

CONSTRUCTION CONTRACT
SKYWAY CONCESSION CO. LLC AND XXXXXXXX

This Agreement (the “agreement”) is made and entered into as of this ____ day of
XXXXXX in the year 2016, by and between:

Skyway Concession Company LLC (SCC)
205 N. Michigan Avenue
Suite 2510
Chicago, IL 60601

a Delaware limited liability company (hereinafter, “SCC”), and the Consultant:

XXXXXXXXXXXXXXXXXXXX (Company’s business address)
XXXXXXXXXXXX
XXXXXXXX
XXXXXXXX

(hereinafter “Contractor”) and collectively (the “Parties”).

WHEREAS, Skyway has entered that certain Chicago Skyway Concession and Lease Agreement, dated as of October 27, 2004, as amended, with the City of Chicago (the “Concession Agreement”) the terms and conditions of which are specifically incorporated as set forth herein and govern all conduct by the Parties under this Agreement.

WHEREAS, SCC is interested in obtaining certain construction services with respect to the *Commercial Ave & West Approach Viaducts Gusset Plate Repairs* project, which are part of the Chicago Skyway Toll Bridge (the “Skyway”), which shall consist of repairs of deck-truss gusset plates to the Commercial Avenue Viaduct, and the West Approach Viaduct.

WHEREAS, Contractor has represented to SCC that it has the professional experience and the adequate expertise and skill required to provide such construction services.

WHEREAS, the Technical Specifications, Dates of Completion, Contract Sum and Values are included as Exhibits A, B and C, attached hereto and incorporated into this Agreement.

In accordance with the XXXXXX Proposal dated XXXXXX 2016, the work will be done on a Not-to-Exceed amount (hereby the “**Contract Sum**”) for the Contract is: \$XXXXXXXX inclusive of all reimbursable expenses. The Contract Price shall not be subject to change or escalation, except as expressly provided for in this Contract.

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to the terms and conditions set forth herein.

CONSTRUCTION CONTRACT
SKYWAY CONCESSION CO. LLC AND XXXXXXX

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Exhibit A: Technical Specifications & Time of Completion

Exhibit B: Contract Price and Values

Exhibit C: Form Waiver of Lien

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I. GENERAL PROVISIONS

A. Definitions

1. "A.C.I." means American Concrete Institute.
2. "A.E.D." means Associated Equipment Distributors.
3. "A.I.A." means American Insurance Association.
4. "A.I.S.C." means American Institute of Steel Construction.
5. "A.N.S.I." means American National Standards Institute.
6. "A.A.S.H.T.O." means American Association of State Highway and Transportation Officials.
7. "A.S.M.E." means American Society of Mechanical Engineers.
8. "A.S.T.M." means American Society for Testing and Materials.
9. "As-Built Drawings" means contract drawings reflecting the final built Project configuration, including approved modifications.
10. "Consultant(s)" refers to the person, firm or corporation awarded a contract by SCC of Chicago to provide professional architectural or engineering design services or construction supervision for the Project.
11. "Contract" means this Contract, including all exhibits that are attached to and/or incorporated by reference in the Contract, and all amendments, modifications, or revisions made from time to time in accordance with the terms of the Contract.
12. "Contract Completion Date" is the date, determined by SCC on which the Project is to reach Substantial Completion. The Contract Completion Date will be determined based on the duration for the Project set by the Contract as adjusted by any Contract Modifications that extend or reduce the duration of the Project.
13. "Contract Documents" consists of specifications, plans, design contracts, fully executed performance and payment bonds, and all other documents attached to the Contract and/or incorporated by reference in it.
14. "Contract Modification" means a written modification of the terms and conditions of this Contract, signed by the Contractor, and SCC.
15. "Contract Time" is the duration of the Work from when the Work is required to begin until the scheduled date for substantial completion, including approved time extensions.
16. "Contractor" means the person who is awarded the Contract.
17. "Detailed Specifications" means the written requirements for materials and equipment to be used in the Work, including any plans or drawings, and standards of performance for the Work.
18. "Environmental Laws" means all applicable Federal, State, and local laws, ordinances, rules, regulations, and executive orders pertaining to environmental matters, including but not limited to the release, management, storage, transportation, use, and disposal of Hazardous Materials.

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19. "Equipment" means all machinery and equipment, together with the necessary supplies for upkeep and maintenance, and all tools and apparatus necessary for the proper and acceptable completion of the Work.
20. "F.E.P.C." means Fair Employment Practices Commission.
21. "Field Order" means the written order to the Contractor, signed by SCC, unilaterally directing changes in the Work or the Contract Times, or directing the Contractor to take corrective action and to adhere to Contract Documents.
22. "Final Completion and Acceptance of the Work" means the last date on which all of the following events have occurred: the Commissioner has determined that all Punch List Work and any other remaining Work have been completed in accordance with the Contract Documents; final inspections have been completed and operations systems and equipment testing have been completed; final occupancy certifications have been issued; all deliverables have been provided to SCC; and all contractual requirements for final payment have been completed.
23. "Hazardous Materials" means asbestos and asbestos-containing materials, polychlorinated biphenyls (PCBs), oil or any other petroleum products, natural gas, special nuclear materials, and by-product materials regulated under the Atomic Energy Act (42 U.S.C. Sec. 2014, et seq.), pesticides under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. Sec. 136, et seq.), lead-based paint, including lead-based paint wastes, and any hazardous waste, toxic substance or related material, including any substance defined or treated as "hazardous waste," "special waste," or "toxic substance" (or comparable term) in any Environmental Law.
24. "Municipal Code" means the Municipal Code of Chicago.
25. "N.E.C." means National Electric Code.
26. "N.E.M.A." means National Electrical Manufacturer's Association.
27. "Notice to Bidders" means Advertisement for Bids, the official notice inviting bids for the proposed Work to be done under this Contract.
28. "Night Work" means work performed between the hours of 9:00 p.m. and 8:00 a.m. unless otherwise defined in the plans.
29. "Notice to Proceed" means written authorization from SCC for the Contractor to commence the Work on a specified date.
30. "O.S.H.A." means the Occupational Safety and Health Administration.
31. "Product Data" are illustrations, standard schedules, performance charts, instructions, descriptive literature, catalogs and brochures, performance and test data, test certifications, diagrams and other information furnished by the Contractor to illustrate a material, product or system for some portion of the Work.
32. "Project" means, collectively, the improvements to be constructed by the Contractor in accordance with the Contract.
33. "Project Record Documents" are all documents pertaining to completed Work that the Contract requires the Contractor to provide to SCC, including, but not limited to, As-Built Drawings, record Shop Drawings, product data, instructions, parts list, certified payrolls and operations and maintenance manuals.

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34. "Provide" means furnish and install, unless otherwise specified herein.
35. "Punch List" work means minor adjustment, repairs or deficiencies in the Work, as determined by SCC, in his sole discretion.
36. "Samples" mean physical examples which illustrate materials, equipment or workmanship. Samples include materials, fabricated items, equipment, devices appliances, or parts thereof as called for in the Detailed Specifications and any other Samples as may be required by SCC to determine whether the kind, quality, construction, workmanship, finish, color and other characteristics of the materials proposed by the Contractor conform to the required characteristics. The various parts of the Work shall be in accordance with the reviewed and approved samples.
37. "Shop Drawings" means drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or any Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work. Shop Drawings include, but are not limited to: fabrication, erection, layout and setting drawings; manufacturer's standard drawings; schedules; wiring and control diagrams; and other drawings pertaining to materials, equipment and systems and methods of construction as may be required to show that the materials, equipment or system conform to the Contract requirements. Shop drawings shall establish the actual detail of all manufactured and fabricated items and indicate the proper relation to the adjoining Work.
38. "Special Wastes" means those substances as defined in the Illinois Environmental Protection Act, 415 ILCS 5/3.45, and further defined in Section 809.103 of 35 Illinois Administrative Code, Subtitle G, Ch. 1.
39. "State" means the State of Illinois.
40. "Subcontractor" means any person or entity with whom Contractor contracts to provide any part of the Work, and all subcontractors of any tier, including suppliers and material persons, whether or not in privity with Contractor.
41. "Submittal" means Schedule, Shop Drawings, Product Data or Samples and other items as may be required by the Contract.
42. "Substantial Completion Date" is the date upon which the Contractor has completed all Work, as determined by the Commissioner, in accordance with the Contract documents.
43. "Substantial Completion of the Project" or "Substantial Completion" means that, in the determination of SCC, the Contractor has completed all Work in accordance with the Contract Documents, except for Punch List Work and SCC is able to occupy and use the Project for the purpose intended.
44. "Work" means all labor, materials, equipment, deliverables, and other incidentals to be provided by the Contractor hereunder which are necessary or convenient to the successful completion of this Project and which are required by, incidental or collateral to the Contract Documents.

B. Usage and Contract Interpretation

1. Unless a contrary meaning is specifically noted elsewhere, words such as, "as required," "as directed," "as permitted," and similar words mean that requirements, directions of, and

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- permission of SCC are intended. The words “approved,” “acceptable,” “satisfactory,” or words of like import, shall mean “approved by,” “acceptable to,” or “satisfactory to” SCC. The words “necessary,” “proper,” or words of like import as used with respect to extent, conduct or character of the Work specified means that Work must be conducted in a manner, or be of character which is “necessary” or “proper” in the opinion of SCC. SCC’s judgment in such matters is final and incontestable by the Contractor.
2. Where the imperative form of an address is used, such as “perform the excavating,” “provide equipment required,” “remove obstructions encountered,” “furnish and install reinforcing steel bars,” etc., that address is directed to the Contractor.
 3. Any headings in this Contract are for convenience of reference only and do not define or limit its terms or provisions. All section references, unless otherwise expressly indicated, are to sections of this Contract. Words importing persons include firms, associations, partnerships, trusts, corporations, joint ventures and other legal entities, including public bodies, as well as natural persons. Words of any gender include correlative words of other genders. Words importing the singular number include the plural and vice versa, unless the context otherwise indicates. All references to any exhibit or document include all supplements and/or amendments to any such exhibits or documents. All references to any person or entity include any person or entity succeeding to the rights, duties, and obligations of such persons or entities in accordance with the terms and conditions of this Contract.
 4. Day means calendar day, unless otherwise stated.
 5. Whenever reference to a law is contained herein, such reference includes any amendment or revision to such law.

C. Severability

If any provision of this Contract is inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions because it conflicts with any other provision of this Contract, or of any constitution, statute, ordinance, rule of law, or public policy, or for any other reason, such circumstances shall not render the provision in question inoperative or unenforceable in any other case or circumstance, or render any other provision or provisions of this Contract invalid, inoperative, or unenforceable to any extent whatever. The invalidity of any phrases, sentences, clauses, or sections contained in this Contract shall not affect the remaining portions of this Contract or any part thereof.

D. Estimates of Quantities

For the estimate of quantities of Work listed in the Proposal Pages, it is understood that: (1) the estimate is approximate only; (2) SCC does not expressly or by implication represent or warrant the actual quantities involved will correspond to the estimate; (3) Contractor must estimate his own quantities; and (4) This Proposal is a Lump Sum Contract.

E. Entire Agreement

The Contract including all Contract Documents, and the exhibits attached to them and incorporated thereby, constitute the entire agreement between the parties with respect to the subject matter hereof, and no other oral or written understandings, representations, inducements, consideration, promises, or interpretations are implied or impressed upon this Contract that are not expressly addressed herein.

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II. PROJECT ORGANIZATION

A. Skyway Concession Company

SCC's Infrastructure Manager will manage the Contract for SCC.

B. Contractor

The work is under the charge and care of the Contractor until Final Completion and Final Acceptance of the Work, unless otherwise specified in the Contract Documents.

III. CONTRACTOR'S OBLIGATIONS

A. Contractor

1. Except as may be expressly provided otherwise in the Contract Documents, Contractor is solely responsible for selecting the means, methods, techniques, sequences, and procedures used in performing the Work. The intent of the Detailed Specifications is to describe the completed Work which the Contractor must provide to fulfill the requirements of the Contract. The Detailed Specifications are not intended to cover every detail of materials, parts, or activities necessary to complete the Work. The Contractor must perform all activities that may be required or necessary to complete the Work in accordance with the Contract Documents. For the Contract Price, the Contractor must construct, furnish and install all materials, parts and labor necessary to complete the entire Work, whether or not the Contract Documents particularly specify or show the details of Work.
2. The Work under this Contract has not been completely segregated into divisions of Work to be performed by any trade or Subcontractor. The Contractor is responsible for all segregation of Work between the trade or craft jurisdictional limits.
3. Prior to submission of its bid, the Contractor must (i) inspect the site of the proposed Work and familiarize itself with all the site conditions that may affect its performance of the Work; and (ii) review the Contract Documents provided with the bid documents. If at any time prior to the bid opening the Contractor discovers any errors, discrepancies or omissions in the Contract Documents, or any discrepancy between the Contract Documents and the physical conditions at the site or in any subsequent drawings that may be provided thereafter, the Contractor must notify SCC immediately, in writing for an interpretation through an Addendum.
4. This written request must be received by SCC no later than 10 business days before bid opening, or no response will be provided. The Contractor will not be allowed to take advantage for the discovery of any such error or omission or discrepancy in the Contract Documents after the award of the Contract. Any Work done after such discovery, unless authorized by SCC will be done at the Contractor's expense.
5. Except as otherwise expressly provided in the Contract Documents, the Contract Price includes all costs and expenses for which the Contractor will be compensated in connection with the Contract, including but not limited to (a) the costs of performing any or all of its obligations and duties under the Contract; (b) the costs of all materials, equipment, supplies, tools, machinery, labor, supervision, management and items of any and all kinds that are or may be necessary and incidental to the full and satisfactory completion of the Work, whether or not specified or indicated in the Contract; (c) the costs of permits, insurance, bonds and license; (d) the costs associated with any risks assumed by the Contractor under the Contract;

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(e) the costs associated with all warranties and guarantees; (f) the costs of complying with the directives of the SCC, (g) the costs of complying with all laws applicable to the Contract; and (h) all overhead and profit. No term of the Contract which further specifically indicates that the Contractor must bear the costs of an item or which further specifically indicates that an item will be performed at no additional cost to SCC will be construed or interpreted to in any way limit the foregoing.

6. Contractor must begin the Work on the date specified in the Notice to Proceed. In addition, upon receipt of Notice to Proceed, the Contractor must assign and maintain during the term of the Contract and any extension of it, an adequate staff of competent personnel who are fully equipped, licensed as appropriate, available as needed, and qualified to perform the Work. The Contractor must include among its staff such personnel and positions as may be required by the Contract Documents.

In the event that, in the reasonable opinion of SCC, the performance of personnel of the Contractor assigned to the Work is at an unacceptable level, or does not comply with Section VIII. A., "Competency of Workers," of the Contract, such personnel must cease to be assigned to this Work and must return to the Contractor. The Contractor must then furnish to SCC the name of a substitute person or persons in accordance with the previous paragraph. Absence of sufficient qualified personnel for the Work shall constitute an event of default.

7. Contractor must supervise and direct the Work competently and efficiently, devoting such attention and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract. Contractor is responsible for providing a finished Project that complies fully with the Contract.
8. Contractor shall be responsible to provide the Engineer means and equipment to access repaired section for inspection and measurement purposes. Contractor will be responsible for coordinating with the Engineer the date of inspection at least three days in advance. The inspection request will be made upon completion of substantial work that could require a full day of inspection and measurement at a time Contractor shall be responsible to provide the Engineer means and equipment to access repaired section for inspection and measurement purposes. Contractor will be responsible for coordinating with the Engineer the date of inspection at least three days in advance. The inspection request will be made upon completion of substantial work that could require a full day of inspection and measurement at a time
9. Risk of Loss. The Work is under the charge and care of the Contractor until Final Completion and Acceptance of the Work by SCC, unless otherwise specified in the Contract Documents. The Contractor assumes all responsibility for injury or damage to the Work by action of the elements, fire or any other causes whatsoever, including, but not limited to, injury or damage arising from the execution or non-execution of the Work. The Contractor must rebuild, repair, restore and make good, at no additional cost to SCC, all injuries or damages to any portion of its Work before Final Completion and Acceptance of the Work.

When equipment or materials are furnished to the Contractor by the City for use or inclusion in the Work, the Contractor's responsibility for safeguarding all such equipment and materials must be the same as for equipment and materials furnished by the Contractor.

10. The Work will not be considered to be completed and accepted until the Contractor receives written notice from SCC confirming the Final Completion and Acceptance of the Work.

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11. In the event Contractor has any issues with respect to the Detailed Specifications or Contract Drawings, Contractor will raise such issues with the Construction Manager.
12. Except as hereinafter specified, the Contractor shall perform with its own organization and forces not less than 25% of the total amount of Work which is performed at the Project site, computed on the basis of cost. The Contractor shall require each Subcontractor to become familiar with all provisions of the Contract Documents which may affect Subcontractor's work.

B. Subcontractors

1. All rights and obligations under this Contract are by and between SCC and the Contractor. Except as may otherwise be provided in the Contract Documents, there is no privity between Subcontractors and SCC. Subcontractors have no rights as third party beneficiaries under this Contract except as provided in the MBE/WBE Special Conditions. The Contractor agrees to implement such measures as may be necessary to ensure that its Subcontractors shall be bound by all applicable provisions of the Contract.
2. All Subcontractors are subject to the approval SCC. The Contractor must not substitute a Subcontractor previously accepted by SCC unless the substitution is acceptable to SCC. All requests to subcontract must be submitted on a form approved by SCC.
3. The Contractor is responsible in all aspects and at all times for any and all Subcontractor's Work.
4. The Contractor must furnish SCC with one (1) copy of each written subcontract agreement and subsequent modifications signed by Contractor and the Subcontractor evidencing such agreement. All subcontracts must be in writing. All subcontracts must require that (i) all Subcontractor's Work be performed in strict accordance with this Contract; and (ii) the Subcontractor must be bound by and subject to the requirements of this Contract, whether or not a particular provision specifically mentions Subcontractors, provided that SCC's rights are not thereby prejudiced. Subcontracts may contain different provisions than are provided in this Contract with respect to payments, schedules, and matters not affecting the quality or timely completion of the Work hereunder. The Contractor must require each Subcontractor to enter into similar subcontracts with its Subcontractors. The Contractor must make available to each Subcontractor, prior to the execution of such subcontract, copies of this Contract, to which the Subcontractor will be bound pursuant to the requirements of this paragraph.

In the event that a subcontract provided to SCC does not comply with the foregoing, SCC's failure to object is not a waiver of the foregoing, and Contractor will remain liable to SCC for any and all damages, costs, fines, losses and claims arising out of such non-compliance.

5. In the case of Work performed by Subcontractors, the Contractor must secure warranties from said Subcontractors addressed to and in favor of SCC; deliver copies of them to SCC upon completion of the Subcontractors' Work and; guarantee and assume full responsibility for the performance of any repair or replacement Work that may be required for the full period of the said warranties provided. However, the delivery of said warranties will not relieve the Contractor from any obligations assumed under this Article III., nor any other provision of this Contract.

C. Site Conditions and Inspection

1. Surveys, soil borings, geotechnical information, data, plans or other materials generally describing the unimproved land or existing structures at the site may be provided to the

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- Contractor by SCC. Such information is not warranted by SCC to be accurate. The Contractor is not entitled to rely on it. When such information appears on Contract Documents, prepared by SCC or its consultants, the Contractor acknowledges that SCC and its consultants have not verified such information. Site plans do not constitute any representation by SCC to the Contractor of site boundaries or characteristics.
2. The Contractor must take field measurements, verify field conditions and carefully compare such field measurements and conditions and any other information known to the Contractor about the Contract Documents before commencing the Work. No allowance will be made to the Contractor for any extra labor and/or materials required due to site conditions or discrepancies which might have been discovered by a thorough and proper inspection of the site. In the event that land surveying Work is required under this Contract, Contractor must have such Work performed by a land surveyor that is licensed as such by the State of Illinois.
 3. If conditions are encountered at the site which are (i) subsurface or otherwise unknown or concealed physical conditions which differ materially from those indicated in the Contract Documents; or (ii) pre-existing unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in activities of the character provided for in the Contract Documents, including the presence of unanticipated Hazardous Materials, then the Contractor must provide immediate written notice to SCC before proceeding with such work or disturbing such areas.
 4. If such conditions differ materially from those indicated in the Contract Documents, and cause a material increase or decrease in the Contractor's cost or time required for the performance of any part of the Work, an equitable adjustment in the Contract Price or Contract time, or both will be made pursuant to Article XIV., "Changes in the Work."
 5. The Contractor must keep on hand at the Work site, for reference, a complete set of Contract Documents for the Work, copies of all plans furnished by the Contractor, all additional and revised plans furnished by SCC and all orders issued to the Contractor by SCC that relate to the Work.

D. Cleaning Up

During the construction, the Contractor will keep the Work site and adjacent premises as free from material, debris, and rubbish as is practicable and will remove the same entirely and at once, if in the opinion of SCC, said material, debris or rubbish constitutes a nuisance, a safety hazard, or is objectionable in any way to the public. Upon verbal and/or written notification of unacceptable work day conditions by SCC, the Contractor shall be responsible for immediate rededication within 48 hours of notification. The Contractor's failure to act accordingly shall result in completion of remediation work by SCC at the Contractor's expense.

As a condition of Final Completion of the Work, the Contractor shall remove from the Work site and adjacent premises all machinery, equipment, surplus materials, false work, excavated and useless materials, rubbish, temporary buildings, barricades and signs, and shall restore the site to the same general conditions that existed prior to the commencement of the Work.

The Contractor shall clean off all cement streaks or drippings, paint smears or drippings, rust stains, oil, grease, dirt, and any other foreign materials deposited or accumulated on any portion of the Work, or existing work, due to Contractor's operations.

Contractor shall be solely responsible for and shall assume all liability associated with off-site disposal of any Hazardous Materials generated as a result of Contractor's construction activities.

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E. Contractor's Warranties and Representations

Contractor warrants and represents that:

1. It has carefully examined and analyzed the provisions and requirements of this Contract; it has inspected the Work site(s) to the extent made available by SCC; from its own analysis it has satisfied itself as to the nature and scope of work, all conditions, any obstructions and requirements needed for the preparation of its bid and the performance of this Contract, the general and local conditions, and all other matters which in any way may affect this Contract or its performance; and the time available for such examination, analysis, inspection and investigation was adequate;
2. This Contract is feasible of performance in accordance with all of its provisions and requirements and that the Contractor can and must perform, or cause to be performed, the Work in strict accordance with the provisions and requirements of this Contract;
3. Except for the contents of this Contract, no representation, statement or promise, oral or written, or of any kind whatsoever, by SCC, its officials, agents, representatives or employees, has induced the Contractor to submit a bid or has been relied upon by the Contractor, including any reference to (i) the meaning, correctness, suitability or completeness of any provisions or requirements of this Contract; (ii) the nature, existence, or location of materials, structures, obstructions, utilities or conditions, surface or subsurface, which may be encountered at or on the Work site; (iii) the nature, quantity, quality or size of any materials, equipment, labor and other facilities needed for the performance of this Contract; (iv) the general conditions which may in any way affect this Contract or its performance; (v) the compensation provisions of the Contract; or (vi) any other matter;
4. The Contractor was given ample opportunity and time to review the Contract Documents prior to submittal of its bid in order that it might request an addendum to the Contract Documents that may entail the inclusion in this Contract of any statement, representation, promise or provision which it desired or on which it wished to place reliance; Contractor did so review the Contract Documents, and that every such statement, representation, promise or provision has been included in this Contract or else, if omitted, the Contractor expressly hereby relinquishes the benefit of any such omitted statement, representation, promise or provision and is willing to perform this Contract in its entirety without claiming reliance on any such omission or making any other claim on account of such omission;
5. The Contractor acknowledges that SCC, in its selection of the Contractor to perform the Work, materially relied upon the Contractor's response to the advertisement for bids. The information provided the Contractor with the bid was accurate at the time it was made, and any material changes in such information have not and will not be made without the express consent of SCC.
6. Contractor's submittal of its bid establishes that the Contractor, in preparing and submitting its bid on which this Contract is based, has complied with, and given full consideration to the following bidding requirements:
 - a. The Contractor did obtain for bidding purposes copies of the complete Contract Documents as identified in the advertisement for bids and all addenda issued by SCC and has become familiar with the same and all Contract requirements and conditions described therein;

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- b. The Contractor has clarified to its satisfaction and complete understanding and acceptance any doubt as to the true meaning and intent of any part or parts of the specifications and plans or other portions of the Contract Documents;
 - c. The Contractor accepts the requirement that the Contractor must have no claim for relief because of alleged mistakes or omissions in its bid and that the Contractor will be held strictly to its bid as presented.
- 7. Contractor has the capability and financial resources to perform all of the provisions and requirements of this Contract.
 - 8. Contractor must perform all of its obligations under this Contract in accordance with all of the Contract's provisions and requirements.

IV. PROPERTY

A. Ownership of Property

Skyway Concession Company has leased the Chicago Skyway from The City of Chicago. All material incorporated into this project ultimately becomes the property of The City of Chicago.

B. Ownership of Detailed Specifications and Other Contract Documents

- 1. The Detailed Specifications, Plans and any copies of them furnished by SCC are the property of SCC. They are not to be used on other work. SCC will provide the Contractor the number of Detailed Specifications and Plans determined appropriate by SCC. SCC may provide the Contractor with additional copies at the Contractor's request and at the Contractor's cost. Contract Documents will be furnished as follows:
 - a. Contract Plans 3 Sets
 - b. Subsequent Details 3 Sets
 - c. Specifications and Contract Drawings 3 Sets
 - d. All information on a disc
- 2. Specifications issued by organizations other than SCC to which reference is made in SCC's specifications must be obtained by the Contractor at its expense. The specifications must also be retained at the Work site.
- 3. The City is the owner of the Project. All documents, data, studies, reports, and instruments of service prepared for or by the City under this contract are the property of the City. During the performance of its Work, the Contractor is responsible for any loss or damage to documents while in the Contractor's possession or the possession of a Subcontractor and any such document so lost or damaged must be restored at the expense of the Contractor.

The Contractor must deliver, or cause to be delivered, at any time during the term of this Contract, all documents, including but not limited to drawings, models, specifications, estimates, reports, studies, maps, and computations, prepared by or for the City, under the terms of this Contract to the City, promptly upon reasonable demand therefore or upon termination of the Work. If the Contractor fails to deliver them when required, then the Contractor must pay the City all damages the City may sustain by reason of the failure, including consequential damages.

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C. Right of Entry

1. The Contractor, and any of its officers, employees, agents, and Subcontractors, are permitted to enter upon any part of the Work site in connection with the performance of the Work hereunder, subject to the terms and conditions contained herein and those rules that may be established by the SCC.
2. Inspections: The Contractor acknowledges that both The City of Chicago and SCC have a right of access to the Work site at all times and the right to inspect all Work during the Contract period.
3. The Contractor must use, and must cause each of its officers, employees, agents, and Subcontractors to use, the highest degree of care when entering upon property owned by The City of Chicago in connection with the Work. In the case of any property owned by The City of Chicago, or property owned by and leased from The City of Chicago, Contractor must comply and must cause each of its officers, employees, agents, and Subcontractors to comply, with any and all instructions and requirements for the use of such property, including any licenses for which being hereby incorporated by reference. Any and all claims, suits, judgments, costs, or expenses, including reasonable attorneys' fees, arising from, by reason of, or in connection with any such entry is treated in accordance with the indemnification provisions contained in this Contract.

D. Damage of City Property

If the Contractor causes damage to The City of Chicago or SCC property, the Contractor must, at the sole option of The City of Chicago or SCC, either: 1) pay the cost of repair of the damage; or 2) repair or replace any property so damaged. SCC has the right to deduct such repairs from payments due the Contractor under their Contract for the cost of such repairs.

E. Acceptance of the Work and Right to Occupy Before Completion

SCC may occupy and use the project or portions thereof in advance of Substantial Completion and Acceptance of the Project. In the event that SCC desires to exercise partial occupancy and use prior to Substantial Completion and Acceptance of the Work, SCC will notify the Contractor, and the Contractor will cooperate with SCC in making available for SCC's use such project services as heating, ventilating, cooling, water, lighting and telephone for space or spaces to be occupied, and if the equipment required to furnish such services is not entirely completed at the time SCC desires to occupy and use the space or spaces, the Contractor will make every reasonable effort to complete that Work.

When the Commissioner determines that the City will use all or part of the Project before Substantial Completion, the Commissioner will determine:

1. The responsibility between the City and Contractor for maintenance, repair, furnishing of utilities and the protection of the public (if required) for that part of the Work to be occupied;
2. The list of items remaining to be performed before the Work or portion thereof to be occupied will be substantially complete;
3. Whether any types of insurance will be needed by the Contractor; and
4. The effect of the City's use before Substantial Completion and Acceptance of the Work on required guarantees and warranties.

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F. Project Completion and Final Acceptance

When the Contractor deems the Work to be complete, the Contractor must notify SCC, in writing that the Work will be ready for an inspection and/or test on a date specified by the Contractor. Such notice is given at least 15 calendar days in advance of said date. If SCC concurs that the Work will be ready for inspection or testing on the date given, SCC will make such inspection within a reasonable period of time. The scheduling of the inspection to determine whether the Work is complete does not relieve the Contractor of its responsibilities under the Contract Documents. The Contractor must cooperate in all respects in the scheduling and performance of the inspection.

