

This agreement was prepared by and  
after recording return to:  
Lynn C. Egan, Esq.  
City of Chicago Law Department  
121 North LaSalle Street, Room 511  
Chicago, IL 60602

## NWS, INC. REDEVELOPMENT AGREEMENT

This NWS, Inc. Redevelopment Agreement (the "Agreement") is made as of this 13th day of April, 1993, by and between the City of Chicago, an Illinois municipal corporation ("City") through its Department of Planning and Development ("DPD") and NWS, Inc., an Illinois corporation ("Developer").

### RECITALS

A. As a home rule unit of government under Section 6 (a), Article VII of the 1970 Constitution of the State of Illinois (the "State"), City has the authority to promote the health, safety, and welfare of City and its inhabitants, to encourage private development in order to enhance the local tax base, create employment opportunities and to enter into contractual agreements with private parties in order to achieve these goals.

B. City is authorized under the provisions of the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1 et seq. (1992 State Bar Edition) (the "Act") to finance the redevelopment of blighted areas.

C. To induce redevelopment pursuant to the Act, the City Council of City (the "City Council") adopted the following ordinances on July 24, 1991: (1) "An Ordinance of the City of Chicago, Illinois, Concerning the Approval of Tax Increment Redevelopment Plan and Redevelopment Project for the Sanitary Drainage and Ship Canal Redevelopment Project Area;" (2) "An Ordinance of the City of Chicago, Illinois, Concerning the Designation of the Sanitary Drainage and Ship Canal Area as a Redevelopment Area Pursuant to Illinois Tax Increment Allocation Redevelopment Act; and (3) "An Ordinance of the City of Chicago, Illinois, Concerning the Adoption of Tax Increment Allocation Financing for Payment of Redevelopment Costs Associated with Sanitary Drainage and Ship Canal Project Area" (collectively referred to herein as the "TIF Ordinances"). The redevelopment project area (the "Redevelopment Area") is legally described in Exhibit A hereto.

D. Developer shall (1) rehabilitate an existing 320,000 square foot building currently owned by Developer and located at 2550 West 35th Street, Chicago, Illinois, legally described in Exhibit B(1) hereto (the "Existing NWS Property"); and (2) purchase and rehabilitate an existing 360,000 square foot building also

located at 2550 West 35th Street, Chicago, Illinois, legally described in Exhibit B(2) hereto (the "New NWS Property", collectively referred to herein with the Existing NWS Property as the "NWS Property"), for use as a warehouse, distribution and office facility. The NWS Property is located within the Redevelopment Area. The purchase and rehabilitation of the New NWS Property and the rehabilitation of the Existing NWS Property and any related improvements (including but not limited to TIF-Funded Improvements as defined below) are sometimes collectively referred to herein as the "Project."

E. The Project will be carried out in accordance with this Agreement and the Tax Increment Redevelopment Plan and Redevelopment Project for the Sanitary Drainage and Ship Canal Tax Increment Redevelopment Area Redevelopment Plan and Project (the "Redevelopment Plan") attached hereto as Exhibit C.

F. Developer agrees to carry out the rehabilitation and acquisition of the TIF-Funded Improvements pursuant to the terms and conditions of this Agreement. Each of the TIF-Funded Improvements is necessary to secure redevelopment of the NWS Property.

G. City agrees to use a portion of the proceeds of its General Obligation Tender Bonds, Project Series B of 1992 (the "Bonds") issued pursuant to an ordinance adopted by the City Council on July 7, 1992 (the "Bond Ordinance") to finance certain Project costs described in Exhibit D (showing line item and cost) attached hereto (the "TIF-Funded Improvements") pursuant to the terms and conditions of this Agreement;

Now, therefore, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

#### SECTION 1. RECITALS

The foregoing recitals are hereby incorporated into this agreement by reference.

#### SECTION 2. DEFINITIONS

For purposes of this Agreement, in addition to the terms defined in the foregoing recitals, the following terms shall have the meanings set forth below:

"Certificate" shall mean the Certificate of Completion described in Section 7.01 hereof.

"Change Order" shall mean any amendment or modification to the

Scope Drawings or the Project Budget as described in Section 3.03, Section 3.04 and Section 3.05 respectively.

"Closing Date" shall mean the date of execution of this Agreement.

"Corporation Counsel" shall mean City's Office of Corporation Counsel.

"Developer's Liabilities" shall mean all obligations and liabilities of Developer to City whether primary, as a surety or guarantor, direct, contingent, fixed or otherwise presently or hereafter owing, due or payable and however evidenced, created, incurred or acquired.

"Employer" shall have the meaning set forth in Section 10 hereof.

"Environmental Laws" shall mean the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended, any so-called "Superfund" or "Superlien" law, the Toxic Substances Control Act, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree now or hereafter in force regulating, relating to or imposing liability or standards of conduct concerning any Hazardous Material, as now or at any time hereafter in effect.

"Escrow" shall mean the construction escrow established pursuant to the Escrow Agreement.

"Escrow Agreement" shall mean the Escrow Agreement establishing a construction escrow, to be entered into by City and the Title Company and Developer, substantially in the form of Exhibit E attached hereto.

"Event of Default" shall have the meaning set forth in Section 15 hereof.

"Financial Statements" shall mean audited financial statements of Developer and National Wine & Spirits, Inc. prepared by a certified public accountant in accordance with generally accepted accounting principles and practices consistently applied throughout the appropriate periods.

"First Disbursement Date" shall mean the date on which City will be required to fund the first draw request pursuant to this Agreement and the Escrow Agreement, which draw shall fund only the Developer's purchase of the New NWS Property and related transactional costs.

"First Construction Disbursement Date" shall mean the date on

which City will be required to fund the second draw request pursuant to this Agreement and the Escrow Agreement.

"General Contractor" shall mean the general contractor(s) hired by Developer with respect to the TIF-Funded Improvements or, alternatively, the Developer acting as its own general contractor with respect to the TIF-Funded Improvements.

"HUD" shall mean the United States Department of Housing and Urban Development.

"Hazardous Materials" shall mean any toxic substance, hazardous substance, hazardous material, hazardous chemical or hazardous, toxic or dangerous waste defined or qualifying as such in (or for the purposes of) any environmental law, or any pollutant or contaminant, and shall include, but not be limited to, petroleum (including crude oil), any radioactive material or by-product material, polychlorinated biphenyls and asbestos in any form or condition.

"Incremental Taxes" shall mean those taxes deposited or to be deposited in City's special tax allocation fund for the purpose of paying certain Project costs and obligations as described in Section 5/11-74.4-8(b) of the Act, as amended from time to time.

"Non-Governmental Charges" shall mean all non-governmental charges, liens, claims, or encumbrances relating to Developer, the NWS Property or the Project.

"Permitted Liens" shall mean those liens and encumbrances against the NWS Property and/or the Project set forth on Exhibit F hereto.

"Project Budget" shall mean the budget attached hereto as Exhibit G, furnished by Developer to DPD, detailing the total costs of the Project (including costs incidental thereto) by line item, in accordance with Section 3.04 hereof.

"Scope Drawings" shall mean complete construction documents containing a site plan and working drawings and specifications for the Project.

"Significant Contract" shall mean any subcontract entered into or to be entered into in connection with the Project which calls for payments in excess of \$100,000 or which will employ ten or more workers.

"Significant Contractor" shall mean a provider of goods or services pursuant to a Significant Contract.

"Surveys" shall mean the surveys required pursuant to Section 5.07 hereof.

"Term of the Agreement" shall mean the later of: (a) the date on which any and all bonds secured in whole or in part by Incremental Taxes generated by the Project shall be redeemed; or (b) the date on which City shall have been fully reimbursed from Incremental Taxes generated by this Project for amounts expended by City for the TIF-Funded Improvements; provided, however, that such term shall in no event be longer than the period for which the Redevelopment Area is in effect.

"Title Company" shall mean Chicago Title Insurance Company.

"Title Policy" shall mean a title insurance policy in the most recently revised ALTA or equivalent form, issued by the Title Company.

### SECTION 3. THE PROJECT

3.01 Developer's Authority. In order to further the redevelopment of the Redevelopment Area, City hereby authorizes Developer to oversee the planning, coordination and construction of the Project in accordance with this Agreement, and Developer hereby accepts such authorization.

3.02 Commencement and Completion of Project. Subject to Section 17.18 (Force Majeure) and City's performance of its obligations hereunder, Developer shall commence construction of the Project by June 1, 1993, and shall complete construction of the Project, occupy the NWS Property and conduct business operations thereon no later than March 31, 1994.

3.03 DPD Approval of Scope Drawings.

(a) Scope Drawings. The Scope Drawings shall conform to the Redevelopment Plan as amended from time to time and all applicable state and local laws, ordinances and regulations. No later than sixty (60) days after the execution of this Agreement and fifteen (15) days prior to the request for the First Construction Disbursement, Developer shall deliver the Scope Drawings to DPD for its review and approval, which approval shall not be unreasonably withheld. DPD's approval shall be granted or denied by DPD within fifteen (15) business days of receipt thereof, provided, however, that failure by DPD to approve or deny the Scope Drawings within such fifteen (15) day period shall not be deemed an approval thereof. Developer shall simultaneously submit the Scope Drawings to City's Building Department, Department of Transportation and such other City departments or governmental authorities as may be necessary to acquire building permits and other required approvals for the Project.

(b) Revised Scope Drawings. In the event DPD rejects all or any portion of the Scope Drawings as initially presented prior to the First Construction Disbursement Date, Developer shall have

fifteen (15) days from the date Developer is notified of such rejection to submit revised or corrected Scope Drawings to DPD for approval. DPD's approval shall be granted or denied by DPD within fifteen (15) business days of receipt thereof. Failure by DPD to approve or deny the Scope Drawings within such fifteen (15) day period shall not be deemed an approval thereof. After the initial approval, subsequent proposed changes to the Scope Drawings shall be submitted to DPD as a Change Order pursuant to Section 3.05 hereof.

3.04 Project Budget. Developer has furnished to DPD, and DPD has approved, a Project Budget dated as of the date hereof showing total costs in an amount not less than Fourteen Million One Hundred Sixty Thousand Dollars (\$14,160,000.00) (including the cost of the Project and acquisition of the Existing NWS Property). Developer hereby certifies to City that (a) the City Funds, together with other financing and/or equity described in Section 4.01 hereof, shall be sufficient to pay all Project costs and (b) to the best of Developer's knowledge after diligent inquiry, the Project Budget is true, correct and complete in all material respects. Developer shall promptly deliver to DPD certified copies of any Change Orders with respect to the Project Budget for approval pursuant to Section 3.05 hereof.

3.05 Change Orders. Except as provided below, all Change Orders (and documentation substantiating the need and identifying the source of funding therefor) must be submitted by Developer to DPD for DPD's prior written approval, which approval shall not be unreasonably withheld and which shall be given or denied within ten (10) business days after receipt by DPD of the request for the Change Order. Failure by DPD to approve or deny any Change Order within such ten (10) day period shall not be deemed an approval of the particular Change Order. Developer shall not authorize or permit the performance of any work relating to such Change Order or the furnishing of materials in connection therewith prior to the receipt by Developer of DPD's written approval. The construction contract between Developer and the third party General Contractor, if any, and the General Contractor and each subcontractor, shall contain a provision to this effect. An approved Change Order shall not be deemed to imply any obligation on the part of City to increase the amount of the City Funds or provide any other additional assistance to Developer. Notwithstanding anything to the contrary in this Section 3.05, Change Orders costing less than Twenty-Five Thousand Dollars (\$25,000.00) each, to an aggregate amount of One Hundred Thousand Dollars (\$100,000), do not require DPD's prior written approval as set forth in this Section 3.05, but DPD shall be notified in writing of all such Change Orders prior to the implementation thereof.

3.06 DPD Approval. Any approvals made by DPD of the Scope Drawings and the Change Orders are for the purposes of this Agreement only and do not affect or constitute approvals required

for building permits or pursuant to any City ordinance, code, regulation or any other governmental approval, nor does any approval by DPD pursuant to this Agreement constitute approval of the quality, structural soundness or safety of the NWS Property or the Project.

3.07 Other Approvals. Any DPD approval under this Agreement shall have no effect upon, nor shall it operate as a waiver of, Developer's obligations to comply with the provisions of Section 5.03 hereof. Rehabilitation, construction and/or demolition work on the Project and purchase of materials shall not proceed until Developer has obtained all necessary permits and approvals (including but not limited to DPD's approval of the Scope Drawings) and proof of the General Contractor's and each subcontractor's bonding.

3.08 Progress Reports. Developer shall provide DPD with monthly progress reports detailing the construction status of the Project, including a revised completion date, if necessary.

3.09 Inspecting Architect. An independent architect approved by both City and Developer shall be selected to act as the inspecting architect, at Developer's expense, for the Project. The inspecting architect shall perform periodic inspections with respect to the rehabilitation of the Project, providing certifications with respect thereto to DPD and Developer, prior to requests for disbursement pursuant to the Escrow Agreement.

3.10 Barricades. Prior to commencing any construction requiring barricades, Developer shall install a construction barricade of a type, kind and appearance satisfactory to City and constructed in compliance with all applicable federal, state or City laws, ordinances and regulations. DPD retains the right to reasonably approve the maintenance, appearance, color scheme, painting, nature, type, content and design of all barricades.

3.11 Signs and Public Relations. Developer shall erect a sign of size and style approved by City in a conspicuous location on the NWS Property during construction of the Project, indicating that financing has been provided by City. City reserves the right to include the name, photograph, artistic rendering of the Project and other pertinent information regarding Developer, the NWS Property and the Project in City's promotional literature and communications.

3.12 Utility Connections. Developer may connect all on-site water, sanitary, storm and sewer lines constructed on the NWS Property to City utility lines existing on or near the perimeter of the NWS Property, provided Developer first complies with all City requirements governing such connections, including the payment of any fees and costs related thereto.

3.13 Permit Fees. In connection with the redevelopment of the Project, Developer shall be obligated to pay only those building, permit, engineering, tap on and inspection fees that are assessed on a uniform basis throughout the City of Chicago and are of general applicability to other property within the City of Chicago.

#### SECTION 4. FINANCING

4.01 General. The total estimated cost of the Project and the acquisition of the Existing NWS Property is \$14,160,000.00, to be applied in the manner set forth in Exhibit G. Such costs shall be funded from the following sources:

Developer equity	\$2,450,000.00
Lender financing	6,500,000.00
State of Illinois loans	750,000.00
City Funds	<u>4,460,000.00</u>
<b>TOTAL</b>	<b>\$ 14,160,000.00</b>

If the amount of State of Illinois loans does not equal the amount set forth above, such shortfall shall be funded by Developer. The figure set forth above with respect to lender financing includes a loan in the amount of \$5,500,000 previously secured by Developer in connection with the acquisition of the Existing NWS Property. All or part of certain other funds spent by Developer with respect to the Project prior to the date hereof may, in DPD's sole discretion, be considered previously contributed hereunder, provided that documentation with respect to such expenditures, in form and substance satisfactory to DPD in its sole discretion, is delivered by Developer to DPD prior to the First Construction Disbursement Date.

4.02 City Funds. Subject to the terms and conditions of this Agreement, including but not limited to Section 5 hereof, City hereby agrees to provide City Funds in an amount not to exceed Four Million Four Hundred Sixty Thousand Dollars (\$4,460,000.00) to assist in financing the TIF-Funded Improvements only, through the funding of draw requests with respect thereto pursuant to the Escrow Agreement and this Agreement.

4.03 Cost Overruns/Reduction in Scope. If the aggregate cost of the TIF-Funded Improvements exceeds City Funds available pursuant to Section 4.02 hereof, Developer shall be solely responsible for such excess costs and shall hold City harmless from any and all costs and expenses of completing the TIF-Funded Improvements in excess of the City Funds. In such circumstances, City may, but shall not be obligated to confer with Developer to determine whether a reduction in scope of all or any portion of the TIF-Funded Improvements should be made. The decision to reduce the scope of all or any portion of the TIF-Funded Improvements shall be in the sole discretion of City and shall not reduce Developer's

obligations under this Agreement.

4.04 Construction Escrow. City and Developer hereby agree to enter into the Escrow Agreement with the Title Company.

4.05 City Fees. City may allocate the sum of One Hundred Thousand Dollars (\$100,000.00) for payment of costs incurred by City for the administration and monitoring of the Project. Such fee shall be in addition to, and shall not be deducted from or considered a part of the City Funds, nor shall Developer be required to pay any portion of such fee.

#### SECTION 5. CONDITIONS PRECEDENT

Unless otherwise stated herein, the following conditions shall be complied with to City's satisfaction within the time periods set forth below:

5.01 Project Budget. Developer shall have submitted to DPD, and DPD shall have approved, a Project Budget in accordance with the provisions of Section 3.04 hereof on or prior to the Closing Date.

5.02 Scope Drawings. Not less than fifteen (15) days prior to the First Construction Disbursement Date, Developer shall have submitted to DPD, and DPD shall have approved, the Scope Drawings in accordance with the provisions of Section 3.04 hereof.

5.03 Other Governmental Approvals. Not less than five (5) days prior to the First Construction Disbursement Date, Developer shall have secured all other necessary approvals and permits required by any state, federal, or local statute, ordinance or regulation and submit evidence thereof to DPD or, in lieu of such evidence, at DPD's option, a certificate of Developer with respect thereto, unless waived in writing by DPD as a condition to the First Construction Disbursement.

5.04 Financing. Developer shall furnish proof reasonably acceptable to City that Developer has sufficient funds on hand or irrevocably available to complete the Project and satisfy its obligations under this Agreement. If a portion of such funds consists of a loan, Developer shall furnish proof that the proceeds thereof are available to be drawn upon by Developer as of the First Disbursement Date and are sufficient (along with other sources set forth in Section 4.01 hereof) to complete the Project.

5.05 Acquisition and Title. On the First Disbursement Date, City shall disburse City Funds in an amount not to exceed \$800,000 to fund, in whole or in part, Developer's acquisition of title to the New NWS Property and related transactional costs, and Developer shall furnish City with a copy of the Title Policy, showing Developer as the named insured, with respect to the entire NWS

Property. The Title Policy shall be dated on the First Disbursement Date and shall contain only those title exceptions listed as Permitted Liens on Exhibit F hereto and shall evidence the recording of this Agreement pursuant to the provisions of Section 8.16 hereof. The Title Policy shall also contain such endorsements as shall be required by Corporation Counsel, including but not limited to extended coverage, zoning, flood plain status, contiguity, location and survey. Developer shall provide certified copies of all easements and encumbrances of record, and documentation relating to the purchase of the NWS Property.

5.06 Evidence of Clean Title. Not less than five (5) days prior to the First Disbursement Date, Developer, at its own expense, shall provide City with current State and county level searches showing no Uniform Commercial Code security interests, judgments, pending suits, federal or state tax liens or fixture filings filed against the NWS Property or any fixtures now or hereafter affixed thereto, except for the Permitted Liens.

5.07 Surveys. Not less than five (5) days prior to the First Disbursement Date, Developer shall furnish City with three (3) plats of an ALTA Survey of the NWS Property dated within 45 days prior to the First Disbursement Date, acceptable in form and content to City and the Title Company, and prepared by a surveyor registered in the State. The Surveys shall be certified to City and the Title Company, and shall indicate whether the NWS Property is in a flood hazard area as identified by HUD.

5.08 Insurance. Developer, at its own expense, shall insure the NWS Property in accordance with Section 12 hereof. Certificates or binders evidencing the required coverages, along with paid receipts, shall be delivered to DPD.

5.09 Opinion of Developer's Counsel. Developer shall furnish City with an opinion of counsel on the Closing Date, substantially in the form attached hereto as Exhibit H, with such changes as may be reasonably required by or acceptable to Corporation Counsel. Developer's counsel shall have no direct or indirect financial ownership interest in Developer, the NWS Property or any other aspect of the Project.

5.11 Evidence of Expenditures. Prior to the First Construction Disbursement Date, Developer shall provide evidence satisfactory to DPD in its sole discretion of the following expenditures made by NWS on the Project in accordance with the provisions of Section 4.01 hereof: (a) expenditures made prior to the date hereof and (b) total expenditures (including the total equity contribution and loans) in an amount not less than \$9,700,000. DPD's acceptance thereof shall be evidenced by its written approval.

5.12 Other Preconditions of Disbursement. Developer shall

satisfy all other preconditions of disbursement of the City Funds as provided in the Bond Ordinance, any certifications or representations made by City in connection with the issuance of the Bonds, the TIF Ordinances, this Agreement and/or the Escrow Agreement.

## SECTION 6. AGREEMENTS WITH CONTRACTORS

6.01 Bid Requirement. Prior to entering into an agreement with a General Contractor (or, if Developer acts as its own General Contractor, with any Significant Contractor) for construction of the TIF-Funded Improvements, Developer shall solicit bids from qualified contractors eligible to do business with, and having an office located in, the City of Chicago. Such bids shall be made in accordance with the requirements of (i) the Municipal Purchasing Act for Cities of 500,000 or More Population, 65 ILCS 5/8-10-10 et seq. (1992 State Bar Edition), a copy of which is attached hereto as Exhibit I (which is made applicable to the Project hereby as if all contracts entered or to be entered into in connection herewith were made or to be made on behalf of a municipality), and (ii) City Department of Purchasing "Requirements for Bidding and Instructions for Bidders", attached hereto as Exhibit J (which is made applicable to the Project hereby as if the bids were to be made directly to City, and the prevailing wage requirements as set forth therein are made applicable to the Project hereby as if the Project were a "public works" project as defined in 820 ILCS 130/2 et seq. (1992 State Bar Edition)). Developer shall select the General Contractor (or, if Developer acts as its own General Contractor, each Significant Contractor) submitting the lowest responsible bid for a particular TIF-Funded Improvement who can complete the Project in a timely manner, and shall submit such bid to DPD for approval, which approval shall be granted or denied in writing within ten (10) business days after receipt thereof. If Developer selects other than the lowest responsible bid for any TIF-Funded Improvement, Developer shall pay the difference between the lowest responsible bid and the bid selected. City shall have the right to inspect all bids submitted and shall have final approval over the bid process. The General Contractor shall not begin work on the Project until the Scope Drawings have been approved by DPD and all requisite permits have been obtained.

6.02 Construction Contract. Unless Developer acts as its own General Contractor, Developer shall enter into a construction contract, substantially in the form attached hereto as Exhibit K and prior to the First Construction Disbursement Date, with the third party General Contractor selected to handle the TIF-Funded Improvements in accordance with Section 6.01 above. Within five (5) business days after execution of such contract by Developer, the third party General Contractor and any other parties thereto, Developer shall deliver to DPD and Corporation Counsel a certified copy of such contract together with any modifications, amendments or supplements thereto.

6.03. Performance Bonds. Prior to commencement of construction, Developer shall require that each subcontractor be bonded for its performance and payment by sureties having an AA rating or better using American Institute of Architect's Form No. A311 or its equivalent. For each such subcontractor who shall not have completed all of its work on the Project prior to the First Construction Disbursement Date, City shall be named as obligee or co-obligee on such subcontractor's bond.

6.04. Employment Opportunity. Developer shall contractually obligate and use reasonable efforts to cause its third party General Contractor, if any, and each subcontractor to agree to the provisions of Section 10 hereof.

6.05. Other Provisions. The construction contract as described in Section 6.02 hereof, if any, and each contract with any subcontractor shall contain provisions required pursuant to Section 3.05 (Change Orders), Section 12 (Insurance) and Section 14.01 (books and records) hereof. Photocopies of all contracts or subcontracts entered or to be entered into in connection with the TIF-Funded Improvements shall be provided to DPD within five (5) days of the execution thereof.

## SECTION 7. COMPLETION OF PROJECT

7.01. Certificate of Completion. Upon completion of the Project in accordance with the terms of this Agreement, and at Developer's written request, DPD shall issue Developer a Certificate certifying that Developer has fulfilled its obligation to construct the Project in accordance with the terms of this Agreement; provided, however, that the issuance of such Certificate shall not operate as a waiver of any of City's rights under this Agreement or any other agreement. DPD shall respond to Developer's written request for a Certificate within thirty (30) days after DPD's receipt thereof, by issuing either a Certificate or a written statement detailing the ways in which the Project does not conform to this Agreement, and any other objections to the issuance of a Certificate which DPD may have, and the measures which must subsequently be taken by Developer in order to obtain the Certificate. Developer may resubmit a written request for a Certificate upon completion of such measures.

7.02 Failure to Complete. If Developer fails to complete the TIF-Funded Improvements in accordance with the terms of the Agreement and provided City has complied in all material respects with this Agreement and with the disbursement requirements as set out in the Escrow Agreement, then City shall have the right (but not the obligation) to complete the TIF-Funded Improvements and to pay for the costs of the TIF-Funded Improvements (including interest costs) out of the City Funds or other City monies. In the event that the aggregate cost of completing the TIF-Funded

Improvements exceeds the amount of the City Funds available pursuant to Section 4.02, Developer shall reimburse City for all reasonable costs and expenses incurred by City in completing the TIF-Funded Improvements in excess of the available City Funds.

#### **SECTION 8. COVENANTS/REPRESENTATIONS/WARRANTIES OF DEVELOPER**

Developer represents, warrants and covenants to City as follows:

8.01 General Covenants. Developer represents, warrants and covenants that:

(a) Developer is an Illinois corporation duly organized, validly existing, and qualified or licensed to do business in Illinois and every other state where, due to the nature of its activities or properties, such qualification or license is required;

(b) Developer has the right, power and authority to enter into, execute, deliver and perform this Agreement;

(c) the execution, delivery and performance by Developer of this Agreement has been duly authorized by all necessary corporate action and will not violate its Articles of Incorporation or by-laws as amended and supplemented, any applicable provision of law, or constitute a breach of, default under, require any consent under (except for the consent of INB National Bank and Bank One, Indianapolis, N.A., which consents have been obtained), or result in the creation of any lien, charge, or encumbrance upon the Project, the NWS Property, or any property of Developer under any agreement, instrument or document to which Developer is now a party or by which Developer is now or may become bound;;

(d) Developer shall acquire and shall maintain good, indefeasible and merchantable title to the NWS Property free and clear of all liens (except for the Permitted Liens and liens incurred in connection with the Project financing as disclosed in the Project Budget), undisputed claims and encumbrances;

(e) Developer is now and shall remain solvent and able to pay its debts as they mature;

(f) there are no actions or proceedings by or before any court, governmental commission, board, bureau or any other administrative agency pending, threatened or affecting Developer which would impair its ability to perform under this Agreement;

(g) Developer has and shall maintain all government permits, certificates and consents (including, without limitation, appropriate environmental approvals) necessary to conduct its business and to construct and complete the Project;

(h) Developer is not in default with respect to any indenture, loan agreement, mortgage, deed, note or any other agreement or instrument related to the borrowing of money to which Developer is a party or by which Developer is bound;

(i) the Financial Statements are complete, correct in all material respects and accurately present the assets, liabilities, results of operations and financial condition of Developer, and there has been no adverse change in the assets, liabilities, results of operations or financial condition of Developer since the date of Developer's most recent Financial Statements;

(j) Prior to the issuance of a Certificate, Developer shall not do, and shall not permit any subsidiary to do, any of the following without the prior written consent of City, which shall not be unreasonably withheld: (1) be a party to any merger, liquidation or consolidation; or (2) sell, transfer, convey, lease or otherwise dispose of all or any portion of the NWS Property (including but not limited to any fixtures or equipment now or hereafter attached thereto) except in the ordinary course of business; and

(k) Developer has not incurred, and, prior to the issuance of a Certificate, shall not, without the prior written consent of the Commissioner of DPD, which shall not be unreasonably withheld, incur any indebtedness secured or to be secured by the NWS Property or any fixtures now or hereafter affixed thereto, except pursuant to Section 4.01 hereof and as disclosed on the Project Budget, or except as disclosed on Exhibit L hereto.

8.02 Covenant to Redevelop. Upon DPD's approval of the Scope Drawings and Project Budget and Developer's receipt of all required building permits and governmental approvals, Developer shall redevelop the NWS Property in accordance with this Agreement and all Exhibits attached hereto, the TIF Ordinances, the Bond Ordinance, the Scope Drawings, Project Budget and all amendments thereto, and all federal, state and local laws, ordinances, rules, regulations, executive orders and codes applicable to the Project, the NWS Property and/or Developer.

8.03 Redevelopment Plan. Developer represents that the Project is and shall be in compliance with all of the terms of the Redevelopment Plan.

8.04 Use of Proceeds. City Funds disbursed to Developer shall be used by Developer solely to pay for acquisition and rehabilitation of the TIF-Funded Improvements as provided in this Agreement.

8.05 Other Bonds. Developer shall, at the request of City, agree to any reasonable amendments to this Agreement that are necessary or desirable in order for City to issue (in its sole

discretion) any bonds in connection with the Project (other than the Bonds), the proceeds of which are to be used to reimburse City for expenditures made in connection with the TIF-Funded Improvements; provided, however, that any such amendments shall not have a material adverse effect on Developer or the Project. Developer, at its own expense, shall cooperate and provide reasonable assistance in connection with the marketing of any such bonds, including but not limited to providing written descriptions of the Project, making representations, providing information regarding its financial condition and assisting City in preparing an offering statement with respect thereto.

8.06 Employment Opportunity. Developer covenants and agrees to abide by, and contractually obligate and use reasonable efforts to cause each third party General Contractor, if any, and subcontractor to abide by the terms set forth in Section 10 hereof.

8.07 Employment Profile. Developer shall submit, and contractually obligate and use reasonable efforts to cause its third party General Contractor, if any, or any subcontractor to submit, to DPD statements of its employment profile upon DPD's request.

8.08 Conflict of Interest. Developer represents and warrants that no member, official, or employee of City, or of any commission or committee exercising authority over the Project or the Redevelopment Plan, or any consultant hired by City, owns or controls (or has owned or controlled) any interest, direct or indirect, in Developer's business or the property described in Exhibits B(1) and B(2) hereto; nor shall any such member, official, employee or consultant participate in any decision relating to Developer's business which affects his or her interests or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested.

8.09 Financial Statements. Developer shall maintain and provide to DPD Financial Statements for Developer's fiscal year ended March 31, 1993 and each March 31 thereafter for the Term of the Agreement. In addition, Developer shall submit unaudited financial statements as soon as reasonably practical following the close of each fiscal year and for such other periods as DPD may request.

8.10 Insurance. Developer, at its own expense, shall comply with all provisions of Section 12 hereof for the Term of the Agreement.

8.11 Non-Governmental Charges. Except for the Permitted Liens, Developer agrees to pay or cause to be paid when due any Non-Governmental Charge assessed or imposed upon the Project, the NWS Property or any fixtures that are or may become attached thereto, which creates, may create, or appears to create a lien

upon all or any portion of the NWS Property or Project; provided however, that if such Non-Governmental Charge may be paid in installments, Developer may pay the same together with any accrued interest thereon in installments as they become due and before any fine, penalty, interest, or cost may be added thereto for nonpayment. Developer shall furnish to DPD, within thirty (30) days of DPD's request, official receipts from the appropriate entity, or other proof satisfactory to DPD, evidencing payment of the Non-Governmental Charge in question. Developer shall have the right, before any delinquency occurs, (i) to contest or object in good faith to the amount or validity of any Non-Governmental Charge by appropriate legal proceedings properly and diligently instituted and prosecuted, in such manner as shall stay the collection of the contested Non-Governmental Charge and prevent the imposition of a lien or the sale or forfeiture of the NWS Property. No such contest or objection shall be deemed or construed to relieve, modify, or extend Developer's covenants to pay any such Non-Governmental Charge at the time and in the manner provided in this Section 8.11; or (ii) at DPD's sole option, to furnish a good and sufficient bond or other security satisfactory to DPD in such form and amounts as DPD shall require, or a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of any such sale or forfeiture of the NWS Property or any portion thereof or any fixtures that are or may be attached thereto, during the pendency of such contest, adequate to pay fully any such contested Governmental Charge and all interest and penalties upon the adverse determination of such contest.

8.12 Developer's Liabilities. Developer shall not enter into any transaction that would materially and adversely affect its ability to perform its obligations hereunder or to repay Developer's Liabilities or any other material liabilities or material obligations of Developer to any other person or entity. Developer shall immediately notify DPD of any and all events or actions which may materially affect Developer's ability to carry on its business operations or perform its obligations under this Agreement or any other documents and agreements.

8.13 Conditional Provisions. The covenants set forth in Exhibit M hereto will become effective at the sole option of City and upon City's receipt of an opinion from nationally recognized bond counsel that the effectiveness of those provisions will not adversely affect the tax-exempt status of the Bonds. In the event that City exercises its option to make the covenants in Exhibit M effective, it shall so notify Developer in accordance with Section 17 hereof.

8.14 Compliance with Laws. To the best of Developer's knowledge, after diligent inquiry, the NWS Property and the Project are in compliance with all applicable federal, state and local laws, statutes, ordinances, rules, regulations, executive orders and codes pertaining to or affecting the Project and the NWS

Property. Upon City's request, Developer shall provide evidence satisfactory to City of such compliance.

