

PUBLIC BUILDING COMMISSION OF CHICAGO



PROFESSIONAL SERVICES AGREEMENT

CONTRACT NUMBER PS1022

WITH

TENG & ASSOCIATES, INC.

TO PROVIDE

ARCHITECT OF RECORD SERVICES

FOR

NEW FLEET MANAGEMENT VEHICLE MAINTENANCE FACILITY

VICINITY OF 5201 SOUTH WESTERN BOULEVARD

CHICAGO, ILLINOIS 60609

Mayor Richard M. Daley

Chairman

Montel M. Gayles

Executive Director

Richard J. Daley Center, Room 200

50 West Washington Street

Chicago, Illinois 60602

www.pbcchicago.com

EXECUTION PAGE

**PROFESSIONAL SERVICES AGREEMENT
FOR**

**ARCHITECT OF RECORD
CONTRACT NO. PS1022**

THIS AGREEMENT dated as of October 2, 2006 but actually executed on the date witnessed, is entered into by and between the Public Building Commission of Chicago, a municipal corporation of the State of Illinois, having its principal office at Room 200, Richard J. Daley Center, 50 West Washington Street, Chicago, Illinois 60602, (the "Commission"), and Teng & Associates, Inc., an Illinois corporation with offices at 205 N. Michigan Ave., Chicago, IL 60601, (the "Architect"), at Chicago, Illinois.

BACKGROUND INFORMATION

THE COMMISSION on behalf of the **City of Chicago Department of General Services** (referred to in this Agreement as the "User Agency"), intends to undertake the construction and/or improvement of the following facility or facilities in Chicago, Illinois 60609, described in Schedule A attached to this Agreement (the "Project"):

**New Fleet Management Vehicle Maintenance Facility
Vicinity of 5201 South Western Boulevard
Chicago, Illinois 60609.**

The Commission requires certain professional services described in this Agreement, in connection with the Project and desires to retain the Architect on the terms and conditions set forth in this Agreement to perform such services. The Architect desires to be so retained by the Commission and has represented to the Commission that the Architect has the knowledge, skill, experience and other resources necessary to perform the Services in the manner provided by this Agreement.

The Architect has consulted with the Commission and the User Agency, reviewed the Project Documents (defined below), made site observations, and taken such other actions as the Architect deemed necessary or advisable to make itself fully acquainted with the scope and requirements of the Project and the Services. The Architect represents that it is qualified and competent by education, training and experience to prepare drawings, specifications and construction documents necessary to complete the Project in accordance with standards of reasonable professional skill and diligence.

The Construction Budget for the Project as determined by the Commission is \$12,056,000.00, and the Architect confirms to the Commission that such Budget based upon current area, volume or other unit cost, the requirements of the Project and allowances for cost escalation and Project contingencies, is reasonable for the construction of the Project.

The Commission has relied upon the Architect's representations in selecting the Architect.

NOW THEREFORE, The parties agree on the Terms that follow:

SIGNED on: 12 / 11 / 2006

PUBLIC BUILDING COMMISSION OF CHICAGO

Richard M Daley
Chairman

ATTEST:
Edmund Johnson
Secretary

ARCHITECT: TENG & ASSOCIATES, INC.

BY: *[Signature]*
Principal

BY: _____
Principal

AFFIX CORPORATE
SEAL, IF ANY, HERE

County of: Cook

State of: IL

Subscribed and sworn to before me by Ivan Duorak and _____

on behalf of Architect this 6 day of Nov., 2006.

[Signature]
Notary Public

My Commission expires: 12/28/09

"OFFICIAL SEAL"
MISTY LYNCH
Notary Public, State of Illinois
My Commission Expires 12/28/09

(SEAL OF NOTARY)

TABLE OF CONTENTS

EXECUTION PAGE.....	1
TERMS	6
1) INCORPORATION OF RECITALS	6
2) DEFINITIONS AND USAGE	6
a) Definitions:	6
b) Usage and Conventions.	7
3) INCORPORATION OF DOCUMENTS	8
a) Project Documents	8
b) Policies Concerning MBE and WBE	8
4) ENGAGEMENT AND STANDARDS FOR PERFORMING SERVICES.....	8
a) Engagement	8
b) Key Personnel	8
c) Adequate Staffing.....	8
d) Nondiscrimination.....	8
e) Employment Procedures; Preferences and Compliance.....	9
f) Compliance with Policies Concerning MBE and WBE	9
g) No Damages for Delay	9
h) Records.....	10
i) Time is of the Essence	10
j) Compliance with Laws	10
k) Progress Meetings	10
l) Weekly meetings.....	10
m) Defects in Project	10
n) Performance Standard.....	10
o) Amendments to this Agreement.....	11
p) Energy Conservation Ordinance	11
q) Compliance with The Chicago Standard	11
r) Representation and Covenant by Architect.....	12
5) TERM.....	12
a) Duration.....	12
b) Termination by the Commission.....	12
c) Suspension by the Commission	12
d) Effect of Termination or Suspension.....	13
e) Termination by the Architect	13
f) Force Majeure.....	13
6) COMPENSATION OF ARCHITECT; REIMBURSEMENT FOR EXPENSES.....	14
7) RIGHTS AND OBLIGATIONS OF COMMISSION	14
a) General and Specific	14
b) Limited Exculpation of Architect	15
c) Audits.....	15
d) Legal, Auditing and other Services.....	15
e) Designated Representatives	15
f) Ownership of Documents	15
8) INDEMNIFICATION.....	16
a) Indemnity by Third Parties	16
b) Indemnification by Architect	16
9) INSURANCE MAINTAINED BY THE ARCHITECT	16
10) DEFAULT.....	16
a) Events of Default.....	16
b) Remedies.....	18
c) Remedies Not Exclusive.....	18
11) DISPUTES	18

a)	General.....	18
b)	Procedure	18
c)	Effect.....	18
d)	Architect Self-Help Prohibited.....	19
12)	CONFIDENTIALITY.....	19
13)	ASSIGNMENT	19
14)	RELATIONSHIP OF PARTIES.....	19
15)	GENERAL.....	19
a)	Architect's Authority	19
b)	Counterparts	20
c)	Entire Agreement.	20
d)	Governing Law	20
e)	No Waiver.....	20
f)	Notices.....	20
g)	Non-liability of Public Officials.....	20
h)	Severability.....	20
i)	Successors and Assigns.....	20
j)	Errors and Omission.....	20
k)	Non-appropriation of Funds.....	21
	SCHEDULE A SCOPE OF SERVICES.....	22
	SCHEDULE B PROJECT DOCUMENTS	31
	SCHEDULE C COMPENSATION OF THE ARCHITECT	32
	TABLE C-1.....	35
	SCHEDULE D INSURANCE REQUIREMENTS.....	36
	SCHEDULE E KEY PERSONNEL	39
	EXHIBIT A DISCLOSURE OF RETAINED PARTIES.....	40
	EXHIBIT B DISCLOSURE AFFIDAVIT	41
	EXHIBIT C POLICIES CONCERNING MBE AND WBE.....	42

TERMS

1) INCORPORATION OF RECITALS

The matters recited above are incorporated in and made a part of this Agreement.

2) DEFINITIONS AND USAGE

- a) **Definitions.** The following phrases have the following meanings for purposes of this Agreement:
- i) **Agreement.** This Agreement for Architect-of-Record Services, between the Commission and the Architect, including all attached exhibits, schedules and documents and all such exhibits, schedules and documents incorporated by reference, all component parts and all amendments, modifications, or revisions made in accordance with its terms.
 - ii) **Architect.** The company or other entity identified by the Commission as Architect of Record for the Project covered by this Agreement.
 - iii) **Authorized Commission Representatives.** One or more persons designated in writing by the Commission for the purposes of assisting the Commission in managing the Project. As specifically directed by the Commission, the Authorized Commission Representative will act on behalf of the Commission.
 - iv) **Change in Scope of the Project.** A substantial change in the prototype, whether by alteration, addition, or deletion therefrom, which necessitates a revision in the basic services and compensation of the Architect and is approved in writing by the Commission. Changes are only "Major or Substantial" if items have been raised and tracked through regular project meetings documentation and if the time exceeds 20 hours per issue. The Architect will track and keep time records, and if the time exceeds 20 hours per issue, will inform the Commission in writing. Failure to provide timely notice to the Commission will be treated as a waiver of the Architect's later claim for additional compensation. Changes to the scope of the project that are not "Major or Substantial" as defined here do not entitle the Architect to additional compensation.
 - v) **Commission.** The Public Building Commission of Chicago, a municipal corporation, acting by and through its Chairman, Secretary, Assistant Secretary, Executive Director, Director of Development, Managing Architect, Portfolio Manager or designated Subconsultant or Subconsultants, including the Commission's Authorized Representative, as designated by the Commission in writing.
 - vi) **Construction Budget.** The total funds budgeted by the Commission for constructing the Project and furnishing all items necessitated by the Project which must be shown or described in the Contract Documents to be prepared by the Architect in accordance with this Agreement. The Construction Budget does not include any payments made to the Architect or Subconsultants or reimbursable expenses pursuant to Schedule C. The Construction Budget does not include demolition, building abatement/demolition related activities.
 - vii) **Contingent Additional Services.** Additional services to be provided by the Architect for the Project pursuant to the provisions of Schedule A.
 - viii) **Contract Documents.** All of the component parts of the Contract between the Commission and the General Contractor for the construction and improvement of the Project including Books 1, 2 and 3, the general and special conditions,

technical specifications, drawings, addenda, bulletins and modifications to those parts.

- ix) **Day.** Unless otherwise indicated, the word "day" means calendar day. The phrase "business day" refers to Monday through Friday, except for national holidays.
 - x) **Deliverables.** The documents, in the format requested by the Commission, including technical specifications, designs, drawings, plans, reports, forms, recommendations, analyses, and interpretations, the Architect is required under this Agreement to provide to the Commission.
 - xi) **Design Team.** The Architect and its Subconsultants.
 - xii) **Key Personnel.** Those job titles and individuals identified in Schedule E.
 - xiii) **Owner's Representative.** The company or other entity identified by the Commission as "Owner's Representation" for this Project.
 - xiv) **Project Schedule.** The schedule prepared by the Architect in CPM and summary bar chart form and subject to the Commission's approval of format and contents. The Project Schedule will agree with the information in Book 1 approved by the Commission for the Project. The Project Schedule will clearly identify all activities within the Project, including each phase of construction, early and late start and finish dates, float times and percent completion of each task. The Project Schedule may be revised from time to time and each revision will be subject to approval by the Commission.
 - xv) **Project Team.** The representatives of the User Agency, Design Team, General Contractor, Subcontractors, Subconsultants and the Commission, including the Authorized Commission Representative.
 - xvi) **Record Documents.** Drawings prepared by the Architect in an electronic format approved by the Commission showing significant changes in the work made during construction, based on marked-up prints, drawings, shop drawings and other data furnished by the General Contractor.
 - xvii) **Services.** Collectively, the duties, responsibilities and tasks that are necessary to allow the Architect to provide the Scope of Services required by the Commission under this Agreement.
 - xviii) **Subconsultants.** Any person or entity, including subconsultants and subcontractors hired or engaged by or through the Architect to provide any part of the Services and that are eligible for reimbursement under the terms of this Agreement.
 - xix) **Technical Personnel.** Includes partners, officers and all other personnel of the Architect, including technical typists assigned to the Project, exclusive of general office employees.
 - xx) **Transfer Documents.** Materials, such as plans, specifications, manuals and other materials, if any, prepared by others, as indicated in Schedule B, and provided to the Architect for reference.
 - xxi) **User Agency.** The governmental agency, identified in the Background Information that requested the Commission to undertake the construction and/or improvement of the Project.
- b) **Usage and Conventions.**

- i) ~~Captions and Headings.~~ The captions and headings of the various sections of this Agreement are used solely for reference purposes and do not construe, nor will they be deemed or used to construe, interpret, limit, or extend the meaning or scope of any word, clause, paragraph, or provision of this Agreement.
- ii) The term "include," in all its forms, means "include, without limitation" unless stated otherwise.
- iii) Terms of one gender imply the other gender(s) unless the context clearly indicates otherwise. Use of the singular includes the plural and vice versa.
- iv) References to "approved by the Commission" or to "approval by the Commission" are not intended to and must not be interpreted to absolve the Architect from liability due to errors and omissions.

3) INCORPORATION OF DOCUMENTS

The documents identified in this Section are incorporated in and made a part of this Agreement. By executing this Agreement, the Architect acknowledges that Architect is familiar with the contents of each of such documents and will comply fully with all applicable portions of them in performing the Services.

- a) Project Documents. The plans and specifications for the Project, if any, included in the Transfer Documents, as described on Schedule B. The Architect must verify the completeness and accuracy of all Project Documents, including information in the Transfer Documents.
- b) Policies Concerning MBE and WBE. The Commission's policies concerning utilization of minority business enterprises ("MBE") and women business enterprises ("WBE"), provided in Exhibit C and the same as may be revised from time to time.

4) ENGAGEMENT AND STANDARDS FOR PERFORMING SERVICES

- a) Engagement. The Commission engages the Architect, and the Architect accepts the engagement, to provide the Services described in this Agreement, as those Services may be amended from time to time by mutual agreement of the Commission and the Architect.
- b) Key Personnel. The Architect must not reassign or replace Key Personnel without the written consent of the Commission. The Commission may at any time in writing notify Architect that the Commission will no longer accept performance of Services under this Agreement by one or more Key Personnel listed in this Agreement in Schedule E. Upon that notice Architect must immediately suspend the Key Person or Key Persons from performing Services under this Agreement and must replace him or them with a person or persons with comparable professional credentials and experience. Such replacements are subject to approval by the Commission.
- c) Adequate Staffing. The Architect must, upon receiving a fully executed copy of this Agreement, assign and maintain for the duration of this Agreement an adequate staff of competent personnel that is fully equipped, licensed as appropriate, available as needed, qualified and assigned exclusively to perform the Services. The level of staffing may be revised from time to time by notice in writing from Architect to the Commission and with prior written consent of the Commission.
- d) Nondiscrimination. In performing under this Agreement the Architect will not discriminate against any worker, employee, applicant for employment, or any member of the public, because of race, color, creed, national origin, gender, age, or disability,

or otherwise commit an unfair labor practice. The Architect certifies that he/she is familiar with, and will comply with, all applicable provisions of the Civil Rights Act of 1964, 28 U.S.C. § 1447, 42 U.S.C. §§ 1971, 1975a-1975d, 2000a to 2000h-6 (1992); the Age Discrimination in Employment Act of 1967, 29 U.S.C. §§ 623-634 (1992); the Americans with Disabilities Act of 1990, 29 U.S.C. § 706, 42 U.S.C. §§ 12101-12213, 47 U.S.C. §§ 152, 221, 225, 611 (1992); 41 C.F.R. § 60 (1992); 41 C.F.R. § 60 (1992); reprinted in 42 U.S.C. 2000(e) note, as amended by Executive Order No. 11,375 32 Fed. Reg. 14,303 (1967) and by Executive Order No. 12,086, 43 Fed. Reg. 46,501 (1978); the Age Discrimination Act, 43 U.S.C. Sec. 6101-6106 (1981); P.L. 101-336; 41 C.F.R. part 60 et seq. (1990); the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq. (1990), as amended; the Discrimination in Public Contracts Act, 775 ILCS 10/0.01 et seq. (1990), as amended; the Environmental Barriers Act., 410 ILCS 25/1 et seq; and the Chicago Human Rights Ordinance, Chapter 2-160, Section 2-160-010 et seq. of the Municipal Code (1990), as amended. The Architect will further furnish such reports and information as may be requested by the Commission, the Illinois Department of Human Relations, or any other administrative or governmental entity overseeing the enforcement, or administration of, or compliance with, the above mentioned laws and regulations.

- e) **Employment Procedures; Preferences and Compliance.** Salaries of employees of the Architect, performing work under this Agreement, will be paid unconditionally, and not less often than once a month, without deduction or rebate on any account except such payroll deductions as are mandatory or permitted by applicable law or regulations. The Architect certifies that he/she is familiar with, and will comply with, all applicable provisions of 820 ILCS 130/0.01 through 130/12 (Prevailing Wage Act), 30 ILCS 570/1 through 570/7 (Employment of Illinois Workers on Public Works Act) and 30 ILCS 560/0.01 through 560/7 (Public Works Preference Act). The Architect will also comply with all applicable "Anti-Kickback" laws and regulations, including the "Anti-Kickback" Act of 1986, 41 U.S.C. §§ 51-58 (1992); 18 U.S.C. § 874 (1992); 40 U.S.C. § 276c (1986) and the Illinois Criminal Code of 1961 720 ILCS 5/33E-1 et. seq. If, in the performance of this Agreement, any direct or indirect "kick-back" is made, as defined in any of the above mentioned laws and regulations, the Commission may withhold from the Architect, out of payments due to the Architect, an amount sufficient to pay any underpaid employees the difference between the salaries required to be paid under the law and this Agreement and the salaries actually paid such employees for the total number of hours worked. The amounts withheld may be disbursed by the Commission for and on account of the Architect to the respective employees to whom they are due, as determined by the Commission in its sole discretion.
- f) **Compliance with Policies Concerning MBE and WBE.** Without limiting the generality of the requirements of the policies of the Commission referred to in paragraph 3 above, the Architect will use every reasonable effort to utilize minority business enterprises for not less than 25% and women business enterprises for not less than 5% of the value of the Services, in accordance with the Resolution passed by the Board of Commissioners of the Commission on October 1, 2004, concerning participation of minority business enterprises and women business enterprises on contracts, other than construction contracts, awarded by the Commission and to furnish to the Commission, such reports and other information concerning compliance with such Resolution as may be requested by the Commission from time to time.
- g) **No Damages for Delay.** The Architect will not assert on its behalf nor on the behalf of its Subconsultants and the Commission will not pay for any costs, fees, charges or claims

for damages for any delays or hindrances from any cause whatsoever during the term of this Agreement. The foregoing does not apply to potential additional compensation for Contingent Additional Services provided by the Architect pursuant to a written request by the Commission. Architect will be granted an extension of time to complete the Services for such reasonable period as will be determined by the Commission. An extension of time granted by the Commission to allow the Architect to perform the Services or any other obligation under this Agreement will in no way operate as a waiver on the part of the Commission of any of its rights under this Agreement.

