

**SECOND AMENDED AND RESTATED GRANT AGREEMENT  
(RAIN READY, FKA SUSTAINABLE BACKYARDS)**

This Second Amended and Restated Grant Agreement is effective as of May 1, 2019, by and between Center for Neighborhood Technology, an Illinois not-for-profit corporation ("**Grantee**"), whose mailing address is 17 N. State St ,Suite 1400, Chicago, IL 60602, and the City of Chicago, a municipal corporation and home rule unit of local government existing under the Constitution of the State of Illinois (the "**City**"), acting through its Chief Sustainability Officer (the "**CSO**"), whose mailing address is 121 North LaSalle Street, 4th Floor, Chicago, Illinois 60602, and the Department of Transportation (the "**Department**"), whose mailing address is 30 North LaSalle Street, 11<sup>th</sup> Floor, Chicago, Illinois 60602, at Chicago, Illinois.

**BACKGROUND**

Pursuant to a settlement agreement as amended with Commonwealth Edison Company ("ComEd"), the City has previously received funds from ComEd (the "ComEd Funds") which, pursuant to an ordinance approved by the City Council of the City on February 5, 2003 and published in the Journal of Proceedings of the City Council for such date at pages 104230 through 104239, the City may use to fund projects selected by the City and may include projects relating to Natural Resources and Water Quality Special Project Management. Pursuant to separate Grant Agreements with the US Environmental Protection Agency ("US EPA") and the US Forest Service, the City has previously received funds from the US EPA and the US Forest Service (the "Federal Funds"), which may be used for general operations of the Sustainable Backyards program. The City appropriated ComEd Funds, Federal Funds and Corporate funds to be used for the Sustainable Backyards program. Pursuant to that certain Grant Agreement dated July 1, 2012 entered into by and between the Grantee and the City (the "Original Grant Agreement"), the City granted ComEd Funds, Federal Funds and Corporate funds to the Grantee to be used for the Sustainable Backyards program, now known as the Rain Ready program.

Pursuant to an Illinois Emergency Management Agency State-Local Hazard Mitigation Grant Program Assistance Agreement (the "IEMA Agreement") between the Illinois Emergency Management Agency ("IEMA") and the City, the City has previously received funds from the Hazard Mitigation Grant Program (the "HMGP Funds"), which pursuant to an ordinance approved by the City Council of the City on April 15, 2015 and published in the Journal of Proceedings of the City Council for such date at pages 105536 through 105536, the City may use for community outreach and producing outreach material with regard to residential-level flood retrofitting. The City has appropriated HMGP Funds to be used for the Sustainable Backyards program. The CSO, pursuant to Section 2-4-055 of the City of Chicago Municipal Code (the "Code"), and the Department, pursuant to the Section 2-102-030 of the Code, are each authorized to enter into grant agreements on behalf of the City to implement environmental enhancement programs. Grantee is ready, willing and able to enter into this Agreement to provide services in connection with the program to the full satisfaction of the City. Now, therefore, in consideration of the mutual promises contained in this Agreement, the City and Grantee agree to the following terms and conditions.

Pursuant to an intergovernmental agreement (the "Intergovernmental Agreement") between the Metropolitan Water Reclamation District of Greater Chicago ("MWRD") and the City, the City has previously received funds for its storm management planning program (the "IGA Funds"), which pursuant to an ordinance approved by the City Council of the City on December 12, 2018 and published in the Journal of Proceedings of the City Council for such date at pages 92012 through 92104, the City may use for a pilot study in the Chatham neighborhood to evaluate

potential runoff reduction and flood protection alternatives. The City has appropriated IGA Funds to be used for this storm management planning program. The CSO, pursuant to Section 2-4-055 of the City of Chicago Municipal Code (the "Code"), and the Department, pursuant to the Section 2-102-030 of the Code, are each authorized to enter into grant agreements on behalf of the City to implement environmental enhancement programs. Grantee is ready, willing and able to enter into this Agreement to provide services in connection with the program to the full satisfaction of the City. Now, therefore, in consideration of the mutual promises contained in this Agreement, the City and Grantee agree to the following terms and conditions.

**NOW, THEREFORE,** the City and Grantee agree as follows:

### **TERMS AND CONDITIONS**

#### **ARTICLE 1. INCORPORATION OF BACKGROUND**

The Background information set forth above is incorporated by reference as if fully set forth here.

#### **ARTICLE 2. AGREEMENT PERIOD, FUNDING**

**2.1 Agreement Period.** This Agreement takes effect on the date hereof and continues through December 31, 2020 or until the Services are completed or until this Agreement is terminated in accordance with its terms, whichever occurs first. See Article 5 for further terms and conditions related to the contract period.

**2.2 Funding.** All payments under this Agreement will be made from IGA Funds (Fund No. 0F19), MWRD funds, and/or such other appropriate Funds as may be identified by the City and are subject to the appropriation and availability of funds in those Funds. The compensation to be paid under this Agreement ("**Compensation**") is limited to \$301,930. If additional funding is available, the City may increase the Compensation, but any such increase is subject to your submission of a satisfactory revised Budget that reflects the additional funds and the cumulative Compensation. Once approved by the City in a manner authorized by applicable law, the revised Budget will supersede the one attached in Exhibit 2. The revised Budget will be designated "Exhibit 2B" and become part of the Agreement. Any successive budget amendments shall be similarly designated and will supersede the previous version(s).

After periodic reviews of the spending levels under this Agreement, the City will have the right upon written notice to the Grantee to reduce the Compensation. Grantee must fully cooperate with the City with regards to the de-obligation or reprogramming of funds. See Article 6 for further terms and conditions related to compensation under this Agreement.

#### **ARTICLE 3. DEFINITIONS**

**3.1 Definitions.** The following words and phrases have the following meanings for purposes of this Agreement:

"**Additional Services**" means those services which are within the general scope of Services of this Agreement, but beyond the description of services required under Section 4.1, and all services reasonably necessary to complete the Additional Services to the standards of performance required by this Agreement. Any Additional Services requested by the Department

require the approval of the City in a written amendment under Section 11.3 of this Agreement before Grantee is obligated to perform those Additional Services and before the City becomes obligated to pay for those Additional Services.

**"Affiliate,"** when used to indicate a relationship with a specified person or entity, means a person or entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with such specified person or entity, and a person or entity shall be deemed to be controlled by another person or entity, if controlled in any manner whatsoever that results in control in fact by that other person or entity (or that other person or entity and any persons or entities with whom that other person or entity is acting jointly or in concert), whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise.

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

**"Chief Procurement Officer"** means the Chief Procurement Officer of the City and any representative duly authorized in writing to act on his behalf.

**"Commissioner"** means the Commissioner of the Department of Transportation, and any representative authorized in writing to act on the Commissioner's behalf.

**"Comptroller"** means the City Comptroller of the Department of Finance, and any representative authorized in writing to act on the Comptroller's behalf.

**"Municipal Code"** means the Municipal Code of Chicago, as amended.

**"Services"** means, collectively, the services, duties and responsibilities described in Article 4 of this Agreement and any and all work necessary to complete them or carry them out fully and to the standard of performance required in this Agreement.

**"Subcontractor"** means any person or entity with whom Grantee contracts to provide any part of the Services, including subcontractors and subconsultants of any tier, suppliers and materials providers, whether or not in privity with Grantee.

### **3.2 Interpretation**

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

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

(c) Words importing persons include firms, associations, partnerships, trusts, corporations and other legal entities, including public bodies, as well as natural persons.

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

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

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

**3.3 Incorporation of Exhibits.** The following attached Exhibits, and any additional or substitute Exhibits permitted under this Agreement, are made a part of this Agreement, and provisions listed in the Exhibits have the same force and effect as if they had been listed in the body of this Agreement:

|           |   |
|-----------|---|
| Exhibit 1 | Scope of Services and Time Limits for Performance |
| Exhibit 2 | Budget  |
| Exhibit 3 | [intentionally omitted]                           |
| Exhibit 4 | Economic Disclosure Statements and Affidavits     |
| Exhibit 5 | Insurance Requirements and Evidence of Insurance  |
| Exhibit 6 | HIPAA Compliance Requirements                     |
| Exhibit 7 | IEMA Agreement                                    |

#### **ARTICLE 4. DUTIES AND RESPONSIBILITIES OF GRANTEE**

**4.1 Scope of Services.** This description of Services is intended to be general in nature and is neither a complete description of Grantee's Services nor a limitation on the Services that Grantee is to provide under this Agreement. Grantee must provide the Services in accordance with the standards of performance set forth in Section 4.3. The Services that Grantee must provide include, but are not limited to, those described in Exhibit 1, Scope of Services and Time Limits for Performance, which is attached to this Agreement and incorporated by reference as if fully set forth herein. Exhibit 1 will set forth specific reporting requirements, if any.

**4.2 Deliverables.** In carrying out its Services, Grantee must prepare or provide to the City various Deliverables. “**Deliverables**” include work product, such as written reviews, recommendations, reports and analyses as identified in Scope of Services and Time Limits for Performance (Exhibit 1), produced by Grantee for the City.

The City may reject Deliverables that do not include relevant information or data identified in Exhibit 1, or do not include all documents or other materials specified in this Agreement or reasonably necessary for the purpose for which the City made this Agreement. If the City determines that Grantee has failed to comply with the foregoing standards, it has 30 days from the discovery to notify Grantee of its failure. If Grantee does not correct the failure, if it is possible to do so, within 30 days after receipt of notice from the City specifying the failure, then the City, by written notice, may treat the failure as a default of this Agreement under Section 10.1.

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

**4.3 Standard of Performance.** Grantee must perform all Services required of it under this Agreement with that degree of skill, care and diligence normally shown by a contractor performing services of a scope and purpose and magnitude comparable with the nature of the

Services to be provided under this Agreement. Grantee acknowledges that it is entrusted with or has access to valuable and confidential information and records of the City and with respect to that information, Grantee agrees to be held to the standard of care of a fiduciary.

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

If Grantee fails to comply with the foregoing standards, Grantee must perform again, at its own expense, all Services required to be re-performed as a direct or indirect result of that failure. Any review, approval, acceptance or payment for any of the Services by the City does not relieve Grantee of its responsibility for the professional skill and care and technical accuracy of its Services and Deliverables. This provision in no way limits the City's rights against Grantee either under this Agreement, at law or in equity.

#### **4.4 Personnel**

(a) **Adequate Staffing, Personnel Qualifications** Grantee must, upon receiving a fully executed copy of this Agreement, assign and maintain during the term of this Agreement and any extension of it an adequate staff of competent personnel that is fully equipped, licensed as appropriate, available as needed, qualified and assigned to perform the Services. Grantee, if exempt from licensure under any applicable statute, must utilize personnel who are otherwise competent and qualified to perform the Services required. Grantee must retain and make available to the City proof of certification or expertise including, but not limited to, resumes and job descriptions. The level of staffing may be revised from time to time by notice in writing from Grantee to the City and with written consent of the City, which consent the City will not withhold unreasonably. If the City fails to object to the revision within 14 days after receiving the notice, then the revision will be considered accepted by the City.