8.15 Survival of Covenants. All warranties, representations, and covenants of Developer contained in this Section 8 or elsewhere in this Agreement shall be true, accurate, and complete at the time of Developer's execution of this Agreement, and shall survive the execution, delivery and acceptance hereof by the parties hereto and be in effect throughout the Term of the Agreement.

8.16 Recording and Filing. Developer shall cause this Agreement and all amendments and supplements hereto to be recorded and filed in the conveyance and real property records of the county in which the Project is located. Developer shall pay all fees and charges incurred in connection with any such recording. Upon recording, Developer shall immediately transmit to City an executed original of this Agreement showing the date and recording number of record.

#### **SECTION 9. COVENANTS/REPRESENTATIONS/WARRANTIES OF CITY**

9.01 General Covenants. City represents that it has the authority as a home rule unit of local government to execute and deliver this Agreement and to perform its obligations hereunder and that City Funds are available as of the date hereof to perform such obligations in accordance with the terms of this Agreement, and shall remain available to fund City's obligations hereunder as same become due.

9.02 Survival of Covenants. All warranties, representations, and covenants of City contained in this Section 9 or elsewhere in this Agreement shall be true, accurate, and complete at the time of City's execution of this Agreement, and shall survive the execution, delivery and acceptance hereof by the parties hereto and be in effect throughout the Term of the Agreement.

#### **SECTION 10. EMPLOYMENT OPPORTUNITY**

Developer and its successors and assigns hereby agree, and shall contractually obligate and use reasonable efforts to cause its or their third party General Contractors (if any), subcontractors, tenants and lessees (collectively with the Developer, the "Employers") to agree, that for the Term of this Agreement with respect to Developer and during the period of any other such party's provision of services hereunder:

(a) Employer shall not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, national origin, ancestry, age, mental or physical disability, sexual orientation, marital status, parental status, military

discharge status or source of income, as defined in the City of Chicago Human Rights Ordinance adopted December 21, 1988. Each Employer will take affirmative action to insure that applicants are employed and employees are treated during employment without regard to their race, color, religion, sex, national origin, ancestry, age, mental or physical disability, sexual orientation, marital status, parental status, military discharge status or source of income. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. Each Employer agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by City setting forth the provisions of this nondiscrimination clause.

(b) To the greatest extent feasible, each Employer shall create training and employment opportunities for the benefit of low and moderate income residents of the Redevelopment Area. Moreover, to the greatest extent possible, contracts for work performed in connection with the Project shall be awarded by Employer to business concerns located in, or owned in substantial part by persons residing in, the Redevelopment Area.

(c) All solicitation or advertisement for employees placed by or on behalf of any Employer shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, ancestry, age, mental or physical disability, sexual orientation, marital status, parental status, military discharge status or source of income.

(d) Developer shall comply with the "First Source Policy" set forth in Exhibit N attached hereto.

(e) Each Employer shall comply with federal, state and local equal employment and affirmative action statutes, rules and regulations, including but not limited to the Human Rights Acts of the State of Illinois and City of Chicago, and any subsequent amendments and regulations promulgated pursuant thereto.

(f) Each Employer agrees to be bound by and comply with the Minority Business Enterprise and Women Business Enterprise Commitment provisions contained in Exhibit O attached hereto. For the purposes of this Agreement, the following terms used in Exhibit O shall have the following meanings: (i) "Year Advertised" shall mean year of the First Disbursement Date, (ii) "Contractor", "Bidder" and "Proposer" shall mean each Employer (iii) "Total Contract Prices" shall mean total costs of the Project as indicated in the Project Budget and (iv) "Purchasing Agent" shall mean DPD.

(g) Each Employer will include the foregoing provisions in every contract entered into in connection with the Project, and

will require the inclusion of these provisions in every subcontract entered into by any subcontractors, and every lease and sublease so that such provision will be binding upon each contractor or subcontractor, tenant or subtenant, as the case may be.

#### **SECTION 11. ENVIRONMENTAL MATTERS**

Developer hereby represents and warrants to City that Developer has conducted environmental studies sufficient to conclude that the Project may be constructed, completed and operated in accordance with all Environmental Laws and this Agreement and all Exhibits attached hereto, the Scope Drawings and all amendments thereto, the Bond Ordinance and the Redevelopment Plan.

Without limiting any other provisions hereof, Developer agrees to indemnify and hold City harmless from and against any and all losses, liabilities, damages, injuries, costs, expenses or claims of any kind whatsoever including, without limitation, any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising under any Environmental Laws incurred, suffered by or asserted against City as a direct or indirect result of any of the following, regardless of whether or not caused by, or within the control of Developer: (i) the presence of any Hazardous Material on or under, or the escape, seepage, leakage, spillage, emission, discharge or release of any Hazardous Material from (A) all or any portion of the NWS Property or (B) any other real property in which Developer, or any person directly or indirectly controlling, controlled by or under common control with Developer, holds any estate or interest whatsoever (including, without limitation, any property owned by a land trust in which the beneficial interest is owned, in whole or in part, by Developer), or (ii) any liens against the NWS Property permitted or imposed by any Environmental Laws, or any actual or asserted liability or obligation of City or Developer or any of its subsidiaries under any Environmental Laws relating to the NWS Property.

#### **SECTION 12. INSURANCE**

Developer shall procure and maintain, or cause to be maintained, at all times throughout the Term of this Agreement, and until each and every obligation of Developer contained in the Agreement has been fully performed, the types of insurance specified below, with insurance companies authorized to do business in the State of Illinois covering all operations under this Agreement, whether performed by Developer, any contractor or subcontractor:

- (a) Prior to the Closing Date: Prior to the execution of this Agreement, the Developer shall procure and maintain the following kinds and amounts of insurance:

(i) Workers' Compensation and Occupational Disease Insurance

Workers' Compensation and Occupational Disease Insurance, in statutory amounts, covering all employees who are to provide a service under this Agreement. Employer's liability coverage with limits of not less than \$100,000 for each accident or illness shall be included.

(ii) Commercial Liability Insurance (Primary and Umbrella)

Commercial Liability Insurance or equivalent with limits of not less than \$1,000,000 per occurrence, combined single limit, for bodily injury, personal injury and property damage liability. Products/completed operations, independent contractors, broad form property damage and contractual liability coverages are to be included. The City of Chicago is to be named as an additional insured.

(b) Construction: Prior to the First Construction Disbursement Date and during the construction phase, Developer shall procure and maintain, or cause to be maintained, the following kinds and amounts of insurance:

(i) Workers' Compensation and Occupational Disease Insurance

Workers' Compensation and Occupational Disease Insurance, in statutory amounts, covering all employees who are to provide a service in connection with this Agreement. Employer's liability coverage with limits of not less than \$500,000 for each accident or illness shall be included.

(ii) Commercial Liability Insurance (Primary and Umbrella)

Commercial Liability Insurance or equivalent with limits of not less than \$3,000,000 per occurrence, combined single limit, for bodily injury, personal injury and property damage liability. Products/completed operations, explosion, collapse, underground, independent contractors, broad form property damage and contractual liability coverages are to be included. The City of Chicago is to be named as an additional insured.

(iii) Automobile Liability Insurance

When any motor vehicles are used in connection with work to be performed in connection with this Agreement, Developer shall provide Automobile Liability Insurance with limits of not less than \$1,000,000 per occurrence combined single limit, for bodily injury and property damage. The City of Chicago is to be named as an additional insured.

(iv) All Risk Builders Risk Insurance

When Developer, any contractor or subcontractor undertakes any construction, including improvements, betterments, and/or repairs, Developer, such contractor or subcontractor shall provide All Risk Blanket Builder's Risk Insurance to cover the materials, equipment, machinery and fixtures that are or will be part of the permanent facilities. Coverage extensions shall include boiler and machinery, and flood.

(v) Professional Liability

When any architects, engineers or consulting firms perform work in connection with this Agreement, Professional Liability insurance shall be maintained with limits of \$1,000,000. The policy shall have an extended reporting period of two years. When policies are renewed or replaced, the policy retroactive date must coincide with, or precede, start of work on the project.

(c) Other Provisions

All insurance policies shall provide that City shall be given 30 days prior written notice of any modification, renewal or cancellation. Original Certificates of Insurance evidencing the required coverages 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, shall be delivered to the City of Chicago, Department of Finance, Risk Management Office, 510 N. Peshtigo Court, Room 5A, 60602, prior to the First Disbursement Date and First Construction Disbursement Date, as applicable. If Developer fails to obtain or maintain any of the insurance policies required under this Agreement or to pay any insurance policies required under this Agreement, or to pay any premium in whole or in part when due, City may (without waiving or releasing any obligation or Event of Default by Developer hereunder) obtain and maintain

such insurance policies and take any other action which City deems advisable to protect its interest in the NWS Property and/or the Project. All sums so disbursed by City including reasonable attorneys' fees, court costs and expenses, shall be reimbursed by Developer upon demand by City.

Developer agrees, and shall cause each contractor and subcontractor to agree, that any insurance coverages and limits furnished by Developer and such contractors or subcontractors shall in no way limit Developer's liabilities and responsibilities specified under this Agreement or any related documents or by law, or such contractor's or subcontractor's liabilities and responsibilities specified under any related documents or by law. Developer shall require all contractors and subcontractors to carry the insurance required herein, or Developer may provide the coverage for any or all contractors and subcontractors, and if so, the evidence of insurance submitted shall so stipulate.

Developer agrees, and shall cause its insurers and the insurers of each contractor and subcontractor engaged after the date hereof in connection with the Project to agree, that all such insurers shall waive their rights of subrogation against City.

Developer shall comply with any additional insurance requirements that are stipulated by the Interstate Commerce Commission's Regulations, Title 49 of the Code of Federal Regulations, Department of Transportation; Title 40 of the Code of Federal Regulations, Protection of the Environment and any other federal, state or local regulations concerning the removal and transport of Hazardous Materials.

City maintains the right to modify, delete, alter or change the provisions of this Section 12 so long as such action does not, without Developer's prior written consent, exceed the requirements set forth in this Section 12.

### **SECTION 13. INDEMNIFICATION**

Developer agrees to indemnify, defend and hold City harmless from and against any losses, costs, damages, liabilities, claims, suits, actions, causes of action and expenses (including, without limitation, reasonable attorneys' fees and court costs) suffered or incurred by City arising from or in connection with (i) Developer's failure to comply with any of the terms, covenants and conditions contained within this Agreement, or (ii) Developer's or any contractor's failure to pay third party General Contractors (if any), subcontractors or materialmen in connection with the TIF-Funded Improvements or any other Project improvement, or (iii) the existence of any material misrepresentation or omission in any offering memorandum or the Redevelopment Plan or any other document

related to this Agreement that is the result of information supplied or omitted by Developer or its agents, employees, contractors or persons acting under the control or at the request of Developer or (iv) Developer's failure to cure any misrepresentation in this Agreement or any other agreement relating hereto.

#### **SECTION 14. MAINTAINING RECORDS/RIGHT TO INSPECT**

14.01 Books and Records. Developer shall keep and maintain separate, complete, accurate and detailed books and records necessary to reflect and fully disclose the amount and disposition of the total cost of the activities paid for with the City Funds. All such books, records and other documents, including but not limited to Developer's loan statements, General Contractors' and contractors' sworn statements, general contracts, subcontracts, purchase orders, waivers of lien, paid receipts and invoices, shall be available at Developer's offices for inspection, copying, audit and examination by an authorized representative of City, at Developer's expense. Developer shall incorporate this right to inspect, copy, audit and examine all books and records into all contracts entered into by Developer with respect to the Project.

14.02 Inspection Rights. Any authorized representative of City shall have access to all portions of the Project and the NWS Property during normal business hours for the Term of the Agreement.

#### **SECTION 15. DEFAULT AND REMEDIES**

15.01 Events of Default. The occurrence of any one or more of the following events shall constitute an "Event of Default" by Developer hereunder:

(a) the failure of Developer to pay when due, declared due, or demanded by City (under law or in accordance with the terms of this Agreement or any other agreement between City and Developer), any of Developer's Liabilities;

(b) the failure of Developer to perform, keep or observe any of the covenants, conditions, promises, agreements or obligations of Developer under this Agreement or any related agreement;

(c) the failure of Developer to perform, keep or observe any of the covenants, conditions, promises, agreements or obligations of Developer under any other agreement with any person or entity if such failure may have a material adverse effect on Developer's business, property, assets, operations or condition, financial or otherwise;

(d) the making or furnishing by Developer to City of any representation, warranty, certificate, schedule, report or other communication within or in connection with this Agreement or any related agreement which is untrue or misleading in any respect;

(e) the creation (whether voluntary or involuntary) of, or any attempt to create, any lien or other encumbrance upon the NWS Property, other than the Permitted Liens, or the making or any attempt to make any levy, seizure or attachment thereof;

(f) the commencement of any proceedings in bankruptcy by or against Developer or for the liquidation or reorganization of Developer, or alleging that such Developer is insolvent or unable to pay its debts as they mature, or for the readjustment or arrangement of Developer's debts, whether under the United States Bankruptcy Code or under any other state or federal law, now or hereafter existing for the relief of debtors, or the commencement of any analogous statutory or non-statutory proceedings involving Developer; provided, however, that if such commencement of proceedings is involuntary, such action shall not constitute an Event of Default unless such proceedings are not dismissed within thirty (30) days after the commencement of such proceedings;

(g) the appointment of a receiver or trustee for Developer, for any substantial part of Developer's assets or the institution of any proceedings for the dissolution, or the full or partial liquidation, or the merger or consolidation, of Developer; provided, however, that if such appointment or commencement of proceedings is involuntary, such action shall not constitute an Event of Default unless such appointment is not revoked or such proceedings are not dismissed within thirty (30) days after the commencement thereof;

(h) the entry of any judgment or order against Developer which remains unsatisfied or undischarged and in effect for thirty (30) days after such entry without a stay of enforcement or execution;

(i) the dissolution of Developer; or

(j) the institution in any court of a criminal proceeding against Developer or any natural person who owns a material interest in Developer, which is not dismissed within thirty (30) days, or the indictment of Developer or any natural person who owns a material interest in Developer, for any crime; provided, however, that in the event such indictment or institution is made against a person owning a material interest in Developer, such event shall not be deemed a default hereunder if such person divests his or her interest in Developer or is acquitted within ninety (90) days of such indictment or institution.

15.02 Remedies. Upon the occurrence of an Event of Default, City may terminate this Agreement and all related agreements, and may suspend disbursement of the City Funds. City may, in any court of competent jurisdiction by any action or proceeding at law or in equity, secure the specific performance of the agreements contained herein, or may be awarded damages for failure of performance, or both.

15.03 Curative Period. In the event Developer shall fail to

perform a monetary covenant which Developer is required to perform under this Agreement, notwithstanding any other provision of this Agreement to the contrary, an Event of Default shall not be deemed to have occurred unless Developer shall have failed to perform such monetary covenant within ten (10) days of its receipt of a notice from City specifying that it has failed to perform such monetary covenant. In the event Developer shall fail to perform a non-monetary covenant which Developer is required to perform under this Agreement, notwithstanding any other provision of this Agreement to the contrary, an Event of Default shall not be deemed to have occurred unless Developer shall have failed to cure such default within twenty (20) days of its receipt of a notice from City specifying the nature of the default; provided, however, with respect to those non-monetary defaults which are not capable of being cured within such twenty (20) day period, Developer shall not be deemed to be in default under this Agreement if it has commenced to cure the alleged default within such twenty (20) day period and thereafter diligently and continuously prosecutes the cure of such default until the same has been cured.

#### SECTION 16. MORTGAGING OF THE PROJECT

In the event that Developer shall hereafter elect to execute and record or permit to be recorded against the NWS Property or any portion thereof, a mortgage(s) or deed(s) of trust (any such mortgage or deed of trust being hereinafter referred to as the "Mortgage" and the holder of the same being hereinafter referred to as the "Mortgagee"), then it is hereby agreed by and between City and Developer as follows:

(a) Prior to the issuance by City to Developer of a Certificate of Completion pursuant to Section 7 hereof, no such Mortgage shall be executed without the prior written consent of the Commissioner of DPD, which shall not be unreasonably withheld.

(b) At any time a Mortgage is recorded against the NWS Property or any portion thereof, then notwithstanding any term or provision of this Agreement to the contrary, no amendments or modifications may be made to this Agreement, nor may this Agreement be terminated, without the Mortgagee's prior written consent.

(c) At any time a Mortgage is recorded against the NWS Property or any portion thereof, then, notwithstanding any term or provision of this Agreement to the contrary, in the event of a default under this Agreement by Developer then, before City may exercise any of its rights pursuant to, or for remedying such default, City shall send written notice describing the nature of such default to the Mortgagee. Such notice shall be sent to the Mortgagee at the address shown in the Mortgage by United States registered or certified mail, return receipt requested, postage prepaid, and shall be deemed received by the Mortgagee three (3) regular business days after mailing in accordance with the foregoing provisions. The Mortgagee shall have fifteen (15) days, commencing with the later to occur of: (i) the day following the last day of the applicable cure period herein provided to

Developer; or (ii) the Mortgagee's receipt of the foregoing notice, within which to cure the alleged default. City shall not be entitled to exercise any of its rights or remedies with respect to such default until the foregoing cure period granted the Mortgagee herein shall have expired; provided, however, that if the default specified in the notice to the Mortgagee is a non-monetary default which cannot be cured within said fifteen-day period, then City shall not be entitled to pursue any rights or remedies on account of such default so long as Mortgagee in good faith has commenced to cure the default within said fifteen-day period and thereafter diligently pursues the curing thereof within a reasonable time; provided further, however, that during such cure period, City shall have no obligation to disburse any City Funds, and Developer shall be solely liable for any liabilities occasioned by such failure to disburse.

(d) In the event that the Mortgagee or any other party shall succeed to the Developer's interest in the NWS Property pursuant to the exercise of remedies under a Mortgage, whether by foreclosure, deed in lieu of foreclosure, or otherwise, and in conjunction therewith accepts an assignment of Developer's interest hereunder in accordance with Section 18.16 hereof, City hereby agrees to attorn to and recognize such party as the successor in interest to Developer for all purposes under this Agreement so long as such party accepts all of the obligations and liabilities of "Developer" hereunder; provided, however, that, notwithstanding any other provision of this Agreement to the contrary, it is understood and agreed that if such party accepts an assignment of Developer's interest under this Agreement, such party shall have no liability under this Agreement for any Event of Default of Developer which accrued prior to the time such party succeeded to the interest of Developer under this Agreement, in which case Developer shall be solely responsible. However, if such Mortgagee or other party succeeding to the Developer's interest in the NWS Property does not expressly accept an assignment of Developer's interest hereunder, such party shall be bound only by those provisions of this Agreement, if any, which are covenants expressly running with the land.

(e) At any time a Mortgage is recorded against all or any portion of the NWS Property, then, in the event this Agreement shall be terminated by operation of law prior to its stated expiration date, or in the event Developer's trustee in bankruptcy, or any receiver or liquidator of Developer's interest in the Project shall disaffirm or terminate this Agreement, City agrees that, upon Mortgagee's request and pending City Council approval, it will enter into a new Agreement for the Project with the Mortgagee for the remainder of the unexpired Term of this Agreement, which new agreement shall be effective as of the date of such disaffirmation or termination and shall be substantially similar to this Agreement.

(f) The parties acknowledge that there are currently two mortgages against the Existing NWS Property as set forth on Exhibit L hereto.

## SECTION 17. NOTICE

Unless otherwise specified, any notice, demand or request required hereunder shall be given in writing at the addresses set forth below, by any of the following means: (a) personal service; (b) telecopy or facsimile; (c) overnight courier, or (d) registered or certified or facsimile mail, return receipt requested.

If to City: City of Chicago  
Department of Planning and Development  
121 North LaSalle Street, Room 1000  
Chicago, IL 60602  
Attention: Commissioner

With Copies To: City of Chicago  
Department of Law  
Finance and Economic Development  
Division  
121 North LaSalle Street, Room 511  
Chicago, IL 60602

If to Developer: NWS, Inc.  
2550 West 35th Street  
Chicago, IL 60632  
Attention: President

With Copies To: John P. Stephens, Esq.  
Burke, Warren & MacKay, P.C.  
225 West Washington Street, 24th Floor  
Chicago, IL 60606

Such addresses may be changed by notice to the other parties given in the same manner provided above. Any notice, demand, or request sent pursuant to either clause (a) or (b) hereof shall be deemed received upon such personal service or upon dispatch. Any notice, demand or request sent pursuant to clause (c) shall be deemed received on the day immediately following deposit with the overnight courier and any notices, demands or requests sent pursuant to subsection (d) shall be deemed received forty-eight (48) hours following deposit in the mail.

## SECTION 18. MISCELLANEOUS

18.01 Amendment. This Agreement and the Exhibits attached hereto may not be amended without the prior written consent of City.

18.02 Entire Agreement. This Agreement (including each Exhibit attached hereto, which is hereby incorporated herein by reference) constitutes the entire Agreement between the parties hereto and it supersedes all prior agreements, negotiations and discussions between the parties relative to the subject matter hereof.

18.03 Limitation of Liability. No member, official or

employee of City shall be personally liable to Developer or any successor in interest in the event of any default or breach by City or for any amount which may become due to Developer from City or any successor in interest or on any obligation under the terms of this Agreement.

18.04 Further Assurances. Developer agrees to take such reasonable actions, including the execution and delivery of such documents, instruments, petitions and certifications as may become necessary or appropriate to carry out the terms, provisions and intent of this Agreement.

18.05 Waiver. Waiver by City or Developer with respect to any breach of this Agreement shall not be considered or treated as a waiver of the rights of the respective party with respect to any other default or with respect to any particular default, except to the extent specifically waived by City or Developer in writing.

18.06 Remedies Cumulative. The remedies of a party hereunder are cumulative and the exercise of any one or more of the remedies provided for herein shall not be construed as a waiver of any other remedies of such party unless specifically so provided herein.

18.07 Disclaimer. Nothing contained in this Agreement nor any act of City shall be deemed or construed by any of the parties, or by any third person, to create or imply any relationship of third-party beneficiary, principal or agent, limited or general partnership or joint venture, or to create or imply any association or relationship involving City.

18.08 Headings. The paragraph and section headings contained herein are for convenience only and are not intended to limit, vary, define or expand the content thereof.

18.09 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute one and the same agreement.

18.10 Recordation. Developer, at its own expense, shall on the Closing Date execute and deliver an original of this Agreement to the office of the Cook County Recorder of Deeds in proper form for recording and/or indexing in the appropriate governmental land records.

18.11 Severability. If any provision in this Agreement, or any paragraph, sentence, clause, phrase, word or the application thereof, in any circumstance, is held invalid, this Agreement shall be construed as if such invalid part were never included herein and the remainder of this Agreement shall be and remain valid and enforceable to the fullest extent permitted by law.

18.12 Conflict. In the event of a conflict between any provisions of this Agreement and the provisions of the Bond Ordinance, the Bond Ordinance shall prevail and control.

18.13 Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Illinois, without regard to its conflicts of law principles.

18.14 Form of Documents. All documents required by this Agreement to be submitted, delivered or furnished to City shall be in form and content satisfactory to City.

18.15 Approval. Wherever this Agreement provides for the approval or consent of City or DPD, or any matter is to be to City's or DPD's satisfaction, unless specifically stated to the contrary, such approval, consent or satisfaction shall be made, given or determined by City or DPD in writing and in its sole discretion.

18.16 Assignment. Prior to the issuance by City to Developer of a Certificate of Completion pursuant to Section 7 hereof, Developer may not sell, assign or otherwise transfer its interest in this Agreement in whole or in part without the written consent of City. Notwithstanding the issuance of such Certificate, any successor in interest to Developer under this Agreement shall certify in writing to City its agreement to abide by all remaining executory terms of this Agreement, including but not limited to Section 8.15 hereof, for the Term of the Agreement. Developer consents to City's sale, transfer, assignment or other disposal of this Agreement at any time in whole or in part.

18.17 Binding Effect. This Agreement shall be binding upon Developer and its successors and permitted assigns and shall inure to the benefit of City, its successors and assigns.

18.18 Force Majeure. For the purposes of this Agreement, neither City nor Developer, nor any successor in interest to either of them, shall be considered in breach of or default in its obligations under this Agreement in the event of any delay caused by damage or destruction by fire or other casualty, strike, shortage of material, unusually adverse weather conditions such as, by way of illustration and not limitation, severe rain storms or below freezing temperatures of abnormal degree or quantity for an abnormal duration, tornadoes or cyclones, and other events or conditions beyond the reasonable control of the party affected which in fact interferes with the ability of such party to discharge its obligations hereunder.

18.19 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute a single instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Redevelopment Agreement to be executed on or as of the day and year first above written.

NWS, Inc.  
By: [Signature]  
Its: President

CITY OF CHICAGO  
By: Debra Conrardy Mitchell  
Debra Conrardy Mitchell  
First Deputy Commissioner,  
Department of Planning and  
Development

This agreement was prepared by  
and after recording return to:  
Lynn C. Egan, Esq.  
City of Chicago Law Department  
121 North LaSalle Street, Room 511  
Chicago, IL 60602

LCE5-001.NWS

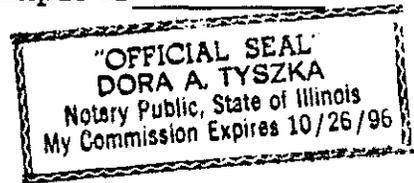
STATE OF ILLINOIS    )  
                          )    SS  
COUNTY OF COOK        )

I, DORA A. TYSZKA, a notary public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that JAMES E. LACASSE, personally known to me to be PRESIDENT of NWS, Inc., an Illinois corporation, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed, and delivered said instrument as a free and voluntary act for the uses and purposes therein set forth.

*Dora A. Tyszka*  
Notary Public

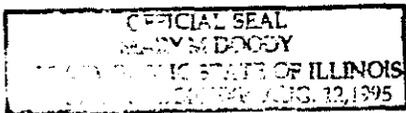
My Commission Expires \_\_\_\_\_

(SEAL)



STATE OF ILLINOIS     )  
                                  )     ss  
COUNTY OF COOK        )

I, Mary M. Doody, a notary public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Debra Conrardy Mitchell, personally known to me to be the First Deputy Commissioner of the Department of Planning and Development of the City of Chicago, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that she signed, sealed, and delivered said instrument as a free and voluntary act for the uses and purposes therein set forth.



Mary M. Doody  
Notary Public

My Commission Expires 8/12/95

(SEAL)

EXHIBIT A

Redevelopment Area

*Sanitary Drainage And Ship Canal*

*Legal Description.*

All that part of the southwest quarter of Section 25;

The northeast quarter, the northwest quarter and the west half of the southeast quarter of Section 35;

The north half, the east half of the southwest quarter and the southeast quarter of Section 36, all in Township 39 North, Range 13 East of the Third Principal Meridian together with certain lots and blocks in Manchester, being Steele and Buchanan's Subdivision of that part of the east half of the northeast quarter of said Section 36, lying north of the Illinois and Michigan Canal according to the plat thereof recorded July 31, 1857;

S. J. Walker's Subdivision of that part south of the Canal of the northwest quarter of Section 31, Township 39 North, Range 14 East of the Third Principal Meridian, also that part south of the Canal of the east half of the northeast quarter of said Section 36, according to the plat thereof recorded February 6, 1863;

The Campbell Soup Company (Central Division) Subdivision of part of the northeast quarter of said Section 36, according to the plat thereof recorded May 23, 1930 as Document No. 10667452;

The Campbell Soup Company's subdivision of part of the northeast quarter of said Section 36, according to the plat thereof recorded July 24, 1957 as Document No. 16966716; and

The Sanitary District Trustees' subdivision of the right-of-way from the north and south center line of Section 30, Township 39 North, Range 14 East of the Third Principal Meridian, to the west line of Section 7, Township 38

North, Range 13 East of the Third Principal Meridian, according to the plat thereof recorded March 31, 1908 as Document No. 4180216 more particularly described as follows:

beginning at the intersection of the southerly line of the Sanitary Drainage and Ship Canal, being the southerly line of Water Lot "B" in the Sanitary District Trustees' Subdivision, aforesaid, with the west right-of-way line of the Pittsburgh, Cincinnati, Chicago & St. Louis Railway in the east half of the northeast quarter of said Section 36; thence southwesterly along the southerly line of said Sanitary Drainage and Ship Canal to the east line of California Avenue; thence north along the east line of California Avenue to the north line of 31st Street to the intersection of the northerly extension of a line drawn 667.24 feet east of and parallel with the west line of the northwest quarter of said Section 36; thence south along said parallel line and its northerly extension to the northerly line of the Chicago & Illinois Western Railroad right-of-way; thence southwesterly along said northerly right-of-way to the west line of Kedzie Avenue; thence south along the west line of Kedzie Avenue to the southerly right-of-way line of said Chicago & Illinois Western Railroad; thence west along said southerly right-of-way line to the west line of the east half of the northeast quarter of said Section 35; thence south along said west line to the southerly right-of-way line of the Illinois Central Railroad; thence westerly along said southerly right-of-way line to a point in a line 20 feet west of and parallel with the east line of the northwest quarter of said Section 35; thence south along said parallel line to the north line of the said Sanitary Drainage and Ship Canal, being the north line of Water Lot "E" in the Sanitary District Trustees' Subdivision, aforesaid; thence northeasterly along said northerly line to the west line of Kedzie Avenue; thence south along the west line of Kedzie Avenue, a distance of 258 feet to the south line of said Water Lot "E"; thence northeasterly along the southerly line of Water Lots "E" and "D" in said Sanitary District Trustees' Subdivision to its intersection with the west line of the Illinois Central Railroad right-of-way; thence southeasterly along said westerly right-of-way line to the east line of the west half of the northwest quarter of said Section 36; thence south along said east line to the southerly right-of-way line of the Atchison, Topeka & Santa Fe Railway; thence northeasterly along said southerly right-of-way line to the west line of California Avenue; thence south along the west line of California Avenue to the south line of 35th Street; thence east along the south line of 35th Street to the west line of the Pittsburgh, Cincinnati, Chicago & St. Louis Railway right-of-way; thence north along said westerly right-of-way line to the point of beginning, in Cook County, Illinois.

