



# Office of the City Clerk

City Hall  
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Chicago, IL 60602  
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## Legislation Text

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**File #:** SO2021-2898, **Version:** 1

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### SUBSTITUTE ORDINANCE

WHEREAS, the City of Chicago ("City") is a home rule unit of government by virtue of the provisions of the Constitution of the State of Illinois of 1970, and, as such, may exercise any power and perform any function pertaining to its government and affairs; and

WHEREAS, GRIT Chicago LLC ("GRIT") is an Illinois limited liability company whose offices are located at 120 North Racine Avenue, Suite 1200, Chicago, Illinois 60607; and

WHEREAS, a substantially final proposed form of infrastructure agreement between the City and GRIT is attached hereto as Exhibit A (the "Infrastructure Agreement"); and

WHEREAS, the City is or shall be the owner of the public right of way and other real property depicted on Exhibit 1 to the Infrastructure Agreement (the "Public Improvements Property"); and

WHEREAS, the City wishes to authorize GRIT to prepare plans and specifications and implement such plans and specifications to construct certain public improvements (the "Public Improvements") on the Public Improvements Property pursuant to the Infrastructure Agreement (the "Work"); and

WHEREAS, GRIT shall be compensated for the Work on the Public Improvements pursuant to the Infrastructure Agreement; and

WHEREAS, as part of the Work, GRIT shall prepare or cause to be prepared plans, specifications, estimate of quantities, engineer's estimate, and ancillary engineering reports and analyses by duly licensed engineer(s) depicting the construction of the Public Improvements comprising the Work, which shall be reviewed and approved by the City prior to the commencement of the Work (the "Approved Plans and Specifications"); and

WHEREAS, pursuant to the Infrastructure Agreement, GRIT will perform the Work, or cause the Work to be performed, and engage third party contractors or subcontractors to cause the Work to be performed in accordance with the Approved Plans and Specifications and a budget for the Work are attached as Exhibit 2C to the Infrastructure Agreement; and

WHEREAS, The City and GRIT desire that the City shall retain ownership of the Public Improvements Property and Public Improvements, as constructed in accordance with the Approved Plans and Specifications, with the exception of a public park along 31<sup>st</sup> Street; and

WHEREAS, the City agrees to use available funds in an amount not to exceed \$60,000,000 (the "Guaranteed Maximum Price" or "GMP") to pay GRIT for the costs of the Public Improvements pursuant to the terms and conditions of the Infrastructure Agreement; and

WHEREAS, the City and GRIT also propose entering into a redevelopment agreement, pursuant to which the City shall sell certain other City-owned property adjacent to the Public Improvements Property for GRIT's proposed "Bronzeville Lakefront" mixed-use development; now therefore,

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

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SECTION 1. The foregoing recitals are hereby adopted as the findings of the City Council.

SECTION 2. The Commissioners of DPD and CDOT (the "Commissioners") or designees of the Commissioners are each hereby authorized, with the approval of the City's Corporation Counsel as to form and legality, to negotiate, execute and deliver the Infrastructure Agreement, and such other supporting documents as may be necessary or appropriate to carry out and comply with the provisions of the Infrastructure Agreement, with such changes, deletions and insertions as shall be approved by the persons executing the Infrastructure Agreement (including but not limited to any changes necessary to preserve the tax-exempt status of any City bonds the proceeds of which may be used to make payments under the Infrastructure Agreement). Pursuant to Section 2-8-065(c)(1) of the Municipal Code of Chicago, the Commissioners are authorized to waive such fees in connection with the Work that are customarily waived in connection with comparable public infrastructure projects.

SECTION 3. If any provision of this ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such provision shall not affect any of the other provisions of this ordinance.

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

SECTION 6. This ordinance shall take effect immediately upon its passage and approval. This ordinance shall be of no further force and effect if the Infrastructure Agreement is not fully executed within one year of the passage and approval hereof.

Exhibit A - Infrastructure Agreement

BRONZEVILLE LAKEFRONT INFRASTRUCTURE AGREEMENT

This Bronzeville Lakefront Infrastructure Agreement (this "Agreement") is made and entered into effective as of the      of      , 2021 (the "Effective Date"), by and between the City of Chicago, Illinois (the "City"), a home rule unit and municipality under Article VII of the Constitution of the State of Illinois, acting by and through its Departments of Planning and Development ("DPD") and Transportation ("CDOT"), and GRIT Chicago, LLC, an Illinois limited liability company ("GRIT"). The City and GRIT are sometimes hereinafter referred to individually as a "Party" and collectively as the "Parties."

RECITALS

A. The City is or shall be the owner of the public right of way and other real property depicted on Exhibit 1 attached hereto and designated as the "Public Improvements Property."

B. The City Council of the City (the "City Council") adopted an ordinance on      , 2021 (the "Infrastructure Agreement Ordinance"), among other things, authorizing GRIT to prepare plans and specifications and implement such plans and specifications to construct certain public improvements (the "Public Improvements") on the Public Improvements Property pursuant to this Agreement (the "Work"). GRIT shall be compensated for the Work on the Public Improvements pursuant to this Agreement and the Infrastructure Agreement Ordinance.

C. Pursuant to the Infrastructure Agreement Ordinance, and as part of the Work, GRIT shall prepare or cause to be prepared plans, specifications, estimate of quantities, engineer's estimate, and ancillary engineering reports and analyses by duly licensed engineer(s) (the "Design Consultant") depicting the construction of the Public Improvements comprising the Work, which shall be reviewed and approved by the City prior to the commencement of the Work (the "Approved Plans and Specifications"), a copy of which shall be deemed incorporated herein upon approval).

D. Pursuant to this Agreement, GRIT will perform the Work, or cause the Work to be performed, and engage third party contractors or subcontractors to cause the Work to be performed in accordance with the Approved Plans and Specifications. A schedule and a budget for the Work are attached hereto as Exhibits 2B and 2C, respectively.

E. The City and GRIT desire that the City shall retain ownership of the Public Improvements Property and Public Improvements, as constructed in accordance with the Approved Plans and Specifications, with the exception of a public park along 31<sup>st</sup> Street between S. Cottage Grove Av. and S. Lake Park Av. (the "31<sup>st</sup> Street Planned Park"), which the City [will][may], upon completion, convey to the Chicago Park District (the "Park District"). Notwithstanding the foregoing, GRIT shall operate and maintain the 31<sup>st</sup> Street Planned Park pursuant to an agreement among GRIT, the Park District and the City (the "31<sup>st</sup> Street Planned Park DEMA"). The 31<sup>st</sup> Street Park Planned DEMA is contemplated in and authorized by

Statement 18 of Business-Residential Planned Development Ordinance Number \_\_\_\_\_ adopted by the City Council on \_\_\_\_\_, 2021 (the "PD," in which GRIT is known as the "Applicant") as a "Park DEMA." The City shall consult with the Park District with respect to any approvals required hereunder applicable to the 31<sup>st</sup> Street Planned Park.

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F. The City agrees to use available funds in an amount not to exceed \$60,000,000 (the "Guaranteed Maximum Price" or "GMP") to pay GRIT for the costs of the Public Improvements pursuant to the terms and conditions of this Agreement.

G. Pursuant to another ordinance adopted by the City Council contemporaneously with the Infrastructure Agreement Ordinance, the City and GRIT have also entered into that certain Bronzeville Lakefront Agreement for the Sale and Redevelopment of Land dated [contemporaneously herewith] (the "Redevelopment Agreement," in which GRIT is known as the "Developer") pursuant to which the City shall sell certain other City-owned property adjacent to the Public Improvements Property (the "Development Parcels," also depicted on Exhibit 1) for GRIT's proposed mixed-use redevelopment project (the "Development").

NOW, THEREFORE, it is agreed between the City and GRIT as follows:

## **SECTION 1**

### **INCORPORATION OF RECITALS AND EXHIBITS: DEFINITIONS**

1 Incorporation of Recitals and Exhibits. The above recitals and exhibits attached hereto are expressly incorporated in and made a part of this Agreement.

2 Definitions, [final list of defined terms to be added for closing]

## **SECTION 2 THE WORK**

2.01 Approved Plans and Specifications. Prior to preparation of the Approved Plans and Specifications, the Design Consultant will prepare conceptual scope drawings ("Scope Drawings"), which are required to be approved by the City in its sole discretion. Preparation of Scope Drawings may include traffic modeling and analysis, photometric analysis, and hydraulic analysis for the phased and full build out of the proposed development. Prior to the start of construction of the Public Improvements, GRIT will subsequently provide to the City Approved Plans and Specifications (including a project budget for the Work), which are required to be approved by the City in its sole discretion.. GRIT shall conduct the construction of the Public Improvements in accordance with the Approved Plans and Specifications. The Public Improvements shall be completed to "CDOT standard" in affect at the time the plans and specifications are constructed which means that all materials and work shall be designed, installed, and constructed in accordance with (i) the most current version of the CDOT's Regulations for Opening, Repair and Construction in the Public Way and its appendices and correlated standards of other City departments, or the successor standards or publication adopted by CDOT, (ii) the current AASHTO standards, and (iii) the current Illinois Department of Transportation ("IDOT") standards. Any material deviation from the Approved Plans and Specifications shall be made subject to and in accordance with the terms of Section 2.03. The Approved Plans and Specifications shall substantially conform to the terms of this Agreement and applicable federal, state and local laws, ordinances and regulations.

(a) Public Improvements. Upon completion of the Work, turnover by GRIT and acceptance by City, the applicable Public Improvements will be owned by City, except for the 31<sup>st</sup> Street Planned Park which [may] [will] be owned by the Park

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District, and operated and maintained by GRIT pursuant to the 31<sup>st</sup> Street Planned Park DEMA.

- (b) Other Governmental Approvals. Prior to the start of construction of the Public Improvements, GRIT shall have secured all other necessary approvals and permits required by any state, federal, or local statute, ordinance or regulation and has submitted evidence thereof to CDOT.

2 Schedule. Any anticipated delay in the Schedule of more than 365 days shall require approval as a Change Order (defined below).

3 Change Orders. "Change Order" means any amendment or modification to the Scope Drawings and/or Approved Plans and Specifications, any amendment or modification to the Budget (including reallocations in excess of \$100,000 among line items therein), any delay in the Schedule of more than 365 days, or the expenditure of contingency funds of more than \$100,000 in the aggregate for the Public Improvements (as described in Section 3.02 below). All Change Orders (and documentation substantiating the need therefor) must be submitted by GRIT to the City for the City's written approval. GRIT will not authorize or permit the performance of any work relating to any Change Order or the furnishing of materials in connection therewith prior to the receipt by GRIT of the City's written approval. Each subcontract between GRIT and any subcontractor shall contain a provision to this effect.

4 Assignment and Delegation. GRIT shall not assign, delegate, subcontract or otherwise transfer all or any part of its rights or obligations under this Agreement or any part hereof, unless otherwise provided for herein, without the express written consent of the City; provided, however, that GRIT may elect and is authorized to delegate contracting obligations to a General Contractor and subcontract for the construction of the Work. The absence of a provision in this Agreement authorizing the assignment, delegation or transfer or the absence of a written consent shall void the attempted assignment, delegation or transfer and shall be of no effect as to the Work or this Agreement. All subcontracts, all approvals or subcontractors and any assignment to which the City consents are, regardless of their form, deemed conditioned upon performance by the subcontractor or assignee in accordance with the terms and conditions of this Agreement. GRIT shall provide the City with a copy of the general contract and with copies of all subcontracts and assignments and any amendments thereto.

5 Selection of General Contractor; Bonding Requirements; Subcontracts. Prior to entering into an agreement (the "General Contract") with the general contractor (the "General Contractor") for the Work, GRIT shall solicit, or shall cause the General Contractor to solicit, bids from qualified contractors eligible to do business with, and having an office located in, the City of Chicago. GRIT shall select the General Contractor (or shall cause the General Contractor to select the subcontractor) submitting the lowest responsible bid who can complete the Work in a timely manner unless otherwise approved by the City. The City shall review and approve all bid packages for subcontracts before issuance and GRIT shall, and shall require the General Contractor to, award subcontracts to the lowest responsive and responsible bidders and give the City prompt notice of such awards.

The General Contract shall be subject to prior approval of the City. GRIT shall submit copies of the General Contract for CDOT's prior written approval which shall be granted or denied within ten (10) business days after delivery thereof. Within ten (10) business days after execution of such General Contract by GRIT, the General Contractor and any other parties thereto, GRIT shall deliver to the City a copy of such General Contract together with any

modifications, amendments or supplements thereto. GRIT shall ensure that the General Contractor shall not (and shall cause the General Contractor to ensure that the subcontractors shall not) begin work on the Work until the Approved Plans and Specifications have been approved by CDOT and all requisite permits have been obtained. Any change to the General Contractor prior to completion of the Work shall require the prior approval of the City.

2.06 (a) Performance and Payment Bonds, Insurance. The General Contractor shall be bonded for its respective performance and payment sureties having an AA rating or better using American Institute of Architect's Form No. 312 or its equivalent. The City shall be named as an obligee or co-obligee on such bond (s). GRIT shall provide a surety bond in the amount of the GMP, which bond shall remain in place (or be replaced with a bond of equivalent terms, and subject to the City's approval) until completion of the Work, as evidenced by the issuance of the Completion Certificate (as defined in Section 5 below). GRIT shall provide the City with copies of such replacement bonds and any future bonds required under this Agreement upon their issuance.

b) Consultant Engineer. GRIT shall retain the services of a qualified and licensed engineer experienced in the construction of infrastructure projects ("Consultant Engineer") with previous experience overseeing of previous CDOT projects. The Consultant Engineer shall be responsible for seeing that the Work is constructed in accordance with the Approved Plans and Specifications under the supervision of CDOT. The Consultant Engineer's scope of work shall include, but not be limited to, preparation of all construction documentation in accordance with the applicable requirements of the Chicago Department of Transportation's Construction Manual, quality assurance and quality control, review of all contractor submittals including shop drawings, material submittals and catalogue cuts, determine the appropriateness of any proposed modifications to the Plans and Specifications, prepare punchlists on behalf of the City and supervise project closeout and acceptance of the Work. Staffing shall be as determined by agreement of the City and GRIT and shall be adequate to cover all aspects of the Work.

c) Maintenance During Construction. Until the Work is inspected and approved by CDOT and the Public Improvements are accepted by CDOT, as evidenced by issuance of the Completion Certificate (defined in Section 5 below), GRIT shall maintain and, as necessary, repair the Public Improvements Property.