(b) **Salaries and Wages** Grantee and Subcontractors must pay all salaries and wages due all employees performing Services under this Agreement unconditionally and at least once a month without deduction or rebate on any account, except only for those payroll deductions that are mandatory by law or are permitted under applicable law and regulations. If in the performance of this Agreement Grantee underpays any such salaries or wages, the Comptroller for the City may withhold, out of payments due to Grantee, an amount sufficient to pay to employees underpaid the difference between the salaries or wages required to be paid under this Agreement and the salaries or wages actually paid these employees for the total number of hours worked. The amounts withheld may be disbursed by the Comptroller for and on account of Grantee to the respective employees to whom they are due. The parties acknowledge that this Section 4.4(b) is solely for the benefit of the City and that it does not grant any third party beneficiary rights.

The Grantee will comply with minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act and to the extent applicable, Grantee will comply with the Davis-Bacon Act, as amended, 40 U.S.C. 3141 *et seq.*, the Copeland "Anti-Kickback" act, as amended, 18 U.S.C. 874, and the Grant Work Hours and Safety Standards Act, as amended, 40 U.S.C. 3701 *et seq.*, regarding labor standards for federally assisted sub agreements.

#### **4.5 Minority and Women's Business Enterprises Commitment**

(a) To the extent that Grantee's Scope of Services (Work Program) includes social service (including, but not limited to, job training and placement services and employment services) ("Social Services"), Grantee need not comply with the Minority-Owned and Women-Owned Business Enterprise Procurement Program (the "MBE/WBE Ordinance"), Municipal Code Section 2-92-420 et seq. or with Section 2-92-586 (Contracts-Firms Owned or Operated by Individuals with Disabilities) of the Municipal Code.

(b) To the extent, however, Grantee's Scope of Services (Work Program) includes but is not limited to landscaping or weatherization work and administrative support thereof ("Work Services"), and notwithstanding anything contained in Grantee's Scope of Services (Work Program), Grantee must take affirmative action to ensure that businesses owned or operated by minorities, women and individuals with disabilities have the maximum opportunity to compete for and perform as contractors or subcontractors for supplies and/or services for the Work Services in order to make best efforts toward compliance with the requirements of the MBE/WBE Ordinance and Section 2-92-586 (Contracts-Firms Owned or Operated by Individuals with Disabilities) of the Municipal Code.

**4.6 Insurance.** Grantee must provide and maintain at Grantee's own expense during the term of this Agreement and any time period following expiration if Grantee is required to return and perform any of the Services or Additional Services under this Agreement, the insurance coverages and requirements specified in Exhibit 5 of this Agreement, insuring all operations related to this Agreement. Grantee must submit Certificates of Insurance of the required coverages prior to this Agreement being fully executed to: City of Chicago, Department of Transportation, 30 North LaSalle Street, 11<sup>th</sup> Floor, Chicago, Illinois 60602.

#### **4.7 Indemnification**

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

- (i) injury, death or damage of or to any person or property;
  - (ii) any infringement or violation of any property right (including any patent, trademark or copyright);
  - (iii) Grantee's failure to perform or cause to be performed Grantee's covenants and obligations as and when required under this Agreement, including Grantee's failure to perform its obligations to any Subcontractor;
  - (iv) the City's exercise of its rights and remedies under Section 10.2 of this Agreement;
- and
- (v) injuries to or death of any employee of Grantee or any Subcontractor under any workers compensation statute.

(b) “**Losses**” means, individually and collectively, liabilities of every kind, including losses, damages and reasonable costs, payments and expenses (such as, but not limited to, court costs and reasonable attorneys' fees and disbursements), claims, demands, actions, suits, proceedings, judgments or settlements, any or all of which in any way arise out of or relate to Grantee's breach of this Agreement or to Grantee's negligent or otherwise wrongful acts or omissions or those of its officers, agents, employees, consultants, Subcontractors or licensees.

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

(d) To the extent permissible by law, Grantee waives any limits to the amount of its obligations to indemnify, defend or contribute to any sums due under any Losses, including any claim by any employee of Grantee that may be subject to the Workers Compensation Act, 820 ILCS 305/1 *et seq.* or any other related law or judicial decision (such as, *Kotecki v. Cyclops Welding Corporation*, 146 Ill. 2d 155 (1991)). The City, however, does not waive any limitations it may have on its liability under the Illinois Workers Compensation Act, the Illinois Pension Code, any other statute or judicial decision.

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

**4.8 Ownership of Documents.** All Deliverables, data, findings or information in any form prepared, assembled or encountered by or provided to Grantee under this Agreement are property of the City, including, as further described in Section 4.9 below, all copyrights inherent in them or their preparation, including “Sustainable Backyards,” “SusBy” and “sustainablebackyards.org”. During performance of its Services, Grantee is responsible for any loss or damage to the Deliverables, data, findings or information while in Grantee's or any Subcontractor's possession. Any such lost or damaged Deliverables, data, findings or information must be restored at the expense of Grantee. If not restorable, Grantee must bear the cost of replacement and of any loss suffered by the City on account of the destruction, as provided in Section 4.7.

**4.9 Copyright Ownership.** Grantee and the City intend that, to the extent permitted by law, the Deliverables to be produced by Grantee at the City's instance and expense under this Agreement are conclusively deemed “**works made for hire**” within the meaning and purview of Section 101 of the United States Copyright Act, 17 U.S.C. §101 *et seq.*, and that the City will be the sole copyright owner of the Deliverables and of all aspects, elements and components of them in which copyright can subsist, and of all rights to apply for copyright registration or prosecute any claim of infringement.

To the extent that any Deliverable does not qualify as a “work made for hire,” Grantee hereby irrevocably grants, conveys, bargains, sells, assigns, transfers and delivers to the City, its successors and assigns, all right, title and interest in and to the copyrights and all U.S. and foreign

copyright registrations, copyright applications and copyright renewals for them, and other intangible, intellectual property embodied in or pertaining to the Deliverables prepared for the City under this Agreement, and all goodwill relating to them, free and clear of any liens, claims or other encumbrances, to the fullest extent permitted by law. Grantee will, and will cause all of its Subcontractors, employees, agents and other persons within its control to, execute all documents and perform all acts that the City may reasonably request in order to assist the City in perfecting its rights in and to the copyrights relating to the Deliverables, at the sole expense of the City. Grantee warrants to the City, its successors and assigns, that on the date of transfer Grantee is the lawful owner of good and marketable title in and to the copyrights for the Deliverables and has the legal rights to fully assign them. Grantee further warrants that it has not assigned and will not assign any copyrights and that it has not granted and will not grant any licenses, exclusive or nonexclusive, to any other party, and that it is not a party to any other agreements or subject to any other restrictions with respect to the Deliverables. Grantee warrants that the Deliverables are complete, entire and comprehensive, and that the Deliverables constitute a work of original authorship.

#### **4.10 Records and Audits**

##### **(a) Records**

(i) Grantee must deliver or cause to be delivered to the City all documents, including all Deliverables prepared for the City under the terms of this Agreement, to the City promptly in accordance with the time limits prescribed in this Agreement, and if no time limit is specified, then upon reasonable demand for them or upon termination or completion of the Services under this Agreement. If Grantee fails to make such delivery upon demand, then Grantee must pay to the City any damages the City may sustain by reason of Grantee's failure.

(ii) Grantee must maintain any such records including Deliverables not delivered to the City or demanded by the City for a period of 5 years after the final payment made in connection with this Agreement and, if later, (a) until any related litigation, claim or audit started during such 5-year period is finally resolved and (b) 4 years after disposing of any real property and Personal Property bought with funds under this Agreement. Grantee must not dispose of such documents following the expiration of this period without notification of and written approval from the City in accordance with Article 12.

(iii) Grantee must maintain and make available to the City such information necessary to assist the City in its compliance with all applicable laws including dates and reports regarding Grantee's activities. Grantee must maintain all documents pertaining to this Agreement including all financial, statistical, property and participant information documentation.

(A) The City has the authority to make physical inspections of the premises used by Grantee in the performance of its Services under this Agreement and to require such physical safeguards to safeguard the property and/or equipment authorized by this Agreement including requiring locks, alarms, safes, fire extinguishers and sprinkler systems.

(B) Further, the City has the authority to be present at any and all meetings held by Grantee, including staff meetings, board of directors meetings, advisory committee meetings and advisory board meetings, if an item relating to this Agreement is to be discussed.



(iv) Grantee must maintain and provide to the City the following information and documents within the time periods indicated: (A) prior to this Agreement being fully executed, a copy of the executed lease for any real property used by Grantee in connection with the Services, an affidavit stating whether the landlord is a Related Party (as defined below), and with respect to any insurance, utility or other costs not based on Grantee's actual use, documentation satisfactory to the City in its sole discretion supporting the allocation of these costs to the Grantee; (B) within six months after the end of the Grantee's fiscal year, annual financial statements for the Grantee that include a statement of financial position and statement of activities, and a trial balance; (C) within 30 days after the transaction occurs, a report of any transaction between Grantee and any Related Party. For purposes of this Section 4.10(a)(iv), "**Related Party**" means any board member, officer or employee of Grantee, and any relative of any board member, officer or employee of the Grantee.

(b) **Audits**

(i) Grantee and any of Grantee's Subcontractors must furnish the Department with all information that may be requested pertaining to the performance and cost of the Services. Grantee must maintain records showing actual time devoted and costs incurred. Grantee must keep books, documents, paper, records and accounts in connection with the Services open to audit, inspection, copying, abstracting and transcription and must make these records available to the City and any other interested governmental agency, at reasonable times during the performance of its Services.

(ii) To the extent that Grantee conducts any business operations separate and apart from the Services required under this Agreement using, for example, personnel, equipment, supplies or facilities also used in connection with this Agreement, then Grantee must maintain and make similarly available to the City detailed records supporting Grantee's allocation to this Agreement of the costs and expenses attributable to any such shared usages.

(iii) Grantee must maintain its books, records, documents and other evidence and adopt accounting procedures and practices sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred for or in connection with the performance of this Agreement. This system of accounting must be in accordance with generally accepted accounting principles and practices, consistently applied throughout.