Payment of Remaining Retainage at Final Completion and Acceptance of the Work: Unless expressly stated otherwise in the Contract specifications, the remaining Retainage will be paid when all Work, including Punch List Work, is complete and the Contractor submits to SCC a sworn affidavit stating the following:

1. All payrolls, invoices for materials and equipment, and all other indebtedness connected with the Work for which SCC might in any way be responsible, have been paid or otherwise satisfied;
2. All waivers of lien required by the Contract have been provided to SCC;
3. As of the date the affidavit is signed, all known claims made by Subcontractors of any tier, and others against the Contractor or SCC, pertaining to the Work required under this Contract, were provided, in writing, to SCC;
4. All claims made by Subcontractors of any tier, and others against the Contractor or SCC pertaining to the Work required under this Contract have been resolved;
5. The warranties and guarantees required by the Contract have been provided to SCC;
6. All warranties and guarantees are in full force and effect;
7. The surety's written consent, signed by its authorized representative, to final payment being made directly to the Contractor is attached to the affidavit;
8. The Contractor agrees that acceptance of final payment will constitute a general release to SCC, its agents, representatives, officials and employees of all other claims of liability for anything done or furnished or relating to the Work or for any act or neglect of SCC or its agents, representatives, officials and employees relating to or connected with this Contract;
9. Record documents, including but not limited to As-Built Drawings, record shop drawings and Operation and Maintenance manuals have been provided to SCC;
10. All other documents requested by SCC have been provided; and
11. A Final Certificate verifying wages and classifications for laborers and mechanics, including apprentices and trainees employed on the Project, in the following form:

On (Specification No: _____ /Contract No: _____ .) hereby certifies that all laborers, mechanics, apprentices and trainees employed by it or by a Subcontractor performing Work under the Contract have been paid wages at rates not less than those required by the Contract provisions, and that the Work performed by each such laborer, mechanic, apprentice or trainee conformed to the classifications set forth in the Contract or training program provisions applicable to the wage rate paid.

Signature and Title

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Name Title _____
Authorized Officer
Contractor: _____
Project: _____

The payment of the remaining retainage to Contractor signifies SCC's final acceptance of the Work.

V. SHOP DRAWINGS, PRODUCT DATA, RECORDS AND SAMPLES

A. Contractor's Responsibilities and Submittal Procedures

1. Shop Drawings, Product Data, Video Tape and Samples are part of the Work under this Contract and must be provided to the satisfaction of SCC at the expense of the Contractor.
2. The Contractor must submit to SCC such Shop Drawings, Product Data, Video Tape and Samples required for the Work involved under this Contract in accordance with the Schedule.
3. The CPM Schedule as defined in 11.B must include a schedule of proposed submittal dates. The dates listed in the schedule must allow sufficient time for review and processing by SCC and resubmittal, if necessary, of Shop Drawings or other data before the Work represented by Shop Drawings and Samples is needed by the Contractor to complete its performance under this Contract. No extensions of time will be granted to Contractor because of its failure to have Shop Drawings, Video Tape, Samples and Product Data submitted in time to allow for review, resubmittal and final review. Contractor must also submit a separate submittal schedule (in table format), in addition to the Schedule, identifying all submittal with submittal dates to SCC for review and approval.
4. The Contractor must prepare and submit proper Shop Drawings, Video Tape, Samples and Product Data in accordance with its contractual obligations. By submitting Shop Drawings, Video Tape, Product Data and Samples, the Contractor represents that it has determined and verified all materials, field measurements, field conditions and quantities, and that it has checked and coordinated the information contained within submittal, including its Subcontractors' Submittal, with the requirements of the Work and of the Contract Documents.
5. All Shop Drawings, Video Tape, Product Data and Samples must be dated and stamped by the Contractor and indicate that the submittal has been reviewed and checked prior to submittal and found to be in conformance with the Contract Documents. All submittal shall be transmitted to SCC's consultant. The Contractor must clearly mark on each Shop Drawing, Video Tape, Product Data and Sample, in accordance with the following for purposes of identification and record:

SUBMITTAL IDENTIFICATION

Name of Project: _____
Contract Name and Number: _____
Date of Submittal: _____
Submittal Number: _____
Resubmittal of Submittal Number: _____
Identification of Deviations from Contract Documents: _____
Specification Section, Page, and Paragraph No. and/or Drawing No.: _____

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Type of Material and Manufacturer: _____

Applicable Standards such as ASTM numbers: _____

CHECKED AND SUBMITTED IN ACCORDANCE WITH DRAWINGS AND SPECIFICATIONS.

Contractor: _____

By: _____ Date: _____

6. Shop Drawings must be submitted with accurate dimensions. The Shop Drawings must represent the actual manner in which the Work is manufactured and installed, and the relation of the Work installed to that of other trades, clearances, and all other pertinent data. Cross-section drawings must indicate minimum clearances and all other pertinent data. Dimensions must be expressed in feet and inches. Designs prepared in the metric system may be submitted with metric units, but the equivalent English units must also be shown. All weights and dimensions must be certified prior to submission for review.
7. SCC's review and acceptance of Shop Drawings in no way relieves Contractor from responsibility for errors or omissions which may exist in the Work or on the certified Shop Drawings. Where such errors or omissions are discovered, they must be corrected by the Contractor at no additional cost to SCC. Submittal must be sufficiently complete to allow for proper review. The Contractor must submit all Shop Drawings, Video Tape, Samples and Product Data to SCC for review with an accompanying transmittal letter containing the above Submittal identification data and a list of items being submitted. The Contractor must coordinate Submittal into logical groups or sets to facilitate review of several related items.
8. Any Submittal which in SCC's sole opinion is not complete and in proper form will be returned to the Contractor without review. The Contractor must not submit duplicates or reproductions of any Contract Documents issued by SCC as Shop Drawings.
9. Contractor must provide Submittal in the following quantities unless a greater number is specified elsewhere in the Contract Documents, or is required by SCC:
 - a. Shop Drawings: Submit one (1) reproducible and six (6) prints. (Prints shall be collated into sets.);
 - b. Product Data: Submit six (6) copies of product data;
 - c. Samples: Submit four (4) samples; and
 - d. Video Tape
10. Prior to submitting Shop Drawings, Product Data, Video Tape, or Samples, the Contractor must notify SCC in writing of any deviations in the Submittal from the requirements of the Contract. If deviations from the Contract requirements are rejected by SCC or if evaluation of the deviations delays the progress of Work, any delay caused will not be compensable by a time extension.

B. Review by SCC

1. Submittal will be reviewed by SCC for compliance with the Contract Documents. In reviewing the Submittal, SCC will not verify dimensions and field conditions. Any such review does not relieve the Contractor, Subcontractor, manufacturer, fabricator or supplier from responsibility for any deficiency that may exist or from any departures or deviations from the requirements of the Contract Documents, nor does it relieve them from

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- responsibility for (i) errors of any sort in Shop Drawings, Samples and Product Data, (ii) responsibility for proper fitting of the Work, or (iii) the necessity of furnishing any Work required by the Contract documents which may not be indicated on Shop Drawings when reviewed. The Contractor is solely responsible for any quantities which may be shown on the Shop Drawings. SCC's review of a specific item does not indicate approval of an assembly of which the item is a component.
2. The Contractor must not fabricate products, begin Work, order or have delivered any material, equipment or system which requires a reviewed Submittal until return of the Submittal from SCC with a stamp authorizing Work and/or delivery and installation to be performed, as described in Paragraph 3., immediately below.
 3. SCC will return submittal stamped as follows:
 - a. "No Exceptions" means no changes need be made on the reviewed Submittal. The Contractor may proceed with the Work for that Submittal. Resubmittal is not required.
 - b. "Exceptions as Noted" indicates that the Submittal is accepted subject to the corrections and/or comments noted. The Contractor may proceed with the Work for that Submittal provided that the Contractor incorporates SCC's comments, and/or corrections. Resubmittal is not required.
 - c. "Revise and Resubmit" means that the Submittal does not meet all the requirements necessary to precede with the Work associated with the Submittal. The Contractor must resubmit in accordance with the reviewer's comments and/or corrections. Submittal marked in this manner must not be released for fabrication, delivery or construction.
 4. If the Submittal requires revision, the Contractor must notify SCC and all pertinent Subcontractors, in writing, that the reviewed set has been withdrawn.
 5. Submittals that require revisions must be corrected and resubmitted to SCC to maintain the approved CPM schedule, but in no event more than three (3) days after receipt of SCC's comments.
 6. Shop Drawings: After review by SCC, one reproducible stamped by SCC as previously described in Paragraph 3. above will be returned to the Contractor.
 7. Submission and Review of Samples: In the event that a considerable range of color, graining, texture or other characteristics may be anticipated in finished products, a sufficient number of Samples of the specified materials must be furnished by the Contractor to indicate the full range of such characteristics which will be present in the finished products. Any product delivered or erected without submittal and review of full range Samples shall be subject to rejection. Each tag or sticker shall have clear space for the stamps of the Contractor and SCC. Notice of the result of the review will be provided to the Contractor with one of the stamps indicated in Paragraph 3. above. Rejected samples will be returned. Accepted samples will be retained by SCC. Where color samples are required to be submitted, color samples must be submitted on the actual material which will finally be installed in the Work.
 8. Product Data: After review by SCC, two (2) sets of product data stamped by SCC as previously described will be returned to the Contractor.

C. Source of Materials

Contractor shall notify SCC in writing as soon as possible after the Contract has been awarded, but not less than three (3) weeks prior to the need for inspection and testing of the source (or

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sources) from which Contractor expects to obtain the various construction materials. The source of supply of each material used shall be approved by SCC before delivery is commenced. If sources previously approved are found to be unacceptable at any time and fail to produce materials satisfactory to SCC, the Contractor shall furnish materials from other approved sources.

D. Record Documents

At Substantial Completion, the Contractor must deliver to SCC, in suitable transfer cases clearly marked "Record Documents," all As-Built Drawings, record Shop Drawings, video tape, Product Data, instructions, parts list, and operations and maintenance manuals arranged in proper order and indexed. At the discretion of SCC, SCC may make the submission of all Record Documents a prerequisite to reduction of retention from 5% to 3% under Section XIII.D., "Retainage," of the Contract.

E. As-Built Drawings

1. As the Work progresses, the Contractor and the Subcontractor for each trade or division of work, under the direction of the Contractor must keep a complete and accurate record of the following:
 - a. Changes between the Work as shown on the Contract Drawings and the Shop Drawings indicating the Work as actually installed;
 - b. The specific location of all infrastructure elements, including piping, valves, ductwork, equipment, driveways, catch basins, sewer lines, waterlines, water mains, and other such elements which were not accurately located or changed location or elevation from that shown on the Contract Drawings; and
 - c. Equipment schedules indicating manufacturers' names and model numbers installed.
2. Changes must be neatly and correctly recorded daily on full size prints of the Contract Drawings, updated daily. This record set of Contract Drawings must be kept at the job site for inspection by SCC. Upon completion of the Work, the Contractor shall submit a final set of full-size prints to SCC for review and acceptance, as well as a CD with all the drawings..
3. At the time As-Built Drawings are delivered to SCC, the Contractor and each Subcontractor shall certify, in writing, that the As-Built Drawings are complete and accurate.

F. Record Shop Drawings and Product Data

1. As the work progresses, the Contractor must keep a complete and accurate record of the changes and deviations from the Work as shown on the Shop Drawings and Product Data indicating the Work performed. The Contractor must furnish Record Shop Drawings in a form and quantity acceptable to SCC. Record Shop Drawings must be submitted for all items reviewed as Shop Drawings. Record Shop Drawings must be legibly drawn on sheets of Mylar or such other medium as directed by SCC. Record Shop Drawings must be submitted on the same size sheets as the Contract Document drawings and include an index of all items.
2. Contractor must furnish 10 record copies of Product Data in loose leaf binders. Loose leaf binders must be subdivided by submittal numbers and must contain an index of all items.

G. Instructions, Parts List and Operation and Maintenance Manuals

The Contractor must furnish a complete list of equipment actually installed. The list must include a copy of pertinent nameplate data, name and address of local representative who stocks or

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furnishes repair or replacement parts, and name, address, and telephone number of the Subcontractor responsible to Contractor for the equipment under the guarantee. Contractor must guarantee any such equipment with respect to SCC.

The Contractor must submit suitable operating instructions for each major component of equipment and its controls. Instructions must include a schematic diagram accurately showing equipment and controls as installed. Included with each diagram must be a set of simple operating instructions stating how the system shall be stopped and started, what adjustments are to be made by the operator, and what to do in case of an emergency. Five (5) copies of proposed instructions must be submitted to SCC for review and acceptance. Upon acceptance, the Contractor must post applicable instructions as directed by SCC.

The Contractor must submit maintenance data prepared by the manufacturer of each major component of equipment and its controls. Data must include complete parts list, itemized lists of common purchase items of materials (e.g., bearings, packing, connectors, sealing devices, and other standard items) indicated by their standard trade designation, recommended routine and inspection maintenance, including testing recommendations to evaluate efficiency of performance, lists of special tools and gauges, lubricating instructions, and recommended spare parts lists, tolerances and clearances required for maintenance, and trouble-shooting guides prepared in a simple format to indicate complaint or problem, probable cause, and remedy. Five (5) copies of the proposed maintenance data must be submitted to SCC for review and acceptance in accordance with Article XIV.

H. Adjustment of Equipment

Before the Work is turned over to SCC, the Contractor must furnish the necessary instruments, test equipment, services, and personnel required to adjust and balance each piece of equipment in order to provide a smoothly functioning, well-integrated system complying with the letter and intent of the Contract Documents.

I. Project Account Records

1. Project Data and Records

- a. The Contractor and each Subcontractor must keep an accurate record showing the names, occupation, and the actual hourly wages paid to all laborers, workers and mechanics employed by them in connection with the Work. Such records must be open at all reasonable hours to the inspection of SCC and to the Director of Labor of the State of Illinois and his/her deputies and agents. The Contractor also must furnish SCC with certified copies of the payrolls, in accordance with Section XIII.B.3 .d.
- b. The Contractor must furnish to SCC upon request a written statement, verified by an affidavit, giving the names and addresses of all persons, firms and corporations who have up to the date thereof furnished labor or materials in the performance of the Contract and the amounts due or to become due to said parties.
- c. The Contractor and all Subcontractors must furnish SCC with such information as SCC may require relating to labor and materials, including all information necessary to determine the cost of the Work, such as the number of workers employed, their pay, and the distribution of labor into Work items, equipment time distribution and any other information which SCC may require. The Contractor must, on request, furnish SCC with copies of delivery tickets and invoices, in triplicate, covering the expenditures on the Contract.

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2. Audits

- a. The Contractor must furnish to SCC such information as may be requested relative to the progress, execution, and cost of the Work. The Contractor must maintain complete records showing actual time devoted and costs incurred. The Contractor must maintain its books, records, documents, and other evidence, and adopt accounting procedures and practices sufficient to record properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred for or in the connection with the Work for seven (7) years after final payment. This system of accounting must be in accordance with generally accepted accounting principles and practices, consistently applied throughout.
- b. All books and accounts, kept by the Contractor, in connection with the Work must be open to inspection and audit by authorized representatives of SCC. The Contractor must make these records available at reasonable times during the performance of the Work and must retain them in a safe place and make them available for inspection and audit for at least seven (7) years after final payment. No provision in this Contract granting SCC the right of access to records and documents is intended to impair, limit, or affect any right of access to such records and documents which SCC would have had in the absence of such provisions.

The Contractor must reimburse SCC for the costs of such audits if the audit demonstrates that the Contractor overstated the amount due on any invoice by at least 10 %.

3. Confidentiality: All of the reports, information, or data, prepared or assembled by or provided to the Contractor under this Contract are confidential, and the Contractor agrees that, except as specifically authorized herein or as may be required by law, it shall not make available said reports, information, or data, to any other individual or organization, without the prior approval of SCC. This requirement will survive expiration or termination of this Contract.

VI. ASSIGNMENT

A. Assignment of Contract by Contractor

The Contract will not be assigned, in whole or in part, without the prior written consent of SCC. Such consent of SCC will not relieve the Contractor from any obligations hereunder, or in any other way change the terms of this Contract.

B. Assignment of Funds or Claims by Contractor

The Contractor must not transfer, pledge or assign any Contract funds or claims due or to become due without the prior written consent of SCC. The transfer, pledge or assignment of any Contract funds, either in whole or in part, or any interest in such Contract funds, which are due or to become due to the Contractor, without the prior written consent of SCC, is void.

C. Assignment of Contract by SCC

SCC expressly reserves the right to assign or otherwise transfer all or any part of its interests hereunder without the consent or approval of Contractor.

D. Assigns

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

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E. Request to Subcontract

All requests to subcontract must be accompanied by three (3) copies of a written subcontract agreement which sets forth the scope of services to be subcontracted, the lump sum or unit price for such services and the signature of the subcontracting parties. Proposed subcontractors shall not commence Work on any portion of the Project without prior written approval by SCC.

VII. QUALITY OF WORKMANSHIP, EQUIPMENT AND MATERIALS

A. Standard of Performance

In addition to performing the Work in full compliance with the Contract Documents, the Contractor shall perform, or cause to be performed, all Work required of it under the terms and conditions of this Contract with that degree of skill, care, and diligence normally exercised by qualified and experienced contractors in performing work in projects of a scope and magnitude comparable to the Work.

B. Correction of Work

1. The Contractor, upon discovery of any defective or non-conforming Work, or when directed in writing by SCC, must promptly re-perform, correct or remove all Work identified to be defective or as failing to conform to the standards set forth in, or any requirement of the Contract Documents, whether or not completed. The Contractor must bear all costs of correcting such defective or non-conforming Work, including costs associated with removing any defective or non-conforming Work, replacing such defective or non-conforming Work with non-defective, conforming Work and any compensation for any additional equipment, materials and/or services made necessary by such removal and replacement.
2. If the Contractor does not proceed with re-performance, correction or removal of such defective or non-conforming Work after written notice from SCC within the time period designated by such notice, SCC may correct or remove it and may store the materials and/or equipment at the expense of the Contractor, then complete the corrective Work. If the Contractor does not pay the costs incurred for such removal, storage and correction within 10 days after receipt of written notice from SCC of the amount of such costs, SCC may upon 10 additional days' written notice, sell any such materials and/or equipment at an auction or at a private sale and will account for the net proceeds thereof, after deducting all the costs borne by the Contractor, including compensation for the SCC's additional services. If such proceeds of sale do not cover all costs for removal and correction of the Work, the difference will be charged to the Contractor with a deduction of any amounts due the Contractor, and an appropriate Contract modification shall be issued. If the payments thereafter due the Contractor are not sufficient to cover such amount, the Contractor must pay the difference to SCC, or SCC may deduct the amount from any other funds due to the Contractor, including, without limitation, any amounts due under any other contract between SCC and Contractor.
3. Any work done without lines and grades or beyond the lines shown on the drawings or any work performed outside the scope of the Contract, without the prior written consent or direction of SCC, is not authorized and is performed only at the sole expense of the Contractor. Upon direction of SCC, work so done must be removed or replaced and those areas restored to their previously existing state at the Contractor's sole expense.
4. Neither the determination of Final Completion and Acceptance of the Work, nor payment, nor any provisions in the Contract Documents will relieve the Contractor of responsibility for defective or non-conforming Work, faulty materials, equipment or workmanship, and unless

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otherwise specified, the Contractor must remedy any defects due to the foregoing and pay for any damage to the Work or other property resulting from defective or non-conforming Work, or faulty materials, equipment or workmanship throughout the Guarantee Period, as defined in Section VII.E., “Guarantees,” below, or such other period of time afforded by industry custom or law, whichever is longer. SCC will give Contractor written notice of such observed defects with reasonable promptness.

C. Materials and Equipment

1. **Quality of Materials:** Unless otherwise specified in the Contract Documents, all materials used for the Project must be new and must be used in such a manner as to produce completed Work which is in conformance with the Contract Documents and acceptable in every detail to SCC. Only materials which conform to the requirements of these specifications are incorporated or used in the Work. In the absence of a definite specification, materials must be the best of their respective kind with properties best suited to the Work required.
2. **Materials Inspection and Responsibility:** Before any material is incorporated into the Work, the Contractor must submit a “Request for Materials Inspection” to SCC. The Contractor is solely responsible for submitting the requests, with sufficient time for SCC to conduct its inspection. The Contractor is not entitled to payment for uninspected materials. SCC has the right to inspect any material to be used in carrying out this Contract. SCC does not assume any responsibility for the availability of any materials or equipment required under this Contract. By performing any tests or accepting any materials, SCC in no way relieves the Contractor of any of its obligations or responsibility under this Contract. Materials, components or completed Work that does not comply with the Detailed Specifications and other requirements of this Contract may be rejected by SCC and must be replaced by the Contractor at no additional cost to SCC. Following receipt of notice from SCC that such materials or components have been rejected, any materials or components so rejected must be promptly removed from the premises of SCC at no additional cost to SCC.

D. Substitution of Materials

1. Request for substitution will be considered in cases of product unavailability or other conditions beyond the control of the Contractor.
2. Each request for substitution must be submitted separately and must include:
 - a. Complete data substantiating compliance of proposed substitution with requirements stated in the Contract Documents:
 - (1) Product identification, including manufacturer’s name and address
 - (2) Manufacturer’s literature identifying:
 - Product description
 - Reference standards
 - Performance and test data
 - (3) Samples, as applicable
 - (4) Names and address of similar projects on which the product has been used, and date of each installation;
 - b. Itemized comparison of the proposed substitution with product specified which list significant variations;

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- c. Data relating to changes in construction schedule;
 - d. Any effect of substitution on other parts of the Work, any Subcontractors, or any separate contracts;
 - e. List of changes required in other Work or products;
 - f. Accurate cost data comparing proposed substitution with product specified, including the amount of any net change to Contract price;
 - g. Designation of required license fees or royalties; and
 - h. Designation of availability of maintenance services, sources of replacement materials.
3. The Contractor warrants and represents that in making a formal request for substitution that:
 - a. The proposed substitution is equivalent to or superior in all respects to the product specified;
 - b. The same warranties and guarantees will be provided for the substitute as for the product specified; and
 - c. The Contractor will coordinate the installation of accepted substitutes into the Work and will make such changes as may be required for the Work to be complete in all respects.
 4. If evidence presented by the Contractor does not provide a sufficient basis for such reasonable certainty that the proposed substitution or deviations will provide a quality or such at least equal to that attainable by the specified product, SCC may reject substitution or deviation without further investigation.
 5. SCC will judge the design and appearance of proposed substitutes on the basis of their suitability in relation to the overall design of the Project, as well as for their intrinsic merits. SCC will not approve proposed substitutes as equal to items specified which, in SCC's opinion, would be unharmonious, or otherwise inconsistent with the character, quality or design of the Project.
 6. Any additional cost, or any loss or damage, arising from the substitution of any material or method for those specified shall be borne by the Contractor, including the cost for damages incurred by other contractors notwithstanding approval or acceptance of such substitution by SCC, unless such substitution was initiated by the written request or direction of SCC.
 7. The investigation review and approval of substitute materials requires a minimum of 30 days beyond that required for specified routine items. The Contractor agrees that no request for a delay or disruption will be allowed whether or not the substitution is granted.
 8. Approval by SCC of a substitution of material must be given pursuant to a Contract modification as required in Article XIV., "Changes in the Work."

E. Guarantees and Warranties

1. All Work furnished under this Contract will be guaranteed against defective materials and workmanship, improper performance and non-compliance with the Contract Documents for a period of one year after Final Completion and Acceptance of the Project, except as otherwise specifically specified in other parts of the Contract Documents, or within such longer periods of time as may be provided by law or provided by the manufacturer.
2. Contractor's Warranties:

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- a. The Contractor's Warranty will be in addition to any Manufacturers' Warranties.
 - b. The Contractor's Warrant will include the name of the project as designated in the Contract Documents, be signed by an officer of the company having authority to provide the warranty, and state: "This document serves as a one (1) year written guarantee for the Work performed, and material and equipment installed on the above referenced project. This warranty incorporates all provisions of the Contract Documents that refer or relate to the guarantee. This warranty is commenced on _____(date).
 - c. During the warranty period, the Contractor will repair and replace at its own expense, when so ordered by SCC, all Work that may develop defects whether these defects may be inherent in the equipment or materials, in the functioning of the piece of equipment, or in the functioning and operation of pieces of equipment operating together as a functional unit. Any equipment or material which is repaired or replaced will have the warranty period extended for a period of one year from the date of the last repair or replacement.
 - d. All costs associated with any repair or replacement under this section, including, but not limited to, removal, material, transportation, and reinstallation, shall be borne by the Contractor.
3. Manufacturer's Warranties
- a. The Contractor will submit all applicable Manufacturer's Warranties to SCC and ensure that all warranty forms have been completed in SCC's name and registered with the appropriate manufacturers.
 - b. Repairs and replacements made by the Contractor, pursuant to Section VII.E.3., will include a Manufacturer's Warranty, if standard with the Manufacturer, in addition to the Contractor's Warranty.

VIII. PERSONNEL

A. Competency of Workers

The Contractor must employ only competent and efficient laborers, mechanics or artisans and whenever, in the opinion of SCC, any worker is careless, incompetent, violates safety or security rules, obstructs the progress of the Work, acts contrary to instructions or acts improperly, or fails to follow the safety requirements of this Contract, the Contractor must, upon request of SCC, remove such worker from the Work. The Contractor must not permit any person or worker to enter any part of the Work or any buildings connected therewith who is under the influence of intoxicating liquors or controlled substances.

B. Supervision and Superintendence

While Work is in progress, either by Contractor labor force or subcontractor, the Contractor must have a full-time, experienced and qualified superintendent assigned to the Work. The Contractor must superintend the Work and shall have a competent superintendent at the jobsite at all times with authority to act for Contractor as the contact person with SCC.

C. Contractors Project Personnel

No separate payment will be made to the Contractor for the cost of personnel. Such costs are included in the Contract Price.

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D. Key Personnel

Upon award of the Contract, the Contractor will submit a project staff organization chart which includes the names and resumes of employees in key positions for this project. All employees in key positions must be approved by SCC.

The Contractor shall employ and assign to work on this Contract a qualified engineer as a project manager with a valid Professional Engineer's License in the State of Illinois, satisfactory to SCC, to act as a contact person with SCC and a Registered Land Surveyor to set and maintain the lines and grades necessary for the proper performance of the Work under this Contract.

E. Prevailing Wage Rates

Not less than the prevailing rate of wages as determined by the Illinois Department of Labor shall be paid to all laborers, mechanics, and other workers performing Work under this Contract.

Contractor's attention is called to the generally prevailing hourly rate of wages, as determined in the CLA which is in Book 2 of these specifications and which are hereby incorporated into the Contract Documents.

The wage rates set forth in these specifications were the rates in effect at the time these specifications were issued. In the performance of the Work, however, Contractor shall be fully responsible for paying the generally prevailing hourly rate of wages in effect, as determined by the Department of Labor, at the time the Work is performed. If the Department of Labor revises the prevailing rate of hourly wages to be paid for the Work prior to completion of the Project, the revised rate shall apply to this Contract from the effective date of such revision, provided, however that such revision shall not entitle Contractor to any increased compensation under the terms hereof.

As a condition of making payment to the Contractor, SCC may request the Contractor to submit an affidavit to the effect that not less than the prevailing hourly wage rate is being paid to laborers, mechanics, and other workmen employed on this Contract in accordance with Illinois law.

IX. PERMITS AND LICENSES

- A. Wherever the Work under this Contract requires the obtaining of permits from the City of Chicago or other public authorities, triplicate copies of such permits are furnished to the City by the Contractor before the Work covered thereby is started. **NO WORK IS ALLOWED TO PROCEED BEFORE SUCH PERMITS ARE OBTAINED.**
- B. Permits required from the Metropolitan Water Reclamation District of Greater Chicago, the Illinois Environmental Protection Agency, IDOT Division of Water Resources, the U.S. Coast Guard and the U.S. Army Corps of Engineers will be obtained by the City.
- C. Permits and Fees: The special use of, or removal, alteration or replacement of certain City-owned facilities and appurtenances such as traffic signs, parking meters, trees, sewers, hydrants, bridges and viaducts which are required for the Contractor to perform its Work, are subject to all applicable Municipal Ordinances. It is the Contractor's responsibility to obtain all the necessary permits and pay the associated fees. Copies of such permits must be furnished to the City by the Contractor before the Work covered is started. Information with regard to the above may be obtained by contacting the appropriate City Departments of Chicago.

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- D. If a highway permit bond was posted, it must remain in effect for at least five years from the date of permit issuance.

X. COORDINATION WITH CITY DEPARTMENTS

A. Water System Work and Usage

If water from a City hydrant is necessary for the execution of the Work, the Contractor will be required to obtain a hydrant permit from the City's Department of Water. Contractor shall obtain a permit from the Department of Water of the City of Chicago for any construction, repair or adjustment of any water main, branch or service connection. Requests for Permits shall be made at the **Department of Water**

B. Sewer System Work

The construction, repair, adjustment or cleaning of any subsurface structure designed to collect or transport storm and/or sanitary waste water, either in private property or in the public way requires a permit issued by the Department of Sewers. Requests for Permits shall be made at the **Department of Sewers**

The Department of Sewers permit must be obtained by a licensed drain layer. A licensed drain layer is a person possessing a current sewer and drain license issued by the Department of Sewers.