- h) **Records.** The Architect must maintain accurate and complete records of expenditures, costs and time incurred by the Architect and by Subconsultants engaged by the Architect in connection with the Project and the Services. Such records will be maintained in accordance with recognized commercial accounting practices. The Commission may examine such records at the Architect's offices upon reasonable notice during normal business hours. The Architect must retain all such records for a period of not less than five calendar years after the termination of this Agreement.
- i) **Time is of the Essence.** The Architect acknowledges that time is of the essence in the performance of services required by this Agreement and that timely completion of the Services is vital to the completion of the Project. The Architect must use every reasonable effort to expedite performance of the Services and performance of all other obligations of the Architect under this Agreement and any other agreements entered into by the Commission which are managed or administered by the Architect as a result of the Architect's engagement under this Agreement.
- j) **Compliance with Laws.** In performing its engagement under this Agreement, the Architect must comply with all applicable federal, state and local laws, rules, and regulations.
- k) **Progress Meetings.** Monthly meetings to discuss the progress of the Project and/or to review the performance of the Architect may be scheduled upon the Commission's request, at mutually agreeable times and locations. The Architect will cause such meetings to be attended by appropriate personnel of the Architect engaged in performing or knowledgeable of the Services. The Architect will take the minutes at these Progress Meetings and distribute the minutes to all parties in attendance within 5 days of the meeting.
- l) **Weekly meetings.** Weekly meetings for the Project and Project Team will be scheduled upon the Commission's request for the duration of the Services. The Architect will cause such meetings to be attended by appropriate personnel of the Design Team engaged in performing or knowledgeable of the Services.
- m) **Defects in Project.** The Architect must notify the Commission immediately if the Architect obtains knowledge of an issue or circumstances which could result in a delay in the performance of Services or significant problem in connection with the Project, including construction defects, cost overruns or scheduling delays.
- n) **Performance Standard.**
 - i) The Architect represents that the Services performed under this Agreement will proceed with efficiency, promptness and diligence and will be executed in a competent and thorough manner, in accordance with reasonable professional standards in the field consistent with that degree of skill and care ordinarily exercised by practicing design professionals performing similar services in the same

locality at the same site and under similar circumstances and conditions. The Architect further promises that it will assign at all times during the term of this Agreement the number of experienced, appropriately trained employees necessary for the Architect to perform the Services in the manner required by this Agreement.

- ii) The Architect must ensure 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. The Architect must maintain current copies of any such licenses and provide these copies upon request by the Commission. The Architect remains responsible for the professional and technical accuracy of all Services furnished, whether by the Architect or others on its behalf. All deliverables will be prepared in a form and content reasonably satisfactory to the Commission and delivered in a timely manner consistent with the requirements of this Agreement.
- iii) The Architect must not use any business or individual to provide the Services under this Agreement who is disqualified by the Commission or debarred under any other governmental agency's procedures.
- iv) If the Architect fails to comply with the obligations under the standards of this Agreement, the Architect 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 Commission does not relieve the Architect of its responsibility to render the Services and deliverables with the professional skill and care and technical accuracy required by this Agreement. This provision in no way limits the Commission's rights against the Architect either under this Agreement, at law or equity.
- o) **Amendments to this Agreement.** The Commission may from time to time request changes to the terms and Services of this Agreement. Such changes, including any increase or decrease in the amount of compensation and revisions to the duration of the Services, which are mutually agreed upon by and between the Commission and Architect, will be incorporated in a written amendment to this Agreement. The Commission will not be liable for any changes absent such written amendment.
- p) **Energy Conservation Ordinance.** Whenever the Project requires design of new buildings or structures, additions or alterations of existing buildings or structures or a portion of them, the Architect must comply with the provisions of the Energy Conservation Ordinance, Chapter 18-13 of the Municipal Code of Chicago. The Architect must select and/or recommend for installation by contractor energy-efficient mechanical, water-heating, electrical distribution and illumination systems and equipment for the effective use of energy.
- q) **Compliance with The Chicago Standard.** The City of Chicago has adopted The Chicago Standard, a new set of construction standards for public buildings. The Chicago Standard was developed to guide the design, construction and renovation of municipal facilities in a manner that provides healthier indoor environments, reduces operating costs and conserves energy resources. It also includes provisions for outfitting, operating and maintaining those facilities. The Chicago Standard takes advantage of new building technologies and practices to enhance the well-being and quality of life of everyone working in and using these buildings, as well as the neighborhoods in which

they are located. The Architect will adhere to The Chicago Standard and achieve, at a minimum, the LEED™1 rating of Certified for the Project.

- r) **Representation and Covenant by Architect.** Neither the Architect nor any affiliate of the Architect 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 User Agency or the Commission 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. For purposes of this subparagraph (r) only, the term "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.

5) TERM

- a) **Duration.** The term of this Agreement begins on the Commencement Date of Services specified in Schedule A, or as stated in the Notice to Proceed ("NTP") if an NTP is issued. Subject to the provisions in this section, this Agreement expires upon completion of the Services and acceptance of the Deliverables by the Commission.
- b) **Termination by the Commission.** The Commission has the right, at any time, to terminate this Agreement in whole or in part, with or without cause, by written notice given to the Architect at least 30 days before the effective date of termination. So long as the Architect is not in default under this Agreement at the time of termination, the Commission will pay the Architect, in accordance with the terms of this Agreement, all compensation and reimbursements due to the Architect for periods up to the effective date of termination. The Commission may, however in its sole discretion, reimburse the Architect for actual expenses approved by the Commission.
- c) **Suspension by the Commission.** The Commission also has the right, at any time and from time to time, with or without cause, to suspend the performance of the Architect hereunder with respect to all or any part of the Services, by written notice given to the Architect at least 5 days before the effective date of suspension. During the notice period the Architect must wind down its Services. So long as the Architect is not in default under this Agreement at the time of suspension, the Commission will pay the Architect, in accordance with the terms of this Agreement, all compensation and reimbursements due to the Architect for periods up to the effective date of suspension. If the Architect's performance is suspended more than 90 days under this provision, the Architect may, at its option, exercise its rights under this section to terminate this Agreement.
- i) During the period the Architect's performance is suspended, the Architect is not entitled to incur fees or bill the Commission, except for Architect's time for participating in substantive meetings concerning the Project (but not for meetings to discuss Architect's invoices or claims). The Architect may bill such time spent

¹ Leadership in Energy and Environmental Design

- during a suspension only if the Architect's participation is requested by the Commission and only for the time of one individual per meeting. Commission will pay for such time at the applicable hourly billing rate set forth in Schedule C. Participation in meetings at the request of the Commission is not considered to be resumption of the Architect's Services.
- ii) If the Architect is required to resume its Services under this Agreement, the Commission will notify Architect in writing, giving Architect a reasonable period not to exceed 10 days to remobilize itself. The Architect may bill such time spent on remobilization. The Commission will pay for such remobilization as is reasonable and billed at the hourly rate for one Senior Project Manager or less at the hourly billing rate set forth in Schedule C. The number of days during which the suspension period lasted, including any remobilization time, will be added to the Completion Date of Services set forth in Schedule A, establishing a revised Completion Date of Services, and Architect will re-commence its Services at the point they were suspended and may resume billing in accordance with the terms of this Agreement.
 - d) **Effect of Termination or Suspension.** Termination or suspension of this Agreement in whole or in part does not relieve the Architect from liability for its performance of any obligation under this Agreement that was performed or was to have been performed by the Architect on or before the effective date of termination or suspension. In no event will the Commission be liable to the Architect for any loss, cost or damage, including lost profits, which the Architect or any other party may sustain by reason of the Commission terminating or suspending this Agreement as provided in it.
 - e) **Termination by the Architect.** If the Project, in whole or substantial part, is stopped for a period longer than 90 days under an order of any court or other governmental authority having jurisdiction of the Project, or as a result of an act of government, such as a declaration of national emergency making materials unavailable, through no act or fault of the Architect, or if the Commission suspends Architect's performance of its Services on the Project for more than 90 days for any reason, or if the Commission fails after notice and an opportunity to cure to make any payment or perform any other obligation hereunder, the Architect has the right to terminate this Agreement, by written notice given to the Commission at least 7 days before the effective date of termination, and has the right to recover from the Commission all compensation and reimbursements earned by the Architect under this Agreement for periods up to the effective date of termination. If Architect for any reason does not exercise its right to terminate hereunder, and if the Project and Architect's Services are later resumed, Architect will provide its Services as set forth in this Agreement without adjustment of compensation.
 - f) **Force Majeure.** Neither of the parties will be liable to the other for any delay or failure in performance hereunder due to causes which are beyond the control of the party unable to perform. If a force majeure occurs, the party delayed or unable to perform will give prompt notice to the other party, and the Commission may, at any time during the continuation of the force majeure event, elect to suspend the performance of the Architect under this Agreement for the duration of the force majeure. The Commission will not be obligated to pay for the Services to the extent and for the duration that performance of the Services is delayed or prevented by force majeure, but, provided the Architect is not in default of any obligation of the Architect under this Agreement, the Commission will pay to the Architect, according to the terms of this Agreement, all

compensation and reimbursements due to the Architect for periods up to the effective date of suspension. The term "force majeure" means an extraordinary event or effect that the parties could not have anticipated or controlled and that renders performance impossible or impracticable for the duration of the event or effect. Such events or effects include but are not limited to: extraordinary acts of nature, such as tornadoes; or of people, such as acts of terrorism; or of governments, such as imposition of martial law. The term does not include, for example, typical Chicago inclement weather (i.e. weather the severity of which is less than a standard deviation from the 5-year mean for the Chicago Midway area as established by the National Oceanic and Atmospheric Administration) or labor strikes.

6) COMPENSATION OF ARCHITECT; REIMBURSEMENT FOR EXPENSES

The Commission will compensate the Architect for the Services in the amount and manner set forth on Schedule C.

7) RIGHTS AND OBLIGATIONS OF COMMISSION

a) **General and Specific.** In connection with the administration of the Project by the Commission and the performance of this Agreement by the Architect, the Commission has the following rights and obligations, in addition to those provided elsewhere in this Agreement:

- i) **Information.** The Commission will provide the Architect all information reasonably required concerning the Commission's requirements for the Project and the Services.
- ii) **Review of Documents.** Subject to the provisions of this Agreement, the Commission will make reasonable efforts to examine documents submitted by the Architect and render decisions pertaining to them with reasonable promptness.
- iii) **Site Data.** To the extent the Commission determines to be necessary for the Architect to perform the Services, the Commission may furnish, or may authorize the Architect to obtain from a company or companies approved by the Commission as Reimbursable Expenses:
 - (1) A certified survey of the site or sites providing, as required, all grades and lines of streets, alleys, pavements and adjoining property, rights-of-way, encroachments, boundaries and contours of the building site.
 - (2) A certified title.
 - (3) Information concerning locations, dimensions and data pertaining to existing buildings and other improvements.
 - (4) Title information as to restrictions, easements, zoning and deed restrictions.
 - (5) Information concerning availability of both public and quasi-public service and utility lines. See Schedule A for more details.
- iv) **Tests and Reports.** To the extent required for the Architect to perform the Services, the Commission may furnish structural, civil, chemical, mechanical, results of test borings and pits for determining soil and subsoil conditions and/or other tests and reports or may authorize the Architect to procure such tests and reports from a Subconsultant or Subconsultants. See Schedule A for more details. The Commission will pay for such tests and reports, however, the Commission may direct the Architect to procure such professional services as Reimbursable Expenses and submit invoices to the Commission for payment as provided in Schedule C.

- b) **Limited Exculpation of Architect.** The Architect is not liable to the Commission under the provisions of subparagraphs 7(a) and 7(b) for the substantive content of such tests and reports obtained from a Subconsultant engaged by the Architect and approved by the Commission, but only if the Architect has exercised reasonable diligence in the selection of the Subconsultant and also only if the Architect has caused the Subconsultant to purchase and maintain professional liability insurance in accordance with Schedule D, protecting the Commission, the User Agency, and the Architect from any loss or claim arising out of the Subconsultant's performance. See Schedule A and D for detailed requirements.
- c) **Audits.** The Commission has the right to abstract and audit the books of the Architect and its Subconsultants on all subjects relating to the Project and/or the Services.
- d) **Legal, Auditing and other Services.** The Commission will arrange and pay for such legal, auditing, insurance counseling and other services as the Commission, in its sole discretion, may determine to be required for the Project. Such payments will not include legal or auditing expenses arising out of or relating to any errors or omissions, or claimed errors or omissions, of the Architect.
- e) **Designated Representatives.** The Commission may designate, at its sole discretion, one or more representatives authorized to act in its behalf. No extras or credits to Subconsultants will be authorized by anyone other than the Commission.
- f) **Ownership of Documents.** All designs, drawings, documents, data, studies and reports prepared by the Architect or any party engaged by the Architect, pertaining to the Project and/or the Services will be the property of the Commission.
- i) The parties intend that, to the extent permitted by law, the drawings, specifications and other design documents to be produced by the Architect and its Subconsultants pursuant to this Agreement (the "Work") will conclusively be 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 Commission, the User Agency and their successors and assigns, will be the copyright owner of all aspects, elements and components of them in which copyrights can subsist. To the extent that any of the foregoing does not qualify as a "work made for hire," the Architect hereby irrevocably grants, conveys, bargains, sells, assigns, transfers and delivers to the Commission, the User Agency and their 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 all other intangible, intellectual property embodied in or pertaining to the Work contracted for under this Agreement, free and clear of any liens, claims or other encumbrances, to the fullest extent permitted by law.
- ii) The Architect will execute all documents and, at the expense of the Commission, perform all acts that the Commission may reasonably request in order to assist the Commission, the User Agency and their successors and assigns, in perfecting their rights in and to the copyrights relating to the Work.
- iii) the Architect represents to the Commission, the User Agency and their successors and assigns, that (i) the Work constitutes a work of authorship; (2) on the date of this Agreement the Architect is the lawful owner of good and marketable title in and to the copyrights for the Work (including the copyrights on designs and plans relating to the Work); (3) the Architect has the legal right to fully assign any such copyright with respect to the Work; (4) the Architect has not assigned any

copyrights nor granted any licenses, exclusive or non-exclusive, to any other party; and (5) the Architect is not a party to any other agreement or subject to any other restrictions with respect to the Work.

In addition, the Architect represents that the plans and designs for the Work will, upon completion of the Services be complete, entire and comprehensive in accordance with the performance standard of this Agreement. Further, the Architect will not restrict or otherwise interfere with the Commission's and/or the User Agency's future actions in authorizing the use, adaptation, revision, or modification or destruction of the Work provided that the Architect is indemnified for any damages resulting from any such future re-use or adaptation of the Work as may be authorized by the Commission.

8) INDEMNIFICATION

- a) Indemnity by Third Parties. The Commission will require, by appropriate provision in each contract let by the Commission after the date of this Agreement with respect to the Project that the contractor(s) and subcontractors(s) under such contracts must indemnify, save and hold harmless the Commission, the User Agency and the Architect, and each of them, and their respective commissioners, board members, officers, officials and employees, from all claims, demands, suits, actions, losses, costs and the like, of every nature and description, made or instituted by third parties, arising or alleged to arise out of the work under such contract, and that the contractor(s) and subcontractor(s) under such contracts will purchase and maintain during the life of such contract such insurance as the Commission may require. The amount and insurer for such insurance are subject to approval by the Commission.
- b) Indemnification by Architect. The Architect must indemnify, defend, keep and save harmless the Commission and the User Agency and their respective commissioners, board members, officers, officials and employees, from and against all claims, demands, suits, losses, costs and expenses, including the fees and expenses of attorneys, (including court costs and expert's fees) that may arise out of or be based on any injury to persons or property that is, or is claimed to be, the result of the Architect's performance or non-performance of this Agreement or of any error, omission or negligent or willfully wrongful act of the Architect, or and any person employed by the Architect, or and any Subconsultant retained by the Architect in connection with this Project.

9) INSURANCE MAINTAINED BY THE ARCHITECT

The Architect will purchase and maintain at all times during the performance of Services, for the benefit of the Commission, the User Agency and the Architect, insurance coverage which will insure the Commission, the User Agency and the Architect against claims and liabilities which could arise out of the performance of such Services, including the insurance coverages set forth in Schedule D to this Agreement.

10) DEFAULT

- a) Events of Default. Each of the following occurrences constitutes an Event of Default by the Architect under this Agreement:
 - i) Failure or refusal on the part of the Architect to duly observe or perform any obligation or agreement on the part of the Architect contained in this Agreement, which failure or refusal continues for a period of 10 days (or such longer period as the Commission, in its sole discretion, may determine if such failure is not capable

of being cured within such 10-day period) after the date on which written notice of it has been given to the Architect by the Commission;

- ii) A materially false representation or warranty by the Architect in this Agreement or throughout the performance of the Services;
- iii) The Architect becomes insolvent or ceases doing business as a going concern, or makes an assignment for the benefit of creditors, or generally fails to pay, or admits in writing its inability to pay, its debts as they become due, or files a voluntary petition in bankruptcy, or is adjudicated a bankrupt or an insolvent, or files a petition seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar arrangement under any present or future statute, law or regulation relating to bankruptcy or insolvency, or files an answer admitting the material allegations of a petition filed against it in any such proceeding, or applies for, consents to or acquiesces in the appointment of a trustee, receiver, liquidator or other custodian of it or of all or any substantial part of its assets or properties, or if it or its principals will take any action in furtherance of any of the foregoing;
- iv) Any proceeding is commenced against the Architect seeking reorganization, arrangement, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation relating to bankruptcy which is not vacated, stayed, discharged, bonded or dismissed within 60 days following commencement of the proceeding, or appointment of, without the Architect's consent or acquiescence, any trustee, receiver, liquidator or other custodian of all or any substantial part of the Architect's assets and properties, and such appointment will not have been vacated, stayed, discharged, bonded or otherwise dismissed within 60 days of the appointment.
- v) The Architect's material failure to perform any of its obligations under this Agreement including:
 - (1) Failure due to a reason or circumstance within the Architect's reasonable control to perform the Services with sufficient personnel, and equipment or with sufficient material to ensure the performance of the Services;
 - (2) Failure to properly perform the Services or inability to perform the Services as a result of insolvency, filing for bankruptcy or assignment for the benefit of creditors;
 - (3) Failure to promptly re-perform within a reasonable time the Services that were rejected per the Terms of this Agreement;
 - (4) Discontinuance of the Services for reasons within the Architect's reasonable control;
 - (5) Failure to comply with a material term of this Agreement, including the provisions concerning insurance and nondiscrimination.
 - (6) Any change in ownership or control of the Architect without prior written approval of the Executive Director which approval the Executive Director will not unreasonably withhold.
 - (7) The Architect's default under any other agreement it presently may have or may enter into with the Commission. Architect acknowledges that in event of a

default under this Agreement the Commission may also declare a default under any such other agreements.

- b) **Remedies.** If an Event of Default occurs and continues, then the Commission may exercise any right, power or remedy permitted to it by law or in equity and has, in particular, without limiting the generality of the foregoing, the right to terminate this Agreement upon written notice to the Architect, in which event the Commission has no further obligations hereunder or liability to the Architect except as to payment for Services actually received and accepted by the Commission through the effective date of termination. No courses of dealing on the part of the Commission or delay or failure on the part of the Commission to exercise any right will operate as a waiver of such right or otherwise prejudice the Commission's rights, powers or remedies.
- c) **Remedies Not Exclusive.** No right or remedy in this Agreement conferred upon or reserved to the Commission is exclusive of any right or remedy provided or permitted under this Agreement or by law or equity, but each is cumulative of every other right or remedy given in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise, and may be enforced concurrently or from time to time.