(d) Other Laws and Regulations. GRIT must at all times observe and comply, and must cause its General Contractor and subcontractors to observe and comply, with all applicable Federal, State and local laws, ordinances, codes, rules, regulations and executive orders, now existing, which may in any manner affect the performance of this Agreement ("Laws"). This includes all Environmental Laws, defined as any and all Laws relating to the regulation and protection of human health, safety, radiation protection, the environment and natural resources now or hereafter in effect, as amended or supplemented from time to time, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. § 5101 et seq., the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq., the Clean Air Act, 42 U.S.C. § 7401 et seq., the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 et seq., the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq., the Atomic Energy Act (42 U.S.C. Sec. 2014, et seq.), the Illinois Radiation Protection Act of 1990 (420 ILCS 40/1, et seq.), any and all

regulations promulgated under such Laws, and all analogous state and local counterparts or equivalents of such Laws, including, without limitation, the Illinois Environmental Protection Act, 415 ILCS 5/1 et seq., and the common law, including, without limitation, trespass and nuisance. Provisions required by law, ordinance, codes, rules, regulations, or executive orders to be inserted in this Agreement are deemed inserted, whether or not they appear in this Agreement or upon application by either Party, this Agreement, will forthwith be physically amended to physically make such insertion; however, in no event does the failure to insert such provision(s) prevent the enforcement of such provision(s) of this Agreement. In constructing the Work, GRIT must follow the most stringent of the applicable agency and code requirements. GRIT is fully responsible for ascertaining and complying with all agency and code requirements applicable to the Work.

(e) During construction of the Work, the appropriate City department shall have the right at any time and from time to time to enter upon the Public Improvements Property for the purpose of conducting such inspections as are required by the terms of this Agreement or as the City may otherwise deem appropriate.

f) No impact or excess deflection shall occur, and if any does so occur then GRIT shall be responsible for the same. The City may require GRIT to provide analysis to that effect.

g) Three (3) copies of shop drawings, catalogue cuts and material submittals pertaining to the Public Improvements, approved by GRIT's General Contractor and reviewed and approved by the Consultant Engineer shall be delivered to the Commissioner of CDOT (the "CDOT Commissioner") at least twenty (20) business days prior to the beginning of any work specified by said shop drawings, catalogue cuts or material submittals for the purpose of verifying that the work conforms to the requirements of the Plans and Specifications.

h) Within sixty (60) days after the completion of all Work required by this Agreement, GRIT or its appointed agent will deliver to the CDOT a complete set of "As Built" plans, shop drawings, material submittals and catalogue cuts.

(i) As contemplated above, GRIT shall deliver payment and performance bonds

(collectively, the "Bond") to the City in accordance with this Agreement and may cause its

General Contractor and/or subcontractors to obtain such Bonds, in a sum equal to one

hundred percent of the hard costs set forth in the Budget, which Bond shall provide that

GRIT, or any general contractor or subcontractors posting said Bond, as applicable, shall

perform all work according to the Approved Plans and Specifications for the Work and

promptly pay all debts incurred by GRIT or its general contractor in the prosecution of said

work for materials and labor. The City will be included as an obligee or co-obligee on said

Bond(s). The Bond(s) shall be in the form attached hereto as Exhibit 4. Any performance

Bond so provided must comply with the provisions of 30 ILCS 550/1 et seq., as amended,

and Chapter 2, Section 2-92-030 of the Municipal Code of Chicago, as amended. The

surety or sureties issuing the Bond must be acceptable to the City Comptroller. The surety for the Bond must have a Best's Key Rating Guide of "B+", Class XI or greater. The performance Bond shall be secured by a surety listed in the latest issue of U.S. Treasury Circular 570.

### SECTION 3 PAYMENT FOR THE WORK

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3.01 Guaranteed Maximum Price. The City will promptly pay GRIT for the cost of the Public Improvements, up to the Guaranteed Maximum Price, in accordance with the terms and conditions of this Agreement. GRIT does not guarantee any specific line item provided as part of the Budget, but agrees that it will be responsible for paying all costs of completing the Public Improvements that exceed the Guaranteed Maximum Price. The City agrees to waive only the following fees with respect to the Public Improvements in accordance with the terms and conditions of this Agreement: [to be determined]. The City further agrees to provide such documentation as is necessary to allow GRIT, General Contractor and subcontractors to exercise sales tax exemptions to the extent applicable to the Work, it being acknowledged that the Budget excludes sales taxes and other fee waivers which are applicable to the City.

GRIT also intends to undertake certain enhancements to the Public Improvements ("Enhanced City Infrastructure") that the City is not obligated to fund hereunder. However, in the event that GRIT identifies cost savings, and the cost of the Public Improvements does not exceed the GMP, the City may consider applying those savings to the Enhanced City Infrastructure. Such a decision is at the sole discretion of the City.

2 Contingency Allowance. The Budget includes a contingency allowance to cover unforeseen costs, including without limitation unknown physical conditions, or costs associated with circumstances outside the control of GRIT that are necessary for the completion of the Public Improvements. Contingency expenditures of more than \$100,000 per issue must be approved in writing by the City prior to such expenditure, which approval may not be unreasonably withheld. Contingency expenditures of up to \$100,000 per issue shall be at the sole discretion of GRIT.

3 Payment Applications. Payment for the Public Improvements shall be made promptly through an escrow account established pursuant to an escrow agreement among the City, GRIT and [Chicago Title and Trust Company] (the "Escrow Agent"), the form of which is attached hereto as Exhibit 5 (the "Escrow Agreement"). The City shall deposit the GMP with the Escrow Agent in the amounts and at the times set forth in Exhibit 3 attached hereto. It is the duty of GRIT to effectively manage the payment application process and all related paperwork. GRIT is responsible to the City for securing and delivering all paperwork required by the Agreement to be submitted with payment applications, including subcontractor, consultant and material supplier lien waivers, certified payrolls, and all other required documents as further specified herein. Repeated failure of GRIT to promptly submit its payment applications to the City, in proper and complete form, will constitute a material breach of this Agreement, and constitute cause for termination. No payment application will include payment for Work for which GRIT has not been billed by the applicable subcontractor, material supplier, service provider or consultant. GRIT will submit payment applications in such a manner so as not to delay payment to any subcontractor, material supplier, consultant or service provider whose billing and lien waiver paperwork is complete. All required certified payrolls, trailing lien waivers, and other required paperwork must be submitted with the payment application. GRIT's payment application will not include any



request for payment for work of any subcontractor, material supplier, consultant, or service provider whose certified payrolls, trailing lien waivers, or other payment paperwork is incomplete at the time the payment application is submitted.

4      **Schedule of Values: Treatment of Prior Expenditures.**

(i) No later than fifteen (15) days after the selection of the General Contractor, GRIT will submit to the City a schedule of values ("Schedule of Values"), showing values of the Public Improvements to be performed by trade contractors, which values shall be

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modified as subcontract awards are made, and agreed upon construction fee ("Construction Fee") to be paid to GRIT or the General Contractor containing such supporting details or other evidence as to its correctness as the City may require. The Schedule of Values will list the value for each construction activity broken down by materials and labor to be included in the progress schedule. When approved by the City, the Schedule of Values will be used as a basis for certificates of payment unless it is found to be in error.

(ii) GRIT has made certain expenditures in satisfaction of certain costs covered in the Budget prior to the Effective Date (the "Prior Expenditures"). Exhibit 6 identifies such prior expenditures approved by the City as Prior Expenditures and, subject to the terms and conditions hereof, the City agrees to reimburse GRIT for such Prior Expenditures within thirty (30) business days of the Effective Date (contingent upon the submission by GRIT and approval by the City of the insurance certificates pursuant to Section 10 and the Bond pursuant to Section 2.05.

5      **Invoice Target Date.** The City will assign an invoice target date to GRIT. Not later than ten (10) business days prior to the invoice target date, GRIT will submit to the City a pencil copy of the application for payment ("Payment Application") for Public Improvements completed through the end of the current month and a monthly progress report. Not later than three (3) business days prior to the invoice target date, the pencil copy will be reviewed for approval of value of the Public Improvements completed at the payment review meeting with the City. Calculation of the value of the Public Improvements completed will be made by summarizing the individual values of Public Improvements completed as such completion is reported in the monthly progress report reviewed by the City. Submission of the monthly progress report five (5) days prior to the payment review meeting will be a condition precedent to the approval of the payment application. The pencil copy of the Payment Application will project completion of the Public Improvements through the end of the current month.

6      **Sworn Statement.** On the invoice target date of each month, GRIT will submit to the City, in triplicate, an application for partial payment including a notarized affidavit stating that all monetary obligations to all subcontractors for the periods covered by all prior applications for payment for which payment has been made by the City, if any, have been completely fulfilled and discharged. The affidavit must be supported by receipts or receipted vouchers, and lien waivers, evidencing payments for such materials, services, labor, and payments to subcontractors, together with a waiver of lien covering the amount for which the current payment is being required and such other evidence of GRIT's right to payment as the City may direct. GRIT shall submit form of waiver of lien for partial or progress payment to the City for approval. The application for partial payment will conform to approvals made by the City at the payment review meeting.

7      **Certified Payrolls.** Three copies of certified payrolls for the payment period are to be submitted by GRIT, the General Contractor and all subcontractors working on the Public Improvements Property to the City or its designated representative every week. The City may elect to utilize a Web-based method for

electronic submittal of certified payrolls. In the event that the City elects to utilize electronic submittal, GRIT shall follow the directions provided by the City, and submit its certified payrolls electronically, as a replacement for the three hard copy submittals. All payrolls must be identified with GRIT, the General Contractor's or subcontractor's name and contract name and number, and must be sequentially numbered. The payroll will be submitted by GRIT, the General Contractor, and subcontractor until all Work by GRIT, the General Contractor, or subcontractor is completed. If there are periods of no Work by GRIT or a subcontractor, a payroll labeled "NO WORK" will be submitted. The final payroll will be labeled

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"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 City. An employee's address should appear every time his/her name appears on the payroll. GRIT must submit the certified payrolls and additional information regarding EEO and wage compliance by providing a payroll summary report ("Payroll Summary Report") in the form required by the City. The EEO report form required by the City and the U.S. Department of Labor must be submitted by GRIT and each subcontractor, reflecting fully the periods of Work covered by the partial payment request.

8 Documentation Supporting Monthly Payment Applications.

- a) For the first Payment Application, GRIT must provide its own Sworn Statement and its own partial lien waivers in support of the Payment Application.
- b) For the second Payment Application, GRIT must provide: its own Sworn Statement; its own partial lien waivers for the current Payment Application; and partial lien waivers from all of its first tier subcontractors for the prior Payment Application.
- c) For the third Payment Application, GRIT must provide: its own Sworn Statement; its own partial lien waivers for the current month; its first tier subcontractors ("First Tier Subcontractors") partial lien waivers for the previous month, and partial lien waivers of the second tier subcontractors ("Second Tier Subcontractors") for the first Payment Application.
- d) For the fourth and all subsequent Payment Applications, GRIT must provide the corresponding supporting documentation as indicated in Section 3.08(c) above. For the final Payment Application all lien waivers of GRIT, its First Tier Subcontractors, and all Second Tier Subcontractors must be "final" waivers.
- e) Prior to final payment and final completion of the Work, and issuance of the Certificate, GRIT must comply with the requirements of Section 3.11, below. Unless a written extension is granted by the City, GRIT must submit the final payment application and waivers consistent herewith. GRIT's failure to do so within the required time period is an Event of Default hereunder.

9 Deductions for Uncorrected Work. The City reserves the right to, in its sole discretion, deduct the cost of damaged or non-conforming Work from the Guaranteed Maximum Price rather than require GRIT to repair or replace such damaged or non-conforming Work, but only in the event GRIT has failed to correct the non-conforming Work after receiving reasonable notice from the City that the City will correct the non-conforming Work, and GRIT has failed to commence correcting such non-conforming Work promptly upon receipt of such notice from the City.

10 Certificates for Payment. If GRIT has complied with the requirements of Section 3.03, "Payment Applications," within 45 days the City will issue to GRIT a certificate for such amount as the City determines to be properly due as agreed upon during the payment review meeting during the preceding payment period and authorize disbursement under the Escrow Agreement within 15 days of issuance of such certificate. The amount of each partial payment will be the total sum of completed Work (including bonds, insurance and fees) less prior partial

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payments, retainage, and payments withheld in accordance with the provisions of Section 3.12. No certificate issued for payment, nor payment to GRIT, nor partial or entire use of the Work, nor occupancy of the Public Improvements Property by the City will be an acceptance of any Work or materials not in accordance herewith. Any certificates for payment are for the benefit of the City and will not be relied upon by any other party (including any surety or subcontractor of GRIT) in any action against the City.

11 Retainage. Except with respect to the items identified on Exhibit 6 (Prior Expenditures) and Exhibit 7 (Exceptions from Retainage) attached hereto, the City will retain ten percent (10%) from the invoice sums approved and due the General Contractor, up to a total of ten percent (10%) of the GMP, including approved change orders (the "Retainage"). The Retainage will be released to the General Contractor in accordance with Section 3.13 below. The Commissioner of CDOT (the "CDOT Commissioner"), at the CDOT Commissioner's sole discretion, may increase the amount of the Retainage withheld if the CDOT Commissioner considers GRIT's or the General Contractor's performance or the progress of the Work to be such that the City will likely incur damages in excess of the amount of Retainage. Neither GRIT nor the General Contractor shall withhold retainage from subcontractors in excess of the percentage Retainage withheld by the City from payments to the General Contractor, and must release Retainage to the subcontractors under Section 3.14 or the prompt payment to subcontractors required by Section 3.15.