Project plans must be submitted to the Department of Sewers sufficiently in advance for examination and review. Plans meeting the Department of Sewers requirements must be submitted with the application for permit at least four (4) days prior to the issuance of permit. When applying for a permit, the Contractor must submit three (3) sets of plans which show all new underground sewer Work inside and around the project with a clear site or location plan together with the estimate of quantities for sewer sizes and sewer structures to be installed.

A copy of the permit must be on the Work site prior to the start of construction. Failure to obtain a permit prior to the start of construction will result in a penalty and could result in the revocation of the drain layers license.

Contractor must arrange for sewer inspections at least 48 hours prior to the start of Work. Inspections may be requested by calling (312)744-7501 for Plumbing Inspections and (312)747-7892 for Mason Inspections.

C. Traffic Control

When it becomes necessary for the Contractor to close a street, in whole or in part, it shall make arrangements with the Department of Transportation, Bureau of Inspections, Construction Compliance Section (OEMC), at least two weeks in advance of such closure. The Bureau of Inspections may issue a permit, partially closing a street and setting forth the requirements regarding the furnishing, placing, maintaining and removing of signs, lights and barricades, the furnishing of flaggers, and other provisions for the safe handling of traffic during the use of said street by the Contractor.

D. Construction Work Within Public Way

In order to perform any construction work within the public way, the Contractor must provide a letter of credit in an amount as required by the City of Chicago. In addition, any constructing or reconstructing sidewalks, driveways, curb and/or curb and gutter, alleys or finished concrete

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pavement requires a permit from OEMC in accordance with Chapter 10-20 of the Municipal Code of Chicago. If the Contractor is not licensed as a sidewalk Contractor, before any permits for the work can be issued, it will be necessary to submit written evidence to the Director of Construction Compliance, Bureau of Inspection, that a licensed sidewalk contractor will perform such Work on behalf of Contractor. Contact the **OEMC**.

E. **Park Meter Removal and Replacement**

The Contractor will contact the City regarding removal and reinstallation of any parking meters. Contact the Department of Revenue.

The Contractor shall not remove any parking meters without the express written consent of SCC. If the Contractor violates this provision, (a) the Contractor recognizes and agrees that SCC will suffer damages as a result, including but not limited to the costs incurred by SCC in tracking, retrieving, and repairing damage to the parking meters, costs that are difficult to ascertain and (b) the Contractor agrees that it shall be liable for liquidated damages in the amount of \$350.00 for each parking meter removed by the Contractor, which amount shall be deducted from any amount(s) due or that may become due the Contractor. Contact the **Department of Revenue**,

F. **Traffic and Parking Sign Removal and Replacement**

SCC will remove and reinstall any traffic and parking sign(s) as may be required. The contractor shall contact the City regarding removal and reinstallation of any traffic and parking signs outside the limits of the Skyway. For traffic signs within the limits of the Skyway, please refer to technical specifications. The Contractor must inform the Bureau of Signs and Markings, in writing, of the location of each sign to be removed and specify its distance from the property line of the nearest cross street. Each sign legend must also be stated. This information must be provided at least five (5) days prior to removal. The Contractor must also inform the Bureau of Signs and Markings, in writing, of when signs may be reinstalled as soon as this date is known. Contact the **Bureau of Signs and Markings**,

G. **Trees**

In accordance with Section 10-32-060 *et seq.* of the Municipal Code of Chicago, the Contractor must obtain a permit from the Bureau of Forestry when removing planting, trimming, spraying, or in anyway affecting the general health or structure of trees in the public way. There is no fee for this permit. The permit must be obtained from the **Bureau of Forestry Permits Division**.

The Bureau of Forestry requires 48 hours notice before starting Work for all activities with the exception of tree planting, which requires two (2) week's prior notice. To obtain tree planting **permits**, two (2) copies of the site plan must be presented to the Bureau for its review and approval. A Bureau representative must also assist in the selection of those trees to be planted in the public way. Tree planting standards and specifications are outlined in the Bureau of Forestry's "Manual of Tree Planting Standards" which is available upon request from the Bureau of Forestry.

H. **Bridges, Viaducts, or Publicly Owned Structures**

Prior to construction, any proposed Work within 50 feet of any existing bridge, viaduct, or publicly owned structure will require a permit from the City of Chicago. There is no fee for this permit. The permit must be obtained from the **Department of Transportation**.

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I. Demolition

If demolition of a structure or removal of an underground storage tank is required during construction, the Contractor shall obtain a permit and pay the required fee as set forth in the Municipal Code of Chicago and its amendments to date. The permit must be obtained from the **Department of Buildings.**

J. Provisions Relating to River Traffic

When execution of a contract requires Work to be done over and/or under the Calumet River, marine regulations shall be complied with in every way, so that river traffic may be protected. Special care shall be used to avoid obstruction of the river. In the event the Contractor finds it necessary to obstruct the river at any time, he shall advise the City of Chicago, through the office of the City of Chicago Chief Bridge Engineer, who will make the necessary inquiries of the proper waterway officials, so that the Contractor can schedule its work without interfering with the movement of vessels. Contact the **Department of Transportation.**

XI. SCHEDULE

A. Time

1. The date for commencement of the Work is the date set forth in the Contract or such other date as may be established at the discretion of SCC in a Notice to Proceed. The Contractor must provide to SCC a schedule for the performance of the Work which complies in all respects with the Contract Documents, within Contract Time. The schedule may be used as a means of determining the progress of Contractor's performance of the Work, but neither the provision of the schedule to SCC, nor SCC's acceptance or use of the schedule, acts in any way to relieve Contractor of any of its obligations under the Contract.
2. Progress and Completion: TIME IS OF THE ESSENCE IN THIS CONTRACT. No time extensions will be allowed unless they are contained in a Contract modification which has been approved and executed by SCC. Liquidated damages will be assessed against the Contractor for late completion of the work and failure to achieve any milestone dates that provide for liquidated damages set forth in the Contract Documents. The Contractor must not suspend any Work that may be subject to damage by climatic conditions without SCC's prior written approval. Notwithstanding any other terms contained herein, the Contractor must take measures to protect the Work and to minimize the impact of such conditions on the progress of the Work.

B. Progress Schedule

1. The Contractor must begin performance of the Work and to prosecute the same with all due diligence, so as to complete the entire Work under this Contract within the Contract Time stipulated, after the date of Commencement of Work, as specified in the written Notice to Proceed to the Contractor. The date for the Commencement of Work is not counted as a calendar day, but each subsequent day thereafter, from midnight to midnight, is counted as one calendar day and the last day counted is the day on which the Contractor has completed, and SCC has accepted, the entire Work. The Contractor must, when necessary, use overtime, multiple shifts, weekend and/or holiday work to maintain the approved schedule at no additional cost to SCC.

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2. Except when otherwise specified by SCC, the Contractor must provide the progress schedule (“Schedule”) for the Work using the Critical Path Method (CPM) as described in Section XI.D., “Critical Path Method (CPM) Schedule,” below.
3. SCC’s approval of the Contractor’s Schedule is done for the sole purpose of insuring that all CPM scheduling documents prepared by the Contractor are in conformance with the Contract requirements. This approval does not relieve the Contractor of the responsibility for the means, methods, procedures and sequence of the construction process nor does it provide any entitlement to additional funds for Work completion in a period that is less than the Contract Time.
4. Daily Progress Reports: The Contractor and all Subcontractors must prepare and submit to SCC daily progress reports on the various parts of the Work, including in the report the number of workers and the classification of the trades involved, equipment used and any pertinent information regarding possible delays in the Work.

C. Construction Operations Plan

1. The Contractor must, within 7 days after Notice to Proceed, submit to SCC for review the CPM Schedule as defined in X.I.D. Work can begin before formal acceptance of the Contractor’s CPM schedule by SCC, but this should not relieve the Contractor from completing the work in accordance with the plans and specifications, nor shall it give him any basis for a claim or time extension. It is understood by the Contractor that a reasonable amount of time is required by SCC for the examination of said procedure and Schedule. As Work progresses, changes or modifications in such procedure and Schedule, or in such methods, structures and equipment may be required by SCC. In such event, upon notice from SCC to the Contractor, further Work is performed only in accordance with such changed or modified procedure and Schedule and such changed or modified methods, structures and equipment, as the case may be, as have been submitted to and approved by SCC in writing.
2. SCC, in its sole discretion, may reject or require modification of any proposed or previously approved order of procedure, method, structure or equipment, which it considers to be unsafe for the Work hereunder, or for other Work being carried on in the vicinity, or for other structures, or for the public, or for workmen, engineers and inspectors employed thereon, or that in the opinion of SCC will result in undesirable settlement of the ground, or that will not provide for the completion of the Work within the period of time specified in the Schedule, or that is contrary to any other requirement of this Contract.
3. It is expressly agreed that the acceptance or approval of any order or procedure, method, structure, or equipment submitted or employed by the Contractor does not in any manner relieve the Contractor of responsibility for the performance of the Work, or for the safety of the performance of the Work hereunder, or from any liability whatsoever on account of any procedure or method employed by the Contractor, or due to any failure or movement of any structure or equipment furnished by it. Notwithstanding any approval by SCC, should any structure or equipment installed hereunder afterwards prove insufficient in strength or fail in any manner whatsoever, such insufficiency or failure in no way forms the basis of any claim for extra compensation for delay, or for damages or expenses caused by such insufficiency or failure shall, or for an extension of time for completion of the Work, or for material, labor or equipment required for repairing or rebuilding such structure or equipment, or for repairing or replacing any other Work that may have been damaged by the movement or insufficiency or failure of any such structure or equipment, respectively.

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D. Critical Path Method (CPM) Schedule

1. The format of the Schedule must show the proposed starting and completion date for the various stages of the Work, including any float time, and must be prepared such that it can be used to plot actual progress against proposed progress. The Schedule must be updated and submitted to SCC no less than monthly or as directed by SCC. SCC may request more frequent submittals. Monthly payment will be withheld for failure to submit updated Schedules. The Schedule must be submitted to SCC in triplicate, one of which must be reproducible. An electronic version of the Schedule will be submitted to SCC. Contractor shall use (check word) software to develop the CPM Schedule.
2. The Schedule must include, as a minimum:
 - a. Project name, Contract number, Contractor's name, data date, and plot date on each separate sheet. If multiple diagrams are prepared, each must, in addition to the above, include a descriptive title of that portion of the Work included therein;
 - b. The order and interdependency of activities, indicating the sequence in which the Work is to be performed as planned by the Contractor. The Schedule describes and indicates the critical path; and
 - c. The dates for the starting and completion of the various stages of the Work, including, without limitation, milestones identified by SCC in the Contract Documents; the placing of material orders, delivery of materials and equipment; preparation, submittal and approval of all required submittals to SCC; interface activities performed by other contractors or Subcontractors upon which the Contractor's schedule depends; all Work activities and field construction operations; equipment installation, testing and balancing. The Contractor must provide estimates of man hours and/or crew sizes for each activity.
3. The following items define the term "activities" as it pertains to the Schedule:
 - a. Each activity is a logically separate part of the Work, defined by an observable start and an observable finish;
 - b. To establish the scope of an activity for Schedule purposes, the Contractor shall form a single activity from the largest grouping of related operations which permit a continuous and measurable flow of Work;
 - c. The scope of an activity is small enough to permit a reasonable appraisal of its status or as directed by SCC;
 - d. Each activity on the Schedule is manpower loaded;
 - e. The activities must be defined such that the average activity has a value of approximately \$25,000, with no activity exceeding \$200,000 without the consent of SCC; and
 - f. Activities of other contractors or companies that must be completed prior to the start of the Contractor's Work or portion of Work, must be included in the Schedule as milestones, and identified with a designation approved by SCC.
4. The following information must be furnished on the Schedule for each activity:
 - a. The Contractor will utilize the format of the project specification division and section numbers in assigning activity numbers to the related portions of Work. Such activity numbers must be submitted to SCC for review and approval;

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- b. A description of the activity that is sufficiently detailed to permit an evaluation of Contractor's performance of the Work described;
 - c. Duration of the activity in calendar days, unless otherwise noted;
 - d. Each activity that is not performed by the Contractor must be assigned a responsibility code indicating which Subcontractor, supplier, fabricator, or other contractor is to perform the activity;
 - e. Each activity must be identified with early/late start, early/late finish, and total float
 - f. A breakdown by monthly node of dollar amount and percentage of Contract Price.
5. In addition to the above, any activity whose start or finish dates has been specified elsewhere in the Contract Documents reflects such specified dates in the Schedule.
6. The following information must be furnished on the Schedule as summary items:
- a. The projected total percentage complete, on a monthly basis;
 - b. Anticipated total partial payments, on a monthly basis, including Subcontractor payment breakdown; and
 - c. The projected total manpower requirements, on a weekly basis.
 - d. Within 14 calendar days after receipt of the detailed Schedule and supporting documents, SCC will either approve the schedule or reject it with written comments. If the Schedule is rejected, the Contractor must submit a revised Schedule within seven (7) calendar days of the date of rejection. SCC's decision to reject the schedule is final and may not be disputed by the Contractor under Article XX. of the Contract.
 - e. Contractor must provide prompt written notice to SCC of any events or other changes which may delay or accelerate the Schedule.
 - f. In the event that Contractor fails to provide the Schedule within the time prescribed and/or updates within the stated time frames, the Contractor may be in default of the Contract requirements and SCC may, in addition to any other remedies available to SCC, withhold monthly/quarterly partial payments until such time as the Contractor submits the required information.
7. Changes to the Schedule
- a. If the Contractor proposes to make any changes to the Schedule, Contractor must provide SCC notice of such proposed changes, in writing, stating the reasons for the change, identifying each changed activity (including durations and interrelationships between activities) and providing a diskette of the proposed changed Schedule.
 - b. The originally approved Schedule will be the baseline Schedule. SCC, in its sole discretion, may approve or disapprove the proposed change in the Schedule to the extent that such change does not extend the Contract Time and provide a decision, in writing, to the Contractor within 10 days of receipt of the Contractor's submission. All monthly updates will be plotted against the current revision of the baseline Schedule.
 - c. If SCC approves the change to the CPM schedule, the Contractor submits a revised schedule incorporating such change(s) within 10 days after approval along with a written description of the change(s) to the schedule.

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- d. Any proposed change which would result in an extension of Contract Time requires a written modification of the Contract pursuant to Section XXIII.B., "Modifications," of the Contract.
8. Updating - The originally approved CPM will be designated as the Baseline schedule and will only be changed based on a Contract Modification which extends the Contract duration.
- a. All updates will be plotted against the Baseline Schedule. The Contractor updates the CPM schedule on a monthly basis coincident with the submission of the pay estimate. The updated information must include the Baseline Schedule detail and the following additional information for each activity:
 - Actual start dates;
 - Actual finish dates;
 - Actual activity percent complete;
 - Remaining duration of activities in progress; and
 - Critical activities must be identified or highlighted.
 - b. The updated information must include the Baseline Schedule detail and the following additional information for each summary item:
 - Actual monthly and total-to-date Work percentage complete.
 - Actual monthly partial payments, including Subcontractor partial payments; and
 - Actual weekly and total-to-date manpower utilization.
 - c. Partial payments may be withheld by SCC if updates are not submitted by the Contractor as required.
9. Neither an update nor Schedule change may, in itself, extend the term of this Contract. The term of the Contract may only be extended by a written Contract Modification executed pursuant to Section XXIII.B., "Modifications," of the Contract.
10. Narrative Report. As part of the CPM schedule update, the Contractor prepares a written narrative report, highlighting the progress during the past update period. This written report includes, but is not necessarily limited to the following information:
- a. Summary of Work accomplished during the past update period;
 - b. Contract milestone comparison chart;
 - c. Analysis of critical path(s);
 - d. Analysis of time lost/gained during the update period;
 - e. Identification of problem areas; and
 - f. Recommended solutions to current problems.
11. The Contractor is required to attend a monthly CPM Schedule review meeting where the Schedule will be reviewed with SCC. The purpose of this meeting is to review past progress, current status, problem areas and future progress. The Contractor's narrative report is reviewed at this meeting. The Contractor's representatives attending this meeting must have the authority to commit manpower and/or other resources to correct any negative impact to the schedule. Any possible means of shortening the Schedule at no additional cost will be

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brought to the attention of SCC. The Updated Progress Schedule will be used as a guide for verifying estimates of work completed for which payment is requested, and must accurately represent the project's current status. None of the information provided in this Section constitutes a request for a time extension

E. Recovery Schedule

1. The Contractor must maintain an adequate work force and the necessary materials, supplies and equipment to meet the current approved Schedule. In the event that the Contractor, in the sole opinion of SCC, is failing to meet the approved Schedule, including any Contract milestones, Contractor must submit a recovery Schedule (the "CPM" Recovery Schedule). The CPM Recovery Schedule sets forth a plan to eliminate the schedule slippage (negative float). The plan must be specific and show the methods to achieve the recovery of time, i.e., increasing manpower, working overtime, weekend work, employing multiple shifts. All costs associated with implementing the CPM Recovery Schedule shall be borne by the Contractor.
2. Upon receipt of the CPM Recovery Schedule, SCC will review the Schedule for conformance with the Contract Documents and degree of detail. SCC, within 14 days after receipt of the CPM Recovery Schedule and supporting documents will approve the schedule or reject it with written comments. If the detailed CPM Recovery Schedule is rejected, the Contractor must submit a revised CPM Recovery Schedule within seven (7) calendar days after the date of rejection. SCC's decision to reject the CPM Recovery Schedule is final and may not be disputed by the Contractor.
3. In the event that the Contractor refuses to follow the direction of SCC, SCC reserves the right after seven (7) days written notice to the Contractor, to procure the materials, equipment and labor to proceed with or to complete the Work or any portion of it and charge the cost to the Contractor. SCC's rights under this provision are cumulative to rights under any other provisions of the Contract including SCC's rights to terminate for default or convenience.

F. Time for Completing Punch List

1. TIME IS OF THE ESSENCE IN CLOSING OUT THE WORK, and Contractor must begin work immediately after receipt of a list of minor miscellaneous or finishing work known as "Punch List Work." Failure of the Contractor or its Subcontractors to begin the Punch List Work within three (3) days of receipt of the Punch List is an event of default.
2. The Contractor must diligently prosecute the Punch List Work once begun and complete it within 30 days from receipt of the punch list. If the Contractor fails to complete punch list work within the 30-day time period, the Contractor must pay the liquidated damages set forth for "Punch List Work" in The Instructions to Bidders.
3. If liquidated damages are assessed, they will be added to the previously determined liquidated damages assessed at the time of substantial completion or beneficial occupancy of the Contract.

G. No Damages for Delay and Extensions of Time

1. Should the Contractor be delayed in the commencement, prosecution or completion of the Work by any act of SCC, including but not limited to a delay, change, addition, deletion or modification in the Work or any omission, neglect or default of SCC, or by order of SCC, or anyone employed by or acting on behalf of SCC, or by any cause beyond the Contractor's control, none of which are due to any fault, neglect, act or omission on Contractor's part, then

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Contractor's relief is limited to an extension of the Contract Time that is no greater than the duration of any such delay. Such extension of time releases and discharges SCC, its employees, agents and representatives from any and all claims for damages of whatever character, including but not limited to, disruption, changes in sequence, interference, inefficiency, direct or indirect cost claimed by the Contractor on account of the aforesaid or any other causes of delay.

2. The Contractor must give SCC written notice of any such delay within five (5) calendar days of the Commencement of such delay. Consideration of a time extension for events beyond the reasonable control of the Contractor will be made if the delay directly impacts the schedule for completion of the Work. Events considered to be beyond the reasonable control of the Contractor are limited to acts of God, acts of the public enemy, fires, floods, earthquakes, epidemics, quarantine restrictions, labor strikes at the job site, freight embargoes, provided that the listed causes were not foreseeable and did not result from the fault or negligence of the Contractor, and provided further that the Contractor took reasonable precautions to prevent delays owing to such causes.
3. No extension of time is granted under this Section for any delay if the delay was caused by the action or inaction of the Contractor, including, but not limited to, the fault or negligence of the Contractor or its Subcontractors, or for which any remedies are provided for by any other provision of the Contract.
4. The grant of an extension of time pursuant to this Section X I.F., "No Damages for Delay and Extension of Time," shall in no way constitute a waiver by SCC of any rights or remedies existing under this Contract, at law or in equity.
5. Any claim for extension of time is made in writing to SCC not more than 10 calendar days after the commencement of the delay, otherwise the claim is waived. Any claim for extension of time (1) states the cause of the delay; (2) specifically demonstrates the impact of the delay on the Contractor's schedule; and (3) states the number of extension days requested. If the cause of the delay is continuing, only one claim is necessary, but the Contractor must report, in writing, the cessation of the cause for the delay within 10 days after such termination. Any claim for extension of time that does not comply with this provision is a waiver by the Contractor of its rights to any such extension.
6. After receipt of a timely and properly completed request for a time extension, SCC may (1) grant a time extension for the entire length of the delay; (2) grant a time extension for a portion of the extent of the delay; or (3) deny the time extension.
7. If the Contractor does not agree with SCC's decision on a claim for time extension, the Contractor may appeal the ruling to the Chief Procurement Officer under Article XX., "Claims and Disputes," provided that the Contractor has complied with the notice requirements provided in these Terms and Conditions for Construction.

H. Suspension of Work

SCC has authority to suspend the Work wholly, or in part, for such period of time as SCC may deem necessary due to conditions unfavorable for the satisfactory prosecution of the work, or to conditions which, in SCC's opinion, warrant such action or for such time as is necessary by reason of failure on the part of the Contractor to carry out orders given or to perform any or all provisions of the Contract. No additional compensation will be paid to the Contractor because of any costs caused by such suspension when the suspension is ordered for reasons resulting from any action or omission on the part of the Contractor or is related to utility adjustments, railroad

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work, work by other contractors on or near the Work covered by the Contract, or unforeseeable weather conditions.

I. Liquidated Damages

If the Work is delayed, the Contractor is liable for liquidated damages for every day the Contract Completion Date or a milestone completion date that provides for liquidated damages is not achieved, provided that such delay is not the result of a justifiable cause permitted pursuant to Section XI.H., "Liquidated Damages," below. SCC shall recover said liquidated damages by deducting the amount thereof out of any monies due or that may become due, and if said monies are insufficient to cover said damages, then the Contractor or the surety shall pay the amount due. Amount of Liquidated Damages is as stated in **Paragraph IV – TIME OF COMPLETION**.

Nothing herein contained shall be construed as limiting SCC's right to recover from the Contractor any and all amounts due or to become due, and any and all costs and expenses sustained by SCC for improper performance hereunder, repudiation of the Contract by the Contractor, failure to perform or breach or beaches in any other aspect, including but not limited to defective workmanship or materials.

1. SCC will recover liquidated damages by deducting the amount thereof out of any moneys due or that may become due the Contractor. If said moneys are insufficient to cover said damages, then the Contractor or its surety must pay the amount due. Nothing herein contained is construed as limiting the right of SCC to recover from the Contractor any and all amounts due or to become due, and any and all costs and expenses sustained by SCC for improper performance hereunder, repudiation of the Contract by the Contractor, failure to begin work on the date of commencement or failure to perform the Work with adequate forces, equipment or materials or other resources, or breaches in any other respect, including but not limited to defective workmanship or materials. In addition to liquidated damages for failure to meet any milestones, the Contractor is liable to SCC for any other damages sustained as the result of the Contractor's refusal or failure to perform the Work.
2. In the event that SCC permits the Contractor to continue to perform Work despite the Contractor's failure to meet any milestone date set forth in the Contract Documents, such action in no way constitutes a waiver by SCC of any rights or remedies that exist under this Contract, at law, or in equity.

J. Notice of Labor Disputes

Whenever the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Contract, the Contractor must immediately give notice to SCC in accordance with Section XXIII.H., "Notice," and must include all available information with respect thereto, to SCC.

K. Winter Shutdown

At the time the Contractor submits the permits, it shall include a time schedule designating construction start and completion dates within the Project site location. If permission is granted to begin construction, this schedule shall be strictly adhered to. Contractor shall take whatever winter protection measures necessary to complete this Work prior to adverse weather conditions.

If the Work is not performed according to this schedule, due to the Contractor's fault and/or negligence, construction time could be extended into the critical season where adverse weather

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conditions may prohibit continuation of the construction according to the Contract Documents. If this should occur and cause any street or portion of the street and the surrounding Work area to be in an impassable and/or hazardous condition, thereby creating undue inconvenience and anger to the area residents, the Contractor shall be assessed a daily monetary deduction, as specified under the contract item, "Traffic Control & Protection," for failure to correct deficiencies for the number of calendar days that unsatisfactory conditions prevailed.

However, regardless of the circumstances of the starting of the street construction and for whatever reason any street or portion of the street is found to be in the aforementioned unfavorable condition, it shall not be allowed to remain as such throughout the winter shutdown. The Contractor shall, at its own expense, put the roadway and the contiguous construction area in a condition, approved by the City of Chicago that can safely and adequately serve the needs of the abutting property owners. The Contractor shall maintain it in this condition until the time that the new construction is permitted to resume and the proposed improvement completed according to the Contract Documents.

XII. MEETINGS

A. Pre-Construction Meeting

Prior to beginning Work, SCC may conduct a Pre-Construction meeting. Representatives of the Contractor and Subcontractors must attend. The purpose of the meeting is to establish lines of authority and communication and the identification of duties and responsibilities of the organizations. Discussion will cover specific contract plans, specifications, unusual conditions, schedules of completion, and other features of the Contract. SCC may conduct additional coordination meetings at its discretion.

B. Weekly Coordination Meetings

SCC may conduct weekly coordination meetings at the jobsite. At a minimum, the Contractor's superintendent will attend. However, the Contractor shall arrange for Subcontractors to attend the meetings if expressly requested by SCC. Prior to the meetings, the Contractor must submit its schedule of activities and interfaces for the next four weeks, in the format required by SCC.

C. Monthly Review Meetings

SCC may conduct monthly review meetings. At a minimum, the Contractor's project manager and superintendent must attend. However, the Contractor shall arrange for Subcontractors to attend the meetings if expressly requested by SCC. The meetings may include the following:

- Review of Work progress since the previous monthly review meeting;
- Discussion of field observations, problems and decisions;
- Review of off-site fabrication problems and other problems affecting the schedule;
- Review of equipment deliveries;
- Discussion of corrective measures and procedures to achieve the Contract schedule;
- Review of submittal schedules and effect on the construction schedule;
- Review of proposed Contract changes and effect on the construction schedule;
- Coordination requirements;

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Clarifications and decisions required of SCC;
Review of Contractor's forces on the Work; and
Review of Project record document status and content.

XIII. PAYMENTS

A. Contract Price

This is a unit price contract. Contractor will be paid for work done by the unit price not to exceed the Contract Sum.

B. Procedure for Payment Requests and Final Payment

1. The Contractor and SCC will agree upon payment, at least once per quarter or month, or more frequently if appropriate or if specified elsewhere in the Contract Documents. SCC will make payments pursuant to such agreements if, in SCC's sole discretion, the payment requests are acceptable in form and content, and the Work for which payment is being requested has been completed according to the terms and conditions of this Contract. All payment requests are subject to correction by SCC and the Retainage provisions of this Contract.
2. In cases where the Contractor will proceed to perform and complete the Work properly under the Contract, progress payments will be processed on a monthly or quarterly basis unless the amount earned is greater than \$1,000,000, then payments will be made twice a month. The payment period ends on the last day of each month and/or the 15th if the payment is made twice a month.
3. Each payment request must be submitted before the first of each month, (or the 15th if the amount earned is greater than \$1,000,000) and include one original and two copies of the following:
 - a. Certified Statement: At SCC's request, the Contractor must submit a certified statement (signed by the Contractor and notarized) for each payment request. The statement, in the form acceptable to SCC, must list the amount earned by each Subcontractor, supplier and the Contractor during the period for which payment is requested;
 - b. Partial Waivers of Lien to Date and Affidavit for Payment: Following Contractor's first payment request, Contractor must submit Partial Waivers of Lien from all Subcontractors and suppliers that performed services and provided supplies during the month before the Contractor's previous payment request. The Partial Waivers of Lien must be in a form acceptable to SCC and must identify, at a minimal, the payment request number and time period covered. The Partial Wavier of Lien must be in dollar amount equal to the dollar amount of the services performed or supplies provided by such Subcontractor or supplier during the relevant time period. With every payment request, Contractor must also submit an Affidavit for Payment from all Subcontractors and suppliers for whose services or supplies Contractor requests payment. The Affidavit for payment must be in a form acceptable to SCC and identify, at a minimal, the payment estimate number, the time period covered, and the total amount invoiced by the Subcontractor or supplier, and the total amount paid to the Subcontractor or supplier to date;

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- c. MBE/WBE Utilization Report: A status report of MBE/WBE Subcontractor payments, as required by the Contract Documents, must be submitted with each invoice in a form required by SCC;
 - d. Certified Payrolls: Certified payrolls for the payment period are to be submitted by the Contractor and all Subcontractors working on the job site to SCC every week. All payrolls must be identified with Contractor or Subcontractor's name, Contract name and be sequentially numbered. The payroll shall be submitted by the Contractor and Subcontractors until all Work by that Contractor or Subcontractor is completed. If there are periods of no Work by a Contractor or Subcontractor, a payroll labeled "NO WORK" shall be submitted. The final payrolls are clearly labeled "FINAL." Certified payrolls are required to assure 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 SCC. An employee's address should appear every time his or her name appears on the payroll. The Contractor must submit the certified payrolls and additional information regarding EEO and wage compliance by providing a Payroll Summary Report in the form required by the SCC. The EEO report forms required by SCC must be submitted by Contractor and each Subcontractor, reflecting fully the periods of Work covered by the partial payment request.
4. Payments will be made by SCC to the Contractor 45 days after receipt of an approved invoice.