11) DISPUTES

- a) **General.** All disputes arising under, related to or in connection with the terms of this Agreement or its interpretation, whether involving law or fact or both, including questions concerning allowability of compensation, and all claims for alleged breach of contract, will be presented to the Authorized Commission Representative. The Architect will present all disputes not resolved by the next Monthly Meeting in writing to the Executive Director for final determination.
- b) **Procedure.** The Architect will make all requests for final determination of disputes in writing specifically referencing this Section, and will include: 1) the issue(s) presented for resolution; 2) a statement of the position of the Architect; 3) the facts underlying the dispute; 4) reference to the applicable provisions of this Agreement by page and section; 5) identification of any other parties believed to be necessary to the resolution; and 6) all documentation which describes and relates to the dispute. The Architect will promptly provide a copy of the request for final determination of the dispute to the Authorized Commission Representative. The Authorized Commission Representative will have 30 business days to respond in writing to the dispute by supplementing the submission or providing its own submission to the Executive Director. Failure by the Authorized Commission Representative to respond will not be an admission of any allegations made in the request for dispute resolution, but will constitute a waiver of the opportunity to respond to such allegation(s), if any. The Executive Director may thereafter reach his final determination in accordance with such other information or assistance as may be deemed reasonable, necessary or desirable.
- c) **Effect.** The Executive Director's final determination will be rendered in writing no more than 45 business days after the response by the Authorized Commission Representative was received or was due unless the Executive Director notifies the Architect that additional time for final determination is necessary. The Executive Director's final determination will be conclusive, final, and binding on all parties. The Architect must follow the procedures set out in this Section and receive the Executive Director's final determination as a condition precedent to filing a complaint in the Circuit Court of Cook County or pursuing any alternative dispute resolution procedure that may be agreed by the parties. The Architect will not withhold performance of any Services required by

the Commission under this Agreement during the dispute resolution period provided in Section 11 DISPUTES of this Agreement.

- d) **Architect Self-Help Prohibited.** The Architect must never withhold performance of its Services by, for example, refusing to review and approve appropriately submitted invoices or pay applications, timely to make recommendations on General Contractor claims, or promptly to issue other appropriate approvals needed by others where doing so would potentially harm third parties, such as Subconsultants, the General Contractor, or its subcontractors. Doing so to gain potential leverage in negotiating or settling the Architect's claims against the Commission or User Agency will be considered to be bad faith on the Architect's part.. This provision is not intended to prohibit the Architect from exercising its well-considered professional judgment, however, in carrying out its duties and responsibilities under this Agreement.

12) CONFIDENTIALITY

All of the reports, information, or data prepared or assembled by the Architect under this Agreement are confidential, and the Architect must not make such reports, information or data must available to any party without the prior written approval of the Commission. In addition, the Architect must not, without the prior written consent of the Commission, prepare or distribute any news releases, articles, brochures, advertisements or other materials concerning this Agreement, the Project or the Services. If the Architect is served with a subpoena requiring the production of documents or information which is deemed confidential, the Architect will immediately notify the Commission in writing and provide a copy of the subpoena to the Commission in sufficient time for the Commission to attempt to quash, or take other action in relation to, the subpoena.

13) ASSIGNMENT

The Architect acknowledges that the Commission is induced to enter into this Agreement by the personal qualifications of the principals, staff and employees of the Architect and, therefore, that neither this Agreement nor any right or obligation in this Agreement may be assigned by the Architect, in whole or in part, without the prior written approval of the Commission. For purposes of this paragraph, if the Architect transfers more than 50% of its equity ownership during any 12-month period, such a transfer is considered an assignment of this Agreement. In the event of an assignment by the Architect without the prior written approval of the Commission, the Commission will have the right to immediately terminate this Agreement without fault or responsibility.

14) RELATIONSHIP OF PARTIES

Under this Agreement, the relationship of the Architect to the Commission is that of an independent contractor, and the Architect, except to the extent expressly provided to the contrary in this Agreement, will have no right or authority to make contracts or commitments for or on behalf of the Commission, to sign or endorse on behalf of the Commission any instruments of any nature or to enter into any obligation binding upon the Commission. This Agreement will not be construed as an agreement of partnership, joint venture, or agency.

15) GENERAL

- a) **Architect's Authority.** The Architect represents that its execution of this Agreement is authorized by a resolution of its Board of Directors, if a corporation, or similar governing document if a partnership or a joint venture, and the signatures(s) of each person signing on behalf of the Architect have been made with complete and full authority to

commit the Architect to all terms and conditions of this Agreement, including each and every representation, certification and warranty contained or incorporated by reference in it.

- b) **Counterparts.** This Agreement may be executed in any number of counterparts, any of which will be deemed an original.
- c) **Entire Agreement.** This Agreement constitutes the entire understanding and agreement between the parties to this Agreement and supersedes any and all prior or contemporaneous oral or written representations or communications with respect to the subject matter hereof, all of which communications are merged in this Agreement. This Agreement must not be modified, amended or in any way altered except by an instrument in writing signed by both of the parties.
- d) **Governing Law.** This Agreement has been negotiated and executed in the State of Illinois and will be construed under and in accordance with the laws of the State of Illinois.
- e) **No Waiver.** The waiver by either party of any breach of this Agreement will not constitute a waiver as to any succeeding breach.
- f) **Notices.** All notices required to be given under this Agreement must be given in writing and must be hand delivered or sent by United States certified or registered mail, postage prepaid, addressed to the Authorized Commission Representative and the Executive Director, if appropriate, or to the Architect at their respective addresses set forth above, as appropriate. If given as provided in this Agreement, such notice is deemed to have been given on the date of delivery, if delivered by hand, and on the second business day after mailing, if given by mail. The Commission or the Architect may, from time to time, change the address to which notices will be sent by giving notice to the other party in the manner provided in this subparagraph.
- g) **Non-liability of Public Officials.** No Commission board member, employee, officer, or official is personally liable to the Architect or its Subconsultants, and Architect and its Subconsultants are not entitled to, and must not attempt to, charge any of them with liability or expense or hold them personally liable to Architect or its Subconsultants under this Agreement.
- h) **Severability.** If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such provision will be severed from this Agreement and such invalidity or unenforceability will not affect any other provision of this Agreement, the balance of which will remain in full force and effect; provided, however, that if such provision is deemed invalid or unenforceable as a matter of law, such provision will be deemed to have been modified so as to be valid and enforceable to the maximum extent permitted by law.
- i) **Successors and Assigns.** Except as otherwise provided in this Agreement, this Agreement is binding upon and inures to the benefit of each of the parties to this Agreement and their respective successors and assigns.
- j) **Errors and Omissions.** The Commission has a committee that reviews the Project for alleged errors and omissions by the Architect. The Committee will, as appropriate, conduct an internal review of the alleged error and omission, provide a written statement of claim on the alleged error and omission to the Architect, allow the Architect to respond in writing, and meet with the Architect to attempt to settle the

claim when the Commission concludes an error or omission has occurred. The Architect will attend such meetings without additional compensation.

Upon notice or discovery, and as directed by the Commission, the Architect will perform, without additional compensation, the required professional services to issue an addenda to the bidding documents, or change orders to the contract documents, to correct or clarify errors, omissions, or ambiguities. The Commission reserves the right to recover damages from the Architect for all or a portion of the costs associated with change orders issued to correct errors or work omitted in the construction documents prepared by the Architect.

The Commission may withhold payments, in whole or in part, for a material breach of this Agreement, including but not limited to, the Architect's failure to perform services or meet the schedule, design errors or omissions and failure to adhere to terms of this Agreement.

If the Architect is terminated under this Agreement, the Architect will not be liable for any changes to the documents made by another Architect contracted by the Commission to complete the Project.

- k) Non-appropriation of Funds. If funds have not been appropriated in full or in part, the Commission has the right to terminate this Agreement.

SCHEDULES FOLLOW.

- A.2.5 Develop an overall design schedule, acceptable to the Commission and coordinate the schedule with the Commission's desired Project completion date.
- A.2.6 Analyze the requirements of the Project, the conditions of the site and the survey, and consult with the Commission to establish the design, and the functionality and financial feasibility of the Project and include any modifications, as may be authorized by the Commission in the previous phase.
- A.2.7 Based upon such analysis, prepare schematic drawings and design studies, a general description of the scope of the Project, a preliminary estimate of construction costs and an analysis of any re-zoning requirements for the Project. Present 2 schematic design options for the Project for review by the Commission and the User Agency.
- A.2.8 Upon direction from the Commission prepare plans, elevations, sections, and outline specifications, as required, to describe the architectural, structural, mechanical, plumbing and electrical aspects of the selected design option for preparation of the preliminary estimate of construction costs.
- A.2.9 As required, review the schematic design documents along with necessary value engineering items, if any, with the Commission and to align the preliminary estimate of construction costs with the Construction Budget. Review the scope of work compared to the Construction Budget and if the Construction Budget is not in line with the Scope of Work, make recommendations for reductions in Scope of Work or increases to the Construction Budget. The Commission and Architect are to agree on a Revised Scope of Work or a Revised Construction Budget before proceeding further.
- A.2.10 At the completion of Schematic Design Services, transmit one complete copy of the final documents to the Commission for review and transmittal to the User Agency. In addition, make presentations to the User Agency as requested by the Commission. After the Commission's written approval of specific User Agency comments, incorporate any such comments into the Design Development Documents.
- A.2.6 Immediately upon the Commission's review and written approval of the deliverables of the Schematic Design Services phase, begin the next phase on the updated and approved schedule.
- A.3 DESIGN DEVELOPMENT**
- A.3.1 Prepare (based upon approved schematic drawings and design studies) plans, elevations and other drawings and outline specifications in order to fix and illustrate the size and character of the Project in its essentials including kinds of materials, type of structure, mechanical and electrical systems and such other work as may be required ("Design Development Documents").
- A.3.2 Update the preliminary estimate of construction costs. Review the Design Development Documents along with the necessary value engineering items, if any, with the Commission and incorporate modifications and revisions into the Design Development Documents to align the preliminary estimate of construction costs with the Project.
- A.3.3 Review the Commission's Environmental Subconsultant's scope of work, if any, incorporate design elements resulting from environmental remediation into the Design Development Documents and coordinate the work as appropriate.
- A.3.4 Using a complete set of Design Development Documents, reflecting all improvements described for the Project provide an updated preliminary estimate of construction costs containing:

- A.3.4.1 An overview of the updated preliminary estimate of construction costs compared to the Construction Budget in this Agreement or the Revised Construction Budget established during Schematic Design.
 - A.3.4.2 A preliminary estimate of construction costs Summary and Division Breakdown.
 - A.3.4.3 A detailed comparison and reconciliation of the current and previous preliminary estimate of construction costs with an explanation of any variance by component, based on CSI format.
 - A.3.4.4 A summary of all approved preliminary estimate of construction costs revisions.
 - A.3.4.5 A cash flow analysis of the Project based on the latest preliminary estimate of construction costs information.
- A.3.5 At completion of this phase, transmit one complete set of the final Design Development Documents, including the updated preliminary estimate of construction costs and details, to the Commission for review and transmittal to the User Agency. Make presentations to the User Agency as requested by the Commission. Any comments presented by the User Agency must be approved by the Commission before incorporating such comments into the Construction Documents.
- A.3.5.1 If the updated preliminary estimate of construction costs exceeds the Construction Budget in this Agreement or the Revised Construction Budget established during Schematic Design, after review and comment and upon written request of the Commission, and without additional compensation continue to revise, modify or correct any or all of the Project design, drawings and specifications in a manner satisfactory to the Commission until the revised preliminary estimate of construction costs estimate conforms to the Construction Budget in this Agreement. Such revisions, modifications and corrections in the plans, specifications and drawings will be submitted to the Commission within a reasonable time (not to exceed 90 days) after notice and direction by the Commission.
 - A.3.5.2 If the Commission requests a change in scope of the Project, and after review and comment and upon written request of the Commission, and with additional compensation revise, modify or correct any or all of the Project design, drawings and specifications in a manner satisfactory to the Commission.
- A.3.6 Immediately upon the Commission's review and written approval of the deliverables of the Design Development phase, begin the next phase on the updated and approved schedule.

A.4 CONSTRUCTION DOCUMENTS

- A.4.1 Prepare and complete, based upon the approved Design Development Documents, all Construction Documents, including architectural and engineering working drawings, designs, plans, calculations and specifications setting forth in detail all of the elements required for the architectural, structural, civil, mechanical, electrical, plumbing, heating, ventilation, air conditioning, fire protection, service-connected equipment and site work as may be necessary in order to obtain bids for construction of the Project. Provide 3 sets of completed Construction Documents in the latest version of Autocad; 1 set on each CD (or other electronic format acceptable to the Commission).

- A.4.2 Include modifications, revisions and environmental remediation in the Construction Documents upon approval by and direction of the Commission.
- A.4.3 Upon completion of the Construction Documents, update the preliminary estimate of construction costs estimate. Review the Construction Documents along with value engineering items with the Commission to align the preliminary estimate of construction costs with the Project.
- A.4.3.1 If the Commission's preliminary estimate of construction costs exceeds the Construction Budget in this Agreement or the Revised Construction Budget established during Schematic Design, after review and comment and upon written request of the Commission, and without additional compensation, continue to revise, modify or correct any or all of the Project design, drawings and specifications in a manner satisfactory to the Commission until the revised preliminary estimate of construction costs conforms to the Construction Budget in this Agreement or the Revised Construction Budget established during Schematic Design,. Such revisions, modifications and corrections in the plans, specifications and drawings will be submitted to the Commission within a reasonable time (not to exceed 90 days) after notice and direction by the Commission.
- A.4.3.2 If the Commission requests a change in scope of the Project, after review and comment and upon written request of the Commission, and with additional compensation revise, modify or correct any or all of the Project design, drawings and specifications in a manner satisfactory to the Commission.
- A.4.4 At the completion of the Construction Document phase, transmit one complete copy of the final documents for such phase to the Commission for review and transmittal to the User Agency. In addition, make presentations to the User Agency as requested by the Commission. Any comments presented by the User Agency must be approved by the Commission before incorporating such comments into the final Bid Documents.
- A.4.5 Immediately upon the Commission's review and written approval of the deliverables of the Construction Documents phase, begin the next phase on the updated and approved schedule.

A.5 BIDDING PHASE SERVICES

- A.5.1 Assemble and review all bid documents required for each bid package. Review and amend the Commission's bid documents and contract documents so that they are coordinated with the construction documents prepared by the Design Team and the commission's Master CPM milestone dates. Review the necessary Instructions to Bidders, Proposal Forms, Contract Forms, General Conditions and Special Conditions of the Contract supplied by the Commission. Prepare Project Phasing Plans which will be included in bid documents. Prepare 25 or other number of sets of bid packages and schedules in the Commission's approved format and as directed by the Commission.
- A.5.2 Assist the Commission in soliciting bids by issuing Notice of Bid Opportunity letters for the work represented in the contract documents, drawings and specifications to all contractors on the applicable Commission pre-qualified list of qualified contractors eligible to bid on the work.
- A.5.3 Attend and document all Pre-Bid Conference Meetings for all bid packages.

- A.5.4 Prepare addenda, as directed by the Commission, to address bidder's questions that require clarification. Consider and document all written requests for product substitutions before receipt of bids.
- A.5.5 Review bids and prepare an evaluation and recommendation for each General Contractor award relative to the Project and Construction Budget as directed by the Commission, and submit in a timely manner to the Commission for approval. Assist in negotiating an agreement with the contractor(s) to construct the Project.
- A.5.6 If the lowest responsible bid, as determined by the Commission, obtained on any solicitation of bids, is in excess of the related budget, the Commission may either award the construction contract to the lowest responsible bidder, or request that the Architect, without additional compensation, make revisions of any or all of the Project including design, scope, quality, drawings, specifications, deletions and substitutions to the end that the construction cost not be in excess of the Construction Budget. Such revisions will be approved by the Commission. The right of the Commission to require such revision and re-bidding will not be exhausted by a single revision and re-bidding, but will be a continuing right until the lowest responsible bid received is within the Construction Budget.
- A.5.7 Assist the Commission, without additional compensation, in the solicitation of new bids.

A.6 CONSTRUCTION PHASE SERVICES

- A.6.1 Attend and participate in regularly scheduled "pencil draw" meetings for approval of contractor pay requests. Review and approve within 3 business days all corrected payment applications and transmit fully executed copies of them for approval and payment by the Commission
- A.6.2 Establish an organization line of authority to implement all construction phases of the project in a coordinated and efficient manner. Establish and maintain a complete library of all contract documents, addenda, bulletins, scope changes, approved shop drawings and material samples.
- A.6.3 Maintain a fulltime project manager as the primary point of contact with the Commission, User Agency, Design Team members and General Contractor. The fulltime project manager will not be removed or replaced before full completion of the work without prior written approval of the Commission. The fulltime project manager will be removed immediately upon written request of the Commission.
- A.6.4 Qualified personnel of Architect, approved by the Commission, shall provide adequate and competent observations on the site on average at least 6 times per month averaging 4 hours per visit, plus a combined total of 16 site visits by the structural engineer, civil engineer, electrical engineer, or MP/FP engineer during the Construction Phase for the purpose of determining if the work is being performed in accordance with the Contract Documents, and shall advise the Commission accordingly. At the conclusion of each site observation visit, the Architect shall prepare a Field Report that identifies the following information: Date, Project, General Contractor, Weather conditions, Project Managers present, Progress % of major portions of the work, contractors on site, manpower levels, items observed and discussed and photos of items observed and discussed. However, the Architect shall not be required to make exhaustive or continuous on-site observations. On the basis of on-site observations, the Architect shall keep the Commission and the Construction Coordinator advised of the progress and quality of the work and endeavors to guard the Commission against defects and deficiencies in the

work of contractors and reject any materials or work which fails to conform to the Contract Documents.

- A.6.5 Establish and implement procedures for, and maintain coordination among, the Commission, the User Agency, Design Team, General Contractor, and other agencies having jurisdiction of the project with respect to all construction aspects of the project.
- A.6.6 If necessary during construction, interpret the meaning and intent of the Contract Documents, and with the Commission's concurrence, transmit such information to the General Contractor. If requested by the Commission, make recommendations on any claims between the Commission and any contractor with whom the Commission has a contract relating to the Project and any other matters relating to the execution and progress of the work or the interpretation of the Contract Documents.
- A.6.7 Develop and establish a quality inspection control program so that the required standards of construction are achieved. Complete and review all testing required by the technical sections of the specifications and applicable codes and regulations for compliance with the Contract Documents.
- A.6.8 Provide and distribute all drawings required during construction. Monitor the flow of all documents and materials for proper sequence of approvals so as not to delay the progress of the work. Review and approve schedules, samples, shop drawings, product data, "as-built" drawings, product substitutions and other submissions to assure compliance with the design concept of the Project and fulfillment of the General Contractor's obligations as set forth in the Contract Documents, including monitoring of the General Contractors' progress against the approved progress schedule.
- A.6.10. Implement the Commission's specifications and procedures for processing scope changes, including applications for extensions of time. Receive and review all bulletins, proposals, revisions in drawings and change orders requested by the General Contractor, Commission, User Agency, or design team or as required by other unforeseen field conditions and make recommendations regarding practicality, costs, unit prices, time and material changes, affect on completion schedule and risk to the project.
- A.6.11 Submit recommendations to the Commission for approval before instituting any changes to the requirements of the Contract Documents. Process and prepare all bulletins, proposals, revisions in drawings and change orders approved by the Commission. Monitor all scope changes during construction to ensure compliance with approved revisions.
- A.6.12 Review contractors' applications for payment, invoices and other supporting documentation in accordance with the Commission's policies and procedures, and recommend action concerning contractors' periodic and final applications for payment. By issuing recommendations to the Commission for payment to contractors, represent to the Commission that, to the best of its knowledge, information and belief, the quality of the work for which payment is requested is in accordance with the Contract Documents, and the payment amount applied for by the contractor is justified. These provisions will not be construed as conferring any rights hereunder for the benefit of contractors, subcontractors, materialmen, workmen or employees, or any other persons performing portions of the work, nor as enlarging or altering the application or effect of existing lien laws.
- A.6.13 Issue clarifications for proper execution of the work required by the Contract Documents; provided, however, Architect shall not have control or charge of and will

not be responsible for construction means and methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work or for the act or omissions of the contractor, subcontractors or any other persons performing any of the work in accordance with the Contract Documents.