12 Payments Withheld. No payment shall be made to GRIT until certificates of insurance, the Bond, or other evidence of compliance by GRIT with all the requirements of this Agreement for insurance and bonds have been provided to the City. Further, no payments on the basis of Work performed by a subcontractor shall be paid until copies of all bonds required and any certificates of insurance required of the subcontractors by this Agreement have been filed with the City. The City may decline processing a Payment Application if, in the City's opinion, the Payment Application is not adequately supported. If GRIT and the City cannot agree on a revised amount, the City will process the Payment Application in the amount the CDOT Commissioner deems appropriate. The City may decline to process any Payment Application or may rescind in whole or in part any approval previously made to such extent as may be necessary in his/her opinion because of any failure of GRIT to perform any obligation under this Agreement, including but not limited to:

- a) GRIT's failure or refusal to provide the City monthly schedule updates and obtain the City's approval, to the extent required under Section 2.03 above.
- b) GRIT's failure to remedy defective Work following written notice from the City.
- c) GRIT's failure to make payments due to subcontractors, employees, or material suppliers or for labor, materials or equipment once payment is received by GRIT, or provide partial lien waivers with Payment Applications as provided herein.
- d) GRIT's persistent failure to maintain progress of the Work in accordance with the Schedule, or failure to carry out the Work in accordance with this Agreement as determined by the City.

- e) GRIT's refusal to follow City, state, federal, or Contract safety and security requirements.

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- (f) GRIT's failure to provide a plan to meet the requirements of the Chicago Residency Ordinance pursuant to Section 6.02 hereof.

The City's rights under this Section 3.12 are cumulative to any other rights provided under this Agreement.

### 3.13 Release of Retainage.

- a) At 50% Completion of the Work. When the Commissioner of CDOT determines that GRIT has satisfactorily completed 50% of the Work (as measured by expenditure of 50% of the Budget), based upon invoice sums approved and due the General Contractor, the Retainage may be reduced to an amount equal to five percent (5%) of the Budget, including any approved or authorized Change Orders.
- b) At 75% Completion of the Work. When the Commissioner of CDOT determines that GRIT has satisfactorily completed 75% of the Work (as measured by expenditure of 75% of the Budget), based upon invoice sums approved and due the General Contractor, the Retainage may be reduced to an amount equal to three percent (3%) of the Budget, including any approved or authorized Change Orders.
- c) At Substantial Completion. When the Work is substantially completed, GRIT must notify the City, in writing, that the Work will be ready for inspection and/or testing on a definite date. Such notice must be given at least seven (7) calendar days in advance of said date. CDOT will make such inspection as is convenient for GRIT, the General Contractor and CDOT, but within a reasonable period of time following such notice. The scheduling of the inspection to determine whether the Work is substantially complete shall not relieve GRIT of its responsibilities under this Agreement. GRIT is required to furnish access for the inspection. If the CDOT Commissioner finds that the Work is acceptable under this Agreement and has been substantially (subject only to final punch list items) and satisfactorily performed, then Retainage may be reduced to an amount equal to one percent (1%) of the Guaranteed Maximum Price, including any approved Change Orders, provided that GRIT has furnished: (i) MBE / WBE final lien waivers, MBE/WBE conditional final lien waivers, or an affidavit of the MBE/WBE stating the final amount earned; (ii) complete certified payrolls; (iii) documentation of the turnover of "as-built" drawings, record shop drawings, and product data; (iv) spare stock of materials, spare parts, accessories, special tools, O & M manuals, guarantees, warranties; and (v) all other items required by this Agreement or reasonably required by the City.
- d) At Final Completion. The remaining Retainage will be paid when all remaining Work and punch list work is complete and GRIT submits to the City a sworn affidavit that states the following:
  - i) All payrolls, bills for materials and equipment, and all other indebtedness connected with the Work for which the City might in any way be responsible, have been paid or otherwise satisfied.
  - ii) The "Contractor's Sworn Statement and Affidavit" for final release of retainage has been provided to the City.

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- iii) All claims made by subcontractors of any tier, suppliers, and others against GRIT, the City, any agents of the City, the DPD Commissioner or the CDOT Commissioner have been resolved.
- iv) "Final Waiver of Lien and Contractor's Affidavit" forms for all subcontractors of any tier have been provided to the City.
- v) All warranties and guarantees required by the Agreement have been provided to the City.
- vi) All warranties and guarantees are in full force and effect.
- vii) GRIT has provided manufacturers' operating instructions for all equipment, and furnished proof that appropriate training of City personnel has been completed.
- viii) The surety's written consent, signed by its authorized representative, for final payment to be made directly to GRIT, has been provided to the Authorized City Representative.
- ix) GRIT agrees that acceptance of final payment will constitute a general release to the City, its representatives, officials and employees of all claims of liability for anything done or furnished or relating to the Work required by the Agreement or for any act or neglect of the City or its agents, officials and employees relating to or connected with the Agreement except as may be mutually agreed and excepted in writing at the time of final payment.
- x) As-built documentation including but not limited to as-built drawings, as-built shop drawings and operation and maintenance manuals have been provided to the City.
- xi) All other documents reasonably requested by the City have been provided.
- xii) GRIT must remove all of GRIT's trailers, equipment, leftover materials, and trash from the Public Improvements Property, staging area(s) or anywhere else on the Public Improvements Property or adjoining areas within the right of way. GRIT must also restore GRIT's staging area(s) to its pre-construction condition. If GRIT does not comply with this requirement, the City may provide written notice to comply. If GRIT fails to comply with the written notice, the City may have the work done by others, and deduct the charge from the General Contractor's Retainage.
- xiii) The MBE/WBE, Prevailing Wage, and City Residency Requirements under this Agreement have been met, as reported by City's Monitoring and Compliance Division.

Notwithstanding the foregoing, the City may decline to release all or a portion of the Retainage if the CDOT Commissioner considers GRIT's performance of the Work to be such that the City has incurred or will likely incur damages greater than the Retainage.

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### 3.14 Prompt Payment to Subcontractors.

- (a) GRIT must state the requirements of this Prompt Payment provision in all subcontracts and purchase orders. If GRIT 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. GRIT and the subcontractors have a continuing obligation to make prompt payment to their respective subcontractors. Compliance with this obligation is a condition of GRIT's participation and that of its subcontractors in the Work.

- (b) ' GRIT must make payment to its subcontractors within fourteen (14) days of receipt of payment from the City for each monthly Payment Application, but only if the subcontractor has satisfactorily completed its Work in accordance with this Agreement and provided GRIT with all of the documents and information required of GRIT by this Section 3. GRIT may delay or postpone payment for a Payment Application when the subcontractor's Work or materials do not comply with the requirements of this Agreement, and GRIT is acting in good faith and not in retaliation for a subcontractor exercising legal or contractual rights.
  - c) GRIT must make final payment to its subcontractors within fourteen (14) days of receipt of such final payment from the City, and after the subcontractor has satisfactorily completed all of its Work, including but not limited to, completion of punch list work, providing final lien waivers, and providing all of the documents required by this Agreement for payment of Retainage at final completion of the Work as provided for in Section 3.13. Retainage must be paid to subcontractors as required by this section, regardless of whether the Work has been determined to have reached substantial completion. GRIT may delay or postpone payment of retainage if the subcontractor's Work or materials do not comply with the requirements of this Agreement, GRIT has substantial grounds for and has acted reasonably in making the determination, and GRIT is acting in good faith and not in retaliation for a subcontractor exercising legal or contractual rights.
  - d) GRIT must make payment to subcontractors so that they receive it within fourteen (14) days of GRIT's receipt of payment from the City. Payment is deemed received by the subcontractor at the time of hand delivery by GRIT, or three (3) calendar days after mailing by GRIT.
  - e) [To the extent feasible, to facilitate the flow of information to subcontractors, the City will post at the field office located at the Public Improvements Property and on the City website ([www.cityofchicago.org](http://www.cityofchicago.org) <<http://www.cityofchicago.org>>), a list of GRIT's Payment Applications, including the subcontractors identified in them, submitted to the City for payment and the date of payments made to GRIT by the City.]
  - f) GRIT must not delay or refuse to timely submit pay requests for a subcontractor's work or materials. The City may construe such delay or refusal as GRIT's failure to act in good faith. "Timely", in this context, means within thirty (30) days after the portion of the subcontractor's work that the subcontractor has invoiced is in place at the Public Improvements Property or the materials delivered to the Public Improvements Property (or off-site if payments for off-site delivery are permitted). In addition, GRIT must not delay or postpone payment for an undisputed portion
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- of a subcontractor's invoice or in connection with claims or disputes involving different Payment Applications on the same project or different projects.
- g) The City may withhold payment from GRIT or the General Contractor when the CDOT Commissioner determines that GRIT has not complied with this Section 3.14.

- h) These provisions do not confer any rights in subcontractors against the City. Nothing in this section is to be construed to limit the rights of and remedies available to the City, including but not limited to various rights under the Agreement.

15 Subcontractor Claims. GRIT must pay all lawful undisputed claims made against it by its subcontractors and all lawful undisputed claims made against GRIT by other third persons arising out of, in connection with, or because of its performance of this Agreement. GRIT will cause all of its subcontractors to pay all lawful undisputed claims made against them. In the event such lawful undisputed claims are not satisfied, the City is hereby empowered to disburse such sums for and on account of GRIT directly to the respective parties to which such sums are due and owed upon ten (10) days written notice to GRIT.

16 Pay Estimates and Payments Subject to Review. Before issuance of the Completion Certificate (defined below) and for a period of three (3) years after issuance of such Completion Certificate, the City shall not be precluded or estopped by any measurement, estimate, or certificate made by GRIT or any subcontractor from showing the true amount and character of the portion of the Work performed and materials furnished by or on behalf of GRIT relating to such Certificate, or from showing that any such measurement, estimate, or certificate is untrue or incorrectly made, or that such portion of the Work or materials do not conform in fact to the Agreement. Subject to Illinois law, the City will not be precluded or estopped, notwithstanding any such measurement, estimate, or certificate and payment in accordance therewith, from recovering from GRIT and its sureties such damages as the City may sustain by reason of GRIT's failure to comply with the terms of the Agreement.

17 Salaries/Wages. Salaries of all employees of the General Contractor performing the Work will be paid unconditionally and not less often than once a month without deduction or rebate on any account, except for payroll deductions as may be required by law. If there is any underpayment of salaries by the General Contractor, the City may withhold, out of payments due to the General Contractor, an amount sufficient to pay to employees the difference between the salaries required to be paid and the salaries actually paid such employees for the total number of hours worked.

18 No Waiver of Legal Rights. Neither the acceptance by the City nor any payment by the City will operate as a waiver of any portion of the Agreement, or of any power herein reserved, or any right to damages herein provided. If the City elects to waive any breach of this Agreement, that waiver will not be held to be a waiver of any other or subsequent breach. The City will not be precluded or estopped from showing the true amount and character of the Work performed and materials furnished by GRIT, or from showing that any measurement, estimate, or certificate is untrue or incorrectly made, or that the Work or materials do not conform to this Agreement. The City will not be precluded or estopped from recovering from GRIT and/or its sureties such damages as the City may sustain by reason of GRIT's failure to comply with the terms of the Agreement.

#### **SECTION 4**

#### **LIENS**

1 GRIT will notify its contractors and subcontractors that no mechanics' lien under the Illinois Mechanics Lien Act. 770 ILCS 60/1, et seq., will be permitted to arise, be filed or maintained against public funds, the Public Improvements Property or the real estate within which it is located, or any part thereof or any interest therein, or against any monies due or to become due to GRIT on account of any work, labor, services,

materials, equipment, or other items performed or furnished for or in connection with the Work; and GRIT, for itself and its contractors and subcontractors, does hereby expressly waive, release, and relinquish such liens and all rights to file or maintain such liens; and agrees further that this waiver of liens and waiver of the rights to file or maintain such liens will be an independent covenant.

2 If any of GRIT's contractors, subcontractors, employees, officials, agents, or any other person directly or indirectly acting for, through, or on their behalf files or maintains a lien or claim under the Illinois Mechanics' Lien Act, 770 ILCS 60/1, et seq., against public funds or against any monies due or to become due to any contractors or subcontractors on account of any of the Work, labor, services, materials, equipment, or other items performed or furnished for or in connection with the Work, GRIT agrees to cause such liens and claims to be satisfied, removed or discharged within 30 days from the date of filing, provided that the City may extend the 30 day period if (i) the City determines that such lien claim cannot be so satisfied, removed, or discharged in such period and (ii) GRIT, in the City's reasonable determination, is proceeding diligently to cause such liens or claims to be satisfied, removed or discharged, or GRIT has posted a bond covering such liens or claims in an amount not less than 110% of such liens or claims. The City has the right, in addition to all other rights and remedies provided under this Agreement or by law, to cause such liens or claims to be satisfied, removed or discharged by any means at GRIT's sole cost, such cost to include reasonable legal fees and shall be reimbursable in full with interest from the date of payment at the rate set at 12% per annum.