C. Payment for Stored Material

- 1. Payment for material stored on the jobsite will be 100% of a valid invoice less applicable retainage. No payment will be made for materials stored off the job site unless otherwise authorized by SCC, in accordance with Section XIII.C.2. Materials stored on the job site that cannot be incorporated in the finished Work within a reasonable period of time, may be included in the progress payment if the following documents are submitted with the request for payment:
 - a. Paid invoices showing the cost of material or equipment;
 - b. Waiver of lien from the supplier indicating that the cost of the material or equipment had been paid; and
 - c. Inspection tickets showing that material or equipment had been inspected and accepted by SCC.

In addition, Contractor must ensure the materials stored, against the risk of loss, theft or damage, until the installment of the work.

- 2. Payment for material stored off-site, if authorized, will be 100% of a valid invoice less applicable retainage when the contractor has provided documents and complied with the requirements below:
 - a. A paid invoice from the supplier showing the unit, quantity, description of the material or equipment and costs;
 - b. A waiver of lien from the supplier for the total amount of the material purchased;
 - c. Inspection for all of the material stored;

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- d. The Contractor will furnish SCC with a certified statement giving the exact location of the materials or equipment, and stating that:
- such materials are suitably stored and maintained at a bonded, secure and environmentally appropriate location agreed upon and subject to such conditions required or established by SCC;
- the Contractor has complied with procedures satisfactory to SCC to establish the City's and SCC's interest therein, including but not limited to, insurance, storage and transportation to the Project Site for such materials stored off-site, as SCC may reasonably require;
- the materials, equipment and associated fabricated components will not be diverted away from the Project;
- e. The risk of loss will remain with the Contractor. The Contractor will provide SCC with a certificate of insurance coverage for the stored material upon which payment is requested;
- f. Immediately upon receipt of payment for such material, the Contractor will prepare and execute any and all documents required to transfer title to SCC, including without limitation, any Uniform Commercial Code Documentation necessary to perfect transfer of title; and
- g. All material and Work covered by payments will thereupon become the sole property of SCC.

D. Retainage

1. SCC will retain 10% of each approved payment estimate covering the first 50% of the Contract Price including approved change orders to date.
2. After Work costing 50% of the Contract Price is performed, SCC shall maintain as retention, an amount equal to 5% of the Contract Price for the Work, including approved change orders, until Substantial Completion of the Project.
3. Upon Final Completion and Acceptance of the Project and prior to the computation of the final quantities, SCC may, in its sole discretion, release a portion of the retainage so that the amount retained by SCC is not less than 3% of the Contract Price. SCC may, at its sole discretion, decline to reduce the retention held, and retains the right to increase the amount of the retention withheld if SCC considers it necessary.
4. Upon (1) Final Completion and Acceptance of the Work; (2) the Contractor's compliance with this Contract's conditions for payment and performance of the Work in accordance with all its terms and conditions of the Contract; (3) payment to all Subcontractors, workers, employees, suppliers and material persons for Work performed and materials supplied; and (4) computation of the final quantities of Work, the retained amount less any amount for damages or other amounts that the SCC determines should be deducted, will be paid to the Contractor as final payment.

E. Payments Withheld

- SCC may decline a request for payment if, in SCC's sole opinion, the request for payment is not adequately supported. If the Contractor and SCC cannot agree on a revised amount, SCC shall process the payment in the amount it deems appropriate.

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- SCC may decline to process any payment or may rescind in whole or in part any approval previously made to such extent as may be necessary in his/her sole opinion because of any failure to perform any obligation under the Contract, including but not limited to:
 - a. Failure or refusal to provide SCC the required initial schedule for the Work or monthly schedule updates and obtain SCC's approval for either or both;
 - b. The Contractor's failure to remedy defective Work;
 - c. Failure of the Contractor to make payments to Subcontractors, or employees, or provide partial waivers of lien;
 - d. The Contractor's failure to maintain timely progress of the Work as stated in the Contractor's schedule, or SCC's determination that the Work will not be completed within the Contract Time, or Contractor's failure to carry out the Work in accordance with the Contract Documents;
 - e. Failure to follow the City, State, Federal, or Contract safety and security requirements;
 - f. Failure to maintain insurance policies as required by the Contract and/or to provide to SCC each evidence of insurance coverage, in the form of current certificates of insurance, as it may require;
 - g. Failure to comply with other requirements as referenced in the Contract documents;
 - h. Failure to provide certified payrolls or other documents required by Section XI.G.2., "No Damages for Delay Extensions of Time," of the Contract;
 - i. Failure to provide material inspections as required by the Contract Documents; and
 - j. Failure to provide contract deliverables such as, accurate as-built drawings, record drawings, warranties, guarantees, manuals, etc.
- SCC may, in its sole discretion, direct that no further payments be made, or vouchers or estimates issued to the Contractor, if the SCC determines that Contractor has failed to pay any Subcontractor, employee or worker for Work performed under this Contract. Payment may be withheld until the Contractor demonstrates, to the satisfaction of SCC, that payments to the Subcontractors, employees or workers have been made in full.

If the SCC notifies the Contractor by notice personally served, or by leaving notice at the Contractor's last known place of business, that no further vouchers or estimates will be issued or payments made on the Contract until the Subcontractors, workers, and employees have been paid and the Contractor neglects or refuses, for the period of 10 days after notice was served, to pay such Subcontractors, workers or employees, SCC may apply any money due, or that may become due, under the Contract to the payment of such Subcontractors, workers or employees without further notice to the Contractor.

The failure of SCC, however, to retain and apply any money, or of SCC to order or direct that no vouchers or estimates be issued or further payments made, will not, nor will the paying over of such reserved percentage without such Subcontractor, workers, or employees being first paid, in any way affect the liability of the Contractor or its sureties to SCC, or to any such Subcontractor, worker or employee upon any bond given in connection with this Contract.

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- SCC's rights under this Section XIII.E., "Payments Withheld," are cumulative to any other rights provided for under this Contract. Failure by SCC to exercise any such right afforded herein or at law or in equity, will not constitute a waiver of such right.

F. Payments to Subcontractors

The Contractor must pay all Subcontractors and suppliers within 14 calendar days of Contractor's receipt of payment from SCC for that portion of the Work if the Subcontractor(s) has satisfactorily completed its Work in accordance with the Contract documents.

G. Payment for Changes

1. Payment for Changes: The amount to be paid by SCC for changes (either additions, deletions or revisions) in the Scope of Work or directions to change the Contract Time, will be made in accordance with sections a. through c. below.
 - a. Request for Proposal Basis: The payment may be based upon a price agreed to by SCC and Contractor. The proposal submitted will be a starting point for negotiation between SCC and Contractor. Any proposal submitted in writing by the Contractor for consideration for changed Work to be done will be broken down into segments of cost as follows:
 - (1) Labor: Follow current Illinois Department of Transportation (IDOT) force account procedures.
 - (2) Insurance and Payroll Taxes: Follow current IDOT force account procedures.
 - (3) Materials: For materials accepted by SCC and used as an integral part of finished Work, follow current IDOT force account procedures.
 - (4) Equipment: Number of proposed equipment hours multiplied by the rate as allowed by the latest revision of "Schedule of Average Equipment Ownership Expense With Operating Cost" as issued by the IDOT or in the AED Compilation of Rental Rates if equipment is to be rented, for the period that said machinery and equipment are to be used on such Work, to which no percent will be added. Where machinery and equipment are not listed in these schedules, then the rates will be determined by SCC after reviewing all available records of the Contractor or other information concerning the expense of operating that type of equipment. No stand-by time is allowed.
 - (5) Cost for Increase in Performance Bond: Follow IDOT procedures.
 - (6) When Work is to be performed by a Subcontractor, follow IDOT procedures.
 - b. Time and Material Basis: If SCC and Contractor cannot agree on a price based on a proposal or on the Schedule of Values, the Work will be paid for on a time and material basis. Work that is done on a time and material basis will be paid for as follows:
 - (1) Labor, including fringe benefits, taxes, etc.: Follow current IDOT force account procedures.
 - (2) No payment will be made for labor performed on a time and material basis until the Contractor has furnished SCC with itemized statements of the labor cost as follows:

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- Name, classification, date, daily hours, total hours, rate, and extension for each laborer and foreman.

Certified payrolls or certified copies thereof, pertinent to the Work for which payment is requested. The payroll records will contain the name, address and social security number of each employee, the employees correct classification, rate of pay, daily and weekly number of hours worked, itemized deductions made and actual wages paid. The time and material bills will be audited and corrected against the certified payrolls. Falsification of the certified payroll is an offense punishable by law.

- (3) Materials: For materials accepted by SCC and used as an integral part of finished Work, follow current IDOT force account procedures.
- (4) The Contractor will be reimbursed for any materials used in the construction of the Work, such as sheeting, falsework, form lumber, burlap, or other materials for curing, etc., which are not an integral part of the finished Work. The amount of reimbursement will be agreed upon in writing before such Work is begun and no percent will be added. The salvage value of such materials will be taken into consideration in the reimbursement agreed upon.
- (5) No payment will be made for material cost until the Contractor has furnished itemized statements of the material costs, which will include:

Quantities of materials, prices, and extension;

Material transportation costs supported by receipted invoices; and

Receipted invoices for all materials used. However, if materials used on the time and material Work are not specifically purchased for such Work but are taken from the Contractor's stock, then in lieu of the invoices, the Contractor will furnish an affidavit certifying that such materials were from his stock, that the quantity claimed was actually used, and that the price and transportation claimed represent the actual cost to the Contractor. The price quoted for such material must be reasonable and acceptable as per the normal industry practice.

- (6) Equipment: The Contractor will be paid for all machinery and equipment (other than small tools as currently defined by IDOT) used on the Work in accordance with the latest revision of "SCHEDULE OF AVERAGE ANNUAL EQUIPMENT OWNERSHIP EXPENSE WITH OPERATING COST," as issued by the IDOT, for the period that said machinery and equipment are in use on such Work, to which no percent will be added. Where machinery and equipment are not listed in this schedule, the rates will be determined by SCC after reviewing all available records of the Contractor or other information concerning the expense of operating that type of equipment.
- (7) When equipment is rented, the Contractor will receive actual rental cost as shown by original receipted bills to which 5% will be added.
- (8) No payment will be made for equipment unless designations, dates, daily hours, rental rates, and extensions for each unit of machinery and equipment are shown on the itemized statement of time and material Work.

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- (9) Bond: SCC will pay the Contractor the actual increase in cost of its performance bond. The Contractor will furnish from the bonding company written documentation of the rate or rates applicable for additional bonding for this Contract. These rate/rates will be applied to all the changes increasing or decreasing the Contract value. No bonding costs will be allowed for Subcontractors. In the absence of written documentation from the bonding company, a percentage of the total change, as determined by SCC, will be added or subtracted to cover the increase or decrease of the cost of the bond.
- (10) When Work is performed by Subcontractor, the Contractor will receive as administrative costs an amount equal to 10% of the first \$10,000 and 5% of any amount over \$10,000 of the total approved costs of such Work. The Subcontractor, however, is not allowed any additional markup if it sublets its Work. The use of a Subcontractor will require the approval of the SCC. All subcontracted costs must be supported by invoices from the Subcontractors performing the Work. The Subcontractors' invoices must be submitted in the form described in items (1) through (4) above.
- (11) Documentation: For additional Work performed on a time and material basis, the Contractor will each day submit to SCC detailed and complete records of the labor, material, equipment, and other costs relating to any force account Work performed on the day the Work is performed. These daily extra Work reports will be signed by the Contractor and SCC.
- (12) Base Contract Work on a Premium Time Basis:
- (a) Premium time costs will be paid, for Contract Work performed outside of regularly scheduled working hours as defined by the Contract Documents, only if expressly directed in writing by SCC prior to the Contractor commencing the Work. Compensation, when authorized, will cover only the direct cost of the premium portion of the time involved and will be without any charge for insurance. No payment will be made for union fringe benefits on the premium portion of the time unless expressly required by union agreement. Taxes which are attributed to the premium portion of the time will be paid. If taxes are charged by the Contractor, SCC may require the Contractor to supply verification that the employees' Social Security Tax, Federal Unemployment Tax, and State Unemployment Tax limits have not been exceeded.
 - (b) An amount equal to 7% of the sum of the premium portion of the work plus taxes will also be paid to the Contractor to cover jobsite general conditions, overhead, and profit. All indirect costs will be part of the overhead, including but not limited to supervision, engineering, and other technical personnel.
 - (c) If the Contractor enters into a subcontract, the Contractor will be allowed an additional 2% of the Subcontractor's premium time billing to cover the Contractor's supervisory and related expense on subcontract operations. The Subcontractor is not allowed the additional 2% if it sublets its Work.
 - (d) Daily Work reports for the premium time hours will be kept and signed daily. The reports must indicate the time of day when the Work was performed and wage rate differential that will be charged. Billings must reflect hours reported on daily Work reports.

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All invoices for changed work must be submitted within 45 days of completion of the changed work. Failure to provide a complete invoice for the changed work within that period will authorize SCC, subject to the approval of the SCC, to determine the final amount for the Contract Modification which may be awarded without the signature of the Contractor.

Miscellaneous:

For the purposes of this section, any business entity which employs field labor and performs Contract Work on the job site is defined as a Subcontractor. (Suppliers/deliverer of materials is not considered as field labor.)

When the extra Work involves only supply of material without any field labor at the job site, the supplier, for the purposes of this section, will be considered as a Subcontractor and the mark up as specified in Section XIII.H.1.b.(3), "Materials," will apply.

2. Change Claims:

- a. The Contractor and SCC are unable to agree on the price and/or time extension in connection with a change, the Contractor must, within 15 days of completing the changed work, provide written notice to SCC of the amount of money and/or time extension sought by the Contractor and the contractual and factual basis for each. The Contractor will designate the document Notice of Claim.
- b. SCC will, within 30 days from receipt of the Notice of Claim, respond by requesting a meeting with the Contractor, making a written request for additional information from the Contractor, including but not limited to a general statement of the basis for the claim, the facts underlying the claim, the notice to SCC of the change that gave rise to the claim, reference to the applicable Contract provisions, and all documentation that describes, relates to and supports the claim; taking other action to attempt to resolve the Notice of Claim, and/or advising the Contractor in writing that it should file a claim under Article XX., "Claims and Disputes." Any steps taken by SCC to resolve the Notice of Claim will not exceed 60 days from receipt of the Notice of Claim unless the Contractor agrees to an additional amount of time in writing.
- c. If the Notice of Claim cannot be resolved as provided for in Section XIV. the Contractor must follow the requirements of Section XX.A., "Claims," and XX.B., "Disputes."
- d. If the Contractor does not agree with the adjustment for time and/or money proposed by SCC, the Contractor must follow the procedures set out by the Contract to file a claim and/or dispute as provided in Article XX., Failure to follow the procedures set out by the Contract to file a claim and/or dispute as provided in Article XX., constitutes a waiver of the right to make a claim or file a Dispute to the SCC. In the event of the Contractor's waiver, the Contractor may file a Dispute, pursuant to Section XX.B., with the SCC seeking a final decision as to the adjustment for the changed work.

H. Night, Sunday and Holiday Work

Whenever the Contractor is permitted to perform work at night or on Sundays or Holidays, or to vary the period of hours during which any work is carried on each day, he must give written notice to SCC, at least 24 hours in advance, so that proper inspection may be provided. Such work will be done under regulations to be furnished in writing by SCC, and no extra compensation will be allowed therefore.

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I. Acceleration

In the event that progress falls behind the approved schedule, SCC may direct and authorize the Contractor, in writing, to perform premium time work as indicated in TIME OF COMPLETION in the Proposal section of the specifications. No additional compensation will be paid for such premium time work and the cost incurred for inspection and testing during such premium time work will be considered as “extra” inspection and reimbursement will be provided by the Contractor as described in Section XV.C., “Materials and Equipment Testing and Inspection.”

In the event conditions are encountered where the Contractor is specifically directed and authorized in writing by SCC to perform premium time work, on the original contract, to advance an already established completion date of an event or the project, or project milestone, the Contractor will be compensated in accordance with Section XIII.G.12.(b)

When such premium time Work is performed by approved subcontractor, the Contractor shall receive a markup as specified in Section XIII.G.12.(c) of the Contract.

J. J. Payroll Canvass Reports

The Contractor shall submit to SCC, with each pay request, a Payroll Canvass Reports PCR’s on Exhibits B and C included in Part 2.. The Contractor will submit the PCR’s to indicate compliance with both the Contractor’s “Award Criteria Determination” commitments made for each trade and the Chicago Residency Ordinance requirements. A pay period canvass report shall be prepared individually, by the Contractor and each of its Subcontractors, on Exhibit B to indicate, on a weekly basis, hour of each trade utilized during each pay period by the Contractor and its Subcontractors on the project. A combined Payroll Canvass Summary Report shall be prepared by the Contractor on Exhibit C to indicate accumulated hours of each trade utilized, to date, on the project by the Contractor and all its Subcontractors. The Contractor shall also be responsible for the accuracy of information and all arithmetical calculations made in the Payroll Canvass Report.

The Contractor will submit within five (5) working days after the award of the Contract Exhibit A, Anticipated Workforce Projection Form, included in the Contract, to the SCC.

XIV. CHANGES IN THE WORK

A. Owner’s Right to Change Work

SCC reserves the right to jointly order, in writing, changes in the Work or the Contract Time without prior notice to the Contractor’s surety. The Contractor is obligated to perform in a timely manner the changed Work included in the written notice from the SCC. These changes may consist of additions, deletions, or other revisions, at the discretion of SCC. The Contractor will begin the changed work upon receipt of a Field Order, signed by SCC, unilaterally directing changes in the work or contract time.

B. Contractor’s Request

The Contractor, within 14 calendar days of receipt of the written notice from SCC, must submit to SCC a written request for adjustment to the Contract Price and/or Contract Time for such revised Work.

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C. Contract Modification

The final provisions of the Change Order, including the adjustment in the Contract Sum and or the Contract time, if any, will be incorporated into a written Contract Modification signed by SCC and Contractor.

D. Contractor's Release

Any and all Contract modifications are a full release of SCC from any liability for any additional compensation or extension of time arising or resulting from the Work performed pursuant to a Contract modification. By execution of a Contract modification, the Contractor accepts the compensation and/or time extension provided in full accord and satisfaction for that Contract modification, and expressly waives, releases and relinquishes any and all additional claims and demands relating to, or arising out of, the matters covered by that Contract modification, including but not limited to direct or indirect cost, profit, or damages related to disruptions.

E. Performance of Changed Work

The Contractor shall promptly proceed with any changes in the Work or Contract Time as directed by a written order of SCC ("Field Order"), in accordance with Section XIV.A., "Owner's Right to Change Work," with or without any Contract modification. The Contractor's refusal or failure to proceed promptly with the changed Work as directed constitutes an event of default under the Contract. No change to the Work by the Contractor as directed by SCC will operate to invalidate the Contract or release Contractor's surety.

F. Change Claims and Disputes

If the Contractor and SCC are unable to agree on the price and/or time extension in connection with a change, the procedures set forth in Article XX., "Claims and Disputes," will govern.

XV. TESTING & INSPECTION

A. Material, Inspection and Responsibility

Contractor shall have the responsibility for Quality Control and Inspection and shall be required to furnish a draft QA/QC plan 7 days prior to Notice to Proceed.

Final QA/QC plans shall be furnished to SCC 7 days within Notice to Proceed.

B. Inspection of the Work

All materials and equipment and each part or detail of the Work is subject at all times to inspection by the SCC and/or the City of Chicago. The Contractor is held strictly to the requirements of the Contract Documents with respect to quality of materials, workmanship and the diligent execution of the Contract. Such inspection may include mill, plant, shop and field inspection of any material or equipment furnished and any installation and construction under the Contract Documents. SCC and the City of Chicago must be allowed access to all parts of the Work and must be furnished with such information and assistance by the Contractor as may be required to make a complete and detailed inspection.

All materials used must be inspected, tested and approved by SCC before being incorporated in the Work. All tests performed by or at the direction of SCC under this Contract are to verify that the materials being provided by the Contractor meet the Contract requirements. The Contractor, at its own expense, may perform or have others perform similar test for the purpose of

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maintaining the quality of the material being provided. Payment will not be made for uninspected or unauthorized use of materials incorporated into the Work.

The Contractor must remove or uncover such portions of the finished Work as SCC may direct before acceptance. After the examination, the Contractor must restore said portion of the Work to the standard required by the Contract Documents. If the Work thus exposed or examined proves acceptable, the expenses of uncovering, removing and/or replacing the parts will be paid as extra work, but if the Work so exposed or examined is unacceptable, the expense of uncovering, removing and/or replacing of the same, in accordance with the Contract Documents, will be borne by the Contractor.

All results of testing and inspection shall be registered and documented according to the QA/QC plans and properly reported to SCC on a monthly basis

Except as may be otherwise specified in other sections of the Contract Documents, SCC will make final inspection of all Work included in the Contract as soon as possible after notification by the Contractor that the Work is substantially completed and ready for acceptance. If the Work is not acceptable to SCC at the time of such inspection, he or she will inform the Contractor as to the particular defects to be remedied before the Work is accepted as substantially complete.

C. Materials and Equipment Testing and Inspection

1. The Contractor must provide SCC sufficient notice of placing orders to permit tests to be completed before the materials are incorporated into the Work. The Contractor must afford such facilities as SCC may require for collecting and forwarding Samples and making inspections and test. All Samples must be furnished without charge to SCC. The Contractor must not make use of or incorporate into the Work the materials represented by the Samples until tests have been made and the materials have been found to be in accordance with the requirements of the Contract Documents.
2. For materials which are integral parts of machinery or equipment or of parts of equipment normally stocked by the Contractor or Subcontractor, the Contractor must furnish the original and one (1) copy of certified tests made at the time of production. The original will be maintained by the Contractor and the copy by SCC.
3. SCC has free entry, at all times while Work is being performed, to all parts of the manufacturer's works that concern the manufacture of the material or equipment ordered. SCC is permitted to examine all components and subassemblies. Assemblies and parts must be numbered for identification. The Contractor must provide SCC with a detailed production schedule prior to the first inspection. After review of the schedule, SCC will inform the Contractor of the methods, extent of inspection, facilities desired and date of inspection. The Contractor will afford SCC without charge, all facilities necessary to determine that the material or equipment furnished are in accordance with the Contract Documents. Test and inspection may be at the place of manufacture prior to shipment.
4. If for any reason, SCC elects not to make the tests, SCC may direct the Contractor to make the necessary tests. The Contractor must furnish a certification of the ordered tests after completion. SCC reserves the right to inspect and reject all materials or equipment which were previously inspected and accepted at the place of manufacture or source of supply, after they were delivered to the Work site, if such materials or equipment do not meet the requirements of the Contract Documents.

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5. The Contract Documents may include the cost of travel and living expenses for a specific number of SCC employs and/or other persons for a specific test. The manufacturer or Contractor must furnish a certification of the ordered test after completion. The Commissioner reserves the right to reinspect and reject all materials or equipment, which have been previously inspected and accepted at the place of manufacture or source of supply, after they have been delivered to the site if such materials or equipment do not meet the requirements of the Contract Documents.
6. Unless otherwise provided, all materials will be sampled and tested in accordance with the latest published standards and methods of the American Society for Testing and Materials (ASTM) and any revisions thereof. In the event that there are no ASTM standards which apply, applicable standard methods of other recognized standardizing agencies will be used. Contractor must provide the name and qualifications of any such standardizing agency to SCC for review and approval.

D. Testing Laboratory Labels

All equipment containing electrical wiring must be submitted to SCC for acceptance before installation. All electrical components furnished and installed or assembled by the Contractor under this Contract must be approved and so labeled by one of the following Testing Laboratories:

1. Underwriters' Laboratories (UL)
2. Canadian Standards Association (CSA)
3. Electrical Testing Laboratory of New York (ETL)
4. Illinois Institute of Technology research Institute (IITRI)
5. American Gas Association (AGA)
6. Factory Mutual Research Corporation (FMRC)
7. Maintenance and Electrical Testing (MET)
8. American Research Lab (ARL)

Any electrical unit comprised of a number of components, assembled at the factory and considered custom made, must bear one of the above labels for the entire unit as well as for each component.

All costs in obtaining a testing laboratory label are paid by the Contractor at no additional cost to SCC. Any delays in completion of the Work caused by the manufacturer of equipment in obtaining the required testing laboratory labels and SCC approval are not grounds for an extension of time beyond the time of completion indicated in the Contract Documents.

XVI. CONTRACTOR'S PRACTICES AT SITE

A. Cooperation Among Contractors

The Contractor must conduct the Work so as not to interfere with or hinder the progress or completion of the work being performed by other contractors within or adjacent to the Work site. The Contractor must assume all liability, financial or otherwise, in connection with this Contract, and must protect and save harmless SCC from any and all damages or claims that may arise because of inconvenience, delay, or loss experienced due to the presence and operations of other

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contractors working within the limits of the Work. The Contractor must assume all responsibility for Work not completed or accepted due to the presence and operations of other contractors. Contractor shall coordinate and tie-in, where appropriate, its Work with that of others in an acceptable manner and perform the Work in proper sequence to the work of others. When any damage is caused by other contractors to the Work performed by the Contractor, the Contractor must file claims with the other contractors, not against SCC, and must obtain compensation for damage directly from such other contractors.

B. Protection of Persons and Property

1. **Protection of Existing Structures and Property:** The Contractor shall avoid causing damage to trees, plant life, sidewalks, curbs, streets, alleys, pavements, utilities, adjoining property, the work of other contractors and the property of SCC and others, and shall, at its own expense, repair any damage that may be caused by itself or any Subcontractor.

The Contractor agrees that it is responsible for loss or damage by fire or theft of equipment, material, property of the City of Chicago or SCC, incurred while such equipment, material or other property is located in any field office or on the site of the Work. The Contractor further agrees that it must repair or replace any such equipment, material or other property so lost or damaged, to the satisfaction of the City of Chicago or SCC, at no additional cost to SCC.

The Contractor must familiarize itself with the requirements of local and state laws applicable to underpinning, shoring and other Work affecting adjoining property and, wherever and whenever required by law, site conditions or standard industry practice, the Contractor must shore-up, brace, underpin, secure and protect all foundations and other parts of existing structures adjacent to, adjoining and in the vicinity of the Work site, which may be in any way affected by the excavations or other operations connected with the Work to be performed under this Contract.

The Contractor is responsible for the giving of any and all required notices to any adjacent or adjoining property owner or other potentially affected party. Such notice must be served in sufficient time so as not to delay the progress of the Work under this Contract.

The Contractor must take such precautions as are necessary to insure the safety of private property owners, lessees, and their invites against injury caused as a result of settlement or displacement of structures. The Contractor must immediately proceed with all shoring or other Work necessary to restore the private property owner's property to a safe condition. If the Contractor fails to undertake such Work within 24 hours after written notice by SCC or the City of Chicago, SCC or the City of Chicago may proceed to repair or restore any such structure to a safe condition, and the cost thereof will be deducted from any compensation due, or which may become due to the Contractor.

If, in the prosecution of the Work, it is necessary to excavate or occupy any street, alley, or public grounds of the City of Chicago, the Contractor agrees to erect and maintain such barriers, and, during the night time, such lights as will effectively prevent the happening of any accidents or damage to life, limb, or property in consequence of such excavation or occupation of such street, alley, or public grounds. The Contractor is liable for all damage occasioned by the Contractor, its agents, employees or Subcontractors of any tier in the excavation or occupation of any street, alley, or public grounds, and shall indemnify the SCC and the City of Chicago pursuant to Article XIX., "Insurance."

Upon Final Completion and Final Acceptance of the Work, the Contractor must remove all machinery, equipment, materials, false work, rubbish or temporary structures and leave the

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Work site and the premises of any private property owners in as good condition as they were prior to commencement of Work.

Materials and equipment necessary for the performance of the Work may only be placed, stored or allowed to occupy any space in public streets or alleys upon the written consent of the City of Chicago. It is SCC's intent that the operations under this Contract are conducted as far as practicable without interference with the public use of streets and alleys. All materials or equipment used in the performance of the Work must be placed so as not to impede traffic on streets and alleys adjacent to the site of the Work, and to allow free access to all fire hydrants, water valves and manholes that are a part of electric, telephone and telegraph conduit lines, fire alarms and police call boxes in the vicinity.

In removing existing pavements, sidewalks, curbs, gutters, walls, foundations, vaults and other structures, the use of any type of impact device in a manner which might damage buildings or their foundations, or other underground structures and utilities is not permitted.