A.6.14 Review the work to establish preliminary acceptance of the Project.

A.7 PROJECT CLOSE-OUT

A.7.1 Conduct a comprehensive final inspection of the Project with the Commission and User Agency to verify that the materials furnished and the work performed are substantially compliant with the Contract Documents.

A.7.2 Consolidate and prepare punch lists from the Architect, the Commission, and the User Agency, and indicate the items of work remaining to be accomplished before a Certificate of Final Acceptance will be issued. Coordinate the completion of such items in an expeditious manner. Prepare certificates of preliminary and final completion in consultation with the Commission and the User Agency.

A.7.3 Coordinate with the General Contractor to assemble and deliver to the Commission all guarantees, warranties, operating and maintenance manuals required by the contract documents. Make recommendations as to the withholding of payments to the General Contractor. Determine the value of any uncorrected and/or deficient work. Coordinate equipment and systems training sessions for User Agency personnel.

A.7.4 Coordinate with the General Contractor to expedite the preparation and delivery of Record Documents and operations and maintenance manuals of the Project in accordance with the specifications. The Record Documents will be subject to the approval of the Commission. Submit approved Record Documents to the Commission upon completion of the Project.

A.7.5 The completion date for this Project will be no later than the Term as defined in this Schedule.

A.7.6 Upon completion of the construction contract and all "punch list" items in accordance with the Contract Documents, issue a Certificate of Final Acceptance and obtain from the General Contractor a sworn statement stating that all debts, liabilities and demands on account of work and materials furnished with respect to the Project have been fully paid, released and discharged and that nothing is due to subcontractors, mechanics or materialmen. A Certificate must not be issued by the Architect until, to the best of its knowledge, information and belief, all work has been completed in accordance with the Contract Documents.

A.8 ADDITIONAL RESPONSIBILITIES AND REPRESENTATIONS

A.8.1 Secure the services of the any necessary Subconsultants with the approval of the Commission.

A.8.2 Review the Commission's Project budget and report to the Commission the status of Project cost at milestones approved by the Commission. Milestones must be at Schematic Design completion and at minimum 60% and 90% completion of the Contract Documents.

A.8.3 Prepare the Project Schedule, a computerized CPM schedule using a program compatible with the Commission's scheduling system. The Project Schedule must clearly identify each phase of the Project and indicate early and late start and finish dates, float times and percent completion of each task. Recommend a method for the delivery of the

Project based on the Commission's goals and requirements. Identify long lead time items and recommend to the Commission methods of procurement to achieve the Project Schedule. The Construction duration will be incorporated into the Construction Documents prepared by and as recommended by the Architect.

- A.8.4 Participate in value engineering and evaluate proposed foundation, structural, electrical, and mechanical systems as to quality, first cost and life cycle cost, constructability, availability and effects on funding flexibility.
- A.8.5 Conduct weekly, at minimum, meetings with the Commission, User Agency, Design Team, Subconsultants and General Contractor. Review all aspects of the Project as necessary, including schedule, submittals, scope changes, information requests, outstanding bulletins, pending issues and field problems. Prepare meeting minutes and distribute to all parties in attendance within 5 business days.
- A.8.6 The monthly report is NOT a requirement of this Agreement.
- A.8.7 Prepare the minutes of all conferences which it attends and promptly forward typed or reproduced copies of such minutes to such parties as are designated by the Commission.
- A.8.8 The Architect agrees that in performing this Agreement it will comply with all applicable local, state and federal ordinances, laws and regulations including the Illinois Environmental Act (415 ILCS 4/1 et. seq.) and the Americans with Disabilities Act of 1990 (42 U.S.C. 12010 et. seq.), including standards and regulations issued pursuant to these Acts. In those instances where compliance with the above-mentioned statutes do not require accessibility for persons with physical disabilities, the following minimum accessibility standards will apply to any public facility for which aggregate construction and rehabilitation costs of \$500,000 or more will have been incurred during any 30-month period:
 - A.8.8.1 Access to the first floor, preferably through the main entrance; and
 - A.8.8.2 Accessible first-floor toilet facilities.
- A.8.9 Provide assistance in expediting, coordinating and securing all necessary orders, ordinances, re-zoning, street and alley vacations, permits, licenses, fees, or other approvals, as applicable, that are required by local, state and federal agencies to permit construction of the Project. Such assistance will include conferences with and presentations to appropriate regulatory agencies including the Department of Construction and Permits, the Buildings Department and Fire Prevention Bureau of the City of Chicago and other governmental bodies. Coordinate all aspects of the Project with any quasi-public agencies or utility companies involved in the Project.
- A.8.10 Coordinate the procurement and assembly of all required permits, licenses, and certificates from the General Contractor and arrange delivery of same to the Commission.
- A.8.11 Provide all services that are required to achieve, at a minimum, the LEED™ rating of Certified. Verify compliance and submit the completed application and documentation to use for review and subsequent responses as directed by the Commission. Cooperate and coordinate with the Commission's independent LEED Commissioning Authority. Review and incorporate the information related to "Fundamental Commissioning of the Building Energy Systems, LEED Energy and Atmosphere Prerequisite No. 1" (except the Development of the Basis of Design) and "Enhanced Commissioning", which information will be developed by the Commission's independent LEED Commissioning Authority, into the Contract Documents.

A.9 CONTINGENT ADDITIONAL SERVICES

Provide any or all of the following Contingent Additional Services as may be authorized in writing by the Commission:

- A.9.1 Architect's On-site Observation. Architect shall assign qualified on-site representatives acceptable to the Commission during such times as construction is in progress for the purpose of periodic on-site observation of the progress and conformance of the work to the requirements of the Contract Documents. The Architect's on-site representative shall not be removed or replaced before full completion of the work without prior written approval of the Commission. The Architect's on-site representative will be removed immediately upon written request of the Commission.
- A.9.2 At the option of the Commission, in addition to periodic on-site observation required under A.6.4 above, Architect shall provide an approved representative for the purpose of providing more extensive representative at the site that described in subparagraph A.6.4 and assisting in carrying out additional on-site duties and responsibilities as determined by the Commission and the Architect.
- A.9.3 Select and coordinate the bidding and installation of Fixtures, Furnishings and Equipment (FF&E) not covered in the Project, sculpture, murals and other related features and special equipment not included in the construction contract.
- A.9.4 Furnish consulting services after occupancy of the building in connection with the operation of the building, including various electrical and mechanical systems.
- A.9.5 Provide consultation concerning replacement of any work damaged or destroyed by fire or other cause during construction and furnish additional services as may be required in connection with the replacement of the work.
- A.9.6 Provide additional services made necessary by the default of the contractor in the performance of the construction contract.
- A.9.7 Furnish additional services required in connection with additional site demolition beyond that described in the original Project.
- A.9.8 Provide all measured drawings of existing construction as required for the completion of the Project.

**SCHEDULE B
PROJECT DOCUMENTS**

**NEW FLEET MANAGEMENT VEHICLE MAINTENANCE FACILITY
5201 SOUTH WESTERN BOULEVARD
CHICAGO, ILLINOIS 60609**

Intentionally left blank.

**SCHEDULE C
COMPENSATION OF THE ARCHITECT**

**NEW FLEET MANAGEMENT VEHICLE MAINTENANCE FACILITY
5201 SOUTH WESTERN BOULEVARD
CHICAGO, ILLINOIS 60609**

C.1 ARCHITECT'S FEE FOR BASIC SERVICES

C.1.1 The Commission will pay the Architect for its services a Fixed Fee ("Fee") of \$941,500.00. The Fee will, in the absence of a change in scope of the Project by the Commission or the issuance of Commission-originated additive change orders constitutes the Architect's full fee for Basic Services. The fee will be allocated and payments made on a monthly basis as follows:

Schematic Design	10%
Design Development	18%
Construction Documents	35%
Bidding Phase Services	2%
Construction Phase	30%
Project Close-out	5%

C.1.2. Architect's fee will include profit, overhead, general conditions, and all items not specifically identified as Reimbursable Expenses.

C.2 FEE FOR ARCHITECT'S ON-SITE OBSERVATION

C.2.1 The Commission will pay the Architect for additional periodic on-site observation as described under A.9.1, subject to the prior written approval of the Commission, a fee not-to-exceed \$81,000.00 payable at the rate of 2.5 times the salary (hourly rate) of Architect's field personnel.

C.3 HOURLY RATES FOR ARCHITECT AND SUBCONSULTANT PERSONNEL

C.3.1 The Commission will compensate the Architect for Contingent Additional Services based upon a Lump Sum Fee or a Time Card Not to Exceed Fee, as approved by the Commission in writing.

C.3.2 **Labor Multiplier.** The Labor Multiplier is applied to the straight hourly rates for approved Project personnel. The product of the Labor Multiplier and the straight hourly rate sets the maximum compensation for all direct personnel expenses and includes: salary, salary adds, benefits, applicable taxes, overhead and profit. The Commission and Architect have agreed that Labor Multiplier for Architect and for each Subconsultant is 2.5.

C.3.3 **Hourly Rates for Architect and Subconsultant Personnel.** All Architect and Subconsultant personnel and the hourly rate billable for each are subject to the prior written approval of the Commission.

C.3.4 Hourly Rates for Architect and Subconsultant personnel are provided in the Table C-1 that follows this Schedule.

C.3.5 Premium on Overtime. To the extent that the Architect (or any Subconsultant) pays its employees a premium in excess of its hourly rates for overtime spent performing the Services, the cost of the premium will be treated as a Direct Cost (see "Project Reimbursable Expenses", below), which will not be treated as a labor cost and which will not be subject to the application of the Labor Multiplier. Any such overtime must be in accordance with Architect's (or Subconsultant's) policies, which are subject to prior written approval by the Commission.

C.4 REIMBURSABLES

C.4.1 Project Reimbursable Expenses ("Direct Costs"). Architect will be reimbursed for certain expenses incurred in the satisfactory performance of the Services. Allowable Direct Costs consist of and are limited to expenses not provided for elsewhere which have been paid for or incurred by Architect (or Subconsultant) in connection with the Services and subject to the limitations set forth below. Allowable Direct Costs will include the following:

C.4.1.1 Plotting, printing and reproduction of drawings specifications, and presentation materials requested by the Commission, or required for scheduled reviews of the progress of the work by the Commission and/or the User Agency, public or city agency meetings and hearings, and as required for professional peer reviews of documents as directed by the Commission. One coordination set will be provided to each Subconsultant at the conclusion of schematic, design development and construction document phases.

C.4.1.2 Distribution of drawings, specifications, and presentation materials requested by the Commission, or required for scheduled reviewed of the progress of the work by the Commission and/or the User Agency, public or city agency meetings and hearings, and as required for professional peer reviews of documents as directed by the Commission.

C.4.1.3 Plotting, printing, reproduction and distribution of drawings and specifications for the purposes of soliciting contractor bids, issuing documents for building permit and issuing documents for construction.

C.4.1.4 Printing and distribution costs associated with shop drawing and submittal reviews during construction.

C.4.2 Costs of these expenses are on a not to exceed basis of \$30,000.00.

C.4.3 The following reimbursable expenses require prior written approval by the Commission:

C.3.4.1 Expense of transportation and living of principals and employees traveling in connection with the Project, but not including travel and expense to and from the job site or within a 50-mile radius of downtown Chicago. Travel expenses include coach air fare, hotel and per diem costs, auto rental, fuel and insurance, and must be supported with proper documentation in the form of itemized invoices.

C.3.4.2 Fees and costs of special consulting services requested by the Commission, such as acoustical, theater and food service Subconsultants, will be paid as a reimbursable expense. Civil, structural, mechanical, electrical, plumbing

and fire protection engineering services are included within the Fixed Fee indicated in paragraph C.1.

- C.4.3.3 Costs for rental or purchase of special items or equipment requested by the Commission.
- C.4.3.4 Fees and costs to secure necessary permits or civil agency approvals, including permit fees and expenditure fees.
- C.4.3.5 Costs of surveys, geotechnical and environmental technical testing and reports.

C.5 METHOD OF PAYMENT

- C.5.1 **Invoices.** Once each month, the Architect will submit an invoice to the Commission for Services performed during the preceding month with the exception of Project Close-out phase services that will be paid in one lump sum after the Completion Date of Services.

Each invoice must be supported with such reasonable detail and data as the Commission may require, including detail and data related to Subconsultant costs. In accordance with the terms of this Agreement, the Architect must maintain complete documentation of all costs incurred for review and audit by the Commission or its designated audit representative(s). Each invoice must be submitted in the format directed by the Commission. Invoices must be accompanied by a progress report in a format acceptable to the Commission. Such progress report must identify any variances from budget or schedule and explain the reasons for such variances.

- C.5.2 **Payment.** Payment will be processed within 30 days after Commission receives an acceptable invoice from the Architect.
- C.5.3 **Invoice Disputes.** If the Commission disputes certain items in the Architect's invoices, the amount not disputed will be paid in full. The amount in question must be resolved in accordance with the Disputes provisions of this Agreement

TABLE C-1

**NEW FLEET MANAGEMENT VEHICLE MAINTENANCE FACILITY
5201 SOUTH WESTERN BOULEVARD
CHICAGO, ILLINOIS 60609**

**(TABLE C-1:
HOURLY RATES FOR ARCHITECT AND SUBCONSULTANT PERSONNEL
FOLLOWS THIS PAGE.)**

**SCHEDULE OF PROJECTED DIRECT LABOR RATES
ARCHITECTURAL AND ENGINEERING SERVICES**

TENG & ASSOCIATES, INC.

HOURLY RATE RANGE PER CLASSIFICATION AND YEAR

CLASSIFICATION	2006	2007	2008	2009
Technical Aide	\$14.00 to \$34.00	\$15.00 to \$36.00	\$16.00 to \$38.00	\$17.00 to \$40.00
Technician	\$18.00 to \$46.00	\$19.00 to \$48.00	\$20.00 to \$50.00	\$21.00 to \$53.00
Architect and Engineer	\$28.00 to \$56.00	\$29.00 to \$59.00	\$30.00 to \$62.00	\$32.00 to \$65.00
Sr. Architect, Sr. Engineer, Design Architect and Project Manager	\$36.00 to \$68.00	\$38.00 to \$71.00	\$40.00 to \$75.00	\$42.00 to \$79.00
Principal and QA/QC	\$46.00 to \$80.00	\$48.00 to \$84.00	\$50.00 to \$88.00	\$53.00 to \$92.00

REIMBURSABLE EXPENSES:

Special consultant costs, auto usage, travel, outside duplication/blue prints/photo/film, out-of-pocket monies, and other reasonably identifiable costs.

Unless specifically stated otherwise in the Project Agreement, reimbursable expense items are in addition to fees stated for services.

MORCOM, N.V., INC.

July-06

HOURLY WAGE RATES:

<u>Classification</u>	<u>Hourly Rate \$</u>	<u>Weighted Average</u>
Principal	65.00	65.00
Project Manager	55.00	55.00
Architect	45.00	45.00
Jr. Architect	25.00	25.00
Jr. Structural Engineer	28.00	28.00
Civil Engineer	39.50 28.25 21.00	29.50
Construcion Inspector	29.00 29.50	29.25
Clerical	18.00	18.00

Annual Salary adjustments (raises) are given January 1 of the calender year and are generally 5.0%

DIRECT COSTS:

Automobiles 1 Company Vehicle @ \$36.00 per day
Telephones 1 Nextell Telephone/radio @ at cost/month

Hourly Labor Rates - 2006 To 2011

CLASSIFICATION

CLASSIFICATION	2006			2007			2008			2009			2010			2011				
	Salary From	Salary To	Average Rate	Salary From	Salary To	Average Rate	Salary From	Salary To	Average Rate	Salary From	Salary To	Average Rate	Salary From	Salary To	Average Rate	Salary From	Salary To	Average Rate		
MANAGEMENT	70.00	70.00	70.00	70.00	70.00	70.00	70.00	70.00	70.00	70.00	70.00	70.00	70.00	70.00	70.00	70.00	70.00	70.00	70.00	
* Project Director / Principal - In - Charge	42.00	60.00	51.00	44.10	60.00	52.05	46.31	60.00	53.16	48.82	60.00	54.31	51.05	60.00	55.53	53.80	60.00	56.80	56.80	
* Project Manager																				44.89
ENGINEERING																				56.80
STRUCTURAL																				44.89
* Sr. Structural Engineer	42.00	54.80	48.30	44.10	57.33	50.72	46.31	60.00	53.15	48.82	60.00	54.31	51.05	60.00	55.53	53.80	60.00	56.80	56.80	56.80
* Structural Engineer	30.45	39.90	35.18	31.97	41.90	36.93	33.57	43.98	38.78	35.25	46.19	40.72	37.01	48.50	42.76	38.86	50.92	44.89	44.89	44.89
CIVIL																				56.80
* Sr. Civil Engineer	42.00	52.50	47.25	44.10	55.13	49.61	46.31	57.88	52.09	48.82	60.00	54.31	51.05	60.00	55.53	53.80	60.00	56.80	56.80	56.80
* Civil Engineer	30.45	40.18	35.31	31.97	42.17	37.07	33.57	44.28	38.92	35.25	46.48	40.87	37.01	48.81	42.91	38.86	51.26	45.06	45.06	45.06
MECHANICAL																				56.80
* Sr. Mechanical Engineer	44.10	54.80	49.35	46.31	57.33	51.82	48.82	60.00	54.31	51.05	60.00	55.53	53.80	60.00	58.30	56.28	60.00	58.74	58.74	58.74
* Mechanical Engineer	31.50	42.00	36.75	33.08	44.10	38.59	34.73	46.31	40.52	36.47	48.82	42.54	38.28	51.05	44.67	40.20	63.60	48.90	48.90	48.90
ELECTRICAL																				60.75
* Sr. Electrical Engineer	47.25	59.85	53.55	49.81	60.00	54.81	52.09	60.00	56.05	54.70	60.00	57.35	57.43	60.00	58.72	60.30	60.00	60.75	60.75	60.75
* Electrical Engineer	31.50	43.05	37.26	33.08	45.20	39.14	34.73	47.46	41.10	36.47	49.84	43.15	38.28	52.93	45.31	40.20	54.94	47.57	47.57	47.57
ARCHITECTURAL																				51.44
* Sr. Architect	33.80	48.56	41.08	35.28	50.98	43.13	37.04	53.54	45.29	38.90	56.21	47.56	40.84	59.02	49.93	42.88	60.00	51.44	51.44	51.44
* Architect	26.78	37.80	32.29	28.12	39.69	33.90	29.52	41.87	35.80	31.00	43.76	37.38	32.55	45.95	39.25	34.18	48.24	41.21	41.21	41.21
TECHNICAL SUPPORT																				44.75
* Engineer / CADD Microstn Manager	32.55	37.57	35.06	34.18	39.45	36.81	35.89	41.42	38.65	37.68	43.49	40.59	39.56	45.87	42.62	41.54	47.95	44.75	44.75	44.75
* Jr. Engineer I / CADD Microstn Engineer	26.25	36.70	30.98	27.56	37.49	32.52	28.94	38.36	34.15	30.39	41.33	35.86	31.91	43.99	37.65	33.50	45.68	39.53	39.53	39.53
* Jr. Engineer II / CADD Microstn Technician	24.94	29.40	27.17	26.19	30.87	28.53	27.50	32.41	29.95	28.87	34.03	31.45	30.31	35.74	33.03	31.83	37.52	34.68	34.68	34.68
* CADD Microstn Operator	18.90	26.92	22.91	19.85	28.27	24.06	20.84	28.68	25.38	21.88	31.16	26.52	22.97	32.72	27.85	24.12	34.36	29.24	29.24	29.24
* Specification Technician	26.78	36.83	31.86	28.12	38.36	33.24	29.52	40.27	34.90	31.00	42.29	36.84	32.55	44.40	38.48	34.18	46.62	40.40	40.40	40.40
* Project Facilitator / Coordinator	25.20	28.35	26.78	26.46	29.77	28.11	27.78	31.28	29.52	29.17	32.82	31.00	30.63	34.46	32.55	32.16	36.18	34.17	34.17	34.17
FIELD SUPPORT																				50.09
* Resident Engineer	37.80	40.70	39.25	39.89	42.74	41.21	41.67	44.87	43.27	43.76	47.12	45.44	45.95	49.47	47.71	48.24	51.94	50.09	50.09	50.09
* Sr. Field Engineer	33.60	37.80	35.70	35.28	39.69	37.49	37.04	41.67	39.36	38.90	43.76	41.33	40.84	45.95	43.39	42.88	48.24	45.56	45.56	45.56
* Field Engineer	27.30	32.65	29.93	28.67	34.18	31.42	30.10	36.89	32.99	31.60	37.88	34.64	33.18	39.66	36.37	34.84	41.54	38.19	38.19	38.19
* Sr. Field Inspector	29.54	32.98	30.95	31.02	33.98	32.50	32.67	35.68	34.12	34.20	37.46	35.83	35.91	39.33	37.62	37.70	41.30	39.50	39.50	39.50
* Field Inspector	23.10	28.35	25.73	24.26	29.77	27.01	25.47	31.28	28.38	26.74	32.82	29.78	28.08	34.46	31.27	29.48	36.18	32.83	32.83	32.83
* Field Technician - I	21.00	28.81	24.86	22.05	29.73	25.89	23.15	31.21	27.19	24.31	32.77	28.54	25.53	34.41	29.97	28.80	36.13	31.47	31.47	31.47
* Field Technician - II	18.90	26.72	22.81	19.85	26.08	23.95	20.84	29.46	26.15	21.88	30.93	26.41	22.97	32.48	27.73	24.12	34.10	29.11	29.11	29.11
SURVEYING																				53.85
* Professional Land Surveyor	39.89	45.01	42.20	41.35	47.28	44.30	43.42	49.82	46.52	45.59	52.10	48.85	47.87	54.71	51.29	50.26	57.45	53.85	53.85	53.85
* Survey Chief	28.25	39.38	32.82	27.56	41.35	34.46	28.94	43.42	36.18	30.39	45.59	37.99	31.91	47.87	38.89	33.50	50.26	41.88	41.88	41.88
* Instrument Operator	23.10	29.40	26.25	24.26	30.87	27.56	25.47	32.41	28.94	26.74	34.03	30.30	28.08	35.74	31.91	29.48	37.52	33.50	33.50	33.50
* Rod Person	17.23	21.87	19.55	18.06	22.96	20.53	19.00	24.11	21.55	19.95	25.32	22.63	20.94	26.58	23.76	21.99	27.91	24.95	24.95	24.95
NON-TECHNICAL SUPPORT																				24.27
* Clerical / Secretary	17.16	20.87	19.02	18.02	21.81	19.97	18.82	23.01	20.96	19.86	24.16	22.01	20.86	25.37	23.11	21.90	26.64	24.27	24.27	24.27