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

(v) The City may in its sole discretion audit the records of Grantee or its Subcontractors, or both, at any time during the term of this Agreement or within five years after the Agreement ends, in connection with the goods, work, or services provided under this Agreement. Each calendar year or partial calendar year is considered an "audited period." If, as a result of such an audit, it is determined that Grantee or any of its Subcontractors has overcharged the City in the audited period, the City will notify Grantee. Grantee must then promptly reimburse the City for any amounts the City has paid Grantee due to the overcharges and also some or all of the cost of the audit, as follows:

(A) If the audit has revealed overcharges to the City representing less than 5% of the total value, based on the Agreement prices, of the goods, work, or services provided in the

audited period, then Grantee must reimburse the City for 50% of the cost of the audit and 50% of the cost of each subsequent audit that the City conducts;

(B) If, however, the audit has revealed overcharges to the City representing 5% or more of the total value, based on the Agreement prices, of the goods, work, or services provided in the audited period, then Grantee must reimburse the City for the full cost of the audit and of each subsequent audit.

Failure of Grantee to reimburse the City in accordance with Section A or B above is an event of default under Section 10.01 of this Agreement, and Grantee will be liable for all of the City's costs of collection, including any court costs and attorneys' fees.

#### **4.11 Confidentiality**

(a) All Deliverables and reports, data, findings or information in any form prepared, assembled or encountered by or provided by Grantee under this Agreement are property of the City and are confidential, except as specifically authorized in this Agreement or as may be required by law. Grantee must not allow the Deliverables to be made available to any other individual or organization without the prior written consent of the City. Further, all documents and other information provided to Grantee by the City are confidential and must not be made available to any other individual or organization without the prior written consent of the City. Grantee must implement such measures as may be necessary to ensure that its staff and its Subcontractors are bound by the confidentiality provisions in this Agreement.

(b) Grantee must not issue any publicity news releases or grant press interviews, and except as may be required by law during or after the performance of this Agreement, disseminate any information regarding its Services or the project to which the Services pertain without the prior written consent of the Commissioner.

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

(d) HIPAA and AIDS Confidentiality Act. To the extent not defined herein, the capitalized terms below and in Exhibit 6 will have the same meaning as set forth in the Health Insurance Portability and Accountability Act ("HIPAA"). See 45 CFR parts 160, 162 and 164. Grantee and all its subcontractors must comply with HIPAA and all rules and regulations applicable to it including the Privacy Rule, which sets forth the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164 subparts A and E; the Standards for Electronic Transactions, which are located at 45 CFR parts 160 and 162 and the Security Standards, which are located at 45 CFR parts 160, 162 and 164. Grantee must also comply with the Illinois AIDS Confidentiality Act (410 ILCS 305/1 through 16) and the rules and regulations of the Illinois Department of Public Health promulgated under it. If Grantee fails to comply with the applicable provisions under HIPAA or the Illinois AIDS Confidentiality Act, such failure will constitute an event of default under this Agreement for which no opportunity for cure will be

provided. Additionally, if Grantee is a Business Associate it must comply with all requirements of HIPAA applicable to Business Associates including the provisions contained in Exhibit 6.

**4.12 Assignments and Subcontracts.** Grantee must not assign, delegate or otherwise transfer all or any part of its rights or obligations under this Agreement or any part of it, unless otherwise provided for in this Agreement or without the express written consent of the Commissioner. The absence of such a provision or written consent voids the attempted assignment, delegation or transfer and is of no effect as to the Services or this Agreement. No approvals given by the Commissioner operate to relieve Grantee of any of its obligations or liabilities under this Agreement.

All subcontracts and all approvals of Subcontractors are, regardless of their form, considered conditioned upon performance by the Subcontractor in accordance with the terms and conditions of this Agreement. If any Subcontractor fails to observe or perform the terms and conditions of this Agreement to the satisfaction of the Department, the City has the absolute right upon written notification to immediately rescind approval and to require the performance of this Agreement by Grantee personally or through any other City-approved Subcontractor. Any approval for the use of Subcontractors in the performance of the Services under this Agreement under no circumstances operates to relieve Grantee of any of its obligations or liabilities under this Agreement.

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

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

Under Municipal Code Section 2-92-245, the Chief Procurement Officer may make direct payments to Subcontractors for Services performed under this Agreement. Any such payment has the same effect as if the City had paid Grantee that amount directly. Such payment by the City to Grantee's Subcontractor under no circumstances operates to relieve Grantee of any of its obligations or liabilities under this Agreement. This section is solely for the benefit of the City and does not grant any third party beneficiary rights.

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

## **ARTICLE 5. TERM OF PERFORMANCE**

### **5.1 Timeliness of Performance**

(a) Grantee must provide the Services and Deliverables within the term and within the time limits required under this Agreement, pursuant to the provisions of Section 2.1 and Exhibit 1. **Further, Grantee acknowledges that TIME IS OF THE ESSENCE and that the failure of Grantee to comply with the time limits described in this Section 5.1 may result in economic or other losses to the City.**

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

**5.2 Agreement Extension Option.** The Commissioner may at any time before this Agreement expires elect to extend this Agreement for up to three (3) additional one-year periods under the same terms and conditions as this original Agreement, except as provided otherwise in this Agreement, by notice in writing to Grantee. After notification by the Commissioner, this Agreement must be modified to reflect the time extension in accordance with the provisions of Section 11.3.

## **ARTICLE 6. COMPENSATION**

**6.1 Basis of Payment.** Grantee will be compensated for Services performed and costs incurred and paid directly by Grantee pursuant to the Budget, which is attached to this Agreement as Exhibit 2 and incorporated by reference as if fully set forth here. Requests for budget revisions which do not affect the Compensation must be submitted for review and approval to the Department.

**6.2 Method of Payment.** Grantee must submit reimbursement requisitions to the City monthly, or at other intervals as determined by the City, identifying the payment due for Services performed and costs incurred and paid directly by Grantee in such detail as the City may require, with supporting documentation if required by the City. The City will reject any reimbursement requisition that includes costs that were incurred or paid by any party other than the Grantee. The requisitions must be on forms provided by the City. The City will process payment within 60 days following submission.

The final requisition for reimbursement must be submitted within forty-five days of the expiration or termination of this Agreement or any amendments to it. Requisitions that are submitted after this date will not be honored, unless written approval is given by the City. Further, the City reserves the right to salvage any funds not expended by Grantee by the end of the term of the Agreement.

**6.3 Non-Appropriation.** If no funds or insufficient funds are appropriated and budgeted in any fiscal period of the City for payments to be made under this Agreement, then the City will notify Grantee in writing of that occurrence, and this Agreement will terminate on the earlier of the last day of the fiscal period for which sufficient appropriation was made or whenever the funds appropriated for payment under this Agreement are exhausted. Payments for Services completed to the date of notification will be made to Grantee. No payments will be made or due to Grantee under this Agreement beyond those amounts approved, appropriated and budgeted by the City to fund payments under this Agreement.

## **ARTICLE 7. DISPUTES**

Except as otherwise provided in this Agreement, Grantee must and the City may bring any dispute arising under this Agreement which is not resolved by the parties to the Chief Procurement Officer for decision based upon the written submissions of the parties. (A copy of the "Regulations of the Department of Procurement Services for Resolution of Disputes between Contractors and the City of Chicago" is available in City Hall, 121 N. LaSalle Street, Room 301, Bid and Bond Room, Chicago, Illinois 60602.) The Chief Procurement Officer will issue a written decision and send it to Grantee by mail. The decision of the Chief Procurement Officer is final and binding. The sole and exclusive remedy to challenge the decision of the Chief Procurement Officer is judicial review by means of a common law writ of certiorari.

## **ARTICLE 8. COMPLIANCE WITH ALL LAWS**

### **8.1 Compliance with All Laws Generally**

(a) Grantee must observe and comply with all applicable federal, state, county and municipal laws, statutes, ordinances and executive orders, in effect now or later and whether or not they appear in this Agreement, including those set forth in this Article 8, and Grantee must pay all taxes and obtain all licenses, certificates and other authorizations required by them. Grantee must require all Subcontractors to do so, also. Further, Grantee must execute and must cause any Subcontractors to execute an Economic Disclosure Statement and Affidavit ("**EDS**") in the form attached to this Agreement as Exhibit 4. Notwithstanding acceptance by the City of the EDS, failure of the EDS to include all information required under the Municipal Code renders this Agreement voidable at the option of the City. Grantee and any Subcontractors must promptly update their EDS(s) on file with the City whenever any information or response provided in the EDS(s) is no longer complete and accurate, and failure to promptly update such EDS(s) will constitute an event of default under this Agreement.

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

### **8.2 Nondiscrimination**

(a) **Grantee.** In performing its Services under this Agreement, Grantee must comply with all applicable laws and regulations prohibiting discrimination against individuals and groups.

#### **(i) Federal Requirements**

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

Grantee must comply with, and the procedures Grantee utilizes and the Services Grantee provides under this Agreement must comply with, the Civil Rights Act of 1964, 42 U.S.C. sec. 2000e *et seq.* (1981), as amended and the Civil Rights Act of 1991, P.L. 102-166. Attention is called to: Exec. Order No. 11246, 30 Fed. Reg. 12,319 (1965), reprinted in 42 U.S.C. 2000e note, as amended by Exec. Order No. 11375, 32 Fed. Reg. 14,303 (1967) and by Exec. Order No. 12086, 43 Fed. Reg. 46,501 (1978); Age Discrimination Act, 42 U.S.C. §§ 6101-6106 (1981); Age Discrimination in Employment Act, 29 U.S.C. §§621-34; Rehabilitation Act of 1973, 29 U.S.C. §§ 793-794 (1981); the Fair Housing Amendments Act, 42 U.S.C. §3601 *et seq.* (1988); Americans with Disabilities Act, 42 U.S.C. §12101 *et seq.*; 41 C.F.R. Part 60 *et seq.* (1990); and all other applicable federal statutes, regulations and other laws.

(ii) **State Requirements**

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

(iii) **City Requirements**

Grantee must comply with, and the procedures Grantee utilizes and the Services Grantee provides under this Agreement must comply with, the Chicago Human Rights Ordinance, ch. 2-160, Section 2-160-010 *et seq.* of the Municipal Code, and all other applicable City ordinances and rules. Further, Grantee must furnish and must cause each of its Subcontractor(s) to furnish such reports and information as requested by the Chicago Commission on Human Relations.

(b) **Subcontractors.** Grantee must incorporate all of this Section 8.2 by reference, in all agreements entered into with any suppliers of materials, furnisher of services, Subcontractors of any tier, and labor organizations that furnish skilled, unskilled and craft union skilled labor, or that may provide any such materials, labor or services in connection with this Agreement.

**8.3 Inspector General.** It is the duty of any Grantee, bidder, proposer or contractor, all Subcontractors, every applicant for certification of eligibility for a City contract or program, and all officers, directors, agents, partners and employees of any Grantee, bidder, proposer or contractor, Subcontractor or such applicant to cooperate with the Inspector General and the Legislative Inspector General in any investigation or hearing undertaken pursuant to Chapters 2-55 and 2-56 of the Municipal Code. Grantee understands and will abide by all provisions of Chapters 2-55 and 2-56 of the Municipal Code. All subcontracts must inform Subcontractors of the provision and require understanding and compliance with it.