3 Whenever the City receives notice in writing of a lien or claim of money due from GRIT or the General Contractor to any subcontractor, worker, or employee for Work performed or for materials or equipment furnished and used in or about the Work, the City may direct that the amount of such claim be deducted from payments due or to become due the General Contractor and withheld by the City until such claim has been paid or otherwise discharged; provided, however that, to the extent permitted by law, the City shall not direct that the amount of such claim be deducted or withheld from payments due or to become due to the General Contractor if GRIT demonstrates that (i) all documentation required by the Agreement for payment of said amount to subcontractor, worker or employee or for such materials and equipment furnished and used in or about the Work has been properly submitted to the City by GRIT, or (ii) GRIT has furnished a bond as security for the lien. This provision is to be construed as being solely for the benefit of the City, and will not require the City to determine or adjust any claims or disputes between GRIT and its subcontractors, workers, or employees, or to withhold any money for their protection, unless the City elects to do so. This provision is not to be construed as conferring any rights hereunder for the benefit of subcontractors, workers or employees, or as enlarging or altering the application or effect of existing lien laws. The final payment will not become due until GRIT delivers to the City complete release of all liens, financial obligations or claims from GRIT, subcontractors, and other agents acting on its behalf in connection with the Work, arising out of the Work, and an affidavit that so far as it has knowledge or information, the releases include all the labor and material for which a claim could be made or a lien could be filed. If any lien remains unsatisfied after all payments have been made, GRIT must refund to the City

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all moneys that the City may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

## **SECTION 5**

### **TURNOVER. ACCEPTANCE. CERTIFICATE OF COMPLETION: WARRANTY**

Upon final inspection of the Work and acceptance of the Public Improvements, and upon GRIT's request, the City shall issue to GRIT a Certificate of Completion of Construction (the "Completion Certificate") certifying that GRIT has fulfilled its obligation to complete the Work in accordance with the terms of this



Agreement. The City shall use reasonable efforts to respond to GRIT's written request for the Completion Certificate within sixty (60) days by issuing either the Completion Certificate or a written statement detailing the ways in which the applicable Work does not conform to this Agreement, and the measures which must be taken by GRIT in order to obtain the requested Completion Certificate. GRIT may resubmit a written request for the Completion Certificate upon completion of such measures.

Following the issuance of the Completion Certificate, GRIT will provide the City with a warranty against defective materials and workmanship with respect to the Public Improvements for a term of one year (the "Warranty Period") unless otherwise required by the Approved Plans and Specifications. Any defects identified during the Warranty Period must be repaired and replaced to the satisfaction of the City at GRIT's expense. Any such repair or replacement shall have a Warranty Period of one year from said repair or replacement date. The Park District will be a third party beneficiary of such warranty with respect to the 29<sup>th</sup> Street and 31<sup>st</sup> Street Planned Parks.

## SECTION 6

### EMPLOYMENT OBLIGATIONS

6.01 GRIT, on behalf of itself and its successors and assigns, hereby agrees, and shall contractually obligate its or their various contractors, subcontractors or any affiliate of GRIT operating on City property or the Public Improvements Property with respect to the Work (collectively, with GRIT, the "Employers" and individually an "Employer") to agree, that for the term of this Agreement with respect to GRIT and during the period of any other party's provision of services in connection with the construction of the Work:

- (a) No Employer shall discriminate against any employee or applicant for employment based upon race, religion, color, sex, national origin or ancestry, age, handicap or disability, sexual orientation, military discharge status, marital status, parental status or source of income as defined in the City of Chicago Human Rights Ordinance, Chapter 2-160, Section 2-160-010 et seq.. Municipal Code, except as otherwise provided by said ordinance and as amended from time to time (the "Human Rights Ordinance"). Each Employer shall take affirmative action to ensure that applicants are hired and employed without discrimination based upon race, religion, color, sex, national origin or ancestry, age, handicap or disability, sexual orientation, military discharge status, marital status, parental status or source of income and are treated in a non-discriminatory manner with regard to all job-related matters, including without limitation: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including

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apprenticeship. Each Employer agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City setting forth the provisions of this nondiscrimination clause. In addition, the Employers, in all solicitations or advertisements for employees, shall state that all qualified applicants shall receive consideration for employment without discrimination based upon race, religion, color, sex, national origin or ancestry, age, handicap or disability, sexual orientation, military discharge status, marital status, parental status or source of income.

- b) To the greatest extent feasible, each Employer is required to present opportunities for training and employment of low- and moderate-income residents of the City; and to provide that contracts for work in connection with the construction of the Work be awarded to business concerns that are located in, or owned in substantial part by persons residing in, the City.

- c) Each Employer shall comply with all federal, state and local equal employment and affirmative action statutes, rules and regulations, including but not limited to the City's Human Rights Ordinance and the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq.. (1993), and any subsequent amendments and regulations promulgated thereto.
- d) Each Employer, in order to demonstrate compliance with the terms of this Section 6.01, shall cooperate with and promptly and accurately respond to inquiries by the City, which has the responsibility to observe and report compliance with equal employment opportunity regulations of federal, state and municipal agencies.
- e) Each Employer shall include the foregoing provisions of subsections (a) through (d) in every contract entered into in connection with the Work, and shall require inclusion of these provisions in every subcontract entered into by any subcontractors, and every agreement with any affiliate operating on City property, including the Public Improvements Property, with respect to the Work, so that each such provision shall be binding upon each contractor, subcontractor or affiliate, as the case may be.
- f) Failure to comply with the employment obligations described in this Section 6.01 shall be a basis for the City to pursue remedies under the provisions of Section 14 hereof.

6.02 City Resident Construction Worker Employment Requirement. GRIT agrees for itself and its successors and assigns, and shall contractually obligate any other General Contractor, if different from GRIT, and shall itself, or cause the General Contractor, if different from GRIT, to contractually obligate its subcontractors, as applicable, to agree, that during the construction of the Work they shall comply with the minimum percentage of total worker hours performed by actual residents of the City as specified in Section 2-92-330 of the Municipal Code of Chicago (at least 50 percent of the total worker hours worked by persons engaged in construction of the Public Improvements shall be performed by actual residents of the City); provided, however, that in addition to complying with this percentage, GRIT, any other General Contractor and each subcontractor shall be required to make good faith efforts to utilize qualified residents of the City in both unskilled and skilled labor positions.

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GRIT may request a reduction or waiver of this minimum percentage level of Chicagoans as provided for in Section 2-92-330 of the Municipal Code of Chicago in accordance with standards and procedures developed by the Chief Procurement Officer of the City.

"Actual residents of the City" shall mean persons domiciled within the City. The domicile is an individual's one and only true, fixed and permanent home and principal establishment.

GRIT, any other General Contractor and each subcontractor shall provide for the maintenance of adequate employee residency records to show that actual Chicago residents are employed in the construction of the Work. Each Employer shall maintain copies of personal documents supportive of every Chicago employee's actual record of residence.

Weekly certified payroll reports (U.S. Department of Labor Form WH-347 or equivalent) shall be submitted to the City in triplicate, which 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

Employer hired the employee should be written in after the employee's name.

GRIT, any other General Contractor and each subcontractor shall provide full access to their employment records to the Chief Procurement Officer, the CDOT Commissioner, the Superintendent of the Chicago Police Department, the Inspector General or any duly authorized representative of any of them. GRIT, any other General Contractor and each subcontractor shall maintain all relevant personnel data and records for a period of at least three (3) years after final acceptance of the Work.

At the direction of the City, affidavits and other supporting documentation will be required of GRIT, any other General Contractor and each subcontractor to verify or clarify an employee's actual address when doubt or lack of clarity has arisen.

Good faith efforts on the part of GRIT, any other General Contractor and each subcontractor to provide utilization of actual Chicago residents (but not sufficient for the granting of a waiver request as provided for in the standards and procedures developed by the Chief Procurement Officer) shall not suffice to replace the actual, verified achievement of the requirements of this Section 6.02 concerning the worker hours performed by actual Chicago residents.

When the Work is completed, in the event that the City has determined that GRIT has failed to ensure the fulfillment of the requirement of this Section 6.02 concerning the worker hours performed by actual Chicago residents or failed to report in the manner as indicated above, the City will thereby be damaged in the failure to provide the benefit of demonstrable employment to Chicagoans to the degree stipulated in this Section 6.02. Therefore, in such a case of noncompliance, it is agreed that 1/20 of 1 percent (0.0005) of the aggregate hard construction costs set forth in the Budget (the product of .0005 x such aggregate hard construction costs) (as the same shall be evidenced by approved contract value for the actual contracts) shall be surrendered by GRIT to the City 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 GRIT, any other General Contractor and/or the subcontractors to prosecution. Any retainage to cover contract performance that may become due to GRIT pursuant to Section 2-92-250 of the Municipal Code of Chicago may be withheld by the City pending the Chief Procurement

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Officer's determination as to whether GRIT must surrender damages as provided in this Section 6.02.

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 Agreement or related documents.

GRIT shall cause or require the provisions of this Section 6.02 to be included in all construction contracts and subcontracts related to the Work.

6.03 MBE/WBE Commitment. GRIT agrees for itself and its successors and assigns, and, if necessary to meet the requirements set forth herein, shall contractually obligate any other General Contractor to agree that, during the construction of the Work:

- a) Consistent with the findings which support, as applicable, (i) the Minority-Owned and Women-Owned Business Enterprise Procurement Program, Section 2-92-420 et seq.. Municipal Code

of Chicago (the "Procurement Program"), and (ii) the Minority- and Women-Owned Business Enterprise Construction Program, Section 2-92-650 et seq., Municipal Code of Chicago (the "Construction Program," and collectively with the Procurement Program, the "MBE/WBE Program"), and in reliance upon the provisions of the MBE/WBE Program to the extent contained in, and as qualified by, the provisions of this Section 6.03, during the course of construction of the Public Improvements, at least the following percentages of the budgeted hard costs of the Public Improvements, as these budgeted amounts may be reduced to reflect decreased actual costs, shall be expended for contract participation by MBEs or WBEs:

- i) At least 30 percent by MBEs.
- ii) At least 10 percent by WBEs.

GRIT's goal will be to achieve 65% participation by minority-owned businesses. The failure to achieve this goal will not be considered an Event of Default.

- b) For purposes of this Section 6.03 only, GRIT (and any party to whom contract is let by GRIT in connection with the Public Improvements) shall be deemed a "contractor" and this Agreement (and any contract let by GRIT in connection with the Public Improvements) shall be deemed a "contract" as such terms are defined in Sections 2-92-420 and 2-92-670, Municipal Code of Chicago, as applicable.
- c) Consistent with Sections 2-92-440 and 2-92-720, Municipal Code of Chicago, GRIT's MBE/WBE commitment may be achieved in part by GRIT's status as an MBE or WBE (but only to the extent of any actual work performed on the Public Improvements by GRIT), or by a joint venture with one or more MBEs or WBEs (but only to the extent of the lesser of (i) the MBE or WBE participation in such joint venture or (ii) the amount of any actual work performed on the Public Improvements by the MBE or WBE), by GRIT utilizing a MBE or a WBE as a General Contractor (but only to the extent of any actual work performed on the Public Improvements by the General Contractor), by subcontracting or causing the

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General Contractor to subcontract a portion of the Public Improvements to one or more MBEs or WBEs, or by the purchase of materials used in the Public Improvements from one or more MBEs or WBEs, or by any combination of the foregoing. Those entities which constitute both a MBE and a WBE shall not be credited more than once with regard to GRIT's MBE/WBE commitment as described in this Section 6.03. In accordance with Section 2-92-730, Municipal Code of Chicago, GRIT shall not substitute any MBE or WBE General Contractor or subcontractor without the prior written approval of the City.

GRIT shall deliver quarterly reports to the City during the construction of the Public Improvements describing its efforts to achieve compliance with this MBE/WBE commitment. Such reports shall include inter alia the name and business address of each MBE and WBE solicited by GRIT or any other General Contractor to work on the Public Improvements, and the responses received from such solicitation, the name and business address of each MBE or WBE actually involved in the Public Improvements, a description of the work performed or products or services supplied, the date and amount of such work, product or service, and such other information as may assist the City in determining GRIT's compliance with this MBE/WBE commitment. The City shall have access to GRIT's applicable books and records, including, without limitation, payroll records, books of account and tax returns, and records and books of account, on five (5) business days' notice, to allow the City to review GRIT's compliance with its commitment to MBE/WBE participation and the status of any MBE or WBE performing any portion of the, Public Improvements.

Upon the disqualification of any MBE or WBE General Contractor or subcontractor, if such status was misrepresented by the disqualified party, GRIT shall be obligated to discharge or cause to be discharged the disqualified General Contractor or subcontractor and, if possible, identify and engage a qualified MBE or WBE as a replacement. For purposes of this Subsection (e), the disqualification procedures are further described in Sections 2-92-540 and 2-92-730, Municipal Code of Chicago, as applicable.

Any reduction or waiver of GRIT's MBE/WBE commitment as described in this Section 6.03 shall be undertaken in accordance with Sections 2-92-450 and 2-92-730, Municipal Code of Chicago, as applicable.

Prior to the commencement of construction of the Public Improvements, GRIT, any other General Contractor and all major subcontractors shall be required to meet with the monitoring staff of the City with regard to GRIT's compliance with its obligations under this Section 6.03. During this meeting, GRIT shall demonstrate its plan to achieve its obligations under this Section 6.03, the sufficiency of which shall be approved by such board or department. During the construction of the Public Improvements, GRIT shall submit the documentation required by this Section 6.03 to the monitoring staff of the City, including the following: (i) subcontractor's activity report; (ii) contractor's certification concerning labor standards and prevailing wage requirements; (iii) contractor letter of understanding; (iv) monthly utilization report; (v) authorization for payroll agent; (vi) certified payroll; (vii) evidence that MBE/WBE contractor associations have been informed of the Public Improvements via written notice and hearings; and (viii) evidence of compliance with job creation/job retention requirements. Failure to submit such

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documentation on a timely basis, or a determination by the City, upon analysis of the documentation, that GRIT is not complying with its obligations hereunder shall, upon the delivery of written notice to GRIT, be deemed an Event of Default or breach hereunder. Upon the occurrence of any such Event of Default, in addition to any other remedies provided in this Agreement, the City may: (1) issue a written demand to GRIT to halt construction of the Public Improvements, (2) withhold any further payment to GRIT or any general contractor, or (3) seek any other remedies against GRIT available at law or in equity.