Other direct costs - Travel, Printing, Messenger, Survey Truck, Survey Equipment charges
Testing & Analysis, Batteries, Special supplies, etc. are to be added depending upon the scope of work.

**SCHEDULE D
INSURANCE REQUIREMENTS**

**NEW VEHICLE MAINTENANCE FACILITY
VICINITY OF 5201 SOUTH WESTERN BOULEVARD
CHICAGO, ILLINOIS 60609**

The Architect must provide and maintain at Architect's own expense, until expiration of this Agreement and during the time period following expiration if Architect is required to return and perform any additional work, the insurance coverages and requirements specified below, insuring all operations related to this Agreement.

D.1 INSURANCE TO BE PROVIDED

D.1.1 Workers' Compensation and Employers Liability

Workers' Compensation Insurance, 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 \$500,000 each accident or illness.

D.1.2 Commercial General Liability (Primary and Umbrella)

Commercial General Liability Insurance or equivalent with limits of not less than \$5,000,000 per occurrence for bodily injury, personal injury, and property damage liability. Coverage must include the following: All premises and operations, products/completed operations, separation of insureds, defense, and contractual liability (with no limitation endorsement). The Commission and the City of Chicago will be named as additional insureds on a primary, non-contributory basis for any liability arising directly or indirectly from the work.

Subconsultants performing work for Architect must maintain limits of not less than \$1,000,000 per occurrence with the same terms herein.

D.1.3 Automobile Liability (Primary and Umbrella)

When any motor vehicles (owned, non-owned and hired) are used in connection with work to be performed, the Architect must provide Automobile Liability Insurance, with limits of not less than \$2,000,000 per occurrence for bodily injury and property damage. The Commission and the City of Chicago must be named as additional insureds on a primary, non-contributory basis.

Subconsultants performing work for Architect must maintain limits of not less than \$1,000,000 per occurrence with the same terms herein.

D.1.4. Professional Liability

When any Architect, or Subconsultant, performs work in connection with the Agreement, Professional Liability Insurance must be maintained with limits of not less than \$5,000,000 per occurrence covering acts, errors, or omissions. When policies are renewed or replaced, the policy retroactive date must coincide with, or precede the, start of work on this Agreement. A claims-made policy, which is not renewed or replaced, must have an extended reporting period of 2 years.

Subconsultants performing work for Architect must maintain limits of not less than \$1,000,000 per occurrence with the same terms herein.

D.1.5 Valuable Papers

When any plans, designs, drawings, specifications, data, media, and documents are produced or used under the Agreement, Valuable Papers Insurance must be maintained in an amount limited to \$3,000,000 to insure against any loss and to pay for the re-creation and reconstruction of such records.

D.1.6 Contractors Pollution Liability

When any work is performed which may cause a pollution exposure, Contractors Pollution Liability must be provided covering bodily injury, property damage and other losses caused by pollution conditions that arise from the Contract scope of services with limits of not less than \$2,000,000 per occurrence. When policies are renewed or replaced, the policy retroactive date must coincide with or precede, start of work on the Contract. A claims-made policy, which is not renewed or replaced, must have an extended reporting period of two (2) years. The Public Building Commission and the City of Chicago are to be named as additional insureds on a primary, non-contributory basis.

Subconsultants performing work for Contractor must maintain limits of not less than \$1,000,000 per occurrence with the same terms herein.

D.1.7 Property

The Architect is responsible for all loss or damage to Commission and/ or City of Chicago property at full replacement cost. The Architect is responsible for all loss or damage to personal property (including but not limited to materials, equipment, tools, and supplies) owned, rented, or used by Architect.

D.2 ADDITIONAL REQUIREMENTS

D.2.1 The Architect must furnish the Public Building Commission Procurement Department, Richard J. Daley Center, Room 200, Chicago, IL 60602, original Certificates of Insurance, or such similar evidence, to be in force on the date of this Agreement, and Renewal Certificates of Insurance, or such similar evidence, if the coverages have an expiration or renewal date occurring during the term of this Agreement. The Architect must submit evidence of insurance to the Commission before award of Agreement. The receipt of any certificate does not constitute agreement by the Commission that the insurance requirements in the Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all Agreement requirements. The failure of the Commission to obtain certificates or other insurance evidence from Architect is not a waiver by the Commission of any requirements for the Architect to obtain and maintain the specified coverages. The Architect will advise all insurers of the Agreement provisions regarding insurance. Non-conforming insurance does not relieve Architect of the obligation to provide insurance as specified in this Agreement. Nonfulfillment of the insurance conditions may constitute a violation of the Agreement, and the Commission retains the right to stop work until proper evidence of insurance is provided, or the Agreement may be terminated.

D.2.2 The Commission reserves the right to obtain copies of insurance policies and records from the Architect and/or its Subconsultants at any time upon written request.

D.2.3 The insurance must provide for 60 days prior written notice to be given to the Commission if coverage is substantially changed, canceled, or non-renewed.

D.2.4 Any deductibles or self-insured retentions on referenced insurance coverages must be borne by Architect.

D.2.5 The Architect agrees that insurers waive their rights of subrogation against the Commission, the City of Chicago and their employees, elected and appointed officials or representatives.

D.2.6 The coverages and limits furnished by Architect in no way limit the Architect's liabilities and responsibilities specified within the Agreement or by law.

D.2.7 Any insurance or self-insurance programs maintained by the Commission and the City of Chicago do not contribute with insurance provided by the Architect under the Agreement.

D.2.8 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 the Agreement given as a matter of law.

D.2.9 The Architect must require all its Subconsultants to provide the insurance required in this Agreement, or Architect may provide the coverages for its Subconsultants. All its Subconsultants are subject to the same insurance requirements of Architect unless otherwise specified in this Agreement.

D.2.10 If Architect or its Subconsultants desires additional coverage, the party desiring the additional coverage is responsible for the acquisition and cost.

D.3. RISK MANAGEMENT

The Commission's Risk Management Department maintains the rights to modify, delete, alter or change these requirements.

**SCHEDULE E
KEY PERSONNEL**

**NEW FLEET MANAGEMENT VEHICLE MAINTENANCE FACILITY
5201 SOUTH WESTERN BOULEVARD
CHICAGO, ILLINOIS 60609**

(TABLE OF KEY PERSONNEL FOLLOWS THIS PAGE.)

**SCHEDULE E
KEY PERSONNEL**

**NEW FLEET MANAGEMENT VEHICLE MAINTENANCE FACILITY
5201 SOUTH WESTERN BOULEVARD
CHICAGO, ILLINOIS 60609**

NAME	FIRM	TITLE
Joseph M. Hoerner, AIA	Teng & Associates, Inc.	Principal-in-Charge
Douglas P. Blanchard, R.A.	Teng & Associates, Inc.	Project Manager
Edward P. Wilkas, AIA, NCARB	Teng & Associates, Inc.	QA/QC
Jerry J. Cibulka, AIA, NCARB	Teng & Associates, Inc.	QA/QC
R. Shankar Nair, Ph.D., S.E., P.E.	Teng & Associates, Inc.	QA/QC
Thomas Hoepf, FAIA, LEED, AP	Teng & Associates, Inc.	Design Architect
Aimee Renee Purcell, R.A.	Teng & Associates, Inc.	Project Architect
Edward E. Hale, Sr., AIA	Morcom, N.V., Inc.	Project Architect
Mark Stanley, ASLA	Teng & Associates, Inc.	Landscape Architect
John E. Tsingas, P.E.	Teng & Associates, Inc.	Mechanical Engineer
Syed Ahmed, P.E.	Delta Engineering, Inc.	Mechanical Engineer
John F. Mathews, P.E.	Teng & Associates, Inc.	Electrical Engineer
Charles Kandallu, P.E.	Delta Engineering, Inc.	Electrical Engineer
Ronald Putlak	Teng & Associates, Inc.	Plumbing/Fire Protection Engineer
Thomas M. Suarez, S.E., P.E.	Teng & Associates, Inc.	Structural Engineer
Prabhu Ananthan, E.I.T.	Morcom, N.V., Inc.	Structural Engineer
Robert J. Stern, P.E.	Teng & Associates, Inc.	Civil Engineer
Robert S. Giurato, P.E.	Environmental Design Int'l, Inc.	Civil Engineer
Scott S. Dileto	Environmental Design Int'l, Inc.	Environmental Engineer
John C. Huston, P.E.	Teng & Associates, Inc.	Building Automation
K. Randolph Robbie	Teng & Associates, Inc.	Communications Technology
Ronald S. Allen, CPP, PSP	Teng & Associates, Inc.	Security
Peter J. Campagnolo	Teng & Associates, Inc.	Cost Estimator

EXHIBIT A

DISCLOSURE OF RETAINED PARTIES

**NEW FLEET MANAGEMENT VEHICLE MAINTENANCE FACILITY
5201 SOUTH WESTERN BOULEVARD
CHICAGO, ILLINOIS 60609**

(THE BELOW-LISTED DOCUMENTS FOLLOW THIS PAGE:

**THE COMMISSION'S DISCLOSURE OF RETAINED PARTIES FORM AS EXECUTED BY ARCHITECT
SCHEDULE C - LETTER OF INTENT TO PERFORM EXECUTED BY EACH MBE/WBE SO RETAINED**

DISCLOSURE OF RETAINED PARTIES

A. Definitions and Disclosure Requirements

1. As used in this Agreement, "Contractor" means a person or entity who has any contract or lease with the Public Building Commission of Chicago ("Commission").
2. Commission contracts and/or qualification submittals must be accompanied by a disclosure statement providing certain information about attorneys, lobbyists, consultants, subcontractors, and other persons whom the Contractor has retained or expects to retain with respect to the contract or lease. In particular, the Contractor must disclose the name of each such person, his or her business address, the name of the relationship, and the amount of fees paid or estimated to be paid. The Contractor is not required to disclose employees who are paid solely through the Contractor's regular payroll.
3. "Lobbyists" means any person (a) who for compensation or on behalf of any person other than himself undertake to influence any legislative or administrative action, or (b) any part of whose duties as an employee of another includes undertaking to influence any legislative or administrative action.

B. Certifications

Contractor hereby certifies as follows: Architect of Record at the New Fleet

1. This Disclosure relates to the following transaction: Management Vehicle Maintenance Facility
Description or goods or services to be provided under Contract: # PS1022
2. Full Legal Name of Contractor: Teng & Associates, Inc.
3. EACH AND EVERY attorney, lobbyist, accountant, consultant, subcontractor, or other person retained or anticipated to be retained by the Contractor with respect to or in connection with the contract or lease is listed below. Attach additional pages if necessary. NOTE: You must include information about certified MBE/WBEs you have retained or anticipate retaining, even if you have already provided that information elsewhere in the contract documents.

Retained Parties:

Name	Business Address	Relationship (Attorney, Lobbyist, Subcontractor, etc.)	Fees (indicate whether paid or estimated)
Morcom, N.V., Inc. (Architecture and Structural Engineering)	449 E. 31 st Street Chicago, Illinois 60616	MBE Subcontractor	\$141,225.00 (Estimated)
Delta Engineering, Inc. (Mechanical and Electrical Engineering)	111 W. Jackson Suite 910 Chicago, Illinois 60604	MBE Subcontractor	\$94,150.00 (Estimated)

Check Here If No Such Persons Have been Retained or Are Anticipated To Be Retained: _____

4. The Contractor certifies that it understands and agrees as follows:
 1. The information provided in this Disclosure of Retained Parties is a material inducement to the Commission to execute the contract or other action with respect to which this Disclosure of Retained Parties form is being certified, and the Commission may rely on the information provided in it. Furthermore, if the Commission determines that any information provided in it is false, incomplete, or inaccurate, the Commission may at its sole option terminate the contract or other transaction, and may terminate the Contractor's participation in the contract or other transactions with the Commission.

**SCHEDULE C – Letter of Intent from MBE/WBE
To Perform As
Subcontractor, Subconsultant, and/or Material Supplier (1 of 2)**

SCHEDULE C AND SUPPORTING DOCUMENTS MUST BE SUBMITTED WITH BID

Name of Project: New Fleet Management Vehicle Maintenance Facility

Project Number: N/A

FROM:

Delta Engineering, Inc. MBE X WBE _____
(Name of MBE or WBE)

TO:

Teng & Associates, Inc. and Public Building Commission of Chicago
(Name of General Bidder)

The undersigned intends to perform work in connection with the above-referenced project as (check one):

_____ a Sole Proprietor X a Corporation
_____ a Partnership _____ a Joint Venture

The MBE/WBE status of the undersigned is confirmed by the attached Letter of Certification, dated JULY 24, 2006. In addition, in the case where the undersigned is a Joint Venture with a non-MBE/WBE firm, a Schedule B, Joint Venture Affidavit, is provided.

The undersigned is prepared to provide the following described services or supply the following described goods in connection with the above-named project.

Mechanical and Electrical Engineering Services

The above-described services or goods are offered for the following price, with terms of payment as stipulated in the Contract Documents.

10% - \$94,150

**SCHEDULE C – Letter of Intent from MBE/WBE
To Perform As
Subcontractor, Subconsultant, and/or Material Supplier (2 of 2)**

PARTIAL PAY ITEMS

For any of the above items that are partial pay items, specifically describe the work and subcontract dollar amount:

If more space is needed to fully describe the MBE/WBE firm's proposed scope of work and/or payment schedule, attach additional sheet(s).

SUB-SUBCONTRACTING LEVELS

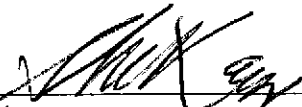
_____ % of the dollar value of the MBE/WBE subcontract will be sublet to non-MBE/WBE contractors.

_____ % of the dollar value of the MBE/WBE subcontract will be sublet to MBE/WBE contractors.

If MBE/WBE subcontractor will not be sub-subcontracting any of the work described in this Schedule, a zero (0) must be filled in each blank above. If more than 10% percent of the value of the MBE/WBE subcontractor's scope of work will be sublet, a brief explanation and description of the work to be sublet must be provided.

The undersigned will enter into a formal agreement for the above work with the General Bidder, conditioned upon its execution of a contract with the Public Building Commission of Chicago, and will do so within five (5) working days of receipt of a notice of Contract award from the Commission.

Delta Engineering, Inc.
Name of MBE/WBE Firm (Print)


Signature

November 6, 2006
Date

S. M. Kazi
Name (Print)

312. 377. 7700
Phone

IF APPLICABLE:

By:

Joint Venture Partner (Print)

Signature

Date

Name (Print)

Phone

MBE X WBE _____ Non-MBE/WBE _____



City of Chicago
Richard M. Daley, Mayor

Department of
Procurement Services

Barbara A. Lumpkin
Chief Procurement Officer

City Hall, Room 403
121 North LaSalle Street
Chicago, Illinois 60602
(312) 744-4900
(312) 744-2949 (TTY)
<http://www.cityofchicago.org>

July 24, 2006

Syed M. Kazi, President
Delta Engineering, Inc.
220 South State Street, Suite 500
Chicago, Illinois 60604

Dear Mr. Kazi:

The City of Chicago Department of Procurement Services ("Department") has undertaken an evaluation of procurement policies and procedures including those utilized within the M/WBE and DBE certification unit. In light of this evaluation and in anticipation of streamlining our procedures, the Department extends your **MBE certification until April 1, 2007.**

The Department may request additional information from you prior to the expiration of the courtesy period. This information will assist us in making a determination on the recertification of your company. You will receive additional information from the Department in the coming days.

As you know, your firm's participation on contracts will be credited only toward MBE in the following specialty area(s):

Consulting Engineer: Construction Management; Surveying

If you have any questions, please contact our office at 312-742-0766.

