



# Office of the City Clerk

City Hall  
121 N. LaSalle St.  
Room 107  
Chicago, IL 60602  
www.chicityclerk.com

## Legislation Text

File #: F2014-33, Version: 1

### NOTIFICATION OF SALE OF CHICAGO INFRASTRUCTURE TRUSJ-^

RETROFIT ONE 031

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To: The City Council of me City of Chicago

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Please be advised that responsive to authority contained in the ordinance adej\$)te4 b jSie G\ City Council (the "City Council") of the City of Chicago (the "City") on January 1S^Mcfgie^ "Retrofit One Ordinance"), providing for the financing of various energy-saving projects^he "Retrofit One"), a (i) Loan and Security Agreement between Banc of America Public Capital Corp (the "Lender") and Chicago Irifrastructure Trust (the "CIT"), dated as of April 1, 2014, for the Ameresco Project; (ii) Loan and Security Agreement between Lender and CIT, dated as of April 1, 2014, for the Noresco Project; and (iii) Loan and Security Agreement between Lender and CIT, dated as of April 1, 2014, for the Schneider Electric Buildings Americas Project (collectively, the "Loan Agreements") were entered into by me, as the Chief Executive Officer, on behalf of the CIT. Capitalized terms defined in the Retrofit One Ordinance are used with the same meanings herein.

The Retrofit One Ordinance provides that the Loan Agreements are approved subject to the following parameters: (a) the aggregate principal amount of the loan thereunder shall not exceed \$30,000,000; (b) the term of the loan thereunder shall not exceed 25 years; and (c) the highest interest rate on the loan thereunder shall not exceed 5.00% per annum. Attached hereto as Exhibit A. are executed copies of the Loan Agreements, setting forth the aggregate principal amount, the maturities, the interest rates of the loan.

Attached hereto as Exhibit B. are executed copies of the (i) Guaranteed Energy Performance Contract between CIT and Ameresco, Inc., dated April 11, 2014; (ii) Guaranteed Energy Performance Contract between CIT and NORESKO, LLC, dated April 11, 2014; and (iii) Guaranteed Energy Performance Contract between CIT and Schneider Electric Buildings Americas, Inc., dated April 11, 2014 (collectively, the "GEPCs"), conforming to the specifications set forth in the Retrofit One Ordinance.

Attached hereto as Exhibit C, are executed copies of the (i) Energy Service Agreement by and between CIT and City, dated April 11, 2014, Retrofit One Chicago Department of Fleet and Facility Management Ameresco Project; (ii) Energy Service Agreement by and between CIT and City, dated April 11, 2014, Retrofit One Chicago Department of Fleet and Facility Management Noresco Project; and (iii) Energy Service Agreement by and between CIT and City, dated April 11, 2014, Retrofit One Chicago Department of Fleet and Facility Management Schneider Electric Buildings Americas Project (collectively, the "ESAs"), conforming to the specifications set forth in the Retrofit One Ordinance.

Attached hereto as Exhibit D, are executed copies of the (i) Subordination and Standstill Agreement between Lender and City, dated April 11, 2014, for the Ameresco Project; (ii) Subordination and Standstill Agreement between Lender and City, dated April 11, 2014, for the Noresco Project; and (iii) Subordination and Standstill Agreement between Lender and City, dated April 11, 2014, for the Schneider Electric Buildings Americas Project (collectively, the "Subordination and Standstill Agreements"), conforming to

the specifications set forth in the Retrofit One Ordinance.

Respectfully submitted this £\_ day of April, 2014.

CHICAGO INFRASTRUCTURE TRUST

Stephen "ST Beitler Chief Executive Officer & Executive  
Director

**ACKNOWLEDGEMENT OF FILING**

The Notification of Sale Chicago Infrastructure Trust Retrofit One was filed in the office of the City Clerk of the City of Chicago, this LTOiy of April, 2014.

Susana A. Mendoza<sup>v</sup> City Clerk

EXHIBIT A LOAN AGREEMENTS

LOAN AND SECURITY AGREEMENT between

BANC OF AMERICA PUBLIC CAPITAL CORP

and

CHICAGO INFRASTRUCTURE TRUST

Dated as of April 1,2014 relating to

CHICAGO INFRASTRUCTURE TRUST (CHICAGO DEPARTMENT OF FLEET AND FACILITY  
MANAGEMENT  
RETROFIT ONE PROJECT) 2014 SERIES A NOTE

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**LOAN AND SECURITY AGREEMENT**

THIS LOAN AND SECURITY AGREEMENT dated as of April 1, 2014 (this "Agreement"), is made and entered into by and between Banc of America Public Capital Corp, a Kansas corporation (the "Lender"), and Chicago Infrastructure Trust, a nonprofit corporation organized and existing under the laws of the State of Illinois (the "Borrower").

**WITNESSETH:**

WHEREAS, the Borrower is authorized and empowered pursuant to the provisions of an ordinance adopted by the City Council (the "City Council") of the City of Chicago, Illinois on April 24, 2012,; as amended, including an ordinance adopted by the City Council on January 15, 2014 and a resolution adopted by the board of directors of the Borrower on November 12, 2013, to, among other things, (i) undertake and acquire certain energy conservation projects for the benefit of the City and its sister agencies, and (ii) to finance such projects through the issuance of bonds, notes, certificates, contract rights and other obligations; and

WHEREAS, the City of Chicago (the "City") desires to achieve energy and operational cost savings from certain energy conservation measures, including the Equipment (as defined herein), acquired by the Borrower on the terms and conditions set forth in the Energy Services Agreement (as defined herein); and

WHEREAS, the Borrower will enter into the Energy Performance Contract (as defined herein) with the Contractor (as defined herein) for the purposes of acquiring the Equipment and certain services related thereto; and

WHEREAS, the Lender will loan the Loan Amount (as defined herein) to the Borrower pursuant to the terms of this Agreement for the purpose of financing the costs of (i) the Equipment; and (ii) paying certain closing costs.

WHEREAS, the Borrower will assign to the Lender its right to receive the Revenues (as defined herein) including the amounts payable by the City pursuant to the Energy Services Agreement and certain amounts payable by the Contractor pursuant to the Energy Performance Contract; and

WHEREAS, as security for the payment of all the Borrower's obligations under this Agreement, the Borrower shall grant to the Lender a first priority perfected security interest in the Equipment, the Revenues, the Project Fund, the Revenue Fund and/or such other security interests as may be appropriate given the nature of the Equipment financed;

NOW, THEREFORE, in consideration of the payments to be made hereunder and the mutual covenants contained herein, the parties agree as follows.

**ARTICLE I DEFINITIONS**

Section 1.01. Definitions. The following terms used herein will have the meanings indicated below unless the context clearly requires otherwise.

**"Additional Payments"** means the amounts, other than Loan Payments, payable by the Borrower pursuant to the provisions of this Agreement, as set forth in Section 3.05.

**"Agreement"** means this Loan and Security Agreement, as the same may be amended or modified from time to time, including the accompanying attachments and documents, which shall constitute a fully integrated transaction existing in accordance with its own terms and conditions.

**"Annual Guaranteed Energy Savings"** means the amount of annual energy savings guaranteed by ( the Contractor pursuant to the Energy Performance Contract.

"Authorized Officer" means (i) in the case of the Lender, the President or any Vice President, and when used in reference to an act or document of the Lender, also means any other person authorized to perform the act or sign the document; (ii) in the case of the Borrower, the Chief Executive Officer or any other person, authorized by a resolution of the Borrower to perform such act or execute such document..

"Bond Counsel" means an attorney or firm of attorneys nationally recognized on the subject of municipal bonds and selected by the Borrower and reasonably acceptable to the City and the Lender.

"Borrower" means Chicago Infrastructure Trust, an Illinois nonprofit corporation.

"Borrower Documents" shall have the meaning ascribed to such term in Section 2.01 (a).

"Business Day" means a day other than a Saturday or Sunday on which banks are generally open for business in New York, New York and Chicago, Illinois.

"City" means the City of Chicago, Illinois, a home rule unit of local government under the Constitution and laws of the State.

"Closing Date" means the date of delivery of all executed documents as required under this Agreement.

"Code" means the Internal Revenue Code of 1986, as amended from time to time, and the regulations issued thereunder.

"Conditional Purchase Agreement" means the Conditional Purchase Agreement dated April 11, 2014, between the Contractor and the Lender.

"Contractor" means Ameresco, hie, a Delaware corporation, and its permitted successors and assigns.

"Contract Price" means the all-inclusive price of the Equipment, including the cost of design, engineering, installation and training, but excluding the cost of any operation or maintenance services or monitoring and verification services, as set forth in the Energy Performance Contract.

"Determination of Taxability" means (a) the receipt by the Lender, the Borrower or the City of an original or a copy of an Internal Revenue Service Statutory Notice of Deficiency which is non-appealable and holds that an Event of Taxability has occurred; (b) the issuance of any public or private ruling of the Internal Revenue Service that holds that an Event of Taxability has occurred; or (c) receipt by the Lender, the Borrower or the City of a written opinion of Bond Counsel that an Event of Taxability has occurred.

"Energy Performance Contract" means the Guaranteed Energy Performance Contract dated April 11, 2014 between the Borrower and the Contractor, and any amendments or supplements thereto.

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"Energy Services Agreement" means the Energy Services Agreement related to the Equipment, dated April 11, 2014, between the Borrower and the City, and any amendments or supplements thereto.

"Equipment" means the fixed and moveable personal property constituting energy conservation measures as more particularly described in the Energy Services Agreement, together with all replacement parts, additions, repairs, modifications, substitutions, accessions, and accessories incorporated therein and/or affixed to such personal property.

"Escrow Agent" means the party designated as such under the Escrow Agreement, and its successors and assigns permitted pursuant to the terms of the Escrow Agreement.

"Escrow Agreement" means the Escrow Agreement dated as of April 1, 2014 between the Borrower, the Lender and the Escrow Agent, pursuant to which the Project Fund is established and administered.

"Event of Taxability" means if as the result of any act of the City, failure to act by the City or any misrepresentation or inaccuracy by the City in any of the representations, warranties or covenants of the City contained in this Agreement or included in the Tax Certificate, the interest on the Series A Note is or becomes includable in the gross income of the registered owner of the Series A Note for federal income tax purposes. For all purposes of this definition, an Event of Taxability shall be deemed to occur on the date as of which the interest on the Series A Note is or becomes includable in the gross income of the registered owner of the Series A Note for federal income tax purposes.

"Excess Savings" means amounts on deposit in the Revenue Fund on each July 1, commencing July 1, 2016 after required payments for Loan Payments, Paying Agent fees, Contractor Fees (as defined in the Paying Agent Agreement), and any refund to the City as provided in the Paying Agent Agreement.

"Lender" means Banc of America Public Capital Corp, a Kansas corporation, and its successors and assigns.

"Loan Amount" means an amount equal to \$6,477,897 to be paid or provided by the Lender for application in accordance with Section 3.01(a), which amount includes (a) the Contract Price of the Equipment and (b) the costs of issuance related to this Agreement.

"Loan Payments" means those scheduled payments of principal, premium, if any, and interest (but excluding administrative fees, indemnifications and reimbursements payable by the Borrower to the Lender hereunder), as specifically set forth in the Notes.

"Loan Rate" means 4.95% per annum.

"Notes" means, collectively, the Series A Note and the Supplemental Note.

"Paying Agent" means the party designated as such under the Paying Agent Agreement, and its successors and assigns permitted pursuant to the terms of the Paying Agent Agreement.

"Paying Agent Agreement" means the Servicing and Paying Agent Agreement dated as of April 1, 2014, between the Borrower and the Paying Agent, and any amendments or supplements thereto.

"PBC Undertaking Agreement" means the Undertaking Agreement dated March 4, 2014 between the Public Building Commission of Chicago and the Borrower relating to the Energy Services Agreement and the Energy Performance Contract, and any amendments or supplements thereto.

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"Permitted Encumbrances" means as of any particular time: (i) liens for taxes, assessments or other governmental charges not delinquent or which are currently being contested by the Borrower in good faith by appropriate proceedings and which proceedings do not, in the Lender's reasonable judgment, materially adversely affect the Lender's security interest in the Equipment; (ii) this Agreement and amendments thereto; (iii) the Borrower's ownership interest in the Equipment; (iv) the Lender's security interest in the Equipment; and (v) mechanic's, workmen's and repairmen's liens which are not delinquent or which are currently being contested by the Borrower or the Contractor in good faith by appropriate proceedings and which proceedings do not, in the Lender's reasonable judgment, materially adversely affect the Lender's security interest in the Equipment.



"Prepayment Price" means the following prepayment prices (expressed as a percentage of the principal amount of the Series A Note to be prepaid) during the corresponding prepayment period set forth below, plus accrued interest to the prepayment date:

Prepayment Period On or before July 1, 2024 July 2, 2024 through July 1, 2025 July 2, 2025 through July 1, 2026 July 2, 2026 and thereafter

Prepayment Price

103% 102% 101% 100%

"Project Fund" means the fund established and held by the Escrow Agent pursuant to the Escrow Agreement.

"Reserved Rights" means the Borrower's rights under the Energy Services Agreement to receive payment of its fees and expenses and for indemnification by the City, the Borrower's rights to indemnification under the Energy Performance Contract by the Contractor, and the Borrower's rights to receive notices pursuant to the Energy Services Agreement and the Energy Performance Contract and to exercise remedies in connection with the foregoing.

"Revenue Fund" means the fund established and held by the Paying Agent pursuant to the Paying Agent Agreement.

"Revenues" shall have the meaning ascribed to such term in Section 3.04.

"Series A Note" means the promissory note from the Borrower to the Lender in the original principal amount of \$6,477,897, substantially in the form of Exhibit A hereto.

"State" means the State of Illinois.

"Subordination Agreement" means that certain Subordination and Standstill Agreement dated April 11, 2014, between the Lender and the City.

"Supplemental Note" means the supplemental promissory note from the Borrower to the Lender in the maximum principal amount of \$2,145,525, substantially in the form of Exhibit B hereto.

"Taxable Rate" means 7.61% per annum

"Tax Certificate" means the Tax Compliance Agreement dated the Closing Date, executed by the Borrower and the City, including all amendments thereto.

"UCC" means the State's Uniform Commercial Code.

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Section 1.02. Rules of Construction. The following rules shall apply to the construction of this Agreement unless the context requires otherwise:

a) Singular words shall connote the plural number as well as the singular and vice versa.

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

c) The headings and table of contents as used in this Agreement are solely for convenience of reference and shall not constitute a part of this Agreement nor shall they affect its meaning, construction or effect.

## ARTICLE II REPRESENTATIONS, WARRANTIES AND COVENANTS OF BORROWER

Section 2.01. Representations, Warranties and Covenants. The Borrower represents, warrants and covenants as follows:

a) The Borrower (1) is a nonprofit corporation organized and existing under the laws of the State; (2) has lawful power and authority to enter into, execute and deliver this Agreement, the Escrow Agreement, the Paying Agent Agreement, the Energy Services Agreement, the Energy Performance Contract and the PBC Undertaking Agreement (collectively, the "Borrower Documents") and to carry out its obligations hereunder and thereunder; (3) is authorized to purchase and own personal property, to borrow money to finance the purchase of such property, and to grant security interests and liens upon such property; (4) by all necessary corporate action has been duly authorized to execute and deliver the Borrower Documents acting by and through its duly authorized officers; and (5) has duly and validly executed and delivered each of the Borrower Documents, each of which constitutes the legal, valid and binding obligation of the Borrower enforceable in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization or moratorium or other similar Laws relating to the enforcement of creditors' rights generally and by general equitable principles.

b) The execution and delivery of the Borrower Documents by the Borrower will not result in a breach of any of the terms of, or constitute a default under, any indenture, mortgage, deed of trust, lease or other agreement or instrument to which the Borrower is a party or by which it or any of its property is bound, or any constitutional or statutory rules or regulations applicable to the Borrower or its property.

c) There is no action, suit, proceeding, inquiry or investigation at law or in equity or before or by any court, public board or body pending or, to the best knowledge of the Borrower, threatened against or affecting the Borrower wherein an unfavorable decision, ruling or finding would adversely affect (i) the transactions contemplated by, or the validity or enforceability of, this Agreement, the Energy Services Agreement or the Energy Performance Contract or (ii) the tax-exempt status of the interest on the Series A Note.

d) The Borrower shall cause to be executed and delivered in connection with this Agreement such documents as are reasonably required by the Lender to insure the validity and enforceability of this Agreement, the Energy Services Agreement and the Energy Performance Contract and the exemption from federal income taxation of interest on the Series A Note.

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(e) No event or condition that constitutes, or with the giving of notice or the lapse of time or both would constitute, an Event of Default exists as of the Closing Date.

f) In no event shall the Borrower consent to any amendment, modification or change to (i) the Energy Services Agreement which has the effect of reducing the amount, or delaying any date for receipt, of payments payable by the City thereunder or (ii) the Energy Performance Contract which has the effect of reducing the amount, or delaying any date for receipt, of the Performance Guarantee Payment payable by the Contractor with respect to any Performance Guarantee Year thereunder, without the prior written consent of the Lender in each instance described under clause (i) or (ii).

g) At no time and in no event will the Borrower permit, suffer or allow any of the Loan Amount to be transferred to any person or entity in violation of, or to be used in any manner which is prohibited by, State or federal law.

h) The BoiTower is not in violation of any applicable law promulgated or judgment entered by any federal, state or governmental authority that individually or in the aggregate, would affect its material obligations under this Agreement, the Energy Services Agreement or the Energy Performance Contract.

(i) The Borrower is, or will be, the holder of all material federal, state, local or other governmental consents, licenses, permits or other authorizations required to permit it to operate or conduct its business as contemplated by this Agreement, the Energy Services Agreement and the Energy Performance Contract.

(j) The Borrower's rights and interests under the Energy Services Agreement and the Energy Performance Contract and with respect to the Revenues are free and clear of all claims, liens, security interests and encumbrances of any kind or character, except as assigned and granted to the Lender by the Borrower under Section 3.02 (b).

(k) All factual information heretofore or contemporaneously furnished to the Lender in writing by the Borrower for purposes of or in connection with this Agreement and the transactions contemplated hereby, taken as a whole, are true and accurate in all material respects on the date as of which such information is dated or certified (or, if such information has been amended or supplemented, on the date as of which any such amendment or supplement is dated or certified).

Section 2.02. Tax Covenants. It is the intention of the parties hereto that the interest on the Series A Note be and remain excludable from gross income for purposes of federal income taxation. In furtherance of the foregoing, the Borrower covenants that it shall, at all times, do and perform all acts and things necessary and within its control in order to assure that the interest on the Series A Note shall, for the purposes of federal income taxation, be excludable from the gross income of the Lender. The Borrower shall not permit the use of the proceeds of the Series A Note, nor take nor omit to take any action, so as to cause interest on the Series A Note to cease to be excludable from the gross income of the Lender for the purposes of federal income taxation.

Section 2.03. Incorporation of Tax Certificate. The representations, warranties, agreements, covenants and statements of expectations of the Borrower set forth in the Tax Certificate are by this reference incorporated in this Agreement as though fully set forth herein.

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**ARTICLE III LOAN  
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**Section 3.01. Loan Amount; Supplemental Loan Amount; Notes.**

a) Subject to the terms, provisions and conditions of this Agreement, on the Closing Date, the Borrower agrees to borrow from the Lender, and the Lender agrees to loan to the Borrower upon satisfaction of the conditions set forth in Section 6.01, the Loan Amount which shall be deposited in the Project Fund and be applied pursuant to the terms of the Escrow Agreement to pay the costs of the Equipment and certain closing costs.

b) The obligation to repay the Loan Amount hereunder shall be evidenced by the Series A Note. The Series A Note shall bear interest, be payable and mature as set forth in Exhibit A.

c) Upon the occurrence of each (without duplication) of: (i) a Determination of Taxability or (ii) a casualty or condemnation event occurs with respect to the Equipment as provided in Section 9.01 and the Lender elects to apply Net Proceeds and/or any other amounts available under the Energy Services Agreement (including Section 6.3 thereof) to the then-applicable Prepayment Price pursuant to Section 9.01 (each a "Supplemental Note Trigger Event"), the principal amount of the Supplemental Note shall equal the then applicable Supplemental Loan Amount. The "Supplemental Loan Amount" shall equal the sum of (a) in the case of a Determination of Taxability, the sum of (x) an amount calculated with respect to Loan Payments paid prior to the Determination of Taxability to restore to the registered owner of the Series A Note its after-tax yield on the Series A Note calculated at the Taxable Rate for the period from the date on which the Event of Taxability is deemed to have occurred to the date of such Determination of Taxability; plus (y) an amount calculated to maintain such after-tax yield to the registered owner of the Series A Note on each scheduled Series A Note payment due date from and after the date of such Determination of Taxability to the final stated installment payment due date of the Series A Note; plus (z) the amount equal to the aggregate interest on the sum of the amounts in (x) and (y) calculated at the Loan Rate and compounded on each scheduled Series A Note installment payment due date to the final stated installment payment due date of the Series A Note; plus (b) in case of a casualty or condemnation event, the sum of (x) the amount of the then-applicable Prepayment Price less the amount of Net Proceeds and/or other amounts available under the Energy Services Agreement (including Section 6.3 thereof) applied by the Lender pursuant to Section 9.01, plus (y) the amount equal to the aggregate interest on such net amount under (x) calculated at the Loan Rate and compounded on each scheduled Series A Note installment payment due date to the final stated installment payment due date of the Series A Note.

d) The Borrower shall have the obligation to pay the Supplemental Loan Amount (if any) from and after the issuance of the Supplemental Note on the Closing Date, provided that the Supplemental Loan Amount and the installment payments with respect thereto shall not be determined or become payable until the occurrence (if ever) of a Supplemental Note Trigger Event. The obligation to repay the Supplemental Loan Amount shall be evidenced by the Supplemental Note. The Supplemental Note shall bear interest, be payable and mature as set forth in Exhibit B. In the event the final stated installment payment due date of the Series A Note occurs and Borrower's obligation to pay the Series A Note is satisfied prior to the occurrence of a Supplemental Note Trigger Event, the Supplemental Note shall be canceled and no longer outstanding.

### **Section 3.02. Loan Payments; Security for Payments.**

(a) The Borrower shall pay to the Lender all Loan Payments at the times and in the amounts provided in the Notes, in lawful money of the United States of America, but only from the Revenues. The Loan Payments shall be payable without notice or demand when due at such place as the

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Lender shall direct in writing. Subject to Section 3.04, the obligations of the Borrower to make Loan Payments and to perform and observe the other covenants and agreements contained herein are absolute and unconditional in all events without abatement, diminution, deduction, set-off or defense, for any reason, including without limitation any failure of the Equipment, any defects, malfunctions, breakdowns or infirmities in the Equipment, disputes with the Contractor or the Lender, failure of the Contractor under the Energy Performance Contract to perform any of its obligations thereunder for whatever reason, including bankruptcy, insolvency, reorganization or any similar event with respect to the Contractor or any accident, condemnation or unforeseen circumstances.

b) As security for its obligation to pay Loan Payments to the Lender and to perform its other obligations hereunder, the Borrower hereby assigns, and grants a security interest in, to the Lender all of its rights and interests under the Energy Services Agreement and the Energy Performance Contract, including, without limitation, the Borrower's right to collect and receive all payments thereunder, the right to make all waivers and agreements and to enter into any amendments and all of its other rights, powers, privileges, options and other benefits thereunder, but excluding the Borrower's duties and obligations thereunder (which are not delegated, but are retained by the Borrower), and the

Lender may take such action and exercise such rights and remedies under the Energy Services Agreement and the Energy Performance Contract upon the occurrence of an event of default under either thereof and exercise and enforce all other rights and interests of the Borrower thereunder (except the Reserved Rights).

c) The Borrower shall cause to be deposited in the Revenue Fund all moneys paid or payable from (i) the City to the Borrower pursuant to the Energy Services Agreement and (i) the Contractor to the Borrower pursuant to the Energy Performance Contract, and shall not direct such funds to be deposited in any other manner.

Section 3.03. Payment on Non-Business Days, Whenever any payment to be made hereunder shall be stated to be due on a day which is not a Business Day, such payment may be made on the next succeeding Business Day, with the same effect as if paid on the stated due date.

#### Section 3.04. Limited Obligations of the Borrower.

a) The obligations of the Borrower hereunder shall be special, limited obligations of the Borrower payable solely from (i) the Loan Amount and investments thereof; (ii) all amounts payable by the City pursuant to the Energy Services Agreement (except for the Reserved Rights), including any amount paid by the City upon the exercise of its purchase option under Section 2.3(a) thereof (but only if either Note is then outstanding); (iii) all amounts payable by the Contractor pursuant to the Energy Performance Contract; (iv) all proceeds, cash and non-cash (including insurance proceeds), from the sale, destruction, loss or other disposition of any of the Equipment; and (v) all moneys realized from the exercise of rights and remedies under this Agreement (collectively, the "Revenues").

b) The Borrower shall not be obligated to pay Loan Payments, the Prepayment Price, Additional Payments or other costs incident thereto from any assets of the Borrower other than the Revenues, the Equipment or any other property in which the Borrower has granted the Lender a security interest pursuant to this Agreement. The Borrower shall not be obligated to pay the Loan Payments, the Prepayment Price, Additional Payments or any other obligation hereunder except from revenues or other moneys made available to the Borrower for such purpose and pledged to the payment of the Notes, the premium, if any, and the interest thereon. THIS AGREEMENT AND THE NOTES ARE NOT OBLIGATIONS OF THE CITY. THIS AGREEMENT AND THE NOTES SHALL NOT BE DEEMED TO CONSTITUTE AN INDEBTEDNESS OR A LOAN AGAINST THE GENERAL TAXING POWERS OR CREDIT OF THE CITY, WITHIN THE MEANING OF ANY

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CONSTITUTIONAL OR STATUTORY PROVISION. THE LENDER SHALL NOT HAVE THE RIGHT TO COMPEL ANY EXERCISE OF THE TAXING POWER OF THE CITY, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF TO PAY THE PRINCIPAL OF, PREMIUM, IF ANY, OR INTEREST ON THE NOTES OR ANY OTHER AMOUNT PAYABLE UNDER THIS AGREEMENT.

Section 3.05. Additional Payments. In addition to the Loan Payments payable by the Borrower, the Borrower shall pay as "Additional Payments" hereunder the reasonable expenses and advances by the Lender (including, without limitation, attorneys' fees and disbursements) to pay insurance premiums not otherwise paid, or caused to be paid, by the Borrower or to enforce its rights upon the Borrower's failure to perform its obligations hereunder. Such Additional Payments shall be billed to the Borrower by the Lender from time to time, together with a statement certifying that the amount so billed has been paid by the Lender for one or more of the items described or that such amount is then payable by the Lender for such items.

ARTICLE IV  
RESERVED

ARTICLE V

## PREPAYMENT

### Section 5.01. Optional Prepayment Rights.

a) The Borrower shall be entitled to prepay, in whole or in part on any Loan Payment due date, the Series A Note in an amount not less than \$500,000 per prepayment, upon written notice delivered to the Lender at least 60 days in advance of the prepayment date, at the then-applicable Prepayment Price, plus accrued interest to the prepayment date.

b) The Borrower shall be entitled to prepay, in whole or in part on any Loan Payment due date, the Supplemental Note, upon written notice delivered to the Lender at least 60 days in advance of the prepayment date, at a prepayment price equal to the outstanding Supplemental Loan Amount or portion thereof to be prepaid, plus accrued interest to the prepayment date.

Section 5.02. Mandatory Prepayment from Excess Project Fund. Any funds remaining in the Project Fund on the earlier of July 15, 2015 or delivery by the Borrower (in its capacity as the Customer under the Energy Performance Contract) of the Final Acceptance Certificate pursuant to the Energy Performance Contract in an amount not greater than 10% of the original Loan Amount shall be applied by the Lender on the earlier of such dates to the prepayment of an equivalent portion of the outstanding principal of the Series A Note without premium. Any funds remaining in the Project Fund on July 15, 2015 or delivery by the Borrower (in its capacity as the Customer under the Energy Performance Contract) of the Final Acceptance Certificate pursuant to the Energy Performance Contract in an amount greater than 10% of the original Loan Amount shall be applied by the Lender on the earlier of such dates to the prepayment of a portion of the outstanding principal of the Series A Note equal to the amount of such excess funds remaining after payment of a prepayment premium from such excess funds of 3% of such excess funds.

Section 5.03. Mandatory Prepayment from Excess Savings. Excess Savings in the Revenue Fund on each July 1, commencing July 1, 2016, shall be applied by the Lender on such July 1 to the prepayment of an equivalent portion of the outstanding principal of the Series A Note without premium.

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Section 5.04. Extraordinary Mandatory Prepayment upon Termination of Energy Services Agreement. If the Energy Services Agreement is terminated and such event results in the City paying liquidated damages to the Borrower pursuant to the Energy Services Agreement, the Borrower shall be required to prepay the outstanding principal balance of the Notes at the then-applicable Prepayment Price, plus accrued interest to the prepayment date, but only from and to the extent of such liquidated damages paid by the City pursuant to the Energy Services Agreement.

Section 5.05. Application of Prepayment Amounts. Prepayments by the Borrower in part under this Article V shall be applied to the principal payments due under the Notes in the inverse order of their maturities.

Section 5.06. Consummation of Prepayment. The Lender's security interest in the Equipment, the Energy Services Agreement, the Energy Performance Contract and any other interest granted by the Borrower to the Lender to secure its obligations hereunder shall be terminated and released automatically in conjunction with the receipt of the full Prepayment Price or the final Loan Payment due hereunder and any Additional Payments due hereunder and outstanding, unless an Event of Default hereunder shall have occurred and be continuing as of such date. Such date may be extended for such additional period as the Lender reasonably determines to be necessary to reflect the impact of, and avoid the risks related to, bankruptcy-related laws. On such date, the Lender shall deliver to the Borrower such termination statements and other documents and instruments as the Borrower shall reasonably require to evidence such prepayment and termination of such security interest.

## ARTICLE VI CONDITIONS PRECEDENT

Section 6.01. Conditions to Lender's Performance. As a prerequisite to the performance of the Lender of any of its obligations hereunder, the Lender shall have received all of the following in form and substance satisfactory to the Lender:

- a) This Agreement and each of the Notes, properly executed by the Borrower;
- b) The Energy Performance Contract, properly executed by the Borrower and the Contractor;
- c) The Energy Services Agreement, properly executed by the Borrower and the City;
- d) The Paying Agent Agreement, properly executed by the Borrower, the Lender and the Paying Agent;
- e) The Escrow Agreement, properly executed by the Borrower, the Lender and the Escrow Agent;
- f) The Subordination Agreement, properly executed by the Lender and the City;
- g) The Conditional Purchase Agreement, properly executed by Contractor and the Lender;
- (h) The PBC Undertaking Agreement, properly executed by the Public Building Commission of Chicago, the Borrower and the City;

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(i) A certified copy of the Surety Bonds related to the Energy Performance Contract satisfying the conditions set forth in Section 8.07, or, at the Lender's sole discretion, such Surety Bonds may be provided after the Closing Date, provided however, that no "Disbursement Request" other than for costs of issuance pursuant to the Escrow Agreement shall be authorized by the Lender until such Surety Bonds satisfying the conditions set forth in Section 8.07 have been delivered to the Lender;

(j) As applicable, financing statements naming the Borrower, as debtor, and naming the Lender, as secured party, such other affidavits, notices and similar instruments necessary or appropriate to perfect and maintain the Lender's first priority, perfected security interest in the Equipment, the Revenues, and moneys and investments held from time to time in the Revenue Fund and the Project Fund;

(k) A certificate of the City in form and substance satisfactory to the Borrower certifying as to, among other things, (i) the ordinances of the City Council (or other satisfactory evidence) authorizing the creation of the Borrower, the execution, delivery and performance of the Energy Services Agreement and any other related documents and the transactions contemplated thereby and hereunder and (ii) the signatures of the officers or agents of the City authorized to execute and deliver the Energy Services Agreement and other related instruments, agreements and certificates on behalf of the City;

(l) A certificate of the Borrower certifying as to, among other things, (i) the resolutions of the Board of Directors of the Borrower authorizing the creation of the Borrower, the execution, delivery and performance of the

Borrower Documents and any other related documents and (ii) the officers of the Borrower authorized to execute and deliver the Borrower Documents, and other instruments, agreements and certificates on behalf of the Borrower;

(m) A Tax Certificate, properly by the Borrower and the City;

(n) Certificates of insurance or evidence of self-insurance required under this Agreement, the Energy Services Agreement and the Energy Performance Contract;

(o) A completed and executed Form 8038-G and evidence of filing thereof with the Internal Revenue Service;

(p) An opinion of counsel to the Borrower addressed to the Lender, the City and Bond Counsel;

(q) An opinion of counsel to the City, addressed to the City, the Lender and the Borrower;

(r) An opinion of counsel to the Contractor addressed to the City, the Lender and the Boi Tower;

(s) An opinion of Bond Counsel addressed to the Borrower and a letter of Bond Counsel addressed to the City and the Lender to the effect that the foregoing opinion addressed to the Borrower may be relied upon by the City and the Lender as if such opinion was addressed to them; and

(t) Any other items reasonably requested by the Lender and evidence of the satisfaction of any of the foregoing requirements of the Lender.

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**ARTICLE VII SECURITY  
INTEREST**

Section 7.01. Security Interest. This Agreement is intended to constitute a security agreement within the meaning of the UCC. In order to secure all of its obligations hereunder and under the Notes to the Lender, the Borrower hereby: (i) grants to the Lender a security interest constituting a first lien on any and all right, title and interest of the Borrower in the Equipment, the Revenues and moneys and investments held from time to time in the Revenue Fund and the Project Fund and in all additions, attachments, accessions, and substitutions thereto, and on any proceeds thereof; and (ii) agrees that this Agreement may be filed as a financing statement evidencing such security interest in the Equipment and such other collateral described in clause (i). The Lender may file any such financing statements in such locations it deems necessary or appropriate to perfect and maintain such security interests granted in this Agreement. If the Lender's security interest in the applicable Equipment and other collateral shall terminate in accordance with Section 5.06, at the request of the Borrower, the Lender shall execute and deliver to the Borrower documents which evidence the termination of the Lender's security or other interest in such Equipment and other collateral.

Section 7.02. Liens and Encumbrances. The Borrower shall not directly, or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Equipment, the Revenues, the Revenue Fund or the Project Fund (collectively "Liens"), except as otherwise contemplated by this Agreement or otherwise approved by the Lender in writing.



Section 7.03. Maintenance of Corporate Status; Change In Name, Corporate Structure or Principal Place of Business. The Borrower at all times shall maintain its existence as a nonprofit corporation organized and existing under the laws of the State. The Borrower shall provide written notice to the Lender of any change in its name, corporate structure, or principal place of business that may affect the enforceability of the Lender's security interest in the Equipment. Such notice shall be provided 30 days in advance of the date that such change is planned to take effect. The Borrower shall first obtain the written consent of the Lender prior to any material change in the Borrower's corporate structure.

Section 7.04. Inspection of Equipment. Subject to the rights of the City under the Energy Services Agreement, the Lender shall have the right at all reasonable times during business hours, upon reasonable advance notice to the Borrower and the City, and with the prior written consent of the City, to enter into and upon the property of the City for the purpose of inspecting the Equipment.

Section 7.05. Location. The Equipment shall be located in the sites designated in the Energy Services Agreement. The Equipment shall not be moved by or on behalf of the Borrower from the sites described in the Energy Services Agreement to any other locations except in accordance with the advance written consent of the Lender.

Section 7.06. Personal Property. The parties hereby intend that the Equipment is, and so long as either Note is outstanding will remain, personal property and will not be or become fixtures. Nonetheless, the Lender, at its cost and expense, may cause such filings to be made with the applicable governmental officials or filing offices to create and preserve for the Lender a perfected, first priority security interest in the Equipment to the extent the property is deemed to be fixtures.

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**ARTICLE VIII MAINTENANCE; MODIFICATION;  
TAXES; INSURANCE AND OTHER OBLIGATIONS**

Section 8.01. Use and Maintenance of Equipment. The Borrower shall care for and promptly make and effect, or shall cause to be cared for and promptly made and effected, all repairs, replacements, and the like as may be necessary to maintain the Equipment in good working order and running condition at all times as required by the Energy Services Agreement and Energy Performance Contract. The Borrower shall not install, use, operate or maintain the Equipment improperly, carelessly, in violation of any applicable law, license or insurance policy provision, including the provisions of the Energy Performance Contract or Energy Services Agreement, or in any manner contrary to that contemplated by this Agreement, the Energy Services Agreement or the Energy Performance Contract. The Borrower shall secure, or cause to be secured, all permits and licenses, if any, necessary for the installation, use, operation, modification and upgrades of the Equipment. The Borrower shall comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each item of the Equipment) with the laws of each jurisdiction in which its operations involving the Equipment may extend and the regulations or orders of any legislative, executive, administrative or judicial body exercising power over the Equipment or the Borrower's interest in this Agreement.

Section 8.02. Taxes, Other Governmental Charges and Utility Charges. In the event that the use, possession or acquisition of the Equipment is found to be subject to taxation in any form (except for income taxes, if any, of the Lender, other than income taxes resulting from the loss of the tax-exemption of the interest on the Series A Note), the Borrower shall pay, or caused to be paid, as the same respectively come due, all taxes and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Equipment, as well as all gas, water, steam, electricity, heat, power, telephone, utility and other charges incurred in the operation, maintenance,

use, occupancy and upkeep of the Equipment.

### **Section 8.03. Insurance.**

a) The Borrower shall maintain, or cause to be maintained, casualty, public liability and property damage insurance, for such amounts and against such hazards as the Lender may reasonably require, to be carried and maintained, or demonstrate to the satisfaction of the Lender that adequate self-insurance is provided with respect to the Equipment sufficient to protect the full replacement value of the Equipment or outstanding principal amount of the Series A Note (whichever is greater) and to protect the Lender, the Borrower and the City from liability in all events. All insurance proceeds from casualty losses shall be payable to the Lender as hereinafter provided. The insurance required to be provided under the terms of Energy Services Agreement and the Energy Performance Contract shall satisfy the requirements of this Section 8.03.

b) Any insurance policy carried or maintained pursuant to this Section shall be so written or endorsed as to make losses, if any, payable to the Lender and naming the Lender as an additional insured party for liability. The Net Proceeds (as defined in Section 9.01) of the insurance required in this section shall be applied as provided in Article IX.

Section 8.04. Advances. In the event the Borrower shall fail to maintain the full insurance coverage required by this Agreement or shall fail to keep the Equipment in good repair and operating condition, the Lender may (but shall be under no obligation to) purchase the required policies of insurance and pay the premiums on the same or may make such repairs or replacements as are necessary and provide for payment thereof; and all amounts so advanced therefor by the Lender shall become Additional Payments payable in accordance with the terms of Section 3.05.

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### **Section 8.05. Amendments; Modifications and Substitutions.**

a) The Borrower shall not without the prior written consent of the Lender (which may be granted or withheld in the exercise of the Lender's sole discretion) agree to (i) any alterations, modifications, additions, substitutions, subtractions or improvements to the Equipment that materially damage the functional capabilities or economic value of the Equipment or have the effect of reducing, or delaying the dates for payment of, the amounts payable by the City under the Energy Services Agreement or the Contractor under the Energy Performance Contract; (ii) increase or decrease the Contract Sum or lengthen or shorten the Contract Time (as each term is defined under the Energy Performance Contract) under the Energy Performance Contract; (iii) exercise any right to terminate the Energy Performance Contract for convenience or for default; (iv) terminate the "Performance Tracking Services" to be performed by the Contractor under the Energy Performance Contract; or (v) any Change Order under the Energy Services Agreement that would change the Project Costs, the Installation Schedule or the Savings Percentage thereunder.

b) The Borrower shall provide such documents or assurances required by the Lender to maintain or confirm the Lender's security interest in the Equipment as so modified or altered, or in any equipment substituted for the Equipment.

c) Notwithstanding the provisions of paragraph (a) of this Section, the Borrower may, with the prior written consent of the Lender and as provided in the Energy Services Agreement and the Energy Performance Contract, agree to the substitution for parts, elements, portions of all of the Equipment, other parts, elements, portions, equipment or facilities. The Borrower shall permit the City and/or the Contractor to make any such permitted substitutions using only parts, elements, equipment or other material of at least equal quality to those contained in or on the Equipment as originally delivered to the Borrower by the Contractor. The Borrower shall provide and cause the City to provide such documents or assurances as the Lender may reasonably request to maintain or confirm the Lender's security interest in the Equipment as so modified or substituted.

### **Section 8.06. Financial and Project Information.**

a) The Borrower shall furnish to the Lender its annual audited financial statements no later than 180 days after the end of each fiscal year of the Borrower and shall provide to the Lender such other financial statements and information as the Lender may reasonably request.

b) The Borrower shall furnish, or cause the City and the Contractor to furnish, as the case may be, to the Lender at the times and in the manner required in the Energy Services Agreement and the Energy Performance Contract, respectively: (i) the annual financial statements of the City and the Contractor; (ii) a copy of any Change Order that changes the Contract Sum or the Contract Time (each term as defined in the Energy Performance Contract) under the Energy Performance Contract; (iii) a copy of any notice that a Contractor must take corrective action and Extraordinary Measures under Section 3 .F of the Energy Performance Contract; (iv) a copy of any stop work order that the Borrower delivers to the Contractor pursuant to Section 6.N or 15.D of the Energy Performance Contract; (v) a copy of any notice from the City that an invoice delivered pursuant to Section 9.2 of the Energy Services Agreement is not a proper invoice or that the amount therein shown is not correct; and (vi) notice of any damage to or loss of the use of the ECMs or that could reasonably be expected to materially adversely affect the Services or the Savings as provided in Section 4.6 of the Energy Services Agreement.

c) The Borrower shall deliver to the Lender, within five Business Days after its delivery to the Borrower (in its capacity as the Customer under the Energy Performance Contract) pursuant to Section IV of the Performance Guarantee, a true and correct copy of each Annual M&V

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Report relating to the Performance Guarantee (as each such term is defined in the Energy Performance Contract).

Section 8.07. Surety Bonds. The Borrower shall secure from the Contractor in connection with the Energy Performance Contract and as provided therein, a payment and performance bond ("Surety Bond") executed by a surety company authorized to do business in the State, having a financial strength rating by A.M. Best Company of "A-" or better, and otherwise satisfactory to Lender and naming Lender as a co-obligee in a sum equal to the entire amount to become payable under the Energy Performance Contract, but shall not secure any energy savings, measurement and verification obligations or maintenance/service obligations, which may be guaranteed by the Contractor under the Energy Performance Agreement. Each bond shall be conditioned on the completion of the work in accordance with the plans and specifications for the Equipment and upon payment of all claims of subcontractors and suppliers. The Borrower shall cause the surety company to add the Lender as a co-obligee on each Surety Bond, and shall deliver a certified copy of each Surety Bond to the Lender promptly upon receipt thereof by the Borrower. Any proceeds from a Surety Bond shall be applied first to amounts due the Lender under this Agreement, and any remaining amounts shall be payable to the Borrower.

In the event of a material default of the Contractor under the Energy Performance Contract in connection with the acquisition, construction, and/or installation of the Equipment or in the event of a material breach of warranty with respect to any material workmanship or performance guaranty with respect to the Equipment, the Borrower will promptly proceed to exhaust its remedies against the Contractor in default. The Borrower shall advise the Lender of the steps it intends to take in connection with any such default. Any amounts received by the Borrower in respect of damages, refunds and adjustments or otherwise in connection with the foregoing shall be paid to the Lender and applied against the Borrower's obligations hereunder.

No "Disbursement Request" under the Escrow Agreement other than for the purpose of paying costs of issuance pursuant to the Escrow Agreement shall be authorized by the Lender until such Surety Bonds satisfying the conditions set forth in this Section have been delivered to the Lender.

**ARTICLE IX  
DAMAGE, DESTRUCTION AND CONDEMNATION; USE OF**

## NET PROCEEDS

Section 9.01. Damage, Destruction and Condemnation. Unless the Borrower shall have exercised the option to prepay Loan Payments by making payment of the Prepayment Price as provided herein, if (a) the Equipment or any portion thereof is destroyed (in whole or in part), lost, secreted, stolen or is damaged by fire or other casualty, or (b) title to, or the temporary use of, the Equipment or any part thereof or the estate of the Borrower in the Equipment or any part thereof shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, then the Lender may, at its option, apply the Net Proceeds (as defined herein) in whole or in part to (i) repair or replace such Equipment or any portion thereof, or (ii) pay the then-applicable Prepayment Price plus interest thereon and any Additional Payments due and outstanding hereunder. Any portion of the Prepayment Price payable under this Section 9.01 in excess of Net Proceeds or any other amounts available under the Energy Services Agreement on the prepayment date shall be included in the Supplemental Loan Amount and paid as provided in Section 3.01. Any balance of the Net Proceeds remaining after application in accordance with the preceding sentence shall be paid to the Borrower.

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For purposes of Section 8.03 and this Article LX the term "Net Proceeds" shall mean the amount remaining from the gross proceeds of any insurance claim or condemnation award after deducting all expenses (including reasonable attorneys' fees) incurred in the collection of such claim or award.

## ARTICLE X

### ASSIGNMENT, INDEMNIFICATION, MORTGAGING AND SELLING Section 10.01.

#### Assignment by Lender.

a) The Lender's right, title and interest in and to this Agreement and the Notes (including the right to receive Loan Payments) and any other amounts payable by the Borrower under this Agreement and the Lender's security interest in the Equipment and all other collateral assigned to the Lender hereunder, and all proceeds therefrom, may be assigned and reassigned by the Lender at any time, in whole or in part, to one or more assignees or subassignees without the necessity of obtaining the consent of the Borrower; provided, that any such assignment, transfer or conveyance (i) shall be made only to investors each of whom the Lender reasonably believes is a "qualified institutional buyer" as defined in Rule 144A(a)(1) promulgated under the Securities Act of 1933, as amended, or an "accredited investor" as defined in Section 501(a)(1), (2), (3) or (7) of Regulation D promulgated under the Securities Act of 1933, as amended, and in either case is purchasing this Agreement and the Notes (or any interest therein) for its own account with no present intention to resell or distribute the Agreement or the Notes (or interest therein), subject to each investor's right at any time to dispose of the Agreement and the Notes (or any interest therein) as it determines to be in its best interests, (ii) shall not be made to any assignee or transferee that is precluded by applicable law from contracting with the Borrower or the City as set forth in the Municipal Code of Chicago or State law, each as amended from time to time, (iii) shall not result in more than 35 owners of the Lender's rights and interests under this Agreement and the Notes or the creation of any interest in the Agreement and the Notes in an aggregate principal component that is less than \$100,000 (or the stated amount of the Supplemental Note to the extent that it is less than \$100,000) and (iv) shall not require the Borrower to make Loan Payments, send notices or otherwise deal with respect to matters arising under this Agreement and the Notes with or to more than one Loan Servicer (as such term is defined below), and any trust agreement, participation agreement or custodial agreement under which multiple ownership interests in this Agreement and the Notes are created shall provide the method by which the owners of such interests shall establish the rights and duties of a single entity, trustee, owner, servicer or other fiduciary or agent acting on behalf of all of the assignees (herein referred to as the "Loan Servicer") to act on their behalf with respect to the rights and interests of the Lender under or with respect to this Agreement and the Notes, including with respect to the exercise of rights and remedies of the Lender on behalf of such

owners upon the occurrence of an Event of Default. The Lender and the Borrower hereby acknowledge and agree that (A) the restrictions and limitations on transfer as provided in this Section 10.01 shall apply to the first and subsequent assignees and sub-assignees of any of the Lender's right, title and interest in, to and under this Agreement and the Notes (or any interest therein); and (B) the Lender's right to assign and transfer as provided in this Section 10.01 does not include the Reserved Rights. Notwithstanding anything in this Section 10.01 to the contrary, the restrictions and limitations on transfer as provided in this Section 10.01 shall not apply to any assignment or transfer of the Lender's right, title and interest in and to this Agreement or the Notes to the Contractor in connection its mandatory purchase obligation or option to purchase as provided in the Conditional Purchase Agreement.

b) Unless to an affiliate controlling, controlled by or under common control with the Lender, no assignment, transfer or conveyance permitted by this Section 10.01 shall be effective as against the Borrower until the Borrower shall have received a written notice of assignment (a copy of which shall be simultaneously delivered to the City) that discloses the name and address of each such assignee; provided, that if such assignment is made to a bank or trust company as trustee or paying agent

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for owners of certificates of participation, participation interests, trust certificates or partnership interests with respect to the Loan Payments, it shall thereafter be sufficient that the Borrower receives notice of the name and address of the bank, trust company or other entity that acts as the Loan Servicer. Notices of assignment provided pursuant to this Section 10.01(b) shall contain a confirmation of compliance with the transfer requirements imposed by Section 10.01(a) hereof. During the term of this Agreement, the Borrower shall keep, or cause to be kept, a complete and accurate record of all such assignments in form necessary to comply with Section 149 of the Code. The Borrower shall retain all such notices as a register of all assignees and shall make all payments to the assignee or assignees or Loan Servicer last designated in such register. The Borrower shall not have the right to and shall not assert against any assignee any claim, counterclaim or other right that the Borrower may have against the Lender or a Contractor; provided that nothing herein is intended or shall be construed to affect in any manner the rights of the Borrower to enforce its rights and remedies directly against the responsible Lender or Contractor.

(c) If the Lender notifies the Borrower of its intent to assign this Agreement and the Notes, the Borrower agrees that it shall execute and deliver to the Lender a notice and acknowledgement of assignment in form reasonably required by the Lender, within five (5) Business Days after its receipt of such request.

Section 10.02. No Sale, Assignment or Leasing by the Borrower. This Agreement and the interest of the Borrower in the Equipment may not be sold, assigned or encumbered by the Borrower unless the prior written consent of the Lender is obtained and an opinion of Bond Counsel is obtained and provided to the Borrower and the Lender to the effect that the excludability of the interest payable on the Series A Note from gross income for federal income tax purposes will not be affected by such action. No agreement or interest therein and no Equipment shall be subject to involuntary assignment, lease, transfer or sale or to assignment, lease, transfer or sale by operation of law in any manner whatsoever except as expressly provided in this Agreement, and any such attempted assignment, lease, transfer or sale shall be void and of no effect and shall, at the option of the Lender, constitute an Event of Default hereunder. In addition, the Borrower shall not consent to any assignment or other transfer by the City or the Contractor of their respective obligations under the Energy Services Agreement or the Energy Performance Contract, as the case may be, without the prior written consent of the Lender and the delivery of an opinion of Bond Counsel to the Borrower and Lender to the effect that the exclusion of the interest payable on tire Series A Note from gross income for federal income tax purposes will not be affected by such action.

Section 10.03. Indemnification. The Borrower, subject to the limits of applicable law and Section 3.04, shall indemnify, protect, hold harmless, save and keep harmless the Lender and its assigns from and against any and all liability, obligation, loss, claim, tax and damage whatsoever, regardless of cause thereof, and all expenses in connection therewith (including, without limitation, counsel fees and expenses, and penalties connected therewitii imposed on interest received) arising out of or as a result of (a) the entering into of this Agreement, (b) the ownership of the

Equipment, (c) the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any item of the Equipment to the extent caused by the gross negligence or willful misconduct of the Borrower, (d) any accident in connection with the operation, use, condition, possession, storage or return of any item of the Equipment resulting in damage to property or injury to or death to any person, and/or (e) the breach of any covenant or any material misrepresentation contained herein. The indemnification arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations hereunder.

Section 10.04. Limitations of Liability. In no event, whether as a result of breach of contract, warranty, tort (including negligence or strict liability), indemnity or otherwise, shall the Lender, its assignees, if any, be liable for any special, consequential, incidental or penal damages including, but not limited to, loss of profit or revenue, loss of use of the Equipment or any associated equipment, service

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materials or software, damage to associated equipment, service materials or software, cost of capital, cost of substitute equipment, service materials or software, facilities, services or replacement power, or down time costs.

Section 10.05. Immunity of Officers, Employees and Members of the Borrower. No recourse shall be had for the payment of the principal of or premium or interest on this Agreement or for any claim based thereon or upon any representation, obligation, covenant or agreement in this Agreement contained against any past, present or future officer, member, employee, director or agent of the Borrower or of any successor public or private corporation thereto, as such, either directly or through the Borrower or any successor public or private corporation thereto, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such officers, members, employees, directors or agents as such is hereby expressly waived and released as a condition of and consideration for the execution of this Agreement.

## ARTICLE XI EVENTS OF DEFAULT AND REMEDIES

Section 11.01. Events of Default The following shall constitute "Events of Default" under this Agreement:

a) failure by the Borrower to pay to the Lender any Loan Payment or Additional Payment required to be paid hereunder when due which continues for a period of ten (10) Days after written notice of such failure is received by the Borrower from the Lender;

b) failure to maintain insurance as provided in Section'8.03;

c) any representation by or on behalf of the Borrower contained in this Agreement or in any instrument furnished in compliance with or in reference to this Agreement proves false or misleading in any material respect as of the date of the making or furnishing thereof;

d) Failure of the Borrower to observe or perform any covenant, condition, agreement or provision in this Agreement on its part to be observed or performed, other than as referred to in subsections (a), (b) and (c) of this Section, for a period of sixty (60) days after written notice, specifying such failure or breach and requesting that it be remedied, has been given to the Borrower by the Lender; except that, if such failure or breach can be remedied but not within such sixty-(60) day period and if the Borrower has taken all action reasonably possible to remedy such failure or breach within such sixty-(60) day period, such failure or breach shall not become an Event of Default for so long as the Borrower shall diligently proceed to remedy the same in accordance with and subject to any directions or limitations of time established by the Lender;

e) the occurrence of an "Event of Default" as defined in the Energy Services Agreement or the Energy Performance Contract, after any applicable notice and cure period;

f) the termination of the Energy Services Agreement pursuant to Section 9.6

thereof;

g) the occurrence of a default under (i) any other agreement for borrowing money, lease financing of property or otherwise receiving credit held by the Lender or any of its affiliates in a principal amount greater than \$10,000,000 under which the Borrower is an obligor for the financing of energy conservation projects for the City or projects for the City's sister agencies supported by payments from appropriation obligations of the City; or (ii) either of the respective Loan Agreements entered into

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on the Closing Date with respect to the Borrower's Chicago Infrastructure Trust Tax-Exempt Revenue Notes (Chicago Department of Fleet and Facility Management Retrofit One Project) 2014 Series B and C; or

(h) (i) initiation by the Borrower of a proceeding under any federal or state bankruptcy or insolvency law seeking relief under such laws concerning the indebtedness of the Borrower; or (ii) initiation against the Borrower of a proceeding under any federal or state bankruptcy or insolvency law seeking relief under such laws concerning the indebtedness of the Borrower if such proceeding is not dismissed within sixty (60) days after commencement thereof.

Section 11.02. Remedies on Default. Whenever any Event of Default shall have occurred and be continuing hereunder, the Lender shall have the right, at its sole option without any further demand or notice, to declare the unpaid principal amount of all Loan Payments to be immediately due and payable and upon any such declaration to take any one or any combination of the following remedial actions with respect to the Equipment financed hereunder, except insofar as the same are otherwise prohibited by applicable law:

a) Take possession of the Equipment wherever situated, without any court order or other process of law and without liability for entering the premises, and lease, sublease or make other disposition of the Equipment for use over a term in a commercially reasonable manner, all for the account of the Lender; provided that the Borrower shall remain liable for the deficiency, if any, between the rent or other amounts paid by a lessee of the Equipment pursuant to such lease or sublease during the same period of time, after deducting all costs and expenses, including reasonable attorney's fees and expenses, incurred with respect to the recovery, repair and storage of the Equipment during such period of time and the sum of the outstanding principal of the Notes, premium and interest thereon, plus Additional Payments and all other amounts due hereunder;

b) Take possession of the Equipment wherever situated, without any court order or other process of law and without liability for entering the premises, and sell any or all of the Equipment at a public or private sale, or otherwise dispose of, hold, use, operate, lease to others or keep idle the Equipment, with thirty (30) days' notice to the Borrower and the City, all free and clear of any rights of the Borrower; provided that any and all such actions be taken in a commercially reasonable manner, all proceeds from such sale to be applied in the following manner:

FIRST, to pay all proper and reasonable costs and expenses associated with the recovery, repair, storage and sale of the Equipment, including reasonable attorneys' fees and expenses,

SECOND, to pay (i) the Lender the amount of all unpaid Loan Payments, if any, which are then due and owing, together with interest and late charges thereon, (ii) the Lender the then outstanding principal amount of the Notes (taking into account the payment of past due Loan Payments as aforesaid), any premium thereon, plus a pro-rata allocation of interest, at the rate utilized to establish the interest component for the Loan Payment next due, from the next preceding due date of a Loan Payment until the date of payment by the buyer, (iii) to the United States any rebatable arbitrage due or accrued pursuant to Section 148(f)(4) of the Code, and (iv) to the Lender any other amounts due hereunder,

including indemnity payments, reimbursement of any advances, Additional Payments and other amounts payable to the Lender hereunder, and

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THIRD, to pay the remainder of the sale proceeds, purchase moneys or other amounts paid by a buyer of the Equipment, to the Borrower;

c) Proceed by appropriate court action to enforce performance by the Borrower or to recover for the breach thereof, including the payment of all amounts due from the Borrower, in which event the Borrower shall pay or repay to the Lender all costs of such action or court action including without limitation, reasonable attorneys' fees;

d) Terminate the Escrow Agreement and apply any proceeds in the Project Fund as provided in (b) above;

e) Exercise its rights of a secured party under the State Uniform Commercial Code with respect to the Equipment, the Project Fund, the Revenue Fund and the Revenues;

f) Exercise its rights as assignee under each of the collateral assignments described in Section 3.02 (b) and 7.01; and

g) Take whatever action at law or in equity may appear necessary or desirable to enforce its rights with respect to the Equipment, the Energy Services Agreement or the Energy Performance Contract, in which event the Borrower shall pay or repay to the Lender all costs of such action or court action, including, without limitation, reasonable attorneys' fees.

Notwithstanding any other provision of this Agreement, the failure by the Borrower to pay all or any portion of a Loan Payment or Additional Payment or otherwise to be in default under this Agreement because the Contractor has failed to pay amounts due or otherwise perform its obligations under the Energy Performance Contract or for any other reason not resulting from a default by the City under the Energy Services Agreement that is not caused by a default by any of the parties (other than the City) to any of the related financing documents does not constitute grounds for the Lender's exercise of its rights to possession and/or sale of the Equipment pursuant to (a) and (b) above; subject, however, to the terms and conditions of the Subordination Agreement.

Notwithstanding any other remedy exercised hereunder, the Borrower shall remain obligated to pay to the Lender any unpaid Loan Payments to the extent Revenues are received pursuant to the Energy Services Agreement and the Energy Performance Contract. To the extent permitted by applicable law, the Borrower hereby waives any rights now or hereafter conferred by statute or otherwise which might require the Lender to use, sell, lease or otherwise dispose of any Equipment in mitigation of the Lender's damages or which might otherwise limit or modify any of the Lender's rights hereunder.

All of the Borrower's right, title and interest in any Equipment the possession of which is retaken by the Lender upon the occurrence of an Event of Default (including, without limitation, construction contracts, warranties, guaranties or completion assurances applicable to such Equipment) shall pass to the Lender, and the Borrower's rights in such Equipment shall terminate immediately upon such repossession.

Section 11.03. No Remedy Exclusive. No remedy herein conferred upon or reserved to the Lender is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the



Lender to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice other than such notice as

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may be required by this Article XI. All remedies herein conferred upon or reserved to the Lender shall survive the termination of this Agreement.

ARTICLE XII  
MISCELLANEOUS

Section 12.01. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by registered mail, postage prepaid, addressed as follows:

If to the Lender: Banc of America Public Capital Coip  
1 1333 McCormick Road, Hunt Valley II Mail Code MD5-  
032-07-05 Hunt Valley, Maryland 21031 Attention: Contract  
Administration

If to the Borrower: Chicago Infrastructure Trust 222 West  
Merchandise Mart Suite 1212  
Chicago, Illinois 60657 Attention: Chief  
Executive Officer

with copies to:

City of Chicago  
Department of Finance  
121 North LaSalle Street, 7th Floor  
Chicago, Illinois 60602

Attention: Deputy Comptroller, Financial Policy and

City of Chicago  
Department of Law  
121 North LaSalle Street, Room 600  
Chicago, Illinois 60602

Attention: Finance and Economic Development Division

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

Section 12^02. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the Lender and the Borrower and their respective successors and permitted assigns, if any.

Section 12.03. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

\*

Section 12.04. Amendments. To the extent permitted by law, the terms of this Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written instrument signed by the parties hereto and approved by Bond Counsel, and then such waiver, consent, modification or change shall be effective only in the specific instance and for the specific purpose given.

Section 12.05. Execution in Counterparts; Electronic Transaction. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument and any of the parties hereto may execute this Agreement by signing any such counterpart, in addition, the transaction described herein may be conducted and this Agreement and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

Section 12.06. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws, excluding the laws relating to the choice of law, of the State.

Section 12.07. Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

Section 12.08. Entire Agreement. This Agreement, the attachments hereto and the Borrower Documents constitute the entire agreement between the Lender and the Borrower with respect to the subject matter hereof. There are no understandings, agreements, representations or warranties, express or implied, not specified herein or in the Borrower Documents regarding this Agreement or the Equipment financed hereunder. This Agreement and the exhibits hereto, shall not be effective or binding upon the Borrower or the Lender until it is signed on their behalf by their respective Authorized Officers.

Section 12.09. "Waiver. The Lender's or the Borrower's failure to enforce at any time or for any period of time any provision of this Agreement shall not be construed to be a waiver of such provision or of the right of the Lender or the Borrower thereafter to enforce each and every provision. No express or implied waiver by the Lender or the Borrower of any default or remedy of default shall constitute a waiver of any other default or remedy of default, or a waiver of any of the Lender's or the Borrower's rights.

Section 12.10. Survivability. All of the limitations of liability and indemnities contained in this Agreement shall continue in full force and effect notwithstanding the expiration or early termination of this Agreement and are expressly made for the benefit of, and shall be enforceable by, the Lender and the Borrower, or their permitted successors and assigns.

Section 12.11. USA Patriot Act Compliance Notification. The Lender hereby notifies the Borrower that pursuant to the requirements of the USA PATRIOT Act (the "Patriot Act"), it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow the Lender to identify the Borrower in accordance with the Patriot Act. The Borrower shall, promptly upon the Lender's request, provide all documentation and other information that the Lender requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the Patriot Act.

Section 12.12. Jury Trial Waiver. Each Party hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in any legal proceeding directly or indirectly arising out of or relating to this Agreement, the Notes or the transactions contemplated hereby or thereby (whether based on contract, tort or any other theory). Each Party hereto (a) certifies that no representative, agent or attorney of any other person has represented, expressly or otherwise, that such other person would not, in the event of litigation, seek to enforce the foregoing waiver and (b) acknowledges that it and the other Party hereto have been induced to enter into this Agreement

by, among other things, the mutual waivers and certifications in this Section.

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[Signature Pages Follow]

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**CHICAGO INFRASTRUCTURE TRUST**

**9**

Stephen S. Beitler Chief Executive Officer and Executive Director

*[Borrower Signature Page of Loan and Security Agreement]*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in their respective corporate names by their duly Authorized Officers, all as of the date first written above.

**BANC OF AMERICA PUBLIC CAPITAL CORP**

{ "\ I

K -r-^^HV' >

By '

Name:

Title:

Tem J. PrestOff  
**Authorized Agent**

*[Lender Signature Page of Loan and Security Agreement]*

**EXHIBIT A**

**FORM OF SERIES A NOTE**

THE CHICAGO INFRASTRUCTURE TRUST (THE "BORROWER") SHALL NOT BE OBLIGATED TO PAY THIS NOTE, THE PREMIUM, IF ANY, AND THE INTEREST THEREON, EXCEPT FROM REVENUES OR OTHER MONEYS MADE AVAILABLE TO THE BORROWER FOR SUCH PURPOSE AND PLEDGED TO THE PAYMENT OF THIS NOTE, THE PREMIUM, IF ANY, AND THE INTEREST THEREON. THIS NOTE IS NOT AN OBLIGATION OF THE CITY OF CHICAGO, ILLINOIS (THE "CITY") AND THIS NOTE SHALL NOT BE DEEMED TO CONSTITUTE AN INDEBTEDNESS OR A LOAN AGAINST THE GENERAL TAXING POWERS OR CREDIT OF THE CITY, WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION. THE HOLDER OF THIS NOTE SHALL NOT HAVE THE RIGHT TO COMPEL ANY EXERCISE OF THE TAXING POWER OF THE CITY, THE STATE OF ILLINOIS OR ANY POLITICAL SUBDIVISION THEREOF TO PAY THE PRINCIPAL OF, PREMIUM, IF ANY, OR INTEREST ON THE NOTE.

THIS NOTE HAS NOT BEEN REGISTERED OR QUALIFIED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE. ANY RESALE, PLEDGE, TRANSFER OR OTHER DISPOSITION OF THIS NOTE OR ANY INTEREST HEREIN WITHOUT SUCH REGISTRATION OR QUALIFICATION MAY BE MADE ONLY IN A TRANSACTION WHICH DOES NOT REQUIRE SUCH REGISTRATION OR QUALIFICATION AND WHICH IS IN ACCORDANCE WITH THE AGREEMENT (DEFINED HEREIN).

**CHICAGO INFRASTRUCTURE TRUST TAX-EXEMPT REVENUE NOTE (CHICAGO  
DEPARTMENT OF FLEET AND FACILITY MANAGEMENT  
RETROFIT ONE PROJECT) 2014 SERIES  
A**

**\$6,477,897**

**April 11, 2014**

FOR VALUE RECEIVED, CHICAGO INFRASTRUCTURE TRUST (the "Borrower") hereby promises to pay to the order of Banc of America Public Capital Corp, its successors and permitted assigns (the "Lender"), in lawful money of the United States of America and in immediately available funds the principal amount of Six Million Four Hundred Seventy-Seven Thousand Eight Hundred Ninety-Seven Dollars (\$6,477,897), together with interest on the principal amount outstanding hereunder from time to time at the rate of 4.95% per annum (computed on the basis of a 360-day year, 30 day month).

This Note is issued pursuant to the Loan and Security Agreement dated as of April 1, 2014 (the "Agreement"), between the Borrower and the Lender. Capitalized terms used herein without definition shall have the meaning given them in the Agreement.

Principal and interest due hereunder shall be payable as follows and as detailed in the attached Payment Schedule.

The entire unpaid principal balance of this Note and all unpaid and accrued interest thereon and

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any other amounts due hereunder shall, unless sooner paid, be paid and become due and payable on April 30, 2029.

This Note shall be prepaid at the option of the Borrower only as permitted and to the extent required by Article V of the Agreement, and upon receipt and application of the amounts so prepaid and, if applicable, the Lender shall recalculate the principal balance then remaining, and any correlative adjustments to the payments provided for in this Note (which adjustments shall be deemed final, absent manifest error) within five (5) Business Days' after written notice thereof is provided by the Lender to the Borrower.

All payments and prepayments on the unpaid principal balance of this Note, interest thereon and any other amounts payable hereunder shall be paid in lawful money of the United States of America in immediately available funds during regular business hours of Lender at the Lender's office at 11333 McCormick Road, M/C MD5-032-07-05, Hunt Valley II, Hunt Valley, MD 21031 or at such other place as the Lender or any other holder of this Note may at any time or from time to time designate in writing to the Borrower; and shall be effective upon receipt. Any payment received by the Lender on account of this Note shall be applied by the Lender: first toward payment of any prepayment premium payable upon prepayment that is not related to a casualty or condemnation event; second; toward payment of accrued and unpaid interest on this Note; third, toward payment of the unpaid principal balance of this Note in the order of maturity (or, if such payment is accepted by the Lender as a partial prepayment of this Note, such payment shall be applied toward payment of the unpaid principal amount of this Note in the inverse order of maturity); and fourth, toward payment of any prepayment premium payable upon prepayment that is related to a casualty or condemnation event and is not to be added to the Supplemental Loan Amount pursuant to Section 3.01(c) of the Agreement.

If any payment on this Note becomes due and payable on a day other than a Business Day (as hereinafter defined), such payment shall be made on the next succeeding Business Day, with the same effect as if paid on the stated due date. "Business Day" as used herein means a day, other than a Saturday or Sunday, on which banks are generally open for business in New York, New York and Chicago, Illinois.

**THIS NOTE AND THE INTEREST THEREON ARE SPECIAL, LIMITED OBLIGATIONS OF THE BORROWER PAYABLE SOLELY OUT OF THE REVENUES AND RECEIPTS DERIVED BY THE BORROWER AS PROVIDED IN THE AGREEMENT AND ARE SECURED BY A PLEDGE AND ASSIGNMENT OF SUCH REVENUES AND RECEIPTS AND OTHER FUNDS AND OTHER ASSETS AS PROVIDED IN THE AGREEMENT. THIS NOTE AND THE AGREEMENT ARE NOT OBLIGATIONS OF THE CITY. THIS NOTE AND THE AGREEMENT SHALL NOT BE DEEMED TO CONSTITUTE AN INDEBTEDNESS OR A LOAN AGAINST THE GENERAL TAXING POWERS OR CREDIT OF THE CITY OF CHICAGO, ILLINOIS (THE "CITY"), WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION. THE LENDER SHALL NOT HAVE THE RIGHT TO COMPEL ANY EXERCISE OF THE TAXING POWER OF THE CITY, THE STATE OF ILLINOIS OR ANY POLITICAL SUBDIVISION THEREOF TO PAY THE PRINCIPAL OF, PREMIUM, IF ANY, OR INTEREST ON THIS NOTE OR ANY OTHER AMOUNT PAYABLE UNDER THE AGREEMENT.**

In the event of the declaration by the Lender of an Event of Default under the Agreement, this Note shall be in default and the balance of the principal sum then due hereunder, together with all accrued interest thereon, immediately shall become due and payable without further notice, such further notice being expressly waived, and the Borrower shall be liable to the holder hereof for reasonable attorney's fees and costs of suit to the extent provided in the Agreement.

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The Borrower waives presentment for payment, demand, notice of demand, notice of nonpayment or dishonor, protest and notice of protest of this Note, and all other notices in connection with the delivery, acceptance, performance, default or enforcement of the payment of this Note.

The remedies of the Lender as provided herein and in the Agreement shall be cumulative and concurrent and may be pursued singly, successively or together, at the sole discretion of the Lender, and may be exercised as often as occasion therefor shall occur; and the failure to exercise any such right or remedy shall in no event be construed as a waiver or release thereof.

THE BORROWER AGREES THAT THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF ILLINOIS (WITHOUT REGARD TO THE CONFLICT OF LAWS PRINCIPLES OF SUCH STATE), INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE. Venue for any action hereunder or related hereto shall be in any state or Federal court of competent jurisdiction in the State of Illinois, and the Borrower submits to the jurisdiction of such courts.

This Note may be transferred or exchanged by the registered owner hereof in person or by its duly authorized attorney, upon surrender of this Note together with a written instrument of transfer satisfactory to the Borrower duly executed by the registered owner or its duly authorized attorney and satisfactory compliance with the applicable terms and conditions of the Agreement, and thereupon a new Note of the same series and maturity and in the same aggregate principal amount, shall be issued to the transferee in exchange therefor upon payment of the charges therein prescribed.

[Signature Page Follows]

IN WITNESS WHEREOF, the Borrower has caused this Note to be signed as of the            day of  
April, 2014.

Attest

CHICAGO INFRASTRUCTURE TRUST

By

Stephen S. Beitler  
Chief Executive Officer and Executive Director



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Payment Schedule

Date	Interest	Principal	Payment	Ending Balance
07/01/2015	\$84,108	\$266,972	\$351,080	\$6,529,637
01/01/2016	161,609	172,871	334,480	6,356,766
07/01/2016	157,330	178,350	335,680	6,178,416
01/01/2017	152,916	181,244	334,160	- 5,997,171
07/01/2017	148,430	186,940	335,370	5,810,231
01/01/2018	143,803	190,057	333,860	5,620,175
07/01/2018	139,099	195,951	335,050	5,424,224
01/01/2019	134,250	199,280	333,530	5,224,943
07/01/2019	129,317	205,413	334,730	5,019,531
01/01/2020	124,233	208,977	333,210	4,810,554
07/01/2020	119,061	215,349	334,410	4,595,205
01/01/2021	113,731	219,139	332,870	4,376,067
07/01/2021	108,308	225,762	334,070	4,150,304

01/01/2022	102,720	229,810	332,530	3,920,494
07/01/2022	97,032	236,698	333,730	3,683,797
01/01/2023	91,174	241,016	332,190	3,442,781
07/01/2023	85,209	248,171	333,380	3,194,609
01/01/2024	79,067	252,763	331,830	2,941,846
07/01/2024	72,811	260,219	333,030	2,681,627
01/01/2025	66,370	265,100	331,470	2,416,527
07/01/2025	59,809	272,861	332,670	2,143,666
01/01/2026	53,056	278,044	331,100	1,865,622
07/01/2026	46,174	286,126	332,300	1,579,496
01/01/2027	39,093	291,637	330,730	1,287,858
07/01/2027	31,874	300,046	331,920	987,813
01/01/2028	24,448	305,902	330,350	681,911
07/01/2028	16,877	314,663	331,540	367,248
01/01/2029	9,089	320,861	329,950	46,388
04/30/2029	759	46,388	47,147	-
Total		\$2,591,758	\$6,796,609*	\$9,388,367

◆Includes \$318,712 of accrued interest.

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## EXHIBIT B

### FORM OF SUPPLEMENTAL NOTE

THE CHICAGO INFRASTRUCTURE TRUST (THE "BORROWER") SHALL NOT BE OBLIGATED TO PAY THIS NOTE, THE PREMIUM, IF ANY, AND THE INTEREST THEREON, EXCEPT FROM REVENUES OR OTHER MONEYS MADE AVAILABLE TO THE BORROWER FOR SUCH PURPOSE AND PLEDGED TO THE PAYMENT OF THIS NOTE, THE PREMIUM, IF ANY, AND THE INTEREST THEREON. THIS NOTE IS NOT AN OBLIGATION OF THE CITY OF CHICAGO, ILLINOIS (THE "CITY") AND THIS NOTE SHALL NOT BE DEEMED TO CONSTITUTE AN INDEBTEDNESS OR A LOAN AGAINST THE GENERAL TAXING POWERS OR CREDIT OF THE CITY, WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION. THE HOLDER OF THIS NOTE SHALL NOT HAVE THE RIGHT TO COMPEL ANY EXERCISE OF THE TAXING POWER OF THE CITY, THE STATE OF ILLINOIS OR ANY POLITICAL SUBDIVISION THEREOF TO PAY THE PRINCIPAL OF, PREMIUM, IF ANY, OR INTEREST ON THE NOTE.

THIS NOTE HAS NOT BEEN REGISTERED OR QUALIFIED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE. ANY RESALE,

PLEDGE, TRANSFER OR OTHER DISPOSITION OF THIS NOTE OR ANY INTEREST HEREIN WITHOUT SUCH REGISTRATION OR QUALIFICATION MAY BE MADE ONLY IN A TRANSACTION WHICH DOES NOT REQUIRE SUCH REGISTRATION OR QUALIFICATION AND WHICH IS IN ACCORDANCE WITH THE AGREEMENT (DEFINED HEREIN).

**CHICAGO INFRASTRUCTURE TRUST SUPPLEMENTAL TAXABLE REVENUE  
NOTE (CHICAGO DEPARTMENT OF FLEET AND FACILITY MANAGEMENT  
RETROFIT ONE PROJECT)**

**\$2,145,525 (maximum principal amount)**

**April 11, 2014**

FOR VALUE RECEIVED, CHICAGO INFRASTRUCTURE TRUST (the "Borrower") hereby promises to pay to the order of Banc of America Public Capital Corp, its successors and permitted assigns (the "Lender"), in lawful money of the United States of America and in immediately available funds a maximum principal amount of Two Million One Hundred Forty-Five Thousand Five Hundred Twenty-Five Dollars (\$2,145,525), subject to adjustment as provided in Section 3.01(c) of the Agreement (defined herein), together with interest on the principal amount outstanding hereunder commencing to accrue on May 1, 2029 at the rate of 5.00% per annum (computed on the basis of a 360-day year, 30 day month).

This Note is issued pursuant to the Loan and Security Agreement dated as of April 1, 2014 (the "Agreement"), between the Borrower and the Lender. Capitalized terms used herein without definition shall have the meaning given them in the Agreement.

Principal shall be due and payable in equal consecutive installments commencing on January 1, 2030, and continuing on each January 1 and July thereafter, and a final installment on January 1, 2036. Interest shall be payable at the same times as the principal payments. The entire unpaid principal balance of this Note and all unpaid and accrued interest thereon and any other amounts due hereunder shall, unless

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sooner paid, be paid and become due and payable on January 1, 2036.

This Note shall be prepaid at the option of the Borrower only as permitted and to the extent required by Article V of the Agreement, and upon receipt and application of the amounts so prepaid and, if applicable, the Lender shall recalculate the principal balance then remaining, and any correlative adjustments to the payments provided for in this Note (which adjustments shall be deemed final, absent manifest error) within five (5) Business Days' after written notice thereof is provided by the Lender to the Borrower.

All payments and prepayments on the unpaid principal balance of this Note, interest thereon and any other amounts payable hereunder shall be paid in lawful money of the United States of America in immediately available funds during regular business hours of Lender at the Lender's office at 11333 McCormick Road, M/C MD5-032-07-05, Hunt Valley 11, Hunt Valley, MD 21031 or at such other place as the Lender or any other holder of this Note may at any time or from time to time designate in writing to Borrower; and shall be effective upon receipt. Any payment received by the Lender on account of this Note shall be applied by the Lender: first, toward payment of accrued and unpaid interest on this Note; and second, toward payment of the unpaid principal balance of this Note in the order of maturity (or, if such payment is accepted by Lender as a partial prepayment of this Note, such payment shall be applied toward payment of the unpaid principal amount of this Note in the inverse order of maturity).

If any payment on this Note becomes due and payable on a day other than a Business Day (as hereinafter defined), such payment shall be made on the next succeeding Business Day, with the same effect as if paid on the stated

due date. "Business Day" as used herein means a day, other than a Saturday or Sunday, on which banks are generally open for business in New York, New York and Chicago, Illinois.

THIS NOTE AND THE INTEREST THEREON ARE SPECIAL, LIMITED OBLIGATIONS OF THE BORROWER PAYABLE SOLELY OUT OF THE REVENUES AND RECEIPTS DERIVED BY THE BORROWER AS PROVIDED IN THE AGREEMENT AND ARE SECURED BY A PLEDGE AND ASSIGNMENT OF SUCH REVENUES AND RECEIPTS AND OTHER FUNDS AND OTHER ASSETS AS PROVIDED IN THE AGREEMENT. THIS NOTE AND THE AGREEMENT ARE NOT OBLIGATIONS OF THE CITY. THIS NOTE AND THE AGREEMENT SHALL NOT BE DEEMED TO CONSTITUTE AN INDEBTEDNESS OR A LOAN AGAINST THE GENERAL TAXING POWERS OR CREDIT OF THE CITY OF CHICAGO, ILLINOIS (THE "CITY"), WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION. THE LENDER SHALL NOT HAVE THE RIGHT TO COMPEL ANY EXERCISE OF THE TAXING POWER OF THE CITY, THE STATE OF ILLINOIS OR ANY POLITICAL SUBDIVISION THEREOF TO PAY THE PRINCIPAL OF, PREMIUM, IF ANY, OR INTEREST ON THIS NOTE OR ANY OTHER AMOUNT PAYABLE UNDER THE AGREEMENT.

In the event of the declaration by the Lender of an Event of Default under the Agreement, this Note shall be in default and the balance of the principal sum then due hereunder, together with all accrued interest thereon, immediately shall become due and payable without further notice, such further notice being expressly waived, and the Borrower shall be liable to the holder hereof for reasonable attorney's fees and costs of suit to the extent provided in the Agreement.

The Borrower waives presentment for payment, demand, notice of demand, notice of nonpayment or dishonor, protest and notice of protest of this Note, and all other notices in connection with the delivery, acceptance, performance, default or enforcement of the payment of this Note.

The remedies of the Lender as provided herein and in the Agreement shall be cumulative and

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concurrent and may be pursued singly, successively or together, at the sole discretion of the Lender, and may be exercised as often as occasion therefor shall occur; and the failure to exercise any such right or remedy shall in no event be construed as a waiver or release thereof.

THE BORROWER AGREES THAT THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF ILLINOIS (WITHOUT REGARD TO THE CONFLICT OF LAWS PRINCIPLES OF SUCH STATE), INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE. Venue for any action hereunder or related hereto shall be in any state or Federal court of competent jurisdiction in the State of Illinois, and the Borrower submits to the jurisdiction of such courts.

This Note may be transferred or exchanged by the registered owner hereof in person or by its duly authorized attorney, upon surrender of this Note together with a written instrument of transfer satisfactory to the Borrower duly executed by the registered owner or its duly authorized attorney and satisfactory compliance with the applicable terms and conditions of the Agreement, and thereupon a new Note of the same series and maturity and in the same aggregate principal amount, shall be issued to the transferee in exchange therefor upon payment of the charges therein prescribed.

[Signature Page Follows]

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April, 2014.

IN WITNESS WHEREOF, the Borrower has caused this Note to be signed as of the            day of

**Attest**

**CHICAGO INFRASTRUCTURE TRUST**

By

;

Stephen S. Beitler  
Chief Executive Officer and Executive Director

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**LOAN AND SECURITY AGREEMENT between**  
**BANC OF AMERICA PUBLIC CAPITAL CORP**  
**and**  
**CHICAGO INFRASTRUCTURE TRUST**

**Dated as of April 1, 2014 relating to**  
**CHICAGO INFRASTRUCTURE TRUST (CHICAGO DEPARTMENT OF FLEET AND FACILITY**  
**MANAGEMENT**  
**RETROFIT ONE PROJECT) 2014 SERIES B NOTE**

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## LOAN AND SECURITY AGREEMENT

THIS LOAN AND SECURITY AGREEMENT dated as of April 1, 2014 (this "Agreement"), is made and entered into by and between Banc of America Public Capital Corp, a Kansas corporation (the "Lender"), and Chicago Infrastructure Trust, a nonprofit corporation organized and existing under the laws of the State of Illinois (the "Borrower").

### WITNESSETH:

WHEREAS, the Borrower is authorized and empowered pursuant to the provisions of an ordinance adopted by the City Council (the "City Council") of the City of Chicago, Illinois on April 24, 2012, as amended, including an ordinance adopted by the City Council on January 15, 2014 and a resolution adopted by the board of directors of the Borrower on November 12, 2013, to, among other things, (i) undertake and acquire certain energy conservation projects for the benefit of the City and its sister agencies, and (ii) to finance such projects through the issuance of bonds, notes, certificates, contract rights and other obligations; and

WHEREAS, the City of Chicago (the "City") desires to achieve energy and operational cost savings from certain energy conservation measures, including the Equipment (as defined herein), acquired by the Borrower on the terms and conditions set forth in the Energy Services Agreement (as defined herein); and

WHEREAS, the Borrower will enter into the Energy Performance Contract (as defined herein) with the Contractor (as defined herein) for the purposes of acquiring the Equipment and certain services related thereto; and

WHEREAS, the Lender will loan the Loan Amount (as defined herein) to the Borrower pursuant to the terms of this Agreement for the purpose of financing the costs of (i) the Equipment; and (ii) paying certain closing costs.

WHEREAS, the Borrower will assign to the Lender its right to receive the Revenues (as defined herein) including the amounts payable by the City pursuant to the Energy Services Agreement and certain amounts payable by the Contractor pursuant to the Energy Performance Contract; and

WHEREAS, as security for the payment of all the Borrower's obligations under this Agreement, the Borrower shall grant to the Lender a first priority perfected security interest in the Equipment, the Revenues, the Project Fund, the Revenue Fund and/or such other security interests as may be appropriate given the nature of the Equipment financed;

NOW, THEREFORE, in consideration of the payments to be made hereunder and the mutual covenants contained herein, the parties agree as follows.

### ARTICLE I DEFINITIONS

Section 1.01. Definitions. The following terms used herein will have the meanings indicated below unless the context clearly requires otherwise.

**"Additional Payments"** means the amounts, other than Loan Payments, payable by the Borrower pursuant to the provisions of this Agreement, as set forth in Section 3.05.

"Agreement" means this Loan and Security Agreement, as the same may be amended or modified from time to time, including the accompanying attachments and documents, which shall constitute a fully integrated transaction existing in accordance with its own terms and conditions.

"Annual Guaranteed Energy Savings" means the amount of annual energy savings guaranteed by the Contractor pursuant to the Energy Performance Contract.

"Authorized Officer" means (i) in the case of the Lender, any President or Vice President, and when used in reference to an act or document of the Lender, also means any other person authorized to perform the act or sign the document; (ii) in the case of the Borrower, the Chief Executive Officer or any other person, authorized by a resolution of the Borrower to perform such act or execute such document.

"Bond Counsel" means an attorney or firm of attorneys nationally recognized on the subject of municipal bonds and selected by the Borrower and reasonably acceptable to the City and the Lender.

"Borrower" means Chicago Infrastructure Trust, an Illinois nonprofit corporation.

"Borrower Documents" shall have the meaning ascribed to such term in Section 2.01(a).

"Business Day" means a day other than a Saturday or Sunday on which banks are generally open for business in New York, New York and Chicago, Illinois.

"City" means the City of Chicago, Illinois, a home rule unit of local government under the Constitution and laws of the State.

"Closing Date" means the date of delivery of all executed documents as required under this Agreement.

"Code" means the Internal Revenue Code of 1986, as amended from time to time, and the regulations issued thereunder.

"Conditional Purchase Agreement" means the Conditional Purchase Agreement dated April 11, 2014, between the Contractor and the Lender.

"Contractor" means NORESKO, LLC, a Delaware limited liability company, and its permitted successors and assigns.

"Contract Price" means the all-inclusive price of the Equipment, including the cost of design, engineering, installation and training, but excluding the cost of any operation or maintenance services or monitoring and verification services, as set forth in the Energy Performance Contract.

"Determination of Taxability" means (a) the receipt by the Lender, the Borrower or the City of an original or a copy of an Internal Revenue Service Statutory Notice of Deficiency which is non-appealable and holds that an Event of Taxability has occurred; (b) the issuance of any public or private ruling of the Internal Revenue Service that holds that an Event of Taxability has occurred; or (c) receipt by the Lender, the Borrower or the City of a written opinion of Bond Counsel that an Event of Taxability has occurred.

"Energy Performance Contract" means the Guaranteed Energy Performance Contract dated April 11, 2014 between the Borrower and the Contractor, and any amendments or supplements thereto.

"Energy Savings Bond" shall have the meaning ascribed to such term in Section 8.08.

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"Energy Services Agreement" means the Energy Services Agreement related to the Equipment, dated April 11, 2014, between the Borrower and the City, and any amendments or supplements thereto.

"Equipment" means the fixed and moveable personal property constituting energy conservation measures as more particularly described in the Energy Services Agreement, together with all replacement parts, additions, repairs, modifications, substitutions, accessions, and accessories incorporated therein and/or affixed to such personal property.

"Escrow Agent" means the party designated as such under the Escrow Agreement, and its successors and assigns permitted pursuant to the terms of the Escrow Agreement.

"Escrow Agreement" means the Escrow Agreement dated as of April 1, 2014 between the Borrower, the Lender and the Escrow Agent, pursuant to which the Project Fund is established and administered.

"Event of Taxability" means if as the result of any act of the City, failure to act by the City or any misrepresentation or inaccuracy by the City in any of the representations, warranties or covenants of the City contained in this Agreement or included in the Tax Certificate, the interest on the Series B Note is or becomes includable in the gross income of the registered owner of the Series B Note for federal income tax purposes. For all purposes of this definition, an Event of Taxability shall be deemed to occur on the date as of which the interest on the Series B Note is or becomes includable in the gross income of the registered owner of the Series B Note for federal income tax purposes.

"Excess Savings" means amounts on deposit in the Revenue Fund on each July 1, commencing July 1, 2016 after required payments for Loan Payments, Paying Agent fees, Contractor Fees (as defined in the Paying Agent Agreement), and any refund to the City as provided in the Paying Agent Agreement.

"Lender" means Banc of America Public Capital Corp, a Kansas corporation, and its successors and assigns.

"Loan Amount" means an amount equal to \$2,564,863 to be paid or provided by the Lender for application in accordance with Section 3.01(a), which amount (together an equity contribution in the amount of \$49,183 to be made by or on behalf of the Borrower) includes (a) the Contract Price of the Equipment and (b) the costs of issuance related to this Agreement.

"Loan Payments" means those scheduled payments of principal, premium, if any, and interest (but excluding administrative fees, indemnifications and reimbursements payable by the Borrower to the Lender hereunder), as specifically set forth in the Notes.

"Loan Rate" means 4.95% per annum.

"Notes" means, collectively, the Series B Note and the Supplemental Note.

"Paying Agent" means the party designated as such under the Paying Agent Agreement, and its successors and assigns permitted pursuant to the terms of the Paying Agent Agreement.

"Paying Agent Agreement" means the Servicing and Paying Agent Agreement dated as of April 1, 2014, between the Borrower and the Paying Agent, and any amendments or supplements thereto.

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"PBC Undertaking Agreement" means the Undertaking Agreement dated March 4, 2014 between the Public Building Commission of Chicago and the Borrower relating to the Energy Services Agreement and the Energy Performance Contract, and any amendments or supplements thereto.

"Permitted Encumbrances" means as of any particular time: (i) liens for taxes, assessments or other governmental charges not delinquent or which are currently being contested by the Borrower in good faith by appropriate proceedings and which proceedings do not, in the Lender's reasonable judgment, materially adversely affect the Lender's security interest in the Equipment; (ii) this Agreement and amendments thereto; (iii) the Borrower's ownership interest in the Equipment; (iv) the Lender's security interest in the Equipment; and (v) mechanic's, workmen's and repairmen's liens which are not delinquent or which are currently being contested by the Borrower or the Contractor in good faith by appropriate proceedings and which proceedings do not, in the Lender's reasonable judgment, materially adversely affect the Lender's security interest in the Equipment.

"Prepayment Price" means the following prepayment prices (expressed as a percentage of the principal amount of the Series B Mote to be prepaid) during the corresponding prepayment period set forth below, plus accrued interest to the prepayment date:

Prepayment Period

On or before July 1, 2024 July 2, 2024 through July 1, 2025 July 2, 2025 through July 1, 2026  
July 2, 2026 and thereafter

Prepayment Price

103% 102% 101% 100%

"Project Fund" means the fund established and held by the Escrow Agent pursuant to the Escrow Agreement.

"Reserved Rights" means the Borrower's rights under the Energy Services Agreement to receive payment of its fees and expenses and for indemnification by the City, the Borrower's rights to indemnification under the Energy Performance Contract by the Contractor, and the Borrower's rights to receive notices pursuant to the Energy Services Agreement and the Energy Performance Contract and to exercise remedies in connection with the foregoing.

"Revenue Fund" means the fund established and held by the Paying Agent pursuant to the Paying Agent Agreement.

"Revenues" shall have the meaning ascribed to such term in Section 3.04.

"Series B Note" means the promissory note from the Borrower to the Lender in the original principal amount of \$2,564,863, substantially in the form of Exhibit A hereto.

"State" means the State of Illinois.

"Subordination Agreement" means that certain Subordination and Standstill Agreement dated April 11, 2014, between the Lender and the City.

"Supplemental Note" means the supplemental promissory note from the Borrower to the Lender in the maximum principal amount of \$877,709, substantially in the form of Exhibit B hereto.

"Taxable Rate" means 7.61% per annum.

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"Tax Certificate" means the Tax Compliance Agreement dated the Closing Date, executed by the Borrower and the City, including all amendments thereto.

"UCC" means the State's Uniform Commercial Code.

Section 1.02. Rules of Construction. The following rules shall apply to the construction of this Agreement unless the context requires otherwise:

- a) Singular words shall connote the plural number as well as the singular and vice versa.
- b) All references in this Agreement to particular Articles, Sections or Exhibits are references to Articles, Sections or Exhibits of this Agreement unless otherwise indicated.
- c) The headings and table of contents as used in this Agreement are solely for convenience of reference and shall not constitute a part of this Agreement nor shall they affect its meaning, construction or effect.

**ARTICLE II  
REPRESENTATIONS, WARRANTIES AND COVENANTS OF BORROWER**

Section 2.01. Representations, Warranties and Covenants. The Borrower represents, warrants and covenants as follows:

- a) The Borrower (1) is a nonprofit corporation organized and existing under the laws of the State; (2) has lawful power and authority to enter into, execute and deliver this Agreement, the Escrow Agreement, the Paying Agent Agreement, the Energy Services Agreement, the Energy Performance Contract and the PBC Undertaking Agreement (collectively, the "Borrower Documents") and to carry out its obligations hereunder and thereunder; (3) is authorized to purchase and own personal property, to borrow money to finance the purchase of such property, and to grant security interests and liens upon such property; (4) by all necessary corporate action has been duly authorized to execute and deliver the Borrower Documents acting by and through its duly authorized officers; and (5) has duly and validly executed and delivered each of the Borrower Documents, each of which constitutes the legal, valid and binding obligation of the Borrower enforceable in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization or moratorium or other similar Laws relating to the enforcement of creditors' rights generally and by general equitable principles.
- b) The execution and delivery of the Borrower Documents by the Borrower will not result in a breach of any of the terms of, or constitute a default under, any indenture, mortgage, deed of trust, lease or other agreement or instrument to which the Borrower is a party or by which it or any of its property is bound, or any constitutional or statutory rules or regulations applicable to the Borrower or its property.
- c) There is no action, suit, proceeding, inquiry or investigation at law or in equity or before or by any court, public board or body pending or, to the best knowledge of the Borrower, threatened against or affecting the Borrower wherein an unfavorable decision, ruling or finding would adversely affect (i) the transactions contemplated by, or the validity or enforceability of, this Agreement, the Energy Services Agreement or the Energy Performance Contract or (ii) the tax-exempt status of the interest on the Series B Note.

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d) The Borrower shall cause to be executed and delivered in connection with this Agreement such documents as are reasonably required by the Lender to insure the validity and enforceability of this Agreement, the Energy Services Agreement and the Energy Performance Contract and the exemption from federal income taxation of interest on the Series B Note.

e) No event or condition that constitutes, or with the giving of notice or the lapse of time or both would constitute, an Event of Default exists as of the Closing Date.

f) In no event shall the Borrower consent to any amendment, modification or change to (i) the Energy Services Agreement which has the effect of reducing the amount, or delaying any date for receipt, of payments payable by the City thereunder or (ii) the Energy Performance Contract which has the effect of reducing the amount, or delaying any date for receipt, of the Performance Guarantee Payment payable by the Contractor with respect to any Performance Guarantee Year thereunder, without the prior written consent of the Lender in each instance described under clause (i) or (ii).

g) At no time and in no event will the Borrower permit, suffer or allow any of the Loan Amount to be transferred to any person or entity in violation of, or to be used in any manner which is prohibited by, State or federal law.

h) The Borrower is not in violation of any applicable law promulgated or judgment entered by any federal, state or governmental authority that individually or in the aggregate, would affect its material obligations under this Agreement, the Energy Services Agreement or the Energy Performance Contract.

(i) The Borrower is, or will be, the holder of all material federal, state, local or other governmental consents, licenses, permits or other authorizations required to permit it to operate or conduct its business as contemplated by this Agreement, the Energy Services Agreement and the Energy Performance Contract.

(j) The Borrower's rights and interests under the Energy Services Agreement and the Energy Performance Contract and with respect to the Revenues are free and clear of all claims, liens, security interests and encumbrances of any kind or character, except as assigned and granted to the Lender by the Borrower under Section 3.02(b).

(k) All factual information heretofore or contemporaneously furnished to the Lender in writing by the Borrower for purposes of or in connection with this Agreement and the transactions contemplated hereby, taken as a whole, are true and accurate in all material respects on the date as of which such information is dated or certified (or, if such information has been amended or supplemented, on the date as of which any such amendment or supplement is dated or certified).

Section 2.02. Tax Covenants. It is the intention of the parties hereto that the interest on the Series B Note be and remain excludable from gross income for purposes of federal income taxation. In furtherance of the foregoing, the Borrower covenants that it shall, at all times, do and perform all acts and things necessary and within its control in order to assure that the interest on the Series B Note shall, for the purposes of federal income taxation, be excludable from the gross income of the Lender. The Borrower shall not permit the use of the proceeds of the Series B Note, nor take nor omit to take any action, so as to cause interest on the Series B Note to cease to be excludable from the gross income of the Lender for the purposes of federal income taxation.

Section 2.03. Incorporation of Tax Certificate. The representations, warranties, agreements, covenants and statements of expectations of the Borrower set forth in the Tax Certificate are by this reference incorporated in this Agreement as though fully set forth herein.

## ARTICLE in LOAN PROVISIONS

### Section 3.01. Loan Amount; Supplemental Loan Amount; Notes.

a) Subject to the terms, provisions and conditions of this Agreement, on the Closing Date, the Borrower agrees to borrow from the Lender, and the Lender agrees to loan to the Borrower upon satisfaction of the conditions set forth in Section 6.01, the Loan Amount which Loan Amount (together with an equity contribution made by or on behalf of the Borrower in the amount of \$49,183) shall be deposited in the Project Fund and be applied pursuant to the terms of the Escrow Agreement to pay the costs of the Equipment and certain closing costs.

b) The obligation to repay the Loan Amount hereunder shall be evidenced by the Series B Note. The Series B Note shall bear interest, be payable and mature as set forth in Exhibit A.

c) Upon the occurrence of each (without duplication) of: (i) a Determination of Taxability or (ii) a casualty or condemnation event occurs with respect to the Equipment as provided in Section 9.01 and the Lender elects to apply Net Proceeds and/or any other amounts available under the Energy Services Agreement (including Section 6.3 thereof) to the then-applicable Prepayment Price pursuant to Section 9.01 (each a "Supplemental Note Trigger Event"), the principal amount of the Supplemental Note shall equal the then applicable Supplemental Loan Amount. The "Supplemental Loan Amount" shall equal the sum of (a) in the case of a Determination of Taxability, the sum of (x) an amount calculated with respect to Loan Payments paid prior to the Determination of Taxability to restore to the registered owner of the Series B Note its after-tax yield on the Series B Note calculated at the Taxable Rate for the period from the date on which the Event of Taxability is deemed to have occurred to the date of such Determination of Taxability; plus (y) an amount calculated to maintain such after-tax yield to the registered owner of the Series B Note on each scheduled Series B Note payment due date from and after the date of such Determination of Taxability to the final stated installment payment due date of the Series B Note; plus (z) the amount equal to the aggregate interest on the sum of the amounts in (x) and (y) calculated at the Loan Rate and compounded on each scheduled Series B Note installment payment due date to the final stated installment payment due date of the Series B Note; plus (b) in case of a casualty or condemnation event, the sum of (x) the amount of the then-applicable Prepayment Price less the amount of Net Proceeds and/or other amounts available under the Energy Services Agreement (including Section 6.3 thereof) applied by the Lender pursuant to Section 9.01, plus (y) the amount equal to the aggregate interest on such net amount under (x) calculated at the Loan Rate and compounded on each scheduled Series B Note installment payment due date to the final stated installment payment due date of the Series B Note.

d) The Borrower shall have the obligation to pay the Supplemental Loan Amount (if any) from and after the issuance of the Supplemental Note on the Closing Date, provided that the Supplemental Loan Amount and the installment payments with respect thereto shall not be determined or become payable until the occurrence (if ever) of a Supplemental Note Trigger Event. The obligation to repay the Supplemental Loan Amount shall be evidenced by the Supplemental Note. The Supplemental Note shall bear interest, be payable and mature as set forth in Exhibit B. In the event the final stated installment payment due date of the Series B Note occurs and Borrower's obligation to pay the Series B Note is satisfied prior to the occurrence of a Supplemental Note Trigger Event, the Supplemental Note shall be canceled and no longer outstanding.

### Loan Payments; Security for Payments.

a) The Borrower shall pay to the Lender all Loan Payments at the times and in the amounts provided in the



Notes, in lawful money of the United States of America, but only from the Revenues. The Loan Payments shall be payable without notice or demand when due at such place as the Lender shall direct in writing. Subject to Section 3.04, the obligations of the Borrower to make Loan Payments and to perform and observe the other covenants and agreements contained herein are absolute and unconditional in all events without abatement, diminution, deduction, set-off or defense, for any reason, including without limitation any failure of the Equipment, any defects, malfunctions, breakdowns or infirmities in the Equipment, disputes with the Contractor or the Lender, failure of the Contractor under the Energy Performance Contract to perform any of its obligations thereunder for whatever reason, including bankruptcy, insolvency, reorganization or any similar event with respect to the Contractor or any accident, condemnation or unforeseen circumstances.

b) As security for its obligation to pay Loan Payments to the Lender and to perform its other obligations hereunder, the Borrower hereby assigns, and grants a security interest in, to the Lender all of its rights and interests under the Energy Services Agreement and the Energy Performance Contract, including, without limitation, the Borrower's right to collect and receive all payments thereunder, the right to make all waivers and agreements and to enter into any amendments and all of its other rights, powers, privileges, options and other benefits thereunder, but excluding the Borrower's duties and obligations thereunder (which are not delegated, but are retained by the Borrower), and the Lender may take such action and exercise such rights and remedies under the Energy Services Agreement and the Energy Performance Contract upon the occurrence of an event of default under either thereof and exercise and enforce all other rights and interests of the Borrower thereunder (except the Reserved Rights).

c) The Borrower shall cause to be deposited in the Revenue Fund all moneys paid or payable from (i) the City to the Borrower pursuant to the Energy Services Agreement and (i) the Contractor to the Borrower pursuant to the Energy Performance Contract, and shall not direct such funds to be deposited in any other manner.

Section 3.03. Payment on Non-Business Days. Whenever any payment to be made hereunder shall be stated to be due on a day which is not a Business Day, such payment may be made on the next succeeding Business Day, with the same effect as if paid on the stated due date.

#### **Section 3.04. Limited Obligations of the Borrower.**

a) The obligations of the Borrower hereunder shall be special, limited obligations of the Borrower payable solely from (i) the Loan Amount and investments thereof; (ii) all amounts payable by the City pursuant to the Energy Services Agreement (except for the Reserved Rights), including any amount paid by the City upon the exercise of its purchase option under Section 2.3(a) thereof (but only if either Note is then outstanding); (iii) all amounts payable by the Contractor pursuant to the Energy Performance Contract; (iv) all proceeds, cash and non-cash (including insurance proceeds), from the sale, destruction, loss or other disposition of any of the Equipment; and (v) all moneys realized from the exercise of rights and remedies under this Agreement (collectively, the "Revenues").

b) The BoiTower shall not be obligated to pay Loan Payments, the Prepayment Price, Additional Payments or other costs incident thereto from any assets of the Borrower other than the Revenues, the Equipment or any other property in which the Borrower has granted the Lender a security interest pursuant to this Agreement. The Borrower shall not be obligated to pay the Loan Payments, the Prepayment Price, Additional Payments or any other obligation hereunder except from revenues or other moneys made available to the Borrower for such purpose and pledged to the payment of the Notes, the

OF THE CITY. THIS AGREEMENT AND THE NOTES SHALL NOT BE DEEMED TO CONSTITUTE AN INDEBTEDNESS OR A LOAN AGAINST THE GENERAL TAXING POWERS OR CREDIT OF THE CITY, WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION. THE LENDER SHALL NOT HAVE THE RIGHT TO COMPEL ANY EXERCISE OF THE TAXING POWER OF THE CITY, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF TO PAY THE PRINCIPAL OF, PREMIUM, IE ANY, OR INTEREST ON THE NOTES OR ANY OTHER AMOUNT PAYABLE UNDER THIS AGREEMENT.

Section 3.05. Additional Payments. In addition to the Loan Payments payable by the Borrower, the Borrower shall pay as "Additional Payments" hereunder the reasonable expenses and advances by the Lender (including, without limitation, attorneys' fees and disbursements) to pay insurance premiums not otherwise paid, or caused to be paid, by the Borrower or to enforce its rights upon the Borrower's failure to perform its obligations hereunder. Such Additional Payments shall be billed to the Borrower by the Lender from time to time, together with a statement certifying that the amount so billed has been paid by the Lender for one or more of the items described or that such amount is then payable by the Lender for such items.

#### ARTICLE IV RESERVED

#### ARTICLE V PREPAYMENT

##### Section 5.01. Optional Prepayment Rights.

a) The Borrower shall be entitled to prepay, in whole or in part on any Loan Payment due date, the Series B Note in an amount not less than \$500,000 per prepayment, upon written notice delivered to the Lender at least 60 days in advance of the prepayment date, at the then-applicable Prepayment Price, plus accrued interest to the prepayment date.

b) The Borrower shall be entitled to prepay, in whole or in part on any Loan Payment due date, the Supplemental Note, upon written notice delivered to the Lender at least 60 days in advance of the prepayment date, at a prepayment price equal to the outstanding Supplemental Loan Amount or portion thereof to be prepaid, plus accrued interest to the prepayment date.

Section 5.02. Mandatory Prepayment from Excess Project Fund. Any funds remaining in the Project Fund on the earlier of October 15, 2015 or delivery by the Borrower (in its capacity as the Customer under the Energy Performance Contract) of the Final Acceptance Certificate pursuant to the Energy Performance Contract in an amount not greater than 10% of the original Loan Amount shall be applied by the Lender on the earlier of such dates to the prepayment of an equivalent portion of the outstanding principal of the Series B Note without premium. Any funds remaining in the Project Fund on October 15, 2015 or delivery by the Borrower (in its capacity as the Customer under the Energy Performance Contract) of the Final Acceptance Certificate the Energy Performance Contract in an amount greater than 10% of the original Loan Amount shall be applied by the Lender on the earlier of such dates to the prepayment of a portion of the outstanding principal of the Series B Note equal to the amount of such excess funds remaining after payment of a prepayment premium from such excess funds of 3% of such excess funds.

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Section 5.03. Mandatory Prepayment from Excess Savings. Excess Savings in the Revenue Fund on each July 1, commencing July 1, 2016, shall be applied by the Lender on such July 1 to the prepayment of an equivalent portion of the outstanding principal of the Notes without premium.

Section 5.04. Extraordinary Mandatory Prepayment upon Termination of Energy Services Agreement. If the Energy Services Agreement is terminated and such event results in the City paying liquidated damages to the Borrower pursuant to the Energy Services Agreement, the Borrower shall be required to prepay the outstanding principal balance of the Notes at the then-applicable Prepayment Price, plus accrued interest to the prepayment date, but only from and to the extent of such liquidated damages paid by the City pursuant to the Energy Services Agreement.

Section 5.05. Application of Prepayment Amounts. Prepayments by the Borrower in part under this Article V shall be applied to the principal payments due under the Notes in the inverse order of their maturities.

Section 5.06. Consummation of Prepayment. The Lender's security interest in the Equipment, the Energy Services Agreement, the Energy Performance Contract and any other interest granted by the Borrower to the Lender to secure its obligations hereunder shall be terminated and released automatically in conjunction with the receipt of the full Prepayment Price or the final Loan Payment due hereunder and any Additional Payments due hereunder and outstanding, unless an Event of Default hereunder shall have occurred and be continuing as of such date. Such date may be extended for such additional period as the Lender reasonably determines to be necessary to reflect the impact of, and avoid the risks related to, bankruptcy-related laws. On such date, the Lender shall deliver to the Borrower such termination statements and other documents and instruments as the Borrower shall reasonably require to evidence such prepayment and termination of such security interest.

## ARTICLE VI CONDITIONS PRECEDENT

Section 6.01. Conditions to Lender's Performance. As a prerequisite to the performance of the Lender of any of its obligations hereunder, the Lender shall have received all of the following in form and substance satisfactory to the Lender:

This Agreement and each of the Notes, properly executed by the Borrower;

The Energy Performance Contract, properly executed by the Borrower and the

The Energy Services Agreement, properly executed by the Borrower and the

The Paying Agent Agreement, properly executed by the Borrower, the Lender

The Escrow Agreement, properly executed by the Borrower, the Lender and the

The Subordination Agreement, properly executed by the Lender and the City;

The Conditional Purchase Agreement, properly executed by Contractor and the

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(h) The PBC Undertaking Agreement, properly executed by the Public Building Commission of Chicago, the Borrower and the City;

(i) A certified copy of the Surety Bonds related to the Energy Performance Contract satisfying the conditions set forth in Section 8.07, or, at the Lender's sole discretion, such Surety Bonds may be provided after the Closing Date, provided however, that no "Disbursement Request" other than for costs of issuance pursuant to the Escrow Agreement shall be authorized by the Lender until such Surety Bonds satisfying the conditions set forth in Section 8.07 have been delivered to the Lender;

(j) As applicable, financing statements naming the Borrower, as debtor, and naming the Lender, as secured party, such other affidavits, notices and similar instruments necessary or appropriate to perfect and maintain the Lender's first priority, perfected security interest in the Equipment, the Revenues, and moneys and investments held from time to time in the Revenue Fund and the Project Fund;

(k) A certificate of the City in form and substance satisfactory to the Borrower certifying as to, among

other things, (i) the ordinances of the City Council (or other satisfactory evidence) authorizing the creation of the Borrower, the execution, delivery and performance of the Energy Services Agreement and any other related documents and the transactions contemplated thereby and hereunder and (ii) the signatures of the officers or agents of the City authorized to execute and deliver the Energy Services Agreement and other related instruments, agreements and certificates on behalf of the City;

(l) A certificate of the Borrower certifying as to, among other things, (i) the resolutions of the Board of Directors of the Borrower authorizing the creation of the Borrower, the execution, delivery and performance of the Borrower Documents and any other related documents and (ii) the officers of the Borrower authorized to execute and deliver the Borrower Documents, and other instruments, agreements and certificates on behalf of the Borrower;

(m) A Tax Certificate, properly by the Borrower and the City;

(n) Certificates of insurance or evidence of self-insurance required under this Agreement, the Energy Services Agreement and the Energy Performance Contract;

(o) A completed and executed Form 8038-G and evidence of filing thereof with the Internal Revenue Service;

(p) An opinion of counsel to the Borrower addressed to the Lender, the City and

Borrower; Borrower;  
Bond Counsel;

(q) An opinion of counsel to the City, addressed to the City, the Lender and the (r) An opinion of counsel to the

Contractor addressed to the City, the Lender and the

(s) An opinion of Bond Counsel addressed to the Borrower and a letter of Bond Counsel addressed to the City and the Lender to the effect that the foregoing opinion addressed to the Borrower may be relied upon by the City and the Lender as if such opinion was addressed to them; and

(t) Any other items reasonably requested by the Lender and evidence of the satisfaction of any of the foregoing requirements of the Lender.

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### ARTICLE VII SECURITY INTEREST

Section 7.01. Security Interest. This Agreement is intended to constitute a security agreement within the meaning of the UCC. In order to secure all of its obligations hereunder and under the Notes to the Lender, the Borrower hereby: (i) grants to the Lender a security interest constituting a first lien on any and all right, title and interest of the Borrower in the Equipment, the Revenues and moneys and investments held from time to time in the Revenue Fund and the Project Fund and in all additions, attachments, accessions, and substitutions thereto, and on any proceeds thereof; and (ii) agrees that this Agreement may be filed as a financing statement evidencing such security interest in the Equipment and such other collateral described in clause (i). The Lender may file any such financing statements in such locations it deems necessary or appropriate to perfect and maintain such security interests granted in this Agreement. If the Lender's security interest in the applicable Equipment and other collateral shall terminate in accordance with Section 5.06, at the request of the Borrower, the Lender shall execute and deliver to the Borrower documents which evidence the termination

of the Lender's security or other interest in such Equipment and other collateral.

Section 7.02. Liens and Encumbrances. The Borrower shall not directly, or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Equipment, the Revenues, the Revenue Fund or the Project Fund (collectively "Liens"), except as otherwise contemplated by this Agreement or otherwise approved by the Lender in writing.

Section 7.03. Maintenance of Corporate Status; Change In Name, Corporate Structure or Principal Place of Business. The Borrower at all times shall maintain its existence as a nonprofit corporation organized and existing under the laws of the State. The Borrower shall provide written notice to the Lender of any change in its name, corporate structure, or principal place of business that may affect the enforceability of the Lender's security interest in the Equipment. Such notice shall be provided 30 days in advance of the date that such change is planned to take effect. The Borrower shall first obtain the written consent of the Lender prior to any material change in the Borrower's corporate structure.

Section 7.04. Inspection of Equipment. Subject to the rights of the City under the Energy Services Agreement, the Lender shall have the right at all reasonable times during business hours, upon reasonable advance notice to the Borrower and the City, and with the prior written consent of the City, to enter into and upon the property of the City for the purpose of inspecting the Equipment.

Section 7.05. Location. The Equipment shall be located in the sites designated in the Energy Services Agreement. The Equipment shall not be moved by or on behalf of the Borrower from the sites described in the Energy Services Agreement to any other locations except in accordance with the advance written consent of the Lender.

Section 7.06. Personal Property. The parties hereby intend that the Equipment is, and so long as the Note is outstanding will remain, personal property and will not be or become fixtures. Nonetheless, the Lender, at its cost and expense, may cause such filings to be made with the applicable governmental officials or filing offices to create and preserve for the Lender as assignee of the Borrower a perfected, first priority security interest in the Equipment to the extent the property is deemed to be fixtures.

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**ARTICLE VIII MAINTENANCE; MODIFICATION;  
TAXES; INSURANCE AND OTHER OBLIGATIONS**

Section 8.01. Use and Maintenance of Equipment. The Borrower shall care for and promptly make and effect, or shall cause to be cared for and promptly made and effected, all repairs, replacements, and the like as may be necessary to maintain the Equipment in good working order and running condition at all times as required by the Energy Services Agreement and Energy Performance Contract. The Borrower shall not install, use, operate or maintain the Equipment improperly, carelessly, in violation of any applicable law, license or insurance policy provision, including the provisions of the Energy Performance Contract or Energy Services Agreement, or in any manner contrary to that contemplated by this Agreement, the Energy Services Agreement or the Energy Performance Contract. The Borrower shall secure, or cause to be secured, all permits and licenses, if any, necessary for the installation, use, operation, modification and upgrades of the Equipment. The Borrower shall comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each item of the Equipment) with the laws of each jurisdiction in which its operations involving the Equipment may extend and the regulations or orders of any legislative, executive, administrative or judicial body exercising power over the Equipment or the Borrower's interest in this Agreement.

Section 8.02. Taxes, Other Governmental Charges and Utility Charges. In the event that the use, possession or acquisition of the Equipment is found to be subject to taxation in any form (except for income taxes, if any, of the Lender, other than income taxes resulting from the loss of the tax-exemption of the interest on the Series B Note), the Borrower shall pay, or caused to be paid, as the same respectively come due, all taxes and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Equipment, as well as all gas, water, steam, electricity, heat, power, telephone, utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Equipment.

### **Section 8.03. Insurance.**

(aj) The Borrower shall maintain, or cause to be maintained, casualty, public liability and property damage insurance, for such amounts and against such hazards as the Lender may reasonably require, to be carried and maintained, or demonstrate to the satisfaction of the Lender that adequate self-insurance is provided with respect to the Equipment sufficient to protect the full replacement value of the Equipment or outstanding principal amount of the Series B Note (whichever is greater) and to protect the Lender, the Borrower and the City from liability in all events. All insurance proceeds from casualty losses shall be payable to the Lender as hereinafter provided. The insurance required to be provided under the terms of Energy Services Agreement and the Energy Performance Contract shall satisfy the requirements of this Section 8.03.

(b) Any insurance policy carried or maintained pursuant to this Section shall be so written or endorsed as to make losses, if any, payable to the Lender and naming the Lender as an additional insured party for liability. The Net Proceeds (as defined in Section 9.01) of the insurance required in this section shall be applied as provided in Article LX.

Section 8.04. Advances. In the event the Borrower shall fail to maintain the full insurance coverage required by this Agreement or shall fail to keep the Equipment in good repair and operating condition, the Lender may (but shall be under no obligation to) purchase the required policies of insurance and pay the premiums on the same or may make such repairs or replacements as are necessary and provide for payment thereof; and all amounts so advanced therefor by the Lender shall become Additional Payments payable in accordance with the terms of Section 3.05.

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### **Section 8.05. Amendments; Modifications and Substitutions.**

a) The Borrower shall not without the prior written consent of the Lender (which may be granted or withheld in the exercise of the Lender's sole discretion) agree to (i) any alterations, modifications, additions, substitutions, subtractions or improvements to the Equipment that materially damage the functional capabilities or economic value of the Equipment or have the effect of reducing, or delaying the dates for payment of, the amounts payable by the City under the Energy Services Agreement or the Contractor under the Energy Performance Contract; (ii) increase or decrease the Contract Sum or lengthen or shorten the Contract Time (as each term is defined under the Energy Performance Contract) under the Energy Performance Contract; (iii) exercise any right to terminate the Energy Performance Contract for convenience or for default; (iv) terminate the "Performance Tracking Services" to be performed by the Contractor under the Energy Performance Contract; or (v) any Change Order under the Energy Services Agreement that would change the Project Costs, the Installation Schedule or the Savings Percentage thereunder.

b) The Borrower shall provide such documents or assurances required by the Lender to maintain or confirm the Lender's security interest in the Equipment as so modified or altered, or in any equipment substituted for the Equipment.

c) Notwithstanding the provisions of paragraph (a) of this Section, the Borrower may, with the prior written consent of the Lender and as provided in the Energy Services Agreement and the Energy Performance Contract, agree to the substitution for parts, elements, portions of all of the Equipment, other parts, elements, portions, equipment or facilities. The Borrower shall permit the City and/or the Contractor to make any such permitted substitutions using only

parts, elements, equipment or other material of at least equal quality to those contained in or on the Equipment as originally delivered to the Borrower by the Contractor. The Borrower shall provide and cause the City to provide such documents or assurances as the Lender may reasonably request to maintain or confirm the Lender's security interest in the Equipment as so modified or substituted.

#### **Section 8.06. Financial and Project Information.**

a) The Borrower shall furnish to the Lender its annual audited financial statements no later than 180 days after the end of each fiscal year of the Borrower and shall provide to the Lender such other financial statements and information as the Lender may reasonably request.

b) . The Borrower shall furnish, or cause the City and the Contractor to furnish, as the case may be, to the Lender at the times and in the manner required in the Energy Services Agreement and the Energy Performance Contract, respectively: (i) the annual financial statements of the City and the Contractor; (ii) a copy of any Change Order that changes the Contract Sum or the Contract Time (each term as defined in the Energy Performance Contract) under the Energy Performance Contract; (iii) a copy of any notice that a Contractor must take corrective action and Extraordinary Measures under Section 3.F of the Energy Performance Contract; (iv) a copy of any stop work order that the Borrower delivers to the Contractor pursuant to Section 6.N or 15.D of the Energy Performance Contract; (v) a copy of any notice from the City that an invoice delivered pursuant to Section 9.2 of the Energy Services Agreement is not a proper invoice or that the amount therein shown is not correct; and (vi) notice of any damage to or loss of the use of the ECMs or that could reasonably be expected to materially adversely affect the Services or the Savings as provided in Section 4.6 of the Energy Services Agreement.

(c) The Borrower shall deliver to the Lender, within five Business Days after its delivery to the Borrower (in its capacity as the Customer under the Energy Performance Contract) pursuant to Section IV

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of the Performance Guarantee, a true and correct copy of each Annual M&V Report relating to the Performance Guarantee (as each such term is defined in the Energy Performance Contract).

Section 8.07. Surety Bonds. The Borrower shall secure from the Contractor in connection with the Energy Performance Contract and as provided therein, a payment and performance bond ("Surety Bond") executed by a surety company authorized to do business in the State, having a financial strength rating by A.M. Best Company of "A-" or better, and otherwise satisfactory to Lender and naming Lender as a co-obligee in a sum equal to the entire amount to become payable under the Energy Performance Contract, but shall not secure any energy savings, measurement and verification obligations or maintenance/service obligations, which may be guaranteed by the Contractor under the Energy Performance Agreement. Each bond shall be conditioned on the completion of the work in accordance with the plans and specifications for the Equipment and upon payment of all claims of subcontractors and suppliers. The Borrower shall cause the surety company to add the Lender as a co-obligee on each Surety Bond, and shall deliver a certified copy of each Surety Bond to the Lender promptly upon receipt thereof by the Borrower. Any proceeds from a Surety Bond shall be applied first to amounts due the Lender under this Agreement, and any remaining amounts shall be payable to the Borrower.

In the event of a material default of the Contractor under the Energy Performance Contract in connection with the acquisition, construction, and/or installation of the Equipment or in the event of a material breach of warranty with respect to any material workmanship or performance guaranty with respect to the Equipment, the Borrower will promptly proceed to exhaust its remedies against the Contractor in default. The Borrower shall advise the Lender of the steps it intends to take in connection with any such default. Any amounts received by the Borrower in respect of damages, refunds and adjustments or otherwise in connection with the foregoing shall be paid to the Lender and applied against the Borrower's obligations hereunder.

No "Disbursement Request" under the Escrow Agreement other than for the purpose of paying costs of issuance pursuant to the Escrow Agreement shall be authorized by the Lender until such Surety Bonds satisfying the conditions set forth in this Section have been delivered to the Lender.

Section 8.08. Energy Savings Bond. No later than the commencement of the "Guarantee Period" (as defined in the Energy Performance Contract), the Borrower shall secure from the Contractor in connection with the Energy Performance Contract a bond ("Energy Savings Bond") executed by a surety company authorized to do business in the State, having a financial strength rating by A.M. Best Company of "A-VII" or better, and otherwise satisfactory to Lender and naming Lender as a co-obligee in a sum equal to the amount of energy savings guaranteed under the Energy Performance Contract in each annual period. The Borrower shall cause the Contractor to provide to the Lender the form of the Energy Savings Bond (including the co-obligee rider thereto) and the identity of the Energy Savings Bond provider not less than thirty (30) days prior to the effective date of any such Energy Savings Bond. The Borrower shall cause the surety company to add the Lender as a co-obligee on the Energy Savings Bond, and shall deliver a certified copy of the Energy Savings Bond to the Lender promptly upon receipt thereof by the Borrower. Any proceeds from the Energy Savings Bond shall be applied first to amounts due the Lender under this Agreement, and any remaining amounts shall be payable to the Borrower.

In the event of failure of the Contractor to pay in respect of its energy savings guaranty under an Energy Performance Contract, the Borrower will promptly proceed to exhaust its remedies against the Contractor. The Borrower shall advise the Lender of the steps it intends to take in connection with any such default. Any amounts received by the Borrower in respect of damages, refunds and adjustments or otherwise in connection with the foregoing shall be paid to the Lender and applied against the Borrower's obligations hereunder.

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**ARTICLE IX**  
**DAMAGE, DESTRUCTION AND CONDEMNATION; USE OF NET**  
**PROCEEDS**

Section 9.01. Damage, Destruction and Condemnation. Unless the Borrower shall have exercised the option to prepay Loan Payments by making payment of the Prepayment Price as provided herein, if (a) the Equipment or any portion thereof is destroyed (in whole or in part), lost, secreted, stolen or is damaged by fire or other casualty, or (b) title to, or the temporary use of, the Equipment or any part thereof or the estate of the Borrower in the Equipment or any part thereof shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, then the Lender may, at its option, apply the Net Proceeds (as defined herein) in whole or in part to (i) repair or replace such Equipment or any portion thereof, or (ii) pay the then-applicable Prepayment Price plus interest thereon and any Additional Payments due and outstanding hereunder. Any portion of the Prepayment Price payable under this Section 9.01 in excess of Net Proceeds or any other amounts available under the Energy Services Agreement on the prepayment date shall be included in the Supplemental Loan Amount and paid as provided in Section 3.01. Any balance of the Net Proceeds remaining after application in accordance with the preceding sentence shall be paid to the Borrower.

For purposes of Section 8.03 and this Article IX the term "Net Proceeds" shall mean the amount remaining from the gross proceeds of any insurance claim or condemnation award after deducting all expenses (including reasonable attorneys' fees) incurred in the collection of such claim or award.

**ARTICLE X**

**ASSIGNMENT, INDEMNIFICATION, MORTGAGING AND SELLING Section 10.01.**

**Assignment by Lender.**



(a) The Lender's right, title and interest in and to this Agreement and the Notes (including the right to receive Loan Payments) and any other amounts payable by the Borrower under this Agreement and the Lender's security interest in the Equipment and all other collateral assigned to the Lender hereunder, and all proceeds therefrom, may be assigned and reassigned by the Lender at any time, in whole or in part, to one or more assignees or subassignees without the necessity of obtaining the consent of the Borrower; provided, that any such assignment, transfer or conveyance (i) shall be made only to investors each of whom the Lender reasonably believes is a "qualified institutional buyer" as defined in Rule 144A(a)(1) promulgated under the Securities Act of 1933, as amended, or an "accredited investor" as defined in Section 501(a)(1), (2), (3) or (7) of Regulation D promulgated under the Securities Act of 1933, as amended, and in either case is purchasing this Agreement and the Notes (or any interest therein) for its own account with no present intention to resell or distribute the Agreement or the Notes (or interest therein), subject to each investor's right at any time to dispose of the Agreement and the Notes (or any interest therein) as it determines to be in its best interests, (ii) shall not be made to any assignee or transferee that is precluded by applicable law from contracting with the Borrower or the City as set forth in the Municipal Code of Chicago or State law, each as amended from time to time, (iii) shall not result in more than 35 owners of the Lender's rights and interests under this Agreement and the Notes or the creation of any interest in the Agreement and the Notes in an aggregate principal component that is less than \$100,000 (or the stated amount of the Supplemental Note to the extent that it is less than \$100,000) and (iv) shall not require the Borrower to make Loan Payments, send notices or otherwise deal with respect to matters arising under this Agreement and the Notes with or to more than one Loan Servicer (as such term is defined below), and any trust agreement, participation agreement or custodial agreement under which multiple ownership interests in this Agreement and the Notes are created shall provide the method by which the owners of such interests shall establish the rights and duties of a single entity,

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trustee, owner, servicer or other fiduciary or agent acting on behalf of all of the assignees (herein referred to as the "Loan Servicer") to act on their behalf with respect to the rights and interests of the Lender under or with respect to this Agreement and the Notes, including with respect to the exercise of rights and remedies of the Lender on behalf of such owners upon the occurrence of an Event of Default. The Lender and the Borrower hereby acknowledge and agree that (A) the restrictions and limitations on transfer as provided in this Section 10.01 shall apply to the first and subsequent assignees and sub-assignees of any of the Lender's right, title and interest in, to and under this Agreement and the Notes (or any interest therein); and (B) the Lender's right to assign and transfer as provided in this Section 10.01 does not include the Reserved Rights. Notwithstanding anything in this Section 10.01 to the contrary, the restrictions and limitations on transfer as provided in this Section 10.01 shall not apply to any assignment or transfer of the Lender's right, title and interest in and to this Agreement or the Notes to the Contractor in connection its mandatory purchase obligation or option to purchase as provided in the Conditional Purchase Agreement.

b) Unless to an affiliate controlling, controlled by or under common control with the Lender, no assignment, transfer or conveyance permitted by this Section 10.01 shall be effective as against the Borrower until the Borrower shall have received a written notice of assignment (a copy of which shall be simultaneously delivered to the City) that discloses the name and address of each such assignee; provided, that if such assignment is made to a bank or trust company as trustee or paying agent for owners of certificates of participation, participation interests, trust certificates or partnership interests with respect to the Loan Payments, it shall thereafter be sufficient that the Borrower receives notice of the name and address of the bank, trust company or other entity that acts as the Loan Servicer. Notices of assignment provided pursuant to this Section 10.01(b) shall contain a confirmation of compliance with the transfer requirements imposed by Section 10.01(a) hereof. During the term of this Agreement, the Borrower shall keep, or cause to be kept, a complete and accurate record of all such assignments in form necessary to comply with Section 149 of the Code. The Borrower shall retain all such notices as a register of all assignees and shall make all payments to the assignee or assignees or Loan Servicer last designated in such register. The Borrower shall not have the right to and shall not assert against any assignee any claim, counterclaim or other right that the Borrower may have against the Lender or a Contractor; provided that nothing herein is intended or shall be construed to affect in any manner the rights of the Borrower to enforce its rights and remedies directly against the responsible Lender or Contractor.

c) If the Lender notifies the Borrower of its intent to assign this Agreement and the Notes, the Borrower agrees that it shall execute and deliver to the Lender a notice and acknowledgement of assignment in form reasonably required by the Lender, within five (5) Business Days after its receipt of such request.

Section 10.02. No Sale, Assignment or Leasing by the Borrower. This Agreement and the interest of the Borrower in the Equipment may not be sold, assigned or encumbered by the Borrower unless the prior written consent of the Lender is obtained and an opinion of Bond Counsel is obtained and provided to the Borrower and the Lender to the effect that the excludability of the interest payable on the Series B Note from gross income for federal income tax purposes will not be affected by such action. No agreement or interest therein and no Equipment shall be subject to involuntary assignment, lease, transfer or sale or to assignment, lease, transfer or sale by operation of law in any manner whatsoever except as expressly provided in this Agreement, and any such attempted assignment, lease, transfer or sale shall be void and of no effect and shall, at the option of the Lender, constitute an Event of Default hereunder. In addition, the Borrower shall not consent to any assignment or other transfer by the City or the Contractor of their respective obligations under the Energy Services Agreement or the Energy Performance Contract, as the case may be, without the prior written consent of the Lender and the delivery of an opinion of Bond Counsel to the Borrower and Lender to the effect that the exclusion of the interest payable on the Series B Note from gross income for federal income tax purposes will not be affected by such action.

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Section 10.03. Indemnification. The Borrower, subject to the limits of applicable law and Section 3.04, shall indemnify, protect, hold harmless, save and keep harmless the Lender and its assigns from and against any and all liability, obligation, loss, claim, tax and damage whatsoever, regardless of cause thereof, and all expenses in connection therewith (including, without limitation, counsel fees and expenses, and penalties connected therewith imposed on interest received) arising out of or as a result of (a) the entering into of this Agreement, (b) the ownership of the Equipment, (c) the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any item of the Equipment to the extent caused by the gross negligence or willful misconduct of the Borrower, (d) any accident in connection with the operation, use, condition, possession, storage or return of any item of the Equipment resulting in damage to property or injury to or death to any person, and/or (e) the breach of any covenant or any material misrepresentation contained herein. The indemnification arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations hereunder.

Section 10.04. Limitations of Liability. In no event, whether as a result of breach of contract, warranty, tort (including negligence or strict liability), indemnity, or otherwise, shall the Lender, its assignees, if any, be liable for any special, consequential, incidental or penal damages including, but not limited to, loss of profit or revenue, loss of use of the Equipment or any associated equipment, service materials or software, damage to associated equipment, service materials or software, cost of capital, cost of substitute equipment, service materials or software, facilities, services or replacement power, or down time costs.

Section 10.05. Immunity of Officers, Employees and Members of the Borrower. No recourse shall be had for the payment of the principal of or premium or interest on this Agreement or for any claim based thereon or upon any representation, obligation, covenant or agreement in this Agreement contained against any past, present or future officer, member, employee, director or agent of the Borrower or of any successor public or private corporation thereto, as such, either directly or through the Borrower or any successor public or private corporation thereto, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such officers, members, employees, directors or agents as such is hereby expressly waived and released as a condition of and consideration for the execution of this Agreement.

## ARTICLE XI EVENTS OF DEFAULT AND REMEDIES

Section 11.01. Events of Default. The following shall constitute "Events of Default" under this Agreement:

a) failure by the Borrower to pay to the Lender any Loan Payment or Additional Payment required to be paid hereunder when due which continues for a period of ten (10) Days after written notice of such failure is received by the Borrower from the Lender;

b) failure to maintain insurance as provided in Section 8.03;

c) any representation by or on behalf of the Borrower contained in this Agreement or in any instrument furnished in compliance with or in reference to this Agreement proves false or misleading in any material respect as of the date of the making or furnishing thereof;

d) Failure of the Borrower to observe or perform any covenant, condition, agreement or provision in this Agreement on its part to be observed or performed, other than as referred to in subsections (a), (b) and (c) of this Section, for a period of sixty (60) days after written notice, specifying such failure or breach and requesting that it be remedied, has been

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given to the Borrower by the Lender; except that, if such failure or breach can be remedied but not within such sixty-(60) day period and if the Borrower has taken all action reasonably possible to remedy such failure or breach within such sixty-(60) day period, such failure or breach shall not become an Event of Default for so long as the Borrower shall diligently proceed to remedy the same in accordance with and subject to any directions or limitations of time established by the Lender;

e) the occurrence of an "Event of Default" as defined in the Energy Services Agreement or the Energy Performance Contract, after any applicable notice and cure period;

f) the termination of the Energy Services Agreement pursuant to Section 9.6 thereof;

g) the occurrence of a default under (i) any other agreement for borrowing money, lease financing of property or otherwise receiving credit held by the Lender or any of its affiliates in a principal amount greater than \$10,000,000 under which the Borrower is an obligor for the financing of energy conservation projects for the City or projects for the City's sister agencies supported by payments from appropriation obligations of the City; or (ii) either of the respective Loan Agreements entered into on the Closing Date with respect to the Borrower's Tax-Exempt Revenue Notes (Chicago Department of Fleet and Facility Management Retrofit One Project) 2014 Series A and C; or

h) (i) initiation by the Borrower of a proceeding under any federal or state bankruptcy or insolvency law seeking relief under such laws concerning the indebtedness of the Borrower; or (ii) initiation against the Borrower of a proceeding under any federal or state bankruptcy or insolvency law seeking relief under such laws concerning the indebtedness of the Borrower if such proceeding is not dismissed within sixty (60) days after commencement thereof.

Section 11.02. Remedies on Default. Whenever any Event of Default shall have occurred and be continuing hereunder, the Lender shall have the right, at its sole option without any further demand or notice, to declare the unpaid principal amount of all Loan Payments to be immediately due and payable and upon any such declaration to take any one or any combination of the following remedial actions with respect to the Equipment financed hereunder, except insofar as the same are otherwise prohibited by applicable law:

a) Take possession of the Equipment wherever situated, without any court order or other process of

law and without liability for entering the premises, and lease, sublease or make other disposition of the Equipment for use over a term in a commercially reasonable manner, all for the account of the Lender; provided that the Borrower shall remain liable for the deficiency; if . any, between the rent or other amounts paid by a lessee of the Equipment pursuant to such lease or sublease during the same period of time, after deducting all costs and expenses, including reasonable attorney's fees and expenses, incurred with respect to the recovery, repair and storage of the Equipment during such period of time and the sum of the outstanding principal of the Notes, premium and interest thereon, plus Additional Payments and all other amounts due hereunder;

b) Take possession of the Equipment wherever situated, without any court order or other process of law and without liability for entering the premises, and sell any or all of the Equipment at a public or private sale, or otherwise dispose of, hold, use, operate, lease to others or keep idle the Equipment, with thirty (30) days' notice to the Borrower and the City, all free and clear of any rights of the Borrower; provided that any and all such actions be taken in a

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commercially reasonable manner, all proceeds from such sale to be applied in the following manner:

FIRST, to pay all proper and reasonable costs and expenses associated with the recovery, repair, storage and sale of the Equipment, including reasonable attorneys' fees and expenses,

SECOND, to pay (i) the Lender the amount of all unpaid Loan Payments, if any, which are then due and owing, together with interest and late charges thereon, (ii) the Lender the then outstanding principal amount of the Notes (taking into account the payment of past due Loan Payments as aforesaid), any premium thereon, plus a pro-rata allocation of interest, at the rate utilized to establish the interest component for the Loan Payment next due, from the next preceding due date of a Loan Payment until the date of payment by the buyer, (iii) to the United States any rebatable arbitrage due or accrued pursuant to Section 148(f)(4) of the Code, and (iv) to the Lender any other amounts due hereunder, including indemnity payments, reimbursement of any advances, Additional Payments and other amounts payable to the Lender hereunder, and

TFfJRD, to pay the remainder of the sale proceeds, purchase moneys or other amounts paid by a buyer of the Equipment, to the Borrower;

c) Proceed by appropriate court action to enforce performance by the Borrower or to recover for the breach thereof, including the payment of all amounts due from the Borrower, in which event the Borrower shall pay or repay to the Lender all costs of such action or court action including without limitation, reasonable attorneys' fees;

d) Terminate the Escrow Agreement and apply any proceeds in the Project Fund as provided in (b), above;

e) Exercise its rights of a secured party under the State Uniform Commercial Code with respect to the Equipment, the Project Fund, the Revenue Fund and the Revenues;

f) Exercise its rights as assignee under each of the collateral assignments described in Section 3.02 (b) and 7.01; and

g) Take whatever action at law or in equity may appear necessary or desirable to enforce its rights with respect to the Equipment, the Energy Services Agreement or the Energy Performance Contract, in which event the Borrower shall pay or repay to the Lender all costs of such action or court action, including, without limitation, reasonable attorneys' fees.

Notwithstanding any other provision of this Agreement, the failure by the Borrower to pay all or any portion of a Loan Payment or Additional Payment or otherwise to be in default under this Agreement because the Contractor has failed to pay amounts due or otherwise perform its obligations under the Energy Performance Contract or for any other reason not resulting from a default by the City under the Energy Services Agreement that is not caused by a default by any of the parties (other than the City) to any of the related financing documents does not constitute grounds for the Lender's exercise of its rights to possession and/or sale of the Equipment pursuant to (a) and (b) above; subject, however, to the terms and conditions of the Subordination Agreement.

Notwithstanding any other remedy exercised hereunder, the Borrower shall remain obligated to pay to the Lender any unpaid Loan Payments to the extent Revenues are received pursuant to the Energy

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Services Agreement and the Energy Performance Contract. To the extent permitted by applicable law, the Borrower hereby waives any rights now or hereafter conferred by statute or otherwise which might require the Lender to use, sell, lease or otherwise dispose of any Equipment in mitigation of the Lender's damages or which might otherwise limit or modify any of the Lender's rights hereunder.

All of the Borrower's right, title and interest in any Equipment the possession of which is retaken by the Lender upon the occurrence of an Event of Default (including, without limitation, construction contracts, warranties, guaranties or completion assurances applicable to such Equipment) shall pass to the Lender, and the Borrower's rights in such Equipment shall terminate immediately upon such repossession.

Section 11.03. No Remedy Exclusive. No remedy herein conferred upon or reserved to the Lender is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Lender to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice other than such notice as may be required by this Article XI. All remedies herein conferred upon or reserved to the Lender shall survive the termination of this Agreement.

## ARTICLE XTI MISCELLANEOUS

Section 12.01. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by registered mail, postage prepaid, addressed as follows:

If to the Lender:           Banc of America Public Capital Corp  
11333 McCormick Road, Hunt Valley II Mail Code MD5-  
032-07-05 Hunt Valley, Maryland 21031 Attention:  
Contract Administration

If to the Borrower:       Chicago Infrastructure Trust  
222 West Merchandise Mart Suite 1212  
Chicago, Illinois 60657 Attention: Chief Executive  
Officer  
  
widi copies to:  
  
City of Chicago  
Department of Finance

121 North LaSalle Street, 7th Floor  
Chicago, Illinois 60602

Attention: Deputy Comptroller, Financial Policy and  
City of Chicago  
Department of Law  
121 North LaSalle Street, Room 600  
Chicago, Illinois 60602

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Attention: Finance and Economic Development Division

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

Section 12.02. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the Lender and the Borrower and their respective successors and permitted assigns, if any.

Section 12.03. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 12.04. Amendments. To the extent permitted by law, the terms of this Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written instrument signed by the parties hereto and approved by Bond Counsel, and then such waiver, consent, modification or change shall be effective only in the specific instance and for the specific purpose given,

Section 12.05. Execution in Counterparts; Electronic Transaction. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument and any of the parties hereto may execute this Agreement by signing any such counterpart. In addition, the transaction described herein may be conducted and this Agreement and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

Section 12.06. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws, excluding the laws relating to the choice of law, of the State.

Section 12.07. Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

Section 12.08. Entire Agreement. This Agreement, the attachments hereto and the Borrower Documents constitute the entire agreement between the Lender and the Borrower with respect to the subject matter hereof. There are no understandings, agreements, representations or warranties, express or implied, not specified herein or in the Borrower Documents regarding this Agreement or the Equipment financed hereunder. This Agreement and the exhibits hereto, shall not be effective or binding upon the Borrower or the Lender until it is signed on their behalf by their respective Authorized Officers.

Section 12.09. Waiver. The Lender's or the Borrower's failure to enforce at any time or for any period of time any provision of this Agreement shall not be construed to be a waiver of such provision or of the right of the Lender or the Borrower thereafter to enforce each and every provision. No express or implied waiver by the Lender or the Borrower of any default or remedy of default shall constitute a waiver of any other default or remedy of default, or a

waiver of any of the Lender's or the Borrower's rights.

Section 12.10. Survivability. All of the limitations of liability and indemnities contained in this Agreement shall continue in full force and effect notwithstanding the expiration or early termination of this Agreement and are expressly made for the benefit of, and shall be enforceable by, the Lender and the Borrower, or their permitted successors and assigns.

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Section 12.11. USA Patriot Act Compliance Notification. The Lender hereby notifies the Borrower that pursuant to the requirements of the USA PATRIOT Act (the "Patriot Act"), it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow the Lender to identify the Borrower in accordance with the Patriot Act. The Borrower shall, promptly upon the Lender's request, provide all documentation and other information that the Lender requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the Patriot Act.

Section 12.12. Jury Trial Waiver. Each Party hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in any legal proceeding directly or indirectly arising out of or relating to this Agreement, the Notes or the transactions contemplated hereby or thereby (whether based on contract, tort or any other theory). Each Party hereto (a) certifies that no representative, agent or attorney of any other person has represented, expressly or otherwise, that such other person would not, in the event of litigation, seek to enforce the foregoing waiver and (b) acknowledges that it and the other Party hereto have been induced to enter into this Agreement by, among other things, the mutual waivers and certifications in this Section

[Signature Pages Follow]

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement in their respective corporate names by their duly Authorized Officers, all as of the date first written above.

**BANC.. OF AMERICA PUBLIC CAPITAL CORP**

By '

Name:

Title:

Tom J. Piston

Authorized Agent



*[Lender Signature Page of Loan and Security Agreement]*

**CHICAGO INFRASTRUCTURE TRUST**

AX>j.

Stephen S. Beitler  
Chief Executive Officer and Executive Director

*[Borrower Signature Page of Loan and Security Agreement]*

**EXHIBIT A**

**FORM OF SERIES B NOTE**

THE CHICAGO INFRASTRUCTURE TRUST (THE "BORROWER") SHALL NOT BE OBLIGATED TO PAY THIS NOTE, THE PREMIUM, IF ANY, AND THE INTEREST THEREON, EXCEPT FROM REVENUES OR OTHER MONEYS MADE AVAILABLE TO THE BORROWER FOR SUCH PURPOSE AND PLEDGED TO THE PAYMENT OF THIS NOTE, THE PREMIUM, IF ANY, AND THE INTEREST THEREON. THIS NOTE IS NOT AN OBLIGATION OF THE CITY OF CHICAGO, ILLINOIS (THE "CITY") AND THIS NOTE SHALL NOT BE DEEMED TO CONSTITUTE AN INDEBTEDNESS OR A LOAN AGAINST THE GENERAL TAXING POWERS OR CREDIT OF THE CITY, WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION. THE HOLDER OF THIS NOTE SHALL NOT HAVE THE RIGHT TO COMPEL ANY EXERCISE OF THE TAXING POWER OF THE CITY, THE STATE OF ILLINOIS OR ANY POLITICAL SUBDIVISION THEREOF TO PAY THE PRINCIPAL OF, PREMIUM, IF ANY, OR INTEREST ON THE NOTE.

THIS NOTE HAS NOT BEEN REGISTERED OR QUALIFIED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE. ANY RESALE, PLEDGE, TRANSFER OR OTHER DISPOSITION OF THIS NOTE OR ANY INTEREST HEREIN WITHOUT SUCH REGISTRATION OR QUALIFICATION MAY BE MADE ONLY IN A TRANSACTION WHICH DOES NOT REQUIRE SUCH REGISTRATION OR QUALIFICATION AND WHICH IS IN ACCORDANCE WITH THE AGREEMENT (DEFINED HEREIN).

**CHICAGO INFRASTRUCTURE TRUST TAX-EXEMPT REVENUE NOTE (CHICAGO  
DEPARTMENT OF FLEET AND FACILITY MANAGEMENT  
RETROFIT ONE PROJECT) 2014 SERIES  
B**

**\$2,564,863**

**April 11, 2014**

FOR VALUE RECEIVED, CHICAGO INFRASTRUCTURE TRUST (the "Borrower") hereby promises to pay to the order of Banc of America Public Capital Corp, its successors and permitted assigns (the "Lender"), in lawful money of the United States of America and in immediately available funds the principal amount of Two Million Five Hundred Sixty-Four Thousand Eight Hundred Sixty-Three Dollars (\$2,564,863), together with interest on the principal amount outstanding hereunder from time to time at the rate of 4.95% per annum (computed on the basis of a 360-day year, 30 day month).

This Note is issued pursuant to the Loan and Security Agreement dated as of April 1, 2014 (the "Agreement"), between the Borrower and the Lender. Capitalized terms used herein without definition shall have the meaning given them in the Agreement.

Principal and interest due hereunder shall be payable as follows and as detailed in the attached Payment Schedule.

The entire unpaid principal balance of this Note and all unpaid and accrued interest thereon and

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any other amounts due hereunder shall, unless sooner paid, be paid and become due and payable on April 30, 2039.

This Note shall be prepaid at the option of the Borrower only as permitted and to the extent required by Article V of the Agreement, and upon receipt and application of the amounts so prepaid and, if applicable, the Lender shall recalculate the principal balance then remaining, and any correlative adjustments to the payments provided for in this Note (which adjustments shall be deemed final, absent manifest error) within five (5) Business Days' after written notice thereof is provided by the Lender to the Borrower.

All payments and prepayments on the unpaid principal balance of this Note, interest thereon and any other amounts payable hereunder shall be paid in lawful money of the United States of America in immediately available funds during regular business hours of Lender at the Lender's office at 11333 McCormick Road, M/C MD5-032-07-05, Hunt Valley 11, Hunt Valley, MD 21031 or at such other place as the Lender or any other holder of this Note may at any time or from time to time designate in writing to the Borrower; and shall be effective upon receipt. Any payment received by the Lender on account of this Note shall be applied by the Lender: first, toward payment of any prepayment premium payable upon prepayment that is not related to a casualty or condemnation event; second, toward payment of accrued and unpaid interest on this Note; third, toward payment of the unpaid principal balance of this Note in the order of maturity (or, if such payment is accepted by the Lender as a partial prepayment of this Note, such payment shall be applied toward payment of the unpaid principal amount of this Note in the inverse order of maturity); and fourth, toward payment of any prepayment premium payable upon prepayment that is related to a casualty or condemnation event and is not to be added to the Supplemental Loan Amount pursuant to Section 3.01(c) of the Agreement.

If any payment on this Note becomes due and payable on a day other than a Business Day (as hereinafter defined), such payment shall be made on the next succeeding Business Day, with the same effect as if paid on the stated due date. "Business Day" as used herein means a day, other than a Saturday or Sunday, on which banks are generally open for business in New York, New York and Chicago, Illinois.

THIS NOTE AND THE INTEREST THEREON ARE SPECIAL, LIMITED OBLIGATIONS OF THE BORROWER PAYABLE SOLELY OUT OF THE REVENUES AND RECEIPTS DERIVED BY THE BORROWER AS PROVIDED IN THE AGREEMENT AND ARE SECURED BY A PLEDGE AND ASSIGNMENT OF SUCH REVENUES AND RECEIPTS AND OTHER FUNDS AND OTHER ASSETS AS PROVIDED IN THE AGREEMENT. THIS NOTE AND THE AGREEMENT ARE NOT OBLIGATIONS OF THE CITY. THIS NOTE AND THE AGREEMENT SHALL NOT BE DEEMED TO CONSTITUTE AN INDEBTEDNESS OR A LOAN AGAINST THE GENERAL TAXING POWERS OR CREDIT OF THE CITY OF CHICAGO, ILLINOIS (THE "CITY"), WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION. THE LENDER SHALL NOT HAVE THE RIGHT TO COMPEL ANY EXERCISE OF THE TAXING POWER OF THE CITY, THE STATE OF ILLINOIS OR ANY POLITICAL SUBDIVISION THEREOF TO PAY THE PRINCIPAL OF, PREMIUM, IF ANY, OR INTEREST ON THIS NOTE OR ANY OTHER AMOUNT PAYABLE UNDER THE AGREEMENT. '

In the event of the declaration by the Lender of an Event of Default under the Agreement, this Note shall be in default and the balance of the principal sum then due hereunder, together with all accrued interest thereon, immediately shall become due and payable without further notice, such further notice being expressly waived, and the Borrower shall be liable to the holder hereof for reasonable attorney's fees and costs of suit to the extent provided in the Agreement.

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The Borrower waives presentment for payment, demand, notice of demand, notice of nonpayment or dishonor, protest and notice of protest of this Note, and all other notices in connection with the delivery, acceptance, performance, default or enforcement of the payment of this Note.

The remedies of the Lender as provided herein and in the Agreement shall be cumulative and concurrent and may be pursued singly, successively or together, at the sole discretion of the Lender, and may be exercised as often as occasion therefor shall occur; and the failure to exercise any such right or remedy shall in no event be construed as a waiver or release thereof.

THE BORROWER AGREES THAT THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF ILLINOIS (WITHOUT REGARD TO THE CONFLICT OF LAWS PRINCIPLES OF SUCH STATE), INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE. Venue for any action hereunder or related hereto shall be in any state or Federal court of competent jurisdiction in the State of Illinois, and the Borrower submits to the jurisdiction of such courts.

This Note may be transferred or exchanged by the registered owner hereof in person or by its duly authorized attorney, upon surrender of this Note together with a written instrument of transfer satisfactory to the Borrower duly executed by the registered owner or its duly authorized attorney and satisfactory compliance with the applicable terms and conditions of the Agreement, and thereupon a new Note of the same series and maturity and in the same aggregate principal amount, shall be issued to the transferee in exchange therefor upon payment of the charges therein prescribed.

[Signature Page Follows]

IN WITNESS WHEREOF, the Borrower has caused this Note to be signed as of the                      day of  
April, 2014.

**Attest**

**CHICAGO INFRASTRUCTURE TRUST**

Stephen S. Beitler  
Chief Executive Officer and Executive Director

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Payment Schedule

**Ending Balance**

07/01/2015 01/01/2016 07/01/2016 01/01/2017 07/01/2017 01/01/2018 07/01/2018 , 01/01/2019 07/01/2019 01/01/2020  
07/01/2020 01/01/2021 07/01/2021 01/01/2022 07/01/2022 01/01/2023 07/01/2023 01/01/2024 .07/01/2024 01/01/2025  
07/01/2025 01/01/2026 07/01/2026 01/01/2027 07/01/2027 01/01/2028 07/01/2028 01/01/2029 04/30/2029  
\$33,302 64,040 62,398 60,687 58,965 57,171 55,365 53,485 51,591 49,620 47,633 45,566 43,482 41,316 39,129 36,858  
34,564 32,183 29,776 27,280 24,755 22,137 19,488 16,743 13,964 11,086 8,170 5,151 1,383  
\$103,598 66,320 69,152 69,553 72,485 72,969 75,965 76,545 79,629 80,290 83,477 84,234 87,508 88,364 91,751 92,692  
96,196 97,247 100,854 102,030 105,755 107,043 110,892 112,307 116,286 117,824 121,950 123,629 84,507  
\$136,900 130,360 131,550 130,240 131,450 130,140 131,330 130,030 131,220 129,910 131,110 129,800 130,990  
129,680 130,880 129,550 130,760 129,430 130,630 129,310 130,510 129,180 130,380 129,050 130,250 128,910  
130,120 128,780 85,890  
\$2,587,456 2,521,135 2,451,983 2,382,430 2,309,945 2,236,976 2,161,011 2,084,466 2,004,837 1,924,547 1,841,069  
1,756,836 1,669,327 1,580,963 1,489,212 1,396,520 1,300,324 1,203,077 1,102,223 1,000,193 894,438 787,395 676,503  
564,197 447,910 330,086 208,136 84,507  
\$2,691,054\*

includes \$126,191 of accrued interest.

EXHIBIT B

FORM OF SUPPLEMENTAL NOTE

THE CHICAGO INFRASTRUCTURE TRUST (THE "BORROWER") SHALL NOT BE OBLIGATED TO PAY THIS NOTE, THE PREMIUM, IF ANY, AND THE INTEREST THEREON, EXCEPT FROM REVENUES OR OTHER MONEYS MADE AVAILABLE TO THE BORROWER FOR SUCH PURPOSE AND PLEDGED TO THE PAYMENT OF THIS NOTE, THE PREMIUM, W ANY, AND THE INTEREST THEREON. THIS NOTE IS NOT AN OBLIGATION OF THE CITY OF CHICAGO, ILLINOIS (THE "CITY") AND THIS NOTE SHALL NOT BE DEEMED TO CONSTITUTE AN INDEBTEDNESS OR A LOAN AGAINST THE GENERAL TAXING POWERS OR CREDIT OF THE CITY, WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION. THE HOLDER OF THIS NOTE SHALL NOT HAVE THE RIGHT TO COMPEL ANY EXERCISE OF THE TAXING POWER OF THE CITY, THE STATE OF ILLINOIS OR ANY POLITICAL SUBDIVISION THEREOF TO PAY THE PRINCIPAL OF, PREMIUM, D7 ANY, OR INTEREST ON THE NOTE.

THIS NOTE HAS NOT BEEN REGISTERED OR QUALIFIED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE. ANY RESALE, PLEDGE, TRANSFER OR OTHER DISPOSITION OF THIS NOTE OR ANY INTEREST HEREIN WITHOUT SUCH REGISTRATION OR QUALIFICATION MAY BE MADE ONLY IN A TRANSACTION WHICH DOES NOT REQUIRE SUCH REGISTRATION OR QUALIFICATION AND WHICH IS IN ACCORDANCE WITH THE AGREEMENT (DEFINED HEREIN).

CHICAGO INFRASTRUCTURE TRUST SUPPLEMENTAL TAXABLE REVENUE  
NOTE (CHICAGO DEPARTMENT OF FLEET AND FACILITY MANAGEMENT  
RETROFIT ONE PROJECT)

\$877,709 (maximum principal amount)

April 11, 2014

FOR VALUE RECEIVED, CHICAGO INFRASTRUCTURE TRUST (the "Borrower") hereby promises to pay to the order of Banc of America Public Capital Corp, its successors and permitted assigns (the "Lender"), in lawful money of the United States of America and in immediately available funds a maximum principal amount of Eight Hundred Seventy-Seven Thousand Seven Hundred Nine Dollars (\$877,709), subject to adjustment as provided in Section 3.01(c) of the Agreement (defined herein), together with interest on the principal amount outstanding hereunder commencing to accrue on May 1, 2029 at the rate of 5.00% per annum (computed on the basis of a 360-day year, 30 day month).

This Note is issued pursuant to the Loan and Security Agreement dated as of April 1, 2014 (the "Agreement"), between the Borrower and the Lender. Capitalized terms used herein without definition shall have the meaning given them in the Agreement.

Principal shall be due and payable in equal consecutive installments commencing on January 1, 2030, and continuing on each January 1 and July thereafter, and a final installment on January 1, 2036. Interest shall be payable at the same times as the principal payments. The entire unpaid principal balance of this Note and all unpaid and accrued interest thereon and any other amounts due hereunder shall, unless

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sooner paid, be paid and become due and payable on January 1, 2036.

This Note shall be prepaid at the option of the Borrower only as permitted and to the extent required by Article V of the Agreement, and upon receipt and application of the amounts so prepaid and, if applicable, the Lender shall recalculate the principal balance then remaining, and any correlative adjustments to the payments provided for in this Note (which adjustments shall be deemed final, absent manifest error) within five (5) Business Days' after written notice thereof is provided by the Lender to the Borrower.

All payments and prepayments on the unpaid principal balance of this Note, interest thereon and any other amounts payable hereunder shall be paid in lawful money of the United States of America in immediately available funds during regular business hours of Lender at the Lender's office at 11333 McCormick Road, M/C MD5-032-07-05, Hunt Valley 11, Hunt Valley, MD 21031 or at such other place as the Lender or any other holder of this Note may at any time or from time to time designate in writing to Borrower; and shall be effective upon receipt. Any payment received by the Lender on account of this Note shall be applied by the Lender: first, toward payment of accrued and unpaid interest on this Note; and second, toward payment of the unpaid principal balance of this Note in the order of maturity (or, if such payment is accepted by Lender as a partial prepayment of this Note, such payment shall be applied toward payment of the unpaid principal amount of this Note in the inverse order of maturity),

If any payment on this Note becomes due and payable on a day other than a Business Day (as hereinafter defined), such payment shall be made on the next succeeding Business Day, with the same effect as if paid on the stated due date. "Business Day" as used herein means a day, other than a Saturday or Sunday, on which banks are generally open for business in New York, New York and Chicago, Illinois.

**THIS NOTE AND THE INTEREST THEREON ARE SPECIAL, LIMITED OBLIGATIONS OF THE BORROWER PAYABLE SOLELY OUT OF THE REVENUES AND RECEIPTS DERIVED BY THE BORROWER AS PROVIDED IN THE AGREEMENT AND ARE SECURED BY A PLEDGE AND ASSIGNMENT OF SUCH REVENUES AND RECEIPTS AND OTHER FUNDS AND OTHER ASSETS AS PROVIDED IN THE AGREEMENT. THIS NOTE AND THE AGREEMENT ARE NOT OBLIGATIONS OF THE CITY. THIS NOTE AND THE AGREEMENT SHALL NOT BE DEEMED TO CONSTITUTE AN INDEBTEDNESS OR A LOAN AGAINST THE GENERAL TAXING POWERS OR CREDIT OF THE CITY OF CHICAGO, ILLINOIS (THE "CITY"), WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION. THE LENDER SHALL NOT HAVE THE RIGHT TO COMPEL ANY EXERCISE OF THE TAXING POWER OF THE CITY, THE STATE OF ILLINOIS OR ANY POLITICAL SUBDIVISION THEREOF TO PAY THE PRINCIPAL OF, PREMIUM, IF ANY, OR INTEREST ON THIS NOTE OR ANY OTHER AMOUNT PAYABLE UNDER THE AGREEMENT.**

In the event of the declaration by the Lender of an Event of Default under the Agreement, this Note shall be in default and the balance of the principal sum then due hereunder, together with all accrued interest thereon, immediately shall become due and payable without further notice, such further notice being expressly waived, and the Borrower shall be liable to the holder hereof for reasonable attorney's fees and costs of suit to the extent provided in the Agreement.

The Borrower waives presentment for payment, demand, notice of demand, notice of nonpayment or dishonor, protest and notice of protest of this Note, and all other notices in connection with the delivery, acceptance, performance, default or enforcement of the payment of this Note.

The remedies of the Lender as provided herein and in the Agreement shall be cumulative and

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concurrent and may be pursued singly, successively or together, at the sole discretion of the Lender, and may be exercised as often as occasion therefor shall occur; and the failure to exercise any such right or remedy shall in no event be construed as a waiver or release thereof.

THE BORROWER AGREES THAT THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF ILLINOIS (WITHOUT REGARD TO THE CONFLICT OF LAWS PRINCIPLES OF SUCH STATE), INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE. Venue for any action hereunder or related hereto shall be in any state or Federal court of competent jurisdiction in the State of Illinois, and the Borrower submits to the jurisdiction of such courts.

This Note may be transferred or exchanged by the registered owner hereof in person or by its duly authorized attorney, upon surrender of this' Note together with a written instrument of transfer satisfactory to the Borrower duly executed by the registered owner or its duly authorized attorney and satisfactory compliance with the applicable terms and conditions of the Agreement, and thereupon a new Note of the same series and maturity and in the same aggregate principal amount, shall be issued to the transferee in exchange therefor upon payment of the charges therein prescribed.

[Signature Page Follows]

IN WITNESS WHEREOF, the Borrower has caused this Note to be signed as of the                      day of  
April, 2014.

Attest

**CHICAGO INFRASTRUCTURE TRUST**

By

Stephen S. Beitler  
Chief Executive Officer and Executive Director



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**LOAN AND SECURITY AGREEMENT between**  
**BANC OF AMERICA PUBLIC CAPITAL CORP**  
**and**  
**CHICAGO INFRASTRUCTURE TRUST**

**Dated as of April 1,2014 relating to**  
**CHICAGO INFRASTRUCTURE TRUST (CHICAGO DEPARTMENT OF FLEET AND FACILITY**  
**MANAGEMENT**  
**RETROFIT ONE PROJECT) 2014 SERIES C NOTE**

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THIS LOAN AND SECURITY AGREEMENT dated as of April 1, 2014 (this "Agreement"), is made and entered into by and between Banc of America Public Capital Corp, a Kansas corporation (the "Lender"), and Chicago Infrastructure Trust, a nonprofit corporation organized and existing under the laws of the State of Illinois (the "Borrower").

**WITNESSETH:**

WHEREAS, the Borrower is authorized and empowered pursuant to the provisions of an ordinance adopted by the City Council (the "City Council") of the City of Chicago, Illinois on April 24, 2012, as amended, including an ordinance adopted by the City Council on January 15, 2014 and a resolution adopted by the board of directors of the Borrower on November 12, 2013, to, among other things, (i) undertake and acquire certain energy conservation projects for the benefit of the City and its sister agencies, and (ii) to finance such projects through the issuance of bonds, notes, certificates, contract rights and other obligations; and

WHEREAS, the City of Chicago (the "City") desires to achieve energy and operational cost savings from certain energy conservation measures, including the Equipment (as defined herein), acquired by the Borrower on the terms and conditions set forth in the Energy Services Agreement (as defined herein); and

WHEREAS, the Borrower will enter into the Energy Performance Contract (as defined herein) with the Contractor (as defined herein) for the purposes of acquiring the Equipment and certain services related thereto; and

WHEREAS, the Lender will loan the Loan Amount (as defined herein) to the Borrower pursuant to the terms of this Agreement for the purpose of financing the costs of (i) the Equipment; and (ii) paying certain closing costs.

WHEREAS, the Borrower will assign to the Lender its right to receive the Revenues (as defined herein) including the amounts payable by the City pursuant to the Energy Services Agreement and certain amounts payable by the Contractor pursuant to the Energy Performance Contract; and

WHEREAS, as security for the payment of all the Borrower's obligations under this Agreement, the Borrower shall grant to the Lender a first priority perfected security interest in the Equipment, the Revenues, the Project Fund, the Revenue Fund and/or such other security interests as may be appropriate given the nature of the Equipment financed;

NOW, THEREFORE, in consideration of the payments to be made hereunder and the mutual covenants contained herein, the parties agree as follows.

**ARTICLE I DEFINITIONS**

Section 1.01. Definitions. The following terms used herein will have the meanings indicated below unless the context clearly requires otherwise.

**"Additional Payments"** means the amounts, other than Loan Payments, payable by the Borrower pursuant to the provisions of this Agreement, as set forth in Section 3.05.

**"Agreement"** means this Loan and Security Agreement, as the same may be amended or modified from time to time, including the accompanying attachments and documents, which shall constitute a fully integrated transaction existing in accordance with its own terms and conditions.

**"Annual Guaranteed Energy Savings"** means the amount of annual energy savings guaranteed by the Contractor pursuant to the Energy Performance Contract.

"Authorized Officer" means (i) in the case of the Lender, any President or Vice President, and when used in reference to an act or document of the Lender, also means any other person authorized to perform the act or sign the document; (ii) in the case of the Borrower, the Chief Executive Officer or any other person, authorized by a resolution of the Borrower to perform such act or execute such document.

"Bond Counsel" means an attorney or firm of attorneys nationally recognized on the subject of municipal bonds and selected by the Borrower and reasonably acceptable to the City and the Lender.

"Borrower" means Chicago Infrastructure Trust, an Illinois nonprofit corporation.

"Borrower Documents" shall have the meaning ascribed to such term in Section 2.01(a).

"Business Day" means a day other than a Saturday or Sunday on which banks are generally open for business in New York, New York and Chicago, Illinois.

"City" means the City of Chicago, Illinois, a home rule unit of local government under the Constitution and laws of the State.

"Closing Date" means the date of delivery of all executed documents as required under this Agreement.

"Code" means the Internal Revenue Code of 1986, as amended from time to time, and the regulations issued thereunder.

"Conditional Purchase Agreement" means the Conditional Purchase Agreement dated April 11, 2014, between the Contractor and the Lender.

"Contractor" means Schneider Electric Buildings Americas, Inc., a Delaware corporation, and its permitted successors and assigns.

"Contract Price" means the all-inclusive price of the Equipment, including the cost of design, engineering, installation and training, but excluding the cost of any operation or maintenance services or monitoring and verification services, as set forth in the Energy Performance Contract.

"Determination of Taxability" means (a) the receipt by the Lender, the Borrower or the City of an original or a copy of an Internal Revenue Service Statutory Notice of Deficiency which is non-appealable and holds that an Event of Taxability has occurred; (b) the issuance of any public or private ruling of the Internal Revenue Service that holds that an Event of Taxability has occurred; or (c) receipt by the Lender, the Borrower or the City of a written opinion of Bond Counsel that an Event of Taxability has occurred.

"Energy Performance Contract" means the Guaranteed Energy Performance Contract dated April 11, 2014 between the Borrower and the Contractor, and any amendments or supplements thereto.

"Energy Savings Bond" shall have the meaning ascribed to such term in Section 8.08.

"Energy Services Agreement" means the Energy Services Agreement related to the Equipment, dated April 11, 2014, between the Borrower and the City, and any amendments or supplements thereto.

"Equipment" means the fixed and moveable personal property constituting energy conservation measures as more particularly described in the Energy Services Agreement, together with all replacement parts, additions, repairs, modifications, substitutions, accessions, and accessories incorporated therein and/or affixed to such personal property.

"Escrow Agent" means the party designated as such under the Escrow Agreement, and its successors and assigns permitted pursuant to the terms of the Escrow Agreement.

"Escrow Agreement" means the Escrow Agreement dated as of April 1, 2014 between the Borrower, the Lender and the Escrow Agent, pursuant to which the Project Fund is established and administered.

"Event of Taxability" means if as the result of any act of the City, failure to act by the City or any misrepresentation or inaccuracy by the City in any of the representations, warranties or covenants of the City contained in this Agreement or included in the Tax Certificate, the interest on the Series C Note is or becomes includable in the gross income of the registered owner of the Series C Note for federal income tax purposes. For all purposes of this definition, an Event of Taxability shall be deemed to occur on the date as of which the interest on the Series C Note is or becomes includable in the gross income of the registered owner of the Series C Note for federal income tax purposes.

"Excess Savings" means amounts on deposit in the Revenue Fund on each July 1, commencing July 1, 2016 after required payments for Loan Payments, Paying Agent fees, Contractor Fees (as defined in the Paying Agent Agreement), and any refund to the City as provided in the Paying Agent Agreement.

"Lender" means Banc of America Public Capital Corp, a Kansas corporation, and its successors and assigns.

"Loan Amount" means an amount equal to \$3,806,199 to be paid or provided by the Lender for application in accordance with Section 3.0.1(a), which amount includes (a) the Contract Price of the Equipment and (b) the costs of issuance related to this Agreement.

"Loan Payments" means those scheduled payments of principal, premium, if any, and interest (but excluding administrative fees, indemnifications and reimbursements payable by the Borrower to the Lender hereunder), as specifically set forth in the Notes.

"Loan Rate" means 4.95% per annum.

"Notes" means, collectively, the Series C Note and the Supplemental Note.

"Paying Agent" means the party designated as such under the Paying Agent Agreement, and its successors and assigns permitted pursuant to the terms of the Paying Agent Agreement.

"Paying Agent Agreement" means the Servicing and Paying Agent Agreement dated as of April 1, 2014, between the Borrower and the Paying Agent, and any amendments or supplements thereto.

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"PBC Undertaking Agreement" means the Undertaking Agreement dated March 4, 2014 between the Public Building Commission of Chicago and the Borrower relating to the Energy Services Agreement and the Energy Performance Contract, and any amendments or supplements thereto.

"Permitted Encumbrances" means as of any particular time: (i) liens for taxes, assessments or other governmental charges not delinquent or which are currently being contested by the Borrower in good faith by appropriate proceedings and which proceedings do not, in the Lender's reasonable judgment, materially adversely affect the Lender's security interest in the Equipment; (ii) this Agreement and amendments thereto; (iii) the Borrower's ownership interest in the Equipment; (iv) the Lender's security interest in the Equipment; and (v) mechanic's, workmen's and repairmen's liens which are not delinquent or which are currently being contested by the Borrower or the Contractor in good faith by appropriate proceedings and which proceedings do not, in the Lender's reasonable judgment, materially adversely affect

the Lender's security interest in the Equipment.

"Prepayment Price" means the following prepayment prices (expressed as a percentage of the principal amount of the Series C Note to be prepaid) during the corresponding prepayment period set forth below, plus accrued interest to the prepayment date:

Prepayment Period

On or before July 1, 2024 July 2, 2024 through July 1, 2025 July 2, 2025 through July 1, 2026  
July 2, 2026 and thereafter

Prepayment Price

103% 102% 101% 100%

"Project Fund" means the fund established and held by the Escrow Agent pursuant to the Escrow Agreement.

"Reserved Rights" means the Borrower's rights under the Energy Services Agreement to receive payment of its fees and expenses and for indemnification by the City, the Borrower's rights to indemnification under the Energy Performance Contract by the Contractor, and the Borrower's rights to receive notices provided the Energy Services Agreement and the Energy Performance Contract and to exercise remedies in connection with the foregoing.

"Revenue Fund" means the fund established and held by the Paying Agent pursuant to the Paying Agent Agreement.

"Revenues" shall have the meaning ascribed to such term in Section 3.04.

"Series C Note" means the promissory note from the Borrower to the Lender in the original principal amount of \$3,806,199, substantially in the form of Exhibit A hereto.

"State" means the State of Illinois.

"Subordination Agreement" means that certain Subordination and Standstill Agreement dated April 11, 2014, between the Lender and the City.

"Supplemental Note" means the supplemental promissory note from the Borrower to the Lender in the maximum principal amount of \$1,301,833, substantially in the form of Exhibit B hereto.

"Taxable Rate" means 7.61 % per annum

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"Tax Certificate" means the Tax Compliance Agreement dated the Closing Date, executed by the Borrower and the City, including all amendments thereto.

"TJCC" means the State's Uniform Commercial Code.

Section 1.02. Rules of Construction. The following rules shall apply to the construction of this Agreement unless the context requires otherwise:

a) Singular words shall connote the plural number as well as the singular and vice versa.

b) All references in this Agreement to particular Articles, Sections or Exhibits are references to



Articles, Sections or Exhibits of this Agreement unless otherwise indicated.

c) The headings and table of contents as used in this Agreement are solely for convenience of reference and shall not constitute a part of this Agreement nor shall they affect its meaning, construction or effect.

## ARTICLE II REPRESENTATIONS, WARRANTIES AND COVENANTS OF BORROWER

Section 2.01. Representations, Warranties and Covenants. The Borrower represents, warrants and covenants as follows:

a) The Borrower (1) is a nonprofit corporation organized and existing under the laws of the State; (2) has lawful power and authority to enter into, execute and deliver this Agreement, the Escrow Agreement, the Paying Agent Agreement, the Energy Services Agreement, the Energy Performance Contract and the PBC Undertaking Agreement (collectively, the "Borrower Documents") and to carry out its obligations hereunder and thereunder; (3) is authorized to purchase and own personal property, to borrow money to finance the purchase of such property, and to grant security interests and liens upon such property; (4) by all necessary corporate action has been duly authorized to execute and deliver the Borrower Documents acting by and through its duly authorized officers; and (5) has duly and validly executed and delivered each of the Borrower Documents, each of which constitutes the legal, valid and binding obligation of the Borrower enforceable in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization or moratorium or other similar Laws relating to the enforcement of creditors' rights generally and by general equitable principles.

b) The execution and delivery of the Borrower Documents by the Borrower will not result in a breach of any of the terms of, or constitute a default under, any indenture, mortgage, deed of trust, lease or other agreement or instrument to which the Borrower is a party or by which it or any of its property is bound, or any constitutional or statutory rules or regulations applicable to the Borrower or its property.

c) There is no action, suit, proceeding, inquiry or investigation at law or in equity or before or by any court, public board or body pending or, to the best knowledge of the Borrower, threatened against or affecting the Borrower wherein an unfavorable decision, ruling or finding would adversely affect (i) the transactions contemplated by, or the validity or enforceability of, this Agreement, the Energy Services Agreement or the Energy Performance Contract or (ii) the tax-exempt status of the interest on the Series C Note.

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d) The Borrower shall cause to be executed and delivered in connection with this Agreement such documents as are reasonably required by the Lender to insure the validity and enforceability of this Agreement, the Energy Services Agreement and the Energy Performance Contract and the exemption from federal income taxation of interest on the Series C Note.

e) No event or condition that constitutes, or with the giving of notice or the lapse of time or both would constitute, an Event of Default exists as of the Closing Date.

f) In no event shall the Borrower consent to any amendment, modification or change to (i) the Energy Services Agreement which has the effect of reducing the amount, or delaying any date for receipt, of payments payable by the City thereunder or (ii) the Energy Performance Contract which has the effect of reducing the amount, or delaying any date for receipt, of the Performance Guarantee Payment payable by the Contractor with respect to any Performance Guarantee Year thereunder, without the prior written consent of the Lender in each instance described under clause (i) or (ii).

g) At no time and in no event will the Borrower permit, suffer or allow any of the Loan Amount to be transferred to any person or entity in violation of, or to be used in any manner which is prohibited by, State or federal

law.

h) The Borrower is not in violation of any applicable law promulgated or judgment entered by any federal, state or governmental authority that individually or in the aggregate, would affect its material obligations under this Agreement, the Energy Services Agreement or the Energy Performance Contract.

(i) The Borrower is, or will be, the holder of all material federal, state, local or

other governmental consents, licenses, permits or other authorizations required to permit.it  
<http://permit.it> to operate or

conduct its business as contemplated by this Agreement, the Energy Services Agreement and the Energy  
Performance Contract.

(j) The Borrower's rights and interests under the Energy Services Agreement and the Energy Performance Contract and with respect to the Revenues are free and clear of all claims, liens, security interests and encumbrances of any kind or character, except as assigned and granted to the Lender by the Borrower under Section 3.02 (b).

(k) All factual information heretofore or contemporaneously furnished to the Lender in writing by the Borrower for purposes of or in connection with this Agreement and the transactions contemplated hereby, taken as a whole, are true and accurate in all material respects on the date as of which such information is dated or certified (or, if such information has been amended or supplemented, on the date as of which any such amendment or supplement is dated or certified).

Section 2.02. Tax Covenants. It is the intention of the parties hereto that the interest on the Series C Note be and remain excludable from gross income for purposes of federal income taxation, In furtherance of the foregoing, the Borrower covenants that it shall, at all times, do and perform all acts and things necessary and within its control in order to assure that the interest on the Series C Note shall, for the purposes of federal income taxation, be excludable from the gross income of the Lender. The Borrower shall not permit the use of the proceeds of the Series C Note, nor take nor omit to take any action, so as to cause interest on the Series C Note to cease to be excludable from the gross income of the Lender for the purposes of federal income taxation.

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Section 2.03. Incorporation of Tax Certificate. The representations, warranties, agreements, covenants and statements of expectations of the Borrower set forth in the Tax Certificate are by this reference incorporated in this Agreement as though fully set forth herein.

### **ARTICLE III LOAN PROVISIONS**

#### **Section 3.01. Loan Amount; Supplemental Loan Amount; Notes.**

a) Subject to the terms, provisions and conditions of this Agreement, on the Closing Date, the Borrower agrees to borrow from the Lender, and the Lender agrees to loan to the Borrower upon satisfaction of the conditions set forth in Section 6.01, the Loan Amount which Loan Amount shall be deposited in the Project Fund and be

applied pursuant to the terms of the Escrow Agreement to pay the costs of the Equipment and certain closing costs.

b) The obligation to repay the Loan Amount hereunder shall be evidenced by the Series C Note. The Series C Note shall bear interest, be payable and mature as set forth in Exhibit A.

c) Upon the occurrence of each (without duplication) of: (i) a Determination of Taxability or (ii) a casualty or condemnation event occurs with respect to the Equipment as provided in Section 9.01 and the Lender elects to apply Net Proceeds and/or any other amounts available under the Energy Services Agreement (including Section 6.3 thereof) to the then-applicable Prepayment Price pursuant to Section 9.01 (each a "Supplemental Note Trigger Event"), the principal amount of the Supplemental Note shall equal the then applicable Supplemental Loan Amount. The "Supplemental Loan Amount" shall equal the sum of (a) in the case of a Determination of Taxability, the sum of (x) an amount calculated with respect to Loan Payments paid prior to the Determination of Taxability to restore to the registered owner of the Series C Note its after-tax yield on the Series C Note calculated at the Taxable Rate for the period from the date on which the Event of Taxability is deemed to have occurred to the date of such Determination of Taxability; plus (y) an amount calculated to maintain such after-tax yield to the registered owner of the Series C Note on each scheduled Series C Note payment due date from and after the date of such Determination of Taxability to the final stated installment payment due date of the Series C Note; plus (z) the amount equal to the aggregate interest on the sum of the amounts in (x) and (y) calculated at the Loan Rate and compounded on each scheduled Series C Note installment payment due date to the final stated installment payment due date of the Series C Note; plus (b) in case of a casualty or condemnation event, the sum of (x) the amount of the then-applicable Prepayment Price less the amount of Net Proceeds and/or other amounts available under the Energy Services Agreement (including Section 6.3 thereof) applied by the Lender pursuant to Section 9.01, plus (y) the amount equal to the aggregate interest on such net amount under (x) calculated at the Loan Rate and compounded on each scheduled Series C Note installment payment due date to the final stated installment payment due date of the Series C Note.

d) The Borrower shall have the obligation to pay the Supplemental Loan Amount (if any) from and after the issuance of the Supplemental Note on the Closing Date, provided that the Supplemental Loan Amount and the installment payments with respect thereto shall not be determined or become payable until the occurrence (if ever) of a Supplemental Note Trigger Event. The obligation to repay the Supplemental Loan Amount shall be evidenced by the Supplemental Note. The Supplemental Note shall bear interest, be payable and mature as set forth in Exhibit B. In the event the final stated installment payment due date of the Series C Note occurs and Borrower's obligation to pay the Series C Note is satisfied prior to the occurrence of a Supplemental Note Trigger Event, the Supplemental Note shall be canceled and no longer outstanding.

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**Section 3.02. Loan Payments; Security for Payments.**

a) The Borrower shall pay to the Lender all Loan Payments at the times and in the amounts provided in the Notes, in lawful money of the United States of America, but only from the Revenues. The Loan Payments shall be payable without notice or demand when due at such place as the Lender shall direct in writing. Subject to Section 3.04, the obligations of the Borrower to make Loan Payments and to perform and observe the other covenants and agreements contained herein are absolute and unconditional in all events without abatement, diminution, deduction, set-off or defense, for any reason, including without limitation any failure of the Equipment, any defects, malfunctions, breakdowns or infirmities in the Equipment, disputes with the Contractor or the Lender, failure of the Contractor under the Energy Performance Contract to perform any of its obligations thereunder for whatever reason, including bankruptcy, insolvency, reorganization or any similar event with respect to the Contractor or any accident, condemnation or unforeseen circumstances.

b) As security for its obligation to pay Loan Payments to the Lender and to perform its other obligations hereunder, the Borrower hereby assigns, and grants a security interest in, to the Lender all of its rights and interests under the Energy Services Agreement, the Energy Performance Contract, including, without limitation, the Borrower's right to collect and receive all payments thereunder, the right to make all waivers and agreements and to enter into any amendments and all of its other rights, powers, privileges, options and other benefits thereunder, but excluding the Borrower's duties and obligations thereunder (which are not delegated, but are retained by the Borrower), and the Lender may take such action and exercise such rights and remedies under the Energy Services Agreement and the Energy Performance Contract upon the occurrence of an event of default under either thereof and exercise and enforce all other rights and interests of the Borrower thereunder (except the Reserved Rights).

c) The Borrower shall cause to be deposited in the Revenue Fund all moneys paid or payable from (i) the City to the Borrower pursuant to the Energy Services Agreement and (i) the Contractor to the Borrower pursuant to the Energy Performance Contract, and shall not direct such funds to be deposited in any other manner.

Section 3.03. Payment on Non-Business Days. Whenever any payment to be made hereunder shall be stated to be due on a day which is not a Business Day, such payment may be made on the next succeeding Business Day, with the same effect as if paid on the stated due date.

#### Section 3.04. Limited Obligations of the Borrower.

(a) " The obligations of the Borrower hereunder shall be special, limited obligations of the Borrower payable solely from (i) the Loan Amount and investments thereof; (ii) all amounts payable by the City pursuant to the Energy Services Agreement (except for the Reserved Rights), including any amount paid by the City upon the exercise of its purchase option under Section 2.3(a) thereof (but only if either Note is then outstanding); (iii) all amounts payable by the Contractor pursuant to the Energy Performance Contract; (iv) all proceeds, cash and non-cash (including insurance proceeds), from the sale, destruction, loss or other disposition of any of the Equipment; and (v) all moneys realized from the exercise of rights and remedies under this Agreement (collectively, the "Revenues").

(b) The Borrower shall not be obligated to pay Loan Payments, the Prepayment Price, Additional Payments or other costs incident thereto from any assets of the Borrower other than the Revenues, the Equipment or any other property in which the Borrower has granted the Lender a security interest pursuant to this Agreement. The Borrower shall not be obligated to pay the Loan Payments, the Prepayment Price, Additional Payments or any other obligation hereunder except from revenues or other

moneys made available to the Borrower for such purpose and pledged to the payment of the Notes, the premium, if any, and the interest thereon. THIS AGREEMENT AND THE NOTES ARE NOT OBLIGATIONS OF THE CITY. THIS AGREEMENT AND THE NOTES SHALL NOT BE DEEMED TO CONSTITUTE AN INDEBTEDNESS OR A LOAN AGAINST THE GENERAL TAXING POWERS OR CREDIT OF THE CITY, WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION. THE LENDER SHALL NOT HAVE THE RIGHT TO COMPEL ANY EXERCISE OF THE TAXING POWER OF THE CITY, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF TO PAY THE PRINCIPAL OF, PREMIUM, IF ANY, OR INTEREST ON THE NOTES OR ANY OTHER AMOUNT PAYABLE UNDER THIS AGREEMENT

Section 3.05. Additional Payments. In addition to the Loan Payments payable by the Borrower, the Borrower shall pay as "Additional Payments" hereunder the reasonable expenses and advances by the Lender (including, without limitation, attorneys' fees and disbursements) to pay insurance premiums not otherwise paid, or caused to be paid, by the Borrower or to enforce its rights upon the Borrower's failure to perform its obligations hereunder. Such Additional Payments shall be billed to the Borrower by the Lender from time to time, together with a statement certifying that the amount so billed has been paid by the Lender for one or more of the items described or that such amount is then payable by the Lender for such items.

#### ARTICLE IV RESERVED

#### ARTICLE V PREPAYMENT

##### Section 5.01. Optional Prepayment Rights.

a) The Borrower shall be entitled to prepay, in whole or in part on any Loan Payment due date, the Series C Note in an amount not less than \$500,000 per prepayment, upon written notice delivered to the Lender at least 60 days in advance of the prepayment date, at the then-applicable Prepayment Price, plus accrued interest to the prepayment date.

b) The Borrower shall be entitled to prepay, in whole or in part on any Loan Payment due date, the Supplemental Note, upon written notice delivered to the Lender at least 60 days in advance of the prepayment date, at a prepayment price equal to the outstanding Supplemental Loan Amount or portion thereof to be prepaid, plus accrued interest to the prepayment date.

Section 5.02. Mandatory Prepayment from Excess Project Fund. Any funds remaining in the Project Fund on the earlier of July 15, 2015 or delivery by the Borrower (in its capacity as the Customer under the Energy Performance Contract) of the Final Acceptance Certificate pursuant to the Energy Performance Contract in an amount not greater than 10% of the original Loan Amount shall be applied by the Lender on the earlier of such dates to the prepayment of an equivalent portion of the outstanding principal of the Series C Note without premium. Any funds remaining in the Project Fund on July 15, 2015 or delivery by the Borrower (in its capacity as the Customer under the Energy Performance Contract) of the Final Acceptance Certificate pursuant to the Energy Performance Contract in an amount greater than 10% of the original Loan Amount shall be applied by the Lender on the earlier of such dates to the prepayment of a portion of the outstanding principal of the Series C Note equal to the amount of such excess funds remaining after payment of a prepayment premium from such excess funds of 3% of such excess funds.

Section 5.03. Mandatory Prepayment from Excess Savings. Excess Savings in the Revenue Fund on each July 1, commencing July 1, 2016, shall be applied by the Lender on such July 1 to the prepayment of an equivalent portion of

the outstanding principal of the Series C Note without premium.

Section 5.04. Extraordinary Mandatory Prepayment upon Termination of Energy Services Agreement. If the Energy Services Agreement is terminated and such event results in the City paying liquidated damages to the Borrower pursuant to the Energy Services Agreement, the Borrower shall be required to prepay the outstanding principal balance of the Notes at the then-applicable Prepayment Price, plus accrued interest to the prepayment date, but only from and to the extent of such liquidated damages paid by the City pursuant to the Energy Services Agreement.

Section 5.05. Application of Prepayment Amounts. Prepayments by the Borrower in part under this Article V shall be applied to the principal payments due under the Notes in the inverse order of their maturities.

Section 5.06. Consummation of Prepayment. The Lender's security interest in the Equipment, the Energy Services Agreement, the Energy Performance Contract and any other interest granted by the Borrower to the Lender to secure its obligations hereunder shall be terminated and released automatically in conjunction with the receipt of the full Prepayment Price or the final Loan Payment due hereunder and any Additional Payments due hereunder and outstanding, unless an Event of Default hereunder shall have occurred and be continuing as of such date. Such date may be extended for such additional period as the Lender reasonably determines to be necessary to reflect the impact of, and avoid the risks related to, bankruptcy-related laws. On such date, the Lender shall deliver to the Borrower such termination statements and other documents and instruments as the Borrower shall reasonably require to evidence such prepayment and termination of such security interest.

#### ARTICLE VT CONDITIONS PRECEDENT

Section 6.01. Conditions to Lender's Performance. As a prerequisite to the performance of the Lender of any of its obligations hereunder, the Lender shall have received all of the following in form and substance satisfactory to the Lender:

- a) This Agreement and each of the Notes, properly executed by the Borrower;
- b) The Energy Performance Contract, properly executed by the Borrower and the
- c) The Energy Services Agreement, properly executed by the Borrower and the
- (d) The Paying Agent Agreement properly executed by the Borrower, the Lender and the Paying Agent;
- e) The Escrow Agreement, properly executed by the Borrower, the Lender and the
- f) The Subordination Agreement, properly executed by the Lender and the City;
- g) The Conditional Purchase Agreement, properly executed by Contractor and the

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(h) The PBC Undertaking Agreement, properly executed by the Public Building Commission of Chicago, the Borrower and the City;

(i) A certified copy of the Surety Bonds related to the Energy Performance Contract satisfying the conditions set forth in Section 8.07, or, at the Lender's sole discretion, such Surety Bonds may be provided after the

Closing Date, provided however, that no "Disbursement Request" other than for costs of issuance pursuant to the Escrow Agreement shall be authorized by the Lender until such Surety Bonds satisfying the conditions set forth in Section 8.07 have been delivered to the Lender;

(j) As applicable, financing statements naming the Borrower, as debtor, and naming the Lender, as secured party, such other affidavits, notices and similar instruments necessary or appropriate to perfect and maintain the Lender's first priority, perfected security interest in the Equipment, the Revenues, and moneys and investments held from time to time in the Revenue Fund and the Project Fund;

(k) A certificate of the City in form and substance satisfactory to the Borrower certifying as to, among other things, (i) the ordinances of the City Council (or other satisfactory evidence) authorizing the creation of the Borrower, the execution, delivery and performance of the Energy Services Agreement and any other related documents and the transactions contemplated thereby and hereunder and (ii) the signatures of the officers or agents of the City authorized to execute and deliver the Energy Services Agreement and other related instruments, agreements and certificates on behalf of the City;

(l) A certificate of the Borrower certifying as to, among other things, (i) the resolutions of the Board of Directors of the Borrower authorizing the creation of the Borrower, the execution, delivery and performance of the Borrower Documents and any other related documents and (ii) the officers of the Borrower authorized to execute and deliver the Borrower Documents, and other instruments, agreements and certificates on behalf of the Borrower;

(m) A Tax Certificate, properly by the Borrower and the City;

(n) Certificates of insurance or evidence of self-insurance required under this Agreement, the Energy Services Agreement and the Energy Performance Contract;

(o) A completed and executed Form 8038-G and evidence of filing thereof with the Internal Revenue Service;

(p) An opinion of counsel to the Borrower addressed to the Lender, the City and

Borrower; Borrower;  
Bond Counsel;

(q) An opinion of counsel to the City, addressed to the City, the Lender and the (r) An opinion of counsel to the

Contractor addressed to the City, the Lender and the

(s) An opinion of Bond Counsel addressed to the Borrower and a letter of Bond Counsel addressed to the City and the Lender to the effect that the foregoing opinion addressed to the Borrower may be relied upon by the City and the Lender as if such opinion was addressed to them; and

(t) Any other items reasonably requested by the Lender and evidence of the satisfaction of any of the foregoing requirements of the Lender.

Section 7.01. Security Interest. This Agreement is intended to constitute a security agreement within the meaning of the UCC. In order to secure all of its obligations hereunder and under the Notes to the Lender, the Borrower hereby: (i) grants to the Lender a security interest constituting a first lien on any and all right, title and interest of the Borrower in the Equipment, the Revenues and moneys and investments held from time to time in the Revenue Fund and the Project Fund and in all additions, attachments, accessions, and substitutions thereto, and on any proceeds thereof; and (ii) agrees that this Agreement may be filed as a financing statement evidencing such security interest in the Equipment and such other collateral described in clause (i). The Lender may file any such financing statements in such locations it deems necessary or appropriate to perfect and maintain such security interests granted in this Agreement. If the Lender's security interest in the applicable Equipment and other collateral shall terminate in accordance with Section 5.06, at the request of the Borrower, the Lender shall execute and deliver to the Borrower documents which evidence the termination of the Lender's security or other interest in such Equipment and other collateral.

Section 7.02. Liens and Encumbrances. The Borrower shall not directly, or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Equipment, the Revenues, the Revenue Fund or the Project Fund (collectively "Liens"), except as otherwise contemplated by this Agreement or otherwise approved by the Lender in writing.

Section 7.03. Maintenance of Corporate Status; Change In Name, Corporate Structure or Principal Place of Business. The Borrower at all times shall maintain its existence as a nonprofit corporation organized and existing under the laws of the State. The Borrower shall provide written notice to the Lender of any change in its name, corporate structure, or principal place of business that may affect the enforceability of the Lender's security interest in the Equipment. Such notice shall be provided 30 days in advance of the date that such change is planned to take effect. The Borrower shall first obtain the written consent of the Lender prior to any material change in the Borrower's corporate structure.

Section 7.04. Inspection of Equipment. Subject to the rights of the City under the Energy Services Agreement, the Lender shall have the right at all reasonable times during business hours, upon reasonable advance notice to the Borrower and the City, and with the prior written consent of the City, to enter into and upon the property of the City for the purpose of inspecting the Equipment.

Section 7.05. Location. The Equipment shall be located in the sites designated in the Energy Services Agreement. The Equipment shall not be moved by or on behalf of the Borrower from the sites described in the Energy Services Agreement to any other locations except in accordance with the advance written consent of the Lender.

Section 7.06. Personal Property. The parties hereby intend that the Equipment is, and so long as the Note is outstanding will remain, personal property and will not be or become fixtures. Nonetheless, the Lender, at its cost and expense, may cause such filings to be made with the applicable governmental officials or filing offices to create and preserve for the Lender as assignee of the Borrower a perfected, first priority security interest in the Equipment to the extent the property is deemed to be fixtures.

## **ARTICLE VIII MAINTENANCE; MODIFICATION; TAXES; INSURANCE AND OTHER OBLIGATIONS**

### **12**

Section 8.01. Use and Maintenance of Equipment. The Borrower shall care for and promptly make and effect, or shall cause to be cared for and promptly made and effected, all repairs, replacements, and the like as may be necessary to maintain the Equipment in good working order and running condition at all times as required by the Energy Services Agreement and Energy Performance Contract. The Borrower shall not install, use, operate or maintain the Equipment improperly, carelessly, in violation of any applicable law, license or insurance policy provision, including the provisions of the Energy Performance Contract or Energy Services Agreement, or in any manner contrary to that contemplated by this Agreement, the Energy Services Agreement or the Energy Performance Contract. The Borrower shall secure, or



cause to be secured, all permits and licenses, if any, necessary for the installation, use, operation, modification and upgrades of the Equipment. The Borrower shall comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each item of the Equipment) with the laws of each jurisdiction in which its operations involving the Equipment may extend and the regulations or orders of any legislative, executive, administrative or judicial body exercising power over the Equipment or the Borrower's interest in this Agreement.

Section 8.02. Taxes, Other Governmental Charges and Utility Charges. In the event that the use, possession or acquisition of the Equipment is found to be subject to taxation in any form (except for income taxes, if any, of the Lender, other than income taxes resulting from the loss of the tax-exemption of the interest on the Series C Note), the Borrower shall pay, or caused to be paid, as the same respectively come due, all taxes and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Equipment, as well as all gas, water, steam, electricity, heat, power, telephone, utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Equipment.

### **Section 8.03. Insurance.**

a) The Borrower shall maintain, or cause to be maintained, casualty, public liability and property damage insurance, for such amounts and against such hazards as the Lender may reasonably require, to be carried and maintained, or demonstrate to the satisfaction of the Lender that adequate self-insurance is provided with respect to the Equipment sufficient to protect the full replacement value of the Equipment or outstanding principal amount of the Series C Note (whichever is greater) and to protect the Lender, the Borrower and the City from liability in all events. All insurance proceeds from casualty losses shall be payable to the Lender as hereinafter provided. The insurance required to be provided under the terms of Energy Services Agreement and the Energy Performance Contract shall satisfy the requirements of this Section 8.03.

b) Any insurance policy carried or maintained pursuant to this Section shall be so written or endorsed as to make losses, if any, payable to the Lender and naming the Lender as an additional insured party for liability. The Net Proceeds (as defined in Section 9.01) of the insurance required in this section shall be applied as provided in Article IX.

Section 8.04. Advances. In the event the Borrower shall fail to maintain the full insurance coverage required by this Agreement or shall fail to keep the Equipment in good repair and operating condition, the Lender may (but shall be under no obligation to) purchase the required policies of insurance and pay the premiums on the same or may make such repairs or replacements as are necessary and provide for payment thereof; and all amounts so advanced therefor by the Lender shall become Additional Payments payable in accordance with the terms of Section 3.05.

### **Section S.05. Amendments; Modifications and Substitutions.**

a) The Borrower shall not without the prior written consent of the Lender (which may be granted or withheld in the exercise of the Lender's sole discretion) agree to (i) any alterations, modifications, additions, substitutions, subtractions or improvements to the Equipment that materially damage the functional capabilities or economic value of the Equipment or have the effect of reducing, or delaying the dates for payment of, the amounts payable by the City under the Energy Services Agreement or the Contractor under the Energy Performance Contract; (ii) increase or decrease the Contract Sum or lengthen or shorten the Contract Time (as each term is defined under the Energy Performance Contract) under the Energy Performance Contract; (iii) exercise any right to terminate the Energy Performance Contract for convenience or for default; (iv) terminate the "Performance Tracking Services" to be performed by the Contractor under the Energy Performance Contract; or (v) any Change Order under the Energy

Services Agreement that would change the Project Costs, the Installation Schedule or the Savings Percentage thereunder.

b) The Borrower shall provide such documents or assurances required by the Lender to maintain or confirm the Lender's security interest in the Equipment as so modified or altered, or in any equipment substituted for the Equipment.

c) "Notwithstanding the provisions of paragraph (a) of this Section, the Borrower may, with the prior written consent of the Lender and as provided in the Energy Services Agreement and the Energy Performance Contract, agree to the substitution for parts, elements, portions of all of the Equipment, other parts, elements, portions, equipment or facilities. The Borrower shall permit the City and/or the Contractor to make any such permitted substitutions using only parts, elements, equipment or other material of at least equal quality to those contained in or on the Equipment as originally delivered to the Borrower by the Contractor. The Borrower shall provide and cause the City to provide such documents or assurances as the Lender may reasonably request to maintain or confirm the Lender's security interest in the Equipment as so modified or substituted.

#### **Section 8.06. Financial and Project Information.**

a) The Borrower shall furnish to the Lender its annual audited financial statements no later than 180 days after the end of each fiscal year of the Borrower and shall provide to the Lender such other financial statements and information as the Lender may reasonably request.

b) The Borrower shall furnish, or cause the City and the Contractor to furnish, as the case may be, to the Lender at the times and in the manner required in the Energy Services Agreement and the Energy Performance Contract, respectively: (i) the annual financial statements of the City and the Contractor; (ii) a copy of any Change Order that changes the Contract Sum or the Contract Time (each term as defined in the Energy Performance Contract) under the Energy Performance Contract; (iii) a copy of any notice that a Contractor must take corrective action and Extraordinary Measures under Section 3.F of the Energy Performance Contract; (iv) a copy of any stop work order that the Borrower delivers to the Contractor pursuant to Section 6.N or 15.D of the Energy Performance Contract; (v) a copy of any notice from the City that an invoice delivered pursuant to Section 9.2 of the Energy Services Agreement is not a proper invoice or that the amount therein shown is not correct; and (vi) notice of any damage to or loss of the use of the ECMs or that could reasonably be expected to materially adversely affect the Services or the Savings as provided in Section 4.6 of the Energy Services Agreement.

(c) The Borrower shall deliver to the Lender, within five Business Days after its delivery to the Borrower (in its capacity as the Customer under the Energy Performance Contract) pursuant to Section IV

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of the Performance Guarantee, a true and correct copy of each Annual M&V Report relating to the Performance Guarantee (as each such term is defined in the Energy Performance Contract).

Section 8.07. Surety Bonds. The Borrower shall secure from the Contractor in connection with the Energy Performance Contract and as provided therein, a payment and performance bond ("Surety Bond") executed by a surety company authorized to do business in the State, having a financial strength rating by A.M. Best Company of "A-" or better, and otherwise satisfactory to Lender and naming Lender as a co-obligee in a sum equal to the entire amount to become payable under the Energy Performance Contract, but shall not secure any energy savings, measurement and verification obligations or maintenance/service obligations, which may be guaranteed by the Contractor under the Energy Performance Agreement. Each bond shall be conditioned on the completion of the work in accordance with the plans and specifications for the Equipment and upon payment of all claims of subcontractors and suppliers. The Borrower shall cause the surety company to add the Lender as a co-obligee on each Surety Bond, and shall deliver a certified copy of each Surety Bond to the Lender promptly upon receipt thereof by the Borrower. Any proceeds from a Surety Bond shall

be applied first to amounts due the Lender under this Agreement, and any remaining amounts shall be payable to the Borrower.

In the event of a material default of the Contractor under the Energy Performance Contract in connection with the acquisition, construction, and/or installation of the Equipment or in the event of a material breach of warranty with respect to any material workmanship or performance guaranty with respect to the Equipment, the Borrower will promptly proceed to exhaust its remedies against the Contractor in default. The Borrower shall advise the Lender of the steps it intends to take in connection with any such default. Any amounts received by the Borrower in respect of damages, refunds and adjustments or otherwise in connection with the foregoing shall be paid to the Lender and applied against the Borrower's obligations hereunder.

No "Disbursement Request" under the Escrow Agreement other than for the purpose of paying costs of issuance pursuant to the Escrow Agreement shall be authorized by the Lender until such Surety Bonds satisfying the conditions set forth in this Section have been delivered to the Lender.

Section 8.08. Energy Savings Bond. No later than the commencement of the "Guarantee Period" (as defined in the Energy Performance Contract), the Borrower shall secure from the Contractor in connection with the Energy Performance Contract a bond ("Energy Savings Bond") executed by a surety company authorized to do business in the State, having a financial strength rating by A.M. Best Company of "A-VII" or better, and otherwise satisfactory to Lender and naming Lender as a co-obligee in a sum equal to the amount of energy savings guaranteed under the Energy Performance Contract in each annual period. The Borrower shall cause the Contractor to provide to the Lender the form of the Energy Savings Bond (including the co-obligee rider thereto) and the identity of the Energy Savings Bond provider not less than thirty (30) days prior to the effective date of any such Energy Savings Bond. The Borrower shall cause the surety company to add the Lender as a co-obligee on the Energy Savings Bond, and shall deliver a certified copy of the Energy Savings Bond to the Lender promptly upon receipt thereof by the Borrower. Any proceeds from the Energy Savings Bond shall be applied first to amounts due the Lender under this Agreement, and any remaining amounts shall be payable to the Borrower.

In the event of failure of the Contractor to pay in respect of its energy savings guaranty under an Energy Performance Contract, the Borrower will promptly proceed to exhaust its remedies against the Contractor. The Borrower shall advise the Lender of the steps it intends to take in connection with any such default. Any amounts received by the Borrower in respect of damages, refunds and adjustments or otherwise in connection with the foregoing shall be paid to the Lender and applied against the Borrower's obligations hereunder.

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**ARTICLE IX  
DAMAGE, DESTRUCTION AND CONDEMNATION; USE OF  
NET PROCEEDS**

Section 9.01. Damage, Destruction and Condemnation. Unless the Borrower shall have exercised the option to prepay Loan Payments by making payment of the Prepayment Price as provided herein, if (a) the Equipment or any portion thereof is destroyed (in whole or in part), lost, secreted, stolen or is damaged by fire or other casualty, or (b) title to, or the temporary use of, the Equipment or any part thereof or the estate of the Borrower in the Equipment or any part thereof shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, then the Lender may, at its option, apply the Net Proceeds (as defined herein) in whole or in part to (i) repair or replace such Equipment or any portion thereof, or (ii) pay the then-applicable Prepayment Price plus interest thereon and any Additional Payments due and outstanding hereunder. Any portion of the Prepayment Price payable under this Section 9.01 in excess of Net Proceeds or any other amounts available under the Energy Services Agreement on the prepayment date shall be included in the Supplemental Loan Amount and paid as provided in Section 3.01. Any balance of the Net Proceeds remaining after application in accordance with the

preceding sentence shall be paid to the Borrower.

For purposes of Section 8.03 and this Article IX the term "Net Proceeds" shall mean the amount remaining from the gross proceeds of any insurance claim or condemnation award after deducting all expenses (including reasonable attorneys' fees) incurred in the collection of such claim or award.

## ARTICLE X ASSIGNMENT, INDEMNIFICATION, MORTGAGING AND SELLING

### Section 10.01. Assignment by Lender.

(a) The Lender's right, title and interest in and to this Agreement and the Notes (including the right to receive Loan Payments) and any other amounts payable by the Borrower under this Agreement and the Lender's security interest in the Equipment and all other collateral assigned to the Lender hereunder, and all proceeds therefrom, may be assigned and reassigned by the Lender at any time, in whole or in part, to one or more assignees or subassignees without the necessity of obtaining the consent of the Borrower; provided, that any such assignment, transfer or conveyance (i) shall be made only to investors each of whom the Lender reasonably believes is a "qualified institutional buyer" as defined in Rule 144A(a)(1) promulgated under the Securities Act of 1933, as amended, or an "accredited investor" as defined in Section 501(a)(1), (2), (3) or (7) of Regulation D promulgated under the Securities Act of 1933, as amended, and in either case is purchasing this Agreement and the Notes (or any interest therein) for its own account with no present intention to resell or distribute the Agreement or the Notes (or interest therein), subject to each investor's right at any time to dispose of the Agreement and the Notes (or any interest therein) as it determines to be in its best interests, (ii) shall not be made to any assignee or transferee that is precluded by applicable law from contracting with the Borrower or the City as set forth in the Municipal Code of Chicago or State law, each as amended from time to time, (iii) shall not result in more than 35 owners of the Lender's rights and interests under this Agreement and the Notes or the creation of any interest in the Agreement and the Notes in an aggregate principal component that is less than \$100,000 (or the stated amount of the Supplemental Note to the extent that it is less than \$100,000) and (iv) shall not require the Borrower to make Loan Payments, send notices or otherwise deal with respect to matters arising under this Agreement and the Notes with or to more than one Loan Servicer (as such term is defined below), and any trust agreement, participation agreement or custodial agreement under which multiple ownership interests in this Agreement and the Notes are created shall provide the method by which the owners of such interests shall establish the rights and duties of a single

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entity, trustee, owner, servicer or other fiduciary or agent acting on behalf of all of the assignees (herein referred to as the "Loan Servicer") to act on their behalf with respect to the rights and interests of the Lender under or with respect to this Agreement and the Notes, including with respect to the exercise of rights and remedies of the Lender on behalf of such owners upon the occurrence of an Event of Default. The Lender and the Borrower hereby acknowledge and agree that (A) the restrictions and limitations on transfer as provided in this Section 10.01 shall apply to the first and subsequent assignees and sub-assignees of any of the Lender's right, title and interest in, to and under this Agreement and the Notes (or any interest therein); and (B) the Lender's right to assign and transfer as provided in this Section 10.01 does not include the Reserved Rights. Notwithstanding anything in this Section 10.01 to the contrary, the restrictions and limitations on transfer as provided in this Section 10.01 shall not apply to any assignment or transfer of the Lender's right, title and interest in and to this Agreement or the Notes to the Contractor in connection its mandatory purchase obligation or option to purchase as provided in the Conditional Purchase Agreement.

b) Unless to an affiliate controlling, controlled by or under common control with the Lender, no assignment, transfer or conveyance permitted by this Section 10.01 shall be effective as against the Borrower until the Borrower shall have received a written notice of assignment (a copy of which shall be simultaneously delivered to the City) that discloses the name and address of each such assignee; provided, that if such assignment is made to a bank or trust company as trustee or paying agent for owners of certificates of participation, participation interests, trust

certificates or partnership interests with respect to the Loan Payments, it shall thereafter be sufficient that the Borrower receives notice of the name and address of the bank, trust company or other entity that acts as the Loan Servicer. Notices of assignment provided pursuant to this Section 10.01(b) shall contain a confirmation of compliance with the transfer requirements imposed by Section 10.01(a) hereof. During the term of this Agreement, the Borrower shall keep, or cause to be kept, a complete and accurate record of all such assignments in form necessary to comply with Section 149 of the Code. The Borrower shall retain all such notices as a register of all assignees and shall make all payments to the assignee or assignees or Loan Servicer last designated in such register. The Borrower shall not have the right to and shall not assert against any assignee any claim, counterclaim or other right that the Borrower may have against the Lender or a Contractor; provided that nothing herein is intended or shall be construed to affect in any manner the rights of the Borrower to enforce its rights and remedies directly against the responsible Lender or Contractor.

c) If the Lender notifies the Borrower of its intent to assign this Agreement and the Notes, the Borrower agrees that it shall execute and deliver to the Lender a notice and acknowledgement of assignment in form reasonably required by the Lender, within five (5) Business Days after its receipt of such request.

Section 10.02. No Sale, Assignment or Leasing by the Borrower. This Agreement and the interest of the Borrower in the Equipment may not be sold, assigned or encumbered by the Borrower unless the prior written consent of the Lender is obtained and an opinion of Bond Counsel is obtained and provided to the Borrower and the Lender to the effect that the excludability of the interest payable on the Series C Note from gross income for federal income tax purposes will not be affected by such action. No agreement or interest therein and no Equipment shall be subject to involuntary assignment, lease, transfer or sale or to assignment, lease, transfer or sale by operation of law in any manner whatsoever except as expressly provided in this Agreement, and any such attempted assignment, lease, transfer or sale shall be void and of no effect and shall, at the option of the Lender, constitute an Event of Default hereunder. In addition, the Borrower shall not consent to any assignment or other u-ansfer by the City or the Contractor of their respective obligations under the Energy Services Agreement or the Energy Performance Contract, as the case may be, without the prior written consent of the Lender and the delivery of an opinion of Bond

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Counsel to the Borrower and Lender to the effect that the exclusion of the interest payable on the Series C Note from gross income for federal income tax purposes will not be affected by such action.

Section 10.03. Indemnification. The Borrower, subject to the limits of applicable law and Section 3.04, shall indemnify, protect, hold harmless, save and keep harmless the Lender and its assigns from and against any and all liability, obligation, loss, claim, tax and damage whatsoever, regardless of cause thereof, and all expenses in connection therewith (including, without limitation, counsel fees and expenses, and penalties connected therewith imposed on interest received) arising out of or as a result of (a) the entering into of this Agreement, (b) the ownership of the Equipment, (c) the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any item of the Equipment to the extent caused by the gross negligence or willful misconduct of the Borrower, (d) any accident in connection with the operation, use, condition, possession, storage or return of any item of the Equipment resulting in damage to property or injury to or death to any person, and/or (e) the breach of any covenant or any material misrepresentation contained herein. The indemnification arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations hereunder.

Section 10.04. Limitations of Liability. In no event, whether as a result of breach of contract, warranty, tort (including negligence or strict liability), indemnity or otherwise, shall the Lender, its assignees, if any, be liable for any special, consequential, incidental or penal damages including, but not limited to, loss of profit or revenue, loss of use of the Equipment or any associated equipment, service materials or software, damage to associated equipment, service materials or software, cost of capital, cost of substitute equipment, service materials or software, facilities, services or replacement power, or down time costs.