EXHIBIT B

TIF FUNDED IMPROVEMENTS

Acquisition and Transaction Costs		\$ 797,366
Rehabilitation		
Concrete		
Asbestos Removal	\$150,000	
Interior Demolition	<u>200,000</u>	
		350,000
Masonry		
Tuckpoint & Masonry Repair		100,000
Metals		
Misc. Iron		25,000
Thermal & Moisture Protection		
Roofing		515,000
Doors and Windows		
Window Replacement	\$275,000	
Doors/Frames/Hardware	<u>105,000</u>	
		380,000
Finishes		
Interior Sandblasting	\$ 65,000	
Carpet & JCT	190,000	
Drywall	65,000	
Ceilings	25,000	
Painting	<u>40,000</u>	
		385,000
Conveying Systems		
Elevators		130,000
Mechanical		
HVAC	\$322,634	
Plumbing	225,000	
Sprinklers	55,000	
Heating	180,000	
Coolers	<u>120,000</u>	
		902,634
Electrical		
Electrical		650,000
Site Work		
Vehicle Ramps		<u>130,000</u>
SUBTOTAL		\$4,365,000
Soft Costs		
Architectural	\$ 55,000	
Engineering and Design	35,000	
Legal Fees	<u>5,000</u>	
		\$ 95,000
<u>TOTAL</u>		<u>\$4,460,000</u>

EXHIBIT B-1  
EXISTING NWS PROPERTY

PARCEL 1:

THAT PART OF THE NORTH EAST 1/4 OF SECTION 36, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, AND OF LOT 1 IN CAMPBELL SOUP COMPANY'S (CENTRAL DIVISION) SUBDIVISION THEREIN ACCORDING TO THE PLAT THEREOF RECORDED MAY 23, 1930 AS DOCUMENT NUMBER 10667452, IN COOK COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE NORTH LINE OF WEST 35TH STREET IN THE CITY OF CHICAGO, COOK COUNTY, ILLINOIS, 33 FEET NORTH OF THE SOUTH LINE OF SAID NORTH EAST 1/4 OF SECTION 36, WITH THE WEST LINE OF SOUTH CAMPBELL AVENUE IN SAID CITY, AS DEDICATED SEPTEMBER 1, 1904 (NOW VACATED), PRODUCED NORTH, THENCE WEST ON AN ASSIGNED AZIMUTH OF 270 DEGREES 00 MINUTES 00 SECONDS ALONG THE NORTH LINE OF SAID 35TH STREET, 526.77 FEET; THENCE ON AN AZIMUTH OF 00 DEGREES 01 MINUTES 00 SECONDS, 439.60 FEET TO A POINT ON THE EASTERLY EXTENSION OF THE CENTERLINE OF A 24" CONCRETE FOUNDATION WALL FOR A POINT OF BEGINNING; THENCE CONTINUING ON AN AZIMUTH OF 00 DEGREES 01 MINUTES 00 SECONDS, 386.74 FEET; THENCE ON AN AZIMUTH OF 23 DEGREES 21 MINUTES 52 SECONDS, 83.73 FEET; THENCE ON AN AZIMUTH OF 67 DEGREES 28 MINUTES 17 SECONDS, 83.74 FEET; THENCE ON AN AZIMUTH OF 339 DEGREES 14 MINUTES 27 SECONDS, 46.06 FEET; THENCE ON AN AZIMUTH OF 68 DEGREES 15 MINUTES 58 SECONDS, 43.44 FEET; THENCE NORTHEASTERLY ALONG A TANGENTIAL CURVE CONCAVE TO THE NORTHWEST, RADIUS 295.11 FEET, CENTRAL ANGLE 18 DEGREES 28 MINUTES 35 SECONDS, 95.17 FEET; THENCE ON AN AZIMUTH OF 49 DEGREES 47 MINUTES 23 SECONDS, 33.91 FEET; THENCE ON AN AZIMUTH OF 36 DEGREES 15 MINUTES 07 SECONDS, 275.76 FEET TO THE SOUTHERLY LINE OF THE CANAL RESERVE OF THE ILLINOIS AND MICHIGAN CANAL; THENCE ON AN AZIMUTH OF 248 DEGREES 27 MINUTES 00 SECONDS ALONG SAID SOUTHERLY LINE, 976.31 FEET TO THE NORTHEAST CORNER OF LOT 4 IN CAMPBELL SOUP COMPANY'S SUBDIVISION OF PART OF THE NORTHEAST 1/4 OF SECTION 36, ACCORDING TO THE PLAT THEREOF, RECORDED JULY 24, 1957 AS DOCUMENT NUMBER 16966716; THENCE SOUTH THROUGH THE FOLLOWING TEN COURSES ALONG THE EAST LINES OF SAID CAMPBELL SOUP COMPANY'S SUBDIVISION; THENCE ON AN AZIMUTH OF 214 DEGREES 13 MINUTES 38 SECONDS, 165.36 FEET; THENCE ON AN AZIMUTH OF 179 DEGREES 59 MINUTES 58 SECONDS, 311.98 FEET; THENCE ON AN AZIMUTH OF 89 DEGREES 56 MINUTES 10 SECONDS, 18.00 FEET; THENCE ON AN AZIMUTH OF 180 DEGREES 00 MINUTES 00 SECONDS, 94.00 FEET; THENCE ON AN AZIMUTH OF 90 DEGREES 00 MINUTES 00 SECONDS, 23.00 FEET; THENCE ON AN AZIMUTH OF 180 DEGREES 00 MINUTES 00 SECONDS, 106.00 FEET; THENCE ON AN AZIMUTH OF 236 DEGREES 06 MINUTES 50 SECONDS, 49.39 FEET; THENCE ON AN AZIMUTH OF 180 DEGREES 00 MINUTES 00 SECONDS, 127.65 FEET; THENCE ON AN AZIMUTH OF 270 DEGREES 00 MINUTES 00 SECONDS, 3.95 FEET; THENCE ON AN AZIMUTH OF 180 DEGREES 00 MINUTES 00 SECONDS, 125.00 FEET TO THE NORTH LINE OF WEST 35TH STREET AFORESAID; THENCE EAST ALONG SAID NORTH LINE, 227.45 FEET; THENCE ON AN AZIMUTH OF 00 DEGREES 01 MINUTES 00 SECONDS, 140.24 FEET; THENCE ON AN AZIMUTH OF 90 DEGREES 01 MINUTES 00 SECONDS, 13.84 FEET; THENCE ON AN AZIMUTH OF 00 DEGREES 01 MINUTES 00 SECONDS, 261.47 FEET; THENCE ON AN AZIMUTH OF 90 DEGREES 01 MINUTES 00 SECONDS, 4.40 FEET; THENCE ON AN AZIMUTH OF 00 DEGREES 01 MINUTES 00 SECONDS, 38.00 FEET TO THE CENTERLINE OF A 24" CONCRETE FOUNDATION WALL; THENCE ON AN AZIMUTH OF 90 DEGREES 01 MINUTES 00 SECONDS, ALONG SAID CENTERLINE AND FOUNDATION WALL, AND SAID CENTERLINE EXTENDED EAST, 354.30 FEET TO THE POINT OF BEGINNING.

PARCEL 2:

LOTS 2 AND 4 IN CAMPBELL SOUP COMPANY'S SUBDIVISION OF PART OF THE NORTH EAST 1/4 OF SECTION 36, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, RECORDED JULY 24, 1957 AS DOCUMENT NUMBER 16966716.

EXHIBIT C

Redevelopment Plan

*Sanitary Drainage And Ship Canal  
Tax Increment Redevelopment Area*

*Redevelopment Plan And Project.*

*April, 1991.*

*I.*

*Introduction.*

The Sanitary Drainage and Ship Canal Redevelopment Project Area (the "R.P.A.") is located in the south and west areas of the City of Chicago (the "City"). The R.P.A. roughly parallels the Stevenson Expressway from Central Park Avenue to California Avenue and the P.C.C. and St. Louis Railroad right-of-way. Existing land uses are largely categorized by

industrial buildings, storage/materials yards, railroad right of ways, and vacant land. Campbell's Soup has discontinued operations at the facility located within the R.P.A. Other large tracts of land between Central Park Avenue and Kedzie Avenue are underutilized. The City is proposing the R.P.A. designation in order to address certain blighting conditions that have served to inhibit or preclude area redevelopment.

The R.P.A. as a whole is approximately bounded by the following:

Beginning at the northwest corner of the Sanitary Drainage and Ship Canal ("Canal") and the southerly extension of Central Park Avenue, then northerly to the southern right-of-way of the Illinois Central Railway, then generally easterly to the Collateral Channel (a slip of the canal), then northerly to 31st Street, then easterly to California Avenue, then southerly to the southwest corner of the Canal and California Avenue, then northeasterly to the western right-of-way of the Baltimore & Ohio Railroad, then generally southerly to 35th Street, then westerly to California Avenue, then northerly to the southern right-of-way of the Atchison, Topeka, and Santa Fe Railroad right-of-way, then northwesterly along the southern right-of-way of the Illinois Central Railroad right-of-way, then westerly along the right-of-way to the southern side of the Canal to Kedzie Avenue, then northerly to the northern side of the Canal, then southwestwardly to the point of beginning.

A legal description is included in (Sub)Exhibit 1.

#### Area Background.

The initial growth of the study area can be traced back to the opening of the Illinois and Michigan Canal in April, 1848. A major stimulus for trade with the entire Mississippi River Basin, the banks of the canal were used almost exclusively for bulk storage of such commodities as grain and coal.

The traffic on the I. & M. Canal, however, peaked in 1882. The Sanitary District of Chicago was formed in 1890, and planned for a new, larger and deeper canal which would provide for removal of the City's sewerage as well as permit for greater shipping traffic. As a result of its planning efforts, the Sanitary and Ship Canal opened to the north of the original canal in 1990. The new canal connected the south branch of the Chicago River with Lockport, Illinois, approximately 34 miles away.

The Sanitary District marketed its land holdings, including area within the R.P.A., along both sides of the canal for industrial uses, as it pursued connection of the canal to the Mississippi River. Manufacturing firms, particularly medium and heavy industrial users, were initial users of the

canal. These firms also took advantage of the excellent rail access afforded by such trunk lines as the Illinois Central and Chicago, Burlington & Quincy Railroads, and switching lines such as the Chicago and Western Indiana Railroad Company. This era, between 1895 - 1920, was Chicago's "Golden Age" of industrial development. Many of the remaining structures in the study area were constructed around this period, including the Campbell's Soup tomato soup plant. The Sanitary District did encounter some image problems for their landholdings. Many business owners eschewed the properties, perceiving the canal as an "open sewer". Indeed, dumping had been reported along its banks. The vacant tracts in the study area are among the remaining Sanitary District properties that were never developed or are under used.

Other pre-existing structures, however, were becoming deteriorated and obsolete due to age and technological advances. As shipping with motor trucks proliferated, thus freeing industrial firms from locations with rail access, many manufacturing plants relocated to new facilities in the suburbs as early as the 1930's.

In order to address the needs for truck access, the Stevenson Expressway was constructed in the vicinity. The siting of the expressway, however, affected circulation and ingress/egress to the sites within the Study Area. As with the construction of the other expressways, firm relocation out of the area may have been hastened by the highway construction.

The decline of manufacturing in the area continued into the 1980's with the relocation of Campbell's Soup, but other businesses continue to thrive in the area. The City's undertaking of redevelopment efforts will allow for certain activities such as clearing older, obsolete structures; improving access and traffic circulation, and making land available at competitive prices, and will allow for the rejuvenation and the strengthening of the industrial uses or other compatible uses remaining in the area.

#### The Redevelopment Plan.

The R.P.A. designation is being reviewed in order to assist the City and the community to actively pursue an economic development strategy that is able to comprehensively address area-wide blighted conditions. The designation would allow the parties to coordinate industrial redevelopment that is responsive to modern market trends and users, and revitalize the area. The redevelopment would also provide new jobs, expansion opportunities for existing Chicago manufacturing and/or industrial firms, the creation of marketable land to attract new industry to the area, and an increased tax base to the City and the community. Removal of obsolete buildings and improvements, site preparation, and property assembly are some of the redevelopment efforts that may be undertaken to assist projects within the R.P.A.

The needed public investment will be possible only if tax increment financing is adopted pursuant to the terms of the Tax Increment Allocation Redevelopment Act (the "Act"). Property tax incremental revenue generated by the development will play a decisive role in encouraging private development. Blighting conditions that have precluded intensive private investment in the past will be addressed. Through this Redevelopment Plan and Project, the City will serve as the central force for marshalling the assets and energies of the private sector for a unified cooperative public-private redevelopment effort. Ultimately, the implementation of the Redevelopment Plan and Project will benefit the City and all the taxing districts which encompass the R.P.A. in the form of a significantly expanded tax base, retain existing businesses in need of expanding their operations and create new employment opportunities as a result of new private development in the R.P.A.

#### Summary.

It is found and declared by the City that in order to promote and protect the health, safety, morals, and welfare of the public, that: blighted area conditions need to be eradicated, and that redevelopment of such areas must be undertaken; and, to alleviate the existing adverse conditions it is necessary to encourage private investment and enhance the tax base of the taxing districts in such areas by the development or redevelopment of project areas. The eradication of blighted areas by redevelopment projects is hereby declared to be essential to the public interest. Public/private partnerships are determined to be necessary in order to achieve development goals. Without the development focus and resources provided under the Tax Increment Allocation Redevelopment Act (Illinois Revised Statutes, Chapter 24, Section 11-74.4-3, as amended), the development goals of the municipality would not be achieved.

It was found and declared by the City that the use of incremental tax revenues derived from the tax rates of various taxing districts in the redevelopment project area for the payment of redevelopment project costs is of benefit to said taxing districts. This is because these taxing districts located in the redevelopment project area would not derive the benefits of an increased assessment base without the removal of the blighted conditions that now hinder its redevelopment.

The redevelopment activities that will take place within the R.P.A. will produce benefits that are reasonably distributed throughout the R.P.A.

The adoption of this Redevelopment Plan and Project makes possible the implementation of a comprehensive program for the economic redevelopment of the proposed area. By means of public investment, the R.P.A. will become an improved, more viable environment that will attract private investment and diversify the City tax base.

Pursuant to the Act, the R.P.A. includes only those contiguous parcels of real property and improvements thereon substantially benefited by the redevelopment project. Also pursuant to the Act, the R.P.A. is not less in the aggregate than  $1\frac{1}{2}$  acres.

## II.

### *Redevelopment Project Area Legal Description.*

The Redevelopment Project Area legal description is attached as (Sub)Exhibit 1.

## III.

### *Redevelopment Project Area Goals And Objectives.*

The following goals and objectives are presented for the R.P.A. in accordance with the City's zoning ordinance and comprehensive plan as amended. Such goals and objectives may be supplemented by future planning studies, traffic studies or site reports that are undertaken by the City or by development entities on behalf of the City as part of any Planned Unit Development (P.U.D.) process or other redevelopment activity.

#### General Goals.

- 1) To provide for implementation of economic development strategies that benefit the City and its residents.
- 2) To provide basic infrastructure improvements where necessary within the R.P.A.
- 3) To encourage a positive and feasible redevelopment of any vacant sites and/or underutilized sites, including business retention efforts, if applicable.
- 4) To preserve and improve the property tax base of the City.
- 5) To create new jobs and retain existing jobs for City residents.

- 6) Coordinate all redevelopment within the R.P.A. in a comprehensive manner, avoiding land use conflicts and potential negative community impacts with the surrounding area and existing users.

Specific Objectives.

- 1) Remove obsolescent and/or underutilized facilities in order to redevelop properties for market uses.
- 2) To address factors of inadequate utilities and deleterious land use throughout the R.P.A.
- 3) To provide infrastructure improvements necessary to the redevelopment or retention of businesses located within the R.P.A.
- 4) Provide competitive advantages for the redevelopment of properties within the R.P.A. (in comparison to out-of-City locations).
- 5) Assemble and/or dispose of public land in order to facilitate business retention, expansion, and attraction.

Redevelopment Objectives.

The purpose of the R.P.A. designation will allow the City to:

- a) Coordinate redevelopment activities within the R.P.A. in order to provide a positive marketplace signal;
- b) Reduce or eliminate blighted area factors present within the area;
- c) Accomplish redevelopment over a reasonable time period;
- d) Provide for high quality development within the R.P.A.; and
- e) Provide for an attractive overall appearance of the area.

Note: The objectives may be supplemented by findings of prospective reports or studies undertaken by the City or by development entities selected by the City.

The Redevelopment Project's implementation will serve to improve the physical appearance of the entire area and contribute to the economic development of the area. Job creation associated with the project will provide new, improved employment opportunities for community and City residents.

#### IV.

##### *Blighted Area Conditions Existing In The Redevelopment Project Area.*

##### Findings.

The Redevelopment Project Area was studied to determine its qualifications as a "blighted area" as such term is defined in the Tax Increment Allocation Redevelopment Act (the "Act"), Illinois Revised Statutes, Section 11-74.4-3, as amended. It was determined that the area as a whole qualifies as a "blighted area". Refer to Appendix A for a summary of findings and a list of existing qualification factors for the area.

##### Eligibility Survey.

The entire designated Redevelopment Project Area was evaluated in March and April, 1991 by representatives from the City, Kane, McKenna and Associates, Inc., and Chicago Associates Planners & Architects. In such evaluation, only information was recorded which would directly aid in the determination of eligibility for a tax increment finance district.

#### V.

##### *Redevelopment Project.*

##### A. Redevelopment Plan And Project Objectives.

The City purposes to realize its goals and objectives of encouraging the development of the R.P.A. and encouraging private investment in industrial, and mixed use redevelopment projects through public finance techniques including, but not limited to, Tax Increment Financing. The City proposes to undertake a two phased redevelopment project consisting of

Phase 1 -- Industrial Redevelopment/East and North Sections; Phase 2 -- Industrial and Mixed Use Redevelopment/Western Section. City objectives would be served through the following:

- (1) By improving facilities that may include:
  - i. Street improvements;
  - ii. Utility improvements (including water, storm water management and sewer improvements, water storage facilities, if necessary);
  - iii. Landscaping or streetscaping;
  - iv. Parking improvements/related parking improvements;
  - v. Signalization, traffic control and lighting;
  - vi. Appropriate signage.
- (2) By entering into redevelopment agreements with developers for qualified redevelopment projects.
- (3) By rehabilitating existing structures or site improvements; including necessary site preparation, demolition, clearance and grading of redevelopment sites and relocation.
- (4) By disposing and/or relocating public buildings that serve existing or ongoing institutional operations including site preparation and demolition.
- (5) By utilizing interest cost write-down pursuant to provisions of the Act.
- (6) By implementing a plan that addresses the redevelopment costs of land acquisition and assembly, site preparation, demolition/removals, and provision of infrastructure improvements or upgrading that may be necessary for adaption to a market oriented tax base, and diversifying the local economy.
- (7) Provide job training for City residents.
- (8) By exercising other powers set forth in the Act as the City deems necessary.

### B. Redevelopment Activities.

Pursuant to the foregoing objectives, the City will implement a coordinated program of redevelopment actions, including, but not limited to, site preparation, assembly/disposal of property, demolition/removals, infrastructure improvements and upgrading, relocation and provision of public improvements, where required. Interest cost rebate pursuant to the Act may also be undertaken.

### Proposed Public Improvements.

In accordance with its estimates of tax increment and other available resources, the City may provide public improvements in the R.P.A. to enhance the immediate area as a whole, to support the Redevelopment Project and Plan, and to serve the needs of City residents. Appropriate public improvements may include, but are not limited to:

- vacation, removal, resurfacing, paving, widening, construction, turn islands, construction or reconstruction of curbs and gutters, traffic signals, and other improvements to streets, alleys, pedestrian ways and pathways;
- reconfiguration of existing right-of-ways;
- construction of new right-of-ways including streets, sidewalks, turning lanes, curbs and gutters;
- demolition of any obsolete structure or structures;
- improvements of public utilities including construction or reconstruction of water mains, as well as sanitary sewer and storm sewer, water storage facilities, detention ponds, signalization improvements, and streetlighting;
- job training for area residents eligible for employment in the development of the projects.

The City may determine at a later date that certain improvements are no longer needed or appropriate, or may add new improvements to the list. The type of public improvement and cost for each item is subject to City approval and to the execution of a redevelopment agreement for the proposed project, in the form acceptable to the City.

Certain public facilities may be relocated in order to consolidate ongoing institutional operations. Utility improvements necessary to facilitate such relocation could also be undertaken by the City.

#### Acquisition And Clearance.

The City may determine that to meet redevelopment objectives it may be necessary to participate in property acquisition in the Redevelopment Project Area or use other means to induce transfer of such property to the private developer.

Clearance and grading of existing properties to be acquired will, to the greatest extent possible, be scheduled to coincide with redevelopment activities so that parcels do not remain vacant for extended periods of time and so that the adverse effects of clearance activities may be minimized.

Individual structures may be exempted from acquisition if they are located so as not to interfere with the implementation of the objectives of this Redevelopment Plan or the projects implemented pursuant to this Redevelopment Plan and the owner(s) agree(s) to rehabilitate or redevelop the property, if necessary, in accordance with the objectives of the Plan as determined by the City.

Property which has been acquired may be made available for temporary public or private revenue producing uses which will not have adverse impacts on the redevelopment area, until such time as they are needed for planned development. Such revenues, if any, would accrue to the Redevelopment Project Area.

#### Relocation.

Any businesses or residents occupying properties to be acquired may be considered for relocation, advisory and financial assistance in accordance with provisions set forth and adopted by the City and other governmental regulations, if any.

#### Land Assembly And Disposition.

Certain properties that may be acquired by the City, and certain properties presently owned by the City (e.g., street rights-of-way and public facilities) may be assembled into appropriate redevelopment sites. Property assembly activities may include use of the City's eminent domain power. These properties may be sold or leased by the City to a private developer in

whole or in part, for redevelopment subject to invitation for proposal requirements of the State of Illinois tax increment law. The City may amend this disposition plan in the future.

Terms of conveyance shall be incorporated into appropriate disposition agreements, and may include more specific restrictions than contained in this Redevelopment Plan or in other municipal codes and ordinances governing the use of land.

#### Demolition And Site Preparation.

Some of the buildings located within the R.P.A. may have to be reconfigured or relocated to accommodate new users or uses. Partial or complete demolition may be necessary as well as removal of debris. Additionally, the Redevelopment Plan contemplates site preparation or other requirements necessary to prepare the site for new uses, including the removal of environmentally hazardous materials, tanks, or soils. All of the above will serve to enhance site preparation for the City's desired redevelopment.

#### Interest Cost Write-Down.

Pursuant to the Act, the City may allocate a portion of incremental tax revenues to reduce the interest cost incurred in connection with redevelopment activities, enhancing the redevelopment potential of the R.P.A.

#### Job Training.

Pursuant to the Act, the City, its Mayor's Office of Employment and Training and other training providers, may develop training programs in conjunction with the redevelopment efforts.

#### Redevelopment Agreements.

Land assemblage may be conducted for (a) sale, lease or conveyance to private developers, or (b) sale, lease, conveyance or dedication for the construction of public improvements or facilities. Terms of conveyance shall be incorporated in appropriate disposition agreements which may contain more specific controls than those stated in this Redevelopment Plan.

In the event the City determines that construction of certain improvements is not financially feasible, the City may reduce the scope of the proposed improvements.

#### C. General Land Use Plan.

Existing land uses in the R.P.A. are primarily industrial, material/storage yards, vacant property, and railroad right-of-way, as shown in (Sub)Exhibit 3. Some City (institutional) uses that are predominantly industrial in character are also present in the R.P.A. (Sub)Exhibit 4 designates the intended general land uses identified for the R.P.A.

The Redevelopment Project shall be subject to the provisions of the City Zoning Ordinance as such may be amended from time to time including any Planned Unit Development (P.U.D.) undertaken within the R.P.A. The proposed general land uses would conform to City planning efforts (ongoing) or objectives.

#### D. Estimated Redevelopment Project Costs.

Redevelopment project costs mean and include the sum total of all reasonable or necessary costs incurred or estimated to be incurred, as provided in the T.I.F. statute, and any such costs incidental to this Redevelopment Plan and Project. Eligible costs permitted under the Act which may be pertinent to this Redevelopment Plan and Project are:

1. Costs of studies and surveys, development of plans and specifications, implementation and administration of the redevelopment plan including, but not limited to, staff and professional service costs for architectural, engineering, legal, marketing, financial, planning, and other special services, provided, however, that no charges for professional services may be based on a percentage of the tax increment collected;
2. Property assembly costs, including but not limited to acquisition of land and other property, real or personal, or rights or interests therein, demolition of buildings, and the clearing and grading of land;
3. Costs of rehabilitation, reconstruction or repair or remodeling of existing buildings and fixtures;
4. Costs of the construction of public works or improvements;

5. Costs of job training and retraining projects;
6. Financing costs, including but not limited to all necessary and incidental expenses related to the issuance of obligations and which may include payment of interest on any obligations issued pursuant to the Act accruing during the estimated period of construction of any redevelopment project for which such obligations are issued and for not exceeding 36 months thereafter and including reasonable reserves related thereto;
7. All or a portion of a taxing district's capital costs resulting from the redevelopment project necessarily incurred or to be in furtherance of the objectives of the redevelopment plan and project, to the extent the City by written agreement accepts and approves such costs;
8. Relocation costs to the extent that the City determines that relocation costs shall be paid or is required to make payment or relocation costs by federal or state law;
9. Costs of job training, advanced vocational education or career education, including but not limited to courses in occupational, semi-technical or technical fields leading directly to employment, incurred by one or more taxing districts, provided that such costs (i) are related to the establishment and maintenance of additional job training, advance vocational education or career education programs for persons employed or to be employed by employers located in the Redevelopment Project Area; and (ii) when incurred by a taxing district or taxing districts other than the City, are set forth in a written agreement by or among the City and the taxing district or taxing districts, which agreement describes the program to be undertaken, including but not limited to the number of employees to be trained, a description of the training and services to be provided, the number and type of positions available or to be available, itemized costs of the program and sources of funds to pay for the same, and the term of agreement. Such costs include, specifically, the payment by community college districts of costs pursuant to Sections 3-37, 3-38, 3-40 and 3-40.1 of the Public Community College Act and by school districts of costs pursuant to Sections 10-22.20a and 10-23.3a of The School Code;
10. If deemed prudent by the City for the redevelopment project, interest costs incurred by the redeveloper related to the construction, renovation or rehabilitation of the redevelopment project provided that:

- (a) such costs are to be paid directly from the special tax allocation fund establishment pursuant to the Act;
- (b) such payments in any one year may not exceed 30% of the annual interest costs incurred by the redeveloper with regard to the redevelopment project during that year;
- (c) if there are not sufficient funds available in the special tax allocation fund to make the payment pursuant to this paragraph (10) then the amounts so due shall accrue and be payable when sufficient funds are available in the special tax allocation fund; and
- (d) the total of such interest payments incurred pursuant to the Act may not exceed 30% of the total redevelopment project costs excluding any property assembly costs and any relocation costs incurred pursuant to the Act.

Estimated costs are shown in the next section. Adjustments to these cost items may be made without amendment to the Redevelopment Plan. The costs represent estimated amounts and do not represent actual City commitments or expenditures. Rather, they are a ceiling on possible expenditures of T.I.F. funds in the project area.

*T.I.F. Redevelopment Project.*

*Sanitary Drainage And Ship Canal*

*Tax Increment Redevelopment Area*

*Estimated Project Costs.*

Phase 1 and Phase 2 Program Actions/Improvements	Estimated Costs (A)
1. Land Acquisition and Assembly Costs including Demolition and Clearance/Site Preparation	\$ 5,500,000
2. Rehabilitation; Construction/ Renovation of Public Facilities	2,500,000

3.	Utility Improvements including, but not limited to, Water, Storm, Sanitary Sewer and the Service of Public Facilities	\$ 5,500,000
4.	Construction and Reconfiguration of Parking, Rights-of-Way and Street Improvements/Construction, Signalization, Traffic Control, and Lighting, Landscaping Buffering and Streetscaping	6,000,000
5.	Interest Costs pursuant to the Act	3,000,000
6.	Planning, Legal, Engineering, Administrative and other Professional Service Costs	1,500,000
7.	Relocation	500,000
8.	Job Training	<u>500,000</u>
	Total Estimated Costs:	\$25,000,000

- (A) All project cost estimates are in 1991 dollars. In addition to the above stated costs, any issue of bonds issued to finance a phase of the project may include an amount of proceeds sufficient to pay customary and reasonable charges associated with the issuance of such obligations as well as to provide for capitalized interest and reasonably required reserves. Adjustments to the estimated line item costs above are expected. Each individual project cost will be re-evaluated in light of the projected private development and resulting tax revenues as it is considered for public financing under the provisions of the Act.

**E. Sources Of Funds To Pay Redevelopment Project Costs Eligible Under Illinois T.I.F. Statute.**

Funds necessary to pay for public improvements and other project costs eligible under the T.I.F. statute are to be derived principally from property tax increment revenues, proceeds from municipal obligations to be retired primarily with tax increment revenues and interest earned on resources available but not immediately needed for the Redevelopment Plan and Project.

"Redevelopment Project Costs" specifically contemplate those eligible public costs set forth in the Illinois statute and do not contemplate the preponderance of the costs to redevelop the area.

The tax increment revenues which will be used to pay debt service on the tax increment obligations, if any, and to directly pay redevelopment project costs shall be the incremental increase in property taxes attributable to the increase in the equalized assessed value of each taxable lot, block, tract or parcel of real property in the R.P.A. over and above the initial equalized assessed value of each such lot, block, tract or parcel in the R.P.A. in the 1989 tax year.

Among the other sources of funds which may be used to pay for redevelopment project costs and debt service on municipal obligations issued to finance project costs are the following: special service area taxes, the proceeds of property sales, property taxes, certain land lease payments, certain Motor Fuel Tax revenues, certain state and federal grants or loans, certain investment income, and such other sources of funds and revenues as the City may from time to time deem appropriate.

The Redevelopment Project Area would not reasonably be expected to be developed without the use of the incremental revenues provided by the Act.

#### F. Nature And Term Of Obligations To Be Issued.

The City may issue obligations secured by the tax increment special tax allocation fund established for the Redevelopment Project Area pursuant to the Act or such other funds as are available to the City by virtue of its power pursuant to the Illinois State Constitution.

Any and/or all obligations issued by the City pursuant to this Redevelopment Plan and Project and the Act shall be retired not more than twenty-three (23) years from the date of adoption of the ordinance approving the Redevelopment Project Area. However, the final maturity date of any obligations issued pursuant to the Act may not be later than twenty (20) years from their respective date of issuance. One or more series of obligations may be issued from time to time in order to implement this Redevelopment Plan and Project. The total principal and interest payable in any year, or projected to be available in that year, from tax increment revenues and from bond sinking funds, capitalized interest, debt service reserve funds and all other sources of funds as may be provided by ordinance.

Those revenues not required for principal and interest payments, for required reserves, for bond sinking funds, for redevelopment project costs, for early retirement of outstanding securities, and to facilitate the economical issuance of additional bonds necessary to accomplish the Redevelopment Plan, may be declared surplus and shall then become

available for distribution annually to taxing districts overlapping the R.P.A. in the manner provided by the Act.

Such securities may be issued on either a taxable or tax-exempt basis, with either fixed rate or floating interest rates; with or without capitalized interest; with or without deferred principal retirement; with or without interest rate limits except as limited by law; and with or without redemption provisions.

#### G. Most Recent Equalized Assessed Valuation (E.A.V.) Of Properties In The Redevelopment Project Area.

The most recent estimate of Equalized Assessed Valuation (E.A.V.) of the property within the R.P.A. is approximately \$11,915,759 which is the 1989 Equalized Assessed Valuation. The Boundary Map, (Sub)Exhibit 3, shows the location of the R.P.A. It is anticipated that the E.A.V. may be reduced by approximately \$2,224,125 and the estimate of E.A.V. would then be \$9,691,634. The reduction is estimated based upon certain real estate tax protest(s) that could result in the Cook County Assessor reducing the 1989 E.A.V.

#### H. Anticipated Equalized Assessed Valuation.

Upon completion of the anticipated private development of the Redevelopment Project Area over a ten year period, it is estimated that the Equalized Assessed Valuation of the property within the Redevelopment Project Area will be approximately \$40,000,000. The estimate assumes a constant Cook County equalization factor (multiplier) of 1.836 (an average of the multiplier over the last 10 year period) and 1991 dollars.

## VI.

### *Scheduling Of Redevelopment Project.*

#### A. Redevelopment Project.

An implementation strategy will be employed with full consideration given to the availability of both public and private funding. It is anticipated that two phases of redevelopment will be undertaken: Phase 1 - Industrial Redevelopment/East and North Sections; Phase 2 - Industrial and Mixed Uses Redevelopment/Western Section.

The Redevelopment Project will begin as soon as a development entity has identified market uses for the sites and such uses are conformant with City zoning and planning requirements. Depending upon the scope of the development as well as the actual uses, the following activities may be included in each phase:

**Land Assembly and Disposition.** Certain properties in the R.P.A. may be acquired by the City and may be assembled into an appropriate redevelopment site. These properties may be acquired by the City, and subsequently sold or leased by the City to a developer for redevelopment of the site.

**Demolition and Site Preparation.** The existing structures located within the R.P.A. may have to be reconfigured or prepared to accommodate new uses. Partial demolition may be necessary as well as removal of debris. Additionally, the redevelopment plan contemplates site preparation, or other requirements necessary to prepare the site for the desired redevelopment.

**Landscaping/Buffering/Streetscaping.** The City may fund certain landscaping projects which serve to beautify public properties or rights-of-way and provide buffering between land uses.

**Water, Sanitary Sewer, Storm Sewer and Other Utility Improvements.** The City may extend or re-route certain utilities to serve or accommodate the new development. Upgrading of existing utilities may be undertaken. The provision of necessary detention or retention facilities may also be undertaken by the City.

**Roadway/Street/Parking Improvements.** Widening of existing road improvements and/or vacation of roads may be undertaken by the City. Certain secondary streets/roads may be extended or constructed by the City. Related curb, gutter, and paving improvements could also be constructed as needed. Parking facilities may be constructed that would be available to the general public.

**Public Facilities and Improvements.** The City may provide for the construction and/or renovation of public buildings and facilities in order to relocate institutional operations, needed services and to provide for efficient utilization of property within the R.P.A.

Utility services may also be provided or relocated in order to accommodate the consolidation of buildings.

**Traffic Control/Signalization.** The City may construct necessary traffic control or signalization improvements that improve access to the R.P.A. and enhance its redevelopment.

Public Safety Related Infrastructure. The City may construct certain public safety improvements including, but not limited to, public signage, public facilities, and streetlights.

Relocation. The City may pay for certain relocation costs, conformant with City policies and regulations.

Interest Cost Coverage. The City may pay for certain interest costs incurred by a redeveloper for construction, renovation or rehabilitation of the redevelopment project. Such funding would be paid for out of annual tax increment revenue generated from the R.P.A. as allowed under the Act.

Professional Services. The City may use tax increment financing to pay necessary planning, legal, engineering, administrative and financing costs during project implementation.

#### B. Commitment To Fair Employment Practices And Affirmative Action.

As part of any Redevelopment Agreement entered into by the City and any private developers, both will agree to establish and implement a honorable, progressive, and goal-oriented affirmative action program that serves appropriate sectors of the City. The program will conform to the most recent City policies and plans.

With respect to the public/private development's internal operations, both entities will pursue employment practices which provide equal opportunity to all people regardless of sex, color, race or creed. Neither party will countenance discrimination against any employee or applicant because of sex, marital status, national origin, age, or the presence of physical handicaps. These nondiscriminatory practices will apply to all areas of employment, including: hiring, upgrading and promotions, terminations, compensation, benefit programs and education opportunities.

All those involved with employment activities will be responsible for conformance to this policy and the compliance requirements of applicable state and federal regulations.