- (h) In accordance with Mayoral Executive Order 2021-2, GRIT must submit annual reports regarding GRIT's efforts regarding utilization of MBE and WBE firms, and other historically underutilized firms.

## **SECTION 7**

### **ADDITIONAL COVENANTS AND REQUIREMENTS**

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

2 GRIT covenants that its officers, directors and employees, and the officers, directors and employees of each of their members if a joint venture, or a limited liability company and contractors and subcontractors, presently have no interest and will acquire no interest, direct or indirect, in the Public

Improvements Property which would conflict in any manner or degree with the performance of the work relating to the Work hereunder. GRIT further covenants that in the performance of this Agreement, no person having any such interest must be employed. GRIT agrees that if the City, by the CDOT Commissioner in his or her reasonable judgment, determines that any of GRIT's work for others conflicts with the Work, GRIT's Entities must terminate such other services immediately upon request of the City.

3 Pursuant to Section 2-156-030(b) of the Municipal Code of Chicago, it is illegal for any elected official of the City, or any person acting at the direction of such official, to contact, either orally or in writing, any other City official or employee with respect to any matter involving any person with whom the elected official has a business relationship, or to participate in any discussion in any City council committee hearing or in any City council meeting or to vote on any matter involving the person with whom an elected official has a business relationship. Violation of Section 2-156-030(b) by any elected official with respect to this Agreement shall be grounds for termination of this Agreement. Section 2-156-080 defines a "business relationship" as any contractual or other private business dealing of an official, or his or her spouse, or of any entity in which an official or his or her spouse has a financial interest, with a person or entity which entitles an official to compensation or payment in the amount of \$2,500 or more in a calendar year; provided however, a financial interest shall not include:

- (i) Any ownership through purchase at fair market value or inheritance of less than 1% of the share of a corporation, or any corporate subsidiary, parent

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or affiliate thereof, regardless of the value of or dividends on such share, if such shares are registered on a securities exchange pursuant to the Securities Exchange Act of 1934, as amended;

- ii) The authorized compensation paid to an official or employee for his office or employment;
- iii) Any economic benefit provided equally to all residents of the City;
- iv) A time or demand deposit in a financial institution; or
- v) An endowment or insurance policy or annuity contract purchased from an insurance company.

A "contractual or other private business dealing" shall not include any employment relationship of an official's spouse with an entity when such spouse has no discretion concerning or input relating to the relationship between that entity and the City.

4 It shall be the duty of any bidder, proposer, GRIT and any contractor, all subcontractors and every applicant for certification of eligibility for a City contractor program, and all officer, directors, agents, partners and employees of any bidder, proposer, GRIT and any contractor, subcontractor or such applicant to cooperate with the Inspector General in any investigation undertaken pursuant to Chapter 2-56 of the Municipal Code of Chicago. GRIT understands and will abide by all provisions of Chapter 2-56 of the Municipal Code of Chicago. GRIT and contractors shall inform subcontractors of this provision and require understanding and compliance herewith.

5 GRIT must comply with Chapter 2-156 of the Municipal Code of Chicago, "Governmental Ethics," including but not limited to Section 2-156-120 of this chapter pursuant to which no payment, gratuity or

offer of employment is made in connection with any City contract, by or on behalf of a subcontractor to the prime contractor 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 chapter is voidable as to the City.

6 GRIT is required to submit a fully-executed Economic Disclosure Statement and Affidavit. These documents must be signed by an authorized officer of the company before a notary and such documents are incorporated by reference to this Agreement. GRIT shall provide City with any material updates to the information previously submitted in GRIT's Economic Disclosure Statement and Affidavit. The City may also request such updates from time to time. Failure to provide such information on a timely basis shall constitute a default under this Agreement.

7 In accordance with Section 2-92-380 of the Municipal Code of Chicago, and in addition to any other rights and remedies (including any set-off) available to the City under, this Agreement, or permitted at law or in equity, the City is entitled to set off a portion of the price or compensation due thereunder, in an amount equal to the amount of the fines and penalties for each outstanding parking violation complaint and/ or the amount of any debt owed by the contracting party to the City.

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For purposes of this provision, "outstanding parking violation complaints" means a parking ticket, notice of parking violation, or parking violation complaint on which neither payment has been made nor an appearance filed in the Circuit Court of Cook County within the time specified on the complaint. "Debt" means a specified sum of money owed to the City for which the period granted for payment has expired.

Notwithstanding the provisions of this section above, no such debt(s) or outstanding parking violation complaint(s) are off set from any such price or compensation due if one or more of the following conditions are met:

- a) The contracting party has entered into an agreement with the Department of Finance, or other appropriate City department for the payment of all outstanding parking violation complaints and/or debts owed to the City and the contracting party is in compliance with the agreement; or
- b) The contracting party is contesting liability for or the amount of the debt in a pending administrative or judicial proceeding; or
- c) The contracting party has filed a petition in bankruptcy and the debts owed in the City are dischargeable in bankruptcy.

8 All construction or alteration undertaken by GRIT in connection with this Agreement shall be performed in compliance with all Federal, State and local laws and regulations regarding accessibility standards for disabled or environmentally limited persons including, but not limited to the following: American with Disabilities Act, P.L. 101-336(1990) and the Uniform Federal Accessibility Standards and; the Illinois Environmental Barriers Act, 410 ILCS 25/1 et seq. (1991), and the regulations promulgated thereto at 71 Ill. Adm. Code Ch. 1, Sec. 400.110. In the event that the above cited standards are inconsistent, GRIT shall comply with the standard providing greater accessibility.

9 GRIT, in contracting work for the Public Improvements, must comply with the provisions of 330 ILCS 55/0.01 et seq., which requires that a preference be given to veterans in the employment and

appointment to fill positions in the construction, addition, or alteration of all public works. In the employment of labor (except executive, administrative and supervisory positions) preference may be given only where the individuals are available and qualified to perform work with respect to the Public Improvements to which the employment relates. GRIT must ensure that the foregoing provision is inserted in all contracts entered in with any contractors and subcontractors and labor organizations which furnish skilled, unskilled and craft union skilled labor, or which may provide any material, labor, or services in connection with this Public Improvements.

10 To the extent permitted by law, this Agreement shall be subject to all provisions of the "Steel Products Procurement Act," 30 ILCS 565/1 et seq., as it may be amended from time to time. Steel Products issued or supplied in the performance of this Agreement or any contract, subcontract related hereto shall be manufactured or produced in the United States. For purposes of this Section 7.10 "United States" means the United States and any place subject to the jurisdiction thereof and "Steel Products" means products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated, or otherwise similarly processed or processed by a combination of two or more such operations, from Steel made in the United States by the open hearth, basic oxygen, electric furnace, Bessemer or other steel making processes. Knowing violation of this Section 7.10 may result in the filing and prosecution of a complaint by the Attorney General of the State

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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.

11 GRIT, in contracting work for the Work, shall use only Illinois laborers in the performance of this Agreement 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.

12 The Child Support Arrearage Ordinance, Municipal Code of Chicago, Section 2-92-415, furthers the City's interest in contracting with entities which demonstrate financial responsibility, integrity and lawfulness, and finds that it is especially inequitable for contractors to obtain the benefits of public funds under City contracts while its owners fail to pay court-ordered child support, and shift the support of their dependents onto the public treasury.

In accordance with Section 2-92-415 of the Municipal Code of Chicago, if the Circuit Court of Cook County or an Illinois court of competent jurisdiction has issued an order declaring one or more Substantial Owner(s) in arrearage on their child support obligations and: (1) such Substantial Owner has not entered into a court-approved agreement for the payment of all such child support owed, or (2) such Substantial Owner is not in compliance with a court-approved agreement for the payment of all such child support owed, (see Certification of compliance with Child Support Orders in Disclosure Affidavit), then:

For those bidders in competitive bid contracts, the City shall assess an 8% penalty. This penalty shall increase their bid price for the purpose of canvassing the bids in order to determine the lowest responsible bidder. This penalty shall apply only for the purposes of comparing bid amounts and shall not affect the amount of any contract payment.

For purposes of this section, "Substantial Owner" means any person who owns or holds a 10% or more Percentage of Interest in the bidder; where the bidder is an individual or sole proprietorship, substantial owner means that individual or sole proprietorship.

"Percentage of Interest" includes direct, indirect and beneficial interests in GRIT. Indirect or beneficial interest means that an interest in GRIT is held by a corporation, joint venture, trust, partnership, association,



estate or other legal entity, in which the individual holds an interest, or by agent(s) or nominees(s) on behalf of an individual or entity. For example, if Corporation B holds or owns a 20% interest in GRIT, and an individual or entity has a 50% or more percentage of interest in Corporation B, then such individual or entity indirectly has a 10% or more percentage of interest in GRIT. If Corporation B is held by another entity, then this analysis similarly must be applied to that next entity.

The provisions of this Section 7.12 shall only apply where not otherwise prohibited by federal, state or local law; provided, however, that it is expressly acknowledged by the City that it is entering into this Agreement with GRIT without competitive bidding for the Work.

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

In accordance with Section 2-92-580 of the Municipal Code of Chicago, if the primary contractor conducts any business operations in Northern Ireland, it is hereby required that the contractor shall make all reasonable and good faith efforts to conduct any business operations in

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Northern Ireland in accordance with the MacBride Principles for Northern Ireland as defined in Illinois Public Act 85-1390 (1988 Ill. Laws 3220).

14 Section 2-92-610 of the Municipal Code of Chicago requires eligible contractors and their subcontractors to pay a living wage (currently \$12.55 per hour minimum base wage) to covered employees employed in the performance of this Agreement. GRIT is an eligible contractor if at any time during the performance of this Agreement, GRIT has 25 or more full-time employees. If GRIT is, or becomes eligible, GRIT and its contractors and subcontractors must pay at least the base wage to covered employees. Covered employees are: security guards (but only if GRIT and its contractors and subcontractors employ in the aggregate 25 or more of them), and, in any number, parking attendants, day laborers, home and health care workers, cashiers, elevator operators, custodial workers and clerical workers. Notwithstanding the foregoing, Section 2-92-610 does not apply to not-for-profit corporations with federal 501(3) tax exempt status. Also, if the work being done under this Agreement is subject to payment of prevailing wages, and the prevailing wages are higher than the base wage, then prevailing wage rates apply and must be paid.

15 GRIT shall ensure that, to the extent applicable, services and materials provided hereunder comply with any Buy America provisions of the Federal government and/or any similar provisions of the State or City.

16 All wages for construction of the Public Improvements shall be paid in accordance with the Prevailing Wage Act, 820 ILCS 130/0.01 et seq.

17 It is an unlawful employment practice for GRIT to fail to hire, to refuse to hire, to discharge, or to discriminate against any individual with respect to compensation, or the terms, conditions, or privileges of employment, because of such individual's race, color, religion, gender, age, disability, or national origin; or to limit, segregate, or classify employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise, adversely affect such individual's status as an employee, because of such individual's race, color, religion, gender, age, disability, or national origin.

18 GRIT must comply with the Civil Rights Act of 1964, 42, Sec.000 et seq.. (1981), as amended. GRIT shall further comply with Executive Order No. 11, 2346, 30 Fed. Reg. 12, 319 (1965), reprinted in 42

U.S.C. 2000(e) note, as amended by Executive Order No. 11,37532 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); the Rehabilitation Act of 1973, 29 U.S.C. Sec. 793-794 (1981); the Americans with Disabilities Act, P.L. 101-336; 41 C.F.R. part 60 et seq. (1990); Air Carriers Access Act, 49 U.S.C.A. 1374; and, FAA Circular No. 150/5100 15A.

19 In satisfying State requirements, GRIT must comply with the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq. (1990), as amended, and the rules and regulations of the Illinois et seq. Department of Human Rights; the Discrimination in Public Contracts Act, 775 ILCS 10/0.01 et seq. (1990), as amended; and the Environmental Barriers Act, 410 ILCS 251 et seq. In satisfying City requirements, GRIT must comply with the Chicago Human Rights Ordinance, Chapter 2-160, Section 2-160-010 et seq.. of the Municipal Code of Chicago (1990), as amended. Further GRIT must furnish such reports and information as requested by the Chicago Commission of Human Relations. GRIT agrees that all of the above provisions will be incorporated in all agreements entered into with any suppliers of materials, providers of services, contractors, subcontractors of any tier, and labor organizations which furnish skilled, unskilled and craft union

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skilled labor, or which may provide any such materials, labor or services in connection with this Agreement.

#### SECTION 8 NOTICES

8.01 Notice. All notices or other communication hereunder to any Party shall be given in writing (at the addresses set forth below: by any of the following means: (a) personal service; (b) electronic communications, whether by telex, telegram or telecopying; (c) overnight courier; or (d) registered or certified, first class mail, return receipt requested:

If to GRIT: GRIT Chicago, LLC  
120 North Racine Avenue, Suite 1200  
Chicago, Illinois 60607  
Attn:

With Copies to: DLA Piper LLP (US)  
444 West Lake Street, Suite 900 Chicago, Illinois  
60606 Attn: Mariah F. DiGrino, Esq.

If to the City: City of Chicago  
Department of Planning and Development 121 North  
LaSalle Street, Suite 1000 Chicago, Illinois 60602 Attn:  
Commissioner

and

City of Chicago Department of Transportation 2  
North LaSalle Street, Suite 1110 Chicago, Illinois  
60602 Attn: Commissioner

With Copies to: City of Chicago  
Department of Law

121 North LaSalle Street, Room 600  
Chicago, Illinois 60602  
Attn: Real Estate & Land Use Division

Such addresses may be changed by notice to the other parties given in the manner provided above. Any notice, demand or request sent pursuant to either subparts (a) or (b) hereinabove of shall be deemed received upon personal service or upon dispatched by electronic means. Any notice, demand or request sent pursuant to subpart (c) shall be deemed received on the day immediately following deposit in an overnight courier, and, if sent pursuant to subpart (d) shall be deemed received forty-eight (48) hours following deposit in the mail.