Section 10.05. Immunity of Officers, Employees and Members of the Borrower. No

recourse shall be had for the payment of the principal of or premium or interest on this Agreement or for any claim based thereon or upon any representation, obligation, covenant or agreement in this Agreement contained against any past, present or future officer, member, employee, director or agent of the Borrower or of any successor public or private corporation thereto, as such, either directly or through the Borrower or any successor public or private corporation thereto, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such officers, members, employees, directors or agents as such is hereby expressly waived and released as a condition of and consideration for the execution of this Agreement.

## ARTICLE XI EVENTS OF DEFAULT AND REMEDIES

Section 11.01. Events of Default. The following shall constitute "Events of Default" under this Agreement:

a) failure by the Borrower to pay to the Lender any Loan Payment or Additional Payment required to be paid hereunder when due which continues for a period of ten (10) Days after written notice of such failure is received by the Borrower from the Lender;

b) failure to maintain insurance as provided in Section 8.03;

c) any representation by or on behalf of the Borrower contained in this Agreement or in any instrument furnished in compliance with or in reference to this Agreement proves false or misleading in any material respect as of the date of the making or furnishing thereof;

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d) Failure of the Borrower to observe or perform any covenant, condition, agreement or provision in this Agreement on its part to be observed or performed, other than as referred to in subsections (a), (b) and (c) of this Section, for a period of sixty (60) days after written notice, specifying such failure or breach and requesting that it be remedied, has been given to the Borrower by the Lender; except that, if such failure or breach can be remedied but not within such sixty-(60) day period and if the Borrower has taken all action reasonably possible to remedy such failure or breach within such sixty-(60) day period, such failure or breach shall not become an Event of Default for so long as the Borrower shall diligently proceed to remedy the same in accordance with and subject to any directions or limitations of time established by the Lender;

e) the occurrence of an "Event of Default" as defined in the Energy Services Agreement or the Energy Performance Contract, after any applicable notice and cure period;

f) the termination of the Energy Services Agreement pursuant to Section 9.6 thereof;

g) the occurrence of a default under (i) any other agreement for borrowing money, lease financing of property or otherwise receiving credit held by the Lender or any of its affiliates in a principal amount greater than \$10,000,000 under which the Borrower is an obligor for the financing of energy conservation projects for the City or projects for the City's sister agencies supported by payments from appropriation obligations of the City; or (ii) either of the respective Loan Agreements entered into on the Closing Date with respect to the Borrower's Tax-Exempt Revenue Notes (Chicago Department of Fleet and Facility Management Retrofit One Project) 2014 Series A and B; or

h) (i) initiation by the Borrower of a proceeding under any federal or state bankruptcy or insolvency law seeking relief under such laws concerning the indebtedness of the Borrower; or (ii) initiation against the Borrower of a proceeding under any federal or state bankruptcy or insolvency law seeking relief under such laws concerning the indebtedness of the Borrower if such proceeding is not dismissed within sixty (60) days after commencement thereof.

Section 11.02. Remedies on Default. Whenever any Event of Default shall have occurred and be continuing hereunder, the Lender shall have the right, at its sole option without any further demand or notice, to declare the unpaid principal amount of all Loan Payments to be immediately due and payable and upon any such declaration to take any one or any combination of the following remedial actions with respect to the Equipment financed hereunder, except insofar as the same are otherwise prohibited by applicable law:

a) Take possession of the Equipment wherever situated, without any court order or other process of law and without liability for entering the premises, and lease, sublease or make other disposition of the Equipment for use over a term in a commercially reasonable manner, all for the account of the Lender; provided that the Borrower shall remain liable for the deficiency, if any, between the rent or other amounts paid by a lessee of the Equipment pursuant to such lease or sublease during the same period of time, after deducting all costs and expenses, including reasonable attorney's fees and expenses, incurred with respect to the recovery, repair and storage of the Equipment during such period of time and the sum of the outstanding principal of the Notes, premium and interest thereon, plus Additional Payments and all other amounts due hereunder;

b) Take possession of the Equipment wherever situated, without any court order or other process of law and without liability for entering the premises, and sell any or all of the Equipment at a public or private sale, or otherwise dispose of, hold, use, operate, lease to others or keep idle the Equipment, with thirty (30) days' notice to the Borrower and the City, all free and clear of any rights of

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the Borrower; provided that any and all such actions be taken in a commercially reasonable manner, all proceeds from such sale to be applied in the following manner:

FIRST, to pay all proper and reasonable costs and expenses associated with the recovery, repair, storage and sale of the Equipment, including reasonable attorneys' fees and expenses,

SECOND, to pay (i) the Lender the amount of all unpaid Loan Payments, if any, which are then due and owing, together with interest and late charges thereon, (ii) the Lender the then outstanding principal amount of the Notes (taking into account the payment of past due Loan Payments as aforesaid), any premium thereon, plus a pro-rata allocation of interest, at the rate utilized to establish the interest component for the Loan Payment next due, from the next preceding due date of a Loan Payment until the date of payment by the buyer, (iii) to the United States any rebatable arbitrage due or accrued pursuant to Section 148(f)(4) of the Code, and (iv) to the Lender any other amounts due hereunder, including indemnity payments, reimbursement of any advances, Additional Payments and other amounts payable to the Lender hereunder, and

THIRD, to pay the remainder of the sale proceeds, purchase moneys or other amounts paid by a buyer of the Equipment, to the Borrower;

c) Proceed by appropriate court action to enforce performance by the Borrower or to recover for the breach thereof, including the payment of all amounts due from the Borrower, in which event the Borrower shall pay or repay to the Lender all costs of such action or court action including without limitation, reasonable attorneys' fees;

d) Terminate the Escrow Agreement and apply any proceeds in the Project Fund as provided in (b), above;

e) Exercise its rights of a secured party under the State Uniform Commercial Code with respect to the Equipment, the Project Fund, the Revenue Fund and the Revenues;

f) Exercise its rights as assignee under each of the collateral assignments described in Section

3.02(b) and 7.01; and

g) Take whatever action at law or in equity may appear necessary or desirable to enforce its rights with respect to the Equipment, the Energy Services Agreement or the Energy Performance Contract, in which event the Borrower shall pay or repay to the Lender all costs of such action or court action, including, without limitation, reasonable attorneys' fees.

Notwithstanding any other provision of this Agreement, the failure by the Borrower to pay all or any portion of a Loan Payment or Additional Payment or otherwise to be in default under this Agreement because the Contractor has failed to pay amounts due or otherwise perform its obligations under the Energy Performance Contract or for any other reason not resulting from a default by the City under the Energy Services Agreement that is not caused by a default by any of the parties (other than the City) to any of the related financing documents does not constitute grounds for the Lender's exercise of its rights to possession and/or sale of the Equipment pursuant to (a) and (b) above; subject, however, to the terms and conditions of the Subordination Agreement.

Notwithstanding any other remedy exercised hereunder, the Borrower shall remain obligated to pay to the Lender any unpaid Loan Payments to the extent Revenues are received pursuant to the Energy

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Services Agreement and the Energy Performance Contract. To the extent permitted by applicable law, the Borrower hereby waives any rights now or hereafter conferred by statute or otherwise which might require the Lender to use, sell, lease or otherwise dispose of any Equipment in mitigation of the Lender's damages or which might otherwise limit or modify any of the Lender's rights hereunder.

All of the Borrower's right, title and interest in any Equipment the possession of which is retaken by the Lender upon the occurrence of an Event of Default (including, without limitation, construction contracts, warranties, guaranties or completion assurances applicable to such Equipment) shall pass to the Lender, and the Borrower's rights in such Equipment shall terminate immediately upon such repossession.

Section 11.03. No Remedy Exclusive. No remedy herein conferred upon or reserved to the Lender is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Lender to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice other than such notice as may be required by this Article XI. All remedies herein conferred upon or reserved to the Lender shall survive the termination of this Agreement.

## ARTICLE XII MISCELLANEOUS

Section 12.01. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by registered mail, postage prepaid, addressed as follows:

If to the Lender: Banc of America Public Capital Corp  
11333 McConnick Road, Hunt Valley II Mail Code MD5-  
032-07-05 Hunt Valley, Maryland 21031 Attention:  
Contract Administration

If to the Borrower: Chicago Infrastructure Trust 222 West  
Merchandise Mart Suite 1212



Chicago, Illinois 60657 Attention: Chief Executive Officer

with copies to:

City of Chicago  
Department of Finance  
121 North LaSalle Street, 7th Floor  
Chicago, Illinois 60602

Attention: Deputy Comptroller, Financial Policy and

City of Chicago Department of  
Law

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121 North LaSalle Street, Room 600 Chicago,  
Illinois 60602  
Attention: Finance and Economic Development Division

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

Section 12.02. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the Lender and the Borrower and their respective successors and permitted assigns, if any.

Section 12.03. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 12.04. Amendments. To the extent permitted by law, the terms of this Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written instrument signed by the parties hereto and approved by Bond Counsel, and then such waiver, consent, modification or change shall be effective only in the specific instance and for the specific purpose given.

Section 12.05. Execution in Counterparts; Electronic Transaction. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument and any of the parties hereto may execute this Agreement by signing any such counterpart. In addition, the transaction described herein may be conducted and this Agreement and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

Section 12.06. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws, excluding the laws relating to the choice of law, of the State.

Section 12.07. Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

Section 12.08. Entire Agreement. This Agreement, the attachments hereto and the Borrower Documents constitute the entire agreement between the Lender and the Borrower with respect to the subject matter hereof. There are no understandings, agreements, representations or warranties, express or implied, not specified herein or in the Borrower

Documents regarding this Agreement or the Equipment financed hereunder. This Agreement and the exhibits hereto, shall not be effective or binding upon the Borrower or the Lender until it is signed on their behalf by their respective Authorized Officers.

Section 12.09. Waiver. The Lender's or the Borrower's failure to enforce at any time or for any period of time any provision of this Agreement shall not be construed to be a waiver of such provision or of the right of the Lender or the Borrower thereafter to enforce each and every provision. No express or implied waiver by the Lender or the Borrower of any default or remedy of default shall constitute a waiver of any other default or remedy of default, or a waiver of any of the Lender's or the Borrower's rights.

Section 12.10. Survivability. All of the limitations of liability and indemnities contained in this Agreement shall continue in full force and effect notwithstanding the expiration or early termination

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of this Agreement and are expressly made for the benefit of, and shall be enforceable by, the Lender and the Borrower, or their permitted successors and assigns.

Section 12.11. USA Patriot Act Compliance Notification. The Lender hereby notifies the Borrower that pursuant to the requirements of the USA PATRIOT Act (the "Patriot Act"), it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow the Lender to identify the Borrower in accordance with the Patriot Act. The Borrower shall, promptly upon the Lender's request, provide all documentation and other information that the Lender requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the Patriot Act.,

Section 12.12. Jury Trial Waiver. Each Party hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in any legal proceeding directly or indirectly arising out of or relating to this Agreement, the Notes or the transactions contemplated hereby or thereby (whether based on contract, tort or any other theory). Each Party hereto (a) certifies that no representative, agent or attorney of any other person has represented, expressly or otherwise, that such other person would not, in the event of litigation, seek to enforce the foregoing waiver and (b) acknowledges that it and the other Party hereto have been induced to enter into this Agreement by, among other things, the mutual waivers and certifications in this Section

[Signature Pages Follow]

**23**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in their respective corporate names by their duly Authorized Officers, all as of the date first written above.

**BANCLP F AMERICA PUBLIC CAPITAL CORP**

By

Name:

**Title:**

**Tem J. Preston Authorized Agent**

*[Lander Signature Page of Loan and Security Agreement]*

**CHICAGO INFRASTRUCTURE TRUST**

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By v | tAj<~ ct

Stephen S. Beitler

Chief Executive Officer and Executive Director

*[Borrower Signature Page of Loan and Security Agreement]*

**EXHIBIT A**

**FORM OF SERIES C NOTE**

THE CHICAGO INFRASTRUCTURE TRUST (THE "BORROWER") SHALL NOT BE OBLIGATED TO PAY THIS NOTE, THE PREMIUM, IF ANY, AND THE INTEREST THEREON, EXCEPT FROM REVENUES OR OTHER MONEYS MADE AVAILABLE TO THE BORROWER FOR SUCH PURPOSE AND PLEDGED TO THE PAYMENT OF THIS NOTE, THE PREMIUM, IF ANY, AND THE INTEREST THEREON. THIS NOTE IS NOT AN OBLIGATION OF THE CITY OF CHICAGO, ILLINOIS (THE "CITY") AND THIS NOTE SHALL NOT BE DEEMED TO CONSTITUTE AN INDEBTEDNESS OR A LOAN AGAINST THE GENERAL TAXING POWERS OR CREDIT OF THE CITY, WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION. THE HOLDER OF THIS NOTE SHALL NOT HAVE THE RIGHT TO COMPEL ANY EXERCISE OF THE TAXING POWER OF THE CITY, THE STATE OF ILLINOIS OR ANY POLITICAL SUBDIVISION THEREOF TO PAY THE PRINCIPAL OF, PREMIUM, IF ANY, OR INTEREST ON THE NOTE.

THIS NOTE HAS NOT BEEN REGISTERED OR QUALIFIED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE. ANY RESALE, PLEDGE, TRANSFER OR OTHER DISPOSITION OF THIS NOTE OR ANY INTEREST HEREIN WITHOUT SUCH REGISTRATION OR QUALIFICATION MAY BE MADE ONLY IN A TRANSACTION WHICH DOES NOT REQUIRE SUCH REGISTRATION OR QUALIFICATION AND WHICH IS IN ACCORDANCE WITH THE AGREEMENT (DEFINED HEREIN).

**CHICAGO INFRASTRUCTURE TRUST TAX-EXEMPT REVENUE NOTE (CHICAGO  
DEPARTMENT OF FLEET AND FACILITY MANAGEMENT  
RETROFIT ONE PROJECT) 2014  
SERIES C**

**\$3,806,199**

**April 11, 2014**

FOR VALUE RECEIVED, CHICAGO INFRASTRUCTURE TRUST (the "Borrower") hereby promises to pay to the order of Banc of America Public Capital Corp, its successors and permitted assigns (the "Lender"), in lawful money of the United States of America and in immediately available funds the principal amount of Three Million Eight Hundred Six Thousand One Hundred Ninety-Nine Dollars (\$3,806,199), together with interest on the principal amount outstanding hereunder from time to time at the rate of 4.95% per annum (computed on the basis of a 360-day year, 30

day month).

This Note is issued pursuant to the Loan and Security Agreement dated as of April 1, 2014 (the "Agreement"), between the Borrower and the Lender. Capitalized terms used herein without definition shall have the meaning given them in the Agreement.

Principal and interest due hereunder shall be payable as follows and as detailed in the attached Payment Schedule.

The entire unpaid principal balance of this Note and all unpaid and accrued interest thereon and

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any other amounts due hereunder shall, unless sooner paid, be paid and become due and payable on April 30, 2029.

This Note shall be prepaid at the option of the Borrower only as permitted and to the extent required by Article V of the Agreement, and upon receipt and application of the amounts so prepaid and, if applicable, the Lender shall recalculate the principal balance then remaining, and any correlative adjustments to the payments provided for in this Note (which adjustments shall be deemed final, absent manifest error) within five (5) Business Days\* after written notice thereof is provided by the Lender to the Borrower.

All payments and prepayments on the unpaid principal balance of this Note, interest thereon and any other amounts payable hereunder shall be paid in lawful money of the United States of America in immediately available funds during regular business hours of Lender at the Lender's office at 11333 McCormick Road, M/C MD5-032-07-05, Hunt Valley II, Hunt Valley, MD 21031 or at such other place as the Lender or any other holder of this Note may at any time or from time to time designate in writing to the Borrower; and shall be effective upon receipt. Any payment received by the Lender on account of this Note shall be applied by the Lender: first, toward payment of any prepayment premium payable upon prepayment that is not related to a casualty or condemnation event; second, toward payment of accrued and unpaid interest on this Note; third, toward payment of the unpaid principal balance of this Note in the order of maturity (or, if such payment is accepted by the Lender as a partial prepayment of this Note, such payment shall be applied toward payment of the unpaid principal amount of this Note in the inverse order of maturity); and fourth, toward payment of any prepayment premium payable upon prepayment that is related to a casualty or condemnation event and is not to be added to the Supplemental Loan Amount pursuant to Section 3.01(c) of the Agreement.-

If any payment on this Note becomes due and payable on a day other than a Business Day (as hereinafter defined), such payment shall be made on the next succeeding Business Day, with the same effect as if paid on the stated due date. "Business Day" as used herein means a day, other than a Saturday or Sunday, on which banks are generally open for business in New York, New York and Chicago, Illinois.

**THIS NOTE AND THE INTEREST THEREON ARE SPECIAL, LIMITED OBLIGATIONS OF THE BORROWER PAYABLE SOLELY OUT OF THE REVENUES AND RECEIPTS DERIVED BY THE BORROWER AS PROVIDED IN THE AGREEMENT AND ARE SECURED BY A PLEDGE AND ASSIGNMENT OF SUCH REVENUES AND RECEIPTS AND OTHER FUNDS AND OTHER ASSETS AS PROVIDED IN THE AGREEMENT. THIS NOTE AND THE AGREEMENT ARE NOT OBLIGATIONS OF THE CITY. THIS NOTE AND THE AGREEMENT SHALL NOT BE DEEMED TO CONSTITUTE AN INDEBTEDNESS OR A LOAN AGAINST THE GENERAL TAXING POWERS OR CREDIT OF THE CITY OF CHICAGO, ILLINOIS (THE "CITY"), WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION. THE LENDER SHALL NOT HAVE THE RIGHT TO COMPEL ANY EXERCISE OF THE TAXING POWER OF TILE CITY, THE STATE OF ILLINOIS OR ANY POLITICAL SUBDIVISION THEREOF TO PAY THE PRINCIPAL OF, PREMIUM, IF ANY, OR INTEREST ON THIS NOTE OR ANY OTHER AMOUNT PAYABLE UNDER THE AGREEMENT.**

In the event of the declaration by the Lender of an Event of Default under the Agreement, this Note shall be in default and the balance of the principal sum then due hereunder, together with all accrued interest thereon, immediately shall become due and payable without further notice, such further notice being expressly waived, and the Borrower shall be liable to the holder hereof for reasonable attorney's fees and costs of suit to the extent provided in the Agreement.

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The Borrower waives presentment for payment, demand, notice of demand, notice of nonpayment or dishonor, protest and notice of protest of this Note, and all other notices in connection with the delivery, acceptance, performance, default or enforcement of the payment of this Note.

The remedies of the Lender as provided herein and in the Agreement shall be cumulative and concurrent and may be pursued singly, successively or together, at the sole discretion of the Lender, and may be exercised as often as occasion therefor shall occur; and the failure to exercise any such right or remedy shall in no event be construed as a waiver or release thereof.

THE BORROWER AGREES THAT THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF ILLINOIS (WITHOUT REGARD TO THE CONFLICT OF LAWS PRINCIPLES OF SUCH STATE), INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE. Venue for any action hereunder or related hereto shall be in any state or Federal court of competent jurisdiction in the State of Illinois, and the Borrower submits to the jurisdiction of such courts.

This Note may be transferred or exchanged by the registered owner hereof in person or by its duly authorized attorney, upon surrender of this Note together with a written instrument of transfer satisfactory to the Borrower duly executed by the registered owner or its duly authorized attorney and satisfactory compliance with the applicable terms and conditions of the Agreement, and thereupon a new Note of the same series and maturity and in the same aggregate principal amount, shall be issued to the transferee in exchange therefor upon payment of the charges therein prescribed,

[Signature Page Follows]

IN WITNESS WHEREOF, the Borrower has caused this Note to be signed as of the                      day of  
April, 2014.

**Attest**

**CHICAGO INFRASTRUCTURE TRUST**

Stephen S. Beitler  
Chief Executive Officer and Executive Director

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Payment Schedule

**Date**

07/01/2015 01/01/2016 07/01/2016 01/01/2017 07/01/2017 01/01/2018 07/01/2018 01/01/2019 07/01/2019 01/01/2020  
07/01/2020 01/01/2021 07/01/2021 01/01/2022 07/01/2022 01/01/2023 07/01/2023 01/01/2024 07/01/2024 01/01/2025  
07/01/2025 01/01/2026 07/01/2026 01/01/2027 07/01/2027 01/01/2028 07/01/2028 01/01/2029 04/30/2029

Interest

\$49,419 95,013 92,568 90,033 87,469 84,812 82,123 79,338 76,519 73,600  
70,643 67,583 64,482 61,275 58,022 54,660 51,249 47,724 44,146 40,451  
36,698 32,823 28,888 24,825 20,696 16,436 12,106 7,638 2,047

Principal

\$154,541 98,787 102,442 103,597 107,361 108,628 112,527 113,922 117,941



119,460 1-23,627 125,297 129,588 131,405 135,858 137,810 142,431 144,546  
149,324 151,609 156,562 159,027 164,152 166,805 172,134 174,964 180,504  
183,542 125,073

**Payment**

\$203,960 193,800 195,010 193,630 194,830 193,440 194,650 193,260 194,460 193,060 194,270 192,880 194,070  
192,680 193,880 192,470 193,680 192,270 193,470 192,060 193,260 191,850 193,040 191,630 192,830 191,400  
192,610 191,180 127,120

**Ending**

**Balance**

\$3,838,923 3,740,136 3,637,695 3,534,097 3,426,736 3,318,108 3,205,581 3,091,659 2,973,718 2,854,258 2,730,630  
2,605,333 2,475,745 2,344,340 2,208,483 2,070,673 1,928,242 1,783,696 1,634,372 1,482,763 1,326,201 1,167,175  
1,003,022 836,217 664,083 489,120 308,615 125,073  
\$5,546,750

Includes \$ 187,265 of accrued interest.

**EXHIBIT B**

**FORM OF SUPPLEMENTAL NOTE**

THE CHICAGO INFRASTRUCTURE TRUST (THE "BORROWER") SHALL NOT BE OBLIGATED TO PAY THIS NOTE, THE PREMIUM, IF ANY, AND THE INTEREST THEREON, EXCEPT FROM REVENUES OR OTHER MONEYS MADE AVAILABLE TO THE BORROWER FOR SUCH PURPOSE AND PLEDGED TO THE PAYMENT OF THIS NOTE, THE PREMIUM, IF ANY, AND THE INTEREST THEREON. THIS NOTE IS NOT AN OBLIGATION OF THE CITY OF CHICAGO, ILLINOIS (THE "CITY") AND THIS NOTE SHALL NOT BE DEEMED TO CONSTITUTE AN INDEBTEDNESS OR A LOAN AGAINST THE GENERAL TAXING POWERS OR CREDIT OF THE CITY, WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION. THE HOLDER OF THIS NOTE SHALL NOT HAVE THE RIGHT TO COMPEL ANY EXERCISE OF THE TAXING POWER OF THE CITY, THE STATE OF ILLINOIS OR ANY POLITICAL SUBDIVISION THEREOF TO PAY THE PRINCIPAL OF, PREMIUM, IF ANY, OR INTEREST ON THE NOTE.

THIS NOTE HAS NOT BEEN REGISTERED OR QUALIFIED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE. ANY RESALE, PLEDGE, TRANSFER OR OTHER DISPOSITION OF THIS NOTE OR ANY INTEREST HEREIN WITHOUT SUCH REGISTRATION OR QUALIFICATION MAY BE MADE ONLY IN A TRANSACTION WHICH DOES NOT REQUIRE SUCH REGISTRATION OR QUALIFICATION AND WHICH IS IN ACCORDANCE WITH THE AGREEMENT (DEFINED HEREIN).

**CHICAGO INFRASTRUCTURE TRUST SUPPLEMENTAL TAXABLE REVENUE  
NOTE (CHICAGO DEPARTMENT OF FLEET AND FACILITY MANAGEMENT  
RETROFIT ONE PROJECT)**

**\$1,301,833 (maximum principal amount)**

**April 11, 2014**

FOR VALUE RECEIVED, CHICAGO INFRASTRUCTURE TRUST (the "Borrower") hereby promises to pay to the order of Banc of America Public Capital Corp, its successors and permitted assigns (the "Lender"), in lawful

money of the United States of America and in immediately available funds a maximum principal amount of One Million Three Hundred One Thousand Eight Hundred Thirty-Three Dollars (\$1,301,833), subject to adjustment as provided in Section 3.01(c) of the Agreement (defined herein), together with interest on the principal amount outstanding hereunder commencing to accrue on May 1, 2029 at the rate of 5.00% per annum (computed on the basis of a 360-day year, 30 day month).

This Note is issued pursuant to the Loan and Security Agreement dated as of April 1, 2014 (the "Agreement"), between the Borrower and the Lender. Capitalized terms used herein without definition shall have the meaning given them in the Agreement.

Principal shall be due and payable in equal consecutive installments commencing on January 1, 2030, and continuing on each January 1 and July thereafter, and a final installment on January 1, 2036. Interest shall be payable at the same times as the principal payments. The entire unpaid principal balance of this Note and all unpaid and accrued interest thereon and any other amounts due hereunder shall, unless

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sooner paid, be paid and become due and payable on January 1, 2036.'

This Note shall be prepaid at the option of the Borrower only as permitted and to the extent required by Article V of the Agreement, and upon receipt and application of the amounts so prepaid and, if applicable, the Lender shall recalculate the principal balance then remaining, and any correlative adjustments to the payments provided for in this Note (which adjustments shall be deemed final, absent manifest error) within five (5) Business Days' after written notice thereof is provided by the Lender to the Borrower.

All payments and prepayments on the unpaid principal balance of this Note, interest thereon and any other amounts payable hereunder shall be paid in lawful money of the United States of America in immediately available funds during regular business hours of Lender at the Lender's office 11333 McCormick Road, M/C MD5-032-07-05, Hunt Valley II, Hunt Valley, MD 21031 or at such other place as the Lender or any other holder of this Note may at any time or from time to time designate in writing to Borrower; and shall be effective upon receipt. Any payment received by the Lender on account of this Note shall be applied by the Lender: first, toward payment of accrued and unpaid interest on this Note; and second, toward payment of the unpaid principal balance of this Note in the order of maturity (or, if such payment is accepted by Lender as a partial prepayment of this Note, such payment shall be applied toward payment of the unpaid principal amount of this Note in the inverse order of maturity).

If any payment on this Note becomes due and payable on a day other than a Business Day (as hereinafter defined), such payment shall be made on the next succeeding Business Day, with the same effect as if paid on the stated due date. "Business Day" as used herein means a day, other than a Saturday or Sunday, on which banks are generally open for business in New York, New York and Chicago, Illinois.

**THIS NOTE AND THE INTEREST THEREON ARE SPECIAL, LIMITED OBLIGATIONS OF THE BORROWER PAYABLE SOLELY OUT OF THE REVENUES AND RECEIPTS DERIVED BY THE BORROWER AS PROVIDED IN THE AGREEMENT AND ARE SECURED BY A PLEDGE AND ASSIGNMENT OF SUCH REVENUES AND RECEIPTS AND OTHER FUNDS AND OTHER ASSETS AS PROVIDED IN THE AGREEMENT. THIS NOTE AND THE AGREEMENT ARE NOT OBLIGATIONS OF THE CITY. THIS NOTE AND THE AGREEMENT SHALL NOT BE DEEMED TO CONSTITUTE AN INDEBTEDNESS OR A LOAN AGAINST THE GENERAL TAXING POWERS OR CREDIT OF THE CITY OF CHICAGO, ILLINOIS (THE "CITY"), WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION. THE LENDER SHALL NOT HAVE THE RIGHT TO COMPEL ANY EXERCISE OF THE TAXING POWER OF THE CITY, THE STATE OF ILLINOIS OR ANY POLITICAL SUBDIVISION THEREOF TO PAY THE PRINCIPAL OF, PREMIUM, IF ANY, OR INTEREST ON THIS NOTE OR ANY OTHER AMOUNT PAYABLE UNDER THE AGREEMENT.**

In the event of the declaration by the Lender of an Event of Default under the Agreement, this Note shall be in default and the balance of the principal sum then due hereunder, together with all accrued interest thereon, immediately shall become due and payable without further notice, such further notice being expressly waived, and the Borrower shall be liable to the holder hereof for reasonable attorney's fees and costs of suit to the extent provided in the Agreement.

The Borrower waives presentment for payment, demand, notice of demand, notice of nonpayment or dishonor, protest and notice of protest of this Note, and all other notices in connection with the delivery, acceptance, performance, default or enforcement of the payment of this Note.

The remedies of the Lender as provided herein and in the Agreement shall be cumulative and

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concurrent and may be pursued singly, successively or together, at the sole discretion of the Lender, and may be exercised as often as occasion therefor shall occur; and the failure to exercise any such right or remedy shall in no event be construed as a waiver or release thereof.

THE BORROWER AGREES THAT THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF ILLINOIS (WITHOUT REGARD TO THE CONFLICT OF LAWS PRINCIPLES OF SUCH STATE), INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE. Venue for any action hereunder or related hereto shall be in any state or Federal court of competent jurisdiction in the State of Illinois, and the Borrower submits to the jurisdiction of such courts.

This Note may be transferred or exchanged by the registered owner hereof in person or by its duly authorized attorney, upon surrender of this Note together with a written instrument of transfer satisfactory to the Borrower duly executed by the registered owner or its duly authorized attorney and satisfactory compliance with the applicable terms and conditions of the Agreement, and thereupon a new Note of the same series and maturity and in the same aggregate principal amount, shall be issued to the transferee in exchange therefor upon payment of the charges therein prescribed.

[Signature Page Follows]

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IN WITNESS WHEREOF, the Borrower has caused this Note to be signed as of the                      day of  
April, 2014.

**Attest**

**CHICAGO INFRASTRUCTURE TRUST**

Stephen S. Beitler  
Chief Executive Officer and Executive Director

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EXHIBIT B GEPCs  
GUARANTEED ENERGY PERFORMANCE CONTRACT

***THIS GUARANTEED ENERGY PERFORMANCE CONTRACT (this Contract ) is made and entered into this 11th day of April, 2014, between Chicago Infrastructure Trust ("Customer") and Ameresco, Inc. ("ESCO" or "Ameresco")***

IN CONSIDERATION OF the recitals and the mutual covenants and agreements set forth herein, the Parties agree as follows:

**SECTION 1. RECITALS.**

***A. The Customer desires that the ESCO implement energy management and energy-related capital improvement services at the public buildings owned or operated by the City of Chicago (the "Client") and identified in Exhibit A attached to this Contract (collectively "Facilities" and each a "Facility").***

B. The ESCO's implementation of energy management and energy-related capital improvement services at the Facilities will involve the building analysis, design, engineering, installation, repairs, retrofit, performance monitoring, guarantee reconciliation, and training services more fully described in the "Project Description" attached hereto as Exhibit A and the other terms and provisions of this Contract (the "Project"). The Project Description specifically describes the energy conservation measures and related services ("ECMs", and each, an "ECM") which the ESCO proposes to install at the Facilities.

C. The ESCO has agreed to provide a performance guarantee in the form attached hereto as Exhibit B (the "Performance Guarantee") guaranteeing the energy savings to the Customer resulting from the acquisition and installation of the ECMs and providing that the ESCO will reimburse the Customer for any shortfall of the savings guaranteed in the Performance Guarantee.

D. The ESCO desires to undertake the Project and provide the Performance Guarantee all in accordance with the terms and provisions of this Contract and the other Contract Documents.

**SECTION 2. DEFINITIONS: RULES OF CONSTRUCTION.**

A. Definitions. All capitalized terms used in this Contract shall have the meaning set forth below, or in Exhibit B, Section I:

1. "ACM" is defined in Section 10.A.

2. "Change Order" means a written change in the Project executed by both Parties that, pursuant to Section 12, specifies changes in the Contract Services and, if applicable, changes in the Contract Sum and Contract Time.

3. "Client" is defined Recital A.

4. "Commission" means the Public Building Commission of Chicago.

5. "Confidential Information" is defined in Section 7.M.1.

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6. "Construction Schedule" means the ESCO's construction schedule for the Work that includes, without limitation, a schedule related to the entire Project and for each ECM, and that provides for expeditious and practicable execution of all aspects of the Work, updated from time to time as permitted by this Contract.

7. "Contract Documents" means this Contract with the Exhibits, the Design & Engineering Documents (once accepted by the Customer as provided in Section 6.B), the Construction Schedule, any Change Orders, the other documents listed in this Contract and any modifications to the foregoing documents issued after execution of this Contract.

8. "Contract Services" means the Work and the Guarantee Period Services.

9. "Contract Sum" is defined in Section 4.A.

10. "Contract Time" is defined in Section 3.A.

11. "Customer Representative" is defined in Section 5.A.

12. "Date of Commencement" is the date first written above.

13. "Design & Engineering Documents" is defined in Section 6.B.1.

14. "Design Materials" is defined in Section 14.A.

15. "Dispute" is defined in Section 11 .A.

16. "ECMs" and each, an "ECM", is defined in Recital B.

17. "Engineer Neutraf means a third party professional engineering firm, which firm shall be reasonably acceptable to both the ESCO and the Customer.

18. "Environmental Consultant means a consultant engaged by the Customer to provide environmental assessments and to perform Environmental Work.

19. "Environmental Incentives" means all rights, credits (including tax credits), rebates, grants, benefits, reductions, offsets, and allowances and entitlements of any kind, howsoever entitled or named (including carbon credits and allowances), whether arising under federal, state or local law, international treaty, trade association membership or the like, arising from the development or installation of the ECMs and

the reduction of energy usage at the Facilities, to the extent provided or permitted by applicable law. Without limiting the forgoing, Environmental Incentives include utility rebates or incentive programs, green tags, renewable energy credits, tradable renewable certificates, portfolio energy credits, the right to apply for (and entitlement to receive) incentives under any state tax credit program, grants from nongovernmental organizations, and the right to claim federal income tax credits under Sections 45 and/or 48 of the Internal Revenue Code.

20. "Environmental Work" means any services or work involving removal, cleanup, or other remedial action in connection with a Hazardous Material or Mold.

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21. "ESCO Representative" is defined in Section 7.D.

22. "Excusable Event" is defined in Section 12.E.

23. "Facilities" and each, a ' Facility', is defined in Recital A.

24. "Final Acceptance" means all of the requirements of the Contract Documents for the Project or for a particular ECM have been completed and the Customer has received all of the related project close-out documentation including a completed Punch List, copy(ies) of all required permits, as-built drawings, an approved commissioning report, operation and maintenance manuals, CMMS (as defined in Exhibit A) analytics report documenting building inventory data, and CMMS preventative maintenance schedule, manufacturer warranty agreements, end-user training manuals and training verification documentation.

25. "Final Acceptance Certificate" is defined in Section 3.D

26. "Financing Closing" is defined in Section 3.B.

27. "Financing Contract means a contract or contracts, or other financing vehicle, entered into by the Customer for the financing of the Project, including without limitation, the Loan Agreement.

28. "GAAP" means the uniform accounting and reporting procedures set forth in the opinions, pronouncements and publications of the American Institute of Certified Public Accountants and the Financial Accounting Standards Board or in such other statements by such other entity as may be of general use by significant segments of the accounting profession as in effect on the date of this Contract.

29. "Guarantee Period" is defined in Section 3.A.

30. "Guarantee Period Services" means the performance guarantee, monitoring, Project modification, guarantee reconciliation, Performance Tracking Services, and other services to be performed during the Guarantee Period as described in Exhibits B, C, and D of this Contract.

31. "Guaranteed Annual Savings Amount" is defined in Exhibit B, Section I.

32. "Hazardous Material" means all hazardous or toxic substances, wastes or other pollutants, including petroleum, petroleum hydrocarbons or petroleum products, petroleum by-products, radioactive materials, asbestos or asbestos-containing materials, gasoline, diesel fuel, pesticides, radon, urea formaldehyde, lead or lead-containing materials, polychlorinated biphenyls; and any other chemicals, materials, substances or wastes in any amount or concentration which are now included in the definition of "hazardous substances," "hazardous materials," "hazardous wastes," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "pollutants," "regulated substances,"

"solid wastes," or "contaminants" or words of similar import, under any applicable law.

33. "Independent Engineer" means a third party professional engineer.

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34. "Installation Period" is defined in Section 3.A.

35. "Intellectual Property Rights" means any patents, copyrights, trademarks, service marks issued under United States law.

36. "Interim Completion" is defined in Section 3.C.

37. 'Investment Grade Audit' means the report prepared by the ESCO that sets forth, among other things, (a) an assessment of the energy consumption characteristics of each Facility, (b) specific energy analysis related to each Facility and its operation, and (c) recommendations for projects or programs to achieve cost and/or energy savings in the operation of the Facilities.

38. "Lender" means Banc of America Public Capital Corp, a Kansas corporation, in its capacity as Lender under the Loan Agreement, and its successors and permitted assigns.

39. "Loan Agreement" means the Loan and Security Agreement dated as of April 1, 2014 between the Lender and the Customer relating to the financing of the costs of the ECMs.

40. "Manufacturers' Warranties" is defined in Section 8.E.

41. "Mold" means any type or form of fungus or similar biological material or agent, including mold, mildew, moisture, yeast and mushrooms, and any mycotoxins, spores, scents, or by-products produced or released by any of the foregoing.

42. "Panel of Independent Engineers" means a panel of three (3) Independent Engineers, the first of which is selected by the Customer, second of which is selected by the ESCO and the third of which is chosen by the Independent Engineers appointed by the ESCO and the Customer.

43. "Parties" means the ESCO and the Customer. "Party" means either the ESCO or the Customer.

44. "Performance Guarantee" is defined in Recital C.

45. "Performance Tracking Payment" is defined in Section 4.C.

46. "Performance Tracking Services" means those services to be provided by the ESCO to measure and verify the performance of the ECMs as described in Exhibit C and Exhibit D.

47. "Professional Standard" is defined in Section 7.A.

48. "Project" is defined in Recital B.

49. "Project Participation Guidelines" are those specific guidelines applicable to Customer projects and attached as Exhibit K.

50. "'Records" is defined in Section 7.K.



51. "Scheduled Completion Dates" means the Scheduled Substantial Completion Date and Scheduled Final Acceptance Date.

52. "Scheduled Final Acceptance Date" is defined in Section 3.D.

53. "Scheduled Substantial Completion Date" is defined in Section 3.C.

54. "Senior Officer" means (i) the Chair, Vice Chair or Executive Director of the Customer or (ii) the chief executive officer, president or any executive vice president of the ESCO, or anyone appointed by such persons to act on their behalf.

55. "Subcontractor" means any partnership, firm, corporation or entity other than an employee of ESCO, who contracts with the ESCO to furnish services, labor, materials, or labor and materials at any Facility or otherwise in connection with the Project. This term also includes subcontractors of any tier, suppliers, fabricators or manufacturers, whether or not in privity with the ESCO.

56. "Substantial Completion" means the later of the following: (i) the Work for the Project or a particular ECM is sufficiently implemented in accordance with the Contract Documents, including commissioning of any systems required by the Contract Documents, so that the Customer may utilize the Project or the ECM for the use for which it is intended, and is fully complete except for minor items, adjustments and/or corrections which do not interfere with the Customer's use and occupancy of the Project or ECM; or (ii) if the nature of the Work requires that a certificate of occupancy be issued, it means the date of issuance of the required certificate of occupancy.

57. "Warranty Period" is defined in Section 8.C.

58. "Work" means the work and services required by the Contract Documents during the Installation Period and during any period of time during which the ESCO is required to correct or replace its work and services pursuant to this Contract and includes all labor, materials, equipment and services provided or to be provided by the ESCO to fulfill the ESCO's obligations under this Contract.

## **B. Rules of Construction.**

1. Grammatical Usage and Construction. In construing this Contract, pronouns include all genders, and the plural includes the singular and vice versa.

2. Headings. The headings, titles, and captions in this Contract have been inserted only for convenience and in no way define, limit, extend, or describe the scope or intent of this Contract.

3. Calendar Days. Unless otherwise provided in this Contract, any reference in this Contract to "day" or "days" shall mean calendar days and not business days. If the date for giving of any notice required to be given, or the performance of any obligation, under this Contract falls on a Saturday, Sunday, or federal holiday, then the notice or obligation may be given or performed on the next business day after that Saturday, Sunday, or federal holiday.

4. Priority of Contract Documents. In the event of a conflict or inconsistency among the Contract Documents, the following order of precedence shall govern the interpretation of such documents:

- a. Change Orders;
- b. This Contract {excluding the exhibits to this Contract};
- c. The exhibits to this Contract, other than Exhibit A;
- d. Exhibit A; and
- e. The Design & Engineering Documents. SECTION 3.

#### CONTRACT TIME AND PROJECT SCHEDULE.

A. Contract Time. The "Contract Time" is the period of time from the Date of Commencement until the end of the Guarantee Term, as defined in Exhibit B. Section I. The Contract Time consists of the Installation Period and the Guarantee Period. The "Installation Period" is the period of time from the Date of Commencement until Final Acceptance of the entire Project. The "Guarantee Period" is the period of time from the Savings Guarantee Commencement Date, as defined in Exhibit B, Section I, until the end of the Guarantee Term.

B. Reserved.

**C. Substantial Completion** *The ESCO will commence the Work within ten (10) days after the Date of Commencement and will diligently prosecute the Work so as to achieve Substantial Completion of the Project no later than April 15, 2015, subject only to adjustments as permitted by this Contract (the "Scheduled Substantial Completion Date"). The ESCO will achieve Interim Completion of each ECM by the date for Interim Completion set forth in the Construction Schedule, subject only to adjustments as permitted this Contract ("Interim Completion").*

1. Certificate of Substantial Completion. When the ESCO believes that the entire Project or a particular ECM has achieved Interim or Substantial Completion, the ESCO will submit a certificate of Interim or Substantial Completion and a Punch List to the Customer and the Client on a form agreed to by the Parties identifying the actual date of Substantial Completion. If the Customer concurs that the described portion of the Work as performed has achieved Interim or Substantial Completion, the Customer will accept that Work by signing the certificate of Interim or Substantial Completion and the Punch List and returning both to the ESCO, with a copy to the Lender, which concurrence shall not unreasonably be withheld, conditioned or delayed. If the Customer does not concur that the Work has achieved Interim or Substantial Completion and/or that the Punch List is not complete or correct, then the Customer shall notify the ESCO within ten (10) business days of any discrepancies. To the extent the ESCO does not dispute the discrepancies raised by the Customer, the ESCO shall (i) promptly and diligently correct the Work to conform to the description of the Work set forth herein, and resubmit the certificate of Interim or Substantial Completion to the Customer, and (ii) promptly complete all items on the Punch List. If the ESCO disagrees with the discrepancies raised by the Customer, the ESCO shall notify the Customer of a dispute and such dispute shall be resolved in accordance with Section 3.C.2 herein. If the

Customer does not deliver written notice to the ESCO within thirty (30) days of receiving the certificate of Interim or Substantial Completion and the Punch List, the Customer will be deemed to have agreed to, signed and returned the certificate of Interim or Substantial Completion and the Punch List.

2. Disputes Concerning Substantial Completion . Any disputes concerning the Interim Completion or Substantial Completion of the Work, or extension of the Scheduled Substantial Completion Date shall initially be submitted to Customer Representative and the ESCO Representative for resolution by mutual agreement between said parties. If no resolution is achieved within ten (10) days, the dispute will be submitted to a Panel of Independent Engineers. The Panel of Independent Engineers shall be authorized to make determinations and bind the Parties on issues related solely to interpretations or adequacy of the Design & Engineering Documents or the execution and/or completion of the Work embodied in the Design & Engineering Documents as it relates to the determination of Interim Completion or Substantial Completion, and delay claims made by either the ESCO or the Customer as such claims relate to failure to achieve Substantial Completion by the Scheduled Substantial Completion Date. The Panel of Independent Engineers shall not have the authority to render determinations regarding payment disputes or other Contract disputes that do not involve or arise out of the content of the Design & Engineering Documents and/or the quality of the execution of the Work. The ESCO and the Customer shall share equally the costs or fees for such firms in connection with such dispute resolution process. All disputes beyond the authority of the Panel of Independent Engineers shall be resolved pursuant to Section 11 herein. The determination of the Panel of Independent Engineers with respect to Interim Completion, Substantial Completion, or responsibility for failure to achieve Substantial Completion by the Scheduled Substantial Completion Date shall be final and binding on the parties..

*D. Final Acceptance. The ESCO and will diligently prosecute the Work so as to achieve Final Acceptance of the entire Project no later than July 15, 2015, subject only to adjustments as permitted by this Contract (the "Scheduled Final Acceptance Date"). Upon Final Acceptance of the entire Project, the Customer shall provide the ESCO, the Client and the Lender a certificate in writing that such Final Acceptance has occurred and identifying the Final Acceptance Date (the "Final Acceptance Certificate").*

E. Construction Schedule. A preliminary Construction Schedule is included as an attachment to Exhibit A: Project Description. The Construction Schedule will be updated by ESCO and submitted to the Customer at least monthly and, if requested by Customer, in electronic format. The ESCO will submit a revised Construction Schedule when the ESCO's planned sequence is changed or when Project changes are made that affect the Construction Schedule. Any changes to the Construction Schedule are subject to review and approval by the Customer. When performing the Work, the ESCO will comply with the Construction Schedule.

#### **SECTION 4. COMPENSATION TO THE ESCO.**

A. Contract Sum. The Customer will pay the ESCO for the due, proper, and complete performance of the Work as required hereunder and for the due performance of all other obligations and duties imposed upon this ESCO pursuant to this Contract, other than the Performance Tracking Services, the "Contract Sum" of Six Million Fifty-Five Thousand One Hundred Twenty-Four and No/100 Dollars (\$6,055,124.00), subject to additions and deductions by Change Order as provided in this Contract.

B. Environmental Incentives. The Customer will own, and may assign or sell in its sole discretion, all right, title, and interest associated with Environmental Incentives. Environmental Incentives will not be included within any calculation of savings or otherwise reduce the ESCO's responsibility for achieving the Guaranteed Annual Savings Amount or Guaranteed Project Savings Amount, as such terms are defined in Exhibit B.

**C. Compensation for Performance Tracking Services. Commencing on the Savings Guarantee Commencement Date and continuing until the expiration or earlier termination of this Contract, the ESCO will perform the Performance Tracking Services. During the Guarantee Period, the Customer will make annual payments to the ESCO for the Performance Tracking Services in the amounts set forth in Exhibit E (each, a "Performance Tracking Payment").**

## **SECTION 5. CUSTOMER RESPONSIBILITIES.**

A. Project Manager; Customer Representative. The ESCO acknowledges and agrees that the Customer has retained the Commission as its construction and program manager for the Project and Contract Services and, in such capacity, the Commission has the authority to act on behalf of the Customer in connection therewith. No funds of the Commission shall be available to pay any amounts hereunder to the ESCO. Any amounts payable to the ESCO under this Contract shall be paid from amounts available to the Customer for such purpose and the ESCO will have no claim against the Commission or the Client for the payment of the Contract Sum or the Performance Tracking Payments. The Commission will appoint one individual who will be authorized to act on behalf of the Commission either to accept, reject or otherwise facilitate the orderly execution of the Contract Services and with whom the ESCO may consult at all reasonable times, and whose instructions, requests, and decisions in writing will be binding upon the Customer as to all matters pertaining to this Contract (the "Customer Representative"). The Commission may substitute a new Customer Representative through written notice to the ESCO.

B. information to ESCO. The Customer agrees to provide, or cause the Client to provide, to the ESCO reasonable access to each Facility and information necessary for the ESCO to perform its responsibilities under this Contract. Such access and information will include, but is not limited to, the following items:

- All mechanical equipment rooms in each Facility;
- All temperature control and energy management systems which control part or all of any of each Facility;
- Personnel with responsibility for operating and/or managing each Facility;
- Monthly utility invoices and billing history for all of the meters listed in Exhibit C, Section II-B;
- Construction documents, equipment inventories, and other documents that may be helpful in evaluating a cause for adjustment as listed in Exhibit C, Section II-E; and
- Any data from meters or sub-meters relevant to the Performance Tracking Services.

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Any information or documentation provided by the Customer or Client to the ESCO relating to the Project or Facilities is provided only for the convenience of the ESCO. The Customer makes no representation or warranty to as to the sufficiency, completeness, or accuracy of such information.

C. Required Maintenance. Customer agrees to maintain, or cause the Client to maintain, the ECMs

and the Facilities in accordance with the required maintenance checklist attached as Exhibit G, with allowance for normal wear and tear.

## **SECTION 6. INSTALLATION PERIOD SERVICES.**

A. Permits and Approvals. Except for those approvals and fees which are specified as the responsibility of the Customer under the Contract Documents, the ESCO shall secure and pay for all necessary permits, approvals, assessments and charges, including, without limitation, all construction building permits, required for the proper execution and completion of the Work. Pursuant to City of Chicago Ordinance PO 98-1690, all permits for demolition, construction alteration, repair, renovations, rehabilitation and inspection of buildings and facilities by the Customer and its contractors for public or governmental use by the City of Chicago and its sister agencies shall be issued without charge.

### **B. Design and Engineering Documents**

1. The ESCO will prepare, for written approval by Customer, working drawings and specifications setting forth in detail the requirements of the construction and installation of the Project in accordance with the Contract Documents ("Design & Engineering Documents"). The Design & Engineering Documents must include all drawings, specifications, schedules, diagrams and plans, and such content and detail as is necessary to properly complete the construction of the Project, and must provide information customarily necessary for the use of such documents by those in the building trades. Where required by law, the Design & Engineering Documents must bear the stamp or seal of architects or engineers licensed by the State of Illinois. The Design & Engineering Documents need not be submitted to the Customer as a complete set, but may be submitted in successive packages, each of which address separate construction trades or systems applicable to the Project. Within ten (10) business days after submission of Design & Engineering Documents and within five (5) business days of equipment and material submittals, the Customer will review each package of Design & Engineering Documents and either (i) accept such documents; or (ii) reject such documents, specifying in writing the basis for reject.

2. The ESCO covenants and agrees that (i) it will not commence the procurement or construction of any portion of the Project until the completed Design & Engineering Documents relevant to such part or portion have been accepted by the Customer in writing; and (ii) the Design & Engineering Documents will be accurate and free from any errors or omissions, and will be in compliance with and accurately reflect all applicable laws. The ESCO will, at no expense to Customer, promptly modify any Design & Engineering Documents which are not in accordance with laws or are inaccurate or contain errors or omissions. The ESCO acknowledges and agrees that the Customer will have no liability for cancellation fees applicable to equipment orders until after the Customer accepts the Design & Engineering Documents.

3. The ESCO acknowledges and agrees that any review, approval, comment or evaluation by the Customer of any plans, drawings, specifications or other documents prepared by or on behalf of the ESCO is solely for the Customer's determining for its own satisfaction the suitability of the Project for the purposes intended therefor by the Customer, and may not be relied upon by the ESCO, its Subcontractors, or any other third party as a substantive review thereof. The Customer, in reviewing, approving, commenting on or evaluating any plans, drawings, specifications or other documents, will have no responsibility or liability for the accuracy or completeness of such documents, for any defects, deficiencies or inadequacies therein or for any failure of such documents to comply with the requirements set forth in the Contract Documents; the

responsibility for all of the foregoing matters being the sole obligation of the ESCO. In no event will any review, approval, comment or evaluation by the Customer relieve the ESCO of any liability or responsibility under this Contract, it being understood that the Customer is at all times ultimately relying upon the ESCO's skill, knowledge and professional training and experience in preparing any plans, drawings, specifications or other documents. The ESCO has provided to the Customer, at the time of offering its services, a written disclosure identifying any Subcontractors that are architect(s) and engineer(s) or professional firm(s) in each case licensed or registered to provide architectural and engineering services in Illinois (collectively the "Licensed Professionals") who have been engaged by the ESCO and will be responsible to the ESCO for the provision of the Contract Services constituting architectural services subject to the Illinois Architecture Practice Act of 1989, 235 ILCS 305 et seq., or engineering services subject to the Professional Engineering Practice Act of 1989, 225 ILCS 325 et seq., (each a "Licensing Act"). The Licensed Professionals have participated in the contracting process for this Contract and will provide services under this Contract as required by the applicable Licensing Act and related regulations including 111. Admin. Code tit. 68, §§ 1150.85 et seq. and 1380.296 et seq. (the "Regulations"). The ESCO will comply with the applicable Licensing Act and related Regulations.

### **C. Labor and Workmanship.**

1. All labor for the Project shall be performed in the best workmanlike manner by workers skilled in their respective trades. The ESCO will only employ and permit the use of such labor as shall not result in jurisdictional disputes or strikes or cause disharmony with the tenants, other contractors, agents, and employees at the Facilities or other sites affiliated with the Customer or Client. Local labor and subcontractors must be given preference where possible and practical. Any worker or other person involved in the performance of the Work who, in the opinion of Customer, is incompetent or careless in the execution of the Work or otherwise unsatisfactory shall be immediately removed upon request of the Customer. The ESCO will enforce strict discipline and good order among the ESCO's employees and other persons carrying out the Work.

2. The ESCO must use every reasonable effort to comply with the Customer's Project Participation Guidelines in the performance of the Work. The ESCO must complete and provide a letter of intent in the form included in Exhibit K (Schedule C-1 to Attachment K-1) from each Subcontractor employed pursuant to the Project Participation Guidelines utilized in the performance of the Work.

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D. Control Over Means, Methods, and Techniques. The ESCO is solely responsible for and will have control over means, methods, techniques, sequences and procedures and for coordinating all portions of the Work, unless the Contract Documents give other specific instructions concerning these matters.

E. Cutting and Patching The ESCO will do all cutting, fitting, and patching necessary for the completion of the Work and will not alter or endanger any existing portion of the Facilities or any material or equipment installed therein without the consent of the Customer.

F. No Reliance Upon Customer or Client Representations. The ESCO has satisfied itself, by its own independent investigation and study, regarding all the conditions of the specific areas in the Facilities affected by the Work to be done and materials to be furnished; the meaning, intention and sufficiency of any plans and specifications for the Work; the recommendations of the Investment Grade Audit; and the conditions

under which the Work is to be done; and has executed this Contract based solely on such investigation, study and determination made by it, and not in reliance upon any representation by Customer or Client or by anyone acting for or on behalf of Customer or Client.

G. Safety. The ESCO is responsible for all necessary safety precautions and programs in connection with the Work, including but not limited to providing whatever protection may be necessary to prevent injury to any persons, whether tenants, patrons, and/or employees or business invitees of Customer, Client, or the ESCO (including any Subcontractor) who may be present at the Facility or loss or damage to property of Customer, Client, or other persons, including all materials and equipment to be incorporated into the Work and all existing improvements which are not to be removed as part of the Work. If the Work might affect the owners or occupants of property adjacent or adjoining the Facility, the ESCO will notify such owners and occupants of the Work and its possible effect on their property. If the Work might affect any utilities, utility service, or utility equipment, the ESCO will notify the utility companies or users of such utilities which might be affected by the Work, and if such utility equipment is not needed or interferes with the execution of the Work, the ESCO will remove or protect such utility equipment as required by such utility companies or users of such utility equipment.

H. Cleaning and Removal of Materials. The ESCO will at all times keep the Facilities free from any accumulation of rubbish, debris, and waste. Upon completion of the Work and prior to final payment of the Contract Sum by Customer, the ESCO will thoroughly clean all Work, remedy any defects, and leave those portions of the Facilities in which the ESCO has been working in clean, orderly condition. Without limiting the generality of the foregoing, any ceiling and wall surface, floor, window or doorframes, hardware, metalwork, and glass (both sides) which are part of the Work or which have become dirty or marred as a result of the ESCO's performance of the Work must be thoroughly cleaned.

I. Recycling. The ESCO must give preference to the use of recycled products in the performance of any Work, and must cooperate with any recycling program established for the Facilities or available through the City of Chicago. The ESCO must perform the Work in accordance with the City of Chicago's Recycling Ordinance and Construction or Demolition Site Waste Recycling Ordinance and document its compliance with such requirements.

J. Access to the Work. The ESCO will provide the Customer with unrestricted access to the Work in preparation and progress wherever located in the Facilities, subject only to reasonable safety precautions.

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K. Use of Facilities. The ESCO will confine its operations to the portions of the Facilities identified in the Contract Documents or otherwise approved by the Customer, and will not unreasonably encumber the portions of the Facilities used for the Work with materials, equipment, or similar items. The ESCO and all Subcontractors will use only such entrances to the Facilities as are designated by the Customer. During occupied hours, the ESCO will limit construction operations to methods and procedures that do not adversely and unduly affect the environment of occupied spaces within the Facilities, including but not limited to creating noise, odors, air pollution, ambient discomfort, or poor lighting.

L. Project Meetings. The ESCO will provide for weekly, or as mutually agreed upon, scheduled Project meetings during the Installation Period, and will give timely advance written notice and agenda of such meetings to the Customer. The ESCO will record minutes and distribute copies of minutes of meetings to the

Customer within five (5) business days after each meeting. The ESCO will schedule additional Project meetings if requested by the Customer.

M. Progress Reports During the Installation Period, the ESCO will provide monthly reports to the Customer on the status of the Work that include, without limitation: (i) a detailed description of the progress of the work for each ECM and the Project as a whole, including a critical path chart illustrating the progress made; (ii) a statement of significant Project issues that remain unresolved and the ESCO's recommendations for resolving the same; (iii) an updated report on whether the Project remains on schedule and budget, and actions being taken to correct schedule delays and budget overruns; and (iv) a summary of any significant Project events that are scheduled to occur during the upcoming 30-day period.

N. Correction of the Work. The Customer has the right and authority to reject Work if defective or deficient, or which otherwise does not conform to the Contract Documents. During the Installation Period, the ESCO will promptly correct Work rejected by the Customer for failing to conform to the requirements of the Contract Documents, whether or not fabricated, installed or completed. If the ESCO, after receipt of written notice from the Customer of its rejection of Work pursuant to this Section, either: (i) has not cured such failure within seven (7) days, or (ii) if the nature of the failure is such that it is not capable of cure within seven (7) days, has not within seven (7) days reached agreement with the Customer for a plan to cure such failure and has not commenced and diligently and continuously pursued the cure of such failure, then the Customer may order the ESCO to stop the Work, or any portion thereof, until the cause for such order has been eliminated or the ESCO has provided the Customer with a plan for corrective action acceptable to the Customer in its reasonable judgment. The right of the Customer to stop the Work shall not, however, give rise to a duty on the part of the Customer to exercise this right for the benefit of the ESCO or any other person or entity.

O. Performance and Payment Bonds. The ESCO will, within thirty (30) days after the Date of Commencement and prior to performing any Work, obtain and furnish to Customer and maintain in effect throughout the Installation Period payment and performance bonds covering the faithful performance and completion of the Work required during the Installation Period and the payment of all obligations arising under this Contract during the Installation Period. Such bonds must (i) be issued by a surety company authorized to do business in Illinois and listed in the latest issue of U.S. Treasury Circular 570, (ii) be in form acceptable to the Customer and the Lender, in an amount equal to the Contract Sum, and (iv) name the Customer and the Lender as co-obligees. No notice of change order need be given to the surety company. The ESCO must supply evidence satisfactory to the Customer that the party issuing the bonds has the authority to bind the issuing surety company. Notwithstanding any provision

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to the contrary herein, any payment and performance bonds associated with this Contract guarantee only the performance of the installation portion of this Contract, and shall not be construed to guarantee the performance of: (1) any efficiency or energy savings guarantees, (2) any support or maintenance service agreement, or (3) any other guarantees or warranties with terms beyond one (1) year in duration from the completion of the installation portion of this Contract. In addition, the payment and performance bond shall include a provision that will guarantee the faithful performance of the prevailing wage clause as provided herein.

If the ESCO fails to furnish and maintain such bonds, the Customer may purchase such bonds on behalf of the ESCO and the ESCO must pay the cost thereof to the Customer upon demand.

P. Startup/Commissioning. The ESCO will conduct a thorough and systematic performance test of each element and total system of the installed ECMs in accordance with Exhibit A, and demonstrate that all ECMs comply with the requirements of the Contract Documents. The tests must be performed by the commissioning entity designated in Exhibit A. or, if no entity is designated, a commissioning entity selected



from a pre-qualified list of commissioning entities provided by the Customer, All tests shall be scheduled at times convenient to the Customer at no additional cost. At least twenty (20) business days prior to the scheduled test, the ESCO will deliver to the Customer a draft commissioning plan for each ECM. The Customer may require changes to the commissioning plan, provided the ESCO is provided with a written description of the changes. The Customer will have the right to designate representatives to be present at any or all such tests including representatives of the manufacturers of the ECMs. The ESCO, or its Subcontractor (s), must correct or adjust all deficiencies in operation of the ECMs identified during the course of the tests described in this Section. The ESCO will provide to the Customer a description of the ongoing training requirements for each Facility's operations and maintenance personnel necessary to maintain proper ECM performance after Final Acceptance.

Q. Additional Performance of Work Requirements. The ESCO will comply with the additional performance of work requirements described in Exhibit F,

## **SECTION 7. OTHER SERVICES AND REQUIREMENTS OF THE ESCO.**

A. Professional Standard. The ESCO will perform, or cause to be performed, all of the Contract Services with that degree of skill, care and diligence normally shown by (and generally accepted as being appropriate for) nationally recognized design, engineering, and construction professionals performing services and work of a scope, purpose and magnitude comparable with the Contract Services (the "Professional Standard). Where the Contract Services require the exercise of professional skill or judgment, the ESCO will cause it to be performed ■ by professionals competent to do so and licensed by the State of Illinois in the applicable discipline, if such licensure is required by law. The ESCO will furnish efficient administration, supervision, and superintendence of all Contract Services and will use every effort to complete the Contract Services in an expeditious and economical manner consistent with the interests of the Customer.

B. Contract Documents. The ESCO hereby covenants and agrees that it will duly and properly perform the Contract Services and implement the Project in accordance with the Contract Documents. Unless otherwise provided in the Contract Documents, the ESCO will provide and pay for labor, materials, tools, equipment and machinery necessary for the proper execution and completion of the Contract Services. The intent of the Contract Documents is to

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include all items necessary for the proper execution and completion of the Contract Services including, without limitation, all items and services which are consistent with, contemplated by, or reasonably inferable from the Contract Documents, whether or not such items and services are specifically mentioned therein. The Contract Documents are complementary, and what is required by one shall be binding as if required by all.

C. Subcontractors The ESCO will furnish in writing to the Customer for its approval the names of the Subcontractors to whom the ESCO plans to award any portion of the Contract Services. Contracts between the ESCO and its Subcontractors must require each Subcontractor, to the extent of the Contract Services to be performed by the Subcontractor, to be bound to the ESCO by the terms of the Contract Documents, and to assume toward the Customer all the obligations and responsibilities which the ESCO, by the Contract Documents, assumes toward the Customer. The ESCO will be responsible to the Customer for acts and omissions of the Subcontractors, their agents and employees, and any other persons performing portions of the Contract Services, and for any damages, losses, costs, and expenses resulting from such acts or omissions, to the same extent as the ESCO is responsible to the Customer for its acts and omissions under this Contract.

D. ESCO's Key Personnel. Included within Exhibit A is a list of the ESCO's key personnel who will be responsible for supervising the performance of the Contract Services. Among such individuals there shall

be appointed a principal representative of the ESCO (the "ESCO Representative") who shall be the ESCO's authorized representative, and who shall receive and initiate all communications to and from the Customer and be authorized to render binding decisions related to the Contract Services. ESCO shall notify promptly the Customer upon terminating the employment of, reassigning or receiving notice of the resignation of, any ESCO Representative. If, after execution of this Contract, the Customer objects to any of the ESCO's key personnel (for any reason whatsoever), the ESCO will promptly remove such disapproved personnel. If any of the ESCO's key personnel are removed as provided above, any replacement personnel are subject to the prior written approval of the Customer, which approval will not be unreasonably withheld.

E. Taxes. Unless otherwise provided in the Contract Documents, the ESCO will pay all federal, state or local sales, consumer, use, and other similar taxes associated with the implementation of the Work which are legally enacted as of the date of execution of this Contract, whether or not effective or merely scheduled to go into effect. The Customer will be responsible for all federal, state or local taxes which are imposed as a result of the Customer's ownership of the Project or are related to the financing of the Project. The Customer will cause the Commission to provide its sales tax exemption certification for purchases of equipment, tools, materials, and supplies relating to the Project.

F. Compliance with Law. The ESCO will comply with all applicable provisions of federal, state and local law when performing any services set forth or described in this Contract, now existing or hereinafter in effect, which may in any manner affect the performance of this Contract. Provisions required by law, rules, ordinances, regulations or executive orders to be inserted shall be deemed inserted whether or not they appear in this Contract, or upon application by either party, this Contract shall forthwith be physically amended to make such insertion; however, in no event shall the failure to insert such provision(s) prevent the enforcement of this Contract. The ESCO shall also comply with all conditions of any federal, state, or local grant received by the Customer or the ESCO with respect to this Contract or the Contract Services.

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1. The ESCO will promptly remedy any violation of any such law, ordinance, rule, regulation, or order that comes to its attention. The ESCO shall promptly, and in no event later than the close of the next business day following receipt, give notice to the Customer by telephone, with confirmation in writing, of receipt by the ESCO of any information relating to violations of laws, ordinances, rules, regulations, and orders.

2. In performing the Contract Services, the ESCO must comply with applicable laws prohibiting discrimination against individuals and groups. The ESCO must not discriminate against any worker, employee; applicant for employment, or any member of the public, because of race, color, creed, national origin, gender, age, or disability, or otherwise commit an unfair labor practice.

3. The ESCO certifies that it is familiar with, and will comply with, all applicable provisions of the Civil Rights Act of 1964, 28 U.S.C. § 1447, 42 U.S.C. SS 1971, 1975a-1975d, 2000a to 2000h-6 (1992); the Age Discrimination in Employment Act of 1967, 29 U.S.C. §§ 623-634 (1992); the Americans with Disabilities Act of 1990, 29 U.S.C. § 706, 42 U.S.C. §§ 12101-12213, 47 U.S.C. §§ 152,221,225,611 (1992); 41 C.F.R. § 60 (1992); 41 C.F.R. § 60 (1992); reprinted in 42 U.S.C. 2000(e) note, as amended by Executive Order No. 11,375 32 Fed. Reg. 14,303 (1967) and by Executive Order No. 12,086, 43 Fed. Reg. 46,501 (1978); the Age Discrimination Act, 43 U.S.C. Sec. 6101-6106 (1981); P.L 101-336; 41 C.F.R. part 60 et seq. (1990); the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq. (1990), as amended; the Discrimination in Public Contracts Act, 775 ILCS 10/0.01 et seq. (1990), as amended; the Environmental Barriers Act., 410 ILCS 25/1 et seq; and the Chicago Human Rights Ordinance, Chapter 2-160, Section 2-160-010 et seq. of the Municipal Code (1990), as amended.

4. The ESCO will furnish such reports and information as may be requested by the Customer, the Illinois Department of Human Relations, or any other administrative or governmental entity overseeing the enforcement, or administration of, or compliance with, the above mentioned laws and regulations.

5. The ESCO will also comply with all applicable "Anti-Kickback" laws and regulations, including the "Anti-Kickback" Act of 1986, 41 U.S.C. §§ 51-58 (1992); 18 U.S.C. § 874 (1992); 40 U.S.C. § 276c (1986) and the Illinois Criminal Code of 1961 720 ILCS 5/33E-1 et seq. If, in the performance of this Contract, any direct or indirect "kickback" is made, as defined in any of the above mentioned laws and regulations, the Customer may withhold from the ESCO, out of payments due to the ESCO, an amount sufficient to pay any underpaid employees the difference between the salaries required to be paid under the law and this Contract and the salaries actually paid such employees for the total number of hours worked. The amounts withheld may be disbursed by the Customer for and on account of the ESCO to the respective employees to whom they are due, as determined by the Customer in its sole discretion.

6. The ESCO agrees to cooperate fully and expeditiously with the Client's Inspector General in all investigations or audits. The ESCO agrees to provide all documents, data, files and other information and access to all witnesses specified by the Client's Inspector General. This obligation applies to all officers, directors, agents, partners, and employees of the ESCO. The ESCO agrees to insert this provision in any subcontracts that it awards.

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7. Pursuant to Municipal Code of Chicago Section 2-92-220, a standard working day consists of eight (8) hours for this Contract. The ESCO shall, and shall cause any Subcontractors providing services hereunder, to coordinate shifts with the Client. No overtime or premium pay will be permitted by the ESCO unless otherwise specified in the Contract Documents and authorized by the Customer.

8. The ESCO shall comply with the Client-required terms and conditions set forth in Exhibit J.

G. Remedy to Damage or Loss. The ESCO will promptly remedy damage, injury or loss at the Facilities to the extent caused by the ESCO, a Subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable.

H. Discharge of Mechanics Liens. Subject to the payment of amounts due hereunder from Customer to ESCO, if any mechanic's, materialman's, or other similar lien is at any time filed against any Facility or ECM or any part thereof on account of any Work performed on or furnished to or claimed to be performed on or furnished to the Work at the direction of the ESCO or any Subcontractor, the ESCO will, upon written request from Customer and without cost or expense to the Customer, promptly cause the sum to be discharged of record by payment, bond, order of a court of competent jurisdiction, or otherwise. If the ESCO, having been requested by the Customer to discharge such lien, fails to commence appropriate action to discharge such lien within ten (10) days after such written request by the Customer, the Customer will have the right to discharge the same by payment, bond, order of a court of competent jurisdiction, or otherwise and without regard to whether the ESCO is disputing the validity or amount of the same, and the costs and expenses incurred by Customer in so discharging such lien shall be payable by the ESCO to the Customer upon demand. The ESCO will protect the Customer against lien filings to the extent that payment is received for completed service or delivered equipment.

I. Royalties and License Fees. The ESCO will pay all royalties and license fees

related to the Contract Services.

J. Publicity Upon the reasonable request of the Customer, the ESCO will cooperate with and assist the Customer in connection with any public relations or publicity relating to the Project, including, without limitation, tours of Facilities arranged by the Customer or Client. Without the prior written consent of the Customer, the ESCO will not disclose details or information relating to the Project or Contract Services to the press, the public, any news-disseminating agency or any other party, except to those parties performing portions of the Contract Services, and then only to the extent required for the performance of the particular portion of the Contract Services being performed.

**K. Retention and Inspection of Documents.**

The ESCO must maintain books, records, documents and other evidence pertaining to the performance and cost of the Contract Services ("Records") for a period of five (5) years after the termination of this Contract ("Retention Period"). The ESCO shall use accounting procedures and practices in accordance with generally accepted accounting principles and practices, consistently applied to all of the Records. The Records will be open to audit, inspection, copying, abstracting and transcription and must be made available to the Customer at reasonable times upon prior notice during the term of this Contract and the Retention Period.

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The Records retention obligation set forth in this Subsection shall survive the termination or expiration of this Contract, whether by lapse of time or otherwise.

The Customer or the Client may, in their sole discretion, audit the Records of the ESCO or its Subcontractors, or both, at any time during the Term or Retention Period, in connection with the Contract Services. Each calendar year or partial calendar year may be deemed an "audited period." If, as a result of such an audit, it is determined that the ESCO or any of its Subcontractors has overcharged the Customer in the audited period, the Customer will notify the ESCO. The ESCO must then promptly reimburse the Customer for any amounts the Customer has paid the ESCO due to the overcharges and, depending on the facts, also some or all of the cost of the audit, as follows: If the audit has revealed overcharges to the Customer representing less than 5% of the total value, based on the contract prices, of the goods, work, or services provided or of underpayments by the ESCO, in the audited period, then the ESCO must reimburse the Customer for 50% of the cost of the audit and 50% of the cost of each subsequent audit that the Customer or the Client conducts; if, however, the audit has revealed overcharges to the Customer representing 5% or more of the total value, based on the contract prices, of the goods, work, or services provided in the audited period or of underpayments by the ESCO, then the ESCO must reimburse the Customer for the full cost of the audit and of each subsequent audit. Failure of ESCO to reimburse the Customer in accordance with the foregoing is an event of default under this Contract, and the ESCO will be liable for all of the Customer's and the Client's costs of collection, including any court costs and attorneys' fees.

L. Cooperation. The ESCO will cooperate with and assist the Customer, the Client, and their advisors, consultants, attorneys, employees, agents and representatives, at all times during the Contract Time so as to complete the Contract Services in an efficient, timely, and economical manner. Such cooperation and assistance will include, without limitation, any cooperation or assistance required in connection with the Customer's efforts to obtain financing for the Project.

**M. Confidential Information.**

1. The term "Confidential Information" means any documentation or information (i) which is marked as "proprietary" or "confidential"; (ii) which is supplied orally with a contemporaneous confidential designation; or (iii) which is known by the ESCO to be confidential or proprietary information or documentation of the Customer or Client. Confidential Information does not include information that can be demonstrated: (i) to have been rightfully in the possession of the ESCO from a source other than the Customer or Client prior to the time of disclosure of said information to the ESCO under this Contract; (ii) to have been in the public domain prior to disclosure to the ESCO; (iii) to have become part of the public domain after disclosure to the ESCO by a publication or by any other means except an unauthorized act or omission or breach of this Contract on the part of the ESCO or the Customer; or (iv) to have been supplied to the ESCO without restriction-by a third party who, to ESCO's knowledge, is under no obligation to the Customer to maintain such information in confidence.

2. The ESCO acknowledges that it may, in performing the Contract Services, have access to or be directly or indirectly exposed to Confidential Information. The ESCO will hold confidential all Confidential Information and will not disclose or use such Confidential Information for any purpose other than the performance of the Contract Services without express prior written consent of the Customer. The ESCO will use reasonable measures at least as strict as those the ESCO uses to protect its own

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confidential information. Such measures must include, without limitation, requiring Subcontractors of the ESCO to execute a non-disclosure agreement before obtaining access to Confidential Information.

3, The ESCO acknowledges that the Customer and client are subject to the Illinois Freedom of Information Act, 5 ILCS 140/1 et seq., and that no disclosure made in good faith by the Customer pursuant to such Act shall be deemed to violate any confidentiality commitments made by the Customer to the ESCO.

N. ECM Malfunction. The ESCO agrees to compensate the Customer for damages to real or personal property and related costs and expenses incurred by the Customer or Client resulting from ECM malfunction to the extent caused by nonperformance or error by the ESCO or its Subcontractors.

O. Financing Contract Requirements. If one or more Financing Contracts are entered into for the Project, the ESCO agrees to provide the parties to the Financing Contract such written information, certificates, copies of invoices, receipts, lien waivers, affidavits, and other like documents as such parties may reasonably request. The ESCO hereby subordinates any liens or security interests to which it may be entitled by law or under the provisions of this Contract to any lien or security interest granted in favor of the party or parties to a Financing Contract.

P. Credit and Financial Information. In the event such information is not publicly available and if requested by the Customer or the Lender, the ESCO will deliver or cause to be delivered to the Customer or the Lender, as applicable:

a) as soon as available and in any event within sixty (60) days after the end of each of the first three fiscal quarters of each fiscal year, unaudited consolidated balance sheets of the ESCO as of the end of such fiscal quarter and unaudited consolidated statements of income for the ESCO for the fiscal quarter then ended and for that portion of the fiscal year then ended, in each case setting forth comparative consolidated figures as of the end of and for the corresponding period in the preceding fiscal year, all in reasonable detail and prepared in accordance with GAAP (subject to the absence of notes required by GAAP and subject to normal

year-end adjustments); and

b) as soon as available and in any event within one hundred twenty (120) days after the end of each fiscal year, an audited consolidated balance sheet of the ESCO as of the end of such fiscal year and audited consolidated statements of income for the ESCO for the fiscal year then ended, including the notes thereto, in each case setting forth comparative figures as of the end of and for the preceding fiscal year, all in reasonable detail and certified by the independent certified public accounting firm regularly retained by the ESCO or another independent certified public accounting firm of recognized standing.

In addition, the ESCO shall provide written notice to the Lender prior to or promptly thereafter with respect to any change in its name, identity or corporate structure and such other information in connection with such action as the Lender may reasonably request.

## **SECTION 8. WARRANTIES AND ECM REPAIR AND REPLACEMENT.**

A. Warranty. For the Warranty Period, the ESCO warrants to the Customer that materials and equipment furnished under this Contract will be of good quality and new, that the

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Work will be performed in accordance with the Professional Standard and free from faults and defects not inherent in the quality required or permitted, that the materials, equipment and Work will conform with the requirements of the Contract Documents, and that the Work will be free from any encumbrances, liens, security interests, or other defects in title upon conveyance of title to the Customer. EXCEPT AS PROVIDED IN THIS SECTION 8.A, THE ESCO MAKES NO WARRANTIES OR REPRESENTATIONS OF ANY KIND, WHETHER STATUTORY, WRITTEN, ORAL OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES AS TO THE VALUE, DESIGN, AND CONDITION OR FITNESS FOR USE OR PARTICULAR PURPOSE AND MERCHANTABILITY, REGARDING THE WORK OR THE ECMS.

B. Exclusion from Warranty. ESCO's warranty excludes remedy for damage or defect to the extent caused by (i) modifications not approved or executed by ESCO or its Subcontractors, (it) improper or insufficient maintenance or operation that is not in accordance with Exhibit G and not supervised or directed by the ESCO or its Subcontractors, (iii) normal wear and tear under normal usage, or (iv) equipment that has been the subject of negligence, accident or damage by circumstances beyond the ESCO's control. If required by the Customer, the ESCO shall furnish satisfactory evidence as to the kind and quality of materials and equipment to meet the requirements of this Section 8.

C. Warranty Period. The warranty period for the Work ("Warranty Period") is the period that is the longer of: (a) eighteen (18) months, running on an ECM by ECM basis from and after the date of Substantial Completion of such ECM, and (b) the warranty period for each ECM as set forth in Exhibit A, running from and after the date of Substantial Completion of all of the Work for a particular ECM (unless Exhibit A specifies a different date for the Warranty Period to begin running for a particular ECM) or (c) the Manufacturer's Warranty (as defined herein).

D. Breach of Warranty. If, at any time prior to the expiration of the Warranty Period, the Customer discovers any failure or breach of the ESCO's warranties, the ESCO will, upon written notice from the Customer and at the ESCO's sole cost and expense, immediately correct such failure or breach (which corrective action may include, without limitation, any necessary removal, disassembly, reinstallation, repair, replacement, reassembly, retesting, and/or reinspection of any part or portion of the Work and any other property damaged or affected by such failure, breach, or corrective action). The ESCO will remedy any such failure or breach so as to minimize revenue loss to the Customer and, to the extent possible, to avoid

disruptions to the operations of the Customer and other occupants of the Facilities. In the event the ESCO fails to initiate and diligently pursue corrective action within five (5) days of the ESCO's receipt of the Customer's notice, the Customer may undertake such corrective action at the ESCO's expense.

E. Manufacturers' Warranties. At Final Acceptance of the Work for a particular ECM, the ESCO will furnish the Customer two (2) original complete sets of all manufacturers' warranties, guarantees, parts lists, and literature applicable to equipment, systems, fittings, and furnishings included in the Work for that ECM (collectively referred to as "Manufacturers' Warranties"), completed in favor of the Customer. These Manufacturers' Warranties are in addition to and not in lieu of the ESCO's warranty set forth in Section 8.A, and the Customer is entitled to look to the ESCO for remedy in all cases where the ESCO's warranty applies regardless of whether a Manufacturer's Warranty also applies. The Customer will acknowledge receipt of the sets of Manufacturers' Warranties on the set itself, and the ESCO will cause six (6) copies of an acknowledged set to be made and furnish them to the Customer. All Manufacturers' Warranties will be for applicable periods and contain terms not less favorable to

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the Customer than those terms which are standard for the applicable industries, and will either be issued in the first instance in the name of and for benefit of the Customer, or be in a freely, assignable form and be assigned to the Customer without limitations.

F. Repair and Replacement of ECMs If the ESCO or the Customer find that an ECM requires repair or replacement, the other Party must be notified and the ESCO will repair or replace the ECM if required to do so pursuant to its obligation to correct the Work or its warranty obligations under Section 8.A. If the ESCO is not required to repair or replace the ECM and the Manufacturers' Warranties apply to the ECM requiring repair or replacement, the Customer will cause the repair or replacement of the ECM in accordance with the Manufacturers' Warranties. If the ESCO is not required to repair or replace the ECM and the Manufacturers' Warranties do not apply, the ESCO and Customer will agree to a schedule for the repair or replacement of the ECM, at the Customer's expense, that establishes reasonable timeframes for the engineering, procurement, and construction and installation associated with such work. The Parties will use good faith efforts to agree to any necessary adjustments to the energy performance calculations that account for the energy savings attributable to the period of time needed to repair or replace the ECM. However, any such adjustments to the energy performance calculations are subject to the terms and provisions of Exhibit C, which require the ESCO to notify the Customer within thirty (30) days of the ESCO becoming aware of a possible Cause for Adjustment, and to specify all Causes for Adjustment in the annual guaranteed savings reconciliation process.

## **SECTION 9. INSURANCE, DAMAGE AND DESTRUCTION, AND INDEMNIFICATION.**

### **A. Insurance to be Maintained by ESCO; Limitation of Liability.**

1. The ESCO will maintain, at its sole cost and expense, the insurance set forth in Exhibit H in form and substance satisfactory to the Customer and the Lender from insurance companies authorized to do business in the State of Illinois which are rated at least A-VII by A.M. Best Company and acceptable to the Customer and the Lender. The ESCO will furnish to Customer and the Lender certificates evidencing such insurance. During the Guarantee Period, the insurance coverage set forth on Exhibit H may be reduced to a level deemed necessary by the Customer, in its reasonable discretion, to protect the Customer and Client from liability for acts of the ESCO during the performance of the Guarantee Period Services.

2. Under no circumstances will either Party be liable to the other Party for any special, indirect, incidental, consequential or punitive damages, however caused and on any theory of liability.

B. Damage and Destruction. The Customer and Client are not liable for damage or destruction to the Work and/or to (a) any tools owned by mechanics, (b) any tools, equipment, scaffolding, staging, towers, and forms rented by ESCO, the capital value of which is not included in the Contract Sum, and (c) any structures erected for housing or convenience of workmen caused by, but not limited to, the following: fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, aircraft, vehicles, smoke, vandalism, or malicious mischief.

C Risk of Loss. Regardless of the passage of title, risk of loss and damage to the Work shall remain with the ESCO until the date of Final Acceptance of the entire Project.

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#### **D. Indemnification.**

1. Professional Indemnity. For claims alleging professional negligence, the ESCO must defend, indemnify and hold the Customer, the Commission, the Lender and the Client and their respective commissioners, board members, officers, officials and employees (hereafter the "Indemnified Parties") free and harmless from and against all claims, demands, suits, losses, costs and expenses, including the reasonable fees and expenses of attorneys, court costs and expert's fees, that may arise out of the ESCO's negligent acts, errors and omissions and misconduct in the ESCO's performance under this Contract or the performance of any Subcontractor retained by the ESCO in connection with this Contract.

2. General Indemnity. For all other claims, the ESCO must protect, defend, indemnify, hold the Indemnified Parties free and harmless from and against all claims, demands, suits, losses, costs and expenses, including the reasonable fees and expenses of attorneys, court costs and expert's fees, that may arise out of the performance of ESCO's Work under this Contract and such claim is attributable to any injury to persons or property that is, or is claimed to be, the result of the ESCO's or a Subcontractor's negligent acts or omissions under this Contract.

3. Scope of Indemnification. The indemnification obligations provided in this Section 9 will be effective to the maximum extent permitted by law. To the extent permitted by law, the ESCO waives any limits to its liability hereunder that it would otherwise have by virtue of the Workers' Compensation Act or any other related law or judicial decision (including, without limitation, Kotecki vs. Cyclops Welding Corporation, 156 Ill. 2d. 155 (1991)). This indemnity extends to all legal costs, including, without limitation: reasonable attorney fees, costs, liens, judgments, settlements, penalties, professional fees or other expenses incurred by the Indemnified Party(ies), including but not limited to reasonable settlement of such claims. This indemnification is not limited by any amount of insurance required under this Contract. Further, the indemnity contained in this section will survive the expiration or termination of this Contract. The ESCO shall be solely responsible for the defense of any and all claims, demands, or suits against the Indemnified Parties, including without limitation, claims by an employee, subcontractor, agents or servants of the ESCO even though the claimant may allege that the Indemnified Parties were in charge of the Contract Services or allege negligence on the part of the Indemnified Parties. The Indemnified Party/Parties will have the right, at its sole option, to participate in the defense of any such suit at its/their expense, without relieving the ESCO of its obligations hereunder. Notwithstanding the forgoing, the ESCO shall have no obligation to indemnify an Indemnified Party for the Indemnified \* Party's own negligence or willful misconduct. Defense costs shall be allocated on a comparable fault basis.

#### **SECTION 10. ENVIRONMENTAL WORK AND HAZARDOUS MATERIALS.**



A. Abatement and Removal of ACM The Work to be performed by the ESCO includes the proper abatement, removal, and disposal of asbestos containing material and associated debris ("ACM") only to the extent included in the Work described in Exhibit A. All Work involving ACM must be performed in accordance with the ACM-related performance of work requirements described in Exhibit F and the other terms and provisions of this Contract. In the event that the ESCO discovers ACM (i) that was not identified in the Contract Documents prior to the commencement of the Work or (ii) that could not have been identified by the ESCO

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through the exercise of reasonable diligence during the performance of the Investment Grade Audit (a "Concealed Condition"), the ESCO and Customer shall negotiate an equitable adjustment to the Contract Sum and Scheduled Completion Dates pursuant to Section 12.D.

B. Performance of Other Environmental Work. If the Contract Documents require the ESCO to manage or perform any Environmental Work, or if in the course of the Work Hazardous Materials or Mold are encountered requiring action, the ESCO must cooperate and coordinate its Work in all respects with that of Environmental Consultants, perform its Work according to safe and approved protocols and procedures, utilize only fully qualified and licensed abaters and remediators, and sequence and perform the Work to minimize environmental contamination of the Facilities. The ESCO will consult with the Customer, including its Environmental Consultants, to determine whether previous abatement, remediation, stabilization, or containment work has been performed at the Facility. If so, the ESCO will perform its Work so as not to undo or disturb the prior work.

C. Encountering Hazardous Materials or Mold. If the ESCO encounters material in a Facility reasonably believed to be a Hazardous Material (including ACM) or Mold that has not been identified in the Contract Documents or that constitutes a Concealed Condition, the ESCO must immediately stop Work in the area affected and report the condition to the Customer Representative in writing and by telephone or in person. The Customer or its Environmental Consultants will verify the presence or absence of the Hazardous Material or Mold reported by the ESCO and, if the Hazardous Material or Mold is found to be present, develop a plan for identifying and handling the Hazardous Material or Mold. If no plan is in place, the ESCO will await and follow directions of the Customer. The Work in the affected area may be resumed in the absence of the Hazardous Material or Mold, or when it has been rendered harmless. Should ESCO stop work because of the discovery of Hazardous Materials or Mold, the time for performance of ESCO'S Work will be extended to cover the period required for abatement, cleanup, or removal of such materials. ESCO will not be held responsible for any claims, damages, costs, or expenses of any kind associated with the period during which ESCO has stopped work as a result of Hazardous Materials or Mold. If appropriate, ESCO will be entitled to an equitable adjustment of the Contract Time, and if appropriate, the Contract Sum, for any increased costs or other charges incurred by ESCO in connection with the existence of its rights under this paragraph. Customer will be responsible for taking all necessary steps to correct, abate, clean up, or control Hazardous Materials or Mold not otherwise delegated to ESCO in the Contract Documents.

**D. Hazardous Materials Introduced to the Facilities by the ESCO.**

Notwithstanding anything to the contrary set forth in this Section 10, if any Hazardous Materials are introduced to any Facility by the ESCO, its Subcontractors, and any party for whom they may be liable or if any Mold occurs within the Facilities as the result of the implementation of the Project or the functioning of the ECMs, then any response, removal, cleanup, or other remedial action required by applicable law shall be performed by the ESCO at its sole cost and expense. Except as to the ESCO's initial response to an emergency, any such remedial action(s) shall require the prior review and approval of the Customer.

**SECTION 11. DISPUTE RESOLUTION.**

A. Representatives of the Parties. Except for those disputes to be decided by the Engineer Neutral as provided in Section 3.C.2 and Section VIII of Exhibit B, all claims, disputes or other controversies arising out of, or relating to, this Contract (hereinafter collectively referred to as a "Dispute") shall initially be submitted to Customer Representative and the ESCO

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Representative for resolution by mutual agreement between said parties. Any mutual determination by the Customer Representative and the ESCO Representative will be final and binding upon the Parties. However, should the Customer Representative and the ESCO Representative fail to arrive at a mutual decision as to the Dispute within ten (10) days after notice to both individuals of the Dispute, such Dispute will be submitted to the Senior Officers as provided in Section 11.B.

B. Senior Officers In the event that a Dispute is not resolved in accordance with Section 11 .A, such Dispute will be submitted to a Senior Officer from each Party for resolution by mutual agreement between said officers. Any mutual determination by the Senior Officers will be final and binding upon the Parties. However, should such Senior Officers fail to arrive at a mutual decision as to the Dispute within ten (10) days after notice to both individuals of the Dispute, the Parties may thereafter pursue any remedies available at law and/or in equity with respect to such Dispute, including, without limitation, litigation. The prevailing Party in any court proceedings shall be reimbursed by the other party for all costs, expenses and charges, including, without limitation, reasonable attorneys' fees, incurred by said prevailing Party.

C. Continuation of Services. Pending final resolution of a Dispute, the ESCO will proceed diligently with the performance of its duties and obligations under this Contract, and the Customer will continue to make payments of undisputed amounts in accordance with this Contract.

## **SECTION 12. CHANGES IN THE WORK.**

A. Minor Changes in the Work. The Customer may issue written field orders which interpret this Contract or order minor changes in the Work not involving an adjustment in the Contract Sum or a change in the Scheduled Completion Dates. The ESCO will carry out such field orders promptly.

B. Change Orders. The Customer may order additions, deletions, or other revisions in the Work, in which event the Contract Sum and/or the Scheduled Completion Dates, as the case may be, will be adjusted by Change Order as hereinafter provided. If the Customer wishes to make additions, deletions, changes to the schedule, or other revisions in the Work, the Customer and the ESCO shall agree upon the amount by which the Contract Sum is to be increased or decreased as a result thereof or the method by which such increase or decrease is to be determined, and a Change Order shall be issued setting forth the addition, deletion, or revision and the amount which the Contract Sum is to be increased or decreased or the method by which the increase or decrease in the Contract Sum is to be determined. If the ESCO and the Customer cannot reach agreement on the payment terms for the change, then: (a) the Customer may issue a Change Order directing the ESCO to commence such changes in the Work, and (b) the payment to the ESCO shall consist of the actual costs and savings of performing the Work attributable to the change, plus fifteen percent (15%) for profit and overhead. In such case, the ESCO shall keep and present, in such form as the Customer may reasonably require, an itemized accounting and appropriate supporting data. In no event will changes in the Work be made without a written Change Order signed by the Customer, and ESCO will be solely responsible for any changes which have not been accepted in a written Change Order signed by the Customer.

C. Extension of Scheduled Completion Dates. The ESCO hereby acknowledges that the Work of

this Contract will be performed in occupied buildings and that such occupancy has been factored into the establishment of the Contract Sum and Contract Time. Accordingly,

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no proposed Change Order from the ESCO arising out of the normal operations and occupancy of a Facility shall be considered by the Customer. If the ESCO claims that it is entitled to an extension of the Scheduled Completion Date by reason of (i) the issuance of a Change Order changing the Work, or (ii) the occurrence of an Excusable Event, the ESCO will give Customer notice to such effect, within ten (10) business days after the commencement of the event, setting forth the extension in the Scheduled Completion Dates requested by the ESCO and specifying the reasons why the ESCO is requesting such extension. The Customer will inform the ESCO of the extension, if any, of the Scheduled Completion Dates which the Customer is willing to make, and, if the Customer is willing to extend the Scheduled Completion Dates, a Change Order shall be issued extending the Scheduled Completion Dates to the date acceptable to the Customer. If the ESCO is delayed at any time in progress of the Work by changes ordered in the Work or by an Excusable Event, then the Contract Time will be extended by Change Order provided that: (i) the ESCO has notified the Customer in writing of such delay within ten (10) business days following the date when the ESCO becomes aware, or should have become aware through the exercise of reasonable diligence, of such delay; (ii) the ESCO has taken all reasonable steps to avoid any such delay (including its continuance); and (iii) such delay is not a theoretical delay but does actually adversely affect the critical path of the Work. Otherwise, the ESCO will not be entitled to an extension of the Contract Time for any delays in the progress of the Work.

D. Equitable Adjustment of Contract Sum. Except as the result of a Change Order as permitted by Section 12.B, an increase in the Contract Sum will only be granted under the following circumstances:

1. The ESCO's cost of performing the Work demonstrably increased because of the occurrence of an Excusable Event described in Section 12.E, paragraphs (1) through (3);

2. The ESCO notified the Customer of the Excusable Event via written notice (which written notice may be via email) within three (3) business days following the date when ESCO became aware, or should have become aware through the exercise of reasonable diligence, of the Excusable Event, which written notice described the ESCO's efforts (or planned efforts) undertaken to overcome or remove the Excusable Event and to minimize the potential adverse effect on the cost for performance of the Work resulting from such Excusable Event.

3. The ESCO took all reasonable steps to avoid the Excusable Event;

4. The ESCO made a written request for an increase in the Contract Sum to the Customer within three (3) business days after the cessation of such Excusable Event specifying the additional cost the ESCO believed it incurred as a result of such event; and

5. The ESCO demonstrates, to the reasonable satisfaction of the Customer, that the Excusable Event did in fact cause an increase in the ESCO's cost of performing the Work.

Compliance with this Section is a condition precedent to receipt of an increase in the Contract Sum as the result of an Excusable Event. In the event of a failure to comply with this Section, the ESCO shall not be entitled to an increase in the Contract Sum and shall be deemed to have waived any future claim relating to such Excusable Event. Upon satisfaction by the ESCO of

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the terms and conditions in the preceding subsections, the Customer and the ESCO will use good faith efforts to agree on the extent to which the ESCO's costs for performing the Work have been increased as a result of any such Excusable Event. Once the Parties have mutually agreed as to the ESCO's increased cost, they shall enter into a Change Order reflecting their agreement as to the adjustment in the Contract Sum.

E. **Excusable Events** The occurrence of any of the following events shall constitute an Excusable Event:

1. Delays resulting from the acts or omissions of the Customer, the Commission or the Client (including, without limitation, failure to pay amounts payable under this Contract), to the extent such delays arise from circumstances beyond the reasonable control and without the fault or negligence of the ESCO, its Subcontractors, or other person for whom they may be liable;

2. The discovery of any Hazardous Materials or Mold in a Facility that is a Concealed Condition (unless the Hazardous Materials are introduced to the Facility by the ESCO, its Subcontractors, or any party for whom they may be liable);

3. The occurrence of a change in law impacting the schedule or cost for the Work, provided that a change in any income tax law or any law by which a tax is levied or assessed on the basis of the ESCO's income, profits, revenues or gross receipts shall not be an Excusable Event; or

4. Any of the following acts, events, conditions or occurrences to the extent that the same are beyond the ESCO's reasonable control, which could not have been either foreseen or avoided by the exercise of due diligence, and which has an adverse effect on the ESCO's ability to perform the Work: drought, flood, earthquake, storm, mudslide, fire, lightning, epidemic, war, riot, civil disturbance, sabotage, explosions, material changes in law, or strikes or labor disputes that affect the Work not reasonably anticipatable, unavoidable casualties, acts of public enemies, orders or restraints of any kind imposed by the government of the United States, any state or any of their departments, agencies or officials, or any other action of a civil government, military or judicial authority.

## **SECTION 13. PAYMENTS AND COMPLETION.**

### **A. Payments.**

■ 1. The total of all payments for the Work performed during the Installation Period will constitute the Contract Sum. Construction progress payments will be made to the ESCO monthly based on the percentage completion of items delineated on the Schedule of Values included in Exhibit A during the prior month.

2. During the Guarantee Period, each Performance Tracking Payment due from the Customer, will be paid on the dates and in the amounts set forth in Exhibit E.

B. **Withholding of Payments.** Payments may be withheld to the extent of, and on account of (1) defective Work not remedied; (2) claims filed by third parties; (3) failure of ESCO to make payments promptly to the Subcontractors for labor, materials or equipment; or (4) failure by the ESCO to perform its obligations under the Contract Documents. The Customer

shall promptly notify the ESCO of any reason for withholding payment and Customer shall promptly make payment to the ESCO upon the resolution of such occurrence.

C. Retainage. During the Installation Period, retainage of ten percent (10%) of the total amount earned will be withheld from partial payments to the ESCO until the ESCO has achieved 50% completion of the Work, as determined by the Customer. Thereafter, retainage of five percent (5%) of the total amount earned will be withheld from partial payments to the ESCO. The retainage will be released upon the occurrence of Final Acceptance of the entire Project.

D. Payment Requests. Each payment request submitted by the ESCO during the Installation Period will be accompanied by the following, all in form and substance satisfactory to the Customer:

1. A duly executed and acknowledged ESCO's sworn statement showing all Subcontractors, the amount of each subcontract, the amount requested for any Subcontractor in the invoice and the amount to be paid to the ESCO, together with similar sworn statements from all Subcontractors;

2. Duly executed conditional waivers of mechanics', materialmen's and construction liens from the ESCO and all Subcontractors. The final invoice for the Contract Sum must be accompanied by final and full waivers of lien from all parties entitled to receive payment in connection with the Work; and

3. Such other documents and information as may be necessary or as may be reasonably requested by the Customer to verify satisfactory completion of the Work covered by such invoice and compliance with this Contract.

4. The ESCO will utilize the Commission's on-line collaboration and document management system (the "System") for the submission of the ESCO's monthly payment requests, including supporting Subcontractor documentation. The ESCO shall be responsible for implementation and use of the System for purposes of submitting its payment applications, including, without limitation, providing appropriate computer, network and information management systems and equipment for its personnel to access the System, training of the ESCO's personnel on the System and the applicable business process.

5. Ownership of and title to ECMs (or portions thereof) referenced in a payment request submitted by the ESCO as herein provided shall vest in the Customer immediately upon the disbursement of loan proceeds from the Project Fund (as defined in the Loan Agreement) in accordance with such payment request, subject to the Lender's security interest and other rights therein as provided in the Loan Agreement.

E. Payment Due Date. Payment will be made net thirty (30) days of submission of a payment request meeting the requirements of this Section. If payment is not made within an additional ten (10) days after the payment due date, and the Customer is not entitled to withhold payment pursuant to Section 13.B, the ESCO may suspend all Work until payment is made.

F. Offsets. All back charges to the ESCO, refunds from the ESCO, and other offsets against any amounts due to the ESCO that are permitted or required under the Contract Documents may be taken at any time from amounts due to the ESCO under the Contract

Documents once the Customer has determined the amount of the back charge, refund, or offset to be made.

G. Certified Payrolls. Three copies of certified payrolls are to be submitted by the ESCO and all Subcontractors providing the Work to the Commission every week. The Commission may elect to utilize a Web-based method for electronic submittal of certified payrolls. In the event that the Commission elects to utilize electronic submittal, ESCO shall follow the directions provided by the Commission and submit its certified payrolls electronically, as a replacement for the three hard copy submittals. The ESCO shall ensure that it is fully trained in the use of the electronic submittal system. All payrolls must be identified with ESCO or Subcontractor's name and the name of this Contract, and must be sequentially numbered. The payroll will be submitted by the ESCO and Subcontractor until all Work by that ESCO or Subcontractor is completed. If there are periods of no Work by the ESCO or a Subcontractor, a payroll labeled "NO WORK" will be submitted. The final payroll will be labeled "FINAL." Certified payrolls are required to assure Equal Employment Opportunity ("EEO") compliance as well as wage compliance. Race, worker classification, and gender must be clearly marked for each employee on the certified payroll along with all additional information required by the Commission. An employee's address should appear every time his/her name appears on the payroll. The ESCO must submit the certified payrolls and additional information regarding EEO and wage compliance by providing a payroll summary report in the form required by the Commission. The EEO report form required by the Commission and the U.S. Department of Labor must be submitted by the ESCO and each Subcontractor, reflecting fully the periods of the Work covered by the partial payment request.

Every Subcontractor and supplier shall be required to submit certified payrolls and labor compliance documentation electronically at the discretion of and in the manner specified by the Commission. Each Subcontractor will be given a log on identification and password to access the Commission's web based reporting system for electronic submittal. Use of the system shall include additional data entry of weekly payroll information including: employee identification, labor classification, total hours worked and hours worked on the Project, wage and benefit rates paid, etc. in the manner specified by the Commission. This requirement will be "flowed down" to every lower-tier subcontractor and material supplier required to provide labor compliance documentation.

#### **SECTION 14. OWNERSHIP OF DESIGN MATERIALS.**

A. Copies of Design Materials. The copies and other tangible embodiments of the drawings, specifications, designs, plans, "architectural work" (as such term is defined in the Architectural Works Copyright Protection Act of 1990) and other documents, prepared by or on behalf of the Customer, the ESCO, and/or Subcontractors in connection with the Project or the Contract Services (collectively, the "Design Materials") are and shall remain the exclusive property of the Customer. The ESCO shall use its best efforts to ensure all copies of the Design Materials are delivered or returned to the Customer or suitably accounted for upon the Customer's request or upon final payment, whichever is earlier. The ESCO may retain one copy of the Design Materials for its records, but shall not use such copies for any purpose other than with respect to the Contract Services without the Customer's prior written consent. The Intellectual Property Rights, if any, relating to the Design Materials or the contents of or concepts embodied in the Design Materials shall remain with and belong to the ESCO or its Subcontractors, as the case may be.

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B. License for the Use of Design Materials. As to those Design Materials deemed subject to any form of Intellectual Property Rights, the ESCO hereby grants and will cause to be granted and delivered to the Customer from Subcontractors a paid-up, nonexclusive, world-wide, irrevocable, transferable license, for the term of the Intellectual Property Rights, for the Customer to use, reproduce and have reproduced, and for the

Customer to allow others to use, reproduce and have reproduced, such Design Materials and any derivative thereof, subject to the restrictions set forth below:

1. All Intellectual Property Rights in or relating to any of the Design Materials shall remain the property of the ESCO or the appropriate Subcontractor, whether or not the Project is completed; and

2. The Customer shall not, without the prior written consent of the ESCO, use such Design Materials, in whole or in part, for the construction of any other project. The Customer may, however, at no cost to the Customer, use such Design Materials (i) for completion of the Project and the Contract Services by others upon termination of this Contract or termination of the ESCO's right to perform all or any portion of the Contract Services, and (ii) for the construction, operation, maintenance and repair of (and for additions, improvements, changes or alterations to) the Project after its completion.

C. Delivery of Design Materials and As-built Drawings. Upon the earlier of the date of Final Acceptance of the Work for a particular ECM or the date of termination of this Contract, the ESCO shall deliver to the Customer any Design Materials which have not been previously submitted to the Customer for that ECM. Upon the date of Final Acceptance of the entire Project, the ESCO must provide two (2) hard copies of "as-built" drawings of all modified conditions associated with the Project, conforming to typical engineering standards. The as-built drawings shall also be submitted in an electronic format compatible with the AutoCAD or other similar system in use by the Customer.

D. Document Control System. The Commission has an on-line collaboration and document management system (the "OCDM System"). The ESCO shall use the OCDM System to: track the Work, manage the Project, and follow the Commission's procedures for electronic submission and receipt of documents as directed by the Commission. The OCDM System shall be the mode of conveyance and repository for all Project-related documents. The ESCO shall post all Project-related documents to the OCDM System as directed by the Commission. By executing this Contract, the ESCO agrees to comply with all terms and conditions required by the Commission for the use of the OCDM System.

1) Within 15 calendar days of the Date of Commencement, the ESCO shall designate an employee that will serve as its "OCDM System Coordinator." The ESCO's OCDM System Coordinator will be the point of contact for the Commission for implementation and support for the ESCO's use of the OCDM System.

2) Employees of the ESCO, its Subcontractors and suppliers who will use the OCDM System must complete the training provided by the Commission. Each such employee must furnish a valid e-mail address to the Commission prior to the training.

3) The OCDM System requires a broadband connection with the Internet (e.g., at a minimum, T1, cable modem, or DSL) for effective use. The ESCO must furnish its own

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hardware and software, including, but not limited to, personal computers, peripheral software, virus protection software and high-speed document scanners.

(4) The ESCO shall be solely responsible for its use of the OCDM System, as well as use of the OCDM System by its Subcontractors and suppliers.

## SECTION 15. DEFAULT AND TERMINATION.

A. Events of Default. The ESCO will be deemed to be in default under this Contract and the Contract Documents if ESCO:

1. fails to make any payment due under the Performance Guarantee;
  2. becomes insolvent or bankrupt, or makes a general assignment for the benefit of creditors, or if a receiver is appointed on account of insolvency;
  3. fails to perform the Contract Services in accordance with the Contract Documents, if not cured within any applicable cure period;
  4. fails to perform the Work on the Project with sufficient workers, equipment or materials to ensure the completion of the Work or any part of the Work within the time specified by the Contract Documents;
  5. discontinues prosecution of Work on the Project;
  6. fails to make prompt payment to Subcontractors or for material or labor on the Project;
- or
7. is otherwise guilty of a breach of any provision of this Contract or the Contract Documents.

B. Remedies. In the event of a default by the ESCO, the Customer may, in addition to and without prejudice to any other right or remedy of the Customer under this Contract, terminate this Contract and the Contract Documents for the Project or for any portion of the Project following the conclusion of the Dispute resolution process described in Section 11. The Customer will then have the following rights (any or all of which may be exercised by the Customer in its sole discretion, and in addition to and without prejudice to any other right or remedy): (a) to take (in the manner and to the extent desired by the Customer) an assignment of the ESCO's subcontracts and material orders for all or any portion of the Project; and (b) finish the Work on all or any portion of the Project by whatever method the Customer considers expedient. The ESCO will not be entitled to receive any further payment for the portion of the Work so terminated. If the expense of finishing the Work on the Project, including compensation for additional managerial and administrative services, exceeds the unpaid balance of the Contract Sum, the ESCO (and the surety or sureties on the bonds required pursuant to Section 6.0) are liable for and will pay the amount of the excess to the Customer.

C. Termination For Convenience. The Customer reserves the right, for its convenience upon a failure of the ESCO to perform under this Contract, to terminate the Work of the ESCO on all the Project and to terminate this Contract by ten (10) days written notice stating the effective date of the termination. In that case, the ESCO and its Subcontractors must (except for services necessary for the orderly termination of the Work):

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1. stop all Work so terminated;
2. place no further order or subcontracts for materials, services, equipment or supplies on the terminated Work,
3. assign to the Customer (in the manner and to the extent directed) all of the rights of the subcontracts relating to the terminated Work;



4. take any action necessary to protect property of the Customer and property in the ESCO's possession in which the Customer has, or may acquire, an interest; and

5. take any other action toward termination of the Work that the Customer may direct.

Thereafter, the Customer will pay the ESCO for the terminated Work the proportion of the Contract Sum that the Work actually performed (including materials delivered to the Facilities) at the date of termination bears to the Work required to be performed for such portion of the Project and, to the extent such funds are made available by the Client, the costs the ESCO actually incurs in cancelling subcontracts or supply contracts related to this Contract. However, no payments will be made for Work not actually performed, and no payment will be made or due for lost profits for portions of the Work not actually performed. In the event the Customer terminates for default pursuant to Section 15.B and the basis for the default is later held invalid, such termination will automatically be deemed a termination for convenience under this Section 15.C.

D. Suspending the Work. The Customer reserves the right to suspend the Work on the Project, wholly or in part, by written stop order for such period as is necessary for the protection of the Customer's interest. The stop order remains in effect until released by the Customer, in writing. The Customer does not assume any liability for damages or loss of anticipated profits resulting from the stoppage of Work, but will grant the ESCO an extension of the Contract Time commensurate with the period of actual delay in completion of Work, if the stop order was not necessitated by the acts, failure to act, or negligence of the ESCO or a Subcontractor. The ESCO will take all means and precautions as may be required to properly protect the finished and partially finished Work during the period or periods of the stop order.

E. ESCO Termination. If, through no fault of the ESCO, the Customer fails to make payments to the ESCO as set forth in Section 13 and Exhibit E. the ESCO may, after the conclusion of the Dispute resolution process described in Section 11, terminate this Contract and recover from the Customer the proportion of the Contract Sum that the Work actually performed (including materials delivered to the Facilities) at the date of termination bears to the Work required to be performed for such portion of the Project. However, no payments will be made for Work not actually performed, and no payment will be made or due for lost profits for portions of the Work not actually performed.

## **SECTION 16. ASSIGNMENT.**

A. ESCO Assignment The ESCO may not assign this Contract or the Contract Documents or sublet it, in whole or in part, without the prior written consent of the Customer and the Lender, in their sole discretion, nor shall the ESCO assign any moneys due or to become due to it under the Contract Documents without the prior written consent of the Customer and

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Lender, in their sole discretion. Any assignment of monies due under the Contract Documents made without the prior written consent of the Customer and the Lender is void, and the assignee in that case acquires no rights against the Customer or the Lender.

B. Customer Assignment The Customer may assign this Contract and the Contract Documents in its sole discretion to: (i) the Client; (ii) the Lender for collateral purposes or (iii) any entity wholly owned or controlled by the same owners of the Customer. The Customer may assign this Contract to any other entity approved in advance by the ESCO and the Lender (in the exercise of their sole discretion). As permitted by clause (ii) of this Section 16.B., the ESCO understands and agrees that, simultaneously with the execution and delivery of this Contract, all of the Customer's rights and interests under this Contract are being assigned

and transferred to the Lender pursuant to the Loan Agreement. The ESCO hereby consents to such assignment and transfer and to any subsequent assignment and transfer of rights and interests under this Contract in accordance with the Loan Agreement. Upon the execution and delivery of the Loan Agreement and this Contract, references to the Customer in the operative provisions of this Contract that relate to rights and interests of the Customer (including, without limitation, rights to enforce the terms of the Performance Guarantee upon the occurrence of an Event of Default described in Section 15.A.1 or 15.A.2) shall be deemed to be references to the Lender (including any successors and permitted assigns of the Lender), as assignee or subsequent assignee of the Customer.

C. Permitted Assigns. This Contract shall be binding upon, and inure to the benefit of, the successors and permitted assigns of the Parties.

## SECTION 17. OTHER CONDITIONS OR PROVISIONS.

A. Representations and Warranties. Each Party warrants and represents to the other that:

1. It has all requisite power, authority, licenses, permits, and franchises, corporate or otherwise, to execute and deliver this Contract and perform its obligations hereunder;
2. Its execution, delivery, and performance of this Contract have been duly authorized by, or are in accordance with, its governing documents, and this Contract has been duly executed and delivered for it by the signatories so authorized, and it constitutes its legal, valid, and binding obligation;
3. Its execution, delivery, and performance of this Contract will not result in a breach or violation of, or constitute a default under, any agreement, lease or instrument to which it is a party or by which it or its properties may be bound or affected; and
4. It has not received any notice, nor to the best of its knowledge is there pending or threatened any notice, of any violation of any applicable laws, ordinances, regulations, rules, decrees, awards, permits or orders which would materially and adversely affect its ability to perform hereunder.

The ESCO warrants and represents to the Customer that the disclosures and certifications set forth on Exhibit I are and shall remain true and correct.

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B. Time. Time is of the essence of this Contract. By executing this Contract, the ESCO confirms that the Scheduled Final Acceptance Date is a reasonable period of time for performing the Work.

C. Governing Law. This Contract shall be governed by the laws of the State of Illinois, without regard to conflicts of law principles.

D. Severability. If any provision of this Contract shall be held to be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired thereby; provided, however, that if enforcement of this Contract in the absence of such provision would deprive a Party of a material element of its original bargain, the Parties shall promptly negotiate in good faith a reformation of this Contract to reflect as nearly as possible all material elements of the original Contract.

E. No Waiver. No course of dealing or failure of the Customer and/or the ESCO to enforce strictly any term, right or condition of this Contract shall be construed as a waiver of such term, right or condition. No express waiver of any term, right or condition of this Contract shall operate as a waiver of any other term, right or condition.

F. Relationship of the Parties. The ESCO is an independent contractor in providing and performing the Contract Services. Nothing in, or done pursuant to, this Contract will be construed to create the relationship of principal and agent, employer and employee, partners, or joint venturers between the Customer and the ESCO or its Subcontractors.

G. Amendment. No amendment to this Contract shall be effective until and unless reduced to writing and executed by the Parties. In no event shall the ESCO and the Customer consent to any amendment, modification or change to this Contract which has the effect of reducing the amount of the Guaranteed Annual Savings Amount or the Guaranteed Project Savings Amount payable by the ESCO hereunder without the prior written consent of the Lender.

H. Entire Agreement. This Contract represents the entire agreement between the Customer and the ESCO with respect to the subject matter hereof, and supersedes all prior negotiations, representations or agreements, whether written or oral.

I. Rights Cumulative. Except as otherwise provided in this Contract, (i) rights and remedies available to the Customer and/or the ESCO as set forth in this Contract shall be cumulative with and in addition to, and not in limitation of, any other rights or remedies available to the Parties at law and/or in equity, and (ii) any specific right or remedy conferred upon or reserved to the Customer and/or the ESCO in any provision of this Contract shall not preclude the concurrent or consecutive exercise of a right or remedy provided for in any other provision hereof.

J. Further Assurances. Each Party hereto shall, from time to time, at the request of the other Party and without further consideration, execute and deliver and cause to be executed and delivered such other instruments and take such other actions as the requesting Party may reasonably request to undertake the Contract Services and carry out the intent and purposes of this Contract.

K. Notices. Any information or notices required to be given under this Contract shall be in writing and shall be delivered either by (i) certified mail, return receipt requested, in

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which case notice shall be deemed delivered three (3) business days after deposit, postage prepaid, in the U.S. mail; (ii) a reputable messenger service or a nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) business day after deposit with such messenger or courier; or (iii) personal delivery with receipt acknowledged in writing, in which case notice shall be deemed delivered when received. All notices shall be addressed as follows:

If	to	Customer:	Chicago	Infrastructure	Trust	222	West
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Merchandise Mart Suite 1212  
Chicago, Illinois 60657 Attention: Executive  
Director Email: [ssb@shapechicago.org](mailto:ssb@shapechicago.org)  
<<mailto:ssb@shapechicago.org>>

and to:

Public Building Commission of Chicago  
50 West Washington, Suite 200  
Chicago, IL 60602  
Attention:  
E-mail:

If to ESCO:

Ameresco, Inc.  
150 N. Michigan Avenue, Suite 2040 Chicago, IL  
60601  
Attention: Louis P. Maltezos, EVP and General Manager Central Region  
Email: [lmaltezos@ameresco.com](mailto:lmaltezos@ameresco.com) <<mailto:lmaltezos@ameresco.com>>

With a copy to:

Ameresco, Inc. 111 Speen Street  
Framingham, MA 01701 Attention:  
General Counsel

The foregoing addresses may be changed from time to time by notice to the other Party in the manner herein before provided for.

L. Counterparts. This Contract may be executed in counterparts, each of which shall be deemed an original, and all of which counterparts shall constitute one agreement. To facilitate execution of this Contract, the Parties may execute and exchange facsimile counterparts of the signature pages, provided originally executed signature pages are exchanged promptly thereafter.

M. Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS CONTRACT OR THE

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TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS CONTRACT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

N. Incorporation by Reference. The recitals set forth on the first few pages of this Contract, as well as the following Exhibits attached hereto, are hereby incorporated into this Contract by this reference and

expressly made a part of this Contract:

- Exhibit A: Project Description
- Exhibit B: Performance Guarantee
- Exhibit C: Methodology and Baseline
- Exhibit D: Performance Tracking Services
- Exhibit E: Performance Tracking Services Payments
- Exhibit F: Additional Performance of Work Requirements
- Exhibit G: Required Maintenance
- Exhibit H: ESCO's Insurance Requirements
- Exhibit I: Customer Disclosures and Certifications
- Exhibit J: Client-Required Terms and Conditions
- Exhibit K: Project Participation Guidelines

[Signature Page Follows]

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above. IN WITNESS WHEREOF, the Parties have executed this Contract this day first written

**CHICAGO INFRASTRUCTURE TRUST**

**AMERESCO, INC.**

vr . (^<"'"v -

By; Q )Co\*~ >'c». ) . By:.  
Stephen S, Beitler Name; Chief Executive Officer Title: and Executive  
Director

*[Signature Page of Guaranteed Energy Performance Contract]*

above. IN WITNESS WHEREOF, the Parties have executed this Contract this day first written

CHICAGO INFRASTRUCTURE TRUST

Stephen S. Beitler Chief Executive Officer and Executive Director

By  
**Narp\*<sup>7</sup>** Title:

Louis P. Malrezos Executive Vice President

*[Signature Page of Guaranteed Energy Performance Contract]*

## **EXHIBIT A PROJECT DESCRIPTION**

### **Section I. Overview Description of the Project.**

The Project is a portion of Retrofit One, the first phase of Retrofit Chicago, a comprehensive effort to increase energy efficiency in public buildings. It is designed to enlist the expertise of energy service companies to identify, design, provide, implement and guarantee the performance of energy-related capital improvements to a variety of Client-owned public buildings. The Energy Conservation Measures (ECMs) described below have been selected to achieve long term savings that can be measured & verified. The ESCO will provide turn-key implementation of each and every ECM listed below including commissioning, training of Client personnel on the operating and maintenance, and ongoing Measuring and Verification (M&V) services to document and confirm the measures are delivering at least the Guaranteed Project Savings Amount, as described in Exhibits B and C.

For each facility listed below, the ESCO will be responsible for doing a complete inventory of existing and new mechanical equipment and populating the necessary information into a digital spreadsheet that will be incorporated into a Computerized Maintenance Management System {"CMMS"} provided by the Customer.

For each applicable ECM listed below, the ESCO will be responsible for applying for and assisting the Customer and the Client secure supplemental funding from grants, reimbursement rebates, and other types of energy efficiency incentives.

### **Section II. Description of ECMs by Facility**

[Remainder of Page Intentionally Left Blank]



## Section 111 Detailed Description of ECMs

The Work under this Contract, including the Detailed Description of ECMs described in this Section III of Exhibit A, specifically excludes Hazardous Material abatement (including asbestos abatement).

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#### Centra! District Office (Water)

##### ECM-1: Interior Lighting Upgrades

Existing fixtures will be re-lamped, retro-fitted, or replaced with new fixtures as noted in lighting schedule. Occupancy controls will be added in spaces with variable occupancy.

Exit sign: 2-lamp, 20 W, incandescent	24	^^^^^^^^^^^^^^^^^^^^ Retrofit exit sign to 4 W, Light- 24	
		Emitting Diode (LED), approved for use in the city of Chicago	
T-12 fluorescent fixture with magnetic ballast: 12		Retrofit to T-8 fluorescent fixture with electronic ballast: 2-foot, 2-lamp, 17 W with reflectors	12
2-foot, 2-lamp, 40 W		New T-8 fluorescent fixture with electronic ballast: 8-foot, 2-lamp, 32 W with reflectors	5
T-12 fluorescent fixture with magnetic ballast: 9		Retrofit to T-8 fluorescent fixture with electronic ballast: 4-foot, 2-lamp, 25 W.	11
4-foot, 2-lamp, 40 W		Retrofit to T-8 fluorescent fixture with electronic ballast: 4-foot, 3-lamp, 25 W.	4
T-12 fluorescent fixture with magnetic ballast: 11		Retrofit to T-8 fluorescent fixture with electronic ballast: 4-foot, 4-lamp, 25 W with reflectors	4
4-foot, 2-lamp, 40 W		Retrofit to T-8 fluorescent fixture with electronic ballast: 4-foot, 2-lamp, 32 W with reflectors	242
T-12 fluorescent fixture with magnetic ballast: 4		Retrofit to T-8 fluorescent fixture with electronic ballast: 8-foot, 2-lamp, 32 W with reflectors	82
4-foot, 3-lamp, 40 W		Retrofit to T-8 fluorescent fixture with electronic ballast: 8-foot, 4-lamp, 32 W with reflectors	1
T-12 fluorescent fixture with magnetic ballast: 4		New fluorescent T5 High-Output Fixture: 4-foot, 4-lamp, 49 W with reflectors	4
4-foot, 4-lamp, 40 W		New fluorescent T5 High-Output Fixture: 4-foot, 4-lamp, 49 W with reflectors	81
T-12 fluorescent fixture with magnetic ballast: 242		Remove off-pattern fixture and cap box	14
4-foot, 4-lamp, 40 W			
T-12 fluorescent fixture with magnetic ballast: 82			
8-foot, 2-lamp, 96 W			
T-12 fluorescent fixture high-output with magnetic ballast: 8-foot, 2-lamp, 96 W	1		
High-Intensity Discharge (HID), High-Pressure Sodium (HPS): 400 W	4		
High-Intensity Discharge (HID), Metal halide: 400 W	81		
High-Intensity Discharge (HID), Metal halide: 400 W	14		
Incandescent lamps: 75-150 W	6	Compact fluorescent lamps: 20-28 W	6
Incandescent halogen: 90 W	1	Compact fluorescent lamp: 28 W	1

Occupancy controls in spaces with variable occupancy, such as restrooms and break-rooms, to reduce operating space:

##### ECM-3: Weatherize Building Envelope

Ameresco shall weatherize the building envelope. Scope of work includes:

- Quantity of ten (10) exterior doors will be weather-stripped with formed and angled sponge wrapped in vinyl.

### A-3

- Quantity of seven (7) over-head doors will be weather-stripped on all four (4) sides with formed and angled sponge wrapped in vinyl.
- Quantity of four (4) window air-conditioning units will be weather stripped with formed and angled sponge wrapped in vinyl, and have a flexible cover installed.

### **ECMs 8 & 9: Demand Control Garage Ventilation Motion Sensor and Timing Controls for Garage Doors**

Ameresco shall install a garage demand control ventilation system, and garage door motion sensors in the garage to only run the exhaust fan when the garage is occupied by vehicles. Scope of work includes:

- Furnish and install new Carbon Monoxide (CO) and Nitrogen Dioxide (N02) detection and ventilation system.
- Furnish and install one (1) main control panel. Panel to be Air Test model CT-7232 or equal.
- Furnish and install ten (10) CO sensors and ten (10) N02 sensors. Wire sensors back to main control panel. Wiring to be home-run configuration. Sensors to space to allow approximately 5000 - 7500 square feet per sensor.
- Wire main control panel to six (6) roof-mounted exhaust fans and four (4) make-up air units. Install relays to start exhaust fans when CO and N02 levels in space are above set point.
- Furnish and install motion detectors to control garage door operation. Wire motion detectors to garage door openers.
- Provide power for controls.
- Test operation of CO/N02 detection system and garage door motion sensors after installation.

### **ECM-10: \_Replace Steam Traps**

Ameresco shall replace the steam traps.

- Replace existing steam traps at steam coils: ■ - Quantity of (4) ceiling-hung heating units
  - Quantity of six (6) unit heaters
  - Quantity of one (1) steam to hot water heat exchanger •
  - Quantity of one (1) multi-zone air handler
- New traps to match size and style of existing traps

### **Legler Library**

### **ECM-3: Weatherize Building Envelope**

Ameresco shall weatherize the building envelope as noted.

- Nine (9) exterior doors will be weather-stripped with formed and angled sponge wrapped in vinyl.

#### **ECW1-4: Refurbish Temperature Control and HVAC Systems**

Ameresco shall refurbish and retrofit the existing temperature control systems. In conjunction with the new controls, Ameresco shall refurbish the existing HVAC equipment as noted below.

- Demo existing head end control boards
- Furnish and install new Direct Digital Control system to control existing HVAC equipment.
- Program sequences of operation to allow set point control, setback and scheduling.
- New DDC system will speak Bacnet or Lonworks.
- Demo existing control valve actuators. Furnish and install new control valve actuators. Calibrate actuator signal to control valve position:
  - One (1) AHU chilled water valve
  - One (1) AHU heating hot water valve
  - Two (2) 2-pipe change-over diverting valves
- Test and refurbish operation of existing temperature sensors, thermostats and actuators, and re-calibrate. Replace end devices as required.
- Wire low voltage end devices such as temperature sensors, actuators to controllers.
- Provide power for controls.
- System to be installed per PBC Temperature Control Specification.
- Test and refurbish operation of temperature control and safeties on hot water boilers.
- Test and refurbish operation of cooling temperature control and safeties on water-cooled chiller.
- Test and refurbish operation of condenser water temperature control and safeties on cooling tower.
- Stroke existing dampers open and closed to test operation. Adjust position, reconnect linkages, replace edge seals, and lubricate rods.
- Stroke existing control valves fully open and fully closed to verify operation.
- Test and refurbish operation of all fan and pump starters.
- Chemically treat and clean cooling tower fill. Clean basin and seal any leaks.

Equipment included in scope:

- One (1) air handling unit:
  - Chilled water cooling coil with 3-way control valve
  - Hot water heating coil with 3-way control valve
  - Chilled water booster pump
  - OA, RA, and EA dampers
  - Exhaust / return fan
- One boiler controller for seven (7) modular hot water boilers
- Two (2) combustion air dampers
- Two (2) heating hot water pumps

A-5

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- One (1) water-cooled chiller
- « One (1) cooling tower fan status
- Two (2) chilled water pumps
- Two (2) condenser water pumps
- Two (2) refrigeration ventilation dampers
- One (1) chilled / hot water pump serving 2-pipe change-over fan coils
- Two (2) 2-pipe change-over diverting valves
- Ten (10) space temperature sensors for averaging

## **SOUTH CHICAGO LIBRARY**

### **ECJW-2: Weatherize Building Envelope**

Ameresco shall weatherize the building envelope as noted.

- Four (4) exterior doors will be weather-stripped with formed and angled sponge wrapped in vinyl.
- Approximately one hundred four (104) linear feet of exterior window framing will be caulked.

### **ECM-3: Upgrade Controls to Direct Digital Controls**

Ameresco shall furnish and install a new Direct Digital Control system. In conjunction with the new controls, Ameresco shall refurbish the existing HVAC equipment as noted in the work scope.

- Disconnect and abandon existing controls in place. Cap pneumatic lines. Demo space thermostats.
- Furnish and install new Direct Digital Control system to control existing HVAC equipment.
- Program sequences of operation to allow set point control, setback and scheduling.
- New DDC system will speak Bacnet or Lonworks.
- Integrate new DDC system into Global Building Management System.
- Furnish and install new end devices.
- Furnish and install new control valves.
- Wire low voltage end devices such as temperature sensors, actuators to controllers.
- Provide power for controls.
- Furnish and install new boiler 3-way valve. Program hot water temperature reset sequence into new DDC controls. Reset sequence to be used for night setback.
- Test and refurbish cooling temperature control and safeties of existing condensing unit
- Test and refurbish heating temperature control and safeties of existing boilers
- Stroke all dampers fully open and closed to confirm operation. Lubricate damper rods, adjust position, re-connect disconnected linkages, and replace edge seals.

A-6

- Test and refurbish operation of all fan and pump starters.
- Re-connect all multi-zone, outside, return and exhaust air damper linkages to actuators.
- Replace one (1) bad motor on cabinet unit heater.
- Controls to comply with PBC Temperature Control Specification.

Equipment included in DDC scope:

- Multi-zone AHU
  - DX cooling
  - Hot water heating
  - Eight (8) zone dampers
- Outside, exhaust, and return air dampers
- One (1) return / exhaust fan
- One (1) condensing unit with (2) stages
  - Three (3) hot water boilers
- Two (2) primary hot water pumps
- Two (2) secondary hot water pumps
- One (1) 3-way valve for hot water temperature control

## **BESSIE COLEMAN LIBRARY**

### **ECM-2: Weatherize Building Envelope**

Ameresco shall weatherize the building envelope as noted.

- Three (3) exterior doors will be weather-stripped with formed and angled sponge wrapped in vinyl.

### **ECM-4: Refurbish existing HVAC system and DDC control system.**

Ameresco shall replace the existing Robert Shaw front end DDC with a new front end system, including new control boards and programming logic. The existing end devices will be re-used where possible, and replaced where required. In conjunction with the new controls, Ameresco shall refurbish (as noted below) the existing HVAC equipment. .

- Disconnect and demo existing front end DDC controls, including logic boards and panels. Demo space thermostats.
- Furnish and install a new DDC front end control system to control existing HVAC equipment.
- Furnish and install new logic boards large enough to accommodate all points
- Program sequences of operation to allow set point control, setback and scheduling.
- New DDC system must speak Bacnet or Lonworks.
- Test and refurbish operation of control end devices such as actuators, sensors, relays and space thermostats.
- Stroke control valves fully open and closed to test operation.
- Wire end devices to controllers. Provide power for end devices and controllers.

- Test and refurbish operation of two (2) hot water boilers temperature control and safeties.
- Test and refurbish operation of two (2) condensing units' temperature control and safeties.
- « Stroke all dampers fully open and closed to confirm operation. Lubricate damper rods, adjust position, re-connect disconnected linkages, and replace edge seals.
- Test and refurbish operation of all fan and pump starters.
- New controls to comply with PBC Temperature Control Specification.

Equipment in DDC scope:

- Two (2) single-zone AHUs
  - DX cooling
  - Hot water heating
  - Outside, exhaust and return air dampers
- Two (2) condensing units with two (2) stages each
- Two (2) hot water boilers
- Two (2) primary hot water pumps
- Two (2) secondary Hot water pumps

#### **ECM-6: Repair and Seal Air Handler**

Ameresco shall repair and seal the air handlers to reduce the leakage.

- Repair and seal air handlers to prevent leakage.
- Furnish and install sheet metal pieces and caulk to close gaps, holes and openings in exterior casing, and around coils and dampers.

#### **ECM-8: Install Hot Water Chemical Treatment System**

Ameresco shall furnish and install a new chemical treatment system for the hot water loop.

- Furnish and install new chemical treatment system for hot water loop.
- Provide one (1) years' worth of chemicals.

#### **Woodson Regional Library ECM-1: Interior**

##### **Lighting Upgrades**

Ameresco shall upgrade the interior lighting system. Existing fixtures will be re-lamped, retrofitted, or replaced as noted in schedule. Occupancy controls will be added in spaces with variable occupancy.

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Exit sign: 2-lamp, 9 W, fluorescent

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Retrofit exit  
(LED), app

A-8

T-8 fluorescent fixture with electronic ballast: 4- foot, 1-lamp 32 W	90	Re-lamp existing fixture with 25 W lamps	90
T-8 fluorescent fixture with electronic ballast: 4- foot, 2-lamp 32 W	1012	Re-lamp existing fixture with 25 W lamps	1012
T-8 fluorescent fixture with electronic ballast: 4- foot, 3-lamp 32 W	133	Re-lamp existing fixture with 25 W lamps	133
T-8 fluorescent fixture with electronic ballast: 4- foot, 4-lamp 32 W	9	Re-lamp existing fixture with 25 W lamps	9
T-12 fluorescent fixture with magnetic ballast: 4 foot, 1-lamp, 40 W		Retrofit to T-8 fluorescent fixture with electronic ballast: 4-foot, 1-lamp, 25 W.■	
T-12 fluorescent fixture with magnetic ballast: 4 foot, 2-lamp, 40 W		Retrofit to T-8 fluorescent fixture with electronic ballast: 4-foot, 2-lamp, 25 W with reflectors	
T-12 fluorescent fixture with magnetic ballast: 4 foot, 4-lamp, 40 W		Retrofit to T-8 fluorescent fixture with electronic ballast: 4-foot, 2-lamp, 32 W with reflectors	
T-12 fluorescent fixture with magnetic ballast: 8 foot, 2-lamp, 96 W		Retrofit to T-8 fluorescent fixture with electronic ballast: 8-foot, 2-lamp, 32 W with reflectors	
Incandescent lamps: 150 W	4	Re-lamp to compact fluorescent lamps: 23 W	4
Incandescent lamps: 150 W	65	Re-lamp to Light-Emitting Diode (LED) with parabolic aluminized reflector: 20 W	65
Incandescent halogen lamps with parabolic aluminized reflectors: 75 W	54	Re-lamp to Light-Emitting Diode (LED): 16 W	54
Occupancy sensors in spaces with variable occupancy, such as the auditorium, wall closets			2 spaces
Replace existing 24 hour lighting control panels with new panels to limit operating fixtures		2 new panels, controlling 650 hours to oc	

## ECM-7: Repair and Seal Air Handlers

Ameresco shall repair and seal the two (2) multi-zone and one (1) single zone air handling units.

- Repair and seal two (2) multi-zone and one (1) single zone air handling units to prevent leakage.
- Furnish and install sheet metal pieces and caulk to close gaps, holes, and openings in exterior casing, and around coils and dampers.
- Replace flex connectors at duct connections to air handlers.

## 6<sup>th</sup> District Chicago Police Station

### ECM-1: Interior Lighting Upgrade Scope of Work \_

Ameresco shall upgrade the interior lighting system. Existing fixtures will be re-lamped, retrofitted, or replaced as noted in lighting schedule. Occupancy controls will be added in spaces with variable occupancy.

Exit sign: 2-lamp, 9 W, fluorescent	53	Retrofit exit sign to 4 W, Light-Emitting Diode (LED), approved for use in the city of Chicago	53
T-8 fluorescent fixture with electronic ballast: 2-foot, 3-lamp PLL40 40 W	105	Re-lamp existing fixture with PLL40 25 W lamps	105
T-8 fluorescent fixture with electronic ballast: 4-foot, 1-lamp 32 W	38	Re-lamp existing fixture with 25 W lamps	38

T-8 fluorescent fixture with electronic ballast: 4-foot, 2-lamp 32 W	260	Re-lamp existing fixture with 25 W lamps	260
T-8 fluorescent fixture with electronic ballast: 4-foot, 3-lamp 32 W	108	Re-lamp existing fixture with 25 W lamps	108
Incandescent lamps: 20 w	9	Re-lamp to Light-Emitting Diode (LED) (1383 Replacement: 2 W	9

Occupancy sensors in spaces with variable occupancy, such as restrooms, locker rooms, storage closets, 42 spaces administrative spaces.

## **Pullman Library**

### **ECM-3: Weatherize Building Envelope**

Ameresco shall weatherize the building envelope as noted.

- Three (3) exterior doors that will be weather-stripped with formed and angled sponge wrapped in vinyl.

### **ECM-4: Upgrade Controls to Direct Digital Controls/ Refurbish Existing HVAC Systems**

Ameresco shall furnish and install a new Direct Digital Control system. In conjunction with the new controls, Ameresco shall refurbish the existing HVAC equipment (as noted below).

- Disconnect and abandon existing controls in place. Demo space thermostats.
- Furnish and install new Direct Digital Control system to control existing HVAC equipment.
- Program sequences of operation to allow set point control, setback and scheduling.
- Program multi-zone, hot deck and cold deck ambient reset and lockout sequence.
- New DDC system will speak Bacnet or Lonworks.
- Integrate new DDC system into Global Building Management System
- Furnish and install new control valves
- Wire low voltage end devices such as temperature sensors, actuators to controllers, etc.
- Provide power for controls.
- Test and refurbish operation of hot water boiler temperature control and safeties.
- Test and refurbish operation of cooling system temperature control and safeties.
- Test and refurbish operation of all fan and pump starters.
- Stroke all dampers fully open and closed to confirm operation. Lubricate damper rods, adjust position, re-connect disconnected linkages, and replace edge seals.

## **A-10**

- Controls to comply with PBC Temperature Control Specification

Equipment in scope:

- Two (2) multi-zone AHUs, each with:
  - DX Cooling Coil
  - Hot Water Heating Coil with face/bypass damper
  - Outside, Return and Exhaust air dampers
- Five (5) zones



- Two (2) return / exhaust fans
- Two (2) indoor compressors
- Two (2) outdoor condensing units
- Two (2) hot water boilers with three (3) sections each
- Two (2) hot water distribution pumps

### Harold Washington Library ECM-1:

#### Interior Lighting Upgrades

Ameresco shall upgrade the interior lighting system. Existing fixtures will be re-lamped, retrofitted, or replaced as noted in lighting schedule. Occupancy controls will be added in spaces with variable occupancy.

			224
T-8 fluorescent fixture with electronic ballast: 4- 224 foot, 1-lamp 32 W	Re-lamp existing fixture with 25 W lamps		
T-8 fluorescent fixture with electronic ballast: 4- 220 foot, 2-lamp 32 W	Re-lamp existing fixture with 25 W lamps		220
T-8 fluorescent fixture with electronic ballast: 4- 1007 foot, 2-lamp 32 W	Re-lamp existing fixture with 25 W lamps		1007
T-8 fluorescent fixture with electronic ballast: 4- 74 foot, 3-lamp 32 W	Re-lamp existing fixture with 25 W lamps		74
T-8 fluorescent fixture with electronic ballast: 4- 548 foot, 4-lamp 32 W	Re-lamp existing fixture with 25 W lamps		548
T-12 fluorescent fixture with magnetic ballast: 3-1 foot, 2-lamp, 30 W	Retrofit to T-8 fluorescent fixture with electronic ballast: 3-foot, 2-lamp, 25 W.		1
T-12 fluorescent fixture with magnetic ballast: 4-1 foot, 2-lamp, 40 W	Retrofit to T-8 fluorescent fixture with electronic ballast: 4-foot, 2-lamp, 25 W with reflectors		1
High-Intensity Discharge (HID), Metal halide: 564 175 W	Re-lamp to High-Intensity Discharge (HID), Ceramic Discharge Metal halide (COM): 145 W		564
High-Intensity Discharge (HID), Metal halide: 3710 250 W	Re-lamp to High-Intensity Discharge (HID), Ceramic Discharge Metal halide (CDM): 205 W		3710
High-Intensity Discharge (HID), Metal halide: 9 400 W	Re-lamp to High-Intensity Discharge (HID), Ceramic Discharge Metal halide (CDM): 330 W		9
Incandescent lamps: 150 W	Re-lamp to compact fluorescent R30: 16 W		1
Incandescent lamps : 150 W	Re-lamp to Light-Emitting Diode (LED) with parabolic aluminized reflector: 16 W		6

### A-11

Incandescent lamps : 150 W	22	Re-lamp to Light-Emitting Diode (LED) with parabolic aluminized reflector: 20 W	22
Incandescent MR16 lamps: 50 W	353	Re-lamp to Light-Emitting Diode (LED) MR16: 9 W	353
Incandescent lamps: 60 W	21	Re-lamp to compact fluorescent 13 W	21
Incandescent R30 lamps: 65 W	11	Re-lamp to Light-Emitting Diode (LED) R30 with parabolic aluminized reflector: 16 W	11
Incandescent halogen lamps with parabolic aluminized reflector: 90 W	30	Re-lamp to Light-Emitting Diode (LED) with parabolic aluminized reflector: 20 W	30

### ECM-2: Weatherize Building Envelope

Ameresco shall weatherize the building envelope as noted. • Twenty-eight (28) exterior doors will be weather-stripped with formed and angled sponge wrapped in vinyl.

**ECM-4: Retro-Commission existing DDC control system.**

Ameresco shall retro-commission the Direct Digital Control system.

- Test operation of existing DDC control system points and operation in conjunction with testing of field devices.
- Testing will be done concurrently at the building automation system (BAS) computer interface, and at the field devices themselves.
- Program existing DDC control system as required to allow scheduling and setback of HVAC system components.
- Existing HVAC equipment and points controlled by the existing DDC system will be retro-commissioned, including:
  - Chilled water system: Chillers, pumps, cooling towers, pumps, and plate heat exchanger
  - Air handling system: Air handlers including supply and return fans, dampers, coil control valves, fan starters, and inlet vanes.
  - VAV terminal units.

**South Shore Library**

**ECMs-3&4: Upgrade Controls to Direct Digital Controls/Refurbish HVAC**

Ameresco shall furnish and install a new Direct Digital Control system.

- Disconnect and abandon existing controls in place. Demo space thermostats. Cap pneumatic lines.
- Furnish and install new Direct Digital Control system to control existing HVAC equipment.
- Program sequences of operation to allow set point control, setback and scheduling.
  - Program multi-zone hot deck and cold deck ambient reset and lockout sequence, o New DDC system will speak Bacnet or Lonworks.
  - o Integrate new DDC system into Global Building Management System
- Furnish, install, and wire low voltage end devices such as temperature sensors, actuators to controllers.

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- Provide power for end devices.
- Furnish and install new wireless thermostats for the multi-zone and single zone air handlers, in locations of existing thermostats. Include routers and repeaters for communication. Integrate wireless thermostats to BMS and GBMS.
- Test and refurbish operation of hot water boiler system temperature control and safeties,
- Test and refurbish operation of temperature control and safeties on existing condensing units.
- Stroke all dampers fully open and closed to confirm operation. Lubricate damper rods, adjust position, re-connect disconnected linkages, and replace edge seals.
- Test and refurbish operation of multi-zone and single zone air handler temperature control and safeties.
- Test and refurbish operation of all fan and pump starters.

- Controls to comply with PBC Temperature Control Specification. Equipment in scope:
- (1) Multi-zone Air Handler with:
  - DX Cooling Coil
  - Hot water Heating Coil
  - Outside, Return and Exhaust air dampers
  - Five (5) zone dampers
- (1) Single-zone Air Handler with:
  - DX Cooling Coil
  - Hot water Heating Coil
  - Outside, Return and Exhaust air dampers
- (2) Return/Exhaust Fans
- (2) Condensing units
- (3) Heating hot water boilers with circulation pumps
- (2) Secondary hot water distribution pumps

#### **Martin Luther King, Jr. Branch Library**

##### **ECM-5: Upgrade Controls to Direct Digital Controls/Refurbish HVAC**

Ameresco shall furnish and install a new Direct Digital Control system . In conjunction with the new controls, Ameresco shall refurbish the existing HVAC equipment.

- » Disconnect and abandon existing controls in place. Cap pneumatic lines. Demo space thermostats.
- Furnish and install new Direct Digital Control system to control existing HVAC equipment.
- Program sequences of operation to allow set point control, setback and scheduling.
- New DDC system must speak Bacnet or Lonworks.
- Integrate new DDC system into Global Building Management System
- Furnish and install new end devices.

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- o Provide power for controls.
- Wire low voltage end devices such as temperature sensors, actuators to controllers.
- Test and refurbish cooling temperature control and safeties of existing compressors and condensers
- Test and refurbish heating temperature control and safeties of existing boilers.
- Test and refurbish operation of all fan and pump starters.
- Stroke all dampers fully open and closed to confirm operation. Lubricate damper rods, adjust position, re-connect disconnected linkages, and replace edge seals.
- Controls to comply with PBC Temperature Control Specification. Equipment in scope
- Three (3) heating hot water boilers
- Two (2) heating hot water circulation pumps

- One (1) multi-zone air handling unit
  - DX Cooling
  - Hot Water Heating
  - Six (6) Zone Dampers
  - Outside, return, and exhaust air dampers
- One (1) air-cooled condensing unit
  
- One (1) exhaust / return fan Clearing

## Library

### ECM-3: Weatherize Building Envelope

Ameresco shall weatherize the building envelope as noted.

- Seven (7) exterior doors will be weather-stripped with formed and angled sponge wrapped in vinyl.
- One (1) interior door will be weather-stripped with formed and angled sponge wrapped in vinyl.
- Approximately one hundred forty eight (148) linear feet of exterior window framing will be caulked.

### ECM-5: Upgrade Controls to Direct Digital Controls/Refurbish HVAC

Ameresco shall furnish and install a new Direct Digital Control system. In conjunction with the new controls, Ameresco shall refurbish the existing HVAC equipment as noted below.

- Disconnect and abandon existing controls in place. Demo space stats.
- Furnish and install new Direct Digital Control system to control existing HVAC equipment.
  - « Program sequences of operation to allow set point control, setback and scheduling.
- Program multi-zone hot deck and cold deck ambient reset and lockout sequence.
- New DDC system must speak Bacnet or Lonworks.
- Integrate new DDC system into Global Building Management System
- Furnish and install new control valve actuators

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- Furnish and install new end devices.
- Wire low voltage end devices such as temperature sensors, actuators to controllers. ? Provide power for controls.
  - o Test and refurbish cooling temperature control and safeties of existing compressors and condenser
- Test and refurbish heating temperature control and safeties of existing boilers
- Stroke all dampers fully open and closed to confirm operation. Lubricate damper rods, adjust position, re-connect disconnected linkages, and replace edge seals.
- Stroke all control valves fully open and closed to confirm operation.
- Test and refurbish operation of all fan and pump starters
- Controls to comply with PBC Temperature Control Specification. Equipment in

DDC scope:

- One (1) multi-zone AHU
  - DX cooling
  - Hot water heating
  - Six (6) zone dampers
  - Outside, exhaust, and return air dampers
- One (1) return / exhaust fan
- Two (2) indoor compressors
- One (1) outdoor air-cooled condenser
- Four (4) hot water boilers
- Four (4) primary hot water pumps
- Two (2) AHU hot water pumps
- <» Two (2) baseboard hot water pumps

### **Wrightwood-Ashburn Branch Library**

#### **ECM-4^ Upgrade Controls to Direct Digital Controls/Refurbish HVAC**

Ameresco shall furnish and install a new Direct Digital Control system. In conjunction with the new controls, Ameresco shall refurbish the existing HVAC equipment.

- Disconnect and abandon existing controls in place. Demo space thermostats.
- Furnish and install new Direct Digital Control system to control existing HVAC equipment.
- Program sequences of operation to allow set point control, setback and scheduling.
- Program multi-zone hot deck and cold deck ambient reset and lockout sequence.
- New DDC system will speak Bacnet or Lonworks.
- Integrate new DDC system into Global Building Management System
- Furnish and install new control valves.
- » Furnish and install new end devices.
- Wire low voltage end devices such as temperature sensors, actuators to controllers.
- Provide power for controls.

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- Test and refurbish cooling temperature control and safeties of existing compressors and condenser
- Test and refurbish heating temperature control and safeties of existing boilers
- » Stroke all dampers fully open and closed to confirm operation. Lubricate damper rods, adjust position, re-connect disconnected linkages, and replace edge seals.
- Test and refurbish operation of all fan and pump starters.
- Controls to comply with PBC Temperature Control Specification.

Equipment in scope:

- One (1) Multi-zone Air Handler with:

- DX cooling
- Hot water heating
- Outside, exhaust and return air dampers
- Seven (7) zones
- One (1) exhaust / return fan
- One (1) air-cooled condensing unit with two (2) circuits
- Two (2) heating hot water boilers
- Two (2) hot water distribution pumps
- One (1) 3-way hot water temperature reset control valve

### McKinley Park Library

#### ECMs-3&4: Upgrade Controls to Direct Digital Controls/Refurbish HVAC

Ameresco shall furnish and install a new Direct Digital Control system. In conjunction with the new controls, Ameresco shall refurbish the existing HVAC equipment as noted below.

- Disconnect and abandon existing controls in place. Demo space thermostats.
- Furnish and install new Direct Digital Control system to control existing HVAC equipment.
- Program sequences of operation to allow set point control, setback and scheduling.
- New DDC system will speak Bacnet or Lonworks.
- Integrate new DDC system into Global Building Management System
  - o Furnish and install new control valves.
  - o Furnish and install new end devices.
  - Wire low voltage end devices such as temperature sensors, actuators to controllers.
  - Provide power for controls.
- « Test and refurbish cooling temperature control and safeties of existing compressors and condenser
- Test and refurbish heating temperature control and safeties of existing boilers
- Stroke all dampers fully open and closed to confirm operation. Lubricate damper rods, adjust position, re-connect disconnected linkages, and replace edge seals.
- o Test and refurbish operation of all fan and pump starters
- Controls to comply with PBC Temperature Control Specification. Equipment in scope:

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- One (1) multi-zone air Handling unit with:
  - DX cooling
  - Hot water heating
  - Outside, exhaust and return air dampers
  - Six (6) zones
- o One (1) single-zone air handling unit with:
  - DX cooling

- Hot water heating
- Outside, exhaust, and return air dampers
- Two (2) exhaust / return fans
- Two (2) indoor compressors
- Two (2) air-cooled condensers
- Two (2) heating hot water boilers, with three (3) sections each
- Two (2) hot water distribution pumps

### **West Belmont Library**

#### **ECWI-2: Weatherize Building Envelope**

Ameresco shall weatherize the building envelope as noted.

- Four (4) exterior doors will be weather-stripped with formed and angled sponge wrapped in vinyl.

#### **ECM-4: Upgrade Controls to Direct Digital Controls/Refurbish HVAC**

Ameresco shall furnish and install a new Direct Digital Control system. In conjunction with the new controls, Ameresco shall refurbish the existing HVAC equipment as noted below.

- Disconnect and abandon existing controls in place. Demo space thermostats.
- Furnish and install new Direct Digital Control system to control existing HVAC equipment.
- Program sequences of operation to allow set point control, setback and scheduling.
- New DDC system will speak Bacnet or Lonworks.
- Integrate new DDC system into Global Building Management System
- Provide power for controls.
- Test and refurbish cooling temperature control and safeties of existing rooftop unit.
- Test and refurbish heating temperature control and safeties of existing rooftop unit.
- Stroke all dampers fully open and closed to confirm operation. Lubricate damper rods, adjust position, re-connect disconnected linkages, and replace edge seals.
- Test and refurbish operation of all fan starters
- Controls to comply with PBC Temperature Control Specification. Equipment in scope.
  - One (1) packaged DX / gas heat rooftop unit with four (4) stages and an exhaust fan

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### **Northtown Library**

#### **ECM 4: Upgrade Controls to Direct Digital Controls**

Ameresco shall furnish and install a new Direct Digital Control system. In conjunction with the new controls, Ameresco shall refurbish the existing HVAC equipment as noted below, o Disconnect and abandon existing electro-mechanical and pneumatic controls in place. Demo space pneumatic stats.

- Furnish and install new Direct Digital Control system to control existing HVAC equipment
- Program sequences of operation to allow set point control, setback and scheduling.
- New DDC system will speak Bacnet or Lonworks.
- Integrate new DDC system into Global Building Management System
- Furnish and install new end devices and control valves.
- Wire low voltage end devices such as temperature sensors, actuators to controllers.
- Provide power for controls.
- Furnish and install new wireless thermostats to control (5) multi-zones air handler zones. Furnish and install repeaters to allow thermostats to communicate with the new DDC system.
- Test and refurbish cooling temperature control and safeties of existing condensing unit
- Test and refurbish heating temperature control and safeties of existing boilers.
- Test and refurbish operation of all fan and pump starters.
- Stroke all dampers fully open and closed to confirm operation. Lubricate damper rods, adjust position, re-connect disconnected linkages, and replace edge seals.
- Controls to comply with PBC Temperature Control Specification Equipment in

scope:

- One (1) multi-zone air Handling unit with:
  - DX cooling
  - Hot water heating
  - Outside, return, and exhaust air dampers
  - Five (5) zones
- Three (3) heating hot water boilers with circulation pumps
- Two (2) secondary hot water distribution pumps
- One (1) condensing unit .

### **George Hall Library**

#### **ECM-3: Weatherize Building Envelope**

Ameresco shall weatherize the building envelope as noted.

- Four (4) exterior doors will be weather-stripped with formed and angled sponge wrapped in vinyl.

#### **ECM-5: Refurbish HVAC and Pneumatic Control Systems**

## **A-18**

Ameresco shall refurbish the existing pneumatic control system. Time clocks will be installed for scheduling of the air handler and steam boilers. In conjunction with, the new controls, Ameresco shall refurbish the existing HVAC equipment as noted below.

- Test and refurbish operation of steam boiler temperature control and safeties.



- Test and refurbish operation of condensing unit temperature control and safeties.
- Test and refurbish operation of steam condensate collection canisters and pumps.
- Test and refurbish operation of steam to hot water heat exchanger
- Stroke steam control valves on air handler full open and full closed to verify operation.
- Stroke 1/3 and 2/3 hot water control valves on steam to hot water heat exchanger full open and fully closed to verify operation
- Stroke all existing dampers open and closed to test operation. Adjust position, reconnect linkages, replace edge seals and lubricate rods.
- Test and refurbish operation of multi-zone air handler temperature control and safeties.
- Test and refurbish operation of pneumatic air-compressor.
- Test and refurbish operation of all fan and pump starters.
- Test and refurbish operation of pneumatic sensors, thermostats and actuators, and re-calibrate.
- Flush and clean existing pneumatic lines and clean existing air dryer. Re-connect dis-connected pneumatic lines.
- Furnish and install new time clock. Connect time clock to refurbished pneumatic controls. Program time clock and control panel to allow scheduling and setback of air handler and steam boiler system.

#### Equipment in scope

- One (1) multi-zone air Handling unit:
  - Nine (9) zones
  - Hot water hot deck
  - DX cooling cold deck
  - OA, RA, and. EA dampers
  - Exhaust / return fan
- Two (2) steam boilers
- One (1) boiler feed unit
- One (1) steam to hot water heat exchanger
- Two (2) hot water pumps
- One (1) DX condensing units with two (2) stages
- Two (2) condensate return reservoirs, each with two (2) pumps

#### ECM-6: Replace Steam Traps

Ameresco shall replace the steam traps.

- Replace existing steam traps at the following locations:
  - Steam to hot water heat exchanger

A-19

- Two (2) steam radiators at grade level in the entry vestibule.
- New traps to match size and style of existing traps.

#### ECM-7: Insulate Steam to Hot Water Heat Exchanger

Ameresco shall insulate the un-insulated steam piping at the Austin Library.

- Insulate existing un-insulated steam to hot water heat exchanger in the boiler room. Pipe insulation to be 3" with All Surface Jacket (ASJ) on straight runs, and PVC jacket at elbows.

### **Walker Branch Library**

#### **ECM-3; Weatherize Building Envelope**

Ameresco shall weatherize the building envelope as noted. Specific areas to be weatherized are:

- Five (5) exterior doors will be weather-stripped with formed and angled sponge wrapped in vinyl.
  - » One (1) interior door will be weather-stripped with formed and angled sponge wrapped in vinyl.
- Three (3) pipe penetrations will be sealed with one or two part foam.

#### **ECM-4: Upgrade Controls to Direct Digital Controls/Refurbish HVAC**

Ameresco shall replace the existing Robert Shaw DDC front-end system and Weil McClain boiler controls, program set point control, scheduling and setback. In conjunction with the new controls, Ameresco shall refurbish the existing HVAC equipment as noted below.

- Demo existing DDC control panels.
- Furnish and install new DDC control panels.
- Integrate new DDC system into Global Building Management System
- Program sequences of operation to allow set point control, setback and scheduling.
- Program occupied / unoccupied modes of operation and optimal start/stop.
- Furnish and install new end devices.
- Wire end devices to new DDC control panels.
- Provide power for controls
- Test and refurbish cooling temperature control and safeties of existing condensing unit.
- Test and refurbish heating temperature control and safeties of existing boilers
- Stroke all dampers fully open and closed to confirm operation. Lubricate damper rods, adjust position, re-connect disconnected linkages, and replace edge seals.
- Stroke control valves open and closed and restore operation, o Test and refurbish operation of all fan and pump starters.
- Controls to comply with PBC Temperature Control Specification. Equipment in scope:
  - One (1) multi-zone AHU

A-20

- DX Cooling
  - Hot water heating
- Outside, return and exhaust air dampers
- Nine (9) zones
- One (1)Return/Exhaust fan
- One (1) Condensing unit with (2) stages

- Four (4) Heating hot water boilers
- Two (2) Boiler circulation pumps
- One (1) Hot water distribution pumps
- One (1) 3-way boiler control valve

### **Thurgood Marshall Library**

#### **ECM-3: Weatherize Buildmg Envelope**

Ameresco shall weatherize the building envelope as noted.

- Six (6) exterior doors will be weather-stripped with formed and angled sponge wrapped in vinyl.

#### **ECM-4: Upgrade Controls to Direct Digital Controls/Refurbish HVAC**

Ameresco shall replace the existing Robert Shaw DDC front-end system boiler controls with a new DDC system, program set point control, scheduling and setback. In conjunction with the new controls, Ameresco shall refurbish the existing HVAC equipment as noted below.

- Demo existing DDC control panels.
- • Furnish and install new DDC control panels.
- Program sequences of operation to allow set point control, setback and scheduling.
- Integrate new DDC system into Global Building Management System
- Furnish and install new end devices and control valves
- Wire end devices to new DDC control panels.
- Provide power for controls
- Test and refurbish cooling temperature control and safeties of existing condensing unit.
- Test and refurbish heating temperature control and safeties of existing boilers
- Stroke all dampers fully open and closed to confirm operation. Lubricate damper rods, adjust position, re-connect disconnected linkages, and replace edge seals.
- Stroke control valves open and closed and restore operation.
- Test and refurbish operation of all fan and pump starters.
- Controls to comply with PBC Temperature Control Specification

Equipment in scope:

- One (1) Multi-zone AHU
  - DX Cooling
  - Hot water heating
    - Outside, return and exhaust air dampers
- Seven (7) zones

A-21

- One (1) Return/Exhaust fan
- One (1) Condensing unit
- Four (4) Heating hot water boilers
- Two (2) Hot water circulation pumps
- One (1) Hot water distribution pumps

- One (1) 3-way boiler control valve

### Lincoln Belmont Library

#### ECM-1: Interior Lighting Upgrades

Ameresco shall upgrade the interior lighting system. Existing fixtures will be re-lamped, retro-fitted, or replaced as noted in lighting schedule. Occupancy controls will be added in spaces with variable occupancy..

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T-8 fluorescent fixture with electronic ballast: 193 4-foot, 1-lamp 32 W	Re-lamp existing fixture with 25 W lamps	193
T-8 fluorescent fixture with electronic ballast: 22 4-foot, 2-lamp 32 W	Re-lamp existing fixture with 25 W lamps	22
T-8 fluorescent fixture with electronic ballast: 124 4-foot, 3-lamp 32 W	Re-lamp existing fixture with 25 W lamps	124
T-8 fluorescent fixture with electronic ballast: 44 4-foot, 4-lamp 32 W	Re-lamp existing fixture with 25 W lamps	44
T-12 fluorescent fixture with magnetic ballast: 1 2-foot, 2-lamp, 40 W	Retrofit to T-8 fluorescent fixture with electronic ballast: 2- foot, 2-lamp, 17 W with reflector	1
Incandescent halogen with parabolic aluminized reflector: 90 W	Retrofit with light- emitting diode (LED) with parabolic aluminized reflector: 20 W	20
Occupancy controls in spaces with variable occupancy, such as the main racks and back areas		2 s p a c e s

#### ECM-3: Weatherize Building Envelope

Ameresco shall weatherize the building envelope as noted.

- Five (5) exterior doors will be weather-stripped with formed and angled sponge wrapped in vinyl.

#### ECM-4: Refurbish and Integrate Existing Direct Digital Controls and Refurbish Existing HVAC Systems

Ameresco shall furnish and install a gateway to integrate the existing Siemens Apogee DDC system into the PBC global building management system. Ameresco will program scheduling and setback of the equipment. In conjunction with the new controls, Ameresco shall refurbish the existing HVAC equipment as noted below.

- Furnish and install a gateway to integrate the existing Siemens Apogee DDC system into Global Building Management System
- Program sequences of operation to allow set point control, setback and scheduling.
- Controls to comply with PBC Temperature Control Specification.

#### A-22

- Test and refurbish end devices.
- Test and refurbish cooling temperature control and safeties of existing condensing unit.
- Test and refurbish heating temperature control and safeties of existing boilers
- Stroke all dampers fully open and closed to confirm operation. Lubricate damper rods, adjust position, re-connect disconnected linkages, and replace edge seals.
- Test and refurbish operation of all fan and pump starters Equipment in

scope:

- One (1) Multi-zone AHU
  - DX Cooling
  - Hot water heating
  - Outside, return and exhaust air dampers
  - Seven(7)zones
- One (1) Return/Exhaust fan
- One (1) Condensing unit with Two (2) stages
- Four (4) Heating hot water boilers
- Two (2) Hot water distribution pumps

#### Near North Branch Library

##### ECM-3: Weatherize Building Envelope

Ameresco shall weatherize the building envelope as noted.

- Five (5) exterior doors will be weather-stripped with formed and angled sponge wrapped in vinyl.
- Four (4) interior doors will be weather-stripped with formed and angled sponge wrapped in vinyl.

##### ECM-4: Refurbish and Integrate Existing Direct Digital Controls Refurbish Existing HVAC

Ameresco shall furnish and install a gateway to integrate the existing Carrier Comfort View Direct Digital Control into the PBC global building management system. Ameresco will program scheduling and setback of the equipment. In conjunction with the new controls, Ameresco shall refurbish the existing HVAC equipment as noted below.

- Furnish and install a gateway to integrate the existing Carrier Comfort View DDC system into Global Building Management System
- Program sequences of operation to allow set point control, setback and scheduling.
- Controls to comply with PBC Temperature Control Specification.
- Test and refurbish end devices.
- Test and refurbish cooling temperature control and safeties of existing condensing unit.

- Test and refurbish heating temperature control and safeties of existing boilers
- Stroke alt dampers fully open and closed to confirm operation. Lubricate damper rods, adjust position, re-connect disconnected linkages, and replace edge seals.

## A-23

- Test and refurbish operation of all fan and pump starters

Equipment in scope:

- One (1) Multi-zone AHU
  - DX Cooling
  - Hot water heating
- Outside, return and exhaust air dampers
- Seven (7) zones
- One (1) Return/Exhaust fan
- One (1) Condensing unit with two (2) stages
- Four (4) Heating hot water boilers
- Two (2) Hot water distribution pumps

## Police Training Academy

## ECM-1: Interior Lighting Upgrades

Ameresco shall upgrade the interior lighting system. Existing fixtures will be re-lamped, • retro-fitted, or replaced as noted in lighting schedule. Occupancy controls will be added in. spaces with variable occupancy.

Exit sign: 2-lamp, 9 W, fluorescent	12	Retrofit exit sign to 4 W, Light-Emitting Diode (LED), approved for use in the city of Chicago	12
T-8 fluorescent fixture with electronic ballast: 2-foot, 2-lamp 32 W, U-lamp	1151	Re-lamp existing fixture with 25 W U-lamps	1151
T-8 fluorescent fixture with electronic ballast: 4-foot, 1-lamp 32 W	9	Re-lamp existing fixture with 25 W lamps	9
T-8 fluorescent fixture with electronic ballast: 4-foot, 2-lamp 32 W	18	New fixture: T-8 fluorescent fixture with electronic ballast, 4-foot, 1-lamp: 32 W, vapor-tight	18
T-8 fluorescent fixture with electronic ballast: 4-foot, 2-lamp 32 W	394	Re-lamp existing fixture with 25 W lamps	394
T-8 fluorescent fixture with electronic ballast: 4-foot, 2-lamp 32 W	18	Retrofit to T-8 fluorescent fixture with electronic ballast: 4-foot, 1-lamp, 32 W with reflector	18
T-8 fluorescent fixture with electronic ballast: 4-foot, 4-lamp 32 W	150	Re-lamp existing fixture with 25 W lamps	150
T-12 fluorescent fixture with magnetic ballast: 2-foot, 1-lamp, 20 W	5	Retrofit to T-8 fluorescent fixture with electronic ballast: 2-foot, 1-lamp, 17 W	5
T-12 fluorescent fixture with magnetic ballast: 4-foot, 1-lamp, 40 W	2	Retrofit to T-8 fluorescent fixture with electronic ballast: 4-foot, 1-lamp, 25 W.	2
T-12 fluorescent fixture with magnetic ballast: 4-foot, 1-lamp, 40 W	16	Retrofit to T-8 fluorescent fixture with electronic ballast: 8-foot, 2-lamp, 25 W.	8
High-intensity discharge (HID) Mercury: 175 W	10	Retrofit to high-intensity discharge (HID) metal halide: 70 W	10
Incandescent quartz lamps: 300 W	16	Re-lamp to Light-Emitting Diode (LED) with parabolic aluminized reflector: 52 W	16

## A-24

Incandescent lamps: 40 W	20	Re-lamp to Light-Emitting Diode (LED) with parabolic aluminized reflector: 9 W, dimmable	20
Incandescent Lamp: 65 W R30	12	Re-lamp to compact fluorescent: 23W R40	12
Incandescent halogen lamps with parabolic aluminized reflector: 90 W	96	Re-lamp to Light-Emitting Diode (LED) with parabolic aluminized reflector: 20 W	96
Occupancy controls in spaces with variable occupancy, such as restrooms, conference rooms, locker rooms, 127 spaces some classrooms.			

### ECM-2: Weatherize Building Envelope

Ameresco shall weatherize the building envelope as noted.

- Sixteen (16) exterior doors will be weather-stripped with formed and angled sponge wrapped in vinyl.

### ECM-4: Upgrade Controls to Direct Digital Controls/Refurbish HVAC

Ameresco shall furnish and install a new Direct Digital Control system. In conjunction with the new controls, Ameresco shall refurbish the existing HVAC equipment.

- Disconnect and abandon existing controls in place. Cap pneumatic lines. Demo existing space thermostats.
- Furnish and install new Direct Digital Control system to control existing HVAC equipment.
- Program sequences of operation to allow set point control, setback and scheduling.
- Program multi-zone hot deck and cold deck ambient reset and simultaneous heating and cooling lockout sequence.
- New DDC system will speak Bacnet or Lonworks.
- Integrate new DDC system into Global Building Management System
- Furnish and install new control valves
- Furnish and install new end devices.
- Wire low voltage end devices such as temperature sensors, actuators to controllers.
- Provide power for controls
- Furnish and install new wireless thermostats for multi-zone dampers. Install router to allow integration of wireless thermostats into GBMS. Install repeaters to allow thermostats to communicate with routers.
- Controls to comply with PBC Temperature Control Specification
  - o Test and refurbish cooling temperature control and safeties of existing chillers
- Test and refurbish condenser water temperature control of existing cooling tower.
- Test and refurbish heating temperature control and safeties of existing boilers.
- Test and refurbish operation of all fan and pump starters, including condensate pumps.
- Stroke all dampers fully open and closed to confirm operation. Lubricate damper rods, adjust position, re-connect disconnected linkages, and replace edge seals.

Equipment in scope:

A-25

- Chiller Plant
  - Two (2) Centrifugal chillers
  - Two (2) Cooling towers
  - Three (3) Chilled water pumps
  - Three (3) Condenser water pumps
- Boiler Plant
  - Two (2) Steam boilers
  - One (1) Steam to hot water heat exchanger
  - Three (3) Hot water distribution pumps
  - Seven (7) Condensate return canisters
  - One (1) Boiler feed system
- Airside Systems
  - Five (5) Multi-zone AHUs
    - Chilled water cooling
    - Steam heating
    - Outside, return and exhaust air dampers
    - Seventy (70) zones
  - Four (4) Single-zone AHUs
    - « Chilled water cooling - one (1) unit only
    - Steam heating
    - » Outside, return and exhaust air dampers
  - Twenty five (25) Return/Exhaust and exhaust fans

**ECM-6: Refurbish Existing Cooling Tower**

Ameresco shall refurbish the existing cooling tower and fill.

- Clean and chemically treat existing cooling tower fill
- Clean and chemically treat cooling tower basins.
- Field verify additional installation requirements

**ECM-7: Replace Steam Traps**

Ameresco shall replace the steam traps.

- Replace existing steam traps at air handler steam coils and steam-to-hot-water heat exchanger, and the steam boilers.
- New traps to match size and style of existing traps.

**NPV Administrative/Mental Health Building C ECM-1:**

**Interior Lighting Upgrades**

Ameresco shall upgrade the interior lighting system. Existing fixtures will be re-lamped, retro-fitted, or replaced as noted in lighting schedule. Occupancy controls will be added in spaces with variable occupancy.



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Exit sign: 2-lamp, 9 W, fluorescent	3	Retrofit exit sign to 4 W, Light-Emitting Diode (LED), approved for use in the city of Chicago	3
Exit sign: 2-lamp, 20 W, incandescent	15	Retrofit exit sign to 4 w, Light-Emitting Diode (LED), approved for use in the city of Chicago	15
T-8 fluorescent fixture with electronic ballast: 4-foot, 1-lamp 32 W	46	Re-lamp existing fixture with 25 W lamps	6
T-8 fluorescent fixture with electronic ballast: 4-foot, 2-lamp 32 W	422	Re-lamp existing fixture with 25 W lamps	22
T-8 fluorescent fixture with electronic ballast: 4-foot, 3-lamp 32 W	182	Re-lamp existing fixture with 25 W lamps	182
T-12 fluorescent fixture with magnetic ballast: 4-foot, 1-lamp, 40 W	6	Retrofit to T-8 fluorescent fixture with electronic ballast: 4-foot, 1-lamp, 25 W.	6
T-12 fluorescent fixture with magnetic ballast: 4-foot, 2-lamp, 40 W	10	New fixture: T-8 fluorescent fixture with electronic ballast, 4-foot, 2-lamp: 32 W and 1-lamp: 17 W. The 32 W lamps will have occupancy sensors	10
T-12 fluorescent fixture with magnetic ballast: 4-foot, 2-lamp, 40 W	11	Retrofit to T-8 fluorescent fixture with electronic ballast: 4-foot, 2-lamp, 25 W.	11
T-8 fluorescent fixture with electronic ballast: 8-foot, 1-lamp 96 W	825	Retrofit to T-8 fluorescent fixture with electronic ballast: 8-foot, 2-lamp, 25 W with reflector	25
Incandescent lamps: 100 W	13	Re-lamp to compact fluorescent: 23 W	13
Incandescent lamps: 150 W	50	Re-lamp to compact fluorescent: 32 W	50
Incandescent lamps: 25 W	20	Re-lamp to light-emitting diode (LED): 3 W	20
Incandescent lamps: 30 W	8	Re-lamp to light-emitting diode (LED): 8 W	8
Incandescent lamps: 40 W	46	Re-lamp to cold cathode lamp: 8W	46
Occupancy controls in spaces with variable occupancy, such as restrooms, conference rooms, storage rooms, kitchens.			

**Mount Greenwood Library****ECM-3: Weatherize Building Envelope**

Ameresco shall weatherize the building envelope as noted.

- Four (4) exterior doors will be weather-stripped with formed and angled sponge wrapped in vinyl.
- Approximately three hundred seventy eight (378) linear feet of exterior window framing will be caulked.

**ECM-4: Upgrade Controls to Direct Digital Controls/Refurbish HVAC**

Ameresco shall furnish and install a new Direct Digital Control system. In conjunction with the new controls, Ameresco shall refurbish the existing HVAC equipment.

- Disconnect and abandon existing controls in place. Demo space stats.

## A-27

- Furnish and install new Direct Digital Control system to control existing HVAC equipment.

- Program sequences of operation to allow set point control, setback and scheduling.
- New DDC system will speak Bacnet or Lonworks.
- o Integrate new DDC system into Global Building Management System
- Furnish and install new end devices.
- Wire low voltage end devices such as temperature sensors, actuators to controllers.
- Provide power for controls.
- Controls to comply with PBC Temperature Control Specification.
- Test and refurbish cooling temperature control and safeties of existing condensing unit
- Test and refurbish heating temperature control and safeties of existing boilers
- Stroke all dampers fully open and closed to confirm operation. Lubricate damper rods, adjust position, re-connect disconnected linkages, and replace edge seals.
- Test and refurbish operation of all fan and pump starters
- Stroke control valves fully open and closed to confirm operation Equipment in scope:
- One (1) Multi-zone AHU
  - DX Cooling
  - Hot water heating
  - Outside, return and exhaust air dampers
  - Five (5) zones
- One (1) Return/Exhaust fan
- One (1) Condensing unit
- Two (2) Heating hot water boilers
  - o Two (2) Hot water distribution pumps

## Chicago Cultural Center

### ECM-1: Interior Lighting Upgrades

Ameresco shall upgrade the interior lighting system .Existing fixtures will be re-lamped, retro-fitted, or replaced as noted in lighting schedule. Occupancy controls will be added in spaces with variable occupancy.

Existing^, * Existing	New J" * fQuantityV
^ * c * ~, f CT V Quantity^	
PLL fluorescent fixture with 38	Re-lamp existing 38
2-foot, 2-lamp 40 W	
T-8 fluorescent fixture with 4	Re-lamp existing 4
-foot, 2-lamp 32 W	
T-8 fluorescent fixture with 98	Re-lamp existing 98
-foot, 1-lamp 32 W	
T-8 fluorescent fixture with 202	Re-lamp existing 202
-foot, 2-lamp 32 W	
T-8 fluorescent fixture with 12	Re-lamp existing 12
-foot, 3-lamp 32 W	

### A-28

T-8 fluorescent fixture with electronic ballast: 4-foot, 4-lamp 32 W

T-12 fluorescent fixture with magnetic ballast: 2-foot, 1-lamp, 20 W

Retrofit to T-8 fluorescent fixture with electronic ballast: 2-foot, 2-lamp, 17 W.

T-12 fluorescent fixture with magnetic ballast: 3-foot, 1-lamp, 30 W

Retrofit to T-8 fluorescent fixture with electronic ballast: 3-foot, 1-lamp, 25 W.

T-12 fluorescent fixture with magnetic ballast: 3-foot, 1-lamp, 30 W  
Retrofit to T-8 fluorescent fixture with electronic ballast: 6-foot, 4-lamp, 25 W.

T-12 fluorescent fixture with magnetic ballast: 4-foot, 1-lamp, 40 W  
Retrofit to T-8 fluorescent fixture with electronic ballast: 4-foot, 1-lamp, 25 W

T-12 fluorescent fixture with magnetic ballast: 4-foot, 2-lamp, 40 W

T-12 fluorescent fixture with magnetic ballast: 4-foot, 2-lamp, 40 W

T-12 fluorescent fixture with magnetic ballast: 4-foot, 12-lamp, 40 W

New fixture: T-8 fluorescent fixture with electronic ballast, 4-foot, 1-lamp: 32 W with reflector  
Retrofit to T-8 fluorescent fixture with electronic ballast: 4-foot, 1-lamp, 32 W with reflector  
Retrofit to T-8 fluorescent fixture with electronic ballast: 4-foot, 2-lamp, 25 W

T-12 fluorescent fixture with magnetic ballast: 4-foot, 4-lamp, 40 W  
New fixture: T-8 fluorescent fixture with electronic ballast, 4-foot, 1-lamp: 32 W with reflector

Re-lamp to compact fluorescent: 32 w

Re-lamp to cold cathode lamp: 5 W, G

Re-lamp to light-emitting diode (LED) MR16: 6W

Re-lamp to light-emitting diode (LED): 8 W

Re-lamp to light-emitting diode (LED) MR16: 9W

Incandescent halogen lamps with parabolic aluminized reflector: 50 W

Incandescent lamps: 52 W  
Re-lamp to Light-Emitting Diode (LED) with parabolic aluminized reflector: 9 W, dimmable  
Re-lamp to light-emitting diode (LED): 8 W

Re-lamp to compact fluorescent: 16 W R30

Re-lamp to compact fluorescent: 20 W

## A-29

Incandescent lamps: 75 W	9	New Fixture: T-8 fluorescent fixture with electronic ballast: 4-foot, 2-lamp, 32 W with reflector	2
Incandescent halogen lamps with parabolic aluminized reflector: 75 W	19	Re-lamp to Light-Emitting Diode (LED) with parabolic aluminized reflector: 16 W	19
Incandescent lamps: 75 W R30	32	Re-lamp to light-emitting diode (LED) BR30: 13 W, dimmable .	32
Incandescent halogen lamps with parabolic aluminized reflector: 90 W	86	Re-lamp to Light-Emitting Diode (LED) with parabolic aluminized reflector: 20 W	86
Incandescent halogen lamps with parabolic aluminized reflector: 90 W	2	Remove fixture and cap box	2

## **ECM-2: Weatherize Building Envelope**

Ameresco shall weatherize the building envelope as noted.

- Sixteen (16) exterior doors will be weather-stripped with formed and angled sponge wrapped in vinyl.
- Six (6) interior doors will be weather-stripped with formed and angled sponge wrapped in vinyl.
- Two (2) doors will have their door sweeps replaced, The new door sweeps will have a double fin film seal between a set of brushes and an aluminum carrier, typically secured to a kick plate.

## **ECM- 7: Integrate Existing Direct Digital Controls/Refurbish HVAC**

Ameresco shall integrate the existing DDC controls into the GBMS. Ameresco shall upgrade the existing space pneumatic thermostats to wireless pneumatic thermostats with repeaters. New schedules will be programmed to match the loads and capacities of the equipment to the occupancy and space demands. In conjunction with the new controls, Ameresco shall refurbish the existing HVAC equipment as noted below.

- Install gateways to integrate the existing Johnson Controls air handler controls, Johnson chiller plant controls, boiler hot water pump controls into the GBMS.
- Program sequences of operation to allow set point control, setback and scheduling.
- Furnish and install wireless DDC thermostats to replace existing multi-zone space pneumatic thermostats. Install routers and repeaters as required. Provide power for controls.
- Test and refurbish end devices.
- Controls to comply with PBC Temperature control specification.
- Test and refurbish cooling temperature control and safeties of existing chillers
  - Test and refurbish condenser water temperature control of existing cooling tower. « Test and refurbish heating temperature control and safeties of existing boilers
- Text and refurbish boiler exhaust system.

. A-30

- Stroke all dampers fully open and closed to confirm operation. Lubricate damper rods, adjust position, re-connect disconnected linkages, and replace edge seals.
- Test and refurbish operation of all fan and pump starters. Equipment in scope:
  - Chiller Plant
    - Two (2) Centrifugal chillers
    - Two (2) Cooling towers
    - Two (2) Chilled water pumps
    - Two (2) Condenser water pumps
  - Boiler Plant
    - Six (6) Heating hot water boilers. The boilers are currently stand-alone and will be refurbished, but not integrated into the control system.
    - Two (2) Primary boiler pumps

- Two (2) Secondary Air handler hot water distribution pumps
- Four (4) Secondary Baseboard radiator hot water distribution pumps
- Boiler combustion exhaust system
- Airside Systems - Eight (8) Multi-zone AHUs
  - Chilled water cooling
  - Hot water heating
  - Outside, return and exhaust air dampers
  - Return/Exhaust fan
  - Seventy (70) zones total
- Airside Systems Eight (8) Single-zone AHUs
  - Chilled water cooling
  - Hot water heating
  - Outside, return and exhaust air dampers
  - Return/Exhaust Fan

#### **ECM-10: Single Zone VAV**

Ameresco shall install single zone variable air volume controls in the eight (8) air handlers serving the gathering halls and community rooms.

- Disconnect and demo existing fan starters.
- Furnish and install new variable frequency drives (VFDs) for supply and return fans on the eight (8) single zone air handlers.
- Furnish and install line and load reactors.
- Test and refurbish existing end devices such as sensors, actuators and control valves.
- Furnish and install new return air temperature sensor.
- Program single-zone VAV control sequence to vary airflow at a constant discharge temperature to maintain return air temperature. Include minimum VFD speed to maintain code minimum airflows. Include summer-winter ambient temperature reset sequences. Add additional control modules to accommodate additional points.

#### **A-31**

Wire low voltage end devices such as sensors and actuators to controllers. Provide power for controls.

### **311 City Services**

#### **ECM-1: Interior Lighting Upgrades**

Ameresco shall upgrade the interior lighting system. Existing fixtures will be re-lamped, retro-fitted, or replaced as noted in lighting schedule. Occupancy controls will be added in spaces with variable occupancy.

Exit sign: 2-lamp, 9 W, fluorescent

T-8 fluorescent fixture with electronic ballast: 4-foot, 1-lamp 32 W

Retrofit exit sign to 4 W, Light-Emitting Diode (LED), approved for use in the city of Chicago

Re-lamp existing fixture with 25 W lamps

T-8 fluorescent fixture with electronic ballast: 4-foot, 2-lamp 32 W

T-8 fluorescent fixture with electronic ballast: 4-foot, 3-lamp 32 W

T-12 fluorescent fixture with magnetic ballast: 4-foot, 2-lamp, 40 W

Retrofit to T-8 fluorescent fixture with electronic ballast: 4-foot, 2-lamp, 25 W.

Occupancy controls in spaces with variable occupancy, such as break rooms, restrooms, office spaces, corridors and storage rooms

## ECM-2: Weatherize Building Envelope^

Ameresco shall weatherize the building envelope as noted.

- Eleven (11) exterior doors will be weather-stripped with formed and angled sponge wrapped in vinyl.

## 14th District Chicago Police Station

### ECM-1: Interior Lighting Upgrade Scope of Work

Ameresco shall upgrade the interior lighting system. Existing fixtures will be re-lamped, retro-fitted, or replaced as noted in lighting schedule. Occupancy controls will be added in spaces with variable occupancy.

	#Quantity»#:		}}Quarrti ty.#p
T-8 fluorescent fixture with electronic ballast: 4-foot, 1-134	Re-lamp existing fixture with 25 W lamps -		134
T-8 fluorescent fixture with electronic ballast: 4-foot, 2-375	Re-lamp existing fixture with 25 W lamps		375

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T-8 fluorescent fixture with electronic ballast: 4- 72 foot, 3-lamp 32 W	Re-lamp existing fixture with 25 W lamps	72
T-8 fluorescent fixture with electronic ballast: 4- 55 foot, 4-lamp 32 W	Re-lamp existing fixture with 25 W lamps	55
Incandescent lamps: 100 W 12	Re-lamp to Light-Emitting Diode (LED), dimmable, with parabolic aluminized reflector: 16 W	12
Incandescent lamps: 65 W R30 8	Re-lamp to Light-Emitting Diode (LED), with parabolic aluminized reflector: 16 W	8

Occupancy sensors in spaces with variable occupancy, such as restrooms, locker rooms, storage closets, 20 spaces,

## Central Office

### ECM-1: Lighting Upgrades

Ameresco shall upgrade the interior lighting system .Existing fixtures will be re-lamped,, retro-fitted, or replaced as noted in lighting schedule. Occupancy controls will be added in spaces with variable occupancy.

**Bill**

**HBP!**

Exit sign: 2-lamp, 20 W, incandescent	2	Retrofit exit sign to 4 W, Light-Emitting Diode (LED), Large "Stair" type approved for use in the city of Chicago	2
T-8 fluorescent fixture with electronic ballast: 4 128-foot, 2-lamp 32 W		Re-lamp existing fixture with 25 W lamps	128
T-8 fluorescent fixture with electronic ballast: 476-foot, 4-lamp 32 W		Re-lamp existing fixture with 25 W lamps	76
T-12 fluorescent fixture with magnetic ballast: 2 2-foot, 2-lamp, 20 W		Retrofit to T-8 fluorescent fixture with electronic ballast: 2-foot, 2-lamp, 17 W.	2
T-12 fluorescent fixture with magnetic ballast: 9 4-foot, 2-lamp, 40 W		Retrofit to T-8 fluorescent fixture with electronic ballast: 4-foot, 2-lamp, 25 W.	9
T-12 fluorescent fixture with magnetic ballast: 4 4-foot, 4-lamp, 40 W		Retrofit to T-8 fluorescent fixture with electronic ballast: 4-foot, 2-lamp, 32 W with reflector.	4
High-Intensity Discharge (HID), Metal halide: 63 400 W		New fluorescent T5 Fixture with electronic ballast: 4-foot, 4-lamp, 49 W high-output with reflector	63
Incandescent halogen lamps: 75 W with parabolic aluminized reflector	7	Re-lamp to compact fluorescent: 16 W R30	16
Incandescent halogen lamps: 90 W with parabolic aluminized reflector	1	Re-lamp to compact fluorescent: 23 W R30	1
Occupancy controls in spaces with variable occupancy, such as break rooms, restrooms, conference room 15 spaces offices.			

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### ECM-2: Weatherize Building Envelope

Ameresco shall weatherize the building envelope as noted.

- » Seven (7) exterior doors will be weather-stripped with formed and angled sponge wrapped in vinyl.
- « Thirteen (13) over-head doors will be weather-stripped with formed and angled sponge wrapped in vinyl.
- Approximately one thousand seven hundred ninety (1790) linear feet of roof/wall joint will be sealed with two part foam.
- Approximately one hundred eighty (180) linear feet of exterior skylight window framing will be caulked.

### EC(VI-5: Refurbish Existing Rooftop Units and Add Programmable Thermostats

Ameresco shall refurbish the existing rooftop units.

- Test and refurbish operation of rooftop unit heating temperature control and safeties and cooling temperature control and safeties.
- Stroke all dampers fully open and closed to confirm operation. Lubricate damper rods, adjust position, re-connect disconnected linkages, and replace edge seals.
- Test and refurbish operation of sensors, thermostats and actuators, and re-calibrate.
- Furnish and install new 7-day programmable thermostats for rooftop units.
- Power thermostats, and wire to rooftop units.
- Program thermostats for scheduling and setback of rooftops based on building occupancy.

### ECM-6: Demand Control Garage Ventilation

Ameresco shall install a garage demand control ventilation system to only run the exhaust fan when the garage is occupied by vehicles.

- Furnish and install new Carbon Monoxide (CO) and Nitrogen Dioxide (N02) detection and ventilation system
- Furnish and install two (2) control panels
- Panel to be Air Test model CT-7232 or equal.
- Furnish and install ten (10) CO sensors and ten (10) N02 sensors. Wire sensors back to main control panel. Wiring to be home-run configuration. Sensors will be spaced to allow 5000-7500 ft2 per sensor.
- Wire main control panel to twelve (12) roof-mounted exhaust fans. Install relays to start exhaust fans when CO and N02 levels in space are above set point.
- Provide power for controls.
- Test operation of CO/N02 detection system and garage door motion sensors after installation.

### 18<sup>th</sup> District Chicago Police Station

#### ECM-1: Interior Lighting Upgrade Scope of Work

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Ameresco shall upgrade the interior lighting system. Existing fixtures will be re-lamped, retro-fitted, or replaced as noted in lighting schedule. Occupancy controls will be added in spaces with variable occupancy.

Existing Fixture	Existing Qty	Proposed Fixture
T-8 fluorescent fixture with electronic ballast: 2-foot, 2-lamp PLL 40 W	14	Re-lamp existing fixture w/14
T-8 fluorescent fixture with electronic ballast: 4-foot, 1-lamp 32 W	38	Re-lamp existing fixture w/38
T-8 fluorescent fixture with electronic ballast: 4-foot, 2-lamp 32 W	306	Re-lamp existing fixture w/306
T-8 fluorescent fixture with electronic ballast: 4-foot, 3-lamp 32 W	111	Re-lamp existing fixture w/111
T-12 fluorescent fixture with magnetic ballast: 4-foot, 2-lamp 32 W	2	Retrofit to T-8 fluorescent2 electronic ballast: 4-foot, 2-lamp 32 W
Occupancy sensors in spaces with variable occupancy, such as restrooms, locker rooms, storage spaces,		

### 20<sup>th</sup> District Chicago Police Station

#### ECM-1: Interior Lighting Upgrade Scope of Work

Ameresco shall upgrade the lighting system of both the building interior, and parking garage. Existing fixtures will be re-lamped, retro-fitted, or replaced as noted in lighting schedule. Occupancy controls will be added in spaces with variable occupancy.

Existing Fixture	* Existing Quantity	^New Fixture	Quantit
Exit sign: 2-lamp, 9 W, fluorescent	79	Retrofit exit sign to 4 W, Light-Emitting Diode approved for use in the city of Chicago	79
T-8 fluorescent fixture with electronic ballast: 2-foot, 2-lamp PLL 40 W	14	Re-lamp existing fixture with 25 W lamps	14
T-8 fluorescent fixture with electronic ballast: 4-foot, 1-lamp 32 W	38	Re-lamp existing fixture with 25 W lamps	38



T-8 fluorescent fixture with electronic ballast: 4-foot, 2-lamp 32 W	284	Re-lamp existing fixture with 25 W lamps	284
T-8 fluorescent fixture with electronic ballast: 4-foot, 3-lamp 32 W	126	Re-lamp existing fixture with 25 W lamps	126
T-12 fluorescent fixture with magnetic ballast: 4-foot, 2-lamp, 40 w	2	Retrofit to T-8 fluorescent fixture with electronic ballast: 4-foot, 2-lamp, 25 W.	2
High-Intensity Discharge, Metal halide: 100 W	76	New fixture: T-8 fluorescent with electronic ballast: 4-foot, 2-lamp, 32 W with reflector	76
High-Intensity Discharge, Metal halide: 150 W	4	Retrofit to Light-Emitting Diode (LED) Wallpack: 52 W	4
Occupancy controls in spaces with variable occupancy, such as restrooms, conference rooms, storage rooms			

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## Loop Operations

## ECM-1: Interior Lighting Upgrades

Ameresco shall upgrade the interior lighting system. Existing fixtures will be re-lamped, retro-fitted, or replaced as noted in lighting schedule. Occupancy controls will be added in

T-8 fluorescent fixture with electronic ballast: 4-foot, 2-lamp 32 W	20	Re-lamp existing fixture with 25 W lamps	20
T-8 fluorescent fixture with electronic ballast: 4-foot, 3-lamp 32 W	78	Re-lamp existing fixture with 25 W lamps	78
Exit sign: 2-lamp, 9 W, fluorescent	18	Retrofit exit sign to 4 W, Light-Emitting Diode (LED), approved for use in the city of Chicago	18
High-Intensity Discharge (HID), Metal halide: 400 W	30	New fluorescent T5 Fixture with electronic ballast: 4-foot, 4-lamp, 49 W high-output with reflector	30
Incandescent halogen lamps with parabolic aluminized reflector: 60 W	6	Re-lamp to Light-Emitting Diode (LED) with parabolic aluminized reflector: 9 W	6
Occupancy controls in spaces with variable occupancy, such as the garage, storage plow areas, conference rooms and restrooms.			

## ECM-2: Exterior Lighting Upgrades

Ameresco shall install new high-output fluorescent fixtures.

High-Intensity Discharge (HID), Metal halide: 400 W	9	New fluorescent fixture: 4-foot, 4-lamp	9
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## ECM-3: Weatherize Building Envelope

Ameresco shall weatherize the building envelope as noted.

- One (1) exterior doors will be weather-stripped with formed and angled sponge wrapped in vinyl.

- « Two (2) doors will have their door sweeps replaced. The new door sweeps will have a double fin film seal between a set of brushes and an aluminum carrier.

#### ECMs 4: Integrate Existing DDC Controls to GBMS/Refurbish Existing HVAC Systems

Ameresco shall replace the Johnson Control DDC front-end systems, install a new front end DDC system, and integrate that system into GBMS. The new system will be programmed

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with scheduling and setback of the equipment. In conjunction with the new controls, Ameresco shall refurbish the existing HVAC equipment.

- Demo existing Johnson Controls front-end control boards.
- Furnish and install new DDC front end control boards.
- Program sequences of operation to allow set point control, setback and scheduling.
- Test and refurbish existing end devices.
- Integrate the new DDC control system into GBMS.
- Replace existing outside air temperature sensor in office space and test and refurbish economizer operation.
- Test and refurbish existing air handler temperature control and safeties.
- Test and refurbish existing condensing unit temperature control and safeties.
- Test and refurbish electric heat contactors, temperature control and safeties.
- Test and refurbish operation of all fan starters
- Stroke all dampers fully open and closed to confirm operation. Lubricate damper rods, adjust position, re-connect disconnected linkages, and replace edge seals.
- Controls to comply with PBC Temperature control specification Equipment in

scope:

Office: Garage: (1)AHU (1)AHU

- |   |                                    |
|---|------------------------------------|
| • Electric heat                                   | □ Electric heat                    |
| • u DX cooling                                    | LI No cooling                      |
| • Outside, return and exhaust air dampers dampers | TJ Outside, return and exhaust air |
| □ Return/Exhaust fan                              | (2) Exhaust fans with CO sensors   |
| (1) condensing unit                               | (2) Electric duct heaters          |

#### ECM-7: Motion Sensor and Timing Controls for Garage Doors.

Ameresco shall install garage door motion sensors in the garage.

- Furnish and install motion detectors and timers to control garage door operation.
- Wire motion detectors and timers to garage door openers. <» Test operation.
- Quantity of two (2) garage doors to be controlled.

## **Austin Irving Library**

### **ECM-1: Interior Lighting Upgrades**

Ameresco shall upgrade the interior lighting system. Existing fixtures will be re-lamped, retro-fitted, or replaced as noted in lighting schedule. Occupancy controls will be added in spaces with variable occupancy.

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T-8 fluorescent fixture with electronic ballast: 4-foot, 2-lamp 32 W

T-8 fluorescent fixture with electronic ballast: 4-foot, 3-lamp 32 W

Incandescent halogen lamps with parabolic aluminized reflector: SOW

Incandescent halogen lamps with parabolic aluminized reflector: 75 W

Re-lamp existing fixture with 25 W lamps

Re-lamp existing fixture with 25 W lamps

Re-lamp to Light-Emitting Diode (LED) with parabolic aluminized reflector: 9 W

Re-tamp to Light-Emitting Diode (LED) with parabolic aluminized reflector: 16 W

### **ECWI-3: Weatherize Building Envelope**

Ameresco shall weatherize the building envelope

- Seven (7) exterior doors will be weather-stripped with formed and angled sponge wrapped in vinyl.
- One (1) interior doors will be weather-stripped with formed and angled sponge wrapped in vinyl.

### **ECM-4: Integrate Existing DDC Controls to GBMS/Refurbish Existing HVAC Systems**

Ameresco shall furnish and install a gateway to integrate the DDC system into GBMS, and program scheduling and setback of the equipment. In conjunction with the new controls, Ameresco shall refurbish the existing HVAC equipment as noted below.

- Furnish and install a gateway to integrate the existing Carrier ComfortView Direct Digital Control system into GBMS.
- Program sequences of operation to allow set point control, setback and scheduling.
- Test and refurbish existing end devices.
- Controls to comply with PBC Temperature control specification
- Test and refurbish existing air handler temperature control and safeties.
- Test and refurbish existing condensing unit temperature control and safeties.
- Test and refurbish boiler temperature control and safeties.
- Test and refurbish operation of all fan and pump starters
- Stroke all dampers fully open and closed to confirm operation. Lubricate damper rods, adjust position, re-connect disconnected linkages, and replace edge seals.
- » Stroke inlet guide vanes open and closed to test operation. Lubricate rods.

Equipment in scope: . One (1) VAV  
AHU

- DX cooling
- Hot water heating
- Inlet guide vanes

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- Outside, return and exhaust air dampers
- Freeze protection pump
- One (1) Return/Exhaust fan
- Twelve (12) Single-duct VAV boxes
- Ten (10) Fan-powered VAV boxes with hot water reheat coils
- Three (3) exhaust fans
- » One (1) condensing unit
- Five (5) hot water boilers
- Two (2) hot water pumps

### **Budlong Woods Library**

#### **ECM-4: Integrate Existing DDC Controls to GBMS/ Refurbish HVAC**

Ameresco shall integrate the existing Invensys DDC system into GBMS, and program scheduling and setback of the equipment. In conjunction with the new controls, Ameresco shall refurbish the existing HVAC equipment as noted below.

- Furnish and install a gateway to integrate the existing Invensys Direct Digital Control system to GBMS. Existing JACE is on site, but is not connected.
- Program sequences of operation to allow set point control, setback and scheduling.
- Test and refurbish existing end devices.
- Controls to comply with PBC Temperature control specification
- Test and refurbish existing air handler temperature control and safeties.
- Test and refurbish existing condensing unit temperature control and safeties.
- Test and refurbish boiler temperature control and safeties.
- Test and refurbish operation of all fan and pump starters
- Stroke all dampers fully open and closed to confirm operation. Lubricate damper rods, adjust position, re-connect disconnected linkages, and replace edge seals.

Equipment in scope: -

- One (1) VAV AHU
  - DX cooling
  - Hot water heating
  - VFD
  - Outside, return and exhaust air dampers
- One (1) Return/Exhaust fan with VFD

- Twelve (12) Single-duct VAV boxes
- Four (4) Fan-powered VAV boxes with hot water reheat coils
- Two (2) exhaust fans
- One (1) condensing unit
- Two (2) hot water boilers
- Two (2) hot water primary pumps
- Two (2) hot water secondary pumps

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## DSS Street Operations

### ECWI-1: Interior Lighting Upgrades

Ameresco shall upgrade the interior lighting system. Existing fixtures will be re-lamped, retro-fitted, or replaced as noted in lighting schedule. Occupancy controls will be added in spaces with variable occupancy.

Exit sign: 2-lamp, 20 W, incandescent

T-12 fluorescent fixture with magnetic ballast: 4-foot, 1-lamp, 40 W

Retrofit exit sign to 4 W, Light-Emitting Diode (LED), approved for use in the city of Chicago

Retrofit to T-8 fluorescent fixture with electronic ballast: 4-foot, 1-lamp, 25 W

T-12 fluorescent fixture with magnetic ballast: 4-foot, 4-lamp, 40 W

T-12 fluorescent fixture with magnetic ballast: 8-foot, 2-lamp, 96 W

New fixture: T-8 fluorescent fixture with electronic ballast, 4-foot, 2-lamp: 32 W with reflector

Retrofit to T-8 fluorescent fixture with electronic ballast; 8-foot, 2-lamp, 32 W with reflector

T-12 fluorescent fixture with magnetic ballast: 8-foot, 2-lamp, 96 W, high output

T-12 fluorescent fixture with magnetic ballast: 8-foot, 2-lamp, 96 W, high output

High-intensity discharge (HID) metal halide: 400 W

New fluorescent T-5 fluorescent Fixture with electronic ballast: 4-foot, 2-lamp, 49 W high-output with reflector

New fluorescent T-8 fluorescent Fixture with electronic ballast: 8-foot, 2-lamp, 32 W with reflector

New fluorescent T-5 fluorescent Fixture

with electronic ballast: 4-foot, 2-lamp,

49 W high-output with reflector

Occupancy controls in spaces with variable occupancy, such as restrooms and the garage

### ECM-2: Exterior Lighting Upgrades

Ameresco shall retrofit the existing fixtures to light-emitting diode (LED) fixtures. Controls will be added.

I High-Intensity Discharge (HID), 1 n4

Retrofit to Light-Emitting Diode (LED)

**ECM-4: Repair Metal Side Wall Panels**

Ameresco shall repair the metal side walls.

- Repair existing metal side wall panels in the garage.
- Replace panels too large to seal with insulation or caulk.
- Seal openings and gaps with insulation or caulk as required.

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**Goldblatt's Building and West Town Library**

**ECM-4&5: Integrate Existing DDC Controls to GBMS/ Refurbish Existing HVAC Systems**

Ameresco shall furnish and install a gateway to integrate the DDC system into GBMS. Ameresco shall re-program and refurbish the existing Trane Tracer Summit DDC system. In conjunction with the new controls, Ameresco shall refurbish the existing HVAC equipment. .

- Furnish and install a gateway to integrate the existing Direct Digital Control system to control existing HVAC equipment.
- Test and refurbish operation and functionality of existing Trane Tracer Summit DDC system.
- Test and refurbish operation of VAV box DDC controllers. Testing to be done from building level interface.
- Program sequences of operation to allow set point control, setback and scheduling.
- Test and refurbish existing end devices.
- Test and refurbish existing water-cooled packaged DX air handler temperature control and safeties.
- Test and refurbish boiler temperature control and safeties.
- Test and refurbish cooling tower temperature control and safeties.
- Test and refurbish condensing unit temperature control and safeties.
- Test and refurbish operation of all fan and pump starters and variable frequency drives.
- Stroke all dampers fully open and closed to confirm operation. Lubricate damper rods, adjust position, re-connect disconnected linkages, and replace edge seals.
- Controls to comply with PBC Temperature control specification Equipment in

scope:

- Two (2) Heating Hot Water boilers
- Two (2) Heating Hot Water Pumps
- Two (2) Cooling Towers
- Two (2) Condenser Water Pumps
- Seven (7) Self-contained Air Handlers - Water-cooled

DX

Hot Water Heating

Outside, return and exhaust air dampers

Variable Frequency Drive (VFD) for Variable Air Volume (VAV)

- One (1) Air-cooled DX, Hot Water Heating VAV Air Handler (West Town Library)

Air-cooled DX Hot Water Heating

Outside, return and exhaust air dampers

## Variable Frequency Drive (VFD) for Variable Air Volume (VAV)

- One (1) DX Condensing Unit
- Eight (8) Return/Exhaust fans
- One hundred fifty (150) VAV boxes with hot water reheat coils

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- Ten (10) Fan-powered VAV boxes with hot water reheat coils Water

**Department/Central District ECM-1: Interior Lighting Upgrades**

Ameresco shall upgrade the interior lighting system. Existing fixtures will be re-lamped, retro-fitted, or replaced as noted in lighting schedule. Occupancy controls will be added in spaces with variable occupancy.

<i>KExl stingF ixtur&amp;f&amp;m^</i>	<sup>^</sup> Existing <sup>8</sup> ; / y Quantity .		::,Quantity, .
T-8 fluorescent fixture with electronic ballast: 2 105 -foot, 2-lamp 32 W		Re-lamp existing fixture with 25 W lamps	105
T-8 fluorescent fixture with electronic ballast: 4 7 -foot, 2-lamp 32 W		New fixture: T-8 fluorescent fixture with electronic ballast, 4-foot, 2-lamp: 32 W and 1 -lamp: 17 W. The 32 W lamps will have occupancy sensors	7
T-8 fluorescent fixture with electronic ballast: 4 463 -foot, 2-lamp 32 W		Re-lamp existing fixture with 25 W lamps	463
T-8 fluorescent fixture with electronic ballast: 4 6 -foot, 3-lamp 32 W		Re-lamp existing fixture with 25 W lamps	6
T-8 fluorescent fixture with electronic ballast: 4 128 -foot, 4-lamp 32 W		Re-lamp existing fixture with 25 W lamps	128
Exit sign: 2-lamp, 20 W, incandescent 70		Retrofit exit sign to 4 W, Light-Emitting Diode70 (LED), approved for use in the city of Chicago	
High-Intensity Discharge (HID), Metal halide: 32 1000 W		New fluorescent T5 Fixture with electronic 32 ballast: 4-foot, 8-lamp, 49 W high-output with reflector	
High-Intensity Discharge (HID), Metal halide: 92 400 W		New fluorescent T5 Fixture with electronic 92 ballast: 4-foot, 4-lamp, 49 W high-output with reflector	
Incandescent lamps: 75 W R30 4		Re-lamp to Light-Emitting Diode (LED): 13 4 W BR30	

Occupancy controls in spaces with variable occupancy, such as conference rooms, locker rooms, classroom27 spaces areas, copy rooms and the kitchenette. The garage area will have occupancy sensors to reduce light level

**ECM-5: Upgrade Controls to Direct Digital Controls and Refurbish Existing HVAC Systems**

Ameresco shall furnish and install a new Direct Digital Control system to control the HVAC equipment at the Water Department / Central District facility. In conjunction with the new controls, Ameresco shall refurbish the existing HVAC equipment as noted below.

- Disconnect and abandon existing controls in place. Demo existing thermostats.

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- Furnish and install new Direct Digital Control system to control existing HVAC equipment.
- Program sequences of operation to allow set point control, setback and scheduling.
- New DDC system will speak Bacnet or Lonworks.
- Integrate new DDC system into Global Building Management System
- Furnish and install new end devices.
- Wire low voltage end devices such as temperature sensors, actuators to controllers.
- Provide power for controls.
- Controls to comply with PBC Temperature Control Specification.
- Test and refurbish rooftop cooling temperature control, heating temperature control, and safeties.
- Test and refurbish heating temperature control, contactors and safeties of existing electric baseboard
- Test and refurbish operation of all fan and pump starters
- Stroke all dampers fully open and closed to confirm operation. Lubricate damper rods, adjust position, re-connect disconnected linkages, and replace edge seals.

Equipment in scope:

- Seven (7) Packaged DX / Gas Heat Rooftop Units
- Thirty three (33) Exhaust Fans
- Four (4) Outside air intake dampers
- One (1) relay for electric heat baseboard lockout

### **Avalon Branch Library**

#### **ECM-4: Install new DDC Front End System, Integrate to GBMS/ Refurbish Existing HVAC System**

Ameresco shall demo the existing Teietrol front end DDC system, and furnish and install a new DDC front end system and program scheduling and setback of the equipment. The new DDC system will be mapped to the existing JACE for integration into GBMS. In conjunction with the new controls, Ameresco shall refurbish the existing HVAC equipment.

- Demo existing Teietrol front end DDC system control boards.
- Furnish and install a new Direct Digital Control system to control existing HVAC equipment.
- Program sequences of operation to allow set point control, setback and scheduling.
- Test and refurbish existing end devices.
- o Wire new DDC logic boards to existing end devices.
- Furnish and install new actuator for 3-way valve on air handler.
- Wire and map new points to existing JACE and GBMS. Re-use existing graphics.
- Controls to comply with PBC Temperature control specification
- Test and refurbish existing air handler temperature control and safeties.
- Test and refurbish existing condensing unit temperature control and safeties.
- Test and refurbish boiler temperature control and safeties.



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- Test and refurbish operation of all fan and pump starters and/or VFDs
- Stroke all dampers fully open and closed to confirm operation. Lubricate damper rods, adjust position, re-connect disconnected linkages, and replace edge seals.

Equipment in scope:

- Two (2) Heating Hot Water boilers
- Two (2) Heating Hot Water Pumps
- One (1) VAV Air Handling Unit
  - Air-cooled DX Hot Water Heating
  - Outside, return and exhaust air dampers Variable Frequency Drive (VFD)
- One (1) DX Condensing Unit
- One (1) Return/Exhaust fan
- Eleven (11) VAV boxes with hot water reheat coils
- Eight (8) Fan-powered VAV boxes with hot water reheat coils

**General Scope Clarifications - All Buildings**

- « With the exception of lamps and ballasts removed as part of this project, handling or abatement of any hazardous materials, including asbestos containing material, is excluded from the Scope of Services unless specifically noted in the scope of work.
- All ECMs - Unless specifically noted in the scope of work, Ameresco has excluded the abatement of any hazardous materials or ACM in this scope item.
- The scope of work and associated costs are based on materials / equipment and sub-contractors as noted (or submitted) to the Customer. Changes to these items may affect pricing of the scope of work to the Customer.
- The Contract Sum set forth in the Agreement is based on 100% availability of rooms / areas / systems to perform noted work scope during normal business hours. Overtime and off-hour shifts (2nd shift and 3rd shift) are not included.
- o The lighting scope includes only the locations and fixtures noted on associated schedule and drawings (as applicable). Not all spaces are being addressed as part of the lighting scope.
- Unless specifically noted in the scope of work - paint / patch is excluded. If noted in the work scope - only the affected areas will be addressed (not the entire area / wall). Paint will match existing adjacent as close as possible but an exact match cannot be guaranteed.
- Piping / conduit / wire mold may be run exposed in occupied spaces (as applicable).
- Unless specifically noted in the scope of work - conduit / wire mold is un-painted.
- Some existing equipment may be left abandoned in place.
- o Unless specifically noted in the scope of work - no piping covers have been included.
- If applicable - tile and carpet in-fill strips will match adjacent existing as close as possible but an exact match cannot be guaranteed.

- If applicable - unless specifically noted in the scope of work, issues with existing roof deck and associated structural are excluded from the scope of work. If identified during the project - this will be brought to the attention of the Customer.
- If applicable - existing ceiling tiles will be removed and reinstalled. New ceiling / grid is not included in the work scope.

#### Lighting scope clarifications:

- The lighting system improvements include retrofit or replacement of existing fixtures as noted in this Exhibit. The exact quantities, location and description of retrofit and replacements are as noted in the line by line summary in Attachment C-2 to the Investment Grade Audit.
- The scope includes retrofit of the noted fixtures only and does not address or include any fix-up / upgrade / replacement of existing wiring, switching, conduits, hangers, etc. If items are found to be in need of repair or replacement - this is not included in the scope of work and associated costing. This scope does include replacement of existing broken lighting sockets when replacing bulbs.
- It is assumed that all emergency lighting is on generator or independent battery control. Replacements of emergency ballasts are not included in the project.
- Replacement or repair of fixture lenses or louvers are not included, fixture lenses will be wiped with a dry cloth.
- Ameresco is not responsible for fixtures that are found to be damaged prior to commencement of its scope of work.
- Ameresco will remove and lawfully recycle / dispose of existing lamps and PCB ballasts. All ballasts that are determined to be non-PCB shall be disposed of with non-hazardous waste. Noted items will be carefully recycled and disposed of through a licensed recycling firm in accordance with all state and federal guidelines. Certificates verifying the proper disposal and recycling of PCB containing materials will be provided by the vendor.
- Lighting levels, if existing is identified to be over-lit per recommended standards, may be reduced..
- Price is based on all ancillary equipment that is not being replaced but necessary for the ECM replacement, being in good working condition.
- Ameresco is not responsible for any pre-existing electrical code violations or electrical system deficiencies.

#### Training Prior to Final Acceptance Date \_

ESCO will implement a comprehensive training program that involves classroom and hands-on/field training. Training sessions will include a review of the overall installation and performance characteristics of installed ECMs. Documentation will include O&M manuals, drawings, and equipment specification literature. Designated facilities personnel, and select building occupants, will receive comprehensive manuals for reference. The primary goal of the ESCO training program will be to educate designated operations, maintenance, and building staff in the key areas that relate to the ECMs installed throughout the project. ESCO has identified three levels of training which may be required depending on the specific ECMs which are installed.