The City and private developers will adopt a policy of equal employment opportunity and will include or require the inclusion of this statement in all contracts and subcontracts at any level. Additionally, any public/private entities will seek to ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which all employees are assigned to work. It shall be specifically ensured that all on-site supervisory personnel are aware of and carry out the

ation to maintain such a working environment, with specific attention  
nority and/or female individuals.

ally, the entities will utilize affirmative action to ensure that business  
tunities are provided and that job applicants are employed and treated  
ondiscriminatory manner. Underlying this policy is the recognition by  
tities that successful affirmative action programs are important to the  
ued growth and vitality of the community.

Completion Of Redevelopment Project And Retirement Of  
ations To Finance Redevelopment Costs.

is Redevelopment Project will be completed on or before a date 23 years  
the adoption of an ordinance designating the Redevelopment Project  
. The City expects that the Redevelopment Project will be completed  
r than the maximum time limit set by the Act, depending on the  
mental property tax yield. Actual construction activities for both  
es are anticipated to be completed within approximately 7 to 10 years.

VII.

*Provisions For Amending The Tax Increment  
Redevelopment Plan And Project.*

Redevelopment Plan and Project may be amended pursuant to the  
ons of the Act. The City anticipates that a wider planning area,  
ng additional properties located along and adjacent to the Sanitary  
ge and Ship Canal, may be reviewed in future years. The planning  
ould concentrate on identifying potential redevelopment uses and the  
to address any blighted conditions inhibiting such uses.

[(Sub)Exhibits 2, 3, 4 and 5 attached to this  
Redevelopment Plan and Project printed  
on pages 3347 through 3352  
of this Journal.]

) Exhibit 1 and Appendix "A" attached to this Redevelopment Plan and  
read as follows:

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the west line of the east half of the northeast quarter of said Section 35; thence south along said west line to the southerly right-of-way line of the Illinois Central Railroad; thence westerly along said southerly right-of-way line to a point in a line 20 feet west of and parallel with the east line of the northwest quarter of said Section 35; thence south along said parallel line to the north line of the said Sanitary Drainage and Ship Canal, being the north line of Water Lot "E" in the Sanitary District Trustees' Subdivision, aforesaid; thence northeasterly along said northerly line to the west line of Kedzie Avenue; thence south along the west line of Kedzie Avenue, a distance of 258 feet to the south line of said Water Lot "E"; thence northeasterly along the southerly line of Water Lots "E" and "D" in said Sanitary District Trustees' Subdivision to its intersection with the west line of the Illinois Central Railroad right-of-way; thence southeasterly along said westerly right-of-way line to the east line of the west half of the northwest quarter of said Section 36; thence south along said east line to the southerly right-of-way line of the Atchison, Topeka & Santa Fe Railway; thence northeasterly along said southerly right-of-way line to the west line of California Avenue; thence south along the west line of California Avenue to the south line of 35th Street; thence east along the south line of 35th Street to the west line of the Pittsburgh, Cincinnati, Chicago & St. Louis Railway right-of-way; thence north along said westerly right-of-way line to the point of beginning, in Cook County, Illinois.

*Appendix "A".*

*City Of Chicago*

*T.I.F. Designation Report*

*Sanitary Drainage And Ship Canal Redevelopment Area.*

*I.*

*Executive Summary.*

Illinois municipalities are enabled to utilize tax increment revenues to aid redevelopment activities in blighted areas pursuant to the Tax Increment Allocation Redevelopment Act, as amended. This report documents the

presence of blighted conditions defined by the Act in the Sanitary Drainage and Ship Canal Redevelopment Area.

This Area first developed during the initial construction of the Illinois and Michigan Canal, and grew during the subsequent opening of the Sanitary Canal in 1900. Development has been historically oriented to the dominant modes of transportation in the area, initially the Canal and, then rail. As a result, the Area generally contains older structures that are characterized by blight, and improvements that are inadequate given the present reliance of industrial users on trucking.

Specifically, after thorough review of the Area, the following blighting characteristics conformant with the T.I.F. Act were found to be present:

For Improved Areas:

- Obsolescence
- Deleterious Land Use and Layout
- Depreciation of Physical Maintenance
- Inadequate Utilities
- Structures Below Minimum Code
- Excessive Vacancies
- Age
- Lack of Community Planning

For Unimproved Vacant Areas:

- Unused Disposal Site
- Unused Railyard/Railroad Right-of-Ways

In addition, other state requirements for designation of an area for T.I.F. were found to be satisfied. Therefore, the contemplated T.I.F. designation for the Area is consistent with the intent of the T.I.F. legislation.

## II.

### *Introduction And Background.*

#### Introduction.

The purpose of this report is to document in a comprehensive manner the extent to which the factors of a "blighted improved area" and a "blighted vacant area" may be found in the area generally located along the Sanitary Drainage and Ship Canal and the Stevenson Expressway, east of Central Park Avenue and west of the Baltimore and Ohio (B. and O.) Railroad in Chicago, Illinois and to determine the eligibility of this area for such status pursuant to the Tax Increment Allocation Redevelopment Act, Illinois Revised Statute, Section 11-74.4-3 (the "Act").

The Act addresses the elimination or reduction of blighted area factors within Illinois communities through the implementation of redevelopment measures. The Act authorizes the use of tax increment revenues derived from the tax rates of various taxing districts in a Redevelopment Project Area (the "R.P.A.") for the payment of costs related to the undertaking of redevelopment projects. In order to qualify for redevelopment eligibility under this legislation, an R.P.A. must contain conditions which warrant its designation as a "blighted area". The following sections of this report will describe conditions of blight which exist in the Study Area conformant to the provisions of the Act.

The Study Area as a whole is approximately bounded by the following:

beginning at the northeast corner of the Sanitary Drainage and Ship Canal ("Canal") and the southerly extension of Central Park Avenue; then northerly to the southern right-of-way of the Illinois Central Railway; then generally easterly to the Collateral Channel (a slip of the Canal); then northerly to 31st Street; then easterly to California Avenue; then southerly to the southwest corner of the Canal and California Avenue; then northeasterly to the western right-of-way of the B. and O. Railroad; then southerly to 35th Street; then westerly to California Avenue; then northerly to the southern right-of-way of the Atchison, Topeka and Santa Fe Railroad right-of-way; then northwesterly along the southern right-of-way of the Illinois Central Railroad; then westerly along the right-of-way to the southern side of the Canal to Kedzie Avenue; then northerly to the northern side of the Canal; then southwestwardly to the point of beginning.

The survey was undertaken in March and April, 1991 and also includes the findings of previous surveys and inventories conducted by various firms

and City agencies which were available and are pertinent to the evaluation of this Area. Additionally, other City plans and studies concerning the Area were reviewed.

#### Area Background.

The initial growth of the Study Area can be traced back to the opening of the Illinois and Michigan Canal in April, 1848. A major stimulus for trade with the entire Mississippi River Basin, the banks of the Canal were used almost exclusively for bulk storage of such commodities as grain and coal.

The traffic on the I. and M. Canal, however, peaked in 1882. The Sanitary District of Chicago was formed in 1890, and planned for a new, larger and deeper Canal which would better provide for removal of the City's sewage as well as permit greater shipping traffic. As a result of its planning efforts, the Sanitary and Ship Canal opened to the north of the original Canal in 1900. The new Canal connected the south branch of the Chicago River with Lockport, Illinois, approximately 34 miles away.

The Sanitary District marketed its land holdings (including areas within the Study Area) along both sides of the Canal for industrial uses as it pursued the connection of the Canal to the Mississippi River. Manufacturing firms, particularly medium and heavy industrial users, were early users of the Canal. These firms also took advantage of the excellent rail access afforded by such trunk lines as the Illinois Central and Chicago, Burlington and Quincy Railroads and switching lines such as the Chicago and Western Indiana Railroad Company. This era, between 1895 - 1920, was Chicago's "Golden Age" of industrial development, and many of the remaining structures in the Study Area were constructed around this period, including the Campbell's Soup tomato soup plant.

The Sanitary District did encounter some image problems for its landholdings, however. Many business owners eschewed the properties, perceiving the Canal as an "open sewer". Indeed, dumping was going on along its banks and has continued. The vacant tracts in the Study Area are among the remaining Sanitary District properties that were never developed or are under used.

Other structures which were constructed prior to this period were becoming deteriorated and obsolete due to age and technological advances. As shipping with motor trucks proliferated, industrial firms were freed from locations with rail access. Many manufacturing plants relocated to new facilities in the suburbs as early as the 1930's.

In order to address the needs for truck access, the Stevenson Expressway was constructed to the south of the Canal and opened in October, 1965. The siting of the expressway, however, affected circulation and ingress/egress to

the sites within the Study Area. As with the construction of the other superhighways, firm relocation out of the area may have been hastened by the highway.

The decline of manufacturing in the area continued into the 1980's with the relocation of Campbell's Soup to a location outside of Illinois, but other businesses continue to thrive in the area. By undertaking redevelopment efforts which will allow for certain activities such as clearing older, obsolete structures, improving access and traffic circulation, and making land available at competitive prices, the City will allow for rejuvenation and strengthening of the industrial uses (or other compatible uses remaining in the area).

The R.P.A. designation is being reviewed in order to assist the City and the community to actively pursue an economic development strategy that is able to comprehensively address area-wide blighted conditions. The designation would allow the parties to coordinate industrial redevelopment that is responsive to modern market trends and users and revitalize the area. The redevelopment would also provide new jobs, expansion opportunities for existing Chicago manufacturing and/or industrial firms and the creation of marketable land to attract new industry to the area and increased tax base to the City.

### III.

#### *Qualification Criteria Used.*

With the assistance of City of Chicago staff, and an independent planning consultant, Chicago Associates Planners and Architects (C.A.P.A.), Kane, McKenna and Associates, Inc. (K.M.A.) examined the proposed redevelopment project area (R.P.A.) to determine the presence or absence of appropriate qualifying factors listed in the Illinois "Real Property Tax Increment Allocation Act" (hereinafter referred to as "the Act"), as amended. The relevant sections of the Act are found below.

The Act sets out specific procedures which must be adhered to in designating a redevelopment project area. By definition, a "redevelopment project area" is:

"an area designated by the municipality, which is not less in the aggregate than one and one-half acres and in respect to which the municipality has made a finding that there exist conditions which cause the area to be classified as a blighted area or a conservation area, or a combination of both blighted area and conservation areas".

The Act defines a "blighted" area as follows:

"any improved or vacant area within the boundaries of a redevelopment project area located within the territorial limits of the municipality where, if improved, industrial, commercial and residential buildings or improvements, because of a combination of 5 or more of the following factors: age; dilapidation; obsolescence; deterioration; illegal use of individual structures; presence of structures below minimum code standards; excessive vacancies; overcrowding of structures and community facilities; lack of ventilation, light or sanitary facilities; inadequate utilities; excessive land coverage; deleterious land use or layout; depreciation of physical maintenance; lack of community planning; is detrimental to the public safety, health, morals or welfare or if vacant, the sound growth of the taxing districts is impaired by: 1) a combination of two or more of the following factors: obsolete platting of the vacant land; diversity of ownership of such land; tax and special assessment delinquencies on such land; deterioration of structures or site improvements in neighboring area adjacent to the vacant land; or 2) the area immediately prior to becoming vacant qualified as a blighted improved area; or 3) the area consists of an unused quarry or unused quarries; or 4) the area consists of unused railyards, rail tracks or railroad rights-of-way; or 5) the area, prior to its designation, is subject to chronic flooding which adversely impacts on real property in the area and such flooding is substantially caused by one or more improvements in or in proximity to the area which improvements have been in existence for at least five years; or 6) the area consists of an unused disposal site, containing earth, stone, building debris or similar material, which were removed from construction, demolition, excavation or dredge sites; or 7) the area is not less than 50 nor more than 100 acres and 75% of which is vacant, notwithstanding the fact that such area has been used for commercial agricultural purposes within five years prior to the designation of the redevelopment project area, and which area meets at least one of the factors itemized in provision 1) of this subsection (a) and the area has been designated as a town or village center by ordinance or comprehensive plan adopted prior to January 1, 1982, and the area has not been developed for that designated purpose".

The criteria listed in the Act have been defined for purposes of the analysis of an improved area as follows:

1. Age. Simply the time which has passed since building construction was completed.

2. **Illegal Use of Structure.** The presence on the property of unlawful uses or activities.
3. **Structures Below Minimum Code Standards.** Structures below local code standards for building, fire, housing, zoning, subdivision or lack of conformance with other applicable governmental codes.
4. **Excessive Vacancies.** When the occupancy or use level of the building is low for frequent or lengthy periods so as to represent an adverse area influence.
5. **Lack of Ventilation, Light or Sanitary Facilities.** Conditions which could negatively influence the health and welfare of building users.
6. **Inadequate Utilities.** Deficiencies in sewer, water supply, storm drainage, electricity, streets or other necessary site services.
7. **Dilapidation.** The condition where the safe use of the building is seriously impaired, as evidenced by substandard structural conditions; this is an advanced stage of deterioration.
8. **Obsolescence.** When the structure has become or will soon become ill-suited for the originally designed use.
9. **Deterioration.** A condition where the quality of the building has declined in terms of structural integrity and/or building systems due to lack of investment, misuse or age.
10. **Overcrowding of Structures and Community Facilities.** A level of use beyond a designed or legally permitted level.
11. **Excessive Land Coverage.** Site coverage of an unacceptably high level.
12. **Deleterious Land Use or Layout.** Inappropriate property use or platting, or other negative influences not otherwise covered, which discourages investment in a property.
13. **Depreciation of Physical Maintenance.** Decline in property maintenance which leads to building degeneration, health and safety hazards, unattractive nuisances, unsightliness, property value decline and area distress.
14. **Lack of Community Planning.** Deficiency in local direction of growth, development or redevelopment in order to maintain or enhance the viability of the area or community.

The criteria listed in the Act were defined for purposes of analysis of vacant land as follows:

1. **Obsolete Platting.** Recorded easement, rights-of-way, points of egress or lot or property lines are so recorded in a manner which is inimical to the redevelopment of properties.
2. **Diversity of Ownership.** Ownership of adjacent parcels by different parties serving to impede any assembly of land for development or redevelopment purposes.
3. **Tax and Special Assessment Delinquencies.** Any unpaid tax or special assessment bill currently attached to any parcel in the R.P.A.
4. **Deterioration of Structures or Site Improvements in Neighboring Areas.** The presence of deterioration as defined in nearby structures.
5. **Flooding on All or Part of Such Vacant Land.** The presence of flood plains or any recent history of flooding on any part of such land.

The final criteria listed in the Act is defined for purposes of analysis of vacant land as follows:

1. **Chronic Flooding.** A history of serious flooding problems which has been in existence for at least five (5) years. Such chronic flooding must adversely impact real property. There may be nearby improvements including structures, parking lots and roads substantially contributing to flooding.
2. **Unused Disposal Site.** The area consists of an unused disposal site containing earth, stone, building debris or similar material, which were removed from construction, demolition, excavation or dredge sites.
3. **Blighted Prior to Vacancy.** The area immediately prior to becoming vacant qualified as a blighted area defined earlier by the Act.
4. **Unused Quarries.** The presence of unused quarry or quarries.
5. **Unused Railways.** The presence of unused railyards, rail tracks or railroad rights-of-way.

6. Vacancy as Percentage of Acreage. The area is not less than 50 nor more than 100 acres and 75% of which is vacant, notwithstanding the fact that such area has been used for commercial agricultural (farming) purposes within five (5) years prior to the designation of the redevelopment project area and meets at least one (1) "blighted" factor (described above) and the area has been designated as a town or village center by ordinance or comprehensive plan adopted prior to January 1, 1982 and the area has not been developed for that designated purpose.

The presence of factors must be reasonably distributed throughout the respective primary tracts and be present to a meaningful extent. The analysis herein indicates that the factors are present to a meaningful extent for each primary tract.

#### IV.

##### *Study Area.*

The Study Area is divided into three (3) primary tracts. These primary tracts comprise the western, the central, and the eastern portions of the proposed R.P.A. and represent study/review sections within the proposed R.P.A.

##### Primary Tract 1.

Primary Tract 1 is bounded by California Avenue to the west, 35th Street to the south, the southern side of the Canal to the north, and the B. and O. Railroad right-of-way to the east.

The area primarily is dominated by two complexes: the vacated Campbell's Soup facilities and the Dickinson building, which account for half of the approximately fourteen (14) buildings in the area. There are also approximately twenty-two (22) fuel storage tanks and about two (2) ancillary buildings located in the primary tract. The Stevenson Expressway runs roughly through the center of the area from the southwest to the northeast.

### Primary Tract 2.

This primary tract is irregularly shaped and is generally bounded by the western easement along the Collateral Channel, Kedzie Avenue, and the Metropolitan Water Reclamation District (M.W.R.D.) property line to the west, a C. and I. W. right-of-way and 31st Street to the north, California Avenue to the east, and an Illinois Central Railroad and an Atchison, Topeka and Santa Fe Railroad rights-of-way, and the southern and northern edges of the Canal to the south. The area is divided width-wise by the C. and I. W. Railroad right-of-way; this separates property fronting 31st Street from property fronting the Canal. The Canal also divides the primary tract, with property on both sides of the Canal.

The area contains approximately twenty-two (22) buildings, nine (9) ancillary buildings, and six (6) storage tanks. North of the rail line are numerous industrial and warehousing buildings and ancillary structures such as sheds. The land north of the Canal but south of the railroad right-of-way has a number of structures, along with some fuel storage tanks. The land south of the Canal has some small structures, but is primarily used for outdoor storage.

To the west of Kedzie, there is a W.V.O.N. radio station building and a transmitting tower. Kedzie Avenue is transversed by two (2) viaducts.

### Primary Tract 3.

This primary tract is bounded by the Canal and Illinois Central Railroad right-of-way to the south, the I.N. Railway right-of-way to the west (which occupies what would be the southerly extension of Central Park Avenue), the Illinois Central and the C. and I. W. Railroad rights-of-way to the north. The tract extends as far east as Kedzie Avenue and is also bounded by the M.W.R.D. property line. This area consists of land owned primarily by the Metropolitan Water Reclamation District (M.W.R.D.) and some railroads. The property is vacant, and is wooded. It contains fill materials and formerly had some railroad tracks.

## V.

### *Methodology Of Evaluation.*

In evaluating the proposed R.P.A.'s qualification, the following methodology was utilized:

- 1) Site surveys of the Study Area were undertaken by representatives from the City of Chicago, Kane, McKenna and Associates, Inc. and Chicago Associates Planners and Architects in February through April of 1991. In some cases, site access was restricted. In these cases, aerial photographs, long-view reconnaissance, and Sanborn maps were relied upon. Site surveys were completed for each parcel and structure to which access could be gained within the proposed R.P.A.
- 2) Primary Tracts 1 and 2 were examined to determine the applicability of the fourteen (14) different criteria for qualification as improved land for T.I.F. under the Act. Primary Tract 3 was examined to determine the applicability of the seven (7) different criteria for qualification as vacant land for T.I.F. under the Act. A survey was then undertaken to independently review the factors for each primary tract. The following preliminary findings are presented to the best of our current knowledge according to the above information and techniques.
- 3) An evaluation of structures, noting depreciation, deterioration, or dilapidation as well as apparent vacancies or possible code violations was conducted by K.M.A. Exterior conditions were examined for structures, while internal examinations were conducted for some structures.
- 4) Individual structures were initially surveyed only in the content of checking, to the best of our knowledge, the existence of qualification factors of specific structures on particular parcels.
- 5) The entire area was studied in relation to review of available planning reports pertaining to the City, water and sewer atlases, City ordinances, 1989 tax levy year information from the Cook County Clerk's Office, Sidwell tax plat maps, local history, City records regarding age of structures and building code violations, and an evaluation of area-wide factors that affected the area's decline (e.g., deleterious land use or layout, obsolescence, et cetera). K.M.A. reviewed the area in its entirety. City redevelopment goals and objectives for the entire area were also reviewed.
- 6) Evaluation was made by reviewing the information collected and determining how each parcel and structure measured as to the prevalence of each factor.

#### Summary Of Area Findings.

The following is a summary of relevant qualification findings:

- 1) The entire R.P.A. comprises approximately 250 acres. The area is contiguous and is greater than 1½ acres in size, as required by the Act.
- 2) The Study Area can be categorized as a "blighted improved area" for Primary Tracts 1 and 2 and a "blighted vacant area" for Primary Tract 3 (a discussion of the basis for qualification of the R.P.A. follows in the next section). Factors necessary to make these findings are present to a meaningful extent and are reasonably distributed throughout the respective primary tracts as described in Exhibit 1.
- 3) Through the combination of proposed infrastructure improvements and reuse of obsolete properties, it is hoped that the marketability of the Area will be improved. Therefore, all property in the R.P.A. would substantially benefit by the proposed redevelopment project improvements.
- 4) The sound growth of these taxing districts that are applicable to the area, including the City, had been impaired by the factors found present in the area. For background on the decline of the Area, refer to pages 4 -- 6.
- 5) The area has not been subject to private redevelopment efforts due to area obsolescence and inadequate infrastructure. It is thus concluded that the area would not be subject to redevelopment without the investment of public funds, including property tax increments.

## VI.

### *Qualification Of Area/Findings Of Eligibility.*

#### Obsolescence.

The evolutionary use and importance of the major transportation systems (Canal to rail to expressway), which serves and defines the R.P.A., creates a context within which obsolete conditions exist.

#### Platting Characteristics That Are Obsolete.

The land was platted to conform to the linear pattern first established by

the Canal, followed by the rail, and reinforced by the Stevenson Expressway construction.

The large parcels are predominantly long, thin and rectangular in shape. In many instances this configuration allows for severely limited or no possible access by the secondary road system. For example, each of three properties within the R.P.A. that are adjacent to the Canal and front on California Avenue have approximately a 4,000 foot perimeter. Yet, the accessible street frontage on California Avenue (taking into account the gradient from the bridge) is less than 150 feet, or less than one-half of one percent of each properties' perimeter.

Other large single-user plats, such as the former Campbell's Soup plant, are usually bracketed by rail and expressway without adequate two-sided road access. But the eastern edge of this property (in Block 501), along with parcels to the north (in Blocks 201 and 503), also offer examples of obsolete platting of parcels originally laid out for residential use. The platting, which consists of residential-sized lots and vacated alleys and streets is neither representative of existing physical conditions nor suited for future industrial users.

There are also situations where the plat was defined by a subdivision network that consisted of branch canals interspersed with rail spurs without road access. These areas have been filled-in or abandoned; creating parcels large in size, varied in composition, and usually lacking in secondary road access. Hence, the plats conform to right-of-ways and improvements that are of a "ghost" nature; they have been filled-in, revised, abandoned or overlooked, with only the plat lines remaining.

#### Functional Characteristics That Are Obsolete.

Many of the buildings, improvements or equipment constructed on the plats were for functions that were specific to the adjacent modes of transport at particular historical points in time. Therefore, the size, shape and construction method was very much determined by this particular type of user. Examples include warehouse structures, truck or barge terminals, tank farms and building material yards.

#### Specific Parcels That Are Obsolete.

The Campbell's Soup property represents a single-use building/complex designed to provide for a fully integrated process of making canned soup. The original structures were added onto through the years to create a large, highly specific complex of structures and improvements. These uses are now discontinued, and the very specific nature, size and integrated form makes

them obsolete for new users (even a new soap company) given the inefficient characteristics of their outdated manufacturing process and facility's design.

#### Street, Alley Or Off-Street Parking Characteristics That Are Obsolete.

Secondary road access is non-existent throughout the R.P.A. The only existing public roads within the district are the quarter section streets: 31st Street, 35th Street, California Avenue and Kedzie Avenue. Alleys are non-existent in the R.P.A., and off-street parking is generally inadequate, either improvised in and around loading areas or assigned to vacant unpaved areas of each property. The near total lack of paved, drained or lighted streets, alleys or parking areas (on the whole) does not conform to current standards for improvements within industrial or manufacturing districts.

#### Utility Easements That Are Obsolete.

The lack of a sub-network of utilities is evidenced by the limited pattern of easements to directly serve different users. Because of the lack of interior public rights-of-way, the patterns for utility easements are not well defined or coordinated.

#### Deleterious Land Use And Layout.

The past modes of transport importance (canal and rail) have shaped the patterns of land use and layout. Therefore, a conflict exists between these past patterns and the requirements of future developments based on the importance of the location of the R.P.A.

#### Land Use Characteristics That Are Deleterious.

When current zoning ordinance performance standards are considered, there are some inconsistencies within the R.P.A. One example is the candy company which has an oil tank farm and building material yard for neighbors. With proper guidelines, these types of uses can be organized within any R.P.A.. But, the oil tanks came as a result of the importance of the Canal and the candy company came (and wants to expand) because of the expressway access. The potential of the expressway will continue to attract users similar to the candy company, and thereby add to the existing conditions of deleterious land use relationships.

The inactivity of the Collateral Channel also involves concerns that were mentioned as early as 1966 in the Mid-Chicago Economic Development Study. The report specifically mentions the limited use of the Collateral Channel and concerns of stagnant water, dumping, water level, circulation and insufficient dredging. Today, the channel is still largely inactive and the concerns mentioned 25 years ago remain valid.

Another facet of the deleterious land use focuses on the environmental assessments for various properties in the area. One area of particular concern is the evidence of oil leaching into soil on City-owned land adjacent to the candy company. Many of the users from the Canal or railroad era tended to store raw bulk materials in either yards or tanks. Many of these materials have a tendency to have environmental hazards, which vary in intensity, degree and regulatory clean-up required. This creates a deleterious setting for any potential future land uses.

#### Layout Characteristics That Are Deleterious.

The layout of improvements developed over a long period of time and paralleled specific periods of transportation modes. From Canal to rail to expressway, the improvements reflect the specific nature of the dominant mode. The linear pattern of the canal and railroads were duplicated by the construction of the expressway. However, as this evolution took place, the mode of transport became more interactive. Access for barges was limited to the banks of the Canal or Collateral Channels, while rail car access was slightly greater with the positioning of rail spurs. Truck accessibility on the other hand extends beyond the fixed rights-of-way of the expressway to primary roads, secondary streets and alleys and individual sites. Preferential streets for truck traffic exists on one-mile streets without connection to other streets. However, since the area has no secondary streets or alleys, the layout within the R.P.A. is deleterious with respect to the interaction at the various places of access.

Many of the area's larger parcels not only have limited road frontage, but it is often located near bridges, overpasses or viaducts. This is especially apparent at properties along Kedzie and California Avenues, which are adjacent to the Canal, the railroads and/or the expressway. This layout creates access points that are prone to accidents. As the City of Chicago's *Railroad Viaducts Vertical Clearance Improvements* report points out, between 1986 and 1988, the Kedzie Avenue project area had an accident rate that was nearly 70 percent greater than the City average and was "considered an accident cluster site".

The improvements have not kept pace with the evolution and development of the expressway. Today, the sub-set of primary, secondary and tertiary improvements do not reflect the fact that the expressway is the dominant mode of transport, and ignore the interactive relationships transportation.

Not only is this true for public improvements, but it is particularly evident with respect to truck access, loading dock and employee parking layouts on individual parcels of land. Additionally, the R.P.A. is laced with several similar or paralleled rail lines that hinder the layout of land for today's industrial users. Rail consolidation might serve to modify this blight characteristic.

Existing parking lots are afterthoughts of each user and occur only in those instances when a tract of land becomes vacant. Segregated loading dock areas of adequate size are sparse within the R.P.A.. The inadequacy or lack of a sub-roadway system makes it next to impossible to serve parking or truck areas. This fragmented condition of layout with respect to truck or auto access creates a condition of deleterious layout.

#### Parcel Specific Evidence.

The Campbell Soup Company has characteristics of deleterious layout particularly with respect to the fragmented evolution of the construction of the complex's structures and improvements. This is evidenced by the several different structural characteristics of the distinct generations of buildings. The early buildings are multi-story with large floor plates, tight column spacing, and low ceiling heights. Multi-storied buildings were added, continuity was maintained by allowing the same column spacing and ceiling heights. The floor plates were specifically shaped to a particular manufacturing process. The more recent additions have been single story structures with large column spaces and high bay ceiling heights.

#### Depreciation Of Physical Maintenance.

Depreciation of physical maintenance was present throughout Primary Tracts 1 and 2. Site improvements, including streets, curbs, sidewalks, driveways, and parking lots, suffered from a deferment of upkeep. This was variously evidenced by cracks and potholes in streets, sidewalks, driveways, and parking lots; by rusting, bent over fences; by partially paved parking lots and driveways with standing water; by chipped curbs (also missing sections at times) and by overgrown vegetation. Primary Tract 3 is vacant; as such there are no significant site improvements.

Depreciation of physical maintenance was also found to be present in structures. In Primary Tract 1, approximately 7 out of 14 buildings (50%) and in Primary Tract 2, approximately 17 buildings out of 22 (77%) were found to have depreciation of physical maintenance. (In addition, there were a number of sheds, ancillary buildings and fuel storage tanks which also exhibited depreciation.) This was variously evidenced by peeling paint; need for tuckpointing; cracked and broken windows; window frames in disrepair

or missing; graffiti; missing, ripped out wiring; rusting exterior pipes; cracks in bricks and cracks in mortar between bricks at times resulting in the shifting of sections of brick walls; chipped and/or buckling lintels; buckling brick facade, especially above windows where support is weaker; broken, bent doors; collapsing overhangs and interconnecting walkways.

#### Inadequate Utilities.

The existing water, sanitary, and storm sewer network that services that area is inadequate.

Utility characteristics that are obsolete and/or lacking:

The quality of the utility service in the R.P.A. is inadequate, specifically as it relates to the following issues:

#### Distribution Of Water And Sewer Mains.

Because of the absence of secondary streets and alleys, the distribution of sewer and water mains is limited to the primary quarter section streets previously mentioned in this report.

#### Water Service And Sewer Drains.

Instead of the branch services being part of an organized and flexible utility network, these branches are on private property and arranged to serve a specific user. Since the distribution of these branches are limited to the specific needs of the users, many of the larger parcels have limited services.

#### Mixed Storm And Sanitary Sewers.

Primarily due to the age of the sewer system, most of the storm and sanitary sewers are mixed. The capacity to meet current standards for separate storm and sanitary sewers is largely non-existent in the R.P.A.

### Utility Easements.

Partly because of the absence of secondary streets and alleys the area lacks clearly defined and coordinated utility easements. The utility services have patterns which address the specific requirements of each user, but have little planned potential or value for future needs.

### Utility characteristics that have deteriorated.

Given the age of the infrastructure in the area, deterioration is a valid concern. In the context of historical use, this infrastructure served industries which had an intensity and by-products of use which could adversely affect the integrity of the systems.

The lack or deterioration of retaining walls and proper drainage at many points along the Canal edge, create excessive run-off, erosion, silt build-up and potential contamination of the waterway.

### Excessive Land Coverage.

Properties in both Primary Tracts 1 and 2 exhibit an excessive amount of land coverage in relation to parking availability (off and on street) and loading provisions. Many of the buildings are situated near lot lines or occupy a significant portion of the lot.

The pragmatic issue of expansion space is an immediate concern which relates to excessive coverage. In the case of the Farley Candy plant on 31st Street, the building footprint covers nearly all of the site while the remainder of the property has been used for loading areas and has struggled to accommodate parking. Their need for space is increasing but their ability to do so is limited by their property line.

### Excessive Vacancies.

The vacancies within the R.P.A exist primarily in Primary Tract 1, but are also present in Primary Tract 2. The 1,663,522 square foot Campbell Soup Complex, within Primary Tract 1, is substantially vacant. The four older buildings were vacated in 1988 and the power station has not been used since 1982. The fifth building, the new warehouse, is only partially occupied. Primary Tract 2 has scattered vacancies. Some of the structures owned by the City stand empty. It also appears that the building formerly occupied by American Roofers (Primary Tract 2) is substantially vacant. As

noted above, many of these vacant buildings have not been properly maintained and are in a state of disrepair, at times severe disrepair.

#### Structures Below Minimum Code.

The City of Chicago Inspectional Services report of April 4, 1991 identified building code violations according to addresses from the Harris Data for the R.P.A. area. The concentration of major code violations are on the properties along 35th Street in Primary Tract 1. The violations include notices for boiler room, electrical and elevator inspections and cite pending court cases for these violations.

#### Age.

A majority of buildings within the R.P.A. are older, having been built prior to the construction of the Stevenson Expressway. It is estimated that at least 80% of the total buildings in the R.P.A. were constructed more than 35 years ago, and greater than 40% were constructed over 50 years ago. One structure reportedly dates back to the early 1800's, according to the current users.

#### Lack Of Community Planning.

The City's 1966 Comprehensive Plan and its 1967 Plan Summary and Development Area supplements generally identify the R.P.A. as suitable for industrial. Subsequently other plans have been prepared for the land within the R.P.A. or adjacent to it, but there is no clear direction to guide or coordinate the necessary infrastructure improvements with the requirements of existing and potential industrial users.