**8.4 Business Relationships with Elected Officials.** Pursuant to Section 2-156-030(b) of the Municipal Code, it is illegal for any elected official of the City, or any person acting at the direction of such official, to contact, either orally or in writing, any other City official or employee with respect to any matter involving any person with whom the elected official has a business relationship, or to participate in any discussion in any City Council committee hearing or in any City Council meeting or to vote on any matter involving the person with whom an elected

official has a business relationship. **Violation of Section 2-156-030(b) by any elected official with respect to this Agreement is grounds for termination of this Agreement.** The term business relationship is defined as set forth in Section 2-156-080 of the Municipal Code.

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 domestic partner, or of any entity in which an official or his or her spouse or domestic partner has a financial interest, with a person or entity which entitles an official to compensation or payment in the amount of \$2,500 or more in a calendar year; provided, however, a financial interest shall not include: (i) any ownership through purchase at fair market value or inheritance of less than one percent 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; (ii) the authorized compensation paid to an official or employee for his office or employment; (iii) any economic benefit provided equally to all residents of the City; (iv) a time or demand deposit in a financial institution; or (v) an endowment or insurance policy or annuity contract purchased from an insurance company. A “contractual or other private business dealing” shall not include any employment relationship of an official's spouse or domestic partner with an entity when such spouse or domestic partner has no discretion concerning or input relating to the relationship between that entity and the City.

### **8.5 Chicago “Living Wage” Ordinance**

(a) **Not-for-Profit Corporations:** If Grantee is a corporation having federal tax-exempt status under Section 501(c)(3) of the Internal Revenue Code and is recognized under Illinois not-for-profit law, then the provisions of Sections (b) through (f) below do not apply.

(b) Section 2-92-610 of the Municipal Code provides for a living wage for certain categories of workers employed in the performance of City contracts, specifically non-City employed security guards, parking attendants, day laborers, home and health care workers, cashiers, elevator operators, custodial workers and clerical workers (“**Covered Employees**”).

(c) Accordingly, pursuant to Section 2-92-610 and regulations promulgated under it:

- i. If Grantee have 25 or more full-time employees, and
- ii. If at any time during the performance of this Agreement, Grantee and/or any Subcontractor or any other entity that provides any portion of the Services (collectively “**Performing Parties**”) uses 25 or more full-time security guards, or any number of other full-time Covered Employees, then
- iii. Grantee must pay its Covered Employees, and must assure that all other Performing Parties pay their Covered Employees, not less than the minimum hourly rate as determined in accordance with this provision (the “**Base Wage**”) for all Services performed under this Agreement.

(d) Grantee's obligation to pay, and to assure payment of, the Base Wage will begin at any time during the time for performance of this Agreement when the conditions set forth in (c)i. and (c)ii. above are met, and will continue until the end of the time for performance of this Agreement.

(e) As of July 1, 2014, the Base Wage became \$11.93, and each July 1 thereafter, the Base Wage will be adjusted, using the most recent federal poverty guidelines for a family of four as published annually by the U.S. Department of Health and Human Services, to constitute the

following: the poverty guidelines for a family of four divided by 2000 hours or the current base wage, whichever is higher. At all times during the time for performance of this Agreement, Grantee and all other Performing Parties must pay the Base Wage (as adjusted in accordance with the above). If the payment of prevailing wages is required for Services done under this Agreement, and the prevailing wages for Covered Employees are higher than the Base Wage, then Grantee and all other Performing Parties must pay the prevailing wage rates.

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

**8.6 Compliance with Environmental and Safety Laws.** Grantee shall be subject to, obey and adhere to any and all federal, state and local laws, statutes, ordinances, codes, rules, regulations and executive orders relating to public health and safety and the environment as are now or may be in effect during the term of this Agreement which may be applicable to Grantee, including but not limited to the following Sections of the Municipal Code: Section 7-28-390, 7-28-440, 11-4-1410, 11-4-1420, 11-4-1450, 11-4-1500, 11-4-1530, 11-4-1550, or 11-4-1560, whether or not in the performance of this Agreement.

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

## **ARTICLE 9. SPECIAL CONDITIONS**

**9.1 Warranties and Representations.** In connection with signing and carrying out this Agreement, Grantee:

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

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

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

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



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

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

(g) acknowledges that any certification, affidavit or acknowledgment made under oath in connection with this Agreement is made under penalty of perjury and, if false, is also cause for termination under Sections 10.1 and 10.3 of this Agreement; and

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

## **9.2 Ethics**

(a) In addition to the foregoing warranties and representations, Grantee warrants:

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

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

(b) Grantee further acknowledges that any Agreement entered into, negotiated or performed in violation of any of the provisions of Chapter 2-156 is voidable as to the City.

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

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

**9.5 Conflicts of Interest**

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

(b) Grantee covenants that it, and to the best of its knowledge, its Subcontractors if any (collectively, "**Consulting Parties**"), presently have no direct or indirect interest and will not acquire any interest, direct or indirect, in any project or contract that would conflict in any manner or degree with the performance of its Services under this Agreement.

(c) Upon the request of the City, Grantee must disclose to the City its past client list and the names of any clients with whom it has an ongoing relationship. Grantee is not permitted to perform any Services for the City on applications or other documents submitted to the City by any of Grantee's past or present clients. If Grantee becomes aware of a conflict, it must immediately stop work on the assignment causing the conflict and notify the City.

(d) Without limiting the foregoing, if the Consulting Parties assist the City in determining the advisability or feasibility of a project or in recommending, researching, preparing, drafting or issuing a request for proposals or bid specifications for a project, the Consulting Parties must not participate, directly or indirectly, as a prime, subcontractor or joint venturer in that project or in the preparation of a proposal or bid for that project during the term of this Agreement or afterwards. The Consulting Parties may, however, assist the City in reviewing the proposals or bids for the project if none of the Consulting Parties have a relationship with the persons or entities that submitted the proposals or bids for that project.

(e) Grantee further covenants that, in the performance of this Agreement, no person having any conflicting interest will be assigned to perform any Services or have access to any confidential information, as described in Section 4.11 of this Agreement. If the City, by the Commissioner in his reasonable judgment, determines that any of Grantee's Services for others conflict with the Services Grantee is to render for the City under this Agreement, Grantee must terminate such other services immediately upon request of the City.

(f) Furthermore, if any federal funds are to be used to compensate or reimburse Grantee under this Agreement, Grantee represents 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. § 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, Grantee must execute a Certification Regarding Lobbying, which is part of the EDS and incorporated by reference as if fully set forth here.

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

## **ARTICLE 10. EVENTS OF DEFAULT, REMEDIES, TERMINATION, SUSPENSION AND RIGHT TO OFFSET**

**10.1 Events of Default Defined.** In addition to any others mentioned elsewhere in this Agreement, the following constitute events of default:

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

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

(i) Failure due to a reason or circumstances within Grantee's reasonable control to perform the Services with sufficient personnel and equipment or with sufficient material to ensure the performance of the Services;

(ii) Failure to perform the Services in a manner satisfactory to the Commissioner or inability to perform the Services satisfactorily as a result of insolvency, filing for bankruptcy or assignment for the benefit of creditors;

(iii) Failure to promptly re-perform within a reasonable time Services that were rejected as erroneous or unsatisfactory;

(iv) Discontinuance of the Services for reasons within Grantee's reasonable control; and

(v) Failure to comply with any other material term of this Agreement, including the provisions concerning insurance and nondiscrimination.

(c) Any change in ownership or control of Grantee without the prior written approval of the Commissioner, which approval the Commissioner will not unreasonably withhold.

(d) Grantee's default under any other agreement it may presently have or may enter into with the City during the life of this Agreement. Grantee acknowledges and agrees that in the event of a default under this Agreement the City may also declare a default under any such other agreements.

(e) Failure to comply with Section 8 in the performance of the Agreement.

(f) Grantee's repeated or continued violations of City ordinances unrelated to performance under the Agreement that in the opinion of the Commissioner indicate a willful or reckless disregard for City laws and regulations.

**10.2 Remedies.** The occurrence of any event of default permits the City, at the City's sole option, to declare Grantee in default. The Commissioner may in his sole discretion give Grantee an opportunity to cure the default within a certain period of time, which period of time must not exceed 30 days unless extended by the Commissioner. Whether to declare Grantee in default is within the sole discretion of the Commissioner and neither that decision nor the factual basis for it is subject to review or challenge under the Disputes provision of this Agreement.

The Commissioner will give Grantee written notice of the default, either in the form of a cure notice ("**Cure Notice**"), or, if no opportunity to cure will be granted, a default notice ("**Default Notice**"). If the Commissioner gives a Default Notice, he will also indicate any present intent he may have to terminate this Agreement, and the decision to terminate is final and effective upon giving the notice. If the Commissioner decides not to terminate, this decision will not preclude him from later deciding to terminate the Agreement in a later notice, which will be final and effective upon the giving of the notice or on the date set forth in the notice, whichever is later. The Commissioner may give a Default Notice if, within the cure period given in a Cure Notice, in the sole opinion of the Commissioner, Grantee fails to effect a cure or fails to commence and continue diligent efforts to cure the event of default. When a Default Notice with intent to terminate is given as provided in this Section 10.2 and Article 12, Grantee must discontinue any Services, unless otherwise directed in the notice, and deliver all materials accumulated in the performance of this Agreement, whether completed or in the process, to the City.

After giving a Default Notice, the City may invoke any or all of the following remedies:

(a) The right to take over and complete the Services, or any part of them, at Grantee's expense and as agent for Grantee, either directly or through others, and bill Grantee for the cost of the Services, and Grantee must pay the difference between the total amount of this bill and the amount the City would have paid Grantee under the terms and conditions of this Agreement for the Services that were assumed by the City as agent for Grantee under this Section 10.2;

(b) The right to terminate this Agreement as to any or all of the Services yet to be performed effective at a time specified by the City;

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

(d) The right to money damages;

(e) The right to withhold all or any part of Grantee's compensation under this Agreement;

(f) The right to deem Grantee non-responsible in future contracts to be awarded by the City.

If the Commissioner considers it to be in the City's best interests, he may elect not to declare default or to terminate this Agreement. The parties acknowledge that this provision is solely for the benefit of the City and that if the City permits Grantee to continue to provide the Services despite one or more events of default, Grantee is in no way relieved of any of its

responsibilities, duties or obligations under this Agreement, nor does the City waive or relinquish any of its rights.