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## **SECTION 9**

### **DEFAULT AND REMEDIES**

9.01 The occurrence of any one or more of the following events, subject to the provisions of Section 8.03 below, shall constitute an "Event of Default" by GRIT hereunder:

- a) the failure of GRIT to perform, keep or observe any of the covenants, conditions, promises, agreements or obligations of GRIT under this Agreement or any related agreement (including but not limited to the Redevelopment Agreement);
- b) the failure of GRIT to perform, keep or observe any of the covenants, conditions, promises, agreements or obligations of GRIT under any agreement with any person or entity if such failure may have a material adverse effect on GRIT's business, property, assets, operations or condition, financial or otherwise;
- c) the making or furnishing by GRIT to the City of any representation, warranty, certificate, schedule, report or other communication within or in connection with this Agreement or any related agreement (including but not limited to the Redevelopment Agreement) which is untrue or misleading in any material respect;
- d) except as otherwise permitted hereunder, the creation (whether voluntary or involuntary) of, or any attempt to create, any lien or other encumbrance upon the Public Improvements Property or real estate interests related thereto, or the making or any attempt to make any levy, seizure or attachment thereof;
- e) the commencement of any proceedings in bankruptcy by or against GRIT or for the liquidation or reorganization of GRIT, or alleging that GRIT is insolvent or unable to pay its debts as they mature, or for the readjustment or arrangement of GRIT's debts, whether under the United States Bankruptcy Code or under any other state or federal law, now or hereafter existing for the relief of debtors, or the commencement of any analogous statutory or non-statutory proceedings involving GRIT; provided, however, that if such commencement of proceedings is involuntary, such action shall not constitute an Event of Default unless such proceedings are not dismissed within sixty (60) days after the commencement of such proceedings;
- f) the appointment of a receiver or trustee for GRIT, for any substantial part of GRIT's assets or the institution of any proceedings for the dissolution, or the full or partial liquidation, or the

merger or consolidation, of GRIT; provided, however, that if such appointment or commencement of proceedings is involuntary, such action shall not constitute an Event of Default unless such appointment is not revoked or such proceedings are not dismissed within sixty (60) days after the commencement thereof;

- g) the entry of any judgment or order against GRIT which remains unsatisfied or undischarged and in effect for sixty (60) days after such entry without a stay of enforcement or execution;
- h) [reserved];

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- (i) the dissolution of GRIT; or
- (j) the institution in any court of a criminal proceeding (other than a misdemeanor) against GRIT, which is not dismissed within thirty (30) days, or the indictment of GRIT for any crime (other than a misdemeanor).

2 Upon the occurrence of an Event of Default, the City may terminate this Agreement and all related agreements (including but not limited to the Redevelopment Agreement), and may suspend disbursement of City funds. The City may, in any court of competent jurisdiction by any action or proceeding at law or in equity, pursue and secure any available remedy, including but not limited to injunctive relief or the specific performance of the agreements contained herein.

3 In the event GRIT shall fail to perform a monetary covenant which it is required to perform under this Agreement, notwithstanding any other provision of this Agreement to the contrary, an Event of Default shall not be deemed to have occurred unless GRIT has failed to perform such monetary covenant within ten (10) days of its receipt of a written notice from the City specifying that it has failed to perform such monetary covenant. In the event GRIT shall fail to perform a non-monetary covenant which GRIT is required to perform under this Agreement, notwithstanding any other provision of this Agreement to the contrary, an Event of Default shall not be deemed to have occurred unless GRIT has failed to cure such default within thirty (30) days of its receipt of a written notice from the City specifying the nature of the default: provided however, with respect to those non-monetary defaults which are not capable of being cured within such thirty (30) day period, GRIT shall not be deemed to have committed an Event of Default under this Agreement if it has commenced to cure the alleged default within such thirty (30) day period and thereafter diligently and continuously prosecutes the cure of such default until the same has been cured; provided further that if a specific cure period is provided for elsewhere in this Agreement that differs from the general notice and/or cure periods set forth in this Section 9.03, such specific notice and/or cure period shall control.

## **SECTION 10**

### **INSURANCE**

10.01 Prior to commencement of construction of the Work or access to the Public Improvements Property (on behalf of GRIT, its contractors, subcontractors, and agents), GRIT shall cause to be procured and delivered to the City, and shall maintain in full force and effect until construction of the Work has been completed and accepted by the City, as applicable, a policy or policies of insurance, as evidenced by certificates of insurance, approved by and meeting the requirements of the City's Risk Manager, all as set forth in Exhibit 9 attached hereto. All such policies shall be in such form and issued by such companies as shall be reasonably acceptable to the City, to protect the City and GRIT against, among other things, any liability

incidental to the use of, or resulting from, any accident occurring on or about the Public Improvements Property or the construction of an improvement thereof. Each such policy shall name the City, its officers, employees, and agents as an additional named insured party. Non-conforming insurance and/or GRIT's failure to provide the City with any applicable certificates of insurance shall not relieve GRIT of the obligation to provide insurance as specified in Exhibit 9. The receipt of any certificate does not constitute agreement by the City that the insurance requirements of Exhibit 9 have been fully met or that the insurance policies indicated on the certificate are in compliance with all requirements set forth therein. The failure of the City to obtain certificates or other evidence of insurance from GRIT (or its contractors, subcontractors, or agents as applicable) shall not be deemed to be a waiver by the City of the insurance requirements set forth herein.

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## **SECTION 11**

### **INDEMNIFICATION**

11.01 GRIT agrees to indemnify, pay and hold the City, and its elected and appointed officials, employees, agents and affiliates (individually an "Indemnitee," and collectively the "Indemnities") harmless from and against, any and all liabilities, obligations, losses, damages (arising out of a third party action against the City), penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever, (and including, without limitation, the reasonable fees, court costs, and disbursements of counsel for such Indemnities in connection with any investigative, administrative or judicial proceeding commenced or threatened, whether or not such Indemnities shall be designated a party thereto), that may be imposed on, suffered, incurred by or asserted against the Indemnities by a third party in any manner relating to or arising out of:

- a) GRIT's failure to comply with any of the terms, covenants and conditions contained within this Agreement or the Redevelopment Agreement; or
- b) GRIT's or any contractor's failure to pay, upon receipt of funds due and owing from the City, subcontractors or materialmen in connection with the Work; or
- c) the existence of any material misrepresentation or omission in this Agreement or any other document related to this Agreement (including but not limited to the Redevelopment Agreement) that is the result of information supplied or omitted by GRIT or its agents, employees, contractors or persons acting under the control or at the request of GRIT or any affiliate of GRIT; or
- d) GRIT's failure to cure any misrepresentation in this Agreement or any other document or agreement relating hereto (including but not limited to the Redevelopment Agreement); or
- e) any act or omission by GRIT or any affiliate of GRIT;

provided, however, that GRIT shall have no obligation to an Indemnitee arising from the wanton or willful misconduct of that Indemnitee. To the extent that the preceding sentence may be unenforceable because it is violative of any law or public policy, GRIT will contribute the maximum portion that it is permitted to pay and satisfy under applicable law, to the payment and satisfaction of all indemnified liabilities incurred by the Indemnities or any of them. The provisions of the undertakings and indemnification set out in this Section 11 will survive the termination of this Agreement; provided, however, that the provisions of the undertakings and indemnification set out in this Section 11 will terminate upon expiration of the final Warranty Period.

## SECTION 12

### BOOKS AND RECORDS

12.01 GRIT will keep and maintain separate, complete, accurate and detailed books and records necessary to reflect and fully disclose the total actual costs of the Work and to monitor construction of the Public Improvements. All such books, records and other documents, including but not limited to contractors' sworn statements, subcontracts, purchase orders, waivers of lien, paid receipts and invoices, will be available at GRIT's offices for inspection, copying, audit and

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examination by an authorized representative of the City, at GRIT's expense. GRIT will not pay for salaries or fringe benefits of auditors or examiners. GRIT must incorporate this right to inspect, copy, audit and examine all books and records into all contracts entered into by GRIT with respect to the Public Improvements. The City shall provide three (3) business days' prior written notice to GRIT in accordance with Section 8. The notice shall indicate the date and time of the inspection. All inspections shall be conducted between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday.

## SECTION 13

### MISCELLANEOUS

1      Assignments and Transfers. Except as might otherwise be expressly provided herein, GRIT may not sell, assign or otherwise transfer their interest in this Agreement in whole or in part without the written consent of the City.

2      Force Majeure. Neither the City nor GRIT shall be considered in breach of or in default of its obligations under this Agreement in the event of any delay caused by damage or destruction by fire or other casualty, strike, shortage of material, unusually adverse weather conditions such as, by way of illustration and not limitation, severe rain storms or below freezing temperatures of abnormal degree or for an abnormal duration, tornadoes or cyclones, pandemics and other events or conditions beyond the reasonable control of the party affected which in fact interferes with the ability of such party to discharge its obligations hereunder. The individual or entity relying on this section with respect to any such delay shall, upon the occurrence of the event causing such delay, immediately give written notice to the other parties to this Agreement. The individual or entity relying on this section with respect to any such delay may rely on this section only to the extent of the actual number of days of delay effected by any such events described above.

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

GRIT represents and warrants that since the date of public advertisement of the specification, request for qualifications, request for proposals or request for information (or any combination of those requests) or, if

not competitively procured, from the date the City approached GRIT or the date GRIT approached the City, as applicable, regarding the formulation of this Agreement, no Identified Parties have made a contribution of any amount to the Mayor or to his political fundraising committee.

GRIT agrees that it shall not: (a) coerce, compel or intimidate its employees to make a contribution of any amount to the Mayor or to the Mayor's political fundraising committee; (b) reimburse its employees for a contribution of any amount made to the Mayor or to the Mayor's

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political fundraising committee; or (c) bundle or solicit others to bundle contributions to the Mayor or to his political fundraising committee.

GRIT agrees that 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.

GRIT agrees that a violation of, non-compliance with, misrepresentation with respect to, or breach of any covenant or warranty under this provision or violation of Mayoral Executive Order No. 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 City to all remedies (including without limitation termination for default) under this Agreement, under any Other Contract, at law and in equity. This provision amends any Other Contract and supersedes any inconsistent provision contained therein. If GRIT violates this provision or Mayoral Executive Order No. 2011-4 prior to award of the Agreement resulting from this specification, the CDOT Commissioner may reject GRIT's bid.

For purposes of this provision:

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

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

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

For purposes of this Section 13.03 only, individuals are "Domestic Partners" if they satisfy the following criteria: (a) they are each other's sole domestic partner, responsible for each other's common welfare; and (b) neither party is married; and (c) the partners are not related by blood closer than would bar marriage in the State of Illinois; and (d) each partner is at least 18 years of age, and the partners are the same sex, and the partners reside at the same residence; and (e) two of the following four conditions exist for the partners: (i) the partners have been residing together for at least 12 months, (ii) the partners have common or joint ownership of a residence, (iii) the partners have at least two of the following arrangements: (A) joint ownership of a motor vehicle; (B) a joint credit account; (C) a joint checking account; and (D) a lease for a residence identifying both domestic partners as tenants, and (iv) each partner identifies the other partner as a primary beneficiary in a will.

"Political fundraising committee" means a "political fundraising committee" as defined in Chapter 2-156

of the Municipal Code

13.04 FOIA;

- (a) GRIT acknowledges that the City is subject to the Illinois Freedom of Information Act, 5 ILCS 140/1 et seq., as amended ("FOIA"). The FOIA requires the City to produce records (very broadly defined in the FOIA) in response to a FOIA request in a very

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short period of time, unless the records requested are exempt under the FOIA. If GRIT receives a request from the City to produce records within the scope of FOIA that would be otherwise required under this Agreement then GRIT covenants to comply with such request within two (2) Business Days of the date of such request. Failure by GRIT to timely comply with such request will be a breach of this Agreement.

- b) Documents that GRIT submits to the City during the term of the Agreement that contain trade secrets and commercial or financial information may be exempt if disclosure would result in competitive harm. However, for documents submitted by GRIT to be treated as a trade secret or information that would cause competitive harm, FOIA requires that GRIT mark any such documents as "proprietary, privileged or confidential." If GRIT marks a document as "proprietary, privileged and confidential", then CDOT will evaluate whether such document may be withheld under the FOIA. CDOT, in its discretion, will determine whether a document will be exempted from disclosure, and that determination is subject to review by the Illinois Attorney General's Office and/or the courts.
- c) GRIT acknowledges that the City is subject to the Local Records Act, 50 ILCS 205/1 et seq., as amended (the "Local Records Act"). The Local Records Act provides that public records may only be disposed of as provided in the Local Records Act. If requested by the City, GRIT covenants to use its best efforts consistently applied to assist the City in its compliance with the Local Records Act concerning records arising under or in connection with this Agreement and the transactions contemplated in the Agreement.

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

6 Patriot Act Certification. GRIT represents and warrants that neither GRIT nor any Affiliate thereof (as defined in the next paragraph) is listed on any of the following lists maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the Bureau of Industry and Security of the U.S. Department of Commerce or their successors, or on any other list of persons or entities with which the City



may not do business under any applicable law, rule, regulation, order or judgment, the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List and the Debarred List.

As used in the above paragraph, an "Affiliate" shall be deemed to be a person or entity related to GRIT that, directly or indirectly, through one or more intermediaries, controls, is

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controlled by or is under common control with GRIT, and a person or entity shall be deemed to be controlled by another person or entity, if controlled in any manner whatsoever that results in control in fact by that other person or entity (or that other person or entity and any persons or entities with whom that other person or entity is acting jointly or in concert), whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise.