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Level 1: For systems and equipment which is are essentially direct replacements of existing

equipment, such that no additional skills will be required to perform operations and maintenance functions, Training will be limited to a general overview of the equipment installed, a review of the manufacturer's operation and maintenance (O&M) manuals, and an explanation of equipment warranties. This level of training will provide staff with familiarity with the equipment that is installed, manufacture's recommended maintenance procedures, and all warranty information. This level of training applies to the following ECMs:

- Weatherize Building Envelope
- Insulate Piping Heat Exchanger
- Repair and Seal Existing AHUs
- Unit Heater Thermostat Upgrade
- Clean Cooling Tower Fill Material

Level 2: For systems and equipment which are new to the site, and require some general understanding as to their function and operation, training will include a minimum amount of classroom instruction that will provide an overview of the specific technology selected, specific equipment installed, review of the manufacturer's operation and maintenance (O&M) manuals, and an explanation of equipment warranties. Following the classroom training session a site tour will be scheduled to view the specific installation and operation of the equipment. This level of training will provide staff with additional equipment details (including equipment cut sheets), familiarity with the equipment that is installed, manufacture's recommended maintenance procedures, and all warranty information. This level of training applies to the following ECMs:

- Lighting Upgrades
- Motion Sensor and Timing Controls for Garage Doors
- Replace Steam Traps

Level 3: For systems and equipment which are new to the site and are more complex in nature, training will be directed to the facilities engineering and operations and maintenance staff. Level 3 training will require more extensive classroom training to discuss design intent, specific system design, energy efficiency considerations, seasonal modes of operations, comfort conditions, operation of individual components, emergency conditions, sequences of operations, alarms, diagnostics, and any additional ECM specific information as required. Level 3 classroom training will also include a review of the manufacturer's operation and maintenance (O&M) manuals, and an explanation of equipment warranties. Following the classroom training session a site tour will be scheduled to view the specific installation, operation of the equipment, and hands on maintenance instructions by manufacturers' representatives. This level of training will provide staff with a comprehensive understanding of all equipment details as well as hands on familiarity with the equipment that is installed and a detailed review of manufacture's recommended maintenance procedures and warranty information. This level of training applies to the following ECMs:

- Upgrade Controls to Direct Digital Controls (DDC) and Integrate into GBMS
- Retro-Commissioning of Existing HVAC Systems
- Demand Control Garage Ventilation
- Install New Heating Hot Water Chemical Treatment System
- Convert Single Zone CV AHU to Single Zone VAV

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### **Manufacturer's Warranty**

Manufacturer's Warranty Period for any ECMs that extend beyond the Warranty Period identified in Section 8 C of the Contract. Upon expiration of the 18 month Warranty Period, the

following manufacturers' warranties shall be assigned to the Customer to the extent allowed by the manufacturer:

- Phillips Fluorescent Lamps: Three (3) year product replacement warranty.
- TCP LED Lamps: Three (3) year product replacement warranty.
- Advance Electronic Ballasts: Five (5) year product replacement warranty.
- Rabb Lighting Exterior LED Fixtures: Five (5) year product material warranty. Radionic Exit Sign Lighting Fixtures: Three (3) year product replacement warranty.

### **Commissioning Requirements**

Commissioning of completed ECMs will be performed by ECM for the larger buildings including Harold Washington Library, Woodson Regional Library, Police Training Academy, Chicago Cultural Center, Central Office (CDOT), and Goldblatts Building. Commissioning will be performed by building for the remaining buildings. Commissioning will be performed by an outside agency, Environmental Systems Design (ESD), who is a Chicago based engineering firm.

### **Section IV. Identification of Key Personnel**

Louis P. Maltezos Steve Taggart  
Pete Kurpiewski, PE LEED CEM' GBE  
Jared Hughes, LEED, CMVP, CEA, CEM " Gil B u d o P E CEM G BE

Fernando 6rihue7a  
Henry Gesiorski

[ Hardik Shah J Project Development Engineer

| Tony Castellani j Sr. Project Manager

| Jim Jones [ Sr, Project Manager

Varun Sood Brian Roskens

\_Steve Wyatt \ Project Development Engineer  
Luis Beita

Project Developmentjineer! Project Developer

Sr. Project Manager

Sr. Project Development Engineer

Sr. Project Manager

### **Section V. Construction Schedule**

Attached to this Exhibit A is the preliminary Construction Schedule. The Construction Schedule is subject to refinement and adjustment from time to time as the work progresses as set forth herein and in this Contract.

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## EXHIBIT B

### PERFORMANCE GUARANTEE

#### Section I. Definitions.

All capitalized terms used in this Exhibit B shall have the meaning set forth below or in Section 2.A of the Contract.

A. Causes for Adjustment: The causes for adjustment to the energy savings calculations set forth in Section 6 of Exhibit C.

B. Closing Stub Year: This term is defined in Section III of this Exhibit B.

C. Guarantee Term: The period running from and after the Savings Guarantee Commencement Date for a period of 14 years

D. Guaranteed Annual Savings Amount: \$702,178, calculated for each Performance Guarantee Year as set forth in the following table. However, if the Performance Guarantee Year is an Opening Stub Year or Closing Stub Year, the Guaranteed Annual Savings Amount applicable to such Performance Guarantee year shall be \$702,178 multiplied by a fraction, the numerator of which is the number of days in such Performance Guarantee Year and the denominator of which is the number of days in the calendar year during which the Performance Guarantee Year occurs (i.e., 365 or 366 days).

Performance Guarantee Year	Guaranteed Energy Savings			Operation and Maintenance Savings	Utility Savings	Guaranteed Annual Savings
	kWh	Therms	kGal			
1	8,591,676	165,969	0	0	\$702,178	\$702,178
2				0	\$702,178	\$702,178
3				0	\$702,178	\$702,178
4				0	\$702,178	\$702,178
5				0	\$702,178	\$702,178
6				0	\$702,178	\$702,178
7				0	\$702,178	\$702,178
8				0	\$702,178	\$702,178
9				0	\$702,178	\$702,178
10				0	\$702,178	\$702,178
11				0	\$702,178	\$702,178
12				0	\$702,178	\$702,178
13				0	\$702,178	\$702,178
14				0	\$702,178	\$702,178
TOTAL	120,283,423	323,5660		\$0	\$9,830,492	\$9,830,492

E. Guaranteed Project Savings Amount: \$9,830,492.

F. Installation Period Savings: The savings generated during the period from the Date of Commencement to the Savings Guarantee Commencement Date for the categories of savings included within the Measured Savings Amount calculations and the Non-measured Savings Amount for those ECMS for which Interim Completion is achieved during the Installation Period.

## B-1

G. Measured Savings Amount: Savings to the Customer resulting from the implementation of the Project, measured and calculated in accordance with Exhibit C, Subsection 3.B, multiplied by the rates for each energy savings category set forth in Exhibit C, Subsection 4.B.

H. Non-measured Savings Amount: Savings to the Customer resulting from the implementation of the Project in the amounts stipulated in Exhibit C, Subsection 3.C.

I. Opening Stub Year: This term is defined in Section III of this Exhibit B.

J. Performance Guarantee Payment: This term is defined in Section II of this Exhibit B.

K. Performance Guarantee Year: Each period during which energy savings are measured, as specified in Section III of this Exhibit B.

L. Prior Year Calculations: This term is defined in Section IV of this Exhibit B.

M. Project Savings Amount: The Measured Savings Amount and the Non-measured Savings Amount.

N. Savings Guarantee Commencement Date: Subject only to adjustments of the Contract Time as provided in the Contract, the first day of the first utility billing period following the earlier to occur of: (i) the Scheduled Substantial Completion Date or (ii) the month in which Substantial Completion of the entire Project occurs in accordance with the Contract.

## Section II. Performance Guarantee.

For each Performance Guarantee Year, the ESCO guarantees that the Project Savings Amount will equal or exceed the Guaranteed Annual Savings Amount. Subject to Section VI of this Exhibit B, in the event the Project Savings Amount in any Performance Guarantee Year is less than the Guaranteed Annual Savings Amount, the ESCO unconditionally and irrevocably agrees to pay the Customer (or its designee) the difference between the Guaranteed Annual Savings Amount and the Project Savings Amount ("Performance Guarantee Payment") at the time and in the amount as provided in Section IV of this Exhibit B.

## Section III. Performance Guarantee Year.

The Customer seeks to align the Performance Guarantee Year with the calendar year for budgeting purposes, and therefore each of the following periods shall serve as a "Performance Guarantee Year":

- i. The period from the Savings Guarantee Commencement Date through the next following December 31 (such initial period referred to herein as the "Opening Stub Year");
- ii. Thirteen (13) 12-calendar month periods, each running from January 1 through the next

following December 31, with the first such period including the first January 1 following the Savings Guarantee Commencement Date and continuing through the next following December 31; and

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***iii. The period running from the January 1 following conclusion of the thirteenth (13 ) 12-month period described in subparagraph (ii) immediately preceding and continuing through and including the fourteenth (14<sup>th</sup>) anniversary of the Savings Guarantee Commencement Date (such final period referred to herein as the "Closing Stub Year").***

As set forth in Exhibit C, the formulae for calculating the Project Savings Amount are designed to accommodate and yield accurate results for Performance Guarantee Years of varying lengths, including both periods exceeding 12 months in length, any stub years and the Installation Period. Notwithstanding anything in Exhibit C or otherwise in this Contract to the contrary, neither the Customer nor the ESCO shall agree, without the prior written consent of the Lender, which consent may be withheld in the Lender's sole discretion, to modify or amend the scope of the Work, if such modification or amendment would, if implemented, adversely affect the achievement of the Guaranteed Annual Savings Amount. The Customer agrees that it will not, without the prior written consent of the Lender, which consent may be withheld in Lender's sole discretion, make any material change to the Facilities or the ECMs that would result in a Cause for Adjustment if such material change would, if implemented, result in a Performance Guarantee Payment in any Performance Guarantee Year.

#### **Section IV. Calculation of Project Savings Amount.**

Throughout the Guarantee Term, the Customer will provide the ESCO with all utility bills pertinent to the energy performance calculations described in this Contract within thirty (30) days of receipt. The Customer may provide the ESCO with copies of bills, or access to invoices via an on-line system. Within sixty (60) days of the ESCO's receipt of all pertinent utility bills with meter-reading ending dates falling within a Performance Guarantee Year (including the Opening Stub Year or Closing Stub Year), the ESCO will prepare and provide to the Customer its proposed calculation of the Project Savings Amount (as calculated pursuant to Exhibit C) and, if applicable, the amount of the Performance Guarantee Payment for the immediately-preceding Performance Guarantee Year (the "Prior Year Calculations") in a comprehensive annual report (the "Annual M&V Report") utilizing the methodology set forth in Exhibit C. The ESCO must account for all Causes for Adjustment to the energy performance calculations permitted by Exhibit C arising during the preceding Performance Guarantee Year within the Prior Year Calculations, provided Customer gave proper notice of the Cause for Adjustment. Within thirty (30) days of the Customer's receipt of the Prior Year Calculations, the Customer will notify the ESCO of (1) the Customer's approval of all or any portion of the Prior Year Calculations; and/or (2) the Customer's disapproval of all or any portion of the Prior Year Calculations, including the basis for the disapproval. Within thirty (30) days of receiving notification of the Customer's approval of all or any portion of the Prior Year Calculations, the ESCO will pay to the Customer (or its designee) the Performance Guarantee Payment, if any, due to the Customer on account of the approved portion of the Prior Year Calculations; provided, however, that if the ESCO has made a Performance Guarantee Payment as provided in the next succeeding paragraph in respect of the Performance Guarantee Year to which the Prior Year Calculations relate, the Performance Guarantee Payment to be made as provided in this sentence shall be reduced by the amount paid by the ESCO in respect of such Performance Guarantee Year. Upon Customer's approval of all of the Prior Year Calculations, ESCO waives the right to make any claim for Causes for Adjustments not specified within the Prior Year Calculations. If the Customer disapproves all or any portion of the Prior Year Calculations, the Parties will use good faith efforts to resolve such dispute within thirty (30) days of notification to the ESCO. If the Parties are unable to resolve the matter within such

thirty (30) day period, the dispute shall be resolved in accordance with Section VIII of this Exhibit. Any amounts payable

**B-3**

by and not paid by the ESCO on the due date thereof shall bear interest at the rate equal to the lesser of (i) ten percent (10%) per annum or (ii) the highest rate permitted by applicable law.

**Section V. Installation Period Savings.**

Installation Period Savings will belong exclusively to the Customer and will not be added to the Project Savings Amount for full Performance Guarantee Years, but will be added to the Project Savings Amount for the Opening and Closing Stub Years; provided however, in the event the Savings Guarantee Commencement Date occurs prior to the Substantial Completion Date, Installation Period Savings achieved during the period commencing with the Savings Guarantee Commencement Date and ending with the Substantial Completion Date shall belong<sup>1</sup> exclusively to the ESCO.

**Section VI. Additional Savings.**

In the event that the Project Savings Amount exceeds the Guaranteed Annual Savings Amount in any Performance Guarantee Year, the excess savings shall belong and accrue to the Customer and shall not reduce the ESCO's liability for achieving the Project Savings Amount in any other Performance Guarantee Year.

**Section VII. Project Modifications to Reduce Performance Guarantee Payment Obligations.**

The mutual goal of the Parties is to maximize the Project Savings Amount. Therefore, the ESCO will have the right, at all times during the Guarantee Term, subject to the Customer's written approval, to modify the scope of the Project, to modify or replace any of the ECMs or install additional ECMs and to revise any procedures for the operation of the ECMs or implement other procedures at the Facilities provided that: (i) such actions by the ESCO do not result in modifying the standards of comfort and service set forth in Exhibit C without the express written approval of the Customer; (ii) such actions do not detrimentally affect site operations or use and occupancy of the Facilities; (iii) such actions are necessary to enable the ESCO to achieve the Guaranteed Annual Savings Amount; and (iv) any costs incurred relative to such modifications, additions or replacements of the ECMs, or operational changes or new procedures or additional maintenance necessitated by the ECMs, shall be the sole responsibility of the ESCO. All modifications, additions or replacements of the ECMs or revisions to operating or other procedures will be described in a supplemental schedule(s) to be provided to the Customer for approval, which will not be unreasonably withheld or delayed, and incorporated into this Contract through a Change Order, and the work related to such modifications, additions, or replacements shall be carried out in accordance with all of the terms and provisions of the Contract applicable to the performance of Work. Any replacement ECM shall be new and have equal or better potential to reduce energy consumption at the Facility than the ECM being replaced. As part of any Project scope modifications, the ESCO shall update any and all software during the implementation necessary for the operation of the ECMs. All replacements of and alterations or additions to the ECMs shall become part of the ECMs described in Exhibit A and shall become the property of the Customer.

**Section VIII. Disputes Regarding Energy Performance Calculations.**

Any disputes concerning the calculation of the Prior Year Calculations, Causes for Adjustment, or other energy or consumption calculations described in Exhibit C and not resolved pursuant to Section IV shall be submitted to the Engineer Neutral (as described in

B-4

Section 3.C.2 of the Contract). The determination of the Engineer Neutral will be final and binding upon both the Customer and the ESCO. The ESCO and the Customer will each be responsible for half of the fees of the Engineer Neutral.

The disputed calculation shall not take effect until there is a final adjudication or resolution of the dispute.

**Section IX. Examples.**

Section 7 of Exhibit C sets forth examples of calculations of energy savings for illustrative purposes.

**Section X. Stub Year Savings.**

If the Project Savings Amount during the Opening Stub Year or Closing Stub Year is less than the Guaranteed Savings, any Installation Period Savings will be used to reduce the Performance Guarantee Payment. The same Installation Period Savings cannot be used to reduce the Performance Guarantee Payment in both the Opening Stub Year and Closing Stub Year.

**Section XI. Termination.**

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, OR IN ANY CONTRACT DOCUMENT, IN THE EVENT THAT THE PERFORMANCE TRACKING SERVICES SET FORTH IN EXHIBIT D ARE CANCELED OR TERMINATED BY CUSTOMER FOR ANY REASON, THIS PERFORMANCE GUARANTEE SHALL BE DEEMED TO HAVE BEEN MET AND FULFILLED AS OF THE EFFECTIVE TERMINATION DATE OF THE PERFORMANCE TRACKING SERVICES AND ESCO SHALL HAVE NO FURTHER OBLIGATIONS OR LIABILITIES ASSOCIATED WITH SUCH PERFORMANCE GUARANTEE AS OF THE DATE OF SUCH TERMINATION.

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EXHIBIT C

METHODOLOGY AND BASELINE

1. OVERVIEW

This Exhibit describes the measurement and verification ("M&V") methodology that will be applied to the Project, and each separate ECM included within the Project. The M&V methodology will be used to determine whether the Project described in Exhibit A achieves the Guaranteed Annual Savings Amount set forth in Exhibit B for each Performance Guarantee Year.

The M&V methodology to be employed for the Project is consistent with the U.S. Department of Energy ("DOE") and International Performance Monitoring and Verification Protocol ("IPMVP") options (summary) listed below.

Savings are determined by field measurement of the key performance parameter(s) which define the energy use of the ECM's affected system(s). Estimates of the non-key parameter are used for the savings calculations.

**Method B: Fully Measured**

Savings are determined by field measurement of the energy use of the ECM-affected system.

Savings are determined by measuring energy use at the whole facility or sub-facility level.

**Method D: Simulations**

Savings are determined through simulation of the energy use of the whole facility, or of a subfacility. Simulation routines are demonstrated to adequately model actual energy performance measured in the facility. The model is closely calibrated with data collected for each ECM.

Used where cost to accurately calculate and/or measure savings would exceed anticipated savings.

2. BASELINE

The baseline is that set of parameters that describes both the energy consumed in the base year calculation for each type of energy consumed ("Base Year") and the conditions that caused that consumption to occur, including utility consumption, building use information, weather data, and other information as may be necessary to describe the Base Year conditions (collectively, the "Baseline") For electricity, the Base Year is calculated as a twelve-month average of the electricity consumed between January 2011 and December 2011; and for natural gas the Base Year is calculated as a twelve-month average based on natural gas consumed

between January 2011 and December 2011. The utility baseline data is included in the table below.

nm A				•^ANNUAL-? (THERMS/ ^COST % Y	ANNUAL COST J , t	^ TOTAL L. ANNUAL S > UTILITY » u ""COST "	
F011 .	Central District Office <W3ter)	Office	803,064	% 57,166	88,244	\$ 50,170	\$ 107,337
KQ29	Legler Library	Library	458,029	\$ 35,819,00	22,454	\$ 16,622	\$ 52,441
F050.	South Chicago Library	Library	285,709	\$ 20,996	9,910	\$ 6,704	\$ 27,700
= FOS2	Bessie Coleman Library	Library	342,637	\$ 24,821	4,868	\$ 4,043	\$ 28,864
P056	Woodson Regional Library	Library	1,883,84 2	\$' 127,901	11,662	\$ 9,623	\$ 137,524
F058	6th District Police Station	Police Station	1,064,14 3	\$ 73,233	23,655	\$ 17,189	\$ 90,422
F070	Pullman Library	Library	322,332	\$ 24,497	12,236	\$ 10,183	\$ 34,680
F073	Harold Washington Library	Library	22,566,4 92	\$ 1,510,787	-	\$	\$ 1,510,787
F077	South Shore Library	Library	196,252	\$ 14,490	14,884	\$ 10,183	\$ 24,673
F086	Martin Luther King Jr Branch Lib	Library	235,201	\$ 17,641	5,899	\$ 5,023	\$ 22,664
F097	Gearing Library	Library	314,775	\$ 22,948	10,496	\$ 7,189	\$ 30,138
F100	Wrightwood-Ashburn Library	Library	289,970	\$ 21,729	7,628	\$ 5,289	\$ 27,018
F107	McKinley Park Library	Library	251,734	\$ 20,205	14,799	\$ 10,364	\$ 30,569
Fill	West Belmont Library	Ubrary	219,789	\$ 16,651	5,324	\$ 4,650	\$ 21,301
F114	Northtown Library	Library	168,045	\$ 12,779	4,918	\$ 3,821	\$ 16,599
F117	George Hall Library	Library	176,746	\$ 12,915	15,627	\$ 10,875	\$ 23,790
F119-	Walker Library	Library	233,265	\$ 17,207	7,503	\$ 5,383	\$ 22,590
F120	Tnurgood Marshall Library	Library	315,518	\$ 23,277	5,782	\$ 4,329	\$ 27,606
F124	Lincoln Belmont Library	Library	NA	NA	14,022	\$ 10,546	NA
■F125	Near North Branch Library	Library	362,297	i 26,869	9,008	\$ 7,055	\$ 33,924
:F223	Police Training Academy	Education	4,432,89 6	\$ 303,675	114,364	\$ 65,441	\$ 369,116
F230	NPV Admin/Mental Building-BLDG. C	Office	1,331,90 1	\$ 116,685	NA	NA	NA
F247	Mount Greenwood Library	Library	256,473	\$ 19,356	9,454	\$ 7,943	S 27,299
F253	Chicago Cultural Center	Museum	4,535,70 8	\$ 311,713	83,915	\$ 44,448	\$ 356,162
F256	311 City Services	Office	1,771,86 0	\$ 120,125	18,210	\$ 13,893	\$ 134,018
F283	14th District Police Station	Police Station	932,275	\$ 73,655	33,332	\$ 22,975	\$ 96,630
F388	Central Office (COOT)	Office	578,821	\$ 40,643	105,863.6	\$ 59,117	\$ 99,760
F398	18th District Police Station	Police Station	833,622	\$ 57,612	28,429	\$ 20,365	\$ 77,976
F399	20th District Police Station	Police Station	1,339,23 2	\$ 91,706	39,211	* 26,419	\$ 118,125
F407	Loop Operations Offices (DSS)	Office/Warehouse	621,389	* 44,656	-	\$	f 44,656
F408	Austin Irving Library	Library	299,586	\$ 23,527	9,346	\$ 6,366	\$ 29,893
F415	Budlong Woods Library	Library	316,560	\$ 22,632	15,506	\$ 10,259	\$ 32,891
F54S	DSS Street Operations	Office/Warehouse	405,429	\$ 29,412	45,423	\$ 30,452	\$ 59,864
F584	1615 W Chicago - Goldblatts Building	Office	2,696,56 8	\$ 196,783	35,835	\$ 24,568	\$ 221,351
F675	Water Department/Central District	Office/Warehouse	1,258,32 3	\$ 97,789	121,756	\$ 75,491	\$ 173,280
F680	Avaion Branch Library	Library	318,753	\$ 22,823	18,470	\$ 12,930	\$ 35,753
TOTAL			52,419,2 36	\$ 3,654,723	1,465,519	\$ 619,910	\$4,147,401

**Field collected data and inputs and outputs used in the Baseline calculations are summarized in the "Baseline Assumptions" set forth on Attachment C-2 and Addendum #1 to the Investment Grade**



***Audit. The Baseline is further described in Sections 4 and 5 of this Exhibit C. For each Performance Guarantee Year, the Parties will determine any Causes for Adjustment pursuant to Section 6 of this Exhibit to establish certain adjustments to the Baseline used to measure energy use at the Facilities for that Performance Guarantee Year ("Adjusted Baseline").***

### 3. DETERMINATION OF PROJECT SAVINGS AMOUNT

#### **A. Project Savings Amount**

For purposes of the performance guarantee described in Exhibit B, the Project Savings Amount will be determined as follows:

$$\$ = \$M + \$N$$

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Where-

$\$$  = Project Savings Amount

$\$m$  = Measured Savings Amount, calculated as set forth in Subsection 3.B below.  $\$N$  = Non-measured Savings Amount, stipulated as set forth in Subsection 3 C below.

#### **B. Measured Savings Amount**

The Measured Savings Amount for any Performance Guarantee Year will be the sum of the "Measured Energy Savings" for all savings categories (i.e., kWh, Therms, or kGals). The Measured

Energy Savings for each savings category will be determined as follows:  $\$o = E_o *$

$\$/Unit E_o - Emb - Emg$  Where:

$\$o$  = Measured Energy Savings

$E_o$  = Measured Energy Units Saved (including partially measured and stipulated, as further described in this Exhibit C)

$\$/Unit$  = Cost of Energy per Unit Measured, as specified in this Exhibit C, Subsection 4.C

$E_{MB}$  = Measured Base Year Consumption or Demand

$Emg$  = Measured Guarantee Year Consumption or Demand

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The process for calculating Measured Energy Units Saved for each ECM is set forth below.

**Interior and Exterior Lighting**                      **Protocol: 1PMVP Option A**

Interior lighting upgrades, Exterior lighting upgrades

**Baseline M&V Activities:**

The measurement boundary includes the energy consumption of individual fixtures or groups of fixtures. The power consumption (Watts) of a sample of the existing fixtures will be measured before work begins. Power (Watt) measurements will be performed with a handheld true-RMS meter. Where applicable, the measurements will be performed at a wall switch. If it is not possible to isolate the fixtures on one switch then measurements will be performed at the individual fixture.

Sampling will follow a statistical sampling approach with an 80/20 precision and confidence criteria on fixture types with a population greater than 50, across like fixture types regardless of building or location. Data will not be collected at all locations, but will follow the statistical sampling approach described herein.

Operating hours for savings calculations are based on observations of site conditions, field data, and industry averages. The lighting operating hours are set forth in Attachment C-2 to the Investment Grade Audit, and shall remain constant in all calculations related to energy consumption and savings related to lighting.

Fixture powers for fixtures not measured are based on manufacturer's data or equivalent fixture measured data. These values are set forth in Attachment C-2 to the Investment Grade Audit, and shall remain constant in all calculations related to energy consumption and savings related to lighting.

Fixture counts were developed during the Investment Grade Audit and are set forth in Attachment C-2 to the Investment Grade Audit. In the event additional fixtures are retrofitted, the fixture counts and related calculations will be updated to reflect any increased quantities. Baseline energy use (watt hours) based on product of the baseline fixture power consumption, operating hours, and fixture quantities for each line item in the lighting audit, as set forth in Attachment C-2 to the Investment Grade Audit.

Baseline demand (watts) based on product of the baseline fixture power consumption, demand coincidence factor (based on operating hours and peak building demand period), and fixture quantities for each line item in the inventory, as set forth in Attachment C-2 to the Investment Grade Audit.

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**Post-Installation M&V Activities:**

- o Fixture counts and proper operation will be confirmed during installation and commissioning of the ECM.
- o Operating hours for all fixture types are assumed to be the same as the baseline operating hours, except for areas with occupancy sensors. Assumed reduction in burn hours associated with occupancy sensors is stipulated. Post installation operating hours for all fixtures types shall be as set forth in Attachment C-2 to the Investment Grade Audit.
- o Measurements will be taken following the same sampling plan utilized during the pre-retrofit M&V process.
- o Verified post-installation energy use shall be calculated based on product of the verified or assumed post-installation fixture power consumption, operating hours, and fixture quantities determined as set forth above.
- o Verified post-installation demand shall be calculated based on product of the verified or assumed post-installation fixture power consumption, demand coincidence factor (based on operating hours and peak building demand period), and fixture quantities determined as set forth above.
- o The verified post-installation energy use and demand shall be subtracted from the baseline values to determine savings from this ECM and the utility rates set forth in this this Exhibit shall be applied to the resulting energy and demand savings to calculate Annual Savings from this ECM. Measurements shall only be taken once after installation and the resulting Annual Savings shall be deemed achieved for the remainder of the guarantee period.
- o An annual verification survey on a sample of fixtures will be performed to verify that the installed equipment components or systems have been properly maintained and continue to generate savings

**Performance Period M&V Activities:**

- o Pre-retrofit measurements shall be taken once before construction
- o Post-retrofit measurements shall be taken once after construction
- o Post-retrofit measurements shall be used for every year of the Guarantee Period

**ECMs:**      **Refurbish HVAC Systems and Refurbish Existing      Protocol      IPMVP Option A**  
                 **Direct Digital Controls System**

ECM Description: Refurbish existing HVAC systems and temperature control systems, refurbish and retro-commission HVAC equipment, and Retro-commission existing DDC controls at Harold Washington Library.

**Pre-Retrofit M&V Activities:**

Baseline operating parameters, hours, and non-critical values will be assumed as noted in the savings calculations.

Measurements for calculations were taken from a sample of equipment, and used to formulate

assumptions.

Data was collected in a sample of buildings of each type and were used to form the baseline assumptions for equipment at all sites.

o o

Operating hours were obtained through site data collection, staff discussions, data loggers, or the BAS.

Data was obtained from the design drawings for use as calculation inputs.

The baseline calculations, and associated inputs and outputs, will be included in the contract and will serve as the baseline for future energy savings calculations.

Additional baseline data may be collected before construction to calibrate calculations.

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### **Post-Installation M&V Activities**

- o. Equipment audit and inspection will confirm final equipment counts and proper operation, o ECM commissioning will verify that equipment is operating as intended, o Non-key operating parameters assumed to be the same as baseline values, o Only the parameters specified in the contract will be utilized to calibrate the calculations for each ECM.
- o Any alterations in utilization or operation of the building by the owner or building occupants may result in modifications to the baseline or post-project calculations, o The equipment must be operated in a manner consistent with the operating standards, schedules, and set points as documented in the contract, o Sampling will follow a statistical sampling approach with an 80/20 precision and confidence criteria on equipment regardless of building or location. Data will not be collected at all locations, but will follow the statistical sampling approach described herein, o The post-installation measured values, as identified below, will be put back into the calculations to determine the post-project usage. The calculated energy usage from the updated calculations will be subtracted from the baseline calculations to determine achieved savings, o • If no changes to calculation assumptions are necessary after collecting the data, the achieved savings will be equivalent to the values identified in the original savings calculations.

### **Approach for Each ECM:**

<b>Controls ECMs:</b>	<b>Data Utilized for Calibration ("key-parameters"):</b>
Reduced operating hours	Motor kW, equipment operating hours
Outside air intake reduction	Damper operation
Reduced fan speeds	Fan speed
Night setback	Equipment operating hours, space temperature reduction

### **Data Gathering Plan:**

- o kW values will be obtained with a hand held RMS meter or consumption data logger o Fan speeds will be obtained through data loggers or the BAS o Space temperatures will be monitored through the BAS or data loggers o Operating conditions will be monitored through site observations, the BAS, and data loggers o Data will be collected on statistically valid sample of equipment, following 80/20 sampling criteria
- o The methodology to obtain the data may vary depending on site requirements

<b>ECMs:</b>	<b>Upgrade to new Direct Digital Controls and Refurbishment of HVAC Systems</b>	<b>Protocol</b>	<b>IPMVP Option A</b>
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ECM Description: Upgrade controls to direct digital controls and refurbish HVAC systems, Upgrade controls to direct digital controls (DDC), and Upgrade controls to remote accessible front end and refurbish HVAC systems.

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### **Pre-Retrofit M&V Activities:**

- o Baseline operating parameters, hours, and non-critical values will be documented / agreed to as noted in the savings calculations, o Measurements for calculations were taken from a sample of equipment, and used to formulate assumptions.
- o Operating hours were obtained through site data collection, staff discussions, data loggers, or the BAS.
- o Data was obtained from the design drawings for use as calculation inputs.
- o The baseline calculations, and associated inputs and outputs, will be included in the contract and will serve as the baseline for future energy savings calculations.
  - o Additional baseline data may be collected before construction to calibrate calculations.

### **Post-Installation M&V Activities**

- o Equipment audit and inspection will confirm final equipment counts and proper operation, o ECM commissioning will verify that equipment is operating as intended, o Non-key operating parameters assumed to be the same as baseline values, o Only the parameters specified in the contract will be utilized to calibrate the calculations for each ECM.
- o Any alterations in utilization or operation of the building by the owner or building occupants may result in modifications to the baseline or post-project calculations.
- o The equipment must be operated in a manner consistent with the operating standards, schedules, and set points as documented in the contract.
- o Sampling will follow a statistical sampling approach with an 80/20 precision and confidence criteria on equipment regardless of building or location. Data will not be collected at all locations, but will follow the statistical sampling approach described herein.
- o The post-installation measured values, as identified below, will be put back into the calculations to determine the post-project usage. The calculated energy usage from the updated calculations will be subtracted from the baseline calculations to determine achieved savings, o If no changes to calculation assumptions are necessary after collecting the data, the achieved savings will be equivalent to the values identified in the original savings calculations.

### **Approach for Each ECM:**

<b>Controls ECMs:</b>	<b>Data Utilized for Calibration ("key-parameters"):</b>
Reduced operating hours	Motor kW, equipment operating hours
Outside air intake reduction	Damper operation
—	—

Reduced fan speeds                      Fan speed  
 Night setback                          Equipment operating hours, space temperature reduction

**Data Gathering Plan:**

- o kW values will be obtained with a hand held RMS meter or consumption data logger
- o Fan speeds will be obtained through data loggers or the BAS
- o Space temperatures will be monitored through the BAS or data loggers
- o Operating conditions will be monitored through site observations, the BAS, and data loggers
- o Data will be collected on statistically valid sample of equipment, following 80/20 sampling criteria
- o The methodology to obtain the data may vary depending on site requirements

**C. Non-Measured Savings Amount**

The annual savings identified in the table below are Non-Measured Savings for the First Guarantee Year documented by the calculations set forth in Addendum #1 to the Investment

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Grade Audit and are not subject to measurement or verification, in each subsequent Performance Guarantee Year, the Non-Measured Savings shall be escalated at a rate of 0% per year to determine the Non-Measured Savings from these measures for such Performance Guarantee Year. The Parties have reviewed the savings in the table below and the Customer agrees and accepts that upon Substantial Completion of the related ECMs the Non-Measured Savings set forth in the table below shall be deemed achieved and included, with appropriate escalation as set forth herein, in the Project Savings Amount determined for each Performance Guarantee Year.

			Non-Measured Savings Value
Envelope	Weatherize the Building Envelope, repair metal wall side panels	Non-Measured Savings	\$
			2
			3,
			2
			6
Misc. Controls	Demand Control Garage Ventilation, Motion sensor for garage doors	Non-Measured Savings	9
			\$
			2
			4,
			6
Steam Traps	Replace Steam Traps	Non-Measured Savings	3
			4
			\$
			1
			0,
Insulation	Insulate Heat Exchanger	Non-Measured Savings	2
			6
			9
			\$
			2
			8
			8

Cooling Tower	Clean Cooling Tower Fill	Non-Measured Savings	\$
			2,
			7
			1
			4
HVAC Mechanical	Single Zone VAV, Repair and	Non-Measured Savings	\$
	Seal Existing Air Handling		1
	Units,		8,
			8
			0
			2
Chemical	Install New HHW Chemical	Non-Measured Savings	\$
Treatment	Treatment		8
			7

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#### 4. WEATHER SOURCE AND ENERGY RATES

##### A. Weather Source

Data for weather-related calculations used in this Contract will be Daily High-Low Temperatures obtained from the National Weather Service Station at O'Hare International Airport. If the data source becomes unavailable or a superior source is identified, the Parties will mutually agree upon an alternative data source. Actual weather data for Performance Guarantee Years will be used for Measured Savings Amount calculations during the Guarantee Term.

##### B. Energy Rates

The rates set forth in this Subsection will be used to determine the Measured Savings Amount. The rates set forth below will be escalated by 0% each Performance Guarantee Year, commencing with the second Performance Guarantee Year.

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F011

**sACTIVIXYrCOPEJ**

Central District Office (Water)

Legler Library

South Chicago Library

Bessie Coleman Library

Woodson Regional Library

6th District Police Station

Pullman Library

Harold Washington Library

South Shore Library

Martin Luther King Jr Branch Lib

Clearing Library

Wrlghtwood-Ashburn Library



McKinley Park Library  
West Belmont Library  
Northtown Library  
George Hall Library  
Walker Library  
Thurgood Marshall Library  
Lincoln Belmont Library  
Near North Branch Library  
Police Training Academy  
NPV Admin/Mental Building-BLDG. C  
Mount Greenwood Library  
Chicago Cultural Center  
311 City Services  
14th District Police Station  
Central Office (CDOT)  
18th District Police Station  
20th District Police Station  
Loop Operations Offices (DSS)  
Austin Irving Library  
Budlong Woods Library  
DSS Street Operations  
1615 W Chicago - Goldblatts Building  
F675  
F680

[1]The utility data rate values for the  
\$

Water Department/Central District  
Avalon Branch Library  
for Lincoln Belmont Library was incomplete, savings calculations.

[2] The electricity rates are blended and are based on the total electricity usage and total electricity cost data provided by the Customer for the sites listed in the table. Complete demand data was not provided by the Customer.

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## 5. BUILDING SCHEDULE AND OPERATIONS

### A. Calendars and Schedules

Except for the Additional Occupancies described below and as otherwise authorized by this Section 5, the Client will operate the conditioned spaces in the Facilities within the date/times and occupancy schedules set forth below.

**msm**

**m**

1029 ■	Legler Library	Library	40	Sun., Closed; Mon. & We
foso	South Chicago Library	Ubrary	48	Sun., Closed; Mon. & We
roS2	Bessie Coleman Library	Ubrary	48	Sun., Closed; Mon & Wed
/ F056	Woodson Regional Library	Library	68	Mon.-Thu., 9-9; Fri & Sat
-: f oss	6th District Police Station	Police Station	168	24hours/day, 7daysawe
' . F070	Pullman Library	library	48	Sun., Closed; Mon. 4 We
; T.073.	Harold Washington Library	Library	68	Mon.-Thu., 9-9; Fri. & Sa
■' F077 '	South Shore Library	Library	48	Sun., Closed; Mon. & We
H086	Martin Luther King Jr Branch Lib	Library	48	Sun., Closed; Mon. & We
" FP97 ■.■	Clearing Library	Library	48	Sun., Closed; Mon. & We
F100	Wrightwood-Ashburn Library	Library	48	Sun., Closed; Mon. & We
F107.	MCKINLEY PARK UBRARY	Library	48	Sun., Closed; Mon & Wed
- Fill	West Belmont Library	Library	48	Sun , Closed; Mon. S We
Flit	Nortntown Library	Ubrary	48	Sun., Closed; Mon. & We
FU7	Hall Library	Library	48	Sun., Closed; Mon. 8i We
■ FU9	walker Library	Library	48	Sun , Closed; Mon. tV We
fi?o	Thurgood Marshall Library	Library	48	Sun., Closed; Mon. & We
,Fi24 .	Uncoln Belmont Library	Library	48	Sun., Closed; Mon. & We
.'V; FizS .	Near North Branch Library	Library	48	Sun., Closed; Mon. 8> We
F223	Police Training Academy	Education	76	6:00 am - 6:00 pm, Mon,
' *>Z3Q.	5801 N Pulaski - NPV Administrative/Mental Building-BLDG. C	Of flee	60	8:00 am - 8:00 pm, Mon.
■. 'rF247'	Mount Greenwood Library	Ubrary	48	Sun., Closed; Mon. HWe
■ -72S3 ■'/-	Chicago Cultural Center	Museum	66	9am - 7pm, Mon. - Thu. 9
.. F25B ■. ;	311 City Services	Office	168	24 hours / day, 7 days a 1
P263	14th District Police Station	Police Station	168	24 hours / day, 7days a v
^ F388	Central Office (CDOT)	Office/Warehouse	52.5	6:00am - 4:30 pm, Mond
F399	20th District Police Station	Police Station	168	24 hours / day, 7 days a 1
-V F407 ■. ■	mop Operations Offices (DSS)	Office/Garage	168	24hours/day, 7days a we
F4C8 .:	Austin Irving Library	Library	48	Sun., Closed; Mon. & We
F415	Budlong Woods Library	Library	48	Sun., Closed; Mon. & We
F54S	DSS Street Operations	Office/Warehouse	42.5	6:00 am - 2:30 pm, Mond
F584 .	1615 W Chicago - Ooldblatts Building	Library	48	Sun., Closed; Mon. & Wed
		Senior Center	40	9-00 am - 5 00 pm, Mond
		Offices	50	7:00 am - 5:00 pm, Mond
		Offices	168	24 hours / day, 7 days a 1
■. ■ F67S	Water Department/Central District	Warehouse	52.5	6:00 8m -4:30 pm, Mond
		Offices	52.5	6:00am - 4:30 pm, Mond
		Emergency Offices	168	24 hours / day, 7 days a 1
- F680 .*	Avalon Branch Library	Library	48	Sun., Closed; Mon. & We

The ESCO acknowledges that the Client conducts certain occasional activities outside of the Occupancy Schedule ("Additional Occupancies"). The ESCO acknowledges that it has evaluated the Additional Occupancies in preparing the Investment Grade Audit and that the Additional Occupancies are factored into the calculation of the Baseline. Additional Occupancies shall not constitute a Cause for Adjustment to the energy savings calculations.

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Holidays: The Facilities will be unoccupied on the dates the following holidays are observed:

- New Year's Day
- Martin Luther King Jr. Day
- Lincoln's Birthday
- Washington's Birthday
- Casimir Pulaski Day
- Memorial Day
- Independence Day
- Labor Day
- Columbus Day
- Veteran's Day
- Thanksgiving Day
- Christmas Day

These occupancy schedules will not apply in any instance where the ESCO or its representatives direct or approve the running of equipment outside of the occupancy schedules in order to improve the efficiency of the ECMs and related equipment.

**B. Standards of Service and Comfort**

The Client will operate the conditioned spaces in the Facilities within the temperature ranges scheduled in the Temperature Control Table below. Operating conditions outside the range specified in this table shall constitute a Cause for Adjustment under this Contract. However, the ESCO acknowledges that adjustments may be made to the temperature ranges within spaces of less than 2000 square feet to accommodate tenant comfort and use of the space without any adjustments to the Baseline, provided spaces with adjustments outside of the temperature ranges do not exceed 5% of the total gross area of a particular Facility.

In the event that an adjustment to the Baseline is sought, the ESCO shall submit the proposed Baseline adjustments to the Customer and describe the reasons for the adjustment as part of the Prior Year Calculations described in Exhibit B.

**Temperature Control Table**

	Heating Set-point Range	Cooling Set-point Range
Occupied	70-74 (average 72)	72-76 (average 74)
Unoccupied	60	85

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## 6. CAUSES FOR ADJUSTMENT

Adjustments to the Baseline are intended to adjust for any operations or conditions that differ from those assumptions made when the guaranteed savings were calculated. Each of the causes described in the table below shall constitute a "Cause for Adjustment" to the Baseline used to calculate the Measured Savings Amount. Any disputes regarding a Cause for Adjustment shall be addressed pursuant to Section VIII of Exhibit B.

Cause	Action
Renovation/ Addition to B1.	None required. Site is independently metered. No effect on savings tracking of other buildings.
New 1. The Customer will notify the ESCO when additions are planned. 2. The ESCO will review the existing calculations at the request and expense of the Customer. 4. If the addition is below all of the three Service	
Renovation1. The Customer will notify the ESCO when building renovations are planned. 2. The ESCO Utility or Hconsumption more than the threshold limits, the renovation's impact on energy use will be a load or option, ignored.	
Abandonment c1. The Customer will notify the ESCO when abandonment is planned. 2. The ESCO will threshold limits, the abandonment's impact on energy use will be accounted for in update on energy may be estimated, or, at the Customer's option, ignored.	
Change in Occupancy1. The Customer will maintain records of its Building Usage, Occupancy Schedule annually. 2. Changes in the Building Usage and Occupancy Schedule will be announced	

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expense of the Customer, provided such changes exceed the threshold limits.* 3. Ameresco will prepare and Section 5.B of this Exhibit, adjustments to the baselines will be made.	
Customer-Initiated ECMs	1. If a Customer-initiated ECM is estimated to save less than 5% purposes of this Cause for Adjustment, multiple Customer-initiated percentage of the Guaranteed Annual Savings Amount. 2. To meet agreement from the ESCO, the resulting savings from the Customer in which the Customer-initiated ECM is installed be reduced below
Weathered electricity or natural gas consumption may or may not be affected by weather differences from at days, Ameresco shall adjust the natural gas baseline using weather normalization software utilizing	
Failure to perform Customer responsibilities	Customer, or Client, as the case or other obligations under the Contract forth in Exhibit G or operating responsibilities C.
Stub Years	During Stub Years, any energy savings and/or heating energy savings shall savings are to be calculated. For April 1 through December 31st weather annual savings will not be realized heating energy savings will occur

Other Causes

The Parties may mutually agree  
Baseline conditions.

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In the event the ESCO has reason to believe that any action or failure to act by the Customer or a measurable deviation from the Baseline may constitute a Cause for Adjustment to the energy performance calculations set forth in this Contract, the ESCO must notify the Customer of a possible Cause for Adjustment within sixty (60) days of becoming aware of such action, failure to act, or measurable deviation. If the ESCO fails to notify the Customer within such sixty (60) day period, the ESCO thereafter waives the right to present any claim for an adjustment to the energy performance calculations on account of such action or failure to act.

Notwithstanding the provisions of this Section, the ESCO is not required to present any claim for a Cause of Adjustment if the ESCO determines that an action, failure to act, or measurable deviation will have no impact on the Measured Savings Amount. In all instances, the ESCO must account for all Causes for Adjustment to the energy performance calculations arising during the preceding Performance Guarantee Year within the Prior Year Calculations (as defined in Exhibit B), and the ESCO waives the right to present any Causes for Adjustments not specified within the Prior Year Calculations. Within sixty (60) days of the Date of Commencement, the Parties will mutually determine any Causes for Adjustment to account for changes in the Site and its use which have occurred prior to the execution of this Contract but after the performance of the Investment Grade Audit.

\* Threshold Limits Per Fuel-type/Category:

Area - 3% of square footage of Site area as of the Date of Commencement.

Electricity - 3% of highest annual peak demand

Natural Gas - 3% of installed Base Year gas-heating capacity

Air Conditioning - 3% of installed Base Year air-conditioning capacity

## 7.EXAMPLES

Examples of energy savings calculations for the each ECM included in the Project are set forth Addendum #1 to the Investment Grade Audit.

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**EXHIBIT D**

**PERFORMANCE TRACKING SERVICES**

For so long as ESCO is obligated to provide M&V Services under the Contract, ESCO will complete the M&V Services as set forth in Exhibit C (Methodology and Baseline) during each Performance Guarantee Year and document its findings, including the determination of the annual Project Savings Amount for purposes of the Performance Guarantee in the Annual M&V Report. ESCO shall submit the Annual M&V Report to the Customer and the Customer shall review and accept the Annual M&V Report in accordance with the schedule below, subject to the provisions of Section IV of Exhibit B (Performance Guarantee).

		v.cWtorner Review's^ .Acceptance Period-^
First Year Annual M&V Report	Sixty (60) days after ESCO's receipt of all pertinent utility bills with meter-reading ending dates falling within a Performance Guarantee Year	30 days
Subsequent Annual M&V Reports, if any	Sixty (60) days after ESCO's receipt of all pertinent utility bills with meter-reading ending dates falling within a Performance Guarantee Year	30 days

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EXHIBIT E

**PERFORMANCE TRACKING SERVICES PAYMENTS**

The ESCO will be paid the following amounts for Performance Tracking Services. Payments will be made in accordance with Section 13.A.2 of the Contract.

<b>Payment Date</b>	<b>Payment Amount</b>
01/01/2016	\$15,413
07/01/2016	15,413
01/01/2017	15,721
07/01/2017	15,721
01/01/2018	16,035
07/01/2018	16,035
01/01/2019	16,356
07/01/2019	16,356
01/01/2020	16,683
07/01/2020	16,683
01/01/2021	17,017
07/01/2021	17,017
01/01/2022	17,357
07/01/2022	17,357
01/01/2023	17,704
07/01/2023	17,704
01/01/2024	18,059
07/01/2024	18,059
01/01/2025	18,420
07/01/2025	18,420
01/01/2026	18,788
07/01/2026	18,788
01/01/2027	19,164
07/01/2027	19,164
01/01/2028	19,547
07/01/2028	19,547
01/01/2029	19,938
04/30/2029	13,292

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## EXHIBIT F

### **ADDITIONAL PERFORMANCE OF WORK REQUIREMENTS**

The ESCO shall be responsible to meet these performance requirements throughout the course of the Work. Exceptions shall only be allowed at the Customer's discretion and with Customer's prior written approval.

#### **A. General Performance of Work Requirements**

1. The following activities are specifically prohibited from occurring on the Customer's or Client's property and cannot be undertaken by the ESCO:

- a. The use of a jackhammer on site
- b. The use of Client space, other than Client space being constructed pursuant to this Contract
- c. The use of Client equipment
- d. Unauthorized use of Facility equipment
- e. The use of the Facility's trash compactor, dumpster, or container
- f. Unauthorized parking in restricted areas
- g. Unauthorized on-site storage
- h. Consumption, of alcohol or controlled substances on site
- i. Unauthorized congregation in Facility public space
- j. Cooking or quantity food preparation on site
- k. Unauthorized use of Facility restroom areas
- l. Unapproved use of Facility utilities
- m. Objectionable, abusive, or unacceptable personal behavior of contractor personnel



- n. Improper disposal of wastes, residues, or debris
- o. Loud noises outside of the Work site considered by the Customer or Client as objectionable

2. -A list of ESCO and Subcontractor employees needs to be submitted to the Customer Representative prior to commencing work. All Project employees are required to sign-in and out on a daily log sheet maintained at each Facility's security office designated by the Commission. All Project employees are required to wear their contractor badge at all times.

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3. For Facilities equipped with freight elevators, all ESCO personnel shall utilize the freight elevator for access to the Work. Only in the event of an emergency shall ESCO personnel be permitted to use other means of egress.

- 4. All keys to construction site offices, fenced in areas, etc. are to be copied and given to security.

5. For Facilities equipped with freight elevators, all materials and waste shall be transported to and from the Work site via the freight elevators. Under no circumstance shall the passenger elevators be used without the written consent of the Customer.

6. It shall be the responsibility of the ESCO to isolate the heating, ventilating, and air conditioning systems of the Work site from the remainder of the Facility. Under no circumstance shall the ESCO utilize materials such as but not limited to: cleaning agents, paints, thinners, or adhesives that if released in the Work site atmosphere could spread to tenant areas, causing discomfort or posing any type of health hazard.

7. In the event that any fire and life safety system will need to be disabled to complete the Work, the ESCO must notify the Customer in advance of such event in writing.

8. In the event any soldering or welding apparatus is required to complete the Work, the ESCO must notify the Customer of such event. A welding permit must be obtained from the Customer if required for the Facility.

9. Removal of debris and delivery of any materials are limited to off-hours, 6 p.m. to 6 a.m. Arrangements should be made in advance with security for the Facility. All dumpsters need to be delivered after 6 p.m. and removed no later than 6 a.m. Arrangements are to be made with Facility security. The Facility will need to be cleaned of all dust and debris prior to 6 a.m. every day.

10. Freight elevators are to be protected on the walls and floor. If the elevator top needs to be removed, arrangements are to be made with the Facility's Chief Engineer.

11. Material Safety Data Sheets (MSDS) must be supplied to the Office of the Facility prior to any material entering the Facility.

12. All fire proofing and fire stops must be maintained. Patching must be completed as occurred to ensure integrity of the fire system.

- 13. Stairway doors shall not be propped open or blocked at any time.

14. Dry chemical fire extinguishers must be in the construction area.
15. Report any injuries to the security department as soon as possible.
16. Flooring throughout the building, including granite, terrazzo and carpeting, must be protected at all times.
17. It is the ESCO's responsibility to come to each Facility prepared with all tools and equipment necessary to complete the job Customer and Client cannot supply lifts, ladders or tools at the Facilities to outside contract employees.

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### B. ACM-Related Performance of Work Requirements

1. In connection with the demolition, removal or handling of any ACM, the ESCO will keep such materials wet, and remove all items in full compliance with current Environmental Protection Agency (EPA), federal Occupational Safety and Health Administration (OSHA), Illinois Environmental Protection Agency (IEPA) and other applicable regulations and statutory requirements. All such items shall be disposed of at an EPA regulated landfill and ESCO shall submit to the Customer for its approval all required hazardous waste and closure documentation, including a listing of all certified personnel, chain of custody, disposal manifests, post-abatement clearance testing, recordkeeping and monitoring reports related to the Project.

2. The ESCO will be responsible to utilize all appropriate engineering controls (including but not limited to critical barriers, hepafiltered vacuums and dust pick-up systems, impermeable containers, etc.) and work methods to minimize fiber, lead or other Hazardous Materials released during handling, removal or disposal activities. The ESCO shall conduct regular biological monitoring and personal and area air sampling to verify lead levels and fiber counts on all portions of the Project. The ESCO shall document its removal activities and provide any and all documentation relating to such removal to the Customer upon request, including but not limited to, documentation regarding air sampling data, hazardous waste manifests, disposal receipts, training certificates and photographs. The ESCO will be responsible to provide all EPA, IEPA and OSHA monitoring, as required by applicable law.

3. Prior to commencing Work, the ESCO shall insure that all workers are instructed in all aspects of personal protection, work procedures, emergency evacuation procedures and the use of equipment, including procedures unique to the ACM abatement Work required by this Contract. The ESCO shall provide appropriate respiratory protection equipment for each worker and insure usage during potential exposure to any ACM or other Hazardous Materials. The ESCO shall have an adequate supply of hepafilter elements or other necessary filter elements and spare parts on sight for all respirators in use, and all respirators shall be chosen from among those jointly approved as being acceptable for protection by the Mine Safety and Health Administration (MSHA), and the National Institute for Occupational Safety and Health (NIOSH). The ESCO shall insure that any of its employees or subcontractors, of whatever tier, shall wear approved respirators at all times while abatement work is underway or while present in the work area.

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## EXHIBIT G

### **REQUIRED MAINTENANCE**

Responsibility for the proper maintenance, service, repair and adjustments to each ECM, ECM system and related ancillary systems and equipment, including related expenses, shall transfer to the Customer on an ECM by ECM basis on the date of Substantial Completion of each ECM as such date is determined in accordance with Section 3.C. of the Contract. The Customer will be responsible for such maintenance, service, repair and adjustments for the remainder of the Term. Operation and Maintenance Manuals ("O&M Manuals") will be provided to the Customer by the ESCO. Included with the O&M Manuals will be a list of maintenance responsibilities and tasks for the Customer. ESCO has no maintenance responsibilities under this Contract. ESCO shall have no responsibility for repairs and/or adjustments to the ECMs except to the extent set forth, and during the Warranty Period provided in Section 8 of this Contract.

**Start-up and Shutdown:** The Customer's responsibilities include all system start-ups and shut-downs. System start-up (beginning of season) and shut-down (end of season) refers to specific manufacturer recommendations with respect to "proper" system start-up, operation, maintenance, and shut-down as defined in O&M Manuals.

**Operations:** The Customer shall, or shall cause the Client to, operate the equipment installed hereunder in accordance with parameters noted in Exhibit C, the manufacturers' recommendations, and any supplemental procedures supplied to the Customer or the Client by ESCO, including those set forth in the O&M Manuals. The Customer shall also, or shall cause the Client to, operate the equipment and systems (including ancillary related systems) in accordance with the standards of service and comfort set forth in Exhibit C.

**Maintenance:** The Customer's maintenance responsibilities include the proper operation and prompt repair and maintenance of each ECM, ECM system and related ancillary systems and equipment such that they are maintained in good working order during the Contract Time. The Customer shall, or shall cause the Client to perform the preventative maintenance that is fully prescribed, defined, and scheduled by the ESCO through the CMMS. The Customer and Client will rely on the information populated by the ESCO into the CMMS to advise the Customer of the periodic preventative maintenance requirements for the equipment included in the ECMs during the Contract Time. The ESCO will be provided with a user license to the CMMS which will the ESCO to access to the CMMS to monitor maintenance work orders for each applicable ECM. The Customer shall, or shall cause the Client to, repair and maintain (i) the equipment and all other components which comprise each ECM and (ii) all other equipment which is attached thereto and/or is integral to the proper functioning of each ECM, including performance of the maintenance tasks, manufacturer's

recommendations and supplemental procedures included in the O&M Manuals as defined by the ESCO in the CMMS. Maintenance also refers to performing required maintenance of ancillary systems.

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## EXHIBIT H

### **ESCO'S INSURANCE REQUIREMENTS**

1. The ESCO shall provide the following minimum insurance coverages:

1. Commercial General Liability (Primary and Umbrella)

Commercial General Liability Insurance or equivalent with limits of not less than \$10,000,000 per occurrence for bodily injury, personal injury, and property damage liability. Coverage must include the following: All premises and operations, products/completed operations (for minimum of two (2) years following project completion), flood, explosion, collapse, underground hazards, separation of insureds, defense and contractual liability. The ESCO and all subcontractors of every tier will specifically name the Customer, the Commission, the Client, the Client agency/property owner of each project, the Lender and others as may be required by the Customer as Additional Insured on a primary and non-contributory basis, with respect to liability arising out of operations of ESCO, and/or its Subcontractors, on behalf of Customer and/or Client, where required by written contract for any liability arising directly or indirectly from the work including the two (2) years completed operations period using the ISO CG2010 (0704) and CG2037 (0704) or equivalent. Coverage will include a waiver of subrogation as required below. The ESCO's Excess Insurance may be used to satisfy the limits specified in this section.

***The ESCO and subcontractors are required to endorse their liability policies with form CG 24 17 to eliminate the exclusion for work within fifty (50) feet of the rail right-of-way. The ESCO must provide copies of this endorsement with the certificate of insurance required below. The ESCO must ensure that Subcontractors maintain this endorsement on their policies. Such coverage is required only when the ESCO's work is within 50 feet of such rail right-of-way.***

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

2. Automobile Liability (Primary and Umbrella)

When any motor vehicles (owned, non-owned, leased and hired) are used in connection with work to be performed, the ESCO must provide Automobile Liability Insurance, with limits of not less than \$5,000,000 per occurrence for bodily injury and property damage. The Customer, the

Commission, the City of Chicago and the client agency/property owner of each project and others as may be required by the Customer as designated in the scope of work are to be named as Additional Insureds on a primary, non-contributory basis, with respect to liability arising out of operations of ESCO, and/or its Subcontractors, on behalf of Customer and/or Client. The ESCO's Excess Insurance may be used to satisfy the limits specified in this section.

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

### 3. Workers' Compensation and Employers Liability

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

### 4. Professional Liability

Professional Liability Insurance must be maintained with limits of not less than \$5,000,000 covering acts, errors, or omissions. The policy will include coverage for wrongful acts, including but not limited to errors, acts or omissions, in the rendering or failure to render professional services. When policies are renewed or replaced, the policy retroactive date must coincide with, or precede the, start of work under this Contract. Coverage must be maintained for two years after Substantial Completion. A claims-made policy, which is not renewed or replaced, must have an extended reporting period of two (2) years.

Subcontractors performing professional services for the ESCO must maintain limits of not less than \$1,000,000 with the same terms herein.

### .5. Contractors' Pollution Liability

Contractors' Pollution coverage is required with limits of not less than \$5,000,000 per occurrence for any portion of the services, which may entail, exposure to any pollutants, whether in the course of sampling, remedial work or any other activity under this Contract. The Contractors' Pollution liability policy will provide coverage for sums that the insured become legally obligated to pay as loss as a result of claims for bodily injury, property damage and/or clean-up costs caused by any pollution incident arising out of the Work including remediation operations, transportation of pollutants, owned and non-owned disposal sites and any and all other activities of the ESCO and its subcontractors. Pollution incidents will include, but not be limited to, the discharge, dispersal, release or escape of any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, medical waste, waste materials, lead, asbestos, silica, hydrocarbons and microbial matter, including fungi which reproduces through release of spores or the splitting of cells or other means, including but not limited to, mold, mildew and viruses, whether or not such microbial matter is living.

The policy will be maintained for a period of three years after final completion and include completed operations coverage. The policy will include the Customer, the Commission, the Client and the client agency/property owner of each project, the Lender and others as may be required by the Customer, as

Additional Insured on a primary and non-contributory basis for on-going and completed operations with respect to liability arising out of operations of ESCO, and/or its subcontractors, on behalf of Customer and/or Client.

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

### 6. Builders Risk/Installation Floater

The ESCO must provide All Risk Builders Risk/Installation Floater insurance or equivalent on a replacement cost basis for materials, supplies, equipment, machinery and fixtures that are or will be part of the permanent facility. Coverage must be on an All Risk basis including, but are not limited to, the following: right to partial occupancy, collapse, water damage including overflow, leakage, sewer backup, or seepage, damage to adjoining or existing property, debris removal, scaffolding, false work, fences, and temporary structures, resulting damage from faulty workmanship or materials, ordinance and Law, and equipment stored off site or in transit. The Customer, the Commission, the Client, the client agency/property owner of each project and the Lender are to be loss payees on the policy. Coverage must remain in place until at least Substantial Completion.

The ESCO is responsible for all loss or damage to personal property including but not limited to materials, equipment, tools, and supplies owned, rented, or used by ESCO.

### 7. Railroad Protective Liability

When work is to be performed within fifty (50) feet of the rail right-of-way, the ESCO shall ensure that Railroad Protective Liability insurance in the name of the railroad or transit entity remains in force during the course of construction of the project entity for losses arising out of injuries to or death of all persons, and for damage to or destruction of property, including the loss of use thereof. Limits shall be in the amount required by the railroad or transit entity.

*The ESCO and subcontractors are required to endorse their liability policies with form CG 24 17 to eliminate the exclusion for work within fifty (50) feet of the rail right-of-way. The ESCO and subcontractors must provide copies of this endorsement with the certificate of insurance required below.*

### 8. Umbrella.

The General Liability, Automobile and Workmen's Compensation policy limits described above may be provided in combination with any umbrella liability policy maintained by the ESCO.

## II. Policies described in Section I above shall be subject to the following:

1. Such certificates and policies must be in a form acceptable to the Customer and from companies with a general rating of A minus, and a financial size category of Class VII or better, in Best's Insurance Guide. In accordance with ISO ACORD Form 25 (2010/05), should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy

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provisions; provided ESCO shall provide Customer at least thirty (30) days' prior written notice of the cancellation, non-renewal (without replacement) or material reduction of coverage or limits of any policy of insurance referred to herein.

2. The ESCO must, at all times during the term of this Contract, maintain and keep in force, at the Company's expense, the insurance coverages provided above.

3. In the event of a claim or litigation the Customer reserves the right to obtain applicable portions of insurance policies and records from the ESCO and/or its Subcontractors at any time upon written request, redacted to delete any ESCO confidential information not relevant to the claim, litigation or intended coverage.

4. Any deductibles or self-insured retentions on referenced insurance coverage must be borne by the ESCO.

5. The Company hereby waives and agrees that their insurers waive their rights of subrogation against the Customer and the Client, and their respective Board members, employees, elected officials, agents or representatives.

6. Unless otherwise stated herein, the insurance coverage and limits furnished by the ESCO in no way limit the ESCO's liabilities and responsibilities specified within this Contract or by law.

7. Any insurance or self-insurance programs maintained by the Client do not contribute with insurance provided by the ESCO under this Contract.

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

9. The ESCO must require all its Subcontractors to provide the insurance required in this Contract, or ESCO may provide the coverage for its Subcontractors. All its Subcontractors are subject to the same insurance requirements of the ESCO unless otherwise specified in this Contract.

10. If the ESCO or its Subcontractors desires additional coverage, the party desiring the additional coverage is responsible for the acquisition and cost.

11. The Customer maintains the rights to modify, delete, alter or change these requirements upon written notice to the ESCO. Documented increased costs resulting from revised insurance requirements may be submitted as a Change Order increasing the Contract Sum.

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EXHIBIT I

Customer Disclosures and Certifications

Name: AMERESCO, INC. .

Address: 111 Speen St. Suite 410. Framingham MA 01701 with local office at 150 N.

Michigan, Suite 2040, Chicago, IL 60601

Telephone No.: 508-661-2200 (Framingham) and 312-994-8600 (Chicago)

Federal Employer f.D. Social Security #: N/A\_

Nature of Transaction:

☐ | Sale or purchase of land

☐ | Construction Contract

☐ | Professional Services Agreement

☒ | Other [Guaranteed Energy Performance Contract 1

Instructions: FOR. USE WITH ANY OF THE ABOVE TRANSACTIONS. Anyone proposing one of the above transactions with the Chicago Infrastructure Trust must complete this Disclosure Affidavit. Please note that in the event the Contractor is a joint venture, the joint venture and each of the joint venture partners must submit a completed Disclosure Affidavit.

The undersigned Louis P. Maltezos , as Executive Vice President  
(Name) (Title)

and on behalf of Ameresco, Inc.  
("Bidder/ Proposer" or "Contractor") having been duly sworn under oath certifies that:

**L DISCLOSURE OF OWNERSHIP INTERESTS**

All bidders/proposers shall provide the following information with their bid/proposal. If the question is not applicable, answer "NA". If the answer is none, please answer "none".

Bidder/Proposer is a: ☒ Corporation ☐ Sole Proprietorship  
☐ Partnership ☐ Not-for-Profit Corporation  
☐ Joint Venture ☐ Other



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## SECTION I, FOR PROFIT CORPORATION

a. State of Incorporation      Delaware^

b. Authorized to do business in the State of Illinois: Yes ("X" ] No f ]

c. Names of all officers of corporation

(or attach list): Name (Print or Type) Title (Print or Type)

Names of all directors of corporation (or attach list): Name (Print or Type) Title (Print or Type)

Ocoiiii: P. Snkellaris David .). Anderson Michael T. ttnkas David .1. Coirsin

.lostpli P. DeManclie Mario lusi Louii. P. Mallezos Amlrcvv 13. Spence

("iconic 1". Sakellaris David .1.. Andervm David J. Corrsin Willinm M. Bulga

Douglas i. Fov Michael E Jcsunis Joseph W. Sullen l-'rank V. Wisneski

d. If the corporation has fewer than 100 shareholders, indicate here or attach a list of names and addresses of all shareholders and the percentage interest of each.

Name (Print or Type) NOT APPLICABLE

Ownership Interest

%

%

%

e. If the corporation has 100 or more shareholders, indicate here or attach a list of names and addresses of all shareholders owning shares equal to or in excess of seven and one-half percent (7.5%) of the proportionate ownership of the corporation and indicate the percentage interest of each.

Name (Print or Type)

Address Ownership

Interest

The common stock of Ameresco, Inc. is publicly traded on the New York Stock Exchange under the symbol AMKC. The most current information related to the Company's shareholders is available in our Proxy Statement and other filings with the Securities and Exchange Commission which are publicly available from the investor relations section of the Company website ([www.ameresco.com](http://www.ameresco.com) <<http://www.ameresco.com>>) or directly from the SEC Edgar database,

f. Is the corporation owned partially or completely by one or more other corporations? Yes j | No [X |

if-yes" provide the above information, as applicable., for each such corporation.

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## SECTION 2. PARTNERSHIPS

- a. If the-bidder/proposer is a partnership, indicate the name of each partner and the percentage of interest of each therein.

Name of Partners (Print or Type)

NA

%

%

## SECTION 3. SOLE PROPRIETORSHIP

- a. The bidder/proposer is a sole proprietorship and is not acting in any representative capacity on behalf of any beneficiary: Yes ☐ No ☐ NA

If NO, complete items b. and c. of this Section 3.

- b. If the sole proprietorship is held by an agent(s) or a nominee(s), indicate the principal(s) for whom the agent or nominee holds such interest.

Name(s) of Principal(s). (Print or Type)

NA

- c. If the interest of a spouse or any other party is constructively controlled by another person or legal entity, state the name and address of such person or entity possessing such control and the relationship under which such control is being or may exercised.

Address(es)

NA

## SECTION 4. LAND TRUSTS, BUSINESS TRUSTS, ESTATES & OTHER ENTITIES

If the bidder/proposer is a land trust, business trust, estate or other similar commercial or legal entity, identify any representative, person or entity holding legal title as well as each beneficiary in whose behalf title is held including the name, address and percentage of interest of each beneficiary.

Name(s) Address(es)

NA

## **SECTION 5. NOT-FOR-PROFIT CORPORATIONS**

a. State of incorporation NA

b. Name of all officers and directors of corporation (or attach list):

Name (Print or Type)	Title (Print or Type)	Name (Print or Type)	Title (Print or Type)
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NA

NOTE: The Chicago Infrastructure Trust may require additional information from any entity or individual to achieve full disclosure relevant to the transaction. Further, any material change in the information required above must be provided by supplementing this statement at any time up to the time the Chicago Infrastructure Trust takes action on the contract or other action requested of the Chicago Infrastructure Trust.

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## **II. CONTRACTOR CERTIFICATION**

### **A. CONTRACTOR**

1. The Contractor, or any subcontractor to be used in the performance of this contract, or any affiliated

entities of the Contractor or any such subcontractor, or any responsible official thereof, or any other official, agent or employee of the Contractor, any such subcontractor or any such affiliated entity, acting pursuant to the direction or authorization of a responsible official thereof has not, during a period of three years prior to the date of execution of this certification or if a subcontractor or subcontractor's affiliated entity during a period of three years prior to the date of award of the subcontract:

- a. Bribed or attempted to bribe, or been convicted of bribery or attempting to bribe a public officer or employee of the City of Chicago, the State of Illinois, any agency of the federal government or any state or local government in the United States (if an officer or employee, in that officer's or employee's official capacity); or
  - b. Agreed or colluded, or been convicted of agreement or collusion among bidders or prospective bidders in restraint of freedom of competition by agreement to bid a fixed price or otherwise; or
  - c. Made an admission of such conduct described in 1(a) or (b) above which is a matter of record but has not been prosecuted for such conduct.
2. The Contractor or agent, partner, employee or officer of the Contractor is not barred from contracting with any unit of state or local government as a result of engaging in or being convicted of bid-rigging" in violation of Section 3 of Article 33E of the Illinois Criminal Code of 1961, as amended (720 ILCS 5/33E-3), or any similar offense of any state or the United States which contains the same elements as the offense of bid-rigging during a period of five years prior to the date of submittal of this bid, proposal or response."
3. The Contractor or any agent, partner, employee, or officer of the Contractor is not barred from contracting with any unit of slate or local government as a result of engaging in or being convicted of bid-rotating<sup>4</sup> in violation of Section 4 of Article 33E of the Illinois Criminal Code of 1961. as amended (720 ILCS 5/33E-4), or any similar offense of any state or the United States which contains the same elements as the offense of bid-rotating,
4. The Contractor understands and will abide by all provisions of Chapter 2-56 of the Municipal Code entitled "Office of the Inspector General" and all provisions of the Public Building Commission Code of Ethics Resolution No.5339, as amended by Resolution No. 5371.

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The Contractor certifies to the best, of its knowledge and belief, that it and its principals:

- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal, state or local department or agency.
- b. Have not within a three-year period preceding this bid or proposal been convicted of or had a

civil judgement rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes; commission of embezzlement, theft, forgery, bribery, falsification or destruction of records; making false statements; or receiving stolen property;

- c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (5)(b) above; and
- d. Have not within a three-year period preceding this bid or proposal had one or more public transactions (federal, state or local) terminated for cause or default.

## B. SUBCONTRACTOR

1. The Contractor has obtained from all subcontractors being used in the performance, of this contract or agreement, known by the Contractor at this time, certifications substantially in the form of Section 1 of this Disclosure Affidavit. Based on such certification(s) and any other information known or obtained by the Contractor, is not aware of any such subcontractor or subcontractor's affiliated entity or any agent, partner, employee or officer of such subcontractor or subcontractor's affiliated entity having engaged in or been convicted of (a) any of the conduct describe in Section 11( A) (1)(a) or (b) of this certification; (b) bid-rigging, bid-rotating, or any similar offense, of any state or the United States which contains the same elements as bid-rigging or bid-rotating, or having made an admission of guilt of the conduct described in Section 11(A)(1)(a) or (b) which is matter of record but has/have not been prosecuted for such conduct.
2. The Contractor will, prior to using them as subcontractors, obtain from all subcontractors to be used in the performance of this contract or agreement, but not yet known by the Contractor at this time, certifications substantially in the form of this certification. The Contractor shall not, without the prior written permission of the Commission, use any of such subcontractors in the performance, of this contract if the Contractor, based on such certifications or any other information known or obtained by Contractor, became aware of such subcontractor, subcontractor's affiliated entity or any agent, employee or officer of such subcontractor or subcontractor's affiliated entity having engaged in or been convicted of (a) any of the conduct describe in Section 11(A)(1)(a) or (b) of this certification or (b) bid-rigging, bid-rotating or any similar offenses of any state or the United States which contains the same elements as bid-rigging or bid-rotating or having made an admission of guilt of the conduct described in Section 11(A)(1)(a) or (b) which is

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a matter of record but has/have not been prosecuted for such conduct. The Contractor shall cause such subcontractors to certify as to Section F1(A)(5). in the event any subcontractor is unable to certify to Section 11(A)(5), such subcontractor shall attach an explanation to the certification.

3. For all subcontractors to be used in the performance of this contract or agreement, the Contractor shall maintain for the duration of the contract all subcontractors' certifications required by Section 11(B)(1) and (2) above, and Contractor shall make such certifications promptly available to the Chicago Infrastructure Trust upon request.

4. The Contractor will not, without the prior written consent of the Chicago Infrastructure Trust, use as subcontractors any individual, firm, partnership, corporation, joint venture or other entity from whom the Contractor is unable to obtain a certification substantially  
. in the form of this certification.
5. The Contractor hereby agrees, if the Chicago Infrastructure Trust so demands, to terminate its subcontractor with any subcontractor if such subcontractor was ineligible at the time that the subcontract was entered into for award of such subcontract. The Contractor shall insert adequate provisions in all subcontracts to allow it to terminate such subcontractor as required by this certification.

### C. STATE TAX DELINQUENCIES

1. The Contractor is not delinquent in the payment of any tax administered by the Illinois Department of Revenue or, if delinquent, the contractor is contesting, in accordance with the procedures established by the appropriate Revenue Act, its liability for the tax or amount of the tax.
2. Alternatively, the contractor has entered into an agreement with the Illinois Department of Revenue for the payment of all such taxes that are due and is in compliance with such agreement.
3. If the Contractor is unable to certify to any of the above statements [(Section II (C))], the Contractor shall explain below. Attach additional pages if necessary.

NA

4. If any subcontractors are to be used in the performance, of this contract or agreement, the Contractor shall cause such subcontractors to certify as to paragraph (C)(1) or (C)(2) of this certification. In the event that any subcontractor is unable to certify to any of the statements in this certification, such subcontractor shall attach an explanation to this certification.

-7-

### OTHER TAXES/FEES

1. The Contractor is not delinquent in paying any fine, ice, tax or other charge owed to the City of Chicago.
2. If Contractor is unable to certify to the above statement. Contractor shall explain below and attach additional sheets if necessary.

NA

**E. ANTI-COLLUSION**

The Contractor, its agents, officers or employees have not directly or indirectly entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with this proposal or contract. Failure to attest to this section as part of the bid will make the bid nonresponsive and not eligible for award consideration.

**F. PUNISHMENT**

A Contractor who makes a false statement material to Section 11(A)(2) of this certification commits a Class 3 felony. 720 ILCS 5/33E-11(b).

**G. JUDICIAL OR ADMINISTRATIVE PROCEEDINGS**

1. The Contractor is not a party to any pending lawsuits against the City of Chicago, the Chicago Infrastructure Trust or the Public Building Commission of Chicago nor has Contractor been sued by the City of Chicago, the Chicago Infrastructure Trust or the Public Building Commission of Chicago in any judicial or administrative proceeding.
2. If the Contractor cannot certify to the above, provide the (1) case name; (2) docket number; (3) court in which the action is or was pending; and (4) a brief description of each such judicial or administrative proceeding. Attach additional sheets if necessary.

NA

-8-

**III. CERTIFICATION OF ENVIRONMENTAL COMPLIANCE**

- A, Neither the Contractor nor any affiliated entity of the Contractor has, during a period of live years prior to the date of execution of this Affidavit: (1) violated or engaged in any conduct which violated federal, state or local Environmental Restriction<sup>^</sup>. (2) received notice of any claim, demand or action, including but not limited to citations and warrants, from any federal, state or local agency exercising executive, legislative, judicial, regulatory or administrative functions relating to a violation or alleged violation of any federal, state or local statute, regulation or other Environmental Restriction: or (3) been subject to

any fine or penalty of any nature for failure to comply with any federal, state or local statute, regulation or other Environmental Restriction.

If the Contractor cannot make the certification contained in Paragraph A of Section 111, identify any exceptions:

Please see attached for exceptions to Paragraph A of Section III

(At tach additional pages of explanation to this Disclosure Affidavit, if necessary.)

- B. Without the prior written consent of the Chicago Infrastructure Trust, Contractor will not employ any subcontractor in connection with the contract or proposal to which this Affidavit pertains without obtaining from such subcontractor a certification similar in form and substance to the certification contained in Paragraph A of this Section III prior to such subcontractor's performance of any work or services or furnishing any goods, supplies or materials of any kind under the proposal or the contract to which this Affidavit pertains.
- C. Until completion of the Contract's performance under the proposal or contract to which this Affidavit pertains, the Contractor will not violate any federal, state or local statute, regulation or other Environmental Restriction, whether in the performance of such contract or otherwise.

#### **IV. CERTIFICATION OF COURT-ORDERED CHILD SUPPORT COMPLIANCE**

For purpose of this Section IV, "SUBSTANTIAL OWNER" means any person who owns or holds a ten percent (10%) or more percentage of interest in the Contractor. If the Contractor is an individual or sole proprietorship, substantial owner means that individual or sole proprietorship. Percentage of interest includes direct, indirect and beneficial interests in the Contractor. Indirect or beneficial interest means that an interest in the Contractor is held by a corporation, joint venture, trust, partnership, association, state or other legal entity in which the individual holds an interest or by agent(s) or nominee(s) on behalf of an individual or entity. For example, if Corporation B holds or owns a twenty percent (20%) interest in Contractor, and an individual or entity has a fifty percent (50%) or more percentage of interest in Corporation B. then such individual or entity indirectly has a ten (10%) or percentage of interest in the Contractor. In this case, the response to this Section IV, must cover such individual(s) or entity. If Corporation B is held by another entity, then this analysis similarly must be applied to that next, entity.

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i

If Contractor's response in this Section IV is 1 or 2, then all of the Contractor's Substantial Owners must remain in compliance with any such child support obligations (1) throughout the term of the contract and any extensions thereof; or (2) until the performance of the contract is completed, as applicable. Failure of Contractor's Substantial Owners to remain in compliance with their child support obligations in the manner set forth in either 1 or 2 constitutes an event of default.

Check one:



1. No Substantial Owner has been declared in arrearage on his or her child support obligations by the Circuit Court of Cook County or by another Illinois court of competent jurisdiction.
2. The Circuit Court of Cook County or another Illinois court of competent jurisdiction has issued an order declaring one or more Substantial Owners in arrearage on their child support obligations. All such Substantial Owners, however, have entered into court-approved agreements for (he payment of all such child support owed, and all such Substantial Owners are in compliance with such agreements.
3. The Circuit Court of Cook County or another Illinois court of competent jurisdiction has issued an order declaring one or more Substantial Owners in arrearage on their child support obligations and: (1) at least one such Substantial Owner has not entered into a court-approved agreement for the payment of all such child support for the payment of all such child support owed; or both (1) and (2).
4. There are no Substantial Owners.

#### **V. INCORPORATION INTO CONTRACT AND COMPLIANCE**

The above certification shall become part of any contract awarded to the Contractor set forth on page 1 of this Disclosure Affidavit and are a material inducement to the Chicago Infrastructure Trust's execution of the contract, contract modification or contract amendment with respect to which this Disclosure Affidavit is being executed and delivered on behalf of the Contractor. Furthermore, Contractor shall comply with these certifications during the term and/or performance of the contract.

#### **VI. VERIFICATION**

Under penalty of perjury. I certify that I am authorized to execute this Disclosure Affidavit on behalf of the Contractor set forth on page 1, that I have personal knowledge of all the certifications made herein and that the same are true.

AMERESCO, INC.

^Signature of Authorized Officer

Louis F. Maltezos \_\_\_\_\_  
Name of Authorized Officer (Print or Type)

Executive Vice President  
Title

(312) 994-8622

Telephone Number

State of

County of Cook

Signed and sworn to before me on this 10 day of April, 2014 by

(Name) as ^Executive Vice President (Title) of

(Bidder/Proposer or Contractor)

Notary Public Signature and Seal

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#### Notes 1-5 Disclosure Affidavit

1. Business entities are affiliated if, directly or indirectly, one controls or has the power to control the other, or if a third person controls or has the power to control both entities. Indicia of control include without limitation: interlocking management or ownership; identify of interests among family members; shared facilities and equipment; common use of employees; or organization of another business entity using substantially the same management, ownership or principals as the first entity.
2. For purposes of Section II (A) (2) of this certification, a person commits the offense of and engages in bid-rigging when he knowingly agrees with any person who is, or but for such agreement should be, a competitor of such person concerning any bid submitted or not submitted by such person or another to a unit of state or local government when with the intent that the bid submitted or not submitted will result in the award of a contract to such person or another and he either (1) provides such person or receives from another information concerning the price or other material term or terms of the bid which would otherwise not be disclosed to a competitor in an independent noncollusive submission of bids or (2) submits a bid that is of such a price or other material term or terms that he does not intend the bid to be accepted, see 720 ILCS 5/33-E-3.
3. No corporation shall be barred from contracting with any unit of state or local government as a result of a conviction, under either Section 33E-3 or Section 33E-4 of Article 33 of the State of Illinois Criminal Code of 1961, as amended, of any employee or agent of such corporation if the employee so convicted is no longer employed by the corporation and: (1) it has been finally adjudicated not guilty or (2) it demonstrates to the governmental entity with which it seeks to contract and that entity finds that the commission of the offense was neither authorized, requested, commanded, nor performed by a director, officer or a high managerial agent on behalf of the corporation as provided in paragraph (2) of subsection, (a) of Section 5-4 of the State of Illinois Criminal Code.
4. For purposes of Section 11(A) of this certification, a person commits the offense of and engages in bid rotating when, pursuant to any collusive scheme or agreement with another, he engages in a pattern over

time (which, for the purposes hereof, shall include at least three contract bids within a period often years, the most recent of which occurs after January 1, 1989) of submitting sealed bids to units of state or local government with the intent that the award of such bids rotates, or is distributed among, persons or business entities which submit bids on a substantial number of the same contracts. See 720 ILCS 5/33E-4. t.

5. "Environmental Restriction" means any statute, ordinance, rule, regulation, permit, permit condition, order or directive relating to or imposing liability or standards of conduct concerning the release or threatened release of hazardous materials, special wastes or other contaminants into the environment, and to the generation, use, storage, transportation, or disposal of construction debris, bulk waste, refuse, garbage, solid wastes, hazardous materials, special wastes or other contaminants including but not limited, to (1) Section 7-28-440 or 11-4-1500 or Article XIV of Chapter 11-4 or Chapter 7-28 or 11-4 of the Municipal Code of Chicago; (2) Comprehensive Environment

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Response and Compensation and Liability Act (42 U.S.C. § 9601 et seq.) the Hazardous Material Transportation Act (49 U.S.C. § 1801 et seq.); (4) the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 7401 et seq.); (5) the Clean Water Act (33 U.S.C. § 1251 et seq.); (6) the Clean Air Act (42 U.S.C. § 7401 et seq.); (7) the Toxic Substances Control Act of 1976 (15 U.S.C. § 2601 et seq.); (8) the Safe Drinking Water Act (42 U.S.C. § 300f); (9) the Occupational Health and Safety Act of 1970 (29 U.S.C. § 651 et seq.); (10) the Emergency Planning and Community Right to Know Act (42 U.S.C. § 11001 et seq.); and (10) the Illinois Environmental Protection Act (415 ILCS 5/1 through 5/56.6).

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## EXHIBIT J

### CLIENT-REQUIRED TERMS AND CONDITIONS

#### Section 1.1 Prompt Payment to Subcontractors.

a) Incorporation of Prompt Payment Language in subcontracts. The ESCO must state the requirements of this Section in all subcontracts and purchase orders. If the ESCO fails to incorporate these provisions in all subcontracts and purchase orders, the provisions of this Section are deemed to be incorporated in all subcontracts and purchase orders. The ESCO and the Subcontractors have a continuing obligation to make prompt payment to their respective Subcontractors. Compliance with this obligation is a condition of the ESCO's participation and that of its Subcontractors on this Contract.

b) Payment to Subcontractors Within Fourteen Days. The ESCO must make payment to its Subcontractors within fourteen (14) Days of receipt of payment from the Customer for each invoice, but only if the Subcontractor has satisfactorily provided goods or services or completed its work or services in accordance with this Contract and provided the ESCO with all of the documents and information required of the ESCO. The ESCO may delay or postpone payment to a Subcontractor when the Subcontractor's work or materials do not comply with the requirements of this Contract, the ESCO is acting in good faith, and not in retaliation for a Subcontractor exercising legal or contractual rights.

c) Reporting Failures to Promptly Pay, (i) The Client posts payments to prime contractors on the web at:

<<http://webapps.cityofchicago.org/A/CSearchWeb/org/cityofchicago/vcsearch/controller/pa>>

ii) If the ESCO, without reasonable cause, fails to make any payment to its Subcontractors and material suppliers within fourteen (14) Days after receipt of payment under this Contract, the ESCO shall pay to its Subcontractors and material suppliers, in addition to the payment due them, interest in the amount of 2% per month, calculated from the expiration of the 14-Day period until fully paid.

iii) In the event that the ESCO fails to make payment to a Subcontractor within the 14-Day period required above, the Subcontractor may notify the Client by submitting a report form that may be downloaded from the DPS website at:

<<http://www.cityofchicago.org/content/dam/city/depts/dps/ContractAdministration/Standar>>

The report will require the Subcontractor to affirm that (a) its invoice to the ESCO was included in the payment request submitted by the ESCO to the Customer and (b) the Subcontractor has not, at the time of the report, received payment from the ESCO for that invoice. The report must reference the payment (voucher) number posted on-line by the Client in the notice of the payment to the ESCO. Subcontractors are hereby reminded that per Chapters 1-21, "False Statements," and 1-22, "False Claims," of the Municipal Code of Chicago (the "MCC"), making false statements or claims to the Client are violations of law and subject to a range of penalties including fines and debarment.

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Section 1.2 Whistleblower Protection. The ESCO shall not take any retaliatory action against any Subcontractor for reporting non-payment pursuant to Section 1.1. Any such retaliatory action is an event of default under this Contract and is subject to the remedies set forth herein, including termination. In addition to those remedies, any retaliatory action by the ESCO may result in the ESCO being deemed non-responsible for future Client projects or, if, in the sole judgment of the Client, such retaliatory action is egregious, the Client may initiate debarment proceedings against the contractor. Any such debarment shall be for a period of not less than one year.

Section 1.3 Liquidated Damages for Failure to Promptly Pay. Much of the Client's economic vitality derives from the success of its small businesses. The failure by contractors to pay their subcontractors in a timely manner, therefore, is clearly detrimental to the Client. Inasmuch as the actual damages to the Customer and the Client due to such failure are uncertain in amount and difficult to prove, the ESCO and the Customer agree that the Customer may assess liquidated damages against contractors who fail to meet their prompt payment requirements. Such liquidated damages shall be assessed to compensate the Customer and Client for any and all damage incurred due to the failure of the contractor to promptly pay its subcontractors, and does not constitute a penalty. Any and all such liquidated damages collected by the Customer or the Client shall be used to improve the administration and outreach efforts of the Client's Small Business Program.

Section 1.4 Action by the Customer. Upon receipt of a report of a failure to pay, the Customer will issue notice to the ESCO and provide the ESCO with an opportunity to demonstrate reasonable cause for failing to make payment within applicable period set forth in this Contract. The Customer and/or the Client shall determine whether any cause for nonpayment provided by ESCO is reasonable. In the event that the ESCO fails to demonstrate reasonable cause for failure to make payment, the Customer and/or the Client shall notify the ESCO that it will assess liquidated damages. Any such liquidated damages will be assessed according to the following schedule:

First Unexcused Report: Second Unexcused Report: Third Unexcused Report: Fourth Unexcused Report:  
\$50 \$100 \$250 \$500

Section 1.5 Business Enterprises Owned by People With Disabilities (BEPD). It is the policy of the Client that businesses certified as a business enterprise owned by people with disabilities ("BEPD") in accordance with MCC Section 2-92-337 et seq., Regulations Governing Certification of BEPDs, and all other regulations promulgated under the aforementioned sections of the MCC; shall have the full and fair opportunities to participate fully in the performance of this Contract. The ESCO shall not discriminate against any person or business on the basis of disability, and shall take affirmative actions to ensure BEPDs shall have full and fair opportunities to compete for and perform subcontracts for supplies or services. Failure to carry out the commitments and policies set forth herein shall constitute a material breach of this Contract and may result in the termination of this Contract or such remedy as the Customer deems appropriate.

Section 1.6 Wages.

(a) Living Wage Ordinance. MCC Sect. 2-92-610 provides for a living wage for certain categories of workers employed in the performance of contracts for Client projects, specifically non-Client employed security guards, parking attendants, day laborers, home and

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health care workers, cashiers, elevator operators, custodial workers, and clerical workers ("Covered Employees"). Accordingly, pursuant to MCC Sect. 2-92-610 and regulations promulgated thereunder:

i) if (1) the ESCO has 25 or more full-time employees, and (2) if at any time during the performance of this Contract the ESCO and/or any Subcontractor or any other entity that provides any portion of the services under this Contract (collectively "Performing Parties") uses 25 or more full-time security guards or any number of other full-time Covered Employees, then the ESCO's obligation to pay, and to assure payment of, the Base Wage (as defined herein) will begin at any time during term of this Contract when the conditions set forth in (1) and (2) above are met, and will continue thereafter until the end of the Term.

ii) As of July 1, 2013, the Base Wage is \$11.78. The current rate can be found on the Client's Department of Procurement Services' website. Each July 1st the Base Wage will be adjusted, using the most recent federal poverty guidelines for a family of four (4) 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 (4) divided by 2000 hours or the current base wage, whichever is higher. At all times during the term of this Contract, the ESCO and all Subcontractors must pay the Base Wage (as adjusted in accordance with the above). If the payment of prevailing wages is required for work or services done under this Contract, and the prevailing wages for Covered Employees are higher than the Base Wage, then the ESCO must pay the prevailing wage rates.

iii) The Contractor must include provisions in all subcontracts requiring its Subcontractors to pay the Base Wage to Covered Employees. The ESCO agrees to provide the Customer and the Client with documentation acceptable to the Chief Procurement Officer of the Client (the "CPO") demonstrating that all Covered Employees, whether employed by the ESCO or by a Subcontractor, have been paid the Base Wage, upon the Customer's request for such documentation. The Customer and the Client may independently audit the ESCO and/or Subcontractors to verify

■ compliance herewith.

iv) Failure to comply with the requirements of this Section will be an event of default under this Contract, and further, failure to comply may result in ineligibility for any award of a Customer contract or subcontract for up to three years.

v) Not-for-Profit Corporations: If the ESCO 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 above do not apply.

(b) Prevailing Wage Rates. This Contract calls for the construction of a "public work" within the meaning of Illinois Prevailing Wage Act, 820 ILCS 130/.01 et seq. (the "Act"): the Act requires contractors and subcontractors to pay laborers, workers and mechanics performing services on public works projects no less than the current "prevailing rate of wages" (hourly cash wages plus amount for fringe benefits) in the county where the work is performed. The Illinois Department of Labor (the "Department") publishes the prevailing wage rates on its website at <<http://www.state.il.us/agency/idoiyrates/rates.HTM>>. The Department revises the prevailing wage rates and the ESCO and its Subcontractors have an obligation to check the Department's web site for revisions to prevailing wage rates. For information regarding current prevailing wage rates, please refer to the Department's website. All contractors and

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subcontractors rendering services under this Contract must comply with all requirements of the Act, including but not limited to, all wage requirements and notice and record keeping duties.

As a condition of making payment to the ESCO, the Customer may require the ESCO or its Subcontractors to submit an affidavit to the effect that not less than the prevailing hourly wage rate is being paid to laborers, mechanics, and other workmen employed on this Contract in accordance with Illinois or federal law, as applicable.

(c) Multi-Project Labor Agreement. The Client has entered into the Multi-Project Labor Agreement (the "PLA") with various trades regarding projects involving construction, demolition, maintenance, rehabilitation, and/or renovation work, as described in the PLA, a copy of which may be found on the Client's website at:

<<http://www.cityofchicago.org/dam/city/depts/dps/RulesRegulations/Multi->

To the extent that this contract involves a project that is subject to the PLA, the ESCO acknowledges familiarity with the requirements of the PLA and its applicability to any work under this Contract, and shall comply in all respects with the PLA.

Section 1.7 Business Relationships With Elected Officials. Pursuant to MCC Section 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 Client 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 (12) 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 Sect. 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.

Section 1.8 MCC 1-23 and 720 ILCS 5/33E Bribery, Debts, and Debarment Certification.

(a) The ESCO or each joint venture partner, if applicable, warrants that the ESCO or each joint venture partner, its agents, employees, officers and any Subcontractors (a) have not been engaged in or been convicted of bribery or attempted bribery of a public officer or employee of the Client, the State of Illinois, any agency of the federal government or any state or local government in the United States or engaged in or been convicted of bid-rigging or bid-rotation activities as defined in this section as required by the Illinois Criminal Code; (b) do not owe any debts to the State of Illinois, in accordance with 65 ILCS 5/11-42.1-1 and (c) are not presently debarred or suspended; Certification Regarding Environmental Compliance; Certification Regarding Ethics and Inspector General; and Certification Regarding Court-Ordered Child Support Compliance.

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(b) The ESCO, in performing under this Contract shall comply with MCC Section 2-92-320, as follows:

i) No person or business entity shall be awarded a contract or sub-contract if that person or business entity: (a) has been convicted of bribery or attempting to bribe a public officer or employee of the Client, the State of Illinois, or any agency of the federal government or of any state or local government in the United States, in that officers or employee's official capacity; or (b) has been convicted of agreement or collusion among bidders or prospective bidders in restraint of freedom of competition by agreement to bid a fixed price, or otherwise; or (c) has made an admission of guilt of



such conduct described in (a) or (b) above which is a matter of record but has not been prosecuted for such conduct.

ii) For purposes of this Section, where an official, agent or employee of a business entity has committed any offense under this section on behalf of such an entity and pursuant to the direction or authorization of a responsible official thereof, the business entity will be chargeable with the conduct.

iii) One business entity will, be chargeable with the conduct of an affiliated agency. Ineligibility under this section will continue for three (3) years following such conviction or admission. The period of ineligibility may be reduced, suspended, or waived by the CPO under certain specific circumstances. Reference is made to MCC Section 2-92-320 for a definition of affiliated agency, and a detailed description of the conditions which would permit the CPO to reduce, suspend, or waive the period of ineligibility.

Section 1.9 Federal Terrorist (No-Business) List. The ESCO warrants and represents that neither the ESCO nor an Affiliate, 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 Customer may not do business under any applicable law, rule, regulation, order or judgment.

For purposes of this Section 1.9, "Affiliate" means a person or entity which directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the ESCO. 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.

Section 1.10 Inspector General and Legislative Inspector General. It is the duty of any bidder, proposer or the ESCO, all Subcontractors, every applicant for certification of eligibility for a Client project or program, and all officers, directors, agents, partners and employees of any bidder, proposer, the ESCO, all Subcontractors or such applicant to cooperate with the Inspector General or the Legislative Inspector General in any investigation or hearing, if applicable, undertaken pursuant to MCC Chapter 2-56 or 2-55, respectively. The ESCO understands and will abide by all provisions of MCC Chapter 2-56 and 2-55. All subcontracts must inform Subcontractors of this provision and require understanding and compliance with them.

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Section 1.11 Governmental Ethics Ordinance 2-156. The ESCO must comply with MCC Chapter 2-156, Governmental Ethics, including but not limited to MCC Section 2-156-120 pursuant to which no payment, gratuity or offer of employment will be made in connection with any Client project, by or on behalf of a Subcontractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a Subcontract or order. Any contract negotiated, entered into, or performed in violation of any of the provisions of this this Section will be voidable as to the Client.

Section 1.12 Restrictions on Business Dealings.

a) Conflicts of Interest. The ESCO covenants that it presently has no interest and will not acquire any interest, direct or indirect, in any enterprise which would conflict in any manner or degree with the performance of the work, services or goods to be provided hereunder. The ESCO further covenants that in its

performance of this Contract no person having any such interest shall be employed. If the Customer determines that the ESCO does have such a conflict of interest, the Customer will notify the ESCO in writing, stating the basis for its determination. The ESCO will thereafter have 30 days in which to respond with reasons why the ESCO believes a conflict of interest does not exist. If the ESCO does not respond or if the Customer still reasonably determines a conflict of interest to exist, the ESCO must terminate its interest in the other enterprise.

b) Prohibition on Certain Contributions, Mayoral Executive Order 2011-4. Neither the ESCO or any person or entity who directly or indirectly has an ownership or beneficial interest in the ESCO of more than 7.5% ("Owners"), spouses and domestic partners of such Owners, ESCO'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 (ESCO 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, and/or (iii) any period in which an extension of this Contract or Other Contract is being sought or negotiated. The ESCO 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 Client approached the ESCO or the date the ESCO approached the Client, 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.

The ESCO 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.

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

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opportunity to cure will be granted. Such breach and default entitles the Customer to all remedies (including without limitation termination for default) under this Contract, under any Other Contract, at law and in equity. This provision amends any Other Contract and supersedes any inconsistent provision contained therein.

If the ESCO violates this provision or Mayoral Executive Order No. 2011-4 prior to award of this Contract resulting from this specification, the CPO may reject the ESCO's bid.

For purposes of this provision:

"Other Contract" means any agreement entered into between the ESCO and the Client or the Customer that is (i) formed under the authority of MCC Chapter 2-92; (ii) for the purchase, sale or lease of real or personal property; or (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 Chapter 2-156, as amended.

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

Section 1.13 Debts Owed to the Client: Anti-Scofflaw, MCC Sect. 2-92-380. Pursuant to MCC Section 2-92-380 and in addition to any other rights and remedies (including set-off) available to the Customer under this Contract or permitted at law or in equity, the Customer will be entitled to set off a portion of the contract price or compensation due under the Agreement, in 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 the ESCO to the Client. For purposes of this Section, outstanding parking violation complaint means a parking ticket, notice of parking violation, or parking violation complaint on which no payment has been made or appearance filed in the Circuit Court of Cook County within the time specified on the complaint, and debt means a specified sum of money owed to the Client for which the period granted for payment has expired. However no such debt(s) or outstanding parking violation complaint(s) will be offset from the contract price or compensation due under this Contract if one or more of the following conditions are met:

i) The ESCO has entered into an agreement with the Department of Revenue, or other appropriate Client department, for the payment of all outstanding parking violation complaints and debts owed to the Client and the ESCO is in compliance with such agreement; or

ii) The ESCO is contesting liability for or the amount of the debt in a pending administrative or judicial proceeding; or the contracting party has filed a petition in bankruptcy and the debts owed the Client are dischargeable in bankruptcy.

#### Section 1.14 Shakman Accord.

(a) The Client is subject to the May 31, 2007 Order entitled "Agreed Settlement Order and Accord" (the "Shakman Accord") and the June 24, 2011 "City of Chicago Hiring Plan" (the "City Hiring Plan") entered in Shakman v. Democratic Organization of Cook County, Case No 69 C 2145 (United States District Court for the Northern District of Illinois). Among other things, the Shakman Accord and the City Hiring Plan prohibit the Customer from hiring persons as governmental employees in non-exempt positions on the basis of political reasons or factors.

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b) The ESCO is aware that the Client's policy prohibits Client employees from directing any individual to apply for a position with the ESCO, either as an employee or as a Subcontractor, and from directing the ESCO to hire an individual as an employee or as a Subcontractor. Accordingly, the ESCO must follow its own hiring and contracting procedures, without being influenced by Client employees. Any and all personnel provided by the ESCO under this Contract are employees or Subcontractors of the ESCO, not employees of the Client. This C is not intended to and does not constitute, create, give rise to, or otherwise recognize an employer-employee relationship of any kind between the Customer or Client and any personnel provided by the ESCO.

c) The ESCO will not condition, base, or knowingly prejudice or affect any term or aspect of the employment of any personnel provided under this Contract, or offer employment to any individual to provide

services under this Contract, 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 Contract, 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.

d) In the event of any communication to the ESCO by a Customer or Client employee or Customer or Client official in violation of paragraph (b) above, or advocating a violation of paragraph (c) above, the ESCO will, as soon as is reasonably practicable, report such communication to the Hiring Oversight Section of the Client's Office of the Inspector General, and also to the head of the relevant Client Department utilizing services provided under this Contract. The ESCO will also cooperate with any inquiries by I GO Hiring Oversight or the Shakman Monitor's Office related to this Contract.

Section 1.15 No Waste Disposal in Public Way MCC 11-4-1600(E). The ESCO 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 MCC (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;
- §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 Contract is executory, the ESCO's or any Subcontractor's violation of the Waste Sections, whether or not relating to the performance of this Contract, constitutes a breach of and an event of default under this Contract, for which the opportunity to cure, if curable, will be granted only at the sole discretion of the CPO. Such breach and default entitles the Customer to all remedies under this Contract, at law or in equity.

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This Section does not limit the ESCO'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 Contract.

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

Section 1.16 Duty to Report Corrupt or Unlawful Activity. It is the duty of the ESCO to report to the Inspector General of the Customer, directly and without undue delay, any and all information concerning conduct which it knows or should reasonably know to involve corrupt or other unlawful activity by its employees or the employees of any of its Subcontractors, in connection with the performance of its work hereunder, or by any person dealing with the Customer or the Client which concerns the person's dealings

with the Customer or the Client. Knowing failure to make such a report will be an event of default under this Contract.

Section 1.17 Veterans Preference. In accordance with the Veterans Preference Act, 330 ILCS 55/0.01 et seq., employment and appointment preference shall be given to veterans when filling positions. This preference may be given only where the individuals are available and qualified to perform the Work. The ESCO must ensure that the above provision is inserted in all contracts it enters into with any Subcontractors and any labor organizations that furnish skilled, unskilled and craft union skilled labor, or that may provide any material, labor, or services in connection with this Agreement.

Section 1.18 Chicago Residency Requirements. The ESCO and all subcontractors that perform Work on the Project sites undertaken pursuant to this Contract shall comply with the minimum percentage of total worker hours performed by actual residents of the City of Chicago as specified in § 2-92-330 of the MCC, unless otherwise prohibited by law. In addition to complying with this requirement, the ESCO and all Subcontractors must make good faith efforts to utilize qualified residents of the City of Chicago in both unskilled and skilled labor positions.

"Actual residents of the City of Chicago" shall mean persons domiciled within the City of Chicago. The domicile is an individual's one and only true, fixed and permanent home and principal establishment.

The ESCO shall provide for the maintenance of adequate employee residency records to ensure that actual Chicago residents are employed on the Project. The ESCO and subcontractors shall maintain copies of personal documents supportive of every Chicago employee's actual record of residence.

Certified payroll reports (U.S. Department of Labor Form WH-347 or equivalent) must be submitted weekly to the Customer in triplicate, shall identify clearly the actual residence of every employee on each submitted certified payroll. The first time that an employee's name appears on a payroll, the date that the company hired the employee should be written in after the employee's name.

Full access to the ESCO's and Subcontractors' employment record shall be granted to the Customer and the Client, the Superintendent of the Chicago Police Department, the Inspector General, or any duly authorized representative thereof. The ESCO and subcontractors shall maintain all relevant personnel data in records for a period of at least three years after final acceptance of the work.

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At the direction of the Customer, affidavits and other supporting documentation will be required of the ESCO to verify or clarify an employee's actual address when doubt or lack of clarity has arisen.

Good faith efforts on the part of the ESCO to provide utilization of actual Chicago residents shall not suffice to replace the actual, verified achievement of the requirements of this section concerning the worker hours performed by actual Chicago residents.

When Work is completed, in the event that the Customer has determined that the ESCO failed to ensure the fulfillment of the requirement of this section concerning the worker hours performed by actual Chicago residents or has failed to report in the manner as indicated above, the Client as the sponsor of the Customer and the Customer will thereby be damaged in the failure to provide the benefit of demonstrable employment to Chicagoans to the degree stipulated in this section. Therefore, in such a case of non-compliance it is agreed that 1/20 of 1 percent (.05%), 0.0005, of the approved contract value for this contract shall be surrendered by the ESCO to the Customer in payment for each percentage of shortfall toward the

stipulated residency requirement. Failure to report the residency of employees entirely and correctly shall result in the surrender of the entire liquidated damages as if no Chicago residents were employed in either of the categories. The willful falsification of statements and the certification of payroll date may subject the ESCO or subcontractor or employee to prosecution. Any retainage to cover contract performance that may become due to the ESCO pursuant to the Contract and § 2-92-250 of the MCC may be withheld by the Customer pending the Customer determination whether the ESCO must surrender damages as provided in this paragraph.

Nothing herein provided shall be construed to be a limitation upon the "Notice of Requirements for Affirmative Action to Ensure Equal Employment Opportunity, Executive Order 11246" and "Standard Federal Equal Employment Opportunity, Executive Order 11246," or other affirmative action required for equal opportunity under the provisions of this contract.

Section 1.19 Employment of Illinois Laborers on Public Works Projects. The ESCO must use only Illinois laborers in the performance of this Contract to the extent (1) required by the Employment of Illinois Laborers on Public Works Projects Act, 30 ILCS, 570/0.01, as amended from time to time and (2) otherwise permitted by law.

Section 1.20 Emissions Reduction. The ESCO must comply with the Clean Diesel Contracting Ordinance, § 2-92- 595 of the MCC.

a) The ESCO and any Subcontractor(s) must utilize Ultra Low Sulfur Diesel Fuel (ULSD) for any heavy-duty diesel-powered vehicle, non-road vehicle or non-road equipment used in the performance of the Contract.

b) The ESCO and any Subcontractor(s) must minimize idling of motor vehicles and non-road vehicles used in the performance of the Contract during periods of inactivity, and must comply with the anti-idling requirements imposed by any applicable federal, state, or local law.

The Customer may conduct an audit of the ESCO or inspect any vehicle or equipment used in the performance of this Contract to ensure compliance with the requirements specified above. In the event that ESCO or any Subcontractor fails to utilize ULSD or fails to minimize idling or comply with anti-idling requirements, ESCO will be subject to liquidated damages of \$5,000 per day for each violation and each day of noncompliance will be a separate violation, provided, however, the damages will not exceed \$50,000 for any one vehicle or piece of

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equipment, as specified in Section 2-92- 595(e) of the MCC. Such liquidated damages are imposed not as a penalty but as an estimate of the damages that the City, as the sponsor of the Customer, and the Customer will sustain from delay in completion of the project and inspection and inspection and other enforcement costs, as well as the resultant damages to the public health of its citizens, which damages by their nature are not capable of precise proof. The Customer is authorized to withhold and deduct from monies otherwise payable to the ESCO the amount of liquidated damages due to the Customer.

The ESCO understands that pursuant to Section 2-92-595(e)(6) of the MCC, any person knowingly making a false statement of material fact to any Client department with respect to compliance with the contract provisions specified in Section 2-92-595(e) of the MCC may be fined not less than \$1,000 or more than \$5,000 for each statement

Section 1.21 Licensing Of General Contractors. The ESCO must be in compliance with the

requirements of Chapter 4-36 of the MCC, in the appropriate license class commensurate with the size of this Project, if the license is required for the scope of Work, at the time throughout the duration of this Contract.

The ESCO's failure to be licensed as a "general contractor" at all times throughout the duration of this Contract, if the license is required for the scope of Work, is an event of default under the Contract and the Customer may exercise any and all rights and remedies permitted under the Contract, at law, or in equity.

Section 1.22 Steel Products. Unless otherwise provided in the Steel Products Procurement Act, 30 ILCS 565/1 et seq., steel products used or supplied in the performance of this Contract or any subcontract to this Contract must be manufactured or produced in the United States. Knowing violation of this law may result in the filing and prosecution of a complaint by the Attorney General of the State of Illinois and will subject violators to a fine of the greater of \$5,000 or the payment price received as a result of such violation.

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## **EXHIBIT K**

### **PROJECT PARTICIPATION GUIDELINES**

In the performance of the services under the Contract, the ESCO must comply with the MBE participation requirements set forth in Attachment K-1 to this Exhibit K and use every reasonable effort to comply with the following project participation guidelines applicable to Client projects:

1. Utilize local businesses for subcontracting work in accordance with the following guidelines:
  - a. Companies that are not local businesses (as defined in clause (iii) below) are required to award 35% of the value of the work and services under the Contract to subcontractors that are local businesses.

- b. A "local business" is one that: 1) owns or leases a functioning business office and/or operations facilities within the City of Chicago; 2) is registered and licensed to do business in the City of Chicago; 3) employs City of Chicago residents; and 4) is subject to City of Chicago taxes.
- 2. Provide opportunities for employment of community residents;
- 3. Provide opportunities for employment for the following programs:
  - a. Federally funded State Energy Sector Partnership Program administered by the Chicago Workforce Investment Council. Program partners include but are not limited to:
    - i. HACIA (Hispanic American Construction Industry Association)
    - ii. CWIT (Chicago Women in Trades)
    - iii. Chicago Regional Council of Carpenters Apprentice and Training Program.

Persons who have completed or are enrolled in programs comparable to the City Colleges of Chicago's Building Energy Technologies Occupational Certificate program at Wilbur Wright College.

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Attachment K-1

**City of Chicago**

**Commodities and Work Services MBE & WBE Special Conditions**

(attached)



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CITY OF CHICAGO Department of Procurement Services Jamse L Rhee, Chief Procurement Officer 121  
North LaSalle Street, Room 806 Chicago, Illinois 60602-1284

**Fax: 312-744 3281**

Commodities and Work Services MBE & WBE Special Conditions

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 (inclusive of any and all modifications and amendments), if awarded, for contract participation by MBEs and WBEs:

MBE Percentage	WBE Percentage
25%	5%

This commitment is met by the Contractor's 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 the indirect participation of MBEs or WBEs in other aspects of the Contractor's business (but no dollar of such indirect MBE or WBE participation will be credited more than once against a Contractor's MBE or WBE commitment with respect to all government Contracts of such Contractor), 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.

As noted above, the Contractor may meet all or part of this commitment by contracting with MBEs or WBEs for the provision of goods or services not directly related to the performance of this Contract. However, in determining the manner of MBE/WBE participation, the Contractor will first consider involvement of iVIBEs/WBEs as joint venture partners, subcontractors, and suppliers of goods and services directly related to

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the performance of this Contract. In appropriate cases, the Chief Procurement Officer will require the Contractor to demonstrate the specific efforts undertaken by it to involve MBEs and WBEs directly in the performance of this Contract.

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 2-92-535, the prime contractor may apply be awarded an additional 0.333 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 mentor agreement with the contractor. 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.*

"B.E.P.D." means an entity certified as a Business enterprise owned or operated by people with disabilities as defined in MCC Section 2-92-586.

"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.

"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.

"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 credited 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-Protégé Agreement" means an agreement between a prime and MBE or WBE subcontractor 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.

"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.

### **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 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 proposed joint venture agreement, the Schedule B submitted on behalf of the proposed joint venture, and all related documents 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 partners) 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 with its bid a Schedule B and the proposed joint venture agreement. These documents must both 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,

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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 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. 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.

- 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.

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- f. If the MBE or WBE is 3 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:
  - 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.

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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:

- o 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 fourteen (14) calendar days to submit to the Department of Procurement Services complete documentation that adequately addresses the conditions for waiver described herein; and
- o 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 / Indirect 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 or indirect 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:

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- o choosing subcontracting opportunities likely to achieve  
MBE/WBE goal's not imposing any limiting conditions which were not  
mandatory for all subcontractors;
- o 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.

OR

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 Reductions 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.

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.
- 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.

- 3) **Schedule 8: 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 the joint venture agreement and a Schedule B along with all other requirements listed in Section 1.3, "Joint Ventures," 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. The joint venture agreement must also clearly define each partner's authority to contractually obligate the joint venture and each partner's authority to expend joint venture funds (e.g., check signing authority).

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 fiNable 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-1 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;

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- 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 cope 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; 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.

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

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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.

#### 10. Arbitration

- a) In the event a contractor has not complied with the contractual MBE/WBE percentages in its Schedule 0, 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.

11. Equal Employment Opportunity

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

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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>>

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

Attachment A -Assist Agency List

## PROCUREMENT

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.

American Brotherhood of Contractors  
935 West 175<sup>th</sup> Street  
Homewood, Illinois 60430  
Phone: (773)491-5640  
Email: [arba@constructive-business.com](mailto:arba@constructive-business.com) <<mailto:arba@constructive-business.com>>

Asian American Business Expo 207 East Ohio St. Suite 218 Chicago, IL 60611 Phone: 312-233-2810 Fax: 312-268-6388  
Email: [Janny@AsianAmericanBusinessExpo.org](mailto:Janny@AsianAmericanBusinessExpo.org) <<mailto:Janny@AsianAmericanBusinessExpo.org>>

Asian American Institute  
4753 N. Broadway St. Suite 904  
Chicago, IL 60640  
Phone: (773) 271-0899  
Fax: (773) 271-1982  
Email: [kfernicola@aaichicago.org](mailto:kfernicola@aaichicago.org) <<mailto:kfernicola@aaichicago.org>>  
Web: [www.aaichicago.org](http://www.aaichicago.org) <<http://www.aaichicago.org>>

Association of Asian Construction Enterprises 333 N. Ogden Avenue Chicago, IL 60607 Phone: (847) 525-9693 Email: [nakmancorp@aol.com](mailto:nakmancorp@aol.com) <<mailto:nakmancorp@aol.com>>

Black Contractors United  
400 W. 76<sup>th</sup> Street, Suite 200  
Chicago, IL 60620  
Phone: (773) 483-4000  
Fax: (773) 483-4150  
Email: [bcunewera@att.net](mailto:bcunewera@att.net) <<mailto:bcunewera@att.net>>  
Web: [www.blackcontractorsunited.com](http://www.blackcontractorsunited.com) <<http://www.blackcontractorsunited.com>>

Cosmopolitan Chamber of Commerce  
203 N. Wabash, Suite 518  
Chicago, IL 60601  
Phone: (312) 499-0611  
Fax: (312) 332-2688  
Email: [ccarey@cosmococ.org](mailto:ccarey@cosmococ.org)  
Web: [www.cosmochamber.org](http://www.cosmochamber.org) <<http://www.cosmochamber.org>>

Eighteenth Street Development Corporation  
1843 South Carpenter  
Chicago, Illinois 60608  
Phone: (312) 733-2287  
Fax: (773)-353-1683  
[www.eighteen1hstreet.org](http://www.eighteen1hstreet.org)  
[www.eighteen1hstreet.org](http://www.eighteen1hstreet.org) <<http://www.eighteen1hstreet.org>>  
Chatham Business Association Small Business  
Development, Inc.  
8441 S. Cottage Grove Avenue  
Chicago, IL 60619  
Phone: (773) 994-5006  
Fax: (773) 994-9871  
Email: [melkelcba@sbcglobal.net](mailto:melkelcba@sbcglobal.net) <<mailto:melkelcba@sbcglobal.net>>  
Web: [www.cbaworks.org](http://www.cbaworks.org) <<http://www.cbaworks.org>>

Chicago Area Gay & Lesbian Chamber of Commerce  
3656 N. Halsted Chicago, IL 60613 Phone: (773) 303-0167 Fax: (773) 303-0168 Email: [info@glchamber.org](mailto:info@glchamber.org)  
<<mailto:info@glchamber.org>> Web: [www.alchamber.org](http://www.alchamber.org) <<http://www.alchamber.org>>

Chicago Minority Supplier Development Council, Inc.  
105 W. Adams, Suite 2300 Chicago, IL 60603-6233 Phone: (312) 755-8880 Fax: (312) 755-8890 Email: [pbaneda@chicagomsdc.org](mailto:pbaneda@chicagomsdc.org)  
<<mailto:pbaneda@chicagomsdc.org>> Web: [www.chicagomsdc.org](http://www.chicagomsdc.org) <<http://www.chicagomsdc.org>>

Chicago Urban League 4510 S. Michigan Ave. Chicago, IL 60653 Phone: (773) 285-5800 Fax: (773) 285-7772  
Email: [Dresident@thechicagourbanleaQue.org](mailto:Dresident@thechicagourbanleaQue.org) <<mailto:Dresident@thechicagourbanleaQue.org>> Web: [www.cul-chicago.org](http://www.cul-chicago.org) <<http://www.cul-chicago.org>>

Chicago Women in Trades (CWIT)  
4425 S. Western Blvd.  
Chicago, IL 60609-3032  
Phone: (773) 376-1450  
Fax: (312) 942-0802  
Email: [cwitinfo@cwit2.org](mailto:cwitinfo@cwit2.org) <<mailto:cwitinfo@cwit2.org>>  
Web: [www.chicagowomenintrades.org](http://www.chicagowomenintrades.org) <<http://www.chicagowomenintrades.org>>

Coalition for United Community Labor Force  
1253 W. 63<sup>rd</sup> Street  
Chicago, IL 60636  
Phone: (312) 243-5149  
Email: [johnrev.hatchett@comcast.net](mailto:johnrev.hatchett@comcast.net) <<mailto:johnrev.hatchett@comcast.net>>

City of Chicago Department of Procurement Services - Assist Agencies (cont'd)

Federation of Women Contractors 5650 S. Archer Avenue Chicago, IL 60638 Phone: (312) 360-1122 Fax: (312) 360-0239 Email: fwcchicago@aol.com <mailto:fwcchicago@aol.com>Web: www.fwcchicago.com <http://www.fwcchicago.com>

Hispanic American Construction Industry Association (HACIA)  
650 West Lake Street Chicago, IL 60661 Phone: (312) 666-5910 Fax: (312) 666-5692 Email: info@haciaworks.org  
<mailto:info@haciaworks.org>Web: www.haciaworks.org <http://www.haciaworks.org>

Illinois Hispanic Chamber of Commerce  
855 W. Adams, Suite 100  
Chicago, IL 60607  
Phone:(312)425-9500  
Fax:(312)425-9510  
Email: oduque@ihccbbusiness.net <mailto:oduque@ihccbbusiness.net>  
Web: www.ihccbbusiness.net <http://www.ihccbbusiness.net>

Latin American Chamber of Commerce 3512 West Fullerton Avenue Chicago, IL 60647 Phone:(773)252-5211 Fax: (773)252-7065  
Etnail:d. lorenzopadron@latlamericanchamberofcommerce.com <mailto:lorenzopadron@latlamericanchamberofcommerce.com>Web:  
www.latinamericanchamberofcommerce.com <http://www.latinamericanchamberofcommerce.com>

National Organization of Minority Engineers  
33 West Monroe Suite 1540  
Chicago, Illinois 60603  
Phone: (312) 425-9560  
Fax: (312) 425-9564  
Email: shandy@infrastructure-eng.com <mailto:shandy@infrastructure-eng.com>  
Web: www.nomeonline.org <http://www.nomeonline.org>

National Association of Women Business Owners  
Chicago Chapter  
230 E.Ohio, Suite 400  
Chicago, IL 60611  
Phone; (312) 224-2605  
Fax: (312)6448557  
Email: info@nawbochicago.org <mailto:info@nawbochicago.org>  
Web: www.nawhochicaao.org <http://www.nawhochicaao.org>

Rainbow/PUSH Coalition  
International Trade Bureau  
930E.50" Street  
Chicago, IL 60615  
Phone: (773) 256-2781  
Fax: (773) 373-4104  
Email: bevans@rainbowpush.org <mailto:bevans@rainbowpush.org>  
Web: www.rainbowpush.org <http://www.rainbowpush.org>

South Shore Chamber, Incorporated  
Black United Funds Bldg.  
1750 E.71" Street  
Chicago, IL 60649-2000  
Phone: (773) 955- 9508  
Email: sshorechambenaisbcglobal.net  
Web: www.southshorechamberinc.org <http://www.southshorechamberinc.org>

Suburban Minority Contractors Association  
1250 Grove Ave. Suite 200  
Barrington, IL 60010  
Phone: (847) 852-5010  
Fax:(847)382-1787  
Email: aprilcobra@hotmail.com <mailto:aprilcobra@hotmail.com>  
Web: www.suburbanblackcontractors.org <http://www.suburbanblackcontractors.org>

Women Construction Owners & Executives (WCOE)  
Chicago Caucus  
308 Circle Avenue  
Forest Park, IL 60130  
Phone: (708) 366-1250  
Fax: (708) 366-5418  
Email: [mkm@mkmservices.com](mailto:mkm@mkmservices.com) <<mailto:mkm@mkmservices.com>>  
Web: [www.wcoeusa.org](http://www.wcoeusa.org) <<http://www.wcoeusa.org>>

Women's Business Development Center  
8 South Michigan Ave., Suite 400  
Chicago, IL 60603  
Phone: (312) 853-3477  
Fax: (312) 853-0145  
Email: [fcurry@wbdc.org](mailto:fcurry@wbdc.org) <<mailto:fcurry@wbdc.org>>  
Web: [www.wbdc.org](http://www.wbdc.org) <<http://www.wbdc.org>>

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Attachment S - 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 TI-IE 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 S06 Chicago,  
Illinois 60602

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

Schedule B - Affidavit of Joint Venture

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 Ba Attached.

- I. Name of Joint venture:  
Address of joint venture.  
  
Phona number of joint venture:
- II, identify each non-MBE/WBE venturer(s):  
Name of Firm:  
Address:  
Phone:  
Contact person for matters concerning MBEAA/BE compliance:
- Hi. Identify each MBE/WBE venturers):  
Name of Firm  
Address:  
Phone:  
Contact person for matters concerning MBEAA/BE compliance:
- IV. Describe the rolo(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 MBDWBE venturer; and (4) the commitment of management, supervisory and operative personnel employed by the MBE/W3E to be dedicated to the performance of the project.
- VI. Ownership of the Joint Venture.
- A. What a'e the percentage(s) of MBEAA/BE ownership of the joint venture?  
MBEAA/BE ownership percentago(s)  
Non-MBE/WBE ownership percentage^)
- 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:

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### Schedule S: Affidavit of Joint Ventura (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:

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ScheduSa B: Affidavit of Joint Ventura (MBE/WBE)

Acquisition and indemnification of payment and performance bonds:

Negotiating and signing labor agreements:

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

1. Supervision of field operations:
2. Major purchases:
3. Estimating:
4. Engineering: \_\_\_\_\_

Financial Controls of joint venture:  
Which firm and/or individual will be responsible for keeping the books of account?

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

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 project?

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 MBEAA/BE firm, or the joint venture.

Page 3 of 5

Schedule B: Affidavit e? Joint Venture (MBE/WBE)

Trade	Non-MBEAA/BE Firm (Number)	MBEAA/BE (Number)	Joint Venture (Number)
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If any personnel proposed for this project will be employees of the joint venture,

A. Are a\_\_ proposed joint venture employees currently employed by either venturer? '

A. Currently employed by non-MBEAA/BE (number) Employed by MBEAA/BE

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.

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

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 MBEAA/3E 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

*(nomina of affable)*

personally appeared and, known to me 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)

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Schedule C-1: 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 MBE/WBE Firm)

To:

(Name of Prime Contractor)

and the City of Chicago.

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 President/owner or Authorized Representative) (Date)

(Name/Title)

(Business Email Address & Phone Number)

08/2013

Page 1 of 1

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

SCHEDULE D-1

Compliance Plan Regarding MBE/WBE Utilization Affidavit of Prime Contractor

■MOM-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 is a me. \_

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

Direct Participation of MBEA/BE Firms:

NOTE: The bidder/proposer shall, in determining the manner of MBEA/BE participation, first consider involvement with MBEA/BE 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 MBEA/BE Subcontractor/Supplier/Consultant participating on this contract

1. Name of MBEA/BE :

Address:

Contact Person:

Phone Number,



Dollar Value of Participation \$

Percentage of Participation %

Mentor Protege Agreement (attach executed copy): ( ) Yes ( ) No Add'l Percentage Claimed.<sup>1</sup> %

Total Participation %

2. Name of MBEAA/BE: :

Address:

Contact Person.

<sup>1</sup> 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 MBEAA/BE protege firm

Page 1 of 5

. Schedule D-1: Prima Contractor Affidavit-MBE/WBE Compliance Plan '

Phone Number:

Dollar Value of Participation \$

Percentage of Participation %

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

Total Participation %

3. Name of MBEAA/BE:

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 MBEAA/BE: :

Add ress:

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 %

6. Attach Additional Sheets as Needed II. Indirect Participation of

MBEAA/BE Firms

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

MBEAA/BE Subcontractors/Suppliers/Consultants proposed to performwork or supply goods or services where such performance does not directly relate to the performance of this contract:

1. Name of MBEM'BE: \_\_\_\_\_ :

Address: \_\_\_\_\_

Contact Peison: \_\_\_\_\_

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

Phone Number: \_\_\_\_\_

Dollar Value of Participation \$ \_\_\_\_\_

Percentage of Participation % \_\_\_\_\_

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

Total Participation % \_\_\_\_\_

2. Name of MBEAA/BE: \_\_\_\_\_

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 % \_\_\_\_\_

3. Name of MBEAA/BE: \_\_\_\_\_

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 MBEAA/BE.

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

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Scieiduls D-1: Prime Contractor Affidavit-MBE/WBE Compliance Plan III. Summary of IVISEA/VBE 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 (Directs Indirect)

1. WBE J\_\_\_ Participation

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

Total Indirect WBE Participation

Total Direct WBE Participation

2. WBE Indirect Participation

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

Total Indirect WBE Participation

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

The Prime Contractor designates the following person as its MBEAA/BE 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 \_

County of:

(Signature)

(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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## **GUARANTEED ENERGY PERFORMANCE CONTRACT**

***THIS GUARANTEED ENERGY PERFORMANCE CONTRACT (this "Contract") is made and entered into this 11th day of April, 2014, between Chicago Infrastructure Trust ("Customer") and NORESKO, LLC ("ESCO" or "NORESCO").***

IN CONSIDERATION OF the recitals and the mutual covenants and agreements set forth herein, the Parties agree as follows:

### **SECTION 1. RECITALS.**

***A. The Customer desires that the ESCO implement energy management and energy-related capital improvement services at the public buildings owned or operated by the City of Chicago (the "Client") and identified in Exhibit A attached to this Contract (collectively "Facilities" and each a "Facility").***

***B. The ESCO's implementation of energy management and energy-related capital improvement services at the Facilities will involve the building analysis, design, engineering, installation, repairs, retrofit, performance monitoring, guarantee reconciliation, and training services more fully described in the "Project Description" attached hereto as Exhibit A and the other terms and provisions of this Contract (the "Project"). The Project Description specifically describes the energy conservation measures and related services ("ECMs", and each, an "ECM") which the ESCO proposes to install at the Facilities.***

C. The ESCO has agreed to provide a performance guarantee in the form attached hereto as Exhibit B (the "Performance Guarantee") guaranteeing the energy savings to the Customer resulting from the acquisition and installation of the ECMs and providing that the ESCO will reimburse the Customer for any shortfall of the savings guaranteed in the Performance Guarantee.

D. The ESCO desires to undertake the Project and provide the Performance Guarantee all in accordance with the terms and provisions of this Contract and the other Contract Documents.

## **SECTION 2. DEFINITIONS: RULES OF CONSTRUCTION.**

A. Definitions. All capitalized terms used in this Contract shall have the meaning set forth below, or in Exhibit B, Section I:

1. "ACM" is defined in Section 10.A.

2. "Change Order" means a written change in the Project executed by both Parties that, pursuant to Section 12, specifies changes in the Contract Services and, if applicable, changes in the Contract Sum and Contract Time.

3. "Client" is defined Recital A.

4. "Commission" means the Public Building Commission of Chicago.

5. "Confidential Information" is defined in Section 7.M.1.

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6. "Construction Schedule" means the ESCO's construction schedule for the Work that includes, without limitation, a schedule related to the entire Project and for each ECM, and that provides for expeditious and practicable execution of all aspects of the Work, updated from time to time as permitted by this Contract.

7. "Contract Documents" means this Contract with the Exhibits, the Design & Engineering Documents (once accepted by the Customer as provided in Section 6.B), the Construction Schedule, any Change Orders, the other documents listed in this Contract and any modifications to the foregoing documents issued after execution of this Contract.

8. "Contract Services" means the Work and the Guarantee Period Services.

9. "Contract Sum" is defined in Section 4.A.

10. "Contract Time" is defined in Section 3.A.

11. "Customer Representative" is defined in Section 5.A.

12. "Date of Commencement" is the date first written above.

13. "Design & Engineering Documents" is defined in Section 6.B.1.

14. "Design Materials" is defined in Section 14.A.

15. "Dispute" is defined in Section 11 .A.

16. "ECMs" and each, an "ECM", is defined in Recital B.

17. "Engineer Neutraf is defined in Section 3.C.2.

18. "Environmental Consultant means a consultant engaged by the Customer to provide environmental assessments and to perform Environmental Work.

19. "Environmental Incentives" means all rights, credits (including tax credits), rebates, grants, benefits, reductions, offsets, and allowances and entitlements of any kind, howsoever entitled or named (including carbon credits and allowances), whether arising under federal, state or local law, international treaty, trade association membership or the like, arising from the development or installation of the ECMs and the reduction of energy usage at the Facilities, to the extent provided or permitted by applicable law. Without limiting the forgoing, Environmental Incentives include utility rebates or incentive programs, green tags, renewable energy credits, tradable renewable certificates, portfolio energy credits, the right to apply for (and entitlement to receive) incentives under any state tax credit program, grants from nongovernmental organizations, and the right to claim federal income tax credits under Sections 45 and/or 48 of the Internal Revenue Code.

20. "Environmental Work" means any services or work involving removal, cleanup, or other remedial action in connection with a Hazardous Material or Mold.

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21. "ESCO Representative" is defined in Section 7.D.

22. "Excusable Event" is defined in Section 12.E.

23. "Facilities" and each, a "Facility", is defined in Recital A.

24. "Final Acceptance" means the date on which the Customer has determined, in consultation with the ESCO, that all of the requirements of the Contract Documents for the Project or for a particular ECM have been completed.

25. "Final Acceptance Date" is defined in Section 3 D.

26. "Final Acceptance Certificate" is defined in Section 3.D.

27. "Financing Closing" is defined in Section 3.B.

28. "Financing Contract" means a contract or contracts, or other financing vehicle, entered into by the Customer for the financing of the Project, including without limitation, the Loan Agreement.

29. "GAAP" means the uniform accounting and reporting procedures set forth in the opinions, pronouncements and publications of the American Institute of Certified Public Accountants and the Financial Accounting Standards Board or in such other statements by such other entity as may be of general use by significant segments of the accounting profession as in effect on the date of this Contract.

30. "Guarantee Period" is defined in Section 3.A

\*

31. "Guarantee Period Services" means the performance guarantee, monitoring, Project modification, guarantee reconciliation, Performance Tracking Services, and other services to be performed during the Guarantee Period as described in Exhibits B, C, and D of this Contract.

32. "Guaranteed Annual Savings Amount" is defined in Exhibit B. Section I.

33. "Hazardous Material" means all hazardous or toxic substances, wastes or other pollutants, including petroleum, petroleum hydrocarbons or petroleum products, petroleum by-products, radioactive materials, asbestos or asbestos-containing materials, gasoline, diesel fuel, pesticides, radon, urea formaldehyde, lead or lead-containing materials, polychlorinated biphenyls; and any other chemicals, materials, substances or wastes in any amount or concentration which are now included in the definition of "hazardous substances," "hazardous materials," "hazardous wastes," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "pollutants," "regulated substances," "solid wastes," or "contaminants" or words of similar import, under any applicable law.

34. "Installation Period" is defined in Section 3.A.

35. "Intellectual Property Rights" means any patents, copyrights, trademarks, service marks issued under United States law.

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36. "Interim Completion" is defined in Section 3.C.

37. "Investment Grade Audit" means the report prepared by the ESCO that sets forth, among other things, (a) an assessment of the energy consumption characteristics of each Facility, (b) specific energy analysis related to each Facility and its operation, and (c) recommendations for projects or programs to achieve cost and/or energy savings in the operation of the Facilities.

38. "Lender" means Banc of America Public Capital Corp, a Kansas corporation, in its capacity as Lender under the Loan Agreement, and its successors and permitted assigns.

39. "Loan Agreement" means the Loan and Security Agreement dated as of April 1, 2014 between the Lender and the Customer relating to the financing of the costs of the ECMs.

40. "Manufacturers' Warranties" is defined in Section 8.E.

41. "Mold" means any type or form of fungus or similar biological material or agent, including mold, mildew, moisture, yeast and mushrooms, and any mycotoxins, spores, scents, or by-products produced or released by any of the foregoing.

42. "Notice to Proceed" is defined in Section 3.B.

43. "Parties" means the ESCO and the Customer. "Party" means either the ESCO or the Customer.

44. "Performance Guarantee" is defined in Recital C.

45. "Performance Tracking Payment" is defined in Section 4.C.

46. "Performance Tracking Services" means those services to be provided by the ESCO to

measure and verify the performance of the ECMs as described in Exhibit C and Exhibit D.

47. "Professional Standard<sup>1</sup> is defined in Section 7.A.

48. "Project" is defined in Recital B.

49. "Project Participation Guidelines" are those specific guidelines applicable to Customer projects and attached as Exhibit K.

50. "Records" is defined in Section 7.K.

51. "Scheduled Completion Dates" means the Substantial Completion Date and Final Acceptance Date.

52. "Senior Officer" means (i) the Chair, Vice Chair or Executive Director of the Customer or (ii) the chief executive officer, president or any executive vice president of the ESCO, or anyone appointed by such persons to act on their behalf.

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53. "Subcontractor" means any partnership, firm, corporation or entity other than an employee of ESCO, who contracts with the ESCO to furnish services, labor, materials, or labor and materials at any Facility or otherwise in connection with the Project. This term also includes subcontractors of any tier, suppliers, fabricators or manufacturers, whether or not in privity with the ESCO.

54. "Substantial Completion" means the date that is the later of the following: (i) the Customer has determined, in consultation with the ESCO, the Work for the Project or a particular ECM is sufficiently implemented in accordance with the Contract Documents, including commissioning of any systems required by the Contract Documents, so that the Customer may utilize the Project or the ECM for the use for which it is intended, and is fully complete except for minor items, adjustments and/or corrections which do not interfere with the Customer's use and occupancy of the Project or ECM; or (ii) if the nature of the Work requires that a certificate of occupancy be issued, it means the date of issuance of the required certificate of occupancy.

55. "Substantial Completion Date" is defined in Section 3.C.

56. "Warranty Period" is defined in Section 8.C.

57. "Work" means the work and services required by the Contract Documents during the Installation Period and during any period of time during which the ESCO is required to correct or replace its work and services pursuant to this Contract and includes all labor, materials, equipment and services provided or to be provided by the ESCO to fulfill the ESCO's obligations under this Contract.

## **B. Rules of Construction.**

1. Grammatical Usage and Construction. In construing this Contract, pronouns include all

genders, and the plural includes the singular and vice versa.

2. Headings. The headings, titles, and captions in this Contract have been inserted only for convenience and in no way define, limit, extend, or describe the scope or intent of this Contract.

3. Calendar Days. Unless otherwise provided in this Contract, any reference in this Contract to "day" or "days" shall mean calendar days and not business days. If the date for giving of any notice required to be given, or the performance of any obligation, under this Contract falls on a Saturday, Sunday, or federal holiday, then the notice or obligation may be given or performed on the next business day after that Saturday, Sunday, or federal holiday.

4. Priority of Contract Documents. In the event of a conflict or inconsistency among the Contract Documents, the following order of precedence shall govern the interpretation of such documents:

- a. Change Orders;
- b. This Contract (excluding the exhibits to this Contract);
- c. The exhibits to this Contract, other than Exhibit A;

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- d. Exhibit A; and
- e. The Design & Engineering Documents. SECTION 3.

## CONTRACT TIME AND PROJECT SCHEDULE.

A. Contract Time. The "Contract Time" is the period of time from the Date of Commencement until the end of the Guarantee Term, as defined in Exhibit B, Section I. The Contract Time consists of the Installation Period and the Guarantee Period. The "Installation Period" is the period of time from the Date of Commencement until Final Acceptance of the entire Project. The "Guarantee Period" is the period of time from the Savings Guarantee Commencement Date, as defined in Exhibit B, Section I, until the end of the Guarantee Term.

### B. Reserved.

C. Substantial Completion. The ESCO will commence the Work within ten (10) days after the Date of Commencement and will diligently prosecute the Work so as to achieve Substantial Completion of the Project no later than April 15, 2015 from the Date of Commencement subject only to adjustments as permitted by this Contract ("Substantial Completion Date"). The ESCO will achieve Interim Completion of each ECM by the date for Interim Completion set forth in the Construction Schedule, subject only to adjustments as permitted this Contract ("Interim Completion"). The ESCO acknowledges that the Savings Guarantee Commencement Date, as defined in Exhibit B, Section I, will commence May 1, 2015, even if the ESCO has not achieved Substantial Completion of the Project, subject only to adjustments of the Contract Time as permitted by this Contract..

1. Certificate of Substantial Completion. When the ESCO believes that the entire Project or a particular ECM has achieved Interim or Substantial Completion, the ESCO will submit a certificate of Interim or Substantial Completion and a Punch List to the Customer, the Client and the Lender on a

form agreed to by the Parties. If the Customer concurs that the described portion of the Work as performed has achieved Interim or Substantial Completion, the Customer will accept that Work by signing the certificate of Interim or Substantial Completion and the Punch List and returning both to the ESCO. If the Customer does not concur that the Work has achieved Interim or Substantial Completion and/or that the Punch List is not complete or correct, then the Customer shall notify the ESCO within thirty (30) days of any discrepancies. To the extent the ESCO does not dispute the discrepancies raised by the Customer, the ESCO shall (i) promptly and diligently correct the Work to conform to the description of the Work set forth herein, and resubmit the certificate of Interim or Substantial Completion to the Customer, and (ii) promptly complete all items on the Punch List. If the ESCO disagrees with the discrepancies raised by the Customer, the ESCO shall notify the Customer of a dispute and such dispute shall be resolved in accordance with Section 3.C.2 herein. If the Customer does not deliver written notice to the ESCO within thirty (30) days of receiving the certificate of Interim or Substantial Completion and the Punch List, the Customer will be deemed to have agreed to, signed and returned the certificate of Interim or Substantial Completion and the Punch List.

2. Disputes Concerning Substantial Completion. Any disputes concerning the Interim or Substantial Completion of the Work will be resolved by submitting the issue to a third party professional engineering firm ("Engineer Neutral"), which firm shall be reasonably acceptable to both the ESCO and the Customer. The Engineer Neutral

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shall be authorized to make determinations and bind the Parties on issues related solely to interpretations or adequacy of the Design & Engineering Documents or the execution and/or completion of the Work embodied in the Design & Engineering Documents as it relates to the determination of Interim or Substantial Completion. The Engineer Neutral shall not have the authority to render determinations regarding delay claims, payment disputes or other Contract disputes that do not involve or arise out of the content of the Design & Engineering Documents and/or the quality of the execution of the Work. All disputes beyond the authority of the Engineer Neutral shall be resolved pursuant to Section 11 herein. The determination of the Engineer Neutral with respect to Interim or Substantial Completion will be final and binding upon the Parties. The ESCO and the Customer shall share equally the costs or fees for such firm in connection with such dispute resolution process.

*D. Final Acceptance. The ESCO and will diligently prosecute the Work so as to achieve Final Acceptance of the entire Project no later than October 15, 2015, subject only to adjustments as permitted by this Contract ("Final Acceptance Date"). Upon Final Acceptance of the entire Project, the Customer shall provide the ESCO, the Client and the Lender a certificate in writing that such Final Acceptance has occurred and identifying the Final Acceptance Date (the "Final Acceptance Certificate").*

E. Construction Schedule. The preliminary Construction Schedule is included as an attachment to Exhibit A: Project Description. The Construction Schedule will be updated by the ESCO and submitted to the Customer at least monthly and, if requested by Customer, in electronic format. The ESCO will submit a revised Construction Schedule when the ESCO's planned sequence is changed or when Project changes are made that affect the Construction Schedule. Any changes to the Construction Schedule are subject to review and approval by the Customer. When performing the Work, the ESCO will comply with the Construction Schedule.

#### **SECTION 4. COMPENSATION TO THE ESCO.**

A. Contract Sum. The Customer will pay the ESCO for the due, proper, and complete performance of the Work as required hereunder and for the due performance of all other obligations and duties imposed upon this ESCO pursuant to this Contract, other than the Performance Tracking Services, the

"Contract Sum" of Two Million Six Hundred Fourteen Thousand Forty-Six and No/100 Dollars (\$2,614,046.00), subject to additions and deductions by Change Order as provided in this Contract.

B. Environmental Incentives. The Customer will own, and may assign or sell in its sole discretion, all right, title, and interest associated with Environmental Incentives. Environmental Incentives will not be included within any calculation of savings or otherwise reduce the ESCO's responsibility for achieving the Guaranteed Annual Savings Amount or Guaranteed Project Savings Amount, as such terms are defined in Exhibit B.

C. *Compensation for Performance Tracking Services. Commencing on the Savings Guarantee Commencement Date and continuing until the expiration or earlier termination of this Contract, the ESCO will perform the Performance Tracking Services. During the Guarantee Period, the Customer will make annual payments to the ESCO for the Performance Tracking Services in the amounts set forth in Exhibit E (each, a "Performance Tracking Payment").*

## **SECTION 5. CUSTOMER RESPONSIBILITIES.**

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A. Project Manager; Customer Representative. The ESCO acknowledges and agrees that the Customer has retained the Commission as its construction and program manager for the Project and Contract Services and, in such capacity, the Commission has the authority to act on behalf of the Customer in connection therewith. No funds of the Commission shall be available to pay any amounts hereunder to the ESCO. Any amounts payable to the ESCO under this Contract shall be paid from amounts available to the Customer for such purpose and the ESCO will have no claim against the Commission or the Client for the payment of the Contract Sum or the Performance Tracking Payments. The Commission will appoint one individual who will be authorized to act on behalf of the Commission either to accept, reject or otherwise facilitate the orderly execution of the Contract Services and with whom the ESCO may consult at all reasonable times, and whose instructions, requests, and decisions in writing will be binding upon the Customer as to all matters pertaining to this Contract (the "Customer Representative"). The Commission may substitute a new Customer Representative through written notice to the ESCO.

B. Information to ESCO. The Customer agrees to provide, or cause the Client to provide, to the ESCO reasonable access to each Facility and information necessary for the ESCO to perform its responsibilities under this Contract. Such access and information will include, but is not limited to, the following items:

- All mechanical equipment rooms in each Facility;
- All temperature control and energy management systems which control part or all of any of each Facility;
- Personnel with responsibility for operating and/or managing each Facility;
- Monthly utility invoices and billing history for all of the meters listed in Exhibit C, Section II-B;
- Construction documents, equipment inventories, and other documents that may be helpful in evaluating a cause for adjustment as listed in Exhibit C, Section II-E; and
- Any data from meters or sub-meters relevant to the Performance Tracking Services.



Any information or documentation provided by the Customer or Client to the ESCO relating to the Project or Facilities is provided only for the convenience of the ESCO. The Customer makes no representation or warranty to as to the sufficiency, completeness, or accuracy of such information.

C. Required Maintenance. Customer agrees to maintain, or cause the Client to maintain, the ECMs and the Facilities in accordance with the required maintenance checklist attached as Exhibit G, with allowance for normal wear and tear.

## **SECTION 6. INSTALLATION PERIOD SERVICES.**

A. Permits and Approvals. Except for those approvals and fees which are specified as the responsibility of the Customer under the Contract Documents, the ESCO shall secure and pay for all necessary permits, approvals, assessments and charges, including,

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without limitation, all construction building permits, required for the proper execution and completion of the Work. Pursuant to City of Chicago Ordinance PO 98-1690, all permits for demolition, construction alteration, repair, renovations, rehabilitation and inspection of buildings and facilities by the Customer and its contractors for public or governmental use by the City of Chicago and its sister agencies shall be issued without charge.

### **B. Design and Engineering Documents**

1. The ESCO will prepare, for written approval by Customer, working drawings and specifications setting forth in detail the requirements of the construction and installation of the Project in accordance with the Contract Documents ( Design & Engineering Documents"). The Design & Engineering Documents must include all drawings, specifications, schedules, diagrams and plans, and such content and detail as is necessary to properly complete the construction of the Project, and must provide information customarily necessary for the use of such documents by those in the building trades. Where required by law, the Design & Engineering Documents must bear the stamp or seal of architects or engineers licensed by the State of Illinois. The Design & Engineering Documents need not be submitted to the Customer as a complete set, but may be submitted in successive packages, each of which address separate construction trades or systems applicable to the Project. Within thirty (30) days after submission, the Customer will review each package of Design & Engineering Documents and either (i) accept such documents; or (ii) reject such documents, specifying in writing the basis for reject.

2. The ESCO covenants and agrees that (i) it will not commence the procurement or construction of any portion of the Project until the completed Design & Engineering Documents relevant to such part or portion have been accepted by the Customer in writing; and (ii) the Design & Engineering Documents will be accurate and free from any errors or omissions, and will be in compliance with and accurately reflect all applicable laws. The ESCO will, at no expense to Customer, promptly modify any Design & Engineering Documents which are not in accordance with laws or are inaccurate or contain errors or omissions. The ESCO acknowledges and agrees that the Customer will have no liability for cancellation fees applicable to equipment orders until after the Customer accepts the Design & Engineering Documents.

3. The ESCO acknowledges and agrees that any review, approval, comment or evaluation by the Customer of any plans, drawings, specifications or other documents prepared by or on behalf of the ESCO is solely for the Customer's determining for its own satisfaction the suitability of the Project

for the purposes intended therefor by the Customer, and may not be relied upon by the ESCO, its Subcontractors, or any other third party as a substantive review thereof. The Customer, in reviewing, approving, commenting on or evaluating any plans, drawings, specifications or other documents, will have no responsibility or liability for the accuracy or completeness of such documents, for any defects, deficiencies or inadequacies therein or for any failure of such documents to comply with the requirements set forth in the Contract Documents; the responsibility for all of the foregoing matters being the sole obligation of the ESCO. In no event will any review, approval, comment or evaluation by the Customer relieve the ESCO of any liability or responsibility under this Contract, it being understood that the Customer is at all times ultimately relying upon the ESCO's skill, knowledge and professional training and experience in preparing any plans, drawings, specifications or other documents. The ESCO has provided to the Customer, at the time of offering its

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services, a written disclosure identifying any Subcontractors that are architect(s) and engineer(s) or professional firm(s) in each case licensed or registered to provide architectural and engineering services in Illinois (collectively the "Licensed Professionals") who have been engaged by the ESCO and will be responsible to the ESCO for the provision of the Contract Services constituting architectural services subject to the Illinois Architecture Practice Act of 1989, 235 ILCS 305 et seq., or engineering services subject to the Professional Engineering Practice Act of 1989, 225 ILCS 325 et seq., (each a "Licensing Act"). The Licensed Professionals have participated in the contracting process for this Contract and will provide services under this Contract as required by the applicable Licensing Act and related regulations including Ill. Admin. Code tit. 68, §§ 1150.85 et seq. and 1380.296 et seq. (the "Regulations"). The ESCO will comply with the applicable Licensing Act and related Regulations.

**C. Labor and Workmanship.**

1. All labor for the Project shall be performed in the best workmanlike manner by workers skilled in their respective trades. The ESCO will only employ and permit the use of such labor as shall not result in jurisdictional disputes or strikes or cause disharmony with the tenants, other contractors, agents, and employees at the Facilities or other sites affiliated with the Customer or Client. Local labor and subcontractors must be given preference where possible and practical. Any worker or other person involved in the performance of the Work who, in the opinion of Customer, is incompetent or careless in the execution of the Work or otherwise unsatisfactory shall be immediately removed upon request of the Customer. The ESCO will enforce strict discipline and good order among the ESCO's employees and other persons carrying out the Work.

2. The ESCO must use every reasonable effort to comply with the Customer's Project Participation Guidelines in the performance of the Work. The ESCO must complete and provide a letter of intent in the form included in Exhibit K (Schedule C-1 to Attachment K-1) from each Subcontractor employed pursuant to the Project Participation Guidelines utilized in the performance of the Work.

**D. Control Over Means, Methods, and Techniques.** The ESCO is solely responsible for and will have control over means, methods, techniques, sequences and procedures and for coordinating all portions of the Work, unless the Contract Documents give other specific instructions concerning these matters.

**E. Cutting and Patching.** The ESCO will do all cutting, fitting, and patching necessary for the completion of the Work and will not alter or endanger any existing portion of the Facilities or any material or equipment installed therein without the consent of the Customer.

**F. No Reliance Upon Customer or Client Representations.** The ESCO has satisfied itself, by its own independent investigation and study, regarding all the conditions of the specific areas in the Facilities

affected by the Work to be done and materials to be furnished; the 'meaning, intention and sufficiency of any plans and specifications for the Work; the recommendations of the Investment Grade Audit; and the conditions under which the Work is to be done; and has executed this Contract based solely on such investigation, study and determination made by it, and not in reliance upon any representation by Customer or Client or by anyone acting for or on behalf of Customer or Client.

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G. Safety. The ESCO is responsible for all necessary safety precautions and programs in connection with the Work, including but not limited to providing whatever protection may be necessary to prevent injury to any persons, whether tenants, patrons, and/or employees or business invitees of Customer, Client, or the ESCO (including any Subcontractor) who may be present at the Facility or loss or damage to property of Customer, Client, or other persons, including all materials and equipment to be incorporated into the Work and all existing improvements which are not to be removed as part of the Work. If the Work might affect the owners or occupants of property adjacent or adjoining the Facility, the ESCO will notify such owners and occupants of the Work and its possible effect on their property. If the Work might affect any utilities, utility service, or utility equipment, the ESCO will notify the utility companies or users of such utilities which might be affected by the Work, and if such utility equipment is not needed or interferes with the execution of the Work, the ESCO will remove or protect such utility equipment as required by such utility companies or users of such utility equipment.

H. Cleaning and Removal of Materials. The ESCO will at all times keep the Facilities free from any accumulation of rubbish, debris, and waste. Upon completion of the Work and prior to final payment of the Contract Sum by Customer, the ESCO will thoroughly clean all Work, remedy any defects, and leave those portions of the Facilities in which the ESCO has been working in clean, orderly condition. Without limiting the generality of the foregoing, any ceiling and wall surface, floor, window or door frames, hardware, metalwork, and glass (both sides) which are part of the Work or which have become dirty or marred as a result of the ESCO's performance of the Work must be thoroughly cleaned.

I. Recycling. The ESCO must give preference to the use of recycled products in the performance of any Work, and must cooperate with any recycling program established for the Facilities or available through the City of Chicago. The ESCO must perform the Work in accordance with the City of Chicago's Recycling Ordinance and Construction or Demolition Site Waste Recycling Ordinance and document its compliance with such requirements.

J. Access to the Work. The ESCO will provide the Customer with unrestricted access to the Work in preparation and progress wherever located in the Facilities, subject only to reasonable safety precautions.

K. Use of Facilities. The ESCO will confine its operations to the portions of the Facilities identified in the Contract Documents or otherwise approved by the Customer, and will not unreasonably encumber the portions of the Facilities used for the Work with materials, equipment, or similar items. The ESCO and all Subcontractors will use only such entrances to the Facilities as are designated by the Customer. During occupied hours, the ESCO will limit construction operations to methods and procedures that do not adversely and unduly affect the environment of occupied spaces within the Facilities, including but not limited to creating noise, odors, air pollution, ambient discomfort, or poor lighting.

L. Project Meetings. The ESCO will provide for weekly, or as mutually agreed upon, scheduled Project meetings during the Installation Period, and will give timely advance written notice and agenda of such meetings to the Customer. The ESCO will record minutes and distribute copies of minutes of meetings to the

Customer within five (5) business days after each meeting. The ESCO will schedule additional Project meetings if requested by the Customer.

M. Progress Reports During the Installation Period, the ESCO will provide monthly reports to the Customer on the status of the Work that include, without limitation: (i) a

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detailed description of the progress of the work for each ECM and the Project as a whole, including a critical path chart illustrating the progress made; (ii) a statement of significant Project issues that remain unresolved and the ESCO's recommendations for resolving the same; (iii) an updated report on whether the Project remains on schedule and budget, and actions being taken to correct schedule delays and budget overruns; and (iv) a summary of any significant Project events that are scheduled to occur during the upcoming 30-day period.

N. Correction of the Work. The Customer has the right and authority to reject Work if defective or deficient, or which otherwise does not conform to the Contract Documents. During the Installation Period, the ESCO will promptly correct Work rejected by the Customer for failing to conform to the requirements of the Contract Documents, whether or not fabricated, installed or completed. If the ESCO, after receipt of written notice from the Customer of its rejection of Work pursuant to this Section, either: (i) has not cured such failure within seven (7) days, or (ii) if the nature of the failure is such that it is not capable of cure within seven (7) days, has not within seven (7) days reached agreement with the Customer for a plan to cure such failure and has not commenced and diligently and continuously pursued the cure of such failure, then the Customer may order the ESCO to stop the Work, or any portion thereof, until the cause for such order has been eliminated or the ESCO has provided the Customer with a plan for corrective action acceptable to the Customer in its reasonable judgment. The right of the Customer to stop the Work shall not, however, give rise to a duty on the part of the Customer to exercise this right for the benefit of the ESCO or any other person or entity.

O. Performance and Payment Bonds. The ESCO will, within thirty (30) days after the Date of Commencement and prior to performing any Work, obtain and furnish to Customer and maintain in effect throughout the Installation Period payment and performance bonds covering the faithful performance and completion of the Work required during the Installation Period and the payment of all obligations arising under this Contract during the Installation Period. Such bonds must (i) be issued by a surety company authorized to do business in Illinois and listed in the latest issue of U.S. Treasury Circular 570, (ii) be in form acceptable to the Customer and the Lender, in an amount equal to the Contract Sum, and (iv) name the Customer and the Lender as co-obligees. No notice of change order need be given to the surety company. The ESCO must supply evidence satisfactory to the Customer that the party issuing the bonds has the authority to bind the issuing surety company. Notwithstanding any provision to the contrary herein, any payment and performance bonds associated with this Contract guarantee only the performance of the installation portion of this Contract, and shall not be construed to guarantee the performance of: (1) any efficiency or energy savings guarantees, (2) any support or maintenance service agreement, or (3) any other guarantees or warranties with terms beyond one (1) year in duration from the completion of the installation portion of this Contract. In addition, the payment and performance bond shall include a provision that will guarantee the faithful performance of the prevailing wage clause as provided herein.

If the ESCO fails to furnish and maintain such bonds, the Customer may purchase such bonds on behalf of the ESCO and the ESCO must pay the cost thereof to the Customer upon demand.

P. Startup/Commissioning. The ESCO will conduct a thorough and systematic performance test of each element and total system of the installed ECMs in accordance with Exhibit A. and demonstrate that all ECMs comply with the requirements of the Contract Documents. The tests must be performed by the commissioning entity designated in Exhibit A, or, if no entity is designated, a commissioning entity selected

from a pre-qualified list of commissioning entities provided by the Customer. All tests shall be scheduled at times

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convenient to the Customer at no additional cost. At least twenty (20) business days prior to the scheduled test, the ESCO will deliver to the Customer a draft commissioning plan for each ECM. The Customer may require changes to the commissioning plan, provided the ESCO is provided with a written description of the changes. The Customer will have the right to designate representatives to be present at any or all such tests including representatives of the manufacturers of the ECMs. The ESCO, or its Subcontractor(s), must correct or adjust all deficiencies in operation of the ECMs identified during the course of the tests described in this Section. The ESCO will provide to the Customer a description of the ongoing training requirements for each Facility's operations and maintenance personnel necessary to maintain proper ECM performance after Final Acceptance.

Q. Additional Performance of Work Requirements. The ESCO will comply with the additional performance of work requirements described in Exhibit F.

## **SECTION 7. OTHER SERVICES AND REQUIREMENTS OF THE ESCO.**

A. Professional Standard. The ESCO will perform, or cause to be performed, all of the Contract Services with that degree of skill, care and diligence normally shown by (and generally accepted as being appropriate for) nationally recognized design, engineering, and construction professionals performing services and work of a scope, purpose and magnitude comparable with the Contract Services (the "Professional Standard"). Where the Contract Services require the exercise of professional skill or judgment, the ESCO will cause it to be performed by professionals competent to do so and licensed by the State of Illinois in the applicable discipline, if such licensure is required by law. The ESCO will furnish efficient administration, supervision, and superintendence of all Contract Services and will use every effort to complete the Contract Services in an expeditious and economical manner consistent with the interests of the Customer.

B. Contract Documents. The ESCO hereby covenants and agrees that it will duly and properly perform the Contract Services and implement the Project in accordance with the Contract Documents. Unless otherwise provided in the Contract Documents, the ESCO will provide and pay for labor, materials, tools, equipment and machinery necessary for the proper execution and completion of the Contract Services. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Contract Services including, without limitation, all items and services which are consistent with, contemplated by, or reasonably inferable from the Contract Documents, whether or not such items and services are specifically mentioned therein. The Contract Documents are complementary, and what is required by one shall be binding as if required by all.

C. Subcontractors. The ESCO will furnish in writing to the Customer for its approval the names of the Subcontractors to whom the ESCO plans to award any portion of the Contract Services. Contracts between the ESCO and its Subcontractors must require each Subcontractor, to the extent of the Contract Services to be performed by the Subcontractor, to be bound to the ESCO by the terms of the Contract Documents, and to assume toward the Customer all the obligations and responsibilities which the ESCO, by the Contract Documents, assumes toward the Customer. The ESCO will be responsible to the Customer for acts and omissions of the Subcontractors, their agents and employees, and any other persons performing portions of the Contract Services, and for any damages, losses, costs, and expenses resulting from such acts or omissions, to the same extent as the ESCO is responsible to the Customer for its acts and omissions under this Contract.

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D. ESCO's Key Personnel. Included within Exhibit A is a list of the ESCO's key personnel who will be responsible for supervising the performance of the Contract Services. Among such individuals there shall be appointed a principal representative of the ESCO (the "ESCO Representative") who shall be the ESCO's authorized representative, and who shall receive and initiate all communications to and from the Customer and be authorized to render binding decisions related to the Contract Services. ESCO shall notify promptly the Customer upon terminating the employment of, reassigning or receiving notice of the resignation of, any ESCO Representative. If, after execution of this Contract, the Customer objects to any of the ESCO's key personnel (for any reason whatsoever), the ESCO will promptly remove such disapproved personnel. If any of the ESCO's key personnel are removed as provided above, any replacement personnel are subject to the prior written approval of the Customer, which approval will not be unreasonably withheld.

E. Taxes. Unless otherwise provided in the Contract Documents, the ESCO will pay all federal, state or local sales, consumer, use, and other similar taxes associated with the implementation of the Work which are legally enacted as of the date of execution of this Contract, whether or not effective or merely scheduled to go into effect. The Customer will be responsible for all federal, state or local taxes which are imposed as a result of the Customer's ownership of the Project or are related to the financing of the Project. The Customer will cause the Commission to provide its sales tax exemption certification for purchases of equipment, tools, materials, and supplies relating to the Project.

F. Compliance with Law. The ESCO will comply with all applicable provisions of federal, state and local law when performing any services set forth or described in this Contract, now existing or hereinafter in effect, which may in any manner affect the performance of this Contract. Provisions required by law, rules, ordinances, regulations or executive orders to be inserted shall be deemed inserted whether or not they appear in this Contract, or upon application by either party, this Contract shall forthwith be physically amended to make such insertion; however, in no event shall the failure to insert such provision(s) prevent the enforcement of this Contract. The ESCO shall also comply with all conditions of any federal, state, or local grant received by the Customer or the ESCO with respect to this Contract or the Contract Services.

1. The ESCO will promptly remedy any violation of any such law, ordinance, rule, regulation, or order that comes to its attention. The ESCO shall promptly, and in no event later than the close of the next business day following receipt, give notice to the Customer by telephone, with confirmation in writing, of receipt by the ESCO of any information relating to violations of laws, ordinances, rules, regulations, and orders.

2. In performing the Contract Services, the ESCO must comply with applicable laws prohibiting discrimination against individuals and groups. The ESCO must not discriminate against any worker, employee, applicant for employment, or any member of the public, because of race, color, creed, national origin, gender, age, or disability, or otherwise commit an unfair labor practice.

3. The ESCO certifies that it is familiar with, and will comply with, all applicable provisions of the Civil Rights Act of 1964, 28 U.S.C. § 1447, 42 U.S.C. SS 1971, 1975a-1975d, 2000a to 2000h-6 (1992); the Age Discrimination in Employment Act of 1967, 29 U.S.C. §§ 623-634 (1992); the Americans with Disabilities Act of 1990, 29 U.S.C. § 706, 42 U.S.C. §§ 12101-12213, 47 U.S.C. §§ 152,221,225,611 (1992); 41 C.F.R. § 60 (1992); 41 C.F.R. § 60 (1992); reprinted in 42 U.S.C. 2000(e) note, as

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amended by Executive Order No. 11,375 32 Fed. Reg. 14,303 (1967) and by Executive Order No. 12,086, 43 Fed. Reg. 46,501 (1978); the Age Discrimination Act, 43 U.S.C. Sec. 6101-6106 (1981);

P.L. 101-336; 41 C.F.R. part 60 et seq. (1990); the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq. (1990), as amended; the Discrimination in Public Contracts Act, 775 ILCS 10/0.01 et seq. (1990), as amended; the Environmental Barriers Act., 410 ILCS 25/1 et seq; and the Chicago Human Rights Ordinance, Chapter 2-160, Section 2-160-010 et seq. of the Municipal Code (1990), as amended.

4. The ESCO will furnish such reports and information as may be requested by the Customer, the Illinois Department of Human Relations, or any other administrative or governmental entity overseeing the enforcement, or administration of, or compliance with, the above mentioned laws and regulations.

5. The ESCO will also comply with all applicable "Anti-Kickback" laws and regulations, including the "Anti-Kickback" Act of 1986, 41 U.S.C. §§ 51-58 (1992); 18 U.S.C. § 874 (1992); 40 U.S.C. § 276c (1986) and the Illinois Criminal Code of 1961 720 ILCS 5/33E-1 et seq. If, in the performance of this Contract, any direct or indirect "kickback" is made, as defined in any of the above mentioned laws and regulations, the Customer may withhold from the ESCO, out of payments due to the ESCO, an amount sufficient to pay any underpaid employees the difference between the salaries required to be paid under the law and this Contract and the salaries actually paid such employees for the total number of hours worked. The amounts withheld may be disbursed by the Customer for and on account of the ESCO to the respective employees to whom they are due, as determined by the Customer in its sole discretion.

6. The ESCO agrees to cooperate fully and expeditiously with the Client's Inspector General in all investigations or audits. The ESCO agrees to provide all documents, date, files and other information and access to all witnesses specified by the Client's Inspector General. This obligation applies to all officers, directors, agents, partners, and employees of the ESCO. The ESCO agrees to insert this provision in any subcontracts that it awards.

7. Pursuant to Municipal Code of Chicago Section 2-92-220, a standard working day consists of eight (8) hours for this Contract. The ESCO shall, and shall cause any Subcontractors providing services hereunder, to coordinate shifts with the Client. No overtime or premium pay will be permitted by the ESCO unless otherwise specified in the Contract Documents and authorized by the Customer.

8. The ESCO shall comply with the Client-required terms and conditions set forth in Exhibit J.

G. Remedy to Damage or Loss. The ESCO will promptly remedy damage, injury or loss at the Facilities to the extent caused by the ESCO, a Subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable.

H. Discharge of Mechanics Liens Subject to the payment of amounts due hereunder from Customer to ESCO, if any mechanic's, materialman's, or other similar lien is at any time filed against any Facility or ECM or any part thereof on account of any Work performed on or furnished to or claimed to be performed on or furnished to the Work at the direction of the

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ESCO or any Subcontractor, the ESCO will, upon written request from Customer and without cost or expense to the Customer, promptly cause the sum to be discharged of record by payment, bond, order of a court of competent jurisdiction, or otherwise. If the ESCO, having been requested by the Customer to discharge such lien, fails to commence appropriate action to discharge such lien within ten (10) days after such written request by the Customer, the Customer will have the right to discharge the same by payment, bond, order of

a court of competent jurisdiction, or otherwise and without regard to whether the ESCO is disputing the validity or amount of the same, and the costs and expenses incurred by Customer in so discharging such lien shall be payable by the ESCO to the Customer upon demand. The ESCO will protect the Customer against lien filings to the extent that payment is received for completed service or delivered equipment.

I. Royalties and License Fees. The ESCO will 'pay all royalties and license fees related to the Contract Services.

J. Publicity. Upon the reasonable request of the Customer, the ESCO will cooperate with and assist the Customer in connection with any public relations or publicity relating to the Project, including, without limitation, tours of Facilities arranged by the Customer or Client. Without the prior written consent of the Customer, the ESCO will not disclose details or information relating to the Project or Contract Services to the press, the public, any news-disseminating agency or any other party, except to those parties performing portions of the Contract Services, and then only to the extent required for the performance of the particular portion of the Contract Services being performed.

**K. Retention and Inspection of Documents.**

The ESCO must maintain books, records, documents and other evidence pertaining to the performance and cost of the Contract Services ("Record's") for a period of five (5) years after the termination of this Contract ( Retention Period ). The ESCO shall use accounting procedures and practices in accordance with generally accepted accounting principles and practices, consistently applied to all of the Records. The Records will be open to audit, inspection, copying, abstracting and transcription and must be made available to the Customer at reasonable times upon prior notice during the term of this Contract and the Retention Period. The Records retention obligation set forth in this Subsection shall survive the termination or expiration of this Contract, whether by lapse of time or otherwise.

The Customer or the Client may, in their sole discretion, audit the Records of the ESCO or its Subcontractors, or both, at any time during the Term or Retention Period, in connection with the Contract Services. Each calendar year or partial calendar year may be deemed an "audited period." If, as a result of such an audit, it is determined that the ESCO or any of its Subcontractors has overcharged the Customer in the audited period, the Customer will notify the ESCO. The ESCO must then promptly reimburse the Customer for any amounts the Customer has paid the ESCO due to the overcharges and, depending on the facts, also some or all of the cost of the audit, as follows: If the audit has revealed overcharges to the Customer representing less than 5% of the total value, based on the contract prices, of the goods, work, or services provided or of underpayments by the ESCO, in the audited period, then the ESCO must reimburse the Customer for 50% of the cost of the audit and 50% of the cost of each subsequent audit that the Customer or the Client conducts; if, however, the audit has revealed overcharges to the Customer representing 5% or more of the total value, based on the contract prices, of the goods, work, or services provided in the audited period or of underpayments by the ESCO, then the ESCO must reimburse the Customer for the full cost of the audit and of

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each subsequent audit. Failure of ESCO to reimburse the Customer in accordance with the foregoing is an event of default under this Contract, and the ESCO will be liable for all of the Customer's and the Client's costs of collection, including any court costs and attorneys' fees.

, L. Cooperation. The ESCO will cooperate with and assist the Customer, the Client, and their advisors, consultants, attorneys, employees, agents and representatives, at all times during the Contract Time so as to complete the Contract Services in an efficient, timely, and economical manner. Such cooperation and assistance will include, without limitation, any cooperation or assistance required in connection with the



Customer's efforts to obtain financing for the Project.

**M. Confidential Information.**

1. The term "Confidential Information" means any documentation or information (i) which is marked as "proprietary" or "confidential"; (ii) which is supplied orally with a contemporaneous confidential designation; or (iii) which is known by the ESCO to be confidential or proprietary information or documentation of the Customer or Client. Confidential Information does not include information that can be demonstrated: (i) to have been rightfully in the possession of the ESCO from a source other than the Customer or Client prior to the time of disclosure of said information to the ESCO under this Contract; (ii) to have been in the public domain prior to disclosure to the ESCO; (iii) to have become part of the public domain after disclosure to the ESCO by a publication or by any other means except an unauthorized act or omission or breach of this Contract on the part of the ESCO or the Customer; or (iv) to have been supplied to the ESCO without restriction by a third party who, to the ESCO's knowledge, is under no obligation to the Customer to maintain such information in confidence.

2. The ESCO acknowledges that it may, in performing the Contract Services, have access to or be directly or indirectly exposed to Confidential Information. The ESCO will hold confidential all Confidential Information and will not disclose or use such Confidential Information for any purpose other than the performance of the Contract Services without express prior written consent of the Customer. The ESCO will use reasonable measures at least as strict as those the ESCO uses to protect its own confidential information. Such measures must include, without limitation, requiring Subcontractors of the ESCO to execute a non-disclosure agreement before obtaining access to Confidential Information.

3. The ESCO acknowledges that the Customer and client are subject to the Illinois Freedom of Information Act, 5 ILCS 140/1 et seq., and that no disclosure made in good faith by the Customer pursuant to such Act shall be deemed to violate any confidentiality commitments made by the Customer to the ESCO.

N. ECM Malfunction. The ESCO agrees to compensate the Customer for damages to real or personal property and related costs and expenses incurred by the Customer or Client resulting from ECM malfunction to the extent caused by nonperformance or error by the ESCO or its Subcontractors.

O. Financing Contract Requirements. If one or more Financing Contracts are entered into for the Project, the ESCO agrees to provide the parties to the Financing Contract such written information, certificates, copies of invoices, receipts, lien waivers, affidavits, and other like documents as such parties may reasonably request. The ESCO hereby subordinates

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any liens or security interests to which it may be entitled by law or under the provisions of this Contract to any lien or security interest granted in favor of the party or parties to a Financing Contract.

P. Credit and Financial Information. In the event such information is not publicly available and if requested by the Customer or the Lender, the ESCO will deliver or cause to be delivered to the Customer or the Lender, as applicable:

- (a) as soon as available and in any event within sixty (60) days after the end of each of the first three fiscal quarters of each fiscal year, annual financial statements prepared by

PriceWaterhouse Coppers .or an equivalent accounting firm, said annual financial statements reflecting the ESCO's consolidated income for the fiscal year then ended and consolidated balance sheet as of the end of the such fiscal year;

b) any such other information of the ESCO that may be reasonably requested by the Customer or the Lender from time to time; and

c) ESCO hereby authorizes the Customer and Lender to provide the ESCO's financial information to any prospective providers of funding in connection with the financing or refinancing of the project.

In addition, the ESCO shall provide written notice to the Lender prior to or promptly thereafter with respect to any change in its name, identity or corporate structure and such other information in connection with such action as the Lender may reasonably request.

## **SECTION 8. WARRANTIES AND ECM REPAIR AND REPLACEMENT.**

A. Warranty. For the Warranty Period, the ESCO warrants to the Customer that materials and equipment furnished under this Contract will be [<http://will.be>](http://will.be) of good quality and new, that the Work will be performed in accordance with the Professional Standard and free from faults and defects not inherent in the quality required or permitted, that the materials, equipment and Work will conform with the requirements of the Contract Documents, and that the Work will be free from any encumbrances, liens, security interests, or other defects in title upon conveyance of title to the Customer. EXCEPT AS PROVIDED IN THIS SECTION 8.A, THE ESCO MAKES NO WARRANTIES OR REPRESENTATIONS OF ANY KIND, WHETHER STATUTORY, WRITTEN, ORAL OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES AS TO THE VALUE, DESIGN, AND CONDITION OR FITNESS FOR USE OR PARTICULAR PURPOSE AND MERCHANTABILITY, REGARDING THE WORK OR THE ECMS.

B. Exclusion from Warranty. ESCO's warranty excludes remedy for damage or defect to the extent caused by (i) modifications not approved or executed by ESCO or its Subcontractors, (ii) improper or insufficient maintenance or operation that is not in accordance with Exhibit G and not supervised or directed by the ESCO or its Subcontractors, (iii) normal wear and tear under normal usage, or (iv) equipment that has been the subject of negligence, accident or damage by circumstances beyond the ESCO's control. If required by the Customer, the ESCO shall furnish satisfactory evidence as to the kind and quality of materials and equipment to meet the requirements of this Section 8.

C. Warranty Period. The warranty period for the Work ("Warranty Period") is the period that is the longer of: (a) eighteen (18) months, running on an ECM by ECM basis from and after the date of Substantial Completion of such ECM, and (b) the warranty period for each

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ECM as set forth in Exhibit A, running from and after the date of Substantial Completion of all of the Work for a particular ECM (unless Exhibit A specifies a different date for the Warranty Period to begin running for a particular ECM) or (c) the Manufacturer's Warranty (as defined herein).

D. Breach of Warranty. If, at any time prior to the expiration of the Warranty Period, the Customer discovers any failure or breach of the ESCO's warranties, the ESCO will, upon written notice from the Customer and at the ESCO's sole cost and expense, immediately correct such failure or breach (which corrective action may include, without limitation, any necessary removal, disassembly, reinstallation, repair,

replacement, reassembly, retesting, and/or reinspection of any part or portion of the Work and any other property damaged or affected by such failure, breach, or corrective action). The ESCO will remedy any such failure or breach so as to minimize revenue loss to the Customer and, to the extent possible, to avoid disruptions to the operations of the Customer and other occupants of the Facilities. In the event the ESCO fails to initiate and diligently pursue corrective action within five (5) days of the ESCO's receipt of the Customer's notice, the Customer may undertake such corrective action at the ESCO's expense.

E. Manufacturers' Warranties. At Final Acceptance of the Work for a particular ECM, the ESCO will furnish the Customer two (2) original complete sets of all manufacturers' warranties, guarantees, parts lists, and literature applicable to equipment, systems, fittings, and furnishings included in the Work for that ECM (collectively referred to as "Manufacturers' Warranties"), completed in favor of the Customer. These Manufacturers' Warranties are in addition to and not in lieu of the ESCO's warranty set forth in Section 8.A, and the Customer is entitled to look to the ESCO for remedy in all cases where the ESCO's warranty applies regardless of whether a Manufacturer's Warranty also applies. The Customer will acknowledge receipt of the sets of Manufacturers' Warranties on the set itself, and the ESCO will cause six (6) copies of an acknowledged set to be made and furnish them to the Customer. All Manufacturers' Warranties will be for applicable periods and contain terms not less favorable to the Customer than those terms which are standard for the applicable industries, and will either be issued in the first instance in the name of and for benefit of the Customer, or be in a freely assignable form and be assigned to the Customer without limitations.

F. Repair and Replacement of ECMs. If the ESCO or the Customer find that an ECM requires repair or replacement, the other Party must be notified and the ESCO will repair or replace the ECM if required to do so pursuant to its obligation to correct the Work or its warranty obligations under Section 8.A. If the ESCO is not required to repair or replace the ECM and the Manufacturers' Warranties apply to the ECM requiring repair or replacement, the Customer will cause the repair or replacement of the ECM in accordance with the Manufacturers' Warranties. If the ESCO is not required to repair or replace the ECM and the Manufacturers' Warranties do not apply, the ESCO and Customer will agree to a schedule for the repair or replacement of the ECM, at the Customer's expense, that establishes reasonable timeframes for the engineering, procurement, and construction and installation associated with such work. The Parties will use good faith efforts to agree to any necessary adjustments to the energy performance calculations that account for the energy savings attributable to the period of time needed to repair or replace the ECM. However, any such adjustments to the energy performance calculations are subject to the terms and provisions of Exhibit C, which require the ESCO to notify the Customer within thirty (30) days of the ESCO becoming aware of a possible Cause for Adjustment, and to specify all Causes for Adjustment in the annual guaranteed savings reconciliation process.

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## **SECTION 9. INSURANCE. DAMAGE AND DESTRUCTION. AND INDEMNIFICATION.**

### **A. Insurance to be Maintained by ESCO; Limitation of Liability.**

1. The ESCO will maintain, at its sole cost and expense, the insurance set forth in Exhibit H in form and substance satisfactory to the Customer and the Lender from insurance companies authorized to do business in the State of Illinois which are rated at least A-VII by A.M. Best Company and acceptable to the Customer and the Lender. The ESCO will furnish to Customer and the Lender certificates evidencing such insurance. During the Guarantee Period, the insurance coverage set forth on Exhibit H may be reduced to a level deemed necessary by the Customer, in its reasonable discretion, to protect the Customer and Client from liability for acts of the ESCO during the performance of the Guarantee Period Services.

2. Under no circumstances will either Party be liable to the other Party for any special, indirect, incidental, consequential or punitive damages, however caused and on any theory of liability.

B. Damage and Destruction. The Customer and Client are not liable for damage or destruction to the Work and/or to (a) any tools owned by mechanics, (b) any tools, equipment, scaffolding, staging, towers, and forms rented by ESCO, the capital value of which is not included in the Contract Sum, and (c) any structures erected for housing or convenience of workmen caused by, but not limited to, the following: fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, aircraft, vehicles, smoke, vandalism, or malicious mischief.

C. Risk of Loss. Regardless of the passage of title, risk of loss and damage to the Work shall remain with the ESCO until the date of Final Acceptance of the entire Project.

**D. Indemnification.**

1. ' Professional Indemnity. For claims alleging professional negligence, the ESCO must defend, indemnify and hold the Customer, the Commission, the Lender and the Client and their respective commissioners, board members, officers, officials and employees (hereafter the "Indemnified Parties") free and harmless from and against all claims, demands, suits, losses, costs and expenses, including the reasonable fees and expenses of attorneys, court costs and expert's fees, that may arise out of the ESCO's negligent acts, errors and omissions and misconduct in the ESCO's performance under this Contract or the performance of any Subcontractor retained by the ESCO in connection with this Contract.

2. General Indemnity. For all other claims, the ESCO must protect, defend, indemnify, hold the Indemnified Parties free and harmless from and against all claims, demands, suits, losses, costs and expenses, including the reasonable fees and expenses of attorneys, court costs and expert's fees, that may arise out of the performance of ESCO's Work under this Contract and such claim is attributable to any injury to persons or property that is, or is claimed to be, the result of the ESCO's or a Subcontractor's negligent acts or omissions under this Contract.

3. Scope of Indemnification. The indemnification obligations provided in this Section 9 will be effective to the maximum extent permitted by-law. To the extent

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permitted by law, the ESCO waives any limits to its liability hereunder that it would otherwise have by virtue of the Workers' Compensation Act or any other related law or judicial decision (including, without limitation, Kotecki vs. Cyclops Welding Corporation, 156 Ill. 2d. 155 (1991)). This indemnity extends to all legal costs, including, without limitation: reasonable attorney fees, costs, liens, judgments, settlements, penalties, professional fees or other expenses incurred by the Indemnified Party(ies), including but not limited to reasonable settlement of such claims. This indemnification is not limited by any amount of insurance required under this Contract. Further, the indemnity contained in this section

will survive the expiration or termination of this Contract. The ESCO shall be solely responsible for the defense of any and all claims, demands, or suits against the Indemnified Parties, including without limitation, claims by an employee, subcontractor, agents or servants of the ESCO even though the claimant may allege that the Indemnified Parties were in charge of the Contract Services or allege negligence on the part of the Indemnified Parties. The Indemnified Party/Parties will have the right, at its sole option, to participate in the defense of any such suit at its/their expense, without relieving the ESCO of its obligations hereunder. Notwithstanding the forgoing, the ESCO shall have no obligation to indemnify an Indemnified Party for the Indemnified Party's own negligence or willful misconduct. Defense costs shall be allocated on a comparable fault basis.

## SECTION 10. ENVIRONMENTAL WORK AND HAZARDOUS MATERIALS.

A. **Abatement and Removal of ACM.** The Work to be performed by the ESCO includes the proper abatement, removal, and disposal of asbestos containing material and associated debris ("ACM") only to the extent included in the Work described in Exhibit A. All Work involving ACM must be performed in accordance with the ACM-related performance of work requirements described in Exhibit F and the other terms and provisions of this Contract. In the event that the ESCO discovers ACM (i) that was not identified in the Contract Documents prior to the commencement of the Work or (ii) that could not have been identified by the ESCO through the exercise of reasonable diligence during the performance of the Investment Grade Audit (a "Concealed Condition"), the ESCO and Customer shall negotiate an equitable adjustment to the Contract Sum and Scheduled Completion Dates pursuant to Section 12.D.

B. **Performance of Other Environmental Work.** If the Contract Documents require the ESCO to manage or perform any Environmental Work, or if in the course of the Work Hazardous Materials or Mold are encountered requiring action, the ESCO must cooperate and coordinate its Work in all respects with that of Environmental Consultants, perform its Work according to safe and approved protocols and procedures, utilize only fully qualified and licensed abaters and remediators, and sequence and perform the Work to minimize environmental contamination of the Facilities. The ESCO will consult with the Customer, including its Environmental Consultants, to determine whether previous abatement, remediation, stabilization, or containment work has been performed at the Facility. If so, the ESCO will perform its Work so as not to undo or disturb the prior work.

C. **Encountering Hazardous Materials or Mold.** If the ESCO encounters material in a Facility reasonably believed to be a Hazardous Material (including ACM) or Mold that has not been identified in the Contract Documents or that constitutes a Concealed Condition, the ESCO must immediately stop Work in the area affected and report the condition to the Customer Representative in writing and by telephone or in person. The Customer or its Environmental Consultants will verify the presence or absence of the Hazardous Material or Mold reported by the ESCO and, if the Hazardous Material or Mold is found to be present,

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develop a plan for identifying and handling the Hazardous Material or Mold. If no plan is in place, the ESCO will await and follow directions of the Customer. The Work in the affected area may be resumed in the absence of the Hazardous Material or Mold, or when it has been rendered harmless. Should ESCO stop work because of the discovery of Hazardous Materials or Mold, the time for performance of ESCO'S Work will be extended to cover the period required for abatement, cleanup, or removal of such materials. ESCO will not be held responsible for any claims, damages, costs, or expenses of any kind associated with the period during which ESCO has stopped work as a result of Hazardous Materials or Mold. If appropriate, ESCO will be entitled to an equitable adjustment of the Contract Time, and if appropriate, the Contract Sum, for any increased costs or other charges incurred by ESCO in connection with the existence of its rights under this paragraph. Customer will be responsible for taking all necessary steps to correct, abate, clean up, or control

Hazardous Materials or Mold not otherwise delegated to ESCO in the Contract Documents.

**D. Hazardous Materials Introduced to the Facilities by the ESCO.**

Notwithstanding anything to the contrary set forth in this Section 10, if any Hazardous Materials are introduced to any Facility by the ESCO, its Subcontractors, and any party for whom they may be liable or if any Mold occurs within the Facilities as the result of the implementation of the Project or the functioning of the ECMs, then any response, removal, cleanup, or other remedial action required by applicable law shall be performed by the ESCO at its sole cost and expense. Except as to the ESCO's initial response to an emergency, any such remedial action(s) shall require the prior review and approval of the Customer.

**SECTION 11. DISPUTE RESOLUTION.**

A. Representatives of the Parties. Except for those disputes to be decided by the Engineer Neutral as provided in Section 3.C.2 and Section VIII of Exhibit B, all claims, disputes or other controversies arising out of, or relating to, this Contract (hereinafter collectively referred to as a "Dispute") shall initially be submitted to Customer Representative and the ESCO Representative for resolution by mutual agreement between said parties. Any mutual determination by the Customer Representative and the ESCO Representative will be final and binding upon the Parties. However, should the Customer Representative and the ESCO Representative fail to arrive at a mutual decision as to the Dispute within ten (10) days after notice to both individuals of the Dispute, such Dispute will be submitted to the Senior Officers as provided in Section 11.B.

B. Senior Officers. In the event that a Dispute is not resolved in accordance with Section 11.A, such Dispute will be submitted to a Senior Officer from each Party for resolution by mutual agreement between said officers. Any mutual determination by the Senior Officers will be final and binding upon the Parties. However, should such Senior Officers fail to arrive at a mutual decision as to the Dispute within ten (10) days after notice to both individuals of the Dispute, the Parties may thereafter pursue any remedies available at law and/or in equity with respect to such Dispute, including, without limitation, litigation. The prevailing Party in any court proceedings shall be reimbursed by the other party for all costs, expenses and charges, including, without limitation, reasonable attorneys' fees, incurred by said prevailing Party.

C. Continuation of Services. Pending final resolution of a Dispute, the ESCO will proceed diligently with the performance of its duties and obligations under this Contract, and the Customer will continue to make payments of undisputed amounts in accordance with this Contract.

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**SECTION 12. CHANGES IN THE WORK.**

A. Minor Changes in the Work The Customer may issue written field orders which interpret this Contract or order minor changes in the Work not involving an adjustment in the Contract Sum or a change in the Scheduled Completion Dates. The ESCO will carry out such field orders promptly.

B. Change Orders. The Customer may order additions, deletions, or other revisions in the Work, in which event the Contract Sum and/or the Scheduled Completion Dates, as the case may be, will be adjusted by Change Order as hereinafter provided. If the Customer wishes to make additions, deletions, changes to the schedule, or other revisions in the Work, the Customer and the ESCO shall agree upon the amount by which the Contract Sum is to be increased or decreased as a result thereof or the method by which such increase or decrease is to be determined, and a Change Order shall be issued setting forth the addition, deletion, or revision and the amount which the Contract Sum is to be increased or decreased or the method by which the increase or decrease in the Contract Sum is to be determined. If the ESCO and the Customer

cannot reach agreement on the payment terms for the change, then: (a) the Customer may issue a Change Order directing the ESCO to commence such changes in the Work, and (b) the payment to the ESCO shall consist of the actual costs and savings of performing the Work attributable to the change, plus fifteen percent (15%) for profit and overhead. In such case, the ESCO shall keep and present, in such form as the Customer may reasonably require, an itemized accounting and appropriate supporting data. In no event will changes in the Work be made without a written Change Order signed by the Customer, and ESCO will be solely responsible for any changes which have not been accepted in a written Change Order signed by the Customer.

C. Extension of Scheduled Completion Dates. The ESCO hereby acknowledges that the Work of this Contract will be performed in occupied buildings and that such occupancy has been factored into the establishment of the Contract Sum and Contract Time. Accordingly, no proposed Change Order from the ESCO arising out of the normal operations and occupancy of a Facility shall be considered by the Customer. If the ESCO claims that it is entitled to an extension of the Scheduled Completion Date by reason of (i) the issuance of a Change Order changing the Work, or (ii) the occurrence of an Excusable Event, the ESCO will give Customer notice to such effect, within ten (10) business days after the commencement of the event, setting forth the extension in the Scheduled Completion Dates requested by the ESCO and specifying the reasons why the ESCO is requesting such extension. The Customer will inform the ESCO of the extension, if any, of the Scheduled Completion Dates which the Customer is willing to make, and, if the Customer is willing to extend the Scheduled Completion Dates, a Change Order shall be issued extending the Scheduled Completion Dates to the date acceptable to the Customer. If the ESCO is delayed at any time in progress of the Work by changes ordered in the Work or by an Excusable Event, then the Contract Time will be extended by Change Order provided that: (i) the ESCO has notified the Customer in writing of such delay within ten (10) business days following the date when the ESCO becomes aware, or should have become aware through the exercise of reasonable diligence, of such delay; (ii) the ESCO has taken all reasonable steps to avoid any such delay (including its continuance); and (iii) such delay is not a theoretical delay but does actually adversely affect the critical path of the Work. Otherwise, the ESCO will not be entitled to an extension of the Contract Time for any delays in the progress of the Work.

D. Equitable Adjustment of Contract Sum. Except as the result of a Change Order as permitted by Section 12.B, an increase in the Contract Sum will only be granted under

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the following circumstances:

1. The ESCO's cost of performing the Work demonstrably increased because of the occurrence of an Excusable Event described in Section 12.E, paragraphs (1) through (3);
2. The ESCO notified the Customer of the Excusable Event via written notice (which written notice may be via email) within three (3) business days following the date when ESCO became aware, or should have become aware through the exercise of reasonable diligence, of the Excusable Event, which written notice described the ESCO's efforts (or planned efforts) undertaken to overcome or remove the Excusable Event and to minimize the potential adverse effect on the cost for performance of the Work resulting from such Excusable Event.
3. The ESCO took all reasonable steps to avoid the Excusable Event;
4. The ESCO made a written request for an increase in the Contract Sum to the Customer within three (3) business days after the cessation of such Excusable Event specifying the additional cost the ESCO believed it incurred as a result of such event; and
5. The ESCO demonstrates, to the reasonable satisfaction of the Customer, that the

Excusable Event did in fact cause an increase in the ESCO's cost of performing the Work.

Compliance with this Section is a condition precedent to receipt of an increase in the Contract Sum as the result of an Excusable Event. In the event of a failure to comply with this Section, the ESCO shall not be entitled to an increase in the Contract Sum and shall be deemed to have waived any future claim relating to such Excusable Event. Upon satisfaction by the ESCO of the terms and conditions in the preceding subsections, the Customer and the ESCO will use good faith efforts to agree on the extent to which the ESCO's costs for performing the Work have been increased as a result of any such Excusable Event. Once the Parties have mutually agreed as to the ESCO's increased cost, they shall enter into a Change Order reflecting their agreement as to the adjustment in the Contract Sum.

E. Excusable Events. The occurrence of any of the following events shall constitute an Excusable Event:

1. Delays resulting from the acts or omissions of the Customer or Client, to the extent such delays arise from circumstances beyond the reasonable control and without the fault or negligence of the ESCO, its Subcontractors, or other person for whom they may be liable;

2. The discovery of any Hazardous Materials or Mold in a Facility that is a Concealed Condition (unless the Hazardous Materials are introduced to the Facility by the ESCO, its Subcontractors, or any party for whom they may be liable);

3. The occurrence of a change in law impacting the schedule or cost for the Work, provided that a change in any income tax law or any law by which a tax is levied or assessed on the basis of the ESCO's income, profits, revenues or gross receipts shall not be an Excusable Event; or

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4. Any of the following acts, events, conditions or occurrences to the extent that the same are beyond the ESCO's reasonable control, which could not have been either foreseen or avoided by the exercise of due diligence, and which has an adverse effect on the ESCO's ability to perform the Work: drought, flood, earthquake, storm, mudslide, fire, lightning, epidemic, war, riot, civil disturbance, sabotage, explosions, material changes in law, or strikes or labor disputes that affect the Work not reasonably anticipatable, unavoidable casualties, acts of public enemies, orders or restraints of any kind imposed by the government of the United States, any state or any of their departments, agencies or officials, or any other action of a civil government, military or judicial authority.

## SECTION 13. PAYMENTS AND COMPLETION.

### A. Payments.

1. The total of all payments for the Work performed during the Installation Period will constitute the Contract Sum. Construction progress payments will be made to the ESCO monthly based on the percentage completion of items delineated on the Schedule of Values included in Exhibit A during the prior month.

2. During the Guarantee Period, each Performance Tracking Payment due from the Customer, as set forth on Exhibit E. will be paid to the ESCO on the dates and in the amounts set forth in Exhibit E.

B. Withholding of Payments. Payments may be withheld to the extent of, and on account of (1) defective Work not remedied; (2) claims filed by third parties; (3) failure of ESCO to make payments promptly



to the Subcontractors for labor, materials or equipment; or (4) failure by the ESCO to perform its obligations under the Contract Documents. The Customer shall promptly notify the ESCO of any reason for withholding payment and Customer shall promptly make payment to the ESCO upon the resolution of such occurrence.

C. Retainage. During the Installation Period, retainage of ten percent (10%) of the total amount earned will be withheld from partial payments to the ESCO until the ESCO has achieved 50% completion of the Work, as determined by the Customer. Thereafter, retainage of five percent (5%) of the total amount earned will be withheld from partial payments to the ESCO. The retainage will be released upon the occurrence of both of the following events: (a) Final Acceptance of the entire Project; and (b) delivery by the ESCO and receipt by the Customer of security for the ESCO's faithful performance of its obligations during the Guarantee Period including, without limitation, payment of any Performance Guarantee Payment due to the Customer in the form of an annually renewable guaranteed energy savings bond. Such savings bond will (i) be issued by a surety with a Best's Key Rating Guide of not less than "A-VII" and licensed to do business in the State of Illinois, (ii) be in a form reasonably satisfactory to the Customer and the Lender, and (iii) name the Customer, the Client and the Lender as co-obligees. The ESCO shall provide to the Customer and the Lender the form of savings bond (including the co-obligee rider thereto) and the identity of the savings bond provider not less than thirty (30) days prior to the effective date of any such savings bond. The cost of any such savings bond will be borne by the Customer and is included in the payment amounts for Performance Tracking Services specified in Exhibit E. The Customer may elect not to renew the savings bond at the start of any Performance Guarantee Year by providing the ESCO with 60 days written notice indicating its election not to renew the instrument, in which event the payment amounts for Performance Tracking Services specified in Exhibit E will be reduced by

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seven percent (7%) of that year's Guaranteed Annual Savings Amount. The savings bond must be provided by the ESCO to the Customer upon Substantial Completion as a condition of Final Acceptance and release of the retainage.

D. Payment Requests. Each payment request submitted by the ESCO during the Installation Period will be accompanied by the following, all in form and substance satisfactory to the Customer:

1. A duly executed and acknowledged ESCO's sworn statement showing all Subcontractors, the amount of each subcontract, the amount requested for any Subcontractor in the invoice and the amount to be paid to the ESCO, together with similar sworn statements from all Subcontractors;

2. Duly executed conditional waivers of mechanics', materialmen's and construction liens from the ESCO and all Subcontractors. The final invoice for the Contract Sum must be accompanied by final and full waivers of lien from all parties entitled to receive payment in connection with the Work; and

3. Such other documents and information as may be necessary or as may be reasonably requested by the Customer to verify satisfactory completion of the Work covered by such invoice and compliance with this Contract.

4. The ESCO will utilize the Commission's on-line collaboration and document management system (the "System") for the submission of the ESCO's monthly payment requests, including supporting Subcontractor documentation. The ESCO shall be responsible for implementation and use of the System for purposes of submitting its payment applications, including, without limitation, providing appropriate computer, network and information management systems and equipment for its personnel to access the System, training of the ESCO's personnel on the System

and the applicable business process.

5. Ownership of and title to ECMs (or portions thereof) referenced in a payment request submitted by the ESCO as herein provided shall vest in the Customer immediately upon the disbursement of loan proceeds from the Project Fund (as defined in the Loan Agreement) in accordance with such payment request, subject to the Lender's security interest and other rights therein as provided in the Loan Agreement.

E. Payment Due Date. Payment will be made net thirty (30) days of submission of a payment request meeting the requirements of this Section. If payment is not made within an additional ten (10) days after the payment due date, and the Customer is not entitled to withhold payment pursuant to Section 13.B, the ESCO may suspend all Work until payment is made; provided, however, that the ESCO's suspension of Work as provided in this subsection shall not affect any of its obligations under the Performance Guarantee.

F. Offsets. All back charges to the ESCO, refunds from the ESCO, and other offsets against any amounts due to the ESCO that are permitted or required under the Contract Documents may be taken at any time from amounts due to the ESCO under the Contract Documents once the Customer has determined the amount of the back charge, refund, or offset to be made.

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G. Certified Payrolls. Three copies of certified payrolls are to be submitted by the ESCO and all Subcontractors providing the Work to the Commission every week. The Commission may elect to utilize a Web-based method for electronic submittal of certified payrolls. In the event that the Commission elects to utilize electronic submittal, ESCO shall follow the directions provided by the Commission and submit its certified payrolls electronically, as a replacement for the three hard copy submittals. The ESCO shall ensure that it is fully trained in the use of the electronic submittal system. All payrolls must be identified with ESCO or Subcontractor's name and the name of this Contract, and must be sequentially numbered. The payroll will be submitted by the ESCO and Subcontractor until all Work by that ESCO or Subcontractor is completed. If there are periods of no Work by the ESCO or a Subcontractor, a payroll labeled "NO WORK" will be submitted. The final payroll will be labeled "FINAL." Certified payrolls are required to assure Equal Employment Opportunity ("EEO") compliance as well as wage compliance. Race, worker classification, and gender must be clearly marked for each employee on the certified payroll along with all additional information required by the Commission. An employee's address should appear every time his/her name appears on the payroll. The ESCO must submit the certified payrolls and additional information regarding EEO and wage compliance by providing a payroll summary report in the form required by the Commission. The EEO report form required by the Commission and the U.S. Department of Labor must be submitted by the ESCO and each Subcontractor, reflecting fully the periods of the Work covered by the partial payment request.

Every Subcontractor and supplier shall be required to submit certified payrolls and labor compliance documentation electronically at the discretion of and in the manner specified by the Commission. Each Subcontractor will be given a log on identification and password to access the Commission's web based reporting system for electronic submittal. Use of the system shall include additional data entry of weekly payroll information including: employee identification, labor classification, total hours worked and hours worked on the Project, wage and benefit rates paid, etc. in the manner specified by the Commission. This requirement will be "flowed down" to every lower-tier subcontractor and material supplier required to provide labor compliance documentation.

## **SECTION 14. OWNERSHIP OF DESIGN MATERIALS.**

A. Copies of Design Materials. The copies and other tangible embodiments of the drawings, specifications, designs, plans, "architectural work" (as such term is defined in the Architectural Works Copyright Protection Act of 1990) and other documents, prepared by or on behalf of the Customer, the ESCO, and/or Subcontractors in connection with the Project or the Contract Services (collectively, the "Design Materials") are and shall remain the exclusive property of the Customer. The ESCO shall use its best efforts to ensure all copies of the Design Materials are delivered or returned to the Customer or suitably accounted for upon the Customer's request or upon final payment, whichever is earlier. The ESCO may retain one copy of the Design Materials for its records, but shall not use such copies for any purpose other than with respect to the Contract Services without the Customer's prior written consent. The Intellectual Property Rights, if any, relating to the Design Materials or the contents of or concepts embodied in the Design Materials shall remain with and belong to the ESCO or its Subcontractors, as the case may be.

B. License for the Use of Design Materials. As to those Design Materials deemed subject to any form of Intellectual Property Rights, the ESCO hereby grants and will cause to be granted and delivered to the Customer from Subcontractors a paid-up, nonexclusive, world-wide, irrevocable, transferable license, for the term of the Intellectual Property

Rights, for the Customer to use, reproduce and have reproduced, and for the Customer to allow others to use, reproduce and have reproduced, such Design Materials and any derivative thereof, subject to the restrictions set forth below:

1. All Intellectual Property Rights in or relating to any of the Design Materials shall remain the property of the ESCO or the appropriate Subcontractor, whether or not the Project is completed; and

2. The Customer shall not, without the prior written consent of the ESCO, use such Design Materials, in whole or in part, for the construction of any other project. The Customer may, however, at no cost to the Customer, use such Design Materials (i) for completion of the Project and the Contract Services by others upon termination of this Contract or termination of the ESCO's right to perform all or any portion of the Contract Services, and (ii) for the construction, operation, maintenance and repair of (and for additions, improvements, changes or alterations to) the Project after its completion.

C. Delivery of Design Materials and As-built Drawings. Upon the earlier of the date of Final Acceptance of the Work for a particular ECM or the date of termination of this Contract, the ESCO shall deliver to the Customer any Design Materials which have not been previously submitted to the Customer for that ECM. Upon the date of Final Acceptance of the entire Project, the ESCO must provide two (2) hard copies of "as-built" drawings of all modified conditions associated with the Project, conforming to typical engineering standards. The as-built drawings shall also be submitted in an electronic format compatible with the AutoCAD or other similar system in use by the Customer.

D. Document Control System. The Commission has an on-line collaboration and document management system (the "OCDM System"). The ESCO shall use the OCDM System to: track the Work, manage the Project, and follow the Commission's procedures for electronic submission and receipt of documents as directed by the Commission. The OCDM System shall be the mode of conveyance and repository for all Project-related documents. The ESCO shall post all Project-related documents to the OCDM System as directed by the Commission. By executing this Contract, the ESCO agrees to comply with all terms and conditions required by the Commission for the use of the OCDM System.

- 1) Within 15 calendar days of the Date of Commencement, the ESCO shall designate an

employee that will serve as its "OCDM System Coordinator." The ESCO's OCDM System Coordinator will be the point of contact for the Commission for implementation and support for the ESCO's use of the OCDM System.

2) Employees of the ESCO, its Subcontractors and suppliers who will use the OCDM System must complete the training provided by the Commission. Each such employee must furnish a valid e-mail address to the Commission prior to the training.

3) The OCDM System requires a broadband connection with the Internet (e.g., at a minimum, T1, cable modem, or DSL) for effective use. The ESCO must furnish its own hardware and software, including, but not limited to, personal computers, peripheral software, virus protection software and high-speed document scanners. All written communication and document transmittal from the ESCO to the Commission will occur via the OCDM System. In the event that hand signatures and/or stamps are required for a document, unless otherwise directed by the Commission, the transmittal of such document shall be made simultaneously via

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the OCDM System and hard copy; hard copy shall be transmitted as required by the Contract Documents. Signed and/or stamped documents must then be scanned and uploaded to the OCDM System.

(4) The ESCO shall be solely responsible for its use of the OCDM System, as well as use of the OCMD System by its Subcontractors and suppliers.

## **SECTION 15. DEFAULT AND TERMINATION.**

A. Events of Default. The ESCO will be deemed to be in default under this Contract and the Contract Documents if ESCO:

1. fails to make any payment due under the Performance Guarantee;
  2. becomes insolvent or bankrupt, or makes a general assignment for the benefit of creditors, or if a receiver is appointed on account of insolvency;
  3. fails to perform the Contract Services in accordance with the Contract Documents, if not cured within any applicable cure period;
  4. fails to perform the Work on the Project with sufficient workers, equipment or materials to ensure the completion of the Work or any part of the Work within the time specified by the Contract Documents;
  5. discontinues prosecution of Work on the Project;
  6. fails to make prompt payment to Subcontractors or for material or labor on the Project;
- or
7. is otherwise guilty of a breach of any provision of this Contract or the Contract Documents.

B. Remedies. In the event of a default by the ESCO, the Customer may, in addition to and without prejudice to any other right or remedy of the Customer under this Contract, terminate this Contract and the Contract Documents for the Project or for any portion of the Project following the conclusion of the Dispute resolution process described in Section 11. The Customer will then have the following rights (any or all of which may be exercised by the Customer in its sole discretion, and in addition to and without prejudice to any

other right or remedy): (a) to take (in the manner and to the extent desired by the Customer) an assignment of the ESCO's subcontracts and material orders for all or any portion of the Project; and (b) finish the Work on all or any portion of the Project by whatever method the Customer considers expedient. The ESCO will not be entitled to receive any further payment for the portion of the Work so terminated. If the expense of finishing the Work on the Project, including compensation for additional managerial and administrative services, exceeds the unpaid balance of the Contract Sum, the ESCO (and the surety or sureties on the bonds required pursuant to Section 6.0) are liable for and will pay the amount of the excess to the Customer.

C. Termination For Convenience. The Customer reserves the right, for its convenience, to terminate the Work of the ESCO on all or any portion the Project or to terminate this Contract by ten (10) days written notice stating the effective date of the termination. In that

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case, the ESCO and its Subcontractors must (except for services necessary for the orderly termination of the Work):

1. stop all Work so terminated;
2. place no further order or subcontracts for materials, services, equipment or supplies on the terminated Work;
3. assign to the Customer (in the manner and to the extent directed) all of the rights of the subcontracts relating to the terminated Work;
4. take any action necessary to protect property of the Customer and property in the ESCO's possession in which the Customer has, or may acquire, an interest; and
5. take any other action toward termination of the Work that the Customer may direct.

Thereafter, the Customer will pay the ESCO for the terminated Work the proportion of the Contract Sum that the Work actually performed (including materials delivered to the Facilities) at the date of termination bears to the Work required to be performed for such portion of the Project and, to the extent such funds are made available by the Client, the costs the ESCO actually incurs in cancelling subcontracts or supply contacts related to this Contract. However, no payments will be made for Work not actually performed, and no payment will be made or due for lost profits for portions of the Work not actually performed. In the event the Customer terminates for default pursuant to Section 15.B and the basis for the default is later held invalid, such termination will automatically be deemed a termination for convenience under this Section 15.C.

D. Suspending the Work. The Customer reserves the right to suspend the Work on the Project, wholly or in part, by written stop order for such period as is necessary for the protection of the Customer's interest. The stop order remains in effect until released by the Customer, in writing. The Customer does not assume any liability for damages or loss of anticipated profits resulting from the stoppage of Work, but will grant the ESCO an extension of the Contract Time commensurate with the period of actual delay in completion of Work, if the stop order was not necessitated by the acts, failure to act, or negligence of the ESCO or a Subcontractor. The ESCO will take all means and precautions as may be required to properly protect the finished and partially finished Work during the period or periods of the stop order.

E. ESCO Termination. If, through no fault of the ESCO, the Customer fails to make payments to the ESCO as set forth in Section 13 and Exhibit E, the ESCO may, after the conclusion of the Dispute resolution process described in Section 11 and with the prior written consent of the Lender, terminate this

Contract and recover from the Customer the proportion of the Contract Sum that the Work actually performed (including materials delivered to the Facilities) at the date of termination bears to the Work required to be performed for such portion of the Project. However, no payments will be made for Work not actually performed, and no payment will be made or due for lost profits for portions of the Work not actually performed.

## **SECTION 16. ASSIGNMENT.**

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A. ESCO Assignment. The ESCO may not assign this Contract or the Contract Documents or sublet it, in whole or in part, without the prior written consent of the Customer and the Lender, in their sole discretion, nor shall the ESCO assign any moneys due or to become due to it under the Contract Documents without the prior written consent of the Customer and Lender, in their sole discretion. Any assignment of monies due under the Contract Documents made without the prior written consent of the Customer and the Lender is void, and the assignee in that case acquires no rights against the Customer or the Lender.

B. Customer Assignment. The Customer may assign this Contract and the Contract Documents in its sole discretion to: (i) the Client; (ii) the Lender for collateral purposes or (iii) any entity wholly owned or controlled by the same owners of the Customer. The Customer may assign this Contract to any other entity approved in advance by the ESCO, which approval shall not be unreasonably withheld or delayed and by the Lender (in the exercise of its sole discretion). As permitted by clause (ii) of this Section 16.B., the ESCO understands and agrees that, simultaneously with the execution and delivery of this Contract, all of the Customer's rights and interests under this Contract are being assigned and transferred to the Lender pursuant to the Loan Agreement. The ESCO hereby consents to such assignment and transfer and to any subsequent assignment and transfer of rights and interests under this Contract in accordance with the Loan Agreement. Upon the execution and delivery of the Loan Agreement and this Contract, references to the Customer in the operative provisions of this Contract that relate to rights and interests of the Customer (including, without limitation, rights to enforce the terms of the Performance Guarantee upon the occurrence of an Event of Default described in Section 15.A.1 or 15.A.2) shall be deemed to be references to the Lender (including any successors and permitted assigns of the Lender), as assignee or subsequent assignee of the Customer.

C. Permitted Assigns. This Contract shall be binding upon, and inure to the benefit of, the successors and permitted assigns of the Parties.

## **SECTION 17. OTHER CONDITIONS OR PROVISIONS.**

A. Representations and Warranties. Each Party warrants and represents to the other that:

1. It has all requisite power, authority, licenses, permits, and franchises, corporate or otherwise, to execute and deliver this Contract and perform its obligations hereunder;
2. Its execution, delivery, and performance of this Contract have been duly authorized by, or are in accordance with, its governing documents, and this Contract has been duly executed and delivered for it by the signatories so authorized, and it constitutes its legal, valid, and binding obligation;
3. Its execution, delivery, and performance of this Contract will not result in a breach or violation of, or constitute a default under, any agreement, lease or instrument to which it is a party or by which it or its properties may be bound or affected; and

4. It has not received any notice, nor to the best of its knowledge is there pending or threatened any notice, of any violation of any applicable laws, ordinances, regulations, rules, decrees, awards, permits or orders which would materially and adversely affect its ability to perform hereunder.

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The ESCO warrants and represents to the Customer that the disclosures and certifications set forth on Exhibit I are and shall remain true and correct.

B. Time. Time is of the essence of this Contract. By executing this Contract, the ESCO confirms that the Final Acceptance Date is a reasonable period of time for performing the Work.

C. Governing Law. This Contract shall be governed by the laws of the State of Illinois, without regard to conflicts of law principles.

D. Severability. If any provision of this Contract shall be held to be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired thereby; provided, however, that if enforcement of this Contract in the absence of such provision would deprive a Party of a material element of its original bargain, the Parties shall promptly negotiate in good faith a reformation of this Contract to reflect as nearly as possible all material elements of the original Contract.

E. No Waiver No course of dealing or failure of the Customer and/or the ESCO to enforce strictly any term, right or condition of this Contract shall be construed as a waiver of such term, right or condition. No express waiver of any term, right or condition of this Contract shall operate as a waiver of any other term, right or condition.

F. Relationship of the Parties. The ESCO is an independent contractor in providing and performing the Contract Services. Nothing in, or done pursuant to, this Contract will be construed to create the relationship of principal and agent, employer and employee, partners, or joint venturers between the Customer and the ESCO or its Subcontractors.

G. Amendment. No amendment to this Contract shall be effective until and unless reduced to writing and executed by the Parties. In no event shall the ESCO and the Customer consent to any amendment, modification or change to this Contract which has the effect of reducing the amount of the Guaranteed Annual Savings Amount or the Guaranteed Project Savings Amount payable by the ESCO hereunder without the prior written consent of the Lender.

H. Entire Agreement. This Contract represents the entire agreement between the Customer and the ESCO with respect to the subject matter hereof, and supersedes all prior negotiations, representations or agreements, whether written or oral.

I. Rights Cumulative. Except as otherwise provided in this Contract, (i) rights and remedies available to the Customer and/or the ESCO as set forth in this Contract shall be cumulative with and in addition to, and not in limitation of, any other rights or remedies available to the Parties at law and/or in equity, and (ii) any specific right or remedy conferred upon or reserved to the Customer and/or the ESCO in any provision of this Contract shall not preclude

the concurrent or consecutive exercise of a right or remedy provided for in any other provision hereof.

J. Further Assurances. Each Party hereto shall, from time to time, at the request of the other Party and without further consideration, execute and deliver and cause to be executed and delivered such other instruments and take such other actions as the requesting Party may reasonably request to undertake the Contract Services and carry out the intent and purposes of this Contract.

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K. Notices. Any information or notices required to be given under this Contract shall be in writing and shall be delivered either by (i) certified mail, return receipt requested, in which case notice shall be deemed delivered three (3) business days after deposit, postage prepaid, in the U.S. mail; (ii) a reputable messenger service or a nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) business day after deposit with such messenger or courier; or (iii) personal delivery with receipt acknowledged in writing, in which case notice shall be deemed delivered when received. All notices shall be addressed as follows:

If to the Customer:

Chicago Infrastructure Trust 222 West  
Merchandise Mart Suite 1212  
Chicago, Illinois 60657 Attention: Executive  
Director Email: [ssb@shapechicago.org](mailto:ssb@shapechicago.org)  
<<mailto:ssb@shapechicago.org>>

And to:

Public Building Commission of Chicago  
50 West Washington, Suite 200  
Chicago, IL 60602  
Attention:  
E-mail:

If to the ESCO:

NORESCO, LLC  
One Research Drive, Suite 400C  
Westborough, MA 01581  
Attention: David Mannherz, Executive Vice President Email:  
[dmannherz@noresco.com](mailto:dmannherz@noresco.com) <<mailto:dmannherz@noresco.com>>

and

NORESCO, LLC  
One Research Drive, Suite 400C  
Westborough, MA 01581  
Attention: Adam Nee, General Counsel  
Email: [anee@noresco.com](mailto:anee@noresco.com) <<mailto:anee@noresco.com>>

The foregoing addresses may be changed from time to time by notice to the other Party in the manner herein before provided for.