The Contractor must indemnify, save and keep SCC and the City of Chicago harmless from any damage due to settlement or the loss of lateral support of adjacent or adjoining property and from all loss or expense and all damages for which the City or SCC may become liable in consequence of such injury or damage to adjacent and adjoining structures and their premises. Contractor's indemnity obligation must survive the expiration or termination of this Contract and must include and apply to any liabilities and duties placed upon the City as owner or occupant of the property on which the improvements provided for herein are to be constructed, by the provisions of an Act entitled "An Act to Prescribe the Duty of an Owner or Occupant of Lands Upon Which Excavations are Made in Reference to the Furnishing of Lateral and Subjacent Support to Adjoining Lands and Structures Thereon." *See of 765 ILCS 140/0.01 et seq.*

2. Existing and Proposed Utilities. The Contract Documents show existing utilities lying within the limits of the Work, such as sewers, manholes, catch basins, gas lines, water lines, telephone and electrical duct lines, CTA facilities, and similar structures. The City of Chicago or SCC does not guarantee the completeness or accuracy of the information regarding utilities, whether public or privately owned. The Contractor must make its own investigation to determine the existence, nature and location of all utilities at the Work site. The Contractor must verify the exact location of all utilities that may interfere with performance of the Work and must report to SCC any differences from the locations shown on the Contract Documents.

The Contractor must so arrange and conduct its Work that utilities may be removed, relocated or supported during excavation and maintained in service until the Work is completed. In addition, the Contractor arranges and conducts its Work that utilities may be replaced, rearranged or relocated prior to backfill being placed. The Contractor must cooperate with the owners of such utilities in the performance of the Work.

Where existing utilities are abandoned and it is necessary to remove them due to the performance of the Work, the utilities shall be removed by the Contractor at no additional cost to SCC or the City of Chicago, and shall become the Contractor's property.

It is the Contractor's responsibility to protect those existing utilities which are to remain in operation during and after completion of the Work, and any new utilities installed by others during the performance of the Work. The Contractor will be held fully responsible for any damage resulting from its performance of the Work, and will be required to repair, replace or reconstruct any utilities damaged, at its own expense, to the satisfaction of the City of

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- Chicago and/or SCC. The protection of the utilities as specified herein shall be at no additional cost to the City of Chicago or SCC.
3. Utilities Outside the Limits of the Work: City-owned water lines, sewers, connections and appurtenances and all City-owned electrical conduits, cables, vaults and appurtenances which are located entirely outside the limits of the Work is protected and maintained by the Contractor in a satisfactory manner until the completion of the Work. Whenever in the performance of the Work it is necessary, because of the nature of the Work or because of the Contractor's method of performing the Work, to support, remove, replace, relocate, rearrange, adjust or repair such City-owned structures located entirely outside of said excavations, the Contractor must notify the appropriate City department to perform such Work, and must cooperate with such department in preserving service. The Contractor must reimburse the appropriate City department for the cost of performing such Work at no additional cost to the City of Chicago under the terms of this Contract.
 4. Utility Relocation and Continuance of Service Plan: The Contractor must prepare a Utility Relocation and Continuance of Service Plan, identifying procedures, locations, time frames and affected agencies and private owners. The Plan must be submitted to SCC for review within 14 days after the Notice to Proceed.
 5. Cooperation with Utilities: The Contractor must cooperate with all utility companies involved in connection with the removal, temporary relocation, reconstruction, or abandonment by these agencies of any and all services or facilities owned or operated by them within the limits of the Work.
 6. Work Performed by Others: The Work must be performed with a minimum of interference to street traffic in the area. The Contractor must coordinate its Work with that of other City contractors, with contractors employed by adjacent property owners, and with contractors employed by any other party or parties for work on utilities to insure the best progress of the Work as a whole.
 7. Preservation and Protection of City Standard Bench Monuments and Survey Controls: The Contractor is responsible for the preservation and protection of all City Standard Bench Monuments, in accordance with the provisions of section 10-4-220 of the Municipal Code of Chicago and Article 105.09 of the Standard Specifications, and as directed by the City of Chicago. Any survey control point disturbed or removed by the Contractor shall be replaced or reestablished to the satisfaction of the City of Chicago at no additional cost to the City of Chicago. **DAMAGE TO ANY OF THE CITY OF CHICAGO STANDARD BENCH MONUMENTS WILL RESULT IN THE CONTRACTOR BEING PROSECUTED TO THE FULL MEASURE OF THE LAW.** The City of Chicago will pursue the matter of compensation for damages incurred by the City of Chicago resulting from Contractor's action during the execution of Work on this project.
 8. Protection of Streets and Traffic: The Contractor must provide all necessary barricades, signs, flags, lights and reflectors. Vehicular and pedestrian traffic on all streets, including adjacent streets, bridges, overpass structures and ramps, are maintained during the performance of the Work in accordance with the requirements of the Contract Documents.
 9. Temporary Restoration of Trench Cuts: Failure to maintain the temporary restoration of trench cuts, which causes the surrounding work area to be in an impassable and/or hazardous condition thereby creating undue inconvenience and danger to area residents is an event of default under this Contract.

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10. Temporary Barriers, Signs, Lights and Flaggers: The Contractor must furnish, relocate and remove portable barricades and lights, collision protection, temporary signs (including traffic and project signs) and supports as directed by SCC or the City of Chicago; and furnishing all necessary flaggers and other protection necessary for the maintenance of traffic flow in a safe and orderly fashion, as required by Article 107.14 of the Standard Specifications, except as otherwise specified in the Contract Documents.

The Contractor must maintain, repair or replace all damaged or destroyed appurtenances referenced in the immediately preceding paragraph throughout the life of the Contract. Maintenance must also include cleaning of the barricades and traffic signs by means of clean water. Flaggers must be provided whenever circumstances warrant.

The barricades must be erected, moved, repaired and repainted as required. Upon the completion of the Work, all barricades remain the property of the Contractor and must be promptly removed from the Work site.

11. Historical and Scientific Specimens: The Contractor preserves and delivers to the City of Chicago any specimens of historical or scientific value encountered in the Work, as directed by the City of Chicago.

C. Protection of Streets, Alleys and Public Grounds

1. When excavating or occupying any street, alley or public grounds of the City of Chicago, the Contractor must erect and maintain temporary barriers and, during the night time, lights that will effectively prevent accidents or damage to life, limb or property in consequence of such excavation or occupation of such street, alley or public grounds. The Contractor is liable for all damages as a result of the excavation or occupation of any street, alley or public grounds, or by the carelessness of the Contractor, his subcontractors, agents, employees or workers and must indemnify and hold harmless the City of Chicago and SCC against all judgments rendered against it by reason thereof.
2. Construction Period Traffic Management Plan. The Contractor must prepare a Construction Period Traffic Management Plan consistent with the requirements of the Contract Documents. The Plan must be submitted to SCC for review within 14 days after award of the Contract. The Contractor must comply with all applicable federal, state and local requirements and coordinate with OEMC and Illinois Department of Transportation. The Contractor must also comply with the following requirements:
 - a. Construction staging segments shall be kept as short as feasible;
 - b. Lane closure shall be kept to a minimum, and at least one lane shall remain open to vehicular traffic;
 - c. Intersections shall remain open to traffic in both directions at all times;
 - d. Detours shall be provided in streets as necessary and approved by SCC;
 - e. Signage plans shall be developed and implemented for all approved detours;
 - f. Coordinate adjustments required for traffic signals; and
 - g. Allow for emergency access at all times.

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D. Protection of Existing Trees in the Right of Way

1. The Contractor is responsible for the restoration of all damaged parkways to their original condition. It is the responsibility of the Contractor to protect all trees at the work site from damage. Any damage to trees resulting from the Work, as determined by the Bureau of Forestry, Parkways and Beautification of the Department of Streets and Sanitation, is repaired or replaced at the Contractor's expense. The Contractor is required to replace any permanently damaged tree with a new tree of the same type.
2. The protection of trees includes bridging, tunneling, drawing, drilling or boring underneath existing trees. The surface area directly adjacent to the tree trunk, measured at the diameter breast height (DBH), shall not be disturbed under the following guidelines:
 - a. Less than 5 inches DBH trees – 2-foot radius of the tree trunk with a minimum of 3-foot depth.
 - b. 5 inches to 20 inches DBH trees – 5-foot radius of the tree trunk with a minimum of 3-foot depth.
 - c. Over 20 inches DBH trees – 7-foot radius of the tree trunk with a minimum of 3-foot depth.
 - d. When bridging, tunneling, drawing, drilling or boring underneath existing trees, such Work shall be accomplished directly beneath the center of the tree trunk.

E. Care of Existing Structures and Property

1. Property Access Maintenance Plan. The Contractor must prepare a Property Access Maintenance Plan consistent with the requirements of the Contract Documents. The plan must be submitted to SCC for review within 14 days after award of the Contract. The Contractor must comply with all applicable federal, state, and local requirements. The Contractor must also comply with the following requirements:
 - a. Maintain vehicle and pedestrian access to properties;
 - b. Maintain pedestrian access on both sides of all streets;
 - c. Provide access walkways to all buildings and businesses;
 - d. Sidewalks shall remain open to the maximum extent possible;
 - e. Provide temporary relocation of access, where required;
 - f. Provide advisory and temporary signs for pedestrian and vehicle access changes and reroutings; and
 - g. Coordinate delivery locations and timing.
2. Before doing any Work adjacent to or on the site of any buildings or other structures adjoining or in the line of the Work to be performed under the Contract, the Contractor must supply written notice of the same to the owner or owners that such Work is to be done, and shall cooperate with the owner thereof in the maintaining, removing, relocating, rearranging or adjusting wherever necessary, of all basements of buildings, sub-sidewalk vaults, tunnels, conduits, wires, poles, pipes, gas mains, cables, steam and street railway tracks and equipment, or other appliances and structures located in any portion of the streets, public areas, highways and easements to be occupied or used during the prosecution of the Work.

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3. Wherever in the performance of the Work it is necessary to remove, reconstruct, relocate, rearrange, adjust or repair City-owned sewers, catch basins, manholes, inlets, sewers connections and appurtenances by reason of the fact that such structures and appurtenances pass through or are located within the limits of the Work as shown on the plans, or ordered by SCC or the City of Chicago the Contractor shall perform the Work necessary to remove, reconstruct, relocate, rearrange, adjust or repair such structures and appurtenances, unless otherwise noted on the plans.
 - a. The SCC and City of Chicago shall determine at its sole discretion the method of Work to be carried on to interfere as little as possible with the normal conduct of business in or around the portions of the building or structures in use.
 - b. The building or structures may be in full-time use and operation and will continue in normal use during performance of the Work. Building facilities, including heating, ventilation, and air conditioning, lighting and plumbing, will not be interrupted in the occupied areas, except as required for making connections to power sources as hereinafter specified.
 - c. The Contractor will serve written notification to SCC requesting any anticipated interruption in facilities at least two (2) weeks prior to disruption of services. The Contractor shall provide any temporary facilities deemed necessary by SCC or the City of Chicago due to a disruption of services. SCC or the City of Chicago will determine the procedures, times of day and dates the Contractor may accomplish the Work and may reject or modify the Contractor's request.
 - d. Storage of all material and/or equipment shall be in areas approved by SCC or the City Chicago in a manner to minimize interference with the normal conduct of business in or around the occupied portions of the building and vehicular areas.
4. The Contractor will not be permitted to perform Work on City-owned water mains, connections and appurtenances or on any City-owned electrical conduits, cables, vaults and appurtenances unless any such structure has been abandoned by the City of Chicago and Work is authorized by SCC or the City of Chicago, or is included in the Contract Documents, with the exception of those City-owned water manholes and electric manholes which are shown as to be adjusted on the plans must be adjusted by the Contractor.
 - a. City-owned water mains, connections and appurtenances and all City-owned electrical conduits, cables, vaults and appurtenances which are located entirely outside of the neat lines of the excavation as shown on the plans or ordered by SCC, shall be protected and maintained until the completion of the Work under the contract, in a satisfactory manner, by the Contractor. Whenever in the performance of the Work under the contract, it shall be necessary because of the nature of the Work required by the contract or because of the Contractor's method of performing the Work, to support, remove, replace, relocate, rearrange, adjust or repair such City-owned structures located entirely outside of said excavations, the Contractor must notify the appropriate City Department to perform such Work, and must cooperate with the Department in preserving service in or through the same. The Contractor will reimburse the appropriate City Department for the cost of performing such Work, and such cost shall be included in the various Contract prices.
 - b. All City-owned water mains, connections and appurtenances and all City-owned electrical conduits, cables, vaults and appurtenances, any part of which are located inside of the neat lines of the excavations as shown on the plans or ordered by SCC or the City of Chicago, will be supported, protected and maintained or removed, replaced, relocated,

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rearranged, adjusted or repaired, both inside and outside of said excavations by the Contractor. Whenever in the performance of the Work under the contract it shall be necessary to support, protect, maintain, remove, replace, relocate, rearrange, adjust or repair such City-owned structures any part of which is located inside of said excavations, the Contractor shall notify the appropriate City department and shall cooperate with such department in preserving service in or through the same.

- c. With the exception of the City-owned water mains, connections and appurtenances and the City-owned electric conduits, cables, vaults and appurtenances described above, and with the exception of City-owned structures which are to be removed or otherwise Worked upon as part of the requirements of the Contract, all poles, trees, shrubbery, fences, sewers, pipes, conduits, cables, wires, manholes, tunnels, buildings, subways and other City-owned structures which pass through and are located within the excavations or which are adjacent to the Work to be constructed under the Contract shall be supported, protected, maintained or relocated and rebuilt by the Contractor during the construction and until the completion of the Work under the Contract.
5. The Contractor shall notify and cooperate with the owner thereof in maintaining, removing, relocating, rearranging or adjusting wherever necessary, of all basements of buildings, sub-sidewalk vaults, tunnels, conduits, wires, poles, pipes, gas mains, cables, steam and street railway tracks and equipment or other appliances or structures located in any portion of the streets, public areas, highways and easements to be occupied or used during the construction of the Work specified under the Contract.
- a. Wherever in the performance of the Work specified under the Contract, it shall be necessary to remove, replace, rearrange, adjust or repair City-owned sewers, catch basins, manholes, inlets, sewer connections and appurtenances by reason of the fact that such structures and appurtenances pass through or are located within the limits of the excavations as shown on the plans or ordered by SCC or City of Chicago, the Contractor shall perform the Work necessary to remove, replace, relocate, rearrange, adjust or repair such structures and appurtenances. The cost of performing such Work shall be included in the Contract price.
 - b. Wherever in the performance of the work specified under the contract it shall become necessary to support and maintain City-owned sewers, catch basins, manholes, inlets, sewer connections and appurtenances or wherever it becomes necessary as a result of the Contractor's methods of construction the Work under the contract, to remove, replace, relocate, rearrange, adjust, or repair City-owned sewers, catch basins, manholes, inlets, sewer connections and appurtenances (other than those specified in the last preceding paragraph) the Contractor shall perform the Work necessary to support, maintain, remove, replace, relocate, rearrange, adjust or repair such structures and appurtenances, and the cost of such work shall be by the Contractor without any additional compensation thereof.
 - c. It is the intention of the specifications that the Contractor shall include in the appropriate Contract Price or prices, all necessary cost and expense of supporting, maintaining, removing, replacing, relocating, rearranging, adjusting or repairing all City-owned appliance and structures (other than City-owned water mains, connection and appurtenances and City-owned electrical conduits, cables, vaults and appurtenances described in subsection 4.b. of this section), encountered in or affected by the Work, and that he or she must also include in such price or prices all necessary cost and expense of removing structures which have been or will be abandoned by the owner or owners

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thereof and which are necessary to be removed in order to construct work under the Contract, but that he or she must not include in such price or prices the cost or expense of supporting, maintaining, moving, replacing, relocating, rearranging, adjusting or repairing such appliances or structures that are not owned by the City of Chicago and are not abandoned by the owner or owners thereof, except as may be otherwise hereinafter specified in this section.

6. The Contractor shall take all reasonable precautions for the protection of buildings, railroad tracks, street railway tracks and appurtenances, and other appliances and structures not owned by the City of Chicago.
7. The Contractor shall determine the methods to be employed, the procedure to be followed, the equipment, plant, false work, shoring, bracing and other temporary structures and equipment to be used on the Work, subject to the requirements of the Contract Documents and the approval of SCC. Only adequate and safe procedures, methods, structures and equipment shall be used.
8. The Contractor shall provide drawings and calculations for all equipment, false work, shoring, bracing and other temporary structures required for the Work, designed, signed and sealed by an Illinois licensed structural engineer. The Contractor shall submit copies of all such drawings and calculations to SCC.
9. Field Check of Dimensions, Cutting and Patching. Where the Work connects to existing structures or appurtenances, the Contractor shall take complete field measurements affecting all Work under this Contract and shall be solely responsible for the proper fit between the Work and existing structures or appurtenances. The Contractor shall perform all cutting, patching, or fitting of Work that may be required to properly fit together the several parts of the Work and the existing structures or appurtenances.
10. Contractor's Layout of the Work. The Contractor shall be responsible for the correct lay-out and accurate fitting of all parts of the Work. Contractor shall hire a land surveyor licensed in the State of Illinois to layout all work from survey points finished by the correct drawings. All labor, materials and other expenses necessary for, or incidental to, the setting and maintaining of lines and grades (exclusive of the Work of establishing the original reference base line and bench marks which will be performed by the SCC) shall be furnished by the Contractor at his own expense. No separate payment will be made to the Contractor for the cost of any of the Work specified herein. Such cost will be included in the Contract lump sum.
11. Salvage of Materials. When city-owned property such as cast iron manholes and catch basin frames and covers, inlet boxes and gates, and other roadway appurtenances are to be removed and are not to be reused in the Work, such roadway appurtenances are securely stored for possible use by SCC. Care is taken by the Contractor to prevent damage in its handling of these appurtenances. The Contractor must deliver to a location designated by the SCC all items identified by SCC for reuse and must legally dispose of the remaining items.
12. Wherever basements of buildings, sub-sidewalk vaults, tunnels, sewers, water, gas, telephone, telegraph, electric or other pipes, conduits, cables, wires, manholes, vaults, steam and street railway tracks or other similar structures and appliances not owned by the City of Chicago are in or cross the excavations for structures to be built under this Contract, the Contractor must notify the owner or owners of such structures and appliances to support, move, rearrange or abandon them, and cooperates with the owner or owners of such structures and appliances in preserving the service or services provided by such structures and

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- appliances, except as may be otherwise specified or provided in the Contract Documents. If the Contractor has complied with the above requirements and has been notified by the owner or owners thereof that any of the above structures or appliances have been abandoned, or lacking such notice, if the Contractor has made all investigations and has found that any of the above structures or appliances have been abandoned by the owner or owners thereof and if the removal of any such abandoned structure or appliance is necessary in order to construct the Work, the Contractor removes the same at no additional cost to SCC.
13. Wherever basements of buildings, sub-sidewalk vaults, tunnels, sewers, water, gas, telephone, telegraph, electric or other pipes, conduits, cables, wires, manholes, vaults, steam and street railway tracks or other similar structures and appliances are adjacent to, but do not cut through or cross the excavations for structures to be built under the Contract, the Contractor shall perform the Work in such a manner as to not cause damage to such structures and appliances and not interrupt their use during the progress of the Work.
 14. The Contractor must arrange the Work that the owner or owners of structures and appliances which are to be supported, maintained, removed, reconstructed, relocated, rearranged, adjusted or repaired by reason of the Work, are notified by the Contractor in ample time to permit such work to be done by the owner or owners. SCC may direct the Contractor to suspend its operations on that part of the Work which affects such structures and appliances until the owner or owners thereof have had time to perform the work.
 15. The Contractor must conduct the Work that no equipment, material or debris is placed upon private property unless it has first obtained the owner's written consent thereto and provided this written consent to SCC. The Contractor must take such means as may be required to prevent the creation of a public nuisance on any part of the Work site or adjacent streets or property.
 16. All streets, pavements, sidewalks and parkways and all private property must be thoroughly cleaned of all surface materials, earth and rubbish by the Contractor, and such streets, pavements, sidewalks and parkways and such private property must be restored to as good condition as before the commencement of the Work. Where sod has been removed or killed, new live sod shall be provided. Where the areas have been seeded, top soil equivalent to that removed shall be placed, fertilized, seeded and rolled to the satisfaction of the owner of the land. All trees, shrubs and plants damaged shall be replaced in the proper season of the year with live, growing stock of the same kind and variety and of the size ordinarily used for planting purposes.

F. Precautions and Safety

1. The Contractor must take any precautions that may be necessary to render all portions of the Work secure in every respect, to decrease the liability of accidents from any cause and to avoid contingencies which are liable to delay the completion of the Work. The Contractor must furnish and install, subject to the approval of SCC, all necessary facilities to provide safe means of access to all points where Work is being performed and make all necessary provisions to insure the safety of workers and of engineers and inspectors during the performance of the Work. The Contractor will be required to conduct its Work so as not to unnecessarily obstruct the activities of other contractors who also may be engaged in work on this or any other project.
2. Although SCC and the City of Chicago may observe the performance of the Work and reserves the right to give the Contractor opinions and suggestions about safety defects and

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deficiencies, neither SCC nor the City of Chicago is not responsible for any unsafe working conditions. SCC's suggestions on safety, or lack thereof, will in no way relieve the Contractor of its responsibility for safety on the Work site. The Contractor has sole responsibility for safety and the obligation to immediately notify SCC of all accidents.

3. Precautions must be exercised at all times for protection of persons (including employees) and property. The safety provisions of applicable laws and building and construction codes shall be observed.
4. The Contractor must provide completely equipped first aid kits readily accessible at all times on the Work site. The Contractor must designate an appropriately trained individual on each shift to be in charge of first aid.
5. The Contractor must provide at appropriate locations fire extinguishers or other fire protection equipment which comply in all respects with the Municipal Code of Chicago and National Fire Protection Association (NFPA) standards. The Contractor must maintain this equipment in proper operating condition at all times and must cause the equipment to be inspected by any and all appropriate agencies as required by law, but in no event less than monthly. The Contractor must comply with the Municipal Code of Chicago requirements on the use of standpipes, hoses and other fire protection equipment.
6. Only such materials and equipment as are necessary for the construction of the Work under this Contract must be placed, stored or allowed to occupy any such space at the site of the Work. Not more than one (1) day's supply of flammable liquids, including oil, gasoline, paint, or solvent shall be kept on hand at any one time. If gasoline, flammable oils, other highly combustible materials or compressed gas cylinders are to be stored at the site, they must be stored in a secure manner, in compliance with all applicable laws, ordinances and regulations, and all storage places shall be clearly marked. The written consent of SCC is required for such storage. Such consent in no way limits Contractor's liability for such materials.
7. The Contractor must prohibit all lighting of fires about the premises and all smoking in restricted areas where posted with "NO SMOKING" signs and must diligently enforce this prohibition. "NO SMOKING" signs must be furnished and posted by the Contractor. No debris or waste materials must be burned at the Work site.

G. Health, Safety and Sanitation

1. Clean-Up: During construction, the Contractor must keep the Work site and adjacent premises as free from material, debris and rubbish as practicable. Haul roads, streets and public areas shall be swept daily. Before Final Completion and Acceptance of the Work, the Contractor must remove from the Work site and adjacent premises all machinery, equipment, surplus materials, false work, excavated and useless materials, rubbish, temporary buildings, barricades and signs and must restore the site to the same general conditions that existed prior to the commencement of the Work. The cost of final clean-up is included in the unit prices for the various items, or included in the Contract Unit Prices, as the case may be. The Contractor must clean off all cement streaks or drippings, paint smears or drippings, rust stains, oil, grease, dirt and any other foreign materials deposited or accumulated on any portion of its Work, or existing facilities and structures, due to its performance of the Work.
2. Snow and Ice Removal: SCC will do snow plowing on all mainline and shoulders of the Chicago Skyway and will not be responsible for any damage to contractors' equipment or materials anywhere on the roadway. Clean-up of snow plowed into these shoulder areas is the responsibility of the Contractor.

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3. Noise and Vibration Control. All equipment, vehicles, and Work under this Contract shall be conducted in accordance with the City of Chicago Building Code, Chapter 11-4 of the Municipal Code of Chicago "Environmental Protection and Control," Article VII - **Noise and Vibration Control**, so as to cause a minimum of noise, vibration and inconvenience to the activities of the occupants of property and buildings in the vicinity of the Work. When SCC or the City of Chicago determines that Contractor's operations constitute a nuisance, the Contractor must immediately proceed to conduct its operations in a manner that abates such nuisance. Contractor must provide all measures, including but not limited to engine and exhaust mufflers, acoustic casing enclosures, maintaining equipment, or physical barriers along the edges of the construction zone, required to minimize noise and vibration. Noise and vibration levels may be monitored by SCC or the City of Chicago.
4. Health and Safety. The Contractor must comply with all applicable OSHA requirements, including but not limited to the requirements of 29 CFR part 1910 - Occupational Safety and Health Standards and 29 CFR part 1926 - Safety and Health Regulations for Construction, including 29 CFR 1926.62 regarding construction worker occupational exposure to lead, promulgated under the U.S. Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. 651 *et seq.* (Federal OSHA). Copies may be obtained from the Regional Administrator of the U.S. Department of Labor, Federal Office Building, 230 S. Dearborn, Chicago, Illinois.

The Contractor must comply with the requirements of the Illinois Health and Safety Act, 820 ILCS 225/.01 *et seq.*, and the rules and regulations promulgated pursuant thereto by the Director of Labor for the State of Illinois, which are on file with the Illinois Secretary of State.

Whenever a Federal OSHA Compliance Officer arrives at the work site, the Contractor shall notify SCC immediately. At the conclusion of the inspection, any findings are reported to SCC. Copies of any citations issued and related documents shall be submitted to SCC.

The Contractor must maintain the following records and make available to SCC for review (i) all records required by OSHA, including the accident log, Fed/OSHA #200, and posting of the prescribed OSHA poster; (ii) log of safety activities, accident investigation, employee instruction, training, tool-box meetings, and any other pertinent information; and (iii) Material Safety Data Sheets (MSDS) as required for each material used by the Contractor at the Work site.

5. The Contractor shall enforce among its employees such regulations in regard to cleanliness and the disposal of garbage and wastes as shall conduce to their health, and tend to prevent the inception and spread of contagious and infectious disease among them, and shall provide an ample supply of suitable, pure drinking water, and shall take such means as SCC may direct to effectively prevent the creation of a nuisance on any part of the Work site or adjacent streets or property. Necessary sanitary conveniences for the use of the laborers on the Work, properly secluded from public observation, shall be constructed and maintained by the Contractor in such manner and at such points as shall be approved, and their use shall be strictly enforced. Whenever manholes have been used for sanitary proposes, they shall be thoroughly flushed and cleaned when no longer needed.

The manner of disposing of waste shall be such that all waste is disposed of without creating a public nuisance or health hazard and in accordance with Illinois Department of Public Health Circular No. 815, Educational Health Circular No. 4.001, and all Illinois Environmental Protection Agency rules and regulations.

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The Contractor shall also comply with all rules and regulations of the Federal and State Governments, and the Chicago Health Department.

H. Hazardous Operations and Security

1. During construction, all cutting or welding operations must be carried out with all precautions taken to prevent fires resulting from sparks or hot slag. Extreme care must be exercised to determine that such sparks or embers do not fall into any combustible materials, even if such material is stored on lower floors. Sheet metal wind screens must be provided around the lead-melting furnaces whether the Work site is enclosed or not. Portable fire extinguishers must be provided at and below all locations where cutting or welding or melting operations are being performed or, if such operations are extensive, a hose from the stand pipe system or fire hydrant must be placed nearby. The Contractor must obtain special permission from the City of Chicago Commissioner of Water and pay all associated connection fees.
2. No welding, flame cutting, or other operations involving use of flame, arcs, or sparking devices, will be allowed without adequate protection. All combustible or flammable material shall be removed from the immediate working area. If removal is impossible, flammable or combustible materials must be protected with fire blankets or suitable non-combustible shields to prevent sparks, flames or hot metal from reaching flammable or combustible materials. The Contractor must provide necessary personnel and equipment to control incipient fires resulting from welding, flame cutting, or other sources involving use of flame, arcs, or sparking devices.
3. Concentration of gas fumes must be reported immediately by the Contractor who shall be responsible for clearing the area and notifying SCC, City of Chicago, and the Utility Company. All operations in the area must be suspended until the source of such fumes has been located and corrected.
4. The Contractor must arrange for the installation of necessary fire protection lines and equipment as required by the Chicago Fire Department and as necessary to properly protect the Work site. Permanent fire protection facilities may be used for this purpose as soon as they are installed, tested and approved by the City of Chicago for temporary use.
5. Gasoline must be kept and handled from approved safety cans.
6. All tarpaulins used for any purpose must be made of fire, water and weather-resistant materials.
7. The Contractor must furnish such watchmen as may be necessary to protect the public and those who are at or in the vicinity of the Work under this Contract, and to protect all materials, tools, machinery and equipment and all Work performed by the Contractor.
8. Contractor must comply with any and all federal and state and local occupational health and safety statutes, and any occupational health and safety standards promulgated there under; provide reasonable protection to the lives, health and safety of all persons employed under this Contract; furnish to all such persons a place of employment which is free from recognized hazards that are causing or are likely to cause death or serious physical harm; keep all persons employed under this Contract informed of Contractor's protections and obligations under the statutes; and provide all persons employed under this Contract with information regarding hazards in the workplace, including information about suitable precautions, relevant symptoms and emergency treatment. The federal and state occupational

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health and safety statutes, and the rules and regulations promulgated there under, shall be considered part of this Contract as though fully set forth herein.

9. Contractor must provide safety instructions and training for all workers. Contractor must conduct weekly craft safety meetings (tool-box type) of reasonable length as an effective means of communicating safety issues to workers. Reports containing tool box discussion topics must be signed-off by all attendees and shall be submitted to SCC.