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

**10.3 Early Termination.** In addition to termination under Sections 10.1 and 10.2 of this Agreement, the City may terminate this Agreement, or all or any portion of the Services to be performed under it, at any time by a notice in writing from the City to Grantee. The City will give notice to Grantee in accordance with the provisions of Article 12. The effective date of termination will be the date the notice is received by Grantee or the date stated in the notice, whichever is later. If the City elects to terminate this Agreement in full, all Services to be provided under it must cease and all materials that may have been accumulated in performing this Agreement, whether completed or in the process, must be delivered to the City effective 10 days after the date the notice is considered received as provided under Article 12 of this Agreement (if no date is given) or upon the effective date stated in the notice.

After the notice is received, Grantee must restrict its activities, and those of its Subcontractors, to winding down any reports, analyses, or other activities previously begun. No costs incurred after the effective date of the termination are allowed. Payment for any Services actually and satisfactorily performed before the effective date of the termination is on the same basis as set forth in Article 6, but if any compensation is described or provided for on the basis of a period longer than 10 days, then the compensation must be prorated accordingly. No amount of compensation, however, is permitted for anticipated profits on unperformed Services. The City and Grantee must attempt to agree on the amount of compensation to be paid to Grantee, but if not agreed on, the dispute must be settled in accordance with Article 7 of this Agreement. The payment so made to Grantee is in full settlement for all Services satisfactorily performed under this Agreement.

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

If the City's election to terminate this Agreement for default under Sections 10.1 and 10.2 is determined in a court of competent jurisdiction to have been wrongful, then in that case the termination is to be considered to be an early termination under this Section 10.3.

**10.4 Suspension.** The City may at any time request that Grantee suspend its Services, or any part of them, by giving 15 days prior written notice to Grantee or upon informal oral, or even no notice, in the event of emergency. No costs incurred after the effective date of such suspension are allowed. Grantee must promptly resume its performance of the Services under the same terms and conditions as stated in this Agreement upon written notice by the Commissioner and such equitable extension of time as may be mutually agreed upon by the Commissioner and Grantee when necessary for continuation or completion of Services. Any additional costs or expenses actually incurred by Grantee as a result of recommencing the

Services must be treated in accordance with the compensation provisions under Article 6 of this Agreement.

No suspension of this Agreement is permitted in the aggregate to exceed a period of 45 days within any one year of this Agreement. If the total number of days of suspension exceeds 45 days, Grantee by written notice to the City may treat the suspension as an early termination of this Agreement under Section 10.3.

#### **10.5 Right to Offset**

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

- (i) if the City terminates this Agreement for default or any other reason resulting from Grantee's performance or non-performance;
- (ii) if the City exercises any of its remedies under Section 10.2 of this Agreement; or
- (iii) if the City has any credits due or has made any overpayments under this Agreement.

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

(b) As provided under Section 2-92-380 of the Municipal Code and in addition to any other rights and remedies (including any of set-off) available to the City under this Agreement or permitted at law or in equity, the City is entitled to set off a portion of the price or compensation due under this Agreement in an amount equal to the amount of the fines and penalties for each outstanding parking violation complaint and/or the amount of any debt owed by Grantee to the City, as those terms are defined in Section 2-92-380.

(c) In connection with any liquidated or unliquidated claims against Grantee, without breaching this Agreement, the City may set off a portion of the price or compensation due under this Agreement in an amount equal to the amount of any liquidated or unliquidated claims that the City has against Grantee unrelated to this Agreement. When the City's claims against Grantee are finally adjudicated in a court of competent jurisdiction or otherwise resolved, the City will

reimburse Grantee to the extent of the amount the City has offset against this Agreement inconsistently with such determination or resolution.

## **ARTICLE 11. GENERAL CONDITIONS**

### **11.1 Entire Agreement**

(a) **General.** This Agreement, and the exhibits attached to it and incorporated in it, constitute the entire agreement between the parties and no other terms, conditions, warranties, inducements, considerations, promises or interpretations are implied or impressed upon this Agreement that are not addressed in this Agreement. This Agreement amends and restates the Original Grant Agreement in its entirety. In the event of any conflict between the Original Grant Agreement and this Agreement, this Agreement shall control.

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

(c) **No Omissions.** Grantee acknowledges that Grantee was given ample opportunity and time and was requested by the City to review thoroughly all documents forming this Agreement before signing this Agreement in order that it might request inclusion in this Agreement of any statement, representation, promise or provision that it desired or on that it wished to place reliance. Grantee did so review those documents, and either every such statement, representation, promise or provision has been included in this Agreement or else, if omitted, Grantee relinquishes the benefit of any such omitted statement, representation, promise or provision and is willing to perform this Agreement in its entirety without claiming reliance on it or making any other claim on account of its omission.

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

**11.3 Amendments.** No changes, amendments, modifications or discharge of this Agreement, or any part of it are valid unless in writing and signed by the authorized agent of Grantee and by the Commissioner or their respective successors and assigns. The City incurs no liability for Additional Services without a written amendment to this Agreement under this Section 11.3.

Whenever in this Agreement Grantee is required to obtain prior written approval, the effect of any approval that may be granted pursuant to Grantee's request is prospective only from the later of the date approval was requested or the date on which the action for which the approval

was sought is to begin. In no event is approval permitted to apply retroactively to a date before the approval was requested.

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

**11.5 Severability.** If any provision of this Agreement is held or deemed to be or is in fact invalid, illegal, inoperative or unenforceable as applied in any particular case in any jurisdiction or in all cases because it conflicts with any other provision or provisions of this Agreement or of any constitution, statute, ordinance, rule of law or public policy, or for any other reason, those circumstances do not have the effect of rendering the provision in question invalid, illegal, inoperative or unenforceable in any other case or circumstances, or of rendering any other provision or provisions in this Agreement invalid, illegal, inoperative or unenforceable to any extent whatsoever. The invalidity, illegality, inoperativeness or unenforceability of any one or more phrases, sentences, clauses or sections in this Agreement does not affect the remaining portions of this Agreement or any part of it.

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

**11.7 Cooperation.** Grantee must at all times cooperate fully with the City and act in the City's best interests. If this Agreement is terminated for any reason, or if it is to expire on its own terms, Grantee must make every effort to assure an orderly transition to another provider of the Services, if any, orderly demobilization of its own operations in connection with the Services, uninterrupted provision of Services during any transition period and must otherwise comply with the reasonable requests and requirements of the Department in connection with the termination or expiration.

**11.8 Waiver.** Nothing in this Agreement authorizes the waiver of a requirement or condition contrary to law or ordinance or that would result in or promote the violation of any federal, state or local law or ordinance. Whenever under this Agreement the City by a proper authority waives Grantee's performance in any respect or waives a requirement or condition to either the City's or Grantee's performance, the waiver so granted, whether express or implied, only applies to the particular instance and is not a waiver forever or for subsequent instances of the performance, requirement or condition. No such waiver is a modification of this Agreement regardless of the number of times the City may have waived the performance, requirement or condition. Such waivers must be provided to Grantee in writing.

**11.9 Independent Contractor.**



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

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

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

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

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

(b) The City is subject to the June 24, 2011 "City of Chicago Hiring Plan" (the "**2011 City Hiring Plan**") entered in *Shakman v. Democratic Organization of Cook County*, Case No 69 C 2145 (United States District Court for the Northern District of Illinois). Among other things, the 2011 City Hiring Plan prohibits the City from hiring persons as governmental employees in non-exempt positions on the basis of political reasons or factors.

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

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

(e) In the event of any communication to Grantee by a City employee or City official in violation of paragraph (c) above, or advocating a violation of paragraph (d) above, Grantee will, as soon as is reasonably practicable, report such communication to the Hiring Oversight Section of the City's Office of the Inspector General ("**IGO Hiring Oversight**"), and also to the head of the Department. Grantee will also cooperate with any inquiries by IGO Hiring Oversight related to this Agreement.

## **ARTICLE 12. NOTICES**

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

If to the **City**: The CSO's and the Department's mailing addresses noted in this Agreement's preamble, with copies to

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

If to **Grantee**: Grantees' mailing addresses noted in this Agreement's preamble

Changes in these addresses must be in writing and delivered in accordance with the provisions of this Article 12. Notices delivered by mail are considered received three days after mailing in accordance with this Article 12. Notices delivered personally are considered effective upon receipt. Refusal to accept delivery has the same effect as receipt.

## **ARTICLE 13. AUTHORITY**

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

## **ARTICLE 14. ADDITIONAL COMPENSATION PROVISIONS**

**14.1 Non-Expendable Personal Property.** Grantee must receive written authorization from the City prior to purchasing tangible personal property having a useful life of more than one year with an acquisition cost of \$5,000 or more per unit ("**Personal Property**"), or as otherwise determined by the Department and defined in Exhibit A and B. All Personal Property will be the property of the City. Grantee must maintain a current inventory listing of Personal Property and must deliver a copy of the listing to the City annually. Grantee must receive written authorization from the City before using funds under this Agreement to improve or purchase real property.

When this Agreement expires or is terminated, Grantee must return to the City (a) the balance of any funds received under this Agreement and any accounts receivable attributable to those funds and (b) all Personal Property. However, upon receipt of the final inventory of all

Personal Property, the City may elect to allow Personal Property to remain in the possession of Grantee if the City, in its sole discretion, determines that the Personal Property is necessary for the performance of any new or other services by Grantee for the City.

**14.2 Allowable Costs.** All allowable costs, although approved by the City's Comptroller's Office, are not considered final and may be disallowed upon the completion of audits performed by the City. Allowable costs are the costs set forth in the Budget. In the event of such disallowance, Grantee must refund the amount disallowed to the City.

**14.3 Reduction of Compensation.** If, subsequent to the execution of this Agreement, anticipated local appropriations are reduced, or the City determines in its sole discretion that Grantee's performance is not satisfactory, the City reserves the right, upon written notice to Grantee, to reduce or modify the compensation under this Agreement, the time of performance or the number of unfilled participant slots.

If the Compensation is reduced, Grantee will have 30 days from the date of the written notice to submit a revised work program, budget or other attachment ("**Revised Submittals**") to the City reflecting the decrease in the Compensation. The City will have the discretion to modify the Revised Submittals as it deems appropriate in order to realize the goals of this Agreement. The Revised Submittals will be reviewed by the Commissioner and upon their final approval will become a part of this Agreement superseding the previous documents.

In the event that Grantee fails to comply with the written notice or submits Revised Submittals which are not accepted by the City, Grantee must perform this Agreement as originally executed for the reduced Compensation.