L. Counterparts. This Contract may be executed in counterparts, each of which shall be deemed an original, and all of which counterparts shall constitute one agreement. To facilitate execution of this Contract, the Parties may execute and exchange facsimile counterparts of the signature pages, provided originally executed signature pages are exchanged promptly thereafter.

M. Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT

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MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS CONTRACT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS CONTRACT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

N. Incorporation by Reference. The recitals set forth on the first few pages of this Contract, as well as the following Exhibits attached hereto, are hereby incorporated into this Contract by this reference and expressly made a part of this Contract:

- Exhibit A: Project Description
- Exhibit B: Performance Guarantee
- Exhibit C: Methodology and Baseline
- Exhibit D: Performance Tracking Services
- Exhibit E: Performance Tracking Services Payments
- Exhibit F: Additional Performance of Work Requirements
- Exhibit G: Required Maintenance
- Exhibit H: ESCO's Insurance Requirements
- Exhibit I: Customer Disclosures and Certifications
- Exhibit J: Client-Required Terms and Conditions
- Exhibit K: Project Participation Guidelines

[Signature Page Follows]

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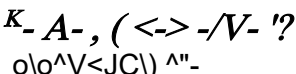
IN WITNESS WHEREOF, the Parties have executed this Contract this day first written above.

CHICAGO INFRASTRUCTURE TRUST

NORESCO, LLC

/  > .

/  >

By:    
 Stephen S. Beitler Name: Chief Executive Officer Title: and Executive Director

By:

*[Signature Page of Guaranteed Energy Performance Contract]*

IN WITNESS WHEREOF, the Parties have executed this Contract this day first written  
above.

**CHICAGO INFRASTRUCTURE TRUST**

Stephen S. Beitler Chief Executive Officer and Executive Director

By:

**Name:** /V

**Title:** David G, Mannherz

**Executive Vice President**

*[Signature Page of Guaranteed Energy Performance Contract]*

## EXHIBIT A

### **PROJECT DESCRIPTION**

#### **Section I. Overview Description of the Project.**

The Project is a portion of Retrofit One, the first phase of Retrofit Chicago, a comprehensive effort to increase energy efficiency in public buildings. It is designed to enlist the expertise of energy service companies to identify, design, provide, implement and guarantee the performance of energy-related capital improvements to a variety of Client-owned public buildings. The Energy Conservation Measures (ECMs) described below have been selected to achieve long term savings that can be measured & verified. The ESCO will provide turn-key implementation of each and every ECM listed below including commissioning, training of Client personnel on the operating and maintenance, and ongoing Measuring and Verification (M&V) services to document and confirm the measures are delivering at least the Guaranteed Project Savings Amount, as described in Exhibits B and C.

For each facility listed below, the ESCO will be responsible for doing a complete inventory of existing and new mechanical equipment and populating the necessary information into a digital spreadsheet that will be incorporated into a Computerized Maintenance Management System (CMMS) provided by the Customer.

For each applicable ECM listed below, the ESCO will be responsible for applying for and assisting the Customer and the Client secure supplemental funding from grants, reimbursement rebates, and other types of energy efficiency incentives.

#### **Section II. Description of ECMs by Facility**

<b><i>Location(s)</i></b> <input type="checkbox"/>	<b><i>ECM Description</i></b> <input type="checkbox"/>
--	--

### **Section III Detailed Description of ECMs ECM:**

#### **Lighting Retrofit**

NORESCO will provide occupancy sensor type devices and lighting controls at the Police-Fire-DSS Warehouse facility. A comprehensive room-by-room detailed scope of work for Police-Fire-DSS Warehouse lighting control work is located in Attachment A1 through A4 of this Exhibit A.

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### **End of Scope of Work for ECM: Lighting Retrofit ECM:**

#### **New Chiller Installation**

NORESCO will install new cooling equipment that will replace the existing Thermal Chicago utility connection. The existing heat exchanger for the connection to Thermal Chicago, which the Client owns, will remain in place. NORESCO will install a new MultiStack chiller with six 85-ton modules for a total nominal tonnage of 510 tons (actual anticipated output of 501 tons). The peak load on the plant is approximately 400 tons, so one module will be redundant. In addition to the new chillers, NORESCO will also install new CHW pumps, CW pumps, refurbish the east cooling tower (quantity of one), and re-purpose the existing heat exchangers for water-side economizing purposes.

As part of the replacement, both CHW and CW pumps will be located in the open area on the west side of the mechanical room to increase access and simplify the mechanical space. The new CHW pumps will be installed with VFDs so that the plant operates as a variable-primary pumping system. The existing cooling tower will be refurbished by replacing fill, re-lining the basin, and servicing the mechanical components.

Design drawings for this work can be found in Attachment B1: Chiller Replacement Drawings, dated 12/18/2012. This proposal only includes the basement chiller replacement scope contained in the "Base Bid" language. The "Add Alternate" scope is not included in this proposal. Equipment specification sheets can be found in Attachment B2: Basement Chiller Equipment Specification Sheets. Finally, refer to the Controls Points List in Attachment B3 for a full list of the inputs and outputs that are to be monitored and controlled.

#### **City Hall - Basement Chillers, Detailed Scope of Work**

The scope of work includes demolishing the existing non-functional chiller and installing a new chiller in its place. The new installation will result in a functional CHW plant, which will allow the building to disconnect from the existing Thermal Chicago CHW service. The scope includes:

- Remove the existing Carrier chiller.

- Furnish and install six (6) MultiStack MS85X chillers that utilize scroll compressors. Each module has a capacity of 85 nominal tons for a total installed capacity of 510 nominal tons.

- Furnish and install two (2) new 30 hp CHW pumps. The new CHW pumps will utilize VFDs and will result in a variable-primary pumping system.

- Install new two (2) new 40 hp CW pumps.

- Repurpose the existing City-owned large plate-and-frame heat exchangers for a waterside economizing system. The system will allow the plant to create CHW in cooler months without having to run the chillers.

- Install new DDC control points to control the new installation.

Note that a refrigerant monitoring system is not included - the new chillers' refrigerant capacity is below the threshold required for monitoring and exhaust of refrigerant.

A-1

Refurbish the existing East cooling tower, capable of approximately 500 tons of cooling, and install freeze protection in the basin and on the CW piping to allow for winter operation as follows:

1. Install air inlet filter on adjacent operating towers to eliminate debris entering system- if required.
2. Remove and dispose of existing fill, eliminators, louvers and water distribution orifices.
3. Cover and seal motors and gear boxes.
4. Plug water inlet and outlet connections.
5. Sandblast tower interior including hot water basin & cold water basin. Patch basins as required.
6. Combine Fireproof EvapLiner polyurethane with a thickening agent to obtain a trowel grade consistency. Apply this trowel grade liner over interior basin seams to ensure seams are encapsulated in polyurethane.
7. Apply primer and Fireproof EvapLiner, elastomeric polyurethane membrane liner to the cold water and hot water basins. This liner is applied via high pressure spray system which results in 50-70 mils thickness on all applied surfaces.
8. Provide and install pultruded fiberglass bottom fill support system. (System elevates the fill approximately 8" above the basin floor allowing easy basin cleaning)
9. Provide and install intermediate fiberglass fill support system, as required.
10. Provide and install high efficiency PVC fill, eliminators and louvers.

NOTE: The heat transfer fill shall be constructed of polyvinyl chloride (PVC). Fill shall be resistant to rot, decay and biological attack; formed, crossfluted bonded together for strength and durability in block format for easy removal and replacement; self extinguishing with flame spread rating of 5 per ASTM E84-81a; able to withstand continuous operating temperature of 120°F fabricated to ensure water breaks up into droplets; specially treated to resist ultraviolet light.

11. Fill kit shall include all intermediate and upper fill supports, and all eliminator supports. All supports shall be constructed of pultruded fiberglass. Flexible membrane air seals shall be installed on the air inlet to prevent water from leaking out the top of the fill bundles, and to prevent air from by-passing the heat transfer section of the fill pack.
12. All fill bundles shall be capable of being removed and re-used in order to provide access to all internal sheet metal surfaces and sheet metal seams, to allow for maintenance or repairs. 'D Fill kit shall include drift eliminators with a maximum drift loss of .002% of the recirculating water.

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13. Provide and install new set of water distribution orifices sized for proper flow range. Balance water flow. D Gravity flow nozzles shall be crown nozzles to prevent debris build up in the entering orifice of the crossflow nozzle, and to eliminate the vortex spiral of water entering the nozzle thereby providing a consistent uniform diffusion pattern at any height of head. Nozzles shall be a two piece construction; a bottom telescoping nozzle body with lock in tabs and a top vortex crown. Nozzle tabs shall lock in the nozzle to the opening in the hot water basin floor when the top vortex crown is inserted in the bottom telescoping nozzle body.
14. Supply and install input gear seal.
15. Change gear box oil.
16. Supply and install access door wing nuts.
17. Adjust fan pitch to maximize air flow and align fan shaft.
18. Furnish and install two (2) new 10kW/460V/3ph electric resistance basin heaters to protect the basin water from freezing at temps at or above zero degrees Fahrenheit.
19. Furnish and install one (1) 120V/71ph thermostat and low water cutout in cooling tower basin for control of heater system.
20. Furnish and install one (1) 480V/3ph NEMA3R basin heater control panel. This panel is complete with main circuit breaker disconnect, selector switches, operating lights, and control power transformer for control circuit wiring.

#### Equipment Manufacturers

The proposal is based on the price and performance of the following new equipment:

1. Basement Installation
  - a. Chiller: MultiStack MS85X Small Scroll Chiller
  - b. CHW Pumps: Bell & Gossett 1510-SE
  - c. CW Pumps: Bell & Gossett 6x8x12XL
  - d. VFDs: ABB Drives with Electronic Bypasses

*End of Scope of Work for ECM: New Chiller Installation*

#### **ECM: EMS Modifications**

##### RJ Quinn Fire Academy

The scope of work for EMS Modifications at RJ Quinn includes installing control devices on the pumps, air handling unit (AHU) fans, as well as installing digital thermostats in select zones on each floor. The new control system will include a front-end computer that will allow local monitoring and adjustment, as well as the potential for tying the building into the GBMS. This does not allow for the monitoring and control of the equipment in the facility.

## A-1

The EMS will be capable of scheduling the main mechanical equipment in the building, as well as monitoring and adjustment of select space temperatures on each floor.

The following controls would be installed:

- Start/Stop and Status: o CHW Pumps (2) o HW Pumps (4) o AHU Fans (4) Zone Temperatures: (11 total) o Basement: 2 o First -through Third Floors: 3 each

Note that the scope of work does not currently include re-installing controls for the southwest zones of the third floor, which until recently were cooled by separate, air-cooled units.

### City Hall

The scope of work for City Hall is limited to implementing a static pressure reset strategy for AHUs 1 through 8. The AHUs are currently variable air volume (VAV) and utilize variable frequency drives (VFDs) to modulate fan speed to maintain a constant static pressure in the ductwork.

The scope of work includes adding a control algorithm to the existing control system for the VAV AHUs to further expand the energy savings capabilities of the EMS. The algorithm will implement a supply air static pressure reset sequence into the EMS for the eight (8) main AHUs. This will help to reduce fan energy during times of low load in the building.

### Equipment Manufacturers

The proposal is based on the price and performance of the following new systems: 1. EMS: Johnson Controls - Facility Explorer System

Refer to the Controls Points List in Attachments B3 and B4 for a full list of the inputs and outputs that are to be monitored and controlled. Note that the City Hall static pressure reset is not included as new points, because the scope of work is limited to programming and does not include additional hardware.

### *End of Scope of Work for ECM: EMS Modifications*

### **ECM: Apparatus Bay MAU Modification**

#### FEC 18 Scope of Work

A combination CO/CO<sub>2</sub>/NO<sub>x</sub> sensor will be installed in the apparatus bay, connected and programmed into the existing EMS. The EMS will be programmed to operate the MAU when indoor air quality exceeds a design threshold.

### Equipment Manufacturers

## A-1



The sensor manufacturer will be Honeywell or equivalent equal. End of

Scope of Work for ECM: Apparatus Bay Modification Commissioning Plan

For complete Commissioning Plan, please refer to Exhibit A-1-1: Commissioning Plan

Training Plan

For complete Training Plan, please refer to Exhibit A-1-2: Training Plan

Construction Schedule

For Construction Schedule, please refer to Exhibit A-1-3: Implementation Plan Construction Schedule

Warranty

For Warranty information,' please refer to Exhibit A-1-4: Warranty Section

#### IV. Identification of Key Personnel

The following is a list of the key NORESKO personnel assigned to the Public Building Commission Guaranteed Energy Performance Contract. The assigned personnel are subject to change based on the actual timing of the work. Should NORESKO need to replace one of the key individuals listed below, it will do so with an individual with similar experience and qualifications.

##### Project Development

- Michael Lebar, Project Developer
- Adam D'Ambrosio, Manager, Project Development

##### Engineering Analysis & Design

- Christine Walker, Manager, Energy Engineering
- John Greenspun, Sr. Engineer

##### Construction Management

- Pat Sise, Manager, Construction
- Scott Gehrke, Project Manager

##### Measurement & Verification

- Alex Millard, Manager, M&V

I

Commissioning

- Rodd Hirt, Commissioning Agent » Pat Benefiel, Commissioning Agent

**Section V. Construction Schedule**

*Please refer to Exhibit A-1-3 Implementation Plan and Construction Schedule*

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### EXHIBIT A-1-1

#### **COMMISSIONING PLAN**

The primary objective of the Commissioning Plan is to define how NORESKO will ensure that all individual pieces of equipment and integrated systems will perform in conformance with the design intent of the project. Although there are different approaches to commissioning, the fundamental process provides quality assurance to confirm that each of the following standards are met for all equipment included in the project:

1. The products and components selected and installed meet project design criteria.
2. Products and components are installed in accordance with the engineer's and manufacturer's recommendations and design criteria.
3. Products and components are capable of meeting their published performance criteria.
4. If the project includes a system of several products and components, the integrated system is installed in accordance with the engineer's design criteria.
5. If the project includes a system of several products and components, the integrated components are interacting in accordance with the engineer's design criteria.
6. All foreseeable items necessary for the components and systems to continue to operate as designed have been identified for inclusion in the Operations and Maintenance (O&M) Manuals.
7. The facility training plan includes all items that need to be discussed and reviewed with facility personnel in order for the project to continue to perform.

Detailed commissioning tasks and requirements for the equipment to be installed as part of the Project will be identified in commissioning specifications. These specifications are developed by NORESKO using an approach customized to the complexity of each piece of equipment and the technology involved. The Commissioning Team will use the specifications to coordinate individual commissioning tasks and ensure that appropriate commissioning test forms are generated and completed to cover all items requested.

#### **COMMISSIONING PROCEDURES**

Specific commissioning procedures vary depending on component technologies, equipment types, and applications involved. As final design is completed, equipment selections are confirmed, and control sequences are finalized, NORESKO will develop a site-specific Commissioning Plan for the Project to outline these procedures. Procedures for each piece of equipment will draw from each individual manufacturer's recommendations.

The following representative sections provide examples of the range and types of commissioning procedures for a few of the components included in the Project.

A-1-1-1

**General Commissioning Items**

1. Verify that each piece of equipment was manufactured, shipped, and installed with all options and features specified (operator workstation, control system interface, ground fault protection, thermal overload, automatic bypass, safety devices, etc.).
2. Provide a complete list of all equipment nameplate data, component manufacturer's software and firmware versions, and serial number(s). (This should include data for individual available pressure vessels, coils, and motor data.)
3. Document all dates, times, durations, operating conditions, and names of parties involved with any tests performed.
4. Each test form shall be reviewed and signed by the party with overall responsibility for the test, as well as a customer representative if it is identified as a test that must be witnessed.
5. Document the procedures, forms, and submissions required to initiate and maintain the manufacturer's warranty.
6. Provide written copies of all applicable O&M instructions.
7. Ensure that appropriate log books have been established using a factory recommended format to record all critical operating parameters during equipment operation.
8. Document that all equipment manufacturer recommended startup and check-out procedures have been completed by an authorized technician using manufacturer's forms.
9. List all rejected items, failed tests, abnormalities observed, or remedial action required by others that were not completely rectified during the construction punch list process.
10. Document all training provided with names and signatures of parties who received training.
11. Verify that adequate clearances exist around all components for cooling air and to provide access for routine service.
12. Review component locations to ensure that they are not subject to temperatures beyond the manufacturer's published operating limits.
13. Check that panels and enclosure locations are of the type specified and are not subject to excessive moisture, spray, or dirt.
14. Confirm that all fluid systems and system components (valves, sensors, radiators, coils, hoses, tanks, quick disconnects, etc.) are properly routed, supported, and free of leaks.
15. Ensure that all lubricants and fluids meet manufacturer requirements for the equipment installed and the anticipated operating conditions (arctic, tropical, etc.). Document that all special additives or conditioners have been added to the specified concentrations.

16. Provide copies of Material Safety Data Sheets (MSDS) for all applicable materials.
17. For exterior installations, confirm that enclosure penetrations are watertight and/or do not void weather rating.

#### A-1-1-2

18. Confirm that equipment, component, and device labels, tags, or signs have been installed per specifications.

### **Lighting Retrofit Commissioning**

1. Confirm that all post-retrofit group light levels have been reduced or raised appropriately to meet IES standards.
2. Ensure that any non-permanent or disposable batteries have been installed and tested and all battery locations, types, and recommended replacement intervals have been
  - documented.
3. Test emergency egress and exit lights for proper sequencing from normal to emergency mode on battery and/or emergency power as applicable.
4. Confirm that all battery condition pilot lights and test switches are fully functional.
5. Verify that new fixtures and/or existing fixture retrofit kits have been installed per specifications.
6. For exterior installations, ensure that enclosure penetrations are watertight and/or do not void weather rating.
7. Check operation of completed installation using available controls (wall switches, occupancy sensors, lighting panels, etc.) to confirm that they cycle on and off as intended.
8. During operation, check that all fixtures and ballasts are free of abnormal vibration or unusual noise.
9. Confirm that all required equipment, component, and device labels, tags, or signs have been installed per specifications.

### **Electrical Equipment and Electrical System Commissioning**

1. Confirm that wiring has been completed and protection devices (fuses, circuit breakers, vacuum fault interrupters, etc.) have been installed to meet applicable codes and specifications for electrical components installed.
2. Verify that all electrical components are installed and tested in accordance with manufacturer recommendations and all applicable local, national, and government codes and specifications.
3. Ensure that all wire, cable, panel grounding, system grounding, insulation, and shielding has been checked, meets specifications, and has been tested in accordance with all applicable local, national, and government codes and specifications.
4. Where applicable, check all overhead electrical lines to ensure that they were constructed using the specified materials and follow the approved routing.

5. Provide convenience receptacle inside control panels per specifications. ,

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6. Verify that all disconnect and/or H-O-A switches have been installed and tested (Hand=On, Off=Off, Auto=Control System state). If the H-O-A switch is to be wired in series with an end switch, verify that this interlock has been wired and is working correctly as well.
7. Check motor rotation prior to connecting any couplings or belt drives. If applicable, verify that variable frequency drive (VFD) controlled equipment has been checked for proper rotation in both drive and bypass.
8. Confirm that all pilot lights, control switches, touch pads, warning buzzers, audible alarms, operating displays, etc., are fully functional.
9. Where required, confirm that all electrical insulation testing (hi-pot, motor megger, etc.) has been completed per code and test results have been documented.
10. Verify that all heaters (lube oil, gearbox, generator winding, enclosure, etc.) have been energized and tested. Document the temperature settings of all heaters and confirm that \* power supplies (breakers, panels, etc.) have been properly tagged so that heaters will not be inadvertently de-energized.
11. Ensure that grounding and other safety systems are installed and properly tested per applicable local, national, and government codes and specifications.
12. Document the final voltages, taps, and selector switch settings on all transformers.
13. Confirm that oil level and type has been checked and recorded for all oil-filled transformers.
14. Functionally test any thermostatic controls or cooling fans on fan-cooled transformers.
15. Confirm that all non-permanent or disposable batteries have been installed and tested and all battery locations, types, and recommended replacement intervals have been documented. Each battery should be labeled with the date installed.
16. For any battery installations that include a battery tender or battery charger, verify that the tender or charger has been installed per specifications and is operating as intended.
17. Ensure that all specified and code required electrical warning and safety labels and tags are in place.
18. Ensure that wiring, panels, and equipment have proper tagging and have been checked against electrical schematics, drawings, and specifications.
19. Ensure that all internal compartment light fixtures have been installed as specified.
20. Measure and document equipment no load, normal load, and full load voltages, power factors, and amperages to establish an operating baseline and ensure that they are within manufacturer's specifications.
21. If applicable, confirm that all switchgear and circuit breaker settings have been coordinated with new and existing electrical distribution system components. Document coordination study settings and approval

prior to energizing equipment.

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### **Mechanical Equipment and Mechanical System Commissioning**

1. Ensure that all life safety systems (harnesses, climbing restraints, barriers, lockouts, etc.) have been installed, labeled, and reviewed with customer personnel.
2. Verify that equipment has been installed (configuration, orientation, pitch, etc.) and supported (housekeeping pads, vibration isolators, seismic restraints, etc.) per specifications.
3. Review all equipment connections and accessories for installation issues that might prevent the equipment from operating properly (loose flex connectors, sharp inlet/outlet transitions, improper slope, pipe strain, inadequate space for thermal expansion, etc.).
4. Confirm that all shipping blocks or temporary supports have been removed prior to startup.
5. Ensure that motor and drive components have been aligned and tensioned to specifications.
6. Document that alignment procedures used, tolerances, adjustments, and final results for all shaft-driven equipment meet or exceed manufacturer requirements and tolerances.
7. If specified, ensure that all baseline vibration measurements are taken for rotating equipment and that initial readings are within vibration severity guidelines.
8. Check to ensure that all enclosures, shrouds, guards, or access panels are securely in place.
9. Review all pressure gauge and temperature sensor locations to ensure that they can be read from floor level and are of proper scale or range for the medium being measured.
10. Verify that all thermal insulation and sound attenuation has been installed per specifications.
11. Confirm that each motor, bearing, and gearbox has been lubricated, if necessary, and that all remote grease, oil, or vent lines specified for continued preventive maintenance have been installed.
12. Confirm that adequate clearances exist for routine service and replacement of all motors, controls, dampers, valves, tube bundles, coils, gearboxes, etc.
13. Review outside air intake openings to ensure that they are free of pollution sources, such as trash, cooling tower mists, building exhaust, vehicle exhaust, or other sources that could impact indoor air quality or deteriorate equipment.
14. Ensure that all equipment piping and piping accessories (strainers, control valves, balance valves, air vents, vacuum breakers, Pete's plugs, etc.) have been installed and/or cleaned per specifications and are free of leaks.
15. Confirm that all piping systems have been pressure tested per code or applicable standards.
16. Verify that all piping systems have been flushed, cleaned, and purged per specifications. Document that cleaning procedures were performed at specified velocities using appropriate media (air, steam, etc.).

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17. Where applicable, ensure that proper type and efficiency of filters or strainers have been installed, are clean, fit properly without leakage, and can be readily serviced. •

**Chiller and Chilled Water System Commissioning**

1. Ensure that a chiller log book has been established using a factory recommended format to record all critical operating parameters during chiller operation.
2. Confirm that wiring has been completed and protection devices (fuses, heaters, breakers, etc.) have been installed to meet applicable codes and specifications for the chiller installed.
3. If applicable, ensure emergency power has been provided to the chiller and all ancillary equipment and controls required for unit to operate as intended during emergency mode.
4. Confirm that all sump or crankcase heaters are operating per manufacturer recommendations.
5. Confirm proper operation of all EMCS interfaces with the chiller (remote set point adjustment, remote start/stop, alarm monitoring, demand limiting, etc.).
6. Test operation of all safety or protection devices (pressure, flow, temperature, voltage, amperage, refrigerant, etc.) to ensure that they have been adjusted or programmed to meet specifications and are operating as intended.
7. Document that chiller control panel has been programmed for the specific chiller purchased, as well as the actual chiller plant configuration (constant flow, variable flow, etc.).
8. Confirm and document that all minimum and maximum operating flows have been identified and adjusted within limits during test and balance.
9. If applicable, document that all remote monitoring or EMCS network interfaces with the chiller control panel operating parameters, faults, or alarms have been tested and calibrated.
10. Verify proper operation of all unique controls or features that were specified to have been provided with chiller control panel (lead/lag, load balance, hot gas bypass, etc.).
11. Provide a list of all chiller control panel programming parameters and settings.
12. Confirm that the control sequencing for all ancillary equipment (chilled and condenser water pump start/stop, cooling tower interlock, etc.) meets specifications and desired control sequences.
13. Verify that the chiller has been installed and supported (housekeeping pads, vibration isolators, seismic restraints, etc.) per specifications.
14. For units with an external drive motor, ensure that the compressor motor and drive components have been aligned per the chiller manufacturer's specifications.
15. Confirm that adequate clearance exists for routine service of all motors, controls, heat exchanger tubes, strainers, valves, etc.



#### A-1-1-6

16. Ensure that all chiller piping and piping accessories (strainers, control valves, flow switches, balance valves, Pete's plugs, etc.) have been installed per specifications and are free of leaks.
17. Verify that all thermal insulation and sound attenuation has been installed per specifications.
18. Confirm that refrigerant purge unit, if applicable, is operating correctly. Verify that refrigerant relief piping is installed per manufacturer's requirements and vented outside.
19. If possible, test the chiller under potential surge conditions to ensure that automatic surge protection devices (variable diffusers, load limiting algorithms, etc.) are functioning.
20. Confirm that there is no abnormal noise or vibration during part- and full-load operation.
21. Review all pressure gauge and temperature sensor locations to ensure that they can be read from floor level and are of proper scale or range for the medium being measured.
22. Verify that piping to and from the chiller has been cleaned per specifications and that a chemical treatment program has been initiated per manufacturer's recommendations.
23. Measure and document no load, normal load, and full load pressures, temperatures, and flows to establish an operating baseline and ensure they are within manufacturer's specifications.

#### Cooling Tower and Condenser System Commissioning

1. If applicable, verify that all vibration switches have been calibrated and tested. Document final settings of all vibration switches.
2. Test operation of all sump or basin heater controls to ensure that they have been adjusted per specifications. Document programming or settings for all sump or basin heaters.
3. Test high- and low-level alarm switches, if applicable, and adjust level switches as required.
4. Review equipment installation configuration for issues that might prevent the unit from meeting design capacity (airflow clearances, balance valves, balance lines, insect screens, debris, high temperature building exhaust, etc.).
5. If applicable, confirm that fan blades have been set to the proper pitch angle and that the fan blades and drive hub have been torqued to required specifications.
6. Confirm that clearances between fan blades and shrouds are within manufacturer tolerances.
7. Inspect tower casings and panels for any physical damage to panels or corrosion-resistant coatings. Confirm that all damage has been properly repaired and tower casings do not leak.
8. Confirm that fill media is installed per specifications and is free from visible damage.
9. Where applicable, test coils and interconnecting piping for integrity and leakage using either pressure or vacuum as defined in the specifications. Document the results of all tests.

#### A-1-1-7

10. Review the location of any acoustical enclosures or architectural barriers to ensure that they do not interfere with proper airflow through the tower or cause recirculation.
11. If gearbox has synthetic lubricant for extended warranty, confirm that the level has been documented and facility staff is aware of special service considerations to maintain warranty.
12. Ensure that specified nozzles have been installed and condenser water is evenly distributed across cooling tower fill media through a full range of fluid flows and fan operating speeds.
13. Verify that condenser water does not splash out of tower or blow out of fan discharge at any point through full range of condenser water flows.
14. Check the tower sump level during operation and, if possible, verify that the cooling tower makeup water supply and fill valve are able to maintain sump level during design conditions.
15. Confirm that the condenser water flow into the return line does not vortex excessively or entrain sufficient air to cause the condenser water pump to surge at any point through the full range of flow.
16. Check the tower sump level after shutdown of condenser water flow to ensure that the tower does not overflow (externally or internally) and that the makeup water valve closes completely.

### **Energy Management Control System Commissioning**

1. Provide a troubleshooting logbook by the operator workstation for use by facility operators and control system technicians to document facility issues and contractor responses to ongoing fine-tuning.
2. Confirm that all sensor locations and inputs have been reviewed to ensure that readings are stable and accurately reflect the medium being measured (no stratification, excessive pulsations, system effects, etc.).
3. Document that all inputs, sensors, outputs, and transducers have been calibrated and that ranges match the medium being measured or devices to be controlled. Where applicable, ensure that current transformer magnetization and polarity tests have been completed per specifications.
4. Document that all flow control devices (valves, dampers, etc.) have been tested through full range of motion to ensure complete shutoff when closed, unrestricted flow when open, and smooth operation.
5. If applicable, verify that interface and monitoring of any OEM equipment (VFD, chiller control panel, burner management system, etc.) operating parameters, faults, or alarms have been completed and tested.
6. If applicable, document that remote monitoring of the control system through dial-up or Internet connection has been completed and tested with lists of all phone numbers, modem settings, IP addresses, passwords, etc.

A-1-1-8

7.  
Provide lists of all user defined system variables, including default or initial values (set point, schedule, reset, alarm, gain, etc.) to facilitate future modifications and fine-tuning.

8. Test all control sequences and software logic by completing functional performance tests that confirm system responses through cause and effect methods.
9. Collect and print trends for all dynamic control loops to demonstrate proper control (timely and smooth response, lack of hunting, close to set point, minimal overshoot, etc.) over each range of system loads (weather conditions, startup, shutdown, etc.) encountered during normal operation.
10. If applicable, review graphic screens to ensure that they accurately reflect all equipment and systems controlled. Include ranges for controlled devices, have sufficient transfers or links to quickly navigate through related subsystems, and include narrative explanation of any non-intuitive sequences.
11. If applicable, enable password protection of control system programming and confirm that the password matrix of access levels and privileges has been approved and implemented per customer requirements.
12. Confirm that all control system and equipment failure modes (power failure, sensor failure, signal or communication loss, etc.) and alarm responses have been reviewed with a customer representative to ensure that they meet facility standard operating procedures.
13. Confirm that all devices with clocks or calendar functions have been checked for proper dates and times and coordinated with local daylight savings time practices.
14. Confirm that all equipment subject to automatic start/stop control by the control system has been reviewed with a customer representative to ensure that equipment is properly labeled and life safety protection measures (horns, lights, etc.) are compatible with facility standard operating procedures.

## DOCUMENTATION

NORESCO will prepare a detailed Commissioning Plan for the Project. This plan will be prepared as soon as final design, equipment selections, and control sequences are completed. The Commissioning Plan will be prepared with input from major subcontractors and vendors and will outline the design intent, objectives, organization, schedule, documentation requirements, and testing procedures to be used.

After the Commissioning Plan has been drafted, NORESKO will schedule meetings with all appropriate commissioning team members to review the proposed plan and document all relevant corrections and clarifications.

Commissioning activities and milestones will be identified in the NORESKO construction schedule to communicate how systems will be brought on-line. As the project transitions from construction to startup, a brief outline of ongoing commissioning activities will be included in the agendas for regular job meetings and will be documented in the meeting minutes. During startup, detailed look-ahead schedules may be generated to coordinate commissioning tasks so that all appropriate Commissioning Team members can participate.

### A-1-1-9

Actual commissioning test forms for the Project will include NORESKO test forms, customized subcontractor test forms, and standard manufacturer installation and startup checklists. As the commissioning process ranges from simple static tests performed during construction (such as electrical Hi-Pot tests) to complex dynamic tests (such as control system functional performance testing), it is impractical to collect and submit each and every test form and checklist. The commissioning team will discuss each commissioning procedure and agree upon the forms and documents to be used to document it prior to the task being performed. Where requested, NORESKO will submit copies of the actual test forms that will be used to Commission personnel

for review and approval.

Where appropriate for the technologies involved, commissioning forms may also include specialized electrical, thermal, or vibration studies performed by consultants. Customized test forms will be generated by NORESO and subcontractors as needed to outline the procedures to be followed during testing of integrated systems or automated control sequences.

Upon completion of project commissioning, the NORESO Commissioning Agent will perform a final quality control check of all commissioning documents and support the submission of project close out documents. The commissioning submittals will contain all relevant commissioning documentation collected during the project, such as completed checklists, test forms, startup sheets, balance reports, and acceptance forms. Descriptions of any abnormalities or unusual observations will also be included.

A-1-1-10

**EXHIBIT A-1-2**

**TRAINING PLAN**

The following table summarizes the training for each energy conservation measure upon construction completion. NORESO will work closely with the Customer to ensure that the training requirements meet the Customer's expectations.

**Table A-1-2-1.: ECM Training Summary**

Lighting Retrofit

New Chiller Installation

Building EMS Modifications

Apparatus Bay MAU Modification

Installation

Lighting Controls Overview Lighting Maintenance Requirements Warranty Information

Installation

Modular Chiller Operation Cooling Tower Operation Freeze Protection System Operation Controls Associated  
with Installation System Alarms Maintenance Requirements O&M Manual Warranty Information

Installation Review of Front End

System Monitoring and Adjustment Capabilities System Alarms

Trends and other EMS Functionality End Device Operation O&M Manuals Warranty Information

Installation

Sensor Operation and Alarms Warranty Information

A-1-2-1

**EXHIBIT A-1-3**

## **IMPLEMENTATION PLAN AND CONSTRUCTION SCHEDULE**

NORESCO shall oversee planned construction activities and directly manage and coordinate the activities of all subcontractors. NORESKO will inspect the work of all Subcontractors for compliance with the Contract Documents.

### **Coordination and Scheduling**

Work activities shall be properly planned and scheduled. Facility personnel will have input into critical implementation decisions. NORESKO believes careful planning and monitoring of access to spaces is required to minimize disruptions. The Senior Project Manager(s) and Site Construction Project Manager(s) will provide advance notification of construction activities and will coordinate the required service interruptions with facility staff and occupants. The Senior Project Manager(s) will also submit regular progress reports to the Customer management, highlighting the project schedule and status of key milestones, next steps, and decision items. NORESKO will be closely coordinating our design and implementation efforts between each facility and ECM along with coordinating design approval from the Customer.

### **NORESCO Site Management**

NORESCO has estimated one Senior Project Manager to over-see work being scheduled, one or two Site Managers as work load varies for each ECM. The Project Management staff will move between all of the buildings and will be present during each week of facility work.

NORESCO will work with the Customer to understand and adhere to site specific regulations whenever we or our subcontractors access one of the facilities. We will adhere to typical security procedures that each facility provides NORESKO.

### **Implementation Phase**

Upon notification to proceed, NORESKO will update the construction schedule for review by the Provider for discussion during the implementation kick-off meetings. The three-week look-ahead process will be presented and discussed at the implementation kick-off meeting. This process will detail the plan for deliveries and areas of work. The three-week look-ahead schedule will be updated and discussed during each of the operations meetings for each ECM. NORESKO will have weekly operations meeting with the PBC to discuss ongoing projects that the Customer or the Client has underway in each of the scheduled facilities, as well as any upcoming activities that NORESKO will need to plan and work around for each ECM. NORESKO will also discuss possible back-up work locations should problems with access develop.

NORESCO will conduct bi-weekly progress meetings to discuss the construction schedule status and any other technical, scope, or other matters for each ECM. On a daily basis, NORESKO will closely coordinate with the Customer to confirm, coordinate, and walk through work completed the day before and plan for the next day's work.

## Schedule

NORESCO's project implementation plan is designed to mitigate progress delays during the design and implementation phases for each ECM. NORESO will be looking to the Customer to provide assistance in freeing any unforeseen obstacles that are outside of NORESO's control as it pertains to the design efforts and implementation work being performed in the buildings. The critical path schedule that NORESO prepared illustrates the mobilization, final design, startup, and commissioning efforts for each ECM. The anticipated duration of construction from award to final acceptance is estimated as 11 months and is based on the Customer providing access to each facility without interruption beyond NORESO's control.

NORESCO will require the use of a mobilization area at each site in order to complete the work. NORESO will work with the Customer to identify acceptable lay-down areas. NORESO will plan to work out of the space provided by the Customer; it is anticipated that that this will be a location for office space for the site project manager. NORESO assumes that the space identified will be available for the duration of the construction phase, and in the event that the PBC requires relocation of this space, an alternate space will be provided.

NORESCO will immediately proceed to finalize contracts with the subcontractors and begin production of the necessary Site Safety and Quality Control Plans, as well as the revised project schedule and implementation plans.

*The following Gantt chart titled "Implementation Plan Construction Schedule" is provided for information purposes*

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**EXHIBIT A-1-4**

**WARRANTY**

NORESCO will provide warranties for each Energy Conservation Measure (ECM) implemented in the construction scope of work as defined below.

*Warranty Service Call Process*

NORESCO maintains a nationwide toll-free 24-hour phone line for service and warranty emergencies. All service and warranty calls go through this service number in order to accurately track the progress of all calls to completion. To process a warranty and/or service request, operators obtain this information from the caller.

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**EXHIBIT B**  
**PERFORMANCE GUARANTEE**

**Section I. Definitions.**

All capitalized terms used in this Exhibit B shall have the meaning set forth below or in Section 2.A of the Contract.

A. Causes for Adjustment: The causes for adjustment to the energy savings calculations set forth in Section II.E of Exhibit C.

B. Closing Stub Year: This term is defined in Section III of this Exhibit B.

C. Guarantee Term: The period running from and after the Savings Guarantee Commencement Date for a period of 14 years.

D. Guaranteed Annual Savings Amount: \$273,818 calculated for each Performance Guarantee Year as set forth in the following table. However, if the Performance Guarantee Year is an Opening Stub Year or Closing Stub Year, the Guaranteed Annual Savings Amount applicable to such Performance Guarantee year shall be \$273,818 multiplied by a fraction, the numerator of which is the number of days in such Performance Guarantee Year and the denominator of which is the number of days in the calendar year during which the Performance Guarantee Year occurs (i.e., 365 or 366 days).

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E. Guaranteed Project Savings Amount: \$3,833,452.

F. \* Installation Period Savings: The savings generated during the period from the

Date of Commencement to the Savings Guarantee Commencement Date for the categories of savings included within the Measured Savings Amount calculations.

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G. Measured Savings Amount: Savings to the Customer resulting from the implementation of the Project, measured and calculated in accordance with Exhibit C, Subsection I.C, multiplied by the rates for each energy savings category set forth in Exhibit C, Subsection II.D.

H. Non-measured Savings Amount: Savings to the Customer resulting from the implementation of the Project in the amounts stipulated in Exhibit C, Subsection I.D.

I. Opening Stub Year: This term is defined in Section 111 of this Exhibit B.

J. Performance Guarantee Payment: This term is defined in Section II of this Exhibit B.

K. Performance Guarantee Year: Each period during which energy savings are measured, as specified in Section III of this Exhibit B.

L. Prior Year Calculations: This term is defined in Section IV of this Exhibit B.

M. Project Savings Amount: The Measured Savings Amount and the Non-measured Savings Amount.

N. Savings Guarantee Commencement Date: Subject only to adjustments of the Contract Time as provided in the Contract, the first day of the first utility billing period following the earlier to occur of: (1) April 15, 2015 or (ii) the month in which Substantial Completion of the entire Project occurs in accordance with the Contract.

**Section II. Performance Guarantee.**

The ESCO guarantees that the Project Savings Amount over the Guarantee Term will equal or exceed the Guaranteed Project Savings Amount. For each Performance Guarantee Year, the ESCO guarantees that the Project Savings Amount will equal or exceed the Guaranteed Annual Savings Amount. Subject to Section VI of this Exhibit B, in the event the Project Savings Amount in any Performance Guarantee Year is less than the Guaranteed Annual Savings Amount, the ESCO unconditionally and irrevocably agrees to pay the Customer (or its designee) the difference between the Guaranteed Annual Savings Amount and the Project Savings Amount ("Performance Guarantee Payment") at the time and in the amount as provided in Section IV of this Exhibit B.

**Section III. Performance Guarantee Year.**

The Customer seeks to align the Performance Guarantee Year with the calendar year for budgeting purposes, and therefore each of the following periods shall serve as a "Performance Guarantee Year":

- i. the period from the Savings Guarantee Commencement Date through the next following December 31 (such initial period referred to herein as the "Opening Stub Year");
- ii. Thirteen (13) 12-calendar month periods, each running from January 1 through the next following December 31, with the first such period including the first

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January 1 following the Savings Guarantee Commencement Date and continuing through the next following December 31; and

***iii. The period running from the January 1 following conclusion of the thirteenth (13<sup>th</sup>) 12-month period described in subparagraph (ii) immediately preceding and continuing through and including the fourteenth (14<sup>th</sup>) anniversary of the Savings Guarantee Commencement Date (such final period referred to herein as the "Closing Stub Year")***

As set forth in Exhibit C, the formulae for calculating the Project Savings Amount are designed to accommodate and yield accurate results for Performance Guarantee Years of varying lengths, including both periods exceeding 12 months in length, any stub years and the Installation Period. Notwithstanding anything in Exhibit C or otherwise in this Contract to the contrary, neither the Customer nor the ESCO shall agree, without the prior written consent of the Lender, which consent may be withheld in the Lender's sole discretion, to modify or amend the scope of the Work, if such modification or amendment would, if implemented, adversely affect the achievement of the Guaranteed Annual Savings Amount. The Customer agrees that it will not, without the prior written consent of the Lender, which consent may be withheld in Lender's sole discretion, make any material change to the Facilities or the ECMs that would result in a Cause for Adjustment if such material change would, if implemented, result in a Performance Guarantee Payment in any Performance Guarantee Year.

**Section IV. Calculation of Project Savings Amount.**

Throughout the Guarantee Term, the Customer will provide the ESCO with all utility bills pertinent to the energy performance calculations described in this Contract within thirty (30) days of receipt. The Customer may provide the ESCO with copies of bills, or access to invoices via an on-line system. Within sixty (60) days of the ESCO's receipt of all pertinent utility bills with meter-reading ending dates falling within a Performance Guarantee Year (including the Opening Stub Year or Closing Stub Year), the ESCO will prepare and provide to the Customer its proposed calculation of the Project Savings Amount (as calculated pursuant to Exhibit C) and, if applicable, the amount of the Performance Guarantee Payment for the immediately-preceding Performance Guarantee Year (the "Prior Year Calculations") in a comprehensive annual report (the "Annual M&V Report"). The ESCO must account for all Causes for Adjustment to the energy performance calculations permitted by Exhibit C arising during the preceding Performance Guarantee Year within the Prior Year Calculations, provided Customer gave proper notice of the Cause for Adjustment. Within thirty (30) days of the Customer's receipt of the Prior Year Calculations, the Customer will notify the ESCO of (1) the Customer's approval of all or any portion of the Prior Year Calculations; and/or (2) the Customer's disapproval of all or any portion of the Prior Year Calculations, including the basis for the disapproval. Within thirty (30) days of receiving notification of the Customer's approval of all or any portion of the Prior Year Calculations, the ESCO will pay to the Customer (or its designee) the Performance Guarantee Payment, if any, due to the Customer on account of the approved portion of the Prior Year Calculations; provided, however, that if the ESCO has made a Performance Guarantee Payment as provided in the next succeeding paragraph in respect of the Performance Guarantee Year to which the Prior Year Calculations relate, the Performance Guarantee Payment to be made as provided in this sentence shall be reduced by the amount paid by the ESCO in respect of such Performance Guarantee Year. Upon Customer's approval of all of the Prior Year Calculations, ESCO waives the right to make any claim for Causes for Adjustments not specified within the Prior Year Calculations. If the Customer disapproves all or any portion of the Prior Year Calculations, the Parties will use good faith efforts to resolve such

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dispute within thirty (30) days of notification to the ESCO. If the Parties are unable to resolve the matter within such thirty (30) day period, the dispute shall be resolved in accordance with Section VIII of this Exhibit. Any amounts payable by and not paid by the ESCO on the due date thereof shall bear interest at the rate equal to the lesser of (i) ten percent (10%) per annum or (ii) the highest rate permitted by applicable law.

Notwithstanding anything in this Contract to the contrary, if during a Performance Guarantee Year the Customer has not received all or a portion of the payment when due from the Client under the Energy Services Agreement (the "ESA") between the Customer and the Client based on a Savings Dispute (as such term is defined in such Energy Services Agreement), upon written demand of the Lender (as the Customer's assignee as provided in Section 16.B of the Contract) the ESCO shall within five (5) days after its receipt of such demand make a Performance Guarantee Payment to the Customer (or its designee) in an amount equal to such payment that was not paid when due. In the event that the ESCO later reasonably establishes that it was not liable to pay the amount so demanded, the Customer shall cause the Client to reimburse the ESCO for the amount that the ESCO had previously paid pursuant to such demand, but in no event shall either the Customer or the ESCO have any right to seek recovery or reimbursement of any such amount to the extent used to pay Loan Payments under the Loan Agreement. A Savings Dispute shall be deemed to exist for purposes of this paragraph in the event that the Client does not make its scheduled payment in full under the ESA on [July 5], 2015.

#### **Section V. Installation Period Savings.**

Installation Period Savings will belong exclusively to the Customer and will not be added to the Project Savings Amount for the Opening Stub Year or any other Performance Guarantee Year.

#### **Section VI. Additional Savings.**

In the event that the Project Savings Amount exceeds the Guaranteed Annual Savings Amount in any Performance Guarantee Year, the excess savings shall belong and accrue to the Customer and shall not reduce the ESCO's liability for achieving the Project Savings Amount in any other Performance Guarantee Year.

#### **Section VII. Project Modifications to Reduce Performance Guarantee Payment Obligations.**

The mutual goal of the Parties is to maximize the Project Savings Amount. Therefore, the ESCO will have the right, at all times during the Guarantee Term, subject to the Customer's written approval, to modify the scope of the Project, to modify or replace any of the ECMs or install additional ECMs and to revise any procedures for the operation of the ECMs or implement other procedures at the Facilities provided that: (i) such actions by the ESCO do not result in modifying the standards of comfort and service set forth in Exhibit C without the express written approval of the Customer; (ii) such actions do not detrimentally affect site operations or use and occupancy of the Facilities; (iii) such actions are necessary to enable the ESCO to achieve the Guaranteed Annual Savings Amount; and (iv) any costs incurred relative to such modifications, additions or replacements of the ECMs, or operational changes or new procedures or additional maintenance necessitated by the ECMs, shall be the sole responsibility of the ESCO. All modifications, additions or replacements of the ECMs or revisions to operating or other procedures will be described in a supplemental schedule(s) to be provided to the

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Customer for approval, which will not be unreasonably withheld or delayed, and incorporated into this Contract through a Change Order, and the work related to such modifications, additions, or replacements shall be carried out in accordance with all of the terms and provisions of the Contract applicable to the performance of Work. Any replacement ECM shall be new and have equal or better potential to reduce energy

consumption at the Facility than the ECM being replaced. As part of any Project scope modifications, the ESCO shall update any and all software during the implementation necessary for the operation of the ECMs. All replacements of and alterations or additions to the ECMs shall become part of the ECMs described in Exhibit A and shall become the property of the Customer.

#### **Section VIII. Disputes Regarding Energy Performance Calculations.**

Any disputes concerning the calculation of the Prior Year Calculations, Causes for Adjustment, or other energy or consumption calculations described in Exhibit C and not resolved pursuant to Section IV shall be submitted to the Engineer Neutral (as described in Section 3.C.2 of the Contract. The determination of the Engineer Neutral will be final and binding upon both the Customer and the ESCO. The ESCO and the Customer will each be responsible for half of the fees of the Engineer Neutral.

The disputed calculation shall not take effect until there is a final adjudication or resolution of the dispute.

#### **Section IX. Examples.**

Section 7 of Exhibit C sets forth examples of calculations of energy savings for illustrative purposes.

#### **Section X. Stub Year Savings.**

If the Project Savings Amount during the Opening Stub Year or Closing Stub Year is less than the Guaranteed Savings, any Installation Period Savings will be used to reduce the Performance Guarantee Payment. The same Installation Period Savings cannot be used to reduce the Performance Guarantee Payment in both the Opening Stub Year and Closing Stub Year.

#### **Section XI. Termination.**

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, OR IN ANY CONTRACT DOCUMENT, IN THE EVENT THAT THE PERFORMANCE TRACKING SERVICES SET FORTH AS EXHIBIT D IS CANCELED OR TERMINATED BY CUSTOMER FOR ANY REASON, THIS PERFORMANCE GUARANTEE SHALL BE DEEMED TO HAVE BEEN MET AND FULFILLED AS OF THE EFFECTIVE TERMINATION DATE OF THE PERFORMANCE TRACKING SERVICES AND ESCO SHALL HAVE NO FURTHER OBLIGATIONS OR LIABILITIES ASSOCIATED WITH SUCH PERFORMANCE GUARANTEE AS OF THE DATE OF SUCH TERMINATION.

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### **EXHIBIT C**

#### **METHODOLOGY AND BASELINE**

##### **1. OVERVIEW**

This Exhibit describes the measurement and verification ("M&V") methodology that will be applied to the Project, and each separate ECM included within the Project. The Parties intend that the M&V

methodology will be used to determine whether the Project described in Exhibit A achieves the Guaranteed Annual Savings Amount set forth in Exhibit B for each Performance Guarantee Year.

The M&V methodology to be employed for the Project is consistent with the U.S. Department of Energy ("DOE") and International Performance Monitoring and Verification Protocol ("IPMVP"), Option A. The specific plans for each ECM are included in Section 3 of this Exhibit C.

## 2. BASELINE

***The baseline is that set of parameters that describes both the energy consumed in the base year calculation for each type of energy consumed ("Base Year") and the conditions that caused that consumption to occur, including utility consumption, building use information, weather data, and other information as may be necessary to describe the Base Year conditions (collectively, the "Baseline"). Consumption and cost data for electricity and natural gas from June 2011 to May 2012 were used to develop the electric and natural gas baseline. This period reflects the most current available bills for these utilities. District chilled water and steam utilities are only at City Hall; a baseline period of January 2011 through December 2011 was used as this was the most recent fully reconciled year. Field collected data and inputs and outputs used in the Baseline calculations are summarized in the "Baseline Assumptions" set forth on Attachment 1 to this Exhibit C. The Baseline is further described in Sections 4 and 5 of this Exhibit C. For each Performance Guarantee Year, the Parties will determine any Causes for Adjustment pursuant to Section 6 of this Exhibit to establish certain adjustments to the Baseline used to measure energy use at the Facilities for that Performance Guarantee Year ("Adjusted Baseline").***

## 3. DETERMINATION OF PROJECT SAVINGS AMOUNT

### **A. Project Savings Amount**

For purposes of the performance guarantee described in Exhibit B, the Project Savings Amount will be determined as follows:

$$\text{\$} = \text{\$M} + \text{\$N}$$

Where:

$\text{\$}$  = Project Savings Amount

$\text{\$m}$  = Measured Savings Amount, calculated as set forth in Subsection 3.B below.

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$\text{\$N}$  = Non-measured Savings Amount, stipulated as set forth in Subsection 3.C below.

### **B. Measured Savings Amount**

The Measured Savings Amount for any Performance Guarantee Year will be the sum of the "Measured Energy Savings" for all savings categories (i.e., kWh, Therms, or kGals). The Measured Energy Savings for each savings category will be determined as follows:

$$\text{\$o} = E_o * \text{\$/Unit}$$

$$E_o = Emb - Emg$$

Where:

\$o = Measured Energy Savings

$E_o$  = Measured Energy Units Saved (including partially measured and stipulated, as further described in this Exhibit C)

\$/Unit = Cost of Energy per Unit Measured, as specified in this Exhibit C, Subsection 4.C Emb =

Measured Base Year Consumption or Demand Emg = Measured Guarantee Year Consumption or Demand

The process for calculating Measured Energy Units Saved for each ECM is set forth below.

#### ECM: LIGHTING RETROFIT Overview of

##### M&V Plan

NORESCO will utilize IPMVP Option A for this ECM.

NORESCO proposes to upgrade the existing lighting systems in the following buildings: • Police - Fire - DSS Warehouse

The M&V Plan assigns all audited luminaires to one of several lamp/ballast combination (LBC) groups based on the luminaires' specific lamp and ballast type and configuration. The selected measured LBC groups represent 83.8-percent of the connected pre-installation lighting load. For each LBC group measured, a minimum of three luminaires were sampled. This sample size is based on confidence level of 90-percent and a precision of 10-percent, and assuming a coefficient of variation of 10-percent. The verified luminaire wattage was determined by using the average of the samples measured within each LBC group.

Upon completion of construction, NORESKO will measure the post-installation electrical demand of a representative sample of luminaires from a number of post-installation LBC groups that represent at least 80-percent of the connected post-installation kW load. The number of measurements will be based on the same statistical sampling criteria as the pre-installation sample. Since existing luminaires that have the same LBC may not be retrofitted with the same post-installation LBC, different luminaires may be selected for post-installation measurements.

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Any variances in the number and/or equipment installed from the proposed scope of work will be noted in the Post-Installation Report generated by NORESKO. Verified savings will be calculated based on measured post

-installation fixture wattages and the as-built quantities.

Hours of operation for each building's fixtures were determined via staff interviews and observations collected during site walks.

## Savings Calculation Methodology

The savings for this ECM were calculated by summing each of the respective components identified in the equations below: direct lighting savings, lighting controls savings, and ancillary HVAC cooling savings.

### Direct Lighting Savings

To calculate the proposed direct lighting savings, fixtures were grouped with others sharing the same baseline lamp and ballast combination, post-installation LBC, and hours of operation. For each group, energy savings during each time of use period are calculated. The formulae for calculating savings are summarized below.

#### Electric Consumption

$$E_{\text{LIGHTING}} = V_{\text{base}} \cdot I_{\text{base}} \cdot H_{\text{base}} - V_{\text{post}} \cdot I_{\text{post}} \cdot H_{\text{post}}$$

Where:

$E_{\text{LIGHTING}}$  = Energy savings, in kWh, for the lighting retrofits.

$P_{\text{base}}$  = Electrical power, in kW, per fixture for appropriate baseline LBC group.

$P_{\text{post}}$  = Electrical power, in kW, per fixture for appropriate post-installation LBC group.

$H_{\text{base}}$  = Existing annual operating hours defined by fixture's pre hours group.

$N_{\text{base}}$  = Number of fixtures in representative baseline LBC group.

$N_{\text{post}}$  = Number of fixtures in representative post-installation LBC group

NORESCO calculated the contribution to proposed peak demand savings by applying a diversity factor to the gross connected load (kW). The operating schedule determines the demand diversity factor. For each group of fixtures in the ECM, NORESKO calculated the monthly proposed demand savings.

#### Electric Demand

$$D_{\text{LIGHTING}} = V_{\text{base}} \cdot I_{\text{base}} \cdot H_{\text{base}} - V_{\text{post}} \cdot I_{\text{post}} \cdot H_{\text{post}} \cdot DF$$

Where:

$D_{\text{LIGHTING}}$  = Monthly demand savings, in kW, for the lighting retrofits.  $P_{\text{base}}$  = Electrical power, in kW, per fixture for appropriate baseline LBC group

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$P_{\text{post}}$  = Electrical power, in kW, per fixture for appropriate post-installation LBC group.

$DF_{\text{LIGHTING}}$  = Hours group diversity factor



Nbase = Number of fixtures in representative baseline LBC group.

Npost = Number of fixtures in representative post-installation LBC group

Energy and demand cost savings were determined by multiplying the proposed energy and demand savings for each applicable LBC by the approved incremental energy costs. The results of these calculations were summed for total electric demand (kW) and energy (kWh) savings.

### *Lighting Controls*

To calculate the proposed lighting control savings, luminaires have been grouped with other luminaires sharing the same baseline LBC group, post-installation LBC group, and hours of operation.

### **Electric Consumption**

$$controls - \{P_{post} * H_{base}\} \sim (P_{post} * H_{post}) * N_{post}$$

*Where:*

ES<sub>controls</sub> = Energy savings, in kWh, for the on/off controls.

P<sub>post</sub> = Electrical power, in kW, per luminaire for appropriate post-installation LBC group.

H<sub>base</sub> = Baseline annual operating hours defined by luminaire's pre-hours group.

H<sub>post</sub> = Post-Installation annual operating hours defined by luminaire's post hours group.

N<sub>post</sub> = Number of luminaires in representative post-installation LBC group.

The post-installation operating hours are based on expected reductions to the baseline operating hours determined via measurements, direction and input from customer, staff interviews, and on-site observations.

For each group of luminaires in this ECM, NORESO calculated the monthly demand savings for the lighting controls as follows:

### **Electric Demand**

$$Decontrols \sim P_{post} * Decontrols * H_{post}$$

*Where:*

DS<sub>controls</sub> = Monthly demand savings, in kW, for the lighting controls.

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= Electrical power, in kW, per luminaire for appropriate post LBC group.

DF<sub>comrois</sub> = Diversity factor, as a percentage in Hours Group Summary Attachment.

Number of luminaires in representative post-installation LBC

The results of these calculations were summed for the total electric demand (kW) and energy (kWh) savings. Cost savings were determined by multiplying the verified energy and demand savings for each

applicable LBC by the approved incremental energy costs.

### Ancillary HVAC Cooling Savings

The proposed lighting upgrade reduces the wattage and hours of operation for lighting, which in turn produces less heat in the lighted areas. Since cooling systems have less heat to remove, less air conditioning energy is required.

The actual heat contributed to the cooling load varies by fixture type (recessed, surface-mounted, suspended, open, or enclosed), air return (open plenum or ducted return), and the amount of exhausted air. To represent various lighting and ventilation systems, NORESO assumes that, in conditioned spaces, electrically produced mechanical cooling removes an average of 75 percent of light-generated heat. Luminaires in unconditioned spaces, such as outdoor areas, stairways, mechanical rooms, and high-bay areas, have no effect on the mechanical cooling systems. Therefore, cooling savings calculations do not include these luminaires.

For each group of luminaires in conditioned spaces, we calculate the HVAC cooling energy savings during each time of use period as follows:

$$C = \frac{(\text{lighting} + \text{controls}) * \text{energy} * \text{SEACooling}}{\text{HC}}$$

$$C = \frac{(\text{lighting} + \text{controls}) * \text{energy} * \text{SEACooling}}{\text{HC}}$$

**C**  
^ capacity

Where:

*EScooling ESlighting*

*'energy*

*HC*

percent.

*Ccapacity*

*EFF*

*SEACooling*

Energy Savings, in kWh, for the HVAC interaction.

Energy savings, in kWh, for the lighting retrofits (from conditioned spaces only).

Conversion factor = 3,413-Btu/kWh.

Heat contribution of luminaires to conditioned space, stipulated at 75-

Conversion factor = 12,000-Btu/ton-hr, cooling capacity.

Mechanical cooling efficiency, in kW/ton

= Cooling season, in percent of year

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The contribution to peak demand savings is determined by applying a diversity factor to the gross kW load. The LBC's hours group determines the demand diversity factor already applied to the demand savings for direct lighting and lighting controls. For each group of luminaires in conditioned spaces, the monthly HVAC demand savings are calculated as follows:

$$DS_{cooling} = \frac{\text{lighting} + \text{controls}}{P_{capacity}} \times \text{energy} \times \frac{77}{17} \times \frac{1}{\text{eff}}$$

Where:

DScooling - Energy Savings, in kWh, for the HVAC interaction.

DSwung - Energy savings, in kWh, for the lighting retrofits (from conditioned spaces only).

Cenergy - Conversion factor = 3,413-Btu/kWh.

HC = Heat contribution of luminaires to conditioned spaces, stipulated at 75-percent.

Ccapacity = Conversion factor = 12,000-btu/ton-hr, cooling capacity. EFF =

Mechanical cooling efficiency, in kW/ton Heating penalty is calculated as follows:

$$MP_{cooling} = \left( \frac{\text{lighting} + \text{controls}}{P_{capacity}} \times \text{energy} \right) \times C_{energy} \times HC \times \frac{1}{\text{eff}}$$

Where:

HPcooling= Heating Penalty, in MMBtu, for the HVAC interaction.

ESlighting = Energy savings, in kWh, for the lighting retrofits (in conditioned spaces only).

EScontrols = Energy savings, in kWh, for the on/off controls (in conditioned spaces)

Cenergy = Conversion factor = 3,413-Btu/kWh.

HC = Heat contribution of luminaires to conditioned space, stipulated at 75-percent.

Cmmbw = Conversion factor = 1,000,000-MMBtu/Btu.

EFF = Mechanical heating efficiency, as a percentage

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$SEA_{\text{hea,ing}}$  = Heating season, in percent of year.

To determine cost savings, NORESO multiplied the energy and demand savings of all luminaire groups (minus the heating penalty) by the approved incremental energy costs.

After construction, the actual number of luminaires upgraded in conditioned spaces will be verified from field inspections and documented in an as-built report; these quantities and verified wattage will be used to calculate verified savings in the above formulae.

### **Baseline M&V Activities**

Pre-installation audits were used with established lighting fixture wattage tables to estimate the baseline energy consumption for the fixtures to be retrofit. NORESO measured fixture wattages for a representative sample of fixtures from a number of pre-installation LBC groups that represents 83.8-percent of the connected pre-installation electrical load (kW). The pre-installation LBC groups scheduled for measurement were based on fixture quantities and hours of operation. NORESO records the ballast type, manufacturer, and model number for all fixtures measured. Pre-installation samples and measurements were witnessed by a Commission representative. The baseline lighting power measurements are included in Appendix B: Line-by-Line Lighting Analysis of the Final Investment Grade Audit dated January 28, 2014.

Hours of operation for each building's fixtures were determined via discussions with the facility staff and were supported by on-site observations. These mutually agreed upon hours of operation were used for both baseline and post-installation energy usage calculations.

### **Post-Installation M&V Activities**

Upon completion of construction, NORESO will measure the post-installation electrical demand of a representative sample of fixtures from a number of post-installation LBC groups that represents at least 80-percent of the connected post-installation electrical load (kW). The post-installation LBC groups selected for measurement will be based on proposed fixture quantities. Fixture wattage power measurements will be performed on individual fixtures where feasible. If a dedicated circuit feeds a group of identical fixtures (i.e., the same LBC) the circuit may be measured as a whole if measurement of individual fixtures is not feasible.

NORESOS will record the ballast type, manufacturer, and model number for all fixtures measured. Post-installation sampling and measurements will be witnessed and signed-off by a Customer representative. The on-site NORESOS construction manager will monitor installation and retrofit of fixtures and verify that the correct products are installed. Any variances in the number and/or equipment installed from the proposed scope of work will be noted in the As-Built Report generated by NORESOS.

The equations described above will be used to calculate verified savings based on the as-built quantities and equipment. After these activities, the verified energy savings determined by the equations and calculations listed above will be considered valid for the term of the guarantee period without additional evaluation.

### **Performance Period M&V Activities**

NORESOS will visually inspect a small sample of fixtures during the annual inspection to confirm that

the proper replacement lamps are being used. NORESO will also survey the maintenance stock and maintenance records to confirm that the proper lamps and ballasts are being inventoried. All discrepancies and improper maintenance practices found will be reported. No additional measurements will be performed. Verified energy savings will be based on the baseline and one time post-installation measurements and calculations described above and documented in the PIR.

## **NEW CHILLER INSTALLATION**

### **Overview of M&V Plan**

NORESCO proposes installing a new 501-ton chiller and chilled water pumps in the basement of City Hall, and refurbishing the cooling tower and repurposing heat exchangers for water side economizing. The savings for this ECM comes from the reduced cost of producing chilled water compared to purchasing it from an outside utility.

The M&V plan is based on the data contained in the chilled water utility bills, plant logs, as well as ultrasonic flow measurements, chilled water supply and return temperature measurements, and weather data to establish the baseline chiller plant load. Post-installation chiller performance will be the proposed manufacturer's rated chiller part-load efficiency curve de-rated by 5% from the manufacturer's stated performance due to AHRI testing tolerances, which allows for some variance in published performance versus actual field performance. The proposed chiller plant sequence of operations will be confirmed during commissioning.

### **Savings Calculation Methodology**

The expected savings for this ECM was calculated using an 8,760-hour bin analysis in an Excel spreadsheet. The sources of inputs for the calculation included the following:

- Utility data: Eliminating outside utility costs for providing the lower part of the City Hall chilled water is the fundamental strategy for calculating for savings in this ECM.
- Ultrasonic Flow Measurements: These measurements helped determine building load and chilled water pump power.
- Interviews: Staff interviews provided insight to operational strategies, past history, maintenance issues, etc.

The bin analysis spreadsheet was used to calculate the plant load for every outdoor temperature bin, and the baseline sequence of operation was applied to the load to determine chiller efficiency. The load at varying outside air temperatures is equal to a linearly increasing weather-dependent cooling load plus the constant load required by the computer server rooms. The cooling tower fan operating hours were modeled as linearly decreasing from the design point. The new system will utilize a water side economizing system below an outside air temperature of 40°F.

New proposed chiller part-load efficiency curves (de-rated by 5%) along with the proposed sequence of operations were used to calculate the post-installation energy use. Key parameters include building load, chiller performance, weather data, condenser water and chilled water pumps run-hours, and cooling tower fan energy. The difference between the baseline chiller plant energy use and the proposed chiller plant energy use is the proposed

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savings. The savings spreadsheet is included in Final Investment Grade Audit date January 28, 2014

## Appendix A. Savings Calculations

### Baseline M&V Activities

Historical utility data provided by Thermal Chicago and plant logs were analyzed by NORESO to determine the plant sequence of operations and baseline energy use. NORESO performed baseline flow measurements of chilled water provided by Thermal Chicago using an ultrasonic flow meter to confirm the pumps' flow and corresponding supply and return water temperatures. The flow measurements are included in the Final Investment Grade Audit dated January 28, 2014 Appendix I. M&V Results

### Post-Installation M&V Activities

As-built documentation showing that the installed chiller meets or exceeds the proposed capacity and part-load efficiency along with checklists detailing the results of the commissioning process will serve as verification that the new chiller is properly installed and capable of achieving the proposed savings. Also, the as-built EMS control sequence will be reviewed to determine that it meets the design intent.

### Performance Period M&V Activities

NORESOS will perform an annual inspection of the equipment to confirm that the ECM continues to be operational and has the potential of producing the expected savings. NORESOS will also verify the EMS setup during the performance period to confirm that as-built control strategies and standards of operations continue to be in place. NORESOS will issue annual reports documenting discrepancies found and, when feasible, recommend corrective actions.

**Verification of these systems will require NORESOS to access these systems on-site during the annual inspection site visit. Verified energy savings shown in the AVR will be based on the expected savings documented in the PIR.**

## **BUILDING EMS MODIFICATIONS**

### Overview of M&V Plan

NORESOS proposes installing controls on the pumps, Air Handling Units (AHUs), boilers, chillers and installing digital thermostats at RJ Quinn, and implementing static pressure reset control on the eight air handling units at City Hall. At RJ Quinn, the new control system will provide local monitoring and adjustment through a front-end. At City Hall, the AHUs currently utilize variable air volume (VAV) and variable frequency drives to maintain a constant static pressure. These changes would reduce fan energy by resetting the static pressure setpoint as a result of zone damper positions.

The M&V plan relies on documenting baseline conditions through historical utility data, surveys of existing mechanical systems, interviews with facility personnel, and the installation of data loggers to collect space temperatures and run-hours. Post-installation M&V will consist of the review of key performance parameters via review of trend data charts during the annual inspection to confirm that the proposed strategies continue to operate per the design intent.

The savings for this ECM were performed using 8,760-hour bin analyses in Excel spreadsheets. The majority of the savings are the result of the new control systems being able to reset heating and cooling setpoints and turning off fans and pumps during unoccupied times (night setback), and modulating static pressure setpoints based on VAV damper positions. Key parameters include fan speed, ductwork static pressure and setpoint, zone air damper positions, outside air temperature, and occupied mode. The analyses calculated the reduction in motor power consumption and reductions in building heating and cooling losses due to these modifications in operation. The savings calculations are included in the Final Investment Grade Audit dated January 28, 2014 Appendix A. Savings Calculations.

### **Baseline M&V Activities**

NORESCO established the baseline usage profile by analyzing facility historical metered data, interviews with facility personnel, survey of the existing equipment, and manufacturer's name plate data within an 8,760-hour bin analysis Excel spreadsheet. Additionally, space temperature data loggers were installed in a sample of spaces at RJ Quinn to determine operational parameters. The logged data is included in the Final Investment Grade Audit dated January 28, 2014 Appendix I. M&V Results.

### **Post-Installation M&V Activities**

NORESCO will conduct detailed commissioning of each new control strategy to confirm the installed systems and control algorithms meet the design intent. Baseline and post-installation load profiles are agreed to be the same for the life of the contract.

### **Performance Period M&V Activities**

NORESCO will perform an annual inspection of the equipment to confirm that the ECM continues to be operational and has the potential of producing the expected savings. NORESKO will also verify the EMS setup during the performance period to confirm that as-built control strategies and standards of operations continue to be in place. NORESKO will issue annual reports documenting discrepancies found and, when feasible, recommend corrective actions.

Verification of these systems will require NORESKO to access these systems on-site during the annual inspection site visit. Verified energy savings shown in the AVR will be based on the expected savings documented in the PIR.

## **APPARATUS BAY MAU MODIFICATION**

### **Overview of M&V Plan**

NORESCO proposes installing CO / CO<sub>2</sub> / NO<sub>x</sub> sensors within the apparatus bay of FEC 18 and integrating them with the existing EMS to better control the makeup air unit (MAU) serving this space. The programmed sequence will limit the unit's operation to periods requiring demand controlled ventilation when activated by the combustion contaminant sensors.

The M&V plan is based on data from deployed temperature data loggers, engineering calculations, and manufacturer's name plate data for the affected equipment. For the post-

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installation verification, the contaminant sensor operation will be confirmed by commissioning operating parameters at the EMS front-end.

## Savings Calculation Methodology

The expected savings for this ECM was calculated using an 8,760-hour bin analysis in an Excel spreadsheet for fan savings and heating energy savings. Weather data from data for Chicago, IL at Midway airport was utilized to establish the baseline and the operating hours identified by the data loggers were de-rated from 100% of the time when outside air temperatures are below 65°F to only 80% of the time. The savings are the result of reducing these operating hours from 80% of total hours to 6.7% (4 minutes per hour).

### *Fan Energy*

The baseline for the existing fan motor energy is based on engineering calculations utilizing outdoor air temperatures, fan power and loading factor, and operating heating hours. The proposed operating heating hours have been reduced to four (4) minutes per hour below 65°F outside air temperatures.

$$ES_{fan} = \frac{HP \cdot LF \cdot H_e}{EFF \cdot P}$$

Where:

ES<sub>fan</sub> = Fan energy savings, in kWh

HP = Fan horsepower, per nameplate

LF = Load factor, 75%

EFF = Motor efficiency, 91.7%

H<sub>e</sub> = Existing annual operating heating hours by bin temperature

H<sub>p</sub> = Proposed annual operating heating hours by bin temperature

### *Heating Energy*

The energy required to heat the introduced outside air was determined as follows:

$$Q_h = C_0 \cdot CFM_{OA} \cdot (T_{HSP} - T_{OA}) \cdot H_e$$

Where:

Q<sub>h</sub> = Heating required for outside air, in therms  
constant, 1.085-Btu/hr

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CFM<sub>oa</sub> = Outside air provided by the unit, 6210-cfm

T<sub>hsp</sub> = Supply air heating set point



Toa = Outside air bin temperature

H<sub>e</sub> = Existing annual operating heating hours by bin temperature

C<sub>h</sub> = Conversion for BTUs to therms, 100,000-BTU/therm

The only change in heating energy is a result of reduced operating heating hours as impacted by the demand control ventilation strategy.

The natural gas savings was calculated by subtracting the proposed gas consumption from the existing gas consumption, where the proposed gas consumption equals the existing gas consumption divided by the burner efficiency multiplied by the ratio of proposed to existing operating heating hours. The savings calculations are included in the Final Investment Grade Audit Appendix A. Savings Calculations.

### **Baseline M&V Activities**

NORESCO established the baseline usage profile by installing temperature data loggers, analyzing historical metered data, interviews with facility personnel, survey of the existing equipment, and manufacturer's name plate data within an 8,760-hour bin analysis Excel spreadsheet. The logger information can be found in the Investment Grade Audit Appendix I. M&V Results.

### **Post-Installation M&V Activities**

NORESCO will conduct detailed commissioning of the MAU to confirm the installed contaminant sensors and control algorithms meet the design intent. Baseline and post-installation load profiles are agreed to be the same for the life of the contract.

### **Performance Period M&V Activities**

Verified savings will be based upon Post-Installation activities.

## **4. WEATHER SOURCE AND ENERGY RATES**

### **A. Weather Source**

Data for weather-related calculations used in this Contract will be from 30-year average historical bin data obtained from the National Weather Service Station at Chicago Midway.

### **B. Energy Rates**

The rates set forth in this Subsection will be used to determine the Measured Savings Amount. The rates set forth below will be escalated by 0% each Performance Guarantee Year, commencing with the second Performance Guarantee Year.

## **5. BUILDING SCHEDULE AND OPERATIONS A. Calendars**

### **and Schedules**

Except for the Additional Occupancies described below and as otherwise authorized by this Section 5, the Customer will operate the conditioned spaces in the Facilities within the date/times and occupancy schedules set forth below.

The ESCO acknowledges that the Client conducts certain occasional activities outside of the Occupancy Schedule[("AdoVf/ona/ Occupancies"). The ESCO acknowledges that it has evaluated the Additional Occupancies in preparing the Investment Grade Audit and that the Additional Occupancies are factored into the calculation of the Baseline. Additional Occupancies shall not constitute a Cause for Adjustment to the energy savings calculations.

Holidays: The Facilities will be unoccupied on the dates the following holidays are observed:

New Year's Day Martin Luther King Jr. Day  
Lincoln's Birthday Washington's Birthday  
Casimir Pulaski Day Memorial Day  
Independence Day Labor Day Columbus  
Day Veteran's Day Thanksgiving Day  
Christmas Day

These occupancy schedules will not apply in any instance where the ESCO or its representatives direct or approve the running of equipment outside of the occupancy schedules in order to improve the efficiency of the ECMs and related equipment.

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### **B. Standards of Service and Comfort**

The Client will operate the conditioned spaces in the Facilities within the temperature ranges scheduled in the Temperature Control Table below. Operating conditions outside the range specified in this table may constitute a Cause for Adjustment under this Contract. However, the ESCO acknowledges that adjustments may be made to the temperature ranges within spaces of less than 2000 square feet to accommodate tenant comfort and use of the space without any adjustments to the Baseline, provided spaces with adjustments outside of the temperature ranges do not exceed 5% of the total gross area of a particular Facility.

In the event that an adjustment to the Baseline is sought, the ESCO shall submit the proposed Baseline adjustments to the Customer and describe the reasons for the adjustment as part of the Prior Year Calculations described in Exhibit B.

## **6. CAUSES FOR ADJUSTMENT**

Adjustments to the Baseline are intended to adjust for any operations or conditions that differ from those assumptions made when the guaranteed savings were calculated. Each of the causes described in the table below shall constitute a "Cause for Adjustment" to the Baseline used to calculate the Measured Savings Amount. Any disputes regarding a Cause for Adjustment shall be addressed pursuant to Section VIII of Exhibit B.

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Customer must promptly notify the ESCO of any activities known to Customer, which adversely impacts the ESCO's ability to realize the Guaranteed Annual Savings Amount. The ESCO shall be entitled to adjust the Guaranteed Savings by the amount of any such adverse impact to the extent that such adverse impact is beyond the ESCO's reasonable control. If the ESCO determines that no adjustment to the

Guaranteed Annual Savings Amount is necessary, then the savings shall be calculated in accordance with the Baseline Assumptions set forth in Exhibit C.

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In the event the ESCO has reason to believe that any action or failure to act by the Customer or a measurable deviation from the Baseline may constitute a Cause for Adjustment to the energy performance calculations set forth in this Contract, the ESCO must notify the Customer of a possible Cause for Adjustment within sixty (60) days of receipt of written confirmation from the Customer detailing the action, failure to act, or measurable deviation giving rise to the potential Cause for Adjustment. If the ESCO fails to notify the Customer within such sixty (60) day period, the ESCO thereafter waives the right to present any claim for an adjustment to the energy performance calculations on account of such action or failure to act.

Notwithstanding the provisions of this Section, the ESCO may, but is not required to present any claim for a Cause of Adjustment if the ESCO determines that an action, failure to act, or measurable deviation will have no impact on the Measured Savings Amount. Upon receipt of written confirmation from the Customer detailing the action, failure to act, or measurable deviation giving rise to the potential Cause for Adjustment, the ESCO will account for any Causes for Adjustment to the energy performance calculations arising during the preceding Performance Guarantee Year within the Prior Year Calculations (as defined in Exhibit B); and the ESCO waives the right to present any Causes for Adjustments not specified within the Prior Year Calculations to the extent that cause giving rise to such claim was reasonably discernable by the ESCO in the preceding Performance Guarantee Year. . Within sixty (60) days of the Date of Commencement, the Parties will mutually determine any Causes for Adjustment to account for changes in the Site and its use which have occurred prior to the execution of this Contract but after the performance of the Investment Grade Audit.

\* Threshold Limits Per Fuel-type/Category:

**Area - 3% of square footage of Site area as of .the Date of Commencement. Electricity - 3%**

**of highest annual peak demand Natural Gas - 3% of installed Base Year gas-heating capacity**

**Air Conditioning - 3% of installed Base Year air-conditioning capacity** 7. **EXAMPLES**

**A. Savings Calculation Model Assumptions**

Savings calculations can be found in Exhibit A: Savings Calculations of the Final Investment Grade Audit dated January 28, 2014

**B. Examples of Energy Savings Calculations**

Examples of Energy Savings Calculations are provided in Section 3 of this Exhibit C.

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**EXHIBIT D**

**PERFORMANCE TRACKING SERVICES**

The ESCO will not perform any additional Performance Tracking Services other than what is described in Exhibit C.

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**EXHIBIT E**

**PERFORMANCE TRACKING SERVICES PAYMENTS**

The ESCO will be paid the following amounts for Performance Tracking Services. Payments will be made in accordance with Section 13.A.2 of the Contract.

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EXHIBIT F

**ADDITIONAL PERFORMANCE OF WORK REQUIREMENTS**

The ESCO shall be responsible to meet these performance requirements throughout the course of the Work. Exceptions shall only be allowed at the Customer's discretion and with Customer's prior written approval.

**A. General Performance of Work Requirements**

1. The following activities are specifically prohibited from occurring on the Customer's or Client's property and cannot be undertaken by the ESCO:

- a. The use of a jackhammer on site
- b. The use of Client space, other than Client space being constructed pursuant to this Contract
- c. The use of Client equipment
- d. Unauthorized use of Facility equipment
- e. The use of the Facility's trash compactor, dumpster, or container
- f. Unauthorized parking in restricted areas
- g. Unauthorized on-site storage
- h. Consumption of alcohol or controlled substances on site
- i. Unauthorized congregation in Facility public space
- j. Cooking or quantity food preparation on site
- k. Unauthorized use of Facility restroom areas
- l. Unapproved use of Facility utilities
- m. Objectionable, abusive, or unacceptable personal behavior of contractor personnel
- n. Improper disposal of wastes, residues, or debris
- o. Loud noises outside of the Work site considered by the Customer or

Client as objectionable

2. A list of ESCO and Subcontractor employees needs to be submitted to the Customer Representative prior to commencing work. All Project employees are required to sign-in and out on a daily log sheet maintained at each Facility's security office designated by the Commission. All Project employees are required to wear their contractor badge at all times.

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3. For Facilities equipped with freight elevators, all ESCO personnel shall utilize the freight elevator for access to the Work. Only in the event of an emergency shall ESCO personnel be permitted to use other means of egress.

4. All keys to construction site offices, fenced in areas, etc. are to be copied and given to security.

5. For Facilities equipped with freight elevators, all materials and waste shall be transported to and from the Work site via the freight elevators. Under no circumstance shall the passenger elevators be used without the written consent of the Customer..

6. It shall be the responsibility of the ESCO to isolate the heating, ventilating, and air conditioning systems of the Work site from the remainder of the Facility. Under no circumstance shall the ESCO utilize materials such as but not limited to: cleaning agents, paints, thinners, or adhesives that if released in the Work site atmosphere could spread to tenant areas, causing discomfort or posing any type of health hazard.

7. In the event that any fire and life safety system will need to be disabled to complete the Work, the ESCO must notify the Customer in advance of such event in writing.

8. In the event any soldering or welding apparatus is required to complete the Work, the ESCO must notify the Customer of such event. A welding permit must be obtained from the Customer if required for the Facility.

9. Removal of debris and delivery of any materials are limited to off-hours, 6 p.m. to 6 a.m. Arrangements should be made in advance with security for the Facility. All dumpsters need to be delivered after 6 p.m. and removed no later than 6 a.m. Arrangements are to be made with Facility security. The Facility will need to be cleaned of all dust and debris prior to 6 a.m. every day.

10. Freight elevators are to be protected on the walls and floor. If the elevator top needs to be removed, arrangements are to be made with the Facility's Chief Engineer.

11. Material Safety Data Sheets (MSDS) must be supplied to the Office of the Facility prior to any material entering the Facility.

12. All fire proofing and fire stops must be maintained. Patching must be completed as occurred to ensure integrity of the fire system.

13. Stairway doors shall not be propped open or blocked at any time.

14. Dry chemical fire extinguishers must be in the construction area.

15. Report any injuries to the security department as soon as possible.



16. Flooring throughout the building, including granite, terrazzo and carpeting, must be protected at all times.

17. It is the ESCO's responsibility to come to each Facility prepared with all tools and equipment necessary to complete the job. Customer and Client cannot supply lifts, ladders or tools at the Facilities to outside contract employees.

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### B. ACM-Related Performance of Work Requirements

1. In connection with the demolition, removal or handling of any ACM, the ESCO will keep such materials wet, and remove all items in full compliance with current Environmental Protection Agency (EPA), federal Occupational Safety and Health Administration (OSHA), Illinois Environmental Protection Agency (IEPA) and other applicable regulations and statutory requirements. All such items shall be disposed of at an EPA regulated landfill and ESCO shall submit to the Customer for its approval all required hazardous waste and closure documentation, including a listing of all certified personnel, chain of custody, disposal manifests, post-abatement clearance testing, recordkeeping and monitoring reports related to the Project.

2. The ESCO will be responsible to utilize all appropriate engineering controls (including but not limited to critical barriers, hepafiltered vacuums and dust pick-up systems, impermeable containers, etc.) and work methods to minimize fiber, lead or other Hazardous Materials released during handling, removal or disposal activities. The ESCO shall conduct regular biological monitoring and personal and area air sampling to verify lead levels and fiber counts on all portions of the Project. The ESCO shall document its removal activities and provide any and all documentation relating to such removal to the Customer upon request, including but not limited to, documentation regarding air sampling data, hazardous waste manifests, disposal receipts, training certificates and photographs. The ESCO will be responsible to provide all EPA, IEPA and OSHA monitoring, as required by applicable law.

3. Prior to commencing Work, the ESCO shall insure that all workers are instructed in all aspects of personal protection, work procedures, emergency evacuation procedures and the use of equipment, including procedures unique to the ACM abatement Work required by this Contract. The ESCO shall provide appropriate respiratory protection equipment for each worker and insure usage during potential exposure to any ACM or other Hazardous Materials. The ESCO shall have an adequate supply of hepafilter elements or other necessary filter elements and spare parts on sight for all respirators in use, and all respirators shall be chosen from among those jointly approved as being acceptable for protection by the Mine Safety and Health Administration (MSHA), and the National Institute for Occupational Safety and Health (NIOSH). The ESCO shall insure that any of its employees or subcontractors, of whatever tier, shall wear approved respirators at all times while abatement work is underway or while present in the work area.

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## EXHIBIT G

### **REQUIRED MAINTENANCE**

Responsibility for the proper maintenance, service, repair and adjustments to each ECM, ECM system and related ancillary systems and equipment, including related expenses, shall transfer to the Customer on an ECM by ECM basis on the Substantial Completion Date of each ECM as such date is determined in accordance with Section 3.C. of the Contract. The Customer will be responsible for such maintenance, service, repair and adjustments for the remainder of the Term. Operation and Maintenance Manuals ("O&M Manuals") will be provided to the Customer by the ESCO. Included with the O&M Manuals will be a list of maintenance responsibilities and tasks for the Customer. ESCO has no maintenance responsibilities under this Contract. ESCO shall have no responsibility for repairs and/or adjustments to the ECMs except to the extent set forth, and during the Warranty Period provided in Section 8 of this Contract.

**Start-up and Shutdown:** The Customer's responsibilities include all system start-ups and shut-downs. System start-up (beginning of season) and shut-down (end of season) refers to specific manufacturer recommendations with respect to "proper" system start-up, operation, maintenance, and shut-down as defined in O&M Manuals.

**Operations:** The Customer shall, or shall cause the Client to, operate the equipment installed hereunder in accordance with parameters noted in Exhibit C, the manufacturers' recommendations, and any supplemental procedures supplied to the Customer or the Client by ESCO, including those set forth in the O&M Manuals. The Customer shall also, or shall cause the Client to, operate the equipment and systems (including ancillary related systems) in accordance with the standards of service and comfort set forth in Exhibit C.

**Maintenance:** The Customer's maintenance responsibilities include the proper operation and prompt repair and maintenance of each ECM, ECM system and related ancillary systems and equipment such that they are maintained in good working order during the Contract Time. The Customer shall, or shall cause the Client to perform the preventative maintenance that is fully prescribed, defined, and scheduled by the ESCO through the CMMS. The Customer and Client will rely on the information populated by the ESCO into the CMMS to advise the Customer of the periodic preventative maintenance requirements during the Contract Time. The ESCO will be provided with a user license to the CMMS which will the ESCO to access to the CMMS to monitor maintenance work orders for each applicable ECM. The Customer shall, or shall cause the Client to, repair and maintain (i) the equipment and all other components which comprise each ECM and (ii) all other equipment which is attached thereto and/or is integral to the proper functioning of each ECM, including performance of the maintenance tasks, manufacturer's recommendations and supplemental procedures included in the O&M Manuals as defined by the ESCO in the CMMS. Maintenance also refers to performing required maintenance of ancillary systems.

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## EXHIBIT H

### **ESCO'S INSURANCE REQUIREMENTS**

The ESCO shall provide the following minimum insurance coverages:

1. Commercial General Liability (Primary and Umbrella)

Commercial General Liability Insurance or equivalent with limits of not less than \$10,000,000 per occurrence for bodily injury, personal injury, and property damage liability. Coverage must include the following: All premises and operations, products/completed operations (for minimum of two (2) years following project completion), flood, explosion, collapse, underground hazards, separation of insureds, defense and contractual liability. The ESCO and all subcontractors of every tier will specifically name the Customer, the Commission, the Client, the Client agency/property owner of each project, the Lender and others as may be required by the Customer as Additional Insured on a primary and non-contributory basis, with respect to liability arising out of operations of ESCO, and/or its Subcontractors, on behalf of Customer and/or Client, where required by written contract for any liability arising directly or indirectly from the work including the two (2) years completed operations period using the ISO CG2010 (0704) and CG2037 (0704) or equivalent. Coverage will include a waiver of subrogation as required below. The ESCO's Excess Insurance may be used to satisfy the limits specified in this section.

***The ESCO and subcontractors are required to endorse their liability policies with form CG 24 17 to eliminate the exclusion for work within fifty (50) feet of the rail right-of-way. The ESCO must provide copies of this endorsement with the certificate of insurance required below. The ESCO must ensure that Subcontractors maintain this endorsement on their policies. Such coverage is required only when the ESCO's work is within 50 feet of such rail right-of-way.***

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

2. Automobile Liability (Primary and Umbrella)

When any motor vehicles (owned, non-owned, leased and hired) are used in connection with work to be performed, the ESCO must provide Automobile Liability Insurance, with limits of not less than \$5,000,000 per occurrence for bodily injury and property damage. The Customer, the Commission, the City of Chicago and the client agency/property owner of each project and others as may be required by the Customer as designated in the scope of work are to be named as Additional Insureds on a primary, non-contributory basis, with respect to liability arising out of operations of ESCO, and/or its Subcontractors, on behalf of Customer and/or Client. The ESCO's Excess Insurance may be used to satisfy the limits specified in this section.

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Subcontractors performing work for the ESCO must maintain limits of not less . than \$1,000.000 per occurrence with the same terms herein.

### 3. Workers' Compensation and Employers Liability

Workers' Compensation Insurance as prescribed by applicable law covering all employees who are to provide a service under this Contract and Employers Liability coverage with limits of not less than \$1.000,000 each accident, illness or disease. Coverage will include a waiver of subrogation as required below.

### 4. Professional Liability

Professional Liability Insurance must be maintained with limits of not less than \$5,000,000 covering acts, errors, or omissions. The policy will include coverage for wrongful acts, including but not limited to errors, acts or omissions, in the rendering or failure to render professional services, When policies are renewed or replaced, the policy retroactive date must coincide with, or precede the, start of work under this Contract. Coverage must be maintained for two years after Substantial Completion. A claims-made policy, which is not renewed or replaced, must have an extended reporting period of two (2) years.

Subcontractors performing professional services for the ESCO must maintain limits of not less than \$1,000,000 with the same terms herein.

### 5. Contractors' Pollution Liability

Contractors' Pollution coverage is required with limits of not less than \$5,000,000 per occurrence for any portion of the services, which may entail, exposure to any pollutants, whether in the course of sampling, remedial work or any other activity under this Contract. The Contractors' Pollution liability policy will provide coverage for sums that the insured become legally obligated to pay as loss as a result of claims for bodily injury, property damage and/or clean-up costs caused by any pollution incident arising out of the Work including remediation operations, transportation of pollutants, owned and non-owned disposal sites and any and all other activities of the ESCO and its subcontractors. Pollution incidents will include, but not be limited to, the discharge, dispersal, release or escape of any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, medical waste, waste materials, lead, asbestos, silica, hydrocarbons and microbial matter, including fungi which reproduces through release of spores or the splitting of cells or other means, including but not limited to, mold, mildew and viruses, whether or not such microbial matter is living.

The policy will be maintained for a period of three years after final completion and include completed operations coverage. The policy will include the Customer, the Commission, the Client and the client agency/property owner of each project, the Lender and others as may be required by the Customer, as Additional Insured on a primary and non-contributory basis for on-going and completed operations with respect to liability arising out of operations of ESCO, and/or its subcontractors, on behalf of Customer and/or Client.

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Subcontractors performing work for the ESCO must maintain limits of not less than \$1,000,000

per occurrence with the same terms herein.

6. Builders Risk/Installation Floater

The ESCO must provide All Risk Builders Risk/Installation Floater insurance or equivalent on a replacement cost basis for materials, supplies, equipment, machinery and fixtures that are or will be part of the permanent facility. Coverage must be on an All Risk basis including, but are not limited to, the following: right to partial occupancy, collapse, water damage including overflow, leakage, sewer backup, or seepage, damage to adjoining or existing property, debris removal, scaffolding, false work, fences, and temporary structures, resulting damage from faulty workmanship or materials, ordinance and Law, and equipment stored off site or in transit. The Customer, the Commission, the Client, the client agency/property owner of each project and the Lender are to be loss payees on the policy. Coverage must remain in place until at least Substantial Completion.

The ESCO is responsible for all loss or damage to personal property including but not limited to materials, equipment, tools, and supplies owned, rented, or used by ESCO.

7. Railroad Protective Liability

When work is to be performed within fifty (50) feet of the rail right-of-way, the ESCO shall ensure that Railroad Protective Liability insurance in the name of the railroad or transit entity remains in force during the course of construction of the project entity for losses arising out of injuries to or death of all persons, and for damage to or destruction of property, including the loss of use thereof. Limits shall be in the amount required by the railroad or transit entity.

*The ESCO and subcontractors are required to endorse their liability policies with form CG 24 17 to eliminate the exclusion for work within fifty (50) feet of the rail right-of-way. The ESCO and subcontractors must provide copies of this endorsement with the certificate of insurance required below.*

8. Umbrella.

The General Liability, Automobile and Workmen's Compensation policy limits described above may be provided in combination with any umbrella liability policy maintained by the ESCO.

II. Policies described in Section I above shall be subject to the following:

1. Such certificates and policies must be in a form acceptable to the Customer and from companies with a general rating of A minus, and a financial size category of Class VII or better, in Best's Insurance Guide. In accordance with ISO ACORD Form 25 (2010/05), should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy

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provisions; provided ESCO shall provide Customer at least thirty (30) days' prior written notice of the cancellation, non-renewal (without replacement) or material reduction of coverage or limits of any policy of insurance referred to herein.

2. The ESCO must, at all times during the term of this Contract, maintain and keep in force, at the Company's expense, the insurance coverages provided above.

3. In the event of a claim or litigation the Customer reserves the right to obtain applicable portions of insurance policies and records from the ESCO and/or its Subcontractors at any time upon written request, redacted to delete any ESCO confidential information not relevant to the claim, litigation or intended coverage.

4. Any deductibles or self-insured retentions on referenced insurance coverage must be borne by the ESCO.

5. The Company hereby waives and agrees that their insurers waive their rights of subrogation against the Customer and the Client, and their respective Board members, employees, elected officials, agents or representatives.

6. Unless otherwise stated herein, the insurance coverage and limits furnished by the ESCO in no way limit the ESCO's liabilities and responsibilities specified within this Contract or by law

7. Any insurance or self-insurance programs maintained by the Client do not contribute with insurance provided by the ESCO under this Contract.

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

9. The ESCO must require all its Subcontractors to provide the insurance required in this Contract, or ESCO may provide the coverage for its Subcontractors. All its Subcontractors are subject to the same insurance requirements of the ESCO unless otherwise specified in this Contract.

10. If the ESCO or its Subcontractors desires additional coverage, the party desiring the additional coverage is responsible for the acquisition and cost.

11. The Customer maintains the rights to modify, delete, alter or change these requirements upon written notice to the ESCO. Documented increased costs resulting from revised insurance requirements may be submitted as a Change Order increasing the Contract Sum.

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#### EXHIBIT I

##### Customer Disclosures and Certifications

Name: NORESCO, LLC

Address: One Research Drive. Suite 400C. Westborough, MA 01581



NORESCO Holdings Managing Member

- d. If the corporation has fewer than 100 shareholders indicate here or attach a list of names and addresses of all shareholders and the percentage interest of each.

Name (Print or Type)	Address Ownership	Interest
NORESCO Holdings, Inc.	One Research Drive, Westborough, MA	98.5 %
NORESCO Acquisition, Inc.	One Research Drive, Westborough, MA	1,5 %
		%

- e. If the corporation has 100 or more shareholders, indicate here or attach a list of names and addresses of all shareholders owning shares equal to or in excess of seven and one-half percent (7.5%) of the proportionate ownership of the corporation and indicate the percentage interest of each.

Name (Print or Type)	Address Ownership	Interest
		%
		%
		%

- f. Is the corporation owned partially or completely by one or more other corporations? Yes ☒ No ☐

If "yes" provide the above information, as applicable, for each such corporation.

## SECTION 2. PARTNERSHIPS

- a. If the bidder/proposer is a partnership, indicate the name of each partner and the percentage of interest of each therein.

Name of Partners (Print or Type)	Percentage Interest
	%
.	%
;	%



—

%

### **SECTION 3. SOLE PROPRIETORSHIP**

- a. The bidder/proposer is a sole proprietorship and is not acting in any representative capacity
- a. on behalf of any beneficiary: Yes [ ] No [ ]  
If NO, complete items b. and c. of this Section 3.
- b. If the sole proprietorship is held by an agent(s) or a nominee(s), indicate the principal(s) for whom the agent or nominee holds such interest.

Name(s) of Principal(s). (Print or Type)

c.

Address(es)

### **SECTION 4. LAND TRUSTS, BUSINESS TRUSTS, ESTATES & OTHER ENTITIES**

If the bidder/proposer is a land trust, business trust, estate or other similar commercial or legal entity, identify any representative, person or entity holding legal title as well as each beneficiary in whose behalf title is held including the name, address and percentage of interest of each beneficiary.

Name(s) Address(es)

### **SECTION 5. NOT-FOR-PROFIT CORPORATIONS**

- a. State of incorporation \_\_\_\_\_
- b. Name of all officers and directors of corporation (or attach list):

Name (Print or Type) Title (Print or Type) Name (Print or Type) Title (Print or Type)

NOTE: The Chicago Infrastructure Trust may require additional information from any entity or individual to achieve full disclosure relevant to the transaction. Further, any material change in the information required above must be provided by supplementing this statement at any time up to the time the Chicago Infrastructure Trust takes action on the contract or other action requested of the Chicago Infrastructure Trust.

## CONTRACTOR CERTIFICATION

### CONTRACTOR

The Contractor, or any subcontractor to be used in the performance of this contract, or any affiliated entities of the Contractor or any such subcontractor, or any responsible official thereof, or any other official, agent or employee of the Contractor, any such subcontractor or any such affiliated entity, acting pursuant to the direction or authorization of a responsible official thereof has not, during a period of three years prior to the date of execution of this certification or if a subcontractor or subcontractor's affiliated entity during a period of three years prior to the date of award of the subcontract:

- a. Bribed or attempted to bribe, or been convicted of bribery or attempting to bribe a public officer or employee of the City of Chicago, the State of Illinois, any agency of the federal government or any state or local government in the United States (if an officer or employee, in that officer's or employee's official capacity); or
- b. Agreed or colluded, or been convicted of agreement or collusion among bidders or prospective bidders in restraint of freedom of competition by agreement to bid a fixed price or otherwise; or
- c. Made an admission of such conduct described in 1(a) or (b) above which is a matter of record but has not been prosecuted for such conduct,

The Contractor or agent, partner, employee or officer of the Contractor is not barred from contracting with any unit of state or local government as a result of engaging in or being convicted of bid-rigging<sup>2</sup> in violation of Section 3 of Article 33E of the Illinois Criminal • Code of 1961, as amended (720 ILCS 5/33E-3), or any similar offense of any state or the United States which contains the same elements as the offense of bid-rigging during a period of five years prior to the date of submittal of this bid, proposal or response.<sup>3</sup>

The Contractor or any agent, partner, employee, or officer of the Contractor is not barred from contracting with any unit of state or local government as a result of engaging in or being convicted of bid-rotating<sup>4</sup> in violation of Section 4 of Article 33E of the Illinois Criminal Code of 1961, as amended (720 ILCS 5/33E-4), or any similar offense of any state or the United States which contains the same elements as the offense of bid-rotating.

The Contractor understands and will abide by all provisions of Chapter 2-56 of the Municipal Code entitled "Office of the Inspector General" and all provisions of the Public Building Commission Code of Ethics Resolution No.5339, as amended by Resolution No. 5371.

5. The Contractor certifies to the best of its knowledge and belief, that it and its principals:

- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal, state or local department or agency.
- b. Have not within a three-year period preceding this bid or proposal been convicted of or had a civil judgement rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes; commission of embezzlement, theft, forgery, bribery, falsification or destruction of records; making false statements; or receiving stolen property;
- c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (5)(b) above; and
- d. Have not within a three-year period preceding this bid or proposal had one or more public transactions (federal, state or local) terminated for cause or default.

#### SUBCONTRACTOR

The Contractor has obtained from all subcontractors being used in the performance of this contract or agreement, known by the Contractor at this time, certifications substantially in the form of Section 1 of this Disclosure Affidavit. Based on such certification(s) and any other information known or obtained by the Contractor, is not aware of any such subcontractor or subcontractor's affiliated entity or any agent, partner,

employee or officer of such subcontractor or subcontractor's affiliated entity having engaged in or been convicted of (a) any of the conduct describe in Section 11(A) (1)(a) or (b) of this certification; (b) bid-rigging, bid-rotating, or any similar offense of any state or the United States which contains the same elements as bid-rigging or bid-rotating, or having made an admission of guilt of the conduct described in Section 11(A)(1)(a) or (b) which is matter of record but has/have not been prosecuted for such conduct.

The Contractor will, prior to using them as subcontractors, obtain from all subcontractors to be used in the performance of this contract or agreement, but not yet known by the Contractor at this time, certifications substantially in the form of this certification. The Contractor shall not, without the prior written permission of the Commission, use any of such subcontractors in the performance of this contract if the Contractor, based on such certifications or any other information known or obtained by Contractor, became aware of such subcontractor, subcontractor's affiliated entity or any agent, employee or officer of such subcontractor or subcontractor's affiliated entity having engaged in or been convicted of (a) any of the conduct describe in Section 11(A)(1)(a) or (b) of this certification or (b) bid-rigging, bid-rotating or any similar offenses of any state or the United States which contains the same elements as bid-rigging or bid-rotating or having

made an admission of guilt of the conduct described in Section 11(A)(1)(a) or (b) which is a matter of record but has/have not been prosecuted for such conduct. The Contractor shall cause such subcontractors to certify as to Section 11(A)(5). In the event any subcontractor is unable to certify to Section 11(A)(5), such subcontractor shall attach an explanation to the certification.

3. For all subcontractors to be used in the performance of this contract or agreement, the Contractor shall maintain for the duration of the contract all subcontractors' certifications required by Section 11(B)(1) and (2) above, and Contractor shall make such certifications promptly available to the Chicago Infrastructure Trust upon request.
4. The Contractor will not, without the prior written consent of the Chicago Infrastructure Trust, use as subcontractors any individual, firm, partnership, corporation, joint venture or other entity from whom the Contractor is unable to obtain a certification substantially in the form of this certification.
5. The Contractor hereby agrees, if the Chicago Infrastructure Trust so demands, to terminate its subcontract with any subcontractor if such subcontractor was ineligible at the time that the subcontract was entered into for award of such subcontract. The Contractor shall insert adequate provisions in all subcontracts to allow it to terminate such subcontractor as required by this certification.

## **C. STATE TAX DELINQUENCIES**

1. The Contractor is not delinquent in the payment of any tax administered by the Illinois Department of Revenue or, if delinquent, the contractor is contesting, in accordance with the procedures established by the appropriate Revenue Act, its liability for the tax or amount of the tax.
2. Alternatively, the contractor has entered into an agreement with the Illinois Department of Revenue for the payment of all such taxes that are due and is in compliance with such agreement.
3. If the Contractor is unable to certify to any of the above statements [(Section II (C))], the Contractor shall explain below. Attach additional pages if necessary.

4. If any subcontractors are to be used in the performance of this contract or agreement, the Contractor shall cause such subcontractors to certify as to paragraph (C)(1) or (C)(2) of this certification. In the event that any subcontractor is unable to certify to any of the statements in this certification, such subcontractor shall attach an explanation to this certification.

**D. OTHER TAXES/FEES**

1. The Contractor is not delinquent in paying any fine, fee, tax or other charge owed to the City of Chicago.
2. If Contractor is unable to certify to the above statement,. Contractor shall explain below and attach additional sheets if necessary.

**E. ANTI-COLLUSION**

The Contractor, its agents, officers or employees have not directly or indirectly entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with this proposal or contract. Failure to attest to this section as part of the bid will make the bid nonresponsive and not eligible for award consideration.

**F. PUNISHMENT**

A Contractor who makes a false statement material to Section 11(A)(2) of this certification commits a Class 3 felony. 720 ILCS 5/33E-11(b).

**G. JUDICIAL OR ADMINISTRATIVE PROCEEDINGS**

1. The Contractor is not a party to any pending lawsuits against the City of Chicago, the Chicago Infrastructure Trust or the Public Building Commission of Chicago nor has Contractor been sued by the City of Chicago, the Chicago Infrastructure Trust or the Public Building Commission of Chicago in any judicial or administrative proceeding.
2. If the Contractor cannot certify to the above, provide the (1) case name; (2) docket number; (3) court in which the action is or was pending; and (4) a brief description of each such judicial or administrative proceeding. Attach additional sheets if necessary.

**111. CERTIFICATION OF ENVIRONMENTAL COMPLIANCE**

- A. Neither the Contractor nor an)' affiliated entity of the Contractor has, during a period of five years prior to the date of execution of this Affidavit: (1) violated or engaged in any conduct which violated federal, state or local Environmental Restriction<sup>5</sup>, (2) received notice of any claim, demand or action, including but not limited to citations and warrants, from any federal, state or local agency exercising executive, legislative, judicial, regulatory or administrative functions relating to a violation or alleged violation of any federal, state or local statute, regulation or other Environmental Restriction; or (3) been subject to any fine or penalty of any nature for failure to comply with any federal, state or local statute, regulation or other Environmental Restriction.

If the Contractor cannot make the certification contained in Paragraph A of Section III, identify any exceptions:

NORESCO is a wholly-owned indirect subsidiary of Carrier Corporation ("Carrier"). Carrier is a division of United Technologies Corporation ("UTC"), a Fortune 500 company listed on the New York Stock-Exchange (NYSE: UTXV). NORESCO can only make this certification on behalf of itself and all affiliates under its control. More information about Carrier and UTC may be found in UTC's annual report submitted to the Securities and Exchange Commission which is available at [www.utc.com](http://www.utc.com) <<http://www.utc.com>>. All litigation and other disputes of a material nature or size are included in UTC's annual report.

(Attach additional pages of explanation to this Disclosure Affidavit, if necessary.)

- B. Without the prior written consent of the Chicago Infrastructure Trust, Contractor will not employ any subcontractor in connection with the contract or proposal to which this Affidavit pertains without obtaining from such subcontractor a certification similar in form and substance to the certification contained in Paragraph A of this Section III prior to such subcontractor's performance of any work or services or furnishing any goods, supplies or materials of any kind under the proposal or the contract to which this Affidavit pertains.
- C. Until completion of the Contractor's performance under the proposal or contract to which this Affidavit pertains, the Contractor will not violate any federal, state or local statute, regulation or other Environmental Restriction, whether in the performance of such contract or otherwise.

#### **IV. CERTIFICATION OF COURT-ORDERED CHILD SUPPORT COMPLIANCE**

For purpose of this Section IV, "SUBSTANTIAL OWNER" means any person who owns or holds a ten percent (10%) or more percentage of interest in the Contractor. If the Contractor is an individual or sole proprietorship, substantial owner means that individual or sole proprietorship. Percentage of interest includes direct, indirect and beneficial interests in the Contractor. Indirect or beneficial interest means that an interest in the Contractor is held by a corporation, joint venture, trust, partnership, association, state or other legal entity in which the individual holds an interest or by agent(s) or nominee(s) on

behalf of an individual or entity. For example, if Corporation B holds or owns a twenty percent (20%) interest in Contractor, and an individual or entity has a fifty percent (50%) or more percentage of interest in Corporation B, then such individual or entity indirectly has a ten (10%) or percentage of

interest in the Contractor. In this case, the response to this Section IV, must cover such individual(s) or entity. If Corporation B is held by another entity, then this analysis similarly must be applied to that next entity.

If Contractor's response in this Section IV is 1 or 2, then all of the Contractor's Substantial- Owners must remain in compliance with any such child support obligations (1) throughout the term of the contract and any extensions thereof; or (2) until the performance of the contract is completed, as applicable. Failure of Contractor's Substantial Owners to remain in compliance with their child support obligations in the manner set forth in either 1 or 2 constitutes an event of default.

Check one:

1. ☒ No Substantial Owner has been declared in arrearage on his or her child support obligations by the Circuit Court of Cook County or by another Illinois court of competent jurisdiction.
2. ☐ The Circuit Court of Cook County or another Illinois court of competent jurisdiction has issued an order declaring one or more Substantial Owners in arrearage on their child support obligations. All such Substantial Owners, however, have entered into court-approved agreements for the payment of all such child support owed, and all such Substantial Owners are in compliance with such agreements.
3. ☐ The Circuit Court of Cook County or another Illinois court of competent jurisdiction has issued an order declaring one or more Substantial Owners in arrearage on their child support obligations and: (1) at least one such Substantial Owner has not entered into a court-approved agreement for the payment of all such child support for the payment of all such child support owed; or both (1) and (2).
4. ☐ There are no Substantial Owners.

## **V. INCORPORATION INTO CONTRACT AND COMPLIANCE**

The above certification shall become part of any contract awarded to the Contractor set forth on page 1 of this Disclosure Affidavit and are a material inducement to the Chicago Infrastructure Trust's execution of the contract, contract modification or contract amendment with respect to which this Disclosure Affidavit is being executed and delivered on behalf of the Contractor. Furthermore, Contractor shall comply with these certifications during the term and/or performance of the contract.

## **VI. VERIFICATION**

Under penalty of perjury, I certify that I am authorized to execute this Disclosure Affidavit on behalf of the Contractor set forth on page 1, that I have personal knowledge of all the certifications made herein and that

the same are true.

S i gnat urp'joj^urhor David G.  
Mannherz

Name of Authorized Officer (Print or Type) Execiitive Vice  
President  
Title

(508) 614-1000  
Telephone Number

State of M CL&^CLtkMLf^ County of (a)i^JIsXL/

*Signed and sworn to before me on this )b"r<sup>k</sup> day of^j\_ ul , 20j±l\_\_ by*  
CDIVt d. C'?; f)\(km\u.v7. (Name) as £yAV V'f (Title) of

/V ft tLt&V 'O /.. L CL. (Bidder/Proposer or Contractor)  
Notary Public Signaitfre and Seal

^ Notary Public - KIERSTEN P. JESTER

LAitjLH 7- Q /jt-l.

11 m ifCommonweoll'h °\* Mossacbusetts " My qorpmisssiort Expires ■ April 7, 2017 '  
: Signaufre and Se

#### Notes 1-5 Disclosure Affidavit

1. Business entities are affiliated if, directly or indirectly, one controls or has the power to control the other, or if a third person controls or has the power to control both entities. Indicia of control include without limitation: interlocking management or ownership; identify of interests among family members; shared facilities and equipment; common use of employees; or organization of another business entity using substantially the same management, ownership or principals as the first entity.
2. For purposes of Section II (A) (2) of this certification, a person commits the offense of and engages in



bid-rigging when he knowingly agrees with any person who is, or but for such agreement should be, a competitor of such person concerning any bid submitted or not submitted by such person or another to a unit of state or local government when with the intent that the bid submitted or not submitted will result in the award of a contract to such person or another and he either (1) provides such person or receives from another information concerning the price or other material term or terms of the bid which would otherwise not be disclosed to a competitor in an independent noncollusive submission of bids or (2) submits a bid that is of such a price or other material term or terms that he does not intend the bid to be accepted, see 720 ILCS 5/33-E-3.

3. No corporation shall be barred from contracting with any unit of state or local government as a result of a conviction, under either Section 33E-3 or Section 33E-4 of Article 33 of the State of Illinois Criminal Code of 1961, as amended, of any employee or agent of such corporation if the employee so convicted is no longer employed by the corporation and: (1) it has been finally adjudicated not guilty Or (2) it demonstrates to the governmental entity with which it seeks to contract and that entity finds that the commission of the offense was neither authorized, requested, commanded, nor performed by a director, officer or a high managerial agent on behalf of the corporation as provided in paragraph (2) of subsection (a) of Section 5-4 of the State of Illinois Criminal Code.
4. For purposes of Section 11(A) of this certification, a person commits the offense of and engages in bid rotating when, pursuant to any collusive scheme or agreement with another, he engages in a pattern over time (which, for the purposes hereof, shall include at least three contract bids within a period of ten years, the most recent of which occurs after January 1, 1989) of submitting sealed bids to units of state or local government with the intent that the award of such bids rotates, or is distributed among, persons or business entities which submit bids on a substantial number of the same contracts. See 720 ILCS 5/33E-4.
5. "Environmental Restriction" means any statute, ordinance, rule, regulation, permit, permit condition, order or directive relating to or imposing liability or standards of conduct concerning the release or threatened release of hazardous materials, special wastes or other contaminants into the environment, and to the generation, use, storage, transportation, or disposal of construction debris, bulk waste, refuse, garbage, solid wastes, hazardous materials, special wastes or other contaminants including but not limited to (1) Section 7-28-440 or 11-4-1500 or Article XIV of Chapter 11-4 or Chapter 7-28 or 11-4 of the Municipal Code of Chicago; (2) Comprehensive Environment

Response and Compensation and Liability Act (42 U.S.C. § 9601 et seq.) the Hazardous Material Transportation Act (49 U.S.C. § 1801 et seq.); (4) the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 7401 et seq.); (5) the Clean Water Act (33 U.S.C. § 1251 et seq.); (6) the Clean Air Act (42 U.S.C. § 7401 et seq.); (7) the Toxic Substances Control Act of 1976 (15 U.S.C. § 2601 et seq.); (8) the Safe Drinking Water Act (42 U.S.C. § 3001); (9) the Occupational Health and Safety Act of 1970 (29 U.S.C. § 651 et seq.); (10) the Emergency Planning and Community Right to Know Act (42 U.S.C. § 11001 et seq.); and (10) the Illinois Environmental Protection Act (415 ILCS 5/1 through 5/56.6).

## **EXHIBIT J**

### **CLIENT-REQUIRED TERMS AND CONDITIONS**

#### **Section 1.1 Prompt Payment to Subcontractors.**

a) Incorporation of Prompt Payment Language in subcontracts. The ESCO must state the requirements of this Section in all subcontracts and purchase orders. If the ESCO fails to incorporate these provisions in all subcontracts and purchase orders, the provisions of this Section are deemed to be incorporated in all subcontracts and purchase orders. The ESCO and the Subcontractors have a continuing obligation to make prompt payment to their respective Subcontractors. Compliance with this obligation is a condition of the ESCO's participation and that of its Subcontractors on this Contract.

b) Payment to Subcontractors Within Fourteen Days. The ESCO must make payment to its Subcontractors within fourteen (14) Days of receipt of payment from the Customer for each invoice, but only if the Subcontractor has satisfactorily provided goods or services or completed its work or services in accordance with this Contract and provided the ESCO with all of the documents and information required of the ESCO. The ESCO may delay or postpone payment to a Subcontractor when the Subcontractor's work or materials do not comply with the requirements of this Contract, the ESCO is acting in good faith, and not in retaliation for a Subcontractor exercising legal or contractual rights.

c) Reporting Failures to Promptly Pay, (i) The Client posts payments to prime contractors on the web at:

<<http://webapps.cityofchicago.org/A/CSearchWeb/org/cityofchicago/vcsearch/controller/pa>>

ii) If the ESCO, without reasonable cause, fails to make any payment to its Subcontractors and material suppliers within fourteen (14) Days after receipt of payment under this Contract, the ESCO shall pay to its Subcontractors and material suppliers, in addition to the payment due them, interest in the amount of 2% per month, calculated from the expiration of the 14-Day period until fully paid.

iii) In the event that the ESCO fails to make payment to a Subcontractor within the 14-Day period required above, the Subcontractor may notify the Client by submitting a report form that may be downloaded from the DPS website at:

<<http://www.cityofchicago.org/content/dam/city/depts/dps/ContractAdministration/Standar>>

The report will require the Subcontractor to affirm that (a) its invoice to the ESCO was included in the payment request submitted by the ESCO to the Customer and (b) the Subcontractor has not, at the time of the report, received payment from the ESCO for that invoice. The report must reference the payment (voucher) number posted on-line by the Client in the notice of the payment to the ESCO. Subcontractors are hereby reminded that per Chapters 1-21, "False Statements," and 1-22, "False Claims," of the Municipal Code of Chicago (the "MCC"). making false statements or claims to the Client are violations of law and subject to a range of penalties including fines and debarment.

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Section 1.2 Whistleblower Protection. The ESCO shall not take any retaliatory action against any Subcontractor for reporting non-payment pursuant to Section 1.1. Any such retaliatory action is an event of default under this Contract and is subject to the remedies set forth herein, including termination. In addition to those remedies, any retaliatory action by the ESCO may result in the ESCO being deemed non-responsible for future Client projects or, if, in the sole judgment of the Client, such retaliatory action is egregious, the Client may initiate debarment proceedings against the contractor. Any such debarment shall be for a period of not less than one year.

Section 1.3 Liquidated Damages for Failure to Promptly Pay. Much of the Client's economic vitality derives from the success of its small businesses. The failure by contractors to pay their subcontractors in a timely manner, therefore, is clearly detrimental to the Client. Inasmuch as the actual damages to the

Customer and the Client due to such failure are uncertain in amount and difficult to prove, the ESCO and the Customer agree that the Customer may assess liquidated damages against contractors who fail to meet their prompt payment requirements. Such liquidated damages shall be assessed to compensate the Customer and Client for any and all damage incurred due to the failure of the contractor to promptly pay its subcontractors, and does not constitute a penalty. Any and all such liquidated damages collected by the Customer or the Client shall be used to improve the administration and outreach efforts of the Client's Small Business Program.

Section 1.4 Action by the Customer. Upon receipt of a report of a failure to pay, the Customer will issue notice to the ESCO and provide the ESCO with an opportunity to demonstrate reasonable cause for failing to make payment within applicable period set forth in this Contract. The Customer and/or the Client shall determine whether any cause for nonpayment provided by ESCO is reasonable. In the event that the ESCO fails to demonstrate reasonable cause for failure to make payment, the Customer and/or the Client shall notify the ESCO that it will assess liquidated damages. Any such liquidated damages will be assessed according to the following schedule:

First Unexcused Report: Second Unexcused Report: Third Unexcused Report: Fourth Unexcused Report:  
\$50 \$100 \$250 \$500

Section 1.5 Business Enterprises Owned by People With Disabilities (BEPD). It is the policy of the Client that businesses certified as a business enterprise owned by people with disabilities ("BEPD") in accordance with MCC Section 2-92-337 et seq., Regulations Governing Certification of BEPDs, and all other regulations promulgated under the aforementioned sections of the MCC; shall have the full and fair opportunities to participate fully in the performance of this Contract. The ESCO shall not discriminate against any person or business on the basis of disability, and shall take affirmative actions to ensure BEPDs shall have full and fair opportunities to compete for and perform subcontracts for supplies or services. Failure to carry out the commitments and policies set forth herein shall constitute a material breach of this Contract and may result in the termination of this Contract or such remedy as the Customer deems appropriate.

#### Section 1.6 Wages.

(a) Living Wage Ordinance. MCC Sect. 2-92-610 provides for a living wage for certain categories of workers employed in the performance of contracts for Client projects, specifically non-Client employed security guards, parking attendants, day laborers, home and

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health care workers, cashiers, elevator operators, custodial workers, and clerical workers ("Covered Employees"). Accordingly, pursuant to MCC Sect. 2-92-610 and regulations promulgated thereunder:

i) if (1) the ESCO has 25 or more full-time employees, and (2) if at any time during the performance of this Contract the ESCO and/or any Subcontractor or any other entity that provides any portion of the services under this Contract (collectively "Performing Parties") uses 25 or more full-time security guards or any number of other full-time Covered Employees, then the ESCO's obligation to pay, and to assure payment of, the Base Wage (as defined herein) will begin at any time during term of this Contract when the conditions set forth in (1) and (2) above are met, and will continue thereafter until the end of the Term.

ii) As of July 1, 2013, the Base Wage is \$11.78. The current rate can be found on the Client's Department of Procurement Services' website. Each July 1st the Base Wage will be adjusted, using the most recent federal poverty guidelines for a family of four (4) 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 (4) divided by 2000 hours or the current base wage, whichever is higher. At all times during the term of this Contract, the ESCO and all Subcontractors must pay the Base Wage (as

adjusted in accordance with the above). If the payment of prevailing wages is required for work or services done under this Contract, and the prevailing wages for Covered Employees are higher than the Base Wage, then the ESCO must pay the prevailing wage rates.

iii) The Contractor must include provisions in all subcontracts requiring its Subcontractors to pay the Base Wage to Covered Employees. The ESCO agrees to provide the Customer and the Client with documentation acceptable to the Chief Procurement Officer of the Client (the "CPO") demonstrating that all Covered Employees, whether employed by the ESCO or by a Subcontractor, have been paid the Base Wage, upon the Customer's request for such documentation. The Customer and the Client may independently audit the ESCO and/or Subcontractors to verify compliance herewith.

iv) Failure to comply with the requirements of this Section will be an event of default under this Contract, and further, failure to comply may result in ineligibility for any award of a Customer contract or subcontract for up to three years.

v) Not-for-Profit Corporations: If the ESCO 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 above do not apply.

(b) Prevailing Wage Rates. This Contract calls for the construction of a "public work" within the meaning of Illinois Prevailing Wage Act, 820 ILCS 130/.01 et seq. (the "Act"): the Act requires contractors and subcontractors to pay laborers, workers and mechanics performing services on public works projects no less than the current "prevailing rate of wages" (hourly cash wages plus amount for fringe benefits) in the county where the work is performed. The Illinois Department of Labor (the "Department") publishes the prevailing wage rates on its website at <<http://www.state.il.us/agency/idol/rates/rates.HTM>>. The Department revises the prevailing wage rates and the ESCO and its Subcontractors have an obligation to check the Department's web site for revisions to prevailing wage rates. For information regarding current prevailing wage rates, please refer to the Department's website. All contractors and

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subcontractors rendering services under this Contract must comply with all requirements of the Act, including but not limited to, all wage requirements and notice and record keeping duties.

As a condition of making payment to the ESCO, the Customer may require the ESCO or its Subcontractors to submit an affidavit to the effect that not less than the prevailing hourly wage rate is being paid to laborers, mechanics, and other workmen employed on this Contract in accordance with Illinois or federal law, as applicable.

(c) Multi-Project Labor Agreement. The Client has entered into the Multi-Project Labor Agreement (the "PLA") with various trades regarding projects involving construction, demolition, maintenance, rehabilitation, and/or renovation work, as described in the PLA, a copy of which may be found on the Client's website at:

<<http://www.cityofchicago.org/dam/city/depts/dps/RulesRegulations/Multi-ProjectLaborAgreement-PLAandSignatoryUnions.pdf>>.

To the extent that this Contract involves a project that is subject to the PLA, the ESCO acknowledges familiarity with the requirements of the PLA and its applicability to any work under this Contract, and shall comply in all respects with the PLA.

Section 1.7 Business Relationships With Elected Officials. Pursuant to MCC Section 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 Client 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 (12) 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 Sect. 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.

#### Section 1.8 MCC 1-23 and 720 ILCS 5/33E Bribery, Debts, and Debarment Certification.

(a) The ESCO or each joint venture partner, if applicable, warrants that the ESCO or each joint venture partner, its agents, employees, officers and any Subcontractors (a) have not been engaged in or been convicted of bribery or attempted bribery of a public officer or employee of the Client, the State of Illinois, any agency of the federal government or any state or local government in the United States or engaged in or been convicted of bid-rigging or bid-rotation activities as defined in this section as required by the Illinois Criminal Code; (b) do not owe any debts to the State of Illinois, in accordance with 65 ILCS 5/11-42.1-1 and (c) are not presently debarred or suspended; Certification Regarding Environmental Compliance; Certification Regarding Ethics and Inspector General; and Certification Regarding Court-Ordered Child Support Compliance.

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(b) The ESCO, in performing under this Contract shall comply with MCC Section 2-92-320, as follows:

i) No person or business entity shall be awarded a contract or sub-contract if that person or business entity: (a) has been convicted of bribery or attempting to bribe a public officer or employee of the Client, the State of Illinois, or any agency of the federal government or of any state or local government in the United States, in that officers or employee's official capacity; or (b) has been convicted of agreement or collusion among bidders or prospective bidders in restraint of freedom of competition by agreement to bid a fixed price, or otherwise; or (c) has made an admission of guilt of such conduct described in (a) or (b) above which is a matter of record but has not been prosecuted for such conduct.

ii) For purposes of this Section, where an official, agent or employee of a business entity has committed any offense under this section on behalf of such an entity and pursuant to the direction or authorization of a responsible official thereof, the business entity will be chargeable with the conduct.

iii) One business entity will be chargeable with the conduct of an affiliated agency Ineligibility under this section will continue for three (3) years following such conviction or admission. The period of ineligibility may be reduced, suspended, or waived by the CPO under certain specific circumstances. Reference is made to MCC Section 2-92-320 for a definition of affiliated agency, and a detailed description of the conditions which would permit the CPO to reduce, suspend, or waive the period of ineligibility.

Section 1.9 Federal Terrorist (No-Business) List. The ESCO warrants and represents that neither the ESCO nor an Affiliate, 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 Customer may not do business under any applicable law, rule, regulation, order or judgment.

For purposes of this Section 1.9, "Affiliate" means a person or entity which directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the ESCO. 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.

Section 1.10 Inspector General and Legislative Inspector General. It is the duty of any bidder, proposer or the ESCO, all Subcontractors, every applicant for certification of eligibility for a Client project or program, and all officers, directors, agents, partners and employees of any bidder, proposer, the ESCO, all Subcontractors or such applicant to cooperate with the Inspector General or the Legislative Inspector General in any investigation or hearing, if applicable, undertaken pursuant to MCC Chapter 2-56 or 2-55, respectively. The ESCO understands and will abide by all provisions of MCC Chapter 2-56 and 2-55. All subcontracts must inform Subcontractors of this provision and require understanding and compliance with them.

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Section 1.11 Governmental Ethics Ordinance 2-156. The ESCO must comply with MCC Chapter 2-156, Governmental Ethics, including but not limited to MCC Section 2-156-120 pursuant to which no payment, gratuity or offer of employment will be made in connection with any Client project, by or on behalf of a Subcontractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a Subcontract or order. Any contract negotiated, entered into, or performed in violation of any of the provisions of this this Section will be voidable as to the Client.

#### Section 1.12 Restrictions on Business Dealings.

a) Conflicts of Interest. The ESCO covenants that it presently has no interest and will not acquire any interest, direct or indirect, in any enterprise which would conflict in any manner or degree with the performance of the work, services or goods to be provided hereunder. The ESCO further covenants that in its performance of this Contract no person having any such interest shall be employed. If the Customer determines that the ESCO does have such a conflict of interest, the Customer will notify the ESCO in writing, stating the basis for its determination. The ESCO will thereafter have 30 days in which to respond with reasons why the ESCO believes a conflict of interest does not exist. If the ESCO does not respond or if the Customer still reasonably determines a conflict of interest to exist, the ESCO must terminate its interest in the other enterprise.

b) Prohibition on Certain Contributions, Mayoral Executive Order 2011-4. Neither the ESCO or any person or entity who directly or indirectly has an ownership or beneficial interest in the ESCO of more than 7.5% ("Owners"), spouses and domestic partners of such Owners, ESCO'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 (ESCO 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, and/or (iii) any period in which an extension of this Contract or Other Contract is being sought or negotiated. The ESCO 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 Client approached the ESCO or the date the ESCO approached the Client, 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.

The ESCO 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.

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

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opportunity to cure will be granted. Such breach and default entitles the Customer to all remedies (including without limitation termination for default) under this Contract, under any Other Contract, at law and in equity. This provision amends any Other Contract and supersedes any inconsistent provision contained therein.

If the ESCO violates this provision or Mayoral Executive Order No. 2011-4 prior to award of this Contract resulting from this specification, the CPO may reject the ESCO's bid.

For purposes of this provision:

"Other Contract" means any agreement entered into between the ESCO and the Client or the Customer that is (i) formed under the authority of MCC Chapter 2-92; (ii) for the purchase, sale or lease of real or personal property; or (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 Chapter 2-156, as amended.

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

Section 1.13 Debts Owed to the Client: Anti-Scofflaw. MCC Sect. 2-92-380. Pursuant to MCC Section 2-92-380 and in addition to any other rights and remedies (including set-off) available to the Customer under this Contract or permitted at law or in equity, the Customer will be entitled to set off a portion of the contract price or compensation due under the Agreement, in 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 the ESCO to the Client. For purposes of this Section, outstanding parking violation complaint means a parking ticket, notice of parking violation, or parking violation complaint on which no payment has been made or appearance filed in the Circuit Court of Cook County within the time specified on the complaint, and debt means a specified sum of money owed to the Client for which the period granted for payment has expired. However no such debt(s) or outstanding parking violation complaint(s) will be offset from the contract price or compensation due under this Contract if one or more of the following conditions are met:

i) The ESCO has entered into an agreement with the Department of Revenue, or other appropriate Client department, for the payment of all outstanding parking violation complaints and debts owed to the Client and the ESCO is in compliance with such agreement; or

ii) The ESCO is contesting liability for or the amount of the debt in a pending administrative or

judicial proceeding; or the contracting party has filed a petition in bankruptcy and the debts owed the Client are dischargeable in bankruptcy.

#### Section 1.14 Shakman Accord.

(a) The Client is subject to the May 31, 2007 Order entitled "Agreed Settlement Order and Accord" (the "Shakman Accord") and the June 24, 2011 "City of Chicago Hiring Plan" (the "City Hiring Plan") entered in *Shakman v. Democratic Organization of Cook County*, Case No 69 C 2145 (United States District Court for the Northern District of Illinois). Among other things, the Shakman Accord and the City Hiring Plan prohibit the Customer from hiring persons as governmental employees in non-exempt positions on the basis of political reasons or factors.

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b) The ESCO is aware that the Client's policy prohibits Client employees from directing any individual to apply for a position with the ESCO, either as an employee or as a Subcontractor, and from directing the ESCO to hire an individual as an employee or as a Subcontractor. Accordingly, the ESCO must follow its own hiring and contracting procedures, without being influenced by Client employees. Any and all personnel provided by the ESCO under this Contract are employees or Subcontractors of the ESCO, not employees of the Client. This C is not intended to and does not constitute, create, give rise to, or otherwise recognize an employer-employee relationship of any kind between the Customer or Client and any personnel provided by the ESCO.

c) The ESCO will not condition, base, or knowingly prejudice or affect any term or aspect of the employment of any personnel provided under this Contract, or offer employment to any individual to provide services under this Contract, 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 Contract, 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.

d) In the event of any communication to the ESCO by a Customer or Client employee or Customer or Client official in violation of paragraph (b) above, or advocating a violation of paragraph (c) above, the ESCO will, as soon as is reasonably practicable, report such communication to the Hiring Oversight Section of the Client's Office of the Inspector General, and also to the head of the relevant Client Department utilizing services provided under this Contract. The ESCO will also cooperate with any inquiries by IGO Hiring Oversight or the Shakman Monitor's Office related to this Contract.

Section 1.15 No Waste Disposal in Public Way MCC 11-4-1600(E). The ESCO 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 MCC (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; §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 Contract is executory, the ESCO's or any Subcontractor's violation of the Waste Sections, whether or not relating to the performance of this Contract, constitutes a breach of and an event of default under this Contract, for which the opportunity to cure, if curable, will be granted only at the sole discretion of the CPO. Such breach and default entitles the Customer to all remedies under this Contract, at law or in equity.

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This Section does not limit the ESCO'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 Contract.

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

Section 1.16 Duty to Report Corrupt or Unlawful Activity. It is the duty of the ESCO to report to the Inspector General of the Customer, directly and without undue delay, any and all information concerning conduct which it knows or should reasonably know to involve corrupt or other unlawful activity by its employees or the employees of any of its Subcontractors, in connection with the performance of its work hereunder, or by any person dealing with the Customer or the Client which concerns the person's dealings with the Customer or the Client. Knowing failure to make such a report will be an event of default under this Contract.

Section 1.17 Veterans Preference. In accordance with the Veterans Preference Act, 330 ILCS 55/0.01 et seq., employment and appointment preference shall be given to veterans when filling positions. This preference may be given only where the individuals are available and qualified to perform the Work. The ESCO must ensure that the above provision is inserted in all contracts it enters into with any Subcontractors and any labor organizations that furnish skilled, unskilled and craft union skilled labor, or that may provide any material, labor, or services in connection with this Agreement.

Section 1.18 Chicago Residency Requirements. The ESCO and all subcontractors that perform Work on the Project sites undertaken pursuant to this Contract shall comply with the minimum percentage of total worker hours performed by actual residents of the City of Chicago as specified in § 2-92-330 of the MCC, unless otherwise prohibited by law. In addition to complying with this requirement, the ESCO and all Subcontractors must make good faith efforts to utilize qualified residents of the City of Chicago in both unskilled and skilled labor positions.

"Actual residents of the City of Chicago" shall mean persons domiciled within the City of Chicago. The domicile is an individual's one and only true, fixed and permanent home and principal establishment.

The ESCO shall provide for the maintenance of adequate employee residency records to ensure that actual Chicago residents are employed on the Project. The ESCO and subcontractors shall maintain copies of personal documents supportive of every Chicago employee's actual record of residence.

Certified payroll reports (U.S. Department of Labor Form WH-347 or equivalent) must be submitted weekly to the Customer in triplicate, shall identify clearly the actual residence of every employee on each submitted certified payroll. The first time that an employee's name appears on a payroll, the date that the company hired the employee should be written in after the employee's name.

Full access to the ESCO's and Subcontractors' employment record shall be granted to the Customer and the Client, the Superintendent of the Chicago Police Department, the Inspector General, or any duly

authorized representative thereof. The ESCO and subcontractors shall maintain all relevant personnel data in records for a period of at least three years after final acceptance of the work.

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At the direction of the Customer, affidavits and other supporting documentation will be required of the ESCO to verify or clarify an employee's actual address when doubt or lack of clarity has arisen.

Good faith efforts on the part of the ESCO to provide utilization of actual Chicago residents shall not suffice to replace the actual, verified achievement of the requirements of this section concerning the worker hours performed by actual Chicago residents.

When Work is completed, in the event that the Customer has determined that the ESCO failed to ensure the fulfillment of the requirement of this section concerning the worker hours performed by actual Chicago residents or has failed to report in the manner as indicated above, the Client as the sponsor of the Customer and the Customer will thereby be damaged in the failure to provide the benefit of demonstrable employment to Chicagoans to the degree stipulated in this section. Therefore, in such a case of non-compliance it is agreed that 1/20 of 1 percent (.05%), 0.0005, of the approved contract value for this contract shall be surrendered by the ESCO to the Customer in payment for each percentage of shortfall toward the stipulated residency requirement. Failure to report the residency of employees entirely and correctly shall result in the surrender of the entire liquidated damages as if no Chicago residents were employed in either of the categories. The willful falsification of statements and the certification of payroll data may subject the ESCO or subcontractor or employee to prosecution. Any retainage to cover contract performance that may become due to the ESCO pursuant to the Contract and § 2-92-250 of the MCC may be withheld by the Customer pending the Customer determination whether the ESCO must surrender damages as provided in this paragraph.

Nothing herein provided shall be construed to be a limitation upon the "Notice of Requirements for Affirmative Action to Ensure Equal Employment Opportunity, Executive Order 11246" and "Standard Federal Equal Employment Opportunity, Executive Order 11246," or other affirmative action required for equal opportunity under the provisions of this contract".

Section 1.19 Employment of Illinois Laborers on Public Works Projects. The ESCO must use only Illinois laborers in the performance of this Contract to the extent (1) required by the Employment of Illinois Laborers on Public Works Projects Act, 30 ILCS, 570/0.01, as amended from time to time and (2) otherwise permitted by law.

Section 1.20 Emissions Reduction. The ESCO must comply with the Clean Diesel Contracting Ordinance, § 2-92- 595 of the MCC.

a) The ESCO and any Subcontractor(s) must utilize Ultra Low Sulfur Diesel Fuel (ULSD) for any heavy-duty diesel-powered vehicle, non-road vehicle or non-road equipment used in the performance of the Contract.

b) The ESCO and any Subcontractor(s) must minimize idling of motor vehicles and non-road vehicles used in the performance of the Contract during periods of inactivity, and must comply with the anti-idling requirements imposed by any applicable federal, state, or local law.

The Customer may conduct an audit of the ESCO or inspect any vehicle or equipment used in the performance of this Contract to ensure compliance with the requirements specified above. In the event that ESCO or any Subcontractor fails to utilize ULSD or fails to minimize idling or comply with anti-idling requirements, ESCO will be subject to liquidated damages of \$5,000 per day for each violation and each day

of noncompliance will be a separate violation; provided, however, the damages will not exceed \$50,000 for any one vehicle or piece of

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equipment, as specified in Section 2-92- 595(e) of the MCC. Such liquidated damages are imposed not as a penalty but as an estimate of the damages that the City, as the sponsor of the Customer, and the Customer will sustain from delay in completion of the project and inspection and inspection and other enforcement costs, as well as the resultant damages to the public health of its citizens, which damages by their nature are not capable of precise proof. The Customer is authorized to withhold and deduct from monies otherwise payable to the ESCO the amount of liquidated damages due to the Customer.

The ESCO understands that pursuant to Section 2-92-595(e)(6) of the MCC, any person knowingly making a false statement of material fact to any Client department with respect to compliance with the contract provisions specified in Section 2-92-595(e) of the MCC may be fined not less than \$1,000 or more than \$5,000 for each statement

Section 1.21 Licensing Of General Contractors. The ESCO must be in compliance with the requirements of Chapter 4-36 of the MCC, in the appropriate license class commensurate with the size of this Project, if the license is required for the scope of Work, at the time throughout the duration of this Contract.

The ESCO's failure to be licensed as a "general contractor" at all times throughout the duration of this Contract, if the license is required for the scope of Work, is an event of default under the Contract and the Customer may exercise any and all rights and remedies permitted under the Contract, at law, or in equity.

Section 1.22 Steel Products. Unless otherwise provided in the Steel Products Procurement Act, 30 ILCS 565/1 et seq., steel products used or supplied in the performance of this Contract or any subcontract to this Contract must be manufactured or produced in the United States. Knowing violation of this law may result in the filing and prosecution of a complaint by the Attorney General of the State of Illinois and will subject violators to a fine of the greater of \$5,000 or the payment price received as a result of such violation.

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## EXHIBIT K

### PROJECT PARTICIPATION GUIDELINES

In the performance of the services under the Contract, the ESCO must comply with the MBE participation requirements set forth in Attachment K-1 to this Exhibit K and use every reasonable effort to comply with the following project participation guidelines applicable to Client projects:

1. Utilize local businesses for subcontracting work in accordance with the following guidelines:
  - a. Companies that are not local businesses (as defined in clause (iii) below) are required to award 35% of the value of the work and services under the Contract to subcontractors that are local businesses.
  - b. A "local business" is one that: 1) owns or leases a functioning business office and/or operations facilities within the City of Chicago; 2) is registered and licensed to do business in the City of Chicago; 3) employs City of Chicago residents; and 4) is subject to City of Chicago taxes.
2. Provide opportunities for employment of community residents;
3. Provide opportunities for employment for the following programs:
  - a. Federally funded State Energy Sector Partnership Program administered by the Chicago Workforce Investment Council. Program partners include but are not limited to:
    - i. HACIA (Hispanic American Construction Industry Association)
    - ii. CWIT (Chicago Women in Trades)
    - iii. Chicago Regional Council of Carpenters Apprentice and Training Program.

Persons who have completed or are enrolled in programs comparable to the City Colleges of Chicago's Building Energy Technologies Occupational Certificate program at Wilbur Wright College.

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Attachment K-1

**City of Chicago**

**Commodities and Work Services MBE & WBE Special Conditions**

(attached)

K-1-2

CITY OF CHICAGO Department of Procurement Services Jamie L Rhee, Chief Procurement Office?-121  
North LaSalle Street, Room 806 Chicago, Illinois 60602-1284

Fax: 312-744-3281

## Commodities and Work Services MBE & WBE Special Conditions

### 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 (inclusive of any and all modifications and amendments), if awarded, for contract participation by MBEs and WBEs:

MBE Percentage	WBE Percentage
25%	5%

This commitment is met by the Contractor's 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 the indirect participation of MBEs or WBEs in other aspects of the Contractor's business {but no dollar of such indirect MBE or WBE participation will be credited more than once against a Contractor's MBE or WBE commitment with respect to all government Contracts of such Contractor), 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.

As noted above, the Contractor may meet all or part of this commitment by contracting with MBEs or WBEs for the provision of goods or services not directly related to the performance of this Contract. However, in determining the manner of MBE/WBE participation, the Contractor will first consider involvement of MBEs/WBEs as joint venture partners, subcontractors, and suppliers of goods and services directly related to

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the performance of this Contract. In appropriate cases, the Chief Procurement Officer will require the Contractor to demonstrate the specific efforts undertaken by it to involve MBEs and WBEs directly in the performance of this Contract.

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 2-92-535, the prime contractor may apply be awarded an additional 0.333 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 mentor agreement with the contractor. 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.*

"B.E.P.D." means an entity certified as a Business enterprise owned or operated by people with disabilities as defined in MCC Section 2-92-586.

"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.

"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.

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"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.

"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 credited 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 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.

"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.

### **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:

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- 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 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 proposed joint venture agreement, the Schedule B submitted on behalf of the proposed joint venture, and all related documents 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 with its bid a Schedule B and the proposed joint venture agreement. These documents must both 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,

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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 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. 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.
- 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.

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- 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:
  - 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.

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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:

- o 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 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 / Indirect 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 or indirect 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:

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- o choosing subcontracting opportunities likely to achieve MBE/WBE goals;
- o not imposing any limiting conditions which were not mandatory for all subcontractors;
- 9 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,

OR

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.

The requirements set forth in these Regulations (this subsection 1.5 "Regulations Governing Reductions 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.

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.

**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.

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 the joint venture agreement and a Schedule B along with all other requirements listed in Section 1.3. "Joint Ventures," 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. The joint venture agreement must also clearly define each partner's authority to contractually obligate the joint venture and each partner's authority to expend joint venture funds (e.g., check signing authority).

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.

**.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.mwdb.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;

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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; 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.

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

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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.

#### 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

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

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#### 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>>

- e 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
- o 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

Attachment A -Assist Agency List

## CHICAGO ENCyLIST"

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.

American Brotherhood of Contractors  
935 West 175<sup>th</sup> Street  
Homewood, Illinois 60430  
Phone: (773)491-5640  
Email: arba@constructive-business.com <mailto:arba@constructive-business.com>

Asian American Business Expo 207 East Ohio St. Suite 218 Chicago, IL 60611 Phone: 312-233-2810 Fax:312-268-6388  
Email: Janny@AsianAmericanBusinessExpo.org <mailto:Janny@AsianAmericanBusinessExpo.org>

Asian American Institute  
4753 N. Broadway St. Suite 904  
Chicago, IL 60640  
Phone:(773)271-0899  
Fax: (773)271-1982  
Email: kfernicola@aaichicago.org <mailto:kfernicola@aaichicago.org>  
Web: [www.aaichicago.org](http://www.aaichicago.org) <http://www.aaichicago.org>

Association of Asian Construction Enterprises  
[333 N. Ogden Avenue Chicago, IL 60607](http://www.aaichicago.org) Phone: (847) 525-9693 Email: [nakmancorp@aol.com](mailto:nakmancorp@aol.com) <mailto:nakmancorp@aol.com>

Black Contractors United  
400 W. 76<sup>th</sup> Street, Suite 200  
Chicago, IL 60620  
Phone: (773) 483-4000  
Fax:(773)483-4150  
Email: [bcunewera@att.net](mailto:bcunewera@att.net) <mailto:bcunewera@att.net>  
Web: [www.blackcontractorsunited.com](http://www.blackcontractorsunited.com) <http://www.blackcontractorsunited.com>

Cosmopolitan Chamber of Commerce  
203 N.Wabash, Suite 518  
Chicago, IL 60601  
Phone: (312)499-0611  
Fax: (312)332-2688

Fax: (312) 332-2000  
Email: [ccarey@cosmococ.org](mailto:ccarey@cosmococ.org) <<mailto:ccarey@cosmococ.org>>  
Web: [www.cosmochamber.org](http://www.cosmochamber.org) <<http://www.cosmochamber.org>>

Eighteenth Street Development Corporation

1843 South Carpenter

Chicago, Illinois 60608

Phone: (312) 733-2287

Fax: (773)-353-1683

[asotoi3toiahteenthstre9l.org](http://asotoi3toiahteenthstre9l.org) <<http://asotoi3toiahteenthstre9l.org>>[[www.eighleenthstree1.org](http://www.eighleenthstree1.org) <<http://www.eighleenthstree1.org>>  
Chatham Business Association Small Business  
Development, Inc.  
8441 S. Cottage Grove Avenue  
Chicago, IL 60619  
Phone: (773)994-5006  
Fax: (773)994-9871  
Email: [melkelcba@sbcglobal.net](mailto:melkelcba@sbcglobal.net) <<mailto:melkelcba@sbcglobal.net>>  
Web: [www.cbaworks.org](http://www.cbaworks.org) <<http://www.cbaworks.org>>

Chicago Area Gay & Lesbian Chamber of Commerce  
3656 N. Halsted Chicago, IL 60613 Phone: (773) 303-0167 Fax: (773) 303-0168 Email: [info@glchamber.org](mailto:info@glchamber.org)  
<<mailto:info@glchamber.org>>Web: [www.alchamber.org](http://www.alchamber.org) <<http://www.alchamber.org>>

Chicago Minority Supplier Development Council, Inc.  
105 W. Adams, Suite 2300  
Chicago, IL 60603-6233  
Phone:(312)755-8880 •  
Fax: (312) 755-8890  
Email: [pbarreda@chicagomsdc.org](mailto:pbarreda@chicagomsdc.org) <<mailto:pbarreda@chicagomsdc.org>>  
Web: [www.chlcaqomsdc.org](http://www.chlcaqomsdc.org) <<http://www.chlcaqomsdc.org>>

Chicago Urban League 4510 S. Michigan Ave. Chicago, IL 60653 Phone: (773) 285-5800 Fax: (773) 285-7772  
Email: [president@thechicagourbanleague.org](mailto:president@thechicagourbanleague.org) Web: [www.cul-chicagoo.org](http://www.cul-chicagoo.org) <<http://www.cul-chicagoo.org>>

Chicago Women In Trades (CWIT)  
4425 S. Western Blvd.  
Chicago, IL 60609-3032  
Phone: (773) 376-1450  
Fax: (312) 942-0802  
Email: [cwitinfo@cwit2.org](mailto:cwitinfo@cwit2.org) <<mailto:cwitinfo@cwit2.org>>  
Web: [www.chicaawomenintrades.org](http://www.chicaawomenintrades.org) <<http://www.chicaawomenintrades.org>>

Coalition for United Community Labor Force  
1253W. 63<sup>rd</sup> Street  
Chicago, IL 60636  
Phone: (312) 243-5149  
Email: [johnrev.hatchett@cornea.st.net](mailto:johnrev.hatchett@cornea.st.net) <<http://st.net>>

Federation of Women Contractors 5650 S. Archer Avenue Chicago, IL 60638 Phone: (312)360-1122 Fax: (312) 360-0239 Email: [fwcchicago@aol.com](mailto:fwcchicago@aol.com) <<mailto:fwcchicago@aol.com>>Web: [www.fwcchicago.com](http://www.fwcchicago.com) <<http://www.fwcchicago.com>>

Hispanic American Construction Industry Association (HACIA)  
650 West Lake Street Chicago, IL 60661 Phone: (312) 666-5910 Fax: (312)666-5692 Email: [info@haciaworks.org](mailto:info@haciaworks.org)

300 West Lake Street, Chicago, IL 60601 Phone: (312) 600-0010 Fax: (312) 600-0002 Email: [info@haciaworks.org](mailto:info@haciaworks.org)  
<<mailto:info@haciaworks.org>>Web: [www.haciaworks.org](http://www.haciaworks.org) <<http://www.haciaworks.org>>

Illinois Hispanic Chamber of Commerce  
855 W. Adams, Suite 100  
Chicago, IL 60607  
Phone: (312) 425-9500  
Fax: (312) 425-9510  
Email: [oduque@ihccbbusiness.net](mailto:oduque@ihccbbusiness.net) <<mailto:oduque@ihccbbusiness.net>>  
Web: [www.ihccbbusiness.net](http://www.ihccbbusiness.net) <<http://www.ihccbbusiness.net>>

Latin American Chamber of Commerce 3512 West Fullerton Avenue Chicago, IL 60647 Phone: (773)252-5211 Fax: (773) 252-7065  
Email: [lorenzopadron@latlamerlcanchamberofcommerce.com](mailto:lorenzopadron@latlamerlcanchamberofcommerce.com) <<mailto:lorenzopadron@latlamerlcanchamberofcommerce.com>>Web:  
[www.latinamericanchamberofcommerce.com](http://www.latinamericanchamberofcommerce.com) <<http://www.latinamericanchamberofcommerce.com>>

National Organization of Minority Engineers  
33 West Monroe Suite 1540  
Chicago, Illinois 60603  
Phone: (312) 425-9560  
Fax: (312) 425-9564  
Email: [shandy@Infrastructure-eng.com](mailto:shandy@Infrastructure-eng.com) <<mailto:shandy@Infrastructure-eng.com>>  
Web: [www.nomeonline.org](http://www.nomeonline.org) <<http://www.nomeonline.org>>

National Association of Women Business Owners  
Chicago Chapter  
230 E. Ohio, Suite 400  
Chicago, IL 60611  
Phone: (312) 224-2605  
Fax: (312) 6448557  
Email: [info@nawbochicago.org](mailto:info@nawbochicago.org) <<mailto:info@nawbochicago.org>>  
Web: [www.nawbochlcaao.org](http://www.nawbochlcaao.org) <<http://www.nawbochlcaao.org>>

Rainbow/PUSH Coalition  
International Trade Bureau  
930 E. 50<sup>th</sup> Street  
Chicago, IL 60615  
Phone: (773) 256-2781  
Fax: (773) 373-4104  
Email: [bevans@rainbowpush.org](mailto:bevans@rainbowpush.org) <<mailto:bevans@rainbowpush.org>>  
Web: [www.rainbowpush.org](http://www.rainbowpush.org) <<http://www.rainbowpush.org>>

South Shore Chamber, Incorporated  
Black United Funds Bldg.  
1750 E. 71<sup>st</sup> Street  
Chicago, IL 60649-2000  
Phone: (773) 955- 9508  
Email: [sshorechamber@sbcglobal.net](mailto:sshorechamber@sbcglobal.net) <<mailto:sshorechamber@sbcglobal.net>>  
Web: [www.southshorechamberino.org](http://www.southshorechamberino.org) <<http://www.southshorechamberino.org>>

Suburban Minority Contractors Association  
1250 Grove Ave. Suite 200  
Barrington, IL 60010  
Phone: (847) 852-5010  
Fax: (847)382-1787  
Email: [aprilcobra@hotmail.com](mailto:aprilcobra@hotmail.com) <<mailto:aprilcobra@hotmail.com>>  
Web: [www.suburbanblackcontractors.org](http://www.suburbanblackcontractors.org) <<http://www.suburbanblackcontractors.org>>

Women Construction Owners & Executives  
(WCOE)  
Chicago Caucus  
308 Circle Avenue  
Forest Park, IL 60130  
Phone: (708) 366-1250  
Fax: (708) 366-5418  
Email: [mkm@mkmservices.com](mailto:mkm@mkmservices.com) <<mailto:mkm@mkmservices.com>>  
Web: [www.wcoeusa.org](http://www.wcoeusa.org) <<http://www.wcoeusa.org>>

Women's Business Development Center  
8 South Michigan Ave., Suite 400  
Chicago, IL 60603  
Phone: (312) 853-3477  
Fax: (312) 853-0145  
Email: [fcuny@wbdc.org](mailto:fcuny@wbdc.org) <<mailto:fcuny@wbdc.org>>  
Web: [www.wbdc.org](http://www.wbdc.org) <<http://www.wbdc.org>>

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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

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

1 o lo

Schedule 3 - Affidavit of Joint Venture

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):
- III. 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 MBEAA/BE'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 1/W3E 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:

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### Schedule B: Affidavit of Joint Ventura (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 a]] 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:



Schedule. 1?.: Affidavit ai 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 project?

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.

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

It 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?

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.

Page 4 of 5

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

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 MBEAA/BE 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 of affiants)

personally appeared and, known to me 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 I**  
**MBE/WBE Letter of Intent to Perform as a Subcontractor, Supplier, or Consultant**  
**FOR**  
**WOW-CONSTRUCTION PROJECTS ONLY**

Project Name: Specification No.-

From: (Name of MBE/WBE 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/protégé with you as a Prime Contractor/mentor:  
( ) Yes ( ) No

NOTICE: THIS SCHEDULE AND ATTACHMENTS REQUIRE ORIGINAL SIGNATURES.

(Signature of presuenuuwnairubu or Authorizea Agent or Mtjuwut) (Uate)

(Name of the person who will be the prime contractor)

(Email address and phone number)

08/2013

Page 1 of 1

Schedule D-I: Affidavit of implementation of MBE/WBE Goals and Participation Plan

FOR  
SCHEDULE D-i MOM-CONSTRUCTION  
Compliance Plan Regarding MBEAASE Utilization PROJECTS ONLY  
Affidavit of Prime Contractor !

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 Prima Consultant/Contractor)

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

All MBEA/VBE 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 MBEAA/BE 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 MBEAA/BE 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:<sup>1</sup> \_\_\_\_%

Total Participation %

2. Name of MBEAA/BE: \_\_\_\_\_

Address:

Contact Person:

<sup>1</sup> 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 MBEAA/BE protege firm.

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

Phone Number:

Dollar Value of Participation \$

Percentage of Participation %

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

Total Participation %

3. Name of MBEA/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 MBEA/BE 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 MBEA/BE direct participation represents the maximum achievable under the circumstances. Only after such a demonstration will indirect participation be considered.

MBE/W3E 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:

**Scierile D-1: Prime Contractor Affidavii-ViBE/WBE Compliance Plan**

Phone Number'

Dollar Value of Participation \$

Percentage of Participation %

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

Total Participation %

2. 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 %

3. Name of MBEAA/BE:

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 MBEAA/BE. ,

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

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**Schedule D-1: Prime Contractor Affidavit-fWBE/WBE Compliance Plan III. Summary of MBE/WBE Proposal A,  
MBE Proposal (Direct & Indirect)**

1. MBE Direct Participation

2. MBE Indirect Participation

**B. WBE Proposal (Direct & Indirect)**

1. WBE Direct Participation

2. WBE Indirect Participation

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Schedule D-1: Prima Contractor Affidavit-MBb/WBE Compliance Plan

The Prima 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 \_

County of

(Signature)

(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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## GUARANTEED ENERGY PERFORMANCE CONTRACT

***THIS GUARANTEED ENERGY PERFORMANCE CONTRACT (this "Contract") is made and entered into this 11th day of April, 2014, between Chicago Infrastructure Trust ("Customer") and Schneider Electric Buildings Americas, inc. ("ESCO" or "Schneider Electric").***

IN CONSIDERATION OF the recitals and the mutual covenants and agreements set forth herein, the Parties agree as follows:

### SECTION 1. RECITALS.

A. ***The Customer desires that the ESCO implement energy management and energy-related capital improvement services at the public buildings owned or operated by the City of Chicago (the "Client") and identified in Exhibit A attached to this Contract (collectively "Facilities" and each a "Facility").***

B. The ESCO's implementation of energy management and energy-related capital improvement services at the Facilities will involve the building analysis, design, engineering, installation, repairs, retrofit, performance monitoring, guarantee reconciliation, and training services more fully described in the "Project Description" attached hereto as Exhibit A and the other terms and provisions of this Contract (the "Project"). The Project Description specifically describes the energy conservation measures and related services ("ECMs", and each, an "ECM") which the ESCO proposes to install at the Facilities.

C. The ESCO has agreed to provide a performance guarantee in the form attached hereto as Exhibit B (the "Performance Guarantee") guaranteeing the energy savings to the Customer resulting from the acquisition and installation of the ECMs and providing that the ESCO will reimburse the Customer for any shortfall of the savings guaranteed in the Performance Guarantee.

D. The ESCO desires to undertake the Project and provide the Performance Guarantee all in accordance with the terms and provisions of this Contract and the other Contract Documents.

### SECTION 2. DEFINITIONS: RULES OF CONSTRUCTION.

A. Definitions. All capitalized terms used in this Contract shall have the meaning set forth below, or in Exhibit B, Section I:

1. "ACM" is defined in Section 10.A.

2. "Change Order" means a written change in the Project executed by both Parties that, pursuant to Section 12, specifies changes in the Contract Services and, if applicable, changes in the Contract Sum and Contract Time.

3. "Client" is defined Recital A.
4. "Commission" means the Public Building Commission of Chicago.
- 5 "Confidential Information" is defined in Section 7.M.1.

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6. "Construction Schedule" means the ESCO's construction schedule for the Work that includes, without limitation, a schedule related to the entire Project and for each ECM, and that provides for expeditious and practicable execution of all aspects of the Work, updated from time to time as permitted by this Contract.

7. "Contract Documents" means this Contract with the Exhibits, the Design & Engineering Documents (once accepted by the Customer as provided in Section 6.B), the Construction Schedule, any Change Orders, the other documents listed in this Contract and any modifications to the foregoing documents issued after execution of this Contract.

8. "Contract Services" means the Work and the Guarantee Period Services.
9. "Contract Sum" is defined in Section 4.A.
10. "Contract Time" is defined in Section 3.A.
11. "Customer Representative" is defined in Section 5.A.
12. "Date of Commencement" is the date first written above.
13. "Design & Engineering Documents" is defined in Section 6.B.1.
14. "Design Materials" is defined in Section 14.A.
15. "Dispute" is defined in Section 11 .A.
16. . "ECMs" and each, an "ECM", is defined in Recital B.
17. "Engineer Neutra" is defined in Section 3.C.2.

18. "Environmental Consultant means a consultant engaged by the Customer to provide environmental assessments and to perform Environmental Work.

19. "Environmental Incentives" means all rights, credits (including tax credits), rebates, grants, benefits, reductions, offsets, and allowances and entitlements of any kind, howsoever entitled or named (including carbon credits and allowances), whether arising under federal, state or local law, international treaty, trade association membership or the like, arising from the development or installation of the ECMs and the reduction of energy usage at the Facilities, to the extent provided or permitted by applicable law. Without limiting the foregoing, Environmental Incentives include utility rebates or incentive programs, green tags, renewable energy credits, tradable renewable certificates, portfolio energy credits, the right to apply for (and entitlement to receive) incentives under any state tax credit program, grants from nongovernmental organizations, and the right to claim federal income tax credits under Sections 45 and/or 48 of the Internal Revenue Code.

20. "Environmental Work" means any services or work involving removal, cleanup, or other remedial action in connection with a Hazardous Material or Mold.

remedial action in connection with a Hazardous Material or Mold.

2

- 21. "ESCO Representative" is defined in Section 7.D.
- 22. "Excusable Event" is defined in Section 12.E.
- 23. "Facilities" and each, a "Facility"<sup>1</sup>, is defined in Recital A.

24. "Final Acceptance" means all of the requirements of the Contract Documents for the Project or for a particular ECM have been completed and the Customer has received all of the related project close-out documentation including a completed Punch List, copy(ies) of all required permits, as-built drawings, an approved commissioning report, operation and maintenance manuals, CMMS (as defined in Exhibit A) analytics report documenting building inventory data, and CMMS preventative maintenance schedule, manufacturer warranty agreements, end-user training manuals and training verification documentation..

- 25. "Final Acceptance Date" is defined in Section 3.D.
- 26. "Final Acceptance Certificate" is defined in Section 3.D.
- 27. "Financing Closing" is defined in Section 3.B.

28. "Financing Contract" means a contract or contracts, or other financing vehicle, entered into by the Customer for the financing of the Project, including without limitation, the Loan Agreement.

29. "GAAP" means the uniform accounting and reporting procedures set forth in the opinions, pronouncements and publications of the American Institute of Certified Public Accountants and the Financial Accounting Standards Board or in such other statements by such other entity as may be of general use by significant segments of the accounting profession as in effect on the date of this Contract.

- 30. "Guarantee Period" is defined in Section 3.A.

31. "Guarantee Period Services" means the performance guarantee, monitoring, Project modification, guarantee reconciliation, Performance Tracking Services, and other services to be performed during the Guarantee Period as described in Exhibits B, C, and D of this Contract.

- 32. "Guaranteed Annual Savings Amount" is defined in Exhibit B, Section I.

33. "Hazardous Material" means all hazardous or toxic substances, wastes or other pollutants, including petroleum, petroleum hydrocarbons or petroleum products, petroleum by-products, radioactive materials, asbestos or asbestos-containing materials, gasoline, diesel fuel, pesticides, radon, urea formaldehyde, lead or lead-containing materials, polychlorinated biphenyls; and any other chemicals, materials, substances or wastes in any amount or concentration which are now included in the definition of "hazardous substances," "hazardous materials," "hazardous wastes," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "pollutants," "regulated substances," "solid wastes," or "contaminants" or words of similar import, under any applicable law.

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34. "Installation Period" is defined in Section 3.A.

35. "Intellectual Property Rights" means any patents, copyrights, trademarks, service marks issued under United States law.

36. "Interim Completion" is defined in Section 3.C.

37. "Investment Grade Audif means the report prepared by the ESCO that sets forth, among other things, (a) an assessment of the energy consumption characteristics of each Facility, ,(b) specific energy analysis related to each Facility and its operation, and (c) recommendations for projects or programs to achieve cost and/or energy savings in the operation of the Facilities.

38. "Lender" means Banc of America Public Capital Corp, a Kansas corporation, in its capacity as Lender under the Loan Agreement, and its successors and permitted assigns.

39. "Loan Agreement means the Loan and Security Agreement dated as of April 1, 2014 between the Lender and the Customer relating to the financing of the costs of the ECMs.

40. "Manufacturers' Warranties" is defined in Section 8.E.

41. "Mold" means any type or form of fungus or similar biological material or agent, including mold, mildew, moisture, yeast and mushrooms, and any mycotoxins, spores, scents, or by-products produced or released by any of the foregoing.

42. "Notice to Proceed" is defined in Section 3.B.

43. "Parties" means the ESCO and the Customer. "Party" means either the ESCO or the Customer.

44. "Performance Guarantee" is defined in Recital C.

45. "Performance Tracking Payment is defined in Section 4.C.

46. "Performance Tracking Services" means those services to be provided by the ESCO to measure and verify the performance of the ECMs as described in Exhibit C and Exhibit D.

47. "Professional Standard" is defined in Section 7.A.

48. "Project is defined in Recital B.

49. "Project Participation Guidelines" are those specific guidelines applicable to Customer projects and attached as Exhibit K.

50. "Records" is defined in Section 7.K.

51. "Scheduled Completion Dates" means the Scheduled Substantial Completion Date and Scheduled Final Acceptance Date.

52. "Scheduled Final Acceptance Date" is defined in Section 3 D.

53. "Scheduled Substantial Completion Date" is defined in Section 3.C.

54. "Senior Officer" means (i) the Chair, Vice Chair or Executive Director of the Customer or (ii) the chief executive officer, president or any executive vice president of the ESCO, or anyone appointed by such persons to act on their behalf.

55. "Subcontractor" means any partnership, firm, corporation or entity other than an employee of ESCO, who contracts with the ESCO to furnish services, labor, materials, or labor and materials at any Facility or otherwise in connection with the Project. This term also includes subcontractors of any tier, suppliers, fabricators or manufacturers, whether or not in privity with the ESCO.

56. "Substantial Completion" means the date that is the later of the following: (i) the Work for the Project or a particular ECM is sufficiently implemented in accordance with the Contract Documents, including commissioning of any systems required by the Contract Documents, so that the Customer may utilize the Project or the ECM for the use for which it is intended, and is fully complete except for minor items, adjustments and/or corrections which do not interfere with the Customer's use and occupancy of the Project or ECM; or (ii) if the nature of the Work requires that a certificate of occupancy be issued, it means the date of issuance of the required certificate of occupancy.

57. "Warranty Period" is defined in Section 8.C.

58. "Work" means the work and services required by the Contract Documents during the Installation Period and during any period of time during which the ESCO is required to correct or replace its work and services pursuant to this Contract and includes all labor, materials, equipment and services provided or to be provided by the ESCO to fulfill the ESCO's obligations under this Contract.

## **B. Rules of Construction.**

1. Grammatical Usage and Construction. In construing this Contract, pronouns include all genders, and the plural includes the singular and vice versa.

2. Headings. The headings, titles, and captions in this Contract have been inserted only for convenience and in no way define, limit, extend, or describe the scope or intent of this Contract.

3. Calendar Days. Unless otherwise provided in this Contract, any reference in this Contract to "day" or "days" shall mean calendar days and not business days. If the date for giving of any notice required to be given, or the performance of any obligation, under this Contract falls on a Saturday, Sunday, or federal holiday, then the notice or obligation may be given or performed on the next business day after that Saturday, Sunday, or federal holiday.

4. Priority of Contract Documents. In the event of a conflict or inconsistency among the Contract Documents, the following order of precedence shall govern the interpretation of such documents:

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a. Change Orders;

This Contract (excluding the exhibits to this Contract);

The exhibits to this Contract, other than Exhibit A;

Exhibit A; and

The Design & Engineering Documents.

### SECTION 3. CONTRACT TIME AND PROJECT SCHEDULE.

A. Contract Time The "Contract Time" is the period of time from the Date of Commencement until the end of the Guarantee Term, as defined in Exhibit B, Section I. The Contract Time consists of the Installation Period and the Guarantee Period. The "Installation Period" is the period of time from the Date of Commencement until Final Acceptance of the entire Project. The "Guarantee Period" is the period of time from the Savings Guarantee Commencement Date, as defined in Exhibit B, Section I, until the end of the Guarantee Term.

B. Reserved.

**C. Substantial Completion. The ESCO will commence the Work within ten (10) days after the Date of Commencement and will diligently prosecute the Work so as to achieve Substantial Completion of the Project no later than April 15, 2015 from the Date of Commencement subject only to adjustments as permitted by this Contract (the "Scheduled Substantial Completion Date"). The ESCO will achieve Interim Completion of each ECM by the date for Interim Completion set forth in the Construction Schedule, subject only to adjustments as permitted this Contract ("Interim Completion").**

1. Certificate of Substantial Completion. When the ESCO believes that the entire Project or a particular ECM has achieved Interim or Substantial Completion, the ESCO will submit a certificate of Interim or Substantial Completion and a Punch List to the Customer, the Client and the Lender on a form agreed to by the Parties. If the Customer concurs that the described portion of the Work as performed has achieved Interim or Substantial Completion, the Customer will accept that Work by signing the certificate of Interim or Substantial Completion and the Punch List and returning both to the ESCO. If the Customer does not concur that the Work has achieved Interim or Substantial Completion and/or that the Punch List is not complete or correct, then the Customer shall notify the ESCO within thirty (30) days of any discrepancies. To the extent the ESCO does not dispute the discrepancies raised by the Customer, the ESCO shall (i) promptly and diligently correct the Work to conform to the description of the Work set forth herein, and resubmit the certificate of Interim or Substantial Completion to the Customer, and (ii) promptly complete all items on the Punch List. If the ESCO disagrees with the discrepancies raised by the Customer, the ESCO shall notify the Customer of a dispute and such dispute shall be resolved in accordance with Section 3.C.2 herein. If the Customer does not deliver written notice to the ESCO within thirty (30) days of receiving the certificate of Interim or Substantial Completion and the Punch List, the Customer will be deemed to have agreed to, signed and returned the certificate of Interim or Substantial Completion and the Punch List.

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2. Disputes Concerning Substantial Completion. Any disputes concerning the Interim or Substantial Completion of the Work will be resolved by submitting the issue to a third party professional engineering firm ("Engineer Neutral"), which firm shall be reasonably acceptable to both the ESCO and the Customer. The Engineer Neutral shall be authorized to make determinations and bind the Parties on issues related solely to interpretations or adequacy of the Design & Engineering Documents or the execution and/or completion of the Work embodied in the Design & Engineering Documents as it relates to the determination of Interim or Substantial Completion. The Engineer Neutral shall not have the authority to render determinations regarding delay claims, payment disputes or other Contract disputes that do not involve or arise out of the content of the Design & Engineering Documents and/or the quality of the execution of the Work. All disputes beyond the authority of the Engineer Neutral shall be resolved pursuant to Section 11 herein. The determination of the Engineer Neutral with respect to Interim or Substantial Completion will be final and binding upon the Parties. The ESCO and the Customer shall share equally the costs or fees for such firm in connection with such

ESCO and the Customer shall share equally the costs or fees for such firm in connection with such dispute resolution process.

*D. Final Acceptance. The ESCO and will diligently prosecute the Work so as to achieve Final Acceptance of the entire Project no later than July 15, 2015, subject only to adjustments as permitted by this Contract (the "Scheduled Final Acceptance Date"). Upon Final Acceptance of the entire Project, the Customer shall provide the ESCO, the Client and the Lender a certificate in writing that such Final Acceptance has occurred and identifying the Final Acceptance Date (the Final Acceptance Certificate ).*

E. Construction Schedule. The preliminary Construction Schedule is included as an attachment to Exhibit A: Project Description. The Construction Schedule will be updated by the ESCO and submitted to the Customer at least monthly and, if requested by Customer, in electronic format. The ESCO will submit a revised Construction Schedule when the ESCO's planned sequence is changed or when Project changes are made that affect the Construction Schedule. Any changes to the Construction Schedule are subject to review and approval by the Customer. When performing the Work, the ESCO will comply with the Construction Schedule.

#### **SECTION 4. COMPENSATION TO THE ESCO.**

A. Contract Sum The Customer will pay the ESCO for the due, proper, and complete performance of the Work as required hereunder and for the due performance of all other obligations and duties imposed upon this ESCO pursuant to this Contract, other than the Performance Tracking Services, the "Contract Sum" of Three Million Five Hundred Sixty-Five Thousand Two Hundred Twenty-One and No/100 Dollars (\$3,565,221.00), subject to additions and deductions by Change Order as provided in this Contract.

B. Environmental Incentives. The Customer will own, and may assign or sell in its sole discretion, all right, title, and interest associated with Environmental Incentives. Environmental Incentives will not be included within any calculation of savings or otherwise reduce the ESCO's responsibility for achieving the Guaranteed Annual Savings Amount or Guaranteed Project Savings Amount, as such terms are defined in Exhibit B.

C. Compensation for Performance Tracking Services. Commencing on the Savings Guarantee Commencement Date and continuing until the expiration or earlier termination of this Contract, the ESCO will perform the Performance Tracking Services. During the Guarantee Period, the Customer will make annual payments to the ESCO for the

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Performance Tracking Services in the amounts set forth in Exhibit E (each, a "Performance Tracking Payment).

#### **SECTION 5. CUSTOMER RESPONSIBILITIES.**

A. Project Manager; Customer Representative. The ESCO acknowledges and agrees that the Customer has retained the Commission as its construction and program manager for the Project and Contract Services and, in such capacity, the Commission has the authority to act on behalf of the Customer in connection therewith. No funds of the Commission shall be available to pay any amounts hereunder to the ESCO. Any amounts payable to the ESCO under this Contract shall be paid from amounts available to the Customer for such purpose and the ESCO will have no claim against the Commission or the Client for the payment of the Contract Sum or the Performance Tracking Payments. The Commission will appoint one individual who will be authorized to act on behalf of the Commission either to accept, reject or otherwise facilitate the orderly execution of the Contract Services and with whom the ESCO may consult at all reasonable times, and whose instructions, requests, and decisions in writing will be binding upon the Customer as to all matters pertaining to this Contract (the "Customer Representative"). The Commission may substitute a new Customer Representative through written notice to the ESCO.

substitute a new Customer Representative through written notice to the ESCO.

B. Information to ESCO. The Customer agrees to provide, or cause the Client to provide, to the ESCO reasonable access to each Facility and information necessary for the ESCO to perform its responsibilities under this Contract. Such access and information will include, but is not limited to, the following items:

- All mechanical equipment rooms in each Facility;
- All temperature control and energy management systems which control part or all of any of each Facility;
- Personnel with responsibility for operating and/or managing each Facility;
- Monthly utility invoices and billing history for all of the meters listed in Exhibit C, Section II-B;
- Construction documents, equipment inventories, and other documents that may be helpful in evaluating a cause for adjustment as listed in Exhibit C, Section II-E; and
- Any data from meters or sub-meters relevant to the Performance Tracking Services.

Any information or documentation provided by the Customer or Client to the ESCO relating to the Project or Facilities is provided only for the convenience of the ESCO. The Customer makes no representation or warranty to as to the sufficiency, completeness, or accuracy of such information.

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C. Required Maintenance. Customer agrees to maintain, or cause the Client to maintain, the ECMs and the Facilities in accordance with the required maintenance checklist attached as Exhibit G, with allowance for normal wear and tear.

## SECTION 6. INSTALLATION PERIOD SERVICES.

A. Permits and Approvals. Except for those approvals and fees which are specified as the responsibility of the Customer under the Contract Documents, the ESCO shall secure and pay for all necessary permits, approvals, assessments and charges, including, without limitation, all construction building permits, required for the proper execution and completion of the Work. Pursuant to City of Chicago Ordinance PO 98-1690, all permits for demolition, construction alteration, repair, renovations, rehabilitation and inspection of buildings and facilities by the Customer and its contractors for public or governmental use by the City of Chicago and its sister agencies shall be issued without charge.

### B. Design and Engineering Documents

1. The ESCO will prepare, for written approval by Customer, working drawings and specifications setting forth in detail the requirements of the construction and installation of the Project in accordance with the Contract Documents ("Design & Engineering Documents"). The Design & Engineering Documents must include all drawings, specifications, schedules, diagrams and plans, and such content and detail as is necessary to properly complete the construction of the Project, and must

such content and detail as is necessary to properly complete the construction of the Project, and must provide information customarily necessary for the use of such documents by those in the building trades. Where required by law, the Design & Engineering Documents must bear the stamp or seal of architects or engineers licensed by the State of Illinois. The Design & Engineering Documents need not be submitted to the Customer as a complete set, but may be submitted in successive packages, each of which address separate construction trades or systems applicable to the Project. Within thirty (30) days after submission, the Customer will review each package of Design & Engineering Documents and either (i) accept such documents; or (ii) reject such documents, specifying in writing the basis for reject.

2. The ESCO covenants and agrees that (i) it will not commence the procurement or construction of any portion of the Project until the completed Design & Engineering Documents relevant to such part or portion have been accepted by the Customer in writing; and (ii) the Design & Engineering Documents will be accurate and free from any errors or omissions, and will be in compliance with and accurately reflect all applicable laws. The ESCO will, at no expense to Customer, promptly modify any Design & Engineering Documents which are not in accordance with laws or are inaccurate or contain errors or omissions. The ESCO acknowledges and agrees that the Customer will have no liability for cancellation fees applicable to equipment orders until after the Customer accepts the Design & Engineering Documents.

3. The ESCO acknowledges and agrees that any review, approval, comment or evaluation by the Customer of any plans, drawings, specifications or other documents prepared by or on behalf of the ESCO is solely for the Customer's determining for its own satisfaction the suitability of the Project for the purposes intended therefor by the Customer, and may not be relied upon by the ESCO, its Subcontractors, or any other third party as a substantive review thereof. The Customer, in reviewing, approving, commenting on or evaluating any plans, drawings, specifications or other

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documents, will have no responsibility or liability for the accuracy or completeness of such documents, for any defects, deficiencies or inadequacies therein or for any failure of such documents to comply with the requirements set forth in the Contract Documents; the responsibility for all of the foregoing matters being the sole obligation of the ESCO. In no event will any review, approval, comment or evaluation by the Customer relieve the ESCO of any liability or responsibility under this Contract, it being understood that the Customer is at all times ultimately relying upon the ESCO's skill, knowledge and professional training and experience in preparing any plans, drawings, specifications or other documents. The ESCO has provided to the Customer, at the time of offering its services, a written disclosure identifying any Subcontractors that are architect(s) and engineer(s) or professional firm(s) in each case licensed or registered to provide architectural and engineering services in Illinois (collectively the "Licensed Professionals") who have been engaged by the ESCO and will be responsible to the ESCO for the provision of the Contract Services constituting architectural services subject to the Illinois Architecture Practice Act of 1989, 235 ILCS 305 et seq., or engineering services subject to the Professional Engineering Practice Act of 1989, 225 ILCS 325 et seq., (each a "Licensing Act"). The Licensed Professionals have participated in the contracting process for this Contract and will provide services under this Contract as required by the applicable Licensing Act and related regulations including Ill. Admin. Code tit. 68, §§ 1150.85 et seq. and 1380.296 et seq. (the "Regulations"). The ESCO will comply with the applicable Licensing Act and related Regulations.

**C. Labor and Workmanship.**

1. All labor for the Project shall be performed in the best workmanlike manner by workers skilled in their respective trades. The ESCO will only employ and permit the use of such labor as shall not result in jurisdictional disputes or strikes or cause disharmony with the tenants, other contractors, agents, and employees of the Facility or other sites affiliated with the Customer or Client. Local labor

agents, and employees at the Facilities or other sites affiliated with the Customer or Client. Local labor and subcontractors must be given preference where possible and practical. Any worker or other person involved in the performance of the Work who, in the opinion of Customer, is incompetent or careless in the execution of the Work or otherwise unsatisfactory shall be immediately removed upon request of the Customer. The ESCO will enforce strict discipline and good order among the ESCO's employees and other persons carrying out the Work.

2. The ESCO must use every reasonable effort to comply with the Customer's Project Participation Guidelines in the performance of the Work. The ESCO must complete and provide a letter of intent in the form included in Exhibit K (Schedule C-1 to Attachment K-1) from each Subcontractor employed pursuant to the Project Participation Guidelines utilized in the performance of the Work.

D. Control Over Means, Methods, and Techniques. The ESCO is solely responsible for and will have control over means, methods, techniques, sequences and procedures and for coordinating all portions of the Work, unless the Contract Documents give other specific instructions concerning these matters.

E. Cutting and Patching. The ESCO will do all cutting, fitting, and patching necessary for the completion of the Work and will not alter or endanger any existing portion of the Facilities or any material or equipment installed therein without the consent of the Customer.

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F. No Reliance Upon Customer or Client Representations. The ESCO has satisfied itself, by its own independent investigation and study, regarding all the conditions of the specific areas in the Facilities affected by the Work to be done and materials to be furnished; the meaning, intention and sufficiency of any plans and specifications for the Work; the recommendations of the Investment Grade Audit; and the conditions under which the Work is to be done; and has executed this Contract based solely on such investigation, study and determination made by it, and not in reliance upon any representation by Customer or Client or by anyone acting for or on behalf of Customer or Client.

G. Safety. The ESCO is responsible for all necessary safety precautions and programs in connection with the Work, including but not limited to providing whatever protection may be necessary to prevent injury to any persons, whether tenants, patrons, and/or employees or business invitees of Customer, Client, or the ESCO (including any Subcontractor) who may be present at the Facility or loss or damage to property of Customer, Client, or other persons, including all materials and equipment to be incorporated into the Work and all existing improvements which are not to be removed as part of the Work. If the Work might affect the owners or occupants of property adjacent or adjoining the Facility, the ESCO will notify such owners and occupants of the Work and its possible effect on their property. If the Work might affect any utilities, utility service, or utility equipment, the ESCO will notify the utility companies or users of such utilities which might be affected by the Work, and if such utility equipment is not needed or interferes with the execution of the Work, the ESCO will remove or protect such utility equipment as required by such utility companies or users of such utility equipment.

H. Cleaning and Removal of Materials. The ESCO will at all times keep the Facilities free from any accumulation of rubbish, debris, and waste. Upon completion of the Work and prior to final payment of the Contract Sum by Customer, the ESCO will thoroughly clean all Work, remedy any defects, and leave those portions of the Facilities in which the ESCO has been working in clean, orderly condition. Without limiting the generality of the foregoing, any ceiling and wall surface, floor, window or door frames, hardware, metalwork, and glass (both sides) which are part of the Work or which have become dirty or marred as a result of the ESCO's performance of the Work must be thoroughly cleaned.

I. Recycling. The ESCO must give preference to the use of recycled products in

the performance of any Work, and must cooperate with any recycling program established for the Facilities or available through the City of Chicago. The ESCO must perform the Work in accordance with the City of Chicago's Recycling Ordinance and Construction or Demolition Site Waste Recycling Ordinance and document its compliance with, such requirements.

J. Access to the Work The ESCO will provide the Customer with unrestricted access to the Work in preparation and progress wherever located in the Facilities, subject only to reasonable safety precautions.

K. Use of Facilities. The ESCO will confine its operations to the portions of the Facilities identified in the Contract Documents or otherwise approved by the Customer, and will not unreasonably encumber the portions of the Facilities used for the Work with materials, equipment, or similar items. The ESCO and all Subcontractors will use only such entrances to the Facilities as are designated by the Customer. During occupied hours, the ESCO will limit construction operations to methods and procedures that do not adversely and unduly affect the environment of occupied spaces within the Facilities, including but not limited to creating noise, odors, air pollution, ambient discomfort, or poor lighting.

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L. Project Meetings. The ESCO will provide for weekly, or as mutually agreed upon, scheduled Project meetings during the Installation Period, and will give timely advance written notice and agenda of such meetings to the Customer. The ESCO will record minutes and distribute copies of minutes of meetings to the Customer within five (5) business days after each meeting. The ESCO will schedule additional Project meetings if requested by the Customer.

M. Progress Reports. During the Installation Period, the ESCO will provide monthly reports to the Customer on the status of the Work that include, without limitation: (i) a detailed description of the progress of the work for each ECM and the Project as a whole, including a critical path chart illustrating the progress made; (ii) a statement of significant Project issues that remain unresolved and the ESCO's recommendations for resolving the same; (iii) an updated report on whether the Project remains on schedule and budget, and actions being taken to correct schedule delays and budget overruns; and (iv) a summary of any significant Project events that are scheduled to occur during the upcoming 30-day period.

N. Correction of the Work. The Customer has the right and authority to reject Work if defective or deficient, or which otherwise does not conform to the Contract Documents. During the Installation Period, the ESCO will promptly correct Work rejected by the Customer for failing to conform to the requirements of the Contract Documents, whether or not fabricated, installed or completed. If the ESCO, after receipt of written notice from the Customer of its rejection of Work pursuant to this Section, either: (i) has not cured such failure within seven (7) days, or (ii) if the nature of the failure is such that it is not capable of cure within seven (7) days, has not within seven (7) days reached agreement with the Customer for a plan to cure such failure and has not commenced and diligently and continuously pursued the cure of such failure, then the Customer may order the ESCO to stop the Work, or any portion thereof, until the cause for such order has been eliminated or the ESCO has provided the Customer with a plan for corrective action acceptable to the Customer in its reasonable judgment. The right of the Customer to stop the Work shall not, however, give rise to a duty on the part of the Customer to exercise this right for the benefit of the ESCO or any other person or entity.

O. Performance and Payment Bonds. The ESCO will, within thirty (30) days after the Date of Commencement and prior to performing any Work, obtain and furnish to Customer and maintain in effect throughout the Installation Period payment and performance bonds covering the faithful performance and completion of the Work required during the Installation Period and the payment of all obligations arising under this Contract during the Installation Period. Each bond must (i) be issued by a surety company authorized to



this Contract during the Installation Period. Such bonds must (i) be issued by a surety company authorized to do business in Illinois and listed in the latest issue of U.S. Treasury Circular 570, (ii) be in form acceptable to the Customer and the Lender, in an amount equal to the Contract Sum, and (iv) name the Customer and the Lender as co-obligees. No notice of change order need be given to the surety company. The ESCO must supply evidence satisfactory to the Customer that the party issuing the bonds has the authority to bind the issuing surety company. Notwithstanding any provision to the contrary herein, any payment and performance bonds associated with this Contract guarantee only the performance of the installation portion of this Contract, and shall not be construed to guarantee the performance of: (1) any efficiency or energy savings guarantees, (2) any support or maintenance service agreement, or (3) any other guarantees or warranties with terms beyond one (1) year in duration from the completion of the installation portion of this Contract.

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If the ESCO fails to furnish and maintain such bonds, the Customer may purchase such bonds on behalf of the ESCO and the ESCO must pay the cost thereof to the Customer upon demand.

P. Startup/Commissioning. The ESCO will conduct a thorough and systematic performance test of each element and total system of the installed ECMs in accordance with Exhibit A, and demonstrate that all ECMs comply with the requirements of the Contract Documents. The tests must be performed by the commissioning entity designated in Exhibit A, or, if no entity is designated, a commissioning entity selected from a pre-qualified list of commissioning entities provided by the Customer. All tests shall be scheduled at times convenient to the Customer at no additional cost. At least twenty (20) business days prior to the scheduled test, the ESCO will deliver to the Customer a draft commissioning plan for each ECM. The Customer may require changes to the commissioning plan, provided the ESCO is provided with a written description of the changes. The Customer will have the right to designate representatives to be present at any or all such tests including representatives of the manufacturers of the ECMs. The ESCO, or its Subcontractor (s), must correct or adjust all deficiencies in operation of the ECMs identified during the course of the tests described in this Section. The ESCO will provide to the Customer a description of the ongoing training requirements for each Facility's operations and maintenance personnel necessary to maintain proper ECM performance after Final Acceptance.

Q. Additional Performance of Work Requirements. The ESCO will comply with the additional performance of work requirements described in Exhibit F.

## **SECTION 7. OTHER SERVICES AND REQUIREMENTS OF THE ESCO.**

A. Professional Standard. The ESCO will perform, or cause to be performed, all of the Contract Services with that degree of skill, care and diligence normally shown by (and generally accepted as being appropriate for) nationally recognized design, engineering, and construction professionals performing services and work of a scope, purpose and magnitude comparable with the Contract Services (the "Professional Standard"). Where the Contract Services require the exercise of professional skill or judgment, the ESCO will cause it to be performed by professionals competent to do so and licensed by the State of Illinois in the applicable discipline, if such licensure is required by law. The ESCO will furnish efficient administration, supervision, and superintendence of all Contract Services and will use every effort to complete the Contract Services in an expeditious and economical manner consistent with the interests of the Customer.

B. Contract Documents. The ESCO hereby covenants and agrees that it will duly and properly perform the Contract Services and implement the Project in accordance with the Contract Documents. Unless otherwise provided in the Contract Documents, the ESCO will provide and pay for labor, materials, tools, equipment and machinery necessary for the proper execution and completion of the Contract Services. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of

intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Contract Services including, without limitation, all items and services which are consistent with, contemplated by, or reasonably inferable from the Contract Documents, whether or not such items and services are specifically mentioned therein. The Contract Documents are complementary, and what is required by one shall be binding as if required by all.

C. Subcontractors. The ESCO will furnish in writing to the Customer for its approval the names of the Subcontractors to whom the ESCO plans to award any portion of the

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Contract Services. Contracts between the ESCO and its Subcontractors must require each Subcontractor, to the extent of the Contract Services to be performed by the Subcontractor, to be bound to the ESCO by the terms of the Contract Documents, and to assume toward the Customer all the obligations and responsibilities which the ESCO, by the Contract Documents, assumes toward the Customer. The ESCO will be responsible to the Customer for acts and omissions of the Subcontractors, their agents and employees, and any other persons performing portions of the Contract Services, and for any damages, losses, costs, and expenses resulting from such acts or omissions, to the same extent as the ESCO is responsible to the Customer for its acts and omissions under this Contract.

D. ESCO's Key Personnel. Included within Exhibit A is a list of the ESCO's key personnel who will be responsible for supervising the performance of the Contract Services. Among such individuals there shall be appointed a principal representative of the ESCO (the "ESCO Representative") who shall be the ESCO's authorized representative, and who shall receive and initiate all communications to and from the Customer and be authorized to render binding decisions related to the Contract Services. ESCO shall notify promptly the Customer upon terminating the employment of, reassigning or receiving notice of the resignation of, any ESCO Representative. If, after execution of this Contract, the Customer objects to any of the ESCO's key personnel (for any reason whatsoever), the ESCO will promptly remove such disapproved personnel. If any of the ESCO's key personnel are removed as provided above, any replacement personnel are subject to the prior written approval of the Customer, which approval will not be unreasonably withheld.

E. Taxes. Unless otherwise provided in the Contract Documents, the ESCO will pay all federal, state or local sales, consumer, use, and other similar taxes associated with the implementation of the Work which are legally enacted as of the date of execution of this Contract, whether or not effective or merely scheduled to go into effect. The Customer will be responsible for all federal, state or local taxes which are imposed as a result of the Customer's ownership of the Project or are related to the financing of the Project. The Customer will cause the Commission to provide its sales tax exemption certification for purchases of equipment, tools, materials, and supplies relating to the Project.

F. Compliance with Law. The ESCO will comply with all applicable provisions of federal, state and local law when performing any services set forth or described in this Contract, now existing or hereinafter in effect, which may in any manner affect the performance of this Contract. Provisions required by law, rules, ordinances, regulations or executive orders to be inserted shall be deemed inserted whether or not they appear in this Contract, or upon application by either party, this Contract shall forthwith be physically amended to make such insertion; however, in no event shall the failure to insert such provision(s) prevent the enforcement of this Contract. The ESCO shall also comply with all conditions of any federal, state, or local grant received by the Customer or the ESCO with respect to this Contract or the Contract Services.

1. The ESCO will promptly remedy any violation of any such law, ordinance, rule, regulation, or order that comes to its attention. The ESCO shall promptly, and in no event later than the close of the next business day following receipt, give notice to the Customer by telephone, with confirmation in writing, of receipt by the ESCO of any information relating to violations of laws, ordinances, rules, regulations, and orders.

2. In performing the Contract Services, the ESCO must comply with applicable laws prohibiting discrimination against individuals and groups. The ESCO

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must not discriminate against any worker, employee, applicant for employment, or any member of the public, because of race, color, creed, national origin, gender, age, or disability, or otherwise commit an unfair labor practice.

3. The ESCO certifies that it is familiar with, and will comply with, all applicable provisions of the Civil Rights Act of 1964, 28 U.S.C. § 1447, 42 U.S.C. SS 1971, 1975a-1975d, 2000a to 2000h-6 (1992); the Age Discrimination in Employment Act of 1967, 29 U.S.C. §§ 623-634 (1992); the Americans with Disabilities Act of 1990, 29 U.S.C. § 706, 42 U.S.C. §§ 12101-12213, 47 U.S.C. §§ 152,221,225,611 (1992); 41 C.F.R. § 60 (1992); 41 C.F.R. § 60 (1992); reprinted in 42 U.S.C. 2000(e) note, as amended by Executive Order No. 11,375 32 Fed. Reg. 14,303 (1967) and by Executive Order No. 12,086, 43 Fed. Reg. 46,501 (1978); the Age Discrimination Act, 43 U.S.C. Sec. 6101-6106 (1981); P L 101-336; 41 C.F.R. part 60 et seq. (1990); the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq. (1990), as amended; the Discrimination in Public Contracts Act, 775 ILCS 10/0.01 et seq. (1990), as amended; the Environmental Barriers Act., 410 ILCS 25/1 et seq; and the Chicago Human Rights Ordinance, Chapter 2-160, Section 2-160-010 et seq. of the Municipal Code (1990), as amended.

4. The ESCO will furnish such reports and information as may be requested by the Customer, the Illinois Department of Human Relations, or any other administrative or governmental entity overseeing the enforcement, or administration of, or compliance with, the above mentioned laws and regulations.

5. The ESCO will also comply with all applicable "Anti-Kickback" laws and regulations, including the "Anti-Kickback" Act of 1986, 41 U.S.C. §§ 51-58 (1992); 18 U.S.C. § 874 (1992); 40 U.S.C. § 276c (1986) and the Illinois Criminal Code of 1961 720 ILCS 5/33E-1 et seq. If, in the performance of this Contract, any direct or indirect "kickback" is made, as defined in any of the above mentioned laws and regulations, the Customer may withhold from the ESCO, out of payments due to the ESCO, an amount sufficient to pay any underpaid employees the difference between the salaries required to be paid under the law and this Contract and the salaries actually paid such employees for the total number of hours worked. The amounts withheld may be disbursed by the Customer for and on account of the ESCO to the respective employees to whom they are due, as determined by the Customer in its sole discretion.

6. The ESCO agrees to cooperate fully and expeditiously with the Client's Inspector General in all investigations or audits. The ESCO agrees to provide all documents, date, files and other information and access to all witnesses specified by the Client's Inspector General. This obligation applies to all officers, directors, agents, partners, and employees of the ESCO. The ESCO agrees to insert this provision in any subcontracts that it awards.

7. Pursuant to Municipal Code of Chicago Section 2-92-220, a standard working day consists of eight (8) hours for this Contract. The ESCO shall, and shall cause any Subcontractors providing services hereunder, to coordinate shifts with the Client. No overtime or premium pay will be permitted by the ESCO unless otherwise specified in the Contract Documents and authorized by the Customer.

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8. The ESCO shall comply with the Client-required terms and conditions set forth in Exhibit J.

G. Remedy to Damage or Loss. The ESCO will promptly remedy damage, injury or loss at the Facilities to the extent caused by the ESCO, a Subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable.

H. Discharge of Mechanics Liens. Subject to the payment of amounts due hereunder from Customer to ESCO, if any mechanic's, materialman's, or other similar lien is at any time filed against any Facility or ECM or any part thereof on account of any Work performed on or furnished to or claimed to be performed on or furnished to the Work at the direction of the ESCO or any Subcontractor, the ESCO will, upon written request from Customer and without cost or expense to the Customer, promptly cause the sum to be discharged of record by payment, bond, order of a court of competent jurisdiction, or otherwise. If the ESCO, having been requested by the Customer to discharge such lien, fails to commence appropriate action to discharge such lien within ten (10) days after such written request by the Customer, the Customer will have the right to discharge the same by payment, bond, order of a court of competent jurisdiction, or otherwise and without regard to whether the ESCO is disputing the validity or amount of the same, and the costs and expenses incurred by Customer in so discharging such lien shall be payable by the ESCO to the Customer upon demand. The ESCO will protect the Customer against lien filings to the extent that payment is received for completed service or delivered equipment.

I. Royalties and License Fees. The ESCO will pay all royalties and license fees related to the Contract Services.

J. Publicity. Upon the reasonable request of the Customer, the ESCO will cooperate with and assist the Customer in connection with any public relations or publicity relating to the Project, including, without limitation, tours of Facilities arranged by the Customer or Client. Without the prior written consent of the Customer, the ESCO will not disclose details or information relating to the Project or Contract Services to the press, the public, any news-disseminating agency or any other party, except to those parties performing portions of the Contract Services, and then only to the extent required for the performance of the particular portion of the Contract Services being performed.

**K. Retention and Inspection of Documents.**

The ESCO must maintain books, records, documents and other evidence pertaining to the performance and cost of the Contract Services {"Records"} for a period of five (5) years after the termination of this Contract {"Retention Period". The ESCO shall use accounting procedures and practices in accordance with generally accepted accounting principles and practices, consistently applied to all of the Records. The Records will be open to audit, inspection, copying, abstracting and transcription and must be made available to the Customer at reasonable times upon prior notice during the term of this Contract and the Retention Period. The Records retention obligation set forth in this Subsection shall survive the termination or expiration of this Contract, whether by lapse of time or otherwise.

The Customer or the Client may, in their sole discretion, audit the Records of the ESCO or its Subcontractors, or both, at any time during the Term or Retention Period, in connection with the Contract Services. Each calendar year or partial calendar year may be deemed an "audited period." If, as a result of such an audit, it is determined that the ESCO or any of its

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Subcontractors has overcharged the Customer in the audited period, the Customer will notify the ESCO. The ESCO must then promptly reimburse the Customer for any amounts the Customer has paid the ESCO due to the overcharges and, depending on the facts, also some or all of the cost of the audit, as follows: If the audit has revealed overcharges to the Customer representing less than 5% of the total value, based on the contract

prices, or the goods, work, or services provided or of underpayments by the ESCO, in the audited period, then the ESCO must reimburse the Customer for 50% of the cost of the audit and 50% of the cost of each subsequent audit that the Customer or the Client conducts; if, however, the audit has revealed overcharges to the Customer representing 5% or more of the total value, based on the contract prices, of the goods, work, or services provided in the audited period or of underpayments by the ESCO, then the ESCO must reimburse the Customer for the full cost of the audit and of each subsequent audit. Failure of ESCO to reimburse the Customer in accordance with the foregoing is an event of default under this Contract, and the ESCO will be liable for all of the Customer's and the Client's costs of collection, including any court costs and attorneys' fees.

L. Cooperation. The ESCO will cooperate with and assist the Customer, the Client, and their advisors, consultants, attorneys, employees, agents and representatives, at all times during the Contract Time so as to complete the Contract Services in an efficient, timely, and economical manner. Such cooperation and assistance will include, without limitation, any cooperation or assistance required in connection with the Customer's efforts to obtain financing for the Project.

**M. Confidential Information.**

1. The term "Confidential Information" means any documentation or information (i) which is marked as "proprietary" or "confidential"; (ii) which is supplied orally with a contemporaneous confidential designation; or (iii) which is known by the ESCO to be confidential or proprietary information or documentation of the Customer or Client. Confidential Information does not include information that can be demonstrated: (i) to have been rightfully in the possession of the ESCO from a source other than the Customer or Client prior to the time of disclosure of said information to the ESCO under this Contract; (ii) to have been in the public domain prior to disclosure to the ESCO; (iii) to have become part of the public domain after disclosure to the ESCO by a publication or by any other means except an unauthorized act or omission or breach of this Contract on the part of the ESCO or the Customer; or (iv) to have been supplied to the ESCO without restriction by a third party who, to the ESCO's knowledge, is under no obligation to the Customer to maintain such information in confidence.

2. The ESCO acknowledges that it may, in performing the Contract Services, have access to or be directly or indirectly exposed to Confidential Information. The ESCO will hold confidential all Confidential Information and will not disclose or use such Confidential Information for any purpose other than the performance of the Contract Services without express prior written consent of the Customer. The ESCO will use reasonable measures at least as strict as those the ESCO uses to protect its own confidential information. Such measures must include, without limitation, requiring Subcontractors of the ESCO to execute a non-disclosure agreement before obtaining access to Confidential Information

3. The ESCO acknowledges that the Customer and client are subject to the Illinois Freedom of Information Act, 5 ILCS 140/1 et seq., and that no disclosure made in

good faith by the Customer pursuant to such Act shall be deemed to violate any confidentiality commitments made by the Customer to the ESCO.

N. ECM Malfunction. The ESCO agrees to compensate the Customer for damages to real or personal

property and related costs and expenses incurred by the Customer or Client resulting from ECM malfunction to the extent caused by nonperformance or error by the ESCO or its Subcontractors.

O. Financing Contract Requirements. If one or more Financing Contracts are entered into for the Project, the ESCO agrees to provide the parties to the Financing Contract such written information, certificates, copies of invoices, receipts, lien waivers, affidavits, and other like documents as such parties may reasonably request. The ESCO hereby subordinates any liens or security interests to which it may be entitled by law or under the provisions of this Contract to any lien or security interest granted in favor of the party or parties to a Financing Contract.

P. Credit and Financial Information. The ESCO agrees to deliver or cause to be delivered to the Customer and the Lender:

a) promptly after the preparation thereof, copies of all measurement and verification reports and all written communications between the ESCO and the Customer relating thereto as may be reasonably requested by the Customer or the Lender; and

b) to the extent not otherwise publicly available through the internet under the Securities & Exchange Commission's EDGAR service, audited annual financial statements, in each case prepared in accordance with GAAP, which financial statements shall include, without limitation, a balance sheet, changes in stockholders' equity, an income statement and statement of cash flows and any footnotes related thereto, which shall be due as soon as practicable and, in any event, within 400 days after the end of each fiscal year of the ESCO.

In addition, the ESCO shall provide written notice to the Lender prior to or promptly thereafter with respect to any change in its name, identity or corporate structure and such other information in connection with such action as the Lender may reasonably request.

## **SECTION 8. WARRANTIES AND ECM REPAIR AND REPLACEMENT.**

A. Warranty. For the Warranty Period, the ESCO warrants to the Customer that materials and equipment furnished under this Contract will be of good quality and new, that the Work will be performed in accordance with the Professional Standard and free from faults and defects not inherent in the quality required or permitted, that the materials, equipment and Work will conform with the requirements of the Contract Documents, and that the Work will be free from any encumbrances, liens, security interests, or other defects in title upon conveyance of title to the Customer. EXCEPT AS PROVIDED IN THIS SECTION 8.A, THE ESCO MAKES NO WARRANTIES OR REPRESENTATIONS OF ANY KIND, WHETHER STATUTORY, WRITTEN, ORAL OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES AS TO THE VALUE, DESIGN, AND CONDITION OR FITNESS FOR USE OR PARTICULAR PURPOSE AND MERCHANTABILITY, REGARDING THE WORK OR THE ECMS.

B. Exclusion from Warranty. ESCO's warranty excludes remedy for damage or defect to the extent caused by (i) modifications not approved or executed by ESCO or its Subcontractors, (ii) improper or insufficient maintenance or operation that is not in accordance

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with Exhibit G and not supervised or directed by the ESCO or its Subcontractors, (iii) normal wear and tear under normal usage, or (iv) equipment that has been the subject of negligence, accident or damage by circumstances beyond the ESCO's control. If required by the Customer, the ESCO shall furnish satisfactory evidence as to the kind and quality of materials and equipment to meet the requirements of this Section 8.

C. Warranty Period. The warranty period for the Work ("Warranty Period") is the period that is the longer of: (a) eighteen (18) months, running on an ECM by ECM basis from and after the

date of Substantial Completion of such ECM, and (b) the warranty period for each ECM as set forth in Exhibit A, running from and after the date of Substantial Completion of all of the Work for a particular ECM (unless Exhibit A specifies a different date for the Warranty Period to begin running for a particular ECM) or (c) the Manufacturer's Warranty (as defined herein).

D. Breach of Warranty. If, at any time prior to the expiration of the Warranty Period, the Customer discovers any failure or breach of the ESCO's warranties, the ESCO will, upon written notice from the Customer and at the ESCO's sole cost and expense, immediately correct such failure or breach (which corrective action may include, without limitation, any necessary removal, disassembly, reinstallation, repair, replacement, reassembly, retesting, and/or reinspection of any part or portion of the Work and any other property damaged or affected by such failure, breach, or corrective action). The ESCO will remedy any such failure or breach so as to minimize revenue loss to the Customer and, to the extent possible, to avoid disruptions to the operations of the Customer and other occupants of the Facilities. In the event the ESCO fails to initiate and diligently pursue corrective action within five (5) days of the ESCO's receipt of the Customer's notice, the Customer may undertake such corrective action at the ESCO's expense.

E. Manufacturers' Warranties. At Final Acceptance of the Work for a particular ECM, the ESCO will furnish the Customer two (2) original complete sets of all manufacturers' warranties, guarantees, parts lists, and literature applicable to equipment, systems, fittings, and furnishings included in the Work for that ECM (collectively referred to as "Manufacturers' Warranties"), completed in favor of the Customer. These Manufacturers' Warranties are in addition to and not in lieu of the ESCO's warranty set forth in Section 8.A, and the Customer is entitled to look to the ESCO for remedy in all cases where the ESCO's warranty applies regardless of whether a Manufacturer's Warranty also applies. The Customer will acknowledge receipt of the sets of Manufacturers' Warranties on the set itself, and the ESCO will cause six (6) copies of an acknowledged set to be made and furnish them to the Customer. All Manufacturers' Warranties will be for applicable periods and contain terms not less favorable to the Customer than those terms which are standard for the applicable industries, and will either be issued in the first instance in the name of and for benefit of the Customer, or be in a freely assignable form and be assigned to the Customer without limitations.

F. Repair and Replacement of ECMs. If the ESCO or the Customer find that an ECM requires repair or replacement, the other Party must be notified and the ESCO will repair or replace the ECM if required to do so pursuant to its obligation to correct the Work or its warranty obligations under Section 8.A. If the ESCO is not required to repair or replace the ECM and the Manufacturers' Warranties apply to the ECM requiring repair or replacement, the Customer will cause the repair or replacement of the ECM in accordance with the Manufacturers' Warranties. If the ESCO is not required to repair or replace the ECM and the Manufacturers' Warranties do not apply, the ESCO and Customer will agree to a schedule for the repair or replacement of the ECM, at the Customer's expense, that establishes reasonable

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timeframes for the engineering, procurement, and construction and installation associated with such work. The Parties will use good faith efforts to agree to any necessary adjustments to the energy performance calculations that account for the energy savings attributable to the period of time needed to repair or replace the ECM. However, any such adjustments to the energy performance calculations are subject to the terms and provisions of Exhibit C, which require the ESCO to notify the Customer within thirty (30) days of the ESCO becoming aware of a possible Cause for Adjustment, and to specify all Causes for Adjustment in the annual guaranteed savings reconciliation process.

## SECTION 9. INSURANCE, DAMAGE AND DESTRUCTION, AND INDEMNIFICATION.

### A. Insurance to be Maintained by ESCO: Limitation of Liability.

1. The ESCO will maintain, at its sole cost and expense, the insurance set forth in Exhibit A from insurance companies authorized to do business in the State of Illinois which are rated at least

H from insurance companies authorized to do business in the State of Illinois which are rated at least A-VII by A.M. Best Company. The ESCO will furnish to Customer and the Lender certificates evidencing such insurance. During the Guarantee Period, the insurance coverage set forth on Exhibit H may be reduced to a level deemed necessary by the Customer, in its reasonable discretion, to protect the Customer and Client from liability for acts of the ESCO during the performance of the Guarantee Period Services.

2. Under no circumstances will either Party be liable to the other Party for any special, indirect, incidental, consequential or punitive damages, however caused and on any theory of liability.

B. Damage and Destruction The Customer and Client are not liable for damage or destruction to the Work and/or to (a) any tools owned by mechanics, (b) any tools, equipment, scaffolding, staging, towers, and forms rented by ESCO, the capital value of which is not included in the Contract Sum, and (c) any structures erected for housing or convenience of workmen caused by, but not limited to, the following: fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, aircraft, vehicles, smoke, vandalism, or malicious mischief.

C. Risk of Loss. Regardless of the passage of title, risk of loss and damage to the Work shall remain with the ESCO until the date of Final Acceptance of the entire Project.

**D. Indemnification.**

1. Professional Indemnity. For claims alleging professional negligence, the ESCO must defend, indemnify and hold the Customer, the Commission, the Lender and the Client and their respective commissioners, board members, officers, officials and employees (hereafter the "Indemnified Parties") free and harmless from and against all claims, demands, suits, losses, costs and expenses, including the reasonable fees and expenses of attorneys, court costs and expert's fees, that may arise out of the ESCO's negligent acts, errors and omissions and misconduct in the ESCO's performance under this Contract or the performance of any Subcontractor retained by the ESCO in connection with this Contract.

2. General Indemnity. For all other claims, the ESCO must protect, defend, indemnify, hold the Indemnified Parties free and harmless from and against all claims,

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demands, suits, losses, costs and expenses, including the reasonable fees and expenses of attorneys, court costs and expert's fees, that may arise out of the performance of ESCO's Work under this Contract and such claim is attributable to any injury to persons or property that is, or is claimed to be, the result of the ESCO's or a Subcontractor's negligent acts or omissions under this Contract.

3. Scope of Indemnification. The indemnification obligations provided in this Section 9 will be effective to the maximum extent permitted by law. To the extent permitted by law, the ESCO waives any limits to its liability hereunder that it would otherwise have by virtue of the Workers' Compensation Act or any other related law or judicial decision (including, without limitation, Kotecki vs. Cyclops Welding Corporation, 156 Ill. 2d. 155 (1991)). This indemnity extends to all legal costs, including, without limitation: reasonable attorney fees, costs, liens, judgments, settlements, penalties, professional fees or other expenses incurred by the Indemnified Party(ies), including but not limited to reasonable settlement of such claims. This indemnification is not limited by any amount of insurance required under this Contract. Further, the indemnity contained in this section will survive the expiration or termination of this Contract. The ESCO shall be solely responsible for the defense of any and all claims, demands, or suits against the Indemnified Parties, including without limitation, claims by an employee, subcontractor, agents or servants of the ESCO even though the claimant may allege that



the Indemnified Parties were in charge of the Contract Services or allege negligence on the part of the Indemnified Parties. The Indemnified Party/Parties will have the right, at its sole option, to participate in the defense of any such suit at its/their expense, without relieving the ESCO of its obligations hereunder. Notwithstanding the forgoing, the ESCO shall have no obligation to indemnify an Indemnified Party for the Indemnified Party's own negligence or willful misconduct. Defense costs shall be allocated on a comparable fault basis.

## SECTION 10. ENVIRONMENTAL WORK AND HAZARDOUS MATERIALS.

A. Abatement and Removal of ACM. The Work to be performed by the ESCO includes the proper abatement, removal, and disposal of asbestos containing material and associated debris ("ACM") only to the extent included in the Work described in Exhibit A. All Work involving ACM must be performed in accordance with the ACM-related performance of work requirements described in Exhibit F and the other terms and provisions of this Contract. In the event that the ESCO discovers ACM (i) that was not identified in the Contract Documents prior to the commencement of the Work or (ii) that could not have been identified by the ESCO through the exercise of reasonable diligence during the performance of the Investment Grade Audit (a "Concealed Condition"), the ESCO and Customer shall negotiate an equitable adjustment to the Contract Sum and Scheduled Completion Dates pursuant to Section 12.D.

B. Performance of Other Environmental Work. If the Contract Documents require the ESCO to manage or perform any Environmental Work, or if in the course of the Work Hazardous Materials or Mold are encountered requiring action, the ESCO must cooperate and coordinate its Work in all respects with that of Environmental Consultants, perform its Work according to safe and approved protocols and procedures, utilize only fully qualified and licensed abaters and remediators, and sequence and perform the Work to minimize environmental contamination of the Facilities. The ESCO will consult with the Customer, including its Environmental Consultants, to determine whether previous abatement, remediation, stabilization, or containment work has been performed at the Facility. If so, the ESCO will perform its Work so as not to undo or disturb the prior work.