These specific plans dealt with the area in a wide range of scenarios, varying from the Central Communities Area (Chicago 21 Plan) to the Mid-Chicago Economic Development Study (1966), but often resulted in conflicting and confusing policy which contributes to the blight. The primary weakness of these plans is that while they address characteristics of issues such as obsolescence and deleterious land use and layout, the means and methods of implementation that should be used to redevelop the area are not presented. The problems have therefore stayed and further manifest themselves over the years.

The lack of community planning exists in the failure to address how this land in the R.P.A., originally shaped by the Canal, can realize its potential in its relationship to today's dominant modes of transport. Additionally,

community planning is lacking in its failure to recognize how the unique layering of all three dominant modes of transport, that not only serve but define the R.P.A., can be exploited to provide for flexible, economically beneficial development.

The community planning also lacks in the absence of coordination and communication between financial resources and plans, the planning documentation, comprehensive plans, economic development plans, or the zoning ordinance and the City agencies responsible for implementation, such as the Sewer and Water departments.

#### Unused Disposal Site.

A portion of the area in Primary Tract 3 consists of property bordering the Sanitary Drainage and Ship Canal. This property contains earth, stone, and building debris. Many of the visible piles/mounds appear to be present from "fly" dumping, or dumping near the existing rail rights-of-way. In addition, there are a number of abandoned automobiles, used tires, and other debris strewn throughout the site. The slope and gradient varies on the site -- overall, the elevation is estimated to vary 20 to 30 feet above Kedzie Avenue (at grade) to the east, and slopes in relation to the western railroad property and the Canal.

#### Unused Railyard/Railroad Rights-Of-Way.

A portion of the area in Primary Tract 3 consists of property that once served as a rail right-of-way. An abandoned rail line exists from Hamlin Avenue to the western part of the primary tract. Further, older maps indicate that a number of spurs and/or switching lines once existed in this northwest corner of the tract. Cook County Assessor's data indicates that the railroad classification was removed in 1986. The property has been vacant since that time, based upon current inspections and review of aerial photos.

### VII.

#### *Overall Assessment Of Area Qualifications.*

The primary cause of the R.P.A.'s stagnation relates to the interplay of a number of factors relating to its historical development. Its qualification for T.I.F. thus primarily and appropriately relies on area-wide factors.

The initial development was oriented toward shipping and railroad transportation, predating automobiles. The area, therefore, declined and stagnated as industry became heavily reliant on trucking.

As a result, the R.P.A. is characterized by obsolescence and deleterious land use and layout. Utilities systems are inadequate and require updating to modern standards. Furthermore, there is a shortage of parking for area workers due to excessive coverage of the land.

The overall decline has led to depreciation of improvements and buildings throughout the R.P.A.. Planning efforts to date have been generally ineffective because they were not implemented.

Individual buildings are older, many having been constructed prior to the 1950's, and are often obsolete; these two factors combine to produce excessive vacancies.

The vacant tracts of land generally have been subject to dumping, and contain abandoned railroad right-of-ways.

The R.P.A. as it exists today exhibits blighted characteristics which prohibit its redevelopment. The presence of the factors herein impairs the value of existing and new private investments thereby threatening the sound growth of the tax base of taxing districts in the area. The City's contemplated T.I.F. designation for the area is consistent with the intent of the T.I.F. legislation.

[Exhibit 1, Boundary Maps and Vicinity Map attached to this Appendix "A" constitute (Sub)Exhibits 2, 3, 4 and 5 attached to the Redevelopment Plan and Project and printed on pages 3347 through 3352 of this Journal.]

Exhibits 2, 3 and 4 attached to this Appendix "A" read as follows.

*Exhibit 2.*

*(To Appendix "A" Beginning On Page 3316  
Of This Journal)*

*Legal Description.*

All that part of the southwest quarter of Section 25; the northeast quarter, the northwest quarter and the west half of the southeast quarter of Section 35; the north half, the east half of the southwest quarter and the southeast quarter of Section 36, all in Township 39 North, Range 13, East of the Third Principal Meridian, together with certain lots and blocks in Manchester, being Steele and Buchanan's Subdivision of that part of the east half of the northeast quarter of said Section 36, lying north of the Illinois and Michigan Canal according to the plat thereof recorded July 31, 1857; S. J. Walker's Subdivision of that part south of the canal of the northwest quarter of Section 31, Township 39 North, Range 14, East of the Third Principal Meridian, also that part south of the canal of the east half of the northeast quarter of said Section 36, according to the plat thereof recorded February 6, 1863; the Campbell Soup Company (Central Division) Subdivision of part of the northeast quarter of said Section 36, according to the plat thereof recorded May 23, 1930 as Document No. 10667452; the Campbell Soup Company's Subdivision of part of the northeast quarter of said Section 36, according to the plat thereof recorded July 24, 1957 as Document No. 16966716; and the Sanitary District Trustees' Subdivision of the right-of-way from the north and south center line of Section 30, Township 39 North, Range 14, East of the Third Principal Meridian, to the west line of Section 7, Township 38 North, Range 13, East of the Third Principal Meridian, according to the plat thereof recorded March 31, 1908 as Document No. 4180216, more particularly described as follows:

beginning at the intersection of the southerly line of the Sanitary Drainage and Ship Canal, being the southerly line of Water Lot "B" in the Sanitary District Trustees' Subdivision, aforesaid, with the west right-of-way line of the Pittsburgh, Cincinnati, Chicago & St. Louis Railway in the east half of the northeast quarter of said Section 36; thence southwesterly along the southerly line of said Sanitary Drainage and Ship Canal to the east line of California Avenue; thence north along the east line of California Avenue to the north line of 31st Street to the intersection of the northerly extension of a line drawn 667.24 feet east of and parallel with the west line of the northwest quarter of said Section 36; thence south along said parallel line and its northerly extension to the northerly line of the Chicago & Indiana Western Railroad right-of-

way; thence southwesterly along said northerly right-of-way line to the west line of Kedzie Avenue; thence south along the west line of Kedzie Avenue to the southerly right-of-way line of said Chicago & Illinois Western Railroad; thence west along said southerly right-of-way line to the west line of the east half of the northeast quarter of said Section 35; thence south along said west line to the southerly right-of-way line of the Illinois Central Railroad; thence westerly along said southerly right-of-way line to a point in a line 20 feet west of and parallel with the east line of the northwest quarter of said Section 35; thence south along said parallel line to the north line of the said Sanitary Drainage and Ship Canal, being the north line of Water Lot "E" in the Sanitary District Trustees' Subdivision, aforesaid; thence northeasterly along said northerly line to the west line of Kedzie Avenue; thence south along the west line of Kedzie Avenue, a distance of 258 feet to the south line of said Water Lot "E"; thence northeasterly along the southerly line of Water Lots "E" and "D" in said Sanitary District Trustees' Subdivision to its intersection with the west line of the Illinois Central Railroad right-of-way; thence southeasterly along said westerly right-of-way line to the east line of the west half of the northwest quarter of said Section 36; thence south along said east line to the southerly right-of-way line of the Atchison, Topeka & Santa Fe Railway; thence northeasterly along said southerly right-of-way line to the west line of California Avenue; thence south along the west line of California Avenue to the south line of 35th Street; thence east along the south line of 35th Street to the west line of the Pittsburgh, Cincinnati, Chicago & St. Louis Railway right-of-way; thence north along said westerly right-of-way line to the point of beginning, in Cook County, Illinois.

*Exhibit 3.*

*(To Appendix "A" Beginning On Page 3316  
Of This Journal)*

*Illinois Tax Increment Financing  
Blight And Conservation Factors  
Improved Areas.*

Block/Primary Tract Number	1	2	Summary
Number of Buildings	14	22	36
Number of Parcels	37	28	65

1.	Age.			
	Number of Buildings 35 years or Older	8	21	29/36
2.	Decline of Physical Maintenance.			
	a. Number of Buildings Evidencing	7	17	24/36
	b. Number of Parcels with Site Improvements Evidencing	Area Wide		100%
3.	Deterioration.			
	a. Number of Buildings Evidencing			
	b. Number of Parcels with Site Improvements Evidencing			
4.	Dilapidation.			
	a. Number of Buildings			
	b. Number of Parcels with Site Improvements Evidencing			
5.	Obsolescence.			
	a. Number of Buildings			
	b. Number of Parcels with Site Improvements Evidencing	Area Wide		100%
6.	Number of Buildings Below Minimum Code.	3	5	8/36

7.	Number of Buildings Lacking Ventilation, Light, or Sanitation Facilities.			
8.	Number of Buildings with Illegal Uses.			
9.	Number of Buildings with Excessive Vacancies...	7	0	7/36
10.	Number of Buildings that are Abandoned.			
11.	Percentage of Block/Tract with Excessive Land Coverage.			
12.	Percentage of Block/Tract with Overcrowding of Structures.			
13.	Percentage of Block/Tract with Inadequate Utilities.	Area Wide		100%
14.	Percentage of Block/Tract with Deleterious Land Use or Layout.	Area Wide		100%
15.	Percentage of Block/Tract Suffering from Inadequate Community Planning.	Area Wide		100%

*Vacant Area*

A.	Block/Primary Tract Number			3
B.	No Buildings and Has Not Been in Agricultural Production in the Last 5 Years and is Not in an Industrial Park Conservation Area and Has Not Been Subdivided.			Yes
1.	Suffers from Obsolete Platting.			
2.	Diversity of Ownership.			
3.	Tax/Special Assessment Delinquencies.			
4.	All or Part Subject to Flooding.			

- |     |                                                                                                                                                                                     |     |
|-----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|
| 5.  | Adjacent Areas Have Deteriorating Structures or Site Improvements.                                                                                                                  |     |
| 6.  | Immediately Prior to Becoming Vacant, Qualified as a Blighted Improved Area.                                                                                                        |     |
| 7.  | Wholly or Partly an Unused Quarry or Quarries.                                                                                                                                      |     |
| 8.  | Wholly or Partly Unused Railyards, Railtracks or Railroad Rights-of-Way.                                                                                                            | Yes |
| 9.  | Suffers from Chronic Flooding which Affects Real Property in the Area and Such Flooding is Substantially Caused by Improvements in the Proximity in Existence for at Least 5 Years. |     |
| 10. | Unused Disposal Site Containing Earth, Stone, Building Debris or Similar Material from Construction, Demolition, Excavation or Dredge Sites.                                        | Yes |
| 11. | Qualifies as Blighted Because it has at Least Two of Factors 1 - 5 and Response on Line B is Yes.                                                                                   | No  |
| 12. | Has at Least One of Factors 6 - 10 and the Response on Line B is Yes.                                                                                                               | Yes |

*Exhibit 4.*

*(To Appendix "A" Beginning On Page 3316  
Of This Journal)*

*Building Survey Methodology.*

Building Condition Review.  
(provided by Chicago Associates  
Planners and Architects)

Depreciation of Physical Maintenance, Deterioration, and Dilapidation Factors were reviewed in a sequential manner.

Sequential in that depreciation leads to deterioration leads to dilapidation. Depending on the component of the structure involved the structure can show evidence of all three factors.

Example:

Depreciation: Wood trim at windows, doors and eaves shows evidence of peeling paint.

Deterioration: Gutters are hanging loose and connection between gutter and downspout are rusted away.

Dilapidation: Foundation wall and masonry wall above are cracked and pushed out of alignment causing the roof structure to sag and be displaced.

1. Depreciation Of Physical Maintenance.

Focus on deferred maintenance and the lack of maintenance of buildings, improvements and grounds consists of the following:

A. Building.

1. Unpainted or unfinished surfaces.
2. Paint peeling.
3. Loose or missing materials.
4. Sagging or bowing walls, floors, roofs, and porches.
5. Cracked or broken windows.
6. Loose gutters or downspouts.
7. Loose or missing shingles.
8. Damaged building areas in disrepair.

B. Front Yards, Side-Yards, Back Yards And Vacant Parcels.

1. Accumulation of trash and debris.
2. Broken sidewalks.
3. Lack of vegetation.
4. Lack of paving and dust control.
5. Potholes.
6. Standing water.
7. Fences in disrepair.
8. Lack of mowing and pruning of vegetation.

C. Streets, Alleys And Parking Areas.

1. Potholes.
2. Broken-up or crumbling surfaces.
3. Broken curbs and/or gutters.
4. Areas of loose or missing materials.
5. Standing water.

D. Is it unsightly?

E. Is it a health and safety problem?

2. Deterioration.

Focus on physical deficiencies or disrepair in buildings or site improvements requiring treatment or repair.

A. Deterioration of Buildings.

Buildings with Major Defects in the:

1. Secondary Building Components.
  - a. Doors
  - b. Windows
  - c. Porches
  - d. Gutters
  - e. Downspouts
  - f. Fascia materials
  
2. Major Defects In Primary Building Components.
  - a. Foundations
  - b. Frames
  - c. Roofs

All buildings and site improvements classified as dilapidated would also be deteriorated.

B. Deterioration Of Surface Improvements.

The conditions of roadways, alleys, curbs, gutters, sidewalks, off-street parking and surface storage areas may also evidence deterioration.

1. Surface cracking.
2. Crumbling.
3. Potholes and depressions.
4. Loose paving materials.
5. Weeds protruding through the surface.

C. General Economic Considerations.

1. Decline in quality of structure due to misuse, lack of maintenance, lack of investment, or age;
2. Low property values compared with other similar property in the municipality; and
3. Current land value with building is close to or below land value without building.

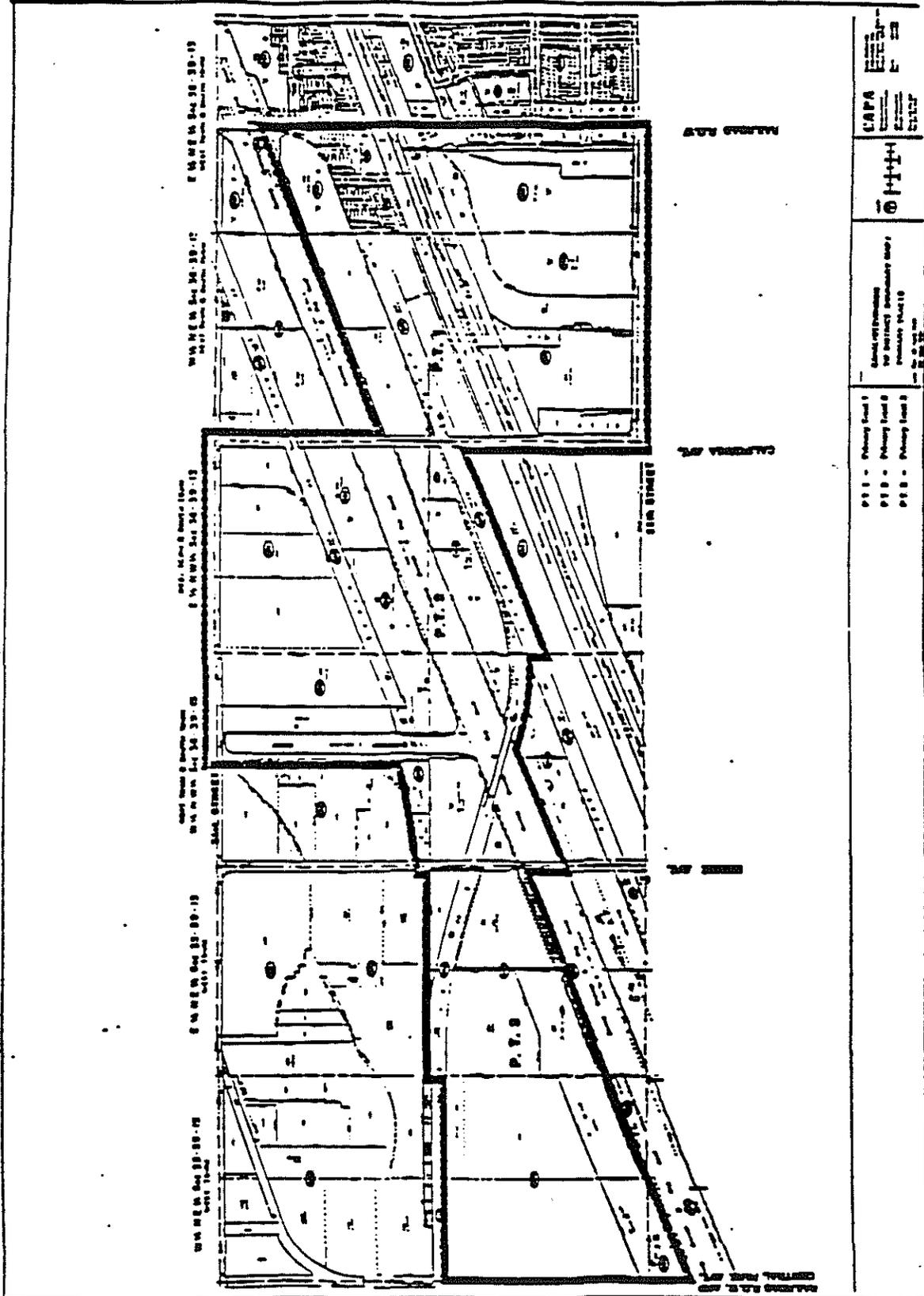
3. Dilapidation.

Focus on an "advanced" state of disrepair of buildings or improvements or the neglect of necessary repairs, showing evidence that the building or improvements are falling into a state of decay.

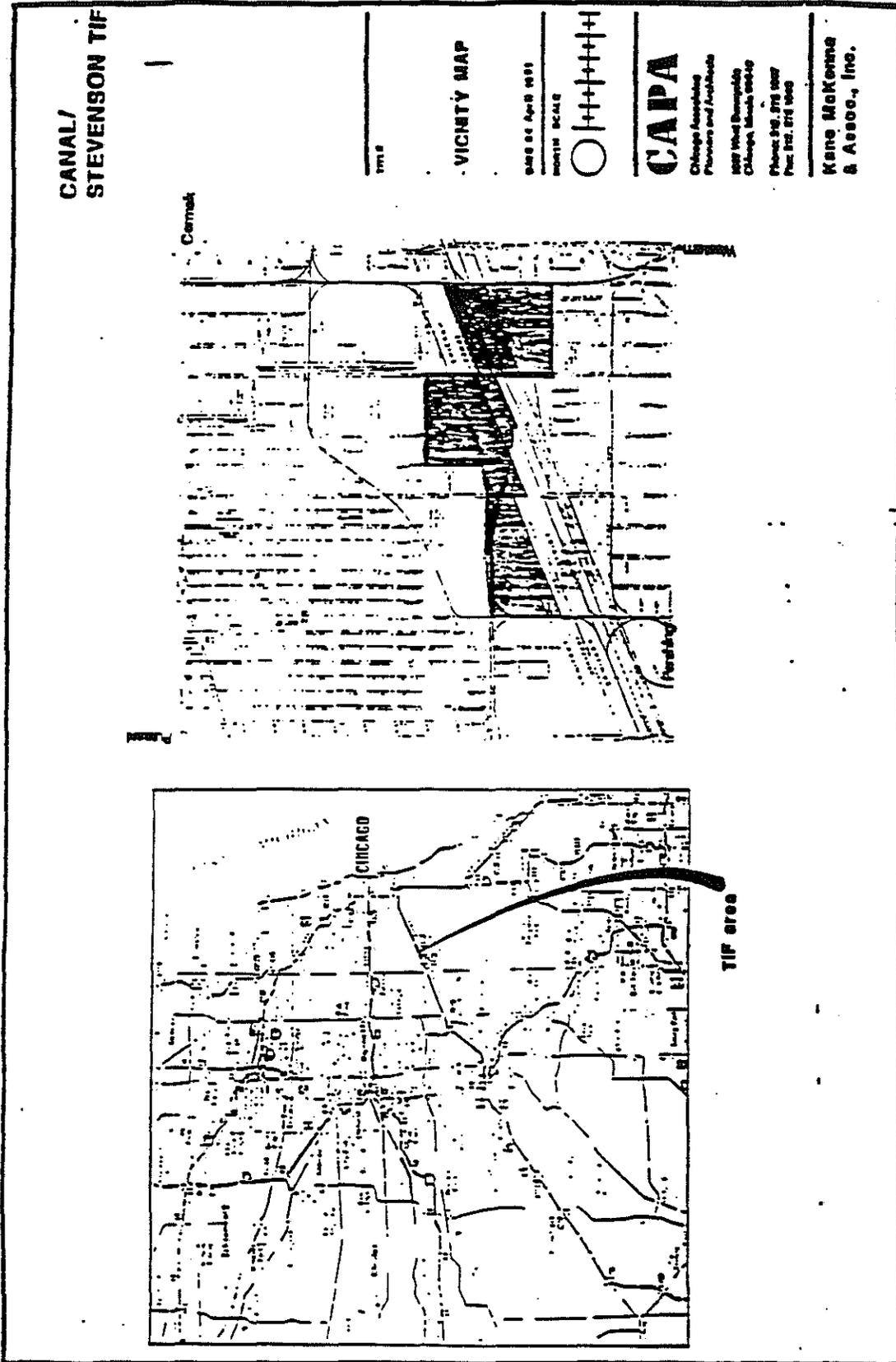
- A. Primary structural components (roof, bearing walls, floor structure, and foundation).
- B. Building systems (heating, ventilation, lighting, and plumbing).
- C. Secondary structural components in such combination and extent that:
  1. Major repair is required.
  2. The defects are so serious and so extensive that the buildings must be removed.
- D. Removal of the building is an option that is economically superior to almost any type of rehabilitation.
- E. Cost of repairs would be high especially when compared to return on investments.
- F. Safe use of the building is seriously impaired.

Building Age was determined through the review of City of Chicago data provided by the Department of Housing (Harris data).

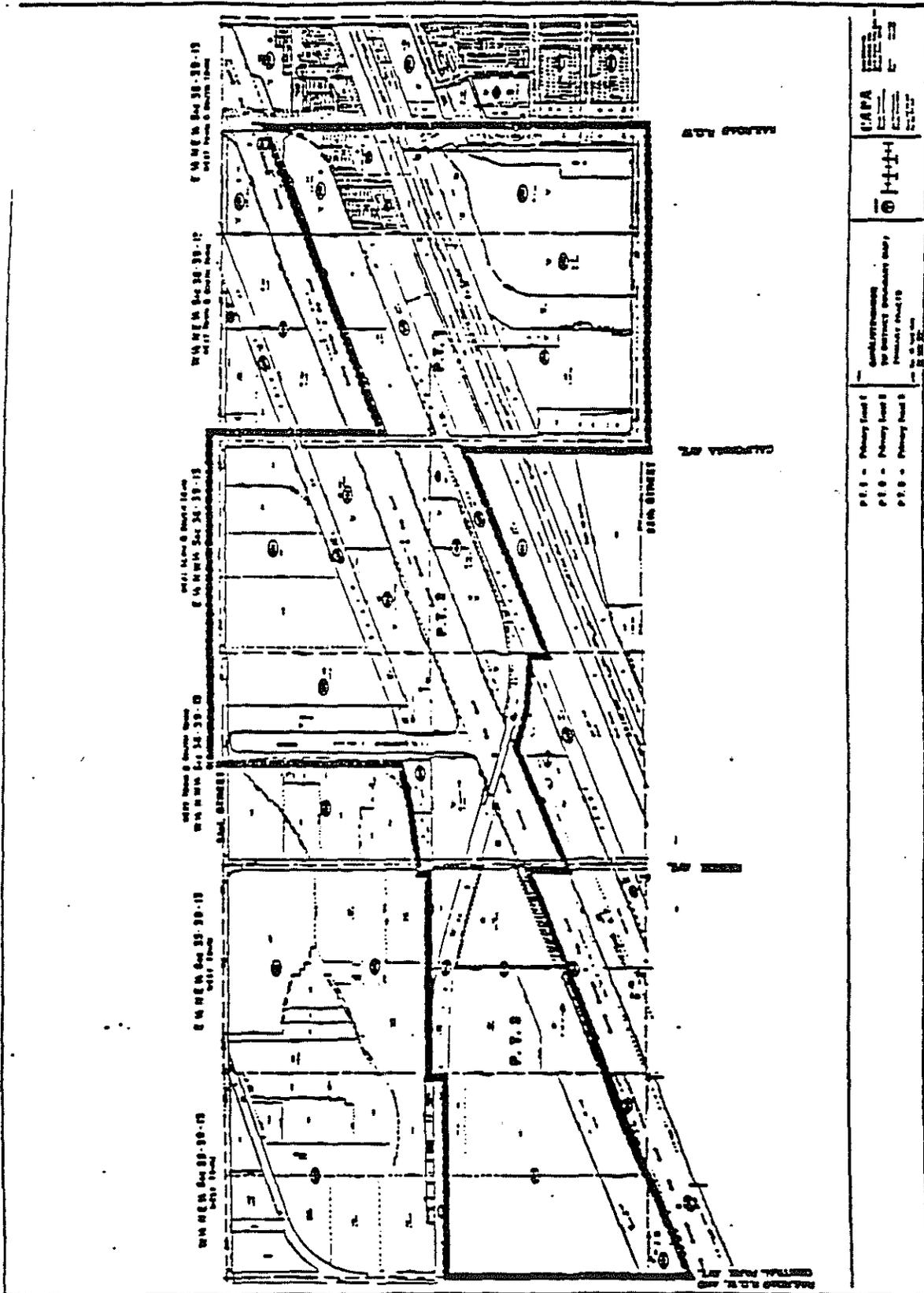
Exhibit "C".



(Sub)Exhibit 2 to Redevelopment Plan and Project.

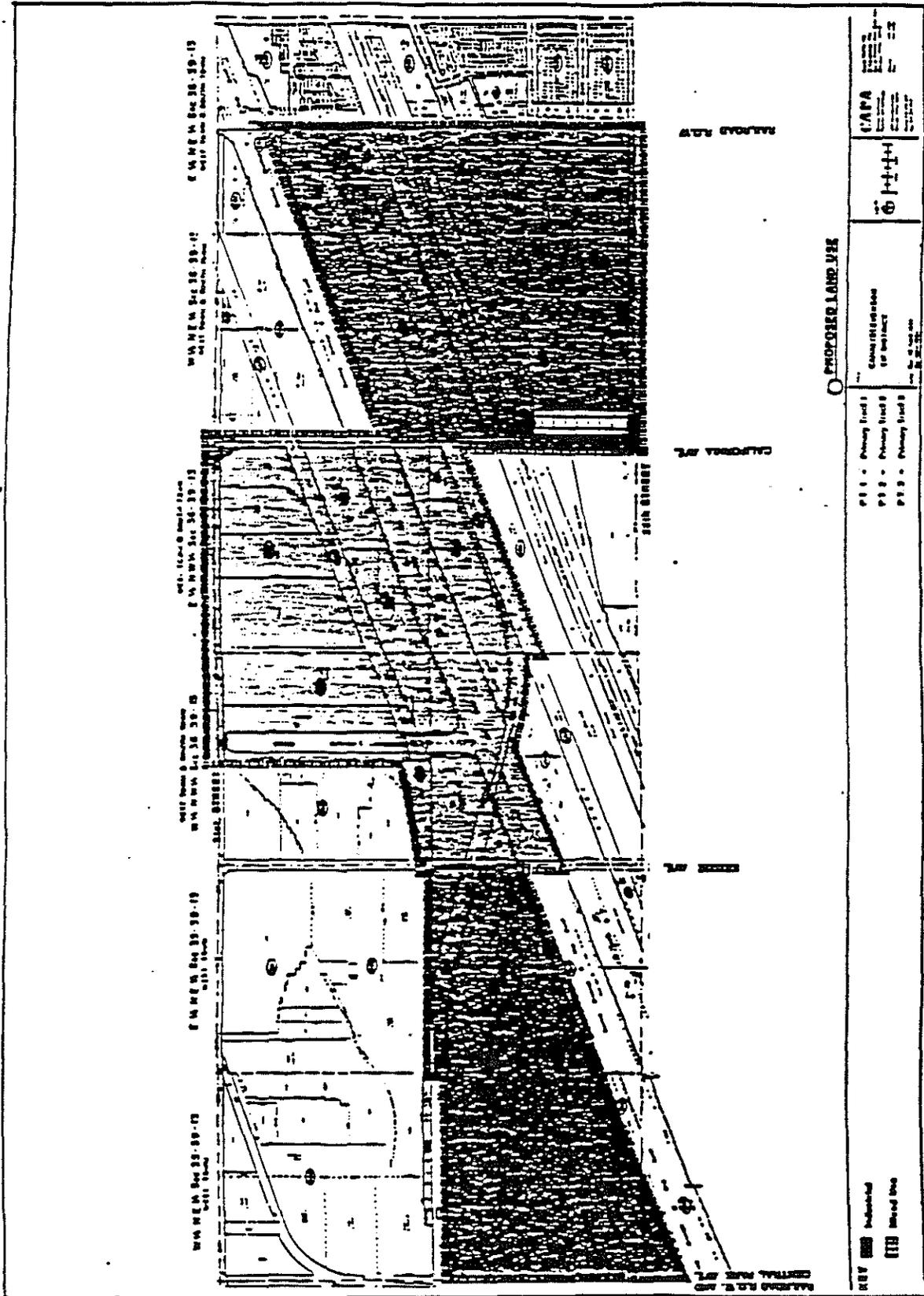


(Sub)Exhibit 3 to Redevelopment Plan and Project





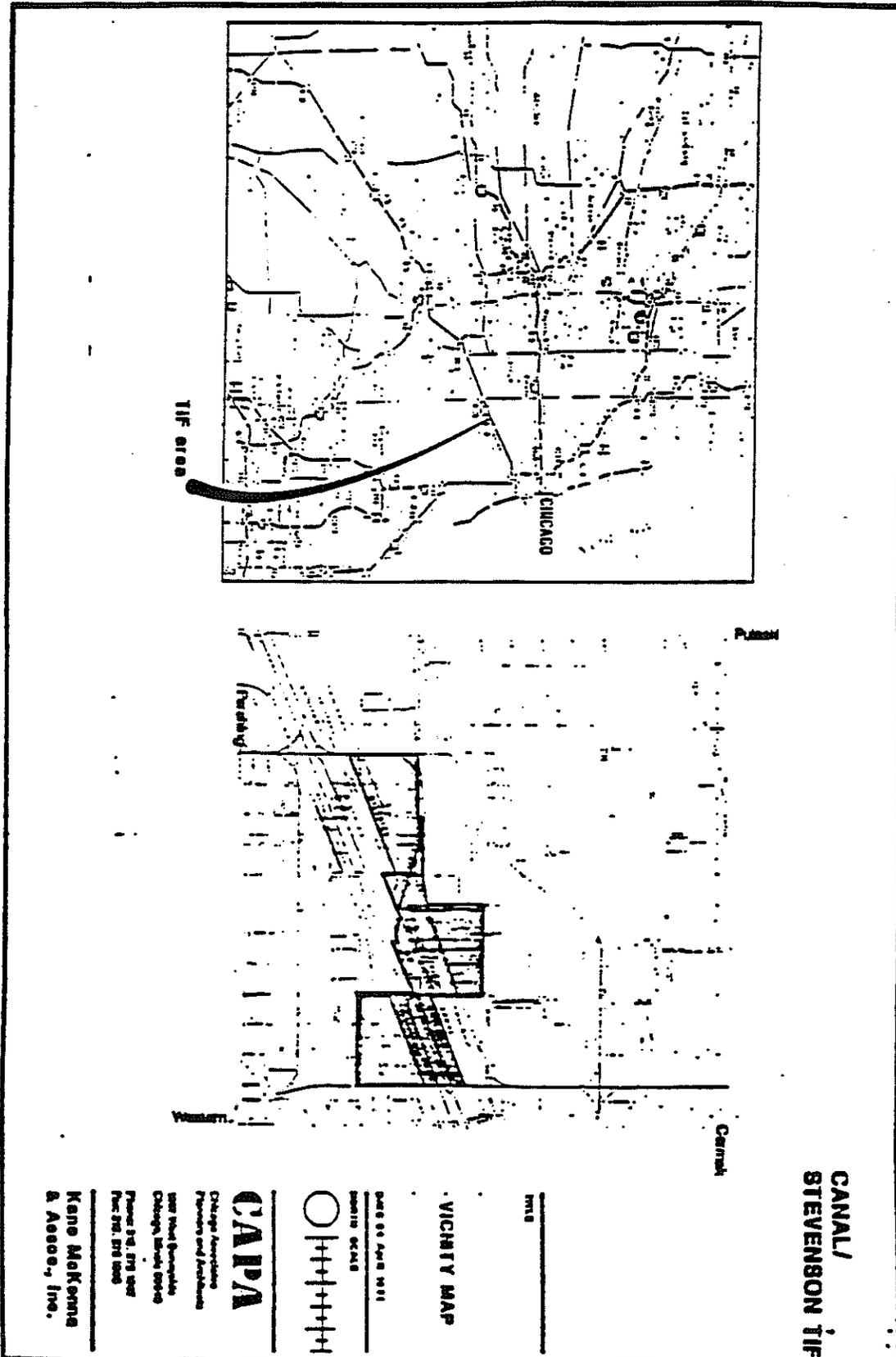
(Sub)Exhibit 5 to Redevelopment Plan and Project



<p>PROPOSED LAND USE</p> <p> <input type="checkbox"/> P11 - Primary Road  <input type="checkbox"/> P12 - Primary Road  <input type="checkbox"/> P13 - Primary Road  <input type="checkbox"/> P14 - Industrial  <input type="checkbox"/> P15 - Mixed Use         </p>	<p> <input type="checkbox"/> COMMERCIAL  <input type="checkbox"/> RESIDENTIAL  <input type="checkbox"/> INDUSTRIAL  <input type="checkbox"/> MIXED USE         </p>	<p> <input type="checkbox"/> C.A.P.A.  <input type="checkbox"/> COMMUNITY DEVELOPMENT  <input type="checkbox"/> ECONOMIC DEVELOPMENT  <input type="checkbox"/> ENVIRONMENTAL  <input type="checkbox"/> HEALTH  <input type="checkbox"/> HOUSING  <input type="checkbox"/> LAND USE  <input type="checkbox"/> PLANNING  <input type="checkbox"/> PUBLIC WORKS  <input type="checkbox"/> SAFETY  <input type="checkbox"/> SOCIAL SERVICES  <input type="checkbox"/> TRANSPORTATION  <input type="checkbox"/> UTILITIES         </p>
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Vicinity Map to Appendix A.