Sincerely,


Lori Ann Lypson
Deputy Procurement Officer

LAL/dm



**SCHEDULE C – Letter of Intent from MBE/WBE
To Perform As
Subcontractor, Subconsultant, and/or Material Supplier (1 of 2)**

SCHEDULE C AND SUPPORTING DOCUMENTS MUST BE SUBMITTED WITH BID

Name of Project: New Fleet Management Vehicle Maintenance Facility

Project Number: N/A

FROM:

Morcom, N.V., Inc. MBE X WBE _____
(Name of MBE or WBE)

TO:

Teng & Associates, Inc. and Public Building Commission of Chicago
(Name of General Bidder)

The undersigned intends to perform work in connection with the above-referenced project as (check one):

_____ a Sole Proprietor X a Corporation
_____ a Partnership _____ a Joint Venture

The MBE/WBE status of the undersigned is confirmed by the attached Letter of Certification, dated July 13, 2006. In addition, in the case where the undersigned is a Joint Venture with a non-MBE/WBE firm, a Schedule B, Joint Venture Affidavit, is provided.

The undersigned is prepared to provide the following described services or supply the following described goods in connection with the above-named project.

Architectural and Structural Engineering Services

The above-described services or goods are offered for the following price, with terms of payment as stipulated in the Contract Documents.

15% - \$141,225

**SCHEDULE C – Letter of Intent from MBE/WBE
To Perform As
Subcontractor, Subconsultant, and/or Material Supplier (2 of 2)**

PARTIAL PAY ITEMS

For any of the above items that are partial pay items, specifically describe the work and subcontract dollar amount:

If more space is needed to fully describe the MBE/WBE firm's proposed scope of work and/or payment schedule, attach additional sheet(s).

SUB-SUBCONTRACTING LEVELS

_____ % of the dollar value of the MBE/WBE subcontract will be sublet to non-MBE/WBE contractors.

_____ % of the dollar value of the MBE/WBE subcontract will be sublet to MBE/WBE contractors.

If MBE/WBE subcontractor will not be sub-subcontracting any of the work described in this Schedule, a zero (0) must be filled in each blank above. If more than 10% percent of the value of the MBE/WBE subcontractor's scope of work will be sublet, a brief explanation and description of the work to be sublet must be provided.

The undersigned will enter into a formal agreement for the above work with the General Bidder, conditioned upon its execution of a contract with the Public Building Commission of Chicago, and will do so within five (5) working days of receipt of a notice of Contract award from the Commission.

Morcom, N.V., Inc.
Name of MBE/WBE Firm (Print)


Signature

November 6, 2006
Date

Allan Mourillon
Name (Print)

312. 842. 3100
Phone

IF APPLICABLE:
By:

Joint Venture Partner (Print)

Signature

Date

Name (Print)

Phone

MBE X WBE _____ Non-MBE/WBE _____



City of Chicago
Richard M. Daley, Mayor

Department of
Procurement Services

Barbara A. Lumpkin
Chief Procurement Officer

City Hall, Room 403
121 North LaSalle Street
Chicago, Illinois 60602
(312) 744-4900
(312) 744-2949 (TTY)
<http://www.cityofchicago.org>

July 13, 2006

Mr. Allan R. Mourillon PE, President
Morcom N.V., Inc.
449 E. 31st Street
Chicago, Illinois 60616

Dear Mr. Mourillon:

The City of Chicago Department of Procurement Services ("Department") has undertaken an evaluation of procurement policies and procedures including those utilized within the M/WBE and DBE certification unit. In light of this evaluation and in anticipation of streamlining our procedures, the Department extends your **MBE certification until April 1, 2007.**

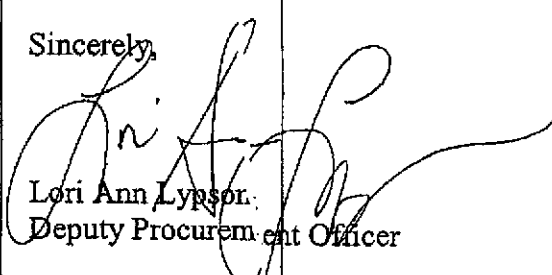
The Department may request additional information from you prior to the expiration of the courtesy period. This information will assist us in making a determination on the recertification of your company. You will receive additional information from the Department in the coming days.

As you know, your firm's participation on contracts will be credited only toward **MBE** in the following specialty area(s):

Civil Engineering; Construction Management

If you have any questions, please contact our office at 312-742-0766.

Sincerely,


Lori Ann Lypson,
Deputy Procurement Officer

mck



EXHIBIT B
DISCLOSURE AFFIDAVIT

NEW FLEET MANAGEMENT VEHICLE MAINTENANCE FACILITY
5201 SOUTH WESTERN BOULEVARD
CHICAGO, ILLINOIS 60609

(COMMISSION'S DISCLOSURE AFFIDAVIT FORM

EXECUTED BY ARCHITECT FOLLOWS THIS PAGE.)

DISCLOSURE AFFIDAVIT

Name: Teng & Associates, Inc.

Address: 205 N. Michigan Ave. Suite 3600, Chicago, IL 60601

Telephone No.: 312. 616. 0000

Federal Employer I.D. #: 36-2491653 Social Security #: _____

Nature of Transaction:

- Sale or purchase of land
- Construction Contract
- Professional Services Agreement
- Other

Instructions: FOR USE WITH ANY OF THE ABOVE TRANSACTIONS. Anyone proposing one of the above transactions with the Public Building Commission of Chicago must complete this Disclosure Affidavit. Please note that in the event the Contractor is a joint venture, the joint venture and each of the joint venture partners must submit a completed Disclosure Affidavit.

The undersigned Donna M. Floerchinger, as Senior Vice President & CFO
(Name) (Title)

and on behalf of Teng & Associates, Inc.
("Bidder/ Proposer" or "Contractor") having been duly sworn under oath certifies that:

I. DISCLOSURE OF OWNERSHIP INTERESTS

Pursuant to Resolution No. 5371 of the Board of Commissioners of the Public Building Commission of Chicago, all bidders/proposers shall provide the following information with their bid/proposal. If the question is not applicable, answer "NA". If the answer is none, please answer "none".

- | | | |
|--|---|---|
| Bidder/Proposer is a: | <input checked="" type="checkbox"/> Corporation | <input type="checkbox"/> LLC |
| | <input type="checkbox"/> Partnership | <input type="checkbox"/> LLP |
| | <input type="checkbox"/> Joint Venture | <input type="checkbox"/> Not-for-Profit Corporation |
| <input type="checkbox"/> Sole Proprietorship | <input type="checkbox"/> Other | |

SECTION 1.

FOR PROFIT CORPORATION OR LIMITED LIABILITY COMPANY (LLC)

a. State of Incorporation or organization Illinois

b. Authorized to do business in the State of Illinois: Yes [X] No []

Names of all officers of corporation or LLC (or attach list):		Names of all directors of corporation (or attach list):	
Name (Print or Type)	Title (Print or Type)	Name (Print or Type)	Title (Print or Type)
Ivan Dvorak, P.E.	President & CEO	Ivan Dvorak, P.E.	President & CEO
Donna Floerchinger	Sr. Vice President & CFO	Donna Floerchinger	Sr. Vice President & CFO
Dr. Shankar Nair, S.E., P.E.	Senior Vice President	Thomas Hoepf, FAIA	Vice President
Barbara Kooper-Klein	Vice President		
Timothy Neumann, AIA	Vice President		
Laurence Buchman	Vice President		
Byron Danley, S.E., P.E.	Vice President		
Thomas Hoepf, FAIA	Vice President		
Mark Mikrut, P.E.	Vice President		
Thomas Lohner, P.E.	Vice President		
Jerry Cibulka, AIA	Vice President		

d. If the corporation has fewer than 100 shareholders indicate here or attach a list of names and addresses of all shareholders and the percentage interest of each.

Name (Print or Type)	Address	Ownership Interest
<u>See Attachment "A"</u>	_____	_____%
_____	_____	_____%
_____	_____	_____%

- e. If the corporation has 100 or more shareholders, indicate here or attach a list of names and addresses of all shareholders owning shares equal to or in excess of seven and one-half percent (7.5%) of the proportionate ownership of the corporation and indicate the percentage interest of each.

Name (Print or Type)	Address	Ownership Interest
<u>N/A</u>	_____	_____ %
_____	_____	_____ %
_____	_____	_____ %

- f. For LLC's, state whether member-managed or identify managing member:

N/A

- g. For LLC's identify each member:

Name (Print or Type)	Address	Ownership Interest
<u>N/A</u>	_____	_____ %
_____	_____	_____ %
_____	_____	_____ %

- h. Is the corporation or LLC owned partially or completely by one or more other corporations or legal entities?

Yes [] No [X]

If "yes" provide the above information, as applicable, for each such corporation or entity.

SECTION 2. PARTNERSHIPS

- a. If the bidder/proposer is a partnership, indicate the name of each partner and the percentage of interest of each therein. Also indicate, if applicable, whether general partner (GP) or limited partner (LP)

Name of Partners (Print or Type)	Percentage Interest
<u>N/A</u>	_____ %
_____	_____ %
_____	_____ %

SECTION 3. SOLE PROPRIETORSHIP

- a. The bidder/proposer is a sole proprietorship and is not acting in any representative capacity on behalf of any beneficiary: Yes [] No []
If NO, complete items b. and c. of this Section 3.
- b. If the sole proprietorship is held by an agent(s) or a nominee(s), indicate the principal(s) for whom the agent or nominee holds such interest.

Name(s) of Principal(s). (Print or Type)

N/A

- c. If the interest of a spouse or any other party is constructively controlled by another person or legal entity, state the name and address of such person or entity possessing such control and the relationship under which such control is being or may exercised.

Name(s)	Address(es)
<u>N/A</u>	_____
_____	_____
_____	_____

SECTION 4. LAND TRUSTS, BUSINESS TRUSTS, ESTATES & OTHER ENTITIES

If the bidder/proposer is a land trust, business trust, estate or other similar commercial or legal entity, identify any representative, person or entity holding legal title as well as each beneficiary in whose behalf title is held including the name, address and percentage of interest of each beneficiary.

Name(s)	Address(es)
<u>N/A</u>	_____
_____	_____
_____	_____

2. The Contractor or agent, partner, employee or officer of the Contractor is not barred from contracting with any unit of state or local government as a result of engaging in or being convicted of bid-rigging² in violation of Section 3 of Article 33E of the Illinois Criminal Code of 1961, as amended (720 ILCS 5/33E-3), or any similar offense of any state or the United States which contains the same elements as the offense of bid-rigging during a period of five years prior to the date of submittal of this bid, proposal or response.³
3. The Contractor or any agent, partner, employee, or officer of the Contractor is not barred from contracting with any unit of state or local government as a result of engaging in or being convicted of bid-rotating⁴ in violation of Section 4 of Article 33E of the Illinois Criminal Code of 1961, as amended (720 ILCS 5/33E-4), or any similar offense of any state or the United States which contains the same elements as the offense of bid-rotating.
4. The Contractor understands and will abide by all provisions of Chapter 2-56 of the Municipal Code entitled "Office of the Inspector General" and all provisions of the Public Building Commission Code of Ethics Resolution No.5339, as amended by Resolution No. 5371.
5. The Contractor certifies to the best of its knowledge and belief, that it and its principals:
 - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal, state or local department or agency.
 - b. Have not within a three-year period preceding this bid or proposal been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes; commission of embezzlement, theft, forgery, bribery, falsification or destruction of records; making false statements; or receiving stolen property;
 - c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (5)(b) above; and
 - d. Have not within a three-year period preceding this bid or proposal had one or more public transactions (federal, state or local) terminated for cause or default.

B. SUBCONTRACTOR

1. The Contractor has obtained from all subcontractors being used in the performance of this contract or agreement, known by the Contractor at this time, certifications substantially in the form of Section 1 of this Disclosure Affidavit. Based on such certification(s) and any other information known or obtained by the Contractor, is not aware of any such subcontractor or subcontractor's affiliated entity or any agent, partner, employee or officer of such subcontractor or subcontractor's affiliated entity having engaged in or been convicted of (a) any of the conduct describe in Section II(A) (1)(a) or (b) of this certification; (b) bid-rigging, bid-rotating, or any similar offense of any state or the United States which contains the same elements as bid-rigging or bid-rotating, or having made an admission of guilt of the conduct described in Section II(A)(1)(a) or (b) which is matter of record but has/have not been prosecuted for such conduct.

2. The Contractor will, prior to using them as subcontractors, obtain from all subcontractors to be used in the performance of this contract or agreement, but not yet known by the Contractor at this time, certifications substantially in the form of this certification. The Contractor shall not, without the prior written permission of the Commission, use any of such subcontractors in the performance of this contract if the Contractor, based on such certifications or any other information known or obtained by Contractor, became aware of such subcontractor, subcontractor's affiliated entity or any agent, employee or officer of such subcontractor or subcontractor's affiliated entity having engaged in or been convicted of (a) any of the conduct describe in Section II(A)(1)(a) or (b) of this certification or (b) bid-rigging, bid-rotating or any similar offenses of any state or the United States which contains the same elements as bid-rigging or bid-rotating or having made an admission of guilt of the conduct described in Section II(A)(1)(a) or (b) which is a matter of record but has/have not been prosecuted for such conduct. The Contractor shall cause such subcontractors to certify as to Section II(A)(5). In the event any subcontractor is unable to certify to Section II(A)(5), such subcontractor shall attach an explanation to the certification.
3. For all subcontractors to be used in the performance of this contract or agreement, the Contractor shall maintain for the duration of the contract all subcontractors' certifications required by Section II(B)(1) and (2) above, and Contractor shall make such certifications promptly available to the Public Building Commission of Chicago upon request.
4. The Contractor will not, without the prior written consent of the Public Building Commission of Chicago, use as subcontractors any individual, firm, partnership, corporation, joint venture or other entity from whom the Contractor is unable to obtain a certification substantially in the form of this certification.
5. The Contractor hereby agrees, if the Public Building Commission of Chicago so demands, to terminate its subcontractor with any subcontractor if such subcontractor was ineligible at the time that the subcontract was entered into for award of such subcontract. The Contractor shall insert adequate provisions in all subcontracts to allow it to terminate such subcontractor as required by this certification.

C. STATE TAX DELINQUENCIES

1. The Contractor is not delinquent in the payment of any tax administered by the Illinois Department of Revenue or, if delinquent, the contractor is contesting, in accordance with the procedures established by the appropriate Revenue Act, its liability for the tax or amount of the tax.
2. Alternatively, the contractor has entered into an agreement with the Illinois Department of Revenue for the payment of all such taxes that are due and is in compliance with such agreement.
3. If the Contractor is unable to certify to any of the above statements [(Section II (C))], the Contractor shall explain below. Attach additional pages if necessary.

N/A

If the letters "NA", the word "None" or no response appears on the lines above, it will be conclusively presumed that the Undersigned certified to the above statements.

4. If any subcontractors are to be used in the performance of this contract or agreement, the Contractor shall cause such subcontractors to certify as to paragraph (C)(1) or (C)(2) of this certification. In the event that any subcontractor is unable to certify to any of the statements in this certification, such subcontractor shall attach an explanation to this certification.

D. OTHER TAXES/FEEES

1. The Contractor is not delinquent in paying any fine, fee, tax or other charge owed to the City of Chicago.
2. If Contractor is unable to certify to the above statement, Contractor shall explain below and attach additional sheets if necessary.

_____ N/A _____

E. ANTI-COLLUSION

The Contractor, its agents, officers or employees have not directly or indirectly entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with this proposal or contract. Failure to attest to this section as part of the bid will make the bid non-responsive and not eligible for award consideration.

F. PUNISHMENT

A Contractor who makes a false statement material to Section II(A)(2) of this certification commits a Class 3 felony. 720 ILCS 5/33E-11(b).

G. JUDICIAL OR ADMINISTRATIVE PROCEEDINGS

1. The Contractor is not a party to any pending lawsuits against the City of Chicago or the Public Building Commission of Chicago nor has Contractor been sued by the City of Chicago or the Public Building Commission of Chicago in any judicial or administrative proceeding.
2. If the Contractor cannot certify to the above, provide the (1) case name; (2) docket number; (3) court in which the action is or was pending; and (4) a brief description of each such judicial or administrative proceeding. Attach additional sheets if necessary.

_____ N/A _____

If the letters "NA", the word "None" or no response appears on the lines above, it will be conclusively presumed that the Undersigned certified to the above statements.

III. CERTIFICATION OF ENVIRONMENTAL COMPLIANCE

- A. Neither the Contractor nor any affiliated entity of the Contractor has, during a period of five years prior to the date of execution of this Affidavit: (1) violated or engaged in any conduct which violated federal, state or local Environmental Restriction⁵, (2) received notice of any claim, demand or action, including but not limited to citations and warrants, from any federal, state or local agency exercising executive, legislative, judicial, regulatory or administrative functions relating to a violation or alleged violation of any federal, state or local statute, regulation or other Environmental Restriction; or (3) been subject to any fine or penalty of any nature for failure to comply with any federal, state or local statute, regulation or other Environmental Restriction.

If the Contractor cannot make the certification contained in Paragraph A of Section III, identify any exceptions:

N/A

(Attach additional pages of explanation to this Disclosure Affidavit, if necessary.)

If the letters "NA", the word "None" or no response appears on the lines above, it will be conclusively presumed that the Undersigned certified to the above statements.

- B. Without the prior written consent of the Public Building Commission of Chicago, Contractor will not employ any subcontractor in connection with the contract or proposal to which this Affidavit pertains without obtaining from such subcontractor a certification similar in form and substance to the certification contained in Paragraph A of this Section III prior to such subcontractor's performance of any work or services or furnishing any goods, supplies or materials of any kind under the proposal or the contract to which this Affidavit pertains.
- C. Until completion of the Contractor's performance under the proposal or contract to which this Affidavit pertains, the Contractor will not violate any federal, state or local statute, regulation or other Environmental Restriction, whether in the performance of such contract or otherwise.

IV. CERTIFICATION OF COURT-ORDERED CHILD SUPPORT COMPLIANCE

For purpose of this Section IV, "SUBSTANTIAL OWNER" means any person who owns or holds a ten percent (10%) or more percentage of interest in the Contractor. If the Contractor is an individual or sole proprietorship, substantial owner means that individual or sole proprietorship. Percentage of interest includes direct, indirect and beneficial interests in the Contractor. Indirect or beneficial interest means that an interest in the Contractor is held by a corporation, joint venture, trust, partnership, association, state or other legal entity in which the individual holds an interest or by agent(s) or nominee(s) on behalf of an individual or entity. For example, if Corporation B holds or owns a twenty percent (20%) interest in Contractor, and an individual or entity has a fifty percent (50%) or more percentage of interest in Corporation B, then such individual or entity indirectly has a ten (10%) or percentage of interest in the Contractor. In this case, the response to this Section IV, must cover such individual(s) or entity. If Corporation B is held by another entity, then this analysis similarly must be applied to that next entity.

If Contractor's response in this Section IV is 1 or 2, then all of the Contractor's Substantial Owners must remain in compliance with any such child support obligations (1) throughout the term of the contract and any extensions thereof; or (2) until the performance of the contract is completed, as applicable. Failure of Contractor's Substantial Owners to remain in compliance with their child support obligations in the manner set forth in either 1 or 2 constitutes an event of default.