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C. Encountering Hazardous Materials or Mold. If the ESCO encounters material in a Facility reasonably believed to be a Hazardous Material (including ACM) or Mold that has not been identified in the Contract Documents or that constitutes a Concealed Condition, the ESCO must immediately stop Work in the area affected and report the condition to the Customer Representative in writing and by telephone or in person. The Customer or its Environmental Consultants will verify the presence or absence of the Hazardous Material or Mold reported by the ESCO and, if the Hazardous Material or Mold is found to be present, develop a plan for identifying and handling the Hazardous Material or Mold. If no plan is in place, the ESCO will await and follow directions of the Customer. The Work in the affected area may be resumed in the absence of the Hazardous Material or Mold, or when it has been rendered harmless. Should ESCO stop work because of the discovery of Hazardous Materials or Mold, the time for performance of ESCO'S Work will be extended to cover the period required for abatement, cleanup, or removal of such materials. ESCO will not be held responsible for any claims, damages, costs, or expenses of any kind associated with the period during which ESCO has stopped work as a result of Hazardous Materials or Mold. If appropriate, ESCO will be entitled to an equitable adjustment of the Contract Time, and if appropriate, the Contract Sum, for any increased costs or other charges incurred by ESCO in connection with the existence of its rights under this paragraph. Customer will be responsible for taking all

necessary steps to correct, abate, clean up, or control Hazardous Materials or Mold not otherwise delegated to ESCO in the Contract Documents.

**D. Hazardous Materials Introduced to the Facilities by the ESCO.**

Notwithstanding anything to the contrary set forth in this Section 10, if any Hazardous Materials are introduced to any Facility by the ESCO, its Subcontractors, and any party for whom they may be liable or if any Mold occurs within the Facilities as the result of the implementation of the Project or the functioning of the ECMs, then any response, removal, cleanup, or other remedial action required by applicable law shall be performed by the ESCO at its sole cost and expense. Except as to the ESCO's initial response to an emergency, any such remedial action(s) shall require the prior review and approval of the Customer.

**SECTION 11. DISPUTE RESOLUTION.**

A. Representatives of the Parties. Except for those disputes to be decided by the Engineer Neutral as provided in Section 3.C.2 and Section VIII of Exhibit B, all claims, disputes or other controversies arising out of, or relating to, this Contract (hereinafter collectively referred to as a "Dispute") shall initially be submitted to Customer Representative and the ESCO Representative for resolution by mutual agreement between said parties. Any mutual determination by the Customer Representative and the ESCO Representative will be final and binding upon the Parties. However, should the Customer Representative and the ESCO Representative fail to arrive at a mutual decision as to the Dispute within ten (10) days after notice to both individuals of the Dispute, such Dispute will be submitted to the Senior Officers as provided in Section 11 .B.

B. Senior Officers. In the event that a Dispute is not resolved in accordance with Section 11.A, such Dispute will be submitted to a Senior Officer from each Party for resolution by mutual agreement between said officers. Any mutual determination by the Senior Officers will be final and binding upon the Parties. However, should such Senior Officers fail to arrive at a mutual decision as to the Dispute within ten (10) days after notice to both individuals of the Dispute, the Parties may thereafter pursue any remedies available at law and/or in equity with respect to such Dispute, including, without limitation, litigation. The prevailing Party in any court

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proceedings shall be reimbursed by the other party for all costs, expenses and charges, including, without limitation, reasonable attorneys' fees, incurred by said prevailing Party.

C. Continuation of Services. Pending final resolution of a Dispute, the ESCO will proceed diligently with the performance of its duties and obligations under this Contract, and the Customer will continue to make payments of undisputed amounts in accordance with this Contract.

**SECTION 12. CHANGES IN THE WORK.**

A. Minor Changes in the Work. The Customer may issue written field orders which interpret this Contract or order minor changes in the Work not involving an adjustment in the Contract Sum or a change in the Scheduled Completion Dates. The ESCO will carry out such field orders promptly.

B. Change Orders. The Customer may order additions, deletions, or other revisions in the Work, in which event the Contract Sum and/or the Scheduled Completion Dates, as the case may be, will be adjusted by Change Order as hereinafter provided. If the Customer wishes to make additions, deletions, changes to the schedule, or other revisions in the Work, the Customer and the ESCO shall agree upon the amount by which the Contract Sum is to be increased or decreased as a result thereof or the method by which such increase or decrease is to be determined, and a Change Order shall be issued setting forth the addition, deletion, or

revision and the amount which the Contract Sum is to be increased or decreased or the method by which the increase or decrease in the Contract Sum is to be determined. If the ESCO and the Customer cannot reach agreement on the payment terms for the change, then: (a) the Customer may issue a Change Order directing the ESCO to commence such changes in the Work, and (b) the payment to the ESCO shall consist of the actual costs and savings of performing the Work attributable to the change, plus fifteen percent (15%) for profit and overhead. In such case, the ESCO shall keep and present, in such form as the Customer may reasonably require, an itemized accounting and appropriate supporting data. In no event will changes in the Work be made without a written Change Order signed by the Customer, and ESCO will be solely responsible for any changes which have not been accepted in a written Change Order signed by the Customer.

C. Extension of Scheduled Completion Dates. The ESCO hereby acknowledges that the Work of this Contract will be performed in occupied buildings and that such occupancy has been factored into the establishment of the Contract Sum and Contract Time. Accordingly, no proposed Change Order from the ESCO arising out of the normal operations and occupancy of a Facility shall be considered by the Customer. If the ESCO claims that it is entitled to an extension of the Scheduled Completion Date by reason of (i) the issuance of a Change Order changing the Work, or (ii) the occurrence of an Excusable Event, the ESCO will give Customer notice to such effect, within ten (10) business days after the commencement of the event, setting forth the extension in the Scheduled Completion Dates requested by the ESCO and specifying the reasons why the ESCO is requesting such extension. The Customer will inform the ESCO of the extension, if any, of the Scheduled Completion Dates which the Customer is willing to make, and, if the Customer is willing to extend the Scheduled Completion Dates, a Change Order shall be issued extending the Scheduled Completion Dates to the date acceptable to the Customer. If the ESCO is delayed at any time in progress of the Work by changes ordered in the Work by an Excusable Event, then the Contract Time will be extended by Change Order provided that: (i) the ESCO has notified the Customer in writing of such delay within ten (10) business days following the date when the ESCO becomes aware, or should

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have become aware through the exercise of reasonable diligence, of such delay; (ii) the ESCO has taken all reasonable steps to avoid any such delay (including its continuance); and (iii) such delay is not a theoretical delay but does actually adversely affect the critical path of the Work. Otherwise, the ESCO will not be entitled to an extension of the Contract Time for any delays in the progress of the Work.

D. Equitable Adjustment of Contract Sum. Except as the result of a Change Order as permitted by Section 12.B, an increase in the Contract Sum will only be granted under the following circumstances:

1. The ESCO's cost of performing the Work demonstrably increased because of the occurrence of an Excusable Event described in Section 12.E, paragraphs (1) through (3);
2. The ESCO notified the Customer of the Excusable Event via written notice (which written notice may be via email) within three (3) business days following the date when ESCO became aware, or should have become aware through the exercise of reasonable diligence, of the Excusable Event, which written notice described the ESCO's efforts (or planned efforts) undertaken to overcome or remove the Excusable Event and to minimize the potential adverse effect on the cost for performance of the Work resulting from such Excusable Event.
3. The ESCO took all reasonable steps to avoid the Excusable Event;
4. The ESCO made a written request for an increase in the Contract Sum to the Customer within three (3) business days after the cessation of such Excusable Event specifying the additional cost the ESCO believed it incurred as a result of such event; and
5. The ESCO demonstrates, \*to the reasonable satisfaction of the Customer, that the

Excusable Event did in fact cause an increase in the ESCO's cost of performing the Work.

Compliance with this Section is a condition precedent to receipt of an increase in the Contract Sum as the result of an Excusable Event. In the event of a failure to comply with this Section, the ESCO shall not be entitled to an increase in the Contract Sum and shall be deemed to have waived any future claim relating to such Excusable Event. Upon satisfaction by the ESCO of the terms and conditions in the preceding subsections, the Customer and the ESCO will use good faith efforts to agree on the extent to which the ESCO's costs for performing the Work have been increased as a result of any such Excusable Event. Once the Parties have mutually agreed as to the ESCO's increased cost, they shall enter into a Change Order reflecting their agreement as to the adjustment in the Contract Sum.

E. Excusable Events. The occurrence of any of the following events shall constitute an Excusable Event:

1. Delays resulting from the acts or omissions of the Customer or Client, to the extent such delays arise from circumstances beyond the reasonable control and without the fault or negligence of the ESCO, its Subcontractors, or other person for whom they may be liable;

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2. The discovery of any Hazardous Materials or Mold in a Facility that is a Concealed Condition (unless the Hazardous Materials are introduced to the Facility by the ESCO, its Subcontractors, or any party for whom they may be liable);

3. The occurrence of a change in law impacting the schedule or cost for the Work, provided that a change in any income tax law or any law by which a tax is levied or assessed on the basis of the ESCO's income, profits, revenues or gross receipts shall not be an Excusable Event; or

4. Any of the following acts, events, conditions or occurrences to the extent that the same are beyond the ESCO's reasonable control, which could not have been either foreseen or avoided by the exercise of due diligence, and which has an adverse effect on the ESCO's ability to perform the Work; drought, flood, earthquake, storm, mudslide, fire, lightning, epidemic, war, riot, civil disturbance, sabotage, explosions, material changes in law, or strikes or labor disputes that affect the Work not reasonably anticipatable, unavoidable casualties, acts of public enemies, orders or restraints of any kind imposed by the government of the United States, any state or any of their departments, agencies or officials, or any other action of a civil government, military or judicial authority.

## SECTION 13. PAYMENTS AND COMPLETION.

### A. Payments.

1. The total of all payments for the Work performed during the Installation Period will constitute the Contract Sum. Construction progress payments will be made to the ESCO monthly based on the percentage completion of items delineated on the Schedule of Values included in Exhibit A during the prior month.

2. During the Guarantee Period, each Performance Tracking Payment due from the Customer, as set forth on Exhibit E, will be paid to the ESCO no later than the later of (i) thirty (30) days following the end of the Performance Guarantee Year for which such Performance Tracking Payment is due or (ii) the date set forth in Exhibit E.

B. Withholding of Payments. Payments may be withheld to the extent of, and on account of (1)

defective Work not remedied; (2) claims filed by third parties; (3) failure of ESCO to make payments promptly to the Subcontractors for labor, materials or equipment; or (4) failure by the ESCO to perform its obligations under the Contract Documents. The Customer shall promptly notify the ESCO of any reason for withholding payment and Customer shall promptly make payment to the ESCO upon the resolution of such occurrence.

C. Retainage. During the Installation Period, retainage of ten percent (10%) of the total amount earned will be withheld from partial payments to the ESCO until the ESCO has achieved 50% completion of the Work, as determined by the Customer. Thereafter, retainage of five percent (5%) of the total amount earned will be withheld from partial payments to the ESCO. The retainage will be released upon the occurrence of both of the following events: (a) Final Acceptance of the entire Project; and (b) delivery by the ESCO and receipt by the Customer of security for the ESCO's faithful performance of its obligations during the Guarantee Period including, without limitation, payment of any Performance Guarantee Payment due to the Customer in the form of an annually renewable guaranteed energy savings bond. Such savings bond will (i) be issued by a surety with a Best's Key Rating Guide of not less than "A-VII" and

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licensed to do business in the State of Illinois, (ii) be in a form reasonably satisfactory to the Customer and the Lender, and (iii) name the Customer, the Client and the Lender as co-obligees. The ESCO shall provide to the Customer and the Lender the form of savings bond (including the co-obligee rider thereto) and the identity of the savings bond provider not less than thirty (30) days prior to the effective date of any such savings bond. The Customer may elect not to renew the savings bond at the start of any Performance Guarantee Year by providing the ESCO with 60 days written notice indicating its election not to renew the instrument. The savings bond must be provided by the ESCO to the Customer upon Substantial Completion as a condition of Final Acceptance and release of the retainage.

D. Payment Requests. Each payment request submitted by the ESCO during the Installation Period will be accompanied by the following, all in form and substance satisfactory to the Customer:

1. A duly executed and acknowledged ESCO's sworn statement showing all Subcontractors, the amount of each subcontract, the amount requested for any Subcontractor in the invoice and the amount to be paid to the ESCO, together with similar sworn statements from all Subcontractors;

2. Duly executed conditional waivers of mechanics', materialmen's and construction liens from the ESCO and all Subcontractors. The final invoice for the Contract Sum must be accompanied by final and full waivers of lien from all parties entitled to receive payment in connection with the Work; and

3. Such other documents and information as may be necessary or as may be reasonably requested by the Customer to verify satisfactory completion of the Work covered by such invoice and compliance with this Contract.

4. The ESCO will utilize the Commission's on-line collaboration and document management system (the "System") for the submission of the ESCO's monthly payment requests, including supporting Subcontractor documentation. The ESCO shall be responsible for implementation and use of the System for purposes of submitting its payment applications, including, without limitation, providing appropriate computer, network and information management systems and equipment for its personnel to access the System, training of the ESCO's personnel on the System and the applicable business process.

5. Ownership of and title to ECMs (or portions thereof) referenced in a payment request submitted by the ESCO as herein provided shall vest in the Customer immediately upon the

disbursement of loan proceeds from the Project Fund (as defined in the Loan Agreement) in accordance with such payment request, subject to the Lender's security interest and other rights therein as provided in the Loan Agreement.

E. Payment Due Date. Payment will be made net thirty (30) days of submission of a payment request meeting the requirements of this Section. If payment is not made within an additional ten (10) days after the payment due date, and the Customer is not entitled to withhold payment pursuant to Section 13.B, the ESCO may suspend all Work until payment is made; provided, however, that the ESCO's suspension of Work as provided in this subsection shall not affect any of its obligations under the Performance Guarantee.

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F. Offsets. All back charges to the ESCO, refunds from the ESCO, and other offsets against any amounts due to the ESCO that are permitted or required under the Contract Documents may be taken at any time from amounts due to the ESCO under the Contract Documents once the Customer has determined the amount of the back charge, refund, or offset to be made.

G. Certified Payrolls. Three copies of certified payrolls are to be submitted by the ESCO and all Subcontractors providing the Work to the Commission every week. The Commission may elect to utilize a Web-based method for electronic submittal of certified payrolls. In the event that the Commission elects to utilize electronic submittal, ESCO shall follow the directions provided by the Commission and submit its certified payrolls electronically, as a replacement for the three hard copy submittals. The ESCO shall ensure that it is fully trained in the use of the electronic submittal system. All payrolls must be identified with ESCO or Subcontractor's name and the name of this Contract, and must be sequentially numbered. The payroll will be submitted by the ESCO and Subcontractor until all Work by that ESCO or Subcontractor is completed. If there are periods of no Work by the ESCO or a Subcontractor, a payroll labeled "NO WORK" will be submitted. The final payroll will be labeled "FINAL." Certified payrolls are required to assure Equal Employment Opportunity ("EEO") compliance as well as wage compliance. Race, worker classification, and gender must be clearly marked for each employee on the certified payroll along with all additional information required by the Commission. An employee's address should appear every time his/her name appears on the payroll. The ESCO must submit the certified payrolls and additional information regarding EEO and wage compliance by providing a payroll summary report in the form required by the Commission. The EEO report form required by the Commission and the U.S. Department of Labor must be submitted by the ESCO and each Subcontractor, reflecting fully the periods of the Work covered by the partial payment request.

Every Subcontractor and supplier shall be required to submit certified payrolls and labor compliance documentation electronically at the discretion of and in the manner specified by the Commission. Each Subcontractor will be given a log on identification and password to access the Commission's web based reporting system for electronic submittal. Use of the system shall include additional data entry of weekly payroll information including: employee identification, labor classification, total hours worked and hours worked on the Project, wage and benefit rates paid, etc. in the manner specified by the Commission. This requirement will be "flowed down" to every lower-tier subcontractor and material supplier required to provide labor compliance documentation.

## SECTION 14. OWNERSHIP OF DESIGN MATERIALS.

A. Copies of Design Materials. The copies and other tangible embodiments of the drawings, specifications, designs, plans, "architectural work" (as such term is defined in the Architectural Works Copyright Protection Act of 1990) and other documents, prepared by or on behalf of the Customer, the ESCO, and/or Subcontractors in connection with the Project or the Contract Services (collectively, the "Design Materials") are and shall remain the exclusive property of the Customer. The ESCO shall use its best efforts to

ensure all copies of the Design Materials are delivered or returned to the Customer or suitably accounted for upon, the Customer's request or upon final payment, whichever is earlier. The ESCO may retain one copy of the Design Materials for its records, but shall not use such copies for any purpose other than with respect to the Contract Services without the Customer's prior written consent. The Intellectual Property Rights, if any, relating to the Design Materials or the contents of or

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concepts embodied in the Design Materials shall remain with and belong to the ESCO or its Subcontractors, as the case may be.

B. License for the Use of Design Materials. As to those Design Materials deemed subject to any form of Intellectual Property Rights, the ESCO hereby grants and will cause to be granted and delivered to the Customer from Subcontractors a paid-up, nonexclusive, world-wide, irrevocable, transferable license, for the term of the Intellectual Property Rights, for the Customer to use, reproduce and have reproduced, and for the Customer to allow others to use, reproduce and have reproduced, such Design Materials and any derivative thereof, subject to the restrictions set forth below:

1. All Intellectual Property Rights in or relating to any of the Design Materials shall remain the property of the ESCO or the appropriate Subcontractor, whether or not the Project is completed; and

2. The Customer shall not, without the prior written consent of the ESCO, use such Design Materials, in whole or in part, for the construction of any other project. The Customer may, however, at no cost to the Customer, use such Design Materials (i) for completion of the Project and the Contract Services by others upon termination of this Contract or termination of the ESCO's right to perform all or any portion of the Contract Services, and (ii) for the construction, operation, maintenance and repair of (and for additions, improvements, changes or alterations to) the Project after its completion.

C. Delivery of Design Materials and As-built Drawings. Upon the earlier of the date of Final Acceptance of the Work for a particular ECM or the date of termination of this Contract, the ESCO shall deliver to the Customer any Design Materials which have not been previously submitted to the Customer for that ECM. Upon the date of Final Acceptance of the entire Project, the ESCO must provide two (2) hard copies of "as-built" drawings of all modified conditions associated with the Project, conforming to typical engineering standards. The as-built drawings shall also be submitted in an electronic format compatible with the AutoCAD or other similar system in use by the Customer.

D. Document Control System. The Commission has an on-line collaboration and document management system (the "OCDM System"). The ESCO shall use the OCDM System to: track the Work, manage the Project, and follow the Commission's procedures for electronic submission and receipt of documents as directed by the Commission. The OCDM System shall be the mode of conveyance and repository for all Project-related documents. The ESCO shall post all Project-related documents to the OCDM System as directed by the Commission. By executing this Contract, the ESCO agrees to comply with all terms and conditions required by the Commission for the use of the OCDM System.

- 1) Within 15 calendar days of the Date of Commencement, the ESCO shall designate an employee that will serve as its "OCDM System Coordinator." The ESCO's OCDM System Coordinator will be the point of contact for the Commission for implementation and support for the ESCO's use of the OCDM System.

2) Employees of the ESCO, its Subcontractors and suppliers who will use the OCDM System must complete the training provided by the Commission. Each such employee must furnish a valid e-mail address to the Commission prior to the training.

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3) The OCDM System requires a broadband connection with the Internet (e.g., at a minimum, T1, cable modem, or DSL) for effective use. The ESCO must furnish its own hardware and software, including, but not limited to, personal computers, peripheral software, virus protection software and high-speed document scanners. All written communication and document transmittal from the ESCO to the Commission will occur via the OCDM System. In the event that hand signatures and/or stamps are required for a document, unless otherwise directed by the Commission, the transmittal of such document shall be made simultaneously via the OCDM System and hard copy; hard copy shall be transmitted as required by the Contract Documents. Signed and/or stamped documents must then be scanned and uploaded to the OCDM System.

4) The ESCO shall be solely responsible for its use of the OCDM System, as well as use of the OCDM System by its Subcontractors and suppliers.

## SECTION 15. DEFAULT AND TERMINATION.

A. Events of Default. The ESCO will be deemed to be in default under this Contract and the Contract Documents if ESCO:

1. fails to make any payment due under the Performance Guarantee;
2. becomes insolvent or bankrupt, or makes a general assignment for the benefit of creditors, or if a receiver is appointed on account of insolvency;
3. fails to perform the Contract Services in accordance with the Contract Documents, if not cured within any applicable cure period;
4. fails to perform the Work on the Project with sufficient workers, equipment or materials to ensure the completion of the Work or any part of the Work within the time specified by the Contract Documents;
5. discontinues prosecution of Work on the Project;
6. fails to make prompt payment to Subcontractors or for material or labor on the Project;  
or
7. is otherwise guilty of a breach of any provision of this Contract or the Contract Documents.

B. Remedies. In the event of a default by the ESCO, the Customer may, in addition to and without prejudice to any other right or remedy of the Customer under this Contract, terminate this Contract and the Contract Documents for the Project or for any portion of the Project following the conclusion of the Dispute resolution process described in Section 11. The Customer will then have the following rights (any or all of which may be exercised by the Customer in its sole discretion, and in addition to and without prejudice to any other right or remedy): (a) to take (in the manner and to the extent desired by the Customer) an assignment of the ESCO's subcontracts and material orders for all or any portion of the Project; and (b) finish the Work on all or any portion of the Project by whatever method the Customer considers expedient. The ESCO will not be entitled to receive any further payment for the portion of the Work so terminated. If the purpose of finishing the



entitled to receive any further payment for the portion of the work so terminated. If the expense of finishing the Work on the Project, including compensation for additional managerial and administrative services, exceeds the unpaid

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balance of the Contract Sum, the ESCO (and the surety or sureties on the bonds required pursuant to Section 6.0) are liable for and will pay the amount of the excess to the Customer.

C. Termination For Convenience. The Customer reserves the right, for its convenience, to terminate the Work of the ESCO on all or any portion the Project or to terminate this Contract by ten (10) days written notice stating the effective date of the termination. In that case, the ESCO and its Subcontractors must (except for services necessary for the orderly termination of the Work):

1. stop all Work so terminated;
2. place no further order or subcontracts for materials, services, equipment • or supplies on the terminated Work;
3. assign to the Customer (in the manner and to the extent directed) all of the rights of the subcontracts relating to the terminated Work;
4. take any action necessary to protect property of the Customer and property in the ESCO's possession in which the Customer has, or may acquire, an interest; and
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5. take any other action toward termination of the Work that the Customer may direct.

Thereafter, the Customer will pay the ESCO for the terminated Work the proportion of the Contract Sum that the Work actually performed (including materials delivered to the Facilities) at the date of termination bears to the Work required to be performed for such portion of the Project and, to the extent such funds are made available by the Client, the costs the ESCO actually incurs in cancelling subcontracts or supply contacts related to this Contract. However, no payments will be made for Work not actually performed, and no payment will be made or due for lost profits for portions of the Work not actually performed. In the event the Customer terminates for default pursuant to Section 15.B and the basis for the default is later held invalid, such termination will automatically be deemed a termination for convenience under this Section 15.C.

D. Suspending the Work. The Customer reserves the right to suspend the Work on the Project, wholly or in part, by written stop order for such period as is necessary for the protection of the Customer's interest. The stop order remains in effect until released by the Customer, in writing. The Customer does not assume any liability for damages or loss of anticipated profits resulting from the stoppage of Work, but will grant the ESCO an extension of the Contract Time commensurate with the period of actual delay in completion of Work, if the stop order was not necessitated by the acts, failure to act, or negligence of the ESCO or a Subcontractor. The ESCO will take all means and precautions as may be required to properly protect the finished and partially finished Work during the period or periods of the stop order.

E. ESCO Termination. If, through no fault of the ESCO, the Customer fails to make payments to the ESCO as set forth in Section 13 and Exhibit E, the ESCO may, after the conclusion of the Dispute resolution process described in Section 11, terminate this Contract and recover from the Customer the proportion of the Contract Sum that the Work actually performed (including materials delivered to the Facilities) at the date of termination bears to the Work required to be performed for such portion of the Project. However, no payments will be

made for Work not actually performed, and no payment will be made or due for lost profits for portions of the Work not actually performed.

## **SECTION 16. ASSIGNMENT.**

A. ESCO Assignment. The ESCO may not assign this Contract or the Contract Documents or sublet it, in whole or in part, without the prior written consent of the Customer and the Lender, in their sole discretion, nor shall the ESCO assign any moneys due or to become due to it under the Contract Documents without the prior written consent of the Customer and Lender, in their sole discretion. Any assignment of monies due under the Contract Documents made without the prior written consent of the Customer and the Lender is void, and the assignee in that case acquires no rights against the Customer or the Lender.

B. Customer Assignment The Customer may assign this Contract and the Contract Documents in its sole discretion to: (i) the Client; (ii) the Lender for collateral purposes or (iii) any entity wholly owned or controlled by the same owners of the Customer. The Customer may assign this Contract to any other entity approved in advance by the ESCO, which approval shall not be unreasonably withheld or delayed and by the Lender (in the exercise of its sole discretion). As permitted by clause (ii) of this Section 16.B., the ESCO understands and agrees that, simultaneously with the execution and delivery of this Contract, all of the Customer's rights and interests under this Contract are being assigned and transferred to the Lender pursuant to the Loan Agreement. The ESCO hereby consents to such assignment and transfer and to any subsequent assignment and transfer of rights and interests under this Contract in accordance with the Loan Agreement. Upon the execution and delivery of the Loan Agreement and this Contract, references to the Customer in the operative provisions of this Contract that relate to rights and interests of the Customer (including, without limitation, rights to enforce the terms of the Performance Guarantee upon the occurrence of an Event of Default described in Section 15.A.1 or 15.A.2) shall be deemed to be references to the Lender (including any successors and permitted assigns of the Lender), as assignee or subsequent assignee of the Customer.

C. Permitted Assigns. This Contract shall be binding upon, and inure to the benefit of, the successors and permitted assigns of the Parties.

## **SECTION 17. OTHER CONDITIONS OR PROVISIONS.**

A. Representations and Warranties. Each Party warrants and represents to the other that:

1. It has all requisite power, authority, licenses, permits, and franchises, corporate or otherwise, to execute and deliver this Contract and perform its obligations hereunder;

2. Its execution, delivery, and performance of this Contract have been duly authorized by, or are in accordance with, its governing documents, and this Contract has been duly executed and delivered for it by the signatories so authorized, and it constitutes its legal, valid, and binding obligation;

3. Its execution, delivery, and performance of this Contract will not result in a breach or violation of, or constitute a default under, any agreement, lease or instrument to which it is a party or by which it or its properties may be bound or affected; and

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4. It has not received any notice, nor to the best of its knowledge is there pending or threatened any notice, of any violation of any applicable laws, ordinances, regulations, rules, decrees, awards, permits or orders which would materially and adversely affect its ability to perform hereunder.

The ESCO warrants and represents to the Customer that the disclosures and certifications set forth on Exhibit I are and shall remain true and correct.

B- Time. Time is of the essence of this Contract. By executing this Contract, the ESCO confirms that the Scheduled Final Acceptance Date is a reasonable period of time for performing the Work.

C. Governing Law. This Contract shall be governed by the laws of the State of Illinois, without regard to conflicts of law principles.

D. Severability. If any provision of this Contract shall be held to be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired thereby; provided, however, that if enforcement of this Contract in the absence of such provision would deprive a Party of a material element of its original bargain, the Parties shall promptly negotiate in good faith a reformation of this Contract to reflect as nearly as possible all material elements of the original Contract,

E. No Waiver. No course of dealing or failure of the Customer and/or the ESCO to enforce strictly any term, right or condition of this Contract shall be construed as a waiver of such term, right or condition. No express waiver of any term, right or condition of this Contract shall operate as a waiver of any other term, right or condition.

F. Relationship of the Parties. The ESCO is an independent contractor in providing and performing the Contract Services. Nothing in, or done pursuant to, this Contract will be construed to create the relationship of principal and agent, employer and employee, partners, or joint venturers between the Customer and the ESCO or its Subcontractors.

G. Amendment. No amendment to this Contract shall be effective until and unless reduced to writing and executed by the Parties. In no event shall the ESCO and the Customer consent to any amendment, modification or change to this Contract which has the effect of reducing the amount of the Guaranteed Annual Savings Amount or the Guaranteed Project Savings Amount payable by the ESCO hereunder without the prior written consent of the Lender.

H. Entire Agreement. This Contract represents the entire agreement between the Customer and the ESCO with respect to the subject matter hereof, and supersedes all prior negotiations, representations or

the ESCO with respect to the subject matter hereof, and supersedes all prior negotiations, representations or agreements, whether written or oral.

<sup>1</sup> I. Rights Cumulative. Except as otherwise provided in this Contract, (i) rights and remedies available to the Customer and/or the ESCO as set forth in this Contract shall be cumulative with and in addition to, and not in limitation of, any other rights or remedies available to the Parties at law and/or in equity, and (ii) any specific right or remedy conferred upon or reserved to the Customer and/or the ESCO in any provision of this Contract shall not preclude the concurrent or consecutive exercise of a right or remedy provided for in any other provision hereof.

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J. Further Assurances. Each Party hereto shall, from time to time, at the request of the other Party and without further consideration, execute and deliver and cause to be executed and delivered such other instruments and take such other actions as the requesting Party may reasonably request to undertake the Contract Services and carry out the intent and purposes of this Contract.

K. Notices. Any information or notices required to be given under this Contract shall be in writing and shall be delivered either by (i) certified mail, return receipt requested, in which case notice shall be deemed delivered three (3) business days after deposit, postage prepaid, in the U.S. mail; (ii) a reputable messenger service or a nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) business day after deposit with such messenger or courier; or (iii) personal delivery with receipt acknowledged in writing, in which case notice shall be deemed delivered when received. All notices shall be addressed as follows:

If to Customer:

Chicago Infrastructure Trust 222 West  
Merchandise Mart Suite 1212  
Chicago, Illinois 60657 Attention: Executive  
Director Email: [ssb@shapechicago.org](mailto:ssb@shapechicago.org)  
<<mailto:ssb@shapechicago.org>>

and to:

Public Building Commission of Chicago  
50 West Washington, Suite 200  
Chicago, IL 60602  
Attention:  
E-mail:

If to ESCO:

Schneider Electric Buildings Americas, Inc.  
1650 W. Crosby Rd,  
Carrollton, TX 75006  
Attention: Tammy Fulop  
Email: tammy.fulop@schneider-electric.com <mailto:tammy.fulop@schneider-electric.com>

The foregoing addresses may be changed from time to time by notice to the other Party in the manner herein before provided for.

L. Counterparts. This Contract may be executed in counterparts, each of which shall be deemed an original, and all of which counterparts shall constitute one agreement. To facilitate execution of this Contract, the Parties may execute and exchange facsimile counterparts of the signature pages, provided originally executed signature pages are exchanged promptly thereafter.

M. Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR

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INDIRECTLY ARISING OUT OF OR RELATING TO THIS CONTRACT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS CONTRACT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

N. Incorporation by Reference. The recitals set forth on the first few pages of this Contract, as well as the following Exhibits attached hereto, are hereby incorporated into this Contract by this reference and expressly made a part of this Contract:

Exhibit A: Project Description

Exhibit B: Performance Guarantee

- Exhibit C: Methodology and Baseline
- Exhibit D: Performance Tracking Services
- Exhibit E: Performance Tracking Services Payments
- Exhibit F: Additional Performance of Work Requirements
- Exhibit G: Required Maintenance
- Exhibit H: ESCO's Insurance Requirements
- Exhibit I: Custome'r Disclosures and Certifications
- Exhibit J: Client-Required Terms and Conditions .
- Exhibit K: Project Participation Guidelines

[Signature Page Follows]

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IN WITNESS WHEREOF, the Parties have executed this Contract this day first written above.

**CHICAGO INFRASTRUCTURE TRUST**

**SCHNEIDER ELECTRIC BUILDINGS  
AMERICAS, INC.**

C<<sup>3</sup>C i \*->-y\*

By: o,tt\_\_ K By:  
Stephen S. Beitler  
Chief Executive Officer  
and Executive Director

Name:  
Title:

*[Signature Page of Guaranteed Energy Performance Contract]*

IN WITNESS WHEREOF, the Parties have executed this Contract this day first written  
above.

**CHICAGO INFRASTRUCTURE TRUST**

**SCHNEIDER ELECTRIC BUILDINGS  
AMERICAS, INC.**

By:  
Stephen S. Beitler Chief Executive Officer and Executive Director

*[Signature Page of Guaranteed Energy Performance Contract]*

## **EXHIBIT A PROJECT DESCRIPTION**

### **Section I. Overview Description of the Project.**

The Project is a portion of Retrofit One, the first phase of Retrofit Chicago, a comprehensive effort to increase energy efficiency in public buildings. It is designed to enlist the expertise of energy service companies to identify, design, provide, implement and guarantee the performance of energy-related capital improvements to a variety of Client-owned public buildings. The Energy Conservation Measures (ECMs) described below have been selected to achieve long term savings that can be measured & verified. The ESCO will provide turn-key implementation of each and every ECM listed below including commissioning, training of Client personnel on the operating and maintenance, and ongoing Measuring and Verification (M&V) services to document and confirm the measures are delivering at least the Guaranteed Project Savings Amount, as described in Exhibits B and C.

For each facility listed below, the ESCO will be responsible for doing a complete inventory of existing and new mechanical equipment and populating the necessary information' into a digital spreadsheet that will be incorporated into a Computerized Maintenance Management System ('CMMS') provided by the Customer.

For each applicable ECM listed below, the ESCO will be responsible for applying for and assisting the



Customer and the Client secure supplemental funding from grants, reimbursement rebates, and other types of energy efficiency incentives.

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**Section II. Description of ECMs by Facility 4th District Police**

**ECM 069.30 - 4th Dist Ltg Occ Sensors**

**ECM 069.31 - 4th Dist Ltg Retrofit/Replace**

**Area 4 / 11th District Police**

**ECM 224.10 - Area 4 BAS**

**ECM 224.20 - Area 4 VAV DCV**

**ECM 224.21 - Area 4 VAV Cell Block**

**ECM 224.31 - Area 4 Ltg Retro/Replace**

**911 Center**

**ECM 257.10 - 911 Ctr RetroCx**

**West Town Health Center**

**ECM 329.10 - West Town HC BAS**

**Englewood Health Center**

**ECM 331.10 - Englewood HC BAS**

**ECM 331.31 - Englewood HC Retro/Replace**

Uptown Health Center

**ECM 353.10 - Uptown HC BAS**

Roseland Health Center

ECM 354.10 - Roseland HC BAS

**ECM 354.31 - Roseland HC Ltg Retro/Replace**

SACHS Clinic

ECM 358.10 - SACHS BAS

**ECM 358.31 - SACHS Ltg Retro/Replace**

Homan Square Police

**ECM 389.30 - Homan Sq Ltg Occ Sensors**

Police Headquarters

ECM 396.10 - Police HQ RetroCx

**ECM 396.30 - Police HQ Occ Sensors ECM 396.31 - Police HQ Ltg Retro/Replace**

17th District Police

ECM 527.10 - 17th Dist ReCx

10th District Police

ECM 541.10 - 10th Dist ReCx

Copernicus Aging Center

ECM 592.10 - Copernicus Aging Ctr BAS

**ECM 592.31 - Copernicus Aging Ctr Ltg Retro/Replace**

**Martin Luther King Community Center**

ECM 601.10-King CC BAS

**ECM 601.11 - King CC AHU3 DCV**

Department of Public Health

ECM 640.10 - Dept of Public Health RetroCx

ECM 640.20 - Dept of Health HVAC Refurbish

ECM 640.30 - Dept of Public Health Ltg Occ Sensors

15th District Police

ECM 668.10 - 15th Dist ReCx

Juvenile Detention Center

ECM 687.30 - Juvenile Detention Ltg Occ Sensors ECM 687.31 - Juvenile Detention Ltg Retro/Replace

8th District Police

ECM 706.10 - 8th Dist ReCx

9th District Police

ECM 783.10 - 9th Dist ReCx

23rd / 19th District Police

ECM 808.10 ■ 23rd/19th Dist ReCx

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Section Hi Detailed Description of ECMs 069 - 4<sup>th</sup>

District Police

ECM 069.30 -Install Lighting Occupancy Sensors

Logged data has shown opportunity to take advantage of occupancy-based lighting control. The below selected area types shall receive either a ceiling or wall switch type lighting occupancy sensor:

Private Office Meeting Room

Open Space Restroom

Storage Hallway

Total wall switch type occupancy sensors: 27 Total ceiling

type occupancy sensors: 20

- Training shall be provided by Schneider Electric and manufacturer representative on the operation of the lighting sensor provided as part of this project. Training will be scheduled 14 days prior with the Customer representatives.

*o No Warranty Period outside of Section 8 of the Contract.*

- A Commissioning (Cx) Guideline will be developed for each ECM. A Project Cx Plan will incorporate each individual Cx Guideline defining subcontractor responsibilities and requirements. As applicable, pre-functional, functional, and performance verification testing will be completed for each ECM. A final Cx Report will be provided documenting compliance with design, proper installation per specifications and standards, proper operation, and individual ECM functionality.

#### **ECM 069.31 -Lighting Retrofit/Replacement**

The facility contains older lighting technologies in need of retrofit or replacement. The following shall take place:

Incandescent lamp shall be replaced with CFL and LED Retrofit remaining T12  
fixtures with T8 lamps and ballasts Total fixture retrofits: 15

- *No Warranty Period outside of Section 8 of the Contract.*

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#### **224 - Area 4/11th District Police**

##### **ECM 224.10 - Install Building Automation System**

The following is a list of the points that will be controlled with the BAS. Motors shall be replaced where new VFD's are being installed. Pneumatic damper actuators shall be replaced with electronic actuators and pneumatic hydronic valves shall be controlled via PE switch:

##### **CHW System**

###### *Control Points*

###### *Monitoring Points*

Chiller 1 Enable/Disable Chiller 2 Enable/Disable Chilled Water Pump 1 Start/Stop Chilled Water Pump 2 Start/Stop

Chilled Water Pump 3 Start/Stop

- « Chilled Water Supply Temperature
- Chilled Water Return Temperature
- Chiller 1 Supply Temperature
- Chiller 2 Supply Temperature
- Chiller 1 Amps Chiller 2 Amps
- Chiller 1 Alarm
- Chiller 2 Alarm
- » Chilled Water Pump 1 Status
- Chilled Water Pump 2 Status
- Chilled Water Pump 3 Status

##### **CW System**

*Control Points*

*Monitoring Points*

- \* Cooling Tower Fan Start/Stop
  - Cooling Tower Fan VFD Speed
  - Cooling Tower Bypass Valve Actuation
  - Condenser Water Pump 1 Start/Stop
  - Condenser Water Pump 2 Start/Stop
  - Condenser Water Pump 3 Start/Stop
  - Condenser Water Supply Temperature
  - Condenser Water Return Temperature
  - Cooling Tower Fan Speed Feedback
  - Condenser Water Pump 1 Status
  - Condenser Water Pump 2 Status
  - Condenser Water Pump 3 Status

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**HW System**

*Control Points*

*Monitoring Points*

- Hot Water Pump 1 Start/Stop Hot Water Pump 2 Start/Stop Hot Water Pump 3 Start/Stop Hot Water Pump 4 Start/Stop  
HX 1 Steam Valve Actuation HX 2 Steam Valve Actuation
- Hot Water Pump 1 Status
  - Hot Water Pump 2 Status
  - Hot Water Pump 3 Status
  - Hot Water Pump 4 Status
  - HX 1 Hot Water Supply Temperature
  - HX 1 Hot Water Return Temperature
  - HX 2 Hot Water Supply Temperature
  - HX 2 Hot Water Return Temperature

**Gun Range Air Handling Unit**

*Control Points*

*Monitoring Points*

- |                             |                           |
|-----------------------------|---------------------------|
| • Supply Fan Start/Stop     | • Supply Air Temperature  |
| • Return Fan Start/Stop     | ■ Mixed Air Temperature   |
| • Supply Fan VFD Speed      | ■ Outdoor Air CFM Flow    |
| ■ Return Fan VFD Speed      | ■ Supply Fan VFD Feedback |
| « Outside/Return Air Damper | ■ Return Fan VFD Feedback |

Actuation

- Exhaust Air Damper Actuation
- Hot Water Valve Actuation
- Space Temperature
- Space Temperature Setpoint Adj.
- Space Occupancy

**S3 & S4 Air Handling Units**

*Control Points*

*Monitoring Points*

- Supply Fan Start/Stop
- «
- « Face & Bypass Damper Actuation
- 1/3<sup>rd</sup> Steam Valve Actuation
- •
- « Chilled Water Valve Actuation
- Supply Air Temperature
- Outside Air Damper Open/Close ■
- Space Temperature
- Space Temperature Setpoint Adj.
- 2/3<sup>rd</sup> Steam Valve Actuation ■
- Supply Fan Status
- Space Override

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**S11 Air Handling Units**

*Monitoring Points*

Supply Fan Start/Stop Outside Air Damper Open/Close Face & Bypass Damper Actuation 1/3<sup>rd</sup> Steam Valve Actuation  
2/3<sup>rd</sup> Steam Valve Actuation  
Supply Air Temperature Supply Fan Status

**S1, S2 & S6 Air Handling Units**

*Monitoring Points*

- Supply Fan Start/Stop
- Return Fan Start/Stop
- Outside/Return Air Damper Actuation
- Exhaust Air Damper Actuation
- Chilled Water Valve Actuation
- Supply Air Temperature Mixed Air Temperature Return Air Temperature Supply Fan Status Return Fan Status

**S10 Air Handling Unit**

*Monitoring Points*

- Supply Fan Start/Stop
- « Return Fan Start/Stop
- » Outside/Return Air Damper Actuation
- » Exhaust Air Damper Actuation
- 1 /3<sup>rd</sup> Steam Valve Actuation
- 2/3<sup>rd</sup> Steam Valve Actuation
- DX Cooling Enable/Disable

Supply Air Temperature Mixed Air Temperature Return Air Temperature Supply Fan Status Return Fan Status

**S5 Air Handling Unit**

*Monitoring Points*

Supply Fan Start/Stop Exhaust Fan Start/Stop Face & Bypass Damper Actuation 1/3<sup>rd</sup> Steam Valve Actuation 2/3<sup>rd</sup> Steam Valve Actuation Chilled Water Valve Actuation  
Supply Air Temperature  
Supply Fan Status  
Exhaust Fan Status  
Space Temperature  
Space Temperature Setpoint Adj.  
Space Override

A-7

**S7 & S8 Air Handling Units**

*Control Points*

*Monitoring Points*

- |   |                                   |
|---|-----------------------------------|
| Supply Fan Start/Stop                     | ■ Supply Air Temperature          |
| Exhaust Fan Start/Stop <sup>a</sup>       | ■ Supply Fan Status               |
| • Face & Bypass Damper Actuation          | ■ Exhaust Fan Status              |
| » 1/3 <sup>rd</sup> Steam Valve Actuation | ■ Space Temperature               |
| » 2/3 <sup>rd</sup> Steam Valve Actuation | ■ Space Temperature Setpoint Adj. |
|   | ■ Space Override                  |

**Miscellaneous**

*Control Points*

*Monitoring Points*

- |                               |                           |
|-------------------------------|---------------------------|
| ■ Exhaust Fan Enable/Disable* | ■ Outside Air Temperature |
|                               | Outside Air Humidity      |

\* - Exhaust Fans will be grouped (zoned) to match schedules of units and will be determined by Schneider Electric.

- Training shall be provided by Schneider Electric and/or BAS contractor on the operation of the BAS system provided under this Contract. This training will be BAS type and building specific. Training will be scheduled 14 days prior with the Customer Representatives.

- *No Warranty Period outside of Section 8 of the Contract.*
- A Commissioning (Cx) Guideline will be developed for each ECM. A Project Cx Plan will incorporate each individual Cx Guideline defining subcontractor responsibilities and requirements. As applicable, pre-functional, functional, and performance verification testing will be completed for each ECM. A final Cx Report will be provided documenting compliance with design, proper installation per specifications and standards, proper operation, and individual ECM functionality.

#### **ECM 224.20 - Convert Constant Air Volume (CAV) Unit to Variable Air Volume (VAV)**

The locker room unit and auditorium units are constant speed units.

This ECM will install variable frequency drives on the supply air and return/exhaust air fan motors. Motors which do not have the proper insulation class and are not rated for use with variable frequency drives will be replaced.

Schneider Electric's performance specification for variable frequency drives is open to Square D, Danfoss, and ABB.

«» Training shall be provided by Schneider Electric and manufacturer representative on the operation of the VFD's provided under this Contract. Training will be scheduled 14 days prior with the Customer Representatives.

- *No Warranty Period outside of Section 8 of the Contract.*

#### **A-8**

- A Commissioning (Cx) Guideline will be developed for each ECM. A Project Cx Plan will incorporate each individual Cx Guideline defining subcontractor responsibilities and requirements. As applicable, pre-functional, functional, and performance verification testing will be completed for each ECM. A final Cx Report will be provided documenting compliance with design, proper installation per specifications and standards, proper operation, and individual ECM functionality.

#### **ECM 224.21 - Convert Constant Air Volume (CAV) Unit to Variable Air Volume (VAV)**

The cell block unit is a constant speed unit.

This ECM will install variable frequency drives on the supply air and return air fan motor. Motors which do not have the proper insulation class and are not rated for use with variable frequency drives will be replaced.

Schneider Electric's performance specification for variable frequency drives is open to Square D, Danfoss, and ABB.

- Training shall be provided by Schneider Electric and manufacturer representative on the operation of the VFD's provided under this Contract. Training will be scheduled 14 days prior with the Customer Representatives.
- *No Warranty Period outside of Section 8 of the Contract.*
- A Commissioning (Cx) Guideline will be developed for each ECM. A Project Cx Plan will incorporate each individual Cx Guideline defining subcontractor responsibilities and requirements. As applicable,



pre-functional, functional, and performance verification testing will be completed for each ECM. A final Cx Report will be provided documenting compliance with design, proper installation per specifications and standards, proper operation, and individual ECM functionality.

### **ECM 224.31 -Lighting Retrofit/Replacement**

The facility contains older lighting technologies in need of retrofit or replacement. The following shall take place:

Incandescent lamp shall be replaced with CFL and LED Replace high-bay metal  
-halide with T5 fluorescent Retrofit remaining T12 fixtures Retrofit exterior metal-  
halide fixtures Total fixture retrofits: 134

Total fixture replacements: 39

« *No Warranty Period outside of Section 8 of the Contract.*

A-9

|

### **257 -911 Center**

#### **ECM 257.10 - Retrocommission Existing Building Automation System**

The existing Siemens Apogee system will be modified to include the addition of time of day scheduling to equipment serving routinely unoccupied areas. In addition, equipment selected by Schneider will have their sequence of operations modified to original design intent with a focus on energy savings.

- » Training shall be provided by Schneider Electric and/or BAS contractor on the operation of the BAS system provided under this Contract. This training will be BAS type and building specific. Training will be scheduled 14 days prior with the Customer Representatives.
- *No Warranty Period outside of Section 8 of the Contract.*
- A Commissioning (Cx) Guideline will be developed for each ECM. A Project Cx Plan will incorporate each individual Cx Guideline defining subcontractor responsibilities and requirements. As applicable, pre-functional, functional, and performance verification testing will be completed for each ECM. A final Cx Report will be provided documenting compliance with design, proper installation per specifications and standards, proper operation, and individual ECM functionality.

### **329 - West Town Health Center**

#### **ECM 329.10 - Install Building Automation System**

The following is a list of the points that will be controlled with the BAS. Motors shall be replaced where new VFD's are being installed. Pneumatic damper actuators shall be replaced with electronic actuators and

pneumatic hydronic valves shall be controlled via PE switch:

### Roof Top Units (2)

#### *Control Points*

#### *Monitoring Points*

- Supply & Return Fan Start/Stop « Supply Air Temperature
  - Cooling Enable/Disable
    - » Supply Fan Status
    - Return Fan Status

### Roof Top Units (2)

#### *Control Points*

#### *Monitoring Points*

- Supply Fan Start/Stop
  - » Supply Air Temperature
- Return Fan Start/Stop
  - Supply Fan Status
  - Return Fan Status
- DX Cooling 1 Enable/Disable
- DX Cooling 2 Enable/Disable
- Electric Heat Enable/Disable
- Economizer Damper Position

A-10

### Electric Zone Reheat (23)

#### *Control Points*

#### *Monitoring Points*

- Electric Heating Stage 1
  - Space Temperature
- Enable/Disable
- Electric Heating Stage 2
  - Space Temperature Setpoint Adj.
  - Space Override
- Enable/Disable (5)

### Miscellaneous

#### *Control Points*

#### *Monitoring Points*

- « Exhaust Fan Enable/Disable\*
  - Outside Air Temperature

\* - Exhaust Fans will be grouped (zoned) to match schedules of units and will be determined by Schneider Electric.

- Training shall be provided by Schneider Electric and/or BAS contractor on the operation of the BAS system provided under this Contract. This training will be BAS type and building specific. Training will be scheduled 14 days prior with the Customer Representatives.

» No Warranty Period outside of Section 8 of the Contract.

- » A Commissioning (Cx) Guideline will be developed for each ECM. A Project Cx Plan will incorporate each individual Cx Guideline defining subcontractor responsibilities and requirements. As applicable, pre-functional, functional, and performance verification testing will be completed for each ECM. A final Cx Report will be provided documenting compliance with design, proper installation per specifications and standards, proper operation, and individual ECM functionality.

### 331 - Englewood Health Center

#### ECM 331.10- Install Building Automation System

The following is a list of the points that will be controlled with the BAS. Motors shall be replaced where new VFD's are being installed. Pneumatic damper actuators shall be replaced with electronic actuators and pneumatic hydronic valves shall be controlled via PE switch:

#### A-11

##### CHW System

###### *Monitoring Points*

- Chilled Water System Enable/Disable
- Chilled Water Supply Temperature Setpoint
- « Chilled Water Pump 1 Start/Stop
- Chilled Water Pump 2 Start/Stop
- Chilled Water Supply Temperature
- Chilled Water Return Temperature
- Chilled Water System Alarm « Chilled Water Pump 1 Status
- Chilled Water Pump 2 Status

##### CW System

###### *Control Points*

###### *Monitoring Points*

- Cooling Tower Fan Start/Stop Cooling Tower Fan VFD Speed Condenser Water Pump 1 Start/Stop  
Condenser Water Pump 2 Start/Stop  
Condenser Water Bypass Valve Actuation
- Condenser Water Supply Temperature
  - Condenser Water Return Temperature
  - Cooling Tower Fan Speed Feedback

- Cooling Tower Fan Speed Feedback
- Condenser Water Pump 1 Status ° Condenser Water Pump 2 Status

## HW System

### *Control Points*

### *Monitoring Points*

- Boiler Enable/Disable
- Zone 1 Hot Water Bypass Valve Actuation
- Zone 2 Hot Water Bypass Valve Actuation
- Hot Water Pump 1 Start/Stop
- Hot Water Pump 2 Start/Stop
- Hot Water Pump 3 Start/Stop
- Hot Water Pump 4 Start/Stop
- Hot Water Return Temperature
- Hot Water Supply Temperature
- Zone 1 Hot Water Supply Temperature
- Zone 2 Hot Water Supply Temperature
- « Mechanical Room Fan Status « Hot Water Pump 1 Status
- Hot Water Pump 2 Status
- Hot Water Pump 3 Status
- Hot Water Pump 4 Status

A-12

## Air Handling Unit - Multi-Zone 1

### *Control Points*

### *Monitoring Points*

- <sup>a</sup> Hot Water Valve Actuation
  - Chilled Water Valve Actuation
  - » Return/Outside Air Damper Actuation
  - Exhaust Air Damper Actuation
  - Supply Fan Start/Stop
  - « Supply Fan VFD Speed
  - « Return Fan Start/Stop
  - Return Fan VFD Speed
  - Zone # Volume Damper Actuation (12)
  - « Zone # Damper Actuation (12)
  - Hot Water Pump Start/Stop
- Hot Deck Temperature Cold Deck Temperature Mixed Air Temperature Zone # Supply Air Temperature

Supply Fan VFD Feedback Exhaust Fan VFD Feedback Supply Air Static Pressure Space Temperature (12) Space Temperature Setpoint Adj.

I  
I Init Override

Unit Override  
Hot Water Pump Status

### Air Handling Unit - Multi-Zone 2

#### *Control Points*

#### *Monitoring Points*

Hot Water Valve Actuation Chilled Water Valve Actuation Return Air Damper Actuation Outside Air Damper Actuation  
Exhaust Air Damper Actuation Supply Fan Start/Stop Supply Fan VFD Speed Exhaust Fan Start/Stop Exhaust Fan VFD  
Speed Zone # Volume Damper Actuation (10)  
Zone # Damper Actuation (10) Hot Water Pump Start/Stop

- Hot Deck Temperature
- Cold Deck Temperature
- Mixed Air Temperature
- Zone # Supply Air Temperature (10)
- Supply Fan VFD Feedback
- Exhaust Fan VFD Feedback
- Supply Air Static Pressure
- - Hot Water Pump Status
- Space Temperature (10)
- Space Temperature Setpoint Adj. (10)
- Unit Override

A-13

### Air Handling Unit - Multi-Zone 3

#### *Control Points*

#### *Monitoring Points*

Hot Water Valve Actuation Chilled Water Valve Actuation Return Air Damper Actuation Outside Air Damper  
Actuation Exhaust Air Damper Actuation Supply Fan Start/Stop Supply Fan VFD Speed Exhaust Fan  
Start/Stop Exhaust Fan VFD Speed Zone # Volume Damper Actuation (8)  
Zone # Damper Actuation (8) Hot Water Pump Start/Stop

» Hot Deck Temperature

- Cold Deck Temperature
- Mixed Air Temperature
- Zone # Supply Air Temperature (8)
- Supply Fan VFD Feedback

- Supply Fan VFD Feedback
- Exhaust Fan VFD Feedback
- Supply Air Static Pressure
- Hot Water Pump Status
- Space Temperature (8)
- Space Temperature Setpoint Adj. (8)
- Unit Override

### Miscellaneous

#### *Control Points*

- Exhaust Fan Enable/Disable\*

#### *Monitoring Points*

- Outside Air Temperature
  - Outside Air Humidity
  - Building Pressure (2)

\* - Exhaust Fans will be grouped (zoned) to match schedules of units and will be determined by Schneider Electric.

- Training shall be provided by Schneider Electric and/or BAS contractor on the operation of the BAS system provided under this Contract. This training will be BAS type and building specific. Training will be scheduled 14 days prior with the Customer Representatives.
- *No Warranty Period outside of Section 8 of the Contract.*
- A Commissioning (Cx) Guideline will be developed for each ECM. A Project Cx Plan will incorporate each individual Cx Guideline defining subcontractor responsibilities and requirements. As applicable, pre-functional, functional, and performance verification testing will be completed for each ECM. A final Cx Report will be provided documenting compliance with design, proper installation per specifications and standards, proper operation, and individual ECM functionality.

### ECM 331.31 -Lighting Retrofit/Replacement

The facility contains older lighting technologies in need of retrofit or replacement. The following shall take place:

Incandescent flood lamps shall be replaced with CFL Retrofit  
remaining T12 fixtures with T8

#### A-14

Retrofit exterior metal-halide with pulse start Total.fixture  
retrofits: 15

- *No Warranty Period outside of Section 8 of the Contract.*
- » A Commissioning (Cx) Guideline will be developed for each ECM. A Project Cx Plan will incorporate each individual Cx Guideline defining subcontractor responsibilities and requirements. As applicable, pre-functional, functional, and performance verification testing will be completed for each ECM. A final Cx Report will be provided documenting compliance with design, proper installation per specifications and standards, proper operation, and individual ECM functionality.

standards, proper operation, and individual ECM functionality.

### 353 - Uptown Health Center

#### ECM 353.10 - Install Building Automation System

The following is a list of the points that will be controlled with the BAS. Motors shall be replaced where new VFD's are being installed. Pneumatic damper actuators shall be replaced with electronic actuators and pneumatic hydronic valves shall be controlled via PE switch:

#### HW System

##### *Monitoring Points*

- Boiler 1 Enable/Disable Boiler 2 Enable/Disable
- Hot Water Pump 1 Start/Stop
- Hot Water Pump 2 Start/Stop • Hot Water Pump 3 Start/Stop
- Hot Water Bypass Valve Actuation
- Boiler 1 Supply Water Temperature
- " Boiler 2 Supply Water Temperature
- Hot Water Supply Temperature
- Hot Water Return Temperature
- Hot Water Pump 1 Status
- Hot Water Pump 2 Status
- Hot Water Pump 3 Status

#### Air Handling Units (2)

##### *Monitoring Points*

DX Cooling 1 Enable/Disable DX Cooling 2 Enable/Disable Economizer Damper Actuation Supply Fan Start/Stop  
Return Fan Start/Stop  
Supply Air Temperature Return Air Temperature Mixed Air Temperature Supply Fan Status  
Return Fan Status

A-15

Miscellaneous

##### *Monitoring Points*

Outside Air Temperature

Roof Top Units (2)

Roof Top Units (3)

*Control Points*

Supply Fan Start/Stop Cooling Enable/Disable Heating Enable/Disable

Basement Air Handling Unit

*Control Points*

Supply Fan Start/Stop Heating Enable/Disable

*Monitoring Points*

Space Temperature  
Space Temperature Setpoint Adj.  
Space Override  
Supply Fan Status  
Supply Air Temperature

*Monitoring Points*

Space Temperature  
Space Temperature Setpoint Adj.  
Space Override  
Supply Fan Status  
Supply Air Temperature

A-16

Electric Baseboard Heaters (10)

*Control Points*

*Monitoring Points*

- Baseboard Heat Enable/Disable

Miscellaneous

*Control Points*

*Monitoring Points*

- Exhaust Fan Enable/Disable\*
- Outside Air Temperature

\* - Exhaust Fans will be grouped (zoned) to match schedules of units and will be determined by Schneider Electric



#### SCHEIDER ELECTRIC

- o Training shall be provided by Schneider Electric and/or BAS contractor on the operation of the BAS system provided under this Contract. This training will be BAS type and building specific. Training will be scheduled 14 days prior with the Customer Representatives.

» *No Warranty Period outside of Section 8 of the Contract.*

- o A Commissioning (Cx) Guideline will be developed for each ECM. A Project Cx Plan will incorporate each individual Cx Guideline defining subcontractor responsibilities and requirements. As applicable, pre-functional, functional, and performance verification testing will be completed for each ECM. A final Cx Report will be provided documenting compliance with design, proper installation per specifications and standards, proper operation, and individual ECM functionality.

### ECM 354.31 -Lighting Retrofit/Replacement

The facility contains older lighting technologies in need of retrofit or replacement. The following shall take place:

Incandescent flood lamps shall be replaced with LED and CFL Retrofit remaining T12

to T8 Total fixture retrofits: 34

- *No Warranty Period outside of Section 8 of the Contract.*
- A Commissioning (Cx) Guideline will be developed for each ECM. A Project Cx Plan will incorporate each individual Cx Guideline defining subcontractor responsibilities and requirements. As applicable, pre-functional, functional, and performance verification testing will be completed for each ECM. A final Cx Report will be provided documenting compliance with design, proper installation per specifications and standards, proper operation, and individual ECM functionality.

A-17

### 358-SACHS'Clinic

#### ECM 358.10 - Install Building Automation System

The following is a list of the points that will be controlled with the BAS. Motors shall be replaced where new VFD's are being installed. Pneumatic damper actuators shall be replaced with electronic actuators and pneumatic hydronic valves shall be controlled via PE switch:

#### Hot Water System

##### *Monitoring Points*

- Boiler 1 Enable/Disable
- Boiler 2 Enable/Disable
- Hot Water Pump 1 Start/Stop
- Hot Water Pump 2 Start/Stop
- Radiant Floor Bypass Valve Actuation (2)
- « Radiant Floor Pump 1 Start/Stop
- Radiant Floor Pump 2 Start/Stop
- Boiler 1 Supply Temperature

- Boiler 1 Supply Temperature
- Boiler 2 Supply Temperature
- Radiant Floor Supply Temperature (2)
- Hot Water Return Temperature Hot Water Pump 1 Status
- Hot Water Pump 2 Status Radiant Floor Hot Water Pump Status (2)

### **Chilled Water System**

#### *Monitoring Points*

Chiller Enable/Disable Chilled Water Pump Start/Stop

- « Chilled Water Supply Temperature
- Chilled Water Return Temperature
- Chiller Alarm
- Chilled Water Pump Status

### **Condenser Water System**

#### *Monitoring Points*

Cooling Tower Fan Start/Stop Cooling Tower Fan VFD Speed Condenser Water Pump Start/Stop

- Condenser Water Supply Temperature
- Condenser Water Return Temperature
- Cooling Tower Fan Speed Feedback
- » Condenser Water Pump Status

A-18

Air Handling Unit - Multi-Zone 1

#### *Control Points*

#### *Monitoring Points*

- <• Pre-Heat Hot Water Valve Actuation
- Hot Water Valve Actuation
- Chilled Water Valve Actuation
- Return Air Damper Actuation
- Outside Air Damper Actuation
- Exhaust Air Damper Actuation
- Pre-Heat Hot Water Pump Start/Stop
- » Hot Water Pump Start/Stop
- Supply Fan Start/Stop
- Supply Fan VFD Speed « Return Fan Start/Stop
- Return Fan VFD Speed
- Zone # Volume Damper Actuation (9)
- Zone # Damper Actuation (9)
- ° Hot Deck Temperature
- Cold Deck Temperature

- Cold Deck Temperature
- • Mixed Air Temperature
- Zone # Supply Air Temperature (9)
- Supply Fan VFD Feedback
- Return Fan VFD Feedback Supply Air Static Pressure
- Pre-Heat Hot Water Pump Status
- Hot Water Pump Status Space Temperature (9)
- Space Temperature Setpoint Adj. (9)
- » Space Override (9)

### **Air Handling Unit - Multi-Zone 2**

#### *Control Points*

#### *Monitoring Points*

- Pre-Heat Hot Water Valve Actuation
- Hot Water Valve Actuation Chilled Water Valve Actuation
- Return Air Damper Actuation
- Outside Air Damper Actuation
- Exhaust Air Damper Actuation
- Pre-Heat Hot Water Pump Start/Stop
- Hot Water Pump Start/Stop
- Supply Fan Start/Stop
- Supply Fan VFD Speed
- Return Fan Start/Stop
- Return Fan VFD Speed
- Zone # Volume Damper Actuation (12)
- Zone # Damper Actuation (12)
- « Hot Deck Temperature
- Cold Deck Temperature
- Mixed Air Temperature
- Zone # Supply Air Temperature (12)
- Supply Fan VFD Feedback
- Return Fan VFD Feedback Supply Air Static Pressure
- Pre-Heat Hot Water Pump Status
- Hot Water Pump Status
- Space Temperature (12)
- Space Temperature Setpoint Adj. (12)
- Space Override (12)

A-19

### **Fan Coil Unit**

#### *Control Points*

#### *Monitoring Points*

- Supply Air Fan Start/Stop

- Supply Air Temperature

- Supply Air Fan Start/Stop

- Supply Air Temperature
  - Supply Fan Status
  - Space Temperature
  - Space Temperature Setpoint Adj.
  - Space Override

### Miscellaneous

#### *Control Points*

#### *Monitoring Points*

- Exhaust Fan Enable/Disable\*

- Outside Air Temperature
  - Outside Air Humidity
  - Building Pressurization (2)

\* - Exhaust Fans will be grouped (zoned) to match schedules of units and will be determined by Schneider Electric.

- o Training shall be provided by Schneider Electric and/or BAS contractor on the operation of the BAS system provided under this Contract. This training will be BAS type and building specific. Training will be scheduled 14 days prior with the Customer Representatives.
- *No Warranty Period outside of Section 8 of the Contract.*
- » A Commissioning (Cx) Guideline will be developed for each ECM. A Project Cx Plan will incorporate each individual Cx Guideline defining subcontractor responsibilities and requirements. As applicable, pre-functional, functional, and performance verification testing will be completed for each ECM. A final Cx Report will be provided documenting compliance with design, proper installation per specifications and standards, proper operation, and individual ECM functionality.

### ECM 358.31 -Lighting Retrofit/Replacement

The facility contains older lighting technologies in need of retrofit or replacement. The following shall take place:

Incandescent flood lamps shall be replaced with LED and CFL Retrofit remaining T12

to T8 Total fixture retrofits: 40

- Training shall be provided by Schneider Electric and manufacturer representative on the operation of the lighting sensor provided as part of this project. Training will be scheduled 14 days prior with the Customer Representatives.
- « *No Warranty Period outside of Section 8 of the Contract.*

### A-20

- A Commissioning (Cx) Guideline will be developed for each ECM. A Project Cx Plan will incorporate each individual Cx Guideline defining subcontractor responsibilities and requirements. As applicable, pre-functional, functional, and performance verification testing will be completed for each ECM. A final Cx Report will be provided documenting compliance with design, proper installation per specifications and standards, proper operation, and individual ECM functionality.

### 390 - Home Square Police

### 309 - Roman Square Police

#### ECM 389.30 -Install Lighting Occupancy Sensors

Logged data has shown opportunity to take advantage of occupancy-based lighting control. The below selected area types shall receive either a ceiling or wall switch type lighting occupancy sensor:

Private Office Meeting Room  
Open Space Restroom  
Storage Hallway

Total wall switch type occupancy sensors: 11 Total ceiling

type occupancy sensors: 17

- Training shall be provided by Schneider Electric and manufacturer representative on the operation of the lighting sensor provided as part of this project. Training will be scheduled 14 days prior with the Customer Representatives.
- *No Warranty Period outside of Section 8 of the Contract.*
- A Commissioning (Cx) Guideline will be developed for each ECM. A Project Cx Plan will incorporate each individual Cx Guideline defining subcontractor responsibilities and requirements. As applicable, pre-functional, functional, and performance verification testing will be completed for each ECM. A final Cx Report will be provided documenting compliance with design, proper installation per specifications and standards, proper operation, and individual ECM functionality.

### 396 - Police Headquarters

#### ECM 396.10 - Retrocommission Existing Building Automation System

The existing KMC system will be modified to include the addition of time of day scheduling to equipment serving routinely unoccupied areas. In addition, equipment selected by Schneider will have their sequence of operations modified to original design intent with a focus on energy savings.

- Training shall be provided by Schneider Electric and/or BAS contractor on the operation of the BAS system provided under this Contract. This training will be BAS type and building specific. Training will be scheduled 14 days prior with the Customer Representatives.

A-21

- *No Warranty Period outside of Section 8 of the Contract.*
- » A Commissioning (Cx) Guideline will be developed for each ECM. A Project Cx Plan will incorporate each individual Cx Guideline defining subcontractor responsibilities and requirements. As applicable, pre-functional, functional, and performance verification testing will be completed for each ECM. A final Cx Report will be provided documenting compliance with design, proper installation per specifications and standards, proper operation, and individual ECM functionality.

#### ECM 396.30 -Install Lighting Occupancy Sensors

Logged data has shown opportunity to take advantage of occupancy-based lighting control. The below selected area types shall receive either a ceiling or wall switch type lighting occupancy sensor:

Private Office Meeting Room

Private Office Meeting Room  
Open Space Restroom  
Storage Hallway

Total wall switch type occupancy sensors: 197

Total ceiling type occupancy sensors: 637

- o Training shall be provided by Schneider Electric and manufacturer representative on the operation of the lighting sensor provided as part of this project. Training will be scheduled 14 days prior with the Customer Representatives.
- *No Warranty Period outside of Section 8 of the Contract.*
- A Commissioning (Cx) Guideline will be developed for each ECM. A Project Cx Plan will incorporate each individual Cx Guideline defining subcontractor responsibilities and requirements. As applicable, pre-functional, functional, and performance verification testing will be completed for each ECM. A final Cx Report will be provided documenting compliance with design, proper installation per specifications and standards, proper operation, and individual ECM functionality.

### **ECM 396.31 -Lighting Retrofit/Replacement**

The facility contains older lighting technologies in need of retrofit or replacement. The following shall take place:

Incandescent flood lamps shall be replaced with LED and CFL Total fixture

retrofits: 19

- Training shall be provided by Schneider Electric and manufacturer representative on the operation of the lighting sensor provided as part of this project. Training will be scheduled 14 days prior with the Customer Representatives.

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- *No Warranty Period outside of Section 8 of the Contract.*
- A Commissioning (Cx) Guideline will be developed for each ECM. A Project Cx Plan will incorporate each individual Cx Guideline defining subcontractor responsibilities and requirements. As applicable, pre-functional, functional, and performance verification testing will be completed for each ECM. A final Cx Report will be provided documenting compliance with design, proper installation per specifications and standards, proper operation, and individual ECM functionality.

### **527-17<sup>th</sup> District Police**

#### **ECM 527.10- Retrocommission Existing Building Automation System**

The existing Staefa control system will be modified to include the addition of time of day scheduling to equipment serving routinely unoccupied areas. In addition, equipment selected by Schneider Electric will have their sequence of operations modified to original design intent with a focus on energy savings.

- Training shall be provided by Schneider Electric and/or BAS contractor on the operation of the BAS system provided under this Contract. This training will be BAS type and building specific. Training will be scheduled 14 days prior with the Customer Representatives.

be scheduled 14 days prior with the Customer Representatives.

- *No Warranty Period outside of Section 8 of the Contract.*
- A Commissioning (Cx) Guideline will be developed for each ECM. A Project Cx Plan will incorporate each individual Cx Guideline defining subcontractor responsibilities and requirements. As applicable, pre-functional, functional, and performance verification testing will be completed for each ECM. A final Cx Report will be provided documenting compliance with design, proper installation per specifications and standards, proper operation, and individual ECM functionality.

## 541 - 10<sup>th</sup> District Police

### ECM 541.10 - Retrocommission Existing Building Automation System

The existing JCI system will be modified to include the addition of time of day scheduling to equipment serving routinely unoccupied areas. In addition, equipment selected by Schneider Electric will have their sequence of operations modified to original design intent with a focus on energy savings.

- Training shall be provided by Schneider Electric and/or BAS contractor on the operation of the BAS system provided under this Contract. This training will be BAS type and building specific. Training will be scheduled 14 days prior with the Customer Representatives.
- *No Warranty Period outside of Section 8 of the Contract.*
- A Commissioning (Cx) Guideline will be developed for each ECM. A Project Cx Plan will incorporate each individual Cx Guideline defining subcontractor responsibilities and requirements. As applicable, pre-functional, functional, and performance verification

#### A-23

testing will be completed for each ECM. A final Cx Report will be provided documenting compliance with design, proper installation per specifications and standards, proper operation, and individual ECM functionality.

## 592 - Copernicus Aging Center

### ECM 592.10 - Install Building Automation System

The following is a list of the points that will be controlled with the BAS. Motors shall be replaced where new VFD's are being installed. Pneumatic damper actuators shall be replaced with electronic actuators and pneumatic hydronic valves shall be controlled via PE switch:

#### Hot Water System

##### *Control Points*

##### *Monitoring Points*

- |                                 |                                |
|---------------------------------|--------------------------------|
| • Boiler Enable/Disable         | ■ Hot Water Supply Temperature |
| • Hot Water Pump 1 Start/Stop ■ | Hot Water Return Temperature   |
| • ■ Hot Water Pump 2 Start/Stop | ■ Hot Water Pump 1 Status      |
|                                 | ■ Hot Water Pump 2 Status      |

#### Air Handling Unit

#### Air Handling Unit

##### Control Points

- « Supply Fan Start/Stop
- Return Fan Start/Stop
- Economizer Damper Actuation
- DX Cooling Enable/Disable
- • Hot Water Valve Actuation
- Hot Water Pump Start/Stop

##### Monitoring Points

- Supply Air Temperature
- Mixed Air Temperature
- « Hot Water Pump Status
- « Supply Fan Status
- « Return Fan Status

#### Hot Water Reheat Coils (18)

##### Control Points

- Hot Water Valve Actuation

##### Monitoring Points

- Space Temperature
- Space Temperature Setpoint Adj.
- Space Override
- Supply Air Temperature

#### A-24

#### Roof Top Unit

##### Monitoring Points

Supply Fan Start/Stop Cooling Enable/Disable Heating Enable/Disable  
Space Temperature  
Space Temperature Setpoint Adj.  
Space Override  
Supply Fan Status  
Supply Air Temperature

#### Miscellaneous

##### Monitoring Points

Exhaust Fan Enable/Disable\*

\* - Exhaust Fans will be grouped (zoned) to match schedules of units and will be determined by Schneider Electric.

- Training shall be provided by Schneider Electric and/or BAS contractor on the operation of the BAS system provided under this Contract. This training will be BAS type and building specific. Training will



system provided under this contract. This training will be BAS type and building specific. Training will be scheduled 14 days prior with the Customer Representatives.

- *No Warranty Period outside of Section 8 of the Contract.*
- A Commissioning (Cx) Guideline will be developed for each ECM. A Project Cx Plan will incorporate each individual Cx Guideline defining subcontractor responsibilities and requirements. As applicable, pre-functional, functional, and performance verification testing will be completed for each ECM. A final Cx Report will be provided documenting compliance with design, proper installation per specifications and standards, proper operation, and individual ECM functionality.

### ECM 592.31 -Lighting Retrofit/Replacement

The facility contains older lighting technologies in need of retrofit or replacement. The following shall take place:

Incandescent flood lamps shall be replaced with LED and CFL Retrofit T12 to T8 Total fixture retrofits: 1

Total fixture replacements." 1

- Training shall be provided by Schneider Electric and manufacturer representative on the operation of the lighting sensor provided as part of this project. Training will be scheduled 14 days prior with the Customer Representatives.
- *No Warranty Period outside of Section 8 of the Contract.*

### A-25

- A Commissioning (Cx) Guideline will be developed for each ECM. A Project Cx Plan will incorporate each individual Cx Guideline defining subcontractor responsibilities and requirements. As applicable, pre-functional, functional, and performance verification testing will be completed for each ECM. A final Cx Report will be provided documenting compliance with design, proper installation per specifications and standards, proper operation, and individual ECM functionality.

## 601 - Martin Luther King Community Center

### ECM 601.10 - Install Building Automation System

The following is a list of the points that will be controlled with the BAS. Motors shall be replaced where new VFD's are being installed. Pneumatic damper actuators shall be replaced with electronic actuators and pneumatic hydronic valves shall be controlled via PE switch:

#### Hot Water System

#### Monitoring Points

Boiler Enable/Disable Hot Water Pump 1 Start/Stop Hot Water Pump 2 Start/Stop

- Perimeter Heating Supply Temperature
- Perimeter Heating Return

Perimeter Bypass Valve Actuation Temperature

Perimeter Heating Pump Start/Stop

Hot Water Supply Temperature Hot Water Return Temperature Hot Water Pump 1 Status Hot Water Pump 2 Status Perimeter Hot Water Pump

Pump 1 Status Hot Water Pump 2 Status Perimeter Hot Water Pump Status

## Chilled Water System

### *Monitoring Points*

Chiller 1 Enable/Disable Chiller 2 Enable/Disable Chilled Water Pump 1 Start/Stop Chilled Water Pump 2 Start/Stop

- Chilled Water Supply Temperature
  - » Chilled Water Return Temperature
    - Chiller 1 Supply Temperature
    - Chiller 2 Supply Temperature
    - Chiller 1 Amps
    - Chiller 2 Amps
    - Chiller 1 Alarm « Chiller 2 Alarm
- « Chilled Water Pump 1 Status
- Chilled Water Pump 2 Status

A-26

## Condenser Water System

### *Control Points*

### *Monitoring Points*

- Cooling Tower Fan Start/Stop • Condenser Water Pump 1 Start/Stop « Condenser Water Pump 2 Start/Stop
  - Condenser Water Supply Temperature
  - Condenser Water Return Temperature
  - Cooling Tower Fan Status
  - Condenser Water Pump 1 Status
  - Condenser Water Pump 2 Status

## Multi-Zone Air Handling Unit

### *Control Points*

### *Monitoring Points*

- Hot Water Valve Actuation
  - » Chilled Water Valve Actuation
  - Outside/Return Air Damper Actuation
  - Exhaust Air Damper Actuation
- Hot Water Pump Start/Stop
  - Supply Fan Start/Stop
  - Supply Fan VFD Speed
  - Return Fan Start/Stop

- Return Fan Start/Stop
- Return Fan VFD Speed
- Zone # Volume Damper Actuation (9)
- » Zone # Damper Actuation (9)
- Hot Deck Temperature
- Cold Deck Temperature
- Mixed Air Temperature
- Zone # Supply Air Temperature (9)
- Supply Fan VFD Feedback
- Return Fan VFD Feedback
- Supply Air Static Pressure
- Hot Water Pump Status
- Space Temperature (9)
- o Space Temperature Setpoint Adj. (9)
- Space Override (9)

### Variable Volume Air Handling Units (2)

#### *Control Points*

#### *Monitoring Points*

#### Chilled Water Valve Actuation

- Hot Water Valve Actuation
- Outside/Return Air Damper Actuation
- Exhaust Air Damper Actuation • Hot Water Pump Start/Stop
- Supply Fan Start/Stop .
- Supply Fan VFD Speed
- Return Fan Start/Stop
- Return Fan VFD Speed
- Supply Air Temperature
- Mixed Air Temperature
- Supply Air Static Pressure Supply Fan Speed VFD Feedback
- Return Fan Speed VFD Feedback
- Hot Water Pump Status

A-27

#### Miscellaneous

#### *Control Points*

#### *Monitoring Points*

- » Outside Air Temperature
- Outside Air Humidity
- Building Pressurization

- Training shall be provided by Schneider Electric and/or BAS contractor on the operation of the BAS system provided under this Contract. This training will be BAS type and building specific. Training will be scheduled 14 days prior with the Customer Representatives.

- o *No Warranty Period outside of Section 8 of the Contract.*
- A Commissioning (Cx) Guideline will be developed for each ECM. A Project Cx Plan will incorporate each individual Cx Guideline defining subcontractor responsibilities and requirements. As applicable, pre-functional, functional, and performance verification testing will be completed for each ECM. A final Cx Report will be provided documenting compliance with design, proper installation per specifications and standards, proper operation, and individual ECM functionality.

#### **ECM 601.11 - Implement Demand Controlled Ventilation for AHU 3**

AHU 3 serves a large volume of space with variable occupancy.

This ECM will install CO2 sensors to monitor occupancy in the space. Outdoor air rates will modulate to properly serve the space to code requirements and save energy.

- Training shall be provided by Schneider Electric and/or BAS contractor on the operation of the BAS system provided under this Contract. This training will be BAS type and building specific. Training will be scheduled 14 days prior with the Customer Representatives.
- *No Warranty Period outside of Section 8 of the Contract.*
- A Commissioning (Cx) Guideline will be developed for each ECM. A Project Cx Plan will incorporate each individual Cx Guideline defining subcontractor responsibilities and requirements. As applicable, pre-functional, functional, and performance verification testing will be completed for each ECM. A final Cx Report will be provided documenting compliance with design, proper installation per specifications and standards, proper operation, and individual ECM functionality.

#### **640 - Department of Public Health**

##### **ECM 640.10 - Front End Tune-up**

The existing Siemens system will be investigated in order to determine proper setpoints and schedules. Those setpoints and schedules will then be implemented to allow for both building comfort and energy saving opportunities.

A-28

- e Training shall be provided by Schneider Electric and/or BAS contractor on the operation of the BAS system provided under this Contract. This training will be BAS type and building specific. Training will be scheduled 14 days prior with the Customer Representatives.
- *No Warranty Period outside of Section 8 of the Contract.*
- A Commissioning (Cx) Guideline will be developed for each ECM. A Project Cx Plan will incorporate each individual Cx Guideline defining subcontractor responsibilities and requirements. As applicable, pre-functional, functional, and performance verification testing will be completed for each ECM. A final Cx Report will be provided documenting compliance with design, proper installation per specifications and standards, proper operation, and individual ECM functionality.

##### **ECM 640.20 - Refurbish HVAC Equipment**

Department of Public Health has a two Tons air cooled condenser

Department of Public Health has a two frame air-cooled condensers.

This ECM involves cleaning the condenser coils and applying an aluminum-based coating which provides better heat exchange properties and protects the existing coil.

- Training shall be provided by Schneider Electric and the equipment manufacturer's representative on the operation and maintenance of the mechanical equipment provided in this project. Training will be scheduled 14 days prior with the Customer Representatives.
- *No Warranty Period outside of Section 8 of the Contract.*
- o A Commissioning (Cx) Guideline will be developed for each ECM. A Project Cx Plan will incorporate each individual Cx Guideline defining subcontractor responsibilities and requirements. As applicable, pre-functional, functional, and performance verification testing will be completed for each ECM. A final Cx Report will be provided documenting compliance with design, proper installation per specifications and standards, proper operation, and individual ECM functionality.

### ECM 640.30 -Install Lighting Occupancy Sensors

Logged data has shown opportunity to take advantage of occupancy-based lighting control. The below selected area types shall receive either a ceiling or wall switch type lighting occupancy sensor:

Private Office Meeting Room  
Open Space Restroom Storage  
Hallway

Total wall switch type occupancy sensors: 14 Total ceiling

type occupancy sensors: 24

### A-29

- Training shall be provided by Schneider Electric and manufacturer representative on the operation of the lighting sensor provided as part of this project. Training will be scheduled 14 days prior with the Customer Representatives.
- *No Warranty Period outside of Section 8 of the Contract.*
- A Commissioning (Cx) Guideline will be developed for each ECM. A Project Cx Plan will incorporate each individual Cx Guideline defining subcontractor responsibilities and requirements. As applicable, pre-functional, functional, and performance verification testing will be completed for each ECM. A final Cx Report will be provided documenting compliance with design, proper installation per specifications and standards, proper operation, and individual ECM functionality.

### 668-15<sup>th</sup> District Police

#### ECM 668.10 - Retrocommission Existing Building Automation System

The existing Staefa controls system will be modified to include the addition of time of day scheduling to equipment serving routinely unoccupied areas. In addition, equipment selected by Schneider will have their sequence of operations modified to original design intent with a focus on energy savings.

- Training shall be provided by Schneider Electric and/or BAS contractor on the operation of the BAS system provided under this Contract. This training will be BAS type and building specific. Training will

system provided under this contract. This training will be BAS type and building specific. Training will be scheduled 14 days prior with the Customer Representatives.

- *No Warranty Period outside of Section 8 of the Contract.*
- A Commissioning (Cx) Guideline will be developed for each ECM. A Project Cx Plan will incorporate each individual Cx Guideline defining subcontractor responsibilities and requirements. As applicable, pre-functional, functional, and performance verification testing will be completed for each ECM. A final Cx Report will be provided documenting compliance with design, proper installation per specifications and standards, proper operation, and individual ECM functionality.

## 687 - Juvenile Detention Center Police

### ECM 687.30 -Install Lighting Occupancy Sensors

Logged data has shown opportunity to take advantage of occupancy-based lighting control. The below selected area types shall receive either a ceiling or wall switch type lighting occupancy sensor:

Private Office Meeting Room  
Open Space Restroom Storage  
Hallway

A-30

Total wall switch type occupancy sensors: 21 Total ceiling

type occupancy sensors: 26

- Training shall be provided by Schneider Electric and manufacturer representative on the operation of the lighting sensor provided as part of this project. Training will be scheduled 14 days prior with the Customer Representatives.
- *No Warranty Period outside of Section 8 of the Contract.*
- A Commissioning (Cx) Guideline will be developed for each ECM. A Project Cx Plan will incorporate each individual Cx Guideline defining subcontractor responsibilities and requirements. As applicable, pre-functional, functional, and performance verification testing will be completed for each ECM. A final Cx Report will be provided documenting compliance with design, proper installation per specifications and standards, proper operation, and individual ECM functionality.

### ECM 687.31 -Lighting Retrofit/Replacement

The facility contains older lighting technologies in need of retrofit or replacement. The following shall take place:

Incandescent flood lamps shall be replaced with LED and CFL Replace metal-halide  
with T5 fluorescent Replace incandescent exits with LED Total fixture retrofits: 3

Total fixture replacements: 2

« Training shall be provided by Schneider Electric and manufacturer representative on the operation of the lighting sensor provided as part of this project. Training will be scheduled 14 days prior with the

lighting sensor provided as part of this project. Training will be scheduled 14 days prior with the Customer Representatives.

- *No Warranty Period outside of Section 8 of the Contract.*
- A Commissioning (Cx) Guideline will be developed for each ECM. A Project Cx Plan will incorporate each individual Cx Guideline defining subcontractor responsibilities and requirements. As applicable, pre-functional, functional, and performance verification testing will be completed for each ECM. A final Cx Report will be provided documenting compliance with design, proper installation per specifications and standards, proper operation, and individual ECM functionality.

## **706 - 8<sup>th</sup> District Police**

### **ECM 706.10 - Retrocommission Existing Building Automation System**

The existing Staefa controls system will be modified to include the addition of time of day scheduling to equipment serving routinely unoccupied areas. In addition, equipment selected by Schneider Electric will have their sequence of operations modified to original design intent with a focus on energy savings.

#### **A-31**

- Training shall be provided by Schneider Electric and/or BAS contractor on the operation of the BAS system provided under this Contract. This training will be BAS type and building specific. Training will be scheduled 14 days prior with the Customer Representatives.
- *No Warranty Period outside of Section 8 of the Contract.*
- A Commissioning (Cx) Guideline will be developed for each ECM. A Project Cx Plan will incorporate each individual Cx Guideline defining subcontractor responsibilities and requirements. As applicable, pre-functional, functional, and performance verification testing will be completed for each ECM. A final Cx Report will be provided documenting compliance with design, proper installation per specifications and standards, proper operation, and individual ECM functionality.

## **783 - 9<sup>th</sup> District Police**

### **ECM 783.10- Retrocommission Existing Building Automation System**

The existing Invensys controls system will be modified to include the addition of time of day scheduling to equipment serving routinely unoccupied areas. In addition, equipment selected by Schneider Electric will have their sequence of operations modified to original design intent with a focus on energy savings.

- Training shall be provided by Schneider Electric and/or BAS contractor on the operation of the BAS system provided under this Contract. This training will be BAS type and building specific. Training will be scheduled 14 days prior with the Customer Representatives.
- *No Warranty Period outside of Section 8 of the Contract.*
- o A Commissioning (Cx) Guideline will be developed for each ECM. A Project Cx Plan will incorporate each individual Cx Guideline defining subcontractor responsibilities and requirements. As applicable, pre-functional, functional, and performance verification testing will be completed for each ECM. A final Cx Report will be provided documenting compliance with design, proper installation per specifications and standards, proper operation, and individual ECM functionality.

## **808 - 23rd/10th District Police**

000 - 20 / 19 - District Police

#### **ECM 808.10 - Retrocommission Existing Building Automation System**

The existing Invensys controls system will be modified to include the addition of time of day scheduling to equipment serving routinely unoccupied areas. In addition, equipment selected by Schneider Electric will have their sequence of operations modified to original design intent with a focus on energy savings.

- Training shall be provided by Schneider Electric and/or BAS contractor on the operation of the BAS system provided under this Contract. This training will be BAS type and building specific. Training will be scheduled 14 days prior with the Customer Representatives.

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- *No Warranty Period outside of Section 8 of the Contract.*
- A Commissioning (Cx) Guideline will be developed for each ECM. A Project Cx Plan will incorporate each individual Cx Guideline defining subcontractor responsibilities and requirements. As applicable, pre-functional, functional, and performance verification testing will be completed for each ECM. A final Cx Report will be provided documenting compliance with design, proper installation per specifications and standards, proper operation, and individual ECM functionality.

#### **Section IV. Identification of Key Personnel**

Jeremy Brown - Development Engineer Darrell DeMoss -

Construction Manager Joseph Laws - Commissioning

Agent Ty Miller - Program Manager Chris Morris - Project

Manager Martin Pape - Engineering Director

#### **Section V. Construction Schedule**

[Attached]



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## Schedule of Values

A Schedule of Values shall be provided by ESCO within 30 days of Date of Commencement.

### EXHIBIT B

## PERFORMANCE GUARANTEE

### Definitions.

All capitalized terms used in this Exhibit B shall have the meaning set forth below or in Section 2.A of the Contract.

A. Causes for Adjustment. The causes for adjustment to the energy savings calculations set forth in Section 6 of Exhibit C.

Closing Stub Year: This term is defined in Section III of this Exhibit B.

C. Guarantee Term: The period running from and after the Savings Guarantee Commencement Date for a period of 11 years.



provided in the Contract, the first day or the first utility billing period following the earlier to occur of: (i) the Scheduled Substantial Completion Date or (ii) the month in which Substantial Completion of the entire Project occurs in accordance with the Contract.

## **Section II. Performance Guarantee.**

The ESCO guarantees that the Project Savings Amount over the Guarantee Term will equal or exceed the Guaranteed Project Savings Amount. For each Performance Guarantee Year, the ESCO guarantees that the Project Savings Amount will equal or exceed the Guaranteed Annual Savings Amount. Subject to Section VI of this Exhibit B, in the event the Project Savings Amount in any Performance Guarantee Year is less than the Guaranteed Annual Savings Amount, the ESCO unconditionally and irrevocably agrees to pay the Customer (or its designee) the difference between the Guaranteed Annual Savings Amount and the Project Savings Amount ("Performance Guarantee Payment") at the time and in the amount as provided in Section IV of this Exhibit B.

## **Section III. Performance Guarantee Year.**

The Customer seeks to align the Performance Guarantee Year with the calendar year for budgeting purposes, and therefore each of the following periods shall serve as a "Performance Guarantee Year":

- i. ***The period from the Savings Guarantee Commencement Date through the next following December 31 (such initial period referred to herein as the "Opening Stub Year"),***
- ii. Thirteen (13) 12-calendar month periods, each running from January 1 through the next following December 31, with the first such period including the first January 1 following the Savings Guarantee Commencement Date and continuing through the next following December 31; and

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- iii. ***The period running from the January 1 following conclusion of the thirteenth (13) 12-month period described in subparagraph (ii) immediately preceding and continuing through and including the fourteenth (14<sup>th</sup>) anniversary of the Savings Guarantee Commencement Date (such final period referred to herein as the "Closing Stub Year")***

As set forth in Exhibit C, the formulae for calculating the Project Savings Amount are designed to accommodate and yield accurate results for Performance Guarantee Years of varying lengths, including both periods exceeding 12 months in length, any stub years and the Installation Period. Notwithstanding anything in Exhibit C or otherwise in this Contract to the contrary, neither the Customer nor the ESCO shall agree, without the prior written consent of the Lender, which consent may be withheld in the Lender's sole discretion, to modify or amend the scope of the Work, if such modification or amendment would, if implemented, adversely affect the achievement of the Guaranteed Annual Savings Amount. The Customer agrees that it will not, without the prior written consent of the Lender, which consent may be withheld in Lender's sole discretion, make any material change to the Facilities or the ECMs that would result in a Cause for Adjustment if such material change would, if implemented, result in a Performance Guarantee Payment in any Performance Guarantee Year.

## **Section IV. Calculation of Project Savings Amount.**

Throughout the Guarantee Term, the Customer will provide the ESCO with all utility bills pertinent to the energy performance calculations described in this Contract within thirty (30) days of receipt. The Customer may provide the ESCO with copies of bills, or access to invoices via an on-line system. Within sixty (60) days

of the ESCO's receipt of all pertinent utility bills with meter-reading ending dates falling within a Performance Guarantee Year (including the Opening Stub Year or Closing Stub Year), the ESCO will prepare and provide to the Customer its proposed calculation of the Project Savings Amount (as calculated pursuant to Exhibit C) and, if applicable, the amount of the Performance Guarantee Payment for the immediately-preceding Performance Guarantee Year (the "Prior Year Calculations") in a comprehensive annual report (the "Annual M&V Report"). The ESCO must account for all Causes for Adjustment to the energy performance calculations permitted by Exhibit C arising during the preceding Performance Guarantee Year within the Prior Year Calculations, provided Customer gave proper notice of the Cause for Adjustment. Within thirty (30) days of the Customer's receipt of the Prior Year Calculations, the Customer will notify the ESCO of (1) the Customer's approval of all or any portion of the Prior Year Calculations; and/or (2) the Customer's disapproval of all or any portion of the Prior Year Calculations, including the basis for the disapproval. Within thirty (30) days of receiving notification of the Customer's approval of all or any portion of the Prior Year Calculations, the ESCO will pay to the Customer (or its designee) the Performance Guarantee Payment, if any, due to the Customer on account of the approved portion of the Prior Year Calculations; provided, however, that if the ESCO has made a Performance Guarantee Payment as provided in the next succeeding paragraph in respect of the Performance Guarantee Year to which the Prior Year Calculations relate, the Performance Guarantee Payment to be made as provided in this sentence shall be reduced by the amount paid by the ESCO in respect of such Performance Guarantee Year. Upon Customer's approval of all of the Prior Year Calculations, ESCO waives the right to make any claim for Causes for Adjustments not specified within the Prior Year Calculations. If the Customer disapproves all or any portion of the Prior Year Calculations, the Parties will use good faith efforts to resolve such dispute within thirty (30) days of notification to the ESCO. If the Parties are unable to resolve the matter within such thirty (30) day period, the dispute shall be resolved in accordance with Section VIII of this Exhibit. Any amounts payable by and not paid by the ESCO on the due date

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thereof shall bear interest at the rate equal to the lesser of (i) ten percent (10%) per annum or (ii) the highest rate permitted by applicable law.

Notwithstanding anything in this Contract to the contrary, if during a Performance Guarantee Year the Customer has not received all or a portion of the payment when due from the Client under the Energy Services Agreement (the "ESA") between the Customer and the Client based on a Savings Dispute (as such term is defined in such Energy Services Agreement), upon written demand of the Lender (as the Customer's assignee as provided in Section 16.B of the Contract) the ESCO shall within five (5) days after its receipt of such demand make a Performance Guarantee Payment to the Customer (or its designee) in an amount equal to such payment that was not paid when due. In the event that the ESCO later reasonably establishes that it was not liable to pay the amount so demanded, the Customer shall cause the Client to reimburse the ESCO for the amount that the ESCO had previously paid pursuant to such demand, but in no event shall either the Customer or the ESCO have any right to seek recovery or reimbursement of any such amount to the extent used to pay Loan Payments under the Loan Agreement. A Savings Dispute shall be deemed to exist for purposes of this paragraph in the event that the Client does not make its scheduled payment in full under the ESA on July 1, 2015.

## Section V. Installation Period Savings.

Installation Period Savings will belong exclusively to the Customer and will not be added to the Project Savings Amount for full Performance Guarantee Years, but will be added to the Project Savings Amount for the Opening and Closing Stub Years; provided however, in the event the Savings Guarantee Commencement Date occurs prior to the Substantial Completion Date, Installation Period Savings achieved during the period commencing with the Savings Guarantee Commencement Date and ending with the Substantial Completion Date shall belong exclusively to the ESCO.

## Section VI. Additional Conditions

## **Section VI. Additional Savings.**

In the event that the Project Savings Amount exceeds the Guaranteed Annual Savings Amount in any Performance Guarantee Year, the excess savings shall belong and accrue to the Customer and shall not reduce the ESCO's liability for achieving the Project Savings Amount in any other Performance Guarantee Year.

## **Section VII. Project Modifications to Reduce Performance Guarantee Payment Obligations.**

The mutual goal of the Parties is to maximize the Project Savings Amount. Therefore, the ESCO will have the right, at all times during the Guarantee Term, subject to the Customer's written approval, to modify the scope of the Project, to modify or replace any of the ECMs or install additional ECMs and to revise any procedures for the operation of the ECMs or implement other procedures at the Facilities provided that: (i) such actions by the ESCO do not result in modifying the standards of comfort and service set forth in Exhibit C without the express written approval of the Customer; (ii) such actions do not detrimentally affect site operations or use and occupancy of the Facilities; (iii) such actions are necessary to enable the ESCO to achieve the Guaranteed Annual Savings Amount; and (iv) any costs incurred relative to such modifications, additions or replacements of the ECMs, or operational changes or new procedures or additional maintenance necessitated by the ECMs, shall be the sole responsibility of the ESCO. All modifications, additions or replacements of the ECMs or revisions to operating

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or other procedures will be described in a supplemental schedule(s) to be provided to the Customer for approval, which will not be unreasonably withheld or delayed, and incorporated into this Contract through a Change Order, and the work related to such modifications, additions, or replacements shall be carried out in accordance with all of the terms and provisions of the Contract applicable to the performance of Work. Any replacement ECM shall be new and have equal or better potential to reduce energy consumption at the Facility than the ECM being replaced. As part of any Project scope modifications, the ESCO shall update any and all software during the implementation necessary for the operation of the ECMs. All replacements of and alterations or additions to the ECMs shall become part of the ECMs described in Exhibit A and shall become the property of the Customer.

## **Section VIII. Disputes Regarding Energy Performance Calculations.**

Any disputes concerning the calculation of the Prior Year Calculations, Causes for Adjustment, or other energy or consumption calculations described in Exhibit C and not resolved pursuant to Section IV shall be submitted to the Engineer Neutral (as described in Section 3.C.2 of the Contract). The determination of the Engineer Neutral will be final and binding upon both the Customer and the ESCO. The ESCO and the Customer will each be responsible for half of the fees of the Engineer Neutral.

The disputed calculation shall not take effect until there is a final adjudication or resolution of the dispute.

## **Section IX. Examples.**

Section 7 of Exhibit C sets forth examples of calculations of energy savings for illustrative purposes.

## **Section X. Stub Year Savings.**

If the Project Savings Amount during the Opening Stub Year or Closing Stub Year is less than the Guaranteed Savings, any Installation Period Savings will be used to reduce the Performance Guarantee Payment. The same Installation Period Savings cannot be used to reduce the Performance Guarantee



Payment in both the Opening Stub Year and Closing Stub Year. '

## Section XI. Termination.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, OR IN ANY CONTRACT DOCUMENT, IN THE EVENT THAT THE PERFORMANCE TRACKING SERVICES SET FORTH IN EXHIBIT D ARE CANCELED OR TERMINATED BY CUSTOMER FOR ANY REASON, THIS PERFORMANCE GUARANTEE SHALL BE DEEMED TO HAVE BEEN MET AND FULFILLED AS OF THE EFFECTIVE TERMINATION DATE OF THE PERFORMANCE TRACKING SERVICES AND ESCO SHALL HAVE NO FURTHER OBLIGATIONS OR LIABILITIES ASSOCIATED WITH SUCH PERFORMANCE GUARANTEE AS OF THE DATE OF SUCH TERMINATION.

### B-5 EXHIBIT C

## METHODOLOGY AND BASELINE

### 1. OVERVIEW

This Exhibit describes the measurement and verification ("M&V") methodology that will be applied to the Project, and each separate ECM included within the Project. The Parties intend that the M&V methodology will be used to determine whether the Project described in Exhibit A achieves the Guaranteed Annual Savings Amount set forth in Exhibit B for each Performance Guarantee Year.

The M&V methodology to be employed for the Project is consistent with the U.S. Department of Energy ("DOE") and International Performance Monitoring and Verification Protocol ("IPMVP"). The majority of the savings are measured with an IPMVP Option C approach. The pre-project utility use will be adjusted to represent the energy use which would have occurred during the Guarantee Period if no project had been performed. The difference between the adjusted baseline energy use and the Guarantee Period energy use, as measured by the utility bills, will be the savings for that period. Some of the lighting savings are measured one time with an IPMVP Option A strategy. The savings in the 911 Center are measured with an IPMVP Option D strategy with models calibrated to pre-project energy use.

### 2. BASELINE

***The baseline is that set of parameters that describes both the energy consumed in the base year calculation for each type of energy consumed ("Base Year") and the conditions that caused that consumption to occur, including utility consumption, building use information, weather data, and other information as may be necessary to describe the Base Year conditions (collectively, the "Baseline"). For electricity and natural gas, the Base Year is typically the twelve-month total consumption between September 1, 2011 and October 31, 2012. Field collected data and inputs and outputs used in the Baseline calculations are summarized in the "Baseline Assumptions" set forth on Attachment 1 to this Exhibit C. The Baseline is further described in Sections 4 and 5 of this Exhibit C. For each Performance Guarantee Year, the Parties will determine any Causes for Adjustment pursuant to Section 6 of this Exhibit to establish certain adjustments to the Baseline used to measure energy use at the Facilities for that Performance Guarantee Year ("Adjusted Baseline").***

### 3. DETERMINATION OF PROJECT SAVINGS AMOUNT

### 3. DETERMINATION OF PROJECT SAVINGS AMOUNT

#### **A. Project Savings Amount**

For purposes of the performance guarantee described in Exhibit B, the Project Savings Amount will be determined as follows:

$$\$ = \$M + \$N$$

Where:

$\$$  = Project Savings Amount

$\$M$  = Measured Savings Amount, calculated as set forth in Subsection 3.B below.

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$\$N$  = Non-measured Savings Amount, stipulated as set forth in Subsection 3.C below.

#### **B. Measured Savings Amount**

The Measured Savings Amount for any Performance Guarantee Year will be the sum of the "Measured Energy Savings" for all savings categories (i.e., kWh, Therms, or kGals). The Measured Energy Savings for each savings category will be determined as follows:

$$\$o = E_o * \$/\text{Unit}$$

$$E_o = Emb - Emg$$

Where:

$\$o$  = Measured Energy Savings

$E_o$  = Measured Energy Units Saved (including partially measured and stipulated, as further described in this Exhibit C)

$\$/\text{Unit}$  = Cost of Energy per Unit Measured, as specified in this Exhibit C, Subsection 4.C  $E_{MB} =$

Measured Base Year Consumption or Demand  $E_{Mg} =$  Measured Guarantee Year Consumption or Demand

The process for calculating Measured Energy Units Saved for each ECM is set forth below.

#### **Option C - Whole Term**

- A. Overview of M&V Plan, and Savings Calculation
- B. Energy Savings Calculations
- C. Key Parameters Measurement Strategy
- D. Parameter Estimates
- E. Cost Savings Calculations

A. Overview of M&V Plan, and Savings Calculation

The method of determining energy savings described in this section uses "Option C -Whole Facility (Main Meter Measurement)" as described in the International Measurement and Verification Protocol (IPMVP Volume I, EVO 10000-1:2010). The remainder of this section provides the energy savings calculations, the key parameter measurements that will be conducted, the parameters that will be estimated and those values, and how cost savings will be calculated.

Guaranteed Meters

The following meters will be used to measure actual energy consumption for both the Base Year and Guarantee Period

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**Building Summary**

The following table lists the buildings that were served by guarantee meters during the Base Year period.

<sup>2)</sup>

## B. Energy Savings Calculations

Provided within this section is an explanation of the calculations that will be used to perform energy savings calculations for this particular ECM.

### **Overview of Savings Methodology**

Energy savings will be measured by comparing the Guarantee Period's total energy consumption and demand to the total energy consumption and demand for the same area in the Base Year period by utilizing energy meter data. Base year energy and demand will be adjusted for differences in weather, facility operation and facility modifications to estimate how much energy would have been used in the guarantee period if the energy conservation measures had not been implemented. The energy saved is the difference between the adjusted Base Year consumption and the Guarantee Period consumption. The demand saved is the

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difference between the adjusted Base Year demand and the Guarantee Period demand. This process will be followed for each fuel type involved in the guarantee.

### **Equations and Analysis of Energy Savings**

Savings are calculated as the difference in energy usage from the baseline conditions after adjusting for all necessary changes, and the Guarantee Period conditions. This is shown in Equation 1 below:

Equation 1 - Energy Consumption Savings

$$F_{\text{save}} = F_{\text{baseline}} - F_{\text{guarantee}}$$

*F<sub>save</sub>* = Energy Savings  
*F<sub>baseline</sub>* = Baseline Performance

Where,

*F<sub>save</sub>* = Energy savings

*F<sub>baseline</sub>* = Adjusted energy usage of facility equipment pre-implementation

*F<sub>guarantee</sub>* = Energy usage of facility equipment post-implementation

The baseline is that set of parameters that describes both the energy consumed in the Base Year and the conditions that caused that consumption to occur. This set of parameters includes utility consumption, facility use information, weather data and other information as may be necessary to describe the Base Year

conditions. In addition, the baseline includes certain mathematical values, calculated by a model, that are used to correlate the Base Year energy consumption with the factors that caused that consumption and is defined by Equation 2 below:

Equation 2 - Baseline Energy Use

$$E_{w,TM} = n \times C_D \times T_j + C_H \times HDD + C_c \times CDD + CO + CM_j$$

Where,

Where,

n = Number of billing periods in year.

E<sub>Baseline</sub> = Adjusted baseline period consumption

C<sub>D</sub> = A constant representing units of consumption per billing period day

T<sub>j</sub> = Number of days in billing period

C<sub>H</sub> = A constant representing units of consumption per heating degree day HDD, =

Heating degree days in the current billing period C<sub>c</sub> = A constant representing units of consumption per cooling degree day CDD, = Cooling degree days in the current billing period

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CO, = Offset for the current billing period

CM<sub>j</sub> = Other adjustments for the current billing period

Customer agrees to accept modifications to this baseline that are necessary to account for changes in the facilities and their use which may have occurred prior to the execution of this Contract but come to the attention of ESCO after the execution of this Contract. Typical adjustments are provided in detail in Exhibit C, Section 6.

Demand savings are computed similarly to the consumption savings, as shown by Equation 3 below:

Equation 3 - Peak Demand Savings

$$D_{save} = D_{Baseline} - D_{Performance}$$

Where,

D<sub>save</sub> = Demand savings

D<sub>Baseline</sub> = Adjusted energy demand of facility equipment pre-implementation

D<sub>performance</sub> = Energy demand of facility equipment post-implementation

Adjusted Base Year demand is calculated as demonstrated in Equation 4 below:

Equation 4 - Baseline Peak Demand

$$\mathcal{E} = ID_D + \sum_{i=1}^n D_H X_i - * - + D_c^{HDD} \frac{CPD}{X_i} + DO_{i,j} + DM_i$$

Where,

$D_D$  = A constant representing units of demand per billing period  
 $D_H$  = A constant representing units of demand per heating degree day per day  
 $D_c$  = A constant representing units of demand per cooling degree day per day  
 $DO_i$  = Offset for the current billing period  
 $DM_i$  = Other adjustments for the current billing period C.

#### Key Parameters Measurement Strategy

**Measurement and documentation strategies for each project phase are outline below. Pre-**

#### **Implementation Measurements and Documentation**

Customer will provide ESCO with monthly utility bills and all delivery invoices for the accounts included in Paragraph A for a minimum of twenty-four (24) months of historical utility

data that is to represent a complete span of two years worth of energy usage. Customer will also provide ESCO with monthly utility bills and all delivery invoices for the accounts included in Paragraph A from the end of that twenty-four (24) month data set through the Savings Guarantee Commencement Date within the timelines specified in Exhibit B.

ESCO will collect daily high and low temperature data from the weather station defined in Section 4 below.

#### **Post-Implementation Measurements and Documentation**

No short term verification is performed using this method. All post-implementation measurements are conducted during the Guarantee Period.

#### **Guarantee Period Measurements and Documentation**

Throughout the Guarantee Period, Customer will provide ESCO with the monthly utility bills and all delivery invoices for the accounts included in Paragraph A within the timelines specified in Exhibit B.

ESCO will collect daily high and low temperature data from the weather station defined in Section 4 below.

#### D. Parameter Estimates

The parameters defined in the equations outlined in Paragraph B that are estimated are determined through engineering analysis of at least twelve (12) months of the pre-implementation measured utility data. This is done to establish the relationship between the weather, billing period length, any other independent factors, and the consumption and demand associated with a particular account. The end result of this analysis is the set of coefficients used in the equations defined in Paragraph B to fully define the baseline for each

account. The values will be presented to Customer by ESCO before the Savings Guarantee Commencement Date and will be documented and agreed upon by both parties in the Meter Tuning Summary to be provided before Final Acceptance. Below are definitions of each of the estimated parameters included in Paragraph B;

- The values of CD and DD represent the base load consumption and demand of the utility usage of a particular meter and are equivalent to the weather independent energy usage and demand.
- The values of CH and DH represent the heating consumption and demand of the utility usage of a particular meter and are equivalent to the weather dependent energy usage and demand. They are associated with a consumption and demand heating balance point specific to that account.
- The values of CC and DC represent the cooling consumption and demand of the utility usage of a particular meter and are equivalent to the weather dependent energy usage and demand. They are associated with a consumption and demand cooling balance point specific to that account.
- o The billing period values of COi and DOi represent the portion of the energy consumption and demand that cannot be accounted for with the weather independent and weather dependent consumption.

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Each of these parameters will be determined based on the relationship of the baseline period energy and demand and the independent factors. During the Guarantee Period they will be used to estimate the energy use and demand that would have occurred if the project had not been performed. To accomplish this, COi and DOi will be pro-rated to the Guarantee Period billing periods for each account.

The terms CMi and DMi are included in the equations in Paragraph B to account for changes in the Guarantee Period energy use and demand from the baseline Period energy use and demand on the accounts in Paragraph A for any causes unrelated to the project as defined Exhibit C. The procedures for developing these estimates vary with the specific causes for the adjustments. The requirements for determining these values and any measurements necessary to support these estimates are defined in Exhibit C.

#### E. Cost Savings Calculations

Provided below are the methods and equations used to determine the cost savings associated with this particular methodology.

Cost Savings are calculated as the difference between the baseline and Guarantee Period energy costs using the utility rates as defined in this Exhibit C, Sub-section 4.B. The applicable utility rates will be applied to the baseline and Guarantee Period energy use for the accounts in Paragraph A. Equation 5 will be used to compute the total cost savings for each Guarantee Year.

Where,

\$save = Guarantee year cost savings

\$Baseline = Billing period k baseline utility cost for account i

Sperformance = Billing period k performance period utility cost for account i

n = Total number of accounts

q = Total number of billing periods for account i

## Equation 5 - Total Cost Savings

### Option D - Calibrated Computer Simulation

- A. Overview of M&V Plan, and Savings Calculation
- B. Energy Savings Calculations
- C. Key Parameters Measurement Strategy
- D. Parameter Estimates
- E. Cost Savings Calculations
- F. Installation Period Measurement Approach

#### A. Overview of M&V Plan, and Savings Calculation

The method of determining energy savings described in this section uses "Option D -Calibrated Simulation" as described in the International Performance Measurement and Verification Protocol (IPMVP). In brief, the energy savings resulting from this project will be measured as follows:

A computer simulation will be used to estimate the post-installation energy use. The metered pre-project energy use will be used to calibrate a computer simulation of the facilities listed in the table in section C. This calibrated computer model will be modified by implementing the effect of the ECMs to generate a simulation of the post-installation energy use. The energy savings from the project will be the difference between the Baseline simulated energy use and the post-installation simulated energy use.

#### B. Energy Savings Calculations

Energy and demand units saved will be determined by the following equation: Where:

$E_s$  = Energy Units Saved  $E_B$  = Simulated Baseline Energy Use  $E_G$  = Simulated

Guarantee Period (Post-Retrofit) Energy Use Baseline Energy Use

*Normalized Base Year*

The Normalized Base Year energy use is the output of the calibrated computer simulation, modified to account for the conditions before the project. The following steps outline the process for calibrating the computer simulation and determining the Normalized Base Year energy use.

*Collect all Measurements and Finalize Calibration Data*



During the first year after the conclusion of construction, all additional information to be used for calibrating the pre-project computer model will be collected. If data is missing or data

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collection errors are present, the missing data will be estimated. Before advancing any further in the model calibration process, this estimated data will be presented for review and approval.

#### *Weather Normalize the Utility Data*

In order to remove the effects of the single measurement year's weather from the savings calculation, the utility data will be modified to represent the level of energy use in a typical year. This is accomplished by modeling the relationship between weather and energy use during the pre-project measurement year. The "Normal" set of weather for the same weather station will be used as an input to the weather model. The data to be used for the weather normalization will use the same station identified in Exhibit C, Sub-section 4.A. If a statistically significant relationship between the measurement year's weather and the measurement year's energy use cannot be derived with this simplistic model, this step will be delayed. In that case, the computer simulation will not be created and calibrated using normalized data, but will instead be created and calibrated using measurement period data. The weather input to the computer simulation will then be adjusted to calculate the normalized utility data.

#### *Calibrate the Computer Simulation*

Using the Normalized Utility Data and all other information collected about the Pre-Retrofit facilities, a computer simulation of each facility will be created and calibrated. The software used for these models is eQUEST. Each model is to be calibrated such that the cumulative variance over the year between the software predicted energy use and the normalized energy use is less than 5%. Each model is also to be calibrated such that the variance in any calendar month is no more than 15% of the normalized energy use. This model is to be calibrated with assumptions, estimations, and measured data from the actual pre-project period conditions. Once the model for each facility has been satisfactorily calibrated, the model results will be available for review.

#### **Guarantee Period (Post-Retrofit) Energy**

##### *Modify the Computer Simulation to Include ECMs*

To simulate the Post-Retrofit energy use, the ECMs will be included in, the computer simulation. Each ECM will be included individually so the savings performance can be analyzed by ECM. Measurements taken during the Investment Grade Audit may be required to properly model pieces of equipment that have experienced significant changes.

#### C. Key Parameters Measurement Strategy

The Pre-Retrofit energy use that is to be used for calibrating the computer simulation for the facility was retrieved from the account listed in the table below.

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## Facility Data

During the Investment Grade Audit, detailed facility information is collected for use in savings projections. Throughout the construction period and first performance year, detailed information about the Post-Retrofit conditions is collected as well. Trend data from the Building Automation System is also collected during the audit and performance phases. All facility information collected during these periods will be used to assist in the calibration of the computer models. This will include, but is not limited to, variables such as equipment size, operating hours, and temperature set-points.

### D. Parameter Estimates

Calibration of the models will require making estimates in place of measured data for many parameters. Because the data collected for each building and simulation during the Investment Grade Audit and Post-Retrofit periods will be different, it is not possible to individually list all estimated parameters. In all cases where reliable measured data has been collected by ESCO, that data will be used in place of estimated parameters.

### E. Cost Savings Calculations

Provided below are the methods and equations used to determine the cost savings associated with this particular methodology.

Cost Savings are calculated as the difference between the adjusted baseline and Guarantee Period energy costs using the utility rates as defined in Exhibit C, Sub-section 4.B. The applicable utility rates will be applied to the baseline and Guarantee Period energy use for the accounts in Paragraph C. Equation 5 will be used to compute the total cost savings for each Guarantee Year.

#### Equation 5 - Total Cost Savings

\*=1

Baseline Performance

Where,

\$save = Guarantee year cost savings

\$Baseline = Billing period k adjusted baseline (after implementing the building code adjustment)  
utility cost for account i

\$performance = Billing period k performance period utility cost for account i

n = Total number of accounts

q = Total number of billing periods for account i

F. Installation Period Measurement Approach

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Once the model is calibrated, each ECM will be implemented, one at a time, in the order of implementation. The baseline computer simulation will be compared to the completed ECM simulations to determine what savings have been achieved.

**Option A - Lighting Efficiency and Controls**

- A. Overview of M&V Plan, and Savings Calculation
- B. Energy Savings Calculations
- C. Key Parameter Measurement Strategy
- D. Parameter Estimates
- E. Cost Savings Calculations

A. Overview of M&V Plan, and Savings Calculation

Savings in this section are determined by using an "Option A: Retrofit Isolation - Key Parameter Measurement" approach as described in the International Performance Measurement & Verification Protocol (IPMVP Volume I,. EVO 10000-1:2010). The remainder of this section describes the energy savings calculations, key parameter measurements that will be conducted, parameters that will be estimated and those values, and how cost savings will be calculated. The energy and cost savings that are determined using this approach will be the annual savings values used for each year of the Guarantee Period.

B. Energy Savings Calculations

Provided within this section is an explanation of the calculations that will be used to perform energy savings calculations for this verification method.

**Equations and Analysis of Energy Savings**

Savings are calculated as the difference in energy usage from the baseline conditions, and the Guarantee Period conditions.

For energy demand, the demand savings will be determined for each fixture and summed for all fixtures that will be retrofitted using the following formula:

Equation 1 - Energy Demand Savings

$$\Delta E = E_{\text{baseline}} - E_{\text{retrofit}}$$

$$E_{\text{save}} = \sum_{i=1}^n (E_{\text{Pre}} - E_{\text{Post}}) \times H_{\text{Post}}$$

Where,

$E_{\text{save}}$  = Demand savings  
 $n$  = Number of fixtures

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$E_{\text{Pre}}$  = Power usage of the baseline lighting conditions

$E_{\text{Post}}$  = Power usage of the Guarantee Period lighting conditions

For energy consumption, the energy savings will be determined for each fixture and summed for all fixtures that will be retrofitted using the following formula:

### Equation 2 - Energy Consumption Savings

$$E_{\text{save}} = \sum_{i=1}^n (E_{\text{Pre}} - E_{\text{Post}}) \times H_{\text{Post}}$$

Where,

$E_{\text{save}}$  = Energy savings

$H_{\text{Pre}}$  = Baseline burn hours •  $H_{\text{Post}}$  = Guarantee

Period burn hours

The energy usage of both the baseline and Guarantee Period lighting conditions are calculated utilizing the same equations. The measured parameters collected during the pre-implementation period will be used to compute the baseline fixture power use. The measured parameters collected during the post-implementation period will be used to compute the Guarantee Period fixture power use. The equations for a single fixture for both the baseline and Guarantee Period are shown below using the baseline calculations as an example.

### Equation 3 - Total Fixture Power Use Where,

$E_{\text{Fixt.pre}}$  = Pre-implementation direct power usage of light fixture  $E_{\text{heat}}$  = Indirect

heating power usage associated with the light fixture Equation 4 - Heating System

Power Use (penalty)

$$E_{\text{neal}} = E_{\text{fat,Pre}} \times \text{HF}$$

Where,  $\times$

HF = Heating Efficiency Conversion Factor (negative) C. Key

### Parameter Measurement Strategy

This section outlines the measurements that will be conducted to determine the measured values in the equations provided above in Paragraph B. For this lighting project, the key parameters that will be measured are the power consumption of each fixture type and the

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burn hours for each occupancy type. Measurement and documentation strategies for each project phase are outlined below.

#### Pre-Implementation Measurements and Documentation

Power measurements will be taken on a sample set of each baseline fixture type to determine the average power use for each fixture type. At least eight (8) measurements will be taken for each fixture type (unless fewer exist). Measurements will continue to be taken for a given fixture type until the 95% confidence interval for the true population mean spans no more than 10% above and below the mean of the sample (or until all fixtures have been measured). The mean of this sample set will be treated as the power consumption for that fixture type for all savings calculations.

Lighting loggers and occupancy sensors were utilized to determine the baseline and Guarantee Period burn hours. The lighting loggers were used to calculate the baseline burn hours. The occupancy sensors determine the necessary operation of the lighting fixtures to meet the lighting needs. Those annual hours are the Guarantee Period burn hours.

#### Post-Implementation Measurements and Documentation

Power measurements will be taken on a sample set of each Guarantee Period fixture type to determine the average power use for each fixture type. At least eight (8) measurements will be taken for each fixture type (unless fewer exist). Measurements will continue to be taken for a given fixture type until the 95% confidence interval for the true population mean spans no more than 10% above and below the mean of the sample (or until all fixtures have been measured). The mean of this sample set will be treated as the power consumption for that fixture type for all savings calculations. The preferred locations for measurements for the new retrofit types will be locations where some previous measurement was taken. The number of post-retrofit samples measured is independent from the number of pre-retrofit samples taken. These measurements are taken to determine the average power use of each fixture type, not the reduction of power use in any specific locations. All measurements will be taken using the same equipment and will be calibrated.

#### Guarantee Period Measurements and Documentation

No additional measurements will be taken during the Guarantee Period of this M&V strategy.

#### D. Parameter Estimates

Of the parameters identified under the equations for energy savings in Section B, several of the parameters are estimates, and will not be measured during any period of the project. Of the variables identified, the parameters that will be estimated for this particular ECM and M&V strategy include: burn hours (for fixtures without occupancy sensors) and heating efficiency conversion factors. Common information that applies to all fixtures groups is included below:

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E. Cost Savings Calculations

Provided below are the methods and equations used to determine the cost savings associated with this particular methodology.

Cost Savings are calculated as the difference between the baseline and Guarantee Period energy costs using the utility rates as defined in Exhibit C, Sub-section 4.B. The applicable marginal utility rates will be applied to the baseline and Guarantee Period energy use as determined in Paragraph B. Equation 5 will be used to compute the total cost savings for each Guarantee Year.

Equation 5 - Total Cost Savings \$ = 'V (f>

- \$ I

$\sum_{j=1}^n \frac{C_{j, \text{Baseline}} - C_{j, \text{Performance}}}{C_{j, \text{Baseline}}}$

Where,

$C_{\text{save}} = \text{Guarantee year cost savings}$   $C_{\text{Baseline}} = \text{Billing period k baseline utility cost for}$

$\text{account i}$   $C_{\text{Performance}} = \text{Billing period k performance period utility cost for account i n}$

= Total number of utility types C. Non - Measured Savings Amount

A. Overview of M&V Plan, and Savings Calculation

B. Annual Non-Measured Savings

A. Overview of M&V Plan, and Savings Calculation

The Actual Savings associated with this methodology will be agreed upon as outlined herein and will not be verified by measurements after implementation has occurred. Customer and ESCO agree to accept the annual savings values included in Section B with no additional verification. In the event that verification steps are performed by Customer or ESCO, the annual savings values included in Section B will still be the reported savings and values used for reconciling the guarantee in Schedule C. Section B details the agreed upon savings by measure and by category.

B. Annual Non-Measured Savings

C-14

### **Utility Cost Savings**

Once the construction of each of the measures below has reached Substantial Completion, the annual savings in the table below will be prorated monthly for each measure until the Savings Guarantee Commencement Date. The annual savings in the table below for each measure will be claimed for each Guarantee Year after the Savings Guarantee Commencement Date.

## **4. WEATHER SOURCE AND ENERGY RATES**

### **A. Weather Source**

Data for weather-related calculations used in this Contract will be Daily High-Low Temperatures obtained from the National Weather Service Station at O'Hare International Airport. If the data source becomes unavailable or a superior source is identified, the Parties will mutually agree upon an alternative data source. Actual weather data for Performance Guarantee Years will be used for Measured Savings Amount calculations during the Guarantee Term.

### **B. Energy Rates**

The rates set forth in this Subsection will be used to determine the Measured Savings Amount. The rates set forth below will be escalated by 0% each Performance Guarantee Year, commencing with the second Performance Guarantee Year.

Utility Company.

**C-15**



C-16

C-17

C-18

C-19

## 5. BUILDING SCHEDULE AND OPERATIONS A.

### Calendars and Schedules

Except for the Additional Occupancies described below and as otherwise authorized by this Section 5, the Client will operate the conditioned spaces in the Facilities within the date/times, occupancy schedules, and set-points set forth below.

Department of Public Health / 311 Department of Public Health / 311 SACHS Clinic SACHS Clinic Uptown Health Center Uptown Health Center Westown Health Center Westown Health Center Westown Health Center District 8, 9, 10, 15, 17 Police Stations - Office District 8, 9, 10, 15, 17 Police Stations - Office District 8, 9, 10, 15, 17 Police Stations - Locker Room

District 8, 9, 10, 15, 17 Police Stations - All other than above

- Garage • Garage
- Garage Office

Copernicus Aging Center Copernicus Aging Center Englewood Health Center Englewood Health Center Dr. MLK Jr. Community Center Dr. MLK Jr. Community Center Dr. MLK Jr. Community Center Area 4 Police Station (District 11) ■ Area 4 Police Station (District 11)-Area 4 Police Station (District 11) ■ Area 4 Police Station (District 11) - Garage Office Area 4 Police Station (District 11)- Court Area 4 Police Station (District 11) - Court Area 4 Police Station (District 11) - Locker Room

Area 4 Police Station (District 11) - All other than above Roseland Health Center Roseland Health Center District 19th and 23rd Police Headquarters - Computer Server Areas and Lobby Police Headquarters - All zones other than above Police Headquarters - All zones other than above

M-F WE M-F WE M-F WE

M, W, F T, TR WE M-F WE Su - Sa

Su - Sa

M-F WE M-F WE

M,T,TR,F

W

WE

M-F

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M-F

WE

M-F

WE

Su - Sa

Su - Sa

M-F

WE

Su-Sa

Su-Sa

M-F

WE

5A-6P 10A-2P 7A-6P 10A-2P 7A-7P 10A - 2P 7A-6P 9A-8P 10A-2P 6A-6P OFF  
7A-9A, 3P-5P, 11P- 1A 24hrs

7A-5P 8A-4P 7A-6P  
OFF 7A-5P 6A- 11P  
OFF 6A-5P  
OFF 6A-5P  
OFF 7A-6P  
OFF

7A-9A, 4P-5P, 12A-2A 24hrs 6A-7P 10A-2P 6A -6P 24hrs 6A-6P 7A-5P

74/65 74/85 74/85 74/85 74/85 74/85 74/85 74/85 74/85 74/99 99 74/80

74

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72 72/60 72/60

## C-20

The Client conducts certain occasional activities outside of the Occupancy Schedule ("Additional Occupancies"). The ESCO has evaluated the Additional Occupancies in preparing the Investment Grade Audit and that the Additional Occupancies are factored into the calculation of the Baseline. Additional Occupancies shall not constitute a Cause for Adjustment to the energy savings calculations.

Holidays: The Facilities will be unoccupied on the dates the following holidays are observed.

New Year's Day Martin Luther King Jr. Day  
Lincoln's Birthday Washington's Birthday  
Casimir Pulaski Day Memorial Day  
Independence Day Labor Day Columbus  
Day Veteran's Day Thanksgiving Day  
Christmas Day

These occupancy schedules will not apply in any instance where the ESCO or its representatives direct or approve the running of equipment outside of the occupancy schedules in order to improve the efficiency of the ECMs and related equipment.

## **B. Standards of Service and Comfort**

The Client will operate the conditioned spaces in the Facilities within the temperature ranges scheduled in Exhibit C, Sub-section 5.A. Operating conditions outside the range specified in this table shall constitute a Cause for Adjustment under this Contract. However, the ESCO acknowledges that adjustments may be made to the temperature ranges within spaces of less than 2000 square feet to accommodate tenant comfort and use of the space without any adjustments to the Baseline, provided spaces with adjustments outside of the temperature ranges do not exceed 5% of the total gross area of a particular Facility.

In the event that an adjustment to the Baseline is sought, the ESCO shall submit the proposed

in the event that an adjustment to the Baseline is sought, the ESCO shall submit the proposed Baseline adjustments to the Customer and describe the reasons for the adjustment as part of the Prior Year Calculations described in Exhibit B.

## 6. CAUSES FOR ADJUSTMENT

Adjustments to the Baseline are intended to adjust for any operations or conditions that differ from those assumptions made when the guaranteed savings were calculated. Each of the causes described in the table below shall constitute a "Cause for Adjustment" to the Baseline used to calculate the Measured Savings Amount. Any disputes regarding a Cause for Adjustment shall be addressed pursuant to Section VIII of Exhibit B.

C-21

C-22

In the event the ESCO has reason to believe that any action or failure to act by the Customer or a measurable deviation from the Baseline may constitute a Cause for Adjustment to the energy performance calculations set forth in this Contract, the ESCO must notify the Customer of a possible Cause for Adjustment within sixty (60) days of becoming aware of such action, failure to act, or measurable deviation. If the ESCO fails to notify the Customer within such sixty (60) day period, the ESCO thereafter waives the right to present any claim for an adjustment to the energy performance calculations on account of such action or failure to act.

Notwithstanding the provisions of this Section, the ESCO is not required to present any claim for a Cause of Adjustment if the ESCO determines that an action, failure to act, or measurable deviation will have no impact on the Measured Savings Amount. In all instances, the ESCO must account for all Causes for Adjustment to the energy performance calculations arising during the preceding Performance Guarantee Year within the Prior Year Calculations (as defined in Exhibit B), and the ESCO waives the right to present any Causes for Adjustments not specified within the Prior Year Calculations. Within sixty (60) days of the Date of Commencement, the Parties will mutually determine any Causes for Adjustment to account for changes in the Facility sites and their uses which have occurred prior to the execution of this Contract but after the performance of the Investment Grade Audit.

#### C-23

\* Threshold Limits Per Fuel-type/Category:

**Area - 3% of square footage of Site area as of the Date of Commencement. Electricity - 3% of highest annual peak demand Natural Gas - 3% of installed Base Year gas-heating capacity Air Conditioning - 3% of installed Base Year air-conditioning capacity**

#### **7. EXAMPLES**

Examples of energy savings calculations for the Project are set forth in Attachment 2 to this Exhibit.




C-24

i i

**Attachment 1 Calculation Model Assumptions [Attached]**

**C-25**

C-26

*Facility "cfrPhaae"6r-B^IP-j-S:"BIII^SIIIBISSIIM^3IBIBI^A^f* 

## C-27 Attachment 2

### Examples of Energy Savings Calculations

The engineering team used eQuest as the appropriate simulation tool for most buildings. In order to accurately predict the energy and demand savings of the project, the model must be calibrated to replicate, at a reasonable level, the energy and demand use profiles of the current baseline building operation. This was accomplished by first running the model as the buildings are presently constructed and operated. These results were then compared to the baseline energy consumption derived in the utility analysis and weather normalization process to assess how closely the model matches the building's current operation. After examining the results, it became apparent where energy or demand was too high or too low, and adjustments were made. The key was getting all parameters, including electric energy, electric demand, and fuel use, to align simultaneously while maintaining the validity of the inputs into the model. These adjustments involved altering operating schedules, internal loads, equipment efficiencies, set-points, etc. in order to achieve a satisfactorily calibrated model.

#### About eQuest

eQuest is a DOE2 application used as an Energy Simulation tool. It uses a variety of functions and custom generated algorithms to simulate the energy consumption of a building. Among the range of simulation results are electricity and gas consumption, and electric demand. The following graphic is an example of the model output from eQuest.

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ii 18 IrWC«t P« IC.CM)

ti)KUUl K "r Sid" HVAC

eQuest Rendering of Area 3 Police

## Other Modeling Tools

In addition to eQuest, the engineering team used two other energy modeling tools. These are spreadsheet-based tools that are internal to Schneider Electric. These were the tools of choice when the building was smaller or less complex. These tools are described below.

### C-28

## The Energy Analysis Model for Simple Buildings (TEAMS)

This modeling tool derives a linear regression of heating and cooling loads based upon the weather. It then allocates electrical and gas consumption based upon these curves. Below is a screenshot of a TEAMS model.

### HVAC Definition

#### Heating Inputs

Occupied Breakeven Temperature, Unoccupied Breakeven Temperature, Design Temp, Outside Air Temp, Night Setback, Energy Type, Plant Size, Efficiency, Hot Water Pump, HW Pump Speed Control, HW Pump Minimum Speed, Anx Heat, OAT Enable (Heat Pump), Aux Heat, Plant Size (Heat Pump)

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Gas/Elec MBH % HP C/P/V % (0-1) F KW

AHU Inputs

Plant 1  
AHU Fan HP 30 HP  
On ForHig/Cia/BDth. B H/C/B  
Fan HP Speed Control C C/P/V  
Economizer Set Point -20 F  
FsnMin Speed 0.00 9fc(0-1)

Plum 3  
0 HP 0 HP  
B H/C/B B H/C/B  
C C/P/V C C/P/V  
0.00 % (6-1) 0.00 % (0-1)  
-20 F -20 F

SqFt/Fan hp 4«

Cooling Inputs

Occupied Breakeven Temperature: Unoccupied Breakeven Temperature Design Temp \*Outside Air Temp Night Setup Energy Type Plant Size Efficiency, Minimum Hot Gas Bypass: Chilled Water Pump Condenser Water Pump CHW Pump  
Speed Control. CHW Pump Minimum Speed: Coopng Tower Fan Auxiliary KW(Purge,Controls,Etc )■

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65 F  
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899 F  
Eloc Gas/Elec  
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HP HP  
2.J10S\* COP  
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0.00 % (0-1)  
0 HP

999 Elec 0

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Gas/Elec  
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COP  
KW HP HP C/P/V U(0-1) HP KW

999 Elec 0

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Gas/Elec  
Tons  
COP  
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HP  
HP  
C/P/V  
% (0-1)  
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KW

Clq.SqFt/Ton 200 Htn.BTU/SqFt 67

Plant \

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Unocc KTO Guvt I

Screenshot of TEAMS Model for Pilsen Health Center

Simple Building Model (SBM)

### Simple Building Modeler (SBM)

SBM is another spreadsheet-based tool that's slight more involved than TEAMs. This tool calculates the energy usage of a building on an hourly basis, like eQuest. Below is a screenshot example of SBM for Copernicus.

C-29



#### *SBM Screenshot Example of Copernicus*

Once the calibration process is complete, the savings process can begin. Savings per ECM are calculated within the energy models. For each ECM, certain parameters are changed in the model in order produce a different result. The difference between modeled baseline and the post-ECM model is the calculated savings.

#### Lighting

For ECMs such as lighting retrofits and occupancy sensors, these savings were calculated outside of the eQuest model. Lighting technology upgrades affect utility costs by reducing electrical consumption and demand of the lighting system. Utility costs related to heating and cooling are also affected because the upgraded lighting system reduces heat gain from lamps and ballasts. Schneider Electric's energy savings calculations account for all these effects. Four calculations are used for each measure. A fifth calculation is used to determine the net effect on utility costs. The first two calculations provide the annual electrical consumption and demand savings in kilowatt hours and kilowatts, respectively:

C-30

Consumption Savings = (Fixture Quantity) x ((Watts/Existing Fixture) - (Watts/Upgraded Fixture)) x (Annual Hours)

14000 kWh - 11000 kWh

(1000 Watts/kW)

$$\frac{\text{Demand Savings} = 12 \text{ Months (Fixture Quantity)} \times ((\text{Watts/Existing Fixture}) - (\text{Watts/Upgraded Fixture}))}{\text{x Diversity Factor}}$$

(1000 Watts/kW)

*Where:*

Fixture Quantity = Quantity of fixtures of a particular type to be upgraded

Watts per Existing Fixture = Observed wattage of each fixture before the upgrade (including lamps and ballasts and accounting for burned out fixtures)

Watts per Upgraded Fixture = Wattage of each fixture after the upgrade

Annual Hours = Annual fixture burn hours. This represents the actual hours the fixture is expected to be in use during the year. The hours vary with the type of space served and the habits of the occupants. Automated occupancy loggers are used to assist in the development of annual operation hours for each type of space.

Diversity Factor = Percentage of time the fixtures are on when the peak demand is set,

A third calculation is used to determine the energy savings that can be expected from reduced cooling loads. These are termed "A/C Savings" and are calculated as follows:

$$\text{A/C Savings} = \text{Electrical Savings} \times \text{Number of Cooling Months}$$

$$\frac{(12 \text{ Months/Year}) \times \text{COP A/C Demand Savings} = \text{Demand}}$$

$$\frac{\text{Savings} \times \text{Number of Cooling Months}}$$

$$(12 \text{ Months/Year}) \times \text{COP}$$

*Where:*

COP = Coefficient of Performance of the cooling system

The fourth calculation is used to determine extra heating that must be done to compensate for the reduction in heat gains in the building because of the upgrades in lamps and ballasts. This is referred to as "Heating Penalty" and is expressed in units of MCF.

C-31

$$\text{Heating Penalty} = (\text{Electrical Savings}) \times (\text{Number of Heating Months}) \times (3413 \text{ Btu/kWh}) (12$$



$$\text{Months/Year}) \times (1,030,000 \text{ Btu/MCF}) \times (\text{Heating Efficiency})$$

Where:

Heating Efficiency = Efficiency of the heating system

Once Electrical Savings, A/C Savings, and Heating Penalty are calculated for each lighting upgrade, utility rates can be applied to these energy consumption values to determine the net effect of the lighting upgrades on utility costs.

$$\begin{aligned} \text{Total Savings} = & ((\text{Electrical Consumption Savings} + \text{A/C Consumption Savings}) \times (\$/\text{kWh})) \\ & + ((\text{Demand Savings} + \text{A/C Demand Savings}) \times (\$/\text{kW})) \\ & - ((\text{Heating Penalty}) \times (\$/\text{MCF})) \end{aligned}$$

Occupancy sensor calculations also involved the use of data logging. Data loggers were used to determine the number of hours the lights were on, and the number of hours the space was occupied. The difference between the lighting hours and the occupancy hours is the calculated savings.

#### Outdoor Unit Coating Savings

The condenser's performance is based on Coefficient of Performance (COP). The general equation for COP is given in Equation 1.'

$$COP = \frac{Q}{W} \quad (1)$$

"Q" is the heat transfer across the coils and can be shown in Equation 2. "W" is the work supplied to the condenser, given in Equation 3.

$$Q = m(h_o - h_i) \quad (2) \quad W = V I \quad (3)$$

"m" is the mass flow rate across the condenser, "h" is the enthalpy of the air with the subscript "o" denoting air outside the condenser and "i" denoting air inside the condenser. "I" is the current supplied to the condenser and "V" is the voltage supplied to the condenser. Assuming the mass flow rate across the coils and voltage supplied is constant, the ratio of the COP prior to rejuvenation (subscript "1") and after the rejuvenation (subscript "2") can be determined from Equation 4.

$$\begin{aligned} \frac{COP_1}{COP_2} &= \frac{h_{o1} - h_{i1}}{h_{o2} - h_{i2}} \quad (4) \end{aligned}$$

C-32

An ammeter is installed to measure the current drawn by the condenser. Temperature detectors are installed outside and inside the condenser. The relative humidity is retrieved from an online database from a local weather station. A psychrometric chart is used to determine the enthalpy of the air at both locations. The data points are taken every 5 minutes.

The increase in performance is displayed in Equation 5.

$$\% \text{ Improvement} = 1 - \frac{COP_1}{5}$$

C-33

**EXHIBIT D PERFORMANCE TRACKING SERVICES**

Opening Stub Year

The services included in the Opening Stub Year will be a pro-rated amount of the services for a full calendar year, based on the number of months included in the Opening Stub Year. The amount of services included below will be multiplied by a fraction, the numerator of which is the number of months included in the Opening Stub Year and the denominator of which is 12.

## Full Project Year Services

### Measurement & Verification with Savings Reporting

Schneider Electric will perform the measurement & verification as outlined in the M&V plan and will update the Energy Savings and Performance report on a quarterly basis. This can only be completed if utility bills and other necessary information is made available per the contract. Notification of report updates will be sent via email with a link back to the Schneider Electric Resource Advisor website to the contacts specified by the Customer. Changes to that contact list can be made at any time. Customer will need to contact Schneider Electric with the new contact list and changes will be made before sending the next email update. If bills and other necessary information are not provided, per the Contract, Schneider Electric is not responsible for providing the Energy Savings and Performance report for that time period.

### Optimization

Schneider Electric will remotely access the Client's energy management system two times each year to perform this service. During each session, the system will be inspected and variables will be compared to a pre-approved list to determine if the system is operating correctly. Any findings that contradict the pre-approved list will be corrected. Additionally, Schneider Electric will inspect the system for other areas of malfunction or energy waste and report those findings for Customer review. All findings, corrected or not corrected, will be reported and that report delivered to customer. Schneider Electric will notify Customer if remote access is not available Customer is responsible for restoring remote access and notifying Schneider Electric. Schneider Electric is not responsible for providing the planned service session if remote access is unavailable.

### On-Site Visit

Schneider Electric will provide On-Site Energy Consulting consisting of two site visit(s) per year, each averaging 20 hours per visit. This service will include a site assessment to determine current conditions and identify areas of improvement. Each site visit will be documented in a report indicating the findings and outlining a plan for further improvement. Each site visit will average 20 hours, but will vary depending upon the needs of that particular visit. Customer is responsible for providing access to all mechanical and electrical equipment and any supervision required by Customer. Site visits must be requested 14 days or more prior to the requested date. Schneider Electric and Customer will work to schedule a mutually acceptable date for each visit.

## D-1

### Remote Energy Management, Training & Technical Support

Schneider Electric will provide up to 132 hours of remote energy management support. This time can be used for any of the following activities including scheduling, system adjustment, on-demand remote energy management system training or technical support. All Remote Support is client initiated and it is the expectation of Schneider Electric that if a client does not remain on the phone for the duration of the time required to accomplish the task, the customer will accept the time, up to the limit of the hours already purchased and not used, that the Schneider Electric representative documents as used for that task. No credit will be given towards future years if all of the 132 hours are not used by the end of the project year. If all of the hours are exhausted at any time before the end of the year, additional hours can be purchased in 10 hour

blocks which will remain available for use until the end of the next project year.

D-2

**EXHIBIT E**

**PERFORMANCE TRACKING SERVICES PAYMENTS**

The ESCO will be paid in arrears the following amounts for Performance Tracking Services. Payments will be made in accordance with Section 13.A.2 of the Contract.

## EXHIBIT F

### **ADDITIONAL PERFORMANCE OF WORK REQUIREMENTS**

The ESCO shall be responsible to meet these performance requirements throughout the course of the Work. Exceptions shall only be allowed at the Customer's discretion and with Customer's prior written approval.

#### **A. General Performance of Work Requirements**

1. The following activities are specifically prohibited from occurring on the Customer's or Client's property and cannot be undertaken by the ESCO:

- a. The use of a jackhammer on site
- b. The use of Client space, other than Client space being constructed pursuant to this Contract
- c. The use of Client equipment
- d. Unauthorized use of Facility equipment

- e. The use of the Facility's trash compactor, dumpster, or container
- f. Unauthorized parking in restricted areas
- g. Unauthorized on-site storage
- h. Consumption of alcohol or controlled substances on site
- i. Unauthorized congregation in Facility public space
- j. Cooking or quantity food preparation on site
- k. Unauthorized use of Facility restroom areas
- l. Unapproved use of Facility utilities
- m. Objectionable, abusive, or unacceptable personal behavior of contractor personnel
- n. Improper disposal of wastes, residues, or debris
- o. Loud noises outside of the Work site considered by the Customer or Client as objectionable

2. A list of ESCO and Subcontractor employees needs to be submitted to the Customer Representative prior to commencing work. All Project employees are required to sign-in and out on a daily log sheet maintained at each Facility's security office designated by the Commission. All Project employees are required to wear their contractor badge at all times.

#### F-1

3. For Facilities equipped with freight elevators, all ESCO personnel shall utilize the freight elevator for access to the Work. Only in the event of an emergency shall ESCO personnel be permitted to use other means of egress.

4. All keys to construction site offices, fenced in areas, etc. are to be copied and given to security.

5. For Facilities equipped with freight elevators, all materials and waste shall be transported to and from the Work site via the freight elevators. Under no circumstance shall the passenger elevators be used without the written consent of the Customer.

6. It shall be the responsibility of the ESCO to isolate the heating, ventilating, and air conditioning systems of the Work site from the remainder of the Facility. Under no circumstance shall the ESCO utilize materials such as but not limited to: cleaning agents, paints, thinners, or adhesives that if released in the Work site atmosphere could spread to tenant areas, causing discomfort or posing any type of health hazard.

7. In the event that any fire and life safety system will need to be disabled to complete the Work, the ESCO must notify the Customer in advance of such event in writing.

8. In the event any soldering or welding apparatus is required to complete the Work, the ESCO must notify the Customer of such event. A welding permit must be obtained from the Customer if required for

the Facility.

9. Removal of debris and delivery of any materials are limited to off-hours, 6 p.m. to 6 a.m. Arrangements should be made in advance with security for the Facility. All dumpsters need to be delivered after 6 p.m. and removed no later than 6 a.m. Arrangements are to be made with Facility security. The Facility will need to be cleaned of all dust and debris prior to 6 a.m. every day.

10. Freight elevators are to be protected on the walls and floor. If the elevator top needs to be removed, arrangements are to be made with the Facility's Chief Engineer.

11. Material Safety Data Sheets (MSDS) must be supplied to the Office of the Facility prior to any material entering the Facility.

12. All fire proofing and fire stops must be maintained. Patching must be completed as occurred to ensure integrity of the fire system.

13. Stairway doors shall not be propped open or blocked at any time.

14. Dry chemical fire extinguishers must be in the construction area.

15. Report any injuries to the security department as soon as possible.

16. Flooring throughout the building, including granite, terrazzo and carpeting, must be protected at all times.

17. It is the ESCO's responsibility to come to each Facility prepared with all tools and equipment necessary to complete the job. Customer and Client cannot supply lifts, ladders or tools at the Facilities to outside contract employees.

## F-2

### B. ACM-Related Performance of Work Requirements

1. In connection with the demolition, removal or handling of any ACM, the ESCO will keep such materials wet, and remove all items in full compliance with current Environmental Protection Agency (EPA), federal Occupational Safety and Health Administration (OSHA), Illinois Environmental Protection Agency (IEPA) and other applicable regulations and statutory requirements. All such items shall be disposed of at an EPA regulated landfill and ESCO shall submit to the Customer for its approval all required hazardous waste and closure documentation, including a listing of all certified personnel, chain of custody, disposal manifests, post-abatement clearance testing, recordkeeping and monitoring reports related to the Project.

2. The ESCO will be responsible to utilize all appropriate engineering controls (including but not limited to critical barriers, hepafiltered vacuums and dust pick-up systems, impermeable containers, etc.) and work methods to minimize fiber, lead or other Hazardous Materials released during handling, removal or disposal activities. The ESCO shall conduct regular biological monitoring and personal and area air sampling to verify lead levels and fiber counts on all portions of the Project. The ESCO shall document its removal activities and provide any and all documentation relating to such removal to the Customer upon request, including but not limited to, documentation regarding air sampling data, hazardous waste manifests, disposal receipts, training certificates and photographs. The ESCO will be responsible to provide all EPA, IEPA and OSHA monitoring, as required by applicable law.

3. Prior to commencing Work, the ESCO shall insure that all workers are instructed in all aspects of personal protection, work procedures, emergency evacuation procedures and the use of equipment,

including procedures unique to the ACM abatement Work required by this Contract. The ESCO shall provide appropriate respiratory protection equipment for each worker and insure usage during potential exposure to any ACM or other Hazardous Materials. The ESCO shall have an adequate supply of hepafilter elements or other necessary filter elements and spare parts on sight for all respirators in use, and all respirators shall be chosen from among those jointly approved as being acceptable for protection by the Mine, Safety and Health Administration (MSHA), and the National Institute for Occupational Safety and Health (NIOSH). The ESCO shall insure that any of its employees or subcontractors, of whatever tier, shall wear approved respirators at all times while abatement work is underway or while present in the work area.

F-3

**EXHIBIT G**

**REQUIRED MAINTENANCE**

Responsibility for the proper maintenance, service, repair, replacement and adjustments to each ECM, ECM system and related ancillary systems and equipment, including related expenses, shall transfer to the Customer on an ECM by ECM basis on the Substantial Completion Date of each ECM as such date is determined in accordance with Section 3.C. of the Contract. The Customer will be responsible for such maintenance, service, repair and adjustments for the remainder of the Term. Operation and Maintenance Manuals ("O&M Manuals") will be provided to the Customer by the ESCO. Included with the O&M Manuals will be a list of maintenance responsibilities and tasks for the Customer. ESCO has no maintenance responsibilities under this Contract. ESCO shall have no responsibility for repairs and/or adjustments to the ECMs except to the extent set forth, and during the Warranty Period provided in Section 8 of this Contract.

**Start-up and Shutdown:** The Customer's responsibilities include all system start-ups and shut-downs. System start-up (beginning of season) and shut-down (end of season) refers to specific manufacturer recommendations with respect to "proper" system start-up, operation, maintenance, and shut-down as defined in O&M Manuals.

**Operations:** The Customer shall, or shall cause the Client to, operate the equipment installed hereunder in accordance with parameters noted in Exhibit C, the manufacturers' recommendations, and any supplemental procedures supplied to the Customer or the Client by ESCO, including those set forth in the O&M Manuals. The Customer shall also, or shall cause the Client to, operate the equipment and systems (including ancillary related systems) in accordance with the standards of service and comfort set forth in Exhibit C.



Maintenance: The Customer's maintenance responsibilities include the proper operation and prompt repair and maintenance of each ECM, ECM system and related ancillary systems and equipment such that they are maintained in good working order during the Contract Time. The Customer shall, or shall cause the Client to perform the preventative maintenance that is fully prescribed, defined, and scheduled by the ESCO through the CMMS. The Customer and Client will rely on the information populated by the ESCO into the CMMS to advise the Customer of the periodic preventative maintenance requirements during the Contract Time. The ESCO will be provided with a user license to the CMMS which will the ESCO to access to the CMMS to monitor maintenance work orders for each applicable ECM. The Customer shall, or shall cause the Client to, repair and maintain (i) the equipment and all other components which comprise each ECM and (ii) all other equipment which is attached thereto and/or is integral to the proper functioning of each ECM, including performance of the maintenance tasks, manufacturer's recommendations and supplemental procedures included in the O&M Manuals as defined by the ESCO in the CMMS. Maintenance also refers to performing required maintenance of ancillary systems.

#### **EXHIBIT H ESCO'S INSURANCE REQUIREMENTS**

The ESCO shall provide the following minimum insurance coverages:

1. Commercial General Liability (Primary and Umbrella)

Commercial General Liability Insurance or equivalent with limits of not less than \$10,000,000 per occurrence for bodily injury, personal injury, and property damage liability. Coverage must include the following: All premises and operations, products/completed operations (for minimum of two (2) years following project completion), flood, explosion, collapse, underground hazards, separation of insureds, defense and contractual liability. The ESCO and all subcontractors of every tier will specifically name the Customer, the Commission, the Client, the Client agency/property owner of each project, the Lender and others as may be required by the Customer as Additional Insured on a primary and non-contributory basis, with respect to liability arising out of operations of ESCO, and/or its Subcontractors, on behalf of Customer and/or Client, where required by written contract for any liability arising directly or indirectly from the work including the two (2) years completed operations period using the ISO CG2010 (0704) and CG2037 (0704) or equivalent. Coverage will include a waiver of subrogation as required below. The ESCO's Excess Insurance may be used to satisfy the limits specified in this section.

***The ESCO and subcontractors are required to endorse their liability policies with form CG 24 17 to eliminate the exclusion for work within fifty (50) feet of the rail right-of-way. The ESCO must provide copies of this endorsement with the certificate of insurance required below. The ESCO must ensure that Subcontractors maintain this endorsement on their policies. Such coverage is required only when the ESCO's work is within 50 feet of such rail right-of-way.***

Subcontractors performing work for the ESCO must maintain limits of not less than \$1,000,000 per

occurrence with the same terms herein.

2. Automobile Liability (Primary and Umbrella)

When any motor vehicles (owned, non-owned, leased and hired) are used in connection with work to be performed, the ESCO must provide Automobile Liability Insurance, with limits of not less than \$5,000,000 per occurrence for bodily injury and property damage. The Customer, the Commission, the City of Chicago and the client agency/property owner of each project and others as may be required by the Customer as designated in the scope of work are to be named as Additional Insureds on a primary, non-contributory basis, with respect to liability arising out of operations of ESCO, and/or its Subcontractors, on behalf of Customer and/or Client. The ESCO's Excess Insurance may be used to satisfy the limits specified in this section.

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

3. Workers' Compensation and Employers Liability

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

4. Professional Liability

Professional Liability Insurance must be maintained with limits of not less than \$5,000,000 covering acts, errors, or omissions. The policy will include coverage for wrongful acts, including but not limited to errors, acts or omissions, in the rendering or failure to render professional services. When policies are renewed or replaced, the policy retroactive date must coincide with, or precede the, start of work under this Contract. Coverage must be maintained for two years after Substantial Completion. A claims-made policy, which is not renewed or replaced, must have an extended reporting period of two (2) years.

Subcontractors performing professional services for the ESCO must maintain limits of not less than \$1,000,000 with the same terms herein.

5. Contractors' Pollution Liability

Contractors' Pollution coverage is required with limits of not less than \$5,000,000 per occurrence for any portion of the services, which may entail, exposure to any pollutants, whether in the course of sampling, remedial work or any other activity under this Contract. The Contractors' Pollution liability policy will provide coverage for sums that the insured become legally obligated to pay as loss as a result of claims for bodily injury, property damage and/or clean-up costs caused by any pollution incident arising out of the Work including remediation operations, transportation of pollutants, owned and non-owned disposal sites and any and all other activities of the ESCO and its subcontractors. Pollution incidents will include, but not be limited to, the discharge, dispersal, release or escape of any

solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, medical waste, waste materials, lead, asbestos, silica, hydrocarbons and microbial matter, including fungi which reproduces through release of spores or the splitting of cells or other means, including but not limited to, mold, mildew and viruses, whether or not such microbial matter is living.

The policy will be maintained for a period of three years after final completion and include completed operations coverage. The policy will include the Customer, the Commission, the Client and the client agency/property owner of each project, the Lender and others as may be required by the Customer, as Additional Insured on a primary and non-contributory basis for on-going and completed operations with respect to liability arising out of operations of ESCO, and/or its subcontractors, on behalf of Customer and/or Client.

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

### 6. Builders Risk/Installation Floater

The ESCO must provide All Risk Builders Risk/Installation Floater insurance or equivalent on a replacement cost basis for materials, supplies, equipment, machinery and fixtures that are or will be part of the permanent facility. Coverage must be on an All Risk basis including, but are not limited to, the following: right to partial occupancy, collapse, water damage including overflow, leakage, sewer backup, or seepage, damage to adjoining or existing property, debris removal, scaffolding, false work, fences, and temporary structures, resulting damage from faulty workmanship or materials, ordinance and Law, and equipment stored off site or in transit. The Customer, the Commission, the Client, the client agency/property owner of each project and the Lender are to be loss payees on the policy. Coverage must remain in place until at least Substantial Completion.

The ESCO is responsible for all loss or damage to personal property including but not limited to materials, equipment, tools, and supplies owned, rented, or used by ESCO.

### 7. Railroad Protective Liability

When work is to be performed within fifty (50) feet of the rail right-of-way, the ESCO shall ensure that Railroad Protective Liability insurance in the name of the railroad or transit entity remains in force during the course of construction of the project entity for losses arising out of injuries to or death of all persons, and for damage to or destruction of property, including the loss of use thereof. Limits shall be in the amount required by the railroad or transit entity.

*The ESCO and subcontractors are required to endorse their liability policies with form CG 24 17 to eliminate the exclusion for work within fifty (50) feet of the rail right-of-way. The ESCO and subcontractors must provide copies of this endorsement with the certificate of insurance required below.*

### 8. Umbrella.

The General Liability, Automobile and Employer's Liability policy limits described above may be provided in combination with any umbrella liability policy maintained by the ESCO.

II. Policies described in Section I above shall be subject to the following:

1. Such certificates and policies must be in a form acceptable to the Customer and from companies with a general rating of A minus, and a financial size category of Class VII or better, in Best's Insurance Guide. In accordance with ISO ACORD Form 25 (2010/05), should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy

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provisions; provided ESCO shall provide Customer at least thirty (30) days' prior written notice of the cancellation, non-renewal (without replacement) or material reduction of coverage or limits of any policy of insurance referred to herein.

2. The ESCO must, at all times during the term of this Contract, maintain and keep in force, at the Company's expense, the insurance coverages provided above.

3. In the event of a claim or litigation the Customer reserves the right to obtain applicable portions of insurance policies and records from the ESCO and/or its Subcontractors at any time upon written request, redacted to delete any ESCO confidential information not relevant to the claim, litigation or intended coverage.

4. Any deductibles or self-insured retentions on referenced insurance coverage must be borne by the ESCO.

5. The Company hereby waives and agrees that their insurers waive their rights of subrogation against the Customer and the Client, and their respective Board members, employees, elected officials, agents or representatives.

6. Unless otherwise stated herein, the insurance coverage and limits furnished by the ESCO in no way limit the ESCO's liabilities and responsibilities specified within this Contract or by law.

7. Any insurance or self-insurance programs maintained by the Client do not contribute with insurance provided by the ESCO under this Contract.

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

9. The ESCO must require all its Subcontractors to provide the insurance required in this Contract, or ESCO may provide the coverage for its Subcontractors. All its Subcontractors are subject to the same insurance requirements of the ESCO unless otherwise specified in this Contract.

10. If the ESCO or its Subcontractors desires additional coverage, the party desiring the additional coverage is responsible for the acquisition and cost.

11. The Customer maintains the rights to modify, delete, alter or change these requirements upon written notice to the ESCO. Documented increased costs resulting from revised insurance requirements may be submitted as a Change Order increasing the Contract Sum.



- a. State of Incorporation: Delaware
- b. Authorized to do business in the State of Illinois' Yes [ X ] No [ ]

- c. Names of all officers of corporation  
(or attach list): Name (Print or Type) Title (Print or Type)  
Names of all directors of corporation (or attach list): Name (Print or Type) Title (Print or Type)

**PLEASE SEE  
ATTACHED LIST**

**PLEASE SEE  
ATTACHED LIST**

- d. If the corporation has fewer than 100 shareholders indicate here or attach a list of names and addresses of all shareholders and the percentage interest of each.

Name (Print or Type)	Address	Ownership Interest
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Schneider Electric Buildings,	1354 Clifford Avenue, Loves Park, IL 61132	100% LLC
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- e. If the corporation has 100 or more shareholders, indicate here or attach a list of names and addresses of all shareholders owning shares equal to or in excess of seven and one-half percent (7.5%) of the proportionate ownership of the corporation and indicate the percentage interest of each.

Name (Print or Type)	Address	Ownership Interest
		%
		%
		%

- f. Is the corporation owned partially or completely by one or more other corporations? Yes [ ] No [ X - Limited Liability Company ]

**If "yes" provide the above information, as applicable, for each such corporation.**

## **SECTION 2. PARTNERSHIPS**

- a. If the bidder/proposer is a partnership, indicate the name of each partner and the percentage of interest of each therein.

Name of Partners (Print or Type)	Percentage Interest
	%
	%

%

### **SECTION 3. SOLE PROPRIETORSHIP**

- a. The bidder/proposer is a sole proprietorship and is not acting in any representative capacity on behalf of any beneficiary: Yes ☐ No ☐ If NO, complete items b. and c. of this Section 3.
- b. If the sole proprietorship is held by an agent(s) or a nominee(s), indicate the principal(s) for whom the agent or nominee holds such interest.

Name(s) of Principal(s). (Print or Type)

- c. If the interest of a spouse or any other party is constructively controlled by another person or legal entity, state the name and address of such person or entity possessing such control and the relationship under which such control is being or may exercised.

Name(s) Address(es)

### **SECTION 4. LAND TRUSTS, BUSINESS TRUSTS, ESTATES & OTHER ENTITIES**

If the bidder/proposer is a land trust, business trust, estate or other similar commercial or legal entity, identify any representative, person or entity holding legal title as well as each beneficiary in whose behalf title is held including the name, address and percentage of interest of each beneficiary.

Name(s) Address(es)

### **SECTION 5. NOT-FOR-PROFIT CORPORATIONS**

a. State of incorporation

b. Name of all officers and directors of corporation (or attach list): Name (Print or Type) Title (Print or Type)  
Name (Print or Type)

NOTE: The Chicago Infrastructure Trust may require additional information from any entity or individual to achieve full disclosure relevant to the transaction. Further, any material change in the information required above must be provided by supplementing this statement at any time up to the time the Chicago Infrastructure Trust takes action on the contract or other action requested of the Chicago Infrastructure Trust.

## **II. CONTRACTOR CERTIFICATION**

### **A. CONTRACTOR**

1. The Contractor, or any subcontractor to be used in the performance of this contract, or any affiliated entities of the Contractor or any such subcontractor, or any responsible official thereof, or any other official, agent or employee of the Contractor, any such subcontractor or any such affiliated entity, acting pursuant to the direction or authorization of a responsible official thereof has not, during a period of three years prior to the date of execution of this certification or if a subcontractor or subcontractor's affiliated entity during a period of three years prior to the date of award of the subcontract:
  - a. Bribe or attempted to bribe, or been convicted of bribery or attempting to bribe a public officer or employee of the City of Chicago, the State of Illinois, any agency of the federal government or any state or local government in the United States (if an officer or employee, in that officer's or employee's official capacity); or
  - b. Agreed or colluded, or been convicted of agreement or collusion among bidders or prospective bidders in restraint of freedom of competition by agreement to bid a fixed price or otherwise; or
  - c. Made an admission of such conduct described in 1(a) or (b) above which is a matter of record but has not been prosecuted for such conduct.
2. The Contractor or agent, partner, employee or officer of the Contractor is not barred from contracting with any unit of state or local government as a result of engaging in or being convicted of bid-rigging<sup>2</sup> in violation of Section 3 of Article 33E of the Illinois Criminal Code of 1961, as amended (720 ILCS 5/33E-



3), or any similar offense of any state or

the United States which contains the same elements as the offense of bid-rigging during a period of five years prior to the date of submittal of this bid, proposal or response.<sup>3</sup>

The Contractor or any agent, partner, employee, or officer of the Contractor is not barred from contracting with any unit of state or local government as a result of engaging in or being convicted of bid-rotating<sup>4</sup> in violation of Section 4 of Article 33E of the Illinois Criminal Code of 1961, as amended (720 ILCS 5/33E-4), or any similar offense of any state or the United States which contains the same elements as the offense of bid-rotating.

The Contractor understands and will abide by all provisions of Chapter 2-56 of the Municipal Code entitled "Office of the Inspector General" and all provisions of the Public Building Commission Code of Ethics Resolution No.5339, as amended by Resolution No. 5371

The Contractor certifies to the best of its knowledge and belief, that it and its principals:

- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal, state or local department or agency.
- b. Have not within a three-year period preceding this bid or proposal been convicted of or had a civil judgement rendered against them for- commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes; commission of embezzlement, theft, forgery, bribery, falsification or destruction of records; making false statements; or receiving stolen property;
- c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (5)(b) above; and
- d. Have not within a three-year period preceding this bid or proposal had one or more public transactions (federal, state or local) terminated for cause or default.

## SUBCONTRACTOR

The Contractor has obtained from all subcontractors being used in the performance of this contract or agreement, known by the Contractor at this time, certifications substantially in the form of Section 1 of this Disclosure Affidavit. Based on such certification(s) and any other information known or obtained by the Contractor, is not aware of any such subcontractor or subcontractor's affiliated entity or any agent, partner, employee or officer of such subcontractor or subcontractor's affiliated entity having engaged in or been convicted of (a) any of the conduct describe in Section II(A) (1)(a) or (b) of this certification; (b) bid-rigging, bid-rotating, or any similar offense of any state or the United States which contains the same elements as bid-rigging or bid-rotating, or having made an admission of guilt of the conduct described in Section 11(A)(1)(a) or (b) which is matter of record but has/have not been prosecuted for such conduct.

2 The Contractor will, prior to using them as subcontractors, obtain from all subcontractors to be used in the performance of this contract or agreement, but not yet known by the Contractor at this time,

certifications substantially in the form of this certification. The Contractor shall not, without the prior written permission of the Commission, use any of such subcontractors in the performance of this contract if the Contractor, based on such certifications or any other information known or obtained by Contractor, became aware of such subcontractor, subcontractor's affiliated entity or any agent, employee or officer of such subcontractor or subcontractor's affiliated entity having engaged in or been convicted of (a) any of the conduct describe in Section 11(A)(1)(a) or (b) of this certification or (b) bid-rigging, bid-rotating or any similar offenses of any state or the United States which contains the same elements as bid-rigging or bid-rotating or having made an admission of guilt of the conduct described in Section 11(A)(1)(a) or (b) which is a matter of record but has/have not been prosecuted for such conduct. The Contractor shall cause such subcontractors to certify as to Section 11(A)(5). In the event any subcontractor is unable to certify to Section 11(A)(5), such subcontractor shall attach an explanation to the certification.

3. For all subcontractors to be used in the performance of this contract or agreement, the Contractor shall maintain for the duration of the contract all subcontractors' certifications required by Section 11(B)(1) and (2) above, and Contractor shall make such certifications promptly available to the Chicago Infrastructure Trust upon request.
4. The Contractor will not, without the prior written consent of the Chicago Infrastructure Trust, use as subcontractors any individual, firm, partnership, corporation, joint venture or other entity from whom the Contractor is unable to obtain a certification substantially in the form of this certification.
5. The Contractor hereby agrees, if the Chicago Infrastructure Trust so demands, to terminate its subcontractor with any subcontractor if such subcontractor was ineligible at the time that the subcontract was entered into for award of such subcontract. The Contractor shall insert adequate provisions in all subcontracts to allow it to terminate such subcontractor as required by this certification.

### **C. STATE TAX DELINQUENCIES**

1. The Contractor is not delinquent in the payment of any tax administered by the Illinois Department of Revenue or, if delinquent, the contractor is contesting, in accordance with the procedures established by the appropriate Revenue Act, its liability for the tax or amount of the tax.
  2. Alternatively, the contractor has entered into an agreement with the Illinois Department of Revenue for the payment of all such taxes that are due and is in compliance with such agreement.
  3. If the Contractor is unable to certify to any of the above statements [(Section II (C)], the Contractor shall explain below. Attach additional pages if necessary.
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4. If any subcontractors are to be used in the performance of this contract or agreement, the Contractor shall cause such subcontractors to certify as to paragraph (C)(1) or (C)(2) of this certification. In the event that any subcontractor is unable to certify to any of the statements in this certification, such subcontractor shall attach an explanation to this certification.

### **D. OTHER TAXES/FEE**

**D. OTHER TAXES/FEES**

1. The Contractor is not delinquent in paying any fine, fee, tax or other charge owed to the City of Chicago.
2. If Contractor is unable to certify to the above statement, Contractor shall explain below and attach additional sheets if necessary.

**E. ANTI-COLLUSION**

The Contractor, its agents, officers or employees have not directly or indirectly entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with this proposal or contract. Failure to attest to this section as part of the bid will make the bid nonresponsive and not eligible for award consideration.

**F. PUNISHMENT**

A Contractor who makes a false statement material to Section 11(A)(2) of this certification commits a Class 3 felony. 720 ILCS 5/33E-11(b).

**G. JUDICIAL OR ADMINISTRATIVE PROCEEDINGS**

1. The Contractor is not a party to any pending lawsuits against the City of Chicago, the Chicago Infrastructure Trust or the Public Building Commission of Chicago nor has Contractor been sued by the City of Chicago, the Chicago Infrastructure Trust or the Public Building Commission of Chicago in any judicial or administrative proceeding.
2. If the Contractor cannot certify to the above, provide the (1) case name; (2) docket number; (3) court in which the action is or was pending; and (4) a brief description of each such judicial or administrative proceeding. Attach additional sheets if necessary.

**CERTIFICATION OF ENVIRONMENTAL COMPLIANCE**

- A. Neither the Contractor nor any affiliated entity of the Contractor has, during a period of five years prior to the date of execution of this Affidavit: (1) violated or engaged in any conduct which violated federal, state or local Environmental Restriction<sup>5</sup>, (2) received notice of any claim, demand or action, including but not limited to citations and warrants, from any federal, state or local agency exercising executive, legislative, judicial, regulatory or administrative functions relating to a violation or alleged violation of any federal, state or local statute, regulation or other Environmental Restriction; or (3) been subject to any fine or penalty of any nature for failure to comply with any federal, state or local statute, regulation

or other Environmental Restriction.

If the Contractor cannot make the certification contained in Paragraph A of Section III, identify any exceptions:

(Attach additional pages of explanation to this Disclosure Affidavit, if necessary.)

- B. Without the prior written consent of the Chicago Infrastructure Trust, Contractor will not employ any subcontractor in connection with the contract or proposal to which this Affidavit pertains without obtaining from such subcontractor a certification similar in form and substance to the certification contained in Paragraph A of this Section III prior to such subcontractor's performance of any work or services or furnishing any goods, supplies or materials of any kind under the proposal or the contract to which this Affidavit pertains.
- C. Until completion of the Contractor's performance under the proposal or contract to which this Affidavit pertains, the Contractor will not violate any federal, state or local statute, regulation or other Environmental Restriction, whether in the performance of such contract or otherwise.

#### **IV. CERTIFICATION OF COURT-ORDERED CHILD SUPPORT COMPLIANCE**

For purpose of this Section IV, "SUBSTANTIAL OWNER" means any person who owns or holds a ten percent (10%) or more percentage of interest in the Contractor. If the Contractor is an individual or sole proprietorship, substantial owner means that individual or sole proprietorship. Percentage of interest includes direct, indirect and beneficial interests in the Contractor. Indirect or beneficial interest means that an interest in the Contractor is held by a corporation, joint venture, trust, partnership, association, state or other legal entity in which the individual holds an interest or by agent(s) or nominee(s) on behalf of an individual or entity. For example, if Corporation B holds or owns a twenty percent (20%) interest in Contractor, and an individual or entity has a fifty percent (50%) or more percentage of interest in Corporation B, then such individual or entity indirectly has a ten (10%) or percentage of interest in the Contractor. In this case, the response to this Section IV, must cover such individual(s) or entity. If Corporation B is held by another entity, then this analysis similarly must be applied to that next entity.

If Contractor's response in this Section IV is 1 or 2, then all of the Contractor's Substantial Owners must remain in compliance with any such child support obligations

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(1) throughout the term of the contract and any extensions thereof; or (2) until the performance of the contract is completed, as applicable. Failure of Contractor's Substantial Owners to remain in compliance with their child support obligations in the manner set forth in either 1 or 2 constitutes an event of default.

Check one:

1. ☐ No Substantial Owner has been declared in arrearage on his or her child support obligations.

support obligations by the Circuit Court of Cook County or by another Illinois court of competent jurisdiction.

2. The Circuit Court of Cook County or another Illinois court of competent jurisdiction has issued an order declaring one or more Substantial Owners in arrearage on their child support obligations. All such Substantial Owners, however, have entered into court-approved agreements for the payment of all such child support owed, and all such Substantial Owners are in compliance with such agreements.
3. The Circuit Court of Cook County or another Illinois court of competent jurisdiction has issued an order declaring one or more Substantial Owners in arrearage on their child support obligations and: (1) at least one such Substantial Owner has not entered into a court-approved agreement for the payment of all such child support for the payment of all such child support owed; or both (1) and (2).
4. ☒ There are no Substantial Owners.

V. **INCORPORATION INTO CONTRACT AND COMPLIANCE**

The above certification shall become part of any contract awarded to the Contractor set forth on page 1 of this Disclosure Affidavit and are a material inducement to the Chicago Infrastructure Trust's execution of the contract, contract modification or contract amendment with respect to which this Disclosure Affidavit is being executed and delivered on behalf of the Contractor. Furthermore, Contractor shall comply with these certifications during the term and/or performance of the contract.

VI. **VERIFICATION**

Under penalty of perjury, I certify that I am authorized to execute this Disclosure Affidavit on behalf of the Contractor set forth on page 1, that I have personal knowledge of all the certifications made herein and that the same are true.

Name of Authorized Officer (Print or Type)

Title

Telephone Number

State of

County of

Signed and sworn to before me on this 1<sup>st</sup> day of April, 2014 by

Walter Wo Ora (Name) as Vice President (Title) of .

(Bidder/Proposer or Contractor)

Notary Public Signature and Seal

MRLEYMCROSE My Commission Expires March 1, 2016

Notes 1-5 Disclosure Affidavit

1. Business entities are affiliated if, directly or indirectly, one controls or has the power to control the other, or if a third person controls or has the power to control both entities. Indicia of control include without limitation: interlocking management or ownership; identify of interests among family members; shared facilities and equipment; common use of employees; or organization of another business entity using substantially the same management, ownership or principals as the first entity.
2. For purposes of Section II (A) (2) of this certification, a person commits the offense of and engages in bid-rigging when he knowingly agrees with any person who is, or but for such agreement should be, a competitor of such person concerning any bid submitted or not submitted by such person or another to a unit of state or local government when with the intent that the bid submitted or not submitted will result in the award of a contract to such person or another and he either (1) provides such person or receives from another information concerning the price or other material term or terms of the bid which would otherwise not be disclosed to a competitor in an independent noncollusive submission of bids or (2) submits a bid that is of such a price or other material term or terms that he does not intend the bid to be accepted, see 720 ILCS 5/33-E-3.
3. No corporation shall be barred from contracting with any unit of state or local government as a result of a conviction, under either Section 33E-3 or Section 33E-4 of Article 33 of the State of Illinois Criminal Code of 1961, as amended, of any employee or agent of such corporation if the employee so convicted is no longer employed by the corporation and: (1) it has been finally adjudicated not guilty or (2) it demonstrates to the governmental entity with which it seeks to contract and that entity finds that the commission of the offense was neither authorized, requested, commanded, nor performed by a director, officer or a high managerial agent on behalf of the corporation as provided in paragraph (2) of subsection (a) of Section 5-4 of the State of Illinois Criminal Code.
4. For purposes of Section 11 (A) of this certification, a person commits the offense of and engages in bid rotating when, pursuant to any collusive scheme or agreement with another, he engages in a pattern over time (which, for the purposes hereof, shall include at least three contract bids within a period of ten years, the most recent of which occurs  
' after January 1, 1989) of submitting sealed bids to units of state or local government with the intent that the award of such bids rotates, or is distributed among, persons or business entities which submit bids on a substantial number of the same contracts. See 720 ILCS 5/33E-4.
5. "Environmental Restriction" means any statute, ordinance, rule, regulation, permit, permit condition, order or directive relating to or imposing liability or standards of conduct concerning the release or threatened release of hazardous materials, special wastes or other contaminants into the environment, and to the generation, use, storage, transportation, or disposal of construction debris, bulk waste, refuse, garbage, solid wastes, hazardous materials, special wastes or other contaminants including but not limited to (1) Section 7-28-440 or 11-4-1500 or Article XIV of Chapter 11-4 or Chapter 7-28 or 11-4 of the Municipal Code of Chicago; (2) Comprehensive Environment Response and Compensation and Liability Act (42 U.S.C. § 9601 et seq.) the Hazardous Material Transportation Act (49 U.S.C. § 1801 et seq.); (4) the Resource Conservation and Recovery Act of 1876 (42 U.S.C. § 7401 et seq.); (5) the Clean Water Act (33

U.S.C. § 1251 et seq.); (6) the Clean Air Act (42 U.S.C. § 7401 et seq.); (7) the Toxic Substances Control Act

or 1976 (15 U.S.C. § 2601 et seq.); (8) the Safe Drinking Water Act (42 U.S.C. § 3000; (9) the Occupational Health and Safety Act of 1970 (29 U.S.C. § 651 et seq.); (10) the Emergency Planning and Community Right to Know Act (42 U.S.C. § 11001 et seq.); and (10) the Illinois Environmental Protection Act (415 ILCS 5/1 through 5/56.6).

## EXHIBIT I

### Customer Disclosures and Certifications

#### SECTION 1. FOR PROFIT CORPORATION (c) - List of Officers and Directors of Schneider Electric Buildings Americas, Inc.

James Sandelin - President Robert Murray - Vice

President Sebastien Chague - Vice President

Guillaume LeGouic - Vice President Victor Copeland -

Secretary Mary Kibble - Assistant Secretary Thomas

Sullivan - Assistant Secretary Shannon LeQuire -

Assistant Secretary Martin Pape - Assistant Secretary

James Sandelin - Director Thomas McNulty -

Director Laurent Vernerey - Director

## EXHIBIT J

### CLIENT-REQUIRED TERMS AND CONDITIONS

#### Section 1.1 Prompt Payment to Subcontractors.

a) Incorporation of Prompt Payment Language in subcontracts. The ESCO must state the requirements of this Section in all subcontracts and purchase orders. If the ESCO fails to incorporate these provisions in all subcontracts and purchase orders, the provisions of this Section are deemed to be incorporated in all subcontracts and purchase orders. The ESCO and the Subcontractors have a continuing obligation to make prompt payment to their respective Subcontractors. Compliance with this obligation is a condition of the ESCO's participation and that of its Subcontractors on this Contract.

b) Payment to Subcontractors Within Fourteen Days. The ESCO must make payment to its Subcontractors within fourteen (14) Days of receipt of payment from the Customer for each invoice, but only if the Subcontractor has satisfactorily provided goods or services or completed its work or services in accordance with this Contract and provided the ESCO with all of the documents and information required of the ESCO. The ESCO may delay or postpone payment to a Subcontractor when the Subcontractor's work or materials do not comply with the requirements of this Contract, the ESCO is acting in good faith, and not in retaliation for a Subcontractor exercising legal or contractual rights.

c) Reporting Failures to Promptly Pay, (i) The Client posts payments to prime contractors on the

web at:

<<http://webapps.cityofchicago.org/CSearchWeb/org/cityofchicago/vcsearch/controller/pa>>

ii) If the ESCO, without reasonable cause, fails to make any payment to its Subcontractors and material suppliers within fourteen (14) Days after receipt of payment under this Contract, the ESCO shall pay to its Subcontractors and material suppliers, in addition to the payment due them, interest in the amount of 2% per month, calculated from the expiration of the 14-Day period until fully paid.

iii) In the event that the ESCO fails to make payment to a Subcontractor within the 14-Day period required above, the Subcontractor may notify the Client by submitting a report form that may be downloaded from the DPS website at:

<<http://www.cityofchicago.org/content/dam/city/depts/dps/ContractAdministration/Standar>>

The report will require the Subcontractor to affirm that (a) its invoice to the ESCO was included in the payment request submitted by the ESCO to the Customer and (b) the Subcontractor has not, at the time of the report, received payment from the ESCO for that invoice. The report must reference the payment (voucher) number posted on-line by the Client in the notice of the payment to the ESCO. Subcontractors are hereby reminded that per Chapters 1-21, "False Statements," and 1-22, "False Claims," of the Municipal Code of Chicago (the "MCC"). making false statements or claims to the Client are violations of law and subject to a range of penalties including fines and debarment.

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Section 1.2 Whistleblower Protection. The ESCO shall not take any retaliatory action against any Subcontractor for reporting non-payment pursuant to Section 1.1. Any such retaliatory action is an event of default under this Contract and is subject to the remedies set forth herein, including termination. In addition to those remedies, any retaliatory action by the ESCO may result in the ESCO being deemed non-responsible for future Client projects or, if, in the sole judgment of the Client, such retaliatory action is egregious, the Client may initiate debarment proceedings against the contractor. Any such debarment shall be for a period of not less than one year.

Section 1.3 Liquidated Damages for Failure to Promptly Pay. Much of the Client's economic vitality derives from the success of its small businesses. The failure by contractors to pay their subcontractors in a timely manner, therefore, is clearly detrimental to the Client. Inasmuch as the actual damages to the Customer and the Client due to such failure are uncertain in amount and difficult to prove, the ESCO and the Customer agree that the Customer may assess liquidated damages against contractors who fail to meet their prompt payment requirements. Such liquidated damages shall be assessed to compensate the Customer and Client for any and all damage incurred due to the failure of the contractor to promptly pay its subcontractors, and does not constitute a penalty. Any and all such liquidated damages collected by the Customer or the Client shall be used to improve the administration and outreach efforts of the Client's Small Business Program.

Section 1.4 Action by the Customer. Upon receipt of a report of a failure to pay, the Customer will issue notice to the ESCO and provide the ESCO with an opportunity to demonstrate reasonable cause for failing to make payment within applicable period set forth in this Contract. • The Customer and/or the Client shall determine whether any cause for nonpayment provided by ESCO is reasonable. In the event that the ESCO fails to demonstrate reasonable cause for failure to make payment, the Customer and/or the Client shall notify the ESCO that it will assess liquidated damages. Any such liquidated damages will be assessed according to the following schedule:

■

First Unexcused Report: Second Unexcused Report: Third Unexcused Report: Fourth Unexcused Report:

\$500 \$1000 \$2500 \$5000



§ 200 § 100 § 200 § 300

Section 1.5 Business Enterprises Owned by People With Disabilities (BEPD). It is the policy of the Client that businesses certified as a business enterprise owned by people with disabilities ("BEPD") in accordance with MCC Section 2-92-337 et seq., Regulations Governing Certification of BEPDs, and all other regulations promulgated under the aforementioned sections of the MCC; shall have the full and fair opportunities to participate fully in the performance of this Contract. The ESCO shall not discriminate against any person or business on the basis of disability, and shall take affirmative actions to ensure BEPDs shall have full and fair opportunities to compete for and perform subcontracts for supplies or services. Failure to carry out the commitments and policies set forth herein shall constitute a material breach of this Contract and may result in the termination of this Contract or such remedy as the Customer deems appropriate.

#### Section 1.6 Wages.

(a) Living Wage Ordinance. MCC Sect. 2-92-610 provides for a living wage for certain categories of workers employed in the performance of contracts for Client projects, specifically non-Client employed security guards, parking attendants, day laborers, home and

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health care workers, cashiers, elevator operators, custodial workers, and clerical workers ("Covered Employees"). Accordingly, pursuant to MCC Sect. 2-92-610 and regulations promulgated thereunder:

i) if (1) the ESCO has 25 or more full-time employees, and (2) if at any time during the performance of this Contract the ESCO and/or any Subcontractor or any other entity that provides any portion of the services under this Contract (collectively "Performing Parties") uses 25 or more full-time security guards or any number of other full-time Covered Employees, then the ESCO's obligation to pay, and to assure payment of, the Base Wage (as defined herein) will begin at any time during term of this Contract when the conditions set forth in (1) and (2) above are met, and will continue thereafter until the end of the Term.

ii) As of July 1, 2013, the Base Wage is \$11.78. The current rate can be found on the Client's Department of Procurement Services' website. Each July 1st the Base Wage will be adjusted, using the most recent federal poverty guidelines for a family of four (4) 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 (4) divided by 2000 hours or the current base wage, whichever is higher. At all times during the term of this Contract, the ESCO and all Subcontractors must pay the Base Wage (as adjusted in accordance with the above). If the payment of prevailing wages is required for work or services done under this Contract, and the prevailing wages for Covered Employees are higher than the Base Wage, then the ESCO must pay the prevailing wage rates.

iii) The Contractor must include provisions in all subcontracts requiring its Subcontractors to pay the Base Wage to Covered Employees. The ESCO agrees to provide the Customer and the Client with documentation acceptable to the Chief Procurement Officer of the Client (the "CPO") demonstrating that all Covered Employees, whether employed by the ESCO or by a Subcontractor, have been paid the Base Wage, upon the Customer's request for such documentation. The Customer and the Client may independently audit the ESCO and/or Subcontractors to verify compliance herewith.

iv) Failure to comply with the requirements of this Section will be an event of default under this Contract, and further, failure to comply may result in ineligibility for any award of a Customer contract or subcontract for up to three years.

v) Not-for-Profit Corporations: If the ESCO 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

status under Section 501(c)(3) of the Internal Revenue Code and is recognized under Illinois not-for-profit law, then the provisions above do not apply.

(b) Prevailing Wage Rates. This Contract calls for the construction of a "public work" within the meaning of Illinois Prevailing Wage Act, 820 ILCS 130/01 et seq. (the "Act"): the Act requires contractors and subcontractors to pay laborers, workers and mechanics performing services on public works projects no less than the current "prevailing rate of wages" (hourly cash wages plus amount for fringe benefits) in the county where the work is performed. The Illinois Department of Labor (the "Department") publishes the prevailing wage rates on its website at <<http://www.state.il.us/agency/idol/rates/rates.HTM>>. The Department revises the prevailing wage rates and the ESCO and its Subcontractors have an obligation to check the Department's web site for revisions to prevailing wage rates. For information regarding current prevailing wage rates, please refer to the Department's website. All contractors and

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subcontractors rendering services under this Contract must comply with all requirements of the Act, including but not limited to, all wage requirements and notice and record keeping duties.

As a condition of making payment to the ESCO, the Customer may require the ESCO or its Subcontractors to submit an affidavit to the effect that not less than the prevailing hourly wage rate is being paid to laborers, mechanics, and other workmen employed on this Contract in accordance with Illinois or federal law, as applicable.

(c) Multi-Project Labor Agreement. The Client has entered into the Multi-Project Labor Agreement (the "PLA") with various trades regarding projects involving construction, demolition, maintenance, rehabilitation, and/or renovation work, as described in the PLA, a copy of which may be found on the Client's website at:

<<http://www.cityofchicago.org/dam/city/depts/dps/RulesRegulations/Multi->

To the extent that this contract involves a project that is subject to the PLA, the ESCO acknowledges familiarity with the requirements of the PLA and its applicability to any work under this Contract, and shall comply in all respects with the PLA.

Section 1.7 Business Relationships With Elected Officials. Pursuant to MCC Section 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 Client 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 (12) 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 Sect. 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.

Section 1.8 MCC 1-23 and 720 ILCS 5/33E Bribery, Debts, and Debarment Certification.

(a) The ESCO or each joint venture partner, if applicable, warrants that the ESCO or each joint venture partner, its agents, employees, officers and any Subcontractors (a) have not been engaged in or been convicted of bribery or attempted bribery of a public officer or employee of the Client, the State of Illinois, any agency of the federal government or any state or local government in the United States or engaged in or been convicted of bid-rigging or bid-rotation activities as defined in this section as required by the Illinois Criminal Code; (b) do not owe any debts to the State of Illinois in accordance with 65 ILCS 5/11

the Illinois Criminal Code, (b) do not owe any debts to the State of Illinois, in accordance with 65 ILCS 5/11-42.1-1 and (c) are not presently debarred or suspended; Certification Regarding Environmental Compliance; Certification Regarding Ethics and Inspector General; and Certification Regarding Court-Ordered Child Support Compliance.

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(b) The ESCO, in performing under this Contract shall comply with MCC Section 2-92-320, as follows:

i) No person or business entity shall be awarded a contract or sub-contract if that person or business entity: (a) has been convicted of bribery or attempting to bribe a public officer or employee of the Client, the State of Illinois, or any agency of the federal government or of any state or local government in the United States, in that officers or employee's official capacity; or (b) has been convicted of agreement or collusion among bidders or prospective bidders in restraint of freedom of competition by agreement to bid a fixed price, or otherwise; or (c) has made an admission of guilt of such conduct described in (a) or (b) above which is a matter of record but has not been prosecuted for such conduct.

ii) For purposes of this Section, where an official, agent or employee of a business entity has committed any offense under this section on behalf of such an entity and pursuant to the direction or authorization of a responsible official thereof, the business entity will be chargeable with the conduct.

iii) One business entity will be chargeable with the conduct of an affiliated agency. Ineligibility under this section will continue for three (3) years following such conviction or admission. The period of ineligibility may be reduced, suspended, or waived by the CPO under certain specific circumstances. Reference is made to MCC Section 2-92-320 for a definition of affiliated agency, and a detailed description of the conditions which would permit the CPO to reduce, suspend, or waive the period of ineligibility.

Section 1.9 Federal Terrorist (No-Business) List. The ESCO warrants and represents that neither the ESCO nor an Affiliate, 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 Customer may not do business under any applicable law, rule, regulation, order or judgment.

For purposes of this Section 1.9, "Affiliate" means a person or entity which directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the ESCO. 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.

Section 1.10 Inspector General and Legislative Inspector General. It is the duty of any bidder, proposer or the ESCO, all Subcontractors, every applicant for certification of eligibility for a Client project or program, and all officers, directors, agents, partners and employees of any bidder, proposer, the ESCO, all Subcontractors or such applicant, to cooperate with the Inspector General or the Legislative Inspector General in any investigation or hearing, if applicable, undertaken pursuant to MCC Chapter 2-56 or 2-55, respectively. The ESCO understands and will abide by all provisions of MCC Chapter 2-56 and 2-55. All subcontracts must inform Subcontractors of this provision and require understanding and compliance with them.

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Section 1.11 Governmental Ethics Ordinance 2-156. The ESCO must comply with MCC Chapter 2-156, Governmental Ethics, including but not limited to MCC Section 2-156-120 pursuant to which no payment, gratuity or offer of employment will be made in connection with any Client project, by or on behalf of a Subcontractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a Subcontract or order. Any contract negotiated, entered into, or performed in violation of any of the provisions of this this Section will be voidable as to the Client.

Section 1.12 Restrictions on Business Dealings.

a) Conflicts of Interest. The ESCO covenants that it presently has no interest and will not acquire any interest, direct or indirect, in any enterprise which would conflict in any manner or degree with the performance of the work, services or goods to be provided hereunder. The ESCO further covenants that in its performance of this Contract no person having any such interest shall be employed. If the Customer determines that the ESCO does have such a conflict of interest, the Customer will notify the ESCO in writing, stating the basis for its determination. The ESCO will thereafter have 30 days in which to respond with reasons why the ESCO believes a conflict of interest does not exist. If the ESCO does not respond or if the Customer still reasonably determines a conflict of interest to exist, the ESCO must terminate its interest in the other enterprise.

b) Prohibition on Certain Contributions, Mayoral Executive Order 2011-4. Neither the ESCO or any person or entity who directly or indirectly has an ownership or beneficial interest in the ESCO of more than 7.5% ("Owners"), spouses and domestic partners of such Owners, ESCO'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 (ESCO 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, and/or (iii) any period in which an extension of this Contract or Other Contract is being sought or negotiated. The ESCO 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 Client approached the ESCO or the date the ESCO approached the Client, 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.

The ESCO 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.

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

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opportunity to cure will be granted. Such breach and default entitles the Customer to all remedies (including without limitation termination for default) under this Contract, under any Other Contract, at law and in equity. This provision amends any Other Contract and supersedes any inconsistent provision contained therein.

If the ESCO violates this provision or Mayoral Executive Order No. 2011-4 prior to award of this Contract resulting from this specification, the CPO may reject the ESCO's bid.

For purposes of this provision:

"Other Contract" means any agreement entered into between the ESCO and the Client or the Customer that is (i) formed under the authority of MCC Chapter 2-92; (ii) for the purchase, sale or lease of real or personal property; or (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 Chapter 2-156, as amended.

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

Section 1.13 Debts Owed to the Client: Anti-Scofflaw. MCC Sect. 2-92-380. Pursuant to MCC Section 2-92-380 and in addition to any other rights and remedies (including set-off) available to the Customer under this Contract or permitted at law or in equity, the Customer will be entitled to set off a portion of the contract price or compensation due under the Agreement, in 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 the ESCO to the Client. For purposes of this Section, outstanding parking violation complaint means a parking ticket, notice of parking violation, or parking violation complaint on which no payment has been made or appearance filed in the Circuit Court of Cook County within the time specified on the complaint, and debt means a specified sum of money owed to the Client for which the period granted for payment has expired. However no such debt(s) or outstanding parking violation complaint(s) will be offset from the contract price or compensation due under this Contract if one or more of the following conditions are met:

i) The ESCO has entered into an agreement with the Department of Revenue, or other appropriate Client department, for the payment of all outstanding parking violation complaints and debts owed to the Client and the ESCO is in compliance with such agreement; or

ii) The ESCO is contesting liability for or the amount of the debt in a pending administrative or judicial proceeding; or the contracting party has filed a petition in bankruptcy and the debts owed the Client are dischargeable in bankruptcy.

#### Section 1.14 Shakman Accord.

(a) The Client is subject to the May 31, 2007 Order entitled "Agreed Settlement Order and Accord" (the "Shakman Accord") and the June 24, 2011 "City of Chicago Hiring Plan" (the "City Hiring Plan") entered in *Shakman v. Democratic Organization of Cook County*, Case No 69 C 2145 (United States District Court for the Northern District of Illinois). Among other things, the Shakman Accord and the City Hiring Plan prohibit the Customer from hiring persons as governmental employees in non-exempt positions on the basis of political reasons or factors.

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b) The ESCO is aware that the Client's policy prohibits Client employees from directing any individual to apply for a position with the ESCO, either as an employee or as a Subcontractor, and from directing the ESCO to hire an individual as an employee or as a Subcontractor. Accordingly, the ESCO must

directing the ESCO to hire an individual as an employee or as a subcontractor. Accordingly, the ESCO must follow its own hiring and contracting procedures, without being influenced by Client employees. Any and all personnel provided by the ESCO under this Contract are employees or Subcontractors of the ESCO, not employees of the Client. This C is not intended to and does not constitute, create, give rise to, or otherwise recognize an employer-employee relationship of any kind between the Customer or Client and any personnel provided by the ESCO.

c) The ESCO will not condition, base, or knowingly prejudice or affect any term or aspect of the employment of any personnel provided under this Contract, or offer employment to any individual to provide services under this Contract, 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 Contract, 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.

d) In the event of any communication to the ESCO by a Customer or Client employee or Customer or Client official in violation of paragraph (b) above, or advocating a violation of paragraph (c) above, the ESCO will, as soon as is reasonably practicable, report such communication to the Hiring Oversight Section of the Client's Office of the Inspector General, and also to the head of the relevant Client Department utilizing services provided under this Contract. The ESCO will also cooperate with any inquiries by IGO Hiring Oversight or the Shakman Monitor's Office related to this Contract.

Section 1.15 No Waste Disposal in Public Way MCC 11-4-1600(E). The ESCO 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 MCC (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;
- §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 Contract is executory, the ESCO's or any Subcontractor's violation of the Waste Sections, whether or not relating to the performance of this Contract, constitutes a breach of and an event of default under this Contract, for which the opportunity to cure, if curable, will be granted only at the sole discretion of the CPO. Such breach and default entitles the Customer to all remedies under this Contract, at law or in equity.

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This Section does not limit the ESCO'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 Contract.

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

termination of this contract, and may further affect the ESCO's eligibility for future contract awards.

Section 1.16 Duty to Report Corrupt or Unlawful Activity. It is the duty of the ESCO to report to the Inspector General of the Customer, directly and without undue delay, any and all information concerning conduct which it knows or should reasonably know to involve corrupt or other unlawful activity by its employees or the employees of any of its Subcontractors, in connection with the performance of its work hereunder, or by any person dealing with the Customer or the Client which concerns the person's dealings with the Customer or the Client. Knowing failure to make such a report will be an event of default under this Contract.

Section 1.17 Veterans Preference. In accordance with the Veterans Preference Act, 330 ILCS 55/0.01 et seq., employment and appointment preference shall be given to veterans when filling positions. This preference may be given only where the individuals are available and qualified to perform the Work. The ESCO must ensure that the above provision is inserted in all contracts it enters into with any Subcontractors and any labor organizations that furnish skilled, unskilled and craft union skilled labor, or that may provide any material, labor, or services in connection with this Agreement.

Section 1.18 Chicago Residency Requirements. The ESCO and all subcontractors that perform Work on the Project sites undertaken pursuant to this Contract shall comply with the minimum percentage of total worker hours performed by actual residents of the City of Chicago as specified in § 2-92-330 of the MCC, unless otherwise prohibited by law. In addition to complying with this requirement, the ESCO and all Subcontractors must make good faith efforts to utilize qualified residents of the City of Chicago in both unskilled and skilled labor positions.

"Actual residents of the City of Chicago" shall mean persons domiciled within the City of Chicago. The domicile is an individual's one and only true, fixed and permanent home and principal establishment.

The ESCO shall provide for the maintenance of adequate employee residency records to ensure that actual Chicago residents are employed on the Project. The ESCO and subcontractors shall maintain copies of personal documents supportive of every Chicago employee's actual record of residence.

Certified payroll reports (U.S. Department of Labor Form WH-347 or equivalent) must be submitted weekly to the Customer in triplicate, shall identify clearly the actual residence of every employee on each submitted certified payroll. The first time that an employee's name appears on a payroll, the date that the company hired the employee should be written in after the employee's name.

Full access to the ESCO's and Subcontractors' employment record shall be granted to the Customer and the Client, the Superintendent of the Chicago Police Department, the Inspector General, or any duly authorized representative thereof. The ESCO and subcontractors shall maintain all relevant personnel data in records for a period of at least three years after final acceptance of the work.

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At the direction of the Customer, affidavits and other supporting documentation will be required of the ESCO to verify or clarify an employee's actual address when doubt or lack of clarity has arisen.

Good faith efforts on the part of the ESCO to provide utilization of actual Chicago residents shall not suffice to replace the actual, verified achievement of the requirements of this section concerning the worker hours performed by actual Chicago residents.

When Work is completed, in the event that the Customer has determined that the ESCO failed to ensure the fulfillment of the requirement of this section concerning the worker hours performed by actual Chicago residents or has failed to report in the manner as indicated above, the Client as the sponsor of the

Chicago residents or has failed to report in the manner as indicated above, the Client as the sponsor of the Customer and the Customer will thereby be damaged in the failure to provide the benefit of demonstrable employment to Chicagoans to the degree stipulated in this section. Therefore, in such a case of non-compliance it is agreed that 1/20 of 1 percent (.05%), 0.0005, of the approved contract value for this contract shall be surrendered by the ESCO to the Customer in payment for each percentage of shortfall toward the stipulated residency requirement. Failure to report the residency of employees entirely and correctly shall result in the surrender of the entire liquidated damages as if no Chicago residents were employed in either of the categories. The willful falsification of statements and the certification of payroll date may subject the ESCO or subcontractor or employee to prosecution. Any retainage to cover contract performance that may become due to the ESCO pursuant to the Contract and § 2-92-250 of the MCC may be withheld by the Customer pending the Customer determination whether the ESCO must surrender damages as provided in this paragraph.

Nothing herein provided shall be construed to be a limitation upon the "Notice of Requirements for Affirmative Action to Ensure Equal Employment Opportunity, Executive Order 11246" and "Standard Federal Equal Employment Opportunity, Executive Order 11246," or other affirmative action required for equal opportunity under the provisions of this contract.

Section 1.19 Employment of Illinois Laborers on Public Works Projects. The ESCO must use only Illinois laborers in the performance of this Contract to the extent (1) required by the Employment of Illinois Laborers on Public Works Projects Act, 30 ILCS, 570/0.01, as amended from time to time and (2) otherwise permitted by law.

Section 1.20 Emissions Reduction. The ESCO must comply with the Clean Diesel Contracting Ordinance, § 2-92- 595 of the MCC.

a) The ESCO and any Subcontractor(s) must utilize Ultra Low Sulfur Diesel Fuel (ULSD) for any heavy-duty diesel-powered vehicle, non-road vehicle or non-road equipment used in the performance of the Contract.

b) The ESCO and any Subcontractor(s) must minimize idling of motor vehicles and non-road vehicles used in the performance of the Contract during periods of inactivity, and must comply with the anti-idling requirements imposed by any applicable federal, state, or local law.

The Customer may conduct an audit of the ESCO or inspect any vehicle or equipment used in the performance of this Contract to ensure compliance with the requirements specified above. In the event that ESCO or any Subcontractor fails to utilize ULSD or fails to minimize idling or comply with anti-idling requirements, ESCO will be subject to liquidated damages of \$5,000 per day for each violation and each day of noncompliance will be a separate violation; provided, however, the damages will not exceed \$50,000 for any one vehicle or piece of

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equipment, as specified in Section 2-92- 595(e) of the MCC. Such liquidated damages are imposed not as a penalty but as an estimate of the damages that the City, as the sponsor of the Customer, and the Customer will sustain from delay in completion of the project and inspection and inspection and other enforcement costs, as well as the resultant damages to the public health of its citizens, which damages by their' nature are not capable of precise proof. The Customer is authorized to withhold and deduct from monies otherwise payable to the ESCO the amount of liquidated damages due to the Customer.

The ESCO understands that pursuant to Section 2-92-595(e)(6) of the MCC, any person knowingly making a false statement of material fact to any Client department with respect to compliance with the contract provisions specified in Section 2-92-595(e) of the MCC may be fined not less than \$1,000 or more than \$5,000 for each statement



than \$5,000 for each statement

Section 1.21 Licensing Of General Contractors. The ESCO must be in compliance with the requirements of Chapter 4-36 of the MCC, in the appropriate license class commensurate with the size of this Project, if the license is required for the scope of Work, at the time throughout the duration of this Contract.

The ESCO's failure to be licensed as a "general contractor" at all times throughout the duration of this Contract, if the license is required for the scope of Work, is an event of default under the Contract and the Customer may exercise any and all rights and remedies permitted under the Contract, at law, or in equity.

Section 1.22 Steel Products. Unless otherwise provided in the Steel Products Procurement Act, 30 ILCS 565/1 et seq., steel products used or supplied in the performance of this Contract or any subcontract to this Contract must be manufactured or produced in the United States. Knowing violation of this law may result in the filing and prosecution of a complaint by the Attorney General of the State of Illinois and will subject violators to a fine of the greater of \$5,000 or the payment price received as a result of such violation

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## **EXHIBIT K**

### **PROJECT PARTICIPATION GUIDELINES**

In the performance of the services under the Contract, the ESCO must comply with the MBE participation requirements set forth in Attachment K-1 to this Exhibit K and use every reasonable effort to comply with the following project participation guidelines applicable to Client projects:

1. Utilize local businesses for subcontracting work in accordance with the following guidelines:
  - a. Companies that are not local businesses (as defined in clause (iii) below) are required to award 35% of the value of the work and services under the Contract to subcontractors that are local businesses

are local businesses.

b A "local business" is one that: 1) owns or leases a functioning business office and/or operations facilities within the City of Chicago; 2) is registered and licensed to do business in the City of Chicago; 3) employs City of Chicago residents; and 4) is subject to City of Chicago taxes.

2. Provide opportunities for employment of community residents;

3. Provide opportunities for employment for the following programs:

a. Federally funded State Energy Sector Partnership Program administered by the Chicago Workforce Investment Council. Program partners include but are not limited to:

i. HACIA (Hispanic American Construction Industry Association)

ii. CWIT (Chicago Women in Trades)

iii. Chicago Regional Council of Carpenters Apprentice and Training Program.

Persons who have completed or are enrolled in programs comparable to the City Colleges of Chicago's Building Energy Technologies Occupational Certificate program at Wilbur Wright College.

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Attachment K-1

**City of Chicago**

**Commodities and Work Services MBE & WBE Special Conditions**

(attached)

K-1-2

CITY OF CHICAGO Department of Procurement Services .Jamie L. Rhee, Chief Procurement Officer 121  
North LaSalle Street, Room 806 Chicago, Illinois 60602-1284

**Fax: 312-744-3281**

### Commodities and Work Services MBE & WBE Special Conditions

**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 (inclusive of any and all modifications and amendments), if awarded, for contract participation by MBEs and WBEs:

MBE Percentage	WBE Percentage
25%	5%

This commitment is met by the Contractor's 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 the indirect participation of MBEs or WBEs in other aspects of the Contractor's business (but no dollar of such indirect MBE or WBE participation will be credited more than once against a Contractor's MBE or WBE commitment with respect to all government Contracts of such Contractor), 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.

As noted above, the Contractor may meet all or part of this commitment by contracting with MBEs or WBEs for the provision of goods or services not directly related to the performance of this Contract. However, in determining the manner of MBE/WBE participation, the Contractor will first consider involvement of MBEs/WBEs as joint venture partners, subcontractors, and suppliers of goods and services directly related to

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the performance of this Contract. In appropriate cases, the Chief Procurement Officer will require the Contractor to demonstrate the specific efforts undertaken by it to involve MBEs and WBEs directly in the performance of this Contract.

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 2-92-535, the prime contractor may apply be awarded an additional 0.333 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 mentor agreement with the contractor. 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.*

"B.E.P.D." means an entity certified as a Business enterprise owned or operated by people with disabilities as defined in MCC Section

2-92-586.

"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.

"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.

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"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.

"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 credited 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-Protégé Agreement" means an agreement between a prime and MBE or WBE subcontractor 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.

"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.

### 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:

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- 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 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 proposed joint venture agreement, the Schedule B submitted on behalf of the proposed joint venture, and all related documents 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 with its bid a Schedule B and the proposed joint venture agreement. These documents must both 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,

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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 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. 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.
- 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.

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- 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:
- 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).
  - lii. 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.

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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:

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

Date and time of contact;

Method of contact (written, telephone, transmittal of facsimile documents, email, etc.)

Copies of letters or any other evidence of mailing that substantiates outreach to MBE/WBE vendors that includes:

Project identification and location;

Classification/commodity of work items for which quotations were sought;

Date, item and location for acceptance of subcontractor bid proposals;

Detailed statement which summarizes direct negotiations with appropriate MBE/WBE firms for specific portions of the work and indicates why negotiations were unsuccessful;

Affirmation that Good Faith Efforts have been demonstrated by:

- 9 choosing subcontracting opportunities likely to achieve MBE/WBE goals;
- a not imposing any limiting conditions which were not mandatory for all subcontractors;
- e 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.

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.

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

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.

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.
- 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.

- (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 the joint venture agreement and a Schedule B along with all other requirements listed in Section 1.3. "Joint Ventures," 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

responsibilities or other performance to be undertaken by the MBE/WBE, and (c) the commitment of management, supervisory and operative personnel employed by the MBE/WBE to be dedicated to the performance of the contract. The joint venture agreement must also clearly define each partner's authority to contractually obligate the joint venture and each partner's authority to expend joint venture funds (e.g., check signing authority).

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-1 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

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;

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- 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; 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.

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

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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.

### **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 arbitative 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**

Compliance with MBE and WBE requirements will not diminish or supplant equal employment opportunity and civil rights provisions

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

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

Attachment A -Assist Agency Us?

, PROCURESvIENT  
®S SERVICES

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.

American Brotherhood of Contractors  
935 West 175<sup>th</sup> Street  
Homewood, Illinois 60430  
Phone: (773)491-5640  
Email: arba@constructivo-bijsiness.corn <mailto:arba@constructivo-bijsiness.corn>

Asian American Business Expo 207 East Ohio St. Suite 218 Chicago, IL 60611 Phone:312-233-2810 Fax: 312-268-6388  
Email: Janny@AsiariAmericanBusinessExpo.org <mailto:Janny@AsiariAmericanBusinessExpo.org>

Asian American Institute  
4753 N. Broadway St, Suite 904  
Chicago, IL 60640  
Phone: (773)271-0899  
Fax:(773)271-1982  
Email: kfernicola@aaichicago.org <mailto:kfernicola@aaichicago.org>  
Web: [www.aaichicaao.org](http://www.aaichicaao.org) <<http://www.aaichicaao.org>>

Association or Asian Construction Enterprises  
[333 N. Ogden Avenue Chicago, IL 60607](http://www.nakmancorpQiaol.com) Phone: (847) 525-9693 Email: [nakmancorpQiaol.com](mailto:nakmancorpQiaol.com)

Black Contractors United  
400 W. 76<sup>th</sup> Sreet, Suite 200  
Chicago, IL 60620  
Phone: (773) 483-4000  
Fax: (773) 483-4150  
Email: bcunewera@att.net <mailto:bcunewera@att.net>  
Web: [www.blackconlractorsunited.com](http://www.blackconlractorsunited.com) <<http://www.blackconlractorsunited.com>>

Cosmopolitan Chamber of Commerce  
[203 N.Wabash, Suite 518 Chicago, IL 60601](http://www.cosmochamber.org) Phone: (312)499-0611 Fax: (312)332-2688 Email: [ccarey@cosmococ.org](mailto:ccarey@cosmococ.org)  
<<mailto:ccarey@cosmococ.org>>Web: [www.cosmochamber.org](http://www.cosmochamber.org) <<http://www.cosmochamber.org>>

Eighteenth Street Development Corporation  
1843 South Carpenter  
Chicago, Illinois 60608  
Phone:(312) 733-2287  
Fax: (773)-353-1683  
[asota\(3ieiahteenthstreet.ora](http://www.eighteenthstreet.org)  
[www.eighteenthstreet.org](http://www.eighteenthstreet.org) <<http://www.eighteenthstreet.org>>  
Chatham Business Association Small Business  
Development, Inc.  
8441 S. Cottage Grove Avenue  
Chicago, IL 60619  
Phone: (773)994-5006  
Fax: (773)994-9871



Email: [mBikelcba@sbcglobal.net](mailto:mBikelcba@sbcglobal.net) <<mailto:mBikelcba@sbcglobal.net>>  
Web: [www.cbaworks.org](http://www.cbaworks.org) <<http://www.cbaworks.org>>

Chicago Area Gay & Lesbian Chamber of Commerce  
3656 N. Halsted Chicago, IL 60613 Phone: (773) 303-0167 Fax: (773) 303-0168 Email: [info@glchamber.org](mailto:info@glchamber.org)  
<<mailto:info@glchamber.org>>Web: [www.alcha.org](http://www.alcha.org) <<http://www.alcha.org>> mber.org <<http://mber.org>>

Chicago Minority Supplier Development  
Council, Inc.  
105 W. Adams, Suite 2300  
Chicago, IL 60603-6233  
Phone: (312) 755-8880  
Fax: (312) 755-8890  
Email: [pbarreda@chicagomsdc.org](mailto:pbarreda@chicagomsdc.org) <<mailto:pbarreda@chicagomsdc.org>>  
Web: [www.chicagomsdc.org](http://www.chicagomsdc.org) <<http://www.chicagomsdc.org>>

Chicago Urban League 4510 S. Michigan Ave. Chicago, IL 60653 Phone: (773) 285-5800 Fax: (773) 285-7772  
Email: [presidentiath@chicagourbanleague.org](mailto:presidentiath@chicagourbanleague.org) <[http://iath@chicagourbanleague.org](mailto:presidentiath@chicagourbanleague.org)>Web: [www.cul-chicago.org](http://www.cul-chicago.org) <<http://www.cul-chicago.org>>

Chicago Women in Trades (CWIT)  
4425 S. Western Blvd.  
Chicago, IL 60609-3032  
Phone:(773)376-1450  
Fax: (312) 942-0802  
Email: [cwitinfor@cwit2.org](mailto:cwitinfor@cwit2.org) <<mailto:cwitinfor@cwit2.org>>  
Web: [www.chicagowomenintrades.org](http://www.chicagowomenintrades.org) <<http://www.chicagowomenintrades.org>>

Coalition for United Community Labor Force  
1253 W. 63<sup>rd</sup> Street  
Chicago, IL 60636  
Phone:(312)243-5149  
Email: [johnrev.hatchett@comcast.net](mailto:johnrev.hatchett@comcast.net) <<mailto:johnrev.hatchett@comcast.net>>

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City of Chicago Department of Procurement Services ~ Assist Agencies (cont'd)

Federation of Women Contractors 5650 S. Archer Avenue Chicago, IL 60638 Phone: (312) 360-1122 Fax:(312)360-0239 Email:  
[fwcchicago@aol.com](mailto:fwcchicago@aol.com) <<mailto:fwcchicago@aol.com>>Web: [www.fwcchicago.com](http://www.fwcchicago.com) <<http://www.fwcchicago.com>>

Hispanic American Construction Industry Association (HACIA)  
650 West Lake Street Chicago, IL 60661 Phone: (312) 666-5910 Fax: (312) 666-5692 Email: [info@haciaworks.org](mailto:info@haciaworks.org)  
<<mailto:info@haciaworks.org>>Web: [www.haclaworks.org](http://www.haclaworks.org) <<http://www.haclaworks.org>>

Illinois Hispanic Chamber of Commerce  
855 W. Adams, Suite 100  
Chicago, IL 60607  
Phone: (312) 425-9500  
Fax:(312)425-9510  
Email: [oduque@ihccbusiness.net](mailto:oduque@ihccbusiness.net) <<mailto:oduque@ihccbusiness.net>>  
Web: [www.ihccbusiness.net](http://www.ihccbusiness.net) <<http://www.ihccbusiness.net>>

Latin American Chamber of Commerce 3512 West Fullerton Avenue Chicago, IL 60647 Phone:(773)252-5211 Fax: (773) 252-7065  
Email:[ld.lorencopadron@latinamericanchamberofcommerce.com](mailto:ld.lorencopadron@latinamericanchamberofcommerce.com) <<mailto:ld.lorencopadron@latinamericanchamberofcommerce.com>>Web:  
[www.latinamericanchamberofcommerce.com](http://www.latinamericanchamberofcommerce.com) <<http://www.latinamericanchamberofcommerce.com>>

National Organization of Minority Engineers  
33 West Monroe Suite 1540  
Chicago, Illinois 60603  
Phone: (312) 425-9560  
Fax: (312) 425-9564  
Email: [shandy@infrastructure-eng.com](mailto:shandy@infrastructure-eng.com) <<mailto:shandy@infrastructure-eng.com>>

Web: [www.nomeonline.org](http://www.nomeonline.org) <<http://www.nomeonline.org>>

National Association of Women Business Owners  
Chicago Chapter  
230 E. Ohio, Suite 400  
Chicago, IL 60611  
Phone: (312) 224-2605  
Fax: (312) 6448557  
Email: [info@nawbochicago.org](mailto:info@nawbochicago.org) <<mailto:info@nawbochicago.org>>  
Web: [www.nawbochicago.org](http://www.nawbochicago.org) <<http://www.nawbochicago.org>>  
Rainbow/PUSH Coalition  
International Trade Bureau  
930 E. 50<sup>th</sup> Street  
Chicago, IL 60615  
Phone: (773) 256-2781  
Fax: (773) 373-4104  
Email: [bevans@rainbowpush.org](mailto:bevans@rainbowpush.org) <<mailto:bevans@rainbowpush.org>>  
Web: [www.rainbowpush.org](http://www.rainbowpush.org) <<http://www.rainbowpush.org>>

South Shore Chamber, Incorporated  
Black United Funds Bldg.  
1750 E. 71<sup>st</sup> Street  
Chicago, IL 60649-2000  
Phone: (773) 955- 9508  
Email: [ssshorechamber@sbcglobal.net](mailto:ssshorechamber@sbcglobal.net) <<mailto:ssshorechamber@sbcglobal.net>>  
Web: [www.southshorechamberinc.org](http://www.southshorechamberinc.org) <<http://www.southshorechamberinc.org>>

Suburban Minority Contractors Association  
1250 Grove Ave. Suite 200  
Barrington, IL 60010  
Phone: (847) 852-5010  
Fax: (847) 382-1787  
Email: [apnlobra@hotmail.com](mailto:apnlobra@hotmail.com) <<mailto:apnlobra@hotmail.com>>  
Web: [www.suburbanblackcontractors.org](http://www.suburbanblackcontractors.org) <<http://www.suburbanblackcontractors.org>>

Women Construction Owners & Executives (WCOE)  
Chicago Caucus  
308 Circle Avenue  
Forest Park, IL 60130  
Phone: (708) 366-1250  
Fax: (708) 366-5418  
Email: [mkm@mkmservices.com](mailto:mkm@mkmservices.com) <<mailto:mkm@mkmservices.com>>  
Web: [www.wcoeusa.org](http://www.wcoeusa.org) <<http://www.wcoeusa.org>>

Women's Business Development Center  
8 South Michigan Ave., Suite 400 Chicago, IL 60603 Phone: (312) 853-3477 Fax: (312) 853-0145 Email: [fcurry@wbdc.org](mailto:fcurry@wbdc.org)  
<<mailto:fcurry@wbdc.org>> Web: [www.wbdc.org](http://www.wbdc.org) <<http://www.wbdc.org>>

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

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

Schedule B - Affidavit of Joint Venture

SCHEDULE 6: 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*

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 MBEArVBE 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-MBEArVBE ownership percentage^)

- 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:

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Schedule E: 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 project?
- 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 MBEA/BE firm, or the joint venture.