## **ARTICLE 15. RELIGIOUS ACTIVITIES**

- (a) Grantee warrants that it will not engage in any inherently religious activities, such as worship, religious instruction, or proselytization, as part of or while carrying out the funded programs or services.
- (b) Grantee warrants that if it does engage in inherently religious activities, such as worship, religious instruction, or proselytization,
  - (i) such activities will always be conducted separately, in time or location, from the funded programs or services; and
  - (ii) any participation in such activities on the part of beneficiaries of the funded programs or services must be wholly voluntary.
- (c) Grantee warrants that it will not discriminate against a beneficiary or prospective beneficiary of the funded programs or services on the basis of religion, religious belief, or participation or nonparticipation in any inherently religious activities.
- (d) If the Agreement involves any grant of funds for the acquisition, construction, or rehabilitation of structures, Grantee warrants:
  - (i) The room or space that the grant funds will be used to acquire, construct or rehabilitate is not Grantee's primary place of worship; and
  - (ii) Grant funds will be used only for those portions of the acquisition, construction, or rehabilitation of the structures that are attributable to eligible activities; and

- (iii) If in the future the structure is used for inherently religious activities or otherwise ceases being used for eligible activities, Grantee will adhere to the rules on real property use and disposition and government reimbursement found in the applicable laws and regulations.

#### **ARTICLE 16. ACKNOWLEDGMENT**

Grantee must confer with the City in advance of any public announcement, promulgation or other distribution with respect to the Services. Grantee must clearly acknowledge the co-sponsorship of the City on all promotional materials including brochures, flyers, written or electronic public notices, news releases, public service announcements, acknowledgments at any special events intended to promote the Services, or solicitation of the private sector. Grantee must not attribute any statement to the City without the City's prior written approval.

Further, all reports, maps and other documents completed as part of this Agreement, other than documents exclusively for internal use within the City, must contain the following information in a conspicuous place near the front of the report, map or document: name of City, month and year of preparation, and name of the project or portion of the project.

#### **ARTICLE 17. COMPLIANCE WITH ACCESSIBILITY LAWS**

Grantee warrants that all Services and programs produced under this Agreement must comply with all accessibility standards for persons with disabilities or environmentally limited persons including, but not limited to the following: Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq. and Rehabilitation Act of 1973, 29 U.S.C. §§ 793-94. In the event that the above cited standards are inconsistent, Grantee must comply with the standard providing greater accessibility.

#### **ARTICLE 18. PROHIBITION ON CERTAIN CONTRIBUTIONS - MAYORAL EXECUTIVE ORDER No. 2011-4**

Grantee agrees that Grantee, any person or entity who directly or indirectly has an ownership or beneficial interest in Grantee of more than 7.5 percent ("Owners"), spouses and domestic partners of such Owners, Grantee's contractors (i.e., any person or entity in direct contractual privity with Grantee regarding the subject matter of this Agreement) ("Contractors"), any person or entity who directly or indirectly has an ownership or beneficial interest in any Contractor of more than 7.5 percent ("Sub-owners") and spouses and domestic partners of such Sub-owners (Grantee and all the other preceding classes of persons and entities are together the "Identified Parties"), shall not make a contribution of any amount to the Mayor of the City of Chicago (the "Mayor") or to his political fundraising committee (a) after execution of this Agreement by Grantee, (b) while this Agreement or any Other Contract (as hereinafter defined) is executory, (c) during the term of this Agreement or any Other Contract, or (d) during any period while an extension of this Agreement or any Other Contract is being sought or negotiated. This provision shall not apply to contributions made prior to May 16, 2011, the effective date of Executive Order 2011-4.

Grantee represents and warrants that from the later of (a) May 16, 2011, or (b) the date the City approached Grantee, or the date Grantee approached the City, as applicable, regarding the formulation of this Agreement, no Identified Parties have made a contribution of any amount to the Mayor or to his political fundraising committee.

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

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

Notwithstanding anything to the contrary contained herein, Grantee agrees that a violation of, non-compliance with, misrepresentation with respect to, or breach of any covenant or warranty under this Agreement or violation of Mayoral Executive Order No. 2011-4 constitutes a breach and default under this Agreement, and under any Other Contract for which no opportunity to cure will be granted, unless the City, in its sole discretion, elects to grant such an opportunity to cure. Such breach and default entitles the City to all remedies (including, without limitation, termination for default) under this Agreement, and under any Other Contract, at law and in equity. This provision amends any Other Contract and supersedes any inconsistent provision contained therein.

If Grantee intentionally violates this provision or Mayoral Executive Order No. 2011-4 prior to the Closing, the City may elect to decline to close the transaction contemplated by this Agreement.

For purposes of this provision:

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

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

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

(d) Individuals are "domestic partners" if they satisfy the following criteria:

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

(ii) neither party is married; and

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

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

- (v) two of the following four conditions exist for the partners:
  - (1) The partners have been residing together for at least 12 months.
  - (2) The partners have common or joint ownership of a residence.
  - (3) The partners have at least two of the following arrangements:
    - (A) joint ownership of a motor vehicle;
    - (B) joint credit account;
    - (C) a joint checking account;
    - (D) a lease for a residence identifying both domestic partners as tenants.
  - (4) Each partner identifies the other partner as a primary beneficiary in a will.

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

#### **ARTICLE 19. INTERNET ACCESS**

Grantee must have Internet access at the site level. Internet access may be either dial-up or high speed/DSL. Grantee must maintain at a minimum, one business e-mail address that will be the primary receiving point for all e-mail correspondence for the Department. Grantee may list additional addresses at contract execution. The additional addresses may be for a specific department/division of Grantee or for specific employees of Grantee. During any period that the Department directly funds Grantee's Internet service, Grantee must use the Department assigned E-Mail address as their primary E-mail address. Grantee may list additional e-mail points of contact in the same manner as listed above. Grantee must notify the Department of any e-mail changes within five business days from the effective date of the change.

#### **ARTICLE 20. IEMA AGREEMENT**

The Grantee will not act, or fail to act, in any way that may cause or causes the City to violate the IEMA Agreement, attached hereto as Exhibit 7.

#### **ARTICLE 21. EXCLUDED PROVIDER WARRANTY AND INDEMNITY**

Grantee hereby represents and warrants that Grantee and Grantee's employees and agents are not now and at no time have been excluded from participation in any federally funded health care program, including Medicare and Medicaid. This is an ongoing obligation of Grantee's to ensure that Grantee is not employing or contracting with individuals that have been sanctioned by the U.S. Department of Health and Human Services Office of Inspector General ("OIG") or barred from federal procurement programs. Grantee shall check the OIG's cumulative sanctions reports and General Series Administration website on a monthly basis. Grantee hereby agrees to immediately notify the City of any threatened, proposed, or actual exclusion from any such program of Grantee's or any such program of any of Grantee's employees or agents. In the event that Grantee or any of Grantee's employees or agents performing Services hereunder are excluded from participation in any federally funded health care program during the term of this

Agreement, or at any time after the effective date of this Agreement, Grantee shall be deemed to be in breach of this section and this agreement shall, as of the effective date of such exclusion or breach, automatically terminate. Grantee shall indemnify and hold harmless the City against all actions, claims, demands and liabilities, and against all loss, damage, and costs and expenses, including reasonable attorney's fees, arising directly or indirectly, out of any violation of this section or due to the exclusion of Grantee or any of Grantee's employees and agents from a federally funded health care program, including Medicare or Medicaid.

## **ARTICLE 22. FREEDOM OF INFORMATION ACT AND LOCAL RECORDS ACT**

**22.1 Freedom of Information Act.** Grantee acknowledges that the City is subject to the Illinois Freedom of Information Act, 5 ILCS 140/1 et. seq., as amended ("FOIA"). FOIA requires the City to produce records (as defined in FOIA) in response to a FOIA request in a short period of time, unless the records requested are exempt under FOIA. If the City asks Grantee to produce records within the scope of FOIA, then Grantee covenants to comply with such request within 48 hours of the date of such request. Grantee's failure to timely comply with such request will be a breach of this Agreement. Documents that Grantee submits to the City under this Section or otherwise during the term of the Agreement that contain trade secrets and commercial or financial information may be exempt if disclosure would result in competitive harm. However, for documents that Grantee submits to be treated as a trade secret or information that would cause competitive harm, FOIA requires that Grantee mark any such documents as "proprietary, privileged or confidential." If Grantee marks a document as "proprietary, privileged and confidential", then the City will evaluate whether such document may be withheld under FOIA. The City, in its discretion, will determine whether a document will be exempted from disclosure, and that determination is subject to review by the Illinois Attorney General's Office and/or the courts.

**22.2 Local Records Act.** Grantee acknowledges that the City is subject to the Local Records Act, 50 ILCS 205/1 et. seq, as amended (the "**Local Records Act**"). The Local Records Act provides that public records may only be disposed of as provided in the Local Records Act. If requested by the City, Grantee covenants to use their best efforts consistently applied to assist the City in its compliance with the Local Records Act concerning records arising under or in connection with this Agreement and the Services contemplated in the Agreement.

*[Signature page follows.]*

SIGNED at Chicago, Illinois:

CITY OF CHICAGO

By: \_\_\_\_\_  
Cara Bader,  
Chief Sustainability Officer

By: \_\_\_\_\_  
Rebekah Scheinfeld, Commissioner  
Department of Transportation

CENTER FOR NEIGHBORHOOD TECHNOLOGY

By: RA Dean

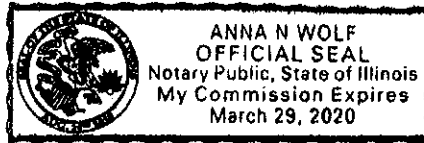
Name: Robert Dean

Title: CEO

(Must Be Executive Director/Corp. President\*)

State of IL

County of COOK



This instrument was acknowledged before me on 5-16-19 (date) by Bob Dean (name/s of person/s) as CEO (type of authority, e.g., officer, trustee, etc.) of Center for Neighborhood Technology.

AWolf (Signature of Notary Public)

\* In the event that this Agreement is signed by any individual other than the corporate president or the executive director, attach a copy of that section of Corporate By-Laws or other authorization, such as a resolution by the Board of Directors, which permits the individual to sign the Agreement for Grantee.



SIGNED at Chicago, Illinois:

CITY OF CHICAGO

By: [Signature]  
Cara Bader,  
Chief Sustainability Officer

By: \_\_\_\_\_  
Rebekah Scheinfeld, Commissioner  
Department of Transportation

CENTER FOR NEIGHBORHOOD TECHNOLOGY

By: [Signature]

Name: Robert Dean

Title: CEO

(Must Be Executive Director/Corp. President\*)

State of IL  
County of COOK



This instrument was acknowledged before me on 5-16-19 (date) by Bob Dean  
(name/s of person/s) as CEO (type of authority, e.g., officer, trustee, etc.) of Center  
for Neighborhood Technology.

[Signature] (Signature of Notary Public)

\* In the event that this Agreement is signed by any individual other than the corporate president  
or the executive director, attach a copy of that section of Corporate By-Laws or other  
authorization, such as a resolution by the Board of Directors, which permits the individual to sign  
the Agreement for Grantee.