7 Waste Ordinance Provisions. In accordance with Section 11-4-1600(e) of the Municipal Code of Chicago, GRIT warrants and represents that it, and to the best of its knowledge, its contractors and subcontractors, have not violated and are not in violation of any provisions of Sections 7-28-390, 7-28-440, 11-4-1410, 11-4-1420, 11-4-1450, 11-4-1500, 11-4-1530, 11-4-1550 or 11-4-1560 of the Municipal Code (the "Waste Sections"). During the period while this Agreement is executory, GRIT's, any general contractor's or any subcontractor's violation of the Waste Sections, whether or not relating to the performance of this Agreement, constitutes a breach of and an event of default under this Agreement, for which the opportunity to cure, if curable, will be granted only at the sole designation of the Chief Procurement Officer. Such breach and default entitles the City to all remedies under the Agreement, at law or in equity. This section does not limit GRIT's, general contractor's and its subcontractors' duty to comply with all applicable federal, state, county and municipal laws, statutes, ordinances and executive orders, in effect now or later, and whether or not they appear in this Agreement. Non-compliance with these terms and conditions may be used by the City as grounds for the termination of this Agreement, and may further affect GRIT's eligibility for future contract awards.

8 Failure to Maintain Eligibility to do Business with City. Failure by GRIT or any controlling person (as defined in Section 1-23-010 of the Municipal Code of Chicago) thereof to maintain eligibility to do business with the City of Chicago as required by Section 1-23-030 of the Municipal Code of Chicago shall be grounds for termination of this Agreement and the transactions contemplated thereby. GRIT shall at all times comply with Section 2-154-020 of the Municipal Code of Chicago.

9 Choice of Law. The provisions of this Agreement shall be governed and construed in accordance with the laws of the State of Illinois.

10 Amendments. This Agreement shall not be amended except in writing approved by the Parties hereto.

11 City Hiring Plan.

i) The City is subject to the June 16, 2014 "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 City Hiring Plan prohibits the City from hiring persons as governmental employees in non-exempt positions on the basis of political reasons or factors.

ii) GRIT is aware that City policy prohibits City employees from directing any individual to apply for a position with GRIT, either as an employee or as a subcontractor, and from directing GRIT to hire an

individual as an employee or as a subcontractor. Accordingly, GRIT must follow its own hiring and contracting procedures, without being influenced by City employees. Any and all personnel provided by GRIT under this Agreement are employees or subcontractors of GRIT, not employees of the City of Chicago. This Agreement is not intended to and does not constitute, create, give rise to,

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or otherwise recognize an employer-employee relationship of any kind between the city and any personnel provided by GRIT.

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

iv) In the event of any communication to GRIT by a City employee or City official in violation of this Section 13.11(ii) above, or advocating a violation of this Section 13.11 (iii) above, GRIT will, as soon as is reasonably practicable, report such communication to the Hiring Oversight Section of the City's Office of the Inspector General ("IGO Hiring Oversight"), and also to the head of the relevant City Department utilizing services provided under this Agreement. GRIT will also cooperate with any inquiries by IGO Hiring Oversight related to the contract.

## **SECTION 14**

### **ENVIRONMENTAL REMEDIATION REQUIREMENTS**

14.01-A Generator Duties. The City authorizes GRIT to perform Generator duties on behalf of the City with respect to pre-existing hazardous waste and non-hazardous special waste encountered on the Public Improvements Property for the duration of the Work, including but not limited to completing and signing, on behalf of the City, the following types of documents on the basis of GRIT's personal knowledge of the information stated in such documents: (1) Uniform Hazardous Waste Manifests, (2) waste profile sheets, and (3) generator's certifications of non-special waste. The Uniform Hazardous Waste Manifest shall be prepared using U.S. Environmental Protection Agency (USEPA) Form 8700-22 (and, when necessary, Form 8700-22A) received from a USEPA-approved registrant. When completing a Uniform Hazardous Waste Manifest for such pre-existing waste, GRIT shall identify the City in box #5 of the manifest (Generator's Name) and provide the City's generator identification number in box #1 of the manifest (Generator ID Number). GRIT also shall identify GRIT's company name and address, and project name, in box #14 (Special Handling Instructions and Additional Information) of the hazardous waste manifest. The authorization to sign manifests on behalf of the City expires concurrently with the completion of the Work (evidenced by the issuance of the Completion Certificate) unless revoked sooner by the City.

GRIT shall maintain on file and provide the City, prior to commencement of the Work, with documentation that the person(s) preparing or signing Uniform Hazardous Waste Manifest(s) on behalf of the

City have completed appropriate U.S. Department of Transportation training pursuant to 49 CFR 172 Subpart H, and that such training is current. Training documentation shall include (1) the person(s) name, job title and employer, (2) the name and address of the entity or

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person(s) that provided the training, (3) a description, copy or location of the training materials, (4) a certificate of training completion, and (5) a date of the training completion.

Prior to executing or filing any manifest or waste profile sheet on behalf of the City, GRIT shall notify the City and provide the draft manifest, the waste profile sheet, and supporting documentation, including waste characterization, to the City for its review and approval. GRIT shall provide to the City copies of the initial Uniform Hazardous Waste Manifests, non-hazardous waste shipping papers, and associated waste profile sheets within five business days of each waste shipment.

For purposes of this Agreement, only, "pre-existing hazardous waste and non-hazardous special waste" means hazardous and non-hazardous special waste arising from contamination or conditions that occurred or existed prior to the Effective Date, such as soil or groundwater contamination resulting from a release that occurred prior to the Effective Date or a drum of oil that was abandoned on the Public Improvements Property prior to the Effective Date.

1 -B 31<sup>st</sup> Street Planned Park Remediation. GRIT covenants and agrees to enroll the 31<sup>st</sup> Street Planned Park in the IEPA's Site Remediation Program ("SRP") and complete all remediation work necessary to obtain the final, comprehensive residential NFR letter using all reasonable means. GRIT must perform additional investigations, as required by the SRP, including soil, groundwater and/or soil vapor sampling.

The City's Department of Assets, Information and Services ("AIS") shall also have the right to review in advance and approve all sampling plans as well as documents submitted to the IEPA under the SRP, as amended or supplemented from time to time, including, without limitation, the SRP documents and any changes thereto, and GRIT's estimate of the cost to perform the remediation work. AIS's approval shall not be unreasonably withheld or conditioned. AIS shall either approve or return, with its reasons why it cannot approve, any document or cost estimate within 14 days of Developer's submission of such document or cost estimate for AIS's review. GRIT covenants and agrees that, after receiving the final NFR letter, it will proceed promptly to record it with the Cook County Recorder of Deeds, and obtain City approval, which approval shall not be unreasonably withheld.

GRIT acknowledges and agrees that it may only commence construction on the 31<sup>st</sup> Street Planned Park parcel after GRIT has obtained Illinois EPA approval of a Remedial Action Plan.

If GRIT fails to obtain the Final NFR Letter for the 31<sup>st</sup> Street Planned Park within six (6) months of the submission of the Remedial Action Completion Report to the IEPA, and provided that Developer is not being responsive to IEPA or is not diligently pursuing issuance of the Final NFR Letter, then the City shall have the right to record a notice of default of this Agreement after having given notice to GRIT and a reasonable opportunity to cure. GRIT may request and IEPA may issue separate NFR letters for individual parcels of the 31<sup>st</sup> Street Planned Park.

GRIT may elect to use institutional controls as part of obtaining NFR letters for 31<sup>st</sup> Street Planned Park, to the extent those institutional controls are consistent with the planned use of the property and IEPA's SRP land use definitions.

2 Public right-of-way Remediation. Public right-of-way (i.e. the Work other than the 31<sup>st</sup> Street Planned Park) need not be enrolled in the SRP, and GRIT is not obligated to pursue or obtain an NFR letter for such property. However, GRIT shall remove any soil not meeting the requirements of 35 IAC Section 742.305.

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GRIT shall also conduct sufficient additional soil and/or groundwater sampling prior to construction to identify construction worker caution areas, hot spots that may require remediation, and soil management requirements. A sampling plan must be submitted to, and approved by, AIS prior to starting this work.

GRIT shall install an SRP-compliant engineered barrier, if required by AIS, to ensure protection of public health and the environment, in portions of the Public Improvements which otherwise are to be landscaped and are adjacent to public open space or residential land use. The SRP-compliant engineered barrier should be constructed of asphalt, concrete, three feet of clean fill, or other alternative barrier type typically approved by IEPA for similar sites.

Imported fill material must for an engineered barrier must either be a) Certified virgin stone or b) tested for Target Compound List parameters (35 IAC 740 Appendix A) and meet the most stringent objectives for residential land use included in Appendix B, Table A of IEPA's Tiered Approach to Corrective Action Objectives.

A Soil Management Plan should be prepared and implemented during construction to document, at a minimum: the site-specific soil excavation, disposal, storage, and reuse procedures; imported material testing requirements; and environmental oversight plan. The Soil Management Plan is subject to AIS review and approval prior to being implemented.

No biosolids or biosolids-based products from the Metropolitan Water Reclamation District or any other source may be imported for the Work for any purpose.

Unless sufficient testing is performed to determine compliance with Illinois EPA's Clean Construction and Demolition Debris ("CCDD") regulations, all soil being removed during construction must be disposed of in accordance with applicable regulations to a Subtitle D landfill. The AIS shall have the right to review the testing results and approve of the disposal facilities to be utilized by GRIT.

AIS's review and approval of plans shall not be unreasonably withheld or conditioned. AIS shall either approve or return, with its reasons why it cannot approve, any document or cost estimate within 14 days of GRIT's submission of such document or cost estimate for AIS's review.

14.03 Private Land Conveyance. Any other privately held land conveyed to the City for the purposes of the Work will additionally require, and shall use City Funds to pay for the cost of:

- a) A Phase I ESA conducted in conformance with ASTM E-1527-13 is required to be conducted within 180 days of privately-owned land being conveyed to the City. A reliance letter naming the City of Chicago as an authorized user must be provided by the environmental professional conducting the Phase I ESA. The Phase I ESA must be submitted to, and approved by, AIS prior to conveyance to the City. AIS's approval shall not be unreasonably withheld or conditioned. AIS shall either approve or return, with its reasons why it cannot approve, the Phase I ESA within 14 days of Developer's submission for AIS's review.
- b) A Phase II ESA must be conducted prior to conveyance of privately-owned land being

dedicated and prior to construction of city-owned land being opened in sufficient detail to identify construction worker caution areas, hot spots that may require remediation, and soil management requirements. A sampling plan must be submitted to, and approved by, AIS prior to starting the work. AIS's approval

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shall not be unreasonably withheld or conditioned. AIS shall either approve or return, with its reasons why it cannot approve, the draft sampling plan within 14 days of GRIT's submission for AIS's review.

- (c) However, although GRIT will use the results of the Phase I and Phase II ESAs to inform the activities required by this Section 14, GRIT shall have no obligation to address the findings of the Phase I and Phase II ESAs other than as stated in this Section 14.

4 GRIT shall bear sole responsibility for conducting any investigative, cleanup, or remediation work necessary to comply with Section 14. The cost of compliance with Section 14 is part of the cost of the Public Improvements, as provided for in Section 3.

5 Hazardous Substances. GRIT shall not use or store any Hazardous Substances on City property unless otherwise approved by the City. GRIT shall promptly notify the City if any Hazardous Substances are found or spilled on a Site. "Hazardous Substances" shall mean any toxic substance, hazardous substance, hazardous material, hazardous chemical or hazardous, toxic or dangerous waste defined or qualifying as such in (or for the purposes of) any Environmental Laws, or any pollutant, toxic vapor, or contaminant, and shall include, but not be limited to, petroleum (including crude oil or any fraction thereof), any radioactive material or byproduct material, polychlorinated biphenyls, radon, mold and per- and polyfluoroalkyl substances, i.e. PFAS, and asbestos or asbestos-containing materials in any form or condition.

*[Signature Page Follows]*

*[Signature Page to Agreement]*

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

CITY OF CHICAGO,  
an Illinois municipal corporation

By:  
Name: Maurice D. Cox  
Its: Commissioner of Planning and Development

By:  
Name: Gia Biagi  
Its: Commissioner of Transportation

GRIT Chicago, LLC,  
an Illinois limited liability company

By:\_\_\_\_  
Name:  
Its:

INFRASTRUCTURE AGREEMENT EXHIBIT 1 DEPICTION OF PUBLIC IMPROVEMENTS PROPERTY AND  
DEVELOPMENT PARCELS

[see attached]

## **Planned Development Sub-Area and Right-of-Way Map**

Applicant GRIT Chicago, LLC  
Address 2601-3045 and 2600-3001 S. Ellis Avenue; 2900-3030 and 2901-3001 S. Cottage Grove; 2600-2900 S. Lake Park Avenue;  
533 E. 29th Street; 401-434 E. 26th Street; 2701-2955 S. Vernon Avenue; 400-598 E. 31st Street; 2601-3099 S. Martin Luther King Drive  
Introduced June 17, 2020 41  
Plan Commission-February 18, 2021

INFRASTRUCTURE AGREEMENT EXHIBIT 2A [INTENTIONALLY OMITTED]

INFRASTRUCTURE AGREEMENT EXHIBIT 2B WORK SCHEDULE

[see attached] [NOT ATTACHED FOR PURPOSES OF ORDINANCE]



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INFRASTRUCTURE AGREEMENT EXHIBIT 2C WORK BUDGET

[see attached]

N:\Projects\10089\DOCS\EXCEL\GO <file:///N:/Projects/10089/DOCS/EXCEL/GO> BOND EOPC April 2021M0089.CEOPC-GO BOND-042321 .xlsx]

4/23/2021

**Engineer's Opinion of Probable Construction Cost**

**QNTY UNIT**

**ITEM**

**A. Environmental Remediation**

9.562 Acre

**6.733 Acre A. Environmental Remediation**

**I. Sub-Area One Right-of-Ways**

1. Testing and Remediation Allowance (See Note 7)

**II. Sub-Area Two Right-of-Ways**

1. Testing and Remediation Allowance (See Note 7)

**UNIT PRICE**

\$225,000 \$225,000

Sub-Total ="