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

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-MBEA/VBE (number) Employed by MBEA/VBE

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.

Page 4 of 5

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

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 MBEAA/BE 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

(name of affiant)

personally appeared and, known to me 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)

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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 or MBBWBE Firm)

To:

(Name of Prime Contractor)

;

and the City of Chicago.

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 MBEAA/BE 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. MBEAA/BE 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 protégé agreement as a subcontractor/protégé with you as a Prime Contractor/mentor:  
( ) Yes ( ) No

NOTICE: THIS SCHEDULE AND ATTACHMENTS REQUIRE ORIGINAL SIGNATURES.

(Signature of Kfesiaenuwnef/O'tu or Autnonzeo Agent or MdeWbh) luate)

(Name of the nease Mint)

(Email & phone Number)

08/2013

Page 1 on

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Schedule D-i: Affidavit of Implementation of 1V1BE/WBE Goals and Participation Plan

**SCHEDULE D-1**

Compliance Plan Regarding MBE/WBE 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 MBEAA/BE goals of this contract.

All MBEAA/BE 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:

MOTE: The bidder/proposer shall, in determining the manner of MBEA/BE participation, first consider involvement with MBEA/BE 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 MBEA/BE 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:<sup>1</sup> %

Total Participation %

Name of MBEA/BE:

Address:

Contact Person.

<sup>1</sup> 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 MBEA/BE protege firm.

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Schedule D-1: Prime Contractor Affidavit-MSE/WBi: Compliance Plan

Phone Number.

Dollar Value of Participation \$

Percentage of Participation %

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

Total Participation %

3. Name of MBEA/BE:

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 %

A. Name of MBEA/BE:

Address:

Contact Person:

Phone Number:

■ Dollar Value or 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 MBEAA/BE goals have been met through the direct participation outlined in Section I. If the MBEAA/BE goals have not been met through direct participation, Contractor will be expected to demonstrate that the proposed MBEAA/BE direct participation represents the maximum achievable under the circumstances Only after such a demonstration will indirect participation be considered.

MBEAA/BE 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 MBEAA/BE:

Address:

Contact Person:

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

Phone Number

Dollar Value of Participation \$

Percentage of Participation %

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

Total Participation %

2. Name of MBEA/VBE:

Add re ss.

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 %

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

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Schedule D-1: Prime Contractor Affidavit-MBE/WBE Compliance Plan III. Summary of M3E/WBE Proposal A. MBE  
Proposal (Direct & Indirect) 1. MBE Direct Participation

2. MBE Indirect Participation

## **B. WBE Proposal (Direct & Indirect)**

1. WBE Direct Participation

2. WBE Indirect Participation

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

The Prime Contractor designates the following person as its MBEAA/BE 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:

County of:

(Signature)

(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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ESAs

ENERGY SERVICES AGREEMENT

by and between

CHICAGO INFRASTRUCTURE TRUST and

THE CITY OF CHICAGO

dated April 11,2014

RETROFIT ONE  
CHICAGO DEPARTMENT OF FLEET AND FACILITY MANAGEMENT  
AMERESCO PROJECT  
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## ENERGY SERVICES AGREEMENT

This ENERGY SERVICES AGREEMENT (this "Agreement"), dated the 11th day of April, 2014 (the "Effective Date") is by and between CHICAGO INFRASTRUCTURE TRUST, an Illinois nonprofit corporation (the "Provider") and the CITY OF CHICAGO, a home rule unit of local government under the Constitution and laws of the State of Illinois (the "Customer") (each of the Customer and the Provider, a "Party" and collectively, the "Parties").

### RECITALS

WHEREAS, the Provider is authorized and empowered pursuant to the provisions of an ordinance adopted by the City Council of the City (the "City Council") on April 24, 2012, as amended by an ordinance adopted by the City Council on January 15, 2014, and a resolution adopted by the board of directors of the Provider on November 12, 2013, to, among other things, acquire and finance certain energy conservation projects for the benefit of the Customer; and

WHEREAS, the Customer desires to engage the Provider to procure, install, implement, own, operate and maintain certain energy conservation measures and energy efficiency measures (as further described herein, "ECMs"), to be located at certain facilities of the Customer (as further described herein, the "Facilities") for the purposes of achieving energy and operational savings at the Facilities subject to the terms and conditions of this Agreement; and

WHEREAS, the Provider desires to procure, install, implement, own, operate and maintain the ECMs and measure and verify energy and operational savings produced by the ECMs under the terms and conditions of this Agreement;

NOW THEREFORE, in consideration of the premises and the mutual promises and agreements of the Parties herein expressed, the Parties, intending to be legally bound, hereby agree as follows:

## ARTICLE I DEFINITIONS

Section 1.1 Definitions. Terms used in this Agreement shall have the meanings set forth in this Article I unless a different meaning clearly appears from the context.

"Agreement" means this Energy Services Agreement, together with all appendices, exhibits and schedules thereto, as any of them may be amended.

"Bond Counsel" means an attorney or firm of attorneys nationally recognized on the subject of municipal bonds and selected by the Provider and reasonably acceptable to the Customer and the Lender.

"Business Day" means any Day other than a Saturday, Sunday or a Day observed as a holiday by the Customer, the State of Illinois or the United States government, except that in the event that an obligation to be performed under this Agreement falls due on a Day other than a Business Day, the obligation shall be deemed due on the next Business Day thereafter (with no additional charge for such deferral).

"Change Order" means a written order signed by the Parties authorizing an addition, deletion or other change in the Installation Work, the Installation Schedule or the Project Costs or any other obligation of the Provider or the Customer pursuant to this Agreement.

"Commission" means the Public Building Commission of Chicago, a public body corporate and politic of the State of Illinois.

"Concealed Conditions" means subsurface or otherwise concealed physical conditions at the Facilities of an unusual nature that differ materially from those conditions ordinarily found to exist and generally recognized as inherent in construction activities of the type and character as the Installation Work, and that the Provider could not have discovered through the exercise of reasonable diligence during the performance of the Investment Grade Audit unless excluded thereunder.

"Customer Equipment" means all Customer-owned and leased equipment and fixtures located at the Facilities or related thereto that may affect the energy consumption savings that may be achieved by the ECMs.

"Pay" means a calendar day and shall include Saturdays, Sundays and holidays.

"Determination of Taxability" means (a) the receipt by the Lender, the Provider or the Customer of an original or a copy of an Internal Revenue Service Statutory Notice of Deficiency which is non-appealable and holds that an Event of Taxability has occurred; (b) the issuance of any public or private ruling of the Internal Revenue Service that holds that an Event of Taxability has occurred; or (c) receipt by the Lender, the Provider or the Customer of a written opinion of Bond Counsel that an Event of Taxability has occurred.

"Discount Rate" means four and ninety-five hundredths percent (4.95%).

"Dispute" means a Savings Dispute or a Non-Savings Dispute.

"Documents" means this Agreement with conditions set forth herein, the Plans and Specifications, the



Installation Schedule, any Change Orders and any modifications to the foregoing documents issued after execution of this Agreement.

"ECMs" means the equipment, devices, materials, and/or software to be acquired and installed at the Facilities by the Provider and all related services as described in Exhibit A.

"Environmental Attributes" means all rights, credits (including tax credits), rebates, grants, benefits, reductions, offsets, and allowances and entitlements of any kind, howsoever entitled or named (including carbon credits and allowances), whether arising under federal, state or local law, international treaty, trade association membership or the like, arising from the development or installation of the ECMs and the reduction of energy usage at the Facilities. Without limiting the foregoing, "Environmental Attributes" includes utility rebates or incentive programs, green tags, renewable energy credits, tradable renewable certificates, portfolio energy credits, the right to apply for (and entitlement to receive) incentives under any state tax credit

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program, grants from nongovernmental organizations, and the right to claim federal income tax credits under Sections 45 and/or 48 of the Internal Revenue Code.

"Event of Loss" means an event in which the Facilities, the ECMs or any portion thereof is destroyed, in whole or in part, or is damaged by fire or other casualty or title to, or the temporary use of, the Facilities, the ECMs or any part thereof shall be taken under the exercise or threat of the power of eminent domain by any governmental body or by any person, firm or corporation acting pursuant to governmental authority.

"Event of Taxability" means if as the result of any act of the Customer, failure to act by the Customer or any misrepresentation or inaccuracy by the Customer in any of the representations, warranties or covenants of the Customer contained in this Agreement or included in the Tax Certificate, the interest on the Series A Note (as defined in the Loan Agreement) is or becomes includable in the gross income of the registered owner of the Series A Note for federal income tax purposes. For all purposes of this definition, an Event of Taxability shall be deemed to occur on the date as of which the interest on the Series A Note is or becomes includable in the gross income of the registered owner of the Series A Note for federal income tax purposes.

"Expected Savings Production" means, at any time, the Savings expected to be produced by the Project during the remaining Term of this Agreement as determined in accordance with Exhibit B and based on the underlying assumptions and performance projections for the Project.

"Fair Market Value" means the value determined on the following basis: (i) the subject value shall be the amount which would be obtained in an arm's length transaction between an informed and willing buyer (who is not a used equipment dealer), and an informed and willing seller under no compulsion to sell; (ii) the costs of removal of the equipment from its then location shall not be a deduction from such value; and (iii) in determining any such value, to the extent the Customer is obligated to maintain any equipment, it shall be assumed (whether or not the same be true) (A) that such equipment has been maintained and is in the condition required in accordance with this Agreement, and (B) such value has not been diminished due to the existence of any damage history.

"Force Majeure Event" means any cause beyond the reasonable control of, and not due to the fault or negligence of, the Party affected, and which could not have been avoided by due diligence and use of reasonable efforts, including, but not limited to, drought, flood, earthquake, storm, mudslide, fire, lightning,

epidemic, war, riot, civil disturbance, sabotage, explosions, material changes in Law, or strikes or labor disputes, unavoidable casualties, acts of public enemies, orders or restraints of any kind imposed by the government of the United States, any state or any of their departments, agencies or officials, or any other action of a civil government, military or judicial authority. "Force Majeure Event" also means the failure of any contractor to a Party hereto to furnish labor, services, materials or equipment, but only if such failure is itself due to a Force Majeure Event (as defined in the previous sentence).

"Hazardous Materials" means all hazardous or toxic substances, wastes or other pollutants, including petroleum, petroleum hydrocarbons or petroleum products, petroleum byproducts, radioactive materials, asbestos or asbestos-containing materials, gasoline, diesel fuel,

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pesticides, radon, urea formaldehyde, lead or lead-containing materials, polychlorinated biphenyls; and any other chemicals, materials, substances or wastes in any amount or concentration which are now included in the definition of "hazardous substances," "hazardous materials," "hazardous wastes," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "pollutants," "regulated substances," "solid wastes," or "contaminants" or words of similar import, under any applicable law.

"Independent Engineer" means a third party professional engineering firm, which firm shall be reasonably acceptable to both the Provider and the Customer.

"Installation Schedule" means the construction schedule included in Exhibit A hereto for the Installation Work that includes, without limitation, a schedule related to the entire Project and for each ECM, and that provides for expeditious and practicable execution of all aspects of the Installation Work.

"Installation Work" means the work and services required by the Documents during tire implementation of the ECMs prior to the Substantial Completion Date and the completion of any related Punch List items and during any period of time during which the Provider is required to correct or replace its work and services pursuant to this Agreement, whether completed or partially completed and, includes all labor, materials, equipment, and services provided or to be provided by the Provider to fulfill the Provider's obligations under this Agreement.

"Interim Completion" means the achievement of the requirements for Substantial Completion for a particular ECM(s) prior to the Substantial Completion Date.

"Investment Grade Audit" means the report prepared by Ameresco, Inc. that sets forth, among other things, (a) an assessment of the energy consumption characteristics of each Facility, (b) specific energy analysis related to each Facility and its operation, and (c) recommendations for projects or programs to achieve cost and/or energy savings in the operation of the Facilities.

"Law" means any applicable constitution, charter, act, statute, law (including common law), ordinance, code, rule, regulation, judgment, decree, writ, order, permit, approval, or the like, as any of the foregoing may change from time to time, of any federal, state or local government or any agency, department, authority, court, political subdivision or other instrumentality thereof.

"Lender" means Banc of America Public Capital Corp, a Kansas corporation, and its successors and permitted assigns.

"Liquidated Damages Amount" means, at any time, the amount equal to the net present value of one hundred percent (100%) of the Savings, plus any unearned Environmental Attributes, calculated at the Discount Rate, assuming the Project will produce Savings at the Expected Savings Production for the remaining Term.

"Loan Agreement" means the Loan and Security Agreement dated as of April 1, 2014 between the Lender and the Provider relating to the financing of the costs of the ECMs.

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"M&V Services" means the measurement and verification services and other services to be performed described in Exhibit B of this Agreement which M&V Services shall commence on the earlier of (i) the first Interim Completion for a particular ECM or (ii) the Substantial Completion of the Project.

"MCC" means the Municipal Code of Chicago.

"Measured Savings" means energy and operational savings achieved by the ECMs as determined pursuant to Exhibit B.

"Non-Measured Savings" means energy and operational savings agreed by the Parties to be achieved as a result of the ECMs as more particularly described in Exhibit B.

"Non-Savings Dispute" means any claim, dispute, controversy or other matter arising out of or related to the validity, scope, making, interpretation, enforceability, performance, breach of, or relating in any way to this Agreement or the relationship between the Parties created by this Agreement or the subject matter of this Agreement, including but not limited to the authority or capacity of any signatory to this Agreement, but excluding a Savings Dispute.

"PBC Undertaking Agreement" means the Undertaking Agreement between the Commission and the Provider related to the Project, and any amendments or supplements thereto.

"Period" means the semi-annual period commencing with the semi-annual period following the Substantial Completion Date or Interim Completion of ECM(s), as applicable.

"Plans and Specifications" means the drawings, specifications, designs, plans, and related documents, prepared by or on behalf of the Customer, the Provider, and/or Subcontractors in connection with the Project.

"Project" means the design, engineering, installation, repairs, retrofit, and implementation of the ECMs, as more fully described in Exhibit A hereto and the other terms and provisions of this Agreement.

"Project Costs" means the costs incurred by Provider in performing the Installation Work.

"Punch List" means minor items of Work to be completed after Substantial Completion, which do not prevent an ECM or the Project from being used for the purpose for which it is intended and which will not prevent the issuance of applicable permits or certificates for such use.

"Savings" means Measured Savings and Non-Measured Savings.

"Savings Dispute" means any claim, dispute, controversy relating to an invoice for payment related to Savings.

"Savings Percentage" is defined in Section 8.1 of this Agreement.

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"Services" means the Installation Work and the M&V Services.

"Subcontract" means an agreement between the Provider and a Subcontractor to provide all or a portion of the Services.

"Subcontractor" or "Subcontractors" means one or more, person or entity that furnishes labor, services, material, or equipment to the Provider or any other Subcontractor to the Provider; provided that the Lender shall not be considered a Subcontractor with respect to this Agreement.

"Substantial Completion" means the date that is the later of the following: (i) the Provider has determined that the Installation Work is sufficiently implemented in accordance with the Documents, including commissioning of any systems required by the Documents, so that the Customer may realize the benefits of the Project or the particular ECM, as the case may be, and is fully complete except for Punch List items; or (ii) if the nature of such Installation Work requires that a certificate of occupancy be issued, it means the date of issuance of the required certificate of occupancy for the portion of the Facilities related to such Installation Work.

"Substantial Completion Date" means April 15, 2015, subject only to extension as provided in this Agreement.

"Tax Certificate" means the Tax Compliance Agreement executed and delivered by the Provider and the Customer in connection with the tax-exempt financing of the Project.

"Term" means the period of time from the Effective Date until April 30, 2029, unless extended pursuant to the terms of this Agreement and, if extended, includes the period of such extension.

Section 1.2 Rules of Interpretation. Unless otherwise required by the context in which any term appears: (a) capitalized terms used in this Agreement have the meanings specified in this Article; (b) the singular shall include the plural and vice versa; (c) references to "Articles," "Sections," "Schedules," "Annexes," "Appendices," "Attachments," or "Exhibits" (if any) shall be to articles, sections, schedules, annexes, appendices, attachments or exhibits (if any) of this Agreement and references to a Schedule, Annex, Appendix, Attachment, or Exhibit shall mean the referenced Schedule, Annex, Appendix, Attachment, or Exhibit and any sub-exhibits, subparts, components or attachments that form a part thereof; (d) all references to a person or entity includes its successors and permitted assigns, and in the case of a governmental authority, any person succeeding to its functions and capacities; (e) the words "herein," "hereof" and "hereunder" shall refer to this Agreement as a whole and not to any particular section or subsection of this Agreement; (f) all accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles in the United States of America, consistently applied; (g) references to this Agreement shall include a reference to all appendices, annexes, schedules and exhibits hereto, as the same may be amended, modified, supplemented or replaced from time to time; (h) references to any agreement, document or

instrument shall mean a reference to such agreement, document or instrument as the same may be amended, modified, supplemented or replaced from time to time (provided that no such

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amendment, modification, supplement or replacement shall serve to eliminate or lessen any Party's obligation under this Agreement as in effect on the Effective Date without the other Party's written consent) and any term defined or provision incorporated in this Agreement by reference to another document, instrument or agreement shall continue to have the meaning or effect ascribed thereto whether or not such other document, instrument or agreement is in effect; (i) the use of the word "including" in this Agreement to refer to specific examples shall be construed to mean "including, without limitation" or "including but not limited to" and shall not be construed to mean that the examples given are an exclusive list of the topics covered; (j) references to Laws shall mean a reference to such Laws as the same may be amended, modified, supplemented or restated and be in effect from time to time; (k) the gender of all words used herein shall include the masculine, feminine and neuter; and (l) the term "or" is not exclusive.

## ARTICLE II TERM; DISPOSITION OF ECMS

### Section 2.1 Term.

a) This Agreement shall be in effect for the Term, unless terminated earlier in accordance with the provisions hereof. The Provider agrees to undertake the Installation Work in accordance with the Installation Schedule.

b) Upon the occurrence of either or both of (i) a Detennination of Taxability or (ii) Event of Loss, the Term shall be extended automatically for such period of time necessary (as determined by written notice by the Lender) for the Provider to satisfy its obligations to the Lender under the Loan Agreement from amounts payable by the Customer under this Agreement, provided that the Term shall not be extended beyond April 1, 2036.

c) At the end of the original Term (if not extended pursuant to subsection (b) of this Section 2.1, the Parties may, upon mutual agreement in writing, elect to extend the Term for one (1) period of up to five (5) years. If the original Term has been extended pursuant to subsection (b) of this Section 2.1, this subsection (c) shall be of no force or effect.

### Section 2.2 Substantial Completion; Interim Completion.

(a) The Provider will commence the Installation Work within ten (10) days after the date of this Agreement and will achieve Substantial Completion of the Project no later than the Substantial Completion Date; provided, however, the Provider may achieve Interim Completion for a particular ECM(s) in advance of the Substantial Completion Date. When the Provider determines that it has achieved Substantial Completion or Interim Completion of the entire Project or a particular ECM, as the case may be, the Provider will provide written notice of Substantial Completion or Interim Completion and a Punch List to the Customer. If the Customer concurs that the described portion of the Installation Work as performed has achieved Interim or Substantial Completion, the Customer will accept that Installation Work by signing the certificate of Interim or

Substantial Completion and the Punch List and returning both to the Provider. If the Customer does not concur that the Installation Work has achieved Interim or Substantial Completion and/or that the Punch List is not complete or correct, then the Customer

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shall notify the Provider within thirty (30) days of any discrepancies. To the extent the Provider does not dispute the discrepancies raised by the Customer, the Provider shall (i) promptly and diligently correct the Work to conform to the description of the Work set forth herein, and resubmit the certificate of Interim or Substantial Completion to the Customer, and (ii) promptly complete all items on the Punch List. If the Provider disagrees with the discrepancies raised by the Customer, the Provider shall notify the Customer of a dispute and such dispute shall be resolved in accordance with paragraph (b) below. If the Customer does not deliver written notice to the Provider within thirty (30) days of receiving the certificate of Interim or Substantial Completion and the Punch List, the Customer will be deemed to have agreed to, signed and returned the certificate of Interim or Substantial Completion and the Punch List.

(b) Any disputes concerning the Interim or Substantial Completion of the Work will be resolved by submitting the issue to an Independent Engineer. The Independent Engineer shall be authorized to make determinations and bind the Parties on issues related solely to interpretations or adequacy of the Plans and Specifications or the execution and/or completion of the Installation Work embodied in the Plans and Specifications as it relates to the determination of Interim or Substantial Completion. The Independent Engineer shall not have the authority to render determinations regarding delay claims, payment disputes or other contract disputes that do not involve or arise out of the content of the Plans and Specifications and/or the quality of the execution of the Installation Work. All disputes beyond the authority of the Independent Engineer shall be resolved pursuant to Article XII herein. The determination of the Independent Engineer with respect to Interim or Substantial Completion will be final and binding upon the Parties. The Provider and the Customer shall share equally the costs or fees for such firm in connection with such dispute resolution process.

### Section 2.3 Fair Market Value Purchase Option.

a) Provided that no Default by Customer has occurred and is continuing, at the end of the Term the Customer shall have the option upon written notice to the Provider at least sixty (60) Days prior to the end of the Term and payment of all amounts then due in respect of Savings pursuant to Section 8.1 and payment of any other amounts payable by the Customer under this Agreement to purchase the ECMs at their Fair Market Value.

b) The Parties shall consult for the purpose of determining the Fair Market Value of the ECMs and any values agreed upon in writing between the Parties shall be binding. If the Parties fail to agree upon any such value within thirty (30) days of the commencement of such consultation, the Provider shall then appoint an independent appraiser (reasonably acceptable to the Customer) to determine the applicable value, and such determination by the independent appraiser shall be set forth in a written opinion delivered to the Parties within thirty (30) days after such appointment and shall be binding on the Parties in the absence of fraud or manifest error. The independent appraiser shall make any such determination acting reasonably and in good faith and utilizing the definition of Fair Market Value, including all assumptions. . The Customer agrees to pay the costs and expenses of any such determination and appraisal.

c) Notwithstanding the foregoing, the Customer shall have a period of five (5) days after

agreement by the Parties on the Fair Market Value, or receipt by the Customer of the

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determination of the independent appraiser, as the case may be, to confirm or retract its decision to exercise the purchase option under this Section 2.3.

(d) Upon the payment of the purchase price of the ECMs and all other amounts due and payable under this Agreement, the Provider shall transfer to the Customer ownership of the ECMs, the Provider's interest in the related Plans and Specifications, any related manufacturer warranties and its interest in the Facilities (free and clear of any liens, claims, security interests or other encumbrances) promptly upon payment by the Customer of such purchase price.

Section 2.4 Disposition of the ECMs by the Provider. At the end of the Term if the Customer does not elect to purchase the ECMs pursuant to Section 2.3, the Provider may, at its sole option, either (i) subject to the Provider's compliance with the other terms and conditions of this Agreement, surrender possession and transfer ownership of all or a portion of the ECMs to the Customer or (ii) at its own expense and upon the Provider providing evidence reasonably satisfactory to the Customer of the Provider's ability to pay such expense, remove all or a portion of the ECMs within a period of one hundred eighty (180) Days from the last Day of the Term and leave the Facilities, return the Facilities to their original condition, except for ordinary wear and tear, and leave the Facilities in neat and clean order. If the Provider fails or is unable to provide to the Customer such evidence of its ability to pay such expense, the Provider shall be deemed to have surrendered possession and transferred ownership of the ECMs to the Customer (and, in the event of such surrender, the Provider shall, within ten (10) Business Days of the surrender occurring deliver to the Customer such documents evidencing the transfer of title as are reasonably acceptable to the Customer). If the Provider determines to surrender possession of the ECMs, the Provider will transfer to the Customer ownership of such ECMs, the Provider's interest in the related Plans and Specifications, any related manufacturer warranties and its interest in the Facilities (free and clear of any liens, claims, security interests or other encumbrances). If the Provider determines to remove all or a portion of the ECMs and fails to remove them within the agreed upon period, the Customer shall have the right, at its option, to remove the ECMs to a public warehouse or other storage location or dispose of them, and restore the Facilities to their original condition, except for ordinary wear and tear, at the Provider's reasonable cost.

### ARTICLE III SERVICES AND RELATED OBLIGATIONS

#### Section 3.1 Subcontractors; Project Manager.

(a) The Provider shall perform and execute the provisions of this Agreement as an independent contractor and shall not be a partner, agent or employee of the Customer. The Provider shall have the right to have any of the Services performed by Subcontractors pursuant to written subcontracts between the Provider and such Subcontractors. No contractual relationship shall exist between the Customer and any Subcontractor with respect to the Installation Work to be performed hereunder. No Subcontractor is intended to be or shall be deemed a third-party beneficiary of this Agreement, unless otherwise expressly stated herein with respect to limitations of liability. The Provider shall be responsible to the Customer for acts and omissions of the Subcontractors, their agents and employees, and any other persons

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perforating portions of the Services on behalf of the Provider, to the same extent as the acts or omissions of the Provider hereunder.

(b) Pursuant to the PBC Undertaking Agreement, the Provider has retained the Commission as its construction and program manager for the Project and the Services and, in such capacity, the Commission has the authority to act on behalf of the Provider in connection therewith.

Section 3.2 Installation Schedule. The Provider shall submit to the Customer and the Lender a revised Installation Schedule when the Provider's planned construction sequence is changed or when Project changes are made that affect the Installation Schedule. Any changes to the Installation Schedule which would extend the Substantial Completion Date beyond one hundred eighty (180) Days past the originally scheduled Substantial Completion Date shall be subject to review by the Customer.

### Section 3.3 Supervision and Performance of the Services; Safety.

a) The Provider shall supervise, perform, and direct the Services using the professional skill, care, and attention reasonably required for projects similar to the Project. The Provider shall be solely responsible for and have control over means, methods, techniques, sequences, and procedures and for coordinating all portions of the Installation Work. The Provider will, at all times, act in the best interest of the Customer.

b) Notwithstanding any other provision herein, the Provider shall directly or through Subcontractors design, engineer, procure, construct, commission and test the Project in a good workmanlike and quality manner, with all reasonable care, skill and diligence.

c) The Provider shall be responsible for maintaining and supervising reasonable safety precautions and programs in connection with the performance of the Services. The Provider shall take reasonable precautions for safety of, and shall provide reasonable and appropriate protection to prevent damage, injury or loss to (1) employees performing the Services and other persons who may be affected thereby; (2) the Installation Work and materials and equipment to be incorporated in the Project; and (3) other property at the Facilities or adjacent thereto.

d) The Provider must employ only competent and efficient workers and whenever, in the opinion of the Customer, any such worker is careless, incompetent, violates safety or security rules, obstructs the progress of the work or services to be performed under this Agreement, acts contrary to instructions or acts improperly, or fails to follow the safety requirements of this Agreement, the Provider must, upon request of the Customer, discharge or otherwise remove such worker from the work or services to be performed under this Agreement and must not use such worker again, except with the written consent of the Customer. The Provider must not permit any person to work upon the work or services to be performed under this Agreement or enter into any buildings connected therewith who is under the influence of intoxicating liquors or controlled substances.



Section 3.4 Use of Facilities. The Provider shall confine its operations to the portions of the Facilities identified in the Documents or otherwise approved by the Customer, and shall not unreasonably encumber the portions of the Facilities used for the Installation Work with materials, equipment, or similar items. The Provider and all Subcontractors shall use only such entrances to the Facilities as are designated by the Customer. During occupied hours, the Provider shall limit construction operations to methods and procedures that do not adversely and unduly affect the environment of occupied spaces within the Facilities, including but not limited to creating noise, odors, air pollution, ambient discomfort, or poor lighting. The Provider is responsible for conducting the Services in such a manner as to minimize debris left in the Facilities or public way and shall provide clean-up as required by the Customer. Whenever the Customer determines any type of operation constitutes a nuisance, the Provider will immediately proceed to conduct its operations in an approved manner. Upon completion of work activities, the Provider must remove all materials, tools and machinery and restore the site to the same general condition that existed prior to the commencement of its operations. While on Customer premises, the Provider will not store any equipment, tools or materials without prior written authorization from the Customer. The Customer will not be responsible for or liable to pay the Provider for any loss of equipment, tools, or materials stored in unsecured areas without proper authorization. The Provider shall promptly report to the Customer any death, lost time injury, or property damage to the Customer's property that occurs on the Facilities or as part of the Provider's operation of the Project on the Facilities. The Customer may at any time require additional provisions if such are deemed necessary for public safety or convenience.

Section 3.5 Permits and Approvals. Except for those permits and fees that are specified in the Documents as the responsibility of the Customer, the Provider shall secure and pay for necessary, licenses, building permits, approvals, assessments and charges required for the proper execution and completion of the Installation Work. Pursuant to City of Chicago Ordinance PO 98-1690, all permits for demolition, construction alteration, repair, renovations, rehabilitation and inspection of buildings and facilities by the Provider and its Subcontractors for public or governmental use by the Customer and its sister agencies shall be issued without charge.

Section 3.6 Commissioning; Testing. The Provider shall conduct a thorough and systematic performance test of each ECM in accordance with Exhibit A, and demonstrate that all ECMs comply with the requirements of the Documents. The Provider shall correct or adjust all deficiencies in operation of the ECMs identified during the course of the tests described in this Section.

#### Section 3.7 Concealed Conditions; Hazardous Materials.

(a) The Provider shall immediately notify the Customer if it encounters Concealed Conditions at the Facilities prior to significantly disturbing the same. If such Concealed Conditions cause an increase in the Provider's cost of, or time required for, performance of any part of the Installation Work, the Provider and the Customer shall agree, by Change Order, on how to proceed and any adjustment to the Installation Schedule and the Savings Percentage related thereto.

(b) The Provider is responsible for all Hazardous Materials that it or its Subcontractors or suppliers bring to or use at the Facilities ("Provider's Hazardous Materials"). The Customer will be responsible for all other Hazardous Materials present or occurring on the Facilities ("Customer's Hazardous Materials"). The

Customer will advise the Provider of any risk of exposure to the Customer's Hazardous Materials prior to any Installation Work. The Provider may temporarily interrupt the Installation Work and will promptly inform the Customer if it reasonably believes there is undue risk of exposure to Customer's Hazardous Materials. The Provider will cooperate with the Customer to determine when it and others under its control may safely resume interrupted Installation Work. The Provider will be entitled to a change in the Installation Schedule and the Savings Percentage in connection with such interruption.

Section 3.8 Operation and Maintenance of Project. The Provider shall operate and maintain the ECMs in accordance with accepted industry practices for the purposes for which the ECMs were designed. The Provider shall retain the sole right to specify operating policies and procedures related to the Project and, subject to thirty (30) days' prior written notice to, and consultation with, the Customer, may modify such policies and procedures from time to time.

Section 3.9 Provider Improvements. The Provider may, at any time during the Term and at its cost, change or modify the ECMs or implement additional ECMs for the purpose of generating incremental Savings and/or optimizing the performance of its ECMs; provided, however, that no such change, modification or implementation of additional ECMs shall occur without at least thirty (30) days' prior written notice to, and consultation with, the Customer.

Section 3.10 Compliance with Laws. The Provider shall comply with all Laws in the course of performing the Services. If any new or different requirement, condition, change or anything beyond the Provider's control alters the Services to be performed hereunder or adversely affects the Project Costs or the Installation Schedule, including without limitation any operation or change of Law (including but not limited to changes to Laws imposing sales, use, excise, transportation, privilege, payroll or occupational taxes or contributions) or requirement in connection with the financing of the Project that becomes applicable after the date of this Agreement, then Provider shall be entitled to propose to the Customer adjustments to the Installation Schedule and the Savings Percentage, and the Parties shall thereafter resolve such proposal in good faith.

Section 3.11 Taxes. Unless otherwise provided in the Documents, the Provider shall pay all applicable federal, state or local sales, consumer, use, and other similar taxes for which it bears the incidence of taxation during the Term. The Provider shall pay all applicable real and personal property taxes relating to the ECMs and the Provider's interest in the Facilities. Notwithstanding the foregoing, the Provider may contest any such taxes, assessments and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during that period of such contest and any appeal therefrom so long as the proceedings do not, in the Lender's reasonable judgment, materially adversely affect the Lender's security interest in the ECMs under the Loan Agreement. The Customer will cause the Commission to provide its sales tax exemption certification for purchases of equipment, tools, materials, and supplies relating to the Project.

Section 3.12 Intellectual Property. The Provider shall pay all royalties and license fees related to the Sendees; shall defend suits or claims for infringement of patent rights required for the Services to be performed; and shall hold the Customer harmless from loss on account thereof.

Section 3.13 Standard Working Hours. Pursuant to MCC Section 2-92-220, a standard working day

consists of eight (8) hours for this Agreement. The Provider shall cause any Subcontractors providing the Services to coordinate shifts with the Customer. No overtime or premium pay will be permitted by the Provider unless otherwise specified in the Plans and Specifications and authorized by the Customer.

Section 3.14 Quality of Materials and Inspection. The Customer will have a right to inspect any material to be used in performance of the Services for this Agreement. The Customer is not responsible for the availability of any materials or equipment required under this Agreement. The Provider is responsible for the meeting the contractual obligations and standards regarding the quality of all materials, components, or Services performed under this Agreement up to the time of completion of the Work. Non-compliant materials, components or Services may be rejected by the Customer and must be replaced or re-performed by the Provider or its Subcontractors at no cost to the Customer. The Customer shall provide written notice to the Provider indicating the time period in which the Provider must, at its expense or the expense of its Subcontractor, remove from Customer premises, any materials or components rejected by the Customer. ■ Any and all labor and materials which may be required to correct or replace damaged, defective or non-conforming products must be provided by the Provider or its Subcontractors at no cost to the Customer. The Provider must, or cause its Subcontractors to, correct or replace the incorrect, damaged or defective or non-conforming goods within seven (7) Business Days of the return unless otherwise provided in the Plans and Specifications. The Customer will not be subject to restocking charges. Failure to correct or replace unacceptable goods, or repeated delivery of unacceptable goods, will be an event of default under this Agreement. Without limiting the scope or duration of any manufacturer's warranty provided for specific parts of the work, all work furnished under this Agreement is guaranteed by the Provider (or the Provider shall cause its Subcontractor(s) to a guarantee) against defective materials and workmanship, improper installation or performance, and non-compliance with this Agreement for a period of one (1) year. Unless otherwise specified, the one-year period will begin on the date of Substantial Completion.

Section 3.15 Records. Upon request, the Provider must furnish to the Customer such information related to the progress, execution, and cost of the Services. All books and accounts in connection with this Agreement must be open to inspection by authorized representatives of the Customer. The Provider must make these records available at reasonable times during the performance of the Services and will retain them in a safe place and must retain them for at least five (5) years after the expiration or termination of this Agreement.

Section 3.16 Audits. The Customer may, in its sole discretion, audit the records of the Provider or its Subcontractors, or both, at any time during the Term or within five (5) years after this Agreement ends, in connection with the goods, work, or Services provided under this \ Agreement. Each calendar year or partial calendar year may be deemed an "audited period." If, as a result of such an audit, it is determined that the Provider or any of its Subcontractors has

overcharged the Customer in the audited period, the Customer will notify the Provider. The Provider must, or cause its Subcontractor to, then promptly reimburse the Customer for any amounts the Customer has paid the Provider due to the overcharges and, depending on the facts, also some or all of the cost of the audit, as follows: If the audit has revealed overcharges to the Customer representing less than 5% of the total value, based on the contract prices, of the goods, work, or services provided in the audited period, then the Provider must reimburse the Customer for 50% of the cost of the audit and 50% of the cost of each subsequent audit that the Customer conducts; if, however, the audit has revealed overcharges to the Customer representing 5% or more of the total value, based on the contract prices, of the goods, work, or services provided in the audited period, then the Provider must, or cause its Subcontractor to, reimburse the Customer for the full cost of the audit

period, then Provider must, or cause its Subcontractor to, reimburse the Customer for the full cost of the audit and of each subsequent audit. Failure of Provider or its Subcontractor to reimburse the Customer in accordance with the foregoing is an event of default under this Agreement, and the Provider (or its Subcontractor, as the case may be) will be liable for all of the Customer's costs of collection, including any court costs and attorneys' fees.

## ARTICLE IV CUSTOMER COVENANTS

Section 4.1 Access to Facilities; Grant of License. The Customer shall provide the Provider with access to the Facilities as reasonably necessary to allow the Provider to perform the Services and any other rights of the Provider hereunder, including ingress and egress rights to the Facilities for Provider and its employees, and Subcontractors. The Customer hereby covenants that the Provider shall have access to the Facilities and ECMs during the Term in order to perform the Services and for so long as needed after termination to remove the ECMs pursuant to the applicable provisions herein. The Customer and its authorized representatives shall at all times have access to and the right to observe the Services or ECM removal but shall not interfere with or handle any Provider equipment or the ECMs without written authorization from the Provider; provided, however, in the event of a material malfunction or emergency condition, the Customer shall be permitted to take those actions necessary to prevent injury or damage.

Section 4.2 Remote Access. The Customer hereby grants to the Provider the right to connect the ECMs to the necessary intranet and/or internet networks so that it is possible for the Provider to remotely monitor the performance of the ECMs.

Section 4.3 Compliance with Laws. The Customer shall comply with all Laws with respect to the performance of its obligations under this Agreement, including federal, state, and local anti-discrimination laws.

Section 4.4 Project Specific Customer Responsibilities. The Provider has the sole right to determine and direct the operating policies and procedures for the ECMs. The Customer, on behalf of and at the direction of the Provider, agrees to undertake the obligations specified in Exhibit C with respect to the ECMs and the Customer acknowledges that the amount of its payment obligations under this Agreement have been determined, in part, in consideration of such undertaking by the Customer on behalf of the Provider.

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Section 4.5 Governmental Approvals. The Customer shall cooperate with the Provider in obtaining any permits or approvals required to be obtained by the Provider relating this Agreement or the Provider's performance hereunder; provided that such obligation shall not require the Customer to waive or otherwise change any Customer-required permit or approval process.

Section 4.6 Notice of Damage. The Commissioner of the Customer's Department of Fleet and Facility Management shall provide prompt written notice to the Provider and the Lender of any matters of which he becomes aware of pertaining to any damage to or loss of the use of the ECMs or that could reasonably be expected to materially adversely affect the Services or the Savings.

Section 4.7 Energy Supply. The Customer shall be responsible for the costs of and maintaining uninterrupted energy supply and utility service to the Facilities. Except in the case of emergencies and

uninterrupted energy supply and utility service to the Facilities. Except in the case of emergencies and subject to Article X, the Customer shall provide prompt written notice to the Provider of any material interruption or alteration of the energy supply or utility service to the Facilities that could affect the ECMs or the Savings.

#### Section 4.8 Information Reporting.

a) Non-confidential information requested by the Provider and under the Customer's control necessary for the performance of the Services shall be furnished by the Customer with reasonable promptness upon written request by the Provider. Without limiting the foregoing, such information will include, but is not limited to, the following items: (i) monthly utility invoices and billing history for all of the meters listed in Exhibit A; (ii) construction documents, equipment inventories, and other documents that may be helpful in evaluating a Change Order; and (iii) any data from meters or sub-meters relevant to the Services.

b) To the extent not otherwise publicly available and upon prior written request of the Lender, the Customer shall provide by no later than 210 days after the end of the Customer's <sup>x</sup> fiscal year, the audited financial statements of the Customer for such fiscal year with the unqualified opinion of an independent certified public accountant.

Section 4.9 Maintenance. The Customer agrees to maintain the Facilities and all Customer Equipment in good repair and in all respects thereof that may affect the Savings that may be achieved by the ECMs including, without limitation, the condition and integrity of the building envelopes of the Facilities and the condition of all energy-consuming Customer Equipment. The Customer shall ensure the availability of, and maintain during the Term, all connections between the ECMs and the Facilities and all energy-consuming Customer Equipment. The Customer shall cooperate with the Provider in establishing and maintaining such connections.

Section 4.10 Alterations to ECMs. The Customer shall not (i) remove the ECMs or (ii) alter or change in any way any ECMs that materially damage the functional capabilities or economic value of the ECMs or have the effect of reducing the Savings that are may be produced by the ECMs, without the Provider's prior written consent.

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#### Section 4.11 Tax-Exempt Financing.

a) It is the intention of the parties hereto that the interest component of debt service payments received by the registered owner of the Series A Note (as defined in the Loan Agreement) be and remain excludable from gross income for purposes of federal income taxation. The Provider and the Customer each covenants that it shall, at all times, do and perform all acts and things necessary and within its control in order to assure that such interest shall, for the purposes of Federal income taxation, be excludable from gross income of the Lender. The Provider and the Customer shall not permit the use of proceeds of any tax-exempt financing for the Project, or take or omit to take any action, so as to cause such interest portion to cease to be excludable from gross income of the Lender for the purposes of Federal income taxation. Without limiting the foregoing, the Provider and the Customer agree to comply with their respective obligations under the Tax Certificate.

b) The Provider shall not take or permit any action or omit to take any action that would cause any tax exempt financing for the Project to be an arbitrage bond within the meaning of Section 149 of the Internal

tax-exempt financing for the Project to be an arbitrage bond within the meaning of Section 148 of the Internal Revenue Code. The Provider shall pay the costs incurred for an consultant or report necessary to satisfy its obligations under Section 148 of the Internal Revenue Code.

## ARTICLE V CHANGE TO SERVICES

Section 5.1 Change Orders. The Provider may order, or the Customer may request, changes in the Installation Work consisting of additions, deletions, or modifications to the Installation Work, changes to the Installation Schedule and/or changes to the total Project Costs. Such changes in the Installation Work shall be authorized only by written Change Order signed by the Parties, which Change Order shall specify any adjustment to the Installation Schedule and Savings Percentage related thereto. To the extent the Provider reasonably determines that any change in the Installation Work requested or directed by the Customer will materially and adversely impact the availability, timing or amounts of Savings, the Provider shall have the right, ' in its sole and absolute discretion, to decline such change in the Installation Work.

Section 5.2 Installation Work Delays. Notwithstanding anything to the contrary herein, if the Provider is delayed at any time in progress of the Installation Work by labor disputes, fire, unusual delay in deliveries, abnormal adverse weather conditions that affect the Installation Work not reasonably anticipatable, unavoidable casualties or any other causes which are beyond the control of the Provider, then the Term may be extended by Change Order provided that: (i) the Provider has notified the Customer in writing of such delay within thirty (30) days following the date when the Provider becomes aware, or should have become aware through the exercise of reasonable diligence, of such delay; (ii) the Provider has taken all reasonable steps to avoid any such delay (including its continuance); (iii) such delay is not a theoretical delay but does actually adversely affect the critical path of the Installation. Work; and (iv) such extension does not cause the Term to exceed the limits of the authority to enter into this Agreement of either the Provider or the Customer.

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## ARTICLE VI INSURANCE; CASUALTY OR CONDEMNATION

Section 6.1 Provider Insurance. The Provider shall purchase from and maintain in a company or companies lawfully authorized to do business in the City of Chicago policies of insurance (a) insuring the ECMs against loss or damage by fire and all other risks covered by the standard extended coverage endorsement then in use in such jurisdiction, in an amount at least equal to the full replacement cost of the ECMs and (b) third party liability insurance covering against legal responsibility to others as a result of bodily injury, property damage and personal injury arising from the operation and maintenance of the Project. Notwithstanding the foregoing, the Customer agrees to include the ECMs under the insurance provided pursuant to Section 6.2 and acknowledges that the amount of its payment obligations under this Agreement have been determined, in part, in consideration of such undertaking on behalf of the Provider; and such Customer-provided insurance shall satisfy the Provider's obligations under this Section 6.1.

Section 6.2 Customer Insurance. The Customer shall during the Term maintain or cause to be maintained (a) casualty insurance insuring the Facilities against loss or damage by fire and all other risks covered by the standard extended coverage endorsement then in use in the State in an amount at least equal to the replacement value of the Facilities; (b) liability insurance naming the Provider and the Lender as additional insureds that protects the Provider and the Lender from liability in all events. Notwithstanding the foregoing

insureds that protects the Provider and the Lender from liability in an event. Notwithstanding the foregoing, the Customer may self-insure against the risks described in the foregoing sentence if the Customer shall furnish to the Provider evidence of such insurance or self-insurance coverage throughout the Term. The Customer shall not cancel or modify such insurance or self-insurance coverage in any way that would affect the interests of the Provider without first giving written notice thereof to Provider at least thirty (30) days in advance of such cancellation or modification.

Section 6.3 Event of Loss. If an Event of Loss occurs, the Customer will provide written notice to the Provider promptly upon the occurrence of such event. If such Event of Loss adversely affects the Expected Savings Production, the Customer shall pay to the Provider (or its designee; provided such designee is located in the continental United States) within ninety (90) days of written demand therefor the Liquidated Damages Amount or ratable portion thereof, less the amount of any insurance or condemnation proceeds paid to the Provider.

Section 6.4 Insurer Qualifications. All insurance maintained hereunder shall be maintained with companies either rated no less than A-VII as to Policy Holder's Rating in the current edition of Best's Insurance Guide (or with an association of companies each of the members of which are so rated) or having a parent company's debt to policyholder surplus ratio of 1:1.

## ARTICLE VII PROJECT OWNERSHIP

Section 7.1 Title. Legal title to and ownership of the ECMs shall remain in the Provider free and clear of any and all liens, claims, security interests or other encumbrances caused, created or permitted by the Customer, except as provided in the Loan Agreement. The Parties agree the ECMs are and will remain personal property and will not be deemed to be affixed to or a part of the real estate on which it may be situated, notwithstanding that the ECMs or any part thereof may be or hereafter become in any manner physically affixed or attached to real estate or any building thereon. Upon the request of the Provider, the Customer will, at the Customer's expense, furnish a waiver of any interest in the ECMs from any party having an interest in any such real estate or building. The Customer shall not claim depreciation or an investment credit with respect to the ECMs or otherwise take any action or fail to take any action inconsistent with the Provider's ownership of the ECMs.

Section 7.2 Risk of Loss. The Provider shall, except as otherwise provided in this Agreement, bear risk of loss and have care, custody and control pertaining thereto of any materials, equipment, spare parts, supplies and maintenance equipment (including temporary materials, equipment, and supplies) on the Facilities or located off-site, or any other Installation Work completed with respect to the ECMs until such time that the transfer of care, custody, and control is effectuated in accordance with the terms of this Agreement. Except as otherwise provided in this Agreement, any ECMs lost, damaged, stolen or impaired before the transfer of care, custody, and control is effectuated in accordance with the terms of this Agreement shall be replaced promptly

custody, and control is effectuated in accordance with the terms of this Agreement shall be replaced promptly by the Provider and such replacement shall be without additional cost except to the extent of the negligence, gross negligence or willful misconduct of the Customer or any party for which the Customer is responsible.

### Section 7.3 Environmental Attributes; Other Incentives.

a) Environmental Attributes. The Provider shall own, and may assign or sell in its sole discretion, all right, title, and interest associated with Environmental Attributes. Environmental Attributes will not be included within any calculation of Savings or otherwise reduce the Customer's obligation to pay for Savings hereunder. The Customer agrees to cooperate with the Provider in obtaining any Environmental Attributes.

b) Other Incentives. The Provider shall own, and may assign or sell in its sole discretion, all right, title, and interest to applicable and available utility-provided incentives for energy efficiency projects, including the right to utilize its ECMs to participate in utility programs that provide incentives related to the curtailment or reduction of energy use during times of peak demand, provided that such participation does not negatively affect the Customer's operations at the Facilities. The Customer agrees to cooperate with the Provider in obtaining any such utility-provided incentives.

## ARTICLE VIII SAVINGS

Section 8.1 Savings. The Customer agrees to pay the Provider (or its designee; provided such designee is located in the continental United States) on a semi-annual basis an amount equal to one hundred percent (100%) (the "Savings Percentage") of each \$1.00 of Savings as such Savings are determined pursuant to Exhibit B. The Savings Percentage shall not change during the Term except as otherwise provided herein prior to the completion of the Installation Work. The obligation of the Customer to pay, and the right of the Provider to receive, amounts for Savings depends on the achievement of Savings as provided herein. The Customer acknowledges and agrees that the Provider shall not be required to achieve any amount of Savings.

## ARTICLE IX PAYMENT

Section 9.1 Invoicing. Based on the Expected Savings Production, the Provider will submit, or cause its agent to submit, invoices to the Customer commencing for payment by the Customer no later than June 25, 2015 and for payment thereafter on a semi-annual basis no later than each December 26 and June 25 thereafter during the Term. For administrative convenience, the initial and each semi-annual invoice for Savings shall be based on the ratable portion of the Expected Savings Production for the corresponding Period as set forth in Exhibit B, subject to the annual reconciliation process in Section 9.4.

Section 9.2 Payment. The Customer shall make payment to the Provider (or to such other payee as directed in a payment invoice) no later than ninety (90) days from the date on which the Provider (or its agent) submits a payment invoice to the Customer meeting the requirements of Section 9.1. Any amounts payable by and not paid by the Customer on the due date thereof shall bear interest at the rate equal to the lesser of (i) ten percent (10%) per annum or (ii) the highest rate permitted by Law.



Section 9.3 Utility Bills. Commencing on the Effective Date and continuing for the Term, the Customer will provide the Provider with all utility bills necessary or convenient for the Savings calculations described in this Agreement within thirty (30) days of receipt. The Customer may provide the Provider with copies of bills, or access to invoices via an on-line system. If Customer fails to provide utility bills within the time period required, the Provider may estimate the Customer's utility usage, utility rates and other data for such period which estimate shall be deemed conclusive for purposes of calculating Savings payable by the Customer pursuant to the invoice for the corresponding Period, subject to the annual reconciliation process in Section 9.4.

Section 9.4 Reconciliation. The Provider will provide an annual savings report to the Customer no later than sixty (60) Days following the Provider's receipt of all utility bills with meter-reading ending dates falling within the preceding year (or stub year) ending each December 31 during the Term. If the annual report for such a year indicates that one or more invoices understated the Savings for the respective Periods, then the Provider shall provide a

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supplemental invoice to the Customer and the Customer shall be unconditionally obligated to pay such invoice in accordance with its terms. If the annual report for such a year indicates that one or more invoices overstated Savings, then the Provider shall refund, or cause to be refunded, to the Customer the amount by which the Customer overpaid such Savings. Within thirty (30) days of the Customer's receipt of the annual report for such a year, the Customer will notify the Provider of (1) the Customer's approval of all or any portion of such annual report; and/or (2) the Customer's disapproval of all or any portion of such annual report, including the basis for the disapproval. If the Customer disapproves all or any portion of the annual report for a calendar year (or stub year), the Parties will use good faith efforts to resolve such dispute within thirty (30) days of notification to the Provider. If the Parties are unable to resolve the matter within such thirty (30) day period, the dispute shall be resolved in accordance with Article XII.

Section 9.5 Unconditional Payment Obligation. Notwithstanding any other provision of this Agreement other than Section 9.6 below, the obligations of the Customer to make payments with respect to Savings, to pay any other amounts under this Agreement and to perform and observe the other covenants and agreements contained in this Agreement shall be absolute and unconditional in all events without abatement, diminution, deduction, set-off or defense, for any reason whatsoever.

Section 9.6 Payments Subject to Annual Appropriation. The Customer is obligated only to pay such payments under this Agreement as may lawfully be made from funds appropriated for that purpose during the Customer's then current fiscal year. If funds to pay any amount payable hereunder are not appropriated and not otherwise made available for that purpose, this Agreement shall be deemed terminated at the end of the then current fiscal year. The Customer agrees to deliver notice to the Provider of such termination promptly after any decision to non-appropriate is made, but failure to give such notice shall not extend the Term beyond the then current fiscal year. The decision whether or not to budget and appropriate funds is within the discretion of the Customer. If this Agreement is terminated in accordance with this Section, the Customer agrees to cease use of all the ECMs as of the last day of the last fiscal year for which appropriations and payments have been made, dismantle and peaceably deliver all the ECMs to Provider at the location(s) to be specified by the Provider and in the same condition and appearance as originally installed at the Facilities (reasonable wear and tear from normal operation excepted), and free of all liens and claims created or permitted by the Customer (except any Lender lien). The Provider shall have all legal and equitable rights to take possession of the ECMs.

Section 9.7 Funding. The source of funds for payments under this Agreement is Fund Number [redacted]

Section 9.7 Funding. The source of funds for payments under this Agreement is Fund Number [check and type, number]. Funding for this Agreement is subject to the availability of funds and their appropriation by the City Council of the Customer.

## ARTICLE X FORCE MAJEURE

Section 10.1 Excused Performance. Each Party hereto shall be excused from performance and shall not be considered to be in default with respect to any obligation hereunder (except the obligation to make payments hereunder and provide insurance pursuant to Article

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VI), if and to the extent that its failure of, or delay in, performance is due to a Force Majeure Event; provided:

a) Such Party gives the other Party written notice describing the particulars of the Force Majeure Event as soon as is reasonably practicable, but in no event later than seven days after the occurrence of such event;

b) The suspension of performance is of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;

c) No obligations of the Party which arose before the occurrence causing the suspension of performance are excused as a result of the occurrence;

d) The Party uses commercially reasonable efforts to overcome or mitigate the effects of such occurrence; and

e) When the Party is able to resume performance of its obligations under this Agreement, such Party shall give the other Party written notice to that effect and shall promptly resume performance hereunder.

Section 10.2 Settlement of Strikes. Notwithstanding the foregoing, nothing in this Article X shall be construed to require the settlement of any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Party involved in the dispute, are contrary to such Party's interest. It is understood and agreed that the settlement of strikes, walkouts, lockouts or other labor disputes shall be entirely within the discretion of the Party experiencing such action.

Section 10.3 Burden of Proof. If the Parties are unable in good faith to agree that a Force Majeure Event has occurred, the Parties shall submit the dispute for resolution pursuant to Article XII and the Party claiming a Force Majeure Event shall have the burden of proof as to whether such Force Majeure Event (i) has occurred, (ii) was not a result of such Party's or its agents' fault or negligence, and (iii) could not have been avoided by due diligence or the use of reasonable efforts of such Party or its agent.

## ARTICLE XI DEFAULT AND REMEDIES

Section 11.1 Customer Events of Default. Any one of the following which occurs and continues shall constitute an "Event of Default" by Customer:

a) Failure by the Customer to make any payment required by Article IX hereof when due which

a) Failure by the Customer to make any payment required by Article IX hereof when due which continues for a period of ten (10) Days after written notice of such failure is received by the Customer from the Provider; or

b) The Customer restricts or attempts to restrict the Provider's access by to the Facilities or the ECMs; or

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c) Failure by the Customer to insure the Facilities or the ECMs as required by Section 6.1 or Section 6.2; or

d) Failure by the Customer to observe and perform any covenant, condition or agreement on its part required to be observed or performed by this Agreement (other than as provided in clause (a), (b) or (c) above), which continues for a period of ninety (90) days after written notice by the Provider delivered to the Customer, which notice shall specify such failure and request that it be remedied, provided, however, that no Event of Default shall occur if the failure stated in the notice cannot be corrected within such period and if corrective action is instituted within such period and diligently pursued in good faith until the default is corrected; or

e) The Customer materially decreases its occupancy or utilization of the Facilities;  
or

f) Any representation or warranty made by the Customer under or in connection with this Agreement or any of the Documents shall prove to be untrue in any material respect on the date as of which it was made; or

g) The occurrence of a default under (i) any other agreement for borrowing money, lease financing of property or otherwise receiving credit held by the Lender or any of its affiliates in a principal amount greater than \$10,000,000 under which the Provider is an obligor for the financing of energy conservation projects for the Customer or projects for the Customer's sister agencies supported by payments from appropriation obligations of the Customer; or (ii) either of the respective Loan Agreements entered into on the Effective Date with respect to the Provider's Tax-Exempt Revenue Notes (Chicago Department of Fleet and Facility Management Retrofit One Project) 2014 Series B and C; or

h) The Customer shall (i) apply for or consent to the appointment of a receiver, trustee, custodian or liquidator of the Customer, or of all or a substantial part of the assets of the Customer, (ii) be unable, fail or admit in writing its inability generally to pay its debts as they become due, (iii) make a general assignment for the benefit of creditors, (iv) have an order for relief entered against it under applicable federal bankruptcy law, or (v) file a voluntary petition in bankruptcy or a petition or an answer seeking reorganization or an arrangement with creditors or taking advantage of any insolvency law or any answer admitting the material allegations of a petition filed against the Customer in any bankruptcy, reorganization or insolvency proceeding;  
or

(i) An order, judgment or decree shall be entered by any court of competent

jurisdiction, approving a petition or appointing a receiver, trustee, custodian or liquidator of all or a substantial part of the assets of the Customer, in each case without its application, approval or consent, and such order, judgment or decree shall continue unstayed and in effect for any period of 60 consecutive days.

Section 11.2 Remedies Upon Customer Default. Whenever any Event of Default by Customer shall have occurred and shall be continuing, the Provider may, at its option, and upon prior written notice to the Customer:

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- a) Take whatever action at law or in equity as may be necessary or desirable to collect the payments and other amounts then due and thereafter to become due or to enforce performance and observance of any obligation, agreement or covenant of the Customer under this Agreement;
- b) Terminate this Agreement and surrender possession of all or a portion of the ECMs and transfer ownership of such ECMs, the Provider's interest in the Plans and Specifications and any related manufacturer warranties and its interest in the Facilities (free and clear of any liens, claims, security interests or other encumbrances) to the Customer without any liability to the Customer in connection with such actions;
- c) With or without terminating this Agreement decommission and/or remove all or a portion of the ECMs without any liability to the Customer in connection with such actions including, without limitation, any obligation to restore or repair the Facilities and any other affected portions of the Facilities; or
- d) Terminate this Agreement and elect to be paid an amount equal to the Liquidated Damages Amount plus any other amounts due and payable hereunder and upon the Customer's payment of such amount transfer to the Customer ownership to the ECMs, the Provider's interest in the Plans and Specifications, any related manufacturer warranties and any interest held by the Provider in the Facilities (free and clear of any liens, claims, security interests or other encumbrances).

Section 11.3 Provider Events of Default. Any one of the following which occurs and continues shall constitute an "Event of Default" by the Provider:

- a) Failure by the Provider to observe and perform any covenant, condition or agreement on its part required to be observed or performed by this Agreement which continues for a period of thirty (30) days after written notice by the Customer delivered to the Provider, which notice shall specify such failure and request that it be remedied; provided, however, that if the failure stated in the notice cannot be corrected within such period, if corrective action is instituted within such period and diligently pursued in good faith until the default is corrected; or
- b) Any representation or warranty made by the Provider under or in connection with this Agreement or any of the Documents shall prove to be untrue in any material respect on the date as of which it was made; or
- c) The Provider shall (i) apply for or consent to the appointment of a receiver, trustee, custodian or liquidator of the Provider, or of all or a substantial part of the assets of the Provider, (ii) be unable, fail or admit

liquidator of the Provider, or of all or a substantial part of the assets of the Provider, (ii) be unable, fail or admit in writing its inability generally to pay its debts as they become due, (iii) make a general assignment for the benefit of creditors, (iv) have an order for relief entered against it under applicable federal bankruptcy law, or (v) file a voluntary petition in bankruptcy or a petition or an answer seeking reorganization or an arrangement with creditors or taking advantage of any insolvency law or any answer admitting the material allegations of a petition filed against the Provider in any bankruptcy, reorganization or insolvency proceeding; or

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(d) An order, judgment or decree shall be entered by any court of competent jurisdiction, approving a petition or appointing a receiver, trustee, custodian or liquidator of all or a substantial part of the assets of the Provider, in each case without its application, approval or consent, and such order, judgment or decree shall continue unstayed and in effect for any period of sixty (60) consecutive days.

Section 11.4 Remedies Upon Provider Default. Whenever any Event of Default by the Provider shall have occurred and shall be continuing, the Customer may, at its option and upon prior written notice to the Provider:

a) Terminate this Agreement and pay to the Provider the Liquidated Damages Amount and any other amounts due and payable hereunder (less any amounts due and payable by the Provider hereunder) whereupon the Provider shall transfer to the Customer ownership of the ECMs, the Provider's interest in the Plans and Specifications, any related Subcontract and any manufacturer warranties and any interest in the Facilities (free and clear of any liens, claims, security interests or other encumbrances);

b) Terminate this Agreement and request the Provider to remove the ECMs from the Facilities upon which the Provider shall remove all or a portion of the ECMs as requested within thirty (30) Days, return the Facilities to their original condition, except for ordinary wear and tear, and leave the Facilities in neat and clean order, without any other liability to the Customer in connection with such actions; provided that if the Provider fails to remove the ECMs within such period, the Customer shall have the right, at its option, to remove the ECMs to a public warehouse or other storage location or dispose of them, and restore the Facilities to their original condition, except for ordinary wear and tear, at Provider's reasonable cost; or

c) Take whatever action at law or in equity as may be necessary or desirable to enforce performance and observance of any obligation, agreement or covenant of the Provider under this Agreement.

Section 11.5 Agreement to Pay Attorneys' Fees and Expenses. In the event a Party should default under any of the provisions of this Agreement and the other Party should employ attorneys or incur other expenses for the collection of the payments due under this Agreement or the enforcement of performance or observance of any obligation or agreement on the part of the non-defaulting Party herein contained, the defaulting Party agrees to pay promptly to the non-defaulting Party the reasonable fees and expenses of such attorneys and such other reasonable out-of-pocket expenses so incurred by such Party, whether incurred at trial, on appeal, in bankruptcy proceedings, or otherwise.

Section 11.6 No Remedy Exclusive. No remedy herein conferred upon or reserved to the Provider or the Customer is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default hereunder shall impair any such right or power or shall be construed to be a waiver

accruing upon any default hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but

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any such right and power may be exercised from time to time and as often as may be deemed expedient.

Section 11.7 No Additional Waiver Implied by One Waiver. In the event any agreement or covenant contained in this Agreement should be breached by a Party and thereafter waived by the other Party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 11.8 Liquidated Damages Amount. The Parties agree that the formulations of damages described in this Article XI, including the formulation of the Liquidated Damages Amount, are fair and reasonable approximations of the damages each Party would incur upon a termination based on an Event of Default and are not intended to be, nor should they be interpreted to result in, a penalty.

## ARTICLE XII DISPUTE RESOLUTION

### Section 12.1 Procedure.

a) Savings Disputes. Savings Disputes shall be submitted to the Independent Engineer. The determination of the Independent Engineer will be final and binding upon both the Customer and the Provider. The Provider and the Customer will each be responsible for half of the fees of the Independent Engineer.

b) Non-Savings Disputes. The Parties commit to first attempt to settle any Non-Savings Dispute through direct discussions of the Parties' management representatives within ten (10) Days after receipt of initial written notification of such Dispute. If within ten (10) Days the Parties have not succeeded in negotiating a resolution of the Dispute, such Dispute will be submitted to senior officers of the Parties, to attempt further in good faith to negotiate a resolution of the Dispute. If within ten (10) Days after such meeting the Parties have not succeeded in negotiating a resolution of the Dispute, the Parties may initiate litigation in any court having jurisdiction in the State.

Section 12.2 Continuation of Work. Notwithstanding any Dispute that the Provider may have undertaken or be involved with, whether pursuant to this Article XII or otherwise, and regardless of the basis thereof or grounds therefor, including, but not limited to Disputes based on or related to any Change Order, the Provider agrees that it will, for so long as this Agreement has not been terminated, diligently perform the Services in accordance with the terms of this Agreement. Any failure by the Provider to perform the Services in accordance with the terms of this Agreement shall give the Customer the immediate right to terminate its participation in any dispute resolution process under this Article XII and exercise its remedies pursuant to Article XI.

Section 12.3 Continuation of Payment. Notwithstanding any Dispute that the Customer may have undertaken or be involved with, whether pursuant to this Article XII or otherwise, and regardless of the basis thereof or grounds therefor, the Customer agrees that it will, for so long as this Agreement has not been terminated, pay all amounts invoiced without setoff or diminution and at the times required pursuant to Article IX and otherwise perform its obligations in accordance with the terms of this Agreement. Any failure by the Customer to pay any invoiced amounts shall give the Provider the immediate right to terminate its participation in any dispute resolution process under this Article XII and exercise its remedies pursuant to Article XL

### ARTICLE XIII INDEMNIFICATION

#### Section 13.1 Indemnification; Limitation of Liability.

a) The Provider agrees to indemnify, defend and hold harmless the Customer and its officers, officials and employees from and against legal or administrative proceedings, claims, demands, damages, fines, penalties, liabilities, interest, costs, and expenses (including reasonable attorneys' fees) for deaths, bodily injuries or damages to third party tangible property to the extent caused, in whole or in part, by the grossly negligent acts or omissions of the Provider during the performance of the Services and violations of Law by the Provider. The indemnity provisions expressed in this Article XIII shall apply to the fullest extent permitted by Law and shall in no manner amend, abridge, modify, or restrict any other obligation of the Provider expressed elsewhere in this Agreement. This provision shall survive the termination of this Agreement.

b) The Customer agrees to indemnify, defend and hold harmless the Provider, the Lender and their respective officers, officials and employees from and against legal or administrative proceedings, claims, demands, damages, fines, penalties, liabilities, interest, costs and expenses (including reasonable attorneys' fees) for deaths, bodily injuries or damages to third party tangible property to the extent caused, in whole or in part, by the grossly negligent acts or omissions of the Customer during the performance of the Customer's obligations under this Agreement and violations of Law by Customer. The indemnity provisions expressed in this Article XIII shall apply to the fullest extent permitted by Law and shall in no manner amend, abridge, modify, or restrict any other obligation of the Customer expressed elsewhere in this Agreement. To the extent permitted by Law, the Customer waives any limits to its liability hereunder that it would otherwise have by virtue of the Workers' Compensation Act or any other related law or judicial decision (including, without limitation, Kotecki vs. Cyclops Welding Corporation, 156 111. 2d. 155 (1991)). This provision shall survive the termination of this Agreement.

c) Under no circumstances will either Party be liable to the other Party for any special, indirect, incidental, consequential or punitive damages, however caused and on any theory of liability.

## ARTICLE XIV REPRESENTATIONS AND WARRANTIES

Section 14.1 Provider Representations and Warranties. The Provider represents and warrants as of the Effective Date that:

a) The Provider is a nonprofit corporation duly formed and validly existing under the laws of the State of Illinois.

b) The Provider is not in violation of any applicable Law promulgated or judgment entered by any federal, state, local or governmental authority that individually or in the aggregate, would affect its performance of any of its material obligations under this Agreement.

c) The Provider and its Subcontractors are, or will be, the holder of all federal, state, local or other governmental consents, licenses, permits, or other authorizations required to permit it to operate or conduct its business as contemplated by this Agreement.

d) The execution and delivery of this Agreement and any documents executed or delivered in connection herewith, the consummation of the transactions herein contemplated or compliance with the terms and provisions hereof will not conflict with or result in a breach of, or require any consent under, the organizational documents of the Provider, or any applicable law or regulation, or any order, writ, injunction or decree of any court, or any agreement or instrument to which the Provider is a party or by which it is bound or to which it is subject, or constitute a default under any such agreement or instrument.

e) The Provider has all necessary power and authority to execute, deliver and perform its obligations under this Agreement; and the execution, delivery and performance by Provider of this Agreement has been duly authorized by all necessary action on its part; and this Agreement has been duly and validly executed and delivered by the Provider and constitutes the legal, valid and binding obligation of the Provider enforceable in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization or moratorium or other similar Laws relating to the enforcement of creditors' rights generally and by general equitable principles.

Section 14.2 Customer Representations and Warranties. The Customer represents and warrants as of the Effective Date that:

a) The Customer is a political subdivision of the State of Illinois and home rule city duly formed and validly existing under the laws of the State of Illinois.

b) The Customer is not in violation of any applicable Law promulgated or judgment entered by any federal, state, local or governmental authority that would , individually or in the aggregate, materially adversely affect its performance of any of its material obligations under this Agreement.

c) None of the execution and delivery of this Agreement, the consummation of the transactions herein contemplated or compliance with the terms and provisions hereof will conflict with or result in a breach



herein contemplated or compliance with the terms and provisions hereof will conflict with or result in a breach of, or require any consent under, or any applicable law or regulation, or any order, writ, injunction or decree of any court, or any material agreement or instrument to which the Customer is a party or by which it is bound or to which it is subject, or constitute a default under any such material agreement or instrument.

d) The Customer has all necessary power and authority to execute, deliver and perform its obligations under this Agreement; and the execution, delivery and performance by the Customer of this Agreement has been duly authorized by all necessary action on its part; and this Agreement has been duly and validly executed and delivered by the Customer and constitutes the legal, valid and binding obligation of the Customer enforceable in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization or moratorium or other similar Laws relating to the enforcement of creditors' rights generally and by general equitable principles.

e) The Customer is the fee simple owner of the Facilities and has not mortgaged, pledged, liened, leased, granted a security interest, encumbrance or claim on or with respect to the Facilities or any interest therein.

f) The Customer intends to continue to use the Facilities in a manner similar to its present use.

g) The information provided by the Customer to Provider relating to the Documents and the Project is true, correct and complete in every material respect and contains no untrue statement of material fact or omits no material fact necessary to make the statements contained therein not misleading.

h) During the Term, the energy services provided by the Provider in connection with ECMs will be used by the Customer only for the purpose of performing essential governmental or proprietary functions of the Customer consistent with the permissible scope of the Customer's authority. The Customer has an immediate need for such services and expects to make immediate use of such services once the ECMs are installed and operating at their intended levels. The Customer's need for such services is not temporary and the Customer does not expect the need for such services to diminish during the Term.

## ARTICLE ASSIGNMENT

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Section 15.1 Assignment by Provider. The Provider may assign all or part of its right, title, and interest in, but not its obligations under, this Agreement, the ECMs or the Project as collateral security for its obligations to the Lender. The Customer understands and agrees that, simultaneously with the execution and delivery of this Agreement, all of the Provider's rights and interests under this Agreement (except for the Provider's rights to indemnification) are being assigned and transferred to the Lender under the Loan Agreement. The Customer hereby consents to such assignment and transfer and to any subsequent assignment and transfer of rights

and interests of this Agreement in accordance with the Loan Agreement. Upon the execution and delivery of the Loan Agreement and this Agreement, references to the Provider in the operative provisions of this Agreement that relate to rights and interests of the Provider (including, without limitation, the right to exercise remedies upon the occurrence of an Event of Default under Section 11.1) shall be deemed to be references to the Lender, as assignee or subsequent assignee of the Provider; provided that nothing herein affects the Provider's obligation to continue to perform its duties and obligations in accordance with this Agreement. The

## ARTICLE XVI REQUIRED CUSTOMER TERMS

(ii) If the Provider, without reasonable cause, fails to make any payment to its Subcontractors and material suppliers within fourteen (14) Days after receipt of payment under this Agreement, the Provider shall pay to its Subcontractors and material suppliers,

The report will require the Subcontractor to affirm that (a) its invoice to the Provider was included in the payment request submitted by the Provider to the Customer and (b) the Subcontractor has not, at the time of the report, received payment from the Provider for that invoice. The report must reference the payment (voucher) number posted on-line by the Customer in the notice of the payment to the Provider. Subcontractors are hereby reminded that per Chapters 1-21, "False Statements," and 1-22, "False Claims," of the MCC, making false statements or claims to the Customer are violations of law and subject to a range of penalties including fines and debarment.

Section 16.2 Whistleblower Protection. The Provider shall not take any retaliatory action against any Subcontractor for reporting non-payment pursuant to Section 16.1. Any such retaliatory action is an event of default under this Agreement and is subject to the remedies set forth herein, including termination. In addition to those remedies, any retaliatory action by the Provider may result in the Provider being deemed non-responsible for future Customer contracts or, if, in the sole judgment of the Customer, such retaliatory action is egregious, the Customer may initiate debarment proceedings against the contractor. Any such debarment shall be for a period of not less than one year.

Section 16.3 Liquidated Damages for Failure to Promptly Pay. Much of the Customer's economic vitality derives from the success of its small businesses. The failure by contractors to pay their subcontractors in a timely manner, therefore, is clearly detrimental to the Customer. Inasmuch as the actual damages to the Customer due to such failure are uncertain in amount and difficult to prove, the Provider and the Customer agree that the Customer may assess liquidated damages against contractors who fail to meet their prompt payment requirements. Such liquidated damages shall be assessed to compensate the Customer for any and all damage incurred due to the failure of the contractor to promptly pay its subcontractors, and does not constitute a penalty. Any and all such liquidated damages collected by the Customer shall be used to improve the administration and outreach efforts of the Customer's Small Business Program.

Section 16.4 Action by the Customer. Upon receipt of a report of a failure to pay, the Customer will issue notice to the Provider and provide the Provider with an opportunity to demonstrate reasonable cause for failing to make payment within applicable period set forth in this Agreement. The Customer shall determine whether any cause for nonpayment provided by Provider is reasonable. In the event that the Provider fails to demonstrate reasonable cause for

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failure to make payment, the Customer shall notify the Provider that it will assess liquidated damages. Any such liquidated damages will be assessed according to the following schedule:

First Unexcused Report: Second Unexcused Report: Third Unexcused Report: Fourth Unexcused Report:  
\$50 \$100 \$250 \$500

Section 16.5 Business Enterprises Owned by People With Disabilities (BEPD). It is the policy of the Customer that businesses certified as a business enterprise owned by people with disabilities ("BEPD") in accordance with MCC Section 2-92-337 et seq., Regulations Governing Certification of BEPDs, and all other regulations promulgated under the aforementioned sections of the MCC; shall have the full and fair opportunities to participate fully in the performance of this Agreement. The Provider shall not discriminate against any person or business on the basis of disability, and shall take affirmative actions to ensure BEPDs shall have full and fair opportunities to compete for and perform subcontracts for supplies or services. Failure

shall have full and fair opportunities to compete for and perform subcontracts for supplies or services. Failure to carry out the commitments and policies set forth herein shall constitute a material breach of this Agreement and may result in the termination of this Agreement or such remedy as the Customer deems appropriate.

#### Section 16.6 Wages.

(a) Living Wage Ordinance. MCC Sect. 2-92-610 provides for a living wage for certain categories of workers employed in the performance of contracts with the Customer, specifically non-Customer 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 MCC Sect. 2-92-610 and regulations promulgated thereunder:

i) if (1) the Provider has 25 or more full-time employees, and (2) if at any time during the performance of this Agreement the Provider 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 the Provider's obligation to pay, and to assure payment of, the Base Wage (as defined herein) will begin at any time during Term when the conditions set forth in (1) and (2) above are met, and will continue thereafter until the end of the Term.

ii) As of July 1, 2013, the Base Wage is \$11.78. The current rate can be found on the Customer's Department of Procurement Services' website. Each July 1st the Base Wage will be adjusted, using the most recent federal poverty guidelines for a family of four (4) 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 (4) divided by 2000 hours or the current base wage, whichever is higher. At all times during the term of this Agreement, the Provider and all Subcontractors must pay the Base Wage (as adjusted in accordance with the above). If the payment of prevailing wages is required

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for work or services done under this Agreement, and the prevailing wages for Covered Employees are higher than the Base Wage, then the Provider must pay the prevailing wage rates.

iii) The Contractor must include provisions in all subcontracts requiring its Subcontractors to pay the Base Wage to Covered Employees. The Provider agrees to provide the Customer with documentation acceptable to the Chief Procurement Officer of the Customer (the "CPO") demonstrating that all Covered Employees, whether employed by the Provider or by a Subcontractor, have been paid the Base Wage, upon the Customer's request for such documentation. The Customer may independently audit the Provider and/or Subcontractors to verify compliance herewith.

iv) 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 Customer contract or subcontract for up to three years.

v) Not-for-profit Corporations: If the Provider 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 above do not apply.

b) Prevailing Wage Rates. This Agreement calls for the construction of a "public work" within the meaning of Illinois Prevailing Wage Act, 820 ILCS 130/ 01 et seq. (the "Act"); the Act requires contractors and

meaning of Illinois Prevailing Wage Act, 820 ILCS 150/01 et seq. (the "Act"), the Act requires contractors and subcontractors to pay laborers, workers and mechanics performing services on public works projects no less than the current "prevailing rate of wages" (hourly cash wages plus amount for fringe benefits) in the county where the work is performed. The Illinois Department of Labor (the "Department") publishes the prevailing wage rates on its website at <<http://www.state.il.us/agency/idol/rates/rates.HTM>>. The Department revises the prevailing wage rates and the Provider and its Subcontractors have an obligation to check the Department's web site for revisions to prevailing wage rates. For information regarding current prevailing wage rates, please refer to the Department's website. All contractors and subcontractors rendering services under this Agreement must comply with all requirements of the Act, including but not limited to, all wage requirements and notice and record keeping duties.

As a condition of making payment to the Provider, the Customer may require the Provider or its Subcontractors to submit an affidavit to the effect that not less than the prevailing hourly wage rate is being paid to laborers, mechanics, and other workmen employed on this Agreement in accordance with Illinois or federal law, as applicable.

c) Multi-Project Labor Agreement, The Customer has entered into the Multi-Project Labor Agreement (the "PLA") with various trades regarding projects involving construction, demolition, maintenance, rehabilitation, and/or renovation work, as described in the PLA, a copy of which may be found on the Customer's website at:

<[http://www>. cityofchicago.org/dam/city/depts/dps/RulesRegulations/Multi-Agreement-PLAandSignatoryUnions.pdf](http://www.cityofchicago.org/dam/city/depts/dps/RulesRegulations/Multi-Agreement-PLAandSignatoryUnions.pdf)>

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To the extent that this Agreement involves a project that is subject to the PLA, the Provider acknowledges familiarity with the requirements of the PLA and its applicability to any work under this Agreement, and shall comply in all respects with the PLA.

Section 16.7 Business Relationships With Elected Officials. Pursuant to MCC Section 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 Customer 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 (12) 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 Sect. 2-156-030 by any elected official with respect to this Agreement will be grounds for termination of this Agreement. The term financial interest is defined as set forth in MCC Chapter 2-156.

Section 16.8 MCC 1-23 and 720 ILCS 5/33E Bribery, Debts, and Debarment Certification.

a) The Provider or each joint venture partner, if applicable, warrants that the Provider or each joint venture partner, its agents, employees, officers and any Subcontractors (a) have not been engaged in or been convicted of bribery or attempted bribery of a public officer or employee of the Customer, the State of Illinois, any agency of the federal government or any state or local government in the United States or engaged in or been convicted of bid-rigging or bid-rotation activities as defined in this section as required by the Illinois Criminal Code; (b) do not owe any debts to the State of Illinois, in accordance with 65 ILCS 5/11 -42.1 -1 and (c) are not presently debarred or suspended; Certification Regarding Environmental Compliance; Certification Regarding Ethics and Inspector General; and Certification Regarding Court-Ordered Child Support Compliance.

b) The Provider, in performing under this Agreement shall comply with MCC Section 2-92-320, as follows:

(i) No person or business entity shall be awarded a contract or sub-contract if that person or business entity: (a) has been convicted of bribery or attempting to bribe a public officer or employee of the Customer, the State of Illinois, or any agency of the federal government or of any state or local government in the United States, in that officers or employee's official capacity; or (b) has been convicted of agreement or collusion among bidders or prospective bidders in restraint of freedom of competition by agreement to bid a fixed price, or otherwise; or (c) has made an admission of guilt of such

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conduct described in (a) or (b) above which is a matter of record but has not been prosecuted for such conduct.

ii) For purposes of this Section, where an official, agent or employee of a business entity has committed any offense under this section on behalf of such an entity and pursuant to the direction or authorization of a responsible official thereof, the business entity will be chargeable with the conduct.

iii) One business entity will be chargeable with the conduct of an affiliated agency. Ineligibility under this section will continue for three (3) years following such conviction or admission. The period of ineligibility may be reduced, suspended, or waived by the CPO under certain specific circumstances. Reference is made to MCC Section 2-92-320 for a definition of affiliated agency, and a detailed description of the conditions which would permit the CPO to reduce, suspend, or waive the period of ineligibility.

Section 16.9 Federal Terrorist (No-Business) List. The Provider warrants and represents that neither the Provider nor an Affiliate, 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 Customer may not do business under any applicable law, rule, regulation, order or judgment.

For purposes of this Section 16.9, "Affiliate" means a person or entity which directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the Provider. A person or entity will be deemed to be controlled by another person or entity if it is controlled in any manner

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.

Section 16.10 Inspector General and Legislative Inspector General. It is the duty of any bidder, proposer or the Provider, all Subcontractors, every applicant for certification of eligibility for a Customer contract or program, and all officers, directors, agents, partners and employees of any bidder, proposer, the Provider, all Subcontractors or such applicant to cooperate with the Inspector General or the Legislative Inspector General in any investigation or hearing, if applicable, undertaken pursuant to MCC Chapter 2-56 or 2-55, respectively. The Provider understands and will abide by all provisions of MCC Chapter 2-56 and 2-55. All Subcontracts must inform Subcontractors of this provision and require understanding and compliance with them.

Section 16.11 Governmental Ethics Ordinance 2-156. The Provider must comply with MCC Chapter 2-156, Governmental Ethics, including but not limited to MCC Section 2-156-120 pursuant to which no payment, gratuity or offer of employment will be made in connection with any Customer contract, by or on behalf of a Subcontractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a Subcontract or order. Any

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contract negotiated, entered into, or performed in violation of any of the provisions of this this Section will be voidable as to the Customer.

### Section 16.12 Restrictions on Business Dealings.

a) Conflicts of Interest. The Provider covenants that it presently has no interest and will not acquire any interest, direct or indirect, in any enterprise which would conflict in any manner or degree with the performance of the work, services or goods to be provided hereunder. The Provider further covenants that in its performance of this Agreement no person having any such interest shall be employed. If the Customer determines that the Provider does have such a conflict of interest, the Customer will notify the Provider in writing, stating the basis for its determination. The Provider will thereafter have 30 days in which to respond with reasons why the Provider believes a conflict of interest does not exist. If the Provider does not respond or if the Customer still reasonably determines a conflict of interest to exist, the Provider must terminate its interest in the other enterprise.

b) Prohibition on Certain Contributions, Mayoral Executive Order 2011-4. Neither the Provider or any person or entity who directly or indirectly has an ownership or beneficial interest in the Provider of more than 7.5% ("Owners"), spouses and domestic partners of such Owners, Provider'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 (Provider 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 Agreement or Other Contract, including while this Agreement or Other Contract is executory, (ii) the term of this Agreement or any Other Contract between Customer and Provider, and/or (iii) any period in which an extension of this Agreement or Other Contract with the Customer is being sought or negotiated. The Provider 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

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 Customer approached the Provider or the date the Provider approached the Customer, 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.

The Provider 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.

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

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constitutes a breach and default under this Agreement, and under any Other Contract for which no opportunity to cure will be granted. Such breach and default entitles the Customer 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.

If the Provider violates this provision or Mayoral Executive Order No. 2011-4 prior to award of this Agreement resulting from this specification, the CPO may reject the Provider's bid.

For purposes of this provision:

"Other Contract" means any agreement entered into between the Provider and the Customer that is (i) formed under the authority of MCC Chapter 2-92; (ii) for the purchase, sale or lease of real or personal property; or (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 Chapter 2-156, as amended.

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

Section 16.13 Debts Owed to the Customer: Anti-Scofflaw. MCC Sect. 2-92-380. Pursuant to MCC Section 2-92-380 and in addition to any other rights and remedies (including set-off) available to the Customer under this Agreement or permitted at law or in equity, the Customer will be entitled to set off a portion of the contract price or compensation due under the Agreement, in 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 the Provider to the Customer. For purposes of this Section, outstanding parking violation complaint means a parking ticket, notice of parking violation, or parking violation complaint on which no payment has been made or appearance filed in the Circuit Court of Cook County within the time specified on the complaint, and debt means a specified sum of money owed to the Customer for which the period granted for payment has expired. However no such debt(s) or outstanding parking violation complaint(s) will be offset from the contract price or compensation due under this Agreement if one or more of the following conditions are met:

a) The Provider has entered into an agreement with the Department of Revenue or other



i) The Provider has entered into an agreement with the Department of Revenue, or other appropriate Customer department, for the payment of all outstanding parking violation complaints and debts owed to the Customer and the Provider is in compliance with such agreement; or

ii) The Provider is contesting liability for or the amount of the debt in a pending administrative or judicial proceeding; or the contracting party has filed a petition in bankruptcy and the debts owed the Customer are dischargeable in bankruptcy.

#### Section 16.14 Shakman Accord.

(a) The Customer is subject to the May 31, 2007 Order entitled "Agreed Settlement Order and Accord" (the "Shakman Accord") and the June 24, 2011 "City of Chicago Hiring

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Plan" (the "City Hiring Plan") entered in *Shakman v. Democratic Organization of Cook County*, Case Ko 69 C 2145 (United States District Court for the Northern District of Illinois). Among other things, the Shakman Accord and the City Hiring Plan prohibit the Customer from hiring persons as governmental employees in non-exempt positions on the basis of political reasons or factors.

b) The Provider is aware that the Customer's policy prohibits Customer employees from directing any individual to apply for a position with the Provider, either as an employee or as a Subcontractor, and from directing the Provider to hire an individual as an employee or as a Subcontractor. Accordingly, the Provider must follow its own hiring and contracting procedures, without being influenced by Customer employees. Any and all personnel provided by the Provider under this Agreement are employees or Subcontractors of the Provider, not employees of the Customer. 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 Customer and any personnel provided by the Provider.

c) The Provider 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.

d) In the event of any communication to the Provider by a Customer employee or Customer official in violation of paragraph (b) above, or advocating a violation of paragraph (c) above, the Provider will, as soon as is reasonably practicable, report such communication to the Hiring Oversight Section of the Customer's Office of the Inspector General, and also to the head of the relevant Customer Department utilizing services provided under this Agreement. The Provider will also cooperate with any inquiries by IGO Hiring Oversight or the Shakman Monitor's Office related to this Agreement.

Section 16.15 No Waste Disposal in Public Way MCC 11-4-1 600(E). The Provider warrants and represents that it, and to the best of its knowledge, its Subcontractors have not violated and are not in violation

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 MCC (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;

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§11-4-1500 Treatment and disposal of solid or liquid; §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, the Provider'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 CPO. Such breach and default entitles the Customer to all remedies under this Agreement, at law or in equity.

This Section does not limit the Provider'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 Customer as grounds for the termination of this Agreement, and may further affect the Provider's eligibility for future contract awards.

Section 16.16 Duty to Report Corrupt or Unlawful Activity. It is the duty of the Provider to report to the Inspector General of the Customer, directly and without undue delay, any and all information concerning conduct which it knows or should reasonably know to involve corrupt or other unlawful activity by its employees or the employees of any of its Subcontractors, in connection with the performance of its work hereunder, or by any person dealing with the Customer which concerns the person's dealings with the Customer. Knowing failure to make such a report will be an event of default under this Agreement.

Section 16.17 MBE/WBE Program Participation and Goals. The rules, regulations, and forms for achieving MBE and WBE goals are set forth in the Special Conditions Regarding Minority Business Enterprise Commitment and Women Business Enterprise Commitment ("M/WBE Special Conditions") attached as Exhibit D to this Agreement.

## ARTICLE XVII MISCELLANEOUS

Section 17.1 Entire Agreement. This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof and reflects the prior agreements and commitments with respect thereto. There are no other oral understandings, terms or conditions and neither Party has relied upon any representation, express or implied, not contained in this Agreement.

Section 17.2 Exhibits. All exhibits and attachments referenced in this Agreement shall be incorporated into this Agreement by such reference and shall be deemed to be an integral part of this Agreement.

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Section 17.3 Amendments. No change, amendment or modification of this Agreement shall be valid or binding upon the Parties hereto unless such change, amendment or modification shall be in writing and duly executed by both Parties hereto. In no event shall the Provider and the Customer consent to any amendment, modification or change to this Agreement which has the effect of reducing the amount of payments payable by the Customer hereunder without the prior written consent of the Lender, including any adjustment to the Baseline as provided in Section 6 of Exhibit B attached hereto as the result of a Cause for Adjustment (as defined in such Section) if such adjustment would, if implemented, reduce the Expected Savings Production.

Section 17.4 Captions. The captions contained in this Agreement are for convenience and reference only and in no way define, describe, extend and or limit the scope of intent of this Agreement or the intent of any provision contained herein.

Section 17.5 Severability. The invalidity of one or more phrases, sentences, clauses, sections or articles contained in this Agreement shall not affect the validity of the remaining portions of this Agreement so long as the material purposes of this Agreement can be determined and effectuated.

Section 17.6 Notices. Any notice, demand, offer, or other instrument required or permitted to be given pursuant to this Agreement shall be in writing signed by the Party giving such notice and shall be hand delivered or sent by registered letter, overnight courier or electronic mail (if mutually acceptable procedures are developed) to the other Party at such address as set forth below.

- (a) If delivered to the Customer: City of Chicago  
Department of Finance  
121 North LaSalle Street, 7th Floor  
Chicago, Illinois 60602  
Attention: Deputy Comptroller, Financial Policy

with a copy to:

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

- (b) If delivered to the Provider: Chicago Infrastructure Trust  
222 West Merchandise Mart Suite 1212  
Chicago, Illinois 60657 Attention: Executive  
Director Email: [ssb@shapechicago.org](mailto:ssb@shapechicago.org)  
<<mailto:ssb@shapechicago.org>>

And to: Public Building Commission of Chicago  
50 West Washington, Suite 200 Chicago, IL  
60602 Attention: E-mail:

Each Party shall have the right to change the place to which notice shall be sent or be delivered by similar notice sent or like manner to the other Party. The effective date of any notice issued pursuant to this Agreement shall be as of the addressee's receipt of such notice.

Section 17.7 No Waiver. Any failure of any Party to enforce any of the provisions of this Agreement or to require compliance with any of its terms at any time during the pendency of this Agreement shall in no way affect the validity of this Agreement, or any part hereof, and shall not be deemed a waiver of the right of such Party thereafter to enforce any and each such provision.

Section 17.8 Successors and Assigns. This Agreement shall be binding upon the Parties hereto, their successors and permitted assigns.

Section 17.9 No Joint Venture or Partnership. The relationship between the Provider and the Customer shall not be that of partners, agents, or joint ventures for one another, and nothing contained in this Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including federal income tax purposes. The Provider and the Customer, in performing any of their obligations hereunder, shall be independent contractors or independent parties and shall discharge their contractual obligations at their own risk.

Section 17.10 Disclaimer. The Provider makes no representation or warranty with respect to the Customer's treatment of any federal or state tax Laws, any applicable accounting treatment or conventions or the assessment of any rating agency in connection with this Agreement, the other Documents, the Project or any particular ECM.

Section 17.11 Further Assurances. The Provider and the Customer agree to provide such information, execute and deliver any instruments and documents, and to take such other actions as may be necessary or reasonably requested by the other Party that are not inconsistent with the provisions of this Agreement and that do not involve the assumptions of obligations other than those provided for in this Agreement, in order to give full effect to this Agreement and to carry out the intent of this Agreement.

Section 17.12 Priority. In the event of any conflict or inconsistency among the various provisions of this Agreement (including the attachments thereto and any other incorporated documentation), the provision imposing the more stringent standard or requirement or requiring a more expansive scope of supply shall prevail.

Section 17.13 Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF ILLINOIS.

Section 17.14 Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT -AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 17.15 Counterparts. This Agreement may be signed in any number of counterparts and each counterpart shall represent a fully executed original as if signed by both Parties.

[Remainder of Page Intentionally Left Blank] [Signature

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IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date first -  
written above

written above.

CHICAGO INFRASTRUCTURE TRUST

By: oUc^ y^j&y£~~- -  
Stephen S. Beifler  
Chief Executive Officer & Executive Director

CITY OF CHICAGO

By:  
Lois A. Scott  
Chief Financial Officer

Approved for the Customer for Form and Legal Sufficiency

*{Signature Page of Energy Services Agreement - 2FM/Ameresco}*

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date first

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date first written above.

CHICAGO INFRASTRUCTURE TRUST

By:

Stephen S. Beitler

Chief Executive Officer & Executive Director CITY OF

CHICAGO

By:

Lois A. Scott y Chief Financial Officer

*[Signature Page of Energy Services Agreement - 2FM/Ameresco]*

Approved for the Customer for Form and Legal Sufficiency

**Exhibit A**

## Description of Facilities and Project

### **Section I. Overview Description of the Project.**

The Project is a portion of Retrofit One, the first phase of Retrofit Chicago, a comprehensive effort to increase energy efficiency in public buildings. It is designed to enlist the expertise of energy service companies to identify, design, provide, implement and guarantee the performance of energy-related capital improvements to a variety of Customer-owned public buildings. The Energy Conservation Measures (ECMs) described below have been selected to achieve long term savings that can be measured & verified. The Provider will provide turn-key implementation of each and every ECM listed below including commissioning, training of Customer personnel on the operating and maintenance, and ongoing Measuring and Verification (M&V) services to document and confirm the realization of Savings, as described in Exhibit B.

### **Section II. Description of ECMs by Facility**

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115 S. Pulaski Rd.  
SOUTH CHICAGO LIBRARY  
BESSIE COLEMAN LIBRARY  
WOODSON REGIONAL LIBRARY  
6TH DISTRICT POLICE STATION  
11001S. Indiana Ave.  
HAROLD WASHINGTON LIBRARY  
SOUTH SHORE LIBRARY  
M- <, JR. BRANCH LIBRARY  
CLEARING LIBRARY  
WRIGHTWOOD - ASHBURN LIBRARY  
MCKINLEY PARK LIBRARY  
3104 N. Narragansett Ave.  
NORTHTOWN LIBRARY  
GEORGE HALL LIBRARY  
11071 S.Hoyne Ave.  
THURGOOD MARSHALL LIBRARY  
LINCOLN BELMONT LIBRARY  
NEAR NORTH BRANCH LIBRARY  
POLICE TRAINING ACADEMY  
NPV ADMIN/MENTAL HEATH-BLDG. C  
MOUNT GREENWOOD LIBRARY  
CHICAGO CULTURAL CENTER  
2111 W. Lexington St.  
14TH DISTRICT POLICE STATION  
CENTRAL OFFICE (CDOT)  
18TH DISTRICT POLICE STATION  
20TH DISTRICT POLICE STATION  
LOOP OPERATIONS OFFICES (DSS)  
AUSTIN IRVING LIBRARY '  
BUDLONG WOODS LIBRARY  
OSS STREET OPERATIONS  
GOLDBLATT'S BUILDING  
WATER DEPT. / CENTRAL DISTRICT  
AVALON BRANCH LIBRARY

## Section ELI Detailed Description of ECMs

The Work under this Agreement, including the Detailed Description of ECMs described in this Section III of Exhibit A, specifically excludes Hazardous Material abatement (including asbestos abatement).

A-2

### Central District Office (Water)

ECM-1: Interior Lighting Upgrade ^ \_ \_

Existing fixtures will be re-lamped, retro-fitted, or replaced with new fixtures as noted in lighting schedule. Occupancy controls will be added in spaces with variable occupancy.

9	5
4	4
4	4
1	1
4	4
6	6
1	1

### ECM-3: Weatherize Building Envelope

The Provider shall weatherize the building envelope. Scope of work includes:

- Quantity of ten (10) exterior doors will be weather-stripped with formed and angled sponge wrapped in vinyl.

- Quantity of seven (7) over-head doors will be weather-stripped on all four (4) sides with formed and angled sponge wrapped in vinyl.
- Quantity of four (4) window air-conditioning units will be weather stripped with formed and angled sponge wrapped in vinyl, and have a flexible cover installed.

### ECMs 8 & 9: Demand Control Garage Ventilation Motion Sensor and Timing Controls for Garage Doors

The Provider shall install a garage demand control ventilation system, and garage door motion sensors in the garage to only run the exhaust fan when the garage is occupied by vehicles. Scope of work includes:

- Furnish and install new Carbon Monoxide (CO) and Nitrogen Dioxide (N02) detection and ventilation system
- Furnish and install one (1) main control panel. Panel to be Air Test model CT-7232 or equal.
- Furnish and install ten (10) CO sensors and ten (10) N02 sensors. Wire sensors back to main control panel. Wiring to be home-run configuration. Sensors to space to allow approximately 5000 - 7500 square feet per sensor.

• Wire main control panel to six (6) roof mounted exhaust fans and four (4) make up air units. Install

- » wire main control panel to six (6) roof-mounted exhaust fans and four (4) make-up air units. Install relays to start exhaust fans when CO and NO2 levels in space are above set point.
- Furnish and install motion detectors to control garage door operation. Wire motion detectors to garage door openers.
- Provide power for controls.
- Test operation of CO/NO2 detection system and garage door motion sensors after installation.

#### **ECM-10: Replace Steam Traps**

The Provider shall replace the steam traps.

- Replace existing steam traps at steam coils:
  - Quantity of (4) ceiling-hung heating units
  - Quantity of six (6) unit heaters
  - Quantity of one (1) steam to hot water heat exchanger
  - Quantity of one (1) multi-zone air handler
- New traps to match size and style of existing traps

#### **Legler Library**

##### **ECM-3: Weatherize Building Envelope**

The Provider shall weatherize the building envelope as noted.

- Nine (9) exterior doors will be weather-stripped with formed and angled sponge wrapped in vinyl.

#### **A-4**

##### **ECM-4: Refurbish Temperature Control and HVAC Systems**

The Provider shall refurbish and retrofit the existing temperature control systems. In conjunction with the new controls, the Provider shall refurbish the existing HVAC equipment as noted below.

- Demo existing head end control boards
- Furnish and install new Direct Digital Control system to control existing HVAC equipment.
- Program sequences of operation to allow set point control, setback and scheduling.
- New DDC system will speak Bacnet or Lonworks.
- Demo existing control valve actuators. Furnish and install new control valve actuators. Calibrate actuator signal to control valve position:
  - One (1) AHU chilled water valve
  - One (1) AHU heating hot water valve
  - Two (2) 2-pipe change-over diverting valves
- Test and refurbish operation of existing temperature sensors, thermostats and actuators, and re-calibrate. Replace end devices as required.
- Wire low voltage end devices such as temperature sensors, actuators to controllers.
- Provide power for controls.

- System to be installed per PBC Temperature Control Specification.
- Test and refurbish operation of temperature control and safeties on hot water boilers.
- Test and refurbish operation of cooling temperature control and safeties on water-cooled chiller
- Test and refurbish operation of condenser water temperature control and safeties on cooling tower
- Stroke existing dampers open and closed to test operation. Adjust position, reconnect linkages, replace edge seals, and lubricate rods.
- Stroke existing control valves fully open and fully closed to verify operation.
- Test and refurbish operation of all fan and pump starters.
- Chemically treat and clean cooling tower fill. Clean basin and seal any leaks. Equipment

included in scope:

- One (1) air handling unit:
- Chilled water cooling coil with 3-way control valve
- Hot water heating coil with 3-way control valve
- Chilled water booster pump
- OA, RA, and EA dampers
- Exhaust / return fan
- One boiler controller for seven (7) modular hot water boilers
- Two (2) combustion air dampers

#### A-5

- Two (2) heating hot water pumps
- One (1) water-cooled chiller -
- One (1) cooling tower fan status
- Two (2) chilled water pumps
- « Two (2) condenser water pumps
- Two (2) refrigeration ventilation dampers
- © One (1) chilled / hot water pump serving 2-pipe change-over fan coils
- Two (2) 2-pipe change-over diverting valves
- Ten (10) space temperature sensors for averaging

## SOUTH CHICAGO LIBRARY

### ECM-2: Weatherize Building Envelope

The Provider shall weatherize the building envelope as noted.

- Four (4) exterior doors will be weather-stripped with formed and angled sponge wrapped in vinyl.
- Approximately one hundred four (104) linear feet of exterior window framing will be caulked.

### **ECM-3: Upgrade Controls to Direct Digital Controls**

The Provider shall furnish and install a new Direct Digital Control system. In conjunction with the new controls, the Provider shall refurbish the existing FTVAC equipment as noted in the work scope.

- Disconnect and abandon existing controls in place. Cap pneumatic lines. Demo space thermostats.
- Furnish and install new Direct Digital Control system to control existing HVAC equipment.
- Program sequences of operation to allow set point control, setback and scheduling.
- New DDC system will speak Bacnet or Lonworks.
- Integrate new DDC system into Global Building Management System.
- Furnish and install new end devices.
- Furnish and install new control valves.
- Wire low voltage end devices such as temperature sensors, actuators to controllers. <» Provide power for controls.
- Furnish and install new boiler 3-way valve. Program hot water temperature reset sequence into new DDC controls. Reset sequence to be used for night setback.
- Test and refurbish cooling temperature control and safeties of existing condensing unit

### **A-6**

» Test and refurbish heating temperature control and safeties of existing boilers

- Stroke all dampers fully open and closed to confirm operation. Lubricate damper rods, adjust position, re-connect disconnected linkages, and replace edge seals.
- Test and refurbish operation of all fan and pump starters.
- Re-connect all multi-zone, outside, return and exhaust air damper linkages to actuators.
- Replace one (1) bad motor on cabinet unit heater.
- Controls to comply with PBC Temperature Control Specification. Equipment included in DDC scope:
  - Multi-zone AHU
    - DX cooling
    - Hot water heating
    - Eight (8) zone dampers
  - Outside, exhaust, and return air dampers
  - One (1) return / exhaust fan
  - One (1) condensing unit with (2) stages
  - Three (3) hot water boilers
  - Two (2) primary hot water pumps
  - « Two (2) secondary hot water pumps
  - One (1) 3-way valve for hot water temperature control

## BESSIE COJLEMANLIBRARY

### ECM-2: Weatherize Building Envelope

The Provider shall weatherize the building envelope as noted.

- Three (3) exterior doors will be weather-stripped with formed and angled sponge wrapped in vinyl.

### ECM-4: Refurbish existing HVAC system and DDC control system.

The Provider shall replace the existing Robert Shaw front end DDC with a new front end system, including new control boards and programming logic. The existing end devices will be re-used where possible, and replaced where required. In conjunction with the new controls, the Provider shall refurbish (as noted below) the existing HVAC equipment..

- Disconnect and demo existing front end. DDC controls, including logic boards and panels. Demo space thermostats.
- » Furnish and install a new DDC front end control system to control existing HVAC equipment.
- Furnish and install new logic boards large enough to accommodate all points.

A-7

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- Program sequences of operation to allow set point control, setback and scheduling.
- New DDC system must speak Bacnet or Lonworks.
- Test and refurbish operation of control end devices such as actuators, sensors, relays and space thermostats.
- Stroke control valves fully open and closed to test operation.
- Wire end devices to controllers. Provide power for end devices and controllers.
- Test and refurbish operation of two (2) hot water boilers temperature control and safeties.
- Test and refurbish operation of two (2) condensing units' temperature control and safeties.
- Stroke all dampers fully open and closed to confirm operation. Lubricate damper rods, adjust position, re-connect disconnected linkages, and replace edge seals.
- Test and refurbish operation of all fan and pump starters.
- New controls to comply with PBC Temperature Control Specification. Equipment in

DDC scope:

- Two (2) single-zone AHUs
  - DX cooling
  - Hot water heating
- o Outside, exhaust and return air dampers
- « Two (2) condensing units with two (2) stages each
- Two (2) hot water boilers
- » Two (2) primary hot water pumps

- Two (2) secondary Hot water pumps

#### **ECM-6: Repair and Seal Air Handler**

The Provider shall repair and seal the air handlers to reduce the leakage.

- Repair and seal air handlers to prevent leakage.
- Furnish and install sheet metal pieces and caulk to close gaps, holes and openings in exterior casing, and around coils and dampers.

#### **ECM-8: Install Hot Water Chemical Treatment System**

The Provider shall furnish and install a new chemical treatment system for the hot water loop.

- Furnish and install new chemical treatment system for hot water loop.
- Provide one (1) years' worth of chemicals.

#### **Woodson Regional Library ECM-1: Interior**

##### **Lighting Upgrades**

### **A-8**

The Provider shall upgrade the interior lighting system. Existing fixtures will be re-lamped, retro-fitted, or replaced as noted in schedule. Occupancy controls will be added in spaces with variable occupancy.

1	1
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9	9
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1	1
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4	4
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4	4
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#### **ECM-7: Repair and Seal Air Handlers**

The Provider shall repair and seal the two (2) multi-zone and one (1) single zone air handling units.

- Repair and seal two (2) multi-zone and one (1) single zone air handling units to prevent leakage.
- Furnish and install sheet metal pieces and caulk to close gaps, holes, and openings in exterior casing, and around coils and dampers.
- Replace flex connectors at duct connections to air handlers.

A-9

#### **6<sup>1</sup> District Chicago Police Station**

##### **ECM-1: Interior Lighting Upgrade Scope of Work**

The Provider shall upgrade the interior lighting system. Existing fixtures will be re-lamped, retrofitted, or replaced as noted in lighting schedule. Occupancy controls will be added in spaces with variable occupancy. .

Retrofit exit sign to 4 W, Light-Emitting Diode (LED), approved for use in the city of Chicago

T-8 fluorescent fixture with electronic ballast: 2-foot, 3-lamp PLL40 40 W

T-8 fluorescent fixture with electronic  
ballast: 4-foot, 1-lamp 32 W

T-8 fluorescent fixture with electronic  
ballast: 4-foot, 2-lamp 32 W

T-8 fluorescent fixture with electronic ballast: 4-foot, 3-lamp 32 W

Incandescent lamps: 20 W

Re-lamp existing fixture with PLL40 25 W lamps

Re-lamp existing fixture with 25 W lamps

Re-lamp existing fixture with 25 W lamps

Re-lamp existing fixture with 25 W lamps

Re-lamp to Light-Emitting Diode (LED) (1383

Replacement: 2 W

#### **Pullman Library**

##### **ECM-3: Weatherize Building Envelope**

The Provider shall weatherize the building envelope as noted.



- Three (3) exterior doors that will be weather-stripped with formed and angled sponge wrapped in vinyl.

#### ECM-4: Upgrade Controls to Direct Digital Controls/ Refurbish Existing HVAC

##### Systems

The Provider shall furnish and install a new Direct Digital Control system. In conjunction with the new controls, the Provider shall refurbish the existing HVAC equipment (as noted below).

- Disconnect and abandon existing controls in place. Demo space thermostats.
- o Furnish and install new Direct Digital Control system to control existing HVAC equipment.
- Program sequences of operation to allow set point control, setback and scheduling.
- Program multi-zone hot deck and cold deck ambient reset and lockout sequence.

#### A-10

® New DDC system will speak Bacnet or Lonworks.

- integrate new DDC system into Global Building Management System.
- Furnish and install new control valves.
- Wire low voltage end devices such as temperature sensors, actuators to controllers, etc.
- Provide power for controls.
- Test and refurbish operation of hot water boiler temperature control and safeties.
- Test and refurbish operation of cooling system temperature control and safeties.
- Test and refurbish operation of all fan and pump starters.
- Stroke all dampers fully open and closed to confirm operation. Lubricate damper rods, adjust position, re-connect disconnected linkages, and replace edge seals.
- Controls to comply with PBC Temperature Control Specification.

##### Equipment in scope:

- Two (2) multi-zone AHUs, each with:
  - DX Cooling Coil
  - Hot Water Heating Coil with face/bypass damper
  - Outside, Return and Exhaust air dampers
- Five (5) zones
- Two (2) return / exhaust fans
- Two (2) indoor compressors
- Two (2) outdoor condensing units
- Two (2) hot water boilers with three (3) sections each
- Two (2) hot water distribution pumps

**Harold Washington Library ECM-1:**

**Interior Lighting Upgrades**

The Provider shall upgrade the interior lighting system. Existing fixtures will be re-lamped, retro-fitted, or replaced as noted in lighting schedule. Occupancy controls will be added in spaces with variable occupancy.

A-11

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1	1
1	1
9	9
1	1
6	6

**ECM-2: Weatherize Building Envelope**

The Provider shall weatherize the building envelope as noted.

- Twenty-eight (28) exterior doors will be weather-stripped with formed and angled sponge wrapped in vinyl.

**ECM-4: Retro-Commission existing DDC control system.**

The Provider shall retro-commission the Direct Digital Control system. © Test operation of existing DDC control system points and operation in conjunction with testing of field devices.

- Testing will be done concurrently at the building automation system (BAS) computer

- Testing will be done concurrently at the building automation system (BAS) computer interface, and at the field devices themselves.
- Program existing DDC control system as required to allow scheduling and setback of HVAC system components.
- Existing HVAC equipment and points controlled by the existing DDC system will be retro-commissioned, including:
  - Chilled water system: Chillers, pumps, cooling towers, pumps, and plate heat exchanger

## A-12

- Air handling system: Air handlers including supply and return fans, dampers, coil control valves, fan starters, and inlet vanes.
- VAV terminal units.

### South Shore Library

#### ECMs-3&4: Upgrade Controls to Direct Digital Controls/Refurbish HVAC

The Provider shall furnish and install a new Direct Digital Control system.

- Disconnect and abandon existing controls in place. Demo space thermostats. Cap pneumatic lines.
- Furnish and install new Direct Digital Control system to control existing HVAC equipment.
- Program sequences of operation to allow set point control, setback and scheduling.
- Program multi-zone hot deck and cold deck ambient reset and lockout sequence.
- New DDC system will speak Bacnet or Lonworks.
- Integrate new DDC system into Global Building Management System.
- Furnish, install, and wire low voltage end devices such as temperature sensors, actuators to controllers.
- Provide power for end devices.
- Furnish and install new wireless thermostats for the multi-zone and single zone air handlers, in locations of existing thermostats. Include routers and repeaters for communication. Integrate wireless thermostats to BMS and GBMS.
- Test and refurbish operation of hot water boiler system temperature control and safeties.
- Test and refurbish operation of temperature control and safeties on existing condensing units.
- Stroke all dampers fully open and closed to confirm operation. Lubricate damper rods, adjust position, re-connect disconnected linkages, and replace edge seals.
- Test and refurbish operation of multi-zone and single zone air handler temperature control and safeties.
- Test and refurbish operation of all fan and pump starters.
- Controls to comply with PBC Temperature Control Specification. Equipment in scope:
  - o (1) Multi-zone Air Handler with:
    - DX Cooling Coil
    - Hot water Heating Coil
    - Outside, Return and Exhaust air dampers
    - Five (5) zone dampers
  - (1) Single-zone Air Handler with:

- DX Cooling Coil
- Hot water Heating Coil

A-13

- Outside, Return and Exhaust air dampers
- (2) Return/Exhaust Fans
- » (2) Condensing units
- (3) Heating hot water boilers with circulation pumps
- (2) Secondary hot water distribution pumps

**Martin Luther King, Jr. Branch Library**

**ECM-5: Upgrade Controls to Digital/Refurbish HVAC**

The Provider shall furnish and install a new Direct Digital Control system. In conjunction with the new controls, the Provider shall refurbish the existing HVAC equipment.

- o Disconnect and abandon existing controls in place. Cap pneumatic lines. Demo space thermostats.
- o Furnish and install new Direct Digital Control system to control existing HVAC equipment.
  - Program sequences of operation to allow set point control, setback and scheduling.
  - New DDC system must speak Bacnet or Lonworks.
  - Integrate new DDC system into Global Building Management System.
  - Furnish and install new end devices.
  - Provide power for controls.
  - Wire low voltage end devices such as temperature sensors, actuators to controllers.
  - Test and refurbish cooling temperature control and safeties of existing compressors and condensers
  - Test and refurbish heating temperature control and safeties of existing boilers.
  - Test and refurbish operation of all fan and pump starters.
  - Stroke all dampers fully open and closed to confirm operation. Lubricate damper rods, adjust position, re-connect disconnected linkages, and replace edge seals.
  - Controls to comply with PBC Temperature Control Specification. Equipment in scope
- Three (3) heating hot water boilers
- Two (2) heating hot water circulation pumps
- One (1) multi-zone air handling unit
  - DX Cooling
  - Hot Water Heating
  - Six (6) Zone Dampers
  - Outside, return and exhaust air dampers » One (1) air-

- Outside, return, and exhaust air dampers » One (1) air-cooled condensing unit
- e One (1) exhaust / return fan

A-14

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## Clearing Library

### ECM-3: Weatherize Building Envelope

The Provider shall weatherize the building envelope as noted.

- Seven (7) exterior doors will be weather-stripped with formed and angled sponge wrapped in vinyl.
- One (1) interior door will be weather-stripped with formed and angled sponge wrapped in vinyl.
- Approximately one hundred forty eight (148) linear feet of exterior window framing will be caulked.

### ECM-5: Upgrade Controls to Direct Digital Controls/Refurbish HVAC

The Provider shall furnish and install a new Direct Digital Control system. In conjunction with die new controls, the Provider shall refurbish the existing HVAC equipment as noted below.

- Disconnect and abandon existing controls in place. Demo space stats.
- Furnish and install new Direct Digital Control system to control existing HVAC equipment.
- Program sequences of operation to allow set point control, setback and scheduling.
- Program multi-zone hot deck and cold deck ambient reset and lockout sequence.
- New DDC system must speak Bacnet or Lonworks.
- Integrate new DDC system into Global Building Management System.
- Furnish and install new control valve actuators.
- Furnish and install new end devices.
- Wire low voltage end devices such as temperature sensors, actuators to controllers.
- Provide power for controls.
- Test and refurbish cooling temperature control and safeties of existing compressors and condenser.
- Test and refurbish heating temperature control and safeties of existing boilers.
- » Stroke all dampers fully open and closed to confirm operation. Lubricate damper rods, adjust position, re-connect disconnected linkages, and replace edge seals.
- Stroke all control valves fully open and closed to confirm operation.
- Test and refurbish operation of all fan and pump starters.
- Controls to comply with PBC Temperature Control Specification. Equipment in

DDC scope:

- One (1) multi-zone AHU
  - DX cooling

- Hot water heating

#### A-15

- Six (6) zone dampers
- Outside, exhaust, and return air dampers
- One (1) return / exhaust fan
- Two (2) indoor compressors
- One (1) outdoor air-cooled condenser
- Four (4) hot water boilers
- Four (4) primary hot water pumps
- » Two (2) AHU hot water pumps
- o Two (2) baseboard hot water pumps

### Wrightwood-Ashburn Branch Library

#### ECM-4: Upgrade Controls to Direct Digital Controls/Refurbish HVAC

The Provider shall furnish and install a new Direct Digital Control system. In conjunction with the new controls, the Provider shall refurbish the existing HVAC equipment.

- Disconnect and abandon existing controls in place. Demo space thermostats.
- Furnish and install new Direct Digital Control system to control existing HVAC equipment.
- Program sequences of operation to allow set point control, setback and scheduling.
- Program multi-zone hot deck and cold deck ambient reset and lockout sequence.
- New DDC system will speak Bacnet or Lonworks.
- Integrate new DDC system into Global Building Management System.
- Furnish and install new control valves.
- Furnish and install new end devices.
- Wire low voltage end devices such as temperature sensors, actuators to controllers.
- Provide power for controls.
- » Test and refurbish cooling temperature control and safeties of existing compressors and condenser.
- Test and refurbish heating temperature control and safeties of existing boilers.
- Stroke all dampers fully open and closed to confirm operation. Lubricate damper rods, adjust position, re-connect disconnected linkages, and replace edge seals.
- Test and refurbish operation of all fan and pump starters.
- Controls to comply with PBC Temperature Control Specification. Equipment in

scope:

<> One (1) Multi-zone Air Handler with:

- DX cooling
- Hot water heating
- Outside, exhaust and return air dampers
- Seven (7) zones

- One (1) exhaust / return fan

A-16

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- One (1) air-cooled condensing unit with two (2) circuits
- Two (2) heating hot water boilers
- Two (2) hot water distribution pumps
- One (1) 3-way hot water temperature reset control valve

### **McKinley Park Library**

#### **ECMs-3&4: Upgrade Controls to Direct Digital Controls/Refurbish HVAC**

The Provider shall furnish and install a new Direct Digital Control system. In conjunction with the new controls, the Provider shall refurbish the existing HVAC equipment as noted below.

- Disconnect and abandon existing controls in place. Demo space thermostats.
- Furnish and install new Direct Digital Control system to control existing HVAC equipment.
- Program sequences of operation to allow set point control, setback and scheduling.
- New DDC system will speak Bacnet or Lonworks.
- o Integrate new DDC system into Global Building Management System.
- Furnish and install new control valves.
- Furnish and install new end devices.
- Wire low voltage end devices such as temperature sensors, actuators to controllers.
- Provide power for controls.
- Test and refurbish cooling temperature control and safeties of existing compressors and condenser.
- » Test and refurbish heating temperature control and safeties of existing boilers.
- Stroke all dampers fully open and closed to confirm operation. Lubricate damper rods, adjust position, re-connect disconnected linkages, and replace edge seals.
- Test and refurbish operation of all fan and pump starters.
- Controls to comply with PBC Temperature Control Specification. Equipment in scope:
  - One (1) multi-zone air Handling unit with:
    - DX cooling
    - Hot water heating
    - Outside. exhaust and return air dampers

- Six (6) zones
- One (1) single-zone air handling unit with:
  - DX cooling
  - Hot water heating
  - Outside, exhaust, and return air dampers
- Two (2) exhaust / return fans

### i: a-17

- Two (2) indoor compressors
- Two (2) air-cooled condensers
- o Two (2) heating hot water boilers, with three (3) sections each
- Two (2) hot water distribution pumps

#### **West Belmont Library**

##### **ECM-2: Weatherize Building Envelope**

The Provider shall weatherize the building envelope as noted.

- o Four (4) exterior doors will be weather-stripped with formed and angled sponge wrapped in vinyl.

##### **ECM-4: Upgrade Controls to Direct Digital Controls/Refurbish HVAC**

The Provider shall furnish and install a new Direct Digital Control system. In conjunction with the new controls, the Provider shall refurbish the existing HVAC equipment as noted below.

- Disconnect and abandon existing controls in place. Demo space tiermostats.
- » Furnish and install new Direct Digital Control system to control existing HVAC equipment.
- Program sequences of operation to allow set point control, setback and scheduling.
- New DDC system will speak Bacnet or Lonworks.
- Integrate new DDC system into Global Building Management System.
- Provide power for controls.
- Test and refurbish cooling temperature control and safeties of existing rooftop unit.
- © Test and refurbish heating temperature control and safeties of existing rooftop unit.
- Stroke all dampers fully open and closed to confirm operation. Lubricate damper rods, adjust position, re-connect disconnected linkages, and replace edge seals.
- Test and refurbish operation of all fan starters.
- Controls to comply with PBC Temperature Control Specification. Equipment in

scope:

- One (1) packaged DX / gas heat rooftop unit with four (4) stages and an exhaust fan



## **Northtown Library**

### **ECM 4: Upgrade Controls to Direct Digital Controls**

The Provider shall furnish and install a new Direct Digital Control system. In conjunction with the new controls, the Provider shall refurbish the existing HVAC equipment as noted below.

- Disconnect and abandon existing electro-mechanical and pneumatic controls in place. Demo space pneumatic stats.

## **A-18**

- Furnish and install new Direct Digital Control system to control existing HVAC equipment.
- Program sequences of operation to allow set point control, setback and scheduling.
- New DDC system will speak Bacnet or Lonworks.
- Integrate new DDC system into Global Building Management System.
- Furnish and install new end devices and control valves.
- Wire low voltage end devices such as temperature sensors, actuators to controllers, o Provide power for controls.
- Furnish and install new wireless thermostats to control (5) multi-zones air handler zones. Furnish and install repeaters to allow thermostats to communicate with the new DDC system.
- » Test and refurbish cooling temperature control and safeties of existing condensing unit.
- Test and refurbish heating temperature control and safeties of existing boilers.
- Test and refurbish operation of all fan and pump starters.
- Stroke all dampers fully open and closed to confirm operation. Lubricate damper rods, adjust position, re-connect disconnected linkages, and replace edge seals.
- Controls to comply with PBC Temperature Control Specification. Equipment in scope:
  - One (1) multi-zone air Handling unit with:
    - DX cooling
    - Hot water heating
    - Outside, return, and exhaust air dampers
    - Five (5) zones
  - Three (3) heating hot water boilers with circulation pumps
  - Two (2) secondary hot water distribution pumps
  - One (1) condensing unit

## **George Hall Library**

### **ECM-3: Weatherize Building Envelope**

The Provider shall weatherize the building envelope as noted.

- Four (4) exterior doors will be weather-stripped with formed and angled sponge wrapped in vinyl.

### **ECM-5: Refurbish HVAC and Pneumatic Control Systems**

The Provider shall refurbish the existing pneumatic control system. Time clocks will be installed for scheduling of the air handler and steam boilers. In conjunction with the new controls, the Provider shall refurbish the existing HVAC equipment as noted below.

- o Test and refurbish operation of steam boiler temperature control and safeties.
- Test and refurbish operation of condensing unit temperature control and safeties.

#### **A-19**

- Test and refurbish operation of steam condensate collection canisters and pumps.
- Test and refurbish operation of steam to hot water heat exchanger.
- Stroke steam control valves on air handler full open and full closed to verify operation.
- Stroke 1/3 and 2/3 hot water control valves on steam to hot water heat exchanger full open and fully closed to verify operation
- Stroke all existing dampers open and closed to test operation. Adjust position, reconnect linkages, replace edge seals and lubricate rods.
- Test and refurbish operation of multi-zone air handler temperature control and safeties.
- Test and refurbish operation of pneumatic air-compressor, o Test and refurbish operation of all fan and pump starters.
- Test and refurbish operation of pneumatic sensors, thermostats and actuators, and recalibrate.
- Flush and clean existing pneumatic lines and clean existing air dryer. Re-connect disconnected pneumatic lines.
- «» Furnish and install new time clock. Connect time clock to refurbished pneumatic controls. Program time clock and control panel to allow scheduling and setback of air handler and steam boiler system.

#### **Equipment in scope**

- One (1) multi-zone air Handling unit:
  - Nine (9) zones
  - Hot water hot deck
  - DX cooling cold deck
  - OA, RA, and EA dampers
  - Exhaust / return fan
- Two (2) steam boilers
- One (1) boiler feed unit
- One (1) steam to hot water heat exchanger
- Two (2) hot water pumps
- One (1) DX condensing units with two (2) stages
- Two (2) condensate return reservoirs, each with two (2) pumps

### **ECM-6: Replace Steam Trans**

The Provider shall replace the steam traps.

- Replace existing steam traps at the following locations:
  - Steam to hot water heat exchanger
  - Two (2) steam radiators at grade level in the entry vestibule.

#### A-20

- New traps to match size and style of existing traps.

#### **ECM-7: Insulate Steam to Hot Water Heat Exchanger**

The Provider shall insulate the un-insulated steam piping at the Austin Library.

- Insulate existing uninsulated steam to hot water heat exchanger in the boiler room. Pipe insulation to be 3" with All Surface Jacket (ASJ) on straight runs, and PVC jacket at elbows.

#### **Walker Branch Library**

#### **ECM-3: Weatherize Building Envelope**

The Provider shall weatherize the building envelope as noted. Specific areas to be weatherized are:

- Five (5) exterior doors will be weather-stripped with formed and angled sponge wrapped in vinyl.
- o One (1) interior door will be weather-stripped with formed and angled sponge wrapped in vinyl.
- Three (3) pipe penetrations will be sealed with one or two part foam.

#### **ECM-4j^ Upgrade Controls to Jirect Digital Controls/Refurbish HVAC**

The Provider shall replace the existing Robert Shaw DDC front-end system and Weil McClain boiler controls, program set point control, scheduling and setback. In conjunction with the new controls, the Provider shall refurbish the existing HVAC equipment as noted below.

- Demo existing DDC control panels.
- Furnish and install new DDC control panels.
- Integrate new DDC system into Global Building Management System.
- Program sequences of operation to allow set point control, setback and scheduling.
- Program occupied / unoccupied modes of operation and optimal start/stop.
- Furnish and install new end devices.
- Wire end devices to new DDC control panels.
- Provide power for controls.
- Test and refurbish cooling temperature control and safeties of existing condensing unit.
- Test and refurbish heating temperature control and safeties of existing boilers.
- » Stroke all dampers fully open and closed to confirm operation. Lubricate damper rods, adjust position, re-connect disconnected linkages, and replace edge seals.
- Stroke control valves open and closed and restore operation.

- Test and refurbish operation of all fan and pump starters.
- Controls to comply with PBC Temperature Control Specification.

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Equipment in scope:

- One (1) multi-zone AHU
  - DX Cooling
  - Hot water heating
  - Outside, return and exhaust air dampers
  - Nine (9) zones
- One (1) Return/Exhaust fan
- One (1) Condensing unit with (2) stages
- Four (4) Heating hot water boilers
- Two (2) Boiler circulation pumps
- One (1) Hot water distribution pumps
- One (1) 3-way boiler control valve

#### Thurgood Marshall Library

##### ECM-3^ Weatherize Building Envelope

The Provider shall weatherize the building envelope as noted.

- Six (6) exterior doors will be weather-stripped with formed and angled sponge wrapped in vinyl.

##### ECM-4: Upgrade Controls to Direct Digital Controls/Refurbish HVAC

The Provider shall replace the existing Robert Shaw DDC front-end system boiler controls with a new DDC system, program set point control, scheduling and setback. In conjunction with the new controls, the Provider shall refurbish the existing HVAC equipment as noted below.

- Demo existing DDC control panels.
- Furnish and install new DDC control panels.
- Program sequences of operation to allow set point control, setback and scheduling.
- Integrate new DDC system into Global Building Management System.
- Furnish and install new end devices and control valves.
- Wire end devices to new DDC control panels.
- Provide power for controls.
- Test and refurbish cooling temperature control and safeties of existing condensing unit.
- Test and refurbish heating temperature control and safeties of existing boilers
- Stroke all dampers fully open and closed to confirm operation. Lubricate damper rods, adjust position, re-connect disconnected linkages, and replace edge seals.
- Stroke control valves open and closed and restore operation.

- Test and refurbish operation of all fan and pump starters.
- Controls to comply with PBC Temperature Control Specification

A-22

Equipment in scope:

- One (1) Multi-zone AHU
  - DX Cooling
  - Hot water heating
  - Outside, return and exhaust air dampers Seven (7) zones
- One (1) Return/Exhaust fan o One (1)

Condensing unit

« Four (4) Heating hot water boilers

- Two (2) Hot water circulation pumps
- One (1) Hot water distribution pumps
- One (1) 3-way boiler control valve

### **Lincoln Belmont Library**

#### **ECM-1: Interior Lighting Upgrades**

The Provider shall upgrade the interior lighting system. Existing fixtures will be re-lamped, retrofitted, or replaced as noted in lighting schedule. Occupancy controls will be added in spaces with variable occupancy.

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#### **ECM-3: Weatherize Building Envelope**

The Provider shall weatherize the building envelope as noted.

- Five (5) exterior doors will be weather-stripped with formed and angled sponge wrapped in vinyl.

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**ECM-4: Refurbish and Integrate Existing Direct Digital Controls and Refurbish Existing HVAC Systems**

The Provider shall furnish and install a gateway to integrate the existing Siemens Apogee DDC system into the PBC global building management system. The Provider will program scheduling and setback of the equipment. In conjunction with the new controls, the Provider shall refurbish the existing HVAC equipment as noted below.

« Furnish and install a gateway to integrate the existing Siemens Apogee DDC system into Global Building Management System.

- Program sequences of operation to allow set point control, setback and scheduling.
- Controls to comply with PBC Temperature Control Specification.
- Test and refurbish end devices.
- Test and refurbish cooling temperature control and safeties of existing condensing unit.
- Test and refurbish heating temperature control and safeties of existing boilers.
- Stroke all dampers fully open and closed to confirm operation. Lubricate damper rods, adjust position, re-connect disconnected linkages, and replace edge seals.
- Test and refurbish operation of all fan and pump starters. Equipment in

scope:

- One (1) Multi-zone AHU
  - DX Cooling
  - Hot water heating
  - Outside, return and exhaust air dampers
  - Seven (7) zones
- One (1) Return/Exhaust fan
- One (1) Condensing unit with Two (2) stages
- Four (4) Heating hot water boilers
- Two (2) Hot water distribution pumps

**Near North Branch Library**

**ECM-3: Weatherize Building Envelope**

The Provider shall weatherize the building envelope as noted.

- Five (5) exterior doors will be weather-stripped with formed and angled sponge wrapped in vinyl.
- Four (4) interior doors will be weather-stripped with formed and angled sponge wrapped in vinyl.

**ECM-4: Refurbish and Integrate Existing Direct Digital Controls and Refurbish Existing HVAC**

The Provider shall furnish and install a gateway to integrate the existing Carrier Comfort View Direct Digital Control into the PBC global building management system. The Provider

A-24

will program scheduling and setback of the equipment. In conjunction with the new controls, the Provider shall refurbish the existing HVAC equipment as noted below.

» Furnish and install a gateway to integrate the existing Carrier Comfort View DDC system into Global Building Management System.

e Program sequences of operation to allow set point control, setback and scheduling.

» Controls to comply with PBC Temperature Control Specification.

- Test and refurbish end devices.
- Test and refurbish cooling temperature control and safeties of existing condensing unit.
- Test and refurbish heating temperature control and safeties of existing boilers.
- Stroke all dampers fully open and closed to confirm operation. Lubricate damper rods, adjust position, re-connect disconnected linkages, and replace edge seals.
- o Test and refurbish operation of all fan and pump starters.

Equipment in scope:

- One (1) Multi-zone AHU
  - DX Cooling
  - Hot water heating
  - Outside, return and exhaust air dampers
  - Seven (7) zones
- One (1) Return/Exhaust fan
- One (1) Condensing unit with two (2) stages
- Four (4) Heating hot water boilers
- Two (2) Hot water distribution pumps

### **Police Training Academy**

#### **ECM-1: Interior Lighting Upgrades**

The Provider shall upgrade the interior lighting system. Existing fixtures will be re-lamped, retrofitted, or replaced as noted in lighting schedule. Occupancy controls will be added in spaces with variable occupancy.

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#### **ECM-2: Weatherize Building Envelope**

The Provider shall weatherize the building envelope as noted.

- Sixteen (16) exterior doors will be weather-stripped with formed and angled sponge wrapped in vinyl.

#### **ECM-4: Upgrade Controls to Direct Digital Controls/Refurbish HVAC**

The Provider shall furnish and install a new Direct Digital Control system. In conjunction with the new controls, the Provider shall refurbish the existing HVAC equipment.

- Disconnect and abandon existing controls in place. Cap pneumatic lines. Demo existing space tiiermostats.
- Furnish and install new Direct Digital Control system to control existing HVAC equipment.
  - « Program sequences of operation to allow set point control, setback and scheduling.
  - » Program multi-zone hot deck and cold deck ambient reset and simultaneous heating and cooling lockout sequence.
- New DDC system will speak Bacnet or Lonworks.
- Integrate new DDC system into Global Building Management System.
- Furnish and install new control valves.
- Furnish and install new end devices.

A-26

- Wire low voltage end devices such as temperature sensors, actuators to controllers.



- Provide power for controls.
  - Furnish and install new wireless thermostats for multi-zone dampers. Install router to allow integration of wireless thermostats into GBMS. Install repeaters to allow thermostats to communicate with routers.
- « Controls to comply with PBC Temperature Control Specification.
- Test and refurbish cooling temperature control and safeties of existing chillers.
- « Test and refurbish condenser water temperature control of existing cooling tower.
- Test and refurbish heating temperature control and safeties of existing boilers.
  - Test and refurbish operation of all fan and pump starters, including condensate pumps.
  - Stroke all dampers fully open and closed to confirm operation. Lubricate damper rods, adjust position, re-connect disconnected linkages, and replace edge seals.

Equipment in scope:

- Chiller Plant
  - Two (2) Centrifugal chillers
  - Two (2) Cooling towers
  - Three (3) Chilled water pumps
  - Three (3) Condenser water pumps » Boiler Plant
  - Two (2) Steam boilers
  - One (1) Steam to hot water heat exchanger
  - Three (3) Hot water distribution pumps
  - Seven (7) Condensate return canisters
  - One (1) Boiler feed system
- Airside Systems
  - Five (5) Multi-zone AHUs
    - Chilled water cooling
    - Steam heating
    - Outside, return and exhaust air dampers
    - Seventy (70) zones
  - Four (4) Single-zone AHUs
    - Chilled water cooling - one (1) unit only
    - Steam heating
    - Outside, return and exhaust air dampers
  - Twenty five (25) Return/Exhaust and exhaust fans

**ECM-6: Refurbish Existing Cooling Tower**

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The Provider shall refurbish die existing cooling tower and fill, o Clean and chemically treat existing cooling tower fill.

- Clean and chemically treat cooling tower basins.
- Field verify additional installation requirements.

#### ECM-7: Replace Steam Traps

The Provider shall replace the steam traps.

- o Replace existing steam traps at air handler steam coils and steam-to-hot-water heat exchanger, and the steam boilers.
- New traps to match size and style of existing traps.

#### NPV Adniinistrative/Mental Health Building C ECM-1:

##### Interior Lighting Upgrades

The Provider shall upgrade the interior lighting system. Existing fixtures will be re-lamped, retro-fitted, or replaced as noted in lighting schedule. Occupancy controls will be added in spaces with variable occupancy.

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### **Mount Greenwood Library**

#### **ECM-3: Weatherize Building Envelope**

The Provider shall weatherize the building envelope as noted.

- Four (4) exterior doors will be weather-stripped with formed and angled sponge wrapped in vinyl.
- o Approximately three hundred seventy eight (378) linear feet of exterior window framing will be caulked.

#### **ECM-4: Upgrade Controls to Direct Digital Controls/Refurbish HVAC**

The Provider shall furnish and install a new Direct Digital Control system. In conjunction with the new controls, the Provider shall refurbish the existing HVAC equipment.

- Disconnect and abandon existing controls in place. Demo space stats.
- o Furnish and install new Direct Digital Control system to control existing HVAC equipment.
- Program sequences of operation to allow set point control, setback and scheduling.
- New DDC system will speak Bacnet or Lonworks.
- Integrate new DDC system into Global Building Management System.
- Furnish and install new end devices.
- « Wire low voltage end devices such as temperature sensors, actuators to controllers.
- Provide power for controls.
- Controls to comply with PBC Temperature Control Specification.
- Test and refurbish cooling temperature control and safeties of existing condensing unit.
- Test and refurbish heating temperature control and safeties of existing boilers
- « Stroke all dampers fully open and closed to confirm operation. Lubricate damper rods, adjust position, re-connect disconnected linkages, and replace edge seals.
- Test and refurbish operation of all fan and pump starters.
- Stroke control valves fully open and closed to confirm operation. Equipment in scope:
  - « One (1) Multi-zone AHU - DX Cooling

A-29

- Hot water heating
- Outside, return and exhaust air dampers
- Five (5) zones

- One (1) Return/Exhaust fan
- One (1) Condensing unit
- Two (2) Heating hot water boilers
- Two (2) Hot water distribution pumps

**Chicago Cultural Center**

**ECM-1: Interior Lighting Upgrades**

The Provider shall upgrade the interior lighting system .Existing fixtures will be re-lamped, retro-fitted, or replaced as noted in lighting schedule. Occupancy controls will be added in spaces with variable occupancy.

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#### **ECM-2: Weatherize Building Envelope**

The Provider shall weatherize the building envelope as noted.

- Sixteen (16) exterior doors will be weather-stripped with formed and angled sponge wrapped in vinyl.
- Six (6) interior doors will be weather-stripped with formed and angled sponge wrapped in vinyl.
- Two (2) doors will have their door sweeps replaced. The new door sweeps will have a double fin fdm seal between a set of brushes and an aluminum carrier, typically secured to a kick plate.

#### **ECM- 7: Integrate Existing Direct Digital Controls/Refurbish HVAC**

The Provider shall integrate the existing DDC controls into the GBMS. The Provider shall upgrade the existing space pneumatic thermostats to wireless pneumatic thermostats with repeaters. New schedules will be programmed to match the loads and capacities of the equipment to the occupancy and space demands. In conjunction with the new controls, the Provider shall ' refurbish the existing HVAC equipment as noted below.

- Install gateways to integrate the existing Johnson Controls air handler controls, Johnson chiller plant controls, boiler hot water pump controls into the GBMS.
- Program sequences of operation to allow set point control, setback and scheduling.
- Furnish and install wireless DDC thermostats to replace existing multi-zone space pneumatic thermostats. Install routers and repeaters as required. Provide power for controls.
- Test and refurbish end devices.
- Controls to comply with PBC Temperature control specification.
- Test and refurbish cooling temperature control and safeties of existing chillers.
- Test and refurbish condenser water temperature control of existing cooling tower.

- Test and refurbish heating temperature control and safeties of existing boilers.
- Text and refurbish boiler exhaust system.
- Stroke all dampers fully open and closed to confirm operation. Lubricate damper rods, adjust position, re-connect disconnected linkages, and replace edge seals.
- Test and refurbish operation of all fan and pump starters. Equipment in scope:
- Chiller Plant
  - Two (2) Centrifugal chillers
  - Two (2) Cooling towers
  - Two (2) Chilled water pumps
  - Two (2) Condenser water pumps
- Boiler Plant
  - Six (6) Heating hot water boilers. The boilers are currently stand-alone and will be refurbished, but not integrated into the control system.

#### A-32

- Two (2) Primary boiler pumps
- Two (2) Secondary Air handler hot water distribution pumps
- Four (4) Secondary Baseboard radiator hot water distribution pumps « Boiler combustion exhaust system
- o Airside Systems - Eight (8) Multi-zone AHUs
  - Chilled water cooling
  - Hot water heating
  - Outside, return and exhaust air dampers
  - Return/Exhaust fan
  - Seventy (70) zones total
- Airside Systems Eight (8) Single-zone AHUs
  - Chilled water cooling
  - Hot water heating
  - Outside, return and exhaust air dampers
  - Return/Exhaust Fan

#### ECM-10: Single Zone VAV

The Provider shall install single zone variable air volume controls in the eight (8) air handlers serving the gathering halls and community rooms.

<> Disconnect and demo existing fan starters.

- Furnish and install new variable frequency drives (VFDs) for supply and return fans on the eight (8) single zone air handlers.
- o Furnish and install line and load reactors.

- Test and refurbish existing end devices such as sensors, actuators and control valves.
- Furnish and install new return air temperature sensor.
- Program single-zone VAV control sequence to vary airflow at a constant discharge temperature to maintain return air temperature. Include minimum VFD speed to maintain code minimum airflows. Include summer-winter ambient temperature reset sequences. Add additional control modules to accommodate additional points.
- Wire low voltage end devices such as sensors and actuators to controllers.
- Provide power for controls.

### 311 City Services

#### ECM-1: Interior Lighting Upgrades

The Provider shall upgrade the interior lighting system. Existing fixtures will be re-lamped, retro-fitted, or replaced as noted in lighting schedule. Occupancy controls will be added in spaces with variable occupancy.

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#### ECM-2: Weatherize Building Envelope

The Provider shall weatherize the building envelope as noted.

- Eleven (11) exterior doors will be weather-stripped with formed and angled sponge wrapped in vinyl.

### 14th District Chicago Police Station

#### ECM-1: Interior Lighting Upgrade Scope of Work

The Provider shall upgrade the interior lighting system. Existing fixtures will be re-lamped, retro-fitted, or replaced as noted in lighting schedule. Occupancy controls will be added in spaces with variable

occupancy. .

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## **Central Office**

### **ECM-1: Lighting Upgrades**

The Provider shall upgrade the interior lighting system .Existing fixtures will be re-lamped, retro-fitted, or replaced as noted in lighting schedule. Occupancy controls will be added in spaces with variable occupancy.

Retrofit exit sign to 4 W, Light-Emitting Diode (LED), Large "Stair" type approved for use in the city of Chicago

T-8 fluorescent fixture with electronic ballast: 4-foot, 2-lamp 32 W

T-8 fluorescent fixture with electronic ballast: 4-foot, 4-lamp 32 W

T-12 fluorescent fixture with magnetic ballast: 2-foot, 2-lamp, 20 W

Retrofit to T-8 fluorescent fixture with electronic ballast: 2-foot, 2-lamp, 17 W.

T-12 fluorescent fixture with magnetic ballast: 4-foot, 2-lamp, 40 W

Retrofit to T-8 fluorescent fixture with electronic ballast: 4-foot, 2-lamp, 25 W.

T-12 fluorescent fixture with magnetic ballast: 4-foot, 4-lamp, 40 W

High-Intensity Discharge (HID), Metal halide: 400 W

Incandescent halogen lamps: 75 W with parabolic aluminized reflector

Retrofit to T-8 fluorescent fixture with electronic ballast: 4-foot, 2-lamp, 32 W with reflector.



New fluorescent T5 Fixture with electronic ballast: 4-foot, 4-lamp, 49 W high-output with reflector

Re-lamp to compact fluorescent: 16 W R30

Incandescent halogen lamps: 90 W with parabolic aluminized reflector

Re-lamp to compact fluorescent: 23 W R30

Occupancy controls in spaces with variable occupancy, such as break rooms, restrooms, conference rooms, corridors, tool rooms and some offices.

*ECM-2: Weatherize Building Envelope* \_ \_ \_ ^

The Provider shall weatherize the building envelope as noted.

- Seven (7) exterior doors will be weather-stripped with fanned and angled sponge wrapped in vinyl.

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- Thirteen (13) over-head doors will be weather-stripped with formed and angled sponge wrapped in vinyl.
- Approximately one thousand seven hundred ninety (1790) linear feet of roof/wall joint will be sealed with two part foam.
- Approximately one hundred eighty (180) linear feet of exterior skylight window framing will be caulked.

*ECM-5: Refurbish Existing Rooftop Units and Add Programmable Thermostats* \_

The Provider shall refurbish the existing rooftop units.

- Test and refurbish operation of rooftop unit heating temperature control and safeties and cooling temperature control and safeties.
  - Stroke all dampers fully open and closed to confirm operation. Lubricate damper rods, adjust position, re-connect disconnected linkages, and replace edge seals.
  - Test and refurbish operation of sensors, thermostats and actuators, and re-calibrate. « Furnish and install new 7-day programmable thermostats for rooftop units.
  - Power thermostats, and wire to rooftop units.
- » Program thermostats for scheduling and setback of rooftops based on building occupancy.

**ECM-6: Demand Control Garage Ventilation**

The Provider shall install a garage demand control ventilation system to only run the exhaust fan when the garage is occupied by vehicles.

- Furnish and install new Carbon Monoxide (CO) and Nitrogen Dioxide (N02) detection and ventilation system
- Furnish and install two (2) control panels
- Panel to be Air Test model CT-7232 or equal.
- Furnish and install ten (10) CO sensors and ten (10) N02 sensors. Wire sensors back to main control panel. Wiring to be home-run configuration. Sensors will be spaced to allow 5000-7500 ft2 per sensor.
- Wire main control panel to twelve (12) roof-mounted exhaust fans. Install relays to start exhaust

- wire main control panel to twelve (12) roof-mounted exhaust fans. install relays to start exhaust fans when CO and NO2 levels in space are above set point.
- Provide power for controls.
- Test operation of CO/NO2 detection system and garage door motion sensors after installation.

### **18<sup>th</sup> District Chicago Police Station**

#### **ECM-1: Interior Lighting Upgrade Scope of Work**

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The Provider shall upgrade the interior lighting system. Existing fixtures will be re-lamped, retro-fitted, or replaced as noted in lighting schedule. Occupancy controls will be added in spaces with variable occupancy.

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### **20<sup>th</sup> District Chicago Police Station**

#### **ECM-1: Interior Lighting Upgrade Scope of Work**

The Provider shall upgrade the lighting system of both the building interior, and parking garage. Existing fixtures will be re-lamped, retro-fitted, or replaced as noted in lighting schedule. Occupancy controls will be added in spaces with variable occupancy.

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### Loop Operations

#### ECM-1: Interior Lighting Upgrades

The Provider shall upgrade the interior lighting system. Existing fixtures will be re-lamped, retrofitted, or replaced as noted in lighting schedule. Occupancy controls will be added in spaces with variable occupancy.

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#### ECM-2: Exterior Lighting Upgrades

The Provider shall install new high-output fluorescent fixtures.

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#### ECM-3: Weatherize Building Envelope

The Provider shall weatherize the building envelope as noted.

- One (1) exterior doors will be weather-stripped with formed and angled sponge wrapped in vinyl.
- Two (2) doors will have their door sweeps replaced. The new door sweeps will have a double fin film seal between a set of brushes and an aluminum carrier.

#### ECMs 4: Integrate Existing DDC Controls to GBMS/Refurbish Existing HVAC Systems

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The Provider shall replace the Johnson Control DDC front-end systems, install a new front end DDC system, and integrate that system into GBMS. The new system will be programmed with scheduling and setback of the equipment. In conjunction with the new controls, the Provider shall refurbish the existing HVAC equipment.

- Demo existing Johnson Controls front-end control boards.
- Furnish and install new DDC front end control boards.
  - o Program sequences of operation to allow set point control, setback and scheduling.
- Test and refurbish existing end devices.
- Integrate the new DDC control system into GBMS.
- Replace existing outside air temperature sensor in office space and test and refurbish economizer operation.
- Test and refurbish existing air handler temperature control and safeties.
- Test and refurbish existing condensing unit temperature control and safeties.
- Test and refurbish electric heat contactors, temperature control and safeties.
- Test and refurbish operation of all fan starters.
- Stroke all dampers fully open and closed to confirm operation. Lubricate damper rods, adjust position, re-connect disconnected linkages, and replace edge seals.
- Controls to comply with PBC Temperature control specification.

Equipment in scope: Office: (1) AHU

- Electric heat
- DX cooling
- Outside, return and exhaust air dampers
- Return/Exhaust fan (1) condensing unit

#### Garage:

1) AHU

- Electric heat
- No cooling
- Outside, return and exhaust air dampers

2) Exhaust fans with CO sensors (2) Electric duct heaters

#### **ECM-7: Motion Sensor and Timing Controls for Garage Doors.**

The Provider shall install garage door motion sensors in the garage.

- Furnish and install motion detectors and timers to control garage door operation.
- Wire motion detectors and timers to garage door openers.

- Test operation.
- » Quantity of two (2) garage doors to be controlled.

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### **Austin Irving Library**

#### **ECM-1: Interior Lighting Upgrades**

The Provider shall upgrade the interior lighting system. Existing fixtures will be re-lamped, retro-fitted, or replaced as noted in lighting schedule. Occupancy controls will be added in spaces with variable occupancy.

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#### **ECM-3: Weatherize Building Envelope**

The Provider shall weatherize the building envelope.

- « Seven (7) exterior doors will be weather-stripped with formed and angled sponge wrapped in vinyl.
- One (1) interior doors will be weather-stripped with formed and angled sponge wrapped in vinyl.

#### **ECM-4: Integrate Existing DDC Controls to GBMS/Refurbish Existing HVAC Systems**

The Provider shall furnish and install a gateway to integrate the DDC system into GBMS, and program scheduling and setback of the equipment. In conjunction with the new controls, the Provider shall refurbish the existing HVAC equipment as noted below.

- Furnish and install a gateway to integrate the existing Carrier ComfortView Direct Digital Control system into GBMS.
- Program sequences of operation to allow set point control, setback and scheduling.
- Test and refurbish existing end devices.
- « Controls to comply with PBC Temperature control specification.

- Test and refurbish existing air handler temperature control and safeties.
- Test and refurbish existing condensing unit temperature control and safeties.
- Test and refurbish boiler temperature control and safeties.
- Test and refurbish operation of all fan and pump starters.

A-40

- Stroke all dampers fully open and closed to confirm operation. Lubricate damper rods, adjust position, re-connect disconnected linkages, and replace edge seals.
- Stroke inlet guide vanes open and closed to test operation. Lubricate rods. Equipment in

scope:

- One (1) VAV AHU
  - DX cooling
  - Hot water heating
  - inlet guide vanes
  - Outside, return and exhaust air dampers
  - Freeze protection pump » One (1)

Return/Exhaust fan

«> Twelve (12) Single-duct VAV boxes

- Ten (10) Fan-powered VAV boxes with hot water reheat coils
- Three (3) exhaust fans
- One (1) condensing unit
- Five (5) hot water boilers
- Two (2) hot water pumps

## **Budlong Woods Library**

### **ECM-4: Integrate Existing DDC Controls to GBMS/ Refurbish HVAC**

The Provider shall integrate the existing Invensys DDC system into GBMS, and program scheduling and setback of the equipment. In conjunction with the new controls, the Provider shall refurbish the existing HVAC equipment as noted below.

- Furnish and install a gateway to integrate the existing Invensys Direct Digital Control system to GBMS. Existing JACE-is on site, but is not connected.
- Program sequences of operation to allow set point control, setback and scheduling.
- Test and refurbish existing end devices.
- « Controls to comply with PBC Temperature control specification.
- Test and refurbish existing air handler temperature control and safeties.
- « Test and refurbish existing condensing unit temperature control and safeties.

- Test and refurbish boiler temperature control and safeties.
- Test and refurbish operation of all fan and pump starters.
- Stroke all dampers fully open and closed to confirm operation. Lubricate damper rods, adjust position, re-connect disconnected linkages, and replace edge seals.

Equipment in scope:

- One (1) VAV AHU
  - DX cooling
  - Hot water heating

#### A-41

- VFD.
- Outside, return and exhaust air dampers © One (1)

Return/Exhaust fan with VFD

© Twelve (12) Single-duct VAV boxes

- Four (4) Fan-powered VAV boxes with hot water reheat coils
- Two (2) exhaust fans
- One (1) condensing unit
- Two (2) hot water boilers

« Two (2) hot water primary pumps « Two (2) hot water secondary pumps

#### DSS Street Operations

##### ECM-1: Interior Lighting Upgrades

The Provider shall upgrade the interior lighting system. Existing fixtures will be re-lamped, retrofitted, or replaced as noted in lighting schedule. Occupancy controls will be added in spaces with variable occupancy.

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## **ECM-2: Exterior Lighting Upgrades**

A-42

The Provider shall retrofit the existing fixtures to light-emitting diode (LED) fixtures. Controls will be added.

High-Intensity Discharge (HID), metal halide: 400 W  
Retrofit to Light-Emitting Diode (LED) triangle: 3x38W

## **ECM-4: Repair Metal Side Wall Panels**

The Provider shall repair the metal side walls.

- Repair existing metal side wall panels in die garage.
- o Replace panels too large to seal with insulation or caulk.
- Seal openings and gaps with insulation or caulk as required.

## **Goldblatt's Building and West Town Library**

ECM-4&5: Integrate Existing DDC Controls to GBMS/ Refurbish Existing HVAC

### **Systems**

The Provider shall furnish and install a gateway to integrate the DDC system into GBMS. The Provider shall re-program and refurbish the existing Trane Tracer Summit DDC system. In conjunction with the new controls, the Provider shall refurbish the existing HVAC equipment.

- Furnish and install a gateway to integrate the existing Direct Digital Control system to control existing HVAC equipment.
- Test and refurbish operation and functionality of existing Trane Tracer Summit DDC system.
- Test and refurbish operation of VAV box DDC controllers. Testing to be done from building level interface.
- Program sequences of operation to allow set point control, setback and scheduling.
- Test and refurbish existing end devices.
- Test and refurbish existing water-cooled packaged DX air handler temperature control and safeties.
- Test and refurbish boiler temperature control and safeties.
- Test and refurbish cooling tower temperature control and safeties.
- » Test and refurbish condensing unit temperature control and safeties.
- Test and refurbish operation of all fan and pump starters and variable frequency drives.



- © Stroke all dampers fully open and closed to confirm operation. Lubricate damper rods, adjust position, re-connect disconnected linkages, and replace edge,seals.
- Controls to comply with PBC Temperature control specification.

A-43

Equipment in scope:

- <» Two (2) Heating Hot Water boilers
  - Two (2) Heating Hot Water Pumps
  - Two (2) Cooling Towers
  - Two (2) Condenser Water Pumps
  - Seven (7) Self-contained Air Handlers - Water-cooled DX
    - Hot Water Heating
    - Outside, return and exhaust air dampers
    - Variable Frequency Drive (VFD) for Variable Air Volume (VAV)
- One (1) Air-cooled DX, Hot Water Heating VAV Air Handler (West Town Library)
  - Air-cooled DX Hot Water Heating
  - Outside, return and exhaust air dampers
  - Variable Frequency Drive (VFD) for Variable Air Volume (VAV)
- One (1) DX Condensing Unit
- Eight (8) Return/Exhaust fans
- « One hundred fifty (150) VAV boxes with hot water reheat coils
- Ten (10) Fan-powered VAV boxes with hot water reheat coils

Water

Department/Central

District

ECM-1:

**Interior Lighting Upgrades**

The Provider shall upgrade the interior lighting system. Existing fixtures will be re-lamped, retro-fitted, or replaced as noted in lighting schedule. Occupancy controls will be added in spaces with variable occupancy.

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#### **ECM-5: Upgrade Controls to Direct Digital Controls and Refurbish Existing HVAC Systems**

The Provider shall furnish and install a new Direct Digital Control system to control the HVAC equipment at the Water Department/Central District facility. In conjunction with the new controls, the Provider shall refurbish the existing HVAC equipment as noted below.

- Disconnect and abandon existing controls in place. Demo existing thermostats.
- Furnish and install new Direct Digital Control system to control existing HVAC equipment.
- Program sequences of operation to allow set point control, setback and scheduling.
- New DDC system will speak Bacnet or Lonworks.
- Integrate new DDC system into Global Building Management System.
- Furnish and install new end devices.
- Wire low voltage end devices such as temperature sensors, actuators to controllers.
- « Provide power for controls.
- Controls to comply with PBC Temperature Control Specification.
- Test and refurbish rooftop cooling temperature control, heating temperature control, and safeties.
- Test and refurbish heating temperature control, contactors and safeties of existing electric baseboard.
- Test and refurbish operation of all fan and pump starters.
- Stroke all dampers fully open and closed to confirm operation. Lubricate damper rods, adjust position, re-connect disconnected linkages, and replace edge seals.

#### **Equipment in scope**

- Seven (7) Packaged DX / Gas Heat Rooftop Units
- Thirty three (33) Exhaust Fans

- Four (4) Outside air intake dampers

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- One (1) relay for electric heat baseboard lockout Avalon

### Branch Library

#### **ECM-4: Install new DDC Front End System, Integrate to GBMS/ Refurbish Existing HVAC System**

The Provider shall demo the existing Teietrol front end DDC system, and furnish and install a new DDC front end system and program scheduling and setback of the equipment. The new DDC system will be mapped to the existing JACE for integration into GBMS. In conjunction with the new controls, the Provider shall refurbish the existing HVAC equipment.

- Demo existing Teietrol front end DDC system control boards.
- Furnish and install a new Direct Digital Control system to control existing HVAC equipment.
- Program sequences of operation to allow set point control, setback and scheduling.
- Test and refurbish existing end devices.
- Wire new DDC logic boards to existing end devices.
- Furnish and install new actuator for 3-way valve on air handler.
- Wire and map new points to existing JACE and GBMS. Re-use existing graphics.
- Controls to comply with PBC Temperature control specification.
- Test and refurbish existing air handler temperature control and safeties.
- Test and refurbish existing condensing unit temperature control and safeties.
- Test and refurbish boiler temperature control and safeties.
- Test and refurbish operation of all fan and pump starters and/or VFDs
- Stroke all dampers fully open and closed to confirm operation. Lubricate damper rods, adjust position, re-connect disconnected linkages, and replace edge seals.

#### Equipment in scope:

- Two (2) Heating Hot Water boilers
- Two (2) Heating Hot Water Pumps
- One (1) VAV Air Handling Unit
  - Air-cooled DX Hot Water Heating
  - Outside, return and exhaust air dampers Variable Frequency Drive (VFD)
- One (1) DX Condensing Unit o One (1)

#### Return/Exhaust fan

« Eleven (11) VAV boxes with hot water reheat coils

- Eight (8) Fan-powered VAV boxes with hot water reheat coils

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Computerized Maintenance Management System

The Provider shall provide a web-based computerized maintenance management system ("CMMS") for the Project capable of maintaining a computer database of information about the Customer's maintenance operations. This information is intended to help maintenance workers do their jobs more effectively and to verify compliance of required maintenance. In addition to generating work orders for maintenance staff, the CMMS will be used to produce status reports and documents giving details or summaries of maintenance activities.

General Scope Clarifications - AU Buildings

- <» With the exception of lamps and ballasts removed as part of this project, handling or abatement of any hazardous materials, including asbestos containing material, is excluded from the scope of services unless specifically noted in the scope of work.
- » All ECMs - Unless specifically noted in the scope of work, the Provider has excluded the abatement of any hazardous materials or ACM in this scope item.
- The scope of work and associated costs are based on materials / equipment and subcontractors as noted (or submitted) to the Customer. Changes to these items may affect pricing of this Agreement.
- The compensation payable under this Agreement is based on 100% availability of rooms / areas / systems to perform noted work scope during normal business hours. Overtime and off-hour shifts- (2nd shift and 3rd shift) are not included.
- The lighting scope includes only the locations and fixtures noted on associated schedule and drawings (as applicable). Not all spaces are being addressed as part of the lighting scope.
- Unless specifically noted in the scope of work - paint / patch is excluded. If noted in the work scope - only the affected areas will be addressed (not the entire area / wall). Paint will match existing adjacent as close as possible but an exact match cannot be guaranteed.
- Piping / conduit / wire mold may be run exposed in occupied spaces (as applicable).
- Unless specifically noted in the scope of work - conduit / wire mold is un-painted.
- Some existing equipment may be left abandoned in place.
- Unless specifically noted in the scope of work - no piping covers have been included.
- If applicable - tile and carpet in-fill strips will match adjacent existing as close as possible but an exact match cannot be guaranteed.
- If applicable - unless specifically noted in the scope of work, issues with existing roof deck and associated structural are excluded from the scope of work. If identified during the project - this will be brought to the attention of the Customer.
- If applicable - existing ceiling tiles will be removed and reinstalled. New ceiling / grid is not included in the work scope.

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**Lighting scope clarifications:**

- The lighting system improvements include retrofit or replacement of existing fixtures as noted in this Exhibit. The exact quantities, location and description of retrofit and replacements are as noted in the line by line summary in Attachment C-2 to the Investment Grade Audit.
- The scope includes retrofit of the noted fixtures only and does not address or include any fix-up / upgrade / replacement of existing wiring, switching, conduits, hangers, etc. If items are found to be in need of repair or replacement - this is not included in the scope of work and associated costing. This scope does include replacement of existing broken lighting sockets when replacing bulbs.
- It is assumed that all emergency lighting is on generator or independent battery control. Replacements of emergency ballasts are not included in the project.
- Replacement or repair of fixture lenses or louvers are not included, fixture lenses will be wiped with a dry cloth.
- The Provider is not responsible for fixtures that are found to be damaged prior to commencement of its scope of Work.
- » The Provider or its Subcontractor will remove and lawfully recycle / dispose of existing lamps and PCB ballasts. All ballasts that are determined to be non-PCB shall be disposed of with non-hazardous waste. Noted items will be carefully recycled and disposed of through a licensed recycling firm in accordance with all state and federal guidelines. Certificates verifying the proper disposal and recycling of PCB containing materials will be provided by the vendor.
- « Lighting levels, if existing is identified to be over-lit per recommended standards, may be reduced.
- Price is based on all ancillary equipment that is not being replaced but necessary for the ECM replacement, being in good working condition.
- The Provider is not responsible for any pre-existing electrical code violations or electrical system deficiencies.

**Training Prior to Final Acceptance Date**

The Provider's Subcontractor will implement a comprehensive training program that involves classroom and hands-on/field training. Training sessions will include a review of the overall installation and performance characteristics of installed ECMs. Documentation will include O&M manuals, drawings, and equipment specification literature. Designated facilities personnel, and select building occupants, will receive comprehensive manuals for reference. The primary goal of the Provider training program will be to educate designated operations, maintenance, and building staff in the key areas that relate to the ECMs installed throughout the project. Three levels of training which may be required depending on the specific ECMs which are installed.

Level 1: For systems and equipment which is are essentially direct replacements of existing equipment, such that no additional skills will be required to perform operations and maintenance functions,

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Training will be limited to a general overview of the equipment installed, a review of the manufacturer's operation and maintenance (O&M) manuals, and an explanation of equipment warranties. This level of training will provide staff with familiarity with the equipment that is installed, manufacture's recommended maintenance procedures, and all warranty information. This level of training applies to the following ECMs:

- Weatherize Building Envelope
- Insulate Piping Heat Exchanger
- Repair and Seal Existing AHUs
- Unit Heater Thermostat Upgrade
- Clean Cooling Tower Fill Material

Level 2: For systems and equipment which are new to the site, and require some general understanding as to their function and operation, training will include a minimum amount of classroom instruction that will provide an overview of the specific technology selected, specific equipment installed, review of the manufacturer's operation and maintenance (O&M) manuals, and an explanation of equipment warranties. Following the classroom training session a site tour will be scheduled to view the specific installation and operation of the equipment. This level of training will provide staff with additional equipment details (including equipment cut sheets), familiarity with the equipment that is installed, manufacture's recommended maintenance procedures, and all warranty information. This level of training applies to the following ECMs: Lighting Upgrades

Motion Sensor and Timing Controls for Garage Doors Replace  
Steam Traps

Level 3: For systems and equipment which are new to the site and are more complex in nature, training will be directed to the facilities engineering and operations and maintenance staff. Level 3 training will require more extensive classroom training to discuss design intent, specific system design, energy efficiency considerations, seasonal modes of operations, comfort conditions, operation of individual components, emergency conditions, sequences of operations, alarms, diagnostics, and any additional ECM specific information as required. Level 3 classroom training will also include a review of the manufacturer's operation and maintenance (O&M) manuals, and an explanation of equipment warranties. Following the classroom training session a site tour will be scheduled to view the specific installation, operation of the equipment, and hands on maintenance instructions by manufacturers' representatives. This level of training will provide staff with a comprehensive understanding of all equipment details as well as hands on familiarity with the equipment that is installed and a detailed review of manufacture's recommended maintenance procedures and warranty information. This level of training applies to the following ECMs:

- Upgrade Controls to Direct Digital Controls (DDC) and Integrate into GBMS
- Retro-Commissioning of Existing HVAC Systems
- Demand Control Garage Ventilation
- Install New Heating Hot Water Chemical Treatment System
- Convert Single Zone CV AHU to Single Zone VAV

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### **Commissioning Requirements**

Commissioning of completed ECMs will be performed by ECM for the larger buildings including Harold Washington Library, Woodson Regional Library, Police Training Academy, Chicago Cultural Center, Central Office (CDOT), and Goldblatts Building. Commissioning will be performed by building for the remaining buildings.

### **Section IV. Construction Schedule**

This Exhibit A contains the preliminary Construction Schedule. The Construction Schedule is subject to refinement and adjustment from time to time as the work progresses as set forth herein and in this Agreement.

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## Exhibit B

### Savings Methodology and Calculation

#### I. Expected Savings Production

The Expected Savings Production shall equal the total annual Savings for any given year during the Term following the Substantial Completion Date (the "Performance Period") or the aggregate of such total annual Savings for the remainder of the Performance Period as set forth in the following table, subject to any applicable adjustments as set forth in the Agreement and this Exhibit B.

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invoice for Expected Savings Production for period ended April 30, 2029 is payable no later than April 29, 2029 in the amount of \$256,473 as a ratable adjustment of annual Expected Savings Production.

Upon an extension of the Term pursuant to Section 2.1(b) of this Agreement, (a) the Performance Period shall be extend for a corresponding amount of time, (b) the Expected Savings Production for each year of the extended Term shall be an amount equal to the total savings for Year 14 above; and (c) the Savings for each year of the extended Term shall equal the Expected Savings Production for each year of the extended Term and no measurement of Savings shall apply in determining the Customer's payment obligations under this Agreement.

## II. Methodology and Baseline

### 1. Overview

This Section II describes the measurement and verification ("M&V") methodology that

#### B-1

will be applied to the Project, and each separate ECM included within the Project to determine Savings.

The M&V methodology to be employed for the Project is consistent with the U.S. Department of Energy ("DOE") and International Performance Monitoring and Verification Protocol ("IPMVP") options (summary) listed below.

Savings are determined by field measurement of the key performance parameters) which define the energy use of the ECM's affected system(s). Estimates of the non-key parameter are used for the savings calculations.

Savings are determined by field measurement of the energy use of the ECM-affected system.

Savings are determined by measuring energy use at the whole facility or sub-facility level.

Savings are determined through simulation of the energy use of the whole facility, or of a subfacility. Simulation routines are demonstrated to adequately model actual energy performance measured in the facility. The model is closely calibrated with data collected for each ECM.

Used where cost to accurately calculate and/or measure savings would exceed anticipated savings.

## 2. Baseline

The baseline is that set of parameters that describes both the energy consumed in the base year calculation for each type of energy consumed ("Base Year") and the conditions that caused that consumption to occur, including utility consumption, building use information, weather data, and other information as may be necessary to describe the Base Year conditions (collectively, the "Baseline"). For electricity, the Base Year is calculated as a twelve-month average of the electricity consumed between January 2011 and December 2011; and for natural gas the Base Year is calculated as a twelve-month average based on natural gas consumed between January 2011 and December 2011.

The utility baseline data is included in the table below.

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Field collected data and inputs and outputs used in the Baseline calculations are summarized in the "Baseline Assumptions" set forth on Attachment C-2 and Addendum #1 to the Investment Grade Audit. The Baseline is further described in Sections II. 4 and 5 of this Exhibit B. For each Performance Period year, the Parties will determine any Causes for Adjustment pursuant to Section II.6 of this Exhibit B establish certain adjustments to the Baseline used to measure energy use at the Facilities for that Performance Period year ("Adjusted Baseline").

### 3. Determination of Savings

#### A. Savings Amount

The amount of Savings will be determined as follows:

$$S = S_m + S_n$$

Where:

B-3

$S$  = Savings

$S_m$  = Measured Savings Amount, calculated as set forth in Subsection 3.B below.

$S_n$  = Non-Measured Savings Amount, stipulated as set forth in Subsection 3.C below.

Installation Period Savings may be added to the Savings for the first Performance Period Year and the final Performance Period year.

#### B. Measured Savings Amount

The Measured Savings Amount for any Performance Period year will be the sum of the "Measured Energy Savings" for all savings categories (i.e., kWh, Therms, or kGals). The Measured Energy Savings for each savings category will be determined as follows:

$$\text{\$o} - \text{E}_0 * \text{\$/Unit}$$

$$\text{E}_0 = \text{Emb} - \text{Emg}$$

Where:

\\$o = Measured Energy Savings

E<sub>0</sub> - Measured Energy Units Saved (including partially measured and stipulated, as further described in this Exhibit B)

\\$/Unit = Cost of Energy per Unit Measured, as specified in this Exhibit B, Subsection

4.C

Emb - Measured Base Year Consumption or Demand

Emg = Measured Performance Period Year Consumption or Demand

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B-4

The process for calculating Measured Energy Units Saved for each ECM is set forth below.

**Interior and Exterior Lighting | Protocol: | IPMVP Option A**

Interior lighting upgrades, Exterior lighting upgrades

Baseline M&V Activities:

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The measurement boundary includes the energy consumption of individual fixtures or groups of fixtures. The power consumption (Watts) of a sample of the existing fixtures will be measured before work begins. Power (Watt) measurements will be performed with a handheld true-RMS meter. Where applicable, the measurements will be performed at a wall switch. If it is not possible to isolate the fixtures on one switch then measurements will be performed at the individual fixture.

Sampling will follow a statistical sampling approach with an 80/20 precision and confidence criteria on fixture types with a population greater than 50, across like fixture types regardless of building or location. Data will not be collected at all locations, but will follow the statistical sampling approach described herein.

Operating hours for savings calculations are based on observations of site conditions, field data, and industry averages. The lighting operating hours are set forth in Attachment C-2 to the Investment Grade Audit, and shall remain constant in all calculations related to energy consumption and savings related to lighting.

Fixture powers for fixtures not measured are based on manufacturer's data or equivalent fixture measured data. These values are set forth in Attachment C-2 to the Investment Grade Audit, and shall remain constant in all calculations related to energy consumption and savings related to lighting.

Fixture counts were developed during the Investment Grade Audit and are set forth in Attachment C-2 to the Investment Grade Audit. In the event additional fixtures are retrofitted, the fixture counts and related calculations will be updated to reflect any increased quantities.

Baseline energy use (watt hours) based on product of the baseline fixture power consumption, operating hours, and fixture quantities for each line item in the lighting audit, as set forth in Attachment C-2 to the Investment Grade Audit.

Baseline demand (watts) based on product of the baseline fixture power consumption, demand coincidence factor (based on operating hours and peak building demand period), and fixture quantities for each line item in the inventory, as set forth in Attachment C-2 to the Investment Grade Audit.

## B-5

### **Post-Installation M&V Activities:**

- Fixture counts and proper operation will be confirmed during installation and commissioning of the ECM.
- Operating hours for all fixture types are assumed to be the same as the baseline operating hours, except for areas with occupancy sensors. Assumed reduction in burn hours associated with occupancy sensors is stipulated. Post installation operating hours for all fixtures types shall be as set forth in Attachment C-2 to the Investment Grade Audit.
- Measurements will be taken following the same sampling plan utilized during the pre-retrofit M&V



process.

- « Verified post-installation energy use shall be calculated based on product of the verified or assumed post-installation fixture power consumption, operating hours, and fixture quantities determined as set forth above.
- « Verified post-installation demand shall be calculated based on product of the verified or assumed post-installation fixture power consumption, demand coincidence factor (based on operating hours and peak building demand period), and fixture quantities determined as set forth above.
- The verified post-installation energy use and demand shall be subtracted from the baseline values to determine savings from this ECM and the utility rates set forth in this this Exhibit shall be applied to the resulting energy and demand savings to calculate annual Savings from this ECM. Measurements shall only be taken once after installation and the resulting Annual Savings shall be deemed achieved for the remainder of the guarantee period.
- « An annual verification survey on a sample of fixtures will be performed to verify that the installed equipment components or systems have been properly maintained and continue to generate savings

**Performance Period M&V Activities:**

- Pre-retrofit measurements shall be taken once before construction
- Post-retrofit measurements shall be taken once after construction
- Post-retrofit measurements shall be used for every year of the Performance Period

**B-6**

**Pre-Retrofit M&V Activities:**

- Baseline operating parameters, hours, and non-critical values will be assumed as noted in the savings calculations.
- « Measurements for calculations were taken from a sample of equipment, and used to formulate assumptions.
- Data was collected in a sample of buildings of each type and were used to form the baseline assumptions for equipment at all sites

for equipment at all sites.

- Operating hours were obtained through site data collection, staff discussions, data loggers, or the BAS.
- Data was obtained from the design drawings for use as calculation inputs.
- Additional baseline data may be collected before construction to calibrate calculations.

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#### **Post-Installation M&V Activities**

- Equipment audit and inspection will confirm final equipment counts and proper operation. «  
ECM commissioning will verify that equipment is operating as intended.
- Non-key operating parameters assumed to be the same as baseline values.

- Non-key operating parameters assumed to be the same as baseline values.
- Only the parameters specified in the contract will be utilized to calibrate the calculations for each ECM.
- Any alterations in utilization or operation of the building by the owner or building occupants may result in modifications to the baseline or post-project calculations.
- The equipment must be operated in a manner consistent with the operating standards, schedules, and set points as documented in the contract.
- Sampling will follow a statistical sampling approach with an 80/20 precision and confidence criteria on equipment regardless of building or location. Data will not be collected at all locations, but will follow the statistical sampling approach described herein.
- The post-installation measured values, as identified below, will be put back into the calculations to determine the post-project usage. The calculated energy usage from the updated calculations will be subtracted from the baseline calculations to determine achieved savings.
- If no changes to calculation assumptions are necessary after collecting the data, the achieved savings will be equivalent to the values identified in the original savings calculations.

**Approach for Each ECM:**

**Data Gathering Plan:**

- kW values will be obtained with a hand held RMS meter or consumption data logger
- Fan speeds will be obtained through data loggers or the BAS
- Space temperatures will be monitored through the BAS or data loggers
- Operating conditions will be monitored through site observations, the BAS, and data loggers
- Data will be collected on statistically valid sample of equipment, following 80/20 sampling criteria
- The methodology to obtain the data may vary depending on site requirements

**Pre-Retrofit M&V Activities:**

- Baseline operating parameters, hours, and non-critical values will be documented / agreed to as noted in the savings calculations.
- » Measurements for calculations were taken from a sample of equipment, and used to formulate assumptions.
- Operating hours were obtained through site data collection, staff discussions, data loggers, or the BAS.
- Data was obtained from the design drawings for use as calculation inputs.
- **Additional baseline data may be collected before construction to calibrate calculations. Post-**

**Installation M&V Activities**

- Equipment audit and inspection will confirm final equipment counts and proper operation. « ECM commissioning will verify that equipment is operating as intended.
- Non-key operating parameters assumed to be the same as baseline values.
- Only the parameters specified in the contract will be utilized to calibrate the calculations for each ECM.
- \*> Any alterations in utilization or operation of the building by the owner or building occupants may result in modifications to the baseline or post-project calculations.
- The equipment must be operated in a manner consistent with the operating standards, schedules, and set points as documented in the contract.
- Sampling will follow a statistical sampling approach with an 80/20 precision and confidence criteria on equipment regardless of building or location.. Data will not be collected at all locations, but will follow the statistical sampling approach described herein.
- The post-installation measured values, as identified below, will be put back into the calculations to determine the post-project usage. The calculated energy usage from the updated calculations will be subtracted from the baseline calculations to determine achieved savings.
- If no changes to calculation assumptions are necessary after collecting the data, the achieved savings will be equivalent to the values identified in the original savings calculations.
- **Approach for Each ECM:**

**Data Gathering Plan:**

- » kW values will be obtained with a hand held RMS meter or consumption data logger
- Fan speeds will be obtained through data loggers or the BAS
- Space temperatures will be monitored through the BAS or data loggers
- Operating conditions will be monitored through site observations, the BAS, and data loggers
- Data will be collected on statistically valid sample of equipment, following 80/20 sampling criteria
- The methodology to obtain the data may vary depending on site requirements

B-9

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C. Non-Measured Savings Amount

The annual savings identified in the table below are Non-Measured Savings for the First Performance Period Year documented by the calculations set forth in Addendum #1 to the Investment Grade Audit and are not subject to measurement or verification. In each subsequent Performance Period year, the Non-Measured Savings shall be escalated at a rate of 0% per year to determine the Non-Measured Savings from these measures for such Performance Period year. The Parties have reviewed the savings in the table below and the Customer agrees and accepts that upon Substantial Completion of the related ECM's the Non-Measured Savings set forth in the table below shall be deemed achieved and included, with appropriate escalation as set forth herein, in the Savings determined for each Performance Period year.

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B-10

4. Weather Source and Energy Rates

A. **Weather Source**

Data for weather-related calculations used in this Agreement will be Daily High-Low Temperatures obtained from the National Weather Service Station at O'Hare International Airport. If the data source becomes unavailable or a superior source is identified, the Parties will mutually agree upon an alternative data source. Actual weather data for Performance Period years will be used for Measured Savings Amount calculations.

B. **Energy Rates**

The rates set forth in this Subsection will be used to determine the Measured Savings Amount. The rates set forth below will be escalated by 0% each Performance Period year, commencing with the second Performance Period year.

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[1] The utility data for Lincoln Belmont Library was incomplete. The Provider's Subcontractor had to assume the usage and rate values for the savings calculations.

[2] The electricity rates are blended and are based on the total electricity usage and total electricity cost data provided by the Customer for the sites listed in the table. Complete demand data was not provided by the Customer.

B-12

**5. Building Schedule and Operations A.**

**Calendars and Schedules**

Except for the Additional Occupancies described below and as otherwise authorized by this Section 5, the Customer will operate the conditioned spaces in the Facilities within the date/times and occupancy schedules set forth below.

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The Customer conducts certain occasional activities outside of the Occupancy Schedule ("Additional Occupancies"). The Provider's Subcontractor has evaluated the Additional Occupancies in preparing the Investment Grade Audit and that the Additional Occupancies are factored into the calculation of the Baseline. Additional Occupancies shall not constitute a Cause for Adjustment to the energy savings calculations.

B-13

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Holidays: The Facilities will be unoccupied on the dates the following holidays are observed:

- New Year's Day

- New Year's Day
- Martin Luther King Jr. Day
- Lincoln's Birthday
- Washington's Birthday
- Casimir Pulaski Day
- Memorial Day
- Independence Day
- Labor Day
- Columbus Day
- Veteran's Day
- Thanksgiving Day
- Christmas Day

These occupancy schedules will not apply in any instance where the Provider or its Subcontractor direct or approve the running of equipment outside of the occupancy schedules in order to improve the efficiency of the ECMs and related equipment.

#### B. Standards of Service and Comfort

The Customer will operate the conditioned spaces in the Facilities within the temperature ranges scheduled in the Temperature Control Table below. Operating conditions outside the range specified in this table shall constitute a Cause for Adjustment under this Agreement. Adjustments may be made to the temperature ranges within spaces of less than 2000 square feet to accommodate tenant comfort and use of the space without any adjustments to the Baseline, provided spaces with adjustments outside of the temperature ranges do not exceed 5% of the total gross area of a particular Facility.

In the event that an adjustment to the Baseline is sought, the Provider or its Subcontractor shall submit the proposed Baseline adjustments to the Customer and describe the reasons for the adjustment.

#### **Temperature Control Table**

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B-14

#### 6. Causes for Adjustment

Adjustments to the Baseline are intended to adjust for any operations or conditions that differ from those assumptions made when Services were calculated. Each of the causes described in the table below shall

those assumptions made when Savings were calculated. Each of the causes described in the table below shall constitute a "Cause for Adjustment" to the Baseline used to calculate the Measured Savings Amount.

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In the event the Provider has reason to believe that any action or failure to act by the Customer or a measurable deviation from the Baseline may constitute a Cause for Adjustment to the Savings calculations set forth in this Agreement, the Provider must notify the Customer of a possible Cause for Adjustment within sixty (60) days of becoming aware of such action, failure to act, or measurable deviation. If the Provider fails to notify the Customer within such sixty (60) day period, the Provider thereafter waives the right to present any claim for an adjustment to the energy performance calculations on account of such action or failure to act.

Notwithstanding the provisions of this Section, the Provider is not required to present any claim for a Cause of Adjustment if the Provider determines that an action, failure to act, or measurable deviation will have no impact on the Measured Savings Amount. In all instances, the Provider must account for all Causes for Adjustment to the energy performance calculations arising during the preceding Performance Period year within the prior Performance Period year Calculations, and the Provider waives the right to present any Causes for Adjustments not specified within the prior year calculations. Within sixty (60) days of the Date of Commencement, the Parties will mutually detennine any Causes for Adjustment to account for changes in the Facility sites and their use which have occurred prior to the execution of this Agreement but after the performance of the Investment Grade Audit.

\* Threshold Limits Per Fuel-type/Category:

Area - 3% of square footage of Facility site area as of the Date of Commencement.

Electricity- 3% of highest annual peak demand

Natural Gas - 3% of installed Base Year gas-heating capacity

Air Conditioning - 3% of installed Base Year air-conditioning capacity

## 7. Examples \_

Examples of energy savings calculations for the each ECM included in the Project are set forth in and Addendum #1 to the Investment Grade Audit.

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### Exhibit C

#### Customer Project-Specific Obligations

Responsibility for the proper maintenance, service, repair, replacement and adjustments to each ECM, ECM system and related auxiliary systems and equipment, including related expenses, shall transfer to the

ECM system and related ancillary systems and equipment, including related expenses, shall transfer to the Customer on an ECM by ECM basis on the Substantial Completion Date of each ECM (unless a Subcontractor or manufacturer warranty period is in effect with respect thereto). The Customer will be responsible for such maintenance, service, repair and adjustments for the remainder of the Term. Operation and Maintenance Manuals ("O&M Manuals") will be provided to the Customer by the Provider's Subcontractor. Included with the O&M Manuals will be a list of maintenance responsibilities and tasks for the Customer. The Provider has no maintenance responsibilities under this Agreement.

**Start-up and Shutdown:** The Customer's responsibilities include all system start-ups and shut-downs. System start-up (beginning of season) and shut-down (end of season) refers to specific manufacturer recommendations with respect to "proper" system start-up, operation, maintenance, and shut-down as defined in O&M Manuals.

**Operations:** The Customer shall operate the equipment installed hereunder in accordance with parameters noted in Exhibit B, the manufacturers' recommendations, and any supplemental procedures supplied to the Customer by the Provider or its Subcontractor including those set forth in the O&M Manuals. The Customer shall also operate the equipment and systems (including ancillary related systems) in accordance with the standards of service and comfort set forth in Exhibit B.

**Maintenance:** The Customer's maintenance responsibilities include the proper operation and prompt repair and maintenance of each ECM, ECM system and related ancillary systems and equipment such that they are maintained in good working order during the Term. The Customer shall repair and maintain (i) the equipment and all other components which comprise each ECM and (ii) all other equipment which is attached thereto and/or is integral to the proper functioning of each ECM, including performance of the maintenance tasks, manufacturer's recommendations and supplemental procedures included in the O&M Manuals. Maintenance also refers to performing required maintenance of ancillary systems.

**CMMS:** The Customer shall cause the CMMS (as defined in Exhibit A to this Agreement) to be continuously operated and maintained during the Term and shall bear all costs related to the CMMS not included in the costs financed by the Provider under the Loan Agreement and as otherwise provided in the PBC Undertaking Agreement. The Provider makes no representation nor warranty with respect to the suitability or utility of the CMMS.

C-1

MBE/WBE Special Conditions (Attached)

D-1

**CITY OF CHICAGO Department of Procurement Services Jamie L. Rhee, Chief Procurement Officer**

121 North LaSalle Street, Room 806 Chicago, Illinois 60602-1284

**Fax: 312-744-3281**

**Commodities and Work Services MBE & WBE Special Conditions**

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 (inclusive of any and all modifications and amendments), if awarded, for contract participation by MBEs and WBEs:

MBE Percentage	WBE Percentage
25%	5%

This commitment is met by the Contractor's 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 the indirect participation of MBEs or WBEs in other aspects of the Contractor's business (but no dollar of such indirect MBE or WBE participation will be credited more than once against a Contractor's MBE or WBE commitment with respect to all government Contracts of such Contractor), 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.

As noted above, the Contractor may meet all or part of this commitment by contracting with MBEs or WBEs for the provision of goods or services not directly related to the performance of this Contract. However, in determining the manner of MBE/WBE participation, the Contractor will first consider involvement of MBEs/WBEs as joint venture partners, subcontractors, and suppliers of goods and services directly related to

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the performance of this Contract. In appropriate cases, the Chief Procurement Officer will require the Contractor to demonstrate the specific efforts undertaken by it to involve MBEs and WBEs directly in the performance of this Contract.

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 2-92-535, the prime contractor may apply be awarded an additional 0.333 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 mentor agreement with the contractor. 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.*

"B.E.P.D." means an entity certified as a Business enterprise owned or operated by people with disabilities as defined in MCC Section 2-92-586.

"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.

"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.

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"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.

"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 credited 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-Protégé Agreement" means an agreement between a prime and MBE or WBE subcontractor 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.

"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.

### 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:

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- 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 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 proposed joint venture agreement, the Schedule B submitted on behalf of the proposed joint venture, and all related documents 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 with its bid a Schedule B and the proposed joint venture agreement. These documents must both 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,

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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 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. 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.
  1. 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.
- 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.

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- 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:
  - 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.

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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 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 / Indirect 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 or indirect 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:

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- choosing subcontracting opportunities likely to achieve MBE/WBE goals:

- not imposing any limiting conditions which were not mandatory for all subcontractors;
- 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.

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 Reductions 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.

or 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:

- o 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.

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 tillable 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.

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

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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.

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 the joint venture agreement and a Schedule B along with all other requirements listed in Section 1.3, "Joint Ventures," 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. The joint venture agreement must also clearly define each partner's authority to contractually obligate the joint venture and each partner's authority to expend joint venture funds (e.g., check signing authority).

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 tillable 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-1 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.mwdb.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;

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- 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; 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.

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

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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.

#### 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.

#### 11. Equal Employment Opportunity

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

Attachment A -Assist Agency List

## PROCUREMENT SERVICES

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.

American Brotherhood of Contractors  
935 West 175<sup>th</sup> Street  
Homewood, Illinois 60430  
Phone: (773) 491-5640  
Email: [arba@constructive-business.com](mailto:arba@constructive-business.com) <<mailto:arba@constructive-business.com>>

Asian American Business Expo 207 East Ohio St. Suite 218 Chicago, IL 60611 Phone: 312-233-2810 Fax:312-268-6388  
Email: [Janny@AsianAmericanBusinessExpo.org](mailto:Janny@AsianAmericanBusinessExpo.org) <<mailto:Janny@AsianAmericanBusinessExpo.org>>

Asian American Institute  
4753 N. Broadway St. Suite 904  
Chicago, IL 60640  
Phone: (773) 271-0899  
Fax: (773)271-1982  
Email: [kfemicola@aaichicago.org](mailto:kfemicola@aaichicago.org) <<mailto:kfemicola@aaichicago.org>>  
Web: [www.aaichicago.org](http://www.aaichicago.org) <<http://www.aaichicago.org>>

Association of Asian Construction Enterprises  
333 N. Ogden Avenue Chicago, IL 60607 Phone: (847) 525-9693 Email: [nakmancorp@aol.com](mailto:nakmancorp@aol.com) <<mailto:nakmancorp@aol.com>>

Black Contractors United  
400 W. 76<sup>th</sup> Street, Suite 200  
Chicago, IL 60620  
Phone: (773) 483-4000  
Fax: (773) 483-4150  
Email: [bcunewera@att.net](mailto:bcunewera@att.net) <<mailto:bcunewera@att.net>>  
Web: [www.blackcontractorsunited.com](http://www.blackcontractorsunited.com) <<http://www.blackcontractorsunited.com>>

Cosmopolitan Chamber of Commerce  
203 N. Wabash, Suite 518  
Chicago, IL 60601  
Phone: (312) 499-0611  
Fax: (312) 332-2688  
Email: [ccarey@cosmococ.org](mailto:ccarey@cosmococ.org) <<mailto:ccarey@cosmococ.org>>  
Web: [www.cosmochamber.org](http://www.cosmochamber.org) <<http://www.cosmochamber.org>>

Eighteenth Street Development Corporation  
1843 South Carpenter  
Chicago, Illinois 60608  
Phone: (312) 733-2287  
Fax: (773)-353-1683  
[asoto@eighteenthstreet.org](mailto:asoto@eighteenthstreet.org) <<mailto:asoto@eighteenthstreet.org>>  
[www.eighteenthstreet.org](http://www.eighteenthstreet.org) <<http://www.eighteenthstreet.org>>  
Chatham Business Association Small Business  
Development, Inc.  
8441 S. Cottage Grove Avenue  
Chicago, IL 60619  
Phone: (773)994-5006  
Fax: (773)994-9871  
Email: [melkelcba@sbcglobal.net](mailto:melkelcba@sbcglobal.net) <<mailto:melkelcba@sbcglobal.net>>  
Web' [www.cbaworks.org](http://www.cbaworks.org) <<http://www.cbaworks.org>>

Chicago Area Gay & Lesbian Chamber of Commerce 3656 N. Halsted Chicago, IL 60613 Phone: (773) 303-0167 Fax: (773) 303-0168  
Email: [info@glchamber.org](mailto:info@glchamber.org) <<mailto:info@glchamber.org>> Web: [www.alchamber.org](http://www.alchamber.org) <<http://www.alchamber.org>>

Chicago Minority Supplier Development Council, Inc.  
105 W. Adams, Suite 2300  
Chicago, IL 60603-6233  
Phone: (312) 755-8880  
Fax: (312) 755-8890  
Email: [pbarreda@chicagomsdc.org](mailto:pbarreda@chicagomsdc.org) <<mailto:pbarreda@chicagomsdc.org>>  
Web: [www.chicagomsdc.org](http://www.chicagomsdc.org) <<http://www.chicagomsdc.org>>

Chicago Urban League  
4510 S. Michigan Ave. Chicago, IL 60653 Phone: (773) 285-5800 Fax: (773) 285-7772  
Email: [Dresident@thechicagourbanleaue.org](mailto:Dresident@thechicagourbanleaue.org) <<mailto:Dresident@thechicagourbanleaue.org>> Web: [www.cul-chlcaao.org](http://www.cul-chlcaao.org) <<http://www.cul-chlcaao.org>>

Chicago Women In Trades (CWIT)  
4425 S. Western Blvd.  
Chicago, IL 60609-3032  
Phone: (773) 376-1450  
Fax: (312) 942-0802  
Email: [cwitinfor@cwit2.org](mailto:cwitinfor@cwit2.org) <<mailto:cwitinfor@cwit2.org>>  
Web: [www.chicagowomenintrades.org](http://www.chicagowomenintrades.org) <<http://www.chicagowomenintrades.org>>

Coalition for United Community Labor Force  
1253 W. 63<sup>rd</sup> Street  
Chicago, IL 60636  
Phone: (312) 243-5149  
Email: [johnrev.hatchett@comcast.net](mailto:johnrev.hatchett@comcast.net) <<mailto:johnrev.hatchett@comcast.net>>

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City of Chicago Department of Procurement Services - Assist Agencies (cont'd)

Federation of Women Contractors 5650 S. Archer Avenue Chicago, IL 60638 Phone: (312) 360-1122 Fax: (312) 360-0239 Email: [fwcchicago@aol.com](mailto:fwcchicago@aol.com) <<mailto:fwcchicago@aol.com>> Web: [www.fwcchicago.com](http://www.fwcchicago.com) <<http://www.fwcchicago.com>>

Hispanic American Construction Industry Association (HACIA)  
650 West Lake Street Chicago, IL 60661 Phone: (312) 666-5910 Fax: (312) 666-5692 Email: [info@haciaworks.org](mailto:info@haciaworks.org)  
<<mailto:info@haciaworks.org>> Web: [www.haciaVviorks.org](http://www.haciaVviorks.org) <<http://www.haciaVviorks.org>>

Illinois Hispanic Chamber of Commerce  
855 W. Adams, Suite 100  
Chicago, IL 60607  
Phone: (312) 425-9500  
Fax: (312) 425-9510  
Email: [oduque@ihccbbusiness.net](mailto:oduque@ihccbbusiness.net) <<mailto:oduque@ihccbbusiness.net>>  
Web: [www.ihccbbusiness.net](http://www.ihccbbusiness.net) <<http://www.ihccbbusiness.net>>

Latin American Chamber of Commerce 3512 West Fullerton Avenue Chicago, IL 60647 Phone: (773) 252-5211 Fax: (773) 252-7065  
Email: [d.lorenzopadron@latnamericanchamberofcommerce.cdm](mailto:d.lorenzopadron@latnamericanchamberofcommerce.cdm) <<mailto:d.lorenzopadron@latnamericanchamberofcommerce.cdm>> Web: [www.latnamericanchamberofcommerce.com](http://www.latnamericanchamberofcommerce.com) <<http://www.latnamericanchamberofcommerce.com>>

National Organization of Minority Engineers  
33 West Monroe Suite 1540  
Chicago, Illinois 60603  
Phone: (312) 425-9560  
Fax: (312) 425-9564  
Email: [shandy@infrastructure-eng.com](mailto:shandy@infrastructure-eng.com) <<mailto:shandy@infrastructure-eng.com>>  
Web: [www.nomeonline.org](http://www.nomeonline.org) <<http://www.nomeonline.org>>

National Association of Women Business Owners  
Chicago Chapter

Chicago Chapter  
230 E. Ohio, Suite 400  
Chicago, IL 60611  
Phone: (312)224-2605  
Fax: (312)6448557  
Email: [Info@nawbachicago.org](mailto:Info@nawbachicago.org) <<mailto:Info@nawbachicago.org>>  
Web: [www.nawbochicago.org](http://www.nawbochicago.org) <<http://www.nawbochicago.org>>  
Rainbow/PUSH Coalition  
International Trade Bureau  
930 E. 50<sup>th</sup> Street  
Chicago, IL 60615  
Phone: (773) 256-2781  
Fax: (773) 373-4104  
Email: [bevans@rainbowpush.org](mailto:bevans@rainbowpush.org) <<mailto:bevans@rainbowpush.org>>  
Web: [www.rainbowpush.org](http://www.rainbowpush.org) <<http://www.rainbowpush.org>>

South Shore Chamber, Incorporated  
Black United Funds Bldg.  
1750 E. 71<sup>st</sup> Street  
Chicago, IL 60649-2000  
Phone: (773) 955- 9508  
Email: [sshorechamber@b.sbgloball.net](mailto:sshorechamber@b.sbgloball.net) <<http://lobal.net>>  
Web: [www.southshorechamberinc.org](http://www.southshorechamberinc.org) <<http://www.southshorechamberinc.org>>

Suburban Minority Contractors Association  
1250 Grove Ave. Suite 200  
Barrington, IL 60010  
Phone: (847)852-5010  
Fax: (847) 382-1787  
Email: [aprilcobra@hotmail.com](mailto:aprilcobra@hotmail.com) <<mailto:aprilcobra@hotmail.com>>  
Web: [www.suburbanblackcontractors.org](http://www.suburbanblackcontractors.org) <<http://www.suburbanblackcontractors.org>>

Women Construction Owners & Executives (WCOE)  
Chicago Caucus  
308 Circle Avenue  
Forest Park, IL 60130  
Phone: (708) 366-1250  
Fax: (708) 366-5418  
Email: [mkm@mkmservices.com](mailto:mkm@mkmservices.com) <<mailto:mkm@mkmservices.com>>  
Web: [www.wcoeusa.org](http://www.wcoeusa.org) <<http://www.wcoeusa.org>>

Women's Business Development Center  
8 South Michigan Ave., Suite 400  
Chicago, IL 60603  
Phone: (312)853-3477  
Fax: (312)853-0145  
Email: [fcurry@wbdc.org](mailto:fcurry@wbdc.org) <<mailto:fcurry@wbdc.org>>  
Web: [www.wbdc.org](http://www.wbdc.org) <<http://www.wbdc.org>>

**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

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

**Schedule B - Affidavit of Joint Venture**

**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 3e Attached.

1. Name of joint venture: •  
Address of joint venture:  
  
Phone number of joint venture:
- II. Identify each non-MBE/WBE venturor(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^)
  - 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

**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

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**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 project?

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.

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

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 MBEA/VBE
- 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.

Page 4 of 5

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

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 MBEA/VBE Partner Firm

Name of Non-MBE/WBE Partner  
Firm

Signature of Affiant

Signature of Affiant



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 or 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 ( ) No

**NOTICE: THIS SCHEDULE AND ATTACHMENTS REQUIRE ORIGINAL SIGNATURES.**

(Signature or Electronic Signature)

(Name of the Contractor)

(Contract Number)

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

**SCHEDULE D-1**

**Compliance Plan Regarding MBE/WBE 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 MBE/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)

**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

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:<sup>1</sup> %

Total Participation %

2. Name of MBE/WBE:

Address.

Contact Person;

<sup>1</sup> 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 MBEA/WBE protege firm

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

Phone Number

Dollar Value of Participation \$

Percentage of Participation %

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

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.

MBEA/VBE Subcontractors/Supphers/Consultants proposed to performwork 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 \$

Percentage of Participation %

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

Total Participation %

2. Name of M BE/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 %

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

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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

2. MBE Indirect Participation

I  
**B. WBE Proposal (Direct & Indirect)**

1. WBE Direct Participation



1. WBE Direct Participation

2. WBE Indirect Participation

06/2013

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

The Prime Contractor designates the following person as its MBEAA/BE 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.

Page 5 of 5

**29**

**ENERGY SERVICES AGREEMENT**

by and between

**CHICAGO INFRASTRUCTURE TRUST and**

**THE CITY OF CHICAGO**

dated April 11,2014

**RETROFIT ONE  
CHICAGO DEPARTMENT OF FLEET AND FACILITY MANAGEMENT  
NORESKO, LLC PROJECT  
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**ENERGY SERVICES AGREEMENT**

THIS ENERGY SERVICES AGREEMENT (this "Agreement") dated the 11th day of April, 2014 (the

THIS ENERGY SERVICES AGREEMENT (this "Agreement"), dated the 11th day of April, 2014 (the "Effective Date"), is by and between CHICAGO INFRASTRUCTURE TRUST, an Illinois nonprofit corporation (the "Provider") and the CITY OF CHICAGO, a home rule unit of local government under the Constitution and laws of the State of Illinois (the "Customer") (each of the Customer and the Provider, a "Party" and collectively, the "Parties").

## RECITALS

WHEREAS, the Provider is authorized and empowered pursuant to the provisions of an ordinance adopted by the City Council of the City (the "City Council") on April 24, 2012, as amended by an ordinance adopted by the City Council on January 15, 2014, and a resolution adopted by the board of directors of the Provider on November 12, 2013, to, among other things, acquire and finance certain energy conservation projects for the benefit of the Customer; and

WHEREAS, the Customer desires to engage the Provider to procure, install, implement, own, operate and maintain certain energy conservation measures and energy efficiency measures (as further described herein, "ECMs"), to be located at certain facilities of the Customer (as further described herein, the "Facilities") for the purposes of achieving energy and operational savings at the Facilities subject to the terms and conditions of this Agreement; and

WHEREAS, the Provider desires to procure, install, implement, own, operate and maintain the ECMs and measure and verify energy and operational savings produced by the ECMs under the terms and conditions of this Agreement;

NOW THEREFORE, in consideration of the premises and the mutual promises and agreements of the Parties herein expressed, the Parties, intending to be legally bound, hereby agree as follows:

## ARTICLE I DEFINITIONS

Section 1.1 Definitions. Terms used in this Agreement shall have the meanings set forth in this Article I unless a different meaning clearly appears from the context.

"Agreement" means this Energy Services Agreement, together with all appendices, exhibits and schedules thereto, as any of them may be amended.

"Bond Counsel" means an attorney or firm of attorneys nationally recognized on the subject of municipal bonds and selected by the Provider and reasonably acceptable to the Customer and the Lender.

"Business Day" means any Day other than a Saturday, Sunday or a Day observed as a holiday by the Customer, the State of Illinois or the United States government, except that in the event that an obligation to be performed under this Agreement falls due on a Day other than a Business Day, the obligation shall be deemed due on the next Business Day thereafter (with no additional charge for such deferral).

"Change Order" means a written order signed by the Parties authorizing an addition, deletion or other change in the Installation Work, the Installation Schedule or the Project Costs or any other obligation of the Provider or the Customer pursuant to this Agreement.

"Commission" means the Public Building Commission of Chicago, a public body corporate and politic

of the State of Illinois.

"Concealed Conditions" means subsurface or otherwise concealed physical conditions at the Facilities of an unusual nature that differ materially from those conditions ordinarily found to exist and generally recognized as inherent in construction activities of the type and character as the installation Work, and that the Provider could not have discovered through the exercise of reasonable diligence during the performance of the Investment Grade Audit unless excluded thereunder.

"Customer Equipment" means all Customer-owned and leased equipment and fixtures located at the Facilities or related thereto that may affect the energy consumption savings that may be achieved by the ECMs.

"Day" means a calendar day and shall include Saturdays, Sundays and holidays.

"Determination of Taxability" means (a) the receipt by the Lender, the Provider or the Customer of an original or a copy of an Internal Revenue Service Statutory Notice of Deficiency which is non-appealable and holds that an Event of Taxability has occurred; (b) the issuance of any public or private ruling of the Internal Revenue Service that holds that an Event of Taxability has occurred; or (c) receipt by the Lender, the Provider or the Customer of a written opinion of Bond Counsel that an Event of Taxability has occurred.

"Discount Rate" means four and ninety-five hundredths percent (4.95%).

"Dispute" means a Savings Dispute or a Non-Savings Dispute.

"Documents" means this Agreement with conditions set forth herein, the Plans and Specifications, the Installation Schedule, any Change Orders and any modifications to the foregoing documents issued after execution of this Agreement.

"ECMs" means the equipment, devices, materials, and/or software to be acquired and installed at the Facilities by the Provider and all related services as described in Exhibit A.

"Environmental Attributes" means all rights, credits (including tax credits), rebates, grants, benefits, reductions, offsets, and allowances and entitlements of any kind, howsoever entitled or named (including carbon credits and allowances), whether arising under federal, state or local law, international treaty, trade association membership or the like, arising from the development or installation of the ECMs and the reduction of energy usage at the Facilities. Without limiting the foregoing, "Environmental Attributes" includes utility rebates or incentive programs, green tags, renewable energy credits, tradable renewable certificates, portfolio energy credits, the right to apply for (and entitlement to receive) incentives under any state tax credit

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program, grants from nongovernmental organizations, and the right to claim federal income tax credits under Sections 45 and/or 48 of the Internal Revenue Code.

"Event of Loss" means an event in which the Facilities, the ECMs or any portion thereof is destroyed, in whole or in part, or is damaged by fire or other casualty or title to, or the temporary use of, the Facilities, the ECMs or any part thereof shall be taken under the exercise or threat of the power of eminent domain by any governmental body or by any person, firm or corporation acting pursuant to governmental authority.

"Event of Taxability" means if for the month of January of the Customer fails to pay the Customer on



"Event of Taxability" means if as the result of any act of the Customer, failure to act by the Customer or any misrepresentation or inaccuracy by the Customer in any of the representations, warranties or covenants of the Customer contained in this Agreement or included in the Tax Certificate, the interest on the Series B Note (as defined in the Loan Agreement) is or becomes includable in the gross income of the registered owner of the Series B Note for federal income tax purposes. For all purposes of this definition, an Event of Taxability shall be deemed to occur on the date as of which the interest on the Series B Note is or becomes includable in the gross income of the registered owner of the Series B Note for federal income tax purposes.

"Expected Savings Production" means, at any time, the Savings expected to be produced by the Project during the remaining Term of this Agreement as determined in accordance with Exhibit B and based on the underlying assumptions and performance projections for the Project.

"Fair Market Value" means the value determined on the following basis: (i) the subject value shall be the amount which would be obtained in an arm's length transaction between an informed and willing buyer (who is not a used equipment dealer), and an informed and willing seller under no compulsion to sell; (ii) the costs of removal of the equipment from its then location shall not be a deduction from such value; and (iii) in determining any such value, to the extent the Customer is obligated to maintain any equipment, it shall be assumed (whether or not the same be true) (A) that such equipment has been maintained and is in the condition required in accordance with this Agreement, and (B) such value has not been diminished due to the existence of any damage history.

"Force Majeure Event" means any cause beyond the reasonable control of, and not due to the fault or negligence of, the Party affected, and which could not have been avoided by due diligence and use of reasonable efforts, including, but not limited to, drought, flood, earthquake, storm, mudslide, fire, lightning, epidemic, war, riot, civil disturbance, sabotage, explosions, material changes in Law, or strikes or labor disputes, unavoidable casualties, acts of public enemies, orders or restraints of any kind imposed by the government of the United States, any state or any of their departments, agencies or officials, or any other action of a civil government, military or judicial authority. "Force Majeure Event" also means the failure of any contractor to a Party hereto to furnish labor, services, materials or equipment, but only if such failure is itself due to a Force Majeure Event (as defined in the previous sentence).

"Hazardous Materials" means all hazardous or toxic substances, wastes or other pollutants, including petroleum, petroleum hydrocarbons or petroleum products, petroleum byproducts, radioactive materials, asbestos or asbestos-containing materials, gasoline, diesel fuel,

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pesticides, radon, urea formaldehyde, lead or lead-containing materials, polychlorinated biphenyls; and any other chemicals, materials, substances or wastes in any amount or concentration which are now included in the definition of "hazardous substances," "hazardous materials," "hazardous wastes," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "pollutants," "regulated substances," "solid wastes," or "contaminants" or words of similar import, under any applicable law.

"Independent Engineer" means a third party professional engineering firm, which firm shall be reasonably acceptable to both the Provider and the Customer.

"Installation Schedule" means the construction schedule included in Exhibit A hereto for the Installation Work that includes, without limitation, a schedule related to the entire Project and for each ECM,

and that provides for expeditious and practicable execution of all aspects of the Installation Work.

"Installation Work" means the work and services required by the Documents during the implementation of the ECMs prior to the Substantial Completion Date and the completion of any related Punch List items and during any period of time during which the Provider is required to correct or replace its work and services pursuant to this Agreement, whether completed or partially completed and, includes all labor, materials, equipment, and services provided or to be provided by the Provider to fulfill the Provider's obligations under this Agreement.

"Interim Completion" means the achievement of the requirements for Substantial Completion for a particular ECM(s) prior to the Substantial Completion Date.

"Investment Grade Audit" means the report prepared by NORESKO, LLC that sets forth, among other things, (a) an assessment of the energy consumption characteristics of each Facility, (b) specific energy analysis related to each Facility and its operation, and (c) recommendations for projects or programs to achieve cost and/or energy savings in the operation of the Facilities.

"Law" means any applicable constitution, charter, act, statute, law (including common law), ordinance, code, rule, regulation, judgment, decree, writ, order, permit, approval, or the like, as any of the foregoing may change from time to time, of any federal, state or local government or any agency, department, authority, court, political subdivision or other instrumentality thereof.

"Lender" means Banc of America Public Capital Corp, a Kansas corporation, and its successors and permitted assigns.

"Liquidated Damages Amount" means, at any time, the amount equal to the net present value of one hundred percent (100%) of the Savings, plus any unearned Environmental Attributes, calculated at the Discount Rate, assuming the Project will produce Savings at the Expected Savings Production for the remaining Term.

"Loan Agreement" means the Loan and Security Agreement dated as of April 1, 2014 between the Lender and the Provider relating to the financing of the costs of the ECMs.

"M&V Services" means the measurement and verification services and other services to be performed described in Exhibit B of this Agreement which M&V Services shall commence on the earlier of (i) the first Interim Completion for a particular ECM or (ii) the Substantial Completion of the Project.

"MCC" means the Municipal Code of Chicago.