EXHIBIT 1

Scope of Services  
and  
Time Limits for Performance



## SCOPE OF WORK

### *A Pilot Study in the Chatham Neighborhood of Chicago to Evaluate Potential Runoff Reduction and Flood Protection Alternatives for Single-Family Properties*

#### Program Overview

The Metropolitan Water Reclamation District (MWRD) and the City of Chicago's Department of Water Management (DWM) have allocated funding for a Pilot Study aimed at gaining insight into the effectiveness of technologies that aim to simultaneously reduce basement backups and stormwater runoff into the sewer system. The Pilot Study will offer residential upgrades services to select blocks in the flood-prone Chatham neighborhood to define eligible flood prevention measures, and the most-cost effective combination of technologies (e.g., backwater valve, cistern, rain garden). The pilot will be primarily funded by MWRD. The City will cover the costs of property assessment and installation of lower cost improvements such as drywells and backwater valves. The Chatham Pilot Study will include up to 40 homes on select property blocks. Landscape construction work will be carried out by Greencorps Chicago, a City of Chicago workforce training group.

Homeowners will also be given the option of paying for additional costs such as regrading and foundation repair to address seepage issues through a loan program offered by Neighborhood Housing Services.

#### Scope of the Pilot Study

Through the Pilot Study, CNT, in partnership with the City and MWRD seek to achieve the following objectives:

- To identify and develop standard details for alternatives that can be implemented at single-family properties to reduce the risk of basement backup and the volume of stormwater runoff.
- To develop criteria and an associated methodology for the selection of candidate properties and the application of an appropriate alternative to each selected property.
- To install the runoff reduction and flood protection alternatives at a maximum of forty (40) selected properties within the Chatham neighborhood.
- To harness potential economies of scale to reduce installation costs.
- To create and implement a monitoring plan to collect data that can be used to evaluate the effectiveness of the technologies implemented.
- To provide recommendations for a future program that can be applied in other neighborhoods.

#### Study Area

The pilot Study Area ("Study Area") will include up to forty (40) residential properties in the Chatham neighborhood of Chicago, as defined in **Figure 1**. Located at the south end of the Chatham neighborhood, this triangular shaped Study Area overlaps with the 6<sup>th</sup>, 8<sup>th</sup>, and 9<sup>th</sup> wards. This area was selected for the Pilot Study because it has a history of regular basement backups and it is currently a

target area of CNT's Rain Ready program. In addition, a higher resolution sewer hydraulic model is available from the MWRD's recently completed stormwater master plan for the area. The hydraulic model will provide helpful guidance in the selection of candidate properties for the Pilot Study.

## CNT Role

CNT will serve as the interface between homeowners and government partners for the pilot study and administer the program. Tasks include:

- Procure contractor to conduct home evaluations and to install selected systems
- Conduct outreach to secure applicants (e.g., targeted mailings, public notices, emails, community meetings)
- Review applications for eligibility and code compliance (e.g., scofflaw law review in cooperation with the City)
- Conduct property inspections with the contractor and select most appropriate systems for each home
- Interface with the contractor(s) (includes Greencorps Chicago) and homeowners relating to construction
- Submit checklists/reporting forms to the City and the MWRD to receive reimbursement for qualified costs
- Perform follow-up survey and provide maintenance training to the homeowner
- Develop and implement monitoring program

## Services to be Provided by CNT

CNT will be responsible for performing the following services.

### **Property Selection**

A two-step process is proposed for the selection of candidate properties to be included in the Pilot Study. The process includes an initial screening and final home inspection and verification.

The initial screening will identify a number of criteria to select up to 60 potential properties or a 2-block neighborhood for the Pilot. The screening criteria can include, but is not limited to:

- Data and results from available hydrologic/hydraulic modeling
- Review of 311 flood complaints
- Survey home data from CNT's RainReady program
- Review of capital improvements planned by the City and MWRD
- GIS analysis of site constraints (utilities, impervious/pervious areas, yard, sizes, etc.)

CNT will inform homeowners selected for the initial screening that not every property will be eligible for the installation of the available flood control devices, which is based on the evaluation criteria set forth below. However, at minimum, each homeowner who agrees to participate in the Pilot Study will receive an on-site inspection and a recommendation from CNT regarding any options that may be available to help reduce flooding at his or her property. The City of Chicago's Private Drain Repair Program may be

available to certain homeowners; however, CNT will inform all residents that participation in that program is separate from this Pilot Study and subject to available funding.

The second step will include a home inspection of each prospective candidate property to determine and verify what types of flood control and passive storage systems are the most appropriate given the site constraints. CNT will conduct property inspections with its contractor. Based on the available budget, data gathered in the initial screening, the home inspection, and the property owner's input and approval, CNT will select the most appropriate technologies to be installed at each property.

The inspection shall include, but is not limited to:

- Televising of the sewer lateral (the video shall be provided to the homeowner at the end of the inspection process)
- Identifying locations of foundation drain, storm drain, and downspouts and determine if they are connected to the lateral
- Measuring dimensions of the lot and available yard space and location of the building/accessory structure
- Determining the relative elevation difference between the building and sidewalk/accessory structure/alley and identifying drainage pathways
- Identifying potential utility conflicts
- Any relevant factors that may determine or influence the selection of measures

The evaluation of each home for recommended flood control measures shall include, but is not limited to, the following criteria:

- Data gathered in the initial screening and subsequent home inspection
- Feasibility of connecting downspouts, storm drains, and foundation drains
- Conditions of the sewer lateral
- Site limitations based on topography, utility, size and dimensions, etc.
- Available project budget (not to exceed \$400,000 for the entire Pilot Study)
- The goal to achieve a balanced application of flood control technologies and passive storage systems considered in this Pilot Study
- Property owner's input and willingness to comply with program requirements, including execution of the liability waiver

CNT and the City shall report findings from the inspection and the evaluation to MWRD for review before performing any installations.

### Flood Control Technologies

CNT will make a recommendation to the City and MWRD of the most appropriate flood technology to be installed at each home. Installations will be made pending approval of the City and MWRD. The following flood control technologies are eligible for reimbursement by MWRD.

- **Simple check valve**
- **Backflow prevention valve with an ejector pump**
- **Surface storage** – Rain garden
- **Subsurface storage** – (e.g., dry well [aggregate-filled trench/well], and underground cistern/container structure.)

CNT will ensure the flood control technologies described above are installed in conjunction with a passive storage system to reduce stormwater runoff. Downspouts from the building will be disconnected, and the runoff will be directed to the storage system.

#### Homeowner Notification and Consent

Following approval of the flood control devices by MWRD and the City, CNT will notify each homeowner. CNT, in partnership with the City and/or its contractor, is solely responsible for obtaining any rights or approvals needed to carry out the installations, and shall obtain an agreement from the homeowner that contains the following components, at minimum:

- Waiver of liability from the homeowner as it relates to the work performed under the Pilot Study holding MWRD harmless for all damages that may occur.
- Agreement to maintain the flood control devices at least for the duration of the Pilot Study and participate in the monitoring program.
- Acknowledgement that the recommended flood control technologies are designed to help prevent basement backups but may not prevent all flooding and drainage-related problems.

#### Installation

Installation of passive storage systems shall be carried out by the City through Greencorps Chicago. Bid and contract administration for backflow prevention and check valve installation (by licensed plumbers) will be handled by CNT with oversight provided by CDOT.

#### Outreach

CNT will conduct outreach to homeowners and interface with GreenCorps Chicago, plumbing contractor(s), and homeowners relating to project scope and construction.

#### Maintenance, Monitoring, and Evaluation

CNT will develop a monitoring program, subject to the review and input of the City and MWRD. Maintenance of the installed systems will be the responsibility of the homeowners; however, CNT will be responsible for working with homeowners to resolve any issues that arise with the proper functioning of the installed technologies and passive storage systems. To that end, CNT will provide follow-up survey and training to homeowners to monitor and maintain the installed systems. CNT will implement the monitoring program to collect data to evaluate the performance of the installed systems; the results of which shall be reported to the MWRD. The monitoring program will be performed for one year following installation of the technologies and green infrastructure, or until the contract end date, December 31, 2020.

The monitoring program shall consist of the following elements, at minimum:

1. An initial survey, prior to installation of the technologies, that provides a baseline of the residents' attitudes towards the history and severity of flooding they currently experience, the technologies being implemented on their home, and expectations of performance of the technologies.
2. After any significant rainfall event (1" or greater) homeowners will be contacted to determine if they experienced flooding in their basement and if they feel they would have experienced flooding during that event normally before the technologies were installed. The amount or severity of any flooding should also be reported, where available.



3. Quarterly inquiries of the participating residents to determine if they experienced any flooding in the previous quarter and if they would have expected flooding normally before the technologies were installed.
4. Final report that summarizes the data collected from the 3 above-listed elements and a final survey of the residents to measure any change in attitude toward the severity of flooding they currently experience, the technologies implemented on their homes and satisfaction with the performance of the technologies. Also, included in the final report will be a summary of the construction that includes evaluation of planned versus actual construction, any unexpected conditions encountered during construction and lessons learned.

### Staffing Plan

CNT will operate the program with a Project Manager supplemented by specialized support, including three full time staff in communications, outreach, development, and accounting. CNT will provide all-inclusive hourly rates (personnel, including occupancy and indirect costs) for CNT Program staff, to be billed on a Time and Materials, not to exceed basis, per the grant agreement.

| Position              | Role  | Responsibilities   |
|-----------------------|---|--|
| Andrew Williams Clark | Managing Director                           | Quality Control  |
| Dawn Walker           | PM Manager, Contract Procurement assistance | Work to include: PM, program design; customer service satisfaction survey and analysis; Analysis; mapping; evaluation reporting    |
| Raines Rebecca        | Community Outreach Specialist               | Work to include: Customer service, outreach, Salesforce data input, community outreach, satisfaction survey(a), monitoring surveys |
| Bryan Nelson          | Home Inspection                             | Homeowner Inspections, report building, homeowner education  |
| Jon Kuta              | Senior Web Developer                        | Design project page and online application   |
| Linda Young           | Chief Operating Officer                     | Project invoicing, contract review, budget officer   |
| Peter Haas, PhD       | Chief Research Scientist                    | GIS analyst, property flow analysis mapping  |
| Kate Borghraef        | Development Associate                       | Salesforce data management   |

### Program Budget

CNT will utilize a two-year Chatham Pilot Study budget, funded by the City of Chicago's Department and Water Management of \$200,000 to provide administrative support, staff,

overheads and materials in relation to the pilot study. Construction costs will be funded by MWRD.

| Expense            | Program Year 1 | Program Year 2    |
|--------------------|----------------|-------------------|
| Total personnel    | \$66,008       | \$14,932          |
| Fringe             | \$13,862       | \$3,136           |
| Occupancy          | \$9,584.36     | \$2,168.13        |
| Overhead           | \$19,967.42    | \$4,516.93        |
| Direct Costs       |                |                   |
| Travel             | \$1044         | \$0               |
| Printing, supplies | \$1367         | \$0               |
| Sub consultants    | \$63,415       | \$0               |
| Total budget       | \$175,247      | \$24,753          |
| Total for 2 years  |                | <b>\$ 200,000</b> |

*The Program Year budgets included below, are anticipated costs which may vary per year. CNT shall manage the total budget to ensure success of the program deliverables over the extent of the contract period.*

### Payment

The City shall reimburse CNT for the administrative costs of implementing the services described herein up to the maximum amount of \$200,000. Administrative costs shall include all costs associated with the inspections, including televising. Payments made by the City shall be in accordance with its agreement with CNT and include an upfront lump sum payment of 25% upon signature of the contract, followed by a quarterly payment schedule.