**CANAL/  
STEVENSON TIF**

**TITLE**

**VICINITY MAP**

**DATE 03 April 1991**

**SCALE 1:10,000**



**CAIPVA**

**Chicago Association  
Planners and Architects**

**100 West Superior  
Chicago, Illinois 60605**

**Phone: 312, 475 3007  
Fax: 312, 475 3005**

**Kane Makenna  
& Assoc., Inc.**

EXHIBIT D

TIF FUNDED IMPROVEMENTS

Acquisition and Transaction Costs		\$ 797,366
Rehabilitation		
Concrete		
Asbestos Removal	\$150,000	
Interior Demolition	<u>200,000</u>	
		350,000
Masonry		
Tuckpoint & Masonry Repair		100,000
Metals		
Misc. Iron		25,000
Thermal & Moisture Protection		
Roofing		515,000
Doors and Windows		
Window Replacement	\$275,000	
Doors/Frames/Hardware	<u>105,000</u>	
		380,000
Finishes		
Interior Sandblasting	\$ 65,000	
Carpet & JCT	190,000	
Drywall	65,000	
Ceilings	25,000	
Painting	<u>40,000</u>	
		385,000
Conveying Systems		
Elevators		130,000
Mechanical		
HVAC	\$322,634	
Plumbing	225,000	
Sprinklers	55,000	
Heating	180,000	
Coolers	<u>120,000</u>	
		902,634
Electrical		
Electrical		650,000
Site Work		
Vehicle Ramps		<u>130,000</u>
SUBTOTAL		\$4,365,000
Soft Costs		
Architectural	\$ 55,000	
Engineering and Design	35,000	
Legal Fees	<u>5,000</u>	
		\$ 95,000
	<u>TOTAL</u>	<u>\$4,460,000</u>

**EXHIBIT E**  
**CONSTRUCTION ESCROW TRUST**

**ESCROW TRUST NO.**  
**CHICAGO TITLE AND TRUST COMPANY, ESCROW TRUSTEE**

**DATE:** \_\_\_\_\_

At the request of NWS, Inc. (hereinafter referred to as Owner) **THE CITY OF CHICAGO** (hereinafter referred to as the City) will fund draw requests ("TIF Payments") in an amount not to exceed \$3,660,000.00 with respect to the premises described as follows:

SEE EXHIBIT A ATTACHED HERETO  
AND FORMING A PART HEREOF

Commonly known as 2550 West 35th Street, Chicago, Illinois, for the improvements thereon more particularly described on Exhibit B attached hereto and forming a part hereof.

You are authorized and directed to disburse the funds deposited hereunder pursuant to statements of amounts due, approved by the Owner and the City, after obtaining only such releases and satisfactions of mechanic's liens or waivers of mechanic's liens and sworn statements of the Owner (who is serving as its own general contractor and may also be referred to herein from time to time as the "General Contractor"), General Contractor, subcontractors and material suppliers required by Chicago Title Insurance Company to enable Chicago Title Insurance Company to issue the insurance coverage herein specified.

The Inspector/Architect is to be Sonoc Hutter Lee Ltd.

- I. Prior to the first disbursement of funds hereunder, the following are requirements of this escrow trust, to wit:
  - A. The Escrow Trustee shall be furnished:
    1. An approval by Owner and the City of the conditions of title to the premises, which conditions are described on Exhibit C attached hereto;
    2. An approval by the City for loan disbursement purposes of the Owner's statement and the General Contractor's Statement, which are provided at IA3 and IA4 below;
    3. A sworn Owner's statement disclosing all contractors and material suppliers with whom Owner has contracted, their addresses, work or materials to be furnished, amounts of the contracts, amounts paid to date amounts of current payments and balances due; and
    4. A sworn General Contractor's statement setting forth in detail all contractors and material suppliers with whom he has contracted, their addresses, work or materials to be furnished, amounts of contracts, amounts paid to date, amounts of current payments and balances due.
- II. Prior to each disbursement of funds hereunder (including the first and final disbursements), it is a requirement of this escrow trust that the Escrow Trustee be furnished:
  - A. A sworn Owner's statement disclosing the various contracts for labor and/or materials entered into by the Owner and setting forth the names of the contractors, their addresses, work or materials to be furnished, amounts of the contracts, amounts paid to date, amounts of current payments and balances due;

- B. A sworn General Contractor's Statement setting forth in detail all contractors and material suppliers with whom he has contracted, their addresses, work or materials to be furnished, amounts of contracts, amounts paid to date, amounts of current payments and balances due;
  - C. A written approval by the Owner and the City of the requested disbursement; approval on behalf of the City shall be given by any one of the following officials of the City's Department of Planning and Development: its Commissioner, First Deputy Commissioner or any Deputy Commissioner;
  - D. A request for TIF Payment attached hereto as Exhibit D, completed by the General Contractor, specifying the amount of the payment due with respect to each TIF Payment and the line item under which such payment is authorized and to be paid, in accordance with the schedule of TIF-Funded Improvements attached hereto as Exhibit B.
  - E. A certification by the Architect certifying that work for which disbursement is requested has been completed and materials are in place as indicated by the request for payment of the Owner and such work and materials are in substantial conformity with the "Scope Drawings" (as such term is defined in the Redevelopment Agreement dated \_\_\_\_\_, 1993, by and between Owner and the City). Said inspection is to be made and submitted by Sonoc Hutter Lee Ltd. To the extent that disbursement is sought for soft costs or work not typically overseen by an architect, an affidavit from the Construction Department of Owner certifying that the work corresponds to the request for payment and that payment as shown on the Owner's statement is due and owing;
  - F. Sufficient funds to cover the requested disbursements and to pay for extras or change orders for which waivers have not been deposited and for which funds have not previously been deposited;
  - G. Statements, waivers, affidavits, supporting waivers and releases of lien from such persons and in such form as may be required by Chicago Title Insurance Company for the purpose of releasing and waiving any and all rights to file mechanic's lien claims against the premises in question for those amounts and the work or materials which they represent; and
  - H. All required documentation for the final draw request must be submitted to Escrow Trustee prior to any disbursements of the final draw.
- III. Prior to the final disbursement of funds hereunder, it is a requirement that Owner furnish the following to Escrow Trustee with respect to the project in a form approved in writing by the City:
- A. A Certificate of Completion issued by the City pursuant to Section 7.01 of the Redevelopment Agreement;
  - B. A Certificate of Occupancy issued by the City of Chicago Department of Buildings with respect to the building situated on Parcel \_\_\_\_\_, as described on Exhibit A; and
  - C. An "as-built" copy of the "Scope Drawings" (as such term is defined in the Redevelopment Agreement).
- IV. Escrow Trustee will give the City written notice of the satisfaction of the conditions precedent for each draw as set forth above within one (1) business day after such satisfaction. The City shall fund such draw to Escrow Trustee within five (5) business days after receipt of such notice from Escrow Trustee.

- V. In the event that with respect to any disbursement of funds pursuant to the Owner's or General Contractor's Statements referenced above the Escrowee is issuing an ALTA Loan Policy with mechanic's lien coverage, covering a disbursement, or, if such a policy has been previously issued, an endorsement is being issued in the form as attached hereto and made a part hereof as Exhibit B, a copy of such policy or endorsement has been provided to the City.
- VI. All disbursements for construction purposes will be made by the Escrow Trustee directly to the General Contractor. In the event that the General Contractor and any subcontractor jointly authorize the Escrow Trustee to pay any funds due one to the other, the Escrow Trustee may comply with such authorization. However, it is the intention of the parties named herein and signatory hereto that no person not a party signatory to this escrow shall have the right to look to the Escrow Trustee for any disbursement hereunder under a third party beneficiary theory or otherwise, and that the Escrow Trustee owes no duty to any such third party to make any disbursement.
- VII. Owner and the City acknowledge and agree that the Chicago Title Insurance Company will not issue an owner's title insurance policy with mechanic lien coverage covering each disbursement, however, in conjunction with the final disbursement of the funds hereunder, it is a requirement of this escrow that Chicago Title Insurance Company shall furnish to Owner (with a copy to the City) either its ALTA Owner's Policy - 1990, with coverage over mechanic's liens, subject to the usual terms and conditions contained in that form of policy and also subject to exceptions as approved heretofore by Owner and the City or an ALTA Construction Owner's Policy with Endorsements attached hereto as Exhibit B, covering the date of final disbursement. With respect to the conditions of title, the liability of the Escrow Trustee in making any disbursements in reliance upon the title evidence referred to above shall not extend to the determination of whether or not it is acceptable to the City, the furnishings of funds for disbursement being considered the acceptance of title as so reported.
- VIII. If at any time during the course of construction the total of the unpaid disclosed cost of construction as indicated by the column totals on the Owner's sworn statements exceeds the amount of the undisbursed proceeds, the Escrow Trustee need not make further disbursements under the terms of this escrow trust until the Owner has deposited in this escrow trust either (a) the sum necessary to make the available funds equal to the unpaid disclosed cost of construction, or (b) a letter in form acceptable to the City, from a financial institution, stating that such financial institution has entered into a loan agreement with Owner pursuant to which it will fund the amount of such shortfall through this escrow prior to the final disbursement of funds hereunder. Also, if the Escrow Trustee discovers a misstatement in an affidavit furnished by Owner, it may stop disbursement until the misstatement has been corrected. Except as provided in Section VII above, Chicago Title and Trust Company has no liability hereunder to the Owner relating to protection against mechanic's lien claims.
- IX. The functions and duties assumed by Chicago Title and Trust Company include only those described in this agreement and the Escrow Trustee is not obligated to act except in accordance with the terms and conditions of this escrow trust. Chicago Title and Trust Company does not insure that the building will be completed, nor does it insure that the building, when completed, will be in accordance with plans and specifications, nor that sufficient funds will be available for completion, nor does it make the certifications of the Inspector/Architect its own, nor does it assume any liability for same other than procurement as one of the conditions precedent to each disbursement.
- X. Bill all title and escrow charges to Owner.

Escrow fees are payable when billed. If escrow fees are not paid within ten (10) days of billing, Escrow Trustee may cease making any further disbursements until escrow fees have been paid.

An Annual Maintenance Fee, as determined by the then current rate schedule, will commence \_\_\_\_\_ and may be deducted from the funds on deposit.

- XI. General Conditions: At any time prior to its commencement of disbursement of funds hereunder, the Escrow Trustee reserves the right to decline commencement of disbursements of funds if Chicago Title Insurance Company declines any risk offered for insurance hereunder, whereupon Escrow Trustee shall return to the City any documents in its possession relating to such loan and the funds received by it. Commencement of disbursement makes this agreement effective as to all funds received and disbursed on the construction in question.

Where, after the first disbursement, a further title search reveals a subsequently arising exception over which Chicago Title Insurance Company is unwilling to insure, the Escrow Trustee will notify the City and may discontinue disbursement until the exception has been disposed of to the satisfaction of the City. A mechanic's lien claim over which Chicago Title Insurance Company is required to insure hereunder does not warrant a discontinuance of disbursement.

The Escrow Trustee has no liability for loss caused by an error in the certification furnished it hereunder as to work in place.

The Escrow Trustee shall not be responsible for any loss of documents or funds while such documents or funds are not in its custody. Documents or funds deposited in the United States mail shall not be construed as being in custody of the Escrow Trustee.

In the event of default as declared by the City and/or foreclosure by the City, the Escrow Trustee shall have the right to discontinue further disbursements under this agreement.

Deposits made pursuant to these instructions may be invested on behalf of any party or parties hereto; provided, that any direction to the Escrow Trustee for such investment shall be expressed in writing and contain the consent of all other parties to this escrow, and also provided that the Escrow Trustee is in receipt of the taxpayer's identification number and investment forms as required. The Escrow Trustee will, upon request, furnish information concerning its procedures and fee schedules for investment.

Except as to deposits of funds for which Escrow Trustee has received express written direction concerning investment or other handling, the parties hereto agree that the Escrow Trustee shall be under no duty to invest or reinvest any deposits at any time held by it hereunder; and, further, that Escrow Trustee may commingle such deposits with other deposits or with its own funds in the manner provided for the administration of funds under the Illinois \_\_\_\_\_ Act and may use any part or all such funds for its own benefit without obligation to any party for interest or earnings derived thereby, if any. Provided, however, nothing herein shall diminish Escrow Trustee's obligation to apply the full amount of the deposits in accordance with the terms of this agreement.

In the event the Escrow Trustee is requested to invest deposits hereunder, Chicago Title and Trust Company is not to be held responsible for any loss of principal or interest which may be incurred as a result of making the investment or redeeming said investment of the purposes of this escrow trust.

- XII. Unless otherwise specified, any notice, demand or request required hereunder shall be given in writing at the addresses set forth below, by any of the following means: (a) personal service; (b) telecopy or facsimile; or (c) overnight courier.

If to the City: City of Chicago  
Department of Planning and Development  
121 North LaSalle Street  
Room 1000  
Chicago, Illinois 60602  
Attn: Commissioner  
Facsimile No.: 312-744-0113

With Copies To: City of Chicago  
Department of Law  
Finance and Economic Development Division  
121 North LaSalle Street  
Room 511  
Chicago, Illinois 60602  
Attn: Chief Assistant Corporation Counsel  
Finance Division  
Facsimile No.: 312-744-8538

If to Owner: NWS, Inc.  
2550 West 35th Street  
Chicago, Illinois 60632  
Attn: \_\_\_\_\_  
Facsimile No.: 312-254-9033

With Copies To: John P. Stephens  
Burke, Warren & MacKay, P.C.  
225 West Washington Street  
24th Floor  
Chicago, Illinois 60606  
Facsimile No.: 312-357-0707

If to Escrow Trustee: Chicago Title and Trust Company  
Division II  
171 North Clark Street  
Chicago, Illinois 60601  
Attn: Roland Smith  
Facsimile No.: 312-223-2108

Such addresses may be changed by notice to the other parties given in the same manner provided above. Any notice, demand, or request sent pursuant to either clause (a) or (b) hereof shall be deemed received upon such personal service or upon dispatch and any notice, demand or request sent pursuant to clause (c) shall be deemed received on the day immediately following deposit with the overnight courier.

- XIII. The undersigned agree that this Construction Loan Escrow Trust agreement is not intended by any of the undersigned to give any benefits, rights, privileges, actions or remedies to any person, partnership, firm or corporation other than Chicago Title and Trust Company, the City of Chicago (the City), and NWS, Inc. (Owner and General Contractor) as a third party beneficiary or otherwise under any theory of law.

**THE CITY OF CHICAGO**

**FOR THE CITY:**

By: \_\_\_\_\_

Title: \_\_\_\_\_

**NWS, Inc.**

**FOR THE OWNER:**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Accepted, Chicago Title and Trust Company, Escrow Trustee

By: \_\_\_\_\_

**AMENDMENT TO CONSTRUCTION LOAN ESCROW  
TRUST AND DISBURSING AGREEMENT**

**("AFTER-THE-FACT" PRODUCTION OF WAIVERS)**

With respect to Escrow Trustee requirements for the furnishing of mechanic's lien coverage to the City at the time of each disbursement of funds by Escrow Trustee, this Agreement is hereby amended in the following particulars: Article IIF is hereby deleted and the following substituted therefor:

- (4) At the time of the first construction draw paid pursuant to the provisions of this Agreement, Owner shall furnish or cause to be furnished to the Escrow Trustee a Sworn Statement to Owner by the General Contractor as set forth hereinbefore above at Article I at A.(4), together with the partial waiver of the General Contractor in the amount of the draw.

At the time of each subsequent construction draw, Owner shall furnish or cause to be furnished to Escrow Trustee a sworn statement to Owner by the General Contractor, as aforesaid, the partial waiver of the General Contractor in the amount of the current draw, and waivers of liens, affidavits, supporting waivers and/or release of liens, if necessary, from subcontractors and material suppliers listed on the prior draw.

At the time of the final construction loan disbursement by Escrow Trustee or at such time as CTIC is requested to issue the Standard ALTA Loan Policy, as provided in Article V hereof, furnishing to the insured thereunder full mechanic lien coverage, the Owner shall furnish, or cause to be furnished to Escrow Trustee a final sworn statement to Owner by the General Contractor, as aforesaid, a final waiver from the General Contractor, final waivers and affidavits from subcontractors, final waivers from sub-subcontractors, and material suppliers, and such other affidavits or releases of lien, if required by CTIC; or in the alternative, the Owner shall enter into such indemnification arrangement with CTIC as required by CTIC to underwrite the requested coverage and issue the said required policy.

Owner: **NWS, INC.**  
By: \_\_\_\_\_

The City: **The City of Chicago**  
By: \_\_\_\_\_

Escrow Trustee: **Chicago Title and Trust Company**  
By: \_\_\_\_\_

EXHIBIT A, continued

NEW NWS PROPERTY

THAT PART OF LOT 1 IN CAMPBELL SOUP COMPANY'S (CENTRAL DIVISION) SUBDIVISION BEING A SUBDIVISION OF PART OF THE NORTHEAST QUARTER OF SECTION 36, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MAY 23, 1930 AS DOCUMENT NUMBER 10667452, IN COOK COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE NORTH LINE OF WEST 35TH STREET IN THE CITY OF CHICAGO, COOK COUNTY, ILLINOIS, 33 FEET NORTH OF THE SOUTH LINE OF SAID NORTHEAST QUARTER OF SECTION 36, WITH THE WEST LINE OF SOUTH CAMPBELL AVENUE IN SAID CITY, AS DEDICATED SEPTEMBER 1, 1904 (NOW VACATED), PRODUCED NORTH, THENCE WEST ON AN ASSIGNED AZIMUTH OF 270 DEGREES 00 MINUTES 00 SECONDS ALONG THE NORTH LINE OF SAID 35TH STREET, 526.77 FEET FOR A POINT OF BEGINNING; THENCE CONTINUING ON AN AZIMUTH OF 270 DEGREES 00 MINUTES 00 SECONDS ALONG THE NORTH LINE OF 35TH STREET 372.53 FEET; THENCE ON AN AZIMUTH OF 00 DEGREES 01 MINUTES 00 SECONDS 140.24 FEET; THENCE ON AN AZIMUTH OF 90 DEGREES 01 MINUTES 00 SECONDS 13.84 FEET; THENCE ON AN AZIMUTH OF 00 DEGREES 01 MINUTES 00 SECONDS 261.47 FEET; THENCE ON AN AZIMUTH OF 90 DEGREES 01 MINUTES 00 SECONDS 4.40 FEET; THENCE ON AN AZIMUTH OF 00 DEGREES 01 MINUTES 00 SECONDS, 38.00 FEET TO THE CENTERLINE OF A 24" CONCRETE FOUNDATION WALL; THENCE ON AN AZIMUTH OF 90 DEGREES 01 MINUTES 00 SECONDS, ALONG SAID CENTERLINE AND FOUNDATION WALL, AND SAID CENTERLINE EXTENDED EAST, 354.30 FEET TO A POINT WHICH BEARS AN AZIMUTH OF 00 DEGREES 01 MINUTES 00 SECONDS FROM THE POINT OF BEGINNING; THENCE ON AN AZIMUTH OF 180 DEGREES 01 MINUTES 00 SECONDS SOUTH , 439.60 FEET TO THE POINT OF BEGINNING.



EXHIBIT C

3. TAXES FOR THE YEAR(S) 1992 2nd installment and 1993.

TAX NOS.: 16-36-200-035; 16-36-200-031; 16-36-200-033; 16-36-201-010;  
16-36-201-008.

17. MORTGAGE DATED MARCH 31, 1992 AND RECORDED APRIL 30, 1992 AS DOCUMENT 92293225 MADE BY NWS, INC., TO AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO TO SECURE A NOTE FOR \$3,750,000.00.  
(AFFECTS PARCELS 2 AND 3)

18. ASSIGNMENT OF LEASES AS STATED BELOW:

ASSIGNOR: NWS, INC., A CORPORATION OF ILLINOIS  
ASSIGNEE: AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO  
DATED: MARCH 31, 1992  
RECORDED: APRIL 30, 1992  
DOCUMENT NUMBER: 92293226

(AFFECTS PARCELS 2 AND 3)

19. MEMORANDUM OF SUBORDINATION AGREEMENT DATED APRIL 1, 1992 AND RECORDED APRIL 30, 1992 AS DOCUMENT 92293229 MADE BY AND BETWEEN AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO AND INB NATIONAL BANK, AS AGENT ON BEHALF OF INB NATIONAL BANK AND BANK ONE, INDIANAPOLIS, N.A.  
(AFFECTS PARCELS 2 AND 3)

20. FINANCING STATEMENT AS STATED BELOW:

SECURED PARTY: AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO  
DEBTOR: NWS, INC., A CORPORATION OF ILLINOIS  
FILED: MAY 1, 1992  
DOCUMENT NUMBER: 92U 07718

(AFFECTS PARCELS 2 AND 3)

21. MORTGAGE DATED APRIL 1, 1992 AND RECORDED APRIL 30, 1992 AS DOCUMENT 92293227 MADE BY NWS, INC., A CORPORATION OF ILLINOIS TO INB NATIONAL BANK, AS AGENT ON BEHALF OF INB NATIONAL BANK AND BANK ONE, INDIANAPOLIS, N.A. TO SECURE AN INDEBTEDNESS FOR \$4,250,000.00.  
(AFFECTS PARCELS 2 AND 3)

22. FINANCING STATEMENT AS STATED BELOW:

SECURED PARTY: INB NATIONAL BANK, AS AGENT ON BEHALF OF INB NATIONAL BANK AND BANK ONE, INDIANAPOLIS, N.A.  
DEBTOR: NWS, INC., A CORPORATION OF ILLINOIS  
FILED: MAY 1, 1992  
DOCUMENT NUMBER: 92U 07719

(AFFECTS PARCELS 2 AND 3)

23. ASSIGNMENT OF RENTS RECORDED APRIL 30, 1992 AS DOCUMENT NO. 92293228 MADE BY NWS, INC., A CORPORATION OF ILLINOIS TO INB NATIONAL BANK, AS AGENT ON BEHALF OF INB NATIONAL BANK AND BANK ONE, INDIANAPOLIS, N.A. (AFFECTS PARCELS 2 AND 3)
24. RAILROAD RIGHTS OF WAY, SWITCH AND SPUR TRACKS, IF ANY.  
(AFFECTS PARCELS 2 AND 3)
25. EASEMENT FOR DOCKAGE RIGHT, RIGHT OF WAY, AND RAILROAD AND TRACKAGE RIGHTS, INGRESS AND EGRESS AND SEWER CONNECTIONS OVER A PART OF THE PROPERTY AS SET OUT IN AN INDENTURE BETWEEN ALBERT DICKINSON COMPANY, A CORPORATION, AND CAMPBELL SOUP COMPANY, A CORPORATION, DATED NOVEMBER 13, 1925 AND RECORDED NOVEMBER 18, 1925 AS DOCUMENT 9099931, IN BOOK 22036, PAGE 1.  
(AFFECTS PARCELS 2 AND 3)
26. AGREEMENT DATED SEPTEMBER 6, 1957 AND RECORDED MARCH 13, 1958 AS DOCUMENT 17154292 BETWEEN THE COSMOPOLITAN NATIONAL BANK OF CHICAGO AS TRUSTEE UNDER TRUST NUMBER 3821 AND CAMPBELL SOUP COMPANY RELATING TO THE RELOCATION OF CERTAIN RAILROAD TRACKS, BUILDING LINES, CONSTRUCTION AND MAINTENANCE OF EXISTING BUILDINGS TO BE BUILT IN THE FUTURE.  
(AFFECTS PARCEL 2 AND LOT 4 OF PARCEL 3).
27. RIGHT TO USE THAT PORTION OF THE RAILROAD TRACK DESCRIBED AS TRACK A IN DOCUMENT NO. 9099931, (NOTED HEREIN) WHICH LIES WITHIN THE BOUNDARIES OF PARCELS 1 AND 2 AFORESAID, AND THE RIGHT TO USE THE SWITCH TRACK NOW LYING ON THE STRIP OF LAND DESCRIBED IN DOCUMENT 10333037 (NOTED HEREIN) AND THE RIGHT TO CONSTRUCT, MAINTAIN AND USE A SINGLE CONNECTING RAILROAD TRACK AT A LOCATION APPROVED BY CAMPBELL SOUP COMPANY RUNNING FROM A POINT WHERE THE NORTH WEST BOUNDARY OF PARCEL 1 AFORESAID (165.37 FEET IN LENGTH) INTERSECTS THE SOUTHERLY LINE OF THE CANAL RESERVE OF THE ILLINOIS AND MICHIGAN CANAL, TO A CONNECTION WITH SAID TRACK 'A', FOR THE RUNNING AND OPERATING OF ENGINES AND CARS OVER AND UPON SAID TRACK FOR THE TRANSPORTATION ONLY OF INCOMING AND OUTGOING FREIGHT OF ANY INDUSTRY, LOCATED ON LAND THEN OWNED BY THE HEREINAFTER NAMED GRANTOR. LYING WEST OF AND ADJOINING SAID PARCEL 1 AND . . . SOUTH OF THE SOUTHERLY LINE OF THE ILLINOIS AND MICHIGAN CANAL RESERVE, TOGETHER WITH THE RIGHT OF THE SAID CAMPBELL SOUP COMPANY TO RELOCATED SAID TRACK A, SAID SWITCH TRACK AND SAID CONNECTING TRACK AT ANY TIME AS RESERVED IN DEED FROM THE COSMOPOLITAN NATIONAL BANK, AS TRUSTEE UNDER TRUST AGREEMENT KNOWN AS TRUST NO. 3821 TO CAMPBELL SOUP COMPANY, A CORPORATION OF NEW JERSEY DATED SEPTEMBER 14, 1955 AND RECORDED SEPTEMBER 27, 1955 AS DOCUMENT 16374751.  
(AFFECTS PARCELS 2 AND 3)
28. EASEMENT IN, UPON, UNDER OVER AND ALONG THE LAND TO INSTALL AND MAINTAIN ALL EQUIPMENT NECESSARY FOR THE PURPOSE OF SERVING THE LAND AND OTHER PROPERTY WITH GAS SERVICE, TOGETHER WITH RIGHT OF ACCESS TO SAID EQUIPMENT, AS CREATED BY GRANT TO NORTHERN ILLINOIS GAS COMPANY RECORDED MAY 9, 1989 AS DOCUMENT NUMBER 89209220.  
  
(AFFECTS PARCEL 2)
30. UNRECORDED SUBLEASE AND ADDENDUM DATED MARCH 14, 1991 AS AMENDED BY ADDENDUM DATED JANUARY 8, 1993, MADE TO CENTRAL AMERICAN WAREHOUSE FOR A TERM ENDING APRIL 30, 1993, AND CONTINUING THEREAFTER UNLESS AND UNTIL TERMINATED UPON THIRTY (30) DAYS PRIOR WRITTEN NOTICE BY EITHER PARTY, AND ALL RIGHTS THEREUNDER OF, AND ALL ACTS DONE OR SUFFERED THEREUNDER BY, SAID LESSEE OR BY ANY PARTY CLAIMING BY, THROUGH, OR UNDER SAID LESSEE.  
  
(AFFECTS PARCELS 2 and 3)

Exhibit D

REQUEST FOR TIF PAYMENT

NWS, Inc., an Illinois corporation ("NWS"), acting as its own General Contractor for the rehabilitation of the NWS facility TIF-Funded Improvements, does hereby request that TIF Payments be made by the City of Chicago (the "City") for certain tax increment eligible improvements in accordance with the Redevelopment Agreement dated March \_\_\_\_, 1993 by and between the City and NWS, and the Construction Escrow Trust between the City, NWS and Chicago Title and Trust Company dated March \_\_\_\_, 1993 (the "Escrow"). Terms used herein and not otherwise defined shall have the meanings set forth for such terms in the Escrow.

TIF Payment is requested in the amount of \$ \_\_\_\_\_ for the following line items as specified in the schedule of TIF Funded Improvements attached to the Escrow as Exhibit A:

LINE ITEM	AMOUNT REQUESTED	BALANCE AFTER REQUESTED PAYMENT
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____
4. _____	_____	_____
5. _____	_____	_____
6. _____	_____	_____

Attached hereto is a copy of the Certificate of the Inspector/Architect Certificate certifying that the work for which this request is made was completed in accordance with the Scope Drawings approved by the City of Chicago.

NWS, Inc.

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

Exhibit E

INSPECTOR/ARCHITECT CERTIFICATE

Sonoc Hutter Lee Ltd., the Inspector/Architect for the rehabilitation of the NWS, Inc. ("NWS") facility located at 2550 West 35th Street, Chicago, Illinois, pursuant to Chicago Title and Trust Company ("CT&T") Escrow No. \_\_\_\_\_ (the "Escrow"), does hereby certify and approve to CT&T, the City of Chicago (the City") and NWS as follows:

A. The work covered by draw request number \_\_\_\_\_ dated \_\_\_\_\_, 1993 has been completed and materials are in place in substantial conformity with the "Scope Drawings" (as such term is defined in the Redevelopment Agreement (the "Agreement") dated March \_\_\_\_, 1993 by and between NWS and the City), any and all permits that are required for said work have been obtained and all work completed is in accordance therewith.

B. The work covered by the above-referenced draw request is composed of \$ \_\_\_\_\_ in TIF Payments (as defined in the Escrow) detailed as follows:

TIF Payments

Line Item	Amount Requested	Balance After Payment
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

C. Total Project (as defined in the Agreement) expenditures to date are \$ \_\_\_\_\_, composed of TIF Payments totaling \$ \_\_\_\_\_ and private payments totaling \$ \_\_\_\_\_.

D. TIF Payments have not been disbursed to pay for costs other than the TIF-Funded Improvements as set forth on Exhibit B to the Escrow.

Sonoc Hutter Lee Ltd.

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

EXHIBIT F

PERMITTED LIENS

1. General real estate taxes not yet due and payable.
2. Railroad rights of way, switch and spur tracks, if any.
3. Easement for dockage right, right of way, and railroad and trackage rights, ingress and egress and sewer connections over a part of the property as set out in an Indenture between Albert Dickinson Company, a corporation, and Campbell Soup Company, a corporation, dated November 13, 1925 and recorded November 18, 1925, as Document No. 9099931, in Book 22036, Page 1.
4. Agreement dated September 6, 1957 and recorded March 13, 1958 as Document No. 17154292 between the Cosmopolitan National Bank of Chicago as Trustee under Trust No. 3821 and Campbell Soup Company relating to the relocation of certain railroad tracks, building lines, construction and maintenance of existing buildings to be built in the future.
5. Right to use that portion of the railroad track described as Track A in Document No. 9099931 and the right to use the switch track now lying on the strip of land described in Document No. 10333037 and the right to construct, maintain and use a single connecting railroad track at a location approved by Campbell Soup Company running from a point where the northwest boundary of Parcel 1 intersects the southerly line of the Canal Reserve of the Illinois and Michigan Canal, to a connection with said Track A, for the running and operating of engines and cars over and upon said Track for the transportation only of incoming and outgoing freight of any industry, located on land then owned by the hereinafter named grantor, lying west of and adjoining said Parcel 1 and south of the southerly line of the Illinois and Michigan Canal Reserve, together with the right of the said Campbell Soup Company to relocate said Track A, said switch track and said connecting track at any time as reserved in deed from the Cosmopolitan National Bank, as Trustee under Trust Agreement known as Trust No. 3821 to Campbell Soup Company, a corporation of New Jersey dated September 14, 1955 and recorded September 27, 1955 and Document No. 16374751.
6. Easement in, upon, under, over and along the land to install and maintain all equipment necessary for the purpose of serving the land and other property with gas service, together with the right of access to said equipment, as created by grant to Northern Illinois Gas Company recorded May 9, 1989 as Document No. 89209220.