"Measured Savings" means energy and operational savings achieved by the ECMs as determined pursuant to Exhibit B.

"Non-Measured Savings" means energy and operational savings agreed by the Parties to be achieved as a result of the ECMs as more particularly described in Exhibit B.

"Non-Savings Dispute" means any claim, dispute, controversy or other matter arising out of or related

to the validity, scope, making, interpretation, enforceability, performance, breach of, or relating in any way to this Agreement or the relationship between the Parties created by this Agreement or the subject matter of this Agreement, including but not limited to the authority or capacity of any signatory to this Agreement, but excluding a Savings Dispute.

"PBC Undertaking Agreement" means the Undertaking Agreement between the Commission and the Provider related to the Project, and any amendments or supplements thereto.

"Period" means the semi-annual period commencing with the semi-annual period following the Substantial Completion Date or Interim Completion of ECM(s), as applicable.

"Plans and Specifications" means the drawings, specifications, designs, plans, and related documents, prepared by or on behalf of the Customer, the Provider, and/or Subcontractors in connection with the Project.

"Project" means the design, engineering, installation, repairs, retrofit, and implementation of the ECMs, as more fully described in Exhibit A hereto and the other terms and provisions of this Agreement.

"Project Costs" means the costs incurred by Provider in performing the Installation Work.

"Punch List" means minor items of Work to be completed after Substantial Completion, which do not prevent an ECM or the Project from being used for the purpose for which it is intended and which will not prevent the issuance of applicable permits or certificates for such use.

"Savings" means Measured Savings and Non-Measured Savings.

"Savings Dispute" means any claim, dispute, controversy relating to an invoice for payment related to Savings.

"Savings Percentage" is defined in Section 8.1 of this Agreement.

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"Services" means the Installation Work and the M&V Services.

"Subcontract" means an agreement between the Provider and a Subcontractor to provide all or a portion of the Services.

"Subcontractor" or "Subcontractors" means one or more person or entity that furnishes labor, services, material, or equipment to the Provider or any other Subcontractor to the Provider; provided that the Lender shall not be considered a Subcontractor with respect to this Agreement.

"Substantial Completion" means the date that is the later of the following: (i) the Provider has determined that the Installation Work is sufficiently implemented in accordance with the Documents, including commissioning of any systems required by the Documents, so that the Customer may realize the benefits of the

Project or the particular ECM, as the case may be, and is fully complete except for Punch List items; or (11) if the nature of such Installation Work requires that a certificate of occupancy be issued, it means the date of issuance of the required certificate of occupancy for the portion of the Facilities related to such Installation Work.

"Substantial Completion Date" means April 15, 2015, subject only to extension as provided in this Agreement.

"Tax Certificate" means the Tax Compliance Agreement executed and delivered by the Provider and the Customer in connection with the tax-exempt financing of the Project.

"Term" means the period of time from the Effective Date until April 30, 2029, unless extended pursuant to the terms of this Agreement and, if extended, includes the period of such extension.

Section 1.2 Rules of Interpretation. Unless otherwise required by the context in which any term appears: (a) capitalized terms used in this Agreement have the meanings specified in this Article; (b) the singular shall include the plural and vice versa; (c) references to "Articles," "Sections," "Schedules," "Annexes," "Appendices," "Attachments," or "Exhibits" (if any) shall be to articles, sections, schedules, annexes, appendices, attachments or exhibits (if any) of this Agreement and references to a Schedule, Annex, Appendix, Attachment, or Exhibit shall mean the referenced Schedule, Annex, Appendix, Attachment, or Exhibit and any sub-exhibits, subparts, components or attachments that form a part thereof; (d) all references to a person or entity includes its successors and permitted assigns, and in the case of a governmental authority, any person succeeding to its functions and capacities; (e) the words "herein," "hereof" and "hereunder" shall refer to this Agreement as a whole and not to any particular section or subsection of this Agreement; (f) all accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles in the United States of America, consistently applied; (g) references to this Agreement shall include a reference to all appendices, annexes, schedules and exhibits hereto, as the same may be amended, modified, supplemented or replaced from time to time; (h) references to any agreement, document or instrument shall mean a reference to such agreement, document or instrument as the same may be amended, modified, supplemented or replaced from time to time (provided that no such

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amendment, modification, supplement or replacement shall serve to eliminate or lessen any Party's obligation under this Agreement as in effect on the Effective Date without the other Party's written consent) and any term defined or provision incorporated in this Agreement by reference to another document, instrument or agreement shall continue to have the meaning or effect ascribed thereto whether or not such other document, instrument or agreement is in effect; (i) the use of the word "including" in this Agreement to refer to specific examples shall be construed to mean "including, without limitation" or "including but not limited to" and shall not be construed to mean that the examples given are an exclusive list of the topics covered; (j) references to Laws shall mean a reference to such Laws as the same may be amended, modified, supplemented or restated and be in effect from time to time; (k) the gender of all words used herein shall include the masculine, feminine and neuter; and (l) the term "or" is not exclusive.

## ARTICLE II TERM; DISPOSITION OF ECMS

### Section 2.1 Term.

a) This Agreement shall be in effect for the Term, unless terminated earlier in accordance with the provisions hereof. The Provider agrees to undertake the Installation Work in accordance with the Installation Schedule.

b) Upon the occurrence of either or both of (i) a Determination of Taxability or (ii) Event of Loss, the Term shall be extended automatically for such period of time necessary (as determined by written notice by the Lender) for the Provider to satisfy its obligations to the Lender under the Loan Agreement from amounts payable by the Customer under this Agreement, provided that the Term shall not be extended beyond April 1, 2036.

c) At the end of the original Term (if not extended pursuant to subsection (b) of this Section 2.1, the Parties may, upon mutual agreement in writing, elect to extend the Term for one (1) period of up to five (5) years. If the original Term has been extended pursuant to subsection (b) of this Section 2.1, this subsection (c) shall be of no force or effect.

## Section 2.2 Substantial Completion; Interim Completion.

(a) The Provider will commence the Installation Work within ten (10) days after the date of this Agreement and will achieve Substantial Completion of the Project no later than the Substantial Completion Date; provided, however, the Provider may achieve Interim Completion for a particular ECM(s) in advance of the Substantial Completion Date. When the Provider determines that it has achieved Substantial Completion or Interim Completion of the entire Project or a particular ECM, as the case may be, the Provider will provide written notice of Substantial Completion or Interim Completion and a Punch List to the Customer. If the Customer concurs that the described portion of the Installation Work as performed has achieved Interim or Substantial Completion, the Customer will accept that Installation Work by signing the certificate of Interim or Substantial Completion and the Punch List and rehiring both to the Provider. If the Customer does not concur that the Installation Work has achieved Interim or Substantial Completion and/or that the Punch List is not complete or correct, then the Customer

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shall notify the Provider within thirty (30) days of any discrepancies. To the extent the Provider does not dispute the discrepancies raised by the Customer, the Provider shall (i) promptly and diligently correct the Work to conform to the description of the Work set forth herein, and resubmit the certificate of Interim or Substantial Completion to the Customer, and (ii) promptly complete all items on the Punch List. If the Provider disagrees with the discrepancies raised by the Customer, the Provider shall notify the Customer of a dispute and such dispute shall be resolved in accordance with paragraph (b) below. If the Customer does not deliver written notice to the Provider within thirty (30) days of receiving the certificate of Interim or Substantial Completion and the Punch List, the Customer will be deemed to have agreed to, signed and returned the certificate of Interim or Substantial Completion and the Punch List.

(b) Any disputes concerning the Interim or Substantial Completion of the Work will be resolved by submitting the issue to an Independent Engineer. The Independent Engineer shall be authorized to make determinations and bind the Parties on issues related solely to interpretations or adequacy of the Plans and Specifications or the execution and/or completion of the Installation Work embodied in the Plans and Specifications as it relates to the determination of Interim or Substantial Completion. The Independent

Engineer shall not have the authority to render determinations regarding delay claims, payment disputes or other contract disputes that do not involve or arise out of the content of the Plans and Specifications and/or the quality of the execution of the Installation Work. All disputes beyond the authority of the Independent Engineer shall be resolved pursuant to Article XII herein. The determination of the Independent Engineer with respect to Interim or Substantial Completion will be final and binding upon the Parties. The Provider and the Customer shall share equally the costs or fees for such firm in connection with such dispute resolution process.

### Section 2.3 Fair Market Value Purchase Option.

a) Provided that no Default by Customer has occurred and is continuing, at the end of the Term the Customer shall have the option upon written notice to the Provider at least sixty (60) Days prior to the end of the Term and payment of all amounts then due in respect of Savings pursuant to Section 8.1 and payment of any other amounts payable by the Customer under this Agreement to purchase the ECMs at their Fair Market Value.

b) The Parties shall consult for the purpose of determining the Fair Market Value of the ECMs and any values agreed upon in writing between the Parties shall be binding. If the Parties fail to agree upon any such value within thirty (30) days of the commencement of such consultation, the Provider shall then appoint an independent appraiser (reasonably acceptable to the Customer) to determine the applicable value, and such determination by the independent appraiser shall be set forth in a written opinion delivered to the Parties within thirty (30) days after such appointment and shall be binding on the Parties in the absence of fraud or manifest error. The independent appraiser shall make any such determination acting reasonably and in good faith and utilizing the definition of Fair Market Value,- including all assumptions. The Customer agrees to pay the costs and expenses of any such determination and appraisal.

c) Notwithstanding the foregoing, the Customer shall have a period of five (5) days after agreement by the Parties on the Fair Market Value, or receipt by the Customer of the

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determination of the independent appraiser, as the case may be, to confirm or retract its decision to exercise the purchase option under this Section 2.3.

(d) Upon the payment of the purchase price of the ECMs and all other amounts due and payable under this Agreement, the Provider shall transfer to the Customer ownership of the ECMs, the Provider's interest in the related Plans and Specifications, any related manufacturer warranties and its interest in the Facilities (free and clear of any liens, claims, security interests or other encumbrances) promptly upon payment by the Customer of such purchase price.

Section 2.4 Disposition of the ECMs by the Provider. At the end of the Term if the Customer does not elect to purchase the ECMs pursuant to Section 2.3, the Provider may, at its sole option, either (i) subject to the Provider's compliance with the other terms and conditions of this Agreement, surrender possession and transfer ownership of all or a portion of the ECMs to the Customer or (ii) at its own expense and upon the Provider providing evidence reasonably satisfactory to the Customer of the Provider's ability to pay such expense, remove all or a portion of the ECMs within a period of one hundred eighty (180) Days from the last Day of the Term and leave the Facilities, return the Facilities to their original condition, except for ordinary wear and tear, and leave the Facilities in neat and clean order. If the Provider fails or is unable to provide to the Customer such evidence of its ability to pay such expense, the Provider shall be deemed to have surrendered possession

and transferred ownership of the ECMs to the Customer (and, in the event of such surrender, the Provider shall, within ten (10) Business Days of the surrender occurring deliver to the Customer such documents evidencing the transfer of title as are reasonably acceptable to the Customer). If the Provider determines to surrender possession of the ECMs, the Provider will transfer to the Customer ownership of such ECMs, the Provider's interest in the related Plans and Specifications, any related manufacturer warranties and its interest in the Facilities (free and clear of any liens, claims, security interests or other encumbrances). If the Provider determines to remove all or a portion of the ECMs and fails to remove them within the agreed upon period, the Customer shall have the right, at its option, to remove the ECMs to a public warehouse or other storage location or dispose of them, and restore the Facilities to their original condition, except for ordinary wear and tear, at the Provider's reasonable cost.

### ARTICLE III SERVICES AND RELATED OBLIGATIONS

#### Section 3.1 Subcontractors; Project Manager.

(a) The Provider shall perform and execute the provisions of this Agreement as an independent contractor and shall not be a partner, agent or employee of the Customer. The Provider shall have the right to have any of the Services performed by Subcontractors pursuant to written subcontracts between the Provider and such Subcontractors. No contractual relationship shall exist between the Customer and any Subcontractor with respect to the Installation Work to be performed hereunder. No Subcontractor is intended to be or shall be deemed a third-party beneficiary of this Agreement, unless otherwise expressly stated herein with respect to limitations of liability. The Provider shall be responsible to the Customer for acts and omissions of the Subcontractors, their agents and employees, and any other persons

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performing portions of the Services on behalf of the Provider, to the same extent as the acts or omissions of the Provider hereunder.

(b) Pursuant to the PBC Undertaking Agreement, the Provider has retained the Commission as its construction and program manager for the Project and the Services and, in such capacity, the Commission has the authority to act on behalf of the Provider in connection therewith.

Section 3.2 Installation Schedule. The Provider shall submit to the Customer and the Lender a revised Installation Schedule when the Provider's planned construction sequence is changed or when Project changes are made that affect the Installation Schedule. Any changes to the Installation Schedule which would extend the Substantial Completion Date beyond one hundred eighty (180) Days past the originally scheduled Substantial Completion Date shall be subject to review by the Customer.

#### Section 3.3 Supervision and Performance of the Services; Safety.

a) The Provider shall supervise, perform, and direct the Services using the professional skill, care, and attention reasonably required for projects similar to the Project. The Provider shall be solely responsible for and have control over means, methods, techniques, sequences, and procedures and for coordinating all portions of the Installation Work. The Provider will, at all times, act in the best interest of the Customer.

b) Notwithstanding any other provision herein, the Provider shall directly or through Subcontractors design, engineer, procure, construct, commission and test the Project in a good workmanlike and quality manner, with all reasonable care, skill and diligence.

c) The Provider shall be responsible for maintaining and supervising reasonable safety precautions and programs in connection with the performance of the Services. The Provider shall take reasonable precautions for safety of, and shall provide reasonable and appropriate protection to prevent damage, injury or loss to (1) employees performing the Services and other persons who may be affected thereby; (2) the Installation Work and materials and equipment to be incorporated in the Project; and (3) other property at the Facilities or adjacent thereto.

d) The Provider must employ only competent and efficient workers and whenever, in the opinion of the Customer, any such worker is careless, incompetent, violates safety or security rules, obstructs the progress of the work or services to be performed under this Agreement, acts contrary to instructions or acts improperly, or fails to follow the safety requirements of this Agreement, the Provider must, upon request of the Customer, discharge or otherwise remove such worker from the work or services to be performed under this Agreement and must not use such worker again, except with the written consent of the Customer. The Provider must not permit any person to work upon the work or services to be performed under this Agreement or enter into any buildings connected therewith who is under the influence of intoxicating liquors or controlled substances.

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Section 3.4 Use of Facilities. The Provider shall confine its operations to the portions of the Facilities identified in the Documents or otherwise approved by the Customer, and shall not unreasonably encumber the portions of the Facilities used for the Installation Work with materials, equipment, or similar items. The Provider and all Subcontractors shall use only such entrances to the Facilities as are designated by the Customer. During occupied hours, the Provider shall limit construction operations to methods and procedures that do not adversely and unduly affect the environment of occupied spaces within the Facilities, including but not limited to creating noise, odors, air pollution, ambient discomfort, or poor lighting. The Provider is responsible for conducting the Services in such a manner as to minimize debris left in the Facilities or public way and shall provide clean-up as required by the Customer. Whenever the Customer determines any type of operation constitutes a nuisance, the Provider will immediately proceed to conduct its operations in an approved manner. Upon completion of work activities, the Provider must remove all materials, tools and machinery and restore the site to the same general condition that existed prior to the commencement of its operations. While on Customer premises, the Provider will not store any equipment, tools or materials without prior written authorization from the Customer. The Customer will not be responsible for or liable to pay the Provider for any loss of equipment, tools, or materials stored in unsecured areas without proper authorization. The Provider shall promptly report to the Customer any death, lost time injury, or property damage to the Customer's property that occurs on the Facilities or as part of the Provider's operation of the Project on the Facilities. The Customer may at any time require additional provisions if such are deemed necessary for public safety or convenience.

Section 3.5 Permits and Approvals. Except for those permits and fees that are specified in the Documents as the responsibility of the Customer, the Provider shall secure and pay for necessary, licenses, building permits, approvals, assessments and charges required for the proper execution and completion of the



Installation Work. Pursuant to City of Chicago Ordinance PO 98-1690, all permits for demolition, construction alteration, repair, renovations, rehabilitation and inspection of buildings and facilities by the Provider and its Subcontractors for public or governmental use by the Customer and its sister agencies shall be issued without charge.

Section 3.6 Cortimissioiring; Testing. The Provider shall conduct a thorough and systematic performance test of each ECM in accordance with Exhibit A, and demonstrate that all ECMs comply with the requirements of the Documents. The Provider shall correct or adjust all deficiencies in operation of the ECMs identified during the course of the tests described in this Section.

Section 3.7 Concealed Conditions; Hazardous Materials.

(a) The Provider shall immediately notify the, Customer if it encounters Concealed Conditions at the Facilities prior to significantly disturbing the same. If such Concealed Conditions cause an increase in the Provider's cost of, or time required for, performance of any part of the Installation Work, the Provider and the Customer shall agree, by Change Order, on how to proceed and any adjustment to the Installation Schedule and the Savings Percentage related thereto.

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(b) The Provider is responsible for all Hazardous Materials that it or its Subcontractors or suppliers bring to or use at the Facilities ("Provider's Hazardous Materials"). The Customer will be responsible for all other Hazardous Materials present or occurring on the Facilities ("Customer's Hazardous Materials"). The Customer will advise the Provider of any risk of exposure to the Customer's Hazardous Materials prior to any Installation Work. The Provider may temporarily interrupt the Installation Work and will promptly inform the Customer if it reasonably believes there is undue risk of exposure to Customer's Hazardous Materials. The Provider will cooperate with the Customer to determine when it and others under its control may safely resume interrupted Installation Work. The Provider will be entitled to a change in the Installation Schedule and the Savings Percentage in connection with such interruption.

Section 3.8 Operation and Maintenance of Project. The Provider shall operate and maintain the ECMs in accordance with accepted industry practices for the purposes for which the ECMs were designed. The Provider shall retain the sole right to specify operating policies and procedures related to the Project and, subject to thirty (30) days' prior written notice to, and consultation with, the Customer, may modify such policies and procedures from time to time.

Section 3.9 Provider Improvements. The Provider may, at any time during the Term and at its cost, change or modify the ECMs or implement additional ECMs for the purpose of generating incremental Savings and/or optimizing the performance of its ECMs; provided, however, that no such change, modification or implementation of additional ECMs shall occur without at least thirty (30) days' prior written notice to, and consultation with, the Customer.

Section 3.10 Compliance with Laws. The Provider shall comply with all Laws in the course of performing the Services. If any new or different requirement, condition, change or anything beyond the Provider's control alters the Services to be performed hereunder or adversely affects the Project Costs or the Installation Schedule, including without limitation any operation or change of Law (including but not limited to changes to Laws imposing sales, use, excise, transportation, privilege, payroll or occupational taxes or

contributions) or requirement in connection with the financing of the Project that becomes applicable after the date of this Agreement, then Provider shall be entitled to propose to the Customer adjustments to the Installation Schedule and the Savings Percentage, and the Parties shall thereafter resolve such proposal in good faith.

Section 3.11 Taxes. Unless otherwise provided in the Documents, the Provider shall pay all applicable federal, state or local sales, consumer, use, and other similar taxes for which it bears the incidence of taxation during the Term. The Provider shall pay all applicable real and personal property taxes relating to the ECMs and the Provider's interest in the Facilities. Notwithstanding the foregoing, the Provider may contest any such taxes, assessments and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during that period of such contest and any appeal therefrom so long as the proceedings do not, in the Lender's reasonable judgment, materially adversely affect the Lender's security interest in the ECMs under the Loan Agreement. The Customer will cause the Commission to provide its sales tax exemption certification for purchases of equipment, tools, materials, and supplies relating to the Project.

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Section 3.12 Intellectual Property. The Provider shall pay all royalties and license fees related to the Services; shall defend suits or claims for infringement of patent rights required for the Services to be performed; and shall hold the Customer harmless from loss on account thereof.

Section 3.13 Standard Working Hours. Pursuant to MCC Section 2-92-220, a standard working day consists of eight (8) hours for this Agreement. The Provider shall cause any Subcontractors providing the Services to coordinate shifts with the Customer. No overtime or premium pay will be permitted by the Provider unless otherwise specified in the Plans and Specifications and authorized by the Customer.

Section 3.14 Quality of Materials and Inspection. The Customer will have a right to inspect any material to be used in performance of the Services for this Agreement. The Customer is not responsible for the availability of any materials or equipment required under this Agreement. The Provider is responsible for the meeting the contractual obligations and standards regarding the quality of all materials, components, or Services performed under this Agreement up to the time of completion of the Work. Non-compliant materials, components or Services may be rejected by the Customer and must be replaced or re-performed by the Provider or its Subcontractors at no cost to the Customer. The Customer shall provide written notice to the Provider indicating the time period in which the Provider must, at its expense or the expense of its Subcontractor, remove from Customer premises, any materials or components rejected by the Customer. Any and all labor and materials which may be required to correct or replace damaged, defective or non-conforming products must be provided by the Provider or its Subcontractors at no cost to the Customer. The Provider must, or cause its Subcontractors to, correct or replace the incorrect, damaged or defective or non-conforming goods within seven (7) Business Days of the return unless otherwise provided in the Plans and Specifications. The Customer will not be subject to restocking charges. Failure to correct or replace unacceptable goods, or repeated delivery of unacceptable goods, will be an event of default under this Agreement. Without limiting the scope or duration of any manufacturer's warranty provided for specific parts of the work, all work furnished under this Agreement is guaranteed by the Provider (or the Provider shall cause its Subcontractor(s)

to a guarantee) against defective materials and workmanship, improper installation or performance, and non-compliance with this Agreement for a period of one (1) year. Unless otherwise specified, the one-year period will begin on the date of Substantial Completion.

Section 3.15 Records. Upon request, the Provider must furnish to the Customer such information related to the progress, execution, and cost of the Services. All books and accounts in connection with this Agreement must be open to inspection by authorized representatives of the Customer. The Provider must make these records available at reasonable times during the performance of the Services and will retain them in a safe place and must retain them for at least five (5) years after the expiration or termination of this Agreement.

Section 3.16 Audits. The Customer may, in its sole discretion, audit the records of the Provider or its Subcontractors, or both, at any time during the Term or within five (5) years after this Agreement ends, in connection with the goods, work, or Services provided under this Agreement. Each calendar year or partial calendar year may be deemed an "audited period." If, as a result of such an audit, it is determined that the Provider or any of its Subcontractors has

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overcharged the Customer in the audited period, the Customer will notify the Provider. The Provider must, or cause its Subcontractor to, then promptly reimburse the Customer for any amounts the Customer has paid the Provider due to the overcharges and, depending on the facts, also some or all of the cost of the audit, as follows: If the audit has revealed overcharges to the Customer representing less than 5% of the total value, based on the contract prices, of the goods, work, or services provided in the audited period, then the Provider must reimburse the Customer for 50% of the cost of the audit and 50% of the cost of each subsequent audit that the Customer conducts; if, however, the audit has revealed overcharges to the Customer representing 5% or more of the total value, based on the contract prices, of the goods, work, or services provided in the audited period, then Provider must, or cause its Subcontractor to, reimburse the Customer for the full cost of the audit and of each subsequent audit. Failure of Provider or its Subcontractor to reimburse the Customer in accordance with the foregoing is an event of default under this Agreement, and the Provider (or its Subcontractor, as the case may be) will be liable for all of the Customer's costs of collection, including any court costs and attorneys' fees.

## ARTICLE IV CUSTOMER COVENANTS

Section 4.1 Access to Facilities; Grant of License. The Customer shall provide the Provider with access to the Facilities as reasonably necessary to allow the Provider to perform the Services and any other rights of the Provider hereunder, including ingress and egress rights to the Facilities for Provider and its employees, and Subcontractors. The Customer hereby covenants that the Provider shall have access to the Facilities and ECMs during the Term in order to perform the Services and for so long as needed after termination to remove the ECMs pursuant to the applicable provisions herein. The Customer and its authorized representatives shall at all times have access to and the right to observe the Services or ECM removal but shall not interfere with or handle any Provider equipment or the ECMs without written authorization from the Provider; provided, however, in the event of a material malfunction or emergency condition, the Customer shall be permitted to take those actions necessary to prevent injury or damage.

Section 4.2 Remote Access. The Customer hereby grants to the Provider the right to connect the ECMs to the necessary intranet and/or internet networks so that it is possible for the Provider to remotely monitor the

performance of the ECMs.

Section 4.3 Compliance with Laws. The Customer shall comply with all Laws with respect to the performance of its obligations under this Agreement, including federal, state, and local anti-discrimination laws.

Section 4.4 Project Specific Customer Responsibilities. The Provider has the sole right to determine and direct the operating policies and procedures for the ECMs. The Customer, on behalf of and at the direction of the Provider, agrees to undertake the obligations specified in Exhibit C with respect to the ECMs and the Customer acknowledges that the amount of its payment obligations under this Agreement have been determined, in part, in consideration of such undertaking by the Customer on behalf of the Provider.

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Section 4.5 Governmental Approvals. The Customer shall cooperate with the Provider in obtaining any permits or approvals required to be obtained by the Provider relating this Agreement or the Provider's performance hereunder; provided that such obligation shall not require the Customer to waive or otherwise change any Customer-required permit or approval process.

Section 4.6 Notice of Damage. The Commissioner of the Customer's Department of Fleet and Facility Management shall provide prompt written notice to the Provider and the Lender of any matters of which he becomes aware of pertaining to any damage to or loss of the use of the ECMs or that could reasonably be expected to materially adversely affect the Services or the Savings.

Section 4.7 Energy Supply. The Customer shall be responsible for the costs of and maintaining uninterrupted energy supply and utility service to the Facilities. Except in the case of emergencies and subject to Article X, the Customer shall provide prompt written notice to the Provider of any material interruption or alteration of the energy supply or utility service to the Facilities that could affect the ECMs or the Savings.

Section 4.8 Information Reporting.

a) Non-confidential information requested by the Provider and under the Customer's control necessary for the performance of the Services shall be furnished by the Customer with reasonable promptness upon written request by the Provider. Without limiting the foregoing, such information will include, but is not limited to, the following items: (i) monthly utility invoices and billing history for all of the meters listed in Exhibit A; (ii) construction documents, equipment inventories, and other documents that may be helpful in evaluating a Change Order; and (iii) any data from meters or sub-meters relevant to the Services.

b) To the extent not otherwise publicly available and upon prior written request of the Lender, the Customer shall provide by no later than 210 days after the end of the Customer's fiscal year, the audited financial statements of the Customer for such fiscal year with the unqualified opinion of an independent certified public accountant.

Section 4.9 Maintenance. The Customer agrees to maintain the Facilities and all Customer Equipment in good repair and in all respects thereof that may affect the Savings that may be achieved by the ECMs including, without limitation, the condition and integrity of the building envelopes of the Facilities and the condition of all energy-consuming Customer Equipment. The Customer shall ensure the availability, of, and

maintain during the Term, all connections between the ECMs and the Facilities and all energy-consuming Customer Equipment. The Customer shall cooperate with the Provider in establishing and maintaining such connections.

Section 4.10 Alterations to ECMs. The Customer shall not (i) remove the ECMs or (ii) alter or change in any way any ECMs that materially damage the functional capabilities or economic value of the ECMs or have the effect of reducing the Savings that are may be produced by the ECMs, without the Provider's prior written consent.

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#### Tax-Exempt Financing.

a) It is the intention of the parties hereto that the interest component of debt service payments received by the registered owner of the Series B Note (as defined in the Loan Agreement) be and remain excludable from gross income for purposes of federal income taxation. The Provider and the Customer each covenants that it shall, at all times, do and perform all acts and things necessary and within its control in order to assure that such interest shall, for the purposes of Federal income taxation, be excludable from gross income of the Lender. The Provider and the Customer shall not permit the use of proceeds of any tax-exempt financing for the Project, or take or omit to take any action, so as to cause such interest portion to cease to be excludable from gross income of the Lender for the purposes of Federal income taxation. Without limiting the foregoing, the Provider and the Customer agree to comply with their respective obligations under the Tax Certificate.

b) The Provider shall not take or permit any action or omit to take any action that would cause any tax-exempt financing for the Project to be an arbitrage bond within the meaning of Section 148 of the Internal Revenue Code. The Provider shall pay the costs incurred for an consultant or report necessary to satisfy its obligations under Section 148 of the Internal Revenue Code.

### ARTICLE V CHANGE TO SERVICES

Section 5.1 Change Orders. The Provider may order, or the Customer may request, changes in the Installation Work consisting of additions, deletions, or modifications to the Installation Work, changes to the Installation Schedule and/or changes to the total Project Costs. Such changes in the Installation Work shall be authorized only by written Change Order signed by the Parties, which Change Order shall specify any adjustment to the Installation Schedule and Savings Percentage related thereto. To the extent the Provider reasonably determines that any change in the Installation Work requested or directed by the Customer will materially and adversely impact the availability, timing or amounts of Savings, the Provider shall have the right, in its sole and absolute discretion, to decline such change in the Installation Work.

Section 5.2 Installation Work Delays. Notwithstanding anything to the contrary herein, if the Provider is delayed at any time in progress of the Installation Work by labor disputes, fire, unusual delay in deliveries, abnormal adverse weather conditions that affect the Installation Work not reasonably anticipatable, unavoidable casualties or any other causes which are beyond the control of the Provider, then the Term may be extended by Change Order provided that: (i) the Provider has notified the Customer in writing of such delay within thirty (30) days following the date when the Provider becomes aware, or should have become aware through the exercise of reasonable diligence, of such delay; (ii) the Provider has taken all reasonable steps to avoid any

such delay (including its continuance); (iii) such delay is not a theoretical delay but does actually adversely affect the critical path of the Installation Work; and (iv) such extension does not cause the Term to exceed the limits of the authority to enter into this Agreement of either the Provider or the Customer.

## ARTICLE VI INSURANCE; CASUALTY OR CONDEMNATION

Section 6.1 Provider Insurance. The Provider shall purchase from and maintain in a company or companies lawfully authorized to do business in the City of Chicago policies of insurance (a) insuring the ECMs against loss or damage by fire and all other risks covered by the standard extended coverage endorsement then in use in such jurisdiction, in an amount at least equal to the full replacement cost of the ECMs and (b) third party liability insurance covering against legal responsibility to others as a result of bodily injury, property damage and personal injury arising from the operation and maintenance of the Project. Notwithstanding the foregoing, the Customer agrees to include the ECMs under the insurance provided pursuant to Section 6.2 and acknowledges that the amount of its payment obligations under this Agreement have been determined, in part, in consideration of such undertaking on behalf of the Provider; and such Customer-provided insurance shall satisfy the Provider's obligations under this Section 6.1.

Section 6.2 Customer Insurance. The Customer shall during the Term maintain or cause to be maintained (a) casualty insurance insuring the Facilities against loss or damage by fire and all other risks covered by the standard extended coverage endorsement then in use in the State in an amount at least equal to the replacement value of the Facilities; (b) liability insurance naming the Provider and the Lender as additional insureds that protects the Provider and the Lender from liability in all events. Notwithstanding the foregoing, the Customer may self-insure against the risks described in the foregoing sentence if the Customer shall furnish to the Provider evidence of such insurance or self-insurance coverage throughout the Term. The Customer shall not cancel or modify such insurance or self-insurance coverage in any way that would affect the interests of the Provider without first giving written notice thereof to Provider at least thirty (30) days in advance of such cancellation or modification.

Section 6.3 Event of Loss. If an Event of Loss occurs, the Customer will provide written notice to the Provider promptly upon the occurrence of such event. If such Event of Loss adversely affects the Expected Savings Production, the Customer shall pay to the Provider (or its designee; provided such designee is located in the continental United States) within ninety (90) days of written demand therefor the Liquidated Damages Amount or ratable portion thereof, less the amount of any insurance or condemnation proceeds paid to the Provider.

Section 6.4 Insurer Qualifications. All insurance maintained hereunder shall be maintained with companies either rated no less than A-VII as to Policy Holder's Rating in the current edition of Best's Insurance Guide (or with an association of companies each of the members of which are so rated) or having a parent company's debt to policyholder surplus ratio of 1:1.

## ARTICLE VII PROJECT OWNERSHIP

Section 7.1 Title. Legal title to and ownership of the ECMs shall remain in the Provider free and clear of any and all liens, claims, security interests or other encumbrances caused, created or permitted by the Customer, except as provided in the Loan Agreement. The Parties agree the ECMs are and will remain personal property and will not be deemed to be affixed to or a part of the real estate on which it may be situated, notwithstanding that the ECMs or any part thereof may be or hereafter become in any manner physically affixed or attached to real estate or any building thereon. Upon the request of the Provider, the Customer will, at the Customer's expense, furnish a waiver of any interest in the ECMs from any party having an interest in any such real estate or building. The Customer shall not claim depreciation or an investment credit with respect to the ECMs or otherwise take any action or fail to take any action inconsistent with the Provider's ownership of the ECMs.

Section 7.2 Risk of Loss. The Provider shall, except as otherwise provided in this Agreement, bear risk of loss and have care, custody and control pertaining thereto of any materials, equipment, spare parts, supplies and maintenance equipment (including temporary materials, equipment, and supplies) on the Facilities or located off-site, or any other Installation Work completed with respect to the ECMs until such time that the transfer of care, custody, and control is effectuated in accordance with the terms of this Agreement. Except as otherwise provided in this Agreement, any ECMs lost, damaged, stolen or impaired before the transfer of care, custody, and control is effectuated in accordance with the terms of this Agreement shall be replaced promptly by the Provider and such replacement shall be without additional cost except to the extent of the negligence, gross negligence or willful misconduct of the Customer or any party for which the Customer is responsible.

### Section 7.3 Environmental Attributes; Other Incentives.

a) Environmental Attributes. The Provider shall own, and may assign or sell in its sole discretion, all right, title, and interest associated with Environmental Attributes. Environmental Attributes will not be included within any calculation of Savings or otherwise reduce the Customer's obligation to pay for Savings hereunder. The Customer agrees to cooperate with the Provider in obtaining any Environmental Attributes.

b) Other Incentives. The Provider shall own, and may assign or sell in its sole discretion, all right, title, and interest to applicable and available utility-provided incentives for energy efficiency projects, including the right to utilize its ECMs to participate in utility programs that provide incentives related to the curtailment or reduction of energy use during times of peak demand, provided that such participation does not negatively affect the Customer's operations at the Facilities. The Customer agrees to cooperate with the Provider in obtaining any such utility-provided incentives.

## ARTICLE VIII SAVINGS

Section 8.1 Savings. The Customer agrees to pay the Provider (or its designee; provided such designee is located in the continental United States) on a semi-annual basis an amount equal to one hundred percent (100%) (the "Savings Percentage") of each \$1.00 of Savings as such Savings are determined pursuant to Exhibit B. The Savings Percentage shall not change during the Term except as otherwise provided herein prior to the completion of the Installation Work. The obligation of the Customer to pay, and the right of the Provider to receive, amounts for Savings depends on the achievement of Savings as provided herein. The Customer acknowledges and agrees that the Provider shall not be required to achieve any amount of Savings.

## ARTICLE IX PAYMENT

Section 9.1 Invoicing. Based on the Expected Savings Production, the Provider will submit, or cause its agent to submit, invoices to the Customer commencing for payment by the Customer no later than June 25, 2015 and for payment thereafter on a semi-annual basis no later than each December 26 and June 25 thereafter during the Term. For administrative convenience, the initial and each semi-annual invoice for Savings shall be based on the ratable portion of the Expected Savings Production for the corresponding Period as set forth in Exhibit B, subject to the annual reconciliation process in Section 9.4.

Section 9.2 Payment. The Customer shall make payment to the Provider (or to such other payee as directed in a payment invoice) no later than ninety (90) days from the date on which the Provider (or its agent) submits a payment invoice to the Customer meeting the requirements of Section 9.1. Any amounts payable by and not paid by the Customer on the due date thereof shall bear interest at the rate equal to the lesser of (i) ten percent (10%) per annum or (ii) the highest rate permitted by Law.

Section 9.3 Utility Bills. Commencing on the Effective Date and continuing for the Term, the Customer will provide the Provider with all utility bills necessary or convenient for the Savings calculations described in this Agreement within thirty (30) days of receipt. The Customer may provide the Provider with copies of bills, or access to invoices via an on-line system. If Customer fails to provide utility bills within the time period required, the Provider may estimate the Customer's utility usage, utility rates and other data for such period which estimate shall be deemed conclusive for purposes of calculating Savings payable by the Customer pursuant to the invoice for the corresponding Period, subject to the annual reconciliation process in Section 9.4.

Section 9.4 Reconciliation. The Provider will provide an annual savings report to the Customer no later than sixty (60) Days following the Provider's receipt of all utility bills with meter-reading ending dates falling within the preceding year (or stub year) ending each December 31 during the Term. If the annual report for such a year indicates that one or more invoices understated the Savings for the respective Periods, then the Provider shall provide a

supplemental invoice to the Customer and the Customer shall be unconditionally obligated to pay such invoice in accordance with its terms. If the annual report for such a year indicates that one or more invoices overstated Savings, then the Provider shall refund, or cause to be refunded, to the Customer the amount by which the Customer overpaid such Savings. Within thirty (30) days of the Customer's receipt of the annual report for such a year, the Customer will notify the Provider of (1) the Customer's approval of all or any portion of such annual report and/or (2) the Customer's disapproval of all or any portion of such annual report.



portion of such annual report; and/or (2) the Customer's disapproval of all or any portion of such annual report, including the basis for the disapproval. If the Customer disapproves all or any portion of the annual report for a calendar year (or stub year), the Parties will use good faith efforts to resolve such dispute within thirty (30) days of notification to the Provider. If the Parties are unable to resolve the matter within such thirty (30) day period, the dispute shall be resolved in accordance with Article XII.

Section 9.5 Unconditional Payment Obligation. Notwithstanding any other provision of this Agreement other than Section 9.6 below, the obligations of the Customer to make payments with respect to Savings, to pay any other amounts under this Agreement and to perform and observe the other covenants and agreements contained in this Agreement shall be absolute and unconditional in all events without abatement, diminution, deduction, set-off or defense, for any reason whatsoever.

Section 9.6 Payments Subject to Annual Appropriation. The Customer is obligated only to pay such payments under this Agreement as may lawfully be made from funds appropriated for that purpose during the Customer's then current fiscal year. If funds to pay any amount payable hereunder are not appropriated and not otherwise made available for that purpose, this Agreement shall be deemed terminated at the end of the then current fiscal year. The Customer agrees to deliver notice to the Provider of such termination promptly after any decision to non-appropriate is made, but failure to give such notice shall not extend the Term beyond the then current fiscal year. The decision whether or not to budget and appropriate funds is within the discretion of the Customer. If this Agreement is terminated in accordance with this Section, the Customer agrees to cease use of all the ECMs as of the last day of the last fiscal year -for which appropriations and payments have been made, dismantle and peaceably deliver all the ECMs to Provider at the location(s) to be specified by the Provider and in the same condition and appearance as originally installed at the Facilities (reasonable wear and tear from normal operation excepted), and free of all liens and claims created or permitted by the Customer (except any Lender lien). The Provider shall have all legal and equitable rights to take possession of the ECMs.

Section 9.7 Funding. The source of funds for payments under this Agreement is Fund Number [click and type number]. Funding for this Agreement is subject to the availability of funds and their appropriation by the City Council of the Customer.

## ARTICLE X FORCE MAJEURE

Section 10.1 Excused Performance. . Each Party hereto shall be excused from performance and shall not be considered to be in default with respect to any obligation hereunder (except the obligation to make payments hereunder and provide insurance pursuant to Article

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VI), if and to the extent that its failure of, or delay in, performance is due to a Force Majeure Event; provided:

a) Such Party gives the other Party written notice describing the particulars of the Force Majeure Event as soon as is reasonably practicable, but in no event later than seven days after the occurrence of such event;

b) The suspension of performance is of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;

c) No obligations of the Party which arose before the occurrence causing the suspension of performance are excused as a result of the occurrence;

d) The Party uses commercially reasonable efforts to overcome or mitigate the effects of such occurrence; and

e) When the Party is able to resume performance of its obligations under this Agreement, such Party shall give the other Party written notice to that effect and shall promptly resume performance hereunder.

Section 10.2 Settlement of Strikes. Notwithstanding the foregoing, nothing in this Article X shall be construed to require the settlement of any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Party involved in the dispute, are contrary to such Party's interest. It is understood and agreed that the settlement of strikes, walkouts, lockouts or other labor disputes shall be entirely within the discretion of the Party experiencing such action.

Section 10.3 Burden of Proof. If the Parties are unable in good faith to agree that a Force Majeure Event has occurred, the Parties shall submit the dispute for resolution pursuant to Article XII and the Party claiming a Force Majeure Event shall have the burden of proof as to whether such Force Majeure Event (i) has occurred, (ii) was not a result of such Party's or its agents' fault or negligence, and (iii) could not have been avoided by due diligence or the use of reasonable efforts of such Party or its agent.

## ARTICLE XI DEFAULT AND REMEDIES

Section 11.1 Customer Events of Default. Any one of the following which occurs and continues shall constitute an "Event of Default" by Customer:

a) Failure by the Customer to make any payment required by Article IX hereof when due which continues for a period of ten (10) Days after written notice of such failure is received by the Customer from the Provider; or

b) The Customer restricts or attempts to restrict the Provider's access by to the Facilities or the ECMs; or

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c) Failure by the Customer to insure the Facilities or the ECMs as required by Section 6.1 or Section 6.2; or

d) Failure by the Customer to observe and perform any covenant, condition or agreement on its part required to be observed or performed by this Agreement (other than as provided in clause (a), (b) or (c) above), which continues for a period of ninety (90) days after written notice by the Provider delivered to the Customer, which notice shall specify such failure and request that it be remedied, provided, however, that no Event of Default shall occur if the failure stated in the notice cannot be corrected within such period and if corrective action is instituted within such period and diligently pursued in good faith until the default is corrected; or

e) The Customer materially decreases its occupancy or utilization of the Facilities;  
or

f) Any representation or warranty made by the Customer under or in connection with this Agreement or any of the Documents shall prove to be untrue in any material respect on the date as of which it was made; or

g) The occurrence of a default under (i) any other agreement for borrowing money, lease financing of property or otherwise receiving credit held by the Lender or any of its affiliates in a principal amount greater than \$10,000,000 under which the Provider is an obligor for the financing of energy conservation projects for the Customer or projects for the Customer's sister agencies supported by payments from appropriation obligations of the Customer; or (ii) either of the respective Loan Agreements entered into on the Effective Date with respect to the Provider's Tax-Exempt Revenue Notes (Chicago Department of Fleet and Facility Management Retrofit One Project) 2014 Series A and C; or

h) The Customer shall (i) apply for or consent to the appointment of a receiver, trustee, custodian or liquidator of the Customer, or of all or a substantial part of the assets of the Customer, (ii) be unable, fail or admit in writing its inability generally to pay its debts as they become due, (iii) make a general assignment for the benefit of creditors, (iv) have an order for relief entered against it under applicable federal bankruptcy law, or (v) file a voluntary petition in bankruptcy or a petition or an answer seeking reorganization or an arrangement with creditors or taking advantage of any insolvency law or any answer admitting the material allegations of a petition filed against the Customer in any bankruptcy, reorganization or insolvency proceeding;  
or

(i) An order, judgment or decree shall be entered by any court of competent jurisdiction, approving a petition or appointing a receiver, trustee, custodian or liquidator of all or a substantial part of the assets of the Customer, in each case without its application, approval or consent, and such order, judgment or decree shall continue unstayed and in effect for any period of 60 consecutive days.

Section 11.2 Remedies Upon Customer Default. Whenever any Event of Default by Customer shall have occurred and shall be continuing, the Provider may, at its option, and upon prior written notice to the Customer:

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a) Take whatever action at law or in equity as may be necessary or desirable to collect the payments and other amounts then due and thereafter to become due or to enforce performance and observance of any obligation, agreement or covenant of the Customer under this Agreement;

b) Terminate this Agreement and surrender possession of all or a portion of the ECMs and transfer ownership of such ECMs, the Provider's interest in the Plans and Specifications and any related manufacturer warranties and its interest in the Facilities (free and clear of any liens, claims, security interests or other encumbrances) to the Customer without any liability to the Customer in connection with such actions;

c) With or without terminating this Agreement decommission and/or remove all or a portion of the ECMs without any liability to the Customer in connection with such actions including, without limitation, any obligation to restore or repair the Facilities and any other affected portions of the Facilities; or

d) Terminate this Agreement and elect to be paid an amount equal to the Liquidated Damages Amount plus any other amounts due and payable hereunder and upon the Customer's payment of such amount transfer to the Customer ownership to the ECMs, the Provider's interest in the Plans and Specifications, any related manufacturer warranties and any interest held by the Provider in the Facilities (free and clear of any liens, claims, security interests or other encumbrances).

Section 11.3 Provider Events of Default. Any one of the following which occurs and continues shall constitute an "Event of Default" by the Provider:

a) Failure by the Provider to observe and perform any covenant, condition or agreement on its part required to be observed or performed by this Agreement which continues for a period of thirty (30) days after written notice by the Customer delivered to the Provider, which notice shall specify such failure and request that it be remedied; provided, however, that if the failure stated in the notice cannot be corrected within such period, if corrective action is instituted within such period and diligently pursued in good faith until the default is corrected; or

b) Any representation or warranty made by the Provider under or in connection with this Agreement or any of the Documents shall prove to be untrue in any material respect on the date as of which it was made; or

c) The Provider shall (i) apply for or consent to the appointment of a receiver, trustee, custodian or liquidator of the Provider, or of all or a substantial part of the assets of the Provider, (ii) be unable, fail or admit in writing its inability generally to pay its debts as they become due, (iii) make a general assignment for the benefit of creditors, (iv) have an order for relief entered against it under applicable federal bankruptcy law, or (v) file a voluntary petition in bankruptcy or a petition or an answer seeking reorganization or an arrangement with creditors or taking advantage of any insolvency law or any answer admitting the material allegations of a petition filed against the Provider in any bankruptcy, reorganization or insolvency proceeding; or

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(d) An order, judgment or decree shall be entered by any court of competent jurisdiction, approving a petition or appointing a receiver, trustee, custodian or liquidator of all or a substantial part of the assets of the Provider, in each case without its application, approval or consent, and such order, judgment or decree shall continue unstayed and in effect for any period of sixty (60) consecutive days.

Section 11.4 Remedies Upon Provider Default. Whenever any Event of Default by the Provider shall have occurred and shall be continuing, the Customer may, at its option and upon prior written notice to the Provider:

a) Terminate this Agreement and pay to the Provider the Liquidated Damages Amount and any other amounts due and payable hereunder (less any amounts due and payable by the Provider hereunder)

whereupon the Provider shall transfer to the Customer ownership of the ECMs, the Provider's interest in the Plans and Specifications, any related Subcontract and any manufacturer warranties and any interest in the Facilities (free and clear of any liens, claims, security interests or other encumbrances);

b) Terminate this Agreement and request the Provider to remove the ECMs from the Facilities upon which the Provider shall remove all or a portion of the ECMs as requested within thirty (30) Days, return the Facilities to their original condition, except for ordinary wear and tear, and leave the Facilities in neat and clean order, without any other liability to the Customer in connection with such actions; provided that if the Provider fails to remove the ECMs within such period, the Customer shall have the right, at its option, to remove the ECMs to a public warehouse or other storage location or dispose of them, and restore the Facilities to their original condition, except for ordinary wear and tear, at Provider's reasonable cost; or

c) Take whatever action at law or in equity as may be necessary or desirable to enforce performance and observance of any obligation, agreement or covenant of the Provider under this Agreement.

Section 11.5 Agreement to Pay Attorneys' Fees and Expenses. In the event a Party should default under any of the provisions of this Agreement and the other Party should employ attorneys or incur other expenses for the collection of the payments due under this Agreement or the enforcement of performance or observance of any obligation or agreement on the part of the non-defaulting Party herein contained, the defaulting Party agrees to pay promptly to the non-defaulting Party the reasonable fees and expenses of such attorneys and such other reasonable out-of-pocket expenses so incurred by such Party, whether incurred at trial, on appeal, in bankruptcy proceedings, or otherwise.

Section 11.6 No Remedy Exclusive. No remedy herein conferred upon or reserved to the Provider or the Customer is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but

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any such right and power may be exercised from time to time and as often as may be deemed expedient.

Section 11.7 No Additional Waiver Implied by One Waiver. In the event any agreement or covenant contained in this Agreement should be breached by a Party and thereafter waived by the other Party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 11.8 Liquidated Damages Amount. The Parties agree that the formulations of damages described in this Article XI, including the formulation of the Liquidated Damages Amount, are fair and reasonable approximations of the damages each Party would incur upon a termination based on an Event of Default and are not intended to be, nor should they be interpreted to result in, a penalty.

## ARTICLE XII DISPUTE RESOLUTION

Section 12.1 Procedure.

a) Savings Disputes. Savings Disputes shall be submitted to the Independent Engineer. The determination of the Independent Engineer will be final and binding upon both the Customer and the Provider. The Provider and the Customer will each be responsible for half of the fees of the Independent Engineer.

b) Non-Savings Disputes. The Parties commit to first attempt to settle any Non-Savings Dispute through direct discussions of the Parties' management representatives within ten (10) Days after receipt of initial written notification of such Dispute. If within ten (10) Days the Parties have not succeeded in negotiating a resolution of the Dispute, such Dispute will be submitted to senior officers of the Parties, to attempt further in good faith to negotiate a resolution of the Dispute. If within ten (10) Days after such meeting the Parties have not succeeded in negotiating a resolution of the Dispute, the Parties may initiate litigation in any court having jurisdiction in the State.

Section 12.2 Continuation of Work. Notwithstanding any Dispute that the Provider may have undertaken or be involved with, whether pursuant to this Article XII or otherwise, and regardless of the basis thereof or grounds therefor, including, but not limited to Disputes based on or related to any Change Order, the Provider agrees that it will, for so long as this Agreement has not been terminated, diligently perform the Services in accordance with the terms of this Agreement. Any failure by the Provider to perform the Services in accordance with the terms of this Agreement shall give the Customer the immediate right to terminate its participation in any dispute resolution process under this Article XII and exercise its remedies pursuant to Article XI.

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Section 12.3 Continuation of Payment. Notwithstanding any Dispute that the Customer may have undertaken or be involved with, whether pursuant to this Article XII or otherwise, and regardless of the basis thereof or grounds therefor, the Customer agrees that it will, for so long as this Agreement has not been terminated, pay all amounts invoiced without setoff or diminution and at the times required pursuant to Article IX and otherwise perform its obligations in accordance with the terms of this Agreement. Any failure by the Customer to pay any invoiced amounts shall give the Provider the immediate right to terminate its participation in any dispute resolution process under this Article XII and exercise its remedies pursuant to Article XI.

**ARTICLE XIII  
INDEMNIFICATION**

Section 13.1 Indemnification; Limitation of Liability.

a) The Provider agrees to indemnify, defend and hold harmless the Customer and its officers, officials and employees from and against legal or administrative proceedings, claims, demands, damages, fines, penalties, liabilities, interest, costs, and expenses (including reasonable attorneys' fees) for deaths, bodily injuries or damages to third party tangible property to the extent caused, in whole or in part, by the grossly negligent acts or omissions of the Provider during the performance of the Services and violations of Law by

negligent acts or omissions of the Provider during the performance of the Services and violations of Law by the Provider. The indemnity provisions expressed in this Article XIII shall apply to the fullest extent permitted by Law and shall in no manner amend, abridge, modify, or restrict any other obligation of the Provider expressed elsewhere in this Agreement. This provision shall survive the termination of this Agreement.

b) The Customer agrees to indemnify, defend and hold harmless the Provider, the Lender and their respective officers, officials and employees from and against legal or administrative proceedings, claims, demands, damages, fines, penalties, liabilities, interest, costs and expenses (including reasonably attorneys' fees) for deaths, bodily injuries or damages to third party tangible property to the extent caused, in whole or in part, by the grossly negligent acts or omissions of the Customer during the performance of the Customer's obligations under this Agreement and violations of Law by Customer. The indemnity provisions expressed in this Article XIII shall apply to the fullest extent permitted by Law and shall in no manner amend, abridge, modify, or restrict any other obligation of the Customer expressed elsewhere in this Agreement. To the extent permitted by Law, the Customer waives any limits to its liability hereunder that it would otherwise have by virtue of the Workers' Compensation Act or any other related law or judicial decision (including, without limitation, *Kotecki vs. Cyclops Welding Corporation*, 156 Ill. 2d. 155 (1991)). This provision shall survive the termination of this Agreement.

c) Under no circumstances will either Party be liable to the other Party for any special, indirect, incidental, consequential or punitive damages, however caused and on any theory of liability.

## ARTICLE XIV REPRESENTATIONS AND WARRANTIES

Section 14.1 Provider Representations and Warranties. The Provider represents and warrants as of the Effective Date that:

a) The Provider is a nonprofit corporation duly formed and validly existing under the laws of the State of Illinois.

b) The Provider is not in violation of any applicable Law promulgated or judgment entered by any federal, state, local or governmental authority that individually or in the aggregate, would affect its performance of any of its material obligations under this Agreement.

c) The Provider and its Subcontractors are, or will be, the holder of all federal, state, local or other governmental consents, licenses, permits, or other authorizations required to permit it to operate or conduct its business as contemplated by this Agreement.

d) The execution and delivery of this Agreement and any documents executed or delivered in connection herewith, the consummation of the transactions herein contemplated or compliance with the terms and provisions hereof will not conflict with or result in a breach of, or require any consent under, the organizational documents of the Provider, or any applicable law or regulation, or any order, writ, injunction or decree of any court, or any agreement or instrument to which the Provider is a party or by which it is bound or

to which it is subject, or constitute a default under any such agreement or instrument.

e) The Provider has all necessary power and authority to execute, deliver and perform its obligations under this Agreement; and the execution, delivery and performance by Provider of this Agreement has been duly authorized by all necessary action on its part; and this Agreement has been duly and validly executed and delivered by the Provider and constitutes the legal, valid and binding obligation of the Provider enforceable in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization or moratorium or other similar Laws relating to the enforcement of creditors' rights generally and by general equitable principles.

Section 14.2 Customer Representations and Warranties. The Customer represents and warrants as of the Effective Date that:

a) The Customer is a political subdivision of the State of Illinois and home rule city duly formed and validly existing under the laws of the State of Illinois.

b) The Customer is not in violation of any applicable Law promulgated or judgment entered by any federal, state, local or governmental authority that would , individually or in the aggregate, materially adversely affect its performance of any of its material obligations under this Agreement.

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c) None of the execution and delivery of this Agreement, the consummation of the transactions herein contemplated or compliance with the terms and provisions hereof will conflict with or result in a breach of, or require any consent under, or any applicable law or regulation, or any order, writ, injunction or decree of any court, or any material agreement or instrument to which the Customer is a party or by which it is bound or to which it is subject, or constitute a default under any such material agreement or instrument.

d) The Customer has all necessary power and authority to execute, deliver and perform its obligations under this Agreement; and the execution, delivery and performance by the Customer of this Agreement has been duly authorized by all necessary action on its part; and this Agreement has been duly and validly executed and delivered by the Customer and constitutes the legal, valid and binding obligation of the Customer enforceable in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization or moratorium or other similar Laws relating to the enforcement of creditors' rights generally and by general equitable principles.

e) The Customer is the fee simple owner of the Facilities and has not mortgaged, pledged, liened, leased, granted a security interest, encumbrance or claim on or with respect to the Facilities or any interest therein.

f) The Customer intends to continue to use the Facilities in a manner similar to its present use.

g) The information provided by the Customer to Provider relating to the Documents and the Project is true, correct and complete in every material respect and contains no untrue statement of material fact or omits no material fact necessary to make the statements contained therein not misleading.

h) During the Term, the energy services provided by the Provider in connection with ECMA will be



n) During the Term, the energy services provided by the Provider in connection with ECMs will be used by the Customer only for the purpose of performing essential governmental or proprietary functions of the Customer consistent with the permissible scope of the Customer's authority. The Customer has an immediate need for such services and expects to make immediate use of such services once the ECMs are installed and operating at their intended levels. The Customer's need for such services is not temporary and the Customer does not expect the need for such services to diminish during the Term.

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## ARTICLE ASSIGNMENT

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Section 15.1 Assignment by Provider. The Provider may assign all or part of its right, title, and interest in, but not its obligations under, this Agreement, the ECMs or the Project as collateral security for its obligations to the Lender. The Customer understands and agrees that, simultaneously with the execution and delivery of this Agreement, all of the Provider's rights and interests under this Agreement (except for the Provider's rights to indemnification) are being assigned and transferred to the Lender under the Loan Agreement. The Customer hereby consents to such assignment and transfer and to any subsequent assignment and transfer of rights and interests of this Agreement in accordance with the Loan Agreement. Upon the execution and delivery of the Loan Agreement and this Agreement, references to the Provider in the operative provisions of this Agreement that relate to rights and interests of the Provider (including, without limitation, the right to exercise remedies upon the occurrence of an Event of Default under Section 11.1) shall be deemed to be references to the Lender, as assignee or subsequent assignee of the Provider; provided that nothing herein affects the Provider's obligation to continue to perform its duties and obligations in accordance with this Agreement. The Customer agrees to execute and deliver any documents reasonably required by the Provider or any assignee of the Provider in connection with any such assignment of this Agreement, the ECMs and/or the Project.

Section 15.2 Assignment by Customer, The Customer may not assign this Agreement or any partial or total interest therein without the Provider's and the Lender's prior written consent (which consent the Provider or the Lender may refuse in either of their reasonable discretion).

## ARTICLE XVI REQUIRED CUSTOMER TERMS

### Section 16.1 Prompt Payment to Subcontractors.

a) Incorporation of Prompt Payment Language in Subcontracts. The Provider must state the

a) incorporation of Prompt Payment Language in Subcontracts. The Provider must state the requirements of this Section in all Subcontracts and purchase orders. If the Provider fails to incorporate these provisions in all Subcontracts and purchase orders, the provisions of this Section are deemed to be incorporated in all Subcontracts and purchase orders. The Provider and the Subcontractors have a continuing obligation to make prompt payment to their respective Subcontractors. Compliance with this obligation is a condition of the Provider's participation and that of its Subcontractors on this Agreement.

b) Payment to Subcontractors Within Fourteen Days. The Provider must make payment to its Subcontractors within fourteen (14) Days of receipt of payment from the Customer for each invoice, but only if the Subcontractor has satisfactorily provided goods or services or completed its work or services in accordance with this Agreement and provided the Provider with all of the documents and information required of the Provider. The Provider may delay or postpone payment to a Subcontractor when the Subcontractor's work or materials do not

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comply with the requirements of this Agreement, the Provider is acting in good faith, and not in retaliation for a Subcontractor exercising legal or contractual rights.

(c) Reporting Failures to Promptly Pay, (i) The Customer posts payments to prime contractors on the web at:

<<http://webapps.cityofchicago.org/VCSearchWeb/org/cityofchicago/vcsearch/controller/pa>>

ii) If the Provider, without reasonable cause, fails to make any payment to its Subcontractors and material suppliers within fourteen (14) Days after receipt of payment under this Agreement, the Provider shall pay to its Subcontractors and material suppliers, in addition to the payment due them, interest in the amount of 2% per month, calculated from the expiration of the 14-Day period until fully paid.

iii) In the event that the Provider fails to make payment to a Subcontractor within the 14-Day period required above, the Subcontractor may notify the Customer by submitting a report form that may be downloaded from the DPS website at:

<<http://www.cityofchicago.org/content/%5e>>

dFormsAgreements/Failure\_to\_Promptly\_Pay\_Fillable\_Form\_3\_2013 .pdf

The report will require the Subcontractor to affirm that (a) its invoice to the Provider was included in the payment request submitted by the Provider to the Customer and (b) the Subcontractor has not, at the time of the report, received payment from the Provider for that invoice. The report must reference the payment (voucher) number posted on-line by the Customer in the notice of the payment to the Provider. Subcontractors are hereby reminded that per Chapters 1-21, "False Statements," and 1-22, "False Claims," of the MCC, making false statements or claims to the Customer are violations of law and subject to a range of penalties including fines and debarment.

Section 16.2 Whistleblower Protection. The Provider shall not take any retaliatory action against any Subcontractor for reporting non-payment pursuant to Section 16.1. Any such retaliatory action is an event of

subcontractor for reporting non-payment pursuant to Section 16.1. Any such retaliatory action is an event of default under this Agreement and is subject to the remedies set forth herein, including termination. In addition to those remedies, any retaliatory action by the Provider may result in the Provider being deemed non-responsible for future Customer contracts or, if, in the sole judgment of the Customer, such retaliatory action is egregious, the Customer may initiate debarment proceedings against the contractor. Any such debarment shall be for a period of not less than one year.

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Section 16.3 Liquidated Damages for Failure to Promptly Pay. Much of the Customer's economic vitality derives from the success of its small businesses. The failure by contractors to pay their subcontractors in a timely manner, therefore, is clearly detrimental to the Customer. Inasmuch as the actual damages to the Customer due to such failure are uncertain in amount and difficult to prove, the Provider and the Customer agree that the Customer may assess liquidated damages against contractors who fail to meet their prompt payment requirements. Such liquidated damages shall be assessed to compensate the Customer for any and all damage incurred due to the failure of the contractor to promptly pay its subcontractors, and does not constitute a penalty. Any and all such liquidated damages collected by the Customer shall be used to improve the administration and outreach efforts of the Customer's Small Business Program.

Section 16.4 Action by the Customer. Upon receipt of a report of a failure to pay, the Customer will issue notice to the Provider and provide the Provider with an opportunity to demonstrate reasonable cause for failing to make payment within applicable period set forth in this Agreement. The Customer shall determine whether any cause for nonpayment provided by Provider is reasonable. In the event that the Provider fails to demonstrate reasonable cause for failure to make payment, the Customer shall notify the Provider that it will assess liquidated damages. Any such liquidated damages will be assessed according to the following schedule:

First Unexcused Report: Second Unexcused Report: Third Unexcused Report: Fourth Unexcused Report:  
\$50 \$100 \$250 \$500

Section 16.5 Business Enterprises Owned by People With Disabilities (BEPD). It is the policy of the Customer that businesses certified as a business enterprise owned by people with disabilities ("BEPD") in accordance with MCC Section 2-92-337 et seq., Regulations Governing Certification of BEPDs, and all other regulations promulgated under the aforementioned sections of the MCC; shall have the full and fair opportunities to participate fully in the performance of this Agreement. The Provider shall not discriminate against any person or business on the basis of disability, and shall take affirmative actions to ensure BEPDs shall have full , and fair opportunities to compete for and perform subcontracts for supplies or services. Failure to carry out the commitments and policies set forth herein shall constitute a material breach of this Agreement

and may result in the termination of this Agreement or such remedy as the Customer deems appropriate.

#### Section 16.6 Wages.

(a) Living Wage Ordinance. MCC Sect. 2-92-610 provides for a living wage for certain categories of workers employed in the performance of contracts with the Customer, specifically non-Customer 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 MCC Sect. 2-92-610 and regulations promulgated thereunder:

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i) if (1) the Provider has 25 or more full-time employees, and (2) if at any time during the performance of this Agreement the Provider 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 the Provider's obligation to pay, and to assure payment of, the Base Wage (as defined herein) will begin at any time during Term when the conditions set forth in (1) and (2) above are met, and will continue thereafter until the end of the Term.

ii) As of July 1, 2013, the Base Wage is \$11.78. The current rate can be found on the Customer's Department of Procurement Services' website. Each July 1st the Base Wage will be adjusted, using the most recent federal poverty guidelines for a family of four (4) 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 (4) divided by 2000 hours or the current base wage, whichever is higher. At all times during the term of this Agreement, the Provider and all Subcontractors must pay the Base Wage (as adjusted in accordance with the above). If the payment of prevailing wages is required for work or services done under this Agreement, and the prevailing wages for Covered Employees are higher than the Base Wage, then the Provider must pay the prevailing wage rates.

iii) The Contractor must include provisions in all subcontracts requiring its Subcontractors to pay the Base Wage to Covered Employees. The Provider agrees to provide the Customer with documentation acceptable to the Chief Procurement Officer of the Customer (the "CPO") demonstrating that all Covered Employees, whether employed by the Provider or by a Subcontractor, have been paid the Base Wage, upon the Customer's request for such documentation. The Customer may independently audit the Provider and/or Subcontractors to verify compliance herewith.

iv) 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 Customer contract or subcontract for up to three years. i

v) Not-for-Profit Corporations: If the Provider 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 above do not apply.

(b) Prevailing Wage Rates. This Agreement calls for the construction of a "public work" within the meaning of Illinois Prevailing Wage Act, 820 ILCS 130/01 et seq. (the "Act"): the Act requires contractors and subcontractors to pay laborers, workers and mechanics performing services on public works projects no less than the current "prevailing rate of wages" (hourly cash wages plus amount for fringe benefits) in the county

than the current prevailing rate of wages (hourly cash wages plus amount for fringe benefits) in the county where the work is performed. The Illinois Department of Labor (the "Department") publishes the prevailing wage rates on its website at <<http://www.state.il.us/agency/idol7rates/rates.HTM>>. The Department revises the prevailing wage rates and the Provider and its Subcontractors have an obligation to check the Department's web site for revisions to prevailing wage rates. For information regarding current

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prevailing wage rates, please refer to the Department's website. All contractors and subcontractors rendering services under this Agreement must comply with all requirements of the Act, including but not limited to, all wage requirements and notice and record keeping duties.

As a condition of making payment to the Provider, the Customer may require the Provider or its Subcontractors to submit an affidavit to the effect that not less than the prevailing hourly wage rate is being paid to laborers, mechanics, and other workmen employed on this Agreement in accordance with Illinois or federal law, as applicable.

(c) Multi-Project Labor Agreement. The Customer has entered into the Multi-Project Labor Agreement (the "PLA") with various trades regarding projects involving construction, demolition, maintenance, rehabilitation, and/or renovation work, as described in the PLA, a copy of which may be found on the Customer's website at:

<<http://www.cityofchicago.org/darn/city/depts/dps/RulesRegulations/Multi->

To the extent that this contract involves a project that is subject to the PLA, the Provider acknowledges familiarity with the requirements of the PLA and its applicability to any work under this Agreement, and shall comply in all respects with the PLA.

Section 16.7 Business Relationships With Elected Officials. Pursuant to MCC Section 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 Customer 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 (12) 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 Sect. 2-156-030 by any elected official with respect to this Agreement will be grounds for termination of this Agreement. The term financial interest is defined as set forth in MCC Chapter 2-156.

Section 16.8 MCC 1-23 and 720 ILCS 5/33E Bribery, Debts, and Debarment Certification.

(a) The Provider or each joint venture partner, if applicable, warrants that the Provider or each joint venture partner, its agents, employees, officers and any Subcontractors (a) have not been engaged in or been

venture partner, its agents, employees, officers and any subcontractors (a) have not been engaged in or been convicted of bribery or attempted bribery of a public officer or employee of the Customer, the State of Illinois, any agency of the federal government or any

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state or local government in the United States or engaged in or been convicted of bid-rigging or bid-rotation activities as defined in this section as required by the Illinois Criminal Code; (b) do not owe any debts to the State of Illinois, in accordance with 65 LLCS 5/11-42.1-1 and (c) are not presently debarred or suspended; Certification Regarding Environmental Compliance; Certification Regarding Ethics and Inspector General; and Certification Regarding Court-Ordered Child Support Compliance.

(b) The Provider, in performing under this Agreement shall comply with MCC Section 2-92-320, as follows:

i) No person or business entity shall be awarded a contract or sub-contract if that person or business entity: (a) has been convicted of bribery or attempting to bribe a public officer or employee of the Customer, the State of Illinois, or any agency of the federal government or of any state or local government in the United States, in that officers or employee's official capacity; or (b) has been convicted of agreement or collusion among bidders or prospective bidders in restraint of freedom of competition by agreement to bid a fixed price, or otherwise; or (c) has made an admission of guilt of such conduct described in (a) or (b) above which is a matter of record but has not been prosecuted for such conduct.

ii) For purposes of this Section, where an official, agent or employee of a business entity has committed any offense under this section on behalf of such an entity and pursuant to the direction or authorization of a responsible official thereof, the business entity will be chargeable with the conduct.

iii) One business entity will be chargeable with the conduct of an affiliated agency. Ineligibility under this section will continue for three (3) years following such conviction or admission. The period of ineligibility may be reduced, suspended, or waived by the CPO under certain specific circumstances. Reference is made to MCC Section 2-92-320 for a definition of affiliated agency, and a detailed description of the conditions which would permit the CPO to reduce, suspend, or waive the period of ineligibility.

Section 16.9 Federal Terrorist fNo-Business) List. The Provider warrants and represents that neither the Provider nor an Affiliate, 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 Customer may not do business under any applicable law, rule, regulation, order or judgment.

For purposes of this Section 16.9, "Affiliate" means a person or entity which directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the Provider. 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.

Section 16.10 Inspector General and Legislative inspector General. It is the duty of any bidder, proposer or the Provider, all Subcontractors, every applicant for certification of eligibility for a Customer contract or program, and all officers, directors, agents, partners and employees of any bidder, proposer, the Provider, all Subcontractors or such applicant to cooperate with the Inspector General or the Legislative Inspector General in any investigation or hearing, if applicable, undertaken pursuant to MCC Chapter 2-56 or 2-55, respectively. The Provider understands and will abide by all provisions of MCC Chapter 2-56 and 2-55. All Subcontracts must inform Subcontractors of this provision and require understanding and compliance with them.

Section 16.11 Governmental Ethics Ordinance 2-156. The Provider must comply with MCC Chapter 2 -156, Governmental Ethics, including but not limited to MCC Section 2-156-120 pursuant to which no payment, gratuity or offer of employment will be made in connection with any Customer contract, by or on behalf of a Subcontractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a Subcontract or order. Any contract negotiated, entered into, or performed in violation of any of the provisions of this this Section will be voidable as to the Customer.

#### Section 16.12 Restrictions on Business Dealings.

a) Conflicts of Interest. The Provider covenants that it presently has no interest and will not acquire any interest, direct or indirect, in any enterprise which would conflict in any manner or degree with the performance of the work, services or goods to be provided hereunder. The Provider further covenants that in its performance of this Agreement no person having any such interest shall be employed. If the Customer determines that the Provider does have such a conflict of interest, the Customer will notify the Provider in writing, stating the basis for its determination. The Provider will thereafter have 30 days in which to respond with reasons why the Provider believes a conflict of interest does not exist. If the Provider does not respond or if > the Customer still reasonably determines a conflict of interest to exist, the Provider must terminate its interest in the other enterprise.

b) Prohibition on Certain Contributions. Mayoral Executive Order 2011-4. Neither the Provider or any person or entity who directly or indirectly has an ownership or beneficial interest in the Provider of more than 7.5% ("Owners"), spouses and domestic partners of such Owners, Provider'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 (Provider 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 Agreement or Other Contract, including while this Agreement or Other Contract is executory, (ii) the term of this Agreement or any Other Contract between Customer and Provider, and/or (iii) any period in which an extension of this Agreement or Other Contract with the Customer is being sought or negotiated.

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The Provider 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 Customer approached the Provider or the date the Provider approached the Customer, 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.

The Provider 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.

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 Agreement, and under any Other Contract for which no opportunity to cure will be granted. Such breach and default entitles the Customer 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.

If the Provider violates this provision or Mayoral Executive Order No. 2011-4 prior to award of this Agreement resulting from this specification, the CPO may reject the Provider's bid.

For purposes of this provision:

"Other Contract" means any agreement entered into between the Provider and the Customer that is (i) formed under the authority of MCC Chapter 2-92; (ii) for the purchase, sale or lease of real or personal property; or (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 Chapter 2-156, as amended.

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

Section 16.13 Debts Owed to the Customer; Anti-Scofflaw. MCC Sect. 2-92-380. Pursuant to MCC Section 2-92-380 and in addition to any other rights and remedies (including set-off) available to the Customer under this Agreement or permitted at law or in equity, the Customer will be entitled to set off a portion of the contract price or compensation due under the Agreement, in 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 the Provider to the Customer. For purposes of this Section, outstanding parking violation complaint means a parking ticket, notice of parking violation, or parking violation complaint on which no payment has been made or appearance filed in the Circuit Court of Cook County within the time specified on the



complaint, and debt means a specified sum of money owed to the Customer for which the period granted for payment has expired. However no such debt(s) or outstanding parking violation complaint(s) will be offset from the contract price or compensation due under this Agreement if one or more of the following conditions are met:

i) The Provider has entered into an agreement with the Department of Revenue, or other appropriate Customer department, for the payment of all outstanding parking violation complaints and debts owed to the Customer and the Provider is in compliance with such agreement; or

ii) The Provider is contesting liability for or the amount of the debt in a pending administrative or judicial proceeding; or the contracting party has filed a petition in bankruptcy and the debts owed the Customer are dischargeable in bankruptcy.

#### Section 16.14 Shakman Accord.

a) The Customer is subject to the May 31, 2007 Order entitled "Agreed Settlement Order and Accord" (the "Shakman Accord") and the June 24, 2011 "City of Chicago Hiring Plan" (the "City Hiring Plan") entered in *Shakman v. Democratic Organization of Cook County*, Case No 69 C 2145 (United States District Court for the Northern District of Illinois). Among other things, the Shakman Accord and the City Hiring Plan prohibit the Customer from hiring persons as governmental employees in non-exempt positions on the basis of political reasons or factors.

b) The Provider is aware that the Customer's policy prohibits Customer employees from directing any individual to apply for a position with the Provider, either as an employee or as a Subcontractor, and from directing the Provider to hire an individual as an employee or as a Subcontractor. Accordingly, the Provider must follow its own hiring and contracting procedures, without being influenced by Customer employees. Any and all personnel provided by the Provider under this Agreement are employees or Subcontractors of the Provider, not employees of the Customer. 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 Customer and any personnel provided by the Provider.

c) The Provider 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.

(d) In the event of any communication to the Provider by a Customer employee or Customer official in violation of paragraph (b) above, or advocating a violation of paragraph (c) above, the Provider will, as soon as

violation of paragraph (b) above, or advocating a violation of paragraph (c) above, the Provider will, as soon as is reasonably practicable, report such communication to the Hiring Oversight Section of the Customer's Office of the Inspector General, and also to the head of the relevant Customer Department utilizing services provided under this Agreement. The Provider will also cooperate with any inquiries by IGO Hiring Oversight or the Shakman Monitor's Office related to this Agreement.

Section 16.15 No Waste Disposal in Public Way MCC 11-4-160L. The Provider 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 MCC (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;
- §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, the Provider'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 Contract, for which the opportunity to cure, if curable, will be granted only at the sole discretion of the CPO. Such breach and default entitles the Customer to all remedies under this Agreement, at law or in equity.

This Section does not limit the Provider'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 Customer as grounds for the termination of this Agreement, and may further affect the Provider's eligibility for future contract awards.

Section 16.16 Duty to Report Corrupt or Unlawful Activity. It is the duty of the Provider to report to the Inspector General of the Customer, directly and without undue delay, any and all information concerning conduct which it knows or should reasonably know to involve corrupt or other unlawful activity by its employees or the employees' of any of its Subcontractors, in connection with the performance of its work hereunder, or by any person dealing with the Customer which concerns the person's dealings with the Customer. Knowing failure to make such a report will be an event of default under this Agreement.

Section 16.17 MBE/WBE Program Participation and Goals. The rules, regulations, and forms for achieving MBE and WBE goals are set forth in the Special Conditions Regarding

Minority Business Enterprise Commitment and Women Business Enterprise Commitment ("M/WBE Special Conditions") attached as Exhibit D to this Contract.

## ARTICLE XVII MISCELLANEOUS

MISCELLANEOUS

Section 17.1 Entire Agreement. This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof and reflects the prior agreements and commitments with respect thereto. There are no other oral understandings, terms or conditions and neither Party has relied upon any representation, express or implied, not contained in this Agreement.

Section 17.2 Exhibits. All exhibits and attachments referenced in this Agreement shall be incorporated into this Agreement by such reference and shall be deemed to be an integral part of this Agreement.

Section 17.3 Amendments. No change, amendment or modification of this Agreement shall be valid or binding upon the Parties hereto unless such change, amendment or modification shall be in writing and duly executed by both Parties hereto. In no event shall the Provider and the Customer consent to any amendment, modification or change to this Agreement which has the effect of reducing the amount of payments payable by the Customer hereunder without the prior written consent of the Lender, including any adjustment to the Baseline as provided in Section 6 of Exhibit B attached hereto as the result of a Cause for Adjustment (as defined in such Section) if such adjustment would, if implemented, reduce the Expected Savings Production.

Section 17.4 Captions. The captions contained in this Agreement are for convenience and reference only and in no way define, describe, extend and or limit the scope of intent of this Agreement or the intent of any provision contained herein.

Section 17.5 Severability. The invalidity of one or more phrases, sentences, clauses, sections or articles contained in this Agreement shall not affect the validity of the remaining portions of this Agreement so long as the material purposes of this Agreement can be determined and effectuated.

Section 17.6 Notices. Any notice, demand, offer, or other instrument required or permitted to be given pursuant to this Agreement shall be in writing signed by the Party giving such notice and shall be hand delivered or sent by registered letter, overnight courier or electronic mail (if mutually acceptable procedures are developed) to the other Party at such address as set forth below.

- (a) If delivered to the Customer: City of Chicago  
Department of Finance  
121 North LaSalle Street, 7th Floor  
Chicago, Illinois 60602

Attention: Deputy Comptroller, Financial Policy 39

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with a copy to:

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

- (b) If delivered to the Provider: Chicago Infrastructure Trust

(c) If delivered to the Provider: Chicago Infrastructure Trust  
222 West Merchandise Mart Suite 1212  
Chicago, Illinois 60657 Attention: Executive  
Director Email: ssb'@shapechicago.org

And to: Public Building Commission of Chicago  
50 West Washington, Suite 200 Chicago, IL  
60602 Attention: E-mail:

Each Party shall have the right to change the place to which notice shall be sent or be delivered by similar notice sent or like manner to the other Party. The effective date of any notice issued pursuant to this Agreement shall be as of the addressee's receipt of such notice.

Section 17.7 No Waiver. Any failure of any Party to enforce any of the provisions of this Agreement or to require compliance with any of its terms at any time during the pendency of this Agreement shall in no way affect the validity of this Agreement, or any part hereof, and shall not be deemed a waiver of the right of such Party thereafter to enforce any and each such provision.

Section 17.8 Successors and Assigns. This Agreement shall be binding upon the Parties hereto, their successors and permitted assigns.

Section 17.9 No Joint Venture or Partnership. The relationship between the Provider and the Customer shall not be that of partners, agents, or joint ventures for one another, and nothing contained in this Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including federal income tax purposes. The Provider and the Customer, in performing any of their obligations hereunder, shall be independent contractors or independent parties and shall discharge their contractual obligations at their own risk.

Section 17.10 Disclaimer. The Provider makes no representation or warranty with respect to the Customer's treatment of any federal or state tax Laws, any applicable accounting

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treatment or conventions or the assessment of any rating agency in connection with this Agreement, the other Documents, the Project or any particular ECM.

Section 17.11 Further Assurances. The Provider and the Customer agree to provide such information, execute and deliver any instruments and documents, and to take such other actions as may be necessary or reasonably requested by the other Party that are not inconsistent with the provisions of this Agreement and that do not involve the assumptions of obligations other than those provided for in this Agreement, in order to give full effect to this Agreement and to carry out the intent of this Agreement.

Section 17.12 Priority. In the event of any conflict or inconsistency among the various provisions of this Agreement (including the attachments thereto and any other incorporated documentation), the provision imposing the more stringent standard or requirement or requiring a more expansive scope of supply shall prevail.

Section 17.13 Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF ILLINOIS

CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF ILLINOIS.

Section 17.14 Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 17.15 Counterparts. This Agreement may be signed in any number of counterparts and each counterpart shall represent a fully executed original as if signed by both Parties.


[Remainder of Page Intentionally Left Blank] [Signature

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IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date first written above.

CHICAGO INFRASTRUCTURE TRUST

By:   
Stephen S. Beitler

Chief Executive Officer & Executive Director CITY OF

CHICAGO

By:

By:

Lois A. Scott  
Chief Financial Officer

Approved for the Customer for Form and Legal Sufficiency

*[Signature Page of Energy Services Agreement - 2FM/NORESCO]*

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date first written above.

CHICAGO INFRASTRUCTURE TRUST

By:

Stephen S. Beitler

Chief Executive Officer & Executive Director CITY OF

CHICAGO

Lois A. Scott Chief Financial Officer

Approved for the Customer for Form and Legal Sufficiency

*[Signature Page of Energy Services Agreement - 2FWNORESCO]*

## **Exhibit A**

### **Description of Facilities and Project**

#### **Section I. Overview Description of the Project.**

The Project is a portion of Retrofit One, the first phase of Retrofit Chicago, a comprehensive effort to increase energy efficiency in public buildings. It is designed to enlist the expertise of energy service companies to identify, design, provide, implement and guarantee the performance of energy-related capital improvements to a variety of Customer-owned public buildings. The Energy Conservation Measures (ECMs) described below have been selected to achieve long term savings that can be measured & verified. The Provider will provide turn-key implementation of each and every ECM listed below including commissioning, training of Customer personnel on the operating and maintenance, and ongoing Measuring and Verification (M&V) services to document and confirm the realization of Savings, as described in Exhibit B.

## Section II. Description of ECMs by Facility

### Section III Detailed Description of ECMs

#### **ECM: Lighting Retrofit**

Occupancy sensor type devices and lighting controls will be installed at the Police-Fire-DSS Warehouse facility. A comprehensive room-by-room detailed scope of work for Police-Fire-DSS Warehouse lighting control work is located in Attachment A1 through A4 of this Exhibit A.

#### **End of Scope of Work for ECM: Lighting Retrofit ECM:**

#### **New Chiller Installation**

New cooling equipment will be installed that will replace the existing Thermal Chicago utility connection. The existing heat exchanger for the connection to Thermal Chicago, which the Client owns, will remain in place. A new MultiStack chiller with six 85-ton modules for a total nominal tonnage of 510 tons (actual anticipated output of 501 tons) will be installed. The peak

load on the plant is approximately 400 tons, so one module will be redundant. In addition to the new chillers, the Provider or its Subcontractor will also install new CHW pumps, CW pumps, refurbish the east cooling tower (quantity of one), and re-purpose the existing heat exchangers for water-side economizing purposes.

As part of the replacement, both CHW and CW pumps will be located in the open area on the west side of the mechanical room to increase access and simplify the mechanical space. The new CHW pumps will be installed with VFDs so that the plant operates as a variable-primary pumping system. The existing cooling tower will be refurbished by replacing fill, re-lining the basin, and servicing the mechanical components.

Design drawings for this work can be found in Attachment B1: Chiller Replacement Drawings, dated 12/18/2012. This proposal only includes the basement chiller replacement scope contained in the "Base Bid" language. The "Add Alternate" scope is not included in this proposal. Equipment specification sheets can be found in Attachment B2: Basement Chiller Equipment Specification Sheets. Finally, refer to the Controls Points List in Attachment B3 for a full list of the inputs and outputs that are to be monitored and controlled.

#### **City Hall - Basement Chillers. Detailed Scope of Work**

The scope of work includes demolishing the existing non-functional chiller and installing a new chiller in its place. The new installation will result in a functional CHW plant, which will allow the building to disconnect



from the existing Thermal Chicago CHW service. The scope includes:

Remove the existing Carrier chiller.

Furnish and install six (6) MultiStack MS85X chillers that utilize scroll compressors. Each module has a capacity of 85 nominal tons for a total installed capacity of 510 nominal tons.

Furnish and install two (2) new 30 hp CHW pumps. The new CHW pumps will utilize VFDs and will result in a variable-primary pumping system.

Install new two (2) new 40 hp CW pumps.

Repurpose the existing City-owned large plate-and-frame heat exchangers for a waterside economizing system. The system will allow the plant to create CHW in cooler months without having to run the chillers.

Install new DDC control points to control the new installation.

Note that a refrigerant monitoring system is not included - the new chillers' refrigerant capacity is below the threshold required for monitoring and exhaust of refrigerant.

Refurbish the existing East cooling tower, capable of approximately 500 tons of cooling, and install freeze protection in the basin and on the CW piping to allow for winter operation as follows:

1. Install air inlet filter on adjacent operating towers to eliminate debris entering system-if required.
2. Remove and dispose of existing fill, eliminators, louvers and water distribution orifices.

#### A-1-1-2

3. Cover and seal motors and gear boxes.
4. Plug water inlet and outlet connections.
5. Sandblast tower interior including hot water basin & cold water basin. Patch basins as required.
6. Combine Fireproof EvapLiner polyurethane with a thickening agent to obtain a trowel grade consistency. Apply this trowel grade liner over interior basin seams to ensure seams are encapsulated in polyurethane.
7. Apply primer and Fireproof EvapLiner, elastomeric polyurethane membrane liner to the cold water and hot water basins. This liner is applied via high pressure spray system which results in 50-70 mils thickness on all applied surfaces.
8. Provide and install pultruded fiberglass bottom fill support system. (System elevates the fill approximately 8" above the basin floor allowing easy basin cleaning)
9. Provide and install intermediate fiberglass fill support system, as required.
10. Provide and install high efficiency PVC fill, eliminators and louvers.

NOTE: The heat transfer fill shall be constructed of polyvinyl chloride (PVC). Fill shall be resistant to rot, decay and biological attack; formed, crossfluted bonded together for strength and durability in block

format for easy removal and replacement; self extinguishing with flame spread rating of 5 per ASTM E84-81a; able to withstand continuous operating temperature of 120°F fabricated to ensure water breaks up into droplets; specially treated to resist ultraviolet light.

11. Fill kit shall include all intermediate and upper fill supports, and all eliminator supports. All supports shall be constructed of pultruded fiberglass. Flexible membrane air seals shall be installed on the air inlet to prevent water from leaking out the top of the fill bundles, and to prevent air from by-passing the heat transfer section of the fill pack.
12. All fill bundles shall be capable of being removed and re-used in order to provide access to all internal sheet metal surfaces and sheet metal seams, to allow for maintenance or repairs. 'D Fill kit shall include drift eliminators with a maximum drift loss of .002% of the recirculating water.
13. Provide and install new set of water distribution orifices sized for proper flow range. Balance water flow. D Gravity flow nozzles shall be crown nozzles to prevent debris build up in the entering orifice of the crossflow nozzle, and to eliminate the vortex spiral of water entering the nozzle thereby providing a consistent uniform diffusion pattern at any height of head. Nozzles shall be a two piece construction; a bottom telescoping nozzle body with lock in tabs and a top vortex crown. Nozzle tabs shall lock in the nozzle to the opening in the hot water basin floor when the top vortex crown is inserted in the bottom telescoping nozzle body.
14. Supply and install input gear seal.

#### A-1-1-3

15. Change gearbox oil.
16. Supply and install access door wing nuts.
17. Adjust fan pitch to maximize air flow and align fan shaft.
18. Furnish and install two (2) new 10kW/460V/3ph electric resistance basin heaters to protect the basin water from freezing at temps at or above zero degrees Fahrenheit.
19. Furnish and install one (1) 120V/lph thermostat and low water cutout in cooling tower basin for control of heater system.
20. Furnish and install one (1) 480V/3ph NEMA3R basin heater control panel. This panel is complete with main circuit breaker disconnect, selector switches, operating lights, and control power transformer for control circuit wiring.

#### Equipment Manufacturers

The proposal is based on the price and performance of the following new equipment:

1. Basement Installation
  - a. Chiller: MultiStack MS85X Small Scroll Chiller
  - b. Chiller: MultiStack MS85X Small Scroll Chiller

- b. CHW Pumps: Bell & Gossett 1510-SE
- c. CW Pumps: Bell & Gossett 6x8x12XL
- d. VFDs: ABB Drives with Electronic Bypasses

End of Scope of Work for ECM: New Chiller Installation ECM: EMS

## Modifications

### RJ Quinn Fire Academy

The scope of work for EMS Modifications at RJ Quinn includes installing control devices on the pumps, air handling unit (AHU) fans, as well as installing digital thermostats in select zones on each floor. The new control system will include a front-end computer that will allow local monitoring and adjustment, as well as the potential for tying the building into the GBMS. This does not allow for the monitoring and control of the equipment in the facility.

The EMS will be capable of scheduling the main mechanical equipment in the building, as well as monitoring and adjustment of select space temperatures on each floor.

The following controls would be installed:

- Start/Stop and Status:
  - o CHW Pumps (2) o HW Pumps (4) o AHU Fans (4) Zone Temperatures: (11 total) o Basement: 2

### A-1-1-4

- o First -through Third Floors: 3 each

Note that the scope of work does not currently include re-installing controls for the southwest zones of the third floor, which until recently were cooled by separate, air-cooled units.

### City Hall

The scope of work for City Hall is limited to implementing a static pressure reset strategy for AHUs 1 through 8. The AHUs are currently variable air volume (VAV) and utilize variable frequency drives (VFDs) to modulate fan speed to maintain a constant static pressure in the ductwork.

The scope of work includes adding a control algorithm to the existing control system for the VAV AHUs to further expand the energy savings capabilities of the EMS. The algorithm will implement a supply air static pressure reset sequence into the EMS for the eight (8) main AHUs. This will help to reduce fan energy during times of low load in the building.

## Equipment Manufacturers

The proposal is based on the price and performance of the following new systems: 1. EMS:

Johnson Controls - Facility Explorer System

Refer to the Controls Points List in Attachments B3 and B4 for a full list of the inputs and outputs that are to be monitored and controlled. Note that the City Hall static pressure reset is not included as new points, because

the scope of work is limited to programming and does not include additional hardware.

*End of Scope of Work for ECM: EMS Modifications*

### **ECM: Apparatus Bay MAU Modification**

#### **FEC 18 Scope of Work**

A combination CO/CC\_/NOx sensor will be installed in the apparatus bay, connected and programmed into the existing EMS. The EMS will be programmed to operate the MAU when indoor air quality exceeds a design threshold.

Equipment Manufacturers

**The sensor manufacturer will be Honeywell or equivalent equal. End of**

### **Scope of Work for ECM: Apparatus Bay Modification Computerized**

### **Maintenance Management System**

#### **A-1-1-5**

The Provider shall provide a web-based computerized maintenance management system ("CMMS") for the Project capable of maintaining a computer database of information about the Customer's maintenance operations. This information is intended to help maintenance workers do their jobs more effectively and to verify compliance of required maintenance. In addition to generating work orders for maintenance staff, the CMMS will be used to produce status reports and documents giving details or summaries of maintenance activities.

### **Commissioning Plan**

**For complete Commissioning Plan, please refer to Exhibit A-1 -1: Coimmssioning Plan Training**

### **Plan**

**For complete Training Plan, please refer to Exhibit A-1-2: Training Plan Section IV.**

### **Construction Schedule**

**Please refer to Exhibit A-1-3 Implementation Plan and Construction Schedule**

A-1-1-6

**EXHIBIT A-1-1**

**COMMISSIONING PLAN**

The primary objective of the Commissioning Plan is to define how the Provider and its Subcontractor will ensure that all individual pieces of equipment and integrated systems will perform in conformance with the design intent of the project. Although there are different approaches to commissioning, the fundamental process provides quality assurance to confirm that each of the following standards are met for all equipment included in the project:

1. The products and components selected and installed meet project design criteria.
2. Products and components are installed in accordance with the engineer's and manufacturer's recommendations and design criteria.
3. Products and components are capable of meeting their published performance criteria.

4. If the project includes a system of several products and components, the integrated system is installed in accordance with the engineer's design criteria.
5. If the project includes a system of several products and components, the integrated components are interacting in accordance with the engineer's design criteria.
6. All foreseeable items necessary for the components and systems to continue to operate as designed have been identified for inclusion in the Operations and Maintenance (O&M) Manuals.
7. The facility training plan includes all items that need to be discussed and reviewed with facility personnel in order for the project to continue to perform.

Detailed commissioning tasks and requirements for the equipment to be installed as part of the Project will be identified in commissioning specifications. These specifications are developed by the Provider's Subcontractor using an approach customized to the complexity of each piece of equipment and the technology involved. The Commissioning Team will use the specifications to coordinate individual commissioning tasks and ensure that appropriate commissioning test forms are generated and completed to cover all items requested.

## **COMMISSIONING PROCEDURES**

Specific commissioning procedures vary depending on component technologies, equipment types, and applications involved. As final design is completed, equipment selections are confirmed, and control sequences are finalized, the Provider's Subcontractor will develop a site-specific Commissioning Plan for the Project to outline these procedures. Procedures for each piece of equipment will draw from each individual manufacturer's recommendations.

The following representative sections provide examples of the range and types of commissioning procedures for a few of the components included in the Project.

### **I**

#### **General Commissioning Items**

1. Verify that each piece of equipment was manufactured, shipped, and installed with all options and features specified (operator workstation, control system interface, ground fault protection, thermal overload, automatic bypass, safety devices, etc.).
2. Provide a complete list of all equipment nameplate data, component manufacturer's software and firmware versions, and serial number(s). (This should include data for individual available pressure vessels, coils, and motor data.)
3. Document all dates, times, durations, operating conditions, and names of parties involved with any tests performed.
4. Each test form shall be reviewed and signed by the party with overall responsibility for the test, as well as a

customer representative if it is identified as a test that must be witnessed.

5. Document the procedures, forms, and submissions required to initiate and maintain the manufacturer's warranty.
6. Provide written copies of all applicable O&M instructions.
7. Ensure that appropriate log books have been established using a factory recommended format to record all critical operating parameters during equipment operation.
8. Document that all equipment manufacturer recommended startup and check-out procedures have been completed by an authorized technician using manufacturer's forms.
9. List all rejected items, failed tests, abnormalities observed, or remedial action required by others that were not completely rectified during the construction punch list process.
10. Document all training provided with names and signatures of parties who received framing.
11. Verify that adequate clearances exist around all components for cooling air and to provide access for routine service.
12. Review component locations to ensure that they are not subject to temperatures beyond the manufacturer's published operating limits.
13. Check that panels and enclosure locations are of the type specified and are not subject to excessive moisture, spray, or dirt.
14. Confirm that all fluid systems and system components (valves, sensors, radiators, coils, hoses, tanks, quick disconnects, etc.) are properly routed, supported, and free of leaks.
15. Ensure that all lubricants and fluids meet manufacturer requirements for the equipment installed and the anticipated operating conditions (arctic, tropical, etc.). Document that all special additives or conditioners have been added to the specified concentrations.
16. Provide copies of Material Safety Data Sheets (MSDS) for all applicable materials.

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17. For exterior installations, confirm that enclosure penetrations are watertight and/or do not void weather rating.
18. Confirm that equipment, component, and device labels, tags, or signs have been installed per specifications.

### **Lighting Retrofit Commissioning**

1. Confirm that all post-retrofit group light levels have been reduced or raised appropriately to meet IES standards.
2. Ensure that any non-permanent or disposable batteries have been installed and tested and all battery

locations, types, and recommended replacement intervals have been documented.

3. Test emergency egress and exit lights for proper sequencing from normal to emergency mode on battery and/or emergency power as applicable.
4. Confirm that all battery condition pilot lights and test switches are fully functional.
5. Verify that new fixtures and/or existing fixture retrofit kits have been installed per specifications.
6. For exterior installations, ensure that enclosure penetrations are watertight and/or do not void weather rating.
7. Check operation of completed installation using available controls (wall switches, occupancy sensors, lighting panels, etc.) to confirm that they cycle on and off as intended.
8. During operation, check that all fixtures and ballasts are free of abnormal vibration or unusual noise.
9. Confirm that all required equipment, component, and device labels, tags, or signs have been installed per specifications.

#### **Electrical Equipment and Electrical System Commissioning**

1. Confirm that wiring has been completed and protection devices (fuses, circuit breakers, vacuum fault interrupters, etc.) have been installed to meet applicable codes and specifications for electrical components installed.
2. Verify that all electrical components are installed and tested in accordance with manufacturer recommendations and all applicable local, national, and government codes and specifications.
3. Ensure that all wire, cable, panel grounding, system grounding, insulation, and shielding has been checked, meets specifications, and has been tested in accordance with all applicable local, national, and government codes and specifications.

#### **A-1-1-3**

4. Where applicable, check all overhead electrical lines to ensure that they were constructed using the specified materials and follow the approved routing.
5. Provide convenience receptacle inside control panels per specifications.
6. Verify that all disconnect and/or H-O-A switches have been installed and tested (Hand=On, Off=Off, Auto=Control System state). If the H-O-A switch is to be wired in series with an end switch, verify that this interlock has been wired and is working correctly as well.
7. Check motor rotation prior to connecting any couplings or belt drives. If applicable, verify that variable frequency drive (VFD) controlled equipment has been checked for proper rotation in both drive and bypass.
8. Confirm that all pilot lights, control switches, touch pads, warning buzzers, audible alarms, operating



displays, etc., are fully functional.

9. Where required, confirm that all electrical insulation testing (hi-pot, motor megger, etc.) has been completed per code and test results have been documented.
10. Verify that all heaters (lube oil, gearbox, generator winding, enclosure, etc.) have been energized and tested. Document the temperature settings of all heaters and confirm that power supplies (breakers, panels, etc.) have been properly tagged so that heaters will not be inadvertently de-energized.
11. Ensure that grounding and other safety systems are installed and properly tested per applicable local, national, and government codes and specifications.
12. Document the final voltages, taps, and selector switch settings on all transformers.
13. Confirm that oil level and type has been checked and recorded for all oil-filled transformers.
14. Functionally test any thermostatic controls or cooling fans on fan-cooled transformers.
15. Confirm that all non-permanent or disposable batteries have been installed and tested and all battery locations, types, and recommended replacement intervals have been documented. Each battery should be labeled with the date installed.
16. For any battery installations that include a battery tender or battery charger, verify that the tender or charger has been installed per specifications and is operating as intended.
17. Ensure that all specified and code required electrical warning and safety labels and tags are in place.
18. Ensure that wiring, panels, and equipment have proper tagging and have been checked against electrical schematics, drawings, and specifications.
19. Ensure that all internal compartment light fixtures have been installed as specified.

#### A-1-1-4

20. Measure and document equipment no load, normal load, and full load voltages, power factors, and amperages to establish an operating baseline and ensure that they are within manufacturer's specifications.
21. If applicable, confirm that all switchgear and circuit breaker settings have been coordinated with new and existing electrical distribution system components. Document coordination study settings and approval prior to energizing equipment.

### **Mechanical Equipment and Mechanical System Commissioning**

1. Ensure that all life safety systems (harnesses, climbing restraints, barriers, lockouts, etc.) have been installed, labeled, and reviewed with customer personnel.
2. Verify that equipment has been installed (configuration, orientation, pitch, etc.) and supported

(housekeeping pads, vibration isolators, seismic restraints, etc.) per specifications.

3. Review all equipment connections and accessories for installation issues that might prevent the equipment from operating properly (loose flex connectors, sharp inlet/outlet transitions, improper slope, pipe strain, inadequate space for thermal expansion, etc.).
4. Confirm that all shipping blocks or temporary supports have been removed prior to startup.
5. Ensure that motor and drive components have been aligned and tensioned to specifications.
6. Document that alignment procedures used, tolerances, adjustments, and final results for all shaft-driven equipment meet or exceed manufacturer requirements and tolerances.
7. If specified, ensure that all baseline vibration measurements are taken for rotating equipment and that initial readings are within vibration severity guidelines.
8. Check to ensure that all enclosures, shrouds, guards, or access panels are securely in place.
9. Review all pressure gauge and temperature sensor locations to ensure that they can be read from floor level and are of proper scale or range for the medium being measured.
10. Verify that all thermal insulation and sound attenuation has been installed per specifications.
11. Confirm that each motor, bearing, and gearbox has been lubricated, if necessary, and that all remote grease, oil, or vent lines specified for continued preventive maintenance have been installed.
12. Confirm that adequate clearances exist for routine service and replacement of all motors, controls, dampers, valves, tube bundles, coils, gearboxes, etc.
13. Review outside air intake openings to ensure that they are free of pollution sources, such as trash, cooling tower mists, building exhaust, vehicle exhaust, or other sources that could impact indoor air quality or deteriorate equipment.

#### A-l-1-5

14. Ensure that all equipment piping and piping accessories (strainers, control valves, balance valves, air vents, vacuum breakers, Pete's plugs, etc.) have been installed and/or cleaned per specifications and are free of leaks.
15. Confirm that all piping systems have been pressure tested per code or applicable standards.
16. Verify that all piping systems have been flushed, cleaned, and purged per specifications. Document that cleaning procedures were performed at specified velocities using appropriate media (air, steam, etc.).
17. Where applicable, ensure that proper type and efficiency of filters or strainers have been installed, are clean, fit properly without leakage, and can be readily serviced.

### **Chiller and Chilled Water System Commissioning**

1. Ensure that a chiller log book has been established using a factory recommended format to record all critical operating parameters during chiller operation.
2. Confirm that wiring has been completed and protection devices (fuses, heaters, breakers, etc.) have been installed to meet applicable codes and specifications for the chiller installed.
3. If applicable, ensure emergency power has been provided to the chiller and all ancillary equipment and controls required for unit to operate as intended during emergency mode.
4. Confirm that all sump or crankcase heaters are operating per manufacturer recommendations.
5. Confirm proper operation of all EMCS interfaces with the chiller (remote set point adjustment, remote start/stop, alarm monitoring, demand limiting, etc.).
6. Test operation of all safety or protection devices (pressure, flow, temperature, voltage, amperage, refrigerant, etc.) to ensure that they have been adjusted or programmed to meet specifications and are operating as intended.
7. Document that chiller control panel has been programmed for the specific chiller purchased, as well as the actual chiller plant configuration (constant flow, variable flow, etc.).
8. Confirm and document that all minimum and maximum operating flows have been identified and adjusted within limits during test and balance.
9. If applicable, document that all remote monitoring or EMCS network interfaces with the chiller control panel operating parameters, faults, or alarms have been tested and calibrated.
10. Verify proper operation of all unique controls or features that were specified to have been provided with chiller control panel (lead/lag, load balance, hot gas bypass, etc.).
11. Provide a list of all chiller control panel programming parameters and settings.

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12. Confirm that the control sequencing for all ancillary equipment (chilled and condenser water pump start/stop, cooling tower interlock, etc.) meets specifications and desired control sequences.
13. Verify that the chiller has been installed and supported (housekeeping pads, -vibration isolators, seismic restraints, etc.) per specifications.
14. For units with an external drive motor, ensure that the compressor motor and drive components have been aligned per the chiller manufacturer's specifications.
15. Confirm that adequate clearance exists for routine service of all motors, controls, heat exchanger tubes, strainers, valves, etc.

16. Ensure that all chiller piping and piping accessories (strainers, control valves, flow switches, balance valves, Pete's plugs, etc.) have been installed per specifications and are free of leaks.
17. Verify that all thermal insulation and sound attenuation has been installed per specifications.
18. Confirm that refrigerant purge unit, if applicable, is operating correctly. Verify that refrigerant relief piping is installed per manufacturer's requirements and vented outside.
19. If possible, test the chiller under potential surge conditions to ensure that automatic surge protection devices (variable diffusers, load limiting algorithms, etc.) are functioning.
20. Confirm that there is no abnormal noise or vibration during part- and full-load operation.
21. Review all pressure gauge and temperature sensor locations to ensure that they can be read from floor level and are of proper scale or range for the medium being measured.
22. Verify that piping to and from the chiller has been cleaned per specifications and that a chemical treatment program has been initiated per manufacturer's recommendations.
23. Measure and document no load, normal load, and full load pressures, temperatures, and flows to establish an operating baseline and ensure they are within manufacturer's specifications.

#### **Cooling Tower and Condenser System Commissioning**

1. If applicable, verify that all vibration switches have been calibrated and tested. Document final settings of all vibration switches.
2. Test operation of all sump or basin heater controls to ensure that they have been adjusted per specifications. Document programming or settings for all sump or basin heaters.
3. Test high- and low-level alarm switches, if applicable, and adjust level switches as required.
4. Review equipment installation configuration for issues that might prevent the unit from meeting design capacity (airflow clearances, balance valves, balance lines, insect screens, debris, high temperature building exhaust, etc.).

#### **A-I-1-7**

5. If applicable, confirm that fan blades have been set to the proper pitch angle and that the fan blades and drive hub have been torqued to required specifications.
6. Confirm that clearances between fan blades and shrouds are within manufacturer tolerances.
7. Inspect tower casings and panels for any physical damage to panels or corrosion-resistant coatings. Confirm that all damage has been properly repaired and tower casings do not leak.
8. Confirm that fill media is installed per specifications and is free from visible damage.

9. Where applicable, test coils and interconnecting piping for integrity and leakage using either pressure or vacuum as defined in the specifications. Document the results of all tests.
10. Review the location of any acoustical enclosures or architectural barriers to ensure that they do not interfere with proper airflow through the tower or cause recirculation.
11. If gearbox has synthetic lubricant for extended warranty, confirm that the level has been documented and facility staff is aware of special service considerations to maintain warranty.
12. Ensure that specified nozzles have been installed and condenser water is evenly distributed across cooling tower fill media through a full range of fluid flows and fan operating speeds.
13. Verify that condenser water does not splash out of tower or blow out of fan discharge at any point through full range of condenser water flows.
14. Check the tower sump level during operation and, if possible, verify that the cooling tower makeup water supply and fill valve are able to maintain sump level during design conditions.
15. Confirm that the condenser water flow into the return line does not vortex excessively or entrain sufficient air to cause the condenser water pump to surge at any point through the full range of flow.
16. Check the tower sump level after shutdown of condenser water flow to ensure that the tower does not overflow (externally or internally) and that the makeup water valve closes completely.

#### **Energy Management Control System Commissioning**

1. Provide a troubleshooting logbook by the operator workstation for use by facility operators and control system technicians to document facility issues and contractor responses to ongoing fine-tuning.
2. Confirm that all sensor locations and inputs have been reviewed to ensure that readings are stable and accurately reflect the medium being measured (no stratification, excessive pulsations, system effects, etc.).
3. Document that all inputs, sensors, outputs, and transducers have been calibrated and that ranges match the medium being measured or devices to be controlled. Where applicable,

#### **A-1-1-8**

ensure that current transformer magnetization and polarity tests have been completed per specifications.

4. Document that all flow control devices (valves, dampers, etc.) have been tested through full range of motion to ensure complete shutoff when closed, unrestricted flow when open, and smooth operation.
5. If applicable, verify that interface and monitoring of any OEM equipment (VFD, chiller control panel, burner management system, etc.) operating parameters, faults, or alarms have been completed and tested.
6. If applicable, document that remote monitoring of the control system through dial-up or Internet connection has been completed and tested with lists of all phone numbers, modem settings, IP addresses, passwords, etc.

7. Provide lists of all user defined system variables, including default or initial values (set point, schedule, reset, alarm, gain, etc.) to facilitate future modifications and fine-tuning.
8. Test all control sequences and software logic by completing functional performance tests that confirm system responses through cause and effect methods.
9. Collect and print trends for all dynamic control loops to demonstrate proper control (timely and smooth response, lack of hunting, close to set point, minimal overshoot, etc.) over each range of system loads (weather conditions, startup, shutdown, etc.) encountered during normal operation.
10. If applicable, review graphic screens to ensure that they accurately reflect all equipment and systems controlled. Include ranges for controlled devices, have sufficient transfers or links to quickly navigate through related subsystems, and include narrative explanation of any non-intuitive sequences.
11. If applicable, enable password protection of control system programming and confirm that the password matrix of access levels and privileges has been approved and implemented per customer requirements.
12. Confirm that all control system and equipment failure modes (power failure, sensor failure, signal or communication loss, etc.) and alarm responses have been reviewed with a customer representative to ensure that they meet facility standard operating procedures.
13. Confirm that all devices with clocks or calendar functions have been checked for proper dates and times and coordinated with local daylight savings time practices.
14. Confirm that all equipment subject to automatic start/stop control by the control system has been reviewed with a customer representative to ensure that equipment is properly labeled and life safety protection measures (horns, lights, etc.) are compatible with facility standard operating procedures.

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## DOCUMENTATION

The Provider's Subcontractor will prepare a detailed Commissioning Plan for the Project. This plan will be prepared as soon as final design, equipment selections, and control sequences are completed. The Commissioning Plan will be prepared with input from major subcontractors and vendors and will outline the design intent, objectives, organization, schedule, documentation requirements, and testing procedures to be used.

After the Commissioning Plan has been drafted, the Provider's Subcontractor will schedule meetings with all appropriate commissioning team members to review the proposed plan and document all relevant corrections and clarifications.

Commissioning activities and milestones will be identified in the construction schedule to communicate how systems will be brought on-line. As the project transitions from construction to startup, a brief outline of ongoing commissioning activities will be included in the agendas for regular job meetings and will be documented in the meeting minutes. During startup, detailed look-ahead schedules may be generated to

coordinate commissioning tasks so that all appropriate Commissioning Team members can participate.

Actual commissioning test forms for the Project will include test forms, customized subcontractor test forms, and standard manufacturer installation and startup checklists. As the commissioning process ranges from simple static tests performed during construction (such as electrical Hi-Pot tests) to complex dynamic tests (such as control system functional performance testing), it is impractical to collect and submit each and every test form and checklist. The commissioning team will discuss each commissioning procedure and agree upon the forms and documents to be used to document it prior to the task being performed.

Where appropriate for the technologies involved, commissioning forms may also include specialized electrical, thermal, or vibration studies performed by consultants. Customized test forms will be generated by the Provider's Subcontractors as needed to outline the procedures to be followed during testing of integrated systems or automated control sequences.

Upon completion of project commissioning, the Provider's Subcontractor's Commissioning Agent will perform a final quality control check of all commissioning documents and support the submission of project close out documents. The commissioning submittals will contain all relevant commissioning documentation collected during the project, such as completed checklists, test forms, startup sheets, balance reports, and acceptance forms. Descriptions of any abnormalities or unusual observations will also be included.

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EXHIBIT A-l-2

The following table summarizes the training construction completion.

**Table A-l-2-1.**

TRAINING PLAN

for each energy conservation measure upon

**ECM Training Summary**

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**EXHIBIT A-1-3**

**IMPLEMENTATION PLAN AM) CONSTRUCTION SCHEDULE**

(Attached)

**Exhibit B**

**Savings Methodology and Calculation**

**I. Expected Savings Production**

The Expected Savings Production shall equal the total annual Savings for any given year during the Term following the Substantial Completion Date (the "Performance Period") or the aggregate of such total annual Savings for the remainder of the Performance Period as set forth in the following table, subject to any applicable adjustments as set forth in the Agreement and this Exhibit B.

Year	Measured Savings	Non-Measured Savings	Total Savings	Semi-annual Invoice Amount
1	\$273,818	\$0	\$273,818	\$136,909
2	\$273,818	\$0	\$273,818	\$136,909
3	\$273,818	\$0	\$273,818	\$136,909
4	\$273,818	\$0	\$273,818	\$136,909
5	\$273,818	\$0	\$273,818	\$136,909
6	\$273,818	\$0	\$273,818	\$136,909
7	\$273,818	\$0	\$273,818	\$136,909
8	\$273,818	\$0	\$273,818	\$136,909



9	\$273,818	\$0	\$273,818	136,909
10	\$273,818	\$0	\$273,818	136,909
11	\$273,818	\$0	\$273,818	136,909
12	\$273,818	\$0	\$273,818	136,909
<u>13</u>	<u>\$273,818</u>	<u>\$0</u>	<u>\$273,818</u>	<u>136,909</u>
<u>14</u>	<u>\$273,818</u>	<u>\$0</u>	<u>\$273,818</u>	<u>136,909*</u>
Total	\$3,833,452	\$0		\$3,833,452

\*Invoice for Expected Savings Production for period ended April 30, 2029 is payable no later than April 29, 2029 in the amount of \$90,512 as a ratable adjustment of annual Expected Savings Production.

Upon an extension of the Term pursuant to Section 2.1(b) of this Agreement, (a) the Performance Period shall be extended for a corresponding amount of time, (b) the Expected Savings Production for each year of the extended Term shall be an amount equal to the total savings for Year 14 above; and (c) the Savings for each year of the extended Term shall equal the Expected Savings Production for each year of the extended Term and no measurement of Savings shall apply in determining the Customer's payment obligations under this Agreement.

## II. Methodology and Baseline 1. Overview

This Section II describes the measurement and verification ("M&V")

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methodology that will be applied to the Project, and each separate ECM included within the Project to determine Savings.

The M&V methodology to be employed for the Project is consistent with the U.S. Department of Energy ("DOE") and International Performance Monitoring and Verification Protocol ("IPMVP"), Option A. The specific plans for each ECM are included in Section 3 of this Exhibit B.

## 2. Baseline

The baseline is that set of parameters that describes both the energy consumed in the base year calculation for each type of energy consumed ("Base Year") and the conditions that caused that consumption to occur, including utility consumption, building use information, weather data, and other information as may be necessary to describe the Base Year conditions (collectively, the "Baseline"). Consumption and cost data for electricity and natural gas from June 2011 to May 2012 were used to develop the electric and natural gas baseline. This period reflects the most current available bills for these utilities. District chilled water and steam utilities are only at City Hall; a baseline period of January 2011 through December 2011 was used as this was the most recent fully reconciled year. Field collected data and inputs and outputs used in the Baseline calculations are summarized in the "Baseline Assumptions" set forth on Attachment 1 to this Exhibit B. The Baseline is further described in Sections II. 4 and 5 of this Exhibit B. For each Performance Period year, the Parties will determine any Causes for Adjustment pursuant to Section II.6 of this Exhibit to establish certain adjustments to the Baseline used to measure energy use at the Facilities for that Performance Period year ("Adjusted Baseline").

### 3. Determination of Savings

#### A. Savings Amount

The amount of Savings will be determined as follows:

$$\text{\$} = \$M + \$N$$

Where:  $\text{\$}$  = Savings

$\text{\$}m$  ~ Measured Savings Amount, calculated as set forth in Subsection 3.B below.

$\text{\$}n$  = Non-Measured Savings Amount, stipulated as set forth in Subsection 3.C below.

Installation Period Savings may be added to the Savings for the first Performance Period Year and the final Performance Period year.

#### B. Measured Savings Amount

The Measured Savings Amount for any Performance Period year will be the sum of the

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"Measured Energy Savings" for all savings categories (i.e., kWh, Therms, or kGals). The Measured Energy Savings for each savings category will be determined as follows:

$$\text{\$}o = E_o * \text{\$/Unit}$$

$$E_o = E_{mb} - E_{mg}$$

Where:

$\text{\$}o$  = Measured Energy Savings

$E_o$  = Measured Energy Units Saved (including partially measured and stipulated, as further described in this Exhibit B)

$\text{\$/Unit}$  = Cost of Energy per Unit Measured, as specified in this Exhibit B, Subsection

#### 4.C

$E_{mb}$  - Measured Base Year Consumption or Demand

$E_{mg}$  - Measured Performance Period Year Consumption or Demand

The process for calculating Measured Energy Units Saved for each ECM is set forth below.

### **ECM: LIGHTING RETROFIT Overview of M&V Plan**

IPMVP Option A will be utilized for this ECM.

The existing lighting systems will be upgraded in the following buildings: • Police - Fire  
- DSS Warehouse

The M&V Plan assigns all audited luminaires to one of several lamp/ballast combination (LBC) groups based on the luminaires' specific lamp and ballast type and configuration. The selected measured LBC groups represent 83.8-percent of the connected pre-installation lighting load. For each LBC group measured, a minimum of three luminaires were sampled. This sample size is based on confidence level of 90-percent and a precision of 10-percent, and assuming a coefficient of variation of 10-percent. The verified luminaire wattage was determined by using the average of the samples measured within each LBC group.

Upon completion of construction, the post-installation electrical demand of a representative sample of luminaires will be measured from a number of post-installation LBC groups that represent at least 80-percent of the connected post-installation kW load. The number of measurements will be based on the same statistical sampling criteria as the pre-installation sample. Since existing luminaires that have the same LBC may not be retrofitted with the same post-installation LBC, different luminaires maybe selected for post-installation measurements.

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Any variances in the number and/or equipment installed from the proposed scope of work will be noted in the Post-Installation Report generated by the Provider's Subcontractor. Verified savings will be calculated based on measured post-installation fixture wattages and the as-built quantities.

Hours of operation for each building's fixtures were determined via staff interviews and observations collected during site walks.

### Savings Calculation Methodology

The savings for this ECM were calculated by summing each of the respective components identified in the equations below: direct lighting savings, lighting controls savings, and ancillary HVAC cooling savings.

#### *Direct Lighting Savings*

To calculate the proposed direct lighting savings, fixtures were grouped with others sharing the same baseline lamp and ballast combination, post-installation LBC, and hours of operation. For each group, energy savings during each time of use period are calculated. The formulae for calculating savings are summarized below.

#### **Electric Consumption**

$$PV^{LIGHTING} = (P_{base}^{KT} - P_{post}^{KT}) * H_{base}$$

Where:

ES<sub>lighting</sub> = Energy savings, in kWh, for the lighting retrofits. P<sub>base</sub> = Electrical power, in kW, per fixture for appropriate baseline LBC group. P<sub>post</sub> = Electrical power, in kW, per fixture for appropriate post-installation LBC group.

H<sub>base</sub> - Existing annual operating hours defined by fixture's pre hours group.

N<sub>base</sub> = Number of fixtures in representative baseline LBC group.

N<sub>post</sub> ~ Number of fixtures in representative post-installation LBC group

The contribution to proposed peak demand savings was calculated by applying a diversity factor to the gross connected load (kW). The operating schedule determines the demand diversity factor. For each group of fixtures in the ECM, the monthly proposed demand savings are calculated.

lighting

$$DS_{lighting} = \sum_{j=1}^J (P_{base}^{L_j} - P_{post}^{L_j}) * DF_{lighting}^{L_j}$$

DS<sub>lighting</sub> = Monthly demand savings, in kW, for the lighting retrofits.

P<sub>base</sub> = Electrical power, in kW, per fixture for appropriate baseline LBC group.

P<sub>post</sub> = Electrical power, in kW, per fixture for appropriate post-installation LBC group.

DF<sub>lighting</sub> = Hours group diversity factor

N<sub>base</sub> = Number of fixtures in representative baseline LBC group.

N<sub>post</sub> = Number of fixtures in representative post-installation LBC group

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Energy and demand cost savings were determined by multiplying the proposed energy and demand savings for each applicable LBC by the approved incremental energy costs. The results of these calculations were summed for total electric demand (kW) and energy (kWh) savings.

### Lighting Controls

To calculate the proposed lighting control savings, luminaires have been grouped with other luminaires sharing the same baseline LBC group, post-installation LBC group, and hours of operation.

#### Electric Consumption

$$ES_{controls} = [Q_{post} * H_{base}] - [Q_{post} * H_{post}]$$

Where:

ES<sub>controls</sub> = Energy savings, in kWh, for the on/off controls.

P<sub>post</sub> = Electrical power, in kW, per luminaire for appropriate post-installation LBC group.

H<sub>base</sub> = Baseline annual operating hours defined by luminaire's pre-hours group. H<sub>post</sub> = Post-Installation annual operating hours defined by luminaire's post hours group.

N<sub>post</sub> = Number of luminaires in representative post-installation LBC group.

The post-installation operating hours are based on expected reductions to the baseline operating hours determined via measurements, direction and input from customer, staff interviews, and on-site observations.

For each group of luminaires in this ECM, the monthly demand savings for the lighting controls were calculated as follows:

#### Electric Demand

$$DS_{controls} = P_{controls} * DF_{controls} * N_{controls}$$

Where:

DS<sub>controls</sub> = Monthly demand savings, in kW, for the lighting controls.

P<sub>post</sub> = Electrical power, in kW, per luminaire for appropriate post LBC group.

DF<sub>controls</sub> = Diversity factor, as a percentage in Hours Group Summary Attachment.

N<sub>post</sub> = Number of luminaires in representative post-installation LBC group

$n_{post}$  = Number of luminaires in representative post-installation LBC group.

The results of these calculations were summed for the total electric demand (kW) and energy (kWh) savings. Cost savings were determined by multiplying the verified energy and demand savings for each applicable LBC by the approved incremental energy costs.

### *Ancillary HVAC Cooling Savings*

The proposed lighting upgrade reduces the wattage and hours of operation for lighting, which in turn produces less heat in the lighted areas. Since cooling systems have less heat to remove, less air conditioning energy is required.

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The actual heat contributed to the cooling load varies by fixture type (recessed, surface-mounted, suspended, open, or enclosed), air return (open plenum or ducted return), and the amount of exhausted air. To represent various lighting and ventilation systems, it is assumed that, in conditioned spaces, electrically produced mechanical cooling removes an average of 75 percent of light-generated heat. Luminaires in unconditioned spaces, such as outdoor areas, stairways, mechanical rooms, and high-bay areas, have no effect on the mechanical cooling systems. Therefore, cooling savings calculations do not include these luminaires.

For each group of luminaires in conditioned spaces, we calculate the HVAC cooling energy savings during each time of use period as follows:

$$ES_{cooling} = (F_{lighting} - F_{controls}) * C_{energy} * HC_{space} * SEAC_{cooling}$$

Where:

$ES_{cooling}$  = Energy Savings, in kWh, for the HVAC interaction.

$ES_{lighting}$  = Energy savings, in kWh, for the lighting retrofits (from conditioned spaces only).

$C_{energy}$  - Conversion factor = 3,413-Btu/kWh.

$HC_{space}$  - Heat contribution of luminaires to conditioned space, stipulated at 75-percent.

$C_{capacity}$  = Conversion factor = 12,000-Btu/ton-hr, cooling capacity.

$EFF$  = Mechanical cooling efficiency, in kW/ton

$SEAC_{cooling}$  - Cooling season, in percent of year

The contribution to peak demand savings is determined by applying a diversity factor to the gross kW load. The LBC's hours group determines the demand diversity factor already applied to the demand savings for direct lighting and lighting controls. For each group of luminaires in conditioned spaces, the monthly HVAC demand savings are calculated as follows:

$$DS_{cooling} = ES_{cooling} * g_{div}$$

$DS_{cooling}$  = Monthly HVAC cooling demand savings

$C_{energy}$

$HC_{space}$

*Ccapacity*  
*EFF*

Energy Savings, in kWh, for the HVAC interaction.

Energy savings, in kWh, for the lighting retrofits (from conditioned spaces only).

Conversion factor = 3,413-Btu/kWh.

Heat contribution of luminaires to conditioned spaces, stipulated at 75-percent.

Conversion factor - 12,000-btu/ton-hr, cooling capacity. Mechanical cooling efficiency, in kW/ton

Heating penalty is calculated as follows:

$$\frac{[ES_{lighting} + ES_{controls}] * C_{energy} * C_{heating}}{C_{cooling} * EFF}$$

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Where:

HP cooling = Heating Penalty, in MMBtu, for the HVAC interaction.

ESlighting ~ Energy savings, in kWh, for the lighting retrofits (in conditioned spaces only).

EScontrols- Energy savings, in kWh, for the on/off controls (in conditioned spaces only).

C<sub>energy</sub> = Conversion factor = 3,413-Btu/kWh.

HC = Heat contribution of luminaires to conditioned space, stipulated at 75-percent.

C<sub>cooling</sub> = Conversion factor = 1,000,000-MMBtu/Btu.

EFF - Mechanical heating efficiency, as a percentage

SEAheating = Heating season, in percent of year.

To determine cost savings, the energy and demand savings of all luminaire groups (minus the heating penalty) is multiplied by the approved incremental energy costs.

After construction, the actual number of luminaires upgraded in conditioned spaces will be verified from field inspections and documented in an as-built report; these quantities and verified wattage will be used to calculate verified savings in the above formulae.

### Baseline M&V Activities

Pre-installation audits were used with established lighting fixture wattage tables to estimate the baseline energy consumption for the fixtures to be retrofit. Fixture wattages for a representative sample of fixtures from a number of pre-installation LBC groups that represents 83.8-percent of the connected pre-installation electrical load (kW) were measured. The pre-installation LBC groups scheduled for measurement were based on fixture quantities and hours of operation. The ballast type, manufacturer, and model number for all fixtures measured were recorded. Pre-installation samples and measurements were witnessed by a Commission representative. The baseline lighting power measurements are included in Appendix B: Line-by-Line Lighting Analysis of the Final Investment Grade Audit dated January 28, 2014.

Hours of operation for each building's fixtures were determined via discussions with the facility staff

and were supported by on-site observations. These mutually agreed upon hours of operation were used for both baseline and post-installation energy usage calculations.

### Post-Installation M&V Activities

Upon completion of construction, the post-installation electrical demand of a representative sample of fixtures from a number of post-installation LBC groups that represents at least 80-percent of the connected post-installation electrical load (kW) will be measured. The post-installation LBC groups selected for measurement will be based on proposed fixture quantities. Fixture wattage power measurements will be performed on individual fixtures where feasible. If a dedicated circuit feeds a group of identical fixtures (i.e., the same LBC) the circuit may be measured as a whole if measurement of individual fixtures is not feasible.

The ballast type, manufacturer, and model number for all fixtures measured will be recorded. Post-installation sampling and measurements will be witnessed and signed-off by a

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i<sup>1</sup>  
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Customer representative. The on-site Subcontractor construction manager will monitor installation and retrofit of fixtures and verify that the correct products are installed. Any variances in the number and/or equipment installed from the proposed scope of work will be noted in the As-Built Report generated by the Provider's Subcontractor.

The equations described above will be used to calculate verified savings based on the as-built quantities and equipment. After these activities, the verified energy savings determined by the equations and calculations listed above will be considered valid for the term of the guarantee period without additional evaluation.

### Performance Period M&V Activities

A small sample of fixtures during the annual inspection to confirm that the proper replacement lamps are being used will be inspected. The maintenance stock and maintenance records will be surveyed to confirm that the proper lamps and ballasts are being inventoried. All discrepancies and improper maintenance practices found will be reported. No additional measurements will be performed. Verified energy savings will be based on the baseline and one tune post-installation measurements and calculations described above and documented in the PIR.

## **NEW CHILLER INSTALLATION**

### Overview of M&V Plan

A new 501 ton chiller and chilled water pumps will be installed in the basement of City Hall, and the cooling tower and repurposing heat exchangers for water side economizing will be refurbished. The savings for this ECM comes from the reduced cost of producing chilled water compared to purchasing it from an outside utility.

The M&V plan is based on the data contained in the chilled water utility bills, plant logs, as well as ultrasonic flow measurements, chilled water supply and return temperature measurements, and weather data to

establish the baseline chiller plant load. Post-installation chiller performance will be the proposed manufacturer's rated chiller part-load efficiency curve de-rated by 5% from the manufacturer's stated performance due to AHR1 testing tolerances, which allows for some variance in published performance versus actual field performance. The proposed chiller plant sequence of operations will be confirmed during commissioning.

### **Savings Calculation Methodology**

The expected savings for this ECM was calculated using an 8,760-hour bin analysis in an Excel spreadsheet. The sources of inputs for the calculation included the following:

- Utility data: Eliminating outside utility costs for providing the lower part of the City Hall chilled water is the fundamental strategy for calculating for savings in this ECM.
- Ultrasonic Flow Measurements: These measurements helped determine building load and chilled water pump power.

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- Interviews: Staff interviews provided insight to operational strategies, past history, maintenance issues, etc.

The bin analysis spreadsheet was used to calculate the plant load for every outdoor temperature bin, and the baseline sequence of operation was applied to the load to determine chiller efficiency. The load at varying outside air temperatures is equal to a linearly increasing weather-dependent cooling load plus the constant load required by the computer server rooms. The cooling tower fan operating hours were modeled as linearly decreasing from the design point. The new system will utilize a water side economizing system below an outside air temperature of 40°F.

New proposed chiller part-load efficiency curves (de-rated by 5%) along with the proposed sequence of operations were used to calculate the post-installation energy use. Key parameters include building load, chiller performance, weather data, condenser water and chilled water pumps run-hours, and cooling tower fan energy. The difference between the baseline chiller plant energy use and the proposed chiller plant energy use is the proposed savings. The savings spreadsheet is included in Final Investment Grade Audit date January 28, 2014 Appendix A. Savings Calculations

### **Baseline M&V Activities**

Historical utility data provided by Thermal Chicago and plant logs were analyzed by NORESO to determine the plant sequence of operations and baseline energy use. The Provider's Subcontractor performed baseline flow measurements of chilled water provided by Thermal Chicago using an ultrasonic flow meter to confirm the pumps' flow and corresponding supply and return water temperatures. The flow measurements are included in the Final Investment Grade Audit dated January 28, 2014 Appendix I. M&V Results

### **Post-Installation M&V Activities**

As-built documentation showing that the installed chiller meets or exceeds the proposed capacity and part-load efficiency along with checklists detailing the results of the commissioning process will serve as



verification that the new chiller is properly installed and capable of achieving the proposed savings. Also, the as-built EMS control sequence will be reviewed to determine that it meets the design intent.

### **Performance Period. M&V Activities**

An annual inspection of the equipment will be performed to confirm that the ECM continues to be operational and has the potential of producing the expected savings. The Provider's Subcontractor will also verify the EMS setup during the performance period to confirm that as-built control strategies and standards of operations continue to be in place. NORESO will issue annual reports documenting discrepancies found and, when feasible, recommend corrective actions..

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Verification of these systems will require the Provider or its Subcontractor to access these systems on-site during the annual inspection site visit. Verified energy savings shown in the AVR will be based on the expected savings documented in the PIR.

### **BUILDING EMS MODIFICATIONS**

#### **Overview of M&V Plan**

Controls on the pumps, Air Handling Units (AHUs), boilers, chillers and digital thermostats at RJ Quinn will be installed, and static pressure reset control on the eight air handling units at City Hall will be implemented. At RJ Quinn, the new control system will provide local monitoring and adjustment through a front-end. At City Hall, the AHUs currently utilize variable air volume (VAV) and variable frequency drives to maintain a constant static pressure. These changes would reduce fan energy by resetting the static pressure setpoint as a result of zone damper positions.

The M&V plan relies on documenting baseline conditions through historical utility data, surveys of existing mechanical systems, interviews with facility personnel, and the installation of data loggers to collect space temperatures and run-hours. Post-installation M&V will consist of the review of key performance parameters via review of trend data charts during the annual inspection to confirm that the proposed strategies continue to operate per the design intent.

#### **Savings Calculation Methodology**

The savings for this ECM were performed using 8,760-hour bin analyses in Excel spreadsheets. The majority of the savings are the result of the new control systems being able to reset heating and cooling setpoints and turning off fans and pumps during unoccupied times (night setback), and modulating static pressure setpoints based on VAV damper positions. Key parameters include fan speed, ductwork static pressure and setpoint, zone air damper positions, outside air temperature, and occupied mode. The analyses calculated the reduction in motor power consumption and reductions in building heating and cooling losses due to these modifications in operation. The savings calculations are included in the Final Investment Grade Audit dated January 28, 2014 Appendix A. Savings Calculations.

#### **Baseline M&V Activities**

Baseline usage profile is established by analyzing facility historical metered data, interviews with facility personnel, survey of the existing equipment, and manufacturer's name plate data within an 8,760-hour bin analysis Excel spreadsheet. Additionally, space temperature data loggers were installed in a sample of spaces at RJ Quinn to determine operational parameters. The logged data is included in the Final Investment Grade Audit dated January 28, 2014 Appendix I. M&V Results.

## **Post-Installation M& V Activities**

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Detailed commissioning of each new control strategy to confirm the installed systems and control algorithms meet the design intent will be undertaken. Baseline and post-installation load profiles are agreed to be the same for the life of the contract.

## **Performance Period M&V Activities**

An annual inspection of the equipment will be performed to confirm that the ECM continues to be operational and has the potential of producing the expected savings. The EMS setup will be verified during the performance period to confirm that as-built control strategies and standards of operations continue to be in place.

Verification of these systems will require the Provider's Subcontractor to access these systems on-site during the annual inspection site visit. Verified energy savings shown in the AVR will be based on the expected savings documented in the PIR.

## **APPARATUS BAY MAU MODIFICATION**

### **Overview of M&V Plan**

CO / CO<sub>2</sub> / NO<sub>x</sub> sensors within the apparatus bay of FEC 18 will be installed and integrated with the existing EMS to better control the makeup air unit (MAU) serving this space. The programmed sequence will limit the unit's operation to periods requiring demand controlled ventilation when activated by the combustion contaminant sensors.

The M&V plan is based on data from deployed temperature data loggers, engineering calculations, and manufacturer's name plate data for the affected equipment. For the post-installation verification, the contaminant sensor operation will be confirmed by commissioning operating parameters at the EMS front-end.

### **Savings Calculation Methodology**

The expected savings for this ECM was calculated using an 8,760-hour bin analysis in an Excel spreadsheet for fan savings and heating energy savings. Weather data from data for Chicago, IL at Midway airport was utilized to establish the baseline and the operating hours identified by the data loggers were de-rated from 100% of the time when outside air temperatures are below 65°F to only 80% of the time. The savings are the result of reducing these operating hours from 80% of total hours to 6.7% (4 minutes per hour).

### Fan Energy

The baseline for the existing fan motor energy is based on engineering calculations utilizing outdoor air temperatures, fan power and loading factor, and operating heating hours. The proposed operating heating hours have been reduced to four (4) minutes per hour below 65 °F outside air temperatures.

$$E_{fan} = \frac{IF}{gpp} \times V \times e_p$$

Where:

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ESfan=Fan energy savings, in kWh

HP=Fan horsepower, per nameplate

LF =Load factor, 75%

EFF=Motor efficiency, 91.7%

H<sub>e</sub> = Existing annual operating heating hours by bin temperature

H<sub>p</sub>=Proposed annual operating heating hours by bin temperature

### Heating Energy

The energy required to heat the introduced outside air was determined as follows:

$$C_a * CFM_{OA} * (T_{HSP} - T_{OA}) * H_e$$

Where:

Q<sub>h</sub> = Heating required for outside air, in therms

C<sub>a</sub> = Air constant, 1.085-Btu/hr

CFM<sub>OA</sub> - Outside air provided by the unit, 6210-cfm

T<sub>hsp</sub> = Supply air heating set point

T<sub>OA</sub> = Outside air bin temperature

H<sub>e</sub> = Existing annual operating heating hours by bin temperature

C<sub>h</sub> = Conversion for BTUs to therms, 100,000-BTU/therm

The only change in heating energy is a result of reduced operating heating hours as impacted by the demand control ventilation strategy.

The natural gas savings was calculated by subtracting the proposed gas consumption from the existing gas consumption, where the proposed gas consumption equals the existing gas consumption divided by the burner efficiency multiplied by the ratio of proposed to existing operating heating hours. The savings calculations are included in the Final Investment Grade Audit Appendix A. Savings Calculations.

### Baseline M&V Activities

Baseline usage profile was established by installing temperature data loggers, analyzing historical metered data, interviews with facility personnel, survey of the existing equipment, and manufacturer's name plate data within an 8,760-hour bin analysis Excel spreadsheet. The logger information can be found in the Investment Grade Audit Appendix I. M&V Results.

Investment Grade Audit Appendix I: M&V Results.

**Post-Installation M&V Activities**

A detailed commissioning of the MAU will be conducted to confirm the installed contaminant sensors and control algorithms meet the design intent. Baseline and post-installation load profiles are agreed to be the same for the life of the contract.

**Performance Period M&V Activities**

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Verified savings will be based upon Post-Installation activities.

4. Weather Source Energy Rates

A. Weather Source

Data for weather-related calculations used in this Contract will be from 30-year average historical bin data obtained from the National Weather Service Station at Chicago Midway.

B. Energy Rates

The rates set forth in this Subsection will be used to determine the Measured Savings Amount. The rates set forth below will be escalated by 0% each Performance Period year, commencing with the second Performance Period year.

5. Building Schedule and Operations

A. Calendars and Schedules

The Customer conducts certain occasional activities outside of the Occupancy Schedule ("Additional Occupancies"). The Provider's Subcontractor has evaluated the Additional Occupancies in preparing the Investment Grade Audit and that the Additional Occupancies are factored into the calculation of the Baseline. Additional Occupancies shall not constitute a Cause for Adjustment to the energy savings calculations.

Holidays: The Facilities will be unoccupied on the dates the following holidays are observed:

New Year's Day Martin Luther King Jr. Day  
Lincoln's Birthday Washington's Birthday  
Casimir Pulaski Day

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Memorial Day Independence Day  
Labor Day Columbus Day Veteran's  
Day Thanksgiving Day Christmas  
Day

These occupancy schedules will not apply in any instance where the Provider or its Subcontractor direct or approve the running of equipment outside of the occupancy schedules in order to improve the efficiency of the ECMs and related equipment.

#### B. Standards of Service and Comfort

The Customer will operate the conditioned spaces in the Facilities within the temperature ranges scheduled in Exhibit B, Sub-section II.5.A. Operating conditions outside the range specified in this table shall constitute a Cause for Adjustment under this Contract. Adjustments may be made to the temperature ranges within spaces of less than 2000 square feet to accommodate tenant comfort and use of the space without any adjustments to the Baseline, provided spaces with adjustments outside of the temperature ranges do not exceed 5% of the total gross area of a particular Facility.

In the event that an adjustment to the Baseline is sought, the Provider or its Subcontractor shall submit the proposed Baseline adjustments to the Customer and describe the reasons for the adjustment.

#### 6. Causes for Adjustment

Adjustments to the Baseline are intended to adjust for any operations or conditions that differ from those assumptions made when Savings were calculated. Each of the causes described in the table below shall constitute a "Cause for Adjustment" to the Baseline used to calculate the Measured Savings Amount.

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In the event the Provider has reason to believe that any action or failure to act by the Customer or a measurable deviation from the Baseline may constitute a Cause for Adjustment to the Savings calculations set forth in this Agreement, the Provider must notify the Customer of a possible Cause for Adjustment within sixty (60) days of becoming aware of such action, failure to act, or measurable deviation. If the Provider fails to notify the Customer within such sixty (60) day period, the Provider thereafter waives the right to present any claim for an adjustment to the energy performance calculations on account of such action or failure to act.

Notwithstanding the provisions of this Section, the Provider is not required to present any claim for a Cause of Adjustment if the Provider determines that an action, failure to act, or measurable deviation will have no impact on the Measured Savings Amount. In all instances, the Provider must account for all Causes for Adjustment to the energy performance calculations arising during the preceding Performance Period year within the prior Performance Period year calculations, and the Provider waives the right to present any Causes for Adjustments not specified within the prior year calculations. Within sixty (60) days of the Date of Commencement, the Parties will mutually determine any Causes for Adjustment to account for changes in the Facility sites and their use which have occurred prior to the execution of this Agreement but after the performance of the Investment Grade Audit.

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\* Threshold Limits Per Fuel-type/Category:

Area - 3% of square footage of Facility site area as of the Date of Commencement.

Electricity - 3% of highest annual peak demand

Natural Gas - 3% of installed Base Year gas-heating capacity

Air Conditioning - 3% of installed Base Year air-conditioning capacity

## 7. Examples

### A. Savings Calculation Model Assumptions

Savings calculations can be found in Exhibit A: Savings Calculations of the Final Investment Grade Audit dated January 28, 2014

### B. Examples of Energy Savings Calculations

Examples of Energy Savings Calculations are provided in Section II.3 of this Exhibit B.

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Exhibit C

Customer Project-Specific Obligations

Responsibility for the proper maintenance, service, repair, replacement and adjustments to each ECM, ECM system and related ancillary systems and equipment, including related expenses, shall transfer to the Customer on an ECM by ECM basis on the Substantial Completion Date of each ECM (unless a Subcontractor or manufacturer warranty period is in effect with respect thereto). The Customer will be responsible for such maintenance, service, repair and adjustments for the remainder of the Term. Operation and Maintenance Manuals ("O&M Manuals") will be provided to the Customer by the Provider's Subcontractor. Included with the O&M Manuals will be a list of maintenance responsibilities and tasks for the Customer. The Provider has no maintenance responsibilities under this Agreement.

Start-up and Shutdown: The Customer's responsibilities include all system start-ups and shut-downs. System start-up (beginning of season) and shut-down (end of season) refers to specific manufacturer recommendations with respect to "proper" system start-up, operation, maintenance, and shut-down as defined in O&M Manuals.

Operations: The Customer shall operate the equipment installed hereunder in accordance with parameters noted in Exhibit B, the manufacturers' recommendations, and any supplemental procedures supplied to the Customer by the Provider or its Subcontractor including those set forth in the O&M Manuals. The Customer shall also operate the equipment and systems (including ancillary related systems) in accordance with the standards of service and comfort set forth in Exhibit B.



Maintenance: The Customer's maintenance responsibilities include the proper operation and prompt repair and maintenance of each ECM, ECM system and related ancillary systems and equipment such that they are maintained in good working order during the Term. The Customer shall repair and maintain (i) the equipment and all other components which comprise each ECM and (ii) all other equipment which is attached thereto and/or is integral to the proper functioning of each ECM, including performance of the maintenance tasks, manufacturer's recommendations and supplemental procedures included in the O&M Manuals. Maintenance also refers to performing required maintenance of ancillary systems.

CMMS: The Customer shall cause the CMMS (as defined in Exhibit A to this Agreement) to be continuously operated and maintained during the Term and shall bear all costs related to the CMMS not included in the costs financed by the Provider under the Loan Agreement and as otherwise provided in the PBC Undertaking Agreement. The Provider makes no representation nor warranty with respect to the suitability or utility of the CMMS.

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**MBE/WBE Special Conditions (Attached)**

CITY OF CHICAGO Department of Procurement Services Jamie L Rhee, Chief Procurement Officer 121 North LaSalle Street, Room 806 Chicago, Illinois 60602-1284

Fax: 312-744-3281

**Commodities and Work Services MBE & WBE Special Conditions**

**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 (inclusive of any and all modifications and amendments), if awarded, for contract participation by MBEs and WBEs:

MBE Percentage	WBE Percentage
25%	5%

This commitment is met by the Contractor's 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 the indirect participation of MBEs or WBEs in other aspects of the Contractor's business (but no dollar of such indirect MBE or WBE participation will be credited more than once against a Contractor's MBE or WBE commitment with respect to all government Contracts of such Contractor), 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.

As noted above, the Contractor may meet all or part of this commitment by contracting with MBEs or WBEs for the provision of goods or services not directly related to the performance of this Contract. However, in determining the manner of MBE/WBE participation, the Contractor will first consider involvement of MBEs/WBEs as joint venture partners, subcontractors, and suppliers of goods and services directly related to

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the performance of this Contract. In appropriate cases, the Chief Procurement Officer will require the Contractor to demonstrate the specific efforts undertaken by it to involve MBEs and WBEs directly in the performance of this Contract.

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 2-92-535, the prime contractor may apply be awarded an additional 0.333 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 mentor agreement with the contractor. 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.*

"B.E.P.D." means an entity certified as a Business enterprise owned or operated by people with disabilities as defined in MCC Section 2-92-586.

"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.

"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.

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"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.

"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 credited 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-Protégé Agreement" means an agreement between a prime and MBE or WBE subcontractor 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.

"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.

### 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:

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- j.
  - 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 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 proposed joint venture agreement, the Schedule B submitted on behalf of the proposed joint venture, and all related documents 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 with its bid a Schedule B and the proposed joint venture agreement. These documents must both 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,

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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 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. 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.
- 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.

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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:
  - 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 1-
  - 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:

- a 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 fourteen (14) calendar days to submit to the Department of Procurement Services complete documentation that adequately addresses the conditions for waiver described herein; and
- o 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 / Indirect 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 or indirect 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:

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  - » choosing subcontracting opportunities likely to achieve MBE/WBE goals;
  - » not imposing any limiting conditions which were not mandatory for all subcontractors;
- a 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.

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 Reductions 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.

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 tillable 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.

**{?.) 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

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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.

**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 the joint venture agreement and a Schedule B along with all other requirements listed in Section 1.3, "Joint Ventures," 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. The joint venture agreement must also clearly define each partner's authority to contractually obligate the joint venture and each partner's authority to expend joint venture funds (e.g., check signing authority).

**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 tillable 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;

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- 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; 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.

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

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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.

### 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.

### 11. Equal Employment Opportunity

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

American Brotherhood of Contractors

935 West 175<sup>th</sup> Street

Homewood, Illinois 60430

Phone: (773)491-5640

Email: [arba@constructive-business.com](mailto:arba@constructive-business.com) <<mailto:arba@constructive-business.com>>

Asian American Business Expo 207 East Ohio St. Suite 218 Chicago, IL 60611 Phone:312-233-2810 Fax: 312-268-6388

Email: [Janny@AsianAmericanBusinessExpo.org](mailto:Janny@AsianAmericanBusinessExpo.org) <<mailto:Janny@AsianAmericanBusinessExpo.org>>

Asian American Institute

4753 N. Broadway St. Suite 904

Chicago, IL 60640

Phone:(773)271-0899

Fax: (773)271-1982

Email: [kfemicola@aaichicago.org](mailto:kfemicola@aaichicago.org) <<mailto:kfemicola@aaichicago.org>>

Web: [www.aaichicago.org](http://www.aaichicago.org)

Association of Asian Construction Enterprises 333 N. Ogden Avenue Chicago, IL 60607 Phone: (847) 525-9693 Email: [nakmancorp@aol.com](mailto:nakmancorp@aol.com)

<<mailto:nakmancorp@aol.com>>

Black Contractors United

400 W. 76<sup>th</sup> Street, Suite 200

Chicago, IL 60620

Phone: (773) 483-4000

Fax: (773)483-4150

Email: [bcunewera@att.net](mailto:bcunewera@att.net) <<mailto:bcunewera@att.net>>

Web: [www.blackcontractorsunited.com](http://www.blackcontractorsunited.com)

Cosmopolitan Chamber of Commerce

203 N.Wabash, Suite 518

Chicago, IL 60601

Phone: (312)499-0611

Fax: (312)332-2688

Email: [ccarey@cosmococ.org](mailto:ccarey@cosmococ.org) <<mailto:ccarey@cosmococ.org>>

Web: [www.cosmochamber.org](http://www.cosmochamber.org) <<http://www.cosmochamber.org>>

Eighteenth Street Development Corporation

1843 South Carpenter

Chicago, Illinois 60608

Phone: (312) 733-2287

Fax: (773)-353-1683

[asoto@eighteenthstreet.org](mailto:asoto@eighteenthstreet.org) <<mailto:asoto@eighteenthstreet.org>>

[www.eighteenthstreet.org](http://eighteenthstreet.org) <<http://eighteenthstreet.org>>

Chatham Business Association Small Business

Development, Inc.

8441 S. Cottage Grove Avenue

Chicago, IL 60619

Phone: (773)994-5006

Fax: (773)994-9871

Email: [melkelcba@sbcglobal.net](mailto:melkelcba@sbcglobal.net) <<mailto:melkelcba@sbcglobal.net>>

Web: [www.cbaworks.org](http://www.cbaworks.org) <<http://www.cbaworks.org>>

Chicago Area Gay & Lesbian Chamber of Commerce

3656 N. Halsted Chicago, IL 60613 Phone: (773)303-0167 Fax: (773) 303-0168 Email: [info@glchamber.org](mailto:info@glchamber.org)

<<mailto:info@glchamber.org>>Web: [www.alchamber.org](http://www.alchamber.org) <<http://www.alchamber.org>>

Chicago Minority Supplier Development Council, Inc.

105 W.Adams, Suite 2300

Chicago, IL 60603-6233

Phone: (312) 755-8880

Fax: (312) 755-8890

Email: [pbarreda@chicagomsdc.org](mailto:pbarreda@chicagomsdc.org) <<mailto:pbarreda@chicagomsdc.org>>  
Web: [www.ohicaqomsdc.org](http://www.ohicaqomsdc.org) <<http://www.ohicaqomsdc.org>>

Chicago Urban League 4510 S. Michigan Ave. Chicago, IL 60653 Phone: (773) 285-5800 Fax: (773) 285-7772  
Email: [president@aithechicaaourbanleaue.org](mailto:president@aithechicaaourbanleaue.org) <[http://rbanleaue.org](mailto:president@aithechicaaourbanleaue.org)> Web: [www.cu-l-chicago.org](http://www.cu-l-chicago.org) <<http://www.cu-l-chicago.org>>

Chicago Women in Trades (CWIT)  
4425 S. Western Blvd.  
Chicago, IL 60609-3032  
Phone: (773) 376-1450  
Fax: (312) 942-0802  
Email: [cwitinfor@cwit2.org](mailto:cwitinfor@cwit2.org) <<mailto:cwitinfor@cwit2.org>>  
Web: [www.chicagowomenin1rades.org](http://www.chicagowomenin1rades.org) <<http://www.chicagowomenin1rades.org>>

Coalition for United Community Labor Force  
1253 W. 63<sup>rd</sup> Street  
Chicago, IL 60636  
Phone: (312) 243-5149  
Email: [johnrev.hatchett@comcast.net](mailto:johnrev.hatchett@comcast.net) <<mailto:johnrev.hatchett@comcast.net>>

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City of Chicago Department of Procurement Services ~ Assist Agencies (cont'd)

Federation of Women Contractors 5650 S. Archer Avenue Chicago, IL 60638 Phone: (312) 360-1122 Fax: (312) 360-0239  
Email: [fwcchicago@aol.com](mailto:fwcchicago@aol.com) <<mailto:fwcchicago@aol.com>> Web: [www.fwcchioaao.com](http://www.fwcchioaao.com) <<http://www.fwcchioaao.com>>

Hispanic American Construction Industry Association (HACIA)  
650 West Lake Street Chicago, IL 60661 Phone: (312) 666-5910 Fax: (312) 666-5692 Email: [info@haciaworks.org](mailto:info@haciaworks.org)  
<<mailto:info@haciaworks.org>> Web: [www.haclaworks.org](http://www.haclaworks.org) <<http://www.haclaworks.org>>

Illinois Hispanic Chamber of Commerce  
855 W. Adams, Suite 100  
Chicago, IL 60607  
Phone: (312) 425-9500  
Fax: (312) 425-9510  
Email: [oduque@ihccbusiness.net](mailto:oduque@ihccbusiness.net) <<mailto:oduque@ihccbusiness.net>>  
Web: [www.ihccbusiness.net](http://www.ihccbusiness.net) <<http://www.ihccbusiness.net>>

Latin American Chamber of Commerce 3512 West Fullerton Avenue Chicago, IL 60647 Phone: (773) 252-5211 Fax: (773) 252-7065  
Email: [d.lorenzopadron@latlnamericanchamberofcommerce.com](mailto:d.lorenzopadron@latlnamericanchamberofcommerce.com) Web: [www.latlnamericanchamberofcommerce.com](http://www.latlnamericanchamberofcommerce.com)  
<<http://www.latlnamericanchamberofcommerce.com>>

National Organization of Minority Engineers  
33 West Monroe Suite 1540  
Chicago, Illinois 60603  
Phone: (312) 425-9560  
Fax: (312) 425-9564  
Email: [shandy@infrastructure-eng.com](mailto:shandy@infrastructure-eng.com) <<mailto:shandy@infrastructure-eng.com>>  
Web: [www.nomeonline.org](http://www.nomeonline.org) <<http://www.nomeonline.org>>

Rainbow/PUSH Coalition International Trade Bureau 930 E. 50<sup>th</sup> Street Chicago, IL 60615 Phone: (773) 256-2781 Fax: (773) 373-4104 Email: [bevans@rainbowpush.org](mailto:bevans@rainbowpush.org) <<mailto:bevans@rainbowpush.org>> Web: [www.rainbowpush.org](http://www.rainbowpush.org) <<http://www.rainbowpush.org>>

South Shore Chamber, Incorporated  
Black United Funds Bldg.  
1750 E. 71<sup>st</sup> Street  
Chicago, IL 60649-2000  
Phone: (773) 955- 9508  
Email: [ssshorechamber\(5\)@sbcg.lobal.net](mailto:ssshorechamber(5)@sbcg.lobal.net) <<http://lobal.net>>  
Web: [www.southshorechamberinc.org](http://www.southshorechamberinc.org) <<http://www.southshorechamberinc.org>>

Suburban Minority Contractors Association  
1250 Grove Ave. Suite 200

Barrington, IL 60010  
Phone: (847) 852-5010  
Fax: (847) 382-1787  
Email: [aprilcobra@hotmail.com](mailto:aprilcobra@hotmail.com) <<mailto:aprilcobra@hotmail.com>>  
Web: [www.suburbanblackcontractors.org](http://www.suburbanblackcontractors.org) <<http://www.suburbanblackcontractors.org>>

Women Construction Owners & Executives  
(WCOE)  
Chicago Caucus  
308 Circle Avenue  
Forest Park, IL 60130  
Phone: (708) 366-1250  
Fax: (708) 366-5418  
Email: [mkm@mkmservices.com](mailto:mkm@mkmservices.com)  
Web: [www.wcoeusa.org](http://www.wcoeusa.org) <<http://www.wcoeusa.org>>

Women's Business Development Center  
8 South Michigan Ave., Suite 400 Chicago, IL 60603 ' Phone: (312) 853-3477 Fax: (312) 853-0145 Email: [fcurry@wbdc.org](mailto:fcurry@wbdc.org)  
<<mailto:fcurry@wbdc.org>> Web: [www.wbdc.org](http://www.wbdc.org) <<http://www.wbdc.org>>  
National Association of Women Business Owners  
Chicago Chapter  
230 E. Ohio, Suite 400  
Chicago, IL 60611  
Phone: (312) 224-2605  
Fax: (312) 644-8557  
Email: [info@nawbochicago.org](mailto:info@nawbochicago.org) <<mailto:info@nawbochicago.org>>  
Web: [www.nawbochicago.org](http://www.nawbochicago.org) <<http://www.nawbochicago.org>>

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

On Bidder/Proposer's Letterhead - SEND TO THE ASSIST AGENCSES - 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

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

Schedule 3 - Affidavit of Joint Venture

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-MBEAA/BE venturer(s):

Name of Firm:

Address:

Phone:

Contact person for matters concerning MBE/WBE compliance:

- III. Identify each MBEAA/BE venturer(s):  
Name of Firm'  
Address:  
Phone:  
Contact person for matters concerning MBEAA/BE 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:

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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 andfor collateralizing loans:

Acquisition of lines of credit:

Page 2 of 5

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Schedule 6: Affidavit of Joint Venture (fvIBE/WBE)

Acquisition and indemnification of payment and performance bonds:

Negotiating and signing labor agreements:

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

1. Supervision of field operations:
2. Major purchases:
3. Estimating:
4. Engineering:

Financial Controls of joint venture:

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

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

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 project?

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-MBEAA/BE firm, the MBEAA/BE firm, or the joint venture.

Page 3 of 5

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

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 MBEAA/BE

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.

Page 4 of 5

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Schedule B: Affidavit of Joint Ventura (EVIBE/WBE)

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 MBEAA/BE Partner Firm

Firm

Name of Non-MBEAA/BE Partner

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 have hereunto set my hand and official seal.

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

Signature of Notary Public

My Commission Expires:

(SEAL) Page 5 of 5

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

**SCHEDULE C-1 MBE/WBE Letter of Intent to Perform as a Subcontractor, Supplier, or Consultant**

Project Name:

Specification No.:

From'

(Name of MBE/WBE Firm)

To'

(Name of Prime Contractor)

and the City of Chicago.

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 MBEA/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. MBEA/WBE credit will not be given for work subcontracted to Non-MBBWBE 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 ( ) No

NOTICE: THIS SCHEDULE AND ATTACHMENTS REQUIRE ORIGINAL SIGNATURES.

(Signature of President/Owner/Authorized Agent or MBE/WBE) (Date)

(Name/Title/Address)

(Title, Position)

03/2013

Peso 1 or 1

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

#### SCHEDULE D-1

#### Compliance Plan Regarding MBEA/BE 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 MBEA/BE goals of this contract.

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

#### 1. Direct Participation of MBEA/BE Firms:

MOTE: The bidder/proposer shall, in determining the manner of MBEA/BE participation, first consider involvement with MBEA/BE 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 MBEA/BE 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: %

Total Participation %

#### 2. Name of MBEA/BE:



Address:

Contact Person:

<sup>1</sup> 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 MBEA/BE protege firm.

08/2013

Page 1 of 5

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Schedule O-I: Prime Contractor Affidavit/BE/WBE Compliance Plan

Phone Number:

Dollar Value of Participation \$

Percentage of Participation %

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

Total Participation %

3. Name of MBEA/BE:

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 %

A. Name of MBEA/BE:

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

MBEA/BE Firms

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

MBEA/BE 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 MBEA/BE

1. Name of MBE/VBE

Address:

Contact Person:

08/2013

Page 2 of 5

**Schedule D-1; Prime Contractor Aff.davi.-fv.BE/WBE <<http://Aff.davi.-fv.BE/WBE>> Compliance Plan**

Phone Number:

Dollar Value of Participation \$

Percentage of Participation %

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

Total Participation %

2. Name of MBEAA/BE:

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 %

3. Name of MBEAA/3E:

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 MBEAA/BE:

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 %

Total Participation %

5. Attach Additional Sheets as Needed

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**Schedule D-1: Prime Contractor Am'davii-MBE/W\_E Compliance Plan III. Summary of MBE/WBE Proposal A.**

**MBE Proposal (Direct & Indirect)**

- 1 MBE Direct Participation

- 2 MBE Indirect Participation

**B. WBE Proposal (Direct & Indirect)**

1. WBE Direct Participation

2. WBE Indirect Participation

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Schedule D-i: Prime Contractor Affidavit-WiBtAAIBE 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:

County of: \_

(Signature)

(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.

ENERGY SERVICES AGREEMENT

by and between

CHICAGO INFRASTRUCTURE TRUST and

THE CITY OF CHICAGO

dated April 11, 2014

RETROFIT ONE  
CHICAGO DEPARTMENT OF FLEET AND FACILITY MANAGEMENT SCHNEIDER ELECTRIC  
BUILDINGS AMERICAS PROJECT  
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**ENERGY SERVICES AGREEMENT**

' This ENERGY SERVICES AGREEMENT (this "Agreement"), dated the 11th day of April, 2014 (the "Effective Date"), is by and between CHICAGO INFRASTRUCTURE TRUST, an Illinois nonprofit corporation (the "Provider") and the CITY OF CHICAGO, a home rule unit of local government under the Constitution and laws of the State of Illinois (the "Customer") (each of the Customer and the Provider, a "Party" and collectively, the "Parties").

**RECITALS**

WHEREAS, the Provider is authorized and empowered pursuant to the provisions of an ordinance adopted by the City Council of the City (the "City Council") on April 24, 2012, as amended by an ordinance adopted by the City Council on January 15, 2014, and a resolution adopted by the board of directors of the Provider on November 12, 2013, to, among other things, acquire and finance certain energy conservation projects for the benefit of the Customer; and

WHEREAS, the Customer desires to engage the Provider to procure, install, implement, own, operate and maintain certain energy conservation measures and energy efficiency measures (as further described herein, "ECMs"). to be located at certain facilities of the Customer (as further described herein, the "Facilities") for the purposes of achieving energy and operational savings at the Facilities subject to the terms and conditions of this Agreement; and

WHEREAS, the Provider desires to procure, install, implement, own, operate and maintain the ECMs and measure and verify energy and operational savings produced by the ECMs under the terms and conditions

of this Agreement;

NOW THEREFORE, in consideration of the premises and the mutual promises and agreements of the Parties herein expressed, the Parties, intending to be legally bound, hereby agree as follows:

## ARTICLE I DEFINITIONS

Section 1.1 Definitions. Terms used in this Agreement shall have the meanings set forth in this Article I unless a different meaning clearly appears from the context.

"Agreement" means this Energy Services Agreement, together with all appendices, exhibits and schedules thereto, as any of them may be amended.

"Bond Counsel" means an attorney or firm of attorneys nationally recognized on the subject of municipal bonds and selected by the Provider and reasonably acceptable to the Customer and the Lender.

"Business Day" means any Day other than a Saturday, Sunday or a Day observed as a holiday by the Customer, the State of Illinois or the United States government, except that in the event that an obligation to be performed under this Agreement falls due on a Day other than a Business Day, the obligation shall be deemed due on the next Business Day thereafter (with no additional charge for such deferral).

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"Change Order" means a written order signed by the Parties authorizing an addition, deletion or other change in the Installation Work, the Installation Schedule or the Project Costs or any other obligation of the Provider or the Customer pursuant to this Agreement.

"Commission" means the Public Building Commission of Chicago, a public body corporate and politic of the State of Illinois.

"Concealed Conditions" means subsurface or otherwise concealed physical conditions at the Facilities of an unusual nature that differ materially from those conditions ordinarily found to exist and generally recognized as inherent in construction activities of the type and character as the Installation Work, and that the Provider could not have discovered through the exercise of reasonable diligence during the performance of the Investment Grade Audit unless excluded thereunder.

"Customer Equipment" means all Customer-owned and leased equipment and fixtures located at the Facilities or related thereto that may affect the energy consumption savings that may be achieved by the ECMs.

"Day" means a calendar day and shall include Saturdays, Sundays and holidays.

"Determination of Taxability" means (a) the receipt by the Lender, the Provider or the Customer of an original or a copy of an Internal Revenue Service Statutory Notice of Deficiency which is non-appealable and holds that an Event of Taxability has occurred; (b) the issuance of any public or private ruling of the Internal Revenue Service that holds that an Event of Taxability has occurred; or (c) receipt by the Lender, the Provider or the Customer of a written opinion of Bond Counsel that an Event of Taxability has occurred.

"Event of Taxability" means a determination by the Internal Revenue Service that a tax liability exists.

"Discount Rate" means four and ninety-five hundredths percent (4.95%).

"Dispute" means a Savings Dispute or a Non-Savings Dispute.

"Documents" means this Agreement with conditions set forth herein, the Plans and Specifications, the Installation Schedule, any Change Orders and any modifications to the foregoing documents issued after execution of this Agreement.

"ECMs" means the equipment, devices, materials, and/or software to be acquired and installed at the Facilities by the Provider and all related services as described in Exhibit A.

"Environmental Attributes" means all rights, credits (including tax credits), rebates, grants, benefits, reductions, offsets, and allowances and entitlements of any kind, howsoever entitled or named (including carbon credits and allowances), whether arising under federal, state or local law, international treaty, trade association membership or the like, arising from the development or installation of the ECMs and the reduction of energy usage at the Facilities. Without limiting the foregoing, "Environmental Attributes" includes utility rebates or incentive programs, green tags, renewable energy credits, tradable renewable certificates, portfolio energy credits, the right to apply for (and entitlement to receive) incentives under any state tax credit

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program, grants from nongovernmental organizations, and the right to claim federal income tax credits under Sections 45 and/or 48 of the Internal Revenue Code.

"Event of Loss" means an event in which the Facilities, the ECMs or any portion thereof is destroyed, in whole or in part, or is damaged by fire or other casualty or title to, or the temporary use of, the Facilities, the ECMs or any part thereof shall be taken under the exercise or threat of the power of eminent domain by any governmental body or by any person, firm or corporation acting pursuant to governmental authority.

"Event of Taxability" means if as the result of any act of the Customer, failure to act by the Customer or any misrepresentation or inaccuracy by the Customer in any of the representations, warranties or covenants of the Customer contained in this Agreement or included in the Tax Certificate, the interest on the Series C Note (as defined in the Loan Agreement) is or becomes includable in the gross income of the registered owner of the Series C Note for federal income tax purposes. For all purposes of this definition, an Event of Taxability shall be deemed to occur on the date as of which the interest on the Series C Note is or becomes includable in the gross income of the registered owner of the Series C Note for federal income tax purposes.

"Expected Savings Production" means, at any time, the Savings expected to be produced by the Project during the remaining Term of this Agreement as determined in accordance with Exhibit B and based on the underlying assumptions and performance projections for the Project.

"Fair Market Value" means the value determined on the following basis: (i) the subject value shall be the amount which would be obtained in an arm's length transaction between an informed and willing buyer (who is not a used equipment dealer), and an informed and willing seller under no compulsion to sell; (ii) the costs of removal of the equipment from its then location shall not be a deduction from such value; and (iii) in determining any such value, to the extent the Customer is obligated to maintain any equipment, it shall be assumed (whether or not the same be true) (A) that such equipment has been maintained and is in the condition required in accordance with this Agreement, and (B) such value has not been diminished due to the existence

or any damage history.

"Force Majeure Event" means any cause beyond the reasonable control of, and not due to the fault or negligence of, the Party affected, and which could not have been avoided by due diligence and use of reasonable efforts, including, but not limited to, drought, flood, earthquake, storm, mudslide, fire, lightning, epidemic, war, riot, civil disturbance, sabotage, explosions, material changes in Law, or strikes or labor disputes, unavoidable casualties, acts of public enemies, orders or restraints of any kind imposed by the government of the United States, any state or any of their departments, agencies or officials, or any other action of a civil government, military or judicial authority. "Force Majeure Event" also means the failure of any contractor to a Party hereto to furnish labor, services, materials or equipment, but only if such failure is itself due to a Force Majeure Event (as defined in the previous sentence).

"Hazardous Materials" means all hazardous or toxic substances, wastes or other pollutants, including petroleum, petroleum hydrocarbons or petroleum products, petroleum byproducts, radioactive materials, asbestos or asbestos-containing materials, gasoline, diesel fuel,

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pesticides, radon, urea formaldehyde, lead or lead-containing materials, polychlorinated biphenyls; and any other chemicals, materials, substances or wastes in any amount or concentration which are now included in the definition of "hazardous substances," "hazardous materials," "hazardous wastes," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "pollutants," "regulated substances," "solid wastes," or "contaminants" or words of similar import, under any applicable law.

"Independent Engineer" means a third party professional engineering firm, which firm shall be reasonably acceptable to both the Provider and the Customer.

"Installation Schedule" means the construction schedule included in Exhibit A hereto for the Installation Work that includes, without limitation, a schedule related to the entire Project and for each ECM, and that provides for expeditious and practicable execution of all aspects of the Installation Work.

"installation Work" means the work and services required by the Documents during the implementation of the ECMs prior to the Substantial Completion Date and the completion of any related Punch List items and during any period of time during which the Provider is required to correct or replace its work and services pursuant to this Agreement, whether completed or partially completed and, includes all labor, materials, equipment, and services provided or to be provided by the Provider to fulfill the Provider's obligations under this Agreement.

"Interim Completion" means the achievement of the requirements for Substantial Completion for a particular ECM(s) prior to the Substantial Completion Date.

"Investment Grade Audit" means the report prepared by Schneider Electric Buildings Americas, Inc. that sets forth, among other things, (a) an assessment of the energy consumption characteristics of each Facility, (b) specific energy analysis related to each Facility and its operation, and (c) recommendations for projects or programs to achieve cost and/or energy savings in the operation of the Facilities.

"Law" means any applicable constitution, charter, act, statute, law (including common law), ordinance, code, rule, regulation, judgment, decree, writ, order, permit, approval, or the like, as any of the foregoing may change from time to time, of any federal, state or local government or any agency, department, authority, court, political subdivision, or other instrumentality thereof.

political subdivision or other instrumentality thereof.

"Lender" means Banc of America Public Capital Corp, a Kansas corporation, and its successors and permitted assigns.

"Liquidated Damages Amount" means, at any time, the amount equal to the net present value of one hundred percent (100%) of the Savings, plus any unearned Environmental Attributes, calculated at the Discount Rate, assuming the Project will produce Savings at the Expected Savings Production for the remaining Term.

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"Loan Agreement" means the Loan and Security Agreement dated as of April 1, 2014 between the Lender and the Provider relating to the financing of the costs of the ECMs.

"M&V Services" means the measurement and verification services and other services to be performed described in Exhibit B of this Agreement which M&V Services shall commence on the earlier of (i) the first Interim Completion for a particular ECM or (ii) the Substantial Completion of the Project.

"MCC" means the Municipal Code of Chicago.

"Measured Savings" means energy and operational savings achieved by the ECMs as determined pursuant to Exhibit B.

"Non-Measured Savings" means energy and operational savings agreed by the Parties to be achieved as a result of the ECMs as more particularly described in Exhibit B.

"Non-Savings Dispute" means any claim, dispute, controversy or other matter arising out of or related to the validity, scope, making, interpretation, enforceability, performance, breach of, or relating in any way to this Agreement or the relationship between the Parties created by this Agreement or the subject matter of this Agreement, including but not limited to the authority or capacity of any signatory to this Agreement, but excluding a Savings Dispute.

"PBC Undertaking Agreement" means the Undertaking Agreement between the Commission and the Provider related to the Project, and any amendments or supplements thereto.

"Period" means the semi-annual period commencing with the semi-annual period following the Substantial Completion Date or Interim Completion of ECM(s), as applicable.

"Plans and Specifications" means the drawings, specifications, designs, plans, and related documents, prepared by or on behalf of the Customer, the Provider, and/or Subcontractors in connection with the Project.

"Project" means the design, engineering, installation, repairs, retrofit, and implementation of the ECMs, as more fully described in Exhibit A hereto and the other terms and provisions of this Agreement.

"Project Costs" means the costs incurred by Provider in performing the Installation Work.

"Punch List" means minor items of Work to be completed after Substantial Completion, which do not prevent an ECM or the Project from being used for the purpose for which it is intended and which will not prevent the issuance of applicable permits or certificates for such use.

"Savings" means Measured Savings and Non-Measured Savings.

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"Savings Dispute" means any claim, dispute, controversy relating to an invoice for payment related to Savings.

"Savings Percentage" is defined in Section 8.1 of this Agreement.

"Services" means the Installation Work and the M&V Services.

"Subcontract" means an agreement between the Provider and a Subcontractor to provide all or a portion of the Services.

"Subcontractor" or "Subcontractors" means one or more person or entity that furnishes labor, services, material, or equipment to the Provider or any other Subcontractor to the Provider; provided that the Lender shall not be considered a Subcontractor with respect to this Agreement.

"Substantial Completion" means the date that is the later of the following: (i) the Provider has determined that the Installation Work is sufficiently implemented in accordance with the Documents, including commissioning of any systems required by the Documents, so that the Customer may realize the benefits of the Project or the particular ECM, as the case may be, and is fully complete except for Punch List items; or (ii) if the nature of such Installation Work requires that a certificate of occupancy be issued, it means the date of issuance of the required certificate of occupancy for the portion of the Facilities related to such Installation Work.

"Substantial Completion Date" means April 15, 2015, subject only to extension as provided in this Agreement.

"Tax Certificate" means the Tax Compliance Agreement executed and delivered by the Provider and the Customer in connection with the tax-exempt financing of the Project.

"Term" means the period of time from the Effective Date until April 30, 2029, unless extended pursuant to the terms of this Agreement and, if extended, includes the period of such extension.

Section 1.2 Rules of Interpretation. Unless otherwise required by the context in which any term appears: (a) capitalized terms used in this Agreement have the meanings specified in this Article; (b) the singular shall include the plural and vice versa; (c) references to "Articles," "Sections," "Schedules," "Annexes," "Appendices," "Attachments," or "Exhibits" (if any) shall be to articles, sections, schedules, annexes, appendices, attachments or exhibits (if any) of this Agreement and references to a Schedule, Annex, Appendix, Attachment, or Exhibit shall mean the referenced Schedule, Annex, Appendix, Attachment, or Exhibit and any sub-exhibits, subparts, components or attachments that form a part thereof; (d) all references to a person or entity includes its successors and permitted assigns and in the case of a governmental authority

a person or entity, includes its successors and permitted assigns; and in the case of a governmental authority, any person succeeding to its functions and capacities; (e) the words "herein," "hereof" and "hereunder" shall refer to this Agreement as a whole and not to any particular section or subsection of this Agreement; (f) all accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles in the United States of

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America, consistently applied; (g) references to this Agreement shall include a reference to all appendices, annexes, schedules and exhibits hereto, as the same may be amended, modified, supplemented or replaced from time to time; (h) references to any agreement, document or instrument shall mean a reference to such agreement, document or instrument as the same may be amended, modified, supplemented or replaced from time to time (provided that no such amendment, modification, supplement or replacement shall serve to eliminate or lessen any Party's obligation under this Agreement as in effect on the Effective Date without the other Party's written consent) and any term defined or provision incorporated in this Agreement by reference to another document, instrument or agreement shall continue to have the meaning or effect ascribed thereto whether or not such other document, instrument or agreement is in effect; (i) the use of the word "including" in this Agreement to refer to specific examples shall be construed to mean "including, without limitation" or "including but not limited to" and shall not be construed to mean that the examples given are an exclusive list of the topics covered; (j) references to Laws shall mean a reference to such Laws as the same may be amended, modified, supplemented or restated and be in effect from time to time; (k) the gender of all words used herein shall include the masculine, feminine and neuter; and (l) the term "or" is not exclusive.

## ARTICLE II TERM; DISPOSITION OF ECMS

### Section 2.1 Term.

a) This Agreement shall be in effect for the Term, unless terminated earlier in accordance with the provisions hereof. The Provider agrees to undertake the Installation Work in accordance with the Installation Schedule.

b) Upon the occurrence of either or both of (i) a Determination of Taxability or (ii) Event of Loss, the Term shall be extended automatically for such period of time necessary (as determined by written notice by the Lender) for the Provider to satisfy its obligations to the Lender under the Loan Agreement from amounts payable by the Customer under this Agreement, provided that the Term shall not be extended beyond April 1, 2036.

c) At the end of the original Term (if not extended pursuant to subsection (b) of this Section 2.1, the Parties may, upon mutual agreement in writing, elect to extend the Term for one (1) period of up to five (5) years. If the original Term has been extended pursuant to subsection (b) of this Section 2.1, this subsection (c) shall be of no force or effect.

### Section 2.2 Substantial Completion: Mterim Completion.

(a) The Provider will commence the Installation Work within ten (10) days after the date of this Agreement and will achieve Substantial Completion of the Project no later than the Substantial Completion

Agreement and will achieve Substantial Completion of the Project no later than the Substantial Completion Date; provided, however, the Provider may achieve Interim Completion for a particular ECM(s) in advance of the Substantial Completion Date. When the Provider determines that it has achieved Substantial Completion or Interim Completion of the entire Project or a particular ECM, as the case may be, the Provider will provide written notice of Substantial Completion or Interim Completion and a Punch List to the Customer. If the

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Customer concurs that the described portion of the Installation Work as performed has achieved Interim or Substantial Completion, the Customer will accept that Installation Work by signing the certificate of Interim or Substantial Completion and the Punch List and returning both to the Provider. If the Customer does not concur that the Installation Work has achieved Interim or Substantial Completion and/or that the Punch List is not complete or correct, then the Customer shall notify the Provider within thirty (30) days of any discrepancies. To the extent the Provider does not dispute the discrepancies raised by the Customer, the Provider shall (i) promptly and diligently correct the Work to conform to the description of the Work set forth herein, and resubmit the certificate of Interim or Substantial Completion to the Customer, and (ii) promptly complete all items on the Punch List. If the Provider disagrees with the discrepancies raised by the Customer, the Provider shall notify the Customer of a dispute and such dispute shall be resolved in accordance with paragraph (b) below. If the Customer does not deliver written notice to the Provider within thirty (30) days of receiving the certificate of Interim or Substantial Completion and the Punch List, the Customer will be deemed to have agreed to, signed and returned the certificate of Interim or Substantial Completion and the Punch List.

(b) Any disputes concerning the Interim or Substantial Completion of the Work will be resolved by submitting the issue to an Independent Engineer. The Independent Engineer shall be authorized to make determinations and bind the Parties on issues related solely to interpretations or adequacy of the Plans and Specifications or the execution and/or completion of the Installation Work embodied in the Plans and Specifications as it relates to the determination of Interim or Substantial Completion. The Independent Engineer shall not have the authority to render determinations regarding delay claims, payment disputes or other contract disputes that do not involve or arise out of the content of the Plans and Specifications and/or the quality of the execution of the installation Work. All disputes beyond the authority of the Independent Engineer shall be resolved pursuant to Article XII herein. The determination of the Independent Engineer with respect to Interim or Substantial Completion will be final and binding upon the Parties. The Provider and the Customer shall share equally the costs or fees for such firm in connection with such dispute resolution process.

### Section 2.3 Fair Market Value Purchase Option.

a) Provided that no Default by Customer has occurred and is continuing, at the end of the Term the Customer shall have the option upon written notice to the Provider at least sixty (60) Days prior to the end of the Term and payment of all amounts then due in respect of Savings pursuant to Section 8.1 and payment of any other amounts payable by the Customer under this Agreement to purchase the ECMs at their Fair Market Value.

b) The Parties shall consult for the purpose of determining the Fair Market Value of the ECMs and any values agreed upon in writing between the Parties shall be binding. If the Parties fail to agree upon any such value within thirty (30) days of the commencement of such consultation, the Provider shall then appoint an independent appraiser (reasonably acceptable to the Customer) to determine the applicable value, and such



an independent appraiser (reasonably acceptable to the Customer), to determine the appraised value, and such determination by the independent appraiser shall be set forth in a written opinion delivered to the Parties within thirty (30) days after such appointment and shall be binding on the Parties in the absence of fraud or manifest error. The independent appraiser shall make any such determination acting reasonably and in

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good faith and utilizing the definition of Fair Market Value, including all assumptions. The Customer agrees to pay the costs and expenses of any such determination and appraisal.

c) Notwithstanding the foregoing, the Customer shall have a period of five (5) days after agreement by the Parties on the Fair Market Value, or receipt by the Customer of the determination of the independent appraiser, as the case may be, to confirm or retract its decision to exercise the purchase option under this Section 2.3.

d) Upon the payment of the purchase price of the ECMs and all other amounts due and payable under this Agreement, the Provider shall transfer to the Customer ownership of the ECMs, the Provider's interest in the related Plans and Specifications, any related manufacturer warranties and its interest in the Facilities (free and clear of any liens, claims, security interests or other encumbrances) promptly upon payment by the Customer of such purchase price.

Section 2.4 Disposition of the ECMs by the Provider. At the end of the Term if the Customer does not elect to purchase the ECMs pursuant to Section 2.3, the Provider may, at its sole option, either (i) subject to the Provider's compliance with the other terms and conditions of this Agreement, surrender possession and transfer ownership of all or a portion of the ECMs to the Customer or (ii) at its own expense and upon the Provider providing evidence reasonably satisfactory to the Customer of the Provider's ability to pay such expense, remove all or a portion of the ECMs within a period of one hundred eighty (180) Days from the last Day of the Term and leave the Facilities, return the Facilities to their original condition, except for ordinary wear and tear, and leave the Facilities in neat and clean order. If the Provider fails or is unable to provide to the Customer such evidence of its ability to pay such expense, the Provider shall be deemed to have surrendered possession and transferred ownership of the ECMs to the Customer (and, in the event of such surrender, the Provider shall, within ten (10) Business Days of the surrender occurring deliver to the Customer such documents evidencing the transfer of title as are reasonably acceptable to the Customer). If the Provider determines to surrender possession of the ECMs, the Provider will transfer to the Customer ownership of such ECMs, the Provider's interest in the related Plans and Specifications, any related manufacturer warranties and its interest in the Facilities (free and clear of any liens, claims, security interests or other encumbrances). If the Provider determines to remove all or a portion of the ECMs and fails to remove them within the agreed upon period, the Customer shall have the right, at its option, to remove the ECMs to a public warehouse or other storage location or dispose of them, and restore the Facilities to their original condition, except for ordinary wear and tear, at the Provider's reasonable cost.

### **ARTICLE III SERVICES AND RELATED OBLIGATIONS**

#### **Section 3.1 Subcontractors; Project Manager.**

(a) The Provider shall perform and execute the provisions of this Agreement as an independent contractor and shall not be a partner, agent or employee of the Customer. The Provider shall have the right to have any of the Services performed by Subcontractors pursuant to written subcontracts between the Provider

have any of the Services performed by Subcontractors pursuant to which Subcontracts between the Provider and such Subcontractors. No contractual

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relationship shall exist between the Customer and any Subcontractor with respect to the Installation Work to be performed hereunder. No Subcontractor is intended to be or shall be deemed a third-party beneficiary of this Agreement, unless otherwise expressly stated herein with respect to limitations of liability. The Provider shall be responsible to the Customer for acts and omissions of the Subcontractors, their agents and employees, and any other persons performing portions of the Services on behalf of the Provider, to the same extent as the acts or omissions of the Provider hereunder.

(b) Pursuant to the PBC Undertaking Agreement, the Provider has retained the Commission as its construction and program manager for the Project and the Services and, in such capacity, the Commission has the authority to act on behalf of the Provider in connection therewith.

Section 3.2 Installation Schedule. The Provider shall submit to the Customer and the Lender a revised Installation Schedule when the Provider's planned construction sequence is changed or when Project changes are made that affect the Installation Schedule. Any changes to the Installation Schedule which would extend the Substantial Completion Date beyond one hundred eighty (180) Days past the originally scheduled Substantial Completion Date shall be subject to review by the Customer.

### Section 3.3 Supervision and Performance of the Services; Safety.

a) The Provider shall supervise, perform, and direct the Services using the professional skill, care, and attention reasonably required for projects similar to the Project. The Provider shall be solely responsible for and have control over means, methods, techniques, sequences, and procedures and for coordinating all portions of the Installation Work. The Provider will, at all times, act in the best interest of the Customer.

b) Notwithstanding any other provision herein, the Provider shall directly or through Subcontractors design, engineer, procure, construct, commission and test the Project in a good workmanlike and quality manner, with all reasonable care, skill and diligence.

c) The Provider shall be responsible for maintaining and supervising reasonable safety precautions and programs in connection with the performance of the Services. The Provider shall take reasonable precautions for safety of, and shall provide reasonable and appropriate protection to prevent damage, injury or loss to (1) employees performing the Services and other persons who may be affected thereby; (2) the Installation Work and materials and equipment to be incorporated in the Project; and (3) other property at the Facilities or adjacent thereto.

d) The Provider must employ only competent and efficient workers and whenever, in the opinion of the Customer, any such worker is careless, incompetent, violates safety or security rules, obstructs the progress of the work or services to be performed under this Agreement, acts contrary to instructions or acts improperly, or fails to follow the safety requirements of this Agreement, the Provider must, upon request of the Customer, discharge or otherwise remove such worker from the work or services to be performed under this Agreement and must not use

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such worker again, except with the written consent of the Customer. The Provider must not permit any person to work upon the work or services to be performed under this Agreement or enter into any buildings connected therewith who is under the influence of intoxicating liquors or controlled substances.

Section 3.4 Use of Facilities. The Provider shall confine its operations to the portions of the Facilities identified in the Documents or otherwise approved by the Customer, and shall not unreasonably encumber the portions of the Facilities used for the Installation Work with materials, equipment, or similar items. The Provider and all Subcontractors shall use only such entrances to the Facilities as are designated by the Customer. During occupied hours, the Provider shall limit construction operations to methods and procedures that do not adversely and unduly affect the environment of occupied spaces within the Facilities, including but not limited to creating noise, odors, air pollution, ambient discomfort, or poor lighting. The Provider is responsible for conducting the Services in such a manner as to minimize debris left in the Facilities or public way and shall provide clean-up as required by the Customer. Whenever the Customer determines any type of operation constitutes a nuisance, the Provider will immediately proceed to conduct its operations in an approved manner. Upon completion of work activities, the Provider must remove all materials, tools and machinery and restore the site to the same general condition that existed prior to the commencement of its operations. While on Customer premises, the Provider will not store any equipment, tools or materials without prior written authorization from the Customer. The Customer will not be responsible for or liable to pay the Provider for any loss of equipment, tools, or materials stored in unsecured areas without proper authorization. The Provider shall promptly report to the Customer any death, lost time injury, or property damage to the Customer's property that occurs on the Facilities or as part of the Provider's operation of the Project on the Facilities. The Customer may at any time require additional provisions if such are deemed necessary for public safety or convenience.

Section 3.5 Permits and Approvals. Except for those permits and fees that are specified in the Documents as the responsibility of the Customer, the Provider shall secure and pay for necessary, licenses, building permits, approvals, assessments and charges required for the proper execution and completion of the Installation Work. Pursuant to City of Chicago Ordinance PO 98-1690, all permits for demolition, construction alteration, repair, renovations, rehabilitation and inspection of buildings and facilities by the Provider and its Subcontractors for public or governmental use by the Customer and its sister agencies shall be issued without charge.

Section 3.6 Commissioning; Testing. The Provider shall conduct a thorough and systematic performance test of each ECM in accordance with Exhibit A, and demonstrate that all ECMs comply with the requirements of the Documents. The Provider shall correct or adjust all deficiencies in operation of the ECMs identified during the course of the tests described in this Section.

Section 3.7 Concealed Conditions: Hazardous Materials.

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a) The Provider shall immediately notify the Customer if it encounters Concealed Conditions at the Facilities prior to significantly disturbing the same. If such Concealed Conditions cause an increase in the Provider's cost of, or time required for, performance of any part of the

Installation Work, the Provider and the Customer shall agree, by Change Order, on how to proceed and any adjustment to the Installation Schedule and the Savings Percentage related thereto.

b) The Provider is responsible for all Hazardous Materials that it or its Subcontractors or suppliers bring to or use at the Facilities ("Provider's Hazardous Materials"). The Customer will be responsible for all other Hazardous Materials present or occurring on the Facilities ("Customer's Hazardous Materials"). The Customer will advise the Provider of any risk of exposure to the Customer's Hazardous Materials prior to any Installation Work. The Provider may temporarily interrupt the Installation Work and will promptly inform the Customer if it reasonably believes there is undue risk of exposure to Customer's Hazardous Materials. The Provider will cooperate with the Customer to determine when it and others under its control may safely resume interrupted Installation Work. The Provider will be entitled to a change in the Installation Schedule and the Savings Percentage in connection with such interruption.

Section 3.8 Operation and Maintenance of Project. The Provider shall operate and maintain the ECMs in accordance with accepted industry practices for the purposes for which the ECMs were designed. The Provider shall retain the sole right to specify operating policies and procedures related to the Project and, subject to thirty (30) days' prior written notice to, and consultation with, the Customer, may modify such policies and procedures from time to time.

Section 3.9 Provider Improvements. The Provider may, at any time during the Term and at its cost, change or modify the ECMs or implement additional ECMs for the purpose of generating incremental Savings and/or optimizing the performance of its ECMs; provided, ( however, that no such change, modification or implementation of additional ECMs shall occur without at least thirty (30) days' prior written notice to, and consultation with, the Customer.

Section 3.10 Compliance with Laws. The Provider shall comply with all Laws in the course of performing the Services. If any new or different requirement, condition, change or anything beyond the Provider's control alters the Services to be performed hereunder or adversely affects the Project Costs or the Installation Schedule, including without limitation any operation or change of Law (including but not limited to changes to Laws imposing sales, use, excise, transportation, privilege, payroll or occupational taxes or contributions) or requirement in connection with the financing of the Project that becomes applicable after the date of this Agreement, then Provider shall be entitled to propose to the Customer adjustments to the Installation Schedule and the Savings Percentage, and the Parties shall thereafter resolve such proposal in good faith.

Section 3.11 Taxes. Unless otherwise provided in the Documents, the Provider shall pay all applicable federal, state or local sales, consumer, use, and other similar taxes for which it bears the incidence of taxation during the Term. The Provider shall pay all applicable real and personal property taxes relating to the ECMs and the Provider's interest in the Facilities. Notwithstanding the foregoing, the Provider may contest any such taxes, assessments and other

charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during that period of such contest and any appeal therefrom so long as the proceedings do

not, in the Lender's reasonable judgment, materially adversely affect the Lender's security interest in the ECMs under the Loan Agreement. The Customer will cause the Commission to provide its sales tax exemption certification for purchases of equipment, tools, materials, and supplies relating to the Project.

Section 3.12 Intellectual Property. The Provider shall pay all royalties and license fees related to the Services; shall defend suits or claims for infringement of patent rights required for the Services to be performed; and shall hold the Customer harmless from loss on account thereof.

Section 3.13 Standard Working Hours. Pursuant to MCC Section 2-92-220, a standard working day consists of eight (8) hours for this Agreement. The Provider shall cause any Subcontractors providing the Services to coordinate shifts with the Customer. No overtime or premium pay will be permitted by the Provider unless otherwise specified in the Plans and Specifications and authorized by the Customer.

Section 3.14 Quality of Materials and Inspection. The Customer will have a right to inspect any material to be used in performance of the Services for this Agreement. The Customer is not responsible for the availability of any materials or equipment required under this Agreement. The Provider is responsible for the meeting the contractual obligations and standards regarding the quality of all materials, components, or Services performed under this Agreement up to the time of completion of the Work. Non-compliant materials, components or Services may be rejected by the Customer and must be replaced or re-performed by the Provider or its Subcontractors at no cost to the Customer. The Customer shall provide written notice to the Provider indicating the time period in which the Provider must, at its expense or the expense of its Subcontractor, remove from Customer premises, any materials or components rejected by the Customer. Any and all labor and materials which may be required to correct or replace damaged, defective or non-conforming products must be provided by the Provider or its Subcontractors at no cost to the Customer. The Provider must, or cause its Subcontractors to, correct or replace the incorrect, damaged or defective or non-conforming goods within seven (7) Business Days of the return unless otherwise provided in the Plans and Specifications. The Customer will not be subject to restocking charges. Failure to correct or replace unacceptable goods, or repeated delivery of unacceptable goods, will be an event of default under this Agreement. Without limiting the scope or duration of any manufacturer's warranty provided for specific parts of the work, all work furnished under this Agreement is guaranteed by the Provider (or the Provider shall cause its Subcontractor(s) to a guarantee) against defective materials and workmanship, improper installation or performance, and non-compliance with this Agreement for a period of one (1) year. Unless otherwise specified, the one-year period will begin on the date of Substantial Completion.

Section 3.15 Records. Upon request, the Provider must furnish to the Customer such information related to the progress, execution, and cost of the Services. All books and accounts in connection with this Agreement must be open to inspection by authorized representatives of the Customer. The Provider must make these records available at reasonable times during the

performance of the Services and will retain them in a safe place and must retain them for at least five (5) years after the expiration or termination of this Agreement.

Section 3.16 Audits. The Customer may, in its sole discretion, audit the records of the Provider or its Subcontractors, or both, at any time during the Term or within five (5) years after this Agreement ends, in connection with the goods, work, or Services provided under this Agreement. Each calendar year or partial

calendar year may be deemed an "audited period." If, as a result of such an audit, it is determined that the Provider or any of its Subcontractors has overcharged the Customer in the audited period, the Customer will notify the Provider. The Provider must, or cause its Subcontractor to, then promptly reimburse the Customer for any amounts the Customer has paid the Provider due to the overcharges and, depending on the facts, also some or all of the cost of the audit, as follows: If the audit has revealed overcharges to the Customer representing less than 5% of the total value, based on the contract prices, of the goods, work, or services provided in the audited period, then the Provider must reimburse the Customer for 50% of the cost of the audit and 50% of the cost of each subsequent audit that the Customer conducts; if, however, the audit has revealed overcharges to the Customer representing 5% or more of the total value, based on the contract prices, of the goods, work, or services provided in the audited period, then Provider must, or cause its Subcontractor to, reimburse the Customer for the full cost of the audit and of each subsequent audit. Failure of Provider or its Subcontractor to reimburse the Customer in accordance with the foregoing is an event of default under this Agreement, and the Provider (or its Subcontractor, as the case may be) will be liable for all of the Customer's costs of collection, including any court costs and attorneys' fees.

#### ARTICLE IV CUSTOMER COVENANTS

Section 4.1 Access to Facilities; Grant of License. The Customer shall provide the Provider with access to the Facilities as reasonably necessary to allow the Provider to perform the Services and any other rights of the Provider hereunder, including ingress and egress rights to the Facilities for Provider and its employees, and Subcontractors. The Customer hereby covenants that the Provider shall have access to the Facilities and ECMs during the Term in order to perform the Services and for so long as needed after termination to remove the ECMs pursuant to the applicable provisions herein. The Customer and its authorized representatives shall at all times have access to and the right to observe the Services or ECM removal but shall not interfere with or handle any Provider equipment or the ECMs without written authorization from the Provider; provided, however, in the event of a material malfunction or emergency condition, the Customer shall be permitted to take those actions necessary to prevent injury or damage.

Section 4.2 Remote Access. The Customer hereby grants to the Provider the right to connect the ECMs to the necessary intranet and/or internet networks so that it is possible for the Provider to remotely monitor the performance of the ECMs.

Section 4.3 Compliance with Laws. The Customer shall comply with all Laws with respect to the performance of its obligations under this Agreement, including federal, state, and local anti-discrimination laws.

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Section 4.4 Project Specific Customer Responsibilities. The Provider has the sole right to determine and direct the operating policies and procedures for the ECMs. The Customer, on behalf of and at the direction of the Provider, agrees to undertake the obligations specified in Exhibit C with respect to the ECMs and the Customer acknowledges that the amount of its payment obligations under this Agreement have been determined, in part, in consideration of such undertaking by the Customer on behalf of the Provider.

Section 4.5 Governmental Approvals. The Customer shall cooperate with the Provider in obtaining any permits or approvals required to be obtained by the Provider relating this Agreement or the Provider's

performance hereunder; provided that such obligation shall not require the Customer to waive or otherwise change any Customer-required permit or approval process.

Section 4.6 Notice of Damage. The Commissioner of the Customer's Department of Fleet and Facility Management shall provide prompt written notice to the Provider and the Lender of any matters of which he becomes aware of pertaining to any damage to or loss of the use of the ECMs or that could reasonably be expected to materially adversely affect the Services or the Savings.

Section 4.7 Energy Supply. The Customer shall be responsible for the costs of and maintaining uninterrupted energy supply and utility service to the Facilities. Except in the case of emergencies and subject to Article X, the Customer shall provide prompt written notice to the Provider of any material interruption or alteration of the energy supply or utility service to the Facilities that could affect the ECMs or the Savings.

#### Section 4.8 Information Reporting.

a) Non-confidential information requested by the Provider and under the Customer's control necessary for the performance of the Services shall be furnished by the Customer with reasonable promptness upon written request by the Provider. Without limiting the foregoing, such information will include, but is not limited to, the following items: (i) monthly utility invoices and billing history for all of the meters listed in Exhibit A; (ii) construction documents, equipment inventories, and other documents that may be helpful in evaluating a Change Order; and (iii) any data from meters or sub-meters relevant to the Services.

b) To the extent not otherwise publicly available and upon prior written request of the Lender, the Customer shall provide by no later than 210 days after the end of the Customer's fiscal year, the audited financial statements of the Customer for such fiscal year with the unqualified opinion of an independent certified public accountant.

Section 4.9 Maintenance. The Customer agrees to maintain the Facilities and all Customer Equipment in good repair and in all respects thereof that may affect the Savings that may be achieved by the ECMs including, without limitation, the condition and integrity of the building envelopes of the Facilities and the condition of all energy-consuming Customer Equipment. The Customer shall ensure the availability of, and maintain during the Term, all connections between the ECMs and the Facilities and all energy-consuming Customer

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Equipment. The Customer shall cooperate with the Provider in establishing and maintaining such connections.

Section 4.10 Alterations to ECMs. The Customer shall not (i) remove the ECMs or (ii) alter or change in any way any ECMs that materially damage the functional capabilities or economic value of the ECMs or have the effect of reducing the Savings that are may be produced by the ECMs, without the Provider's prior written consent.

#### Section 4.11 Tax-Exempt Financing.

a) It is the intention of the parties hereto that the interest component of debt service payments received by the registered owner of the Series C Note (as defined in the Loan Agreement) be and remain excludable from gross income for purposes of federal income taxation. The Provider and the Customer each covenants that it shall, at all times, do and perform all acts and things necessary and within its control in order

to assure that such interest shall, for the purposes of Federal income taxation, be excludable from gross income of the Lender. The Provider and the Customer shall not permit the use of proceeds of any tax-exempt financing for the Project, or take or omit to take any action, so as to cause such interest portion to cease to be excludable from gross income of the Lender for the purposes of Federal income taxation. Without limiting the foregoing, the Provider and the Customer agree to comply with their respective obligations under the Tax Certificate.

b) The Provider shall not take or permit any action or omit to take any action that would cause any tax-exempt financing for the Project to be an arbitrage bond within the meaning of Section 148 of the Internal Revenue Code. The Provider shall pay the costs incurred for an consultant or report necessary to satisfy its obligations under Section 148 of the Internal Revenue Code.

## ARTICLE V CHANGE TO SERVICES

Section 5.1 Change Orders. The Provider may order, or the Customer may request, changes in the Installation Work consisting of additions, deletions, or modifications to the Installation Work, changes to the Installation Schedule and/or changes to the total Project Costs. Such changes in the Installation Work shall be authorized only by written Change Order signed by the Parties, which Change Order shall specify any adjustment to the Installation Schedule and Savings Percentage related thereto. To the extent the Provider reasonably determines that any change in the Installation Work requested or directed by the Customer will materially and adversely impact the availability, timing or amounts of Savings, the Provider shall have the right, in its sole and absolute discretion, to decline such change in the Installation Work.

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Section 5.2 Installation Work Delays. Notwithstanding anything to the contrary herein, if the Provider is delayed at any time in progress of the Installation Work by labor disputes, fire, unusual delay in deliveries, abnormal adverse weather conditions that affect the Installation Work not reasonably anticipatable, unavoidable casualties or any other causes which are beyond the control of the Provider, then the Term may be extended by Change Order provided that: (i) the Provider has notified the Customer in writing of such delay within thirty (30) days following the date when the Provider becomes aware, or should have become aware through the exercise of reasonable diligence, of such delay; (ii) the Provider has taken all reasonable steps to avoid any such delay (including its continuance); (iii) such delay is not a theoretical delay but does actually adversely affect the critical path of the Installation Work; and (iv) such extension does not cause the Term to exceed the limits of the authority to enter into this Agreement of either the Provider or the Customer.

## ARTICLE VI INSURANCE; CASUALTY OR CONDEMNATION

Section 6.1 Provider Insurance. The Provider shall purchase from and maintain in a company or companies lawfully authorized to do business in the City of Chicago policies of insurance (a) insuring the ECMs against loss or damage by fire and all other risks covered by the standard extended coverage endorsement then in use in such jurisdiction, in an amount at least equal to the full replacement cost of the



ECMs and (b) third party liability insurance covering against legal responsibility to others as a result of bodily injury, property damage and personal injury arising from the operation and maintenance of the Project. Notwithstanding the foregoing, the Customer agrees to include the ECMs under the insurance provided pursuant to Section 6.2 and acknowledges that the amount of its payment obligations under this Agreement have been determined, in part, in consideration of such undertaking on behalf of the Provider; and such Customer-provided insurance shall satisfy the Provider's obligations under this Section 6.1.

Section 6.2 Customer Insurance. The Customer shall during the Term maintain or cause to be maintained (a) casualty insurance insuring the Facilities against loss or damage by fire and all other risks covered by the standard extended coverage endorsement then in use in the State in an amount at least equal to the replacement value of the Facilities; (b) liability insurance naming the Provider and the Lender as additional insureds that protects the Provider and the Lender from liability in all events. Notwithstanding the foregoing, the Customer may self-insure against the risks described in the foregoing sentence if the Customer shall furnish to the Provider evidence of such insurance or self-insurance coverage throughout the Term. The Customer shall not cancel or modify such insurance or self-insurance coverage in any way that would affect the interests of the Provider without first giving written notice thereof to Provider at least thirty (30) days in advance of such cancellation or modification.

Section 6.3 Event of Loss. If an Event of Loss occurs, the Customer will provide written notice to the Provider promptly upon the occurrence of such event. If such Event of Loss adversely affects the Expected Savings Production, the Customer shall pay to the Provider (or its designee; provided such designee is located in the continental United States) within ninety (90) days of written demand therefor the Liquidated Damages Amount or ratable portion thereof, less the amount of any insurance or condemnation proceeds paid to the Provider.

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Section 6.4 Insurer Qualifications. All insurance maintained hereunder shall be maintained with companies either rated no less than A-VII as to Policy Holder's Rating in the current edition of Best's Insurance Guide (or with an association of companies each of the members of which are so rated) or having a parent company's debt to policyholder surplus ratio of 1:1.

## **ARTICLE VII PROJECT OWNERSHIP**

Section 7.1 Title. Legal title to and ownership of the ECMs shall remain in the Provider free and clear of any and all liens, claims, security interests or other encumbrances caused, created or permitted by the Customer, except as provided in the Loan Agreement. The Parties agree the ECMs are and will remain personal property and will not be deemed to be affixed to or a part of the real estate on which it may be situated, notwithstanding that the ECMs or any part thereof may be or hereafter become in any manner physically affixed or attached to real estate or any building thereon. Upon the request of the Provider, the Customer will, at the Customer's expense, furnish a waiver of any interest in the ECMs from any party having an interest in any such real estate or building. The Customer shall not claim depreciation or an investment credit with respect to the ECMs or otherwise take any action or fail to take any action inconsistent with the Provider's ownership of the ECMs.

Section 7.2 Risk of Loss. The Provider shall, except as otherwise provided in this Agreement, bear risk of loss and have care, custody and control pertaining thereto of any materials, equipment, spare parts, supplies

and maintenance equipment (including temporary materials, equipment, and supplies) on the Facilities or located off-site, or any other Installation Work completed with respect to the ECMs until such time that the transfer of care, custody, and control is effectuated in accordance with the terms of this Agreement. Except as otherwise provided in this Agreement, any ECMs lost, damaged, stolen or impaired before the transfer of care, custody, and control is effectuated in accordance with the terms of this Agreement shall be replaced promptly by the Provider and such replacement shall be without additional cost except to the extent of the negligence, gross negligence or willful misconduct of the Customer or any party for which the Customer is responsible.

### Section 7.3 Environmental Attributes; Other Incentives.

a) Environmental Attributes. The Provider shall own, and may assign or sell in its sole discretion, all right, title, and interest associated with Environmental Attributes. Environmental Attributes will not be included within any calculation of Savings or otherwise reduce the Customer's obligation to pay for Savings hereunder. The Customer agrees to cooperate with the Provider in obtaining any Environmental Attributes.

b) Other Incentives. The Provider shall own, and may assign or sell in its sole discretion, all right, title, and interest to applicable and available utility-provided incentives for energy efficiency projects, including the right to utilize its ECMs to participate in utility programs that provide incentives related to the curtailment or reduction of energy use during times of peak demand, provided that such participation does not negatively affect the Customer's

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operations at the Facilities. The Customer agrees to cooperate with the Provider in obtaining any such utility-provided incentives.

## ARTICLE VIII SAVINGS

Section 8.1 Savings. The Customer agrees to pay the Provider (or its designee; provided such designee is located in the continental United States) on a semi-annual basis an amount equal to one hundred percent (100%) (the "Savings Percentage") of each \$1.00 of Savings as such Savings are determined pursuant to Exhibit B. The Savings Percentage shall not change during the Term except as otherwise provided herein prior to the completion of the Installation Work. The obligation of the Customer to pay, and the right of the Provider to receive, amounts for Savings depends on the achievement of Savings as provided herein. The Customer acknowledges and agrees that the Provider shall not be required to achieve any amount of Savings.

## ARTICLE IX PAYMENT

Section 9.1 Invoicing. Based on the Expected Savings Production, the Provider will submit, or cause its agent to submit, invoices to the Customer commencing for payment by the Customer no later than June 25, 2015 and for payment thereafter on a semi-annual basis no later than each December 26 and June 25 thereafter during the Term. For administrative convenience, the initial and each semi-annual invoice for Savings shall be based on the ratable portion of the Expected Savings Production for the corresponding Period as set forth in Exhibit B, subject to the annual reconciliation process in Section 9.4.

Section 9.2 Payment. The Customer shall make payment to the Provider (or to such other payee as directed in a payment invoice) no later than ninety (90) days from the date on which the Provider (or its agent) submits a payment invoice to the Customer meeting the requirements of Section 9.1. Any amounts payable by

and not paid by the Customer on the due date thereof shall bear interest at the rate equal to the lesser of (i) ten percent (10%) per annum or (ii) the highest rate permitted by Law.

Section 9.3 Utility Bills. Commencing on the Effective Date and continuing for the Term, the Customer will provide the Provider with all utility bills necessary or convenient for the Savings calculations described in this Agreement within thirty (30) days of receipt. The Customer may provide the Provider with copies of bills, or access to invoices via an on-line system. If Customer fails to provide utility bills within the time period required, the Provider may estimate the Customer's utility usage, utility rates and other data for such period which estimate shall be deemed conclusive for purposes of calculating Savings payable by the Customer pursuant to the invoice for the corresponding Period, subject to the annual reconciliation process in Section 9.4.

Section 9.4 Reconciliation. The Provider will provide an annual savings report to the Customer no later than sixty (60) Days following the Provider's receipt of all utility bills with

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meter-reading ending dates falling within the preceding year (or stub year) ending each December 31 during the Term. If the annual report for such a year indicates that one or more invoices understated the Savings for the respective Periods, then the Provider shall provide a supplemental invoice to the Customer and the Customer shall be unconditionally obligated to pay such invoice in accordance with its terms. If the annual report for such a year indicates that one or more invoices overstated Savings, then the Provider shall refund, or cause to be refunded, to the Customer the amount by which the Customer overpaid such Savings. Within thirty (30) days of the Customer's receipt of the annual report for such a year, the Customer will notify the Provider of (1) the Customer's approval of all or any portion of such annual report; and/or (2) the Customer's disapproval of all or any portion of such annual report, including the basis for the disapproval. If the Customer disapproves all or any portion of the annual report for a calendar year (or stub year), the Parties will use good faith efforts to resolve such dispute within thirty (30) days of notification to the Provider. If the Parties are unable to resolve the matter within such thirty (30) day period, the dispute shall be resolved in accordance with Article XII.

Section 9.5 Unconditional Payment Obligation. Notwithstanding any other provision of this Agreement other than Section 9.6 below, the obligations of the Customer to make payments with respect to Savings, to pay any other amounts under this Agreement and to perform and observe the other covenants and agreements contained in this Agreement shall be absolute and unconditional in all events without abatement, diminution, deduction, set-off or defense, for any reason whatsoever.

Section 9.6 Payments Subject to Annual Appropriation. The Customer is obligated only to pay such payments under this Agreement as may lawfully be made from funds appropriated for that purpose during the Customer's then current fiscal year. If funds to pay any amount payable hereunder are not appropriated and not otherwise made available for that purpose, this Agreement shall be deemed terminated at the end of the then current fiscal year. The Customer agrees to deliver notice to the Provider of such termination promptly after any decision to non-appropriate is made, but failure to give such notice shall not extend the Term beyond the then current fiscal year. The decision whether or not to budget and appropriate funds is within the discretion of the Customer. If this Agreement is terminated in accordance with this Section, the Customer agrees to cease use of all the ECMs as of the last day of the last fiscal year for which appropriations and payments have been

made, dismantle and peaceably deliver all the ECMs to Provider at the location(s) to be specified by the Provider and in the same condition and appearance as originally installed at the Facilities (reasonable wear and tear from normal operation excepted), and free of all liens and claims created or permitted by the Customer (except any Lender lien). The Provider shall have all legal and equitable rights to take possession of the ECMs.

Section 9.7 Funding. The source of funds for payments under this Agreement is Fund Number [click and type number]. Funding for this Agreement is subject to the availability of funds and their appropriation by the City Council of the Customer.

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### ARTICLE X FORCE MAJEURE

Section 10.1 Excused Performance. Each Party hereto shall be excused from performance and shall not be considered to be in default with respect to any obligation hereunder (except the obligation to make payments hereunder, and provide insurance pursuant to Article VI), if and to the extent that its failure of, or delay in, performance is due to a Force Majeure Event; provided:

a) Such Party gives the other Party written notice describing the particulars of the Force Majeure Event as soon as is reasonably practicable, but in no event later than seven days after the occurrence of such event;

b) The suspension of performance is of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;

c) No obligations of the Party which arose before the occurrence causing the suspension of performance are excused as a result of the occurrence;

d) The Party uses commercially reasonable efforts to overcome or mitigate the effects of such occurrence; and

e) When the Party is able to resume performance of its obligations under this Agreement, such Party shall give the other Party written notice to that effect and shall promptly resume performance hereunder.

Section 10.2 Settlement of Strikes. Notwithstanding the foregoing, nothing in this Article X shall be construed to require the settlement of any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Party involved in the dispute, are contrary to such Party's interest. It is understood and agreed that the settlement of strikes, walkouts, lockouts or other labor disputes shall be entirely within the discretion of the Party experiencing such action.

Section 10.3 Burden of Proof. If the Parties are unable in good faith to agree that a Force Majeure Event has occurred, the Parties shall submit the dispute for resolution pursuant to Article XII and the Party claiming a Force Majeure Event shall have the burden of proof as to whether such Force Majeure Event (i) has

occurred, (ii) was not a result of such Party's or its agents' fault or negligence, and (iii) could not have been avoided by due diligence or the use of reasonable efforts of such Party or its agent.

## ARTICLE XI DEFAULT AND REMEDIES

Section 11.1 Customer Events of Default. Any one of the following which occurs and continues shall constitute an "Event of Default" by Customer:

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a) Failure by the Customer to make any payment required by Article IX hereof when due which continues for a period often (10) Days after written notice of such failure is received by the Customer from the Provider; or

b) The Customer restricts or attempts to restrict the Provider's access by to the Facilities or the ECMs; or

c) Failure by the Customer to insure the Facilities or the ECMs as required by Section 6.1 or Section 6.2; or

d) Failure by the Customer to observe and perform any covenant, condition or agreement on its part required to be observed or performed by this Agreement (other than as provided in clause (a), (b) or (c) above), which continues for a period of ninety (90) days after written notice by the Provider delivered to the Customer, which notice shall specify such failure and request that it be remedied, provided, however, that no Event of Default shall occur if the failure stated in the notice cannot be corrected within such period and if corrective action is instituted within such period and diligently pursued in good faith until the default is corrected; or

e) The Customer materially decreases its occupancy or utilization of the Facilities;  
or

f) Any representation or warranty made by the Customer under or in connection with this Agreement or any of the Documents shall prove to be untrue in any material respect on the date as of which it was made; or

g) The occurrence of a default under (i) any other agreement for borrowing money, lease financing of property or otherwise receiving credit held by the. Lender or any of its affiliates in a principal amount greater than \$10,000,000 under which the Provider is an obligor for the financing of energy conservation projects for the Customer or projects for the Customer's sister agencies supported by payments from appropriation obligations of the Customer; or (ii) either of the respective Loan Agreements entered into on the Effective Date with respect to the Provider's Tax-Exempt Revenue Notes (Chicago Department of Fleet and Facility Management Retrofit One Project) 2014 Series A and B; or

h) The Customer shall (i) apply for or consent to the appointment of a receiver, trustee, custodian or liquidator of the Customer, or of all or a substantial part of the assets of the Customer, (ii) be unable, fail or admit in writing its inability generally to pay its debts as they become due, (iii) make a general assignment for

the benefit of creditors, (iv) have an order for relief entered against it under applicable federal bankruptcy law, or (v) file a voluntary petition in bankruptcy or a petition or an answer seeking reorganization or an arrangement with creditors or taking advantage of any insolvency law or any answer admitting the material allegations of a petition filed against the Customer in any bankruptcy, reorganization or insolvency proceeding; or

- (i) An order, judgment or decree shall be entered by any court of competent jurisdiction, approving a petition or appointing a receiver, trustee, custodian or liquidator of all

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or a substantial part of the assets of the Customer, in each case without its application, approval or consent, and such order, judgment or decree shall continue unstayed and in effect for any period of 60 consecutive days.