I. Services and Use of Site

1. **Work Area:** After receipt of the Notice to Proceed, the Contractor must propose a suitable working area subject to approval by SCC and the City of Chicago. The Contractor shall secure the space at its own expense.
2. **Temporary Services and Utilities:** If specified in the Contract, the Contractor must be responsible for arranging for and providing all general services and temporary facilities as specified in the Contract Documents and as required for the proper and expeditious prosecution of the Work. The Contractor must pay all costs for such general services and temporary facilities. The Contractor must provide temporary connections for water, electricity and heat including installation, maintenance and removal of such facilities. The Contractor must pay the cost of all water, telephone, and electricity during the construction period.
 - a. **Water:** The Contractor must provide temporary water connections as required for drinking and construction purposes. The City of Chicago reserves the right to regulate the use of water, and may impose restriction on the use in the event water is being used carelessly by the Contractor. Water and facilities for obtaining water for sanitary purposes, drinking, mixing concrete and for all other purposes shall be provided by and at the expense of the Contractor. The water may not be obtained from the mains of the Chicago water system, except as may be provided in the Contract Documents. Except with special permission from the Department of Water, connections for water shall not be made to the City's fire hydrants.
 - b. **Light and Power:** The Contractor must furnish the electricity and must furnish and install all wiring, electrical services, lighting units, insulated supports for wiring and all other electrical equipment together with all other incidental and collateral Work necessary for the furnishing of the temporary power and lighting facilities for the Work to be done under this Contract, all at no additional cost to SCC or the City of Chicago. Electrical Work must be performed by a licensed electrician.
 - c. **Temporary Heating During Construction:** The Contractor must provide temporary closures or enclosures for all exterior door, window, roof or other types of exterior openings as required to provide protection from the elements during construction. It is the Contractor's responsibility to keep water in pipes from freezing and to maintain temporary heat in areas where Work is being performed at not less than 50° F before plastering and painting and not less than 60° F thereafter. The Heating period must be from approximately October 1 to May 30 unless conditions warrant otherwise. The Contractor must furnish, install, operate and maintain all required temporary heating equipment, and must provide and pay all fuel costs.
3. **Temporary Construction Facilities:** Unless otherwise specified, the following temporary construction facilities must be provided and maintained by the Contractor throughout the construction period and removed at the completion of the Work:

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- a. Field Offices. Unless otherwise specified in the Detailed Specifications, the Contractor must provide a temporary building or mobile type field office of such size and containing such equipment as the Contractor deems necessary to conduct the operations. The field office must be provided with a telephone for Contractor's superintendent during the entire period of construction. The telephone must be removed promptly upon Final Completion and Acceptance of the Work.
 - b. Toilets: The Contractor must provide at least one portable chemical toilet for every 20 workers or fraction thereof at the Work site as soon as construction operations commence. Toilet facilities must be serviced twice weekly which includes draining tank and refilling and disinfecting the interior of each toilet unit, and keeping each unit stocked with toilet paper. Toilet facilities must be maintained during the term of the construction period and removed upon completion of the Work.
 - c. Stove heaters in temporary offices and sheds will be properly installed to protect combustible walls, floors and roof.
 - d. Storage of Materials: If it is necessary to store materials, they will be protected in such a manner as to insure the preservation of their quality and fitness for the work. All stored materials will be inspected at the time of use in the Work even though they may have been inspected and approved before being placed in storage. The Contractor may store materials in the areas provided as working areas by the Contract Documents. If no areas are provided, or if the areas provided are insufficient, the space required will be provided by the Contractor at its expense. Upon completion of the Work, storage sites and working areas will be cleaned and restored to their original condition by the Contractor at its expense.

All materials and equipment will be received at the Work undamaged. SCC will have the right to reject any method of packing and shipping which, in SCC's opinion, will not adequately protect the materials and equipment against damage while they are in transit or storage or which will damage existing structures.
 - e. Storage Sheds: The Contractor and each Subcontractor shall provide suitable watertight storage sheds for their own use as needed. The Contractor and each subcontractor shall be responsible and pay for any electric services to their storage shed. However, such electrical Work will be performed by an electrical Subcontractor. The Contractor shall be responsible for materials stored in the open; they shall be arranged in an orderly manner and properly protected against the elements and damage.
4. Working Space: The Contractor must provide working space for its own use and for each of its Subcontractors. It must provide sufficient space for benches, tools, material storage and for such other purposes as may be required to properly perform and expedite the Work. Allocation of such Work areas is subject to approval by SCC. The Contractor must maintain all Work areas in a clean and orderly condition and take whatever precautions may be necessary adjacent to the new Work. Any damage to Work site due to improper protection must be cleaned, repaired or replaced by the Contractor at no additional cost to SCC
 5. Equipment and False work: The Contractor must determine the methods to be employed, the procedures to be followed, the equipment, plant, false work, shoring, bracing, and other temporary structures and equipment to be used on the Work, subject to the requirements of the Contract Documents. Only adequate and safe procedures, methods, structures, and equipment must be used. The Contractor must furnish, maintain, and be solely responsible for all equipment such as temporary ladders, ramps, runways, hoists, scaffolding, and similar

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items required for proper execution of Work. All such apparatus, equipment and construction must meet the requirements of Federal, State and Local Laws concerning the safety and protection of employees. No hoist, scaffolding or other equipment shall be erected at such location as will interfere with general construction or progress of other trades. Hoists, scaffolding or other equipment must be located at sufficient distance from exterior walls to prevent staining or marring of any permanent Work. All suspended scaffolding and staging must be lowered to ground level at the end of each work day.

6. Project Sign: This section is deleted.

J. Reports and Plans

1. Daily Progress Reports: The Contractor and all Subcontractors must prepare and submit to SCC daily progress reports on the various parts of the Work. The report must include the number of workers and the classification of the trades involved, equipment used and any pertinent information regarding possible delays in the Work.
2. Procedures, Methods and Equipment: The Contractor must determine the methods to be employed, the procedure to be followed, the equipment, plant, false work, shoring, bracing and other temporary structures and equipment to be used on the Work, subject to the requirements of the Contract Documents. Only adequate and safe procedures, methods, structures and equipment must be used. Any approval, constructive or otherwise, by SCC of such methods, procedures and equipment in no way relieves the Contractor of any of its obligations hereunder.

XVII. STANDARD SPECIFICATIONS

A. General

“Standard Specifications” designated as component part of the Contract Documents means the Standard Specifications for Road and Bridge Construction issued by the Department of Transportation of the State of Illinois, dated January 1, 2002, together with all additions and revisions thereto issued by said Department of Transportation as of the date of the advertisement of bids for this Contract.

B. Concreting in Freezing Weather

The Contractor shall provide protection of Portland Cement Concrete from cold weather in accordance with Articles 1020.13(c) and/or 1020.13(e) of the Standard Specifications. The cost of all protection of the concrete from cold weather as may be required and as specified in the aforesaid specifications must be included in the contract Unit Prices.

C. Protection of Railroad Traffic and Property Due to the Contractor's Construction Operations

The following supplements, the Standard Specifications, and any Supplemental Specifications in effect; and in case of conflict with any part of parts of said Standard or Supplemental Specifications, this supplement takes precedence and governs. Add the following to Article 107.12., "Protection of Railroad Traffic and Property":

Whenever such Work, in the opinion of the Railroad Engineer, or his duly constituted and authorized representative, may affect the safety of trains and the continuity of the Railroad's operations, the method of doing such Work shall first be submitted to the

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Railroad Engineer for approval, which shall not be unreasonably withheld or delayed, and without which the Work shall not be commenced or prosecuted.

The approval of the Railroad Engineer shall not be considered as a release from responsibility or liability for any damage which the Railroad may suffer, or for which it may be held liable by the acts of the Contractor, his Subcontractors, or his or their employees.

The Contractor is cautioned that when Contractor is working over and/or near railroad property, Contractor must provide adequate protection to safeguard the railroad property. The Contractor shall also notify all railroad companies affected by the construction 10 days prior to starting any work that involves working on or over railroad property and shall receive permission from said companies before entering onto railroad property.

XVIII. ENVIRONMENTAL REQUIREMENTS

A. Compliance with Environmental Laws

1. The Contractor must comply with all Environmental Laws including, without limitation, those listed in the Disclosure Affidavit which must be executed and notarized by Contractor, and any analogous future local, state or federal ordinance or statute, rule and regulation promulgated under or pursuant to the foregoing, and any other present or future law, ordinance, rule, regulation, permit or permit condition, order, or directive which regulates, relates to, imposes liability for or establishes standards of conduct concerning any Hazardous Materials that may be set forth by the Federal government, any state or any political subdivision thereof, or any agency, court or body of the Federal government, any state or any political subdivision thereof exercising executive, legislative, judicial, regulatory or administrative functions.
2. If the Contractor is required pursuant to any Environmental Laws to file any notice or report of a release or threatened release of Hazardous Materials or Special Wastes on, under, or about any premises used by Contractor to perform the Work required hereunder, the Contractor must provide a copy of such report or notice to SCC. In the event of a release or threatened release of Hazardous Materials or special waste into the environment, or in the event of any claim, demand, action or notice is made against the Contractor regarding the Contractor's failure or alleged failure to comply with any Environmental Law, the Contractor must notify the SCC and the City of Chicago pursuant to Section XVIII.C., "Disposal of Waste Materials, Construction Debris, Soils and Waste," herein below.
3. If the Contractor fails to comply with any Environmental Law, SCC may terminate this Contract in accordance with the default provisions of this contract and may adversely affect Contractor's eligibility for future contract awards.

B. Environmental Permits

1. The Contractor must show evidence of, and keep current throughout the term of this Contract, all waste hauling, special waste hauling, disposal permits, insurance certificates, and any other permits, registrations, authorizations, or notifications required by Federal, State, City or other local governmental body or agency pursuant to any Environmental Law.
2. When requested by SCC, the Contractor must submit copies of all hauling permits required by any Environmental Law. Copies of all permits and insurance certificates that require periodic renewal must be forwarded to SCC throughout the duration of this Contract.

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Noncompliance with this requirement may be cause for rejection of the bid and/or termination of this Contract.

3. Environmental Records and Reports: The Contractor is required to prepare and maintain proper, accurate and complete records of accounts of all transactions related to the performance of this Contract, including, but not limited to the following:
 - a. Vehicle maintenance records;
 - b. Safety and accident reports;
 - c. IEPA or OSHA manifests;
 - d. Disposal records, including disposal site used, date, truck number and disposal weight; and
 - e. Permit documentation and all other documentation and transactions pertaining to all Environmental Laws.

C. Disposal of Materials, Construction Debris, Soil and Waste

1. The Contractor is responsible for the proper disposal of all materials, construction debris soil and other waste. Hauling and disposal by a Subcontractor does not relieve the Contractor from responsibility for proper disposal. Disposal of all materials, construction debris, soil, and other wastes must be at a disposal site that is properly licensed and permitted to accept the particular materials, construction debris, soil and other wastes delivered to it in accordance with all Environmental Laws. The Contractor shall identify the disposal site(s) or transfer station(s) to which it has contractual access and for which proper, sanitary landfill permits and/or licenses have been obtained.
2. The Contractor must provide SCC or his/her designated representative with copies of all load tickets, manifests, bills of lading, scale tickets and other pertinent documents. When requested by the SCC, the Contractor shall provide copies of all permits and/or licenses for the proposed transfer station and/or landfill. In the event that the transfer station and/or landfill proposed for use by the Contractor does not possess the necessary permits and/or licenses to accept the materials, construction debris, soil or other wastes, the Contractor will replace the transfer station and/or landfill submitted as part of their bid proposal at no additional cost to SCC. If the Contractor disposes of materials, construction debris, soil or other wastes at a site which is not properly permitted, the Contractor will be responsible for all liabilities or costs incurred in connection with such disposal, including but not limited to costs associated with the removal of the waste to a properly licensed/permitted landfill or disposal site.
3. The Contractor must notify SCC, within 24 hours, of receipt of any environmental complaints, fines, citations, violations or notices of violation ("Claim") by any governmental body or regulatory agency against the Contractor by any third party relating to the loading, hauling or disposal of materials, construction debris, soil or other wastes. The Contractor will provide evidence to SCC that any such Claim has been addressed to the satisfaction of the issuer or initiator of such Claim.
4. The Contractor must notify SCC of any community meetings, media involvement or media coverage related to the loading, hauling or disposal of materials, construction debris, soil and other wastes under this Contract in which the Contractor is asked to participate.

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5. The Contractor must verify, in writing, whenever requested by SCC, that all materials, construction debris, and other waste accepted by the Contractor, from the City of Chicago, has been disposed of in compliance with all Environmental Laws.
6. The form for identifying the Contractor's debris disposal/handling site(s) and acknowledging terms and conditions relating thereto which have been executed by the Contractor and attached to this Contract are hereby incorporated by reference (the "Form"). In addition to the representations and requirements contained in the Form, the Contractor understands and agrees that the Contractor, unless otherwise authorized in writing by SCC, must not continue to use a disposal/handling site identified in the Form that (i) has been cited as being in violation of or subject to any remedial action under any environmental law or regulation or of any City ordinance; or (ii) does not have a necessary permit. If only one site was identified in the Form, the Contractor must arrange for a substitute disposal/handling site which meets the requirements specified in the Form and provide a revised Form to the Commissioner of Environment. The Contractor further understands and agrees that any such substitution is at no additional cost to SCC, regardless of the reason necessitating such substitution.

D. Equipment and Environmental Control During Transport

The Contractor must haul materials, construction debris, soil and other wastes in vehicles and/or containers complying with all applicable Environmental Laws. All equipment used to transfer materials, construction debris, soil and other wastes shall be designed to prevent spillage during the hauling operation. The Contractor's equipment must fully comply with all City, State and Federal Regulations, laws and ordinances pertaining to size, load weight, safety and any Environmental Law.

E. Environmental Control

In performing the Work, the Contractor shall become thoroughly familiar with all Federal, State, and local statutes, ordinances, and directives with respect to the elimination of excessive noise and pollution of air, water, and soil due to construction and other operations. Attention shall be given to reduce the noise of heavy construction equipment and to the control of dust, smoke, and fumes from construction equipment and other operations on the Work site, and the dirt and noise created by heavy truck operations over City streets in accordance with ordinances of the City of Chicago and orders of the SCC. The discharge of Hazardous Materials into waterways and City sewers will not be permitted.

F. Open Dumping Prohibited

The removal of all recyclable material and garbage, refuse or other waste material, including but not limited to broken concrete, bricks, rock, paving asphalt and incidental debris generated from all construction or demolition activities performed under this Contract, must be transported to a facility that is zoned and permitted to accept such material pursuant to Section 11-4 of the City of Chicago Municipal Code and all applicable local, state, and federal regulations.

Bills of Lading, manifests, or other confirmatory receipts signed by a representative of accepting facility for each load of material must be retained by the Contractor and made available to SCC upon request.

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XIX. INSURANCE, INDEMNITY AND BONDS

A. Indemnity

1. The Contractor must protect, defend, indemnify, and hold SCC and the City of Chicago, its officers, officials, representatives, and employees (collectively the "Indemnitees"), harmless from and against any and all claims, damages, demands, injury or death, in consequence of granting this Contract or arising out of or being in any way connected with the Contractor's performance under this Contract except for matters shown by final judgment to have been caused by or attributable to the negligence of Indemnitees. This indemnification obligation is effective to the maximum extent permitted by applicable law. This indemnity extends to all legal costs, including attorney fees, costs, liens, judgments, settlements, penalties, professional fees, and other expenses incurred by SCC, including fines and penalties imposed by public bodies, and the reasonable settlement of such claims. This indemnification obligation is not limited by any amount of insurance required under this Contract. Further, the indemnification obligation contained in this section will survive the expiration or termination of this Contract. To the extent permissible by law, the Contractor waives any limits on the Contractor's liability that it would otherwise have by virtue of the Worker's Compensation Act or any other related law or judicial decision (such as *Kotecki v. Cyclops Welding Corporation*, 146 Ill. 2d 155 (1991)). The City of Chicago, however, does not waive any limitations it may have on its liability under the Worker's Compensation Act, the Illinois Pension Code or any other statute.
2. In addition, the Contractor waives the right to receive the benefits of or to invoke the protection afforded by any and all maritime statutory limitations of liability, including the Limitation of Vessel Owner's Liability Act, 48 U.S.C. § 183 et seq., that could act to diminish the liability of the Contractor for any harm or damage arising from Contractor's performance of its obligations under the Contract in any manner or for any and all claims or other costs arising from or occasioned by its operations on any waterways, including Lake Michigan and the Chicago River. This provision is not intended to avoid or waive federal jurisdiction under the applicable admiralty laws. This waiver extends only to the Indemnities, and not to third parties seeking recovery for claims solely against the Contractor.
3. Without limiting its waiver, the Contractor specifically consents to pay any and all sums in respect of any claims against the Indemnities and other costs suffered by the Indemnities arising from or occasioned by Contractor's operations in or on waterways, including the following:
 - a. Loss or damage to any other ship, vessel or boat caused proximately or otherwise by the Contractor's vessel, or loss of the cargo or the other ship, vessel or boat;
 - b. Loss of life or personal injury, or for any cost of life salvage;
 - c. Loss or damage to any harbor, dock, building, graving or otherwise, slipway, pontoon, pier, quay, tunnel, jetty, stage, buoy, cables of any kind, or other fixed or movable object or property whatsoever;
 - d. The cost of the removal, raising or destruction of the wreck of any vessel employed by the Contractor in performing its obligations under the Contract;
 - e. If a vessel is disabled or otherwise, the cost of towage or other salvage of any vessel employed by the Contractor in performing its obligations under the Contract;
 - f. Loss or damage to the bottom, banks, or shoreline of the waterway.

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4. The Contractor will be solely responsible for the defense of any and all claims, demands, or suits against Indemnities, including claims by employees, subcontractors, agents, or servants of Contractor even though the claimant may allege that the Indemnities were in charge of the Work or alleged negligence on the part of Indemnities. SCC and the City of Chicago will have the right, at its sole option, to participate in the defense of any such suit, without relieving the Contractor of its obligations under this section.
5. "Injury" or "damage" as these words are used in this section will be construed to include injury or damage consequent upon the failure of or use or misuse by Contractor, its subcontractors, agents, servants, or employees, of any scaffolding, hoist cranes, stays, ladders, supports, rigging, blocking or any and all other kinds of items of equipment, whether or not they are owned, furnished, or loaned by the Indemnities.
6. The Contractor will promptly provide, or cause to be provided, to SCC copies of all notices that Contractor may receive of any claims, actions, or suits that may be given or filed in connection with the Contractor's performance or the performance of any Subcontractor and for which the Indemnities are entitled to indemnification under this contract and to give the Indemnities authority, information and assistance for the defense of any claim or action.

B. Performance and Payment Bonds

1. The Contractor will, before award of the Contract, deliver to SCC a Performance and Payment bond in the amount set forth in the Detailed Specifications. Any performance bond provided by the Contractor must comply with the provisions of 30 ILCS 550/1 et.seq., as amended, and of Chapter 2, Section 2-92-030 of the Municipal Code of Chicago, as amended and is in such form as the performance bond form included in the Detailed Specifications. The surety or sureties issuing the bond must be acceptable to SCC and the bond must be in the form provided by SCC. The surety for the bond must have a Best's Key Rating Guide of "B+," Class XI or greater. The bond shall cover the warranty period required by the Contract.

In case of neglect, failure, or refusal of Contractor to provide satisfactory sureties when so directed within seven (7) days after such notification, SCC may declare this Contract forfeited, but such forfeiture shall not release Contractor or its surety or sureties from any liability which may have accrued prior to the date of such forfeiture.

If at any time the surety or sureties, or any one of them, upon such bond become insolvent, or are, in the sole opinion of SCC, unsatisfactory, or unable to respond to damages in case of liability on such bond, SCC will notify the Contractor and direct that a bond issued by a satisfactory surety or sureties be provided forthwith.

2. Surety for Performance Bond: The Performance Bond required by the Contract shall be secured by a Guarantee or surety company listed in the latest issue of U.S. Treasury Circular 570.

C. Insurance

The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located insurance for protection from claims under workers' compensation acts and other employee benefit acts which are applicable, claims for damages because of bodily injury, including death, and claims for damages, other than to the Work itself, to property which may arise out of or result from the Contractor's operations under the Contract, whether such operations be by

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the Contractor or by a Subcontractor or anyone directly or indirectly employed by any of them. This insurance shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater, and shall include contractual liability insurance applicable to the Contractor's obligations. Certificates of Insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. Each policy shall contain a provision that the policy will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner.

THE FOLLOWING ARE THE MINIMUM AMOUNTS OF CONTRACTORS INSURANCE:

| <i>Type of Insurance</i> | <i>Limits of Liability</i> |
|---|--|
| General Liability: Comprehensive Form Premises – Operations Products/Completed Operations Hazard Contractual Insurance | Bodily Injury and Property Damage Combined: \$1,000,000 each occurrence |
| Broad Form Property Damage Independent Contractors | Personal Injury: \$1,000,000 aggregate |
| Personal Injury Explosion and Collapse Hazard Underground Hazard | |
| All Risk Builder's Risk | Full Contract Price |
| Automobile Liability Comprehensive Form Owned Hired Non-Owned | Bodily Injury and Property Damage Combined: \$1,000,000 each occurrence |
| Excess Liability: Umbrella Form | Bodily Injury and Property Damage Combined: \$5,000,000 each occurrence \$5,000,000 aggregate |
| Employer's Liability and Worker's Compensation | \$1,000,000 each occurrence Statutory Minimum Amount |

The insurance required above (except for automobile liability and worker's compensation insurance policies) shall be endorsed to name as additional insureds **Skyway Concession Co. LLC, and the City of Chicago**, and any mortgagee or construction lender identified in writing to Contractor (collectively, the "Additional Insureds"). Wherever used, the term "Additional Insureds" shall be deemed to include the officers, employees and representative of all of the Additional Insureds. All issuing underwriters shall have rating of A:VII or better in

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the latest edition of Best's Key Rating Guide or comparable ratings reasonably acceptable to the Owner.

Certificates of Insurance, copies of policies, and all applicable endorsements for the above-described insurance shall be furnished to the Construction Manager for transmittal to the Owner before the commencement of any Work. All insurance policies required hereunder shall be endorsed to provide that (i) the insurance carrier will give written notice to the Owner at least thirty (30) days prior to any material change in or cancellation or non-renewal of the policies, and (ii) the named insured shall not cancel the insurance or amend the policy to reduce the coverage required. All insurance shall be endorsed as primary and not contributory with respect to other insurance. All liability insurance policies shall be endorsed to include contractual liability.

Additionally, the Contractor must procure and maintain at all times, at Contractor's own expense, through the completion of the warranty period, the types of insurance specified in the Detailed Specifications of the Contract Documents, with insurance companies authorized to do business in the State of Illinois, covering all operations under this Contract, whether performed by the Contractor or by Subcontractors. Upon written request by SCC, the Contractor must allow SCC to review and copy any original insurance policies the Contractor is obligated to maintain under this policy.

The Contractor hereby waives any and every claim or right of recovery from SCC and the City of Chicago for any and all injuries and losses arising under this Contract or in any way related to the Work, including but not limited to any claim for loss of or damage to the Work or to the contents thereof, which injury, loss or damage is covered by valid and collectible insurance policies, to the extent that such injury, loss or damage is recoverable under said insurance policies. As this waiver will preclude the assignment of any claim by subrogation (or otherwise) to an insurance company (or any other person), the Contractor agrees to give each insurance company which has issued, or in the future may issue, its policies of insurance, written notice of the terms of this waiver, and to have said insurance policies properly endorsed, if necessary, to prevent the invalidation of insurance coverage by reason of said waiver. The Contractor must require each Subcontractor to include similar waivers of subrogation in favor of SCC and the City of Chicago.

SCC reserves the right to change, modify or delete insurance requirements set forth in the Contract Documents, including, without limitation, the right to request that the Contractor provide additional types of insurance.

XX. CLAIMS AND DISPUTES

A. Claims

1. This provision of the Contract applies to claims for time and/or money based on changes under Article XIV., "Changes in the Work," and all other claims made under this Contract.
2. Any claim made by the Contractor regarding the Project must be made in accordance with the requirements stated below:
 - a. If the Contractor and SCC are unable to agree in connection with a claim, the Contractor must, no later than 15 days after completing the claim related work, provide written notice to SCC of the contractual and factual basis for the claim. The Contractor must designate the document, Notice of Claim."

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- b. SCC must, within 30 days from receipt of the Notice of Claim, respond by requesting a meeting with the Contractor, making a written request for additional information from the Contractor including but not limited to a general statement of the basis for the claim; the facts underlying the claim; the notice to SCC of the event that gave rise to the claim; reference to the applicable Contract provisions; and all documentation that describes, relates to and supports the claim; taking other action to attempt to resolve the Notice of Claim; and/or advising the Contractor in writing that it should file a claim. Any steps taken by SCC to resolve the Notice of Claim shall not exceed 60 days from receipt of the Notice of Claim unless the Contractor agrees to additional amount of time in writing.
- c. If the notice of Claim cannot be resolved within the time frame stated in Section XIV.F., "Change Claims and Disputes," for a Notice of Claim, the Contractor must file its claim within 10 days of being advised to do so by SCC.
- d. The claim must include a general statement of the basis for the claim, the facts underlying the claim, the notice to SCC of the event that gave rise to the claim, reference to the applicable Contract provisions, and all documentation that describes relates to and supports the claim.
- e. SCC has 15 days from receipt of the claim to render a written "Final Decision" stating SCC's factual and contractual basis for the decision.
- f. After receiving the SCC's Final Decision, the Contractor must accept the final decision or file a Dispute with the SCC within 30 days in accordance with Section XX.B., "Disputes."
- g. The Contractor's failure to file a Dispute with SCC within 30 days will constitute a waiver of the claim and dispute.
- h. The Contractor's failure to make a claim and/or dispute SCC's Final Decision will constitute a waiver of the right to make a claim or file a dispute. In the event of the Contractor's waiver, SCC may file a Dispute, pursuant to Section XX.B., "Disputes," with SCC seeking a final decision as to the adjustment for the changed work.

B. Disputes

All disputes between the parties with respect to the subject matter of this Agreement shall be subject to mediation in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association. Should any dispute not be resolved by mediation, either party may file a lawsuit in the Federal and State courts sitting in Cook County, Illinois, which shall be the exclusive forums for resolving all disputes. Except in the case of an emergency involving an equitable remedy or except to prevent a claim from being barred by the statute of limitations, the completion of mediation shall be a prerequisite to filing a lawsuit. Contractor will not withhold performance of any Services required under this Agreement during the pendency of any dispute. Provided that Contractor continues performing its Services, SCC will continue to make payments to the Contractor as provided in XIII. SCC's written determination will be complied with pending final resolution of the dispute. Neither SCC's determination, nor the Contractor's response in connectin therewith, nor the continued performance by either party, will constitute an admission as to any factual and/or legal position in connection with the dispute, or a waiver of rights under this agreement, by, statute, in equity, or at law. The prevailing party in any litigation shall be entitled to recover its reasonable attorneys' fees, court costs and litigation expenses from the non-prevailing party.

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XXI. EVENTS OF DEFAULT AND TERMINATION

A. Owner's Rights

1. SCC may, at its sole discretion, exercise the right to send the Contractor notice under paragraphs C.1. or C.2. of this Section. Whether to declare the Contractor in default is within the sole discretion of SCC and neither that decision nor the factual basis for it is subject to review or challenge under Article XX., "Claims and Disputes."
2. In the event of termination of the Contract by SCC under paragraphs C.1. or C.2. of this Section, SCC may use the material and equipment, whether owned or leased, which is within the scope of the Work or necessary for completion of the Work paid for by SCC (whether located on or off the Work site), to complete the Work and the Contractor shall receive no further payment until the Work is completed. However, if the cost of completion exceeds the unpaid balance of the Contract, the Contractor must pay the difference to SCC immediately upon demand.