**AMOUNT**

\$2,151,450 \$1,514,925

\$3,666,375

**B. Roadway Improvements**

**I. Sub-Area One Roadways**

1. Cottage Grove - 29th Street to 31st Street (New Roadway - 80' ROW)
2. 29th Street - Cottage Grove to Bridge Approach (New Roadway)
3. 29th Street - Bridge Approach to Lake Park (New Roadway)
4. 29th Street - MLK to Cottage Grove (Roadway Improvements)
5. 30th Street - Vernon Avenue to Lake Park (New Roadway)
6. Lake Park - 29th Street (New Roadway)
7. Lake Park - 31st Street to 29th Street (Rebuild Ex. Roadway)
8. Vernon Avenue - 31st to 30th Streets (New Roadway)
9. Vernon Avenue - 30th to 29th Streets (Rebuild Ex. Roadway)
10. 31st Street - MLK Drive to Lake Park (Roadway Improvements)
- II. Non-Potable Water Pipe (Cottage Grove, Lake Park, 29th Street)
12. Off-Street Path along 31st Street - MLK to Lake Park (See Note 6)
13. Typical Way Finding/Street Signage

**11. Sub-Area Two Roadways**

1. Cottage Grove - 29th Street to 26th Street (New Roadway - 80' ROW)
2. 26th Street - MLK to Bridge Approach (New Roadway)
3. 26th Street - Bridge Approach to Lake Park (New Roadway)
4. Lake Park - 29th Street to 26th Street (New Roadway)
5. Vernon Avenue - 29th Street to Cottage Grove (Rebuild Ex. Roadway)
6. 27th Street - Cottage Grove to Lake Park (New Roadway)
7. Non-Potable Water Pipe (Cottage Grove, Lake Park)
8. Typical Way Finding/Street Signage

1,370 235 235 460 870 180 1,360 360 950 1,550 3,145 3,100 1

1,290 475 235  
1,200 510 460

2,490 1

L.F. L.F. L.F. L.F. L.F. L.F. L.F. L.F. L.F. L.F. L.F. L.F. L.S.

L.F. L.F. L.F. L.F. L.F. L.F. L.F. L.S.

\$2,950 \$2,490 \$12,840 \$380 \$2,490 \$2,490 \$1,420 \$2,490 \$1,420 \$500 \$80 \$550 \$20,000

Sub-Total =

\$2,950 \$2,490  
\$12,840 \$2,490 \$1,420 \$2,490 \$80

\$20,000

**Sub-Total ■■**

\$4,041,500 \$585,150  
\$3,017,400 \$174,800  
\$2,166,300 \$448,200  
\$1,931,200 \$896,400  
\$1,349,000 \$775,000 \$251,600  
\$1,705,000 \$20,000

**\$17,361,550**

\$3,805,500 \$1,182,750 \$3,017,400 \$2,988,000  
\$724,200 \$1,145,400  
\$199,200 \$20,000

**\$13,082,450**

**B. Roadway Improvements Sub-Total = \$30,444,000**

Page 4 of 6

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## SPACECO, INC.

N:\Projects\10089\DOCS\EXCEL\GO <file:///N:/Projects/10089/DOCS/EXCEL/GO> BOND EOPC April 2021M0089.CEOPC-GO BOND-042321 .xlsx  
4/23/2021

### Engineer's Opinion of Probable Construction Cost

<u>ITEM</u>	<u>UNIT</u>		<u>PRICE</u>	<u>AMOUNT</u>
	<u>QNTY</u>	<u>UNIT</u>		
C. On-Site Public Benefit Improvements I. Sub-Area				
One Open Space				
1. 31st Street Park-Parcel 1A (See Note 8)	2.01	Acre	\$1,492,800	\$3,000,528
2. <u>Required Detention Storage for 31st Street Park (See Note 9)</u>	<u>0.59</u>	<u>Ac-ft</u>	<u>\$650,000</u>	<u>\$383,500</u>
			<b>Sub-Total = \$3,384,028</b>	

**C. On-Site Public Benefit Improvements Sub-Total = \$3,384,028**

HARD COST SUBTOTAL =	\$37,494,403
BONDS & INSURANCE @ 2% =	\$749,888
GENERAL CONDITIONS @ 8% =	\$2,999,552
DEVELOPER COSTS @ 5% =	\$1,874,720
ENGINEERING & DESIGN @ 10% =	\$3,749,440
CONSTRUCTION MANAGEMENT @ 7% =	\$2,624,608
CONTINGENCY @ 20% =	\$7,498,881

**CONSULTANT ENGINEERING REVIEW (2 YEARS) =\$1,000,000**

**OVERALL SUB-TOTAL = \$57,991,493 ESCALATION @ 3%/Yr. for 2**

**Yrs. = \$1,575,891**

**GO BOND FUNDED TOTAL = \$59,567,384**

**NOTES:**

1. All Roadways assumed constructed at grade.
2. Roadways assumed to not require environmental capping.
3. Soil export assumed to be Subtitle D Special Waste.
4. Only Roadways noted are included in the EOPC.
5. Estimate limits as defined by Sub-Area Estimate Boundaries Exhibit and Roadway Exhibits last revised 12/15/20.
6. Quantities and/or unit prices under this line item were derived from CDOT Preliminary Order of Magnitude Cost Estimate dated 3/26/20.
7. Environmental cost per acre per email dated 07/30/20 with Abigail Mazza COC AIS
8. Public Park improvements carries \$225k/acre for Environmental Remediation and \$5/SF for Site Clearing & Demolition and applies to Park areas. It is assumed \$30/CY for Earth Excavation (2' Cut), \$100/CY for Offsite Removal of Cut Material, \$75/CY for Clean Soil for Cap (2' Import), \$15k/acre for Fine Grading, and \$3/SY for Environmental Barrier Fabric for Earthwork Costs. For Storm Sewer Infrastructure, it is assumed \$8.5k per sewer structure and \$150/LF for storm sewer pipe. Finally, it is assumed \$50k/acre for Irrigation and \$200k/acre for Base Landscaping (Trees, Bushes, Turf, etc.).
9. Required volumes for Park is based on prorated land area from overall Detention Required.
10. Unit Prices and Soft Cost percentages in this estimate are based on internal QAQC, substantial increase in commodity costs, and supply chain challenges in the industry.

INFRASTRUCTURE AGREEMENT EXHIBIT 3 ESCROW AGREEMENT GMP DEPOSIT SCHEDULE [see  
attached]

[NOT ATTACHED FOR PURPOSES OF ORDINANCE]

INFRASTRUCTURE AGREEMENT EXHIBIT 4 FORM OF BOND

[see attached]

[NOT ATTACHED FOR PURPOSES OF ORDINANCE]

INFRASTRUCTURE AGREEMENT EXHIBIT 5 FORM OF CONSTRUCTION ESCROW AGREEMENT

[see attached]

[NOT ATTACHED FOR PURPOSES OF ORDINANCE]

INFRASTRUCTURE AGREEMENT EXHIBIT 6

APPROVED PRIOR EXPENDITURES

Professional Services (Project Management/Design/Consultants/Surveying) - Estimated

\$(            )

INFRASTRUCTURE AGREEMENT EXHIBIT 7

EXCEPTIONS FROM RETAINAGE

Bonds Insurance

Professional Services, including but not limited to Project Management & Design Consultants Developer Fee

Inspection Fees Interim Financing Costs

INFRASTRUCTURE AGREEMENT EXHIBIT 8 [INTENTIONALLY OMITTED]  
INFRASTRUCTURE AGREEMENT EXHIBIT 9

INSURANCE REQUIREMENTS

GRIT must provide and maintain at GRIT's own expense, or caused to be provided and maintained, until the Certificate is issued, the insurance coverages and requirements specified below, insuring all operations related to the Agreement.

A. INSURANCE TO BE PROVIDED

1) Workers Compensation and Employers Liability

Workers Compensation Insurance, as prescribed by applicable law covering all employees who are to provide work under this Agreement and Employers Liability coverage with limits of not less than \$1,000,000 each accident, illness or disease.

2) Commercial General Liability (Primary and Umbrella)

Commercial General Liability Insurance or equivalent with limits of not less than \$5,000,000 per occurrence for bodily injury, personal injury, and property damage liability. Coverages must include the following: All premises and operations, products/completed operations, independent contractors, separation of insureds, defense, and contractual liability (not to include Endorsement CG 21 39 or equivalent). The City of Chicago is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly from the work.

Subcontractors performing work for GRIT must maintain limits of not less than \$2,000,000 with the same terms herein.

3) **Automobile Liability (Primary and Umbrella)**

When any motor vehicles (owned, non-owned and hired) are used in connection with work to be performed, GRIT must provide or cause to be provided Automobile Liability Insurance with limits of not less than \$5,000,000 per occurrence for bodily injury and property damage. The City of Chicago is to be named as an additional insured on a primary, non-contributory basis. Coverage extension must include a) an MC-90 endorsement where required by the Motor Carrier Act of 1980 and b) pollution coverage for loading, unloading and transportation of infectious waste, chemical waste, hazardous waste, and radioactive waste if applicable.

Subcontractors performing work for GRIT must maintain limits of not less than \$2,000,000 with the same terms herein.

4) **Railroad Protective Liability**

When any work is to be done adjacent to or on railroad or transit property, GRIT must provide or caused to be provided, with respect to the operations that GRIT or subcontractors perform, Railroad Protective Liability Insurance in the name of railroad or transit entity. The policy must have limits of not less than the requirement of the operating railroad 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.

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**When applicable**

A certified copy of the Railroad Protective Policy is to be submitted to: -Chicago Transit Authority, 567 West Lake Street, Chicago, IL 60661

A binder will be accepted until such time that policy is issued.

**Builders Risk**

When GRIT or any subcontractor undertakes any construction, including improvements, betterments, and/or repairs, GRIT must cause the subcontractor(s) to provide All Risk Builders Risk Insurance at replacement cost for materials, supplies, equipment, machinery and fixtures that are or will be part of the Work. Coverages must include but are not limited to the following: material stored off-site and in-transit, debris removal, landscaping, collapse, flood, water including overflow, leakage, sewer backup or seepage and loss from faulty workmanship or materials. The City of Chicago is to be named as an additional insured and loss payee.

GRIT and subcontractors are responsible for any loss or damage to personal property (including materials, equipment, tools and supplies) owned, rented or used by GRIT or any subcontractor.

**Professional Liability**

When any architects, engineers, construction managers or other professional consultants perform work in connection with this Agreement, Professional Liability Insurance covering acts, errors, or omissions must be maintained with limits of not less than \$2,000,000. Coverage must include pollution liability if environmental site assessments will be done. When policies are renewed or replaced, the policy retroactive date must coincide with, or precede, start of work on the Agreement. 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 GRIT must maintain limits of not less than \$1,000,000 with the same terms herein.

#### Valuable Papers

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

#### Contractors Pollution Liability

When any remediation work is performed which may cause a pollution exposure, Contractors Pollution Liability must be provided covering bodily injury, property damage and other losses caused by pollution conditions that arise from the Agreement scope of services with limits of not less than \$1,000,000 per occurrence. Coverage must include completed operations, contractual liability, defense, excavation, environmental cleanup, remediation and disposal. When policies are renewed or replaced, the policy retroactive date must coincide with or precede, start of work on the Agreement. A claims-made policy

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which is not renewed or replaced must have an extended reporting period of two (2) years. The City of Chicago is to be named as an additional insured on a primary, non-contributory basis.

#### 9) Asbestos Abatement Liability

When any asbestos work is performed in connection with this Agreement, Asbestos Abatement Liability Insurance must be provided with limits of not less than \$1,000,000 per occurrence insuring bodily injury, property damage and environmental cleanup. When policies are renewed or replaced, the policy retroactive date must coincide with or precede, start of work on the Agreement. A claims-made policy which is not renewed or replaced must have an extended reporting period of one (1) year. The City of Chicago is to be named as an additional insured on a primary, non-contributory basis.

### **B. ADDITIONAL REQUIREMENTS**

GRIT must furnish the City of Chicago, Department of Transportation, 2 N. LaSalle Street, Room 1110, Chicago, IL 60602, original Certificates of Insurance, or such similar evidence, to be in force on the date of this Agreement, and Renewal Certificates of Insurance, or such similar evidence, if the coverages have an expiration or renewal date occurring during the term of this Agreement. GRIT must submit evidence of insurance on the City Insurance Certificate Form or commercial equivalent prior to closing. The receipt of any certificate does not constitute agreement by the City that the insurance requirements in the Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all Agreement requirements. The failure of the City to obtain certificates or other insurance evidence from GRIT is not a waiver by the City of any requirements for GRIT to obtain and maintain the specified coverages. GRIT shall advise all insurers of the Agreement provisions regarding insurance. Non-conforming insurance does not relieve GRIT of the obligation to provide insurance as specified herein. Nonfulfillment of the insurance conditions may constitute a violation of the Agreement, and the City retains the right to terminate this until proper evidence of insurance is provided.

GRIT must provide for 60 days prior written notice to be given to the City in the event coverage is substantially changed, canceled, or non-renewed.

Any deductibles or self-insured retentions on referenced insurance coverages must be borne by GRIT.

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

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

Any insurance or self-insurance programs maintained by the City of Chicago do not contribute with insurance provided by GRIT under the Agreement.

The required insurance to be carried is not limited by any limitations expressed in the indemnification language in this Agreement or any limitation placed on the indemnity in this Agreement given as a matter of law.

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If GRIT is a joint venture or limited liability company, the insurance policies must name the joint venture or limited liability company as a named insured.

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

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

Notwithstanding any provision in the Contract to the contrary, the City of Chicago Risk Management Department maintains the right to modify, delete, alter or change these requirements, so long as such action does not occur without GRIT's written consent to increase such requirements.