Section 11.2 Remedies Upon Customer Default. Whenever any Event of Default by Customer shall have occurred and shall be continuing, the Provider may, at its option, and upon prior written notice to the Customer:

- a) Take whatever action at law or in equity as may be necessary or desirable to collect the payments and other amounts then due and thereafter to become due or to enforce performance and observance of any obligation, agreement or covenant of the Customer under this Agreement;

- b) Terminate this Agreement and surrender possession of all or a portion of the ECMs and transfer ownership of such ECMs, the Provider's interest in the Plans and Specifications and any related manufacturer warranties and its interest in the Facilities (free and clear of any liens, claims, security interests or other encumbrances) to the Customer without any liability to the Customer in connection with such actions;

- c) With or without terminating this Agreement decommission and/or remove all or a portion of the ECMs without any liability to the Customer in connection with such actions including, without limitation, any obligation to restore or repair the Facilities and any other affected portions of the Facilities; or

- d) Terminate this Agreement and elect to be paid an amount equal to the Liquidated Damages Amount plus any other amounts due and payable hereunder and upon the Customer's payment of such amount transfer to the Customer ownership to the ECMs, the Provider's interest in the Plans and Specifications, any related manufacturer warranties and any interest held by the Provider in the Facilities (free and clear of any liens, claims, security interests or other encumbrances).

Section 11.3 Provider Events of Default. Any one of the following which occurs and continues shall constitute an "Event of Default" by the Provider:

- a) Failure by the Provider to observe and perform any covenant, condition or agreement on its part required to be observed or performed by this Agreement which continues for a period of thirty (30) days after written notice by the Customer delivered to the Provider, which notice shall specify such failure and request that it be remedied; provided, however, that if the failure stated in the notice cannot be corrected within such period, if corrective action is instituted within such period and diligently pursued in good faith until the default is corrected; or

- b) Any representation or warranty made by the Provider under or in connection with this

Agreement or any of the Documents shall prove to be untrue in any material respect on the date as of which it was made; or

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c) The Provider shall (i) apply for or consent to the appointment of a receiver, trustee, custodian or liquidator of the Provider, or of all or a substantial part of the assets of the Provider, (ii) be unable, fail or admit in writing its inability generally to pay its debts as they become due, (iii) make a general assignment for the benefit of creditors, (iv) have an order for relief entered against it under applicable federal bankruptcy law, or (v) file a voluntary petition in bankruptcy or a petition or an answer seeking reorganization or an arrangement with creditors or taking advantage of any insolvency law or any answer admitting the material allegations of a petition filed against the Provider in any bankruptcy, reorganization or insolvency proceeding; or

d) An order, judgment or decree shall be entered by any court of competent jurisdiction, approving a petition or appointing a receiver, trustee, custodian or liquidator of all or a substantial part of the assets of the Provider, in each case without its application, approval or consent, and such order, judgment or decree shall continue unstayed and in effect for any period of sixty (60) consecutive days.

Section 11.4 Remedies Upon Provider Default. Whenever any Event of Default by the Provider shall have occurred and shall be continuing, the Customer may, at its option and upon prior written notice to the Provider:

a) Terminate this Agreement and pay to the Provider the Liquidated Damages Amount and any other amounts due and payable hereunder (less any amounts due and payable by the Provider hereunder) whereupon the Provider shall transfer to the Customer ownership of the ECMs, the Provider's interest in the Plans and Specifications, any related Subcontract and any manufacturer warranties and any interest in the Facilities (free and clear of any liens, claims, security interests or other encumbrances);

b) Terminate this Agreement and request the Provider to remove the ECMs from the Facilities upon which the Provider shall remove all or a portion of the ECMs as requested within thirty (30) Days, return the Facilities to their original condition, except for ordinary wear and tear, and leave the Facilities in neat and clean order, without any other liability to the Customer in connection with such actions; provided that if the Provider fails to remove the ECMs within such period, the Customer shall have the right, at its option, to remove the ECMs to a public warehouse or other storage location or dispose of them, and restore the Facilities to their original condition, except for ordinary wear and tear, at Provider's reasonable cost; or

c) Take whatever action at law or in equity as may be necessary or desirable to enforce performance and observance of any obligation, agreement or covenant of the Provider under this Agreement.

Section 11.5 Agreement to Pay Attorneys' Fees and Expenses. In the event a Party should default under any of the provisions of this Agreement and the other Party should employ attorneys or incur other expenses for the collection of the payments due under this Agreement or the enforcement of performance or observance of any obligation or agreement on the part of the non-defaulting Party herein contained, the defaulting Party agrees to pay promptly to the non-defaulting Party the reasonable fees and expenses of such attorneys and such other reasonable

out-of-pocket expenses so incurred by such Party, whether incurred at trial, on appeal, in bankruptcy proceedings, or otherwise.

Section 11.6 No Remedy Exclusive. No remedy herein conferred upon or reserved to the Provider or the Customer is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

Section 11.7 No Additional Waiver Implied by One Waiver. In the event any agreement or covenant contained in this Agreement should be breached by a Party and thereafter waived by the other Party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 11.8 Liquidated Damages Amount. The Parties agree that the formulations of damages described in this Article XI, including the formulation of the Liquidated Damages Amount, are fair and reasonable approximations of the damages each Party would incur upon a termination based on an Event of Default and are not intended to be, nor should they be interpreted to result in, a penalty.

## ARTICLE XII DISPUTE RESOLUTION

### Section 12.1 Procedure.

a) Savings Disputes. Savings Disputes shall be submitted to the Independent Engineer. The determination of the Independent Engineer will be final and binding upon both the Customer and the Provider. The Provider and the Customer will each be responsible for half of the fees of the Independent Engineer.

b) Non-Savings Disputes. The Parties commit to first attempt to settle any Non-Savings Dispute through direct discussions of the Parties' management representatives within ten (10) Days after receipt of initial written notification of such Dispute. If within ten (10) Days the Parties have not succeeded in negotiating a resolution of the Dispute, such Dispute will be submitted to senior officers of the Parties, to attempt further in good faith to negotiate a resolution of the Dispute. If within ten (10) Days after such meeting the Parties have not succeeded in negotiating a resolution of the Dispute, the Parties may initiate litigation in any court having jurisdiction in tire State.

Section 12.2 Continuation of Work. Notwithstanding any Dispute that the Provider may have undertaken or be involved with, whether pursuant to this Article XII or otherwise, and regardless of the basis thereof or grounds therefor, including, but not limited to Disputes based on or related to any Change Order, the Provider agrees that it will, for so long as this Agreement



has not been terminated, diligently perform the Services in accordance with the terms of this Agreement. Any failure by the Provider to perform the Services in accordance with the terms of this Agreement shall give the Customer the immediate right to terminate its participation in any dispute resolution process under this Article XII and exercise its remedies pursuant to Article XI.

Section 12.3 Continuation of Payment. Notwithstanding any Dispute that the Customer may have undertaken or be involved with, whether pursuant to this Article XII or otherwise, and regardless of the basis thereof or grounds therefor, the Customer agrees that it will, for so long as this Agreement has not been terminated, pay all amounts invoiced without setoff or diminution and at the times required pursuant to Article LX and otherwise perform its obligations in accordance with the terms of this Agreement. Any failure by the Customer to pay any invoiced amounts shall give the Provider the immediate right to terminate its participation in any dispute resolution process under this Article XII and exercise its remedies pursuant to Article XI.

### ARTICLE XIII INDEMNIFICATION

#### Section 13.1 Indemnification; Limitation of Liability.

a) The Provider agrees to indemnify, defend and hold harmless the Customer and its officers, officials and employees from and against legal or administrative proceedings, claims, demands, damages, fines, penalties, liabilities, interest, costs, and expenses (including reasonable attorneys' fees) for deaths, bodily injuries or damages to third party tangible property to the extent caused, in whole or in part, by the grossly negligent acts or omissions of the Provider during the performance of the Services and violations of Law by the Provider. The indemnity provisions expressed in this Article XIII shall apply to the fullest extent permitted by Law and shall in no manner amend, abridge, modify, or restrict any other obligation of the Provider expressed elsewhere in this Agreement. This provision shall survive the termination of this Agreement.

b) The Customer agrees to indemnify, defend and hold harmless the Provider, the Lender and their respective officers, officials and employees from and against legal or administrative proceedings, claims, demands, damages, fines, penalties, liabilities, interest, costs and expenses (including reasonable attorneys' fees) for deaths, bodily injuries or damages to third party tangible property to the extent caused, in whole or in part, by the grossly negligent acts or omissions of the Customer during the performance of the Customer's obligations under this Agreement and violations of Law by Customer. The indemnity provisions expressed in this Article XIII shall apply to the fullest extent permitted by Law and shall in no manner amend, abridge, modify, or restrict any other obligation of the Customer expressed elsewhere in this Agreement. To the extent permitted by Law, the Customer waives any limits to its liability hereunder that it would otherwise have by virtue of the Workers' Compensation Act or any other related law or judicial decision (including, without limitation, *Kotecki vs. Cyclops Welding Corporation*, 156 Ill. 2d 155 (1991)). This provision shall survive the termination of this Agreement.

(c) Under no circumstances will either Party be liable to the other Party for any special, indirect, incidental, consequential or punitive damages, however caused and on any theory of liability.

## ARTICLE XIV REPRESENTATIONS AND WARRANTIES

Section 14.1 Provider Representations and Warranties. The Provider represents and warrants as of the Effective Date that:

a) The Provider is a nonprofit corporation duly formed and validly existing under the laws of the State of Illinois.

b) The Provider is not in violation of any applicable Law promulgated or judgment entered by any federal, state, local or governmental authority that individually or in the aggregate, would affect its performance of any of its material obligations under this Agreement.

c) The Provider and its Subcontractors are, or will be, the holder of all federal, state, local or other governmental consents, licenses, permits, or other authorizations required to permit it to operate or conduct its business as contemplated by this Agreement.

d) The execution and delivery of this Agreement and any documents executed or delivered in connection herewith, the consummation of the transactions herein contemplated or compliance with the terms and provisions hereof will not conflict with or result in a breach of, or require any consent under, the organizational documents of the Provider, or any applicable law or regulation, or any order, writ, injunction or decree of any court, or any agreement or instrument to which the Provider is a party or by which it is bound or to which it is subject, or constitute a default under any such agreement or instrument,

e) The Provider has all necessary power and authority to execute, deliver and perform its obligations under this Agreement; and the execution, delivery and performance by Provider of this Agreement has been duly authorized by all necessary action on its part; and this Agreement has been duly and validly executed and delivered by the Provider and constitutes the legal, valid and binding obligation of the Provider enforceable in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization or moratorium or other similar Laws relating to the enforcement of creditors' rights generally and by general equitable principles.

Section 14.2 Customer Representations and Warranties. The Customer represents and warrants as of the Effective Date that:

a) The Customer is a political subdivision of the State of Illinois and home rule city duly formed and validly existing under the laws of the State of Illinois.

b) The Customer is not in violation of any applicable Law promulgated or judgment entered by any federal, state, local or governmental authority that would, individually or in the

aggregate, materially adversely affect its performance of any of its material obligations under this Agreement.

c) None of the execution and delivery of this Agreement, the consummation of the transactions herein contemplated or compliance with the terms and provisions hereof will conflict with or result in a breach

of, or require any consent under, or any applicable law or regulation, or any order, writ, injunction or decree of any court, or any material agreement or instrument to which the Customer is a party or by which it is bound or to which it is subject, or constitute a default under any such material agreement or instrument.

d) The Customer has all necessary power and authority to execute, deliver and perform its obligations under this Agreement; and the execution, delivery and performance by the Customer of this Agreement has been duly authorized by all necessary action on its part; and this Agreement has been duly and validly executed and delivered by the Customer and constitutes the legal, valid and binding obligation of the Customer enforceable in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization or moratorium or other similar Laws relating to the enforcement of creditors' rights generally and by general equitable principles.

e) The Customer is the fee simple owner of the Facilities and has not mortgaged, pledged, liened, leased, granted a security interest, encumbrance or claim on or with respect to the Facilities or any interest therein.

f) The Customer intends to continue to use the Facilities in a manner similar to its present use.

• (g) The information provided by the Customer to Provider relating to the Documents and the Project is true, correct and complete in every material respect and contains no untrue statement of material fact or omits no material fact necessary to make the statements contained therein not misleading.

(h) During the Term, the energy services provided by the Provider in connection with ECMs will be used by the Customer only for the purpose of performing essential governmental or proprietary functions of the Customer consistent with the permissible scope of the Customer's authority. The Customer has an immediate need for such services and expects to make immediate use of such services once the ECMs are installed and operating at their intended levels. The Customer's need for such services is not temporary and the Customer does not expect the need for such services to diminish during the Term.

## ARTICLE ASSIGNMENT

Section 15.1 Assignment by Provider. The Provider may assign all or part of its right, title, and interest in, but not its obligations under, this Agreement, the ECMs or the Project as collateral security for its obligations to the Lender. The Customer understands and agrees that, simultaneously with the execution and delivery of this Agreement, all of the Provider's rights and interests under this Agreement (except for the Provider's rights to indemnification) are being assigned and transferred to the Lender under the Loan Agreement. The Customer hereby consents to such assignment and transfer and to any subsequent assignment

and transfer of rights and interests of this Agreement in accordance with the Loan Agreement. Upon the execution and delivery of the Loan Agreement and this Agreement, references to the Provider in the operative provisions of this Agreement that relate to rights and interests of the Provider (including, without limitation, the right to exercise remedies upon the occurrence of an Event of Default under Section 11.1) shall be deemed to be references to the Lender, as assignee or subsequent assignee of the Provider; provided that nothing herein affects the Provider's obligation to continue to perform its duties and obligations in accordance with this Agreement. The Customer agrees to execute and deliver any documents reasonably required by the Provider or any assignee of the Provider in connection with any such assignment of this Agreement, the ECMs and/or the Project.

Section 15.2 Assignment by Customer. The Customer may not assign this Agreement or any partial or total interest therein without the Provider's and the Lender's prior written consent (which consent the Provider or the Lender may refuse in either of their reasonable discretion).

## ARTICLE XVI REQUIRED CUSTOMER TERMS

### Section 16.1 Prompt Payment to Subcontractors.

a) Incorporation of Prompt Payment Language in Subcontracts. The Provider must state the requirements of this Section in all Subcontracts and purchase orders. If the Provider fails to incorporate these provisions in all Subcontracts and purchase orders, the provisions of this Section are deemed to be incorporated in all Subcontracts and purchase orders. The Provider and the Subcontractors have a continuing obligation to make prompt payment to their respective Subcontractors. Compliance with this obligation is a condition of the Provider's participation and that of its Subcontractors on this Agreement.

b) Payment to Subcontractors Within Fourteen Days. The Provider must make payment to its Subcontractors within fourteen (14) Days of receipt of payment from the Customer for each invoice, but only if the Subcontractor has satisfactorily provided goods or services or completed its work or services in accordance with this Agreement and provided the Provider with all of the documents and information required of the Provider. The Provider may delay or postpone payment to a Subcontractor when the Subcontractor's work or materials do not

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comply with the requirements of this Agreement, the Provider is acting in good faith, and not in retaliation for a Subcontractor exercising legal or contractual rights.

(c) Reporting Failures to Promptly Pay, (i) The Customer posts payments to prime contractors on the web at:

<http://webapps.cityofchicago.org/VCSearchWeb/org/cityofchicago/vcsearch/controller/page?agencyId=city>.

ii) If the Provider, without reasonable cause, fails to make any payment to its Subcontractors and material suppliers within fourteen (14) Days after receipt of payment under this Agreement, the Provider shall pay to its Subcontractors and material suppliers, in addition to the payment due them, interest in the amount of 2% per month, calculated from the expiration of the 14-Day period until fully paid.

para.

iii) In the event that the Provider fails to make payment to a Subcontractor within the 14-Day period required above, the Subcontractor may notify the Customer by submitting a report form that may be downloaded from the DPS website at:

<<http://www.cityofchicago.org/content/dam>>

dFormsAgreements/Failure\_to\_Promptly\_Pay\_Fillable\_Form\_3\_2013 .pdf

The report will require the Subcontractor to affirm that (a) its invoice to the Provider was included in the payment request submitted by the Provider to the Customer and (b) the Subcontractor has not, at the time of the report, received payment from the Provider for that invoice. The report must reference the payment (voucher) number posted on-line by the Customer in the notice of the payment to the Provider. Subcontractors are hereby reminded that per Chapters 1-21, "False Statements," and 1-22, "False Claims," of the MCC, making false statements or claims to the Customer are violations of law and subject to a range of penalties including fines and debarment.

Section 16.2 Whistleblower Protection. The Provider shall not take any retaliatory action against any Subcontractor for reporting non-payment pursuant to Section 16.1. Any such retaliatory action is an event of default under this Agreement and is subject to the remedies set forth herein, including termination, in addition to those remedies, any retaliatory action by the Provider may result in the Provider being deemed non-responsible for future Customer contracts or, if, in the sole judgment of the Customer, such retaliatory action is egregious, the Customer may initiate debarment proceedings against the contractor. Any such debarment shall be for a period of not less than one year.

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Section 16.3 Liquidated Damages for Failure to Promptly Pay. Much of the Customer's economic vitality derives from the success of its small businesses. The failure by contractors to pay their subcontractors in a timely manner, therefore, is clearly detrimental to the Customer. Inasmuch as the actual damages to the Customer due to such failure are uncertain in amount and difficult to prove, the Provider and the Customer agree that the Customer may assess liquidated damages against contractors who fail to meet their prompt payment requirements. Such liquidated damages shall be assessed to compensate the Customer for any and all damage incurred due to the failure of the contractor to promptly pay its subcontractors, and does not constitute a penalty. Any and all such liquidated damages collected by the Customer shall be used to improve the administration and outreach efforts of the Customer's Small Business Program.

Section 16.4 Action by the Customer. Upon receipt of a report of a failure to pay, the Customer will issue notice to the Provider and provide the Provider with an opportunity to demonstrate reasonable cause for failing to make payment within applicable period set forth in this Agreement. The Customer shall determine whether any cause for nonpayment provided by Provider is reasonable. In the event that the Provider fails to demonstrate reasonable cause for failure to make payment, the Customer shall notify the Provider that it will

demonstrate reasonable cause for failure to make payment, the Customer shall notify the Provider that it will assess liquidated damages. Any such liquidated damages will be assessed according to the following schedule:

First Unexcused Report: Second Unexcused Report: Third Unexcused Report: Fourth Unexcused Report:  
\$50 \$100 \$250 \$500

Section 16.5 Business Enterprises Owned by People With Disabilities (BEPD). It is the policy of the Customer that businesses certified as a business enterprise owned by people with disabilities ("BEPD") in accordance with MCC Section 2-92-337 et seq., Regulations Governing Certification of BEPDs, and all other regulations promulgated under the aforementioned sections of the MCC; shall have the full and fair opportunities to participate fully in the performance of this Agreement. The Provider shall not discriminate against any person or business on the basis of disability, and shall take affirmative actions to ensure BEPDs shall have full and fair opportunities to compete for and perform subcontracts for supplies or services. Failure to carry out the commitments and policies set forth herein shall constitute a material breach of this Agreement and may result in the termination of this Agreement or such remedy as the Customer deems appropriate.

#### Section 16.6 Wages.

(a) Living Wage Ordinance. MCC Sect. 2-92-610 provides for a living wage for certain categories of workers employed in the performance of contracts with the Customer, specifically non-Customer 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 MCC Sect. 2-92-610 and regulations promulgated thereunder:

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i) if (1) the Provider has 25 or more full-time employees, and (2) if at any time during the performance of this Agreement the Provider 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 the Provider's obligation to pay, and to assure payment of, the Base Wage (as defined herein) will begin at any time during Term when the conditions set forth in (1) and (2) above are met, and will continue thereafter until the end of the Term.

ii) As of July 1, 2013, the Base Wage is \$11.78. The current rate can be found on the Customer's Department of Procurement Services' website. Each July 1st the Base Wage will be adjusted, using the most recent federal poverty guidelines for a family of four (4) 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 (4) divided by 2000 hours or the current base wage, whichever is higher. At all times during the term of this Agreement, the Provider and all Subcontractors must pay the Base Wage (as adjusted in accordance with the above). If the payment of prevailing wages is required for work or services done under this Agreement, and the prevailing wages for Covered Employees are higher than the Base Wage, then the Provider must pay the prevailing wage rates.

iii) The Contractor must include provisions in all subcontracts requiring its Subcontractors to pay the Base Wage to Covered Employees. The Provider agrees to provide the Customer with documentation acceptable to the Chief Procurement Officer of the Customer (the "CPO") demonstrating that all Covered Employees, whether employed by the Provider or by a Subcontractor, have been paid

that an employee, whether employed by the Provider or by a subcontractor, has been paid the Base Wage, upon the Customer's request for such documentation. The Customer may independently audit the Provider and/or Subcontractors to verify compliance herewith.

iv) 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 Customer contract or subcontract for up to three years.

v) Not-for-Profit Corporations: If the Provider 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 above do not apply.

(b) Prevailing Wage Rates. This Agreement calls for the construction of a "public work" within the meaning of Illinois Prevailing Wage Act, 820 ILCS 130/.01 et seq. (the "Act"): the Act requires contractors and subcontractors to pay laborers, workers and mechanics performing services on public works projects no less than the current "prevailing rate of wages" (hourly cash wages plus amount for fringe benefits) in the county where the work is performed. The Illinois Department of Labor (the "Department") publishes the prevailing wage rates on its website at <<http://www.state.il.us/agency/idol/rates/rates.HTM>>. The Department revises the prevailing wage rates and the Provider and its Subcontractors have an obligation to check the Department's web site for revisions to prevailing wage rates. For information regarding current

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prevailing wage rates, please refer to the Department's website. All contractors and subcontractors rendering services under this Agreement must comply with all requirements of the Act, including but not limited to, all wage requirements and notice and record keeping duties.

As a condition of making payment to the Provider, the Customer may require the Provider or its Subcontractors to submit an affidavit to the effect that not less than the prevailing hourly wage rate is being paid to laborers, mechanics, and other workmen employed on this Agreement in accordance with Illinois or federal law, as applicable.

(c) Multi-Project Labor Agreement. The Customer has entered into the Multi-Project Labor Agreement (the "PLA") with various trades regarding projects involving construction, demolition, maintenance, rehabilitation, and/or renovation work, as described in the PLA, a copy of which may be found on the Customer's website at:

<http://www.cityofchicago.org/dam/city/depts/dps/RulesRegulations/Multi-ProjectLaborAgreement-PLAandSignatoryUnions.pdf>.

To the extent that this Agreement involves a project that is subject to the PLA, the Provider acknowledges familiarity with the requirements of the PLA and its applicability to any work under this Agreement, and shall comply in all respects with the PLA.

Section 16.7 Business Relationships With Elected Officials. Pursuant to MCC Section 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 Customer 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

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 (12) 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 Sect. 2-156-030 by any elected official with respect to this Agreement will be grounds for termination of this Agreement. The term financial interest is defined as set forth in MCC Chapter 2-156.

Section 16.8 MCC 1-23 and 720 ILCS 5/33E Bribery, Debts, and Debarment Certification.

(a) The Provider or each joint venture partner, if applicable, warrants that the Provider or each joint venture partner, its agents, employees, officers and any Subcontractors (a) have not been engaged in or been convicted of bribery or attempted bribery of a public officer or employee of the Customer, the State of Illinois, any agency of the federal government or any

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state or local government in the United States or engaged in or been convicted of bid-rigging or bid-rotation activities as defined in this section as required by the Illinois Criminal Code; (b) do not owe any debts to the State of Illinois, in accordance with 65 ILCS 5/11 -42.1-1 and (c) are not presently debarred or suspended; Certification Regarding Environmental Compliance; Certification Regarding Ethics and Inspector General; and Certification Regarding Court-Ordered Child Support Compliance.

(b) The Provider, in performing under this Agreement shall comply with MCC Section 2-92-320, as follows:

i) No person or business entity shall be awarded a contract or sub-contract if that person or business entity; (a) has been convicted of bribery or attempting to bribe a public officer or employee of the Customer, the State of Illinois, or any agency of the federal government or of any state or local government in the United States, in that officer's or employee's official capacity; or (b) has been convicted of agreement or collusion among bidders or prospective bidders in restraint of freedom of competition by agreement to bid a fixed price, or otherwise; or (c) has made an admission of guilt of such conduct described in (a) or (b) above which is a matter of record but has not been prosecuted for such conduct.

ii) For purposes of this Section, where an official, agent or employee of a business entity has committed any offense under this section on behalf of such an entity and pursuant to the direction or authorization of a responsible official thereof, the business entity will be chargeable with the conduct.

iii) One business entity will be chargeable with the conduct of an affiliated agency. Ineligibility under this section will continue for three (3) years following such conviction or admission. The period of ineligibility may be reduced, suspended, or waived by the CPO under certain specific circumstances. Reference is made to MCC Section 2-92-320 for a definition of affiliated agency, and a detailed description of the conditions which would permit the CPO to reduce, suspend, or waive the period of ineligibility.



Section 16.9 Federal Terrorist (No-Business) List. The Provider warrants and represents that neither the Provider nor an Affiliate, 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 Customer may not do business under any applicable law, rule, regulation, order or judgment.

For purposes of this Section 16.9, "Affiliate" means a person or entity which directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the Provider. 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

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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.

Section 16.10 Inspector General and Legislative Inspector General. It is the duty of any bidder, proposer or the Provider, all Subcontractors, every applicant for certification of eligibility for a Customer contract or program, and all officers, directors, agents, partners and employees of any bidder, proposer, the Provider, all Subcontractors or such applicant to cooperate with the Inspector General or the Legislative Inspector General in any investigation or hearing, if applicable, undertaken pursuant to MCC Chapter 2-56 or 2-55, respectively. The Provider understands and will abide by all provisions of MCC Chapter 2-56 and 2-55. All Subcontracts must inform Subcontractors of this provision and require understanding and compliance with them.

Section 16.11 Governmental Ethics Ordinance 2-156. The Provider must comply with MCC Chapter 2-156, Governmental Ethics, including but not limited to MCC Section 2-156-120 pursuant to which no payment, gratuity or offer of employment will be made in connection with any Customer contract, by or on behalf of a Subcontractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a Subcontract or order. Any contract negotiated, entered into, or performed in violation of any of the provisions of this this Section will be voidable as to the Customer.

#### Section 16.12 Restrictions on Business Dealings.

a) Conflicts of Interest. The Provider covenants that it presently has no interest and will not acquire any interest, direct or indirect, in any enterprise which would conflict in any manner or degree with the performance of the work, services or goods to be provided hereunder. The Provider further covenants that in its performance of this Agreement no person having any such interest shall be employed. If the Customer determines that the Provider does have such a conflict of interest, the Customer will notify the Provider in writing, stating the basis for its determination. The Provider will thereafter have 30 days in which to respond with reasons why the Provider believes a conflict of interest does not exist. If the Provider does not respond or if the Customer still reasonably determines a conflict of interest to exist, the Provider must terminate its interest in the other enterprise.

b) Prohibition on Certain Contributions, Mayoral Executive Order 2011-4. Neither the Provider or any person or entity who directly or indirectly has an ownership or beneficial interest in the Provider of more than 7.5% ("Owners"), spouses and domestic partners of such Owners, Provider's Subcontractors, any person

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.

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The Provider 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 Customer approached the Provider or the date the Provider approached the Customer, 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.

The Provider 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.

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 Agreement, and under any Other Contract for which no opportunity to cure will be granted. Such breach and default entitles the Customer 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.

If the Provider violates this provision or Mayoral Executive Order No. 2011-4 prior to award of this Agreement resulting from this specification, the CPO may reject the Provider's bid.

For purposes of this provision:

"Other Contract" means any agreement entered into between the Provider and the Customer that is (i) formed under the authority of MCC Chapter 2-92; (ii) for the purchase, sale or lease of real or personal property; or (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 Chapter 2-156, as amended.

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

Section 16.13 Debts Owed to the Customer; Anti-Scofflaw, MCC Sect. 2-92-380. Pursuant to MCC Section 2-92-380 and in addition to any other rights and remedies (including set-off) available to the Customer under this Agreement or permitted at law or in equity, the Customer will be entitled to set off a portion of the contract price or compensation due under the Agreement in an amount equal to the amount of the fines and

contract price or compensation due under the Agreement, in 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 the Provider to the Customer. For purposes of this Section, outstanding parking violation complaint means a parking ticket, notice of parking violation, or parking violation complaint on which no payment has been made or appearance filed in the Circuit Court of Cook County within the time specified on the

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complaint, and debt means a specified sum of money owed to the Customer for which the period granted for payment has expired. However no such debt(s) or outstanding parking violation complaint(s) will be offset from the contract price or compensation due under this Agreement if one or more of the following conditions are met:

i) The Provider has entered into an agreement with the Department of Revenue, or other appropriate Customer department, for the payment of all outstanding parking violation complaints and debts owed to the Customer and the Provider is in compliance with such agreement; or

ii) The Provider is contesting liability for or the amount of the debt in a pending administrative or judicial proceeding; or the contracting party has filed a petition in bankruptcy and the debts owed the Customer are dischargeable in bankruptcy.

#### Section 16.14 Shakman Accord.

a) The Customer is subject to the May 31, 2007 Order entitled "Agreed Settlement Order and Accord" (the "Shakman Accord") and the June 24, 2011 "City of Chicago Hiring Plan" (the "City Hiring Plan") entered in Shakman v. Democratic Organization of Cook County, Case No 69 C 2145 (United States District Court for the Northern District of Illinois). Among other things, the Shakman Accord and the City Hiring Plan prohibit the Customer from hiring persons as governmental employees in non-exempt positions on the basis of political reasons or factors.

b) The Provider is aware that the Customer's policy prohibits Customer employees from directing any individual to apply for a position with the Provider, either as an employee or as a Subcontractor, and from directing the Provider to hire an individual as an employee or as a Subcontractor. Accordingly, the Provider must follow its own hiring and contracting procedures, without being influenced by Customer employees. Any and all personnel provided by the Provider under this Agreement are employees or Subcontractors of the Provider, not employees of the Customer. 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 Customer and any personnel provided by the Provider.

c) The Provider 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.

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(d) In the event of any communication to the Provider by a Customer employee or Customer official in violation of paragraph (b) above, or advocating a violation of paragraph (c) above, the Provider will, as soon as is reasonably practicable, report such communication to the Hiring Oversight Section of the Customer's Office of the Inspector General, and also to the head of the relevant Customer Department utilizing services provided under this Agreement. The Provider will also cooperate with any inquiries by IGO Hiring Oversight or the Shakman Monitor's Office related to this Agreement.

Section 16.15 No Waste Disposal in Public Way MCC 11-4-1600(E). The Provider 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 MCC (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;
- § 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, the Provider'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 CPO. Such breach and default entitles the Customer to all remedies under this Agreement, at law or in equity.

This Section does not limit the Provider'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 Customer as grounds for the termination of this Agreement, and may further affect the Provider's eligibility for future contract awards.

Section 16.16 Duty to Report Corrupt or Unlawful Activity. It is the duty of the Provider to report to the Inspector General of the Customer, directly and without undue delay, any and all information concerning conduct which it knows or should reasonably know to involve corrupt or other unlawful activity by its employees or the employees of any of its Subcontractors, in connection with the performance of its work hereunder, or by any person dealing with the Customer which concerns the person's dealings with the Customer. Knowing failure to make such a report will be an event of default under this Agreement.

Section 16.17 MBE/WBE Program Participation and Goals. The rules, regulations, and forms for achieving MBE and WBE goals are set forth in the Special Conditions Regarding

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Minority Business Enterprise Commitment and Women Business Enterprise Coinmitrnt ("M/WBE Special Conditions") attached as Exhibit D to this Agreement.

**ARTICLE XVII  
MISCELLANEOUS**

Section 17.1 Entire Agreement. Tins Agreement contains the entire understanding of the Parties with respect to the subject matter hereof and reflects the prior agreements and commitments with respect thereto. There are no other oral understandings, terms or conditions and neither Party has relied upon any representation, express or implied, not contained in this Agreement.

Section 17.2 Exhibits. All exhibits and attachments referenced in this Agreement shall be incorporated into this Agreement by such reference and shall be deemed to be an integral part of this Agreement.

Section 17.3 Amendments. No change, amendment or modification of this Agreement shall be valid or binding upon the Parties hereto unless such change, amendment or modification shall be in writing and duly executed by both Parties hereto. In no event shall the Provider and the Customer consent to any amendment, modification or change to this Agreement which has the effect of reducing the amount of payments payable by the Customer hereunder without the prior written consent of the Lender, including any adjustment to the Baseline as provided in Section 6 of Exhibit B attached hereto as the result of a Cause for Adjustment (as defined in such Section) if such adjustment would, if implemented, reduce the Expected Savings Production.

Section 17.4 Captions. The captions contained in this Agreement are for convenience and reference only and in no way define, describe, extend and or limit the scope of intent of this Agreement or the intent of any provision contained herein.

Section 17.5 Severability. The invalidity of one or more phrases, sentences, clauses, sections or articles contained in this Agreement shall not affect the validity of the remaining portions of this Agreement so long as the material purposes of this Agreement can be determined and effectuated.

Section 17.6 Notices. Any notice, demand, offer, or other instrument required or permitted to be given pursuant to this Agreement shall be in writing signed by the Party giving such notice and shall be hand delivered or sent by registered letter, overnight courier or electronic mail (if mutually acceptable procedures are developed) to the other Party at such address as set forth below.

- (a) ' If delivered to the Customer: City of Chicago  
Department of Finance  
121 North LaSalle Street, 7th Floor  
Chicago, Illinois 60602  
Attention: Deputy Comptroller, Financial Policy

with a copy to:

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

- (b) If delivered to the Provider: Chicago Infrastructure Trust  
222 West Merchandise Mart Suite 1212  
Chicago, Illinois 60657 Attention: Executive  
Director Email: [ssb@shapechicago.org](mailto:ssb@shapechicago.org)  
<<mailto:ssb@shapechicago.org>>

And to: Public Building Commission of Chicago  
50 West Washington, Suite 200 Chicago, IL  
60602 Attention: E-mail:

Each Party shall have the right to change the place to which notice shall be sent or be delivered by similar notice sent or like manner to the other Party. The effective date of any notice issued pursuant to this Agreement shall be as of the addressee's receipt of such notice.

Section 17.7 No Waiver. Any failure of any Party to enforce any of the provisions of this Agreement or to require compliance with any of its terms at any time during the pendency of this Agreement shall in no way affect the validity of this Agreement, or any part hereof, and shall not be deemed a waiver of the right of such Party thereafter to enforce any and each such provision.

Section 17.8 Successors and Assigns. This Agreement shall be binding upon the Parties hereto, their successors and permitted assigns.

Section 17.9 No Joint Venture or Partnership. The relationship between the Provider and the Customer shall not be that of partners, agents, or joint ventures for one another, and nothing contained in this Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including federal income tax purposes. The Provider and the Customer, in performing any of their obligations hereunder, shall be independent contractors or independent parties and shall discharge their contractual obligations at their own risk.

Section 17.10 Disclaimer. The Provider makes no representation or warranty with respect to the Customer's treatment of any federal or state tax Laws, any applicable accounting

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treatment or conventions or the assessment of any rating agency in connection with this Agreement, the other Documents, the Project or any particular ECM.

Section 17.11 Further Assurances. The Provider and the Customer agree to provide such information, execute and deliver any instruments and documents, and to take such other actions as may be necessary or reasonably requested by the other Party that are not inconsistent with the provisions of this Agreement and that

reasonably requested by the other party that are not inconsistent with the provisions of this Agreement and that do not involve the assumptions of obligations other than those provided for in this Agreement, in order to give full effect to this Agreement and to carry out the intent of this Agreement.

Section 17.12 Priority. In the event of any conflict or inconsistency among the various provisions of this Agreement (including the attachments thereto and any other incorporated documentation), the provision imposing the more stringent standard or requirement or requiring a more expansive scope of supply shall prevail.

Section 17.13 Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF ILLINOIS.

Section 17.14 Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 17.15 Counterparts. This Agreement may be signed in any number of counterparts and each counterpart shall represent a fully executed original as if signed by both Parties.

[Remainder of Page Intentionally Left Blank] [Signature

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IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date first written above.

CHICAGO INFRASTRUCTURE TRUST

. ■  $CX/2J_2^*$

By: O Jc&se- v ^ \_&kj  
Stephen S. Beitler

Chief Executive Officer & Executive Director CITY OF

CHICAGO

By: i  
Lois A. Scott  
Chief Financial Officer

Approved for the Customer for Form and Legal Sufficiency

*[Signature Page of Energy Services Agreement - 2FM/Schneider Electric Project]*

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date first written above.

CHICAGO INFRASTRUCTURE TRUST



CHICAGO INFRASTRUCTURE TRUST

By:

Stephen S. Beitler  
Chief Executive Officer & Executive Director

CITY OF CHICAGO

By: ;'£^/L>--? Lois.A. Scott Chief Financial Officer

Approved for the Customer for Form and Legal Sufficiency

*[Signature Page of Energy Services Agreement -*

Exhibit A

Description of Facilities and Project

**Section I. Overview Description of the Project.**

The Project is a portion of Retrofit One, the first phase of Retrofit Chicago, a comprehensive effort to

THE PROJECT IS A PORTION OF RETROFIT ONE, THE FIRST PHASE OF RETROFIT CHICAGO, A COMPREHENSIVE EFFORT TO INCREASE ENERGY EFFICIENCY IN PUBLIC BUILDINGS. IT IS DESIGNED TO ENLIST THE EXPERTISE OF ENERGY SERVICE COMPANIES TO IDENTIFY, DESIGN, PROVIDE, IMPLEMENT AND GUARANTEE THE PERFORMANCE OF ENERGY-RELATED CAPITAL IMPROVEMENTS TO A VARIETY OF CUSTOMER-OWNED PUBLIC BUILDINGS. THE ENERGY CONSERVATION MEASURES (ECMS) DESCRIBED BELOW HAVE BEEN SELECTED TO ACHIEVE LONG TERM SAVINGS THAT CAN BE MEASURED & VERIFIED. THE PROVIDER WILL PROVIDE TURN-KEY IMPLEMENTATION OF EACH AND EVERY ECM LISTED BELOW INCLUDING COMMISSIONING, TRAINING OF CUSTOMER PERSONNEL ON THE OPERATING AND MAINTENANCE, AND ONGOING MEASURING AND VERIFICATION (M&V) SERVICES TO DOCUMENT AND CONFIRM THE REALIZATION OF SAVINGS, AS DESCRIBED IN EXHIBIT B.

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## **Section II. Description of ECMs by Facility**

4th District Police

ECM 069.30 - 4th Dist Ltg Occ Sensors

ECM 069.31 - 4th Dist Ltg Retrofit/Replace

Area 4 / 11th District Police

Area 4 / 11th District Police

ECM 224.10-Area 4 BAS

ECM 224.20 - Area 4 VAV DCV

ECM 224.21 - Area 4 VAV Cell Block

ECM 224.31 - Area 4 Ltg Retro/Replace

911 Center

ECM 257.10 - 911 Ctr RetroCx

West Town Health Center

ECM 329.10 - West Town HC BAS

Englewood Health Center

ECM 331.10 - Englewood HC BAS

ECM 331.31 - Englewood HC Retro/Replace

Uptown Health Center

ECM 353.10 - Uptown HC BAS

Roseland Health Center

ECM 354.10 - Roseland HC BAS

ECM 354.31 - Roseland HC Ltg Retro/Replace

SACHS Clinic

ECM 358.10 - SACHS BAS

ECM 358.31 - SACHS Ltg Retro/Replace

Homan Square Police

ECM 389.30 - Homan Sq Ltg Occ Sensors

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Police Headquarters

ECM 396.10 - Police HQ RetroCx

ECM 396.30 ■ Police HQ Occ Sensors ECM 396.31 - Police HQ Ltg Retro/Replace

Area 4 / 11th District Police

17th District Police  
ECM 527.10 - 17th Dist ReCx

10th District Police  
ECM 541.10 - 10th Dist ReCx

Copernicus Aging Center  
ECM 592.10 - Copernicus Aging Ctr BAS  
ECM 592.31 - Copernicus Aging Ctr Ltg Retro/Replace

Martin Luther King Community Center  
ECM 601.10-King CC BAS  
ECM 601.11 - King CC AHU3 DCV

Department of Public Health  
ECM 640.10 - Dept of Public Health RetroCx  
ECM 640.20 - Dept of Health HVAC Refurbish  
ECM 640.30 - Dept of Public Health Ltg Occ Sensors

15th District Police  
ECM 668.10 - 15th Dist ReCx

Juvenile Detention Center  
ECM 687.30 - Juvenile Detention Ltg Occ Sensors ECM 687.31 - Juvenile Detention Ltg Retro/Replace

8th District Police  
ECM 706.10 - 8th Dist ReCx

9th District Police  
ECM 783.10 - 9th Dist ReCx

23rd / 19th District Police  
ECM 808.10 - 23rd. 19th Dist ReCx

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### **Section III Detailed Description of ECMs 069 - 4<sup>th</sup> District**

#### **Police**

##### **ECM 069.30 -Install Lighting Occupancy Sensors**

**ECM 009.30 -Install Lighting Occupancy Sensors**

Logged data has shown opportunity to take advantage of occupancy-based lighting control. The below selected area types shall receive either a ceiling or wall switch type lighting occupancy sensor:

- Private Office Meeting Room
- Open Space Restroom Storage
- Hallway

Total wall switch type occupancy sensors: 27 Total ceiling type

occupancy sensors: 20

- Training shall be provided by Provider's Subcontractor and manufacturer representative on the operation of the lighting sensor provided as part of this project. Training will be scheduled 14 days prior with the Customer representatives.
- A Commissioning (Cx) Guideline will be developed for each ECM. A Project Cx Plan will incorporate each individual Cx Guideline defining subcontractor responsibilities and requirements. As applicable, pre-functional, functional, and performance verification testing will be completed for each ECM. A final Cx Report will be provided documenting compliance with design, proper installation per specifications and standards, proper operation, and individual ECM functionality.

**ECM 069.31 -Lighting Retrofit/Replacement**

The facility contains older lighting technologies in need of retrofit or replacement. The following shall take place:

- Incandescent lamp shall be replaced with CFL and LED
- Retrofit remaining T12 fixtures with T8 lamps and ballasts Total fixture

retrofits: 15

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**224 - Area 4/11th District Police**

**ECM 224.10 - Install Building Automation System**

The following is a list of the points that will be controlled with the BAS. Motors shall be replaced where new VFD's are being installed. Pneumatic damper actuators shall be replaced with electronic actuators and pneumatic hydronic valves shall be controlled via PE switch:

### CHW System

#### *Monitoring Points*

Chiller 1 Enable/Disable Chiller 2 Enable/Disable Chilled Water Pump 1 Start/Stop Chilled Water Pump 2 Start/Stop  
Chilled Water Pump 3 Start/Stop

- Chilled Water Supply Temperature
- ° Chilled Water Return Temperature
- Chiller 1 Supply Temperature
- Chiller 2 Supply Temperature
- <sup>8</sup> Chiller 1 Amps
- Chiller 2 Amps
- ° Chiller 1 Alarm
- " Chiller 2 Alarm
- Chilled Water Pump 1 Status
- Chilled Water Pump 2 Status
- » Chilled Water Pump 3 Status

### CW System

#### *Monitoring Points*

- Cooling Tower Fan Start/Stop
- Cooling Tower Fan VFD Speed
- Cooling Tower Bypass Valve Actuation
- Condenser Water Pump 1 Start/Stop
- Condenser Water Pump 2 Start/Stop
- Condenser Water Pump 3 Start/Stop
- Condenser Water Supply Temperature
- Condenser Water Return Temperature
- Cooling Tower Fan Speed Feedback
- Condenser Water Pump 1 Status
- Condenser Water Pump 2 Status ° Condenser Water Pump 3 Status

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### HW System

#### *Control Points*

Hot Water Pump 1 Start/Stop Hot Water Pump 2 Start/Stop Hot Water Pump 3 Start/Stop Hot Water Pump 4 Start/Stop  
HX 1 Steam Valve Actuation HX 2 Steam Valve Actuation

*Monitoring Points*

- Hot Water Pump 1 Status
- Hot Water Pump 2 Status
- Hot Water Pump 3 Status
- Hot Water Pump 4 Status
- HX 1 Hot Water Supply Temperature
- » HX 1 Hot Water Return Temperature
- HX 2 Hot Water Supply Temperature
- » HX 2 Hot Water Return Temperature

**Gun Range Air Handling Unit**

*Control Points*

- Supply Fan Start/Stop
- Return Fan Start/Stop
- Supply Fan VFD Speed
- Return Fan VFD Speed
- Outside/Return Air Damper Actuation
- Exhaust Air Damper Actuation
- Hot Water Valve Actuation

*Monitoring Points*

- Supply Air Temperature
- Mixed Air Temperature
- Outdoor Air CFM Flow
- Supply Fan VFD Feedback
- Return Fan VFD Feedback
- Space Temperature
- Space Temperature Setpoint Adj.
- Space Occupancy

**S3 & S4 Air Handling Units**

*Control Points*

- Supply Fan Start/Stop
- Outside Air Damper Open/Close
- Face & Bypass Damper Actuation
- 1/3<sup>rd</sup> Steam Valve Actuation
- 2/3<sup>rd</sup> Steam Valve Actuation
- Chilled Water Valve Actuation

*Monitoring Points*

- Supply Air Temperature
- " Supply Fan Status
- Space Temperature
- Space Temperature Setpoint Adj.
- <sup>D</sup> Space Override

## S11 Air Handling Units

### *Control Points*

### *Monitoring Points*

- Supply Fan Start/Stop
- Outside Air Damper Open/Close
- Face & Bypass Damper Actuation
- 1/3<sup>rd</sup> Steam Valve Actuation
- 2/3<sup>rd</sup> Steam Valve Actuation
- Supply Air Temperature
- 0 Supply Fan Status

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### SI, S2 & S6 Air Handling Units

#### *Control Points*

#### *Monitoring Points*

- Supply Fan Start/Stop
- Return Fan Start/Stop
- Outside/Return Air Damper Actuation
- Exhaust Air Damper Actuation
- Chilled Water Valve Actuation
- Supply Air Temperature
- Mixed Air Temperature
- Return Air Temperature
- Supply Fan Status
- Return Fan Status

## S10 Air Handling Unit

### *Control Points*

- » Supply Fan Start/Stop
- Return Fan Start/Stop
- " Outside/Return Air Damper Actuation
- Exhaust Air Damper Actuation
- 1 /3<sup>rd</sup> Steam Valve Actuation
- 2/3<sup>rd</sup> Steam Valve Actuation
- DX Cooling Enable/Disable

## S5 Air Handling Unit

### *Control Points*

- Supply Fan Start/Stop
- Exhaust Fan Start/Stop
- Face & Bypass Damper Actuation
- <sup>B</sup> 1/3<sup>rd</sup> Steam Valve Actuation
- 2/3<sup>rd</sup> Steam Valve Actuation
- Chilled Water Valve Actuation

### *Monitoring Points*

- Supply Air Temperature
- Mixed Air Temperature



- Return Air Temperature
- Supply Fan Status
- Return Fan Status

*Monitoring Points*

- Supply Air Temperature
- Supply Fan Status
- Exhaust Fan Status
- Space Temperature
- Space Temperature Setpoint Adj.
- Space Override

**S7 & S8 Air Handling Units**

*Control Points*

- Supply Fan Start/Stop
- Exhaust Fan Start/Stop
- Face & Bypass Damper Actuation
- 1/3<sup>rd</sup> Steam Valve Actuation
- 2/3<sup>rd</sup> Steam Valve Actuation

*Monitoring Points*

- Supply Air Temperature
- " Supply Fan Status
- Exhaust Fan Status
- Space Temperature
- Space Temperature Setpoint Adj.
- Space Override

**Miscellaneous**

*Control Points*

- Exhaust Fan Enable/Disable\*

*Monitoring Points*

- Outside Air Temperature
- Outside Air Humidity

\* - Exhaust Fans will be grouped (zoned) to match schedules of units and will be determined by Provider's Subcontractor.

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- o Training shall be provided by Provider's Subcontractor and/or BAS contractor on the operation of the BAS system provided under this Agreement. This training will be BAS type and building specific. Training will be scheduled 14 days prior with the Customer representatives.
- A Commissioning (Cx) Guideline will be developed for each ECM. A Project Cx Plan will incorporate each individual Cx Guideline denning subcontractor responsibilities and requirements. As applicable, pre-functional, functional, and performance verification testing will be completed for each ECM. A final Cx Report will be provided documenting compliance with design, proper installation per specifications and standards, proper operation, and individual ECM functionality.

**ECM 224.20 - Convert Constant Air Volume (CAV) Unit to Variable Air Volume (VAV)**

The locker room unit and auditorium units are constant speed units.

This ECM will install variable frequency drives on the supply air and return/exhaust air fan motors. Motors which do not have the proper insulation class and are not rated for use with variable frequency drives will be replaced.

Provider's Subcontractor's performance specification for variable frequency drives is open to Square D, Danfoss, and ABB.

- Training shall be provided by Provider's Subcontractor and manufacturer representative on the operation of the VFD's provided under this Agreement. Training will be scheduled 14 days prior with the Customer representatives.
- A Commissioning (Cx) Guideline will be developed for each ECM. A Project Cx Plan will incorporate each individual Cx Guideline defining subcontractor responsibilities and requirements. As applicable, pre-functional, functional, and performance verification testing will be completed for each ECM. A final Cx Report will be provided documenting compliance with design, proper installation per specifications and standards, proper operation, and individual ECM functionality.

#### **ECM 224.21 - Convert Constant Air Volume (CAV) Unit to Variable Air Volume (VAV)**

The cell block unit is a constant speed unit.

This ECM will install variable frequency drives on the supply air and return air fan motor. Motors which do not have the proper insulation class and are not rated for use with variable frequency drives will be replaced.

Provider's Subcontractor's performance specification for variable frequency drives is open to Square D, Danfoss, and ABB.

- Training shall be provided by Provider's Subcontractor and manufacturer representative on the operation of the VFD's provided under this Agreement. Training will be scheduled 14 days prior with the Customer representatives.

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- A Commissioning (Cx) Guideline will be developed for each ECM. A Project Cx Plan will incorporate each individual Cx Guideline defining subcontractor responsibilities and requirements. As applicable, pre-functional, functional, and performance verification testing will be completed for each ECM. A final Cx Report will be provided documenting compliance with design, proper installation per specifications and standards, proper operation, and individual ECM functionality.

#### **ECM 224.31 -Lighting Retrofit/Replacement**

The facility contains older lighting technologies in need of retrofit or replacement. The following shall take place:

Incandescent lamp shall be replaced with CFL and LED Replace high-bay metal-halide with T5 fluorescent Retrofit remaining T12 fixtures  
Retrofit exterior metal-halide fixtures

Total Estimated Cost: \$124

Total fixture retrofits: 154

Total fixture replacements: 39

## **257 - 911 Center**

### **ECM 257.10 - Retrocommission Existing Building Automation System**

The existing Siemens Apogee system will be modified to include the addition of time of day scheduling to equipment serving routinely unoccupied areas. In addition, equipment selected by Schneider will have their sequence of operations modified to original design intent with a focus on energy savings.

- Training shall be provided by Provider's Subcontractor and/or BAS contractor on the operation of the BAS system provided under this Agreement. This training will be BAS type and building specific. Training will be scheduled 14 days prior with the Customer representatives.
- *No warrantee period outside of Section 8 of the Contract.*
- A Commissioning (Cx) Guideline will be developed for each ECM. A Project Cx Plan will incorporate each individual Cx Guideline defining subcontractor responsibilities and requirements. As applicable, pre-functional, functional, and performance verification testing will be completed for each ECM. A final Cx Report will be provided documenting compliance with design, proper installation per specifications and standards, proper operation, and individual ECM functionality.

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## **329 - West Town Health Center**

### **ECM 329.10 - Install Building Automation System**

The following is a list of the points that will be controlled with the BAS. Motors shall be replaced where new VFD's are being installed. Pneumatic damper actuators shall be replaced with electronic actuators and pneumatic hydronic valves shall be controlled via PE switch:

#### **Roof Top Units (2)**

##### *Control Points*

- Supply & Return Fan Start/Stop
- » Cooling Enable/Disable

##### *Monitoring Points*

- Supply Air Temperature
- Supply Fan Status
- Return Fan Status

#### **Roof Top Units (2)**

##### *Control Points*

##### *Monitoring Points*

- |                                |                          |
|--------------------------------|--------------------------|
| • Supply Fan Start/Stop        | ■ Supply Air Temperature |
| • Return Fan Start/Stop        | ■ Supply Fan Status      |
| • DX Cooling 1 Enable/Disable  | ■ Return Fan Status      |
| • DX Cooling 2 Enable/Disable  |                          |
| • Electric Heat Enable/Disable |                          |
| • Economizer Damper Position   |                          |

Electric Zone Reheat (23)

*Control Points*

*Monitoring Points*

- |                            |                                   |
|----------------------------|-----------------------------------|
| • Electric Heating Stage 1 | ■ Space Temperature               |
| • Enable/Disable           | ■ Space Temperature Setpoint Adj. |
| • Electric Heating Stage 2 | ■ Space Override                  |
| • Enable/Disable (5)       |                                   |

**Miscellaneous**

*Control Points*

*Monitoring Points*

- |                               |                           |
|-------------------------------|---------------------------|
| • Exhaust Fan Enable/Disable* | ■ Outside Air Temperature |
|-------------------------------|---------------------------|

\* - Exhaust Fans will be grouped (zoned) to match schedules of units and will be determined by Provider's Subcontractor.

- • Training shall be provided by Provider's Subcontractor and/or BAS contractor on the operation of the BAS system provided under this Agreement. This training will be BAS type and building specific. Training will be scheduled 14 days prior with the Customer representatives.
- A Commissioning (Cx) Guideline will be developed for each ECM. A Project Cx Plan will incorporate each individual Cx Guideline defining subcontractor responsibilities and

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requirements. As applicable, pre-functional, functional, and performance verification testing will be completed for each ECM. A final Cx Report will be provided documenting compliance with design, proper installation per specifications and standards, proper operation, and individual ECM functionality.

### 331 - Englewood Health Center

#### ECM 331.10 - Install Building Automation System

The following is a list of the points that will be controlled with the BAS. Motors shall be replaced where new VFD's are being installed. Pneumatic damper actuators shall be replaced with electronic actuators and pneumatic hydronic valves shall be controlled via PE switch:

#### CHW System

*Control Points*

- Chilled Water System Enable/Disable
- Chilled Water Supply Temperature Setpoint
- Chilled Water Pump 1 Start/Stop
- Chilled Water Pump 2 Start/Stop

*Monitoring Points*

- Chilled Water Supply Temperature
- Chilled Water Return Temperature
- Chilled Water System Alarm
- Chilled Water Pump 1 Status
- Chilled Water Pump 2 Status

**CW System**

*Control Points*

- " Cooling Tower Fan Start/Stop
- Cooling Tower Fan VFD Speed
- Condenser Water Pump 1 Start/Stop
- Condenser Water Pump 2 Start/Stop
- Condenser Water Bypass Valve Actuation

*Monitoring Points*

- Condenser Water Supply Temperature
- Condenser Water Return Temperature
- Cooling Tower Fan Speed Feedback
- Condenser Water Pump 1 Status
- Condenser Water Pump 2 Status

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**HW System**

*Control Points*

- Boiler Enable/Disable
- Zone 1 Hot Water Bypass Valve Actuation
- Zone 2 Hot Water Bypass Valve Actuation

• Zone 2 Hot Water Bypass Valve Actuation

- Hot Water Pump 1 Start/Stop
- Hot Water Pump 2 Start/Stop
- Hot Water Pump 3 Start/Stop « Hot Water Pump 4 Start/Stop

*Monitoring Points*

- Hot Water Return Temperature
- Hot Water Supply Temperature
- Zone 1 Hot Water Supply Temperature
- Zone 2 Hot Water Supply Temperature
- Mechanical Room Fan Status
- Hot Water Pump 1 Status
- Hot Water Pump 2 Status • Hot Water Pump 3 Status
- Hot Water Pump 4 Status

**Air Handling Unit - Multi-Zone 1**

*Control Points*

- Hot Water Valve Actuation
- Chilled Water Valve Actuation
- Return/Outside Air Damper Actuation
- Exhaust Air Damper Actuation
- <sup>a</sup> Supply Fan Start/Stop
- Supply Fan VFD Speed
- Return Fan Start/Stop
- Return Fan VFD Speed
- Zone # Volume Damper Actuation (12)
- Zone # Damper Actuation (12)
- Hot Water Pump Start/Stop

**Air Handling Unit - Multi-Zone 2**

*Control Points*

- Hot Water Valve Actuation
- Chilled Water Valve Actuation
- Return Air Damper Actuation
- Outside Air Damper Actuation
- Exhaust Air Damper Actuation
- Supply Fan Start/Stop
- Supply Fan VFD Speed
- Exhaust Fan Start/Stop
- Exhaust Fan VFD Speed
- Zone # Volume Damper Actuation (10)
- Zone # Damper Actuation (10)
- Hot Water Pump Start/Stop

*Monitoring Points*

- Hot Deck Temperature
- Cold Deck Temperature
- Mixed Air Temperature
- Zone # Supply Air Temperature (12)
- Supply Fan VFD Feedback

- Supply Fan VFD Feedback
- Exhaust Fan VFD Feedback
- Supply Air Static Pressure
- Space Temperature (12)
- Space Temperature Setpoint Adj. (12)
- Unit Override
- Hot Water Pump Status

*Monitoring Points*

- Hot Deck Temperature
- Cold Deck Temperature
- Mixed Air Temperature
- Zone # Supply Air Temperature (10)
- Supply Fan VFD Feedback
- Exhaust Fan VFD Feedback
- Supply Air Static Pressure
- Hot Water Pump Status
- Space Temperature (10)
- <sup>B</sup> Space Temperature Setpoint Adj. (10)
- Unit Override

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**Air Handling Unit - Multi-Zone 3**

*Control Points*

- <sup>A</sup> Hot Water Valve Actuation
- <sup>B</sup> Chilled Water Valve Actuation
- Return Air Damper Actuation
- Outside Air Damper Actuation
- Exhaust Air Damper Actuation
- Supply Fan Start/Stop
- Supply Fan VFD Speed
- Exhaust Fan Start/Stop
- Exhaust Fan VFD Speed
- Zone # Volume Damper Actuation (8)
- Zone # Damper Actuation (8)
- Hot Water Pump Start/Stop

*Monitoring Points*

- Hot Deck Temperature
- « Cold Deck Temperature
- Mixed Air Temperature
- Zone # Supply Air Temperature (8)
- Supply Fan VFD Feedback
- <sup>B</sup> Exhaust Fan VFD Feedback
- Supply Air Static Pressure
- Hot Water Pump Status

- Space Temperature (8)
- Space Temperature Setpoint Adj. (8)
- Unit Override

#### Miscellaneous

##### *Control Points*

##### *Monitoring Points*

- |                               |                           |   |  |  |          |
|-------------------------------|---------------------------|---|--|--|----------|
| ■ Exhaust Fan Enable/Disable* | ■ Outside Air Temperature |   |  |  |          |
|                               | ■ Outside Air Humidity    | B |  |  | Building |
|                               | Pressure (2)              |   |  |  |          |

\* - Exhaust Fans will be grouped (zoned) to match schedules of units and will be determined by Provider's Subcontractor.

<> Training shall be provided by Provider's Subcontractor and/or BAS contractor on the . operation of the BAS system provided under this Agreement. This training will be BAS type and building specific. Training will be scheduled 14 days prior with the Customer representatives.

- A Commissioning (Cx) Guideline will be developed for each ECM. A Project Cx Plan will incorporate each individual Cx Guideline defining subcontractor responsibilities and requirements. As applicable, pre-functional, functional, and performance verification testing will be completed for each ECM. A final Cx Report will be provided documenting compliance with design, proper installation per specifications and standards, proper operation, and individual ECM functionality.

#### ECM 331.31 -Lighting Retrofit/Replacement

The facility contains older lighting technologies in need of retrofit or replacement. The following shall take place:

Incandescent flood lamps shall be replaced with CFL Retrofit remaining TI  
2 fixtures with T8 Retrofit exterior metal-halide with pulse start

Total fixture retrofits: 15.

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- A Comiriissioning (Cx) Guideline will be developed for each ECM. A Project Cx Plan will incorporate each individual Cx Guideline defining subcontractor responsibilities and requirements. As applicable, pre-functional, functional, and performance verification testing will be completed for each ECM. A final Cx Report will'be provided documenting compliance with design, proper installation per specifications and standards, proper operation, and individual ECM functionality.

#### 353 - Uptown Health Center

##### ECM 353.10 - Install Building Automation System

The following is a list of the points that will be controlled with the BAS. Motors shall be replaced where new VFD's are being installed. Pneumatic damper actuators shall be replaced with electronic actuators and pneumatic hydronic valves shall be controlled via PE switch:



## HW System

### *Control Points*

- Boiler 1 Enable/Disable
- Boiler 2 Enable/Disable
- Hot Water Pump 1 Start/Stop
- Hot Water Pump 2 Start/Stop
- Hot Water Pump 3 Start/Stop
- " Hot Water Bypass Valve

### Actuation

### *Monitoring Points*

- Boiler 1 Supply Water Temperature
- Boiler 2 Supply Water Temperature
- Hot Water Supply Temperature
- Hot Water Return Temperature ° Hot Water Pump 1 Status
- Hot Water Pump 2 Status
- Hot Water Pump 3 Status

## Air Handling Units (2)

### *Control Points*

- DX Cooling 1 Enable/Disable
- DX Cooling 2 Enable/Disable
- Economizer Damper Actuation
- Supply Fan Start/Stop
- Return Fan Start/Stop

### *Monitoring Points*

- Supply Air Temperature
- Return Air Temperature
- Mixed Air Temperature
- Supply Fan Status
- Return Fan Status

## Miscellaneous

### *Control Points*

### *Monitoring Points*

- Outside Air Temperature

- Training shall be provided by Provider's Subcontractor and/or BAS contractor on the operation of the BAS system provided under this Agreement. This training will be BAS type and building specific. Training will be scheduled 14 days prior with the Customer representatives.

- A Commissioning (Cx) Guideline will be developed for each ECM. A Project Cx Plan will incorporate

each individual Cx Guideline defining subcontractor responsibilities and requirements. As applicable, pre-functional, functional, and performance verification testing will be completed for each ECM. A final Cx Report will be provided documenting compliance with design, proper installation per specifications and standards, proper operation, and individual ECM functionality.

### 354 - Roseland Health Center

#### ECM 354.10 - Install Building Automation System

The following is a list of the points that will be controlled with the BAS. Motors shall be replaced where new VFD's are being installed. Pneumatic damper actuators shall be replaced with electronic actuators and pneumatic hydronic valves shall be controlled via PE switch:

##### RoofTopTJnits(3)

###### *Control Points*

- Supply Fan Start/Stop
- Cooling Enable/Disable
- Heating Enable/Disable

###### *Monitoring Points*

- Space Temperature
- Space Temperature Setpoint Adj.
- Space Override
- Supply Fan Status
- Supply Air Temperature

##### Basement Air Handling Unit

###### *Control Points*

- Supply Fan Start/Stop
- Heating Enable/Disable

###### *Monitoring Points*

- Space Temperature
- Space Temperature Setpoint Adj.
- Space Override
- Supply Fan Status
- Supply Air Temperature

##### Electric Baseboard Heaters (10)

###### *Control Points*

- Baseboard Heat Enable/Disable

###### *Monitoring Points*

##### Miscellaneous

###### *Control Points*

- Exhaust Fan Enable/Disable\*

###### *Monitoring Points*

- " Outside Air Temperature

\* - Exhaust Fans will be grouped (zoned) to match schedules of units and will be determined by Provider's Subcontractor.

- Training shall be provided by Provider's Subcontractor and/or BAS contractor on the operation of the BAS system provided under this Agreement. This training will be BAS

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type and building specific. Training will be scheduled 14 days prior with the Customer representatives.

- A Commissioning (Cx) Guideline will be developed for each ECM. A Project Cx Plan will incorporate each individual Cx Guideline defining subcontractor responsibilities and requirements. As applicable, pre-functional, functional, and performance verification testing will be completed for each ECM. A final Cx Report will be provided documenting compliance with design, proper installation per specifications and standards, proper operation, and individual ECM functionality.

ECM 354.31 -Lighting Retrofit/Replacement

The facility contains older lighting technologies in need of retrofit or replacement. The following shall take place:

Incandescent flood lamps shall be replaced with LED and CFL - Retrofit  
remaining T12 to T8

Total fixture retrofits: 34

- A Commissioning (Cx) Guideline will be developed for each ECM. A Project Cx Plan will incorporate each individual Cx Guideline defining subcontractor responsibilities and requirements. As applicable, pre-functional, functional, and performance verification testing will be completed for each ECM. A final Cx Report will be provided documenting compliance with design, proper installation per specifications and standards, proper operation, and individual ECM functionality.

358 - SACHS Clinic

ECM 358.10 - Install Building Automation System

The following is a list of the points that will be controlled with the BAS. Motors shall be replaced where new VFD's are being installed. Pneumatic damper actuators shall be replaced with electronic actuators and pneumatic hydraulic valves shall be controlled via PE switch:

## Hot Water System

### *Monitoring Points*

- Boiler 1 Enable/Disable
- Boiler 2 Enable/Disable
- Hot Water Pump 1 Start/Stop
- Hot Water Pump 2 Start/Stop
- Radiant Floor Bypass Valve Actuation (2)
- Radiant Floor Pump 1 Start/Stop
- Radiant Floor Pump 2 Start/Stop
- Boiler 1 Supply Temperature
- Boiler 2 Supply Temperature
- Radiant Floor Supply Temperature (2)
- Hot Water Return Temperature
- Hot Water Pump 1 Status
- Hot Water Pump 2 Status '
- Radiant Floor Hot Water Pump Status (2)

## Chilled Water System

### *Monitoring Points*

Chiller Enable/Disable Chilled Water Pump Start/Stop

- Chilled Water Supply Temperature
- Chilled Water Return Temperature
- Chiller Alarm
- <sup>0</sup> Chilled Water Pump Status

## Condenser Water System

### *Control Points*

- Cooling Tower Fan Start/Stop
- Cooling Tower Fan VFD Speed
- Condenser Water Pump Start/Stop

### *Monitoring Points*

- Condenser Water Supply Temperature
- Condenser Water Return Temperature
- Cooling Tower Fan Speed Feedback
- Condenser Water Pump Status

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**Air Handling Unit - Multi-Zone 1**

*Control Points*

- Pre-Heat Hot Water Valve Actuation
- Hot Water Valve Actuation
- Chilled Water Valve Actuation
- Return Air Damper Actuation
- Outside Air Damper Actuation
- Exhaust Air Damper Actuation
- Pre-Heat Hot Water Pump Start/Stop
- Hot Water Pump Start/Stop
- Supply Fan Start/Stop
- Supply Fan VFD Speed
- Return Fan Start/Stop
- Return Fan VFD Speed
- Zone # Volume Damper Actuation (9)
- Zone # Damper Actuation (9)

*Monitoring Points*

- Hot Deck Temperature
- Cold Deck Temperature
- ° Mixed Air Temperature
- Zone # Supply Air Temperature (9)
- Supply Fan VFD Feedback
- " Return Fan VFD Feedback
- Supply Air Static Pressure
- Pre-Heat Hot Water Pump Status
- Hot Water Pump Status
- Space Temperature (9)
- Space Temperature Setpoint Adj. (9)
- Space Override (9)

**Air Handling Unit - Multi-Zone 2**

*Control Points*

- Pre-Heat Hot Water Valve Actuation
- Hot Water Valve Actuation
- Chilled Water Valve Actuation
- Return Air Damper Actuation
- Outside Air Damper Actuation
- Exhaust Air Damper Actuation

- Pre-Heat Hot Water Pump Start/Stop
- Hot Water Pump Start/Stop
- Supply Fan Start/Stop
- Supply Fan VFD Speed » Return Fan Start/Stop
- Return Fan VFD Speed
- Zone # Volume Damper Actuation (12)
- Zone # Damper Actuation (12)

*Monitoring Points*

- Hot Deck Temperature
- Cold Deck Temperature
- Mixed Air Temperature
- Zone # Supply Air Temperature (12)
- Supply Fan VFD Feedback
- Return Fan VFD Feedback
- Supply Air Static Pressure
- Pre-Heat Hot Water Pump Status
- Hot Water Pump Status
- Space Temperature (12)
- Space Temperature Setpoint Adj. (12)
- Space Override (12)

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**Fan Coil Unit**

*Control Points*

- Supply Air Fan Start/Stop

*Monitoring Points*

- Supply Air Temperature
- Supply Fan Status
- Space Temperature
- <sup>B</sup> Space Temperature Setpoint Adj.
- Space Override

**Miscellaneous**

*Control Points*

- Exhaust Fan Enable/Disable\*

*Monitoring Points*

- Outside Air Temperature
- Outside Air Humidity
- Building Pressurization (2)

\* - Exhaust Fans will be grouped (zoned) to match schedules of units and will be determined by Provider's Subcontractor.

- Training shall be provided by Provider's Subcontractor and/or BAS contractor on the operation of the BAS system provided under this Agreement. This training will be BAS type and building specific. Training will be scheduled 14 days prior with the Customer representatives.
- A Commissioning (Cx) Guideline will be developed for each ECM. A Project Cx Plan will incorporate each individual Cx Guideline denning subcontractor responsibilities and requirements. As applicable, pre-functional, functional, and performance verification testing will be completed for each ECM. A final Cx Report will be provided documenting compliance with design, proper installation per specifications and standards, proper operation, and individual ECM functionality.

### **ECM 358.31 -Lighting RetrofirTReplacement**

The facility contains older lighting technologies in need of retrofit or replacement. The following shall take place:

- Incandescent flood lamps shall be replaced with LED and CFL
- Retrofit remaining T1 2 to T8

Total fixture retrofits: 40

- Training shall be provided by Provider's Subcontractor and manufacturer representative on the operation of the lighting sensor provided as part of this project. Training will be scheduled 14 days prior with the Customer representatives.
- A Commissioning (Cx) Guideline will be developed for each ECM. A Project Cx Plan will incorporate each individual Cx Guideline defining subcontractor responsibilities and requirements. As applicable, pre-functional, functional, and performance verification testing will be completed for each ECM. A final Cx Report will be provided

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documenting compliance with design, proper installation per specifications and standards, proper operation, and individual ECM functionality.

### **389 - Homan Square Police**

#### **ECM 389.30 -Install Lighting Occupancy Sensors**

Logged data has shown opportunity to take advantage of occupancy-based lighting control. The below selected area types shall receive either a ceiling or wall switch type lighting occupancy sensor:

- Private Office
- Meeting Room
- Open Space Restroom
- Storage Hallway

Total wall switch type occupancy sensors: 11 Total ceiling type

occupancy sensors: 17

- Training shall be provided by Provider's Subcontractor and manufacturer representative on the operation of the lighting sensor provided as part of this project. Training will be scheduled 14 days prior with the Customer representatives.
- A Commissioning (Cx) Guideline will be developed for each ECM. A Project Cx Plan will incorporate each individual Cx Guideline defining subcontractor responsibilities and requirements. As applicable, pre-functional, functional, and performance verification testing will be completed for each ECM. A final Cx Report will be provided documenting compliance with design, proper installation per specifications and standards, proper operation, and individual ECM functionality.

### 396 - Police Headquarters

#### ECM 396.10 - Retrocommission Existing Building Automation System

The existing KMC system will be modified to include the addition of time of day scheduling to equipment serving routinely unoccupied areas. In addition, equipment selected by Schneider will have their sequence of operations modified to original design intent with a focus on energy savings.

- Training shall be provided by Provider's Subcontractor and/or BAS contractor on the operation of the BAS system provided under this Agreement. This training will be BAS type and building specific. Training will be scheduled 14 days prior with the Customer representatives.

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- A Coinmissioning (Cx) Guideline will be developed for each ECM. A Project Cx Plan will incorporate each individual Cx Guideline defining subcontractor responsibilities and requirements. As applicable, pre-functional, functional, and performance verification testing will be completed for each ECM. A final Cx Report will be provided documenting compliance with design, proper installation per specifications and standards, proper operation, and individual ECM functionality.

#### ECM 396.30 -Install Lighting Occupancy Sensors

Logged data has shown opportunity to take advantage of occupancy-based lighting control. The below selected area types shall receive either a ceiling or wall switch type lighting occupancy sensor:

- Private Office
- Meeting Room
- Open Space
- Restroom
- Storage
- Hallway



Total wall switch type occupancy sensors: 197 Total ceiling

type occupancy sensors: 637

- Training shall be provided by Provider's Subcontractor and manufacturer representative on the operation of the lighting sensor provided as part of this project. Training will be scheduled 14 days prior with the Customer representatives.
- A Commissioning (Cx) Guideline will be developed for each ECM. A Project Cx Plan will incorporate each individual Cx Guideline defining subcontractor responsibilities and requirements. As applicable, pre-functional, functional, and performance verification testing will be completed for each ECM. A final Cx Report will be provided documenting compliance with design, proper installation per specifications and standards, proper operation, and individual ECM functionality.

### **ECM 396.31 -Lighting Retrofit/Replacement**

The facility contains older lighting technologies in need of retrofit or replacement. The following shall take place:

- Incandescent flood lamps shall be replaced with LED and CFL Total fixture

retrofits: 19

- Training shall be provided by Provider's Subcontractor and manufacturer representative on the operation of the lighting sensor provided as part of this project. Training will be scheduled 14 days prior with the Customer representatives.

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- A Coinmissioning (Cx) Guideline will be developed for each ECM. A Project Cx Plan will incorporate each individual Cx Guideline defining subcontractor responsibilities and requirements. As applicable, pre-functional, functional, and performance verification testing will be completed for each ECM. A final Cx Report will be provided documenting compliance with design, proper installation per specifications and standards, proper operation, and individual ECM functionality.

### **527 - 17<sup>th</sup> District Police**

#### **ECM 527.10 - Retrocommission Existing Building Automation System**

The existing Staefa control system will be modified to include the addition of time of day scheduling to equipment serving routinely unoccupied areas. In addition, equipment selected by Provider's Subcontractor will have their sequence of operations modified to original design intent with a focus on energy savings.

- Training shall be provided by Provider's Subcontractor and/or BAS contractor on the operation of the BAS system provided under this Agreement. This training will be BAS type and building specific. Training will be scheduled 14 days prior with the Customer representatives.

- A Commissioning (Cx) Guideline will be developed for each ECM. A Project Cx Plan will incorporate each individual Cx Guideline defining subcontractor responsibilities and requirements. As applicable, pre-functional, functional, and performance verification testing will be completed for each ECM. A final Cx Report will be provided documenting compliance with design, proper installation per specifications and standards, proper operation, and individual ECM functionality.

## 541 - 10<sup>th</sup> District Police

### ECM 541.10 - Retrocommission Existing Building Automation System

The existing JCI system will be modified to include the addition of time of day scheduling to equipment serving routinely unoccupied areas. In addition, equipment selected by Provider's Subcontractor will have their sequence of operations modified to original design intent with a focus on energy savings.

- o Training shall be provided by Provider's Subcontractor and/or BAS contractor on the operation of the BAS system provided under this Agreement. This training will be BAS type and building specific. Training will be scheduled 14 days prior with the Customer representatives.
- <> A Commissioning (Cx) Guideline will be developed for each ECM. A Project Cx Plan will incorporate each individual Cx Guideline defining subcontractor responsibilities and requirements. As applicable, pre-functional, functional, and performance verification testing will be completed for each ECM. A final Cx Report will be provided

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documenting compliance with design, proper installation per specifications and standards, proper operation, and individual ECM functionality.

## 592 - Copernicus Aging Center

### ECM 592.10 - Install Building Automation System

The following is a list of the points that will be controlled with the BAS. Motors shall be replaced where new VFD's are being installed. Pneumatic damper actuators shall be replaced with electronic actuators and pneumatic hydronic valves shall be controlled via PE switch:

### Hot Water System

#### *Control Points*

- <sup>B</sup> Boiler Enable/Disable
- » Hot Water Pump 1 Start/Stop
- Hot Water Pump 2 Start/Stop

#### *Monitoring Points*

- Hot Water Supply Temperature
- Hot Water Return Temperature
- Hot Water Pump 1 Status
- Hot Water Pump 2 Status

- Hot Water Pump 2 Status

## **Air Handling Unit**

### *Control Points*

- Supply Fan Start/Stop
- Return Fan Start/Stop
- Economizer Damper Actuation
- DX Cooling Enable/Disable
- Hot Water Valve Actuation
- Hot Water Pump Start/Stop

### *Monitoring Points*

- Supply Air Temperature
- Mixed Air Temperature
- Hot Water Pump Status
- Supply Fan Status
- Return Fan Status

## **Hot Water Reheat Coils (18)**

### *Control Points.*

- Hot Water Valve Actuation

### *Monitoring Points*

- Space Temperature
- Space Temperature Setpoint Adj.
- Space Override
- Supply Air Temperature

## **Roof Top Unit**

### *Control Points*

- Supply Fan Start/Stop
- Cooling Enable/Disable
- Heating Enable/Disable

### *Monitoring Points*

- Space Temperature
- Space Temperature Setpoint Adj.
- Space Override
- Supply Fan Status
- Supply Air Temperature

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## **Miscellaneous**

### *Control Points*

- Exhaust Fan Enable/Disable\*

### *Monitoring Points*

- Outside Air Temperature

\* - Exhaust Fans will be grouped (zoned) to match schedules of units and will be determined by Provider's Subcontractor.

- Training shall be provided by Provider's Subcontractor and/or BAS contractor on the operation of the

BAS system provided under this Agreement. This training will be BAS type and building specific. Training will be scheduled 14 days prior with the Customer representatives.

- A Commissioning (Cx) Guideline will be developed for each ECM. A Project Cx Plan will incorporate each individual Cx Guideline defining subcontractor responsibilities and requirements. As applicable, pre-functional, functional, and performance verification testing will be completed for each ECM. A final Cx Report will be provided documenting compliance with design, proper installation per specifications and standards, proper operation, and individual ECM functionality.

### **ECM 592.31 -Lighting Retrofit/Replacement**

The facility contains older lighting technologies in need of retrofit or replacement. The following shall take place:

Incandescent flood lamps shall be replaced with LED and CFL

- Retrofit T1 2 to T8

Total fixture retrofits: 1

Total fixture replacements: 1

- ® Training shall be provided by Provider's Subcontractor and manufacturer representative on the operation of the lighting sensor provided as part of this project. Training will be scheduled 14 days prior with the Customer representatives.
- A Commissioning (Cx) Guideline will be developed for each ECM. A Project Cx Plan will incorporate each individual Cx Guideline defining subcontractor responsibilities and requirements. As applicable, pre-functional, functional, and performance verification testing will be completed for each ECM. A final Cx Report will be provided documenting compliance with design, proper installation per specifications and standards, proper operation, and individual ECM functionality.

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### **601 - Martin Luther King Community Center ECM 601.10 - Install**

#### **Building Automation System**

The following is a list of the points that will be controlled with the BAS. Motors shall be replaced where new VFD's are being installed. Pneumatic damper actuators shall be replaced with electronic actuators and pneumatic hydronic valves shall be controlled via PE switch:

#### **Hot Water System**

### Hot Water System

#### *Control Points*

#### *Monitoring Points*

- Boiler Enable/Disable
- Hot Water Pump 1 Start/Stop
- Hot Water Pump 2 Start/Stop
- Perimeter Bypass Valve Actuation
- Perimeter Heating Pump Start/Stop
- Perimeter Heating Supply Temperature
- Perimeter Heating Return Temperature
- Hot Water Supply Temperature
- Hot Water Return Temperature
- Hot Water Pump 1 Status » Hot Water Pump 2 Status
- Perimeter Hot Water Pump Status

### Chilled Water System

#### *Monitoring Points*

Chiller 1 Enable/Disable Chiller 2 Enable/Disable Chilled Water Pump 1 Start/Stop Chilled Water Pump 2 Start/Stop

- Chilled Water Supply Temperature
- Chilled Water Return Temperature
- Chiller 1 Supply Temperature
- Chiller 2 Supply Temperature
- Chiller 1 Amps " Chiller 2 Amps
- Chiller 1 Alarm
- Chiller 2 Alarm
- Chilled Water Pump 1 Status
- Chilled Water Pump 2 Status

### Condenser Water System

#### *Monitoring Points*

Cooling Tower Fan Start/Stop Condenser Water Pump 1 Start/Stop

Condenser Water Pump 2 Start/Stop

- Condenser Water Supply Temperature
- Condenser Water Return Temperature
- Cooling Tower Fan Status
- Condenser Water Pump 1 Status
- Condenser Water Pump 2 Status

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### Multi-Zone Air Handling Unit

#### *Control Points*

- Hot Water Valve Actuation
- Chilled Water Valve Actuation
- Outside/Return Air Damper Actuation
- Exhaust Air Damper Actuation
- Hot Water Pump Start/Stop

- Supply Fan Start/Stop
- Supply Fan VFD Speed
- Return Fan Start/Stop
- Return Fan VFD Speed
- Zone # Volume Damper Actuation (9)
- Zone # Damper Actuation (9)

*Monitoring Points*

- Hot Deck Temperature
- Cold Deck Temperature
- Mixed Air Temperature
- Zone # Supply Air Temperature (9)
- » Supply Fan VFD Feedback
- Return Fan VFD Feedback
- Supply Air Static Pressure
- Hot Water Pump Status
- Space Temperature (9)
- Space Temperature Setpoint Adj. (9)
- Space Override (9)

Variable Volume Air Handling Units (2)

*Control Points*

*Monitoring Points*

- Chilled Water Valve Actuation
- Hot Water Valve Actuation
- Outside/Return Air Damper Actuation
- Exhaust Air Damper Actuation
- Hot Water Pump Start/Stop
- Supply Fan Start/Stop
- Supply Fan VFD Speed
- Return Fan Start/Stop
- Return Fan VFD Speed
- " Supply Air Temperature
- Mixed Air Temperature
- Supply Air Static Pressure
- Supply Fan Speed VFD Feedback
- Return Fan Speed VFD Feedback
- Hot Water Pump Status

Miscellaneous

*Control Points*

*Monitoring Points*

- Outside Air Temperature
- Outside Air Humidity
- Building Pressurization

Training shall be provided by Provider's Subcontractor and/or BAS contractor on the operation of the BAS system provided under this Agreement. This training will be BAS type and building specific. Training will be scheduled 14 days prior with the Customer representatives.

A Commissioning (Cx) Guideline will be developed for each ECM. A Project Cx Plan will incorporate each individual Cx Guideline defining subcontractor responsibilities and requirements. As applicable, pre-functional, functional, and performance verification testing will be completed for each ECM. A final Cx Report will be provided

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documenting compliance with design, proper installation per specifications and standards, proper operation, and individual ECM functionality.

### **ECM 601.11 - Implement Demand Controlled Ventilation for AHU 3**

AHU 3 serves a large volume of space with variable occupancy.

This ECM will install CO2 sensors to monitor occupancy in the space. Outdoor air rates will modulate to properly serve the space to code requirements and save energy.

- Training shall be provided by Provider's Subcontractor and/or BAS contractor on the operation of the BAS system provided under this Agreement. This training will be BAS type and building specific. Training will be scheduled 14 days prior with the Customer representatives.
- A Commissioning (Cx) Guideline will be developed for each ECM. A Project Cx Plan will incorporate each individual Cx Guideline defining subcontractor responsibilities and requirements. As applicable, pre-functional, functional, and performance verification testing will be completed for each ECM. A final Cx Report will be provided documenting compliance with design, proper installation per specifications ' and standards, proper operation, and individual ECM functionality.

640 - Department of Public Health ECM 640.10

#### **- Front End Tune-up**

The existing Siemens system will be investigated in order to determine proper setpoints and schedules. Those setpoints and schedules will then be implemented to allow for both building comfort and energy saving opportunities.

- Training shall be provided by Provider's Subcontractor and/or BAS contractor on the operation of the BAS system provided under this Agreement. This training will be BAS type and building specific. Training will be scheduled 14 days prior with the Customer representatives.
- A Commissioning (Cx) Guideline will be developed for each ECM. A Project Cx Plan will incorporate each individual Cx Guideline defining subcontractor responsibilities and requirements. As applicable, pre-functional, functional, and performance verification testing will be completed for each ECM. A final Cx Report will be provided documenting compliance with design, proper installation per specifications and standards, proper operation, and individual ECM functionality.

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#### **ECM 640.20 - Refurbish HVAC Equipment**

Department of Public Health has a two Trane air-cooled condensers.

This ECM involves cleaning the condenser coils and applying an aluminum-based coating which provides better heat exchange properties and protects the existing coil.

- Training shall be provided by Provider's Subcontractor and the equipment manufacturer's representative on the operation and maintenance of the mechanical equipment provided in this project. Training will be scheduled 14 days prior with the Customer representatives.
- A Commissioning (Cx) Guideline will be developed for each ECM. A Project Cx Plan will incorporate each individual Cx Guideline defining subcontractor responsibilities and requirements. As applicable, pre-functional, functional, and performance verification testing will be completed for each ECM. A final Cx Report will be provided documenting compliance with design, proper installation per specifications and standards, proper operation, and individual ECM functionality.

#### **ECM 640.30 -Install Lighting Occupancy Sensors**

Logged data has shown opportunity to take advantage of occupancy-based lighting control. The below selected area types shall receive either a ceiling or wall switch type lighting occupancy sensor:

Private Office - Meeting Room  
Open Space Restroom Storage  
Hallway

Total wall switch type occupancy sensors: 14 Total ceiling

type occupancy sensors: 24

- » Training shall be provided by Provider's Subcontractor and manufacturer representative on the operation of the lighting sensor provided as part of this project. Training will be scheduled 14 days prior with the Customer representatives.
- A Commissioning (Cx) Guideline will be developed for each ECM. A Project Cx Plan will incorporate each individual Cx Guideline defining subcontractor responsibilities and requirements. As applicable, pre-functional, functional, and performance verification testing will be completed for each ECM. A final Cx Report will be provided documenting compliance with design, proper installation per specifications and standards, proper operation, and individual ECM functionality.



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## 668 - 15<sup>th</sup> District Police

### ECM 668.10 - Retrocommission Existing Building Automation System

The existing Staefa controls system will be modified to include the addition of time of day scheduling to equipment serving routinely unoccupied areas. In addition, equipment selected by Schneider will have their sequence of operations modified to original design intent with a focus on energy savings.

- « Training shall be provided by Provider's Subcontractor and/or BAS contractor on the operation of the BAS system provided under this Agreement. This training will be BAS type and building specific. Training will be scheduled 14 days prior with the Customer representatives.
- » *No warrantee period outside of Section 8 of the Contract.*
- A Commissioning (Cx) Guideline will be developed for each ECM. A Project Cx Plan will incorporate each individual Cx Guideline defining subcontractor responsibilities and requirements. As applicable, pre-functional, functional, and performance verification testing will be completed for each ECM. A final Cx Report will be provided documenting compliance with design, proper installation per specifications and standards, proper operation, and individual ECM functionality.

## 687 - Juvenile Detention Center Police

### ECM 687.30 -Install Lighting Occupancy Sensors

Logged data has shown opportunity to take advantage of occupancy-based lighting control. The below selected area types shall receive either a ceiling or wall switch type lighting occupancy sensor:

- Private Office
- Meeting Room
- Open Space
- Restroom
- Storage
- Hallway

Total wall switch type occupancy sensors: 21 Total ceiling type  
occupancy sensors: 26

- Training shall be provided by Provider's Subcontractor and manufacturer representative on the operation of the lighting sensor provided as part of this project. Training will be scheduled 14 days prior with the Customer representatives.
- A Commissioning (Cx) Guideline will be developed for each ECM. A Project Cx Plan will incorporate each individual Cx Guideline defining subcontractor responsibilities and requirements. As applicable, pre-functional, functional, and performance verification testing will be completed for each ECM. A final Cx Report will be provided

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documenting compliance with design, proper installation per specifications and standards, proper operation, and individual ECM functionality.

### **ECM 687.31 -Lighting Retrofit/Replacement**

The facility contains older lighting technologies in need of retrofit or replacement. The following shall take place:

Incandescent flood lamps shall be replaced with LED and CFL Replace metal-halide with T5 fluorescent - Replace incandescent exits with LED

Total fixture retrofits: 3

Total fixture replacements: 2

- Training shall be provided by Provider's Subcontractor and manufacturer representative on the operation of the lighting sensor provided as part of this project. Training will be scheduled 14 days prior with the Customer representatives.
- A Commissioning (Cx) Guideline will be developed for each ECM. A Project Cx Plan will incorporate each individual Cx Guideline defining subcontractor responsibilities and requirements. As applicable, pre-functional, functional, and performance verification testing will be completed for each ECM. A final Cx Report will be provided documenting compliance with design, proper installation per specifications and standards, proper operation, and individual ECM functionality.

### **706 - 8<sup>th</sup> District Police**

#### **ECM 706.10 - Retrocommission Existing Building Automation System**

The existing Staefa controls system will be modified to include the addition of time of day scheduling to equipment serving routinely unoccupied areas. In addition, equipment selected by Provider's Subcontractor will have their sequence of operations modified to original design intent with a focus on energy savings.

- Training shall be provided by Provider's Subcontractor and/or BAS contractor on the operation of the BAS system provided under this Agreement. This training will be BAS type and building specific. Training will be scheduled 14 days prior with the Customer representatives.
- A Commissioning (Cx) Guideline will be developed for each ECM. A Project Cx Plan will incorporate each individual Cx Guideline defining subcontractor responsibilities and requirements. As applicable, pre-functional, functional, and performance verification testing will be completed for each ECM. A final Cx Report will be provided documenting compliance with design, proper installation per specifications and standards, proper operation, and individual ECM functionality.

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### **783 - 9<sup>th</sup> District Police**

### **ECM 783.10 - Retrocommission Existing Building Automation System**

The existing Invensys controls system will be modified to include the addition of time of day scheduling to equipment serving routinely unoccupied areas. In addition, equipment selected by Provider's Subcontractor will have their sequence of operations modified to original design intent with a focus on energy savings.

- Training shall be provided by Provider's Subcontractor and/or BAS contractor on the operation of the BAS system provided under this Agreement. This training will be BAS type and building specific. Training will be scheduled 14 days prior with the Customer representatives.
- « A Commissioning (Cx) Guideline will be developed for each ECM. A Project Cx Plan will incorporate each individual Cx Guideline defining subcontractor responsibilities and requirements. As applicable, pre-functional, functional, and performance verification testing will be completed for each ECM. A final Cx Report will be provided documenting compliance with design, proper installation per specifications and standards, proper operation, and individual ECM functionality.

### **808 - 23<sup>rd</sup>/19<sup>th</sup> District Police**

#### **ECM 808.10 - Retrocommission Existing Building Automation System**

The existing Invensys controls system will be modified to include the addition of time of day scheduling to equipment serving routinely unoccupied areas. In addition, equipment selected by Provider's Subcontractor will have their sequence of operations modified to original design intent with a focus on energy savings.

- Training shall be provided by Provider's Subcontractor and/or BAS contractor on the operation of the BAS system provided under this Agreement. This training will be BAS type and building specific. Training will be scheduled 14 days prior with the Customer representatives.
- A Commissioning (Cx) Guideline will be developed for each ECM. A Project Cx Plan will incorporate each individual Cx Guideline defining subcontractor responsibilities and requirements. As applicable, pre-functional, functional, and performance verification testing will be completed for each ECM. A final Cx Report will be provided documenting compliance with design, proper installation per specifications and standards, proper operation, and individual ECM functionality.

### **Computerized Maintenance Management System**

The Provider shall provide a web-based computerized maintenance management system ("CMMS") for the Project capable of maintaining a computer database of information about the Customer's maintenance operations. This information, is intended to help maintenance workers

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do their jobs more effectively and to verify compliance of required maintenance. In addition to generating work orders for maintenance staff, the CMMS will be used to produce status reports and documents giving details or summaries of maintenance activities.

### **Section IV. Construction Schedule**

[Attached]

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Construction Schedule

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## Exhibit B

### Savings Methodology and Calculation

#### I. Expected Savings Production

The Expected Savings Production shall equal the total annual Savings for any given year during the Term following the Substantial Completion Date (the "Performance Period") or the aggregate of such total annual Savings for the remainder of the Performance Period as set forth in the following table, subject to any applicable adjustments as set forth in the Agreement and this Exhibit B.

Year	Measured Savings	Non-Measured Savings	Total Savings	Semi-annual Invoice Amount
0	\$0	\$0	\$0 \$0	
1	\$406,433	\$22,433	\$428,866	\$214,433
2	\$406,433	\$22,433	\$428,866	\$214,433
3	\$406,433	\$22,433	\$428,866	\$214,433
4	\$406,433	\$22,433	\$428,866	\$214,433
5	\$406,433	\$22,433	\$428,866	\$214,433
6	\$406,433	\$22,433	\$428,866	\$214,433
7	\$406,433	\$22,433	\$428,866	\$214,433
8	\$406,433	\$22,433	\$428,866	\$214,433
9	\$406,433	\$22,433	\$428,866	\$214,433
10	\$406,433	\$22,433	\$428,866	\$214,433
11	\$406,433	\$22,433	\$428,866	\$214,433
12	\$406,433	\$22,433	\$428,866	\$214,433
13	\$406,433	\$22,433	\$428,866	\$214,433
13	14		\$406,433	\$22,433
	\$428,866	\$214,433		
	\$5,600,062	\$214,062	\$5,814,124	

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\*Invoice for Expected Savings Production for period ended April 30, 2029 is payable no later than April 29, 2029 in the amount of \$134,042 as a ratable adjustment of annual Expected Savings Production.

Upon an extension of the Term pursuant to Section 2.1(b) of this Agreement, (a) the Performance Period shall be extended for a corresponding amount of time, (b) the Expected Savings Production for each year of the extended Term shall be an amount equal to the total savings for Year 14 above; and (c) the Savings for each year of the extended Term shall equal the Expected Savings Production for each year of the extended Term and no measurement of Savings shall apply in determining the Customer's payment obligations under this Agreement.

## II. Methodology and Baseline 1. Overview

This Section II describes the measurement and verification ("M&V") methodology that

### B-1

will be applied to the Project, and each separate ECM included within the Project to determine Savings.

The M&V methodology to be employed for the Project is consistent with the U.S. Department of Energy ("DOE") and International Performance Monitoring and Verification Protocol ("IPMVP") options. The majority of the Savings are measured with an IPMVP Option C approach. The pre-project utility use will be adjusted to represent the energy use which would have occurred during the Performance Period if no project had been performed. The difference between the Adjusted Baseline (defined herein) energy use and the Performance Period energy use, as measured by the utility bills, will be the savings for that period. Some of the lighting Savings are measured one time with an IPMVP Option A strategy. The Savings in the 911 Center are measured with an IPMVP Option D strategy with models calibrated to pre-project energy use.

## 2. Baseline

The baseline is that set of parameters that describes both the energy consumed in the base year calculation for each type of energy consumed ("Base Year") and the conditions that caused that consumption to occur, including utility consumption, building use information, weather data, and other information as may be necessary to describe the Base Year conditions (collectively, the "Baseline"). For electricity and natural gas, the Base Year is typically the twelve-month total consumption between September 1, 2011 and October 31, 2012. Field collected data and inputs and outputs used in the Baseline calculations are summarized in the "Baseline Assumptions" set forth on Attachment 1 to this Exhibit B. The Baseline is further described in Sections 4 and 5 of this Exhibit B. For each Performance Period Year, the Parties will determine any Causes for Adjustment pursuant to Section 6 of this Exhibit to establish certain adjustments to the Baseline used to measure energy use at the Facilities for that Performance Period year ("Adjusted Baseline").

## 3. Determination of Savings

### A. Savings Amount

The amount of Savings will be determined as follows:

© CM + CNT

$S = S_{MVA} + S_{NVA}$

Where: \$ = Savings

\$<sub>m</sub> = Measured Savings Amount, calculated as set forth in Subsection 3.B below.

- \$<sub>n</sub> = Non-Measured Savings Amount, stipulated as set forth in Subsection 3.C below.

Installation Period Savings may be added to the Savings for the first Performance Period Year and the final Performance Period year.

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### B. Measured Savings Amount

The Measured Savings Amount for any Performance Period year will be the sum of the "Measured Energy Savings" for all savings categories (i.e., kWh, Therms, or kGals). The Measured Energy Savings for each savings category will be determined as follows:

$$S_o = E_o * \$/\text{Unit}$$

$$E_o = E_{mb} - E_{mg}$$

Where:

\$<sub>o</sub> - Measured Energy Savings

E<sub>o</sub> = Measured Energy Units Saved (including partially measured and stipulated, as further described in this Exhibit B)

\$/Unit = Cost of Energy per Unit Measured, as specified in this Exhibit B, Subsection

## 4.C

E<sub>mb</sub> = Measured Base Year Consumption or Demand

E<sub>mg</sub> = Measured Performance Period Year Consumption or Demand

The process for calculating Measured Energy Units Saved for each ECM is set forth below.

### **Option C - Whole Term**

- A. Overview of M&V Plan, and Savings Calculation
- B. Energy Savings Calculations
- C. Key Parameters Measurement Strategy
- D. Parameter Estimates
- E. Cost Savings Calculations

A. Overview of M&V Plan, and Savings Calculation

A. OVERVIEW OF M&V Plan, and Savings Calculation

The method of determining Savings described in this section uses "Option C - Whole Facility (Main Meter Measurement)" as described in the International Measurement and Verification Protocol (TPMVP Volume I, EVO 10000-1:2010). The remainder of this section provides the Savings calculations, the key parameter measurements that will be conducted, the parameters that will be estimated and those values, and how cost savings will be calculated.

Meters

\*-■ ■- ---

The following meters will be used to measure actual energy consumption for both the Base Year and Performance Period.

B-3

**Building Summary**

The following table lists the buildings that were served by meters during the Base Year period.

<sup>2)</sup>

## B. Energy Savings Calculations

Provided within this section is an explanation of the calculations that will be used to perform Savings calculations for this particular ECM.

### **Overview of Savings Methodology**

Savings will be measured by comparing the Performance Period's total energy consumption and demand to the total energy consumption and demand for the same area in the Base Year period by-utilizing energy, meter data. Base year energy and demand will be adjusted for differences in weather, facility operation and facility modifications to estimate how much energy would have been used in the Performance Period if the energy conservation measures had not been implemented. The energy saved is the difference between the adjusted Base Year consumption and the Performance Period consumption. The demand saved is the difference

B-4

between the adjusted Base Year demand and the Performance Period demand. This process will be followed for each related fuel type.

### **Equations and Analysis of Energy Savings**

Savings are calculated as the difference in energy usage from the Baseline conditions after adjusting for all necessary changes and the Performance Period conditions. This is shown in Equation 1 below:

Equation 1 - Energy Consumption Savings

$$F_{\text{save}} = F_{\text{Baseline}} - F_{\text{Performance}}$$

$F_{\text{save}}$  = Adjusted Baseline Performance

Where,

$E_{\text{save}}$  = Energy savings

$E_{\text{Baseline}}$  - Adjusted energy usage of facility equipment pre-implementation

$E_{\text{Performance}}$  = Energy usage of facility equipment post-implementation

The baseline is that set of parameters that describes both the energy consumed in the Base Year and the conditions that caused that consumption to occur. This set of parameters includes utility consumption, facility use information, weather data and other information as may be necessary to describe the Base Year conditions. In addition, the baseline includes certain mathematical values calculated by a model that are used to correlate

In addition, the baseline includes certain mathematical values, calculated by a model, that are used to correlate the Base Year energy consumption with the factors that caused that consumption and is defined by Equation 2 below:

Equation 2 - Baseline Energy Use

$$E_{\text{Sas}}^{\wedge} = \sum C_D \times T, + C_H \times \text{HDD}, + C_c \times \text{CDD}, + \text{CO}_i + \text{CM}_j$$

Where,

n = Number of billing periods in year.

E<sub>Baseline</sub> = Adjusted baseline period consumption

C<sub>d</sub> = A constant representing units of consumption per billing period day T, = Number of days in billing period.

C<sub>h</sub> = A constant representing units of consumption per heating degree day

HDD<sub>j</sub> = Heating degree days in the current billing period

C<sub>c</sub> = A constant representing units of consumption per cooling degree day

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CDD<sub>j</sub> = Cooling degree days in the current billing period

CO<sub>i</sub> = Offset for the current billing period

CM<sub>j</sub> = Other adjustments for the current billing period

Customer agrees to accept modifications to this baseline that are necessary to account for changes in the facilities and their use which may have occurred prior to the execution of this Agreement but come to the attention of Provider or Provider's Subcontractor after the execution of this Agreement. Typical adjustments are provided in detail in Exhibit B, Section 6.

Demand savings are computed similarly to the consumption savings, as shown by Equation 3 below:

Equation 3 - Peak Demand Savings

$$E^{\wedge}_{\text{save}} \sim \frac{B_{\text{ote}}}{f_{\text{ine}}} \times \text{Performance}$$

Where,

D<sub>save</sub> ~ Demand savings

D<sub>Baseline</sub> = Adjusted energy demand of facility equipment pre-implementation D<sub>performance</sub> =

Energy demand of facility equipment post-implementation

Energy demand of facility equipment post-implementation

Adjusted Base Year demand is calculated as demonstrated in Equation 4 below:

Equation 4 - Baseline Peak Demand

$$D_{ne} = Z \left( D_D + D_{HX} \left( \frac{HDD}{CDD} \right) + D_{CX} + DO_j + DM_i \right)$$

Where, .

$D_D$  = A constant representing units of demand per billing period  
 $D_{HX}$  = A constant representing units of demand per heating degree day per day  
 $D_{CX}$  = A constant representing units of demand per cooling degree day per day  
 $D_D$  = Offset for the current billing period

$DM_i$  ~ Other adjustments for the current billing period

### C. Key Parameters Measurement Strategy

Measurement and documentation strategies for each project phase are outline below.

## B-6

### **Pre-Implementation Measurements and Documentation**

Customer will provide the Provider and its Subcontractor with monthly utility bills and all delivery invoices for the accounts included in Paragraph A for a minimum of twenty-four (24) months of historical utility data that is to represent a complete span of two years of energy usage. Customer will also provide Provider and its Subcontractor with monthly utility bills and all delivery invoices for the accounts included in Paragraph A from the end of that twenty-four (24) month data set through the Substantial Completion Date within the timelines specified in this Agreement.

The Provider and/or its Subcontractor will collect daily high and low temperature data from the weather station identified in Section 4 below.

### **Post-Implementation Measurements and Documentation**

No short term verification is performed using this method. All post-implementation measurements are conducted during the Performance Period.

### **Performance Period Measurements and Documentation**

Throughout the Performance Period, Customer will provide ESCO with the monthly utility bills and all delivery invoices for the accounts included in Paragraph A within the timelines specified in this Agreement.

The Provider and/or its Subcontractor will collect daily high and low temperature data from the weather station identified in Section 4 below.

### D. Parameter Estimates

The parameters defined in the equations outlined in Paragraph B that are estimated are determined through engineering analysis of at least twelve (12) months of the pre-implementation measured utility data. This is done to establish the relationship between the weather, billing period length, any other independent factors, and the consumption and demand associated with a particular account. The end result of this analysis is the set of coefficients used in the equations defined in Paragraph B to fully define the baseline for each account. The values will be presented to Customer by the Provider and/or its Subcontractor before the Substantial Completion Date and will be documented and agreed upon by both parties in the Meter Tuning Summary to be provided by the Provider's Subcontractor. Below are definitions of each of the estimated parameters included in Paragraph B;

- The values of CD and DD represent the base load consumption and demand of the utility usage of a particular meter and are equivalent to the weather independent energy usage and demand.
- The values of CH and DH represent the heating consumption and demand of the utility usage of a particular meter and are equivalent to the weather dependent energy usage and demand. They are associated with a consumption and demand heating balance point specific to that account.

#### B-7

- The values of CC and DC represent the cooling consumption and demand of the utility usage of a particular meter and are equivalent to the weather dependent energy usage and demand. -They are associated with a consumption and demand cooling balance point specific to that account.
- The billing period values of COi and DOi represent the portion of the energy consumption and demand that cannot be accounted for with the weather independent and weather dependent consumption.

Each of these parameters will be determined based on the relationship of the baseline period energy and demand and the independent factors. During the Performance Period they will be used to estimate the energy use and demand that would have occurred if the Project had not been performed. To accomplish this, COi and DOi will be pro-rated to the Performance Period billing periods for each account.

The terms CMi and DMi are included in the equations in Paragraph B to account for changes in the Performance Period energy use and demand from the baseline period energy use and demand on the accounts in Paragraph A for any causes unrelated to the project as defined in Exhibit B. The procedures for developing these estimates vary with the specific causes for the adjustments. The requirements for detennining these values and any measurements necessary to support these estimates are defined in Exhibit B.

#### E. Cost Savings Calculations

Provided below are the methods and equations used to determine the cost savings associated with this particular methodology.

Cost Savings are calculated as the difference between the baseline and Performance Period energy costs using the utility rates as defined in this Exhibit B, Sub-section 4.B. The applicable utility rates will be applied to the baseline and Performance Period energy use for the accounts in Paragraph A. Equation 5 will be used to compute the total cost savings for each Performance Period year.

#### Equation 5 - Total Cost Savings



Where,

S<sub>save</sub> - Performance Period year cost savings

Billing period k baseline utility cost for account i

S<sub>performance</sub> = Billing period k performance period utility cost for account i

n = Total number of accounts

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q = Total number of billing periods for account i

#### **Option D - Calibrated Computer Simulation**

- A. Overview of M&V Plan, and Savings Calculation
- B. Energy Savings Calculations
- C. Key Parameters Measurement Strategy
- D. Parameter Estimates
- E. Cost Savings Calculations
- F. Installation Period Measurement Approach

#### **A. Overview of M&V Plan, and Savings Calculation**

The method of determining Savings described in this section uses "Option D - Calibrated Simulation" as described in the International Performance Measurement and Verification Protocol (IPMVP). In brief, the Savings resulting from this project will be measured as follows:

A computer simulation will be used to estimate the post-installation energy use. The metered pre-project energy use will be used to calibrate a computer simulation of the Facilities listed in the table in Section C. This calibrated computer model will be modified by implementing the effect of the ECMs to generate a simulation of the post-installation energy use. The Savings from the project will be the difference between the Baseline simulated energy use and the post-installation simulated energy use.

#### **B. Energy Savings Calculations**

Energy and demand units saved will be determined by the following equation:

$$E_s = E_B - E_a$$

Where:

E<sub>s</sub> - Energy Units Saved

E<sub>B</sub> - Simulated Baseline Energy Use

E<sub>a</sub> - Simulated Performance Period (post-retrofit) Energy Use Baseline

**Ea – Simulated Performance Period (post-retrofit) Energy Use Baseline**

**Energy Use**

*Normalized Base Year*

The Normalized Base Year energy use is the output of the calibrated computer simulation, modified to account for the conditions before the project. The following steps outline the process for calibrating the computer simulation and determining the Normalized Base Year energy use.

**B-9**

*Collect all Measurements and Finalize Calibration Data*

During the first year after the conclusion of construction, all additional information to be used for calibrating the pre-project computer model will be collected. If data is missing or data collection errors are present, the missing data will be estimated. Before advancing any further in the model calibration process, this estimated data will be presented for review and approval.

*Weather Normalize the Utility Data*

In order to remove the effects of the single measurement year's weather from the savings calculation, the utility data will be modified to represent the level of energy use in a typical year. This is accomplished by modeling the relationship between weather and energy use during the pre-project measurement year. The "Normal" set of weather for the same weather station will be used as an input to the weather model. The data to be used for the weather normalization will use the same station identified in Exhibit B, Sub-section 4.A. If a statistically significant relationship between the measurement year's weather and the measurement year's energy use cannot be derived with this simplistic model, this step will be delayed. In that case, the computer simulation will not be created and calibrated using normalized data, but will instead be created and calibrated using measurement period data. The weather input to the computer simulation will then be adjusted to calculate the normalized utility data.

*Calibrate the Computer Simulation*

Using the Normalized Utility Data and all other information collected about the pre-installation Facilities, a computer simulation of each facility will be created and calibrated. The software used for these models is eQUEST. Each model is to be calibrated such that the cumulative variance over the year between the software predicted energy use and the normalized energy use is less than 5%. Each model is also to be calibrated such that the variance in any calendar month is no more than 15% of the normalized energy use. This model is to be calibrated with assumptions, estimations, and measured data from the actual pre-project period conditions. Once the model for each facility has been satisfactorily calibrated, the model results will be available for review.

**Performance Period (post-retrofit) Energy**

*Modify the Computer Simulation to Include ECMs*

To simulate the post-retrofit energy use, the ECMs will be included in the computer simulation. Each ECM will be included individually so the savings performance can be analyzed by ECM. Measurements taken

ECM will be included individually so the savings performance can be analyzed by ECM. Measurements taken during the Investment Grade Audit may be required to properly model pieces of equipment that have experienced significant changes.

### C. Key Parameters Measurement Strategy

The pre-retrofit energy use that is to be used for calibrating the computer simulation for the facility was retrieved from the account listed in the table below.

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## **Facility Data**

During the Investment Grade Audit, detailed facility information is collected for use in Savings projections. Throughout the construction period and first Performance Period year, detailed information about the post-retrofit conditions is collected as well. Trend data from the Building Automation System is also collected during the audit and performance phases. All facility information collected during these periods will be used to assist in the calibration of the computer models. This will include, but is not limited to, variables such as equipment size, operating hours, and temperature set-points.

### D. Parameter Estimates

Calibration of the models will require making estimates in place of measured data for many parameters. Because the data collected for each building and simulation during the Investment Grade Audit and post-retrofit periods will be different, it is not possible to individually list all estimated parameters. In all cases where reliable measured data has been collected by the Provider or the Provider's Subcontractor, that data will be used in place of estimated parameters.

### E. Cost Savings Calculations

Provided below are the methods and equations used to determine the cost savings associated with this particular methodology.

Cost Savings are calculated as the difference between the adjusted baseline and Performance Period energy costs using the utility rates as defined in Exhibit B, Sub-section 4.B. The applicable utility rates will be applied to the baseline and Performance Period energy use for the accounts in Paragraph C. Equation 5 will be used to compute the total cost savings for each Performance Period Year.

Equation 5 - Total Cost Savings

7. Baseline & Performance Data

Where,

$S_{save} = \text{Performance Period year cost savings}$

B-II

i

$B_{asoime} \sim$  Billing period k adjusted baseline (after implementing the building code adjustment)  
utility cost for account i

$S_{performance} = \text{Billing period k performance period utility cost for account i}$

n = Total number of accounts

q = Total number of billing periods for account i

#### F. Installation Period Measurement Approach

Once the model is calibrated, each ECM will be implemented, one at a time, in the order of implementation. The baseline computer simulation will be compared to the completed ECM simulations to determine what savings have been achieved.

#### **Option A - Lighting Efficiency and Controls**

- A. Overview of M&V Plan, and Savings Calculation
- B. Energy Savings Calculations
- C. Key Parameter Measurement Strategy
- D. Parameter Estimates
- E. Cost Savings Calculations

#### A. Overview of M&V Plan, and Savings Calculation

Savings in this section are determined by using an "Option A: Retrofit Isolation - Key Parameter Measurement" approach as described in the International Performance Measurement & Verification Protocol (IPMVP Volume I, EVO 10000-1:2010). The remainder of this section describes the energy savings calculations, key parameter measurements that will be conducted, parameters that will be estimated and those values, and how cost savings will be calculated. The energy and cost savings that are determined using this approach will be the annual savings values used for each year of the Performance Period.

#### B. Energy Savings Calculations

Provided within this section is an explanation of the calculations that will be used to perform energy savings calculations for this verification method

savings calculations for this verification method.

### Equations and Analysis of Energy Savings

Savings are calculated as the difference in energy usage from the baseline conditions, and the Performance Period conditions

For energy demand, the demand savings will be determined for each fixture and summed for all fixtures that will be retrofitted using the following formula:

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Equation 1 - Energy Demand Savings

-0\*12]

Where,

$D_{save}$  = Demand savings  
 $n$  = Number of fixtures

$E_{pre}$  = Power usage of the baseline lighting conditions

$E_{post}$  = Power usage of the Performance Period lighting conditions

For energy consumption, the energy savings will be determined for each fixture and summed for all fixtures that will be retrofitted using the following formula:

Equation 2 - Energy Consumption Savings

Where,

$E_{save}$  = Energy savings

$H_{pre}$  = Baseline burn hours

$H_{post}$  = Performance Period burn hours

The energy usage of both the baseline and Performance Period lighting conditions are calculated utilizing the same equations. The measured parameters collected during the pre-implementation period will be used to compute the baseline fixture power use. The measured parameters collected during the post-implementation period will be used to compute the Performance Period fixture power use. The equations for a single fixture for both the baseline and Performance Period are shown below using the baseline calculations as an example.

### Equation 3 - Total Fixture Power Use

$$P_{Pre} = P_{xi.Pre} + H_{tut}$$

. Where,

$P_{Fxt,Pre}$  = Pre-implementation direct power usage of light fixture  
 $H_{cat}$  = Indirect heating power usage associated with the light fixture

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- Heating System Power Use (penalty)

Where,

HF = Heating Efficiency Conversion Factor (negative) C. Key

#### Parameter Measurement Strategy

This section outlines the measurements that will be conducted to determine the measured values in the equations provided above in Paragraph B. For this lighting project, the key parameters that will be measured are the power consumption of each fixture type and the burn hours for each occupancy type. Measurement and documentation strategies for each project phase are outlined below.

#### Pre-Implementation Measurements and Documentation

Power measurements will be taken on a sample set of each baseline fixture type to determine the average power use for each fixture type. At least eight (8) measurements will be taken for each fixture type (unless fewer exist). Measurements will continue to be taken for a given fixture type until the 95% confidence interval for the true population mean spans no more than 10% above and below the mean of the sample (or until all fixtures have been measured). The mean of this sample set will be treated as the power consumption for that fixture type for all savings calculations.

Lighting loggers and occupancy sensors were utilized to determine the baseline and Performance Period burn hours. The lighting loggers were used to calculate the baseline burn hours. The occupancy sensors determine the necessary operation of the lighting fixtures to meet the lighting needs. Those annual hours are the Performance Period burn hours.

#### Post-Implementation Measurements and Documentation

Power measurements will be taken on a sample set of each Performance Period fixture type to determine the average power use for each fixture type. At least eight (8) measurements will be taken for each fixture type (unless fewer exist). Measurements will continue to be taken for a given fixture type until the 95% confidence interval for the true population mean spans no more than 10% above and below the mean of the

confidence interval for the true population mean spans no more than 10% above and below the mean of the sample (or until all fixtures have been measured). The mean of this sample set will be treated as the power consumption for that fixture type for all savings calculations. The preferred locations for measurements for the new retrofit types will be locations where some previous measurement was taken. The number of post-retrofit samples measured is independent from the number of pre-retrofit samples taken. These measurements are taken to determine the average power use of each fixture type, not the reduction of power use in any specific locations. All measurements will be taken using the same equipment and will be calibrated.

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### Performance Period Measurements and Documentation

No additional measurements will be taken during the Performance Period of this M&V strategy.

#### D. Parameter Estimates

Of the parameters identified under the equations for energy savings in Section B, several of the parameters are estimates, and will not be measured during any period of the project. Of the variables identified, the parameters that will be estimated for this particular ECM and M&V strategy include: burn hours (for fixtures without occupancy sensors) and heating efficiency conversion factors. Common information that applies to all fixtures groups is included below:

#### E. Cost Savings Calculations

Provided below are the methods and equations used to determine the cost savings associated with this particular methodology.

Cost Savings are calculated as the difference between the baseline and Performance Period energy costs using the utility rates as defined in Exhibit B, Sub-section 4.B. The applicable marginal utility rates will be applied to the baseline and Performance Period energy use as determined in Paragraph B. Equation 5 will be used to compute the total cost savings for each Performance Period year.

#### Equation 5 - Total Cost Savings

$$\$_{\text{save}} = \sum_{i=1}^n (\text{Baseline} - \text{Performance})_i \times \text{Utility Rate}_i$$

Where,

$\$_{\text{save}}$  ~ Performance Period year cost savings

$\text{Baseline}$  ~ Billing period 1 baseline utility cost for account i

$\Delta$ Baseline - Billing period k baseline utility cost for account i

Spferomiance ~ Billing period k performance period utility cost for account i

n = Total number of utility types

### **C. Non - Measured Savings Amount**

#### **A. Overview of M&V Plan, and Savings Calculation**

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#### **B. Annual Non-Measured Savings**

##### **A. Overview of M&V Plan, and Savings Calculation**

The actual Savings associated with this methodology will be agreed upon as outlined herein and will not be verified by measurements after implementation has occurred. Customer and the Provider agree to accept the annual savings values included in Section B with no additional verification. Section B details the agreed upon savings by measure and by category.

#### **B. Annual Non-Measured Savings Utility Cost**

##### **Savings**

Once the construction of each of the ECMs below has reached Substantial Completion, the annual savings in the table below will be prorated monthly for each measure until the Substantial Completion Date. The annual savings in the table below for each measure will be claimed for each Performance Period year.

### **4. Weather Source Energy Rates**

#### **A. Weather Source**

Data for weather-related calculations used in this Agreement will be Daily High-Low Temperatures obtained from the National Weather Service Station at O'Hare International Aii-port. If the data source becomes unavailable or a superior source is identified, the Parties will mutually agree upon an alternative data source. Actual weather data for Performance Period years will be used for Measured Savings Amount calculations.



calculations.

**B.     Energy Rates**

The rates set forth in this Subsection will be used to determine the Measured Savings Amount. The rates set forth below will be escalated by 0% each Performance Period year, commencing with the second Performance Period year.

Utility Company:                      Com Ed/Exelon  
Rate Schedule:                        Electric Rate 2

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Component	Charge	Unit	Description
Exelon Electricity Charge	\$0.03497	Per kWh	
Exelon Transmission	\$0.01273	Per kWh	
Com Ed Distribution	\$0.00111	Per kWh	
Environmental Cost Recovery	\$0.00019	Per kWh	
Energy Efficient Programs	\$0.00184	Per kWh	
Line Loss Charge	\$0.00118	Per kWh	
Demand Charge	\$4.65	PerkW	
Franchise Cost	5.30%	Per\$	Applies to all charges above
State Tax	4.85%	Per\$	Applies to all charges above

Utility Company:                      Com Ed/Exelon  
Rate Schedule:                        Electric Rate 3

Component	Charge	Unit	Description
Exelon Electricity Charge	\$0.03497	Per kWh	
Exelon Transmission	\$0.01273	Per kWh	
Com Ed Distribution	\$0.00111	Per kWh	
Environmental Cost Recovery	\$0.00019	Per kWh	
Energy Efficient Programs	\$0.00184	Per kWh	
Line Loss Charge	\$0.00118	Per kWh	
Demand Charge	\$4.65	PerkW	
Franchise Cost	5.40%	Per \$	Applies to all charges
State Tax	4.70%	Per \$	Applies to all charges

Utility Company:                      Com Ed/Exelon  
Rate Schedule:                        Electric Rate 4

Component	Charge	Unit	Description
Exelon Electricity Charge	\$0.03497	Per kWh	
Exelon Transmission	\$0.01273	Per kWh	
Com Ed Distribution	\$0.00111	Per kWh	
Environmental Cost Recovery	\$0.00019	Per kWh	
Energy Efficient Programs	\$0.00184	Per kWh	

Line Loss Charge	\$0.00118	Per kWh	
Demand Charge	\$5.12	PerkW	
Franchise Cost	5.30%	Per\$	Applies to all charg
State Tax	4.85%	Per\$	Applies to all charg

Utility Company: Com Ed/Exelon

Rate Schedule: Electric Rate 5

Component	Charge	Unit	Description
Exelon Electricity Charge	\$0.03497	Per kWh	
Exelon Transmission	\$0.01273	Per kWh	
Com Ed Distribution	\$0.00111	Per kWh	
Environmental Cost Recovery	\$0.00019	Per kWh	
Energy Efficient Programs	\$0.00184	Per kWh	
Line Loss Charge	\$0.00118	Per kWh	
Demand Charge	\$4.65	PerkW	
Franchise Cost	5.50%	Per \$	Applies to all charg
State Tax	4.70%	Per\$	Applies to all charg

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Utility Company: Com Ed/Exelon

Rate Schedule: Electric Rate 6

Component	Charge	Unit	Description
Exelon Electricity Charge	\$0.03497	Per kWh	
Exelon Transmission	\$0.01273	Per kWh	
Com Ed Distribution	\$0.00111	Per kWh	
Environmental Cost Recovery ■	\$0.00027	Per kWh	
Energy Efficient Programs	\$0.00134	Per kWh	
Line Loss Charge	\$0.00117	Per kWh	
Demand Charge	\$4.57	PerkW	
Franchise Cost	5.40%	Per\$	Applies to all charg
State Tax	\$0.03300	Per kWh	

Utility Company: Com Ed/Exelon

Rate Schedule: Electric Rate 7

Component	Charge	Unit	Description
Exelon Electricity Charge	\$0.03497	Per kWh	
Exelon Transmission	\$0.01273	Per kWh	
Com Ed Distribution	\$0.00111	Per kWh	
Environmental Cost Recovery	\$0.00019	Per kWh	
Energy Efficient Programs	\$0.00184	Per kWh	
Line Loss Charge	\$0.00118	Per kWh	
Demand Charge	\$4.65	PerkW	

Franchise Cost	4.50%	Per \$	Applies to all charg
State Tax	4.85%	Per\$	Applies to all charg

Utility Company: Com Ed/Exelon  
Rate Schedule: Electric Rate 8

Component	Charge	Unit	Description
Exelon Electricity Charge	\$0.03497	Per kWh	
Exelon Transmission	\$0 01273	Per kWh	
Com Ed Distribution	\$0.00111	Per kWh	
Environmental Cost Recovery	\$0.00027	Per kWh	
Energy Efficient Programs	\$0.00184	Per kWh	
Line Loss Charge	\$0.00118	Per kWh	
Demand Charge	\$4.94	PerkW	
Franchise Cost	4.86%	Per\$	Applies to all charg
State Tax	4.45%	Per \$	Applies to all charg

Utility Company: People's Gas  
Rate Schedule: Homan

Component	Charge	Unit	Description
Tier 1 Gas Charge	\$0.30615	Per Therm	Applies to first 100
Tier 2 Gas Charge	\$0.13084	Per Therm	Applies to next 4,9
Tier 3 Gas Charge	\$0.10554	Per Therm	Applies to all Therm
Natural Gas Savings Program	\$0.00810	Per Therm	
Environmental Charge	\$0.00340	Per Therm	
Volume Balancing Adjustment	-\$0.00120	Per Therm	
Infrastructure Adjustment	1.17%	Per\$	Applies to all charg
State Tax	0.10%	Per\$	Applies to all charg

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State Gas Revenue Tax	5.00%	Per \$	Infrastructure Adjustment Applies to all charges above, except Infrastructure Adjustment and State Tax
Carrier Charge	\$0.39000	Per Therm	

Utility Company: People's Gas  
Rate Schedule: Englewood

Component	Charge	Unit	Description
Tier 1 Gas Charge	\$0 30615	Per Therm	Applies to first 100
Tier 2 Gas Charge	\$0.13084	Per Therm	Applies to next 4,9
Tier 3 Gas Charge	\$0.10554	Per Therm	Applies to all Therm
Natural Gas Savings Program	\$0 00810	Per Therm	
Environmental Charge	\$0.00340	Per Therm	
Volume Balancing Adjustment	-\$0.00120	Per Therm	

Infrastructure Adjustment	1.17%	Per \$	Applies to all charg
State Tax	0.10%	Per\$	Applies to all charg
State Gas Revenue Tax	5.00%	Per\$	Adjustment Applies to all charg
Carrier Charge	\$0.40000	Per Therm	Adjustment and St

Utility Company:	People's Gas			
Rate Schedule:	Rate GS-2			
Component	Charge	Unit	Description	
Tier 1 Gas Charge	\$0.30615	Per Therm	Applies to first 100	
Tier 2 Gas Charge	\$0.13084	Per Therm	Applies to all Therm	
Infrastructure Adjustment	1.17%	Per\$	Applies to all charg	
Natural Gas Savings Program	\$0.00810	Per Therm		
Environmental Charge	\$0.00340	Per Therm		
Hub Credit Gas Charge	-\$0.00150	Per Therm		
Volume Balancing Adjustment	-\$0.00120	Per Therm		
State Tax	0.10%	Per \$	Applies to all charg	
State Gas Revenue Tax	5.00%	Per\$	Applies to all charg	
Carrier Charge	\$0.39690	Per Therm		

Utility Company:	People's Gas			
Rate Schedule:	Gas Rate 6			
Component	Charge	Unit	Description	
Tier 1 Gas Charge	\$0.30615	Per Therm	Applies to first 100	
Tier 2 Gas Charge	\$0.13084	Per Therm	Applies to next 4,9	
Tier 3 Gas Charge	\$0.10554	Per Therm	Applies to all Therm	
Base Rate Stor Credit	-\$0.00098	Per Therm		
Natural Gas Savings Program	\$0.00810	Per Therm		
Environmental Charge	\$0.00340	Per Therm		
Hub Credit Gas Charge	-\$0.00150	Per Therm		
Standby Demand Charge	\$0.01358	Per Therm		
Volume Balancing Adjustment	-\$0.00120	Per Therm		
Gas Chg Stor Credit	-\$0.00126	Per Therm		
Infrastructure Adjustment	1.17%	Per\$	Applies to all charg	
State Tax	0.10%	Per\$	Applies to all charg	
State Gas Revenue Tax	5.00%	Per \$	Adjustment Applies to all charg	
			Adjustment and St	

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\$0.45000 | Per Therm

Utility Company-	People's Gas			
Rate Schedule:	Copernicus			
Component	Charge	Unit	Description	
Tier 1 Gas Charge	\$0.30615	Per Therm	Applies to first 100	

Tier 2 Gas Charge	\$0.13084	Per Therm	Applies to next 4,9
Tier 3 Gas Charge	\$0 10554	Per Therm	Applies to all Ther
Base Rate Stor Credit	-\$0.00098	Per Therm	
Natural Gas Savings Program	\$0.00810	Per Therm	
Environmental Charge	\$0.00340	Per Therm	
Hub Credit Gas Charge	-\$0.00150	Per Therm	
Standby Demand Charge	\$0.01358	Per Therm	
Volume Balancing Adjustment	-\$0.00120	Per Therm	
Gas Chg Stor Credit	-\$0.00126	Per Therm	
Infrastructure Adjustment	1.17%	Per\$	Applies to all charg
State Tax	0.10%	Per\$	Applies to all charg Adjustment
State Gas Revenue Tax	5.00%	Per \$	Applies to all charg Adjustment and St
Carrier Charge	\$0.35000	Per Therm	

Utility Company:

People's Gas

Rate Schedule:

King

Component	Charge	Unit	Description
Tier 1 Gas Charge	\$0.30615	Per Therm	Applies to first 100
Tier 2 Gas Charge	\$0.13084	Per Therm	Applies to next 4,9
Tier 3 Gas Charge	\$0 10554	Per Therm	Applies to all Ther
Base Rate Stor Credit	-\$0.00098	Per Therm	
Natural Gas Savings Program	\$0.00810	Per Therm	
Environmental Charge	\$0.00340	Per Therm	
Hub Credit Gas Charge	-\$0.00150	Per Therm	
Standby Demand Charge	\$0.01358	Per Therm	
Volume Balancing Adjustment	-\$0.00120	Per Therm	
Gas Chg Stor Credit	-\$0.00126	Per Therm	
Infrastructure Adjustment	1.17%	Per \$	Applies to all charg
State Tax	0.10%	PerS	Applies to all charg Adjustment
State Gas Revenue Tax	5.00%	Per\$	Applies to all charg Adjustment and St
Carrier Charge	\$0.40000	Per Therm	

Utility Company:

People's Gas

Rate Schedule:

Gas Rate 9

Component	Charge	Unit	Description
Tier 1 Gas Charge	\$0.30615	Per Therm	Applies to first 100
Tier 2 Gas Charge	\$0.13084	Per Therm	Applies to next 4,9
Tier 3 Gas Charge	\$0.10554	Per Therm	Applies to all Ther
Base Rate Stor Credit	-\$0.00098	Per Therm	
Natural Gas Savings Program	\$0.00810	Per Therm	
Environmental Charge	\$0.00340	Per Therm	
Hub Credit Gas Charge	-\$0.00150	Per Therm	
Standby Demand Charge	\$0.01358	Per Therm	

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Volume Balancing Adjustment	-\$0.00120	Per Therm	
Gas Chg Stor Credit	-\$0.00126	Per Therm	
Infrastructure Adjustment	1.17%	Per\$	Applies to all charges above
State Tax	0.10%	Per\$	Applies to all charges above, except Infrastructure Adjustment
State Gas Revenue Tax	5.00%	Per\$	Applies to all charges above, except Infrastructure Adjustment and State Tax
Carrier Charge	\$0.44000	Per Therm	

## Marginal Lighting Rates

Energy Quantity	Price Per Unit
4th District kWh	\$0.05741
4th District kW	\$5.13215
4th District Therm	\$0.60094
Homan Square kWh	\$0.05891
Homan Square Therm	\$0.51314
Juvenile kWh	\$0.05744
Juvenile kW	\$5.13635
Juvenile Therm	\$0.58704

## 5. Building Schedule and Operations A. Calendars- and Schedules

Except for the Additional Occupancies described below and as otherwise authorized by this Section 5, the Customer will operate the conditioned spaces in the Facilities within the date/times, occupancy schedules, and set-points set forth below.

Area	Day	Time Schedule	Cooling Occ/TJnocc SP	Heating Occ/Unocc SP
72/55 72/55 72/55 72/55 72/50 72/50 72/50 72/50 72/55 55 72/65				
72 72/55 72/55 72/55				
55 72/55 72/55				
55 72/55				
Department of Public Health/311	M-F	5A-6P		
Department of Public Health / 311	WE	10A-2P		
SACHS Clinic	M-F	7A - 6P		
SACHS Clinic	WE	10A-2P		
Uptown Health Center	M-F	7A - 7P		
Uptown Health Center	WE	10A-2P		
Westown Health Center	M, W, F	7A - 6P		
Westown Health Center	T, TR	9A - 8P		
Westown Health Center	WE	10A - 2P		
District 8, 9, 10, 15, 17 Police Stations - Office	M-F	6A - 6P		
District 8,9, 10, 15, 17 Police Stations - Office	WE	OFF		
District 8, 9, 10, 15, 17 Police Stations - Locker Room	Su - Sa	7A-9A, 3P-5P,		
				IIP- 1A
District 8,9, 10, 15, 17 Police Stations - All other than above	Su-Sa	24hrs		
Copernicus Aging Center	M-F	7A - 5P		

Copernicus Aging Center	M-F	7A - 5P
Copernicus Aging Center	WE -	8A - 4P
Englewood Health Center	M-F	7A-6P
Englewood Health Center	WE	OFF
Dr MLK, Jr Community Center	M,T,TR,F	7A - 5P
Dr. MLK Jr. Community Center	W	6A - 11P
Dr. MLK Jr Community Center	WE	OFF
Area 4 Police Station (District 11) - Garage	M-F	6A - 5P

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Area 4 Police Station (District 11) - Garage

Area 4 Police Station (District 11)- Garage Office Area 4 Police Station (District 11) - Garage Office Area 4 Police Station (District 11) - Court

Area 4 Police Station (District 11) - Court

Area 4 Police Station (District 11)- Locker Room

Area 4 Police Station (District 11) - All other than above Roseland Health Center Roseland Health Center District 19lli and 23rd

Police Headquarters - Computer Server Areas and Lobby Police Headquarters - All /ones other than above Police Headquarters - All zones other than above

WE M-F WE M-F WE

Su-Sa

Su-Sa

M-F

WE

Su-Sa

Su-Sa

M-F

WE

OFF 6A-5P

OFF 7A- 6P

OFF

7A-9A, 4P-5P, 12A-2A 24hrs 6A-7P 10A-2P 6A-6P 24hrs 6A-6P 7A-5P

74/99 99

74/99 99

74

74/85 74/85 74/99

74

74/80 74/80

55 72/55

55 72/55

55 72/55

72

72/50 72/50 72/55

72

72/60 72/60

The Customer conducts certain occasional activities outside of the Occupancy Schedule ("Additional Occupancies"), The Provider's Subcontractor has evaluated the Additional Occupancies in preparing the Investment Grade Audit and that the Additional Occupancies are factored into the calculation of the Baseline. Additional Occupancies shall not constitute a Cause for Adjustment to the energy savings calculations.

Holidays: The Facilities will be unoccupied on the dates the following holidays are observed: ..

New Year's Day Martin Luther King Jr.

Day Lincoln's Birthday Washington's

Birthday Casimir Pulaski Day  
Memorial Day Independence Day  
Labor Day Columbus Day Veteran's  
Day Thanksgiving Day Christmas Day

These occupancy schedules will not apply in any instance where the Provider or its Subcontractor direct or approve the running of equipment outside of the occupancy schedules in order to improve the efficiency of the ECMs and related equipment.

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### B. Standards of Service and Comfort

The Customer will operate the conditioned spaces in the Facilities within the temperature ranges scheduled in Exhibit B, Sub-section II.5.A. Operating conditions outside the range specified in this table shall constitute a Cause for Adjustment under this Agreement. Adjustments may be made to the temperature ranges within spaces of less than 2000 square feet to accommodate tenant comfort and use of the space without any adjustments to the Baseline, provided spaces with adjustments outside of the temperature ranges do not exceed 5% of the total gross area of a particular Facility.

In the event that an adjustment to the Baseline is sought, the Provider or its Subcontractor shall submit the proposed Baseline adjustments to the Customer and describe the reasons for the adjustment.

### 6. Causes for Adjustment

Adjustments to the Baseline are intended to adjust for any operations or conditions that differ from those assumptions made when Savings were calculated. Each of the causes described in the table below shall constitute a "Cause for Adjustment" to the Baseline used to calculate the Measured Savings Amount.

Cause	Action
Renovation/ Addition	1. None required. Site is independently metered. No effect on Independent Utility Msavings tracking of other buildings.
Service	
New Energy	1. The Customer will notify the Provider when additions are planned. 2. The Provider
Existing Utility	addition is likely to increase energy use above the threshold limits. * 3. If the addition
HVAC Service	all incoming utilities (consumption and demand) and HVAC service will be accounted
	expense of the Customer. 4. If the addition is below all of the threshold limits, the
	computerized building simulation, manual calculations or as a ratio of the main building
	meter data (if available) and/or energy simulations.
Renovation /	1. The Customer will notify the Provider when building



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Mo renovations are planned. 2. The Provider will review the renovation plans and determine  
dificin updated savings calculations at the request and expense of the Customer. 4. If the expe

atio  
n of  
Buil  
ding  
on  
Exis  
ting  
Utili  
ty or  
HV  
AC  
Serv  
ice  
(incl  
udin  
g  
addi  
tion  
al  
plug  
load  
or  
othe  
r  
equi  
pme  
nt)

Abandon  
ment of  
a portion  
of the  
Building  
on  
Existing  
Utility or  
HVAC  
Service  
Change in  
Occupancy,  
Occupancy

1. The Customer will notify the Provider when an abandonment is  
abandonment's impact on energy use will be accounted for in upda  
ignored.

1. The Customer will maintain records of its  
annually accounted for in the savings calculæ

Hours,  
Calendar or  
Set-points  
Customer- Initia  
ated ECMs

1. If a Customer-initia  
Savings Amount, no a  
Agreement. For purpo  
ECMs obtained throug  
ECM for purposes of c  
Amount. 2. To measur  
a separate M&V plan

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	Pending agreement from the Provider, the resulting savings from the Customer initiated ECM will be subtracted from this Agreement's savings. 3. In no event will the Measured Savings Amount during the year in which the Customer-initiated ECM is installed be reduced below the immediately preceding year's Measured Savings Amount due solely to a Customer-initiated ECM.
Failure to perform Customer responsibilities	Customer fails to perform a duty or responsibility specified in Exhibit C to this Agreement or Article IV or this Agreement.
Other Causes	The Parties may mutually agree to other Causes for Adjustment to address changes in certain Baseline conditions.

In the event the Provider has reason to believe that any action or failure to act by the Customer or a measurable deviation from the Baseline may constitute a Cause for Adjustment to the Savings calculations set forth in this Agreement, the Provider must notify the Customer of a possible Cause for Adjustment within sixty (60) days of becoming aware of such action, failure to act, or measurable deviation. If the Provider fails to notify the Customer within such sixty (60) day period, the Provider thereafter waives the right to present any claim for an adjustment to the energy performance calculations on account of such action or failure to act.

Notwithstanding the provisions of this Section, the Provider is not required to present any claim for a Cause of Adjustment if the Provider determines that an action, failure to act, or measurable deviation will have no impact on the Measured Savings Amount. In all instances, the Provider must account for all Causes for Adjustment to the energy performance calculations arising during the preceding Performance Period year within the prior Performance Period year calculations, and the Provider waives the right to present any Causes for Adjustments not specified within the prior year calculations. Within sixty (60) days of the Date of Commencement, the Parties will mutually determine any Causes for Adjustment to account for changes in the Facility sites and their use which have occurred prior to the execution of this Agreement but after the performance of the Investment Grade Audit.

\* Threshold Limits Per Fuel-type/Category:

Area - 3% of square footage of Facility site area as of the Date of Commencement.

Electricity - 3% of highest annual peak demand

Natural Gas - 3% of installed Base Year gas-heating capacity

Air Conditioning - 3% of installed Base Year air-conditioning capacity

## 7. Examples .

Examples of energy savings calculations for the Project are set forth in Attachment 2 to this Exhibit.

B-25

Assumptions

Attachment 1 Calculation



	DCV		minimum flow of 40% Install C02 seoccupied hours. implement DCV sequences
t-acitlly or Wiise or Block : . JfdTT/A.V.tiJJ.IIJ/A'hil'Sayings i			
BAS	Building Setpoints	High	Scheaule building Equipment Failure, Setpoint -F, off on weekends night (no OA) Occ heat. Unoccupied :
HVAC Occ Sensors	Building Controls	Low	Enable standby mEquipment Failure. Setpoint occupancy StandbChanges heat
		MI	W. Concept/. PerformanceMe*ricJ'SVj Primary Vanablee^^ fiy. Impacting PcformanoB^Jji,
BAS	Building Setpoints	High	"Impacts Schedule court to operate 7am-6pm M-F, off on weekends with occupied setpcints 72 cool/70 heat, unoccupied setpoints 99 Equipment Failure, Setpoint Changes
BAS cont '■	Building Setpoints	High	Schedule Gaiaage Office to operate 6am -5pm M-F. OFF weekends, with occupied setpants 74 cool/70 heat, unoccupied setpoints 99 cool/55 heat Allow all fans to cycle on to maintain minimum heat setpoint Equipment Failure. Setpoint Changes
BAS cont	Building Setpoints	High	Schedule Lockers to operate 12em~2am. 7am -9am. 4om-5pm. No caotlnq capacity for Changes
BAS cont	Economizer & Locker/Auditor.um	High	Enable economizer tased on enthalpy, with Equipment Failure. Operations
Locker & Auditorium AHUs	VFD Installation	Medium	Install new VFDs cn locker room and Equipment Failure Operations
Cell Block AHU	VFD Installation	Medium	Install new VFDs on celi block supply fan Equipment Failure. Operations

## B-28 Attachment 2

### Examples of Energy Savings Calculations

The engineering team used eQuest as the appropriate simulation tool for most buildings. In order to accurately predict the energy and demand savings of the project, the model must be calibrated to replicate, at a reasonable

level, the energy and demand use profiles of the current baseline building operation. This was accomplished by first running the model as the buildings are presently constructed and operated. These results were then compared to the baseline energy consumption derived in the utility analysis and weather normalization process to assess how closely the model matches the building's current operation. After examining the results, it became apparent where energy or demand was too high or too low, and adjustments were made. The key was getting all parameters, including electric energy, electric demand, and fuel use, to align simultaneously while maintaining the validity of the inputs into the model. These adjustments involved altering operating schedules, internal loads, equipment efficiencies, set-points, etc. in order to achieve a satisfactorily calibrated model.

## About eQuest

eQuest is a DOE2 application used as an Energy Simulation tool. It uses a variety of functions and custom generated algorithms to simulate the energy consumption of a building. Among the range of simulation results are electricity and gas consumption, and electric demand. The following graphic is an example of the model output from eQuest.

```

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```

### eQuest Rendering of Area 3 Police

## Other Modeling Tools

In addition to eQuest, the engineering team used two other energy modeling tools. These are spreadsheet-based tools that are internal to Provider's Subcontractor. These were the tools of choice when the building was smaller or less complex. These tools are described below.

## B-29

## The Energy Analysis Model for Simple Buildings (TEAMS)

This modeling tool derives a linear regression of heating and cooling loads based upon the weather. It then allocates electrical and gas consumption based upon these curves. Below is a screenshot of a TEAMS model.

### HVAC Definition

#### Heating Inputs

	RTUs Plant 1	Baseboard Plant 2	Bee. DH Plant 3	AHU Inputs Plant 1	Plant 2 Plant3
Occupied Breakeven Temperature:	54	• F 50	• F 5 47	• F 10	• F 21
Unoccupied Breakeven Temperature:	• F 0	• F Gas	42 -F Elec Gas/Elec	-F Elec Gas/Elec BO	B HC/B
Design Temp: Outside Air Temp Night	Gas/Elec 1050 MSH	«0 M3H 100 % 0 HP	MBH 100 % 0 HP C	C/P/V FanMinSpod	0.00 % (0-1)
Sotoack. En«oy Type: Plant Size	87 *0 HP C C/PA/	C C/P/V 0.00	% (0- C/P/V 0.00	% (0-1) - Point'	-20 *F
Efficiency. Hot Water Pump. HW Pump	000 % (0-1) .20	' F 1) -20 'F 0 KW	20 'F 0 KW		
Speed Control. HW Pump Minimum	0 KW				
Speed: Aux Heat OAT Enable (Heat					
Pump) Awe Heat Plant Size [Heat Pump].					

| SqFt/Fan hp 466

	Plant 1	Plant 2	Plant 3
Occupied Breakeven Temperature:	61	F 65	F 95 -F 65
Unoccupied Breakeven Temperature:	-F 999	F Elec 999	F 999 F Elec Gas/Elec
Design Temp: Outside Air Temp Night Set	Gas/Elec 70 Tons	Gaa/Hlec 0 Tons 2.7	0 Tons 2.7 COP 0 KW
Energy Type Plant Size Efficiency	2.61064 COP 0 KW	0 COP 0 KW HP 0 Hp	0 HP 0 HP C C/PA/
Minimum Hot Gas Bypass Chilled Water	HP 0 HP C C/P/V	C C/PA/ 0.00	% (0- 0.00 14(0-1) 0 HP 0
Pump Condensate Water Pump CHW Pump	0.00	% (0-1) 0 HP 01) 0 HP 0 KW	KW
Speed Control: CHW Pump Minimum	KW		
Speed Cooling Tower Fan Auxiliary KW			
(PuTge,Controls,Etc)			

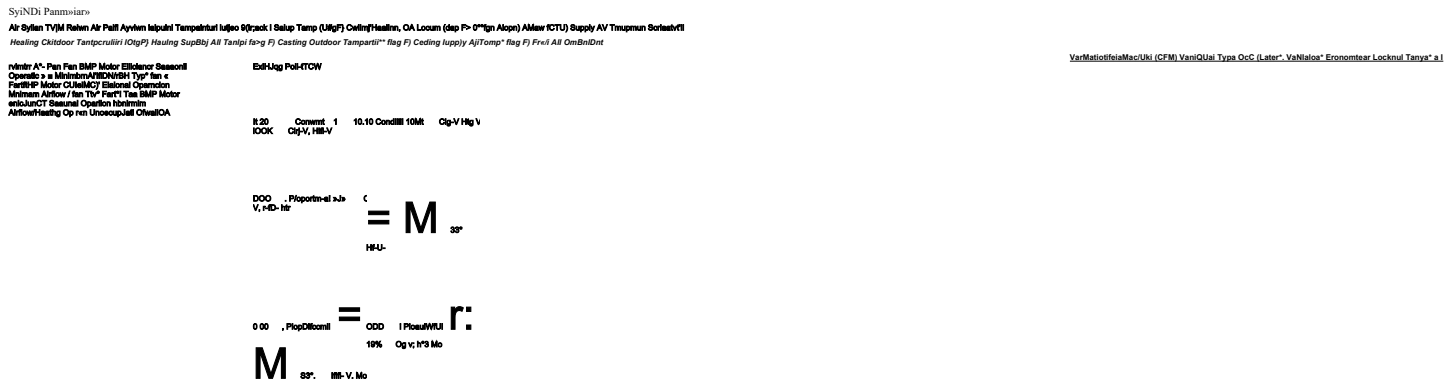
I clo SpFt/ron 200 I Hip- BOi/sgFt B7 ~1

Screenshot of TEAMS Model for Pilsen Health Center

## Simple Building Modeler (SBM)

SBM is another spreadsheet-based tool that's slight more involved than TEAMS. This tool calculates the energy usage of a building on an hourly basis, like eQuest. Below is a screenshot example of SBM for Copernicus.

B-30



SBM Screenshot Example of Copemctis

Once the calibration process is complete, the savings process can begin. Savings per ECM are calculated within the energy models. For each ECM, certain parameters are changed in the model in order produce a different result. The difference between modeled baseline and the post-ECM model is the calculated savings. Lighting

For ECMs such as lighting retrofits and occupancy sensors, these savings were calculated outside of the eQuest model. Lighting technology upgrades affect utility costs by reducing electrical consumption and demand of the lighting system. Utility costs related to heating and cooling are also affected because the upgraded lighting system reduces heat gain from lamps and ballasts. The energy savings calculations account for all these effects. Four calculations are used for each measure. A fifth calculation is used to determine the net effect on utility costs.. The first two calculations provide the annual electrical consumption and demand savings in kilowatt hours and kilowatts, respectively:

B-31

$$\text{Consumption Savings} = (\text{Fixture Quantity}) \times ((\text{Watts/Existing Fixture}) - (\text{Watts/Upgraded Fixture})) \times$$

(Annual Hours)

(1000 Watts/kW)

Demand Savings = 12 Months (Fixture Quantity) x ((Watts/Existing Fixture) - (Watts/Upgraded Fixture)) x Diversity Factor

(1000 Watts/kW)

*Where:*

Fixture Quantity = Quantity of fixtures of a particular type to be upgraded

Watts per Existing Fixture = Observed wattage of each fixture before the upgrade (including lamps and ballasts and accounting for burned out fixtures)

Watts per Upgraded Fixture = Wattage of each fixture after the upgrade

Annual Hours = Annual fixture burn hours. This represents the actual hours the fixture is expected to be in use during the year. The hours vary with the type of space served and the habits of the occupants. Automated occupancy loggers are used to assist in the development of annual operation hours for each type of space.

Diversity Factor ~ Percentage of time the fixtures are on when the peak demand is set.

A third calculation is used to determine the energy savings that can be expected from reduced cooling loads. These are termed "A/C Savings" and are calculated as follows:

A/C Savings = Electrical Savings x Number of Cooling Months

(12 Months/Year) x COP A/C Demand Savings = Demand

Savings x Number of Cooling Months

(12 Months/Year) x COP

*Where:*

COP = Coefficient of Performance of the cooling system

## B-32

The fourth calculation is used to determine extra heating that must be done to compensate for the reduction in heat gains in the building because of the upgrades in lamps and ballasts. This is referred to as "Heating



Penalty" and is expressed in units of MCF.

$$\text{Heating Penalty} = (\text{Electrical Savings}) \times (\text{Number of Heating Months}') \times (3413 \text{ Btu/kWh}) \\ (12 \text{ Months/Year}) \times (1,030,000 \text{ Btu/MCF}) \times (\text{Heating Efficiency})$$

Where:

Heating Efficiency = Efficiency of the heating system

Once Electrical Savings, A/C Savings, and Heating Penalty are calculated for each lighting upgrade, utility rates can be applied to these energy consumption values to determine the net effect of the lighting upgrades on utility costs.

$$\text{Total Savings} = ((\text{Electrical Consumption Savings} + \text{A/C Consumption Savings}) \times (\$/\text{kWh})) \\ + ((\text{Demand Savings} + \text{A/C Demand Savings}) \times (\$/\text{kW})) \\ - ((\text{Heating Penalty}) \times (\$/\text{MCF}))$$

Occupancy sensor calculations also involved the use of data logging. Data loggers were used to determine the number of hours the lights were on, and the number of hours the space was occupied. The difference between the lighting hours and the occupancy hours is the calculated savings.

#### Outdoor Unit Coating Savings

The condenser's performance is based on Coefficient of Performance (COP). The general equation for COP is given in Equation 1.

$$COP = \frac{Q}{W} \quad (1)$$

"Q" is the heat transfer across the coils and can be shown in Equation 2. "W" is the work supplied to the condenser, given in Equation 3.

$$Q = m(h_o - h_i) \quad (2)$$

$$W = \sqrt{3} \times I \times V \quad (3)$$

"m" is the mass flow rate across the condenser, "h" is the enthalpy of the air with the subscript "o" denoting air outside the condenser and "i" denoting air inside the condenser. "I" is the current supplied to the condenser and "V" is the voltage supplied to the condenser. Assuming the mass flow rate across the coils and voltage supplied is constant,

B-33

i,

the ratio of the COP prior to rejuvenation (subscript "1") and after the rejuvenation (subscript "2") can be determined from Equation 4.

$$\frac{COP_2}{COP_1} = \frac{A h_c L}{A h_c L} \quad (4)$$

An ammeter is installed to measure the current drawn by the condenser. Temperature detectors are installed outside and inside the condenser. The relative humidity is retrieved from an online database from a local weather station. A psychrometric chart is used to determine the enthalpy of the air at both locations. The data points are taken every 5 minutes.

The increase in performance is displayed in Equation 5.

$$\% \text{ Improvement} = \frac{COP_2 - COP_1}{COP_1} \times 100 \quad (5)$$

### Customer Project-Specific Obligations

Responsibility for the proper maintenance, service, repair, replacement and adjustments to each ECM, ECM system and related ancillary systems and equipment, including related expenses, shall transfer to the Customer on an ECM by ECM basis on the Substantial Completion Date of each ECM (unless a Subcontractor or manufacturer warranty period is in effect with respect thereto). The Customer will be responsible for such maintenance, service, repair and adjustments for the remainder of the Term. Operation and Maintenance Manuals ("O&M Manuals") will be provided to the Customer by the Provider's Subcontractor. Included with the O&M Manuals will be a list of maintenance responsibilities and tasks for the Customer. The Provider has no maintenance responsibilities under this Agreement.

**Start-up and Shutdown:** The Customer's responsibilities include all system start-ups and shut-downs. System start-up (beginning of season) and shut-down (end of season) refers to specific manufacturer recommendations with respect to "proper" system start-up, operation, maintenance, and shut-down as defined in O&M Manuals.

**Operations:** The Customer shall operate the equipment installed hereunder in accordance with parameters noted in Exhibit B, the manufacturers' recommendations, and any supplemental procedures supplied to the Customer by the Provider or its Subcontractor including those set forth in the O&M Manuals. The Customer shall also operate the equipment and systems (including ancillary related systems) in accordance with the standards of service and comfort set forth in Exhibit B.

**Maintenance:** The Customer's maintenance responsibilities include the proper operation and prompt repair and maintenance of each ECM, ECM system and related ancillary systems and equipment such that they are maintained in good working order during the Term. The Customer shall repair and maintain (i) the equipment and all other components which comprise each ECM and (ii) all other equipment which is attached thereto and/or is integral to the proper functioning of each ECM, including performance of the maintenance tasks, manufacturer's recommendations and supplemental procedures included in the O&M Manuals. Maintenance also refers to performing required maintenance of ancillary systems.

**CMMS:** The Customer shall cause the CMMS (as defined in Exhibit A to this Agreement) to be continuously operated and maintained during the Term and shall bear all costs related to the CMMS not included in the costs financed by the Provider under the Loan Agreement and as otherwise provided in the PBC Undertaking Agreement. The Provider makes no representation nor warranty with respect to the suitability or utility of the CMMS.

C-1

MDE/ WBE Special Conditions (Attached)

D-1

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CITY Of CHICAGO Department of Procurement Services Jamie L Rhee, Chief Procurement Officer  
121 North LaSalle Street, Room 806 Chicago, Illinois 60602-1284

Fax: 312-744-3281

## Commodities and Work Services MBE & WBE Special Conditions

### 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 total 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 (inclusive of any and all modifications and amendments), if awarded, for contract participation by MBEs and WBEs:

MBE Percentage	WBE Percentage
25%	5%

This commitment is met by the Contractor's 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 the indirect participation of MBEs or WBEs in other aspects of the Contractor's business (but no dollar of such indirect MBE or WBE participation will be credited more than once against a Contractor's MBE or WBE commitment with respect to all government Contracts of such Contractor), 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.

As noted above, the Contractor may meet all or part of this commitment by contracting with MBEs or WBEs for the provision of goods or services not directly related to the performance of this Contract. However, in determining the manner of MBE/WBE participation, the Contractor will first consider involvement of MBEs/WBEs as joint venture partners, subcontractors, and suppliers of goods and services directly related to

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the performance of this Contract. In appropriate cases, the Chief Procurement Officer will require the Contractor to demonstrate the specific efforts undertaken by it to involve MBEs and WBEs directly in the performance of this Contract.

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.

Code of Chicago for the voluntary use of MBEs or WBEs in private sector contracts.

Pursuant to 2-92-535, the prime contractor may apply be awarded an additional 0.333 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 mentor agreement with the contractor. 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.*

"B.E.P.D." means an entity certified as a Business enterprise owned or operated by people with disabilities as defined in MCC Section 2-92-586.

"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.

"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.

## **2**

"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.

"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 credited 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 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.

"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.

### **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:

## **3**

- 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 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 proposed joint venture agreement, the Schedule B submitted on behalf of the proposed joint venture, and all related documents 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 with its bid a Schedule B and the proposed joint venture agreement. These documents must both 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.

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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 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. 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.
- 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.

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- 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:
  - 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.

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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 fourteen (14) calendar days to submit to the Department of Procurement Services complete documentation that adequately addresses the conditions for waiver described herein; and
- o 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 / Indirect 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 or indirect 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:

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- « choosing subcontracting opportunities likely to achieve MBE/WBE goals;
- o not imposing any limiting conditions which were not mandatory for all subcontractors;
- o 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.

OR

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 Reductions 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.

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 tillable 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.
- 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

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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.

- 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 the joint venture agreement and a Schedule B along with all other requirements listed in Section 1.3, "Joint Ventures," 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. The joint venture agreement must also clearly define each partner's authority to contractually obligate the joint venture and each partner's authority to expend joint venture funds (e.g., check signing authority).

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 tillable 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-1 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

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; 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.

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

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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.

### **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.

### **11. Equal Employment Opportunity**

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

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### 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>>

- o 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



Attachment A -Assist Agency List

PRQCUmmEH SERVICES

c CITY OF CHICAGO^ ASSIST AGJENCY LIST,

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.

American Brotherhood of Contractors  
935 West 175<sup>th</sup> Street  
Homewood, Illinois 60430  
Phone: (773)491-5640  
Email: arba@constructive-business.com <mailto:arba@constructive-business.com>

Asian American Business Expo 207 East Ohio St. Suite 218 Chicago, IL 60611 Phone:312-233-2810 Fax: 312-268-6388  
Email: Janny@AsianAmericanBusinessExpo.org <mailto:Janny@AsianAmericanBusinessExpo.org>

Asian American Institute  
4753 N. Broadway St. Suite 904  
Chicago, IL 60640  
Phone: (773)271-0899  
Fax:(773)271-1982  
Email: Wernicola@aaichicago.org <mailto:Wernicola@aaichicago.org>  
Web: [www.aaichicaao.org](http://www.aaichicaao.org) <<http://www.aaichicaao.org>>

Association of Asian Construction Enterprises 333 N. Ogden Avenue Chicago, IL 60607 Phone: (847) 525-9693 Email: [nakmancorptai.aol.com](mailto:nakmancorptai.aol.com)  
<<http://nakmancorptai.aol.com>>

Black Contractors United  
400 W. 76<sup>th</sup> Street, Suite 200  
Chicago, IL 60620  
Phone: (773) 483-4000  
Fax:(773)483-4150  
Email: bcunewera@att.net <mailto:bcunewera@att.net>  
Web: [www.blackcon1ractorsunited.com](http://www.blackcon1ractorsunited.com) <<http://www.blackcon1ractorsunited.com>>

Cosmopolitan Chamber of Commerce  
203 N.Wabash, Suite 518  
Chicago, IL 60601  
Phone:(312) 499-0611  
Fax: (312) 332-2688  
Email: ccarey@cosmococ.org  
Web: [www.cosmochamber.org](http://www.cosmochamber.org) <<http://www.cosmochamber.org>>

Eighteenth Street Development Corporation  
1843 South Carpenter  
Chicago, Illinois 60608  
Phone: (312) 733-2287  
Fax: (773)-353-1683  
[asoto\(3>eiahteenthstreet .org](http://www.eighteenthstreet.org)  
[www.eighteenthstreet.org](http://www.eighteenthstreet.org) <<http://www.eighteenthstreet.org>>  
Chatham Business Association Small Business  
Development, Inc.  
8441 S. Cottage Grove Avenue  
Chicago, IL 60610

Chicago, IL 60619  
Phone: (773)994-5006  
Fax: (773)994-9871  
Email: [melkelcba@sbcglobal.net](mailto:melkelcba@sbcglobal.net) <<mailto:melkelcba@sbcglobal.net>>  
Web: [www.cbaworks.org](http://www.cbaworks.org) <<http://www.cbaworks.org>>

Chicago Area Gay a Lesbian Chamber of Commerce 3656 N. Halsted Chicago, IL 60613 Phone: (773) 303-0167 Fax: (773) 303-0168  
Email: [info@glchamber.org](mailto:info@glchamber.org) <<mailto:info@glchamber.org>> Web: [www.Qlchamber.org](http://www.Qlchamber.org) <<http://www.Qlchamber.org>>

Chicago Minority Supplier Development  
Council, Inc.  
105W. Adams, Suite 2300  
Chicago, IL 60603-6233  
Phone: (312) 755-8880  
Fax: (312) 755-8890  
Email: [pbarreda@chicagoinssdc.org](mailto:pbarreda@chicagoinssdc.org) <<mailto:pbarreda@chicagoinssdc.org>>  
Web: [www.chlcagomsdc.org](http://www.chlcagomsdc.org) <<http://www.chlcagomsdc.org>>

Chicago Urban League 4510 S. Michigan Ave. Chicago, IL 60653 Phone: (773) 285-5800 Fax: (773) 285-7772  
Email: [president@thechicagourbanleague.org](mailto:president@thechicagourbanleague.org) <<http://urbanleague.org>> Web: [www.cul-chicago.org](http://www.cul-chicago.org) <<http://www.cul-chicago.org>>

Chicago Women in Trades (CWIT)  
4425 S. Western Blvd.  
Chicago, IL 60609-3032  
Phone: (773) 376-1450  
Fax: (312) 942-0802  
Email: [cwitinfo@cwit2.org](mailto:cwitinfo@cwit2.org) <<mailto:cwitinfo@cwit2.org>>  
Web: [www.chicagowomenintrades.org](http://www.chicagowomenintrades.org) <<http://www.chicagowomenintrades.org>>

Coalition for United Community Labor Force  
1253 W. 63<sup>rd</sup> Street  
Chicago, IL 60636  
Phone: (312) 243-5149  
Email: [johnrev.hatchett@cdmcast.net](mailto:johnrev.hatchett@cdmcast.net) <<mailto:johnrev.hatchett@cdmcast.net>>

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City of Chicago Department of Procurement Services ~ Assist Agencies (cont'd)

Federation of Women Contractors  
5650 S. Archer Avenue  
Chicago, IL 60638  
Phone: (312) 360-1122  
Fax: (312) 360-0239  
Email: [fwcchicago@aol.com](mailto:fwcchicago@aol.com) <<mailto:fwcchicago@aol.com>>  
Web: [www.fwcchicago.com](http://www.fwcchicago.com) <<http://www.fwcchicago.com>>

Hispanic American Construction Industry Association (HAC1A)  
650 West Lake Street Chicago, IL 60661 Phone: (312) 666-5910 Fax: (312) 666-5692 Email: [Info@haciaworks.org](mailto:Info@haciaworks.org)  
<<mailto:Info@haciaworks.org>> Web: [www.haciaworks.org](http://www.haciaworks.org)

Illinois Hispanic Chamber of Commerce  
855 W. Adams, Suite 100  
Chicago, IL 60607  
Phone: (312) 425-9500  
Fax: (312) 425-9510  
Email: [oduque@ihccbusiness.net](mailto:oduque@ihccbusiness.net) <<mailto:oduque@ihccbusiness.net>>  
Web: [www.ihccbusiness.net](http://www.ihccbusiness.net) <<http://www.ihccbusiness.net>>

Latin American Chamber of Commerce 3512 West Fullerton Avenue Chicago, IL 60647 Phone: (773) 252-5211 Fax: (773) 252-7065  
Email: [d.lorezopadron@latinamericanchamberofcommerce.com](mailto:d.lorezopadron@latinamericanchamberofcommerce.com) <<mailto:d.lorezopadron@latinamericanchamberofcommerce.com>> Web: [www.latinamericanchamberofcommerce.com](http://www.latinamericanchamberofcommerce.com) <<http://www.latinamericanchamberofcommerce.com>>

National Organization of Minority Engineers  
33 West Monroe Suite 1540

33 West Monroe Suite 1340  
Chicago, Illinois 60603  
Phone: (312) 425-9560  
Fax: (312) 425-9564  
Email: [shandy@infrastructure-eng.com](mailto:shandy@infrastructure-eng.com) <<mailto:shandy@infrastructure-eng.com>>  
Web: [www.nomeonline.org](http://www.nomeonline.org) <<http://www.nomeonline.org>>

National Association of Women Business Owners  
Chicago Chapter  
230 E. Ohio, Suite 400  
Chicago, IL 60611  
Phone: (312) 224-2605  
Fax: (312) 6448557  
Email: [info@nawbochicago.org](mailto:info@nawbochicago.org) <<mailto:info@nawbochicago.org>>  
Web: [www.nawbochicago.org](http://www.nawbochicago.org) <<http://www.nawbochicago.org>>

Rainbow/PUSH Coalition  
International Trade Bureau  
930 E. SO\* Street  
Chicago, IL 60615  
Phone: (773) 256-2781  
Fax: (773) 373-4104  
Email: [bevans@rainbowpush.org](mailto:bevans@rainbowpush.org) <<mailto:bevans@rainbowpush.org>>  
Web: [www.rainbowpush.org](http://www.rainbowpush.org) <<http://www.rainbowpush.org>>

South Shore Chamber, Incorporated  
Black United Funds Bldg  
1750 E. 71 \* Street  
Chicago, IL 60649-2000  
Phone: (773) 955- 9508  
Email: [sshorechamber@sbcglobal.net](mailto:sshorechamber@sbcglobal.net)  
Web: [www.southshorechamberinc.org](http://www.southshorechamberinc.org) <<http://www.southshorechamberinc.org>>

Suburban Minority Contractors Association  
1250 Grove Ave. Suite 200  
Barrington, IL 60010  
Phone: (847) 852-5010  
Fax: (847) 382-1787  
Email: [aprilcobra@hotmail.com](mailto:aprilcobra@hotmail.com) <<mailto:aprilcobra@hotmail.com>>  
Web: [www.suburbanblackcontractors.org](http://www.suburbanblackcontractors.org) <<http://www.suburbanblackcontractors.org>>

Women Construction Owners & Executives (WCOE)  
Chicago Caucus  
308 Circle Avenue  
Forest Park, IL 60130  
Phone: (708) 366-1250  
Fax: (708) 366-5418  
Email: [mkm@mkmservices.com](mailto:mkm@mkmservices.com) <<mailto:mkm@mkmservices.com>>  
Web: [www.wcoeusa.org](http://www.wcoeusa.org) <<http://www.wcoeusa.org>>

Women's Business Development Center  
8 South Michigan Ave., Suite 400 Chicago, IL 60603 Phone: (312) 853-3477 Fax: (312) 853-0145 Email: [fcurry@wbdc.org](mailto:fcurry@wbdc.org)  
<<mailto:fcurry@wbdc.org>>Web: [www.wbdc.org](http://www.wbdc.org) <<http://www.wbdc.org>>

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 Saile Street, Room 806 Chicago,  
Illinois 60602

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Schedule S - Affidavit of Joint Venture

SCHEDULE 8: 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 Shoets May Be Attached.

- I. Name of joint venture:  
Address of joint venture:  
  
Phone number of jointventure:
- II. Identify each non-MBEAA/BE venturer(s):  
Name of Firm:  
Address:  
Phone:  
Contact person for matters concerning MBE/WBE compliance:
- III. Identify each MBE/WBE venturers):  
Name of Firm;  
Address:  
Pho ne:  
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?  
MBEAA/BE ownership percentage(s)  
Non-MBEAA/BE 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 4 of 5

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Schedule B: Affidavit: Entrepreneurial Venture (MBE/WBE)

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

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

4. 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:

VII. 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.):

A. Joint venture check signing:

B. Authority to enter contracts on behalf of the joint venture:

C. Signing, co-signing and/or collateralizing loans:

D. Acquisition of lines of credit:

Schedule 8: Affidavit of Joint Venture

- 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 project?
- 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-MBEA/BE firm, the MBEA/VBE firm, or the joint venture.

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SeheduSeB: Affidavit of Joint Ventura (MBE/WBE)

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

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-MBEAA/BE (number) Employed by MBEAA/BE

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.

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Sehedute B: Affidavit of Joint Ventura (MBE/W3E)



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 MBEAA/BE 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

personally appeared and, known to me 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

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**  
**HO ^-CONSTRUCTION PROJECTS ONLY**

Project Name:

Specification No.:

From:

(Name of MBE/WBE Firm)

To:

(Name of Prime Contractor)

and the City of Chicago.

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 MBEAA/BE 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 protegee agreement as a subcontractor/protegee with you as a Prime Contractor/mentor:  
( ) Yes ( ) No

NOTICE: THIS SCHEDULE AND ATTACHMENTS REQUIRE ORIGINAL SIGNATURES.

(Signature of Hresiaem/umwenufcu or Aumonzea Agent of MBh/wbb) \u0026lt;file:///ua/s>)

(Name/1 me-Hiease print;

(bman it mone iMumoer)

08/2013

Page 1 of 1

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

#### SCHEDULE D-1 Compliance Plan Regarding MBEAABE Utilization Affidavit of Prime Contractor

FOR  
WOM-COWSTFIUCTIOW PROJECTS ONLY

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

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:

MOTE: The bidder/proposer shall, in determining the manner of MBEA/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 MBEA/WBE Subcontractor/Supplier/Consultant participating on this contract:

1. Name of MBEA/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 %

2. Name of MBE/WBE:

Address:

Contact Person: ;

<sup>1</sup> 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 MBEA/WBE protege firm

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

Phone Number

Dollar Value of Participation \$

Percentage of Participation %

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

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 MBEAA/BE:

Address,

Contact Person.

Phone Number

Dollar Value of Participation \$

Percentage of Participation %

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

Total Participation %

5. Attach Additional Sheets as Needed

II. Indirect Participation of MBEA/BE Firms

NOTE: This section need not be completed if the MBEAA/BE goals have been met through the direct participation outlined in Section I. If the MBEAA/BE goals have not been met through direct participation, Contractor will be expected to demonstrate that the proposed MBEAA/BE 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 MBEAA/BE:

Address:

Contact Person:

Page 2 of 5

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

Phone Number'

Dollar Value of Participation \$

Percentage of Participation %

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

Total Participation %

2. Name of MBEAA/BE:

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 %

3. Name of MBEAA/BE'

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

Page 3 of 5

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

**MBE Proposal (Direct & Indirect)**

**1 MBE Direct Participation**

<b>MBE Firm Name</b>	<b>Dollar Amount Participation (\$)</b>	<b>Pei cent Amount Participation (%)</b>
----------------------	---	--

**Total Direct MBE Participation**

2 MBE Indirect Participation

<b>MBE Firm Name</b>	<b>Dollar Amount Participation (\$)</b>	<b>Percent Amount Participation (%)</b>
----------------------	---	---

**Total Indirect MBE Participation**

**B. WBE Proposal (Direct & Indirect)**

1. WBE Direct Participation

<b>WBE Firm Name</b>	<b>Dollar Amount Participation (\$)</b>	<b>Percent Amount Participation (%)</b>
----------------------	---	---

**Total Direct WBE Participation**

2. WBE Indirect Participation

<b>WBE Firm Name</b>	<b>Dollar Amount Participation (\$)</b>	<b>Percent Amount Participation (%)</b>
----------------------	---	---

**Total Indirect WBE Participation**

Schedule D-1: Prime Contractor Affidavit-MBE/WBfc 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:

Page 5 of 5

## EXHIBIT D

### SUBORDINATION AND STANDSTILL AGREEMENTS

#### **Subordination and Standstill Agreement**

#### **Relating to Chicago Infrastructure Trust (Chicago Department of Fleet and Facility Management Retrofit One Project) 2014 Series A Note**

*This Subordination and Standstill Agreement (this "Agreement") is entered into as of April 11, 2014, by and between Banc of America Public Capital Corp, a Kansas corporation (the "Lender "), and CITY OF CHICAGO, a home rule unit of local government under the Constitution and laws of the State of Illinois (the "City").*

#### **Recitals**

Whereas, the City authorized and empowered the Chicago Infrastructure Trust, a nonprofit corporation organized and existing under the laws of the State of Illinois (the "Borrower"), to undertake, acquire and finance certain energy conservation projects for the benefit of the City and its sister agencies; and

WHEREAS, the Borrower is, simultaneously herewith, entering into that certain Guaranteed Energy Performance Contract (the "GEPC") with Ameresco, Inc. (the "ESCO") under which the ESCO agrees (a) to implement energy management and energy-related capital improvement services at certain public buildings owned or operated by the City (the "Facilities ") as described in the GEPC, including the installation of certain energy conservation measures ("ECMs") at such Facilities; and (b) to provide a performance guarantee that guarantees the energy savings to the City resulting from the acquisition and installation of the ECMs described in the GEPC and payment or reimbursement for any difference between the guaranteed annual savings amount and the actual project savings amount as therein provided; and

WHEREAS, the Lender is, simultaneously herewith, entering into that certain Loan Agreement with the Borrower (the "Loan Agreement ") for the purpose of making a loan to the Borrower to finance the costs of the ECMs and other property to be acquired and installed under the GEPC (collectively, the "Equipment") and certain other costs; and

WHEREAS, the Borrower and the City are, simultaneously herewith, entering into that certain Energy Services Agreement (the "ESA ") under which the Borrower will procure, install, implement, own, operate and maintain the ECMs acquired and installed under the GEPC for the purposes of achieving energy, and operational savings at the Facilities subject to the ESA for the benefit of the City in consideration for which the City agrees to make payments in an amount equal to such savings as provided in the ESA; and

WHEREAS, in order to secure all of its obligations under the Loan Agreement to the Lender, the Borrower has (a) assigned and granted a security interest to the Lender in all of the Borrower's rights and interests under the GEPC and the ESA, including (without limitation) its rights to receive all payments thereunder and to enforce all of the Borrower's rights thereunder;

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and (b) granted to the Lender a security interest constituting a first lien on any and all right, title and interest of the Borrower in and to the Equipment described in the Loan Agreement; and

WHEREAS, on the terms and conditions in this Agreement, the City is willing to subordinate its rights and interests under the ESA in the Equipment described therein to the security interest granted to the Lender in the Equipment pursuant to the Loan Agreement and the Lender is willing not to exercise its Liquidation Rights (as herein defined) so long as certain conditions continue to be satisfied;

Now, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

#### Section 1. Subordination.

The rights and interests of the City in and to the Equipment under the ESA, including its purchase option under Section 2.3 of the ESA, its right to remove or request removal of the Equipment under Section 2.4



option under Section 2.13 of the ESA, its right to remove or request removal of the Equipment under Section 2.13 or 11.4(b) of the ESA and all other rights and remedies of the City with respect to the Equipment as provided in the ESA, shall be subject and subordinate to the security interest granted by the Borrower to the Lender in and to the Equipment pursuant to the Loan Agreement and to any renewals, modifications, consolidations, replacements and extensions of the Loan Agreement to the full extent of the obligations now or hereafter secured by the security interest granted thereunder.

## Section 2. Standstill.

a) If any Event of Default that is a Non-City Related Default (as herein defined) occurs under the Loan Agreement, the Lender hereby agrees that it shall not exercise its rights to possession and/or sale of Equipment (herein referred to as "Liquidation Rights") pursuant to subsections (a) and (b) of Section 11.02 of the Loan Agreement so long as the City (i) does not exercise its right to terminate the ESA, unless the City elects to pay the Liquidated Damages Amount under Section 11.4(a) thereof, and (ii) continues to make its payments with respect to Savings (as Such term is defined in the ESA) pursuant to Sections 8.1, 9.1 and 12.3 of the ESA. The Lender shall promptly deliver written notice to the City of (x) the occurrence of a Non-City Related Default under the Loan Agreement and (y) the Lender's intention to proceed to exercise its Liquidation Rights under the Loan Agreement if and when the standstill agreement terminates as herein provided. "Non-City Related Default" means an Event of Default under the Loan Agreement that occurs as a result of any event that does not result from a default by the City under the ESA that is not caused by the Borrower under the Loan Agreement, the ESA or the GEPC or by the ESCO under the GEPC. The Lender hereby acknowledges and agrees that it shall have no further interest in the Equipment under the Loan Agreement after payment by the City of the Liquidated Damages Amount and transfer of ownership of the ECMs under the ESA to the City in connection with termination of the ESA pursuant to Section 11.4(a) thereof.

b) Notwithstanding anything in Section 2(a) to the contrary, if an Event of Default occurs under Section 11.01(h) of the Loan Agreement and Sections 11.3(c) and 11.3(d) of the ESA (the "CIT Bankruptcy Default"), the Lender hereby agrees that it shall not exercise its

-2-

Liquidation Rights so long as (i) the City does not exercise its right to terminate the ESA (unless the City elects to pay the Liquidated Damages Amount thereunder) and continues to make its payments with respect to Savings (as such term is defined in the ESA) pursuant to Sections 8.1, 9.1 and 12.3 of the ESA or (ii) the Loan Agreement or the ESA is not involuntarily terminated in connection with legal proceedings relating to the CIT Bankruptcy Default. The City and the Lender shall be deemed to have notice of the CIT Bankruptcy Default immediately upon its occurrence without the requirement for delivery of any notice from either party to the other. If the Lender at any time desires to exercise its Liquidation Rights (for whatever reason, including rejection, potential rejection or other involuntary termination of the Loan Agreement or the ESA in connection with legal proceedings relating to the CIT Bankruptcy Default) and as a condition to its exercise of the Liquidation Rights, the Lender may deliver to the City a notice in the manner provided in Section 17.6 of the ESA that the Lender intends to exercise its Liquidation Rights with respect to the Equipment under the Loan Agreement together with an offer to enter into a new agreement with the City on the same terms and conditions as the ESA, except that the provider under such new agreement shall be the Lender or its designee, the commencement date for such new agreement shall be the first day of the first calendar month following the date the Lender delivers the notice of its intent to exercise its Liquidation Rights and the new agreement to the City and the effective date of the new agreement shall be the termination date of the ESA, unless an earlier

termination date has occurred as a result of any related legal proceedings (in which event the new agreement shall identify the applicable effective date). The offer may be accepted by the City by delivery to the Lender in the manner provided in Section 17.6 of the ESA and to the Lender's notice address as provided in Section 12.01 of the Loan Agreement within thirty days after the delivery to the City of such offer two duly executed originals of the new agreement to the Lender. Upon receipt of such new agreement, the Lender shall immediately execute both originals of such new agreement and return one fully executed copy thereof to the City. Upon the commencement date of the new agreement, the ESA shall terminate and be of no further force and effect. The City further agrees that, should the Lender acquire the Borrower's right, title and interest in the Equipment under the Loan Agreement in connection with the occurrence of the CIT Bankruptcy Default through the exercise of its rights and remedies as a secured party under the Uniform Commercial Code in effect in Illinois or any transfer in lieu thereof, the City shall attorn to the Lender with respect to the Lender's rights and interests in the Equipment for purposes of the Loan Agreement and the delivery of services to the City pursuant to the ESA for the period until the first to occur of (x) the execution and delivery by the City and the Lender of the new agreement as herein provided or (y) the delivery by the City to the Lender of written notice that the City is exercising its right to terminate the ESA pursuant to Section 11.4 thereof. Notwithstanding anything in this Agreement to the contrary, the Lender's agreement not to exercise its Liquidation Rights shall terminate immediately upon the delivery by the City to the Lender of written notice pursuant to Section 11.4(b) that the City is terminating the ESA and requesting removal of the ECMs from the Facilities as therein provided. The Lender hereby acknowledges and agrees that it shall have no further interest in the Equipment after payment by the City of the Liquidated Damages Amount and transfer of ownership of the ECMs under the ESA to the City, all in connection with termination of the ESA pursuant to Section 11.4(a) thereof.

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c) The City hereby acknowledges and agrees that the Lender shall be entitled to exercise the rights of access to the Facilities pursuant to Section 4.1 of the ESA for the purpose of exercising its Liquidation Rights upon termination of the standstill provided in this Section 2.

d) Nothing in this Section 2 is intended, or shall be construed, to limit or restrict in any manner the Lender's rights or remedies against the Borrower or with respect to the Equipment under the Loan Agreement upon (i) the occurrence of an Event of Default by the City, or failure to appropriate funds sufficient to pay the City's obligations, under the ESA, or (ii) subject to Section 2(b), the occurrence of an Event of Default by the Borrower (in its capacity as Provider) under the ESA with respect to the Loan Agreement that entitles the City to exercise its right to terminate the ESA and the City determines to terminate such ESA and require the Borrower (in its capacity as Provider) to remove the ECMs from the Facilities pursuant to Section 11.4(b) of the ESA. In addition, nothing in this Section 2 is intended, or shall be construed, to limit or restrict in any manner or under any circumstance the Lender's rights or remedies (other than the Lender's Liquidation Rights as provided in this Section 2) against the Borrower upon the occurrence of an Event of Default under the Loan Agreement, the ESA or the GEPC or against the defaulting ESCO under or with respect to the GEPC.

### Section 3. Miscellaneous.

(a) Notices. Any notice, request, complaint, demand or other communication under or with respect to this Agreement shall be sufficiently given and shall be deemed given when delivered or mailed by registered mail, postage prepaid, and addressed as provided below. The parties identified below may, by written notice to the other party, from time to time modify the address to which communications are to be given hereunder.

If to the City: City of Chicago, Department of Finance  
121 North LaSalle Street, 7th Floor Chicago,  
Illinois 60602

Attention: Deputy Comptroller, Financial Policy and

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

If to the Lender: Banc of America Public Capital Corp  
11333 McCormick Road, Hunt Valley II Mail Code MD5-  
032-07-05 Hunt Valley, Maryland 21031 Attention:  
Contract Administration

(b) Further Assurances. At the request of either party hereto, the other party shall execute, acknowledge and deliver such other documents and/or instruments as may be

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reasonably required by the requesting party in order to carry out the purpose of this Agreement, provided that no such document or instrument shall modify the rights and obligations of the parties set forth herein.

c) Successors, Assigns; Governing Law. This Agreement shall be binding upon and inure to the benefit of the City and any successor as may be provided by law and the Lender, its successors and its assigns permitted under Section 10.01 of the Loan Agreement. This Agreement shall be construed in accordance with and governed by Illinois law.

d) Conflicts. In the event of any inconsistency between the terms of this Agreement or the ESA, the terms of this Agreement shall control over the terms of the ESA.

e) Severability. If any provision of this Agreement shall be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not apply to or affect any other provisions hereof, but this Agreement shall be construed as if such invalidity, illegality, or unenforceability did not exist.

f) Entire Agreement. This Agreement contains the entire agreement between the parties and no modifications shall be binding upon any party hereto unless set forth in a document duly executed by or on behalf of such party.

g) Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute and be construed as one and the same instrument.

h) Jury Trial Waiver. Each party hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in any legal proceeding directly or indirectly arising out of or relating to this Agreement or the transactions contemplated hereby (whether based on contract, tort or any other theory). Each party hereto (i) certifies that no representative, agent or attorney of any other person has represented, expressly or otherwise, that such other person would not, in the event of litigation, seek to enforce the foregoing waiver and (ii) acknowledges that it and the other party hereto have been induced to enter into this Agreement by, among other things, the mutual waivers and certifications in this subsection (h).

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IN Witness Whereof, the parties hereto Agreement as of the date first written above.

Lender

Banc of America Public. Capital Corp

Lois A. Scott  
Chief Financial Officer

Acknowledged as of the date first above written: Borrower

Chicago Infrastructure Trust

By:  
Stephen S. Beitler  
Chief Executive Officer and Executive Director

-6-

Approved for the City for Form and Legal  
Sufficiency:

In Witness Whereof, the parties hereto have executed this Subordination and Standstill Agreement as of the date first written above.

Lender

Banc of America Public Capital Corp

By:  
Terri J. Preston Authorized Agent

City of Chicago /

By: ' !'>:■-

Lois A. Scott  
Chief Financial Officer

Acknowledged as of the date first above written: Borrower

Acknowledged as of the date first above written. Borrower

Chicago Infrastructure Trust

By:

Stephen S. Beitler

Chief Executive Officer and Executive Director

*Approved for the City for Form and Legal Sufficiency: j/rjf-f- lfi77&\*s^i*

In Witness Whereof, the parties hereto have executed this Subordination and Standstill Agreement as of the date first written above.

Lender

Banc of America Public Capital Corp

Terri J. Preston Authorized Agent

By:.

Lois A. Scott

Chief Financial Officer

Approved for the City for Form and Legal  
Sufficiency:

Acknowledged as of the date first above written:

Borrower

Chicago Infrastructure Trust

Bv: /jv?

Stephen S. Beitler

Chief Executive Officer and Executive Director

-6-

## Subordination and Standstill Agreement

### Relating to Chicago Infrastructure Trust (Chicago Department of Fleet and Facility Management Retrofit One Project) 2014 Series B Note

*This Subordination and Standstill Agreement (this "Agreement") is entered into as of April 11, 2014, by and between Banc of America Public Capital Corp, a Kansas corporation (the "Lender"), and City of Chicago, a home rule unit of local government under the Constitution and laws of the State of Illinois (the "City").*

## Recitals

Whereas, the City authorized and empowered the Chicago Infrastructure Trust, a nonprofit corporation organized and existing under the laws of the State of Illinois (the "Borrower"), to undertake, acquire and finance certain energy conservation projects for the benefit of the City and its sister agencies; and

WHEREAS, the Borrower is, simultaneously herewith, entering into that certain Guaranteed Energy Performance Contract (the "GEPC") with NORESKO, LLC (the "ESCO") under which the ESCO agrees (a) to implement energy management and energy-related capital improvement services at certain public buildings owned or operated by the City (the "Facilities") as described in the GEPC, including the installation of certain energy conservation measures {"ECMs") at such Facilities; and (b) to provide a performance guarantee that guarantees the energy savings to the City resulting from the acquisition and installation of the ECMs described in the GEPC and payment or reimbursement for any difference between the guaranteed annual savings amount and the actual project savings amount as therein provided; and

Whereas, the Lender is, simultaneously herewith, entering into that certain Loan Agreement with the Borrower (the "Loan Agreement") for the purpose of making a loan to the Borrower to finance the costs of the ECMs and other property to be acquired and installed under the GEPC (collectively, the "Equipment") and certain other costs; and

Whereas, the Borrower and the City are, simultaneously herewith, entering into that certain Energy Services Agreement (the "ESA") under which the Borrower will procure, install, implement, own, operate and maintain the ECMs acquired and installed under the GEPC for the purposes of achieving energy and operational savings at the Facilities subject to the ESA for the benefit of the City in consideration for which the City agrees to make payments in an amount equal to such savings as provided in the ESA; and

Whereas, in order to secure all of its obligations under the Loan Agreement to the Lender, the Borrower has (a) assigned and granted a security interest to the Lender in all of the Borrower's rights and interests under the GEPC and the ESA including (without limitation) its rights to receive all payments

interests under the GEPC and the ESA, including (without limitation) its rights to receive all payments thereunder and to enforce all of the Borrower's rights thereunder;

CIT SSA Series B.doc 2215408

and (b) granted to the Lender a security interest constituting a first lien on any and all right, title' and interest of the Borrower in and to the Equipment described in the Loan Agreement; and

Whereas, on the terms and conditions in this Agreement, the City is willing to subordinate its rights and interests under the ESA in the Equipment described therein to the security interest granted to the Lender in the Equipment pursuant to the Loan Agreement and the Lender is willing not to exercise its Liquidation Rights (as herein defined) so long as certain conditions continue to be satisfied;

Now, Therefore, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

#### Section 1. Subordination.

The rights and interests of the City in and to the Equipment under the ESA, including its purchase option under Section 2.3 of the ESA, its right to remove or request removal of the Equipment under Section 2.4 or 11.4(b) of the ESA and all other rights and remedies of the City with respect to the Equipment as provided in the ESA, shall be subject and subordinate to the security interest granted by the Borrower to the Lender in and to the Equipment pursuant to the Loan Agreement and to any renewals, modifications, consolidations, replacements and extensions of the Loan Agreement to the full extent of the obligations now or hereafter secured by the security interest granted thereunder.

#### Section 2. Standstill.

a) If any Event of Default that is a Non-City Related Default (as herein defined) occurs under the Loan Agreement, the Lender hereby agrees that it shall not exercise its rights to possession and/or sale of Equipment (herein referred to as "Liquidation Rights") pursuant to subsections (a) and (b) of Section 11.02 of the Loan Agreement so long as the City (i) does not exercise its right to terminate the ESA, unless the City elects to pay the Liquidated Damages Amount under Section 11.4(a) thereof, and (ii) continues to make its payments with respect to Savings (as such term is defined in the ESA) pursuant to Sections 8.1, 9.1 and 12.3 of the ESA. The Lender shall promptly deliver written notice to the City of (x) the occurrence of a Non-City Related Default under the Loan Agreement and (y) the Lender's intention to proceed to exercise its Liquidation Rights under the Loan Agreement if and when the standstill agreement terminates as herein provided. "Non-City Related Default" means an Event of Default under the Loan Agreement that occurs as a result of any event that does not result from a default by the City under the ESA that is not caused by the Borrower under the Loan Agreement, the ESA or the GEPC or by the ESCO under the GEPC. The Lender hereby acknowledges and agrees that it shall have no further interest in the Equipment under the Loan Agreement after payment by the City of the Liquidated Damages Amount and transfer of ownership of the ECMs under the ESA to the City in connection with termination of the ESA pursuant to Section 11.4(a) thereof.

b) Notwithstanding anything in Section 2(a) to the contrary, if an Event of Default occurs under



or, notwithstanding anything in Section 2(a) to the contrary, in an event of default under Section 11.01(h) of the Loan Agreement and Sections 11.3(c) and 11.3(d) of the ESA (the "CIT Bankruptcy Default"), the Lender hereby agrees that it shall not exercise its

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Liquidation Rights so long as (i) the City does not exercise its right to terminate the ESA (unless the City elects to pay the Liquidated Damages Amount thereunder) and continues to make its payments with respect to Savings (as such term is defined in the ESA) pursuant to Sections 8.1, 9.1 and 12.3 of the ESA or (ii) the Loan Agreement or the ESA is not involuntarily terminated in connection with legal proceedings relating to the CIT Bankruptcy Default. The City and the Lender shall be deemed to have notice of the CIT Bankruptcy Default immediately upon its occurrence without the requirement for delivery of any notice from either party to the other. If the Lender at any time desires to exercise its Liquidation Rights (for whatever reason, including rejection, potential rejection or other involuntary termination of the Loan Agreement or the ESA in connection with legal proceedings relating to the CIT Bankruptcy Default) and as a condition to its exercise of the Liquidation Rights, the Lender may deliver to the City a notice in the manner provided in Section 17.6 of the ESA that the Lender intends to exercise its Liquidation Rights with respect to the Equipment under the Loan Agreement together with an offer to enter into a new agreement with the City on the same terms and conditions as the ESA, except that the provider under such new agreement shall be the Lender or its designee, the commencement date for such new agreement shall be the first day of the first calendar month following the date the Lender delivers the notice of its intent to exercise its Liquidation Rights and the new agreement to the City and the effective date of the new agreement shall be the termination date of the ESA, unless an earlier termination date has occurred as a result of any related legal proceedings (in which event the new agreement shall identify the applicable effective date). The offer may be accepted by the City by delivery to the Lender in the manner provided in Section 17.6 of the ESA and to the Lender's notice address as provided in Section 12.01 of the Loan Agreement within thirty days after the delivery to the City of such offer two duly executed originals of the new agreement to the Lender. Upon receipt of such new agreement, the Lender shall immediately execute both originals of such new agreement and return one fully executed copy thereof to the City. Upon the commencement date of the new agreement, the ESA shall terminate and be of no further force and effect. The City further agrees that, should the Lender acquire the Borrower's right, title and interest in the Equipment under the Loan Agreement in connection with the occurrence of the CIT Bankruptcy Default through the exercise of its rights and remedies as a secured party under the Uniform Commercial Code in effect in Illinois or any transfer in lieu thereof, the City shall attorn to the Lender with respect to the Lender's rights and interests in the Equipment for purposes of the Loan Agreement and the delivery of services to the City pursuant to the ESA for the period until the first to occur of (x) the execution and delivery by the City and the Lender of the new agreement as herein provided or (y) the delivery by the City to the Lender of written notice that the City is exercising its right to terminate the ESA pursuant to Section 11.4 thereof. Notwithstanding anything in this Agreement to the contrary, the Lender's agreement not to exercise its Liquidation Rights shall terminate immediately upon the delivery by the City to the Lender of written notice pursuant to Section 11.4(b) that the City is terminating the ESA and requesting removal of the ECMs from the Facilities as therein provided. The Lender hereby acknowledges and agrees that it shall have no further interest in the Equipment after payment by the City of the Liquidated Damages Amount and transfer of ownership of the ECMs under the ESA to the City, all in connection with termination of the ESA pursuant to Section 11.4(a) thereof.

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c) The City hereby acknowledges and agrees that the Lender shall be entitled to exercise the rights of access to the Facilities pursuant to Section 4.1 of the ESA for the purpose of exercising its Liquidation Rights upon termination of the standstill provided in this Section 2.

d) Nothing in this Section 2 is intended, or shall be construed, to limit or restrict in any manner the Lender's rights or remedies against the Borrower or with respect to the Equipment under the Loan Agreement upon (i) the occurrence of an Event of Default by the City, or failure to appropriate funds sufficient to pay the City's obligations, under the ESA, or (ii) subject to Section 2(b), the occurrence of an Event of Default by the Borrower (in its capacity as Provider) under the ESA with respect to the Loan Agreement that entitles the City to exercise its right to terminate the ESA and the City determines to terminate such ESA and require the Borrower (in its capacity as Provider) to remove the ECMs from the Facilities pursuant to Section 11.4(b) of the ESA. In addition, nothing in this Section 2 is intended, or shall be construed, to limit or restrict in any manner or under any circumstance the Lender's rights or remedies (other than the Lender's Liquidation Rights as provided in this Section 2) against the Borrower upon the occurrence of an Event of Default under the Loan Agreement, the ESA or the GEPC or against the defaulting ESCO under or with respect to the GEPC.

### Section 3. Miscellaneous .

(a) Notices. Any notice, request, complaint, demand or other communication under or with respect to this Agreement shall be sufficiently given and shall be deemed given when delivered or mailed by registered mail, postage prepaid, and addressed as provided below. The parties identified below may, by written notice to the other party, from time to time modify the address to which communications are to be given hereunder.

If to the City:                   City of Chicago, Department of Finance  
121 North LaSalle Street, 7th Floor Chicago,  
Illinois 60602

Attention: Deputy Comptroller, Financial Policy and

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

If to the Lender:           Banc of America Public Capital Corp  
11333 McCormick Road, Hunt Valley II Mail Code MD5-  
032-07-05 Hunt Valley, Maryland 21031 Attention:  
Contract Administration

(b) Further Assurances. At the request of either party hereto, the other party shall execute, acknowledge and deliver such other documents and/or instruments as may be

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reasonably required by the requesting party in order to carry out the purpose of this Agreement, provided that no such document or instrument shall modify the rights and obligations of the parties set forth herein.

c) Successors, Assigns; Governing Law. This Agreement shall be binding upon and inure to the benefit of the City and any successor as may be provided by law and the Lender, its successors and its assigns permitted under Section 10.01 of the Loan Agreement. This Agreement shall be construed in accordance with and governed by Illinois law.

d) Conflicts. In the event of any inconsistency between the terms of this Agreement or the ESA, the terms of this Agreement shall control over the terms of the ESA.

e) Severability. If any provision of this Agreement shall be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not apply to or affect any other provisions hereof, but this Agreement shall be construed as if such invalidity, illegality, or unenforceability did not exist.

f) Entire Agreement. This Agreement contains the entire agreement between the parties and no modifications shall be binding upon any party hereto unless set forth in a document duly executed by or on behalf of such party.

g) Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute and be construed as one and the same instrument.

h) Jury Trial Waiver. Each party hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in any legal proceeding directly or indirectly arising out of or relating to this Agreement or the transactions contemplated hereby (whether based on contract, tort or any other theory). Each party hereto (i) certifies that no representative, agent or attorney of any other person has represented, expressly or otherwise, that such other person would not, in the event of litigation, seek to enforce the foregoing waiver and (ii) acknowledges that it and the other party hereto have been induced to enter into this Agreement by, among other things, the mutual waivers and certifications in this subsection (h).

IN Witness Whereof, the parties hereto have executed this Subordination and Standstill Agreement as of the date first written above.

Lender

Banc of America Public Capital Corp

/s/

**By: \_\_\_\_\_ f ) 1 °**  
Terri J. Preston Authorized Agent  
City

City of Chicago

By:  
Lois A. Scott  
Chief Financial Officer

Approved for the City for Form and Legal  
Sufficiency:

Acknowledged as of the date first above written: Borrower  
Chicago Infrastructure Trust

By:  
Stephen S. Beitler  
Chief Executive Officer and Executive Director

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In Witness Whereof, the parties hereto have executed this Subordination and Standstill Agreement as of the date first written above.

Lender

Banc of America Public Capital Corp

By:

Terri J. Preston  
Authorized Agent

City of Chicago / By: / ^ILL/X- - Wo^- "

Lois A. Scott  
Chief Financial Officer

Acknowledged as of the date first above written: Borrower

Chicago Infrastructure Trust

By:

Stephen S. Beitler  
Chief Executive Officer and Executive Director

Approved for the City for, Form and Legal Sufficiency: V">-viC^-XTT^^^y-- ■•

In Witness Whereof, the parties hereto have executed this Subordination and Standstill Agreement as of the date first written above.

Lender

Banc of America Public Capital Corp

Terri J. Preston Authorized Agent

By:.

Lois A. Scott  
Chief Financial Officer

Approved for the City for Form and Legal  
Sufficiency:

ACKNOWLEDGED as of the date first above written:

Borrower

Chicago Infrastructure Trust

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Stephen S. Beitler  
Chief Executive Officer and Executive Director

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**Subordination and Standstill agreement**

**Relating to Chicago Infrastructure Trust (Chicago Department of Fleet  
and Facility Management Retrofit One Project)  
2014 Series C Note**

*This Subordination and Standstill Agreement (this "Agreement") is entered into as of April 11, 2014, by and between Banc of America Public Capital Corp, a Kansas corporation (the "Lender "), and City of Chicago, a home rule unit of local government under the Constitution and laws of the State of Illinois (the "City ").*

**Recitals**

Whereas, the City authorized and empowered the Chicago Infrastructure Trust, a nonprofit corporation organized and existing under the laws of the State of Illinois (the "Borrower"), to undertake, acquire and finance certain energy conservation projects for the benefit of the City and its sister agencies; and

Whereas, the Borrower is, simultaneously herewith, entering into that certain Guaranteed Energy Performance Contract (the "GEPC") with Schneider Electric Buildings Americas, Inc. (the "ESCO") under which the ESCO agrees (a) to implement energy management and energy-related capital improvement services at certain public buildings owned or operated by the City (the "Facilities ") as described in the GEPC, including the installation of certain energy conservation measures {"ECMs") at such Facilities; and (b) to provide a performance guarantee that guarantees the energy savings to the City resulting from the acquisition and installation of the ECMs described in the GEPC and payment or reimbursement for any difference between the guaranteed annual savings amount and the actual project savings amount as therein provided; and

Whereas, the Lender is, simultaneously herewith, entering into that certain Loan Agreement with the Borrower (the "Loan Agreement") for the purpose of making a loan to the BoiTower to finance the costs of the ECMs and other property to be acquired and installed under the GEPC (collectively, the "Equipment") and certain other costs; and

WHEREAS, the Borrower and the City are, simultaneously herewith, entering into that certain Energy Services Agreement (the "ESA ") under which the Borrower will procure, install, implement, own, operate and maintain the ECMs acquired and installed under the GEPC for the purposes of achieving energy and operational savings at the Facilities subject to the ESA for the benefit of the City in consideration for which the City agrees to make payments in an amount equal to such savings as provided in the ESA; and

Whereas, in order to secure all of its obligations under the Loan Agreement to the Lender, the Borrower has (a) assigned and granted a security interest to the Lender in all of the Borrower's rights and interests under the GEPC and the ESA, including (without limitation) its rights to receive all payments thereunder and to enforce all of the Borrower's rights thereunder;

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and (b) granted to the Lender a security interest constituting a first lien on any and all right, title and interest of the Borrower in and to the Equipment described in the Loan Agreement; and

WHEREAS, on the terms and conditions in this Agreement, the City is willing to subordinate its rights and interests under the ESA in the Equipment described therein to the security interest granted to the Lender in the Equipment pursuant to the Loan Agreement and the Lender is willing not to exercise its Liquidation Rights (as herein defined) so long as certain conditions continue to be satisfied;

NOW, Therefore, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

#### Section L Subordination.

The rights and interests of the City in and to the Equipment under the ESA, including its purchase option under Section 2.3 of the ESA, its right to remove or request removal of the Equipment under Section 2.4

or 11.4(b) of the ESA and all other rights and remedies of the City with respect to the Equipment as provided in the ESA, shall be subject and subordinate to the security interest granted by the Borrower to the Lender in and to the Equipment pursuant to the Loan Agreement and to any renewals, modifications, consolidations, replacements and extensions of the Loan Agreement to the full extent of the obligations now or hereafter secured by the security interest granted thereunder.

## Section 2. Standstill.

a) If any Event of Default that is a Non-City Related Default (as herein defined) occurs under the Loan Agreement, the Lender hereby agrees that it shall not exercise its rights to possession and/or sale of Equipment (herein referred to as "Liquidation Rights") pursuant to subsections (a) and (b) of Section 11.02 of the Loan Agreement so long as the City (i) does not exercise its right to terminate the ESA, unless the City elects to pay the Liquidated Damages Amount under Section 11.4(a) thereof, and (ii) continues to make its payments with respect to Savings (as such term is defined in the ESA) pursuant to Sections 8.1, 9.1 and 12.3 of the ESA. The Lender shall promptly deliver written notice to the City of (x) the occurrence of a Non-City Related Default under the Loan Agreement and (y) the Lender's intention to proceed to exercise its Liquidation Rights under the Loan Agreement if and when the standstill agreement terminates as herein provided. "Non-City Related Default" means an Event of Default under the Loan Agreement that occurs as a result of any event that does not result from a default by the City under the ESA that is not caused by the Borrower under the Loan Agreement, the ESA or the GEPC or by the ESCO under the GEPC. The Lender hereby acknowledges and agrees that it shall have no further interest in the Equipment under the Loan Agreement after payment by the City of the Liquidated Damages Amount and transfer of ownership of the ECMs under the ESA to the City in connection with termination of the ESA pursuant to Section 11.4(a) thereof.

b) Notwithstanding anything in Section 2(a) to the contrary, if an Event of Default occurs under Section 11.01(h) of the Loan Agreement and Sections 11.3(c) and 11.3(d) of the ESA (the "CIT Bankruptcy Default"), the Lender hereby agrees that it shall not exercise its

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Liquidation Rights so long as (i) the City does not exercise its right to terminate the ESA (unless the City elects to pay the Liquidated Damages Amount thereunder) and continues to make its payments with respect to Savings (as such term is defined in the ESA) pursuant to Sections 8.1, 9.1 and 12.3 of the ESA or (ii) the Loan Agreement or the ESA is not involuntarily terminated in connection with legal proceedings relating to the CIT Bankruptcy Default. The City and the Lender shall be deemed to have notice of the CIT Bankruptcy Default immediately upon its occurrence without the requirement for delivery of any notice from either party to the other. If the Lender at any time desires to exercise its Liquidation Rights (for whatever reason, including rejection, potential rejection or other involuntary termination of the Loan Agreement or the ESA in connection with legal proceedings relating to the CIT Bankruptcy Default) and as a condition to its exercise of the Liquidation Rights, the Lender may deliver to the City a notice in the manner provided in Section 17.6 of the ESA that the Lender intends to exercise its Liquidation Rights with respect to the Equipment under the Loan Agreement together with an offer to enter into a new agreement with the City on the same terms and conditions as the ESA, except that the provider under such new agreement shall be the Lender or its designee, the commencement date for such new agreement shall be the first day of the first calendar month following the date the Lender delivers the notice of its intent to exercise its Liquidation Rights and the new agreement to the City and the effective date of the new agreement shall be the termination date of the ESA, unless an earlier



termination date has occurred as a result of any related legal proceedings (in which event the new agreement shall identify the applicable effective date). The offer may be accepted by the City by delivery to the Lender in the manner provided in Section 17.6 of the ESA and to the Lender's notice address as provided in Section 12.01 of the Loan Agreement within thirty days after the delivery to the City of such offer two duly executed originals of the new agreement to the Lender. Upon receipt of such new agreement, the Lender shall immediately execute both originals of such new agreement and return one fully executed copy thereof to the City. Upon the commencement date of the new agreement, the ESA shall terminate and be of no further force and effect. The City further agrees that, should the Lender acquire the Borrower's right, title and interest in the Equipment under the Loan Agreement in connection with the occurrence of the CIT Bankruptcy Default through the exercise of its rights and remedies as a secured party under the Uniform Commercial Code in effect in Illinois or any transfer in lieu thereof, the City shall attorn to the Lender with respect to the Lender's rights and interests in the Equipment for purposes of the Loan Agreement and the delivery of services to the City pursuant to the ESA for the period until the first to occur of (x) the execution and delivery by the City and the Lender of the new agreement as herein provided or (y) the delivery by the City to the Lender of written notice that the City is exercising its right to terminate the ESA pursuant to Section 11.4 thereof. Notwithstanding anything in this Agreement to the contrary, the Lender's agreement not to exercise its Liquidation Rights shall terminate immediately upon the delivery by the City to the Lender of written notice pursuant to Section 11.4(b) that the City is terminating the ESA and requesting removal of the ECMs from the Facilities as therein provided. The Lender hereby acknowledges and agrees that it shall have no further interest in the Equipment after payment by the City of the Liquidated Damages Amount and transfer of ownership of the ECMs under the ESA to the City, all in connection with termination of the ESA pursuant to Section 11.4(a) thereof.

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c) The City hereby acknowledges and agrees that the Lender shall be entitled to exercise the rights of access to the Facilities pursuant to Section 4.1 of the ESA for the purpose of exercising its Liquidation Rights upon termination of the standstill provided in this Section 2.

d) Nothing in this Section 2 is intended, or shall be construed, to limit or restrict in any manner the Lender's rights or remedies against the Borrower or with respect to the Equipment under the Loan Agreement upon (i) the occurrence of an Event of Default by the City, or failure to appropriate funds sufficient to pay the City's obligations, under the ESA, or (ii) subject to Section 2(b), the occurrence of an Event of Default by the Borrower (in its capacity as Provider) under the ESA with respect to the Loan Agreement that entitles the City to exercise its right to terminate the ESA and the City determines to terminate such ESA and require the Borrower (in its capacity as Provider) to remove the ECMs from the Facilities pursuant to Section 11.4(b) of the ESA. In addition, nothing in this Section 2 is intended, or shall be construed, to limit or restrict in any manner or under any circumstance the Lender's rights or remedies (other than the Lender's Liquidation Rights as provided in this Section 2) against the Borrower upon the occurrence of an Event of Default under the Loan Agreement, the ESA or the GEPC or against the defaulting ESCO under or with respect to the GEPC.

### Section 3. Miscellaneous.

(a) Notices. Any notice, request, complaint, demand or other communication under or with respect to this Agreement shall be sufficiently given and shall be deemed given when

with respect to this Agreement shall be sufficiently given and shall be deemed given when delivered or mailed by registered mail, postage prepaid, and addressed as provided below. The parties identified below may, by written notice to the other party, from time to time modify the address to which communications are to be given hereunder.

If to the City:                   City of Chicago, Department of Finance  
121 North LaSalle Street, 7th Floor Chicago,  
Illinois 60602

Attention: Deputy Comptroller, Financial Policy and

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

If to the Lender:           Banc of America Public Capital Corp  
11333 McCormick Road, Hunt Valley II Mail Code MD5-  
032-07-05 Hunt Valley, Maryland 21031 Attention:  
Contract Administration

- (b) Further Assurances. At the request of either party hereto, the other party shall execute, acknowledge and deliver such other documents and/or instruments as may be

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reasonably required by the requesting party in order to carry out the purpose of this Agreement, provided that no such document or instrument shall modify the rights and obligations of the parties set forth herein.

c) Successors, Assigns; Governing Law. This Agreement shall be binding upon and inure to the benefit of the City and any successor as may be provided by law and the Lender, its successors and its assigns permitted under Section 10.01 of the Loan Agreement. This Agreement shall be construed in accordance with and governed by Illinois law,

d) Conflicts. In the event of any inconsistency between the terms of this Agreement or the ESA, the terms of this Agreement shall control over the terms of the ESA.

e) Severability. If any provision of this Agreement shall be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not apply to or affect any other provisions hereof, but this Agreement shall be construed as if such invalidity, illegality, or unenforceability did not exist.

f) Entire Agreement. This Agreement contains the entire agreement between the parties and no modifications shall be binding upon any party hereto unless set forth in a document duly executed by or on behalf of such party.

g) Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute and be construed as one and the same

be deemed an original, but all of which together shall constitute and be construed as one and the same instrument.

h) Jury Trial Waiver. Each party hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in any legal proceeding directly or indirectly arising out of or relating to this Agreement or the transactions contemplated hereby (whether based on contract, tort or any other theory). Each party hereto (i) certifies that no representative, agent or attorney of any other person has represented, expressly or otherwise, that such other person would not, in the event of litigation, seek to enforce the foregoing waiver and (ii) acknowledges that it and the other party hereto have been induced to enter into this Agreement by, among other things, the mutual waivers and certifications in this subsection (h).

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In Witness WHEREOF, the parties hereto have executed this Subordination and Standstill Agreement as of the date first written above.

Lender

Banc of America public Capital Corp

**By: -T JL. V, J H ''**

Terri J. Preston Authorized Agent  
City

City of Chicago

By:

Lois A. Scott  
Chief Financial Officer

Approved for the City for Form and Legal  
Sufficiency:

Acknowledged as of the date first above written: Borrower

Chicago Infrastructure Trust

By:

Stephen S. Beitler  
Chief Executive Officer and Executive Director

•0-

In Witness Whereof, the parties hereto have executed this Subordination and Standstill Agreement as of the date first written above.

Lender

Banc of America Public Capital Corp

By:

Terri J. Preston  
Authorized Agent

City

City of Chicago; - /

By: *sykcU'^-QUs^*

Lois A. Scott  
Chief Financial Officer

Approved by the City Clerk and Legal

Sufficiency: b?">-■<•". 'H^v^^r -

Acknowledged as of the date first above written: Borrower

Chicago Infrastructure Trust

By: :

Stephen S. Beitler

Chief Executive Officer and Executive Director

In Witness Whereof, the parties hereto have executed this Subordination and Standstill Agreement as of the date first written above.

Lender

Banc of America Public Capital Corp

Terri J. Preston Authorized Agent

Lois A. Scott

Chief Financial Officer

Acknowledged as of the date first above written: Borrower

Chicago Infrastructure Trust

**Op CL&**  
**Bv: 'dk^JQfl^**

Stephen S. Beltler

Chief Executive Officer and Executive Director

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Approved for the City for Form and Legal