B. Events of Default

The Contractor's failure to perform any of its obligations under the Contract, including but not limited to the following, are events of default:

1. Failure to begin the Work at the time specified;
2. Failure to perform the Work with sufficient workers and equipment or with sufficient materials to insure the completion of Work or any part of the Work within the time specified by the Contract.
3. Failure to perform the Work in accordance with the Contract Documents;
4. Failure to promptly remove materials, repair, or replace Work that was rejected as defective or unsuitable;
5. Unauthorized discontinuation of the Work;
6. Insolvency, bankruptcy or assignment for the benefit of creditors that negatively impacts Contractor's ability to pay Subcontractors or perform the Work;
7. Failure to pay Subcontractors or material suppliers;
8. Failure to carry on the Work in a manner acceptable to the Commissioner;
9. Failure to observe federal, state, or local laws or regulations governing safety and security requirements, including all environmental requirements;
10. Failure to comply with any other term of this Contract that states an event of default or failure to comply with any term of this Contract in any material respect; and
11. Failure to identify disposal site(s) for materials, construction debris, soil and other wastes or to submit such information when requested by the Chief Procurement Officer

C. Remedies

In the event of default, SCC, at his or her sole discretion, may send the Contractor notice of its intent to exercise remedies pursuant to the following:

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1. Termination: SCC may terminate the Contract. Written notification of the default and termination of the Contract will be provided to the Contractor and the bond company by SCC. The SCC's decision and declaration of termination is final and effective.
2. Opportunity to Cure: SCC may provide the Contractor the opportunity to cure the default. The Contractor must cure the default within 10 days of receipt of the notice from SCC. If SCC determines that the Contractor has not cured the default within the 10-day cure period, SCC may at any time thereafter terminate the Contract, in which event the termination of the Contract is final and effective.
3. In addition to the foregoing, upon an event of default as defined in Section XXI.B., "Events of Default," SCC may invoke any or all of the following remedies:
 - a. The right of set-off against any payments due or to become due to the Contractor and against any retention;
 - b. The right to take over and complete the Work, or any part thereof, either directly or through others. SCC may use the Contractor's Subcontractors, materials and equipment to complete the Work. Upon SCC's notification to the Contractor invoking this remedy, any and all rights the Contractor may have in or under its subcontracts are assigned to SCC at SCC's discretion. The sole obligation accepted by SCC under such subcontracts is to pay for Work satisfactorily performed after the date of the assignment. In the event a conditional assignment has not been executed, the Contractor must execute, or cause to be executed, any assignment, agreement, or other document which may be necessary, in the sole opinion of SCC, to evidence or effect compliance with this provision. The Contractor must promptly deliver such documents upon SCC's request. In the case of any subcontract so assigned and accepted by SCC, the Contractor remains liable to the Subcontractors for any payment already invoiced to and paid by SCC, and for any claim, suit, or cause of action based on or resulting from any error, omission, negligence, fraud, willful or intentionally tortuous conduct, or any other act or omission or breach of Contract, by the Contractor, its officers, employees, agents, and other Subcontractors, arising prior to the date of assignment to SCC, when such claim, suit, or cause of action has not been discharged, disposed of, or otherwise resolved as of that date. The Contractor must notify its Subcontractors of these requirements;
 - c. In the event of termination, all costs and changes incurred by SCC, together with the cost of completing the Work, are deducted from any moneys due or which may become due to the Contractor. When the expense incurred by SCC exceeds the sum which would have been payable under the Contract, the Contractor and the surety are liable and shall pay to SCC the amount of such excess;
 - d. The right to terminate the Contract as to any or all of the Work yet to be performed;
 - e. The right of specific performance, an injunction, or any other appropriate equitable remedy, as may be applicable;
 - f. The right of money damages, including but not limited to all expert witness or other consultant fees, court costs, and attorneys' fees which SCC may incur in connection with any claim, suit, or action based upon, related to, or arising from, directly or indirectly, an event of default hereunder
 - g. The right to withhold all or any part of the Contractor's compensation to be awarded by the City;

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- h. The right to terminate any or all of any other contracts that Contractor may have with SCC; and
- i. The right to deem the Contractor non-responsible in future contracts to be awarded by SCC.

D. Nonexclusivity of Remedies

The remedies under the terms of this Contract are not intended to be exclusive of any other remedies provided, but each and every such remedy is cumulative and is in addition to any other remedies, existing now or hereafter, at law, or in equity. No delay or omission to exercise any right or power accruing upon any event of default impairs any such right or power, nor construes it as a waiver of any event of default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient.

E. Adjudication of Termination

In the event the Contract is terminated by SCC for cause, and it is subsequently determined by a court of competent jurisdiction that such termination, an early termination, was without cause, such termination shall thereupon be deemed under Section XXI.F., “Early Termination,” and the provisions of Section XXI.F., “Early Termination,” apply.

F. Early Termination

- 1. SCC may terminate the Work of the Contractor by written notice stating the effective date of such termination. Immediately upon receipt of such notice, the Contractor must provide similar written notice to the affected Subcontractor(s), whereupon such Contractor and Subcontractor(s) must, except for services necessary for the orderly termination of the Work (i) stop all Work and place no further order or subcontracts for materials, services, equipment or supplies; (ii) assign to SCC, in the manner and to the extent directed, all of the rights of the Contractor under Work orders, purchase orders and subcontracts relating to the portion of the Work that has been completed; (iii) terminate Work orders, purchase orders and subcontracts outstanding to the extent that they relate to the Work and are not assigned to SCC; (iv) take any action necessary to protect property in the Contractor's possession in which SCC has or may acquire an interest; and (v) take any other action toward termination of the Work which SCC may direct.
- 2. In the event that all or a portion of the Work of the Contractor is terminated pursuant to this Section XXI.F., “Early Termination,” the Contractor is entitled to payment of those costs relating to the completed portion of the Work. SCC will pay to the Contractor, subject to the limitations set forth in this Contract, the sum of the following costs:
 - a. Portion of the Contract total related to the Work completed by the Contractor immediately prior to notice of termination less the payments for progress or changes previously made;
 - b. Expenses incurred for which the Contractor is liable as the result of termination by Contractor of respective Work orders, purchase orders or subcontracts related to the notice of termination;
 - c. No payment will be made for Work not actually performed. Deductions will be made by SCC for any amounts previously paid to the Contractor and for any amounts which may be due SCC, or which SCC may offset or withhold by the terms hereof; and

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- d. The total amount of all payments to the Contractor shall not, in any event, exceed the proportion that the Work actually performed (including materials delivered to the Project site minus credits for returned goods or canceled orders) at the date of termination bears to the entire Work to be performed hereunder. Any payment to Contractor under this subparagraph shall be made in accordance with the provisions of Article XIII., "Payments."
3. After receipt of a notice of termination pursuant to this Section XXI.F., "Early Terminations," Contractor shall submit to the Commissioner its final invoice in the form, with supporting documentation. The Commissioner may require certified payrolls, receipts and other proof of expenditures. The final invoice must be submitted promptly, but in no event more than 60 days after the effective date of termination. Failure to submit the final invoice within 60 days after the effective date of termination constitutes a waiver of the final invoice.

XXII. COMPLIANCE WITH ALL LAWS

A. Contractor Must Comply with All Laws

The Contractor must at all times observe and comply, and must cause its Subcontractors to observe and comply with all applicable Federal, State and local laws, ordinances, codes, rules, regulations, and executive orders, now existing or hereinafter in effect, which may in any manner affect the performance of the Contract. Provision(s) required by law ordinance, codes, rules, regulations, or executive orders to be inserted in this Contract is deemed inserted, whether or not they appear in this Contract, or upon application by either party, this Contract 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 Contract. In performing the Work, the Contractor must follow the most stringent of the applicable agency and code requirements. The contractor is fully responsible for ascertaining and complying with all agency and code requirements applicable to the Work.

B. Provisions Relating to Liens

1. The Contractor will notify its 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 Project, or any part thereof or any interest therein, or any improvements thereon, or against any monies due or to become due to the Contractor on account of any work, labor, services, materials, equipment, or other items performed or furnished for or in connection with the Project; and the Contractor, for itself and its 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 wavier of the rights to file or maintain such liens will be an independent covenant.
2. If any of the Contractor's 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 Subcontractors on account of any Work, labor, services, materials, equipment, or other items performed or furnished for or in connection with the Project, the Contractor agrees to cause such liens and claims to be satisfied, removed, or discharged within 30 days from the date of filing, provided that SCC may extend the 30-day period if (i) SCC determines that such lien claim cannot be so

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satisfied, removed, or discharged in such period and (ii) the Contractor, in SCC's sole determination, is proceeding diligently to cause such liens or claims to be satisfied, removed or discharged. SCC has the right, in addition to all other rights and remedies provided under this Contract or by law, to cause such liens or claims to be satisfied, removed, or discharged by any means at the Contractor's sole cost, such cost to include reasonable legal fees.

C. Non-Discrimination

1. **General Requirements:** It is an unlawful employment practice for the Contractor 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.

The Contractor must comply with The Civil Rights Act of 1964, 42, U.S.C. Sec. 2000 et seq., (1981), as amended. The Contractor shall further comply with Executive Order No. 11,246, 30 Fed. Reg. 12,319 (1965), reprinted in 42 U.S.C. 2000(e) note, as amended by Executive Order No. 11,375 32 Fed. Reg. 14,303 (1967) and by Executive Order No. 12,086, 43 Fed. Reg. 46,501 (1978); the Age Discrimination Act, 43 U.S.C. Sec. 6101-6106 (1981); 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.

2. **State Requirement:** The Contractor 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 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.).
3. **City Requirements.** The Contractor 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, the Contractor must furnish such reports and information as requested by the Chicago Commission of Human Relations.
4. **Subcontractors:** The Contractor agrees that all of the above provisions will be incorporated in all agreements entered into with any suppliers of materials, providers of services, subcontractors of any tier, and labor organizations which furnish skilled, unskilled and craft union skilled labor, or which may provide any such materials, labor or services in connection with this Contract.

D. Conflict of Interest

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

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The Contractor covenants that its officers, directors and employees, and the officers, directors and employees of each of its members if a joint venture, and subcontractors, presently have no interest and will acquire no interest, direct or indirect, in the Project which would conflict in any manner or degree with the performance of the Work hereunder. The Contractor further covenants that in the performance of this Contract, no person having any such interest must be employed. The Contractor agrees that if SCC in its reasonable judgment determines that any of Contractor's work for others conflicts with the Work, the Contractor must terminate such other services immediately upon request of SCC.

Furthermore, if any federal funds are to be used to compensate or reimburse the Contractor under this Contract, the Contractor represents that it is and will remain in compliance with federal restrictions. It represents further that it is and will remain in compliance with federal restrictions on lobbying set forth in Section 319 of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1990, 31 U.S.C.S. 1352, and related rules and regulations set forth at 54 Fed. Reg. 52,309 ff. (1989), as amended. If federal funds are to be used, the Contractor shall execute a Certification Regarding Lobbying, which is contained in the Disclosure Affidavit, and is attached hereto as an exhibit and incorporated by reference as if fully set forth herein.

E. Relationships with Elected Officials

1. Pursuant to Section 2-156-030(b) of the Municipal Code of the City of Chicago, it is illegal for any elected official of the City of Chicago, 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 contract shall be grounds for termination of this contract.
2. 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:
 - a. 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 or affiliate thereof, regardless of the value of or dividends on such shares, if such shares are registered on a securities exchange pursuant to the Securities Exchange Act of 1934, as amended;
 - b. the authorized compensation paid to an official or employee for his office or employment;
 - c. any economic benefit provided equally to all residents of the City of Chicago;
 - d. a time or demand deposit in a financial institution; or
 - e. an endowment or insurance policy or annuity contract purchased from an insurance company.
3. 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 SCC.

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F. Chapter 2-56 of the Municipal Code of Chicago Office of Inspector General

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

G. Governmental Ethics Ordinance

The Contractor 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 there with, as an inducement for the award of a subcontract or order.

H. Disclosure Affidavit and Disclosure of Retained Persons

The Contractor is required to submit a fully executed Disclosure Affidavit and a Disclosure of Retained Parties, on the form in the Proposal and Acceptance provisions in Detailed Specifications. These documents must be signed by an authorized officer of the company before a notary and such documents are incorporated by reference to this Contract.

I. Americans with Disabilities Act

All construction or alteration undertaken by Contractor in connection with this Contract 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 ("UFAS") or the American with Disabilities Act ("ADA") 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, the Contractor shall comply with the standard providing greater accessibility.

J. Steel Products

To the extent permitted by law, this Contract 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 Contract or any subcontract thereto shall be manufactured or produced in the United States. For purposes of this Section "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 may result in the filing and prosecution of a complaint by the Attorney General of the State of Illinois and will subject violators to a fine of the greater of \$5,000 or the payment price received as a result of such violation.

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K. Chicago Residency Requirements

The Contractor shall comply with the residential preference requirements of Section 2-92-330 of the Municipal Code, as it may be amended from time to time, so long as such requirements are in full force and effect, provided, however, that the total hours worked on the site of the construction project by employees of the Contractor and his subcontractors shall be performed at least 50% by actual residents of the City of Chicago.

In effect, the Contractor shall establish, maintain and implement a written Equal Employment Opportunity and Affirmative Action Plan (the “E.E.O./A.A. Plan”), which will provide for the following goals for employment of women and minorities:

| | |
|-----------------------------|----------------------------|
| <u>Minority Employment:</u> | <u>Women’s Employment:</u> |
| 25% of skilled hours | 7% of skilled hours |
| 40% of laborer hours | 10% of laborer hours |

“Actual residents of the City of Chicago” shall mean persons domiciled with the City of Chicago. The domicile is an individual’s one and only true, fixed and permanent home and principal establishment.

L. MacBride Principles Ordinance

The City of Chicago through the passage of the MacBride Principles Ordinance seeks to promote fair and equal employment opportunities and labor practices for religious minorities in Northern Ireland and provide a better working environment for all citizens in Northern Ireland. 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 Northern Ireland in accordance with the MacBride Principles for Northern Ireland as defined in Illinois Public Act 85-1390 (1988 Ill. Laws 3220).

For those Contractors who take exception in competitive bid contracts to the provision set forth above, SCC shall assess an 8% penalty. This penalty will increase their bid price for the purpose of canvassing the bids in order to determine who is to be the lowest responsible bidder. This penalty will apply only for purposes of comparing bid amounts and will not affect the amount of any contract payment.

M. Chicago Living Wage Ordinance

Section 2-92-610 of the Municipal Code of Chicago requires eligible Contractors and their subcontractors to pay a living wage.

XXIII. MISCELLANEOUS

A. Modifications

No changes, modifications, cancellation, or discharge of this Contract, or any part thereof, is valid unless in writing and signed by the parties hereto, or their respective successors and assigns.

B. No Waiver of Legal Rights

1. SCC will not be precluded or stopped from showing the true amount and character of the Work performed and materials furnished by the Contractor or from showing that any measurement, estimate, or certificate is untrue or incorrectly made, or that the Work or material do not conform in fact to the Contract. SCC will not be precluded or stopped from

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- recovering from the Contractor and its sureties such damages as SCC may sustain by reason of Contractor's failure to comply with the terms of the Contract.
2. Neither the acceptance by SCC, or any representative of SCC, nor any payment for or acceptance of the whole or any part of the Work, nor any extension of time, nor any possession taken by SCC, will operate as a waiver by SCC of any portion of the Contract, or of any power herein reserved or any right of SCC to damages herein provided. A waiver of any breach of the Contract is not held to be a waiver of any other or subsequent breach.
 3. Miscellaneous Provisions: Whenever under this Contract, SCC by a proper authority waives the Contractor's performance in any respect or waives a requirement or condition to either SCC's or the Contractor's performance, the waiver so granted, whether express or implied, only applies to the particular instance and is not deemed a waiver forever or for subsequent instance of the performance, requirement, or condition. No such waiver is construed as a modification of this Contract regardless of the number of times SCC may have waived the performance, requirement, or condition.

C. Governing Law

This Contract is governed in accordance with the laws of the State of Illinois without regard to choice of law principles. The Contractor hereby irrevocably submits, and causes its Subcontractors to submit, to the original jurisdiction of those State or Federal courts located within the County of Cook, State of Illinois, with regard to any controversy arising out of, relating to, or in any way concerning the execution or performance of this Contract. The Contractor agrees that service of process on the Contractor may be made, at the option of SCC, either by registered or certified mail addressed to the applicable office as provided for in this Contract, by registered or certified mail addressed to the office actually maintained by the Contractor, or by personal delivery on any officer, director, or managing or general agent of the Contractor.

D. Consent to Service of Process and Jurisdiction

All judicial proceedings brought against the Contractor with respect to this Contract may be brought in (1) any court of the State of Illinois of competent jurisdiction; and (2) any Federal court of competent jurisdiction having situs within the boundaries of the Federal court district of the Northern District of Illinois, and by execution and delivery of this Contract, the Contractor accepts, for itself and in connection with it properties, generally and unconditionally, the exclusive jurisdiction of the aforesaid courts, and irrevocably agrees to be bound by any final judgment rendered thereby from which no appeal has been taken or is available. The Contractor designates and appoints the representative identified on the signature page hereto under the heading "Designation of Agent for Service Process" as its agent in Chicago, Illinois to receive on its behalf service of all process in any such proceedings in such court (which representative shall be available to receive such service at all times), such service being hereby acknowledged by such representative to effective and binding service in every respect. Said agent may be changed only upon the giving of written notice by the Contractor to SCC of the name and address of a new Agent for Service of Process who works within the geographical boundaries of the City of Chicago and is retained or employed by the Contractor. The Contractor irrevocably waives any objection (including without limitation any objection of the laying of venue or based on the grounds of forum non conveniens) which it may now or hereafter have to bring any action or proceeding with respect to this Contract in the jurisdiction set forth above. Nothing herein will affect the right to serve process in any other manner permitted by law or will limit the right of SCC to bring proceedings against the Contractor in the courts of any other jurisdiction.

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E. Contractor Cooperation

The Contractor must act in good faith in the performance of this Contract and to co-operate with SCC and any other SCC contractors at the site to assure timely completion of the Work. The Contractor must implement such measures as may be necessary to ensure that its staff and its Subcontractors are bound by the provisions of this Contract.

F. Joint and Several Liability

In the event that Contractor, or its successors or assigns, if any, is comprised of more than one individual or other legal entity (or a combination thereof), then and in that event, each and every obligation or undertaking herein stated to be fulfilled or performed by Contractor is the joint and several obligation or undertaking of each such individual or other legal entity.

G. No Third Party Beneficiaries

Except as may otherwise be provided herein, the parties agree that this Contract is solely for the benefit of the parties and nothing herein is intended to create any third party beneficiary rights for Subcontractors or other third parties.

H. Notices

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

1. If to SCC: Skyway Concession Company, 8801 South Anthony Street, Chicago, IL 60617
2. If to the Contractor: The address identified on its Proposal; and
3. With Copies to: The Contractor's bonding company.

Notices delivered by mail are deemed effective three (3) days after mailing in accordance with this Section. Notices delivered personally are deemed effective upon receipt. The addresses stated herein may be revised without need for modification or amendment of this Contract, provided written notification is given in accordance with this Section.

I. Authority

1. Contractor: Execution of this Contract by the Contractor is authorized and signature(s) of each person signing on behalf of the Contractor have been made with complete and full authority to commit the Contractor to all terms and conditions of this Contract, including each and every representation, certification, and warranty contained herein, attached hereto and collectively incorporated by reference herein, or as may be required by the terms and conditions hereof. If other than a sole proprietorship, Contractor must provide satisfactory evidence that the execution of the Contract is authorized in accordance with the business entities rules and procedures.
2. Consents and Approvals: Unless otherwise expressly stated herein, any consents and approvals to be given by the City are made by the Commissioner.

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XXIV. SPECIAL CONDITIONS REGARDING MBE/WBE

A. Policy and Terms

1. It is the policy of the City of Chicago that Local Businesses certified as Minority Business Enterprises (MBE) and Women Business Enterprises (WBE) in accordance with Section 2-92-420 et seq., of the Municipal Code of Chicago and Regulations Governing Certification of Minority and Women-owned Businesses, and all other Regulations promulgated under the aforementioned sections of the Municipal Code shall have the maximum opportunity to participate fully in the performance of this agreement. Therefore, the Contractor shall not discriminate against any person or business on the basis of race, color, national origin, or sex, and shall take affirmative action to ensure that women and minority businesses shall have the maximum opportunity to compete for and perform subcontracts for supplies or services.

SCC/City of Chicago have established a goal of awarding not less than 25% of the annual dollar value of this contract to certified MBEs and 5% of the annual dollar value of all contracts to certified WBEs.

2. Failure to carry out the commitments and policies set forth herein shall constitute a material breach of the contract and may result in the termination of the contract or such remedy as the City of Chicago deems appropriate.
3. For purposes of evaluating bidders' responsiveness, the contract MBE and WBE participation goals shall be percentages of the Total Base Bid by the Contractor. However, the MBE and WBE participation goals shall apply to the total value of this contract, including all amendments and modifications. SCC also has the authority to review each proposed contract modification and amendment that by itself or aggregated with previous modification/amendment requests, increases the contract value by ten percent (10%) of the initial award or \$50,000 whichever is greater for opportunities to increase participation of MBEs or WBEs already involved in the contract.

Note: MBE/WBE participation goals are separate and those businesses certified with the City of Chicago as both a MBE/WBE shall not be credited more than once against a Contractor's MBE or WBE commitment in the performance of the contract.

4. The contract MBE and WBE participation goals may be met by the bidder's status as MBE or WBE, or by joint venture with one or more MBEs and/or WBEs, or by subcontracting a portion of the work to one or more MBEs and/or WBEs, or by purchasing materials used in the performance of the contract from one or more MBEs and/or WBEs or by any combination of the foregoing.

B. Definitions

1. "**Minority Business Enterprise**" or "**MBE**" means a firm awarded certification as a minority owned and controlled business in accordance with City Ordinances and Regulations.
2. "**Women Business Enterprise**" or "**WBE**" means a firm awarded certification as women-owned and controlled business in accordance with City Ordinances and Regulations. (Copies of the Regulations Governing Certification of Minority and Women-owned Businesses are available from the Bid and Bond Room, Department of Procurement Services, City Hall, 3rd Floor, Chicago, Illinois 60602).
3. "**Directory**" means the Directory of Certified "Disadvantaged Business Enterprises" "Minority Business Enterprises" and "Women Business Enterprises" maintained and

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published by the Contract Compliance Administrator. The Directory identifies firms that have been certified as MBEs and WBEs, and includes both the date of their last certification and the area of specialty in which they have been certified. Contractors are responsible for verifying the current certification status of all proposed MBE and WBE firms.

4. **“Area of Specialty”** means the description of a MBE or WBE firm’s business which has been determined by SCC to be most reflective of the MBE or WBE firm’s claimed specialty or expertise. Each MBE and WBE letter of certification contains a description of their Area of Specialty. This information is also contained in the Directory. Credit toward this contract’s MBE or WBE participation goal shall be limited to the participation of firms performing within their Area of Specialty.

NOTICE: The Department of Procurement Services does not make any representation concerning the ability of any MBE or WBE to perform work within their Area of Specialty. It is the responsibility of all Contractors to determine the capability and capacity of MBE and WBE firms to satisfactorily perform the work proposed.

5. **“Joint Venture”** means an association of two or more businesses to carry out a single business enterprise for profit, and for which purpose they combine their expertise, property, capital, efforts, skill and knowledge. Contractors may develop joint venture agreements as an instrument to provide participation by MBEs and WBEs in contract work. A joint venture seeking to be credited for MBE and/or WBE participation may be formed among certified MBE and certified WBE firms or between MBE and/or WBE firm(s) and non-MBE/WBE firm(s).

A joint venture is eligible for MBE and/or WBE credit if the MBE and/or WBE venturer(s) share in the ownership, control, management responsibilities, risks and profits of the joint venture, and are responsible for a clearly defined portion of work to be performed, in proportion with the MBE and/or WBE ownership percentage.

6. **“Contract Compliance Administrator”** means the SCC representative who will evaluate MBE/WBE participation.

C. Joint Ventures

Bidders may develop joint venture agreements as an instrument to provide participation by certified MBEs and WBEs in contract work. A joint venture seeking to be credited for MBE and/or WBE participation may be formed among MBE and/or WBE firms or between a MBE and/or WBE firm and a non-MBE/WBE firm.

A joint venture is eligible if, and only if, all of the following requirements are satisfied:

- **the MBE and/or WBE venturer(s) shares in the (1) ownership, (2) control, (3) management responsibilities, (4) risks and (5) profits of the joint venture in proportion with the MBE and/or WBE ownership percentage;**
- **the MBE and/or WBE venturer(s) is responsible for a clearly defined portion of work to be performed, in proportion with the MBE and/or WBE ownership percentage; and**
- **the MBE and/or WBE venturer(s) actually performs (with its own forces and using its own equipment) work equal to at least 50% of the value of its ownership of the joint venture. For example, if the MBE and/or WBE is proposed as a 25% venturer on a \$1,000,000 contract (or subcontract), the MBE and/or WBE must, in addition to its**

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other joint venture responsibilities, perform work equal to at least \$125,000 (or 50% of 25% of \$1,000,000).

SCC will evaluate the proposed joint venture agreement, the **Schedule B** submitted on behalf of the proposed joint venture, and all related documents to determine whether these requirements have been satisfied. The decision of SCC regarding the eligibility of the Joint Venture shall be final.

(**Notice:** SCC requires that, whenever a joint venture is proposed as the prime Contractor, each joint venturer must separately sign the proposal to SCC, in the pages below, TO BE EXECUTED BY A CORPORATION; TO BE EXECUTED BY A PARTNERSHIP; and/or TO BE EXECUTED BY A SOLE PROPRIETOR, as applicable.)

D. Counting MBE and WBE Participation Toward the Contract Goals

MBE and WBE participation shall be counted toward the MBE and/or WBE goals set in this contract as follows:

1. Once a MBE or WBE is determined to be eligible in accordance with these rules, the total dollar value of the contract awarded to the MBE or WBE may be counted toward the MBE or WBE goal, except as indicated below.
2. A Contractor may count toward its MBE or WBE goal a portion of the total dollar value of a contract with a joint venture eligible under the standards of this Special Condition equal to the percentage of the ownership and control of the MBE or WBE venturer.
3. A Contractor may count toward its MBE or WBE goal only expenditures to firms that perform a commercially useful function in the work of a contract. A firm is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work of a contract and carries out its responsibilities by actually performing, managing, and supervising the work involved. To determine whether a firm is performing a commercially useful function, SCC shall evaluate industry practices, and other relevant factors.
4. A Contractor may count toward its MBE or WBE goal sixty percent (60%) of its expenditures for materials and supplies required under the contract and obtained from a MBE or WBE regular dealer, and one hundred percent (100%) of such expenditures to a MBE or WBE manufacturer.

For purposes of this section, a manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the Contractor.

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

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5. A Contractor may count toward its MBE or WBE goal the following expenditures to MBE or WBE firms that are not manufacturers or regular dealers:
 - a. The fees or commissions charged for providing a *bona fide* service, such as professional, technical, consultant or managerial services and assistance in the procurement of essential personnel, facilities, equipment, materials or supplies required for performance of the contract, provided that the fee or commission is determined by SCC to be reasonable and not excessive as compared with fees customarily allowed for similar services.
 - b. The fees charged for delivery of materials and supplies required on a job site (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer of or a regular dealer in the materials and supplies, provided that the fee is determined by SCC to be reasonable and not excessive as compared with fees customarily allowed for similar services.
 - c. The fees or commissions charged for providing any bonds or insurance specifically required for the performance of the contract, provided that the fee or commission is determined by SCC to be reasonable and not excessive as compared with fees customarily allowed for similar services.

E. Procedure to Determine Bid Compliance

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

1. Schedule B: Affidavit Joint Venture (MBE/WBE)

Where the bidder's MBE/WBE proposal includes the participation of any MBE or WBE as a joint venturer, on any tier, the bidder must submit, together with their bid, a **Schedule B:**

Affidavit of Joint Venture (MBE/WBE) with an attached copy of the joint venture agreement proposed among the parties.

The **Schedule B**, in conjunction with the joint venture agreement must clearly evidence that the MBE or WBE venturer will be responsible for a clearly defined portion of the work to be performed, and that the MBE or WBE firm's responsibilities are in proportion with their ownership percentage. In order to demonstrate the MBE or WBE venturer's share in the ownership, control, management responsibilities, risks and profits of the joint venture, **the proposed joint venture agreement shall include specific details related to (1) the contributions of capital and equipment; (2) work items to be performed by the MBE's or WBE's own forces; (3) work items to be performed under the supervision of the MBE or WBE venturer; and (4) the commitment of management, supervisory and operative personnel employed by the MBE or WBE to be dedicated to the performance of the project.**

The **Schedule B**, together with the joint venture agreement must, in addition, clearly evidence the commitment of the MBE or WBE venturer to actually perform (with its own forces and equipment) work equal to at least fifty percent (50%) of the value of its ownership of the joint venture.

2. Schedule C: Letter of Intent to Perform as a Subcontractor, Supplier and/or Consultant

A **Schedule C**, executed by the MBE or WBE firm (or Joint Venture Subcontractor) must be submitted by the bidder for each MBE and WBE included on their **Schedule D**. Each

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Schedule C must accurately detail the work to be performed by the MBE or WBE firm and the agreed rates and prices to be paid.

If any fully complete and executed **Schedule C** is not or cannot be submitted with the bid, it must be received by SCC within three (3) business days after the date of the bid opening. (**All post-bid submissions must have original signatures on all documents**). Failure to submit any Schedule C as required by this Section may result in SCC's determination that a bid is "non-responsive." SCC shall have the discretion to apply suitable sanctions against any bidder who fails to comply with these requirements. Appropriate sanctions may include, without limitation, and/or rejection of the Contractor's bid.

3. Letters of Certification

A copy of each proposed MBE and WBE firm's **Letter of Certification** from the City of Chicago must be submitted with the bid.

All **Letters of Certification** issued by the City of Chicago include a statement of the MBE or WBE firm's area of specialization. The MBE or WBE firm's scope of work, as detailed by their **Schedule C** must conform to their stated area of specialization. Where a MBE or WBE is proposed to perform work not covered by their area of certification, they must request an expansion of their certification at least 30 calendar days prior to their being proposed to perform such work. The MBE or WBE firm's request to expand the scope of their certification, together with all documentation required by the City of Chicago to process that request, must be received by SCC prior to the bid opening.

4. Schedule D: Affidavit of Prime Contractor Regarding MBEs and WBEs

Bidders must submit, together with the bid, a completed **Schedule D** committing them to the utilization of each listed MBE and WBE firm.