7. Unrecorded Sublease and Addendums dated March 14, 1991 and January 8, 1993, respectively, made to Central American Warehouse for a term ending April 30, 1993, subject to termination upon thirty (30) days notice at any time thereafter upon thirty (30) days prior written notice and all rights thereunder of, and all acts done or suffered thereunder by, said lessee or by any party claiming by, through or under said lessee.
8. Assignment of Leases as stated below:
  - Assignor: NWS, Inc., an Illinois corporation
  - Assignee: American National Bank and Trust Company of Chicago
  - Dated: March 31, 1992
  - Recorded: April 30, 1992
  - Document No.: 92293226
9. Memorandum of Subordination Agreement dated April 1, 1992, and recorded April 30, 1992, as Document No. 92293229, made by and between American National Bank and Trust Company of Chicago and INB National Bank, as agent on behalf of INB National Bank and Bank One, Indianapolis, N.A.
10. Financing Statement as stated below:
  - Secured Party: American National Bank and Trust Company of Chicago,
  - Debtor: NWS, Inc., an Illinois corporation
  - Filed: May 1, 1992, Cook County Recorder
  - Document No.: 92U 07718
11. Mortgage dated April 1, 1992 and recorded April 30, 1992 as Document No. 92293227, made by NWS, Inc., an Illinois corporation, to INB National Bank, as agent on behalf of INB National Bank and Bank One, Indianapolis, N.A., as the same may be modified or amended from time to time and any financing statements and collateral security documents associated therewith.
12. Financing Statement as stated below:
  - Secured Party: INB National Bank, as agent on behalf of INB National Bank and Bank One, Indianapolis, N.A.
  - Debtor: NWS, Inc., an Illinois corporation
  - Filed: May 1, 1992, Cook County Recorder
  - Document No.: 92U 07719
13. Mortgage dated March 31, 1992, recorded April 30, 1992 as Document No. 92293225 made by NWS, Inc. to American National Bank and Trust Company of Chicago to secure a Note for \$3,750,000.00.

14. Any existing unrecorded leases and all rights thereunder of the lessees and of any person claiming by, through or under the lessees.
15. Assignment of Rents recorded April 30, 1992, as Document No. 92293228, made by NWS, Inc., an Illinois corporation, to INB National Bank, as agent on behalf of INB National Bank and Bank One, Indianapolis, N.A.
16. Covenants, condition and restrictions of record, including, but not limited to utility, access and railroad easements. entered after the date of this Agreement, provided that such encumbrances are subject to this Agreement.
17. Mortgage of the State of Illinois securing an amount not to exceed \$750,000.00, provided that such mortgage will be subject to this Agreement.
18. Any mortgages, security agreements and financing statements recorded against the Property after the issuance of a Certificate of Completion pursuant to this Agreement.
19. Financing Statement as stated below:
 

Secured Party:	American National Bank and Trust Company of Chicago
Debtor:	NWS, Inc., an Illinois corporation
Filed:	May 2, 1992, Illinois Secretary of State
Document No.:	3083834
20. Financing Statement as stated below:
 

Secured Party:	Hewlett Packard Company
Debtor:	NWS, Inc., an Illinois corporation
Filed:	February 10, 1993
Document No.:	3083834
21. Financing Statement as stated below:
 

Secured Party:	Hewlett Packard Company
Debtor:	Consolidated Distilled Products, Inc.
Filed:	June 3, 1991
Document No.:	2857922
22. Financing Statement as stated below:
 

Secured Party:	Hewlett Packard Company
Debtor:	Consolidated Distilled Products, Inc.
Filed:	October 15, 1991
Document No.:	2905010

23. Financing Statement as stated below:  
Secured Party: Hewlett Packard Company  
Debtor: Consolidated Distilled  
Products, Inc.  
Filed: December 19, 1991  
Document No.: 2928606

**EXHIBIT G**

**PROJECT BUDGET**

**SOURCES**

Lender Financing Banks	\$ 6,500,000	
State of Illinois Loan	750,000	
Developer Equity	2,450,000	
City Funds	<u>4,460,000</u>	
	<b>TOTAL</b>	<b>\$14,160,000</b>

**USES**

Building I		
Purchase	\$ 5,500,000	
Material Handling and Rehabilitation	<u>3,500,000</u>	
	\$ 9,000,000	
Building II		
Purchase	\$ 797,366	
Rehabilitation		
TIF Funded Improvements	3,662,634	
Additional Costs (Material Handling System, Office Fixtures, Fees, Custom Bond Area	<u>700,000</u>	
	\$ 5,160,000	
	<b>TOTAL</b>	<b>\$14,160,000</b>

**EXHIBIT H**

[To be retyped on Burke, Warren & MacKay, P.C. letterhead]

\_\_\_\_\_, 1993

City of Chicago  
121 North LaSalle Street  
Chicago, IL 60602

ATTENTION: Corporation Counsel

Ladies and Gentlemen:

We have acted as counsel to NWS, Inc., an Illinois corporation ("Developer"), in connection with the purchase and/or rehabilitation of certain properties located in the Sanitary Drainage and Ship Canal Redevelopment Area (the "Project"). In that capacity, we have examined, among other things, the following agreements, instruments and documents of even date herewith, hereinafter referred to as the "Documents": (a) NWS, Inc. Redevelopment Agreement (the "Agreement"); (b) [insert other documents including but not limited to documents related to purchase and financing of existing NWS Property and New NWS Property]; and (c) all other agreements, instruments and documents executed in connection with the foregoing.

In addition to the foregoing, we have examined (a) the original or certified, conformed or photostatic copies of the Developer's (i) Articles of Incorporation, as amended to date, (ii) qualifications to do business and certificates of good standing in all states in which the Developer is qualified to do business, (iii) By-Laws, as amended to date, and (iv) records of all corporate proceedings relating to the Project; and (b) such other documents, records and legal matters as we have deemed necessary or relevant for purposes of issuing the opinions hereinafter expressed.

In all such examinations, we have assumed the genuineness of all signatures (other than those of the Developer), the authenticity of documents submitted to us as originals and conformity to the originals of all documents submitted to us as certified, conformed or photostatic copies.

Based on the foregoing, it is our opinion that:

1. The Developer is a corporation duly organized, validly existing and in good standing under the laws of its state of incorporation, has full power and authority to own and lease its properties and to carry on its business as presently conducted, and

is in good standing and duly qualified to do business as a foreign corporation under the laws of every state in which the conduct of its affairs or the ownership of its assets requires such qualification, except for those states in which its failure to qualify to do business would not have a material adverse effect on it or its business.

2. The Developer has full right, power and authority to execute and deliver the Documents to which it is a party and to perform its obligations thereunder. Such execution, delivery and performance will not conflict with, or result in a breach of, the Developer's Articles of Incorporation or By-Laws or result in a breach or other violation of any of the terms, conditions or provisions of any law or regulation, order, writ, injunction or decree of any court, government or regulatory authority, or, to the best of our knowledge after diligent inquiry, any of the terms, conditions or provisions of any agreement, instrument or document to which the Developer is a party or by which the Developer or its properties is bound. To the best of our knowledge after diligent inquiry, such execution, delivery and performance will not constitute grounds for acceleration of the maturity of any agreement, indenture, undertaking or other instrument to which the Developer is a party or by which it or any of its property may be bound, or result in the creation or imposition of (or the obligation to create or impose) any lien, charge or encumbrance on, or security interest in, any of its property pursuant to the provisions of any of the foregoing, other than in favor of [Lender].

3. The execution and delivery of each Document and the performance of the transactions contemplated thereby have been duly authorized and approved by all requisite action on the part of the Developer.

4. Each of the Documents to which the Developer is a party has been duly executed and delivered by a duly authorized officer of the Developer, and each such Document constitutes the legal, valid and binding obligation of the Developer, enforceable in accordance with its terms, except as limited by applicable bankruptcy, reorganization, insolvency or similar laws affecting the enforcement of creditors' rights generally.

5. Exhibit A attached hereto (a) identifies each class of capital stock of the Developer, (b) sets forth the number of issued and authorized shares of each such class, and (c) identifies the record owners of shares of each class of capital stock of the Developer and the number of shares held of record by each such holder. To the best of our knowledge after diligent inquiry, except as set forth on Exhibit A, there are no warrants, options, rights or commitments of purchase, conversion, call or exchange or other rights or restrictions with respect to any of the capital stock of the Developer. Each outstanding share of the capital

stock of the Developer is duly authorized, validly issued, fully paid and nonassessable.

6. To the best of our knowledge after diligent inquiry, no judgments are outstanding against the Developer, nor is there now pending or threatened, any litigation, contested claim or governmental proceeding by or against the Developer or affecting the Developer or its property, or seeking to restrain or enjoin the performance by the Developer of the Agreement or the transactions contemplated by the Agreement, or contesting the validity thereof. To the best of our knowledge after diligent inquiry, the Developer is not in default with respect to any order, writ, injunction or decree of any court, government or regulatory authority or in default in any respect under any law, order, regulation or demand of any governmental agency or instrumentality, a default under which would have a material adverse effect on the Developer or its business.

7. To the best of our knowledge after diligent inquiry, there is no default by the Developer or any other party under any material contract, lease, agreement, instrument or commitment to which the Developer is a party or by which the company or its properties is bound.

8. To the best of our knowledge after diligent inquiry, all of the assets of Developer are free and clear of mortgages, liens, pledges, security interests and encumbrances except for those specifically set forth in the Documents.

9. The execution, delivery and performance of the Documents by the Developer have not and will not require the consent of any person or the giving of notice to, any exemption by, any registration, declaration or filing with or any taking of any other actions in respect of, any person, including without limitation any court, government or regulatory authority.

10. To the best of our knowledge after diligent inquiry, the Developer owns or possesses or is licensed or otherwise has the right to use all licenses, permits and other governmental approvals and authorizations, operating authorities, certificates of public convenience, goods carriers permits, authorizations and other rights that are necessary for the operation of its business.

11. A federal or state court sitting in the State of Illinois and applying the choice of law provisions of the State of Illinois would enforce the choice of law contained in the Documents and apply the law of the State of Illinois to the transactions evidenced thereby.

We are attorneys admitted to practice in the State of Illinois and we express no opinion as to any laws other than

federal laws of the United States of America and the laws of the State of Illinois.

Very truly yours,

BURKE, WARREN & MACKAY, P.C.

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

**EXHIBIT I**

**PURCHASING ACT**

**DIVISION 10. PURCHASING AND PUBLIC  
WORKS CONTRACTS IN CITIES OF  
MORE THAN 500,000**

**5/8-10-1. Short title**

§ 8-10-1. This division shall be known and is hereafter designated as "Municipal purchasing act for cities of 500,000 or more population."

Laws 1961, p. 576, § 8-10-1, eff. July 1, 1961.

Formerly Ill.Rev.Stat.1991, ch. 24, ¶ 8-10-1.

**5/8-10-2. Additional powers and duties**

§ 8-10-2. In addition to all the rights, powers, privileges, duties, and obligations conferred thereon elsewhere in this division or any other Acts, all cities of 500,000 or more population shall have the rights, powers and privileges and shall be subject to the duties and obligations conferred thereon by this Division 10.

Laws 1961, p. 576, § 8-10-2, eff. July 1, 1961.

Formerly Ill.Rev.Stat.1991, ch. 24, ¶ 8-10-2.

**5/8-10-3. Purchase orders and contracts—Competitive bids**

§ 8-10-3. Except as otherwise herein provided, all purchase orders or contracts of whatever nature, for labor, services or work, the purchase, lease, or sale of personal property, materials, equipment or supplies, involving amounts in excess of \$10,000, made by or on behalf of any such municipality, shall be let by free and open competitive bidding after advertisement, to the lowest responsible bidder, or in the appropriate instance, to the highest responsible bidder, depending upon whether such municipality is to expend or to receive money. All such purchase orders or contracts, as defined above, which shall involve amounts of \$10,000, or less, shall be let in the manner described above whenever practicable, except that such purchase orders or contracts may be let in the open market in a manner calculated to insure the best interests of the public, after solicitation of bids by mail, telephone, or otherwise. The provisions of this Section are subject to any contrary provision contained in "An Act concerning the use of Illinois mined coal in certain plants and institutions", filed July 13, 1937, as heretofore and hereafter amended.<sup>1</sup>

Laws 1961, p. 576, § 8-10-3, eff. July 1, 1961. Amended by P.A. 76-2581, § 1, eff. July 10, 1970; P.A. 81-1376, § 1, eff. Aug. 9, 1980.

Formerly Ill.Rev.Stat.1991, ch. 24, ¶ 8-10-3.

<sup>1</sup> 30 ILCS 555/1 et seq

**5/8-10-4. Contracts not requiring competitive bids**

§ 8-10-4. Contracts which by their nature are not adapted to award by competitive bidding, such as but not limited to contracts for the services of individuals possessing a high degree of professional skill where the ability or fitness of the individual plays an important part, contracts

for supplies, materials, parts or equipment which are available only from a single source, contracts for printing of finance committee pamphlets, comptroller's estimates, and departmental reports, contracts for the printing or engraving of bonds, water certificates, tax warrants and other evidences of indebtedness, contracts for utility services such as water, light, heat, telephone or telegraph, and contracts for the purchase of magazines, books, periodicals and similar articles of an educational or instructional nature, and the binding of such magazine, books, periodicals, pamphlets, reports and similar articles shall not be subject to the competitive bidding requirements of this Article. The purchasing agent hereinafter provided for is hereby expressly authorized to procure from any federal, state or local governmental unit or agency thereof such materials, supplies, commodities or equipment as may be made available through the operation of any legislation heretofore or hereafter enacted without conforming to the competitive bidding requirements of this Division 10. Regular employment contracts in the municipal service, whether with respect to the classified service or otherwise, shall not be subject to the provisions of this Division 10, nor shall this Division 10 be applicable to the granting or issuance pursuant to powers conferred by laws, ordinances or resolutions, of franchises, licenses, permits or other authorizations by the corporate authorities of the municipality, or by departments, offices, institutions, boards, commissions, agencies or other instrumentalities thereof, nor to contracts or transactions, other than the sale or lease of personal property, pursuant to which the municipality is the recipient of money. The purchasing agent may sell or cause to be loaned with proper surety, materials common only to the municipal water distribution system, to such corporations and individuals, upon a proper showing that they are unable to obtain such materials for the purpose of obtaining water from the water system, or while awaiting shipment from manufacturers or vendors of such material, provided, that proper charges for the sale of such material shall be made to such extent as to save the municipality from monetary losses in such transactions.

Laws 1961, p. 576, § 8-10-4, eff. July 1, 1961. Amended by Laws 1967, p. 3599, § 1, eff. Sept. 5, 1967. Formerly Ill.Rev.Stat.1991, ch. 24, § 8-10-4

#### 5/8-10-5. Emergency contracts

§ 8-10-5. In the case of an emergency affecting the public health or safety, so declared by the corporate authorities of the municipality at a meeting thereof duly convened, which declaration shall require the affirmative vote of a majority of all the members thereof and shall set forth the nature of the danger to the public health or safety, contracts may be let to the extent necessary to resolve such emergency without public advertisement. The resolution or ordinance in which such declaration is embodied shall fix the date upon which such emergency shall terminate, which date may be extended or abridged by the corporate authorities as in their judgment the circumstances require.

The purchasing agent hereinafter provided for, may purchase or may authorize in writing any agency of such municipal government or of the institutions, boards or commissions thereof, if any, to purchase in the open market without filing requisition or estimate therefor, and without advertisement, any supplies, materials or equipment, for immediate delivery to meet bona fide operating emergencies where the amount thereof is not in excess of

\$40,000. A full written account of any such emergency together with a requisition for the materials, supplies or equipment required therefor shall be submitted immediately to the purchasing agent and shall be open to public inspection for a period of at least one year subsequent to the date of such emergency purchase. The exercise of the authority herein vested in the purchasing agent in respect to purchases for such bona fide operating emergencies shall not be dependent upon a declaration of emergency by the corporate authorities under the first paragraph of this section.

Laws 1961, p. 576, § 8-10-5, eff. July 1, 1961. Amended by Laws 1967, p. 3599, § 1, eff. Sept. 5, 1967; P.A. 81-1376, § 1, eff. Aug. 9, 1980.

Formerly Ill.Rev.Stat.1991, ch. 24, § 8-10-5.

#### 5/8-10-6. Requisition agents

§ 8-10-6. The responsible head of each major department, office, institution, board, commission, agency or instrumentality of such municipal government shall certify in writing to the purchasing agent the names of such officers or employees who shall be exclusively authorized to sign requests for purchase for such respective department, office, institution, board, commission, agency or instrumentality, and all requests for purchase shall be void unless executed by such certified officers or employees and approved by the purchasing agent.

Except as to emergency contracts authorized by Section 8-10-5, no undertaking involving amounts in excess of \$10,000 shall be split into parts, by the requisitioning agent or otherwise, so as to produce amounts of \$10,000 or less, for the purpose of avoiding the provisions of this Division 10.

The term "responsible head" as used herein shall, in the case of the corporate authorities of the municipality, be such member, members, or committee thereof as shall be designated by appropriate resolution or order adopted by such corporate authorities.

Laws 1961, p. 576, § 8-10-6, eff. July 1, 1961. Amended by Laws 1967, p. 3599, § 1, eff. Sept. 5, 1967; P.A. 81-1376, § 1, eff. Aug. 9, 1980.

Formerly Ill.Rev.Stat.1991, ch. 24, § 8-10-6.

#### 5/8-10-7. Advertisements for bids—Deposits

§ 8-10-7. All proposals to award purchase orders or contracts involving amounts in excess of \$10,000 shall be published at least 10 days, excluding Sundays and legal holidays, in advance of the date announced for the receiving of bids, in a secular English language daily newspaper of general circulation throughout such municipality and shall simultaneously be posted on readily accessible bulletin boards in the office of the purchasing agent. Nothing contained in this section shall be construed to prohibit the purchasing agent from placing additional announcements in recognized trade journals. Advertisements for bids shall describe the character of the proposed contract or agreement in sufficient detail to enable the bidders thereon to know what their obligations will be, either in the advertisement itself, or by reference to detailed plans and specifications on file at the time of the publication of the first announcement. Such advertisement shall also state the date, time and place assigned for the opening of bids, and no bids shall be received at any time subsequent to the time indicated in the announcement. However, an extension of time may be granted for the opening of such bids upon publication in a secular English newspaper of gener-

al circulation throughout such municipality of the date to which the bid opening has been extended. The time of the bid extension opening shall not be less than 5 days after the publication thereof, Sundays and legal holidays excluded.

Cash, cashier's check, a certified check, a comptroller's certificate of moneys owed the particular vendor, or a bid bond with adequate surety approved by the purchasing agent as a deposit of good faith, in a reasonable amount, but not in excess of 10% of the contract amount may be required of each bidder by the purchasing agent on all bids involving amounts in excess of \$10,000 and, if so required, the advertisement for bids shall so specify.

Laws 1961, p. 576, § 8-10-7, eff. July 1, 1961. Amended by Laws 1961, p. 3850, § 1, eff. Aug. 24, 1961; Laws 1967, p. 3599, § 1, eff. Sept. 5, 1967; P.A. 81-1376, § 1, eff. Aug. 9, 1980; P.A. 84-1269, § 1, eff. Aug. 11, 1986. Formerly Ill.Rev.Stat.1991, ch. 24, ¶ 8-10-7.

#### 5/8-10-8. Collusion among bidders and disclosures—Prohibition

§ 8-10-8. Any agreement or collusion among bidders or prospective bidders in restraint of freedom of competition by agreement to bid a fixed price, or otherwise, shall render the bids of such bidders void. Each bidder shall accompany his bid with a sworn statement, or otherwise swear or affirm, that he has not been a party to any such agreement. Any disclosure in advance of the opening of bids, of the terms of the bids submitted in response to an advertisement, made or permitted by the purchasing agent shall render the proceedings void and shall require re-advertisement and re-award.

Laws 1961, p. 576, § 8-10-8, eff. July 1, 1961. Formerly Ill.Rev.Stat.1991, ch. 24, ¶ 8-10-8.

#### 5/8-10-9. Opening of bids

§ 8-10-9. All sealed bids shall be publicly opened by the purchasing agent of such municipality, or by an officer or employee in the office of the purchasing agent duly authorized in writing by the purchasing agent to open such bids, and all such bids shall be open to public inspection in the office of the purchasing agent for a period of at least 48 hours before award is made.

Laws 1961, p. 576, § 8-10-9, eff. July 1, 1961. Formerly Ill.Rev.Stat.1991, ch. 24, ¶ 8-10-9.

#### 5/8-10-10. Awarding of contracts—Filing of purchase order or contract—Public inspection

§ 8-10-10. The award of any contract involving amounts in excess of \$10,000 shall be made by the purchasing agent to the lowest or highest responsible bidder as provided in Section 8-10-3. Every contract involving amounts in excess of \$10,000 shall be signed by the mayor or his duly designated agent, by the comptroller and by the purchasing agent, respectively, of such municipality. Each bid, with the name of the bidder, shall be entered on a record which record with the name of the successful bidder indicated thereon, shall, after award of contract, be open to public inspection in the office of the purchasing agent of such municipality.

All purchase orders or contracts involving amounts of \$10,000 or less shall be awarded by the purchasing agent to the lowest or highest responsible bidder as provided in

Section 8-10-3 and shall be signed by the purchasing agent and by the comptroller.

An official copy of each awarded purchase order or contract together with all necessary attachments thereto, including assignments and written consents thereto of the purchasing agent as authorized by Section 8-10-14, shall be retained by the purchasing agent in an appropriate file open to the public for such period of time after termination of contract during which action against the municipality might ensue under applicable laws of limitation. After such period such purchase orders, contracts and attachments may be destroyed by direction of the purchasing agent.

Laws 1961, p. 576, § 8-10-10, eff. July 1, 1961. Amended by Laws 1967, p. 3599, § 1, eff. Sept. 5, 1967; P.A. 81-1376, § 1, eff. Aug. 9, 1980.

Formerly Ill.Rev.Stat.1991, ch. 24, ¶ 8-10-10.

#### 5/8-10-11. Responsibility of bidders—Determination

§ 8-10-11. In determining the responsibility of any bidder the purchasing agent may take into account other factors in addition to financial responsibility, such as past records of transactions with the bidder, experience, adequacy of equipment, ability to complete performance within a specified time limit and other pertinent considerations.

Laws 1961, p. 576, § 8-10-11, eff. July 1, 1961.

Formerly Ill.Rev.Stat.1991, ch. 24, ¶ 8-10-11.

#### 5/8-10-12. Rejection of bids

§ 8-10-12. Any and all bids received in response to an advertisement may be rejected by the purchasing agent if the bidder is not deemed responsible, or the character or quality of the services, supplies, materials, equipment or labor does not conform to requirements or if the public interest may otherwise be served thereby.

Laws 1961, p. 576, § 8-10-12, eff. July 1, 1961.

Formerly Ill.Rev.Stat.1991, ch. 24, ¶ 8-10-12.

#### 5/8-10-13. Bonds of bidders

§ 8-10-13. Bond, with sufficient sureties, in such amount as shall be deemed adequate, not only to insure performance of contract in the time and manner prescribed in the contract, but also to save, indemnify, and keep harmless the municipality against all loss, damages, claims, liabilities, judgments, costs, and expenses which may in anywise accrue against the municipality in consequence of the granting of the contract, or which may in anywise result therefrom, may be required of each bidder upon contracts involving amounts in excess of \$10,000 when, in the opinion of the purchasing agent, the public interests will be served thereby.

Laws 1961, p. 576, § 8-10-13, eff. July 1, 1961. Amended by Laws 1967, p. 3599, § 1, eff. Sept. 5, 1967; P.A. 81-1376, § 1, eff. Aug. 9, 1980.

Formerly Ill.Rev.Stat.1991, ch. 24, ¶ 8-10-13.

#### 5/8-10-14. Assignment of contracts

§ 8-10-14. No contract awarded to the lowest responsible bidder or to the highest responsible bidder, as the case may be, shall be assignable or sublet by the successful bidder without the written consent of the purchasing agent. In no event shall a contract or any part thereof be assigned or sublet to a bidder who had been declared not

to be a responsible bidder in the consideration of bids submitted in response to advertisement for the particular contract.

Laws 1961, p. 576, § 8-10-14, eff. July 1, 1961. Amended by Laws 1967, p. 3599, § 1, eff. Sept. 5, 1967. Formerly Ill.Rev.Stat.1991, ch. 24, § 8-10-14.

**5/8-10-15. Purchasing agents—Tenure—Removal—Salary—Bond—Exemption from civil service**

§ 8-10-15. In all municipalities within the purview of this Division 10, there shall be a purchasing agent who shall be appointed by the mayor by and with the consent of the corporate authorities of the municipality. The purchasing agent shall hold office for a term of 4 years and until his successor is appointed and qualified. Such purchasing agent may be removed from office for cause after public hearing before the corporate authorities at which hearing the purchasing agent with counsel shall be entitled to be heard. His salary shall be fixed by the corporate authorities and he shall be required to give bond, with adequate surety, for the faithful performance of his duties in an amount to be determined by the corporate authorities. He shall be exempt from the provisions of Division 1 of Article 10,<sup>1</sup> relating to civil service, in any municipality which has or may hereafter adopt that Division 1. In making the appointment of the purchasing agent, the mayor and corporate authorities shall give due consideration to the executive experience and ability required for the proper and effective discharge of the duties of the office, and no person shall be appointed purchasing agent unless he has served for at least 3 years in a responsible executive capacity requiring knowledge of and experience in large scale purchasing activities.

Laws 1961, p. 576, § 8-10-15, eff. July 1, 1961.

Formerly Ill.Rev.Stat.1991, ch. 24, § 8-10-15.

<sup>1</sup> 65 ILCS 5/10-1-1 et seq.

**5/8-10-16. Purchasing agent—Powers and duties**

§ 8-10-16. The purchasing agent may appoint the necessary employees of his office in accordance with law. The number and salaries of such employees shall be fixed by the corporate authorities. The purchasing agent shall: (a) adopt, promulgate and from time to time revise rules and regulations for the proper conduct of his office; (b) constitute the sole agent of the municipality in contracting for labor, materials, services, or work, the purchase, lease, or sale of personal property, materials, equipment or supplies, in conformity with the provisions of this Division 10; (c) open all sealed bids; (d) determine the lowest or highest responsible bidder, as the case may be, as required by this Division 10, and purchase orders in conformity with this Division 10; (e) enforce written specifications describing standards established in conformity with this Division 10; (f) operate or require such physical, chemical or other tests as may be necessary to insure conformity to such specifications with respect to quality of materials; (g) exercise, or require, at central storerooms or otherwise, such control as may be necessary to insure conformity to contract provisions with respect to quantity; (h) distribute or cause to be distributed, to the various requisitioning agencies of such municipality, such supplies, materials or equipment, as may be purchased by him; (i) transfer materials, supplies and equipment to or between the various requisitioning agencies and to trade in, sell or dispose of such materials, supplies or equipment as may become surplus,

obsolete or unusable; (j) control inventories and inventory records of all stocks of materials, supplies and equipment of common usage contained in any central or principal storeroom, stockyard or warehouse of such municipality; (k) assume such related activities as may be assigned to him from time to time by the mayor or the corporate authorities of such municipality, and (l) submit to the mayor of such municipality an annual report faithfully describing the activities of his office, which report shall be spread upon the official public records of the corporate authorities of such municipality or given comparable public distribution.

Laws 1961, p. 576, § 8-10-16, eff. July 1, 1961. Amended by Laws 1967, p. 3599, § 1, eff. Sept. 5, 1967.

Formerly Ill.Rev.Stat.1991, ch. 24, § 8-10-16.

**5/8-10-17. Revolving fund—Pecuniary interest in contracts—Penalty**

§ 8-10-17. The corporate authorities of any such municipality may establish a revolving fund in such amount as may be necessary to enable the purchasing agent to purchase items of common usage in advance of immediate need, the revolving fund to be reimbursed from the annual appropriation of the requisitioning agencies. Neither the purchasing agent, nor any officer or employe of his office, nor any member of the board of standardization hereinafter provided for, shall be financially interested, directly or indirectly, in any purchase order or contract coming under the purview of his official duties. The above named officials and employes are expressly prohibited from accepting, directly or indirectly, from any person, company, firm or corporation to which any purchase order or contract may be awarded, any rebate, gift, money, or anything of value whatsoever. Any officer or employe, as above defined, convicted of violating this section, shall be guilty of a business offense and shall be fined not to exceed \$10,000 and shall forfeit the right to his public office, trust or employment and shall be removed therefrom.

Laws 1961, p. 576, § 8-10-17, eff. July 1, 1961. Amended by P.A. 77-2500, § 1, eff. Jan. 1, 1973.

Formerly Ill.Rev.Stat.1991, ch. 24, § 8-10-17.

**5/8-10-18. Purchasing agent—Execution of contracts**

§ 8-10-18. No department, office, institution, commission, board, agency or instrumentality of any such municipality, or any officer or employe thereof, shall be empowered to execute any purchase order or contract as defined in Section 8-10-3 except as herein specifically authorized, but all such purchase orders or contracts shall be executed by the purchasing agent in conformity with the provisions of this Division 10.

Laws 1961, p. 576, § 8-10-18, eff. July 1, 1961.

Formerly Ill.Rev.Stat.1991, ch. 24, § 8-10-18.

**5/8-10-19. Board of standardization—Powers and duties**

§ 8-10-19. In all municipalities to which the provisions of this Division 10 shall apply, there shall be a board of standardization, which board shall be composed of the purchasing agent for such municipality, who shall be chairman, and 6 other members who shall be appointed by the mayor of such municipality. Three of the members shall be responsible heads of a major office, department,

institution, commission or board of such municipality and shall receive no compensation for their services on the board of standardization. The other 3 members may be officers or employees of the municipality but only those such members who are not officers or employees shall be entitled to receive such compensation as the corporate authorities may provide. Any member, excepting the purchasing agent, may deputize a proxy to act in his stead. The board of standardization shall meet at least once each 2 calendar months upon notification by the chairman at least 5 days in advance of the date announced for such meeting. Official action of the board shall require the vote of a majority of all members of the board. The chairman shall cause to be prepared a report faithfully describing the proceedings of each meeting, which report shall be transmitted to each member and shall be made available to the mayor and to the corporate authorities, respectively, of such municipality within 5 days, excluding Sundays and legal holidays, subsequent to the date of the meeting.

The board of standardization shall: (a) classify the requirements of such municipality, including the departments, offices, institutions, commissions and boards thereof, with respect to supplies, materials, and equipment, of common usage, (b) adopt as standards, the smallest numbers of the various qualities, sizes and varieties of such supplies, materials and equipment as may be consistent with the efficient operation of such municipal government, and (c) prepare, adopt, promulgate, and from time to time revise, written specifications describing such standards.

Specifications describing in detail the physical, chemical and other characteristics of supplies, material or equipment to be acquired by purchase order or contract shall be prepared by the board of standardization.

In the preparation or revision of standard specifications the board of standardization shall solicit the advice, assistance and cooperation of the several requisitioning agencies and shall be empowered to consult such public or non-public laboratory or technical services as may be deemed expedient. After adoption, each standard specification shall, until rescinded, apply alike in terms and effect to every purchase or contract for the purchase of any commodity, material, supply or equipment and shall be made available to the public upon request.

Laws 1961, p. 576, § 8-10-19, eff. July 1, 1961. Amended by Laws 1967, p. 3599, § 1, eff. Sept. 5, 1967.

Formerly Ill.Rev.Stat.1991, ch. 24, ¶ 8-10-19.

#### 5/8-10-20. Ordinances—Adoption and publication

§ 8-10-20. Official ordinances in conformity with the provisions of this Division 10 shall be adopted by formal action of the corporate authorities of such municipality and shall be published for the information of the public.

Laws 1961, p. 576, § 8-10-20, eff. July 1, 1961.

Formerly Ill.Rev.Stat.1991, ch. 24, ¶ 8-10-20.

#### 5/8-10-21. Contracts executed in violation of this division—Effect

§ 8-10-21. Any purchase order or contract executed in violation of this Division 10 shall be null and void as to the municipality and if public funds shall have been expended thereupon the amount thereof may be recovered in the

name of the municipality in an appropriate action instituted therefor.

Laws 1961, p. 576, § 8-10-21, eff. July 1, 1961.

Formerly Ill.Rev.Stat.1991, ch. 24, ¶ 8-10-21.

#### 5/8-10-22. Local improvement contracts

§ 8-10-22. Nothing contained in this Division 10 shall be deemed to apply to the letting of contracts and accepting of bids for the construction of local improvements pursuant to Division 2 of Article 9.<sup>1</sup>

Laws 1961, p. 576, § 8-10-23, eff. July 1, 1961.

Formerly Ill.Rev.Stat.1991, ch. 24, ¶ 8-10-22.

<sup>1</sup> 65 ILCS 5/9-2-1 et seq.

#### 5/8-10-23. Audits of expenditures—Reports

§ 8-10-23. The comptroller of each municipality to which this Division 10 applies shall conduct audits of all expenditures incident to all purchase orders and contracts awarded hereunder by the purchasing agent. The comptroller shall make reports on such audits to the mayor and corporate authorities.

Laws 1961, p. 576, § 8-10-23, eff. July 1, 1961.