Check one:

1. No Substantial Owner has been declared in arrearage on his or her child support obligations by the Circuit Court of Cook County or by another Illinois court of competent jurisdiction.
2. The Circuit Court of Cook County or another Illinois court of competent jurisdiction has issued an order declaring one or more Substantial Owners in arrearage on their child support obligations. All such Substantial Owners, however, have entered into court-approved agreements for the payment of all such child support owed, and all such Substantial Owners are in compliance with such agreements.
3. The Circuit Court of Cook County or another Illinois court of competent jurisdiction has issued an order declaring one or more Substantial Owners in arrearage on their child support obligations and: (1) at least one such Substantial Owner has not entered into a court-approved agreement for the payment of all such child support for the payment of all such child support owed; or both (1) and (2).
4. There are no Substantial Owners.

V. INCORPORATION INTO CONTRACT AND COMPLIANCE

The above certification shall become part of any contract awarded to the Contractor set forth on page 1 of this Disclosure Affidavit and are a material inducement to the Public Building Commission of Chicago's execution of the contract, contract modification or contract amendment with respect to which this Disclosure Affidavit is being executed and delivered on behalf of the Contractor. Furthermore, Contractor shall comply with these certifications during the term and/or performance of the contract.

VI. VERIFICATION

Under penalty or perjury, I certify that I am authorized to execute this Disclosure Affidavit on behalf of the Contractor set forth on page 1, that I have personal knowledge of all the certifications made herein and that the same are true.

The Contractor must report any change in any of the facts stated in this Affidavit to the Public Building Commission of Chicago within 14 days of the effective date of such change by completing and submitting a new Disclosure Affidavit. Failure to comply with this requirement is grounds for your firm to be deemed non-qualified to do business with the PBCC. Deliver any such new Disclosure Affidavit to: Public Building Commission of Chicago, Director of Procurement, 50 W. Washington, Room 200, Chicago, IL 60602.

Donna M. Floerchinger
Signature of Authorized Officer

Donna M. Floerchinger
Name of Authorized Officer (Print or Type)

Senior Vice President & CFO
Title

312. 616. 0000
Telephone Number

State of Illinois

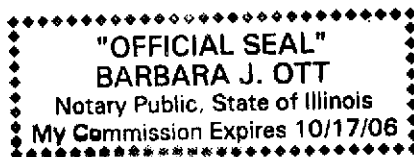
County of Cook

Signed and sworn to before me on this 13th day of September, 2006 by

Donna M. Floerchinger (Name) as Senior Vice President & CFO (Title) of

Teng & Associates, Inc. (Bidder/Proposer or Contractor)

Barbara J. Ott
Notary Public Signature and Seal



"Attachment A"

Teng & Associates, Inc. Shareholders

		Total % Interest
Ivan J. Dvorak	205 N. Michigan Ave. Suite 3600, Chicago, IL 60601	4.2364%
Ivan J. Dvorak Remainder Trust	205 N. Michigan Ave. Suite 3600, Chicago, IL 60601	11.1053%
Mark Dvorak Dynasty Trust	205 N. Michigan Ave. Suite 3600, Chicago, IL 60601	17.3446%
Hynek Dvorak Dynasty Trust	205 N. Michigan Ave. Suite 3600, Chicago, IL 60601	17.3446%
Donna M. Floerchinger	205 N. Michigan Ave. Suite 3600, Chicago, IL 60601	14.2474%
Byron T. Danley	205 N. Michigan Ave. Suite 3600, Chicago, IL 60601	6.1945%
Timothy D. Neumann	205 N. Michigan Ave. Suite 3600, Chicago, IL 60601	6.1945%
Laurence J. Buchman	205 N. Michigan Ave. Suite 3600, Chicago, IL 60601	0.0413%
Laurence J. Buchman Living Trust	205 N. Michigan Ave. Suite 3600, Chicago, IL 60601	4.0884%
Mark A. Mikrut	205 N. Michigan Ave. Suite 3600, Chicago, IL 60601	4.1297%
Jerry J. Cibulka	205 N. Michigan Ave. Suite 3600, Chicago, IL 60601	3.0973%
Robert J. Stern	205 N. Michigan Ave. Suite 3600, Chicago, IL 60601	1.8584%
Robert J. Stern Family Dynasty Trust I	205 N. Michigan Ave. Suite 3600, Chicago, IL 60601	0.2065%
Barbara J. Kooper-Klein	205 N. Michigan Ave. Suite 3600, Chicago, IL 60601	1.5486%
John A. Samis	205 N. Michigan Ave. Suite 3600, Chicago, IL 60601	1.5486%
Allen Morris	205 N. Michigan Ave. Suite 3600, Chicago, IL 60601	1.0324%
Richard Westrum	205 N. Michigan Ave. Suite 3600, Chicago, IL 60601	1.0324%
Thomas Hoepf	205 N. Michigan Ave. Suite 3600, Chicago, IL 60601	1.0324%
R. Shankar Nair	205 N. Michigan Ave. Suite 3600, Chicago, IL 60601	0.5162%
John Hillman	205 N. Michigan Ave. Suite 3600, Chicago, IL 60601	0.3613%
Ioanis Tsingas	205 N. Michigan Ave. Suite 3600, Chicago, IL 60601	0.3613%
Mark A. Treiber	205 N. Michigan Ave. Suite 3600, Chicago, IL 60601	0.3613%
Vinod Patel	205 N. Michigan Ave. Suite 3600, Chicago, IL 60601	0.3613%
Jacques Cattan	205 N. Michigan Ave. Suite 3600, Chicago, IL 60601	0.2581%
Jefrey D. Jakalski	205 N. Michigan Ave. Suite 3600, Chicago, IL 60601	0.2581%
Joseph Hoerner	205 N. Michigan Ave. Suite 3600, Chicago, IL 60601	0.2581%
John Huston	205 N. Michigan Ave. Suite 3600, Chicago, IL 60601	0.2581%
Sean McMahon	205 N. Michigan Ave. Suite 3600, Chicago, IL 60601	0.2581%
Thomas Lohner	205 N. Michigan Ave. Suite 3600, Chicago, IL 60601	0.2581%
Edward Wilkas	205 N. Michigan Ave. Suite 3600, Chicago, IL 60601	0.2065%
		100.0%

EXHIBIT C

POLICIES CONCERNING MBE AND WBE

**NEW FLEET MANAGEMENT VEHICLE MAINTENANCE FACILITY
5201 SOUTH WESTERN BOULEVARD
CHICAGO, ILLINOIS 60609**

**(COMMISSION'S RESOLUTION CONCERNING PARTICIPATION
OF
MINORITY BUSINESS ENTERPRISES
AND
WOMEN BUSINESS ENTERPRISES
DATED
OCTOBER 1, 2004**

FOLLOWS THIS PAGE)

**Special Conditions Regarding Remedial Program for
Utilization of Minority Business Enterprise ("MBE"),
Women Business Enterprise ("WBE") and
Economically Disadvantaged Firms**

SECTION 1

INTRODUCTION

SECTION 1.1 In February 1992 the Board of Commissioners (the "Board") of the Public Building Commission of Chicago (the "Commission") adopted a Remedial Program for Utilization of MBE and WBE firms (the "Program") as a means of providing open access to the award of Commission Contracts and to remedy the effects of racial and sexual discrimination which have placed such firms at a competitive disadvantage in the award of Commission Contracts.

SECTION 1.2 In 2003, District Judge James B. Moran in the case *Builders Association of Greater Chicago v. City of Chicago*, No. 96 C 1122 (N.D. Ill.) held that the evidence introduced at trial demonstrated that past and current discriminatory practices continue to place MBE and WBE firms at a competitive disadvantage in the award of governmental contracts and such practices have and continue to impede the growth and success of MBE and WBE firms.

SECTION 1.3 The Commission has a compelling interest in preventing public funds from perpetuating the past and current discrimination against MBE and WBE firms which currently exist in the market.

SECTION 1.4 The February 1992 Program adopted by the Commission has not been sufficient to ameliorate the effects of racial and gender discrimination in the marketplace.

SECTION 1.5 The remedies adopted herein by the Commission will not overly burden non-MBE and non-WBE firms in the award of Commission Contracts.

SECTION 1.6 The Commission will periodically review MBE and WBE participation on contracts awarded by the Commission to insure that the Commission continues to have a compelling interest in remedying discrimination against MBE and WBE firms in the award of Commission Contracts and that the measures adopted herein remain narrowly tailored to accomplish that objective.

SECTION 2

POLICY STATEMENT

SECTION 2.1 It is the policy of the Commission to ensure competitive business opportunities for MBE and WBE firms in the performance of Contracts, to prohibit discrimination in the award of or participation in Contracts, and to abolish arbitrary barriers to full participation in Contracts by all persons, regardless of race, sex or ethnicity. Therefore, during the performance of this Contract, the Contractor must agree that it shall not discriminate against any person or business on the basis of race, color, religion, ancestry, age, marital status, physical or mental handicap, unfavorable discharge from military service, parental status, sexual orientation, national origin or sex, in the solicitation or the purchase of goods and services or the subcontracting of work in the performance in this Contract.

SECTION 2.2 The Commission shall require the Contractor also agrees to take affirmative action to ensure that MBE and WBE firms shall have the maximum opportunity to compete for and perform subcontracts with respect to this Contract.

SECTION 3

SECTION 3.1 For purposes of this Special Condition, the following definitions shall apply:

(a) "Affiliate" of a person or entity means a person or entity that directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with the person or entity. In determining whether persons or entities are affiliates, the Commission shall consider all appropriate factors including common ownership, common management and contractual relationships. Affiliates shall be considered together in determining whether a firm is a Small Business Enterprise.

(b) "Broker" means a person or entity that fills orders by purchasing or receiving supplies from a third party supplier rather than out of existing inventory and provides no commercially useful function other than acting as a conduit between a supplier and a customer.

(c) "Certification" or "Certified" shall mean a person or entity qualified or granted certification as a Minority Business Enterprise (MBE) or Woman Business Entity (WBE) by the City of Chicago.

- (d) "Commercially useful function" means responsibility for the execution of a distinct element of the work of the contract which is carried out by actually performing, managing and supervising the work involved or fulfilling responsibilities as a joint venture.
- (e) "Construction Contract" means a contract for the construction, repair, alteration, renovation or improvement of any building, facility or other structure.
- (f) "Contract" means any contract awarded by the Commission which is to be paid from funds belonging to or administered by the Commission regardless of source.
- (g) "Contract Specific Goals" means the subcontracting goals for MBE and WBE participation established for a particular contract based upon the availability of MBEs and WBEs to perform and anticipated scope of work of the contract and the Commission's progress towards meeting the aspirational goals.
- (h) "Contractor" means any person or business entity that seeks to enter into a Construction Contract with the Commission and includes all partners, affiliates and joint ventures of such person or entity.
- (i) "Economically disadvantaged" means an individual whose personal net worth is less than \$750,000, indexed annually for the Chicago Metro Area Consumer Price Index published by the U.S. Department of Labor, Bureau of Labor Standards, beginning January, 1999.
- (j) "Executive Director" means the Executive Director of the Commission or his duly designated representative as appointed in writing.
- (k) "Good faith efforts" means actions undertaken by a Contractor to achieve a Contract Specific Goal that by their scope, intensity and appropriations to the objective can reasonably be expected to fulfill the Program's requirements.
- (l) "Joint venture" means an association of two or more persons or entities or any combination of two or more business enterprises and persons numbering two or more, proposing to perform a single for-profit business enterprise, in which each joint venture partner contributes property, capital, efforts, skill and knowledge, and in which the MBE or WBE is responsible for a distinct, clearly-defined portion of the work of the contract and whose share in the capital contribution, control, management, risks and profits of the joint venture is equal to its ownership interest. Joint ventures must have an agreement in writing specifying the terms and conditions of the relationships between the parties and their relationship and responsibilities to the contract.

(m) "Local business enterprise" means, for purposes of Certification, a business entity located within the counties of Cook, DuPage, Kane, Lake, McHenry or Will in the State of Illinois (the "Six County Region"), which has the majority of its regular, full time work force located within the Six County Region.

(n) "Minority" means:

(i) Any individual in the following racial or ethnic groups, members of which are rebuttably presumed to be socially disadvantaged:

(A) African-Americans or Blacks, which includes persons having origins in any of the Black racial groups of Africa;

(B) Hispanics, which includes persons of Spanish culture with origins in Mexico, South or Central America or the Caribbean Islands, regardless of race; and

(ii) Individual members of other groups, including but not limited to Asian-Americans, Arab-Americans and Native-Americans, found by the Commission to be socially disadvantaged by having suffered racial or ethnic prejudice or cultural bias within American society, without regard to individual qualities, resulting in decreased opportunities to compete in Chicago area markets or to do business with the Commission.

(n) "Minority-owned business enterprise" or "MBE" means a small local business enterprise which is at least 51 percent owned by one or more economically disadvantaged minority persons, or in the case of a publicly held corporation at least 51 percent of all classes of the stock of which is owned by one or more economically disadvantaged minority persons whose management, policies, major decisions and daily business operations are independently managed and controlled by one or more economically disadvantaged minority persons.

(o) "Owned" means having all of the customary incidents of ownership, including the right of disposition and sharing in all of the risks, responsibilities and profits commensurate with the degree of ownership.

(p) "Personal net worth" means the net value of the assets of an individual after total liabilities are deducted. An individual's personal net worth does not include the individual's ownership interest in an applicant or other certified MBE or WBE or the individual's equity in his or her primary place of residence. As to

assets held jointly with his or her spouse, an individual's personal net worth includes only that individual's share of such assets. An individual's net worth also includes the present value of the individual's interest in any vested pension plans, Individual Retirement Accounts, 401(K) accounts or other retirement savings or investment programs less the tax and interest penalties that would be imposed if the asset were distributed at the present time.

(q) "Program" means the minority- and women-owned business enterprise construction procurement program established in this special condition.

(r) "Small business enterprise" means a small business as defined by the U.S. Small Business Administration pursuant to the business size standards found in 13 C.F.R Part 121 relevant to the scope(s) of work the firm seeks to perform on Commission contracts. A firm is not an eligible small business enterprise in any fiscal year in which its gross receipts, averaged over the firm's previous five fiscal years, exceed the size standards of 13 C.F.R Part 121.

(s) "Small local business enterprise" means a business that is a small business enterprise and a local business enterprise.

(t) "Woman" means a person of the female gender, who is presumed to be socially disadvantaged.

(u) "Women-owned business enterprise" or "WBE" means a small local business enterprise which is at least 51 percent owned by one or more economically disadvantaged women or in the case of a publicly owned business, at least 51 percent of all classes of the stock of which is owned by one or more economically disadvantaged women, whose management, policies, major decisions and daily business operations are independently managed and controlled by one or more economically disadvantaged women.

SECTION 4

ASPIRATIONAL AND CONTRACT SPECIFIC GOALS

SECTION 4.1 Upon the effective date of these Special Conditions, the bi-annual aspirational goals shall be to award 24 percent of the annual dollar value of all Commission Construction Contracts to certified MBEs and 4 percent of the annual dollar value of all Commission Contracts to qualified WBEs and 25 percent of the annual dollar value of all other Commission Contracts to certified MBEs and 5 percent of the annual dollar value of the all other Commission Contracts to certified WBEs.

The Commission shall establish subsequent bi-annual aspirational goals for the award of Commission Contracts based on the best available evidence. Quotas are hereby prohibited.

SECTION 4.2 As one method to achieve the aspirational goals, the Executive Director is authorized to establish contract specific goals for MBE and WBE participation for each contract let through competitive bidding. Contract specific goals shall be based on normal industry practice, as determined in consultation with other governmental agencies, the scope of work of the contract, the availability of at least three MBEs and three WBEs to perform the functions of those individual contracts, and the Commission's progress to date towards meeting the bi-annual, aspirational goals of Section 4.1. The Executive Director shall implement administrative procedures to establish contract-specific goals.

SECTION 4.3 Each Bidder's commitment to utilization of certified MBE and WBE firms shall be considered as further evidence of the responsibility of the Bidder. Further, the Bidder must agree to use its best efforts to include MBE and WBE firms in any Contract modification work that increases the Contract value of ten (10%) percent of the initial Contract value or fifty thousand (\$50,000) dollars, whichever is less.

SECTION 4.4 Failure to carry out the commitments and policies set forth in this Program shall constitute a material breach of contract and may result in termination of the Contractor or such other remedy as the Commission deems appropriate.

SECTION 5

RACE AND GENDER-NEUTRAL MEASURES

SECTION 5.1 The Commission shall develop and use race and gender-neutral measures to facilitate the participation of small business enterprises in Commission Contracts. Race and gender-neutral measures shall be used to the maximum feasible extent to meet the bi-annual aspirational goals established in Section 4.1. These measures may include, but are not limited to:

- (a) Arranging solicitation times for the presentations of bids, specifications, and delivery schedules so as to facilitate the participation of interested contractors and subcontractors;
- (b) Segmenting contracts so as to facilitate the participation of small business enterprises;
- (c) Providing assistance to businesses in overcoming barriers such as difficulty in obtaining bonding and financing;

- (d) Providing timely informational programs on contracting procedures, bid preparation and specific contracting opportunities;
- (e) Holding pre-bid conferences, where appropriate, to explain the projects and to encourage contractors to use small business enterprises as subcontractors;
- (f) Adopting prompt payment procedures, including requiring by contract that prime contractors pay subcontractors within specified days of receipt of payment from the Commission and where necessary, issuing payments directly to subcontractors in lieu of payments to prime contractors;
- (g) Reviewing bonding, insurance and retainage requirements so as to eliminate unnecessary barriers to and reduce the burdens of contracting with the Commission;
- (h) Expediting payments and advancing payments to cover start-up and mobilization costs, where appropriate;
- (i) Providing information concerning small business loan programs and other programs providing access to capital to small business enterprises;
- (j) Collecting information from all prime contractors on Commission construction contracts detailing the bids received from all subcontractors for Commission construction contracts and the expenditures to subcontractors utilized by prime contractors on Commission construction contracts;
- (k) At the discretion of the Executive Director, letting a representative sample of Commission construction contracts without goals to determine MBE and WBE utilization in the absence of goals;
- (l) Providing a bid preference on construction contracts of 2 percent for firms bidding on prime contracts whose principal place of business is located in the City of Chicago;
- (m) Limiting the self-performance of prime contractors, where appropriate;
- (n) Creating a target market program for bidding on Commission prime construction contracts by small local business enterprises;
- (o) To the extent practicable, awarding contracts requiring the expenditure of funds not exceeding \$5,000 to small local business enterprises; and
- (p) Referring complaints of discrimination against MBEs or WBEs to appropriate authorities, for investigation and resolution.

SECTION 6

CONTRACT PROVISION

SECTION 6.1 Each Commission Contract let through competitive bidding with an estimated value in excess of \$5,000 for which contract specific goals have been established shall contain the following requirements:

- (a) Include with the bid specifications for each competitively bid contract a list of certified MBEs and WBEs that are available to perform the work required by the specifications or otherwise make such a list available to potential contractors.
- (b) A description of this Special Condition and the program including the requirement of an approved compliance plan; the requirements related to achieving the goals and counting MBE or WBE participation towards meeting the goals; if goals are not met, the requirement of documentation of the Contractor's good faith efforts to achieve the goals including the good faith efforts of MBEs and WBEs to achieve the goal for which they do not qualify; and a requirement that the Contractor commit to the expenditure of at least the dollar value of the contract specific goals with one or more MBEs and one or more WBEs or make good faith efforts to do so. This commitment may be met by the contractor's status as a MBE or WBE, a joint venture with one or more MBEs or WBEs as prime contractor (to the extent of the MBE's or WBE's participation in such joint venture), subcontracting a portion of the work to one or more MBEs or WBEs, purchasing materials or services for the work from one or more MBEs or WBEs or by any combination of the foregoing;
- (c) A requirement that prime contractors on Commission construction contracts notify MBEs and WBEs utilized on those contracts about opportunities on contracts without affirmative action contracting goals;
- (d) A requirement that where the Contractor cannot achieve the contract specific goals it must document its good faith efforts to do so. In determining whether the contractor has made such good faith efforts, the performance of other contractors in meeting the goals may be considered. The Executive Director or his designee shall consider, at a minimum, the Contractor's efforts to do the following:
 - (i) Soliciting through reasonable and available means the interest of MBEs or WBEs that have the capability to perform the work of the contract. The contractor must solicit this interest within sufficient time to allow the MBEs or WBEs to respond. The contractor must take appropriate steps to follow up initial solicitations with interested MBEs or WBEs.