Except in cases where the bidder has submitted a complete request for a waiver or variance of the MBE and WBE goal (See **F. Grant of Relief for Bidders** below), the bidder must commit to the expenditure of a specific dollar amount of participation by each MBE and/or WBE firm included on their **Schedule D**. The total dollar commitment to proposed MBE firms must at least equal the MBE goal. The total dollar commitment to proposed WBE firms must at least equal the WBE goal. Bidders are responsible for calculating the dollar equivalent of the MBE and WBE goals as a percentage of their total base bid.

All commitments made by the bidder's **Schedule D** must conform to those presented in the submitted **Schedule C**. Where **Schedule Cs** will be submitted after the bid opening (See D.2.above), the bidder may submit a revised **Schedule D** (executed and notarized) to conform with **Schedule Cs**. Except in cases where substantial and documented justification is provided, bidders will not be allowed to reduce the dollar commitment made to any MBE or WBE in order to achieve conformity between the **Schedules C and D**.

5. The submittal must have all blank spaces on the Schedule pages, applicable to the subject specification, correctly filled in.
6. Agreements between a bidder and a MBE or WBE in which the MBE or WBE promises not to provide subcontracting quotations to other bidders are prohibited.
7. During the period before award, the submitted documentation will be evaluated. Furthermore, the bidder agrees to give, upon request, earnest and prompt cooperation to SCC or its authorized delegate in submitting to interviews that may be necessary, or in allowing entry to places of business or in providing further documentation, or in soliciting the cooperation of a

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proposed MBE or WBE in the providing of such assistance. A bid may be treated as non-responsive by reason of the determination that a bidder's proposal contains an insufficient level of MBE or WBE participation, or that the bidder was found to be unresponsive or uncooperative when asked for further information relative to the proposal, or that false statements were made in the **Schedules**.

8. In cases where SCC's review of a bidder's proposal concludes that the MBE and/or WBE proposal was deficient, the bidder will be instructed to submit (within three business days of such notice given by SCC) a modification of the MBE and/or WBE Proposal, in proper format, which remedies all the deficiencies cited. The failure to correct all deficiencies as required by this Section may result in SCC's determination that a bid is "non-responsive."
9. Bidders will not be permitted to modify their MBE/WBE proposal except insofar as directed to do so by SCC. All terms and conditions stipulated for prospective MBE and WBE subcontractors or suppliers therefore should be satisfactorily negotiated prior to the submission to SCC of the bidder's MBE/WBE commitment as part of the bid proposal. If circumstances should arise, however, where a proposed MBE or WBE becomes no longer available, the process described below in the section entitled VIII. DBE Substitutions and Waivers of Requirements should be followed.
10. When necessary in the interest of time, SCC may treat as non-responsive a bid instead of granting extended time for a bidder to replace MBEs or WBEs named in the bidder's proposal which were later determined to be ineligible or unavailable.

F. Grant of Relief for Bidders

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

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

Bidders/proposers will be considered responsive to the terms and conditions of these Regulations if a waiver request and proof of notification to an assist agency is submitted at the time of bid/proposal opening. Once the bids have been opened, the lowest responsive and responsible bidder so deemed by SCC or authorized designee will have no more than seven (7) calendar days to submit to SCC complete documentation that adequately addresses the conditions for waiver described herein. Failure to submit documentation sufficient to support the waiver request will cause the bid/proposal to be found non-responsive by SCC, and the bid/proposal will be rejected.

1. Direct/Indirect Participation

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

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- a. The bidder/proposer has documented the unsuccessful solicitation for either subcontractors or joint venture partners of at least 50% (or at least five when there are more than eleven certified firms in the commodity area) of the appropriate certified MBE/WBE firms to perform any direct or indirect work identified or related to the advertised bid/proposal. Direct participation involves subcontracting a portion of the goods/services specifically required in the bid/proposal. Indirect participation is the subcontracting of goods/services not specifically related to the performance of this contract. Documentation must include but is not necessarily limited to:
- (1) A detailed statement of efforts to identify and select portions of work identified in the bid solicitation for subcontracting to certified MBE/WBE firms;
 - (2) A listing of all MBE/WBE firms contacted that includes:
 - (a) Names, address and telephone numbers of MBE/WBE firms solicited;
 - (b) Date and time of contact;
 - (c) Method of contact (written, telephone, transmittal of facsimile documents, etc.)
 - (3) Copies of letters or any other evidence of mailing that substantiates outreach to MBE/WBE vendors that includes:
 - (a) Project identification and location;
 - (b) Classification/commodity of work items for which quotations were sought;
 - (c) Date, item and location for acceptance of subcontractor bid proposals;
 - (d) Detailed statement which summarizes direct negotiations with appropriate MBE/WBE firms for specific portions of the work and indicates why negotiations were unsuccessful;
 - (e) Affirmation that good faith efforts have been demonstrated by choosing subcontracting opportunities likely to achieve MBE/WBE goals by not imposing any limiting conditions which were not mandatory for all subcontractors; or denying the benefits ordinarily conferred on MBE/WBE subcontractors for the type of work that was solicited.

OR

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

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- (2) Other documentation which demonstrates to the satisfaction of SCC that the MBE/WBE proposals are excessively costly, even though not in excess of 20% higher than the average price quoted. This determination will be based on factors that include, but are not limited to the following:
 - (a) SCC's estimate for the work under a specific subcontract;
 - (b) The bidder/proposer's own estimate for the work under the subcontract;
 - (c) An average of the bona fide prices quoted for the subcontract;
 - (d) Demonstrated increase in other contract costs as a result of subcontracting to the MBE/WBE or other firm.

2. Assist Agency Participation

Every waiver and/or reduction request must include evidence that the bidder/proposer has provided timely notice of the need for subcontractors to an appropriate association/assist agency representative of the MBE/WBE business community.

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

3. Impracticability

- a. If SCC determines that a lesser MBE and/or WBE percentage standard is appropriate with respect to a particular contract subject to competitive bidding prior to the bid solicitations for such contract, bid specifications shall include a statement of such revised standard.
- b. The requirements set forth in these Regulations shall not apply where SCC determines that MBE/WBE subcontractor participation is impracticable.

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

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

4. Notification of minority and women Contractor assistance agencies and associations of solicitation for specific sub-bids;

5. Direct negotiation with MBEs and/or WBEs for specific sub-bids; the actions taken must be reported in such a fashion as to include all of the following items:

- a. A detailed statement of the efforts made to negotiate with MBEs and/or WBEs including at a minimum:

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- (1) The name, addresses, and telephone number of MBEs and/or WBEs who were contacted;
 - (2) A description of the information provided to MBEs and/or WBEs who were contacted;
 - (3) A description of the information provided to MBEs and/or WBEs regarding the plans and specifications for portions of the work to be performed; and
 - (4) A detailed statement of the reasons why additional prospective agreements with MBEs and/or WBEs, if needed to meet the stated goal, were not reached in spite of negotiations;
- b. A detailed statement of the efforts made to select portions of the work proposed to be performed by MBEs and/or WBEs in order to increase the likelihood of achieving the stated goal;
- c. As to each MBE and/or WBE contacted but which the bidder considers to be not qualified, a detailed statement of the reasons for the bidder's conclusion;
6. If the Contractor is a distributor or manufacturer where it can be shown that the opportunity for MBE and/or WBE participation does not exist in work under this contract, efforts must include an exhaustive research into the MBE and/or WBE potential in the roles of sub-supplier, transport, engineering, distribution, or any other roles contributing to production and delivery as specified in the contract. Information must be submitted stating the reasons, based on research, why MBE and/or WBE participation will not be practically possible to the extent of this contract's goal;
7. General efforts made to assist MBEs and WBEs to overcome participation barriers, as indicated in **M. Prime Contractor Assistance**, below.

If the bidder does not meet the MBE and/or WBE goal, price alone shall not be an acceptable basis for which the bidder may reject a MBE and/or WBE sub-bid unless the bidder can show to the satisfaction of SCC that no reasonable price can be obtained from a MBE and/or WBE. A determination of reasonable price is based on such factors as SCC's estimate for the work under a specific subcontract, the bidder's own estimate for the specific subcontract, and the average of the bona fide prices quoted for the specific subcontract. A MBE or WBE bid for a subcontract will be presumed to be unreasonable if the MBE's or the WBE's price exceeds the average price quoted by more than 15 percent.

G. Reporting

1. The Contractor shall, within five working days of receiving the awarded contract, execute a formal subcontract or purchase order with the MBEs and WBEs which were proposed all in accordance with the terms of the Contractor's bid proposal and MBE/WBE assurances, and shall promptly submit to the City at that time a copy of the MBE and WBE subcontracts or purchase orders, each showing acceptance of the subcontract or purchase order by the MBE or WBE.
2. During the life of the project, the Contractor shall submit partial and final waivers of lien from MBE and WBE subcontractors which are drawn up to show the true, cumulative dollar amount of subcontractor payments made to date.
3. The Contractor shall file regular MBE/WBE utilization reports, on Purchases Form MBE/WBE Status - 1 entitled "**Status Report of MBE/WBE (Sub) Contract Payments,**"

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according to the following procedure: At the time of signing each payment voucher (“Summary of Estimate”), the Contractor shall present the notarized MBE/WBE Status form executed to reflect the current status of effective and projected payments to MBEs and WBEs. The current voucher will not be processed to SCC for payment until the current MBE/WBE Status form has been presented.

H. MBE/WBE Substitutions and Waivers of Goals

1. Arbitrary changes by the Contractor of the commitments earlier certified in Schedule D are prohibited. Further, after once entering into each approved MBE and WBE subagreement, the Contractor shall thereafter neither terminate the sub-agreement, nor reduce the scope of the work to be performed by the MBE or WBE, nor decrease the price to the MBE or WBE, without in each instance receiving the prior written approval of SCC. In some cases, however, it may become necessary to substitute a new MBE or WBE in order actually to fulfill the MBE or WBE requirements. In such cases, the City must be given reasons justifying the release by the City of prior specific MBE or WBE commitments established in the Contractor’s bid proposal, and will need to review the eligibility of the MBE or WBE presented as a substitute. The substitution procedure will be as follows:

- a. The Contractor must notify SCC immediately in writing of an apparent necessity to reduce or terminate a MBE or WBE subcontract and to propose a substitute firm for some phase of work, if needed in order to sustain the fulfillment of the MBE/WBE contract goals.
- b. The Contractor’s notification should include the specific reasons for the proposed substitution. Stated reasons which would be acceptable include any of the following examples: A previous committed MBE or WBE was found not to be able to perform, or not to be able to perform on time; a committed MBE or WBE was found not to be able to produce acceptable work; a committed MBE or WBE was discovered later to be not bona fide; a MBE or WBE previously committed at a given price later demands an unreasonable escalation of price.

The Contractor’s position in these cases must be fully explained and supported with adequate documentation. Stated reasons which will not be acceptable include: A replacement firm has been recruited to perform the same work under terms more advantageous to the prime contractor; issues about performance by the committed MBE or WBE were disputed (unless every reasonable effort has already been taken to have the issues resolved or mediated satisfactorily); a MBE or WBE has requested reasonable price escalation which may be justified due to unforeseen circumstances.

- c. The Contractor’s notification should include the names, address, and principal official of any proposed substitute MBE or WBE and the dollar value and scope of work of the proposed subcontract. Attached should be all the same MBE/WBE affidavits, documents, and Letters of Intent which are required of bidders, as enumerated above in section E. Procedure to Determine Bid Compliance.
- d. SCC will evaluate the submitted documentation, and respond within 15 working days to the request for approval of a substitution. The response may be in the form of requesting more information, or requesting an interview to clarify or mediate the problem. In the case of an expressed emergency need to receive the necessary decision for the sake of job progress, SCC will instead respond as soon as practicable.

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- e. Actual substitution of a replacement MBE or WBE to fulfill contract requirements should not be made before SCC approval is given of the acceptability of the substitute MBE or WBE subcontract. This subcontract must be executed within five working days, and a copy of the MBE or WBE subcontract with signatures of both parties to the agreement should be submitted immediately to SCC.
2. SCC will not approve extra payment for escalated costs incurred by the Contractor when a substitution of subcontractors becomes necessary for the Contractor in order to comply with MBE/WBE contract requirements.
3. After award of contract, no relief of the MBE/WBE requirements will be granted by SCC except in exceptional circumstances. Requests for complete or partial waiver of the MBE/WBE requirements of this contract must be made in writing, stating all details of the request, the circumstances, and any additional relevant information. The request must be accompanied by a record of all efforts taken by the Contractor to locate specific firms, solicit MBE and WBE bids, seek assistance from technical assistance agencies, etc., as outlined above in Section F, Grant of Relief for Bidders.
4. In a case where an enterprise under contract was previously considered to be a MBE or WBE but is later found not to be, or whose work is found not to be creditable toward MBE or WBE goals fully as planned, SCC will consider the following special criteria in evaluating a waiver request:
 - a. Whether the prime contractor was reasonable in believing the enterprise was a MBE or WBE or that eligibility or “counting“ standards were not being violated;
 - b. The adequacy of unsuccessful efforts taken to obtain a substitute MBE or WBE (as outlined in section F. Grant of Relief for Bidders).
5. SCC solely will determine grants of waiver and all matters of MBE/WBE compliance.

I. Non-Compliance

The following constitutes a material breach of this contract and shall entitle SCC to declare a default, terminate the contract and exercise those remedies provided for in the contract, at law or in equity:

1. failure to satisfy the MBE/WBE percentages required by the contract; and
2. the Contractor or subcontractor is disqualified as a MBE or WBE, such status was a factor in contract award, and was misrepresented by the Contractor.

In the event that the Contractor is determined not to have been involved in any misrepresentation of the status of the disqualified subcontractor or supplier, the Contractor shall seek to discharge the disqualified subcontractor or supplier, upon proper notification to SCC and/or Contract Compliance Administrator and make every effort to identify and engage a qualified MBE or WBE as its replacement. Furthermore, continued eligibility to enter into future contracting arrangements with SCC may be jeopardized as a result of non-compliance. Payments due to the Contractor may be withheld until corrective action is taken.

J. Penalty for Failure to Meet MBE/WBE Commitments

1. SCC determines, upon reviewing a particular Contract, that the MBE or WBE participation commitments have not been met, a penalty in the amount of the discrepancy between the amount of the commitment, as such amount may be amended through change orders or

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otherwise over the term of the Contract, and the achieved amount may be applied to the Contractor.

2. Prior to imposing the penalty specified by this section, SCC shall notify the Contractor of the fact and amount of the proposed penalty. The Contractor shall have the opportunity to present evidence to SCC to controvert the fact or amount of the proposed penalty. Within 5 days of receiving the final decision of SCC on the matter, and in the event that such final decision is adverse to the Contractor, the Contractor may submit to SCC a written request for a hearing.
3. The penalty specified by this section shall be imposed either upon expiration of the time period in which the Contractor may seek review, or upon the administrative law officer's finding adverse to the Contractor, as applicable.

K. Record Keeping

The Contractor shall maintain records of all relevant data with respect to the utilization of MBEs and WBEs, retaining these records for a period of at least three years after final acceptance of the work. Full access to these records shall be granted to the SCC, City of Chicago, Federal or State authorities in this project, the U.S. Department of Justice, or any duly authorized representatives thereof.

L. Prime Contractor Assistance

Prime Contractors must themselves assist MBEs and WBEs in overcoming barriers to program participation. The following instruments of assistance, for example, should be used as applicable:

1. Developing solicitations of sub-contract bids so as to increase potential MBE and WBE participation. This can take the form of breaking down large subcontracts into smaller ones, and of issuing notice of solicitations in a timely manner;
2. Providing technical assistance and guidance in the bidding, estimating, and scheduling processes;
3. Considering purchasing supplies and/or leasing the required equipment for a job, then subcontracting only for the expertise required to perform the work;
4. Providing accelerated payments or establishing pro-rated payment and delivery schedules so as to minimize cash flow problems faced by small firms;
5. Providing, waiving, or reducing subcontractor bonding requirements; allowing stage bonding (bonding carried over from one project stage to the next);
6. Providing a pre-bid conference for potential sub-contractors.

In addition to the employment of minority and women construction enterprises and material suppliers, the Contractor should consider the utilization of MBEs and WBEs in fields indirectly related to construction contracts: banking, office equipment sales, vehicles sales, mechanical repair, legal and accounting services, building security, graphics and advertising, etc.

M. Equal Employment Opportunity

Compliance with MBE and WBE requirements will not diminish or supplant Equal Employment Opportunity and Civil Rights provisions as required by law as they relate to Prime Contractor and subcontractor obligations.

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N. Resource Agencies

Small business guaranteed loans; surety bond guarantees; 8 (a) certification:

U.S. Small Business Administration
500 W. Madison Street, Suite 1250
Chicago, Illinois 60601
Attention: Robert Conner
(312) 353-4528

**S. B. A. Bond Guarantee Program
Surety Bonds**
500 W. Madison Street, Suite 1250
Chicago, Illinois 60661
Attention: Mark Ferguson
(312) 353-5430

S. B. A. - Procurement Assistance
500 W. Madison Street, Suite 1250
Chicago, Illinois 60661
Attention: Robert P. Murphy, Area Director
(312) 353-7381

Project information and general MBE/WBE information Program:

**City of Chicago
Department of Procurement Services**
Contract Monitoring and Compliance
33 North LaSalle, Lower Level
Chicago, Illinois 60602
Attention: Carnice Carey
(312) 744-1895

**City of Chicago
Department of Procurement Services**
Contract Administration Division
33 North LaSalle, Lower Level
Chicago, Illinois 60602
Attention: Byron Whittaker
(312) 744-4926

Information on MBE/WBE availability in the manufacturing, sales or supplies, and related fields (direct assistance from 42 regional affiliates located throughout the U.S.):

**National Minority Suppliers
Development Council, Inc.**
1040 Avenue of the Americas, 2nd Floor
New York, New York 10018
Attention: Harriet R. Michel
(212) 944-2430

**Chicago Minority Business
Development Council**
11 South LaSalle - Suite 850
Chicago, Illinois 60603
Attention: Maye Foster-Thompson
(312) 263-0105

Directories of Certified Disadvantaged, Minority and Women Business Enterprises are available in the Bid and Bond Room, Department of Procurement Services, City Hall, 3rd Floor, Chicago, Illinois 60602, Monday through Friday between the hours of 8:40 am to 10:45 am and 12:00 p.m. to 3:30 p.m.

O. Assist Agencies

1. Non-Construction Assist Agencies

Latin American
Chamber of Commerce
3512 West Fullerton Avenue
Chicago, Illinois 60647
Attn: D. Lorenzo Padron
Office No.: (773) 252-5211
Fax No.: (773) 252-7065

Women In Business Yellow Pages
734 North LaSalle Street, 2nd Floor
Chicago, Illinois 60610
Attn: Rebecca Atwood Langelier
Office No.: (312) 294-6300
Fax No.: (312) 988-9661

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Asian American
Small Business Association
5901 North Cicero Avenue, ste. 205
Chicago, Illinois 60646
Attn: John Lee, Exe Director
Office No.: (773) 545-0600

National Association of Women
Business Owners-Chicago Chap..
330 South Wells, Suite 1110
Chicago, Illinois 60606
Attn: Sandra Gidley
Office No.: (312) 322-0990
Fax No.: (312) 461-0238

Illinois Dept. of Commerce
and Community Affairs
100 W. Randolph - Suite 3-400
Chicago, Illinois 60601
Attn: Mollie Cole
Office No.: (312) 814-7176
Fax No.: (312) 814-6732

Chicago Minority Business
Development Council
11 S. LaSalle Street- Suite 850
Chicago, Illinois 60603-1202
Attn: Maye Foster Thompson
Office No.: (312) 263-0105
Fax No.: (312) 263-0280

Triton College
Small Bus. Development Center
2000 Fifth Avenue
River Grove, Illinois 60171
Attn: Jeffrey Barnes
Office No.: (708) 456-0300, X3593
Fax No.: (708) 583-3118

Cosmopolitan Chamber of Commerce
1455 S. Michigan - Suite 240
Chicago, Illinois 60605-2602
Attn: Gloria Bell
Office No.: (312) 786-0212
Fax No.: (312) 786-9079

Westside Small Business
Development Corporation
112 N. Pulaski Road
Chicago, Illinois 60624
Attn: Betty Boston
Office No.: (773) 638-1990
Fax No.: (773) 638-4851

Little Village 26th Street
Area Chamber of Commerce
3610 West 26th Street
Chicago, Illinois 60623
Attn: Chuck Goncales
Office No.: (773) 521-5387
Fax No.: (773) 521-5252

Chicago Urban League
4510 S. Michigan
Chicago, Illinois 60653
Attn: Lee V. Smith
Office No.: (312) 285-5800, X383
Fax No.: (312) 285-7772

Mexican American
Chamber of Commerce of Illinois
122 S. Michigan Ave., Suite 1705
Chicago, Illinois 60603
Attn: Juan Ochoa
Office No.: (312) 554-0844
Fax No.: (312) 554-0848

State of Illinois
Dept. of Central Management Service
Business Enterprises Division
100 W. Randolph St., Suite 4-400
Chicago, Illinois 60601
Attn: Sondra N. Phillips, Director
Office No.: (312) 814-4190
Fax No.: (312) 814-6664

2. Construction Assist Agencies

Hispanic-American Construction

Mexican American

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Industry Associations (HACIA)
901 West Jackson, Ste.205
Chicago, IL 60607
Attn: Rafael Hernandez
Office No.: (312) 666-5910
Fax No.: (312) 666-5692

Chamber of Commerce of Illinois
300 122 S. Michigan Ave., Suite 1449
Chicago, Illinois 60603
Attn: Juan Ochoa
Office No.: (312) 554-0844
Fax No.: (312) 554-0848

Federation of Women Contractors
330 South Well, Ste. 1110
Chicago, Illinois 60606
Attn: Debra Smith, Administration
Office No.: (312) 360-1122
Fax No.: (312) 360-0239

African American Contractors Asso.
1006 S. Michigan Ave., Ste 601
Chicago, Illinois 60605
Attn: Omar Shareef, President
Pager No.: (312) 760-1011
Fax No.: (312) 567-9919

Black Contractors United
2860 E. 76th Street, Suite 2B
Chicago, Illinois 60649
Attn: Rev. Ralph Tolbert, Exec. Dir.
Office No.: (773) 933-7950
Fax No.: (773) 933-7957

Association of Asian
Construction Enterprises
333 North Ogden Avenue
Chicago, Illinois 60607
Attn: Mr. Perry Nakachi, President
Office No.: (312) 563-0746
Fax No.: (312) 666-1785

SKYWAY CONCESSION COMPANY
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SCC Contract No. 2016-01:
Commercial Ave & West Approach Viaducts Gusset Plate Repairs

For Skyway Concession Company LLC

Contractor Company Name

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

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Exhibit A:

I. Technical Specifications

Location:

The 6-bridge Commercial Avenue Viaduct begins west of Commercial Avenue and continues to the west approach of the Calumet River High Bridge (IDOT SN: 016-6412 through 016-6417). The Calumet River Bridge – West Approach (IDOT SN 016-6418) begins east of the Commercial Avenue Viaduct and continues to the Calumet River High Bridge. **Exhibit A** shows a map with the location of the structures.

The SCC reserves the right to modify, change, add or delete any location during the solicitation period and up to the issuance of a contract.

Scope of work:

The work involves structural steel repairs consisting of reinforcing deck-truss gusset plates to the Commercial Avenue and West Approach Viaduct structures on the Chicago Skyway in the City of Chicago. Other miscellaneous tasks include items such as cleaning and painting of isolated areas of the structural steel.

The work shall be performed as detailed in the specifications and drawings in the **Exhibits B and C of the RFP**, prepared by URS and Benesch. The Contractor is expected to fully know and understand all the requirements and procedures and include all required elements in the proposal.

In addition to this contract, all work is to be done in accordance with the following documents:

- 1) *SCC 2016-01 - Commercial & W Approach Gusset Plate Repairs - RFP*
- 2) *SCC 2016-01 - RFP – Exhibit B – Drawings*
- 3) *SCC 2016-01 - RFP – Exhibit B – Specifications*
- 4) *SCC 2016-01 - RFP – Exhibit C – Drawings*
- 5) *SCC 2016-01 - RFP – Exhibit C – Specifications*
- 6) **XXXXXXX** *Bid Proposal, dated **XX/XX/2016***

II. Time of Completion

A. Time is of the Essences

It is understood and agreed that **TIME IS OF THE ESSENCE IN THIS CONTRACT**, and the Contractor agrees to begin actual work covered by this Contract after notification by SCC to commence work and to prosecute the same with all due diligence so that to complete the entire work under the Contract by **October 31, 2016**.

B. Punch List Time Of Completion

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It is also understood and agreed that TIME IS OF THE ESSENCE IN CLOSING OUT THE JOB, and the Contractor agrees to begin work immediately after receipt of formal comprehensive list of minor miscellaneous or finishing work known as "Punch List" work. Further, upon substantial completion/beneficial occupancy of the Work and final inspection of same, a "Punch List" will be transmitted to the Contractor from SCC. This "Punch list" will consist not only of physical work items requiring corrective action, but will also include all applicable Contractor submittals as may be required by the Contract. It is understood and agreed that **all** final "Punch List" work will be prosecuted expeditiously and completed, in total, within thirty (30) calendar days of the date of the transmittal to the Contractor. Failure to complete all "Punch List" items within the thirty (30) day calendar day time limit shall be construed as failure to prosecute the work of the contract and, as such, will subject the Contractor to the assessment of project liquidated damages in the amount of \$500.00/calendar day. These damages will be assessed continuously from the time of the expiration of the thirty (30) calendar day time limit until such time as all "Punch List" items are completed to the satisfaction of SCC.

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| Name and Address | Kind of Work | Amount of Contract | Retention (Inst. Current) | Net of Previous Payments | Net Amount This Payment | Balance to Become Due (Incl. Ret.) |
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| AMOUNT OF ORIGINAL CONTRACT \$ _____ EXTRAS TO CONTRACT \$ _____ TOTAL CONTRACT AND EXTRAS \$ _____ CREDITS TO CONTRACT \$ _____ ADJUSTED TOTAL CONTRACT \$ _____ | WORK COMPLETED TO DATE \$ _____ LESS ___% RETAINED \$ _____ NET AMOUNT EARNED \$ _____ NET PREVIOUSLY PAID \$ _____ NET AMOUNT OF THIS PAYMENT \$ _____ BALANCE TO BECOME DUE (Ins. Retention) \$ _____ |
|---|--|

It is understood that the total amount paid to date plus the amount requested in this application shall not exceed _____%

I agree to furnish Waivers of Lien for all materials under my contract when demanded.

Signed _____

 (position)

Subscribed and sworn to before me this _____ day of _____ 20____.

 Notary Public

The above sworn statement should be obtained by the owner before each and every payment

SKYWAY CONCESSION COMPANY
Terms and Conditions for Construction Contract

FINAL WAIVER OF LIEN

STATE OF ILLINOIS) Gty# _____
COUNTY OF) Loan# _____

TO WHOM IT MAY CONCERN:

WHEREAS the undersigned has been employed by, _____ to furnish labor and materials for the premises known as _____, of which the _____ is the owner.

The undersigned, for and in consideration of _____ Dollars and 00/100 (\$ _____), and other good and valuable consideration, the receipt whereof is hereby acknowledged, do(es) hereby waive and release any and all liens or claim of, or right to lien, under the statutes of the State of Illinois, relating to mechanic's liens, with respect to and on said above-described premises, and the improvements thereon, and on the material, fixtures, apparatus or machinery furnished, and on the moneys, funds, or other considerations, due or to become due from the owner, on account of labor, services, materials, fixtures, apparatus or machinery heretofore furnished, or which may be furnished at any time thereafter, by the undersigned for the above-described premises.

Given under _____ hand _____ and seal _____
this _____ day of _____, 20 ____.

Signature and Seal: _____

NOTE: All waivers must be for the full amount paid. If waiver is for a corporation, corporate name should be used, corporate seal affixed and title of officer signing waiver should be set forth; if waiver is for a partnership, the partnership name should be used, partner should sign and designate himself as partner.

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CONTRACTOR'S AFFIDAVIT

STATE OF ILLINOIS)
COUNTY OF)

TO WHOM IT MAY CONCERN:

THE undersigned, being duly sworn, deposes and says that he is the _____ for _____ Who is the contractor furnishing LABOR and MATERIALS on the property located at _____, Illinois owned by _____.

That the total amount of the contract including extras is \$ _____ on which he has received payment of \$ _____ prior to this payment. That all waivers are true, correct and genuine and delivered unconditionally and that there is no claim either legal or equitable to defeat the validity of said waivers. That the following are the names of all parties who have furnished material or labor, or both for said work and all parties having contracts or subcontracts for specific portions of said work or for material entering into the construction thereof and the amount due or to become due to each, and that the items mentioned include all labor and material required to complete said work according to plans and specifications:

| NAMES | WHAT FOR | CONTRACT PRICE | AMOUNT PAID | THIS PAYMENT | BALANCE DUE |
|---|----------|----------------|-------------|--------------|-------------|
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| TOTAL LABOR AND MATERIAL TO COMPLETE | | | | | |

That there are no other contracts for said work outstanding, and that there is nothing due or to become due to any person for material, labor or other work of any kind done or to be done upon or in connection with said work other than above stated.

Signed this ____ day of _____, 20 ____ . Signature: _____
Subscribed and sworn to before me this _____ day of _____ 20 ____ .

_____, Notary Public