### Procurement

CNT will ensure any subcontracts are publicly advertised and all program-related contracts awarded to the lowest responsible bidder as determined by the City. CNT, in cooperation with the City, shall consider and act in general accord with the applicable standards of MWRD’s Purchasing Act, 70 ILCS 2605/11/1-11.24, and Multi-Project Labor Agreement and Memorandum of Understanding (attached to this Agreement as Exhibits 2 and 3, respectively) when advertising and awarding any contracts. The City shall provide to MWRD and CNT documentation of the following with respect to any procurement carried out through this IGA:

- Advertisement page for the contract bid out.
- Tab sheet of firms that bid on project
- The award letter or agenda in which the entity made the award

The City shall also require a payment bond and performance bond for all Project-related construction contracts in general accord with the applicable standards of Exhibit 2. The City may impose more stringent

requirements than those contained in Exhibits 2 and 3 when awarding contracts, but in no event shall the City's requirements fall below MWRD's applicable general standards. The City need not include the attached Exhibits 2 and 3 as part of its bid documents. However, the City is responsible for ensuring that these applicable minimum requirements are met.

### Affirmative Action

CNT, in cooperation with the City shall comply with MWRD's Affirmative Action goals with respect to that portion of the cost of the Pilot Study for which MWRD has contributed funds.

CNT and the City shall comply with the applicable portions of MWRD's Affirmative Action Requirements and Affirmative Action Ordinance. Affirmative Action goals for the Project are: 10% of the total amount of reimbursement provided by MWRD for the Project for Women-Owned Business Enterprises, 20% of the total amount of reimbursement provided by MWRD for the Project for Minority-Owned Business Enterprises, and 10% of the total amount of reimbursement provided by MWRD for the Project for Small Business Enterprises.

In order to evidence compliance with MWRD's Affirmative Action Requirements, the City in cooperation with CNT must complete an Affirmative Action Status Report ("Status Report") and submit a letter from a certifying agency that verifies the MBE/WBE/SBE status of the vendors. Failure to submit the Status Report may result in a payment delay and/or denial. The Status Report and the letter from a certifying agency will be submitted to MWRD's Diversity Administrator. The City must comply with the MWRD's Affirmative Action goals only in respect to that portion of the cost of the Project for which MWRD has contributed funds.

### Prevailing Wage

CNT will comply with the Prevailing Wage Act, 820 ILCS 130/0.01 *et seq.*, as applicable, while conducting the construction of the Program. Current prevailing wage rates for Cook County are determined by the Illinois Department of Labor. The prevailing wage rates are available on the Illinois Department of Labor's official website.

### Project Schedule

The anticipated Project schedule will be mutually agreed upon by all parties to this Agreement after execution of the Agreement.

### Term and Termination

The term of the agreement shall commence on the date that the last signature is affixed hereto and shall expire upon completion of the Pilot Study or on December 31, 2020.



EXHIBIT 2(B)

Budget



## Exhibit 2B

| <b>Expense</b>           | <b>Program Year 1</b> | <b>Program Year 2</b> |
|--------------------------|-----------------------|-----------------------|
| Salary                   | \$66,008.00           | \$14,932.00           |
| Fringe                   | \$13,862.00           | \$3,136.00            |
| Occupancy                | \$9,584.00            | \$2,168.00            |
| Overhead                 | \$19,967.00           | \$4,517.00            |
| Direct Costs             |                       |                       |
| Travel                   | \$1,044.00            | \$ -                  |
| Printing, supplies       | \$1,367.00            | \$ -                  |
| sub consultants          | \$63,415.00           | \$ -                  |
| Construction sub         | \$101,930.00          |                       |
| <b>Total budget</b>      | <b>\$277,177.00</b>   | <b>\$24,753.00</b>    |
| <b>Total for 2 years</b> |                       | <b>\$301,930.00</b>   |





EXHIBIT 3

[intentionally omitted]

EXHIBIT 4

Economic Disclosure Statements and Affidavits

## EXHIBIT 5

### Insurance Requirements & Insurance Certificate

A. The kinds and amounts of insurance required are as follows:

1) Workers Compensation and Employers Liability

Workers Compensation as prescribed by applicable law covering all employees who are to provide a service under this Agreement and Employers Liability coverage with limits of not less than \$100,000 each accident or illness.

2) Commercial General Liability (Primary and Umbrella)

Commercial General Liability Insurance or equivalent with limits of not less than \$500,000 per occurrence for bodily injury, personal injury, and property damage liability. Coverages must include the following: All premises and operations, products/completed operations, separation of insureds, defense, and contractual liability (with no limitation endorsement). The City of Chicago is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly from the work or Services.

3) Automobile Liability (Primary and Umbrella)

When any motor vehicles (owned, non-owned and hired) are used in connection with work or Services to be performed, Grantee must provide Automobile Liability Insurance with limits of not less than \$300,000 per occurrence for bodily injury and property damage.

4) Professional Liability

When any professional consultants perform work or Services in connection with this Agreement, Professional Liability Insurance covering errors, omissions, or negligent acts, must be maintained with limits of not less than \$500,000. Coverage must include contractual liability. When policies are renewed or replaced, the policy retroactive date must coincide with, or precede, start of work or Services on this Agreement. A claims-made policy which is not renewed or replaced must have an extended reporting period of 2 years.

5) Medical/Professional Liability

When any medical services are performed in connection with this Agreement, Medical/Professional Liability Insurance must be provided to include coverage for errors, omissions and negligent acts related to the rendering or failure to render professional, medical or health services with limits of not less than \$500,000. Coverage must include contractual liability. When policies are renewed or replaced, the policy retroactive date must coincide with, or precede, start of work or Services on this Agreement. A claims made policy which is not renewed or replaced must have an extended reporting period of 2 years.

6) Builders Risk

When any Grantee performs any construction, including improvement, betterments, and/or repairs, Grantee must provide All Risk Builders Insurance to cover materials, supplies, equipment, machinery and fixtures that are part of the structure.

B. Related Requirements

If the coverages have an expiration or renewal date occurring during the term of this Agreement, Grantee must furnish renewal certificates to the Department at the above address. The receipt of any certificate does not constitute agreement by the City that the insurance requirements in this Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all Agreement requirements. The failure of the City to obtain certificates or other insurance evidence from Grantee is not a waiver by the City of any requirements for Grantee to obtain and maintain the specified coverages. Grantee must advise all insurers of the Agreement provisions regarding insurance. Non-conforming insurance does not relieve Grantee of its obligation to provide insurance as specified here. Nonfulfillment of the insurance conditions may constitute a violation of this Agreement, and the City retains the right to stop work or Services or terminate this Agreement until proper evidence of insurance is provided.

The insurance must provide for 30 days prior written notice to be given to the City in the event coverage is substantially changed, canceled or non-renewed.

All deductibles or self insured retentions on referenced insurance coverages must be borne by Grantee.

Grantee agrees that insurers waive their rights of subrogation against the City of Chicago, its employees, elected officials, agents or representatives.

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

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

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

Grantee must require all Subcontractors to provide the insurance required in this Agreement or Grantee may provide the coverages for Subcontractors. All Subcontractors are subject to the same insurance requirements of Grantee unless otherwise specified in this Agreement.

If Grantee or Subcontractors desire additional coverages, the party desiring additional coverages is responsible for the acquisition and cost of such additional protection.

The City of Chicago's Risk Management Division maintains the right to modify, delete, alter or change these requirements.

C. If you need additional information related to insurance, please call the office of the City Comptroller, at (312) 744-7923.

## EXHIBIT 6

### Contractual Requirements Related to HIPAA

The terms below that are capitalized and in bold have the same meanings as set forth in the Health Insurance Portability and Accountability Act. See 45 CFR parts 160 and 164.

1. Grantee must not use or further disclose Protected Health Information ("**PHI**") other than as permitted or required by this Agreement or as Required by Law. (<http://www.hhs.gov/ocr/hipaa/>)
2. Grantee must use appropriate safeguards to prevent the use or disclosure of PHI other than as provided for in this Agreement.
3. Grantee must mitigate to the extent practicable any harmful effect that is known to Grantee of a use or disclosure of PHI by Grantee in violation of the requirements of this Agreement.
4. Grantee must report any use or disclosure of the PHI not provided for by this Agreement to the City.
5. Grantee must ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Grantee on behalf of the City agrees to the same restrictions and conditions that apply through this Agreement to Grantee with respect to such information.
6. If Grantee has PHI in a Designated Record Set then Grantee must provide access, at the request of the City, and in the time and manner designated by the City, to PHI in a Designated Record Set, to the City or, as directed by the City, to an Individual in order to meet the requirements under 45 CFR 164.524.
7. If Grantee has PHI in a Designated Record Set then Grantee must amend the PHI in the applicable Designated Record Set as directed or agreed to by the City pursuant to 45 CFR 164.526, and in the time and manner designated by the City.
8. Grantee must make internal practices, books and records relating to the use and disclosure of PHI Grantee received from the City or that Grantee created or received on behalf of the City available to the City, or, at the City's request, to the Secretary, in a time and manner designated by the City or the Secretary, for purposes of the Secretary determining City's compliance with the Privacy Rule.
9. Grantee must document the disclosure of PHI and information relating to such disclosures as would be required for the City to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528.
10. Grantee must provide to the City or an Individual, in time and manner designated by the City, information collected that relates to the disclosure of PHI, to permit the City to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528.
11. Grantee must either return all PHI to the City or destroy it, at the City's option, upon termination or expiration of this Agreement.
12. Grantee must implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic health information that it creates, receives, maintains, or transmits on behalf of the City as required by 45 CFR part 164.
13. Grantee must ensure that any agent, including a subcontractor, to whom it provides such information agrees to implement reasonable and appropriate safeguards to protect it.
14. Grantee must report to the City any security incident of which it becomes aware.

## EXHIBIT 7

## IEMA Agreement