(ii) Provide interested MBEs or WBEs with adequate information about the plans, specifications and requirements of the contract, including addenda, in a timely manner to assist them in responding to the solicitation.

(iii) Negotiating in good faith with interested MBEs or WBEs that have submitted bids. Documentation of negotiation must include the names, addresses and telephone numbers of MBEs or WBEs that were solicited; the date of each such solicitation; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why agreements could not be reached with MBEs or WBEs to perform the work. That there may be some additional costs involved in solicitation and using MBEs and WBEs is not a sufficient reason for a contractor's failure to meet the goals, as long as such costs are reasonable.

(iv) Not rejecting MBEs or WBEs as being unqualified without sound reasons based on the thorough investigation of their capabilities. The MBEs' or WBEs' standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations are not legitimate causes for rejecting or not soliciting bids to meet the goals.

(v) Making a portion of the work available to MBE or WBE subcontractors and suppliers and to select those portions of the work or material consistent with the available MBE or WBE subcontractors and suppliers, so as to facilitate meeting the goals.

(vi) Making good faith efforts despite the ability or desire of a Contractor to perform the work of a contract with its own organization. A Contractor that desires to self-perform the work of a contract must demonstrate good faith efforts unless the goals have been met.

(vii) Selecting portions of the work to be performed by MBEs or WBEs in order to increase the likelihood that the goals will be met. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate MBE or WBE participation even when the Contractor might otherwise prefer to perform these work items with its own forces.

(viii) Making efforts to assist interested MBEs or WBEs in obtaining bonding lines of credit or insurance as required by the Commission or Contractor.

(ix) Making efforts to assist interested MBEs or WBEs in obtaining necessary equipment, supplies, materials or related assistance or services, including participation in a mentor-protégée program; and

- (x) Effectively using the services of the Commission; minority or women community organizations; minority or women contractors' groups; local, state and federal minority or women business assistance offices; and other organizations to provide assistance in the recruitment and placement of MBEs or WBEs.
- (e) Provide a procedure whereby the Contractor may protest the determination that it did not make good faith efforts.
- (f) Negotiate with any Contractor whose contract is in excess of \$25,000 in value and is not awarded by competitive bidding a commitment, where practicable, to meet at least the aspirational goals as percentages of the dollar value of the contract.
- (g) Include MBEs and WBEs on solicitation mailing lists and encourage that they be solicited for suitable contracts.
- (h) Publicize the Program through appropriate means, in order to attract qualified MBEs and WBEs.

SECTION 6.2 To achieve the contract specific goals, the Executive Director shall undertake, in addition to the other measures provided herein, the following:

- (a) Include uniform provisions permitting the termination of the contract by the Commission upon the disqualification of the Contractor as a MBE or WBE if the contractor's status as MBE or WBE was a factor in the award of the contract and such status was misrepresented by the Contractor;
- (b) Include uniform provisions permitting termination of the contract by the Commission upon the disqualification of any MBE or WBE if the subcontractor's or supplier's status as a MBE or WBE was a factor in the award of the contract and the status of the subcontractor or supplier was misrepresented by the contractor. In the event that the contractor is determined not to have been involved in any misrepresentation of the status of the disqualified subcontractor or supplier, the contractor shall discharge the disqualified subcontractor or supplier and make good faith efforts to engage a qualified MBE or WBE replacement;
- (c) Include uniform provisions allowing the Executive Director access to the Contractor's books and records, including without limitation payroll records, tax returns and records and books of account, to determine the Contractor's compliance with its commitment to MBE and WBE participation and the status of any MBE or WBE performing any portion of the contract. This provision shall be in addition to, and not a substitute for, any other provision allowing inspection of the Contractor's records by the Commission for any purpose;

(d) Review each proposed contract modification request that, by itself or aggregated with previous modification requests, increases the contract value by ten percent of the initial contract value or \$50,000.00, whichever is less, for opportunities to increase participation of MBEs or WBEs. Where the proposed contract modification involves work which can be performed by MBEs or WBEs already performing work on the contract such MBEs and WBEs shall participate in such work specified in the contract modification;

(e) Insert in each contract containing a commitment to MBE and/or WBE participation:

(i) A requirement of periodic reporting by the Contractor to the Executive Director on all expenditures made to achieve compliance with the foregoing provisions. Such reports shall include the name and business address of each subcontractor and supplier actually involved in the contract, a description of the work performed and/or product or service supplied by each such subcontractor or supplier, the date and amount of each expenditure, and such other information as may assist the Executive Director in determining the Contractor's compliance with the foregoing provisions;

(ii) A requirement that the Contractor cannot make changes to its contractual MBE and WBE commitments or substitute such MBE or WBE subcontractors without the prior written approval of the Executive Director. Unauthorized changes or substitutions, including performing the work designated for a subcontractor with the contractor's own forces, shall be a violation of this section and a breach of the contract with the Commission, and may cause termination of the contract for breach, and/or subject the Contractor to contract remedies or other sanctions. The facts supporting the request must not have been known nor reasonably should have been known by the parties prior to entering into the subcontract.

(f) Substitutions of the subcontractor shall be permitted only on the following bases:

(I) Unavailability after receipt of reasonable notice to proceed;

(ii) Failure of performance;

(iii) Financial incapacity;

(iv) Refusal by the subcontractor to honor the bid or proposal price or scope;

(v) Mistake of fact or law about the elements of the scope of work of a solicitation where a reasonable price cannot be agreed;

- (vi) Failure of the subcontractor to meet insurance, licensing or bonding requirements;
- (vii) The subcontractor's withdrawal of its bid or proposal; or
- (viii) Decertification of the subcontractor as MBE or WBE.

Where the Contractor has established the basis for the substitution to the satisfaction of the Executive Director, it must make good faith efforts to substitute with a MBE or WBE subcontractor. If the MBE or WBE contract specific goal cannot be reached and good faith efforts have been made, the Contractor may substitute with a non-MBE or non-WBE. If a Contractor plans to hire a subcontractor on any scope of work that was not previously disclosed within the compliance plan the Contractor must obtain the approval of the Executive Director to modify the compliance plan and must make good faith efforts to ensure that MBEs or WBEs have a fair opportunity to bid on the new scope of work.

SECTION 7

DETERMINING MBE/WBE UTILIZATION

SECTION 7.1 The methodology for determining MBE and WBE utilization shall be determined for purposes of analysis with respect to this contract as follows:

- (a) The total dollar value of the contract awarded to the certified MBE or WBE firm shall be credited to such participation. Only minority business participation may be counted toward MBE participation and only women business participation may be counted toward WBE participation.
- (b) The total dollar value of a contract with a firm owned and controlled by minority women is counted toward either the MBE or WBE goal, but not both. The Contractor employing the firm may choose the goal to which the contract value is applied. Various work done by one and the same subcontractor shall be considered, for the purpose of this principle, as work effectively done under one subcontract only, which subcontractor may be counted toward only one of the goals, not toward both.
- (c) In a firm owned and controlled by both minority males and minority females, if the minority females own and control 51% or more of the business, then the total dollar value of a contract with such firm may be counted toward either MBE participation or WBE participation, but not both. If the minority females, however, own and control less than 51% of the firm, then the firm's participation may be counted only toward MBE utilization.

(d) A Contractor may count toward its MBE or WBE goal the portion of the total dollar value of a contract with an eligible joint venture equal to the percentage of the ownership and control of the MBE or WBE partner in the joint venture. A joint venture seeking to be credited for MBE participation may be formed among certified MBE and WBE firms, or between certified MBE and WBE firms and a non-MBE/WBE firm. A joint venture satisfies the eligibility standards of this Program if the certified MBE or WBE participant of the joint venture:

(i) Shares in the ownership, control, management responsibilities, risks and profits of the joint venture; and

(ii) Is responsible for a clearly defined portion of work to be performed in proportion to the MBE or WBE ownership percentage.

(e) A Contractor may count toward its MBE and WBE goals only expenditures to firms that perform a commercially-useful function in the work of a contract. A firm is considered to perform a commercially-useful function when it is responsible for execution of a distinct element of the work of a contract and carries out its responsibilities by actually performing, managing, and supervising the work involved. To determine whether a firm is performing a commercially-useful function, the Commission shall evaluate the amount of work subcontracted, industry practices and other relevant factors.

(f) Consistent with normal industry practices, a MBE or WBE firm may enter into subcontracts. If a MBE or WBE contractor subcontracts a significantly greater portion of the work of a contract than would be expected on the basis of normal industry practices, the MBE or WBE shall be rebuttably presumed not to be performing a commercially-useful function.

(g) A Contractor may count toward its goals expenditures to MBE or WBE manufacturers (i.e., suppliers that produce goods from raw materials or substantially alters them before resale).

(h) A Contractor may count toward its goals expenditures to MBE or WBE suppliers provided that the supplier performs a commercially-useful function in the supply process.

SECTION 8

SUBMISSION OF BID PROPOSALS

SECTION 8.1 The following schedules and documents constitute the Bidder's MBE/WBE compliance proposal and must be submitted at the time of the bid or proposal or within such extended period as provided in Section VII hereof:

(a) Evidence of Certification/Schedule A: Affidavit of MBE/WBE. A copy of each proposed MBE and WBE firm's Letter of Certification from the certifying agency must be submitted. Where the Bidder's MBE/WBE compliance proposal includes any MBE or WBE firm that is not currently certified (as evidenced by a Letter of Certification), "Schedule A: Affidavit of MBE/WBE" executed by the proposed MBE or WBE must be submitted.

(b) Schedule B: Affidavit of MBE/Non-MBE or WBE/Non-WBE Joint Ventures. Where the Bidder's MBE/WBE compliance proposal includes participation of any MBE or WBE as a joint venture participant on any tier, the Bidder must submit a "Schedule B: Affidavit of MBE/Non-MBE or WBE/Non-WBE Joint Venture" with an attached copy of the joint venture agreement proposed among the parties. The Schedule B and the joint venture agreement must clearly evidence that the MBE or WBE participant will be responsible for a clearly defined portion of the work to be performed and that the MBE or WBE firm's responsibilities are in proportion with its ownership percentage. In order to demonstrate the MBE or WBE participant's share in the ownership, control, management responsibilities, risks and profits of the joint venture, the proposed joint venture agreement should include specific details related to:

- (i) The contributions of capital and equipment;
- (ii) Work items to be performed by the MBE or WBE firm's own forces;
- (iii) Work items to be performed under the supervision of the MBE or WBE participant; and
- (iv) The commitment of management, supervisory and operational personnel employed by the MBE or WBE to be dedicated to the performance of the contract.

(c) Schedule C: Letter of Intent to Perform as a Subcontractor, Subconsultant, or Material Supplier, Schedule C, executed by the MBE/WBE firm (or Joint Venture Subcontractor) must be submitted by the Bidder for each MBE/WBE included on the Schedule D. Schedule C must accurately detail the work to be performed by the MBE or WBE firm and the agreed rates and prices to be paid.

(d) Schedule D: Affidavit of Prime Contractor Regarding MBE or WBE Utilization. A completed Schedule D committing to the utilization of each listed MBE or WBE firm. Unless the Bidder has submitted a completed request for a waiver of participation by MBE/WBE firms (See Request for Waiver procedures in Section VIII hereof), the Bidder must include the specific dollar amount of participation of each MBE/WBE firm listed on its Schedule D. The total dollar commitment to proposed MBE firms must at least equal the MBE goal, and the total dollar commitment to proposed WBE firms must at least

equal the WBE goal. Bidders are responsible for calculating the dollar equivalent of MBE or WBE utilization as percentages of their total base bid.

SECTION 8.2 The submittals must have all blank spaces on the Schedule pages applicable to the contract correctly filled in. Agreements between a Bidder and a MBE/WBE in which the MBE/WBE promises not to provide subcontracting quotations to other Bidders are prohibited.

SECTION 9

EVALUATION OF BID PROPOSALS

SECTION 9.1 During the period between bid opening and contract award, the submitted documentation will be evaluated by the Commission. The Bidder agrees to provide, upon request, earnest and prompt cooperation to the Executive Director or his designee in submitting to interviews that may be necessary, in allowing entry to places of business, in providing further documentation, or in soliciting the cooperation of a proposed MBE or WBE firm in providing such assistance. A bid may be treated as non-responsive by reason of the determination that the Bidder's proposal did not contain a sufficient level of Certified MBE or WBE participation, that the Bidder was unresponsive or uncooperative when asked for further information relative to the proposal, or that false statements were made in the Schedules.

SECTION 9.2 If the Commission's review of a Bidder's proposal concludes that the MBE or WBE proposal was deficient, the Commission shall promptly notify the Bidder of the apparent deficiency and instruct the Bidder to submit (within three (3) business days of such notice given by the Commission) a modification of the MBE or WBE Proposal, in proper format, which remedies the deficiencies cited. Failure to correct all deficiencies cited by the Commission will be cause for rejection of the Bidder's proposal as nonresponsive.

SECTION 9.3 Bidders will not be permitted to modify their MBE/WBE compliance proposal except insofar as directed to do so by the Commission. Therefore, all terms and conditions stipulated for prospective MBE and WBE subcontractors or suppliers should be satisfactorily negotiated prior to the submission to the Commission of the Bidder's MBE/WBE compliance proposal with the bid. If circumstances should arise, however, where a proposed MBE/WBE is no longer available, the process described in Section 6.2(f) should be followed.

SECTION 10

REQUEST FOR WAIVER

SECTION 10.1 If a Bidder is unable to identify qualified MBE and WBE firms to perform sufficient work to fulfill the MBE or WBE percentage goals for this Contract, the bid or proposal must include a written request for waiver. A request for waiver shall set forth the Bidder's

inability to obtain sufficient MBE and WBE firms notwithstanding good faith attempts to achieve such participation.

SECTION 10.2 Examples of such good faith efforts may include, but are not limited to, the following:

- (a) Attendance at the Pre-bid conference;
- (b) The Bidder's general affirmative action policies regarding the utilization of MBE and WBE firms, plus a description of the methods used to carry out those policies;
- (c) Advertisement in trade association newsletters and minority and women-oriented and general circulation media for specific sub-bids;
- (d) Timely notification of specific sub-bids to minority and women contractor assistance agencies and associations;
- (e) Description of direct negotiations with MBE and WBE firms for specific sub-bids, including:
 - (i) The name, address and telephone number of MBE and WBE firms contacted;
 - (ii) A description of the information provided to MBE and WBE firms regarding the portions of the work to be performed; and
 - (iii) The reasons why additional MBE and WBE firms were not obtained in spite of negotiations.
- (f) A statement of the efforts made to select portions of the work proposed to be performed by MBE and WBE firms (such as sub-supplier, transport, engineering, distribution, or any other roles contributing to production and delivery as specified in the contract) in order to increase the likelihood of achieving such participation.
- (g) As to each MBE and WBE contacted which the Bidder considers to be not qualified, a detailed statement of the reasons for the Bidder's conclusion.
- (h) Efforts made by the Bidder to expand its search for MBE and/or WBE firms beyond usual geographic boundaries.
- (i) General efforts made to assist MBE and WBE firms to overcome participation barriers.

SECTION 10.3 The Executive Director, after review and evaluation of the documents provided by the Bidder, may grant a waiver request upon the determination that:

- (a) Sufficient qualified MBE and/or WBE firms capable of providing the goods or services required by the contract are unavailable despite the good faith efforts of the Bidder;
- (b) The Bidder is the sole source for work to be performed under the contract; or
- (c) The price(s) quoted by potential MBE and/or WBE firms for goods or services is above competitive levels to an extent unwarranted by any increased cost of doing business attributable to the present effects of disadvantage or discrimination.

SECTION 11

REPORTING AND RECORD-KEEPING REQUIREMENTS

SECTION 11.1 The Contractor, within five (5) working days of contract award, shall execute a formal subcontract or purchase order in compliance with the terms of the Contractor's bid proposal and MBE/WBE assurances, and submit to the Commission a copy of the MBE and WBE subcontracts or purchase orders, each showing acceptance of the subcontract or purchase order by the MBE and WBE firms. During the performance of the contract, the Contractor shall submit partial and final waivers of lien from MBE and WBE subcontractors and suppliers indicating the current payment amount and the cumulative dollar amount of payments made to date. The Contractor shall file regular MBE and WBE utilization reports on the form entitled "Status Report of MBE and WBE (Sub) Contract Payments" at the time of submitting each monthly payment voucher ("Summary of Estimate"), which reflects the current status of cumulative and projected payments to MBE and WBE firms.

SECTION 11.2 The Contractor shall maintain records of all relevant data with respect to the utilization of MBE and WBE firms, including without limitation payroll records, tax returns and records, and books of account, and retain such records for a period of at least three (3) years after final acceptance of the work. Full access to such records shall be granted to the Commission and/or its designees, on five (5) business days' notice in order for the Commission to determine the Contractor's compliance with its MBE and WBE commitments and the status of any MBE or WBE firm performing any portion of the contract.

SECTION 12

NON-COMPLIANCE AND LIQUIDATED DAMAGES

SECTION 12.1 The Executive Director has the authority to apply suitable sanctions to the Contractor if the Contractor is found to be in non-compliance with the MBE and WBE requirements. Failure to comply with the MBE or WBE terms of this contract or failure to use MBE and WBE firms as stated in the Contractor's assurances constitutes a material breach of the contract, and may lead to the suspension or termination of the contract in part or in whole, disqualification from entering into future contracting arrangements with the Commission, and criminal liability. In some cases, monthly progress payments may be withheld until corrective action is taken.

SECTION 12.2 When the contract is completed, in the event that the Executive Direct has determined that the Contractor did not comply in the fulfillment of the required MBE and/or WBE goals, and a grant of relief of the requirements was not obtained, the Commission will thereby be damaged in the failure to provide the benefit of participation to minority or women business to the degree set forth in this Special Condition. Therefore, in case of such non-compliance, the Commission will deduct as liquidated damages one (1%) percent (or fraction thereof) deficiency toward the MBE goal or WBE goal.

SECTION 13

REVIEW AND SUNSET

SECTION 13.1 These Special Conditions shall be reviewed no later than 5 years from their adoption and shall expire on October 31, 2009 unless the Commission find that its remedial purposes have not been fully achieved and there is a compelling interest in continuing narrowly tailored remedies to redress discrimination against MBEs or WBEs so that the Commission will not function as a passive participant in a discriminatory marketplace.

SECTION 14

SEVERABILITY

SECTION 14.1 In the event that any section, subsection, paragraph, clause, provision or application of these Special Conditions shall be held invalid by any court, the invalidity of such section, paragraph, clause or provision shall not affect any of the remaining provisions hereof.