Formerly Ill.Rev.Stat.1991, ch. 24, ¶ 8-10-23.

#### 5/8-10-24. Specifications relating to construction, alteration, rehabilitation or repair of realty—Preparation—Approval—Modification

§ 8-10-24. All specifications pertaining to the construction, alteration, rehabilitation or repair of any real property of such municipality shall be prepared by the engineering agency engaged in the design of such construction, alteration, rehabilitation or repair, prior to approval by the purchasing agent, and any such specification shall form a part of any such purchase order or contract, and the performance, inspection and testing of all such contracts shall be supervised by the engineering agency designated in such contracts.

If after award of such contracts changes or modifications are necessitated therein, such changes or modifications may be accomplished or ordered in writing by the engineering agency, but if the costs thereof are estimated to exceed \$5,000 written approval of the purchasing agent must be first obtained. A modification agreement therefor shall thereafter be executed by the contractor, the mayor or his duly designated agent, by the comptroller and by the purchasing agent.

Laws 1961, p. 576, § 8-10-24, added by Laws 1967, p. 3599, § 1, eff. Sept. 5, 1967.

Formerly Ill.Rev.Stat.1991, ch. 24, ¶ 8-10-24.

#### 5/8-10-25. Conflicts of application of laws

§ 8-10-25. In the event of a conflict between the application of this Division 10 of Article 8 and the application of "An Act concerning municipalities, counties and other political subdivisions", enacted by the 85th General Assembly,<sup>1</sup> the provisions of "An Act concerning municipalities, counties and other political subdivisions" shall prevail.

Laws 1961, p. 576, § 8-10-25, added by P.A. 85-854, Art. 1, § 8, eff. Sept. 24, 1987.

Formerly Ill.Rev.Stat.1991, ch. 24, ¶ 8-10-25.

<sup>1</sup> 50 ILCS 510/1 et seq.

**REQUIREMENTS FOR BIDDING AND INSTRUCTIONS FOR BIDDERS**

**CONTRACT FOR WORK**

Proposals will be received by the Purchasing Agent of the City of Chicago in accordance with Contract Documents as set forth herein.

**1. DEFINITIONS**

The term "Commissioner" means the Commissioner of the Using Department of the City of Chicago and the term "his duly authorized representative" means any person or persons authorized in writing by the Commissioner to act for the Commissioner in connection with this contract.

The term "Purchasing Agent" means the Purchasing Agent of the City of Chicago whose duties and responsibilities are more particularly described in the Municipal Purchasing Act for Cities of 500,000 or more population as contained in the Illinois Municipal Code, as amended.

**2. COMPLIANCE WITH LAWS**

The bidder shall at all times observe and comply with all laws, ordinances, regulations and codes of the Federal, State, City and other government agencies, which may in any manner affect the preparation of proposals or the performance of the contract.

**3. EXAMINATION BY BIDDER**

The bidder shall, before submitting his bid, carefully examine the proposal, plans, specifications, contract documents and bonds. He shall inspect in detail the site of the proposed work and familiarize himself with all the local conditions affecting the contract and the detailed requirements of construction. If his bid is accepted, he will be responsible for all errors in his proposal resulting from his failure or neglect to comply with these instructions. The City will, in no case, be responsible for any change in anticipated profits resulting from such failure or neglect.

Unless otherwise provided in Special Conditions, when the plans or specifications include information pertaining to subsurface exploration, borings, test pits, and other preliminary investigation, such information represents only the opinion of the City as to the location, character, or quantity of the materials encountered and is only included for the convenience of the bidder. The City assumes no responsibility whatever in respect to the sufficiency or accuracy of the information, and there is no guaranty, either expressed or implied, that the conditions indicated are representative of those existing throughout the work, or that unanticipated developments may not occur.

**4. BID DEPOSIT**

Bid deposit shall be required for all competitive sealed bidding for contracts when required in the legal advertisement. Bid deposit shall be a bond provided by a surety company authorized to do business in the State of Illinois, or the equivalent in cashier's check, money order or certified check. All certified checks must be drawn on a responsible bank doing business in the United States, and

shall be made payable to the order of the City of Chicago. CASH OR COMPTROLLER'S CERTIFICATE IS NOT AN ACCEPTABLE FORM OF BID DEPOSIT.

Bid deposits shall be in the amount shown in the advertisement or as may be prescribed herein, but not in excess of 10% of the bid. Where the amount of the bid deposit shown in the advertisement should prove to be more than 10% of the bid, then the bidder may submit, in lieu of the foregoing, an amount equal to 10% of his bid. Compliance with the provisions herewith shall be determined in all cases by the Purchasing Agent and his determination shall be final.

When the Invitation for Bids requires deposit, noncompliance requires that the bid be rejected unless it is determined that the bid fails to comply in a non-substantial manner with the deposit requirements.

After bids are opened, deposits shall be irrevocable for the period specified in the Article 10, Acceptance of Proposal herein. If a bidder is permitted to withdraw its bid before award, no action shall be taken against the bidder or the bid deposit.

**5. PREPARATION OF PROPOSAL**

The bidder shall prepare his proposal in TRIPLICATE on the attached proposal forms. Unless otherwise stated, all blank spaces on the proposal page or pages, applicable to the subject specification, must be correctly filled in. Either a unit price or a lump sum price, as the case may be, must be stated for each and every item, either typed in or written in ink, in figures, and, if required, in words.

If bidder is a corporation, the President and Secretary shall execute three copies of the bid. The Corporate seal shall be affixed to all three copies. In the event that this bid is executed by other than the President, attach hereto a certified copy of that section of Corporate By-Laws or other authorization by the Corporation which permits the person to execute the offer for the corporation.

If bidder is a partnership, all partners shall execute three copies of the bid, unless one partner has been authorized to sign for the partnership, in which case, evidence of such authority satisfactory to the Purchasing Agent shall be submitted.

If bidder is a sole proprietor, he shall execute three copies of the bid.

A "Partnership", "Joint Venture" or "Sole Proprietor" operating under an Assumed Name must be registered with the Illinois county in which located, as provided in Chapter 96, Section 4 et sub, Ill. Rev. Stats. 1987.

**6. SUBMISSION OF PROPOSALS**

All prospective bidders shall submit sealed proposals in TRIPLICATE with applicable bid deposit enclosed in envelopes provided for that purpose in the Office of the Purchasing Agent, Room 401, City Hall, and if proposals are

# REQUIREMENTS FOR BIDDING AND INSTRUCTIONS FOR BIDDERS

submitted in envelopes other than those so provided for this purpose, then the sealed envelope submitted by the prospective bidder shall carry the following information on the face of the envelope: bidder's name, address, subject matter of proposal, advertised date of bid opening and the hour designated for bid opening as shown on the legal advertisement.

Where proposals are sent by mail to the Purchasing Agent the bidders shall be responsible for their delivery to the Purchasing Agent before the advertised date and hour for the opening of bids. If the mail is delayed beyond the date and hour set for the bid opening, proposals thus delayed will not be accepted.

Proposals shall be submitted with original signatures in the space provided on the appropriate Proposal Execution Page. Proposals not properly signed shall be rejected.

## 7. WITHDRAWAL OF PROPOSALS

Bidders may withdraw their proposals at any time prior to the time specified in the advertisement as the closing time for the receipt of bids. However, no bidder shall withdraw or cancel his proposal for a period of sixty (60) calendar days after said advertised closing time for the receipt of proposals nor shall the successful bidder withdraw or cancel or modify his proposal after having been notified by the Purchasing Agent that said proposal has been accepted by the City.

Where this contract shall be approved by another agency, such as the Federal Government or State of Illinois, then the bidder shall not withdraw or cancel or modify his proposal for a period of ninety (90) calendar days after said advertised closing time for the receipt of proposals.

## 8. COMPETENCY OF BIDDER

No proposal will be accepted from or contract awarded to any person, firm or corporation that is in arrears or is in default to the City of Chicago upon any debt or contract, or that is a defaulter, as surety or otherwise, upon any obligation to said City, or had failed to perform faithfully any previous contract with the City.

The bidder, if requested, must present within a reasonable time, as determined by the Purchasing Agent, evidence satisfactory to the Purchasing Agent of performance ability and possession of necessary facilities, pecuniary resources and adequate insurance to comply with the terms of these specifications and contract documents.

## 9. CONSIDERATION OF PROPOSALS

The Purchasing Agent shall represent and act for the City in all matters pertaining to this proposal and contract in conjunction therewith. The Purchasing Agent reserves the right to reject any or all proposals and to disregard any informality in the bids and bidding, when in his opinion the best interest of the City will be served by such action.

The proposal is contained in these contract documents and **MUST NOT BE DETACHED HEREFROM** by any bidder when submitting a proposal. Incomplete proposals are subject to rejection.

## 10. ACCEPTANCE OF PROPOSALS

The Purchasing Agent will accept in writing one of the proposals or reject all proposals, within sixty (60) calendar days, or within ninety (90) calendar days where approval by other agencies is required, from the date of opening of bids, unless the lowest responsible bidder, upon request of the City, extends the time of acceptance to the City.

## 11. PERFORMANCE BOND

When required by the Purchasing Agent the successful bidder or bidders shall, within thirteen (13) calendar days of receipt of written notice from the City, furnish a performance bond in the full amount of the contract on Form P.W.O. 62, a specimen of which is bound herein.

Receipt of written notice from the City to furnish a bond constitutes tentative notice of pending award and proposal acceptance. Release of the contract shall be withheld pending receipt and approval of a satisfactory bond.

Attention is called to the provisions of Section 8-10-13 of the Illinois Municipal Code and to the provisions of Chapter 7-4 of the Municipal Code of Chicago.

## 12. FAILURE TO FURNISH BOND

In the event that the bidder fails to furnish the performance bond in said period of thirteen (13) calendar days, then the bid deposit of the bidder shall be retained by the City as liquidated damages and not as a penalty, IT BEING NOW AGREED that said sum is a fair estimate of the amount of damages that said City will sustain due to the bidder's failure to furnish said bond. In addition, the Purchasing Agent reserves the right to terminate the contract for failure to furnish a required performance bond.

## 13. INTERPRETATION OF CONTRACT DOCUMENTS

If any person contemplating submitting a proposal is in doubt as to the true meaning of any part of the specifications or other contract documents, he may submit to the Purchasing Agent a written request for an interpretation thereof. The person submitting the request will be responsible for its prompt delivery. Any interpretation of the proposed documents will be made only by an addendum duly issued by the Purchasing Agent. A copy of such addendum will be mailed or delivered to each person receiving a set of such contract documents and to such other prospective bidders as shall have requested that they be furnished with a copy of each addendum. Failure on the part of the prospective bidder to receive a written interpretation prior to the time of the opening of bids will not be grounds for withdrawal of proposal. Bidder will acknowledge receipt of each addendum issued in space

# REQUIREMENTS FOR BIDDING AND INSTRUCTIONS FOR BIDDERS

provided on proposal page. Oral explanations will not be binding.

## 14. CATALOGS

Each bidder shall submit in triplicate, where necessary, or when requested by the Purchasing Agent, catalogs, descriptive literature, and detailed drawings, fully detailing features, designs, construction, appointments, finishes and the like not covered in the specifications, necessary to fully describe the material or work he proposes to furnish.

## 15. TRADE NAME

In cases where an item is identified by a manufacturer's name, trade name, catalog number, or reference, it is understood that the bidder proposes to furnish the item so identified and does not propose to furnish an "equal" unless the proposed "equal" is definitely indicated therein by the bidder.

Reference to a specific manufacturer, trade name, or catalog is intended to be descriptive but not restrictive and only to indicate to the prospective bidder items that will be satisfactory. Bids on other makes and catalogs will be considered, provided each bidder clearly states on the face of his proposal exactly what he proposes to furnish, or forwards with his bid, a cut, illustration, or other descriptive matter which will clearly indicate the character of the item covered by his bid.

The Purchasing Agent hereby reserves the right to approve as an equal, or to reject as not being an equal, any item the bidder proposes to furnish which contains major or minor variations from specification requirements but which may comply substantially therewith.

## 16. RETURN OF BID DEPOSIT

The bid deposit of all except the three lowest bidders on each contract will be returned shortly after the bid opening.

The Purchasing Agent reserves the right to hold all bid deposits, if the intent is to award multiple contracts for a requirement and/or if the three lowest responsible bidders can not be readily determined based on price until all proposals have been evaluated.

The remaining bid deposits on each contract will be returned with the exception of the accepted bidder, after the Purchasing Agent has awarded the contract. The bid deposit of the accepted bidder will be returned after the contract and a satisfactory performance bond has been approved, where such bond is required.

## 17. TAXES

Federal Excise Tax does not apply to materials purchased by the City of Chicago by virtue of Exemption Certificate No. 36-6005820 and State of Illinois Sales Tax does not apply by virtue of Exemption Certificate No. E9998-1874-01. Illinois

Retailers' Occupation Tax, Use Tax, and Municipal Retailers' Occupation Tax do not apply to materials or services purchased by the City of Chicago by virtue of Statute. The price or prices quoted herein shall include all other Federal and/or State, direct and/or indirect taxes which apply.

The prices quoted herein shall agree with all Federal Laws and Regulations.

## 18. ORDER OF PRECEDENCE OF COMPONENT CONTRACT PARTS

The order of precedence of the component contract parts shall be as follows:

1. General Conditions.
2. Addenda if any.
3. Special Conditions.
4. Plans or City drawings, if any, which may be a part of this contract requirement.
5. Detail Specifications.
6. Standard Specifications of the City, State or Federal Government, if any.
7. Advertisement for proposals (copy of advertisement to be attached to back of cover).
8. Requirements for Bidding and Instructions to Bidders.
9. Performance Bond, if required.

The foregoing order of precedence shall govern the interpretation of the contract in all cases of conflict or inconsistency therein, except as may be otherwise expressly provided by the City.

## 19. CONTRACTOR'S FINANCIAL STATEMENT

Each bidder shall have on file in the office of the Purchasing Agent prior to bid opening a CONTRACTOR'S STATEMENT OF EXPERIENCE AND FINANCIAL CONDITION dated not earlier than the end of the Contractor's last fiscal year period. This shall be kept on file by the Purchasing Agent as a representative statement for a period of one year only. Forms are available at the office of the Bid and Bond Section, Purchasing Department, Room 401 City Hall, or may be obtained by addressing a request to the Purchasing Agent, Room 403, City Hall, Chicago, Illinois, 60602. Failure to have a current financial statement on file in the office of the Purchasing Agent at time of bid opening may be cause for the rejection of Contractor's Proposal.

## 20. NOTICES

All communications and notices herein provided for shall be in writing, delivered personally or mailed first class, postage prepaid, to the Contractor by name and address listed on the proposal hereof; to the Commissioner of the using department by name and address listed on the cover hereof and to the Purchasing Agent, Room 403, City Hall, 121 N. LaSalle Street, Chicago, Illinois 60602.

# GENERAL CONDITIONS

## 1. NON-DISCRIMINATION

### A. Federal Requirements

It shall be an unlawful employment practice for the Contractor (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, or the terms, conditions, or privileges of his employment, because of such individual's race, color, religion, sex, age, handicap or national origin; or (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, age, handicap or national origin.

Contractor shall comply with The Civil Rights Act of 1964, 42 U.S.C. sec. 2000 et seq. (1981), as amended. Attention is called to: Exec. Order No. 11,246, 30 Fed. Reg. 12,319 (1965), reprinted in 42 U.S.C. 2000(e) note, as amended by Exec. Order No. 11,375, 32 Fed. Reg. 14,303 (1967) and by Exec. Order No. 12,086, 43 Fed. Reg. 46,501 (1978); Age Discrimination Act, 42 U.S.C. sec. 6101-6106 (1981); Rehabilitation Act of 1973, 29 U.S.C. sec. 793-794 (1981); Americans with Disabilities Act, P.L. 101-596; and 41 C.F.R. Part 60 et seq. (1990).

### B. State Requirements

Contractor shall comply with the Illinois Human Rights Act, Ill. Rev. Stat. ch. 68, para. 1-101 et seq. (1990), as amended and any rules and regulations promulgated in accordance therewith, including, but not limited to the Equal Employment Opportunity Clause, 5 Ill. Admin. Code § 750 Appendix A. Furthermore, the Contractor shall comply with the Discrimination in Public Contracts Act, Ill. Rev. Stat. ch. 29, para. 17 et seq. (1990), as amended.

### C. City Requirements

Contractor shall comply with the Chicago Human Rights Ordinance, ch. 2-160, section 2-160-010 et seq. of the Chicago Municipal Code (1990), as amended. Further, Contractor shall furnish or shall cause each of its subcontractor(s) to furnish such reports and information as requested by the Chicago Commission on Human Relations.

### D. Subcontractors

Contractor agrees that all of the above provisions (A), (B) and (C), will be incorporated in all agreements entered into with any suppliers of materials, furnisher of services, subcontractors of any tier, and labor organizations which furnish skilled, unskilled and craft union skilled labor, or which may provide any such materials, labor or services in connection with this contract.

## 2. INDEMNITY

Contractor shall indemnify, keep and save harmless the City, its agents, officials and employees, against all injuries, deaths, loss, damages, claims, patent claims, suits, liabilities, judgments, costs and expenses, which may in anywise accrue against the City in consequence of the granting of this contract or which may in any wise result therefrom, whether

or not it shall be alleged or determined that the act was caused through negligence or omission of the Contractor or his employees, of the subcontractor or his employees, if any, and the Contractor shall, at his own expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising therefrom or incurred in connection therewith, and, if any judgment shall be rendered against the City in any such action, the Contractor shall, at his own expense, satisfy and discharge the same. Contractor expressly understands and agrees that any performance bond or insurance protection required by this contract, or otherwise provided by Contractor, shall in no way limit the responsibility to indemnify, keep and save harmless and defend the City as herein provided.

## 3. EMPLOYMENT

The Contractor shall comply with "AN ACT to give preference to the veterans of the United States military and naval service in appointments and employment upon public works, by, or for the use of, the State of its political subdivisions," approved June 12, 1935, as amended. Attention is called to Chapter 126-1/2, Section 23, Ill. Rev. Stats. 1987.

## 4. PREVAILING WAGE ACT

The Contractor shall comply with "AN ACT regulating wages of laborers, mechanics, and other workers employed in any public works by the State, county, city or any public body or any political subdivision or by anyone under contract for public works." Attention is called to Chapter 48, Par.39s, Ill Rev Stats. 1989.

It is the policy of the State of Illinois that a wage of no less than the general prevailing hourly rate as paid for work of a similar character in the locality in which the work is performed, shall be paid to all laborers, workers and mechanics employed by or on behalf of any and all public bodies engaged in public works.

The term "general prevailing hourly rate", when used in this Act means the hourly cash wages plus fringe benefits for health and welfare, insurance, vacations and pensions paid generally, in the locality in which the work is being performed, to employees engaged in work of a similar character on public works.

If the Department of Labor revises the general prevailing hourly rate to be paid by the public body, the revised rate shall apply to such contract.

## 5. SUBLETTING OR ASSIGNMENT OF CONTRACT OR CONTRACT FUNDS

No contract shall be assigned or any part of the same sub-contracted without the written consent of the Purchasing Agent; but in no case shall such consent relieve the Contractor from his obligations, or change the terms of the contract.

The Contractor shall not transfer or assign any contract funds or claims due or to become due without the written approval of the Purchasing Agent having first been obtained.

The transfer or assignment of any contract funds either in whole or in part, or any interest therein, which shall be due or to become due to the contractor, shall cause the annulment of said transfer or assignment so far as the City is concerned.

# GENERAL CONDITIONS

## 6. CASH BILLING TERMS

Any cash billing discounts offered will not be considered in the evaluation of bids.

## 7. GUARANTEES & WARRANTIES

All guarantees and warranties required shall be furnished by the Contractor and shall be delivered to the Purchasing Agent before final voucher on the contract is issued.

## 8. COOPERATION BETWEEN CONTRACTORS

Unless otherwise provided in Special Conditions, if separate contracts are let for work within or adjacent to the project site as may further be hereinafter detailed in the contract documents, each contractor shall conduct his work so as not to interfere with or hinder the progress of completion of the work being performed by other contractors.

Each contractor involved shall assume all liability, financial or otherwise, in connection with his contract, and shall protect and save harmless the City from any and all damages or claims that may arise because of inconvenience, delay, or loss experienced by him because of the presence and operations of other contractors working within the limits of the same improvement. Each contractor shall assume all responsibility for all work not completed or accepted because of the presence and operations of the other contractors.

The Contractor shall as far as possible arrange his work and place and dispose of the materials being used, so as not to interfere with the operations of the other contractors within or adjacent to the limits of the project site. He shall join his work with that of the others in an acceptable manner and shall perform it in proper sequence to that of the others.

## 9. SUPERINTENDENCE

The Contractor shall personally superintend the work or shall have a competent person at the site at all times to act for him.

## 10. PLANS OR DRAWINGS AND SPECIFICATIONS CO-OPERATIVE

Plans or drawings mentioned in Requirements for Bidding and Instructions to Bidders or in the specifications shall be so considered that any material shown on plans or drawings and not therein specified, or material therein specified and not shown on plans or drawings, shall be executed by the Contractor the same as though it were both shown and specified.

## 11. PERMITS

Unless otherwise provided in Special Conditions, the Contractor shall take out, at his own expense, all permits and licenses necessary to carry out the work described in this contract.

## 12. MATERIALS INSPECTION AND RESPONSIBILITY

The City, by its engineering agencies, shall have a right to inspect any material to be used in carrying out this contract.

The City does not assume any responsibility for the availability of any controlled materials or other materials and equipment required under this contract.

The Contractor shall be responsible for the contracted quality and standards of all materials, components or completed work furnished under this contract up to the time of final acceptance by the City.

Materials, components or completed work not complying therewith may be rejected by the Purchasing Agent and shall be replaced by the Contractor at no cost to the City.

Any materials or components rejected shall be removed within a reasonable time from the premises of the City at the entire expense of the Contractor, after written notice has been mailed by the City to the Contractor that such materials or components have been rejected.

## 13. INSURANCE

The Contractor agrees to keep in force during the life of this contract such insurance policies as indicated in the SPECIAL CONDITIONS of this contract. Contractor further agrees to furnish certificates of any or all insurance policies listing the City as an additional insured upon request by the Purchasing Agent.

## 14. PAYMENT TO CONTRACTOR

Work performed under this contract is interpreted to include materials to be furnished under this contract which are suitably stored at the site of the work. Unless otherwise provided in Special Conditions, which shall be subject to the provisions of Chapter 26-13 of the Municipal Code of Chicago, the Purchasing Agent may from time to time, in cases where the Contractor shall proceed properly to perform and complete his contract, grant to such Contractor as the work progresses an estimate of the amount already earned. All partial payment estimates shall be subject to correction by the final estimate.

Waivers from Subcontractors and Suppliers indicating that they have received their share from the Contractor of the previous partial payment to the Contractor must be presented concurrently by the Contractor when he presents an estimate for a partial payment.

The Purchasing Agent may, whenever he shall have reason to believe that the Contractor has neglected or failed to pay any subcontractors, workmen or employees for work performed or for materials furnished and used in or about the work contracted for, order and direct that no future vouchers or estimates be issued and no further payments be made upon the contract until said Purchasing Agent shall be satisfied that such sub-contractors, workmen and employees have been fully paid, and the reserve sum referred to in the above stated Chapter 26-13 shall not be payable until the Contractor shall have satisfied the Purchasing Agent that all sub-contractors, material men, workmen and employees have been fully paid.

Whenever the Purchasing Agent shall notify the Contractor, by notice personally served or by mailing a copy thereof to the Contractor to his office as shown by his bid, that no further vouchers or estimates will be issued or payments made on the contract until subcontractors, workmen and employees have been paid, and the Contractor shall neglect or refuse for the period of ten days after such notice is given, as above provided for, to pay such subcontractors, workmen and employees, the City may then apply any money due or that may become due under the contract to the payment of such subcontractors, workmen and employees without other or further notice to said Contractor; but failure of the City to retain and apply such moneys, or of the Purchasing Agent to order or direct that no vouchers or estimates shall be issued or further payments be made shall not, nor shall the paying over of such

# GENERAL CONDITIONS

reserve sum without such subcontractors, workmen or employees being first paid, in any way affect the liability of the Contractor or of his sureties to the City, or to any such subcontractors, workmen or employees upon any bond given in connection with such contract.

Before final payment is made under the contract, and as a condition precedent to such final payment, the Contractor shall furnish waivers of all liens and satisfactory guarantees against all claims on account of work performed, tools and plant employed, and material and labor furnished under the contract. The Contractors shall not be entitled to demand or receive final payment until all the stipulations, provisions and conditions set forth in the contract have been complied with, and the work has been accepted by the Commissioner, whereupon the City will, at the expiration of 30 calendar days after such completion and acceptance, pay the whole account of money due the Contractor under the contract.

The acceptance by the Contractor of the final payment above mentioned shall operate as and shall be a release to the City from all claims or liability under this contract for anything done or furnished or relating to the work under this contract, or for any act or neglect of the City relating to or connected with this contract.

## 15. CHANGES

The Commissioner may, subject to prior written approval of the Purchasing Agent, if the estimated costs thereof exceeds \$5,000.00, at any time, by written order, and without notice to the sureties, make changes in the drawings and/or specifications of this contract if within the general scope. If such changes cause an increase or decrease in the Contractor's cost of, or time required for, performance of the contract, an equitable adjustment as may be hereinafter further described in Special Conditions, shall be made and the contract modified in writing accordingly. Any claim of the Contractor for adjustment under this clause must be submitted in writing to the Commissioner and Purchasing Agent within 10 days from the date of receipt by the Contractor of the notification of change unless the Commissioner and the Purchasing Agent grant a further period of time before the date of final payment under the contract. If the parties fail to agree upon the adjustment to be made, the dispute shall be determined solely by the Purchasing Agent but nothing provided in this clause shall excuse the Contractor from proceeding with the prosecution of the work as changed. Except as otherwise provided in this contract, no charge for any extra work or material will be allowed.

## 16. TIME AND PROGRESS

It is understood and agreed that TIME IS OF THE ESSENCE OF CONTRACT, and the Contractor agrees to begin actual work covered by this contract in conformity with the provisions set forth herein and to prosecute the same with all due diligence, so as to complete the entire work under this contract within the calendar days stipulated after the date for commencement of work as specified in the written notification to the Contractor from the Commissioner, using double shift and holiday work when necessary.

Unless otherwise provided in Special Conditions, the Contractor shall submit to the Commissioner for approval, within 5 calendar days after the effective date of this contract, a TIME SCHEDULE for performing operations under this contract which will insure the satisfactory completion of the

entire work within the time hereinafter specified. When approved and accepted by the Commissioner, the Contract shall prosecute the work under this contract so that the actual work completed shall be not less than required by such approved TIME SCHEDULE for performing operations under this contract which will insure the satisfactory completion of the entire work within the time hereinafter specified. When approved and accepted by the Commissioner, the Contractor shall prosecute the work under this contract so that the actual work completed shall be not less than required by such approved TIME SCHEDULE.

If the rate of progress be such that the total amount of work accomplished by the Contractor within any time mentioned in such approved TIME SCHEDULE is less than the amount therein specified to be completed within such time, then the Purchasing Agent may declare this contract in default as provided herein.

## 17. PROVISIONS RELATIVE TO DELAY

Should the Contractor be obstructed or delayed in the commencement, prosecution or completion of the work under this contract by any act or delay of the City or by order of the Commissioner, howsoever caused, then the time herein fixed for the completion of said work will be extended for a period equivalent to the time lost by reason of such acts or delays of the City or orders of the Commissioner.

It is otherwise understood that no extension of time will be granted to the Contractor unless he, immediately upon knowledge of the causes of an unavoidable delay, first notifies the Commissioner and Purchasing Agent in writing, stating the approximate number of days he expects to be delayed.

The Contractor must also make a request in writing to the Commissioner and Purchasing Agent for an extension of time within ten (10) calendar days after the cessation of the delay. Compliance by the Contractor with the requirements set forth in this paragraph are conditions precedent to the granting of an extension of time and it is hereby agreed that in case of failure to comply with said requirements, the Contractor shall not be entitled to an extension of time.

The Purchasing Agent and the Commissioner will determine the number of days, if any, that the Contractor has been delayed. Such determination when approved and authorized in writing by the Mayor, Comptroller and the Purchasing Agent, will be final and binding.

It is further expressly understood and agreed that the Contractor shall not be entitled to any damages or compensation from the City, or be reimbursed for any loss or expense on account of any delay or delays resulting from any of the causes aforesaid.

## 18. DEFAULT

If the Contractor fails to begin the work under this contract within the time specified, or fails to perform the work with sufficient workmen and equipment or with sufficient materials to insure the completion of said work within the specified time, or shall perform the work in an unsatisfactory manner, or shall neglect or refuse to remove materials or perform anew such work as shall be rejected as defective or unsuitable, or shall discontinue the prosecution of the work, or if the Contractor shall become insolvent or be declared bankrupt, or shall commit any act of bankruptcy or insolvency, or shall make an assignment for the benefit of

# GENERAL CONDITIONS

creditors, or from any other cause whatsoever shall not carry on the work in an acceptable manner, the Purchasing Agent shall give notice in writing to the Contractor and his surety of such failure, delay, neglect, refusal, or default, specifying the same, and if the Contractor, within a period of ten (10) days after such notice, shall not proceed in accordance therewith, then the Purchasing Agent acting for and on behalf of the City shall, upon receipt of a written certificate from the Commissioner of the fact of such failure, delay, neglect, refusal, or default and of the failure of the Contractor to comply with such notice, have full power and authority to declare the forfeiture of this contract, and to forfeit the rights of the Contractor in this contract, and the Purchasing Agent at his option may call upon the surety to complete the work in accordance with the terms of this contract or may have the City take over the work, including any or all materials and equipment on the ground as may be suitable and acceptable to the City and may complete the work by or on its own force account, or may enter into a new contract for the completion of the work, by or on its own force account, or may enter in a new contract for the completion of the work, or may use such other methods as in the opinion of the Commissioner shall be required for the completion of the work in an acceptable manner. All costs and charges incurred by the City, together with the cost of completing the work, shall be deducted from any moneys due or which may become due on this contract. In case the expense so incurred by the City shall be less than the sum which would have been payable under this contract if it had been completed by the Contractor and had not been forfeited by the City, then the Contractor shall be entitled to receive the the difference, subject to any claims or liens thereon which may have been filed with the City or any prior assignment filed with it, and in case such expense shall exceed the sum which would have been payable under this contract, the Contractor and the surety shall be liable and shall pay to the City the amount of such excess.

## 19. DISPUTES

Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of shall be decided after hearing by the Purchasing Agent, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Purchasing Agent shall be final and binding.

## 20. NON-COLLUSION, BRIBERY OF A PUBLIC OFFICER OR EMPLOYEE

Contractor, in performing under this contract shall comply with the Municipal Code of Chicago, Section 2-92-320, as follows:

No person or business entity shall be awarded a contract or sub-contract if that person or business entity: (a) has been convicted of bribery or attempting to bribe a public officer or employee of the City of Chicago, the State of Illinois, or any agency of the federal government or of any state or local government in the United States, in that officer's or employee's official capacity; or (b) has been convicted of agreement or collusion among bidders or prospective bidders in restraint of freedom of competition by agreement to bid a fixed price, or otherwise; or (c) has made an admission of guilt of such conduct described in (a) or (b) above which is a matter of record but has not been prosecuted for such conduct.

For purposes of this section, where an official, agent or employee of a business entity has committed any offense under this section on behalf of such an entity and pursuant to the direction or authorization of a responsible official thereof, the business entity shall be chargeable with the conduct. One business entity shall be chargeable with the conduct of an affiliated agency.

Ineligibility under this section shall continue for three years following such conviction or admission. The period of ineligibility may be reduced, suspended, or waived by the Purchasing Agent under certain specific circumstances. Reference is made to Section 2-92-320 for a definition of "affiliated agency", and a detailed description of the conditions which would permit the Purchasing Agent to reduce, suspend, or waive the period of ineligibility.

Exhibit K

THE AMERICAN INSTITUTE OF ARCHITECTS



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*AIA Document A101/CM*

CONSTRUCTION MANAGEMENT EDITION

**Standard Form of Agreement Between  
Owner and Contractor**

*where the basis of payment is a*

**STIPULATED SUM**

**1980 EDITION**

*THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES; CONSULTATION WITH  
AN ATTORNEY IS ENCOURAGED.*

*This document is intended to be used in conjunction with AIA Documents  
A201/CM, 1980; B141/CM, 1980; and B801, 1980.*

---

**AGREEMENT**

made as of the \_\_\_\_\_ day of February \_\_\_\_\_ in the year of Nineteen  
Hundred and Ninety-Three

**BETWEEN** the Owner: NWS, INC., an Illinois corporation

and the Contractor:

the Project: 2550 West 35th Street  
Chicago, Illinois

the Construction Manager: NWS Construction Management Department

the Architect: Sonoc/Hutter/Lee, Ltd.

The Owner and the Contractor agree as set forth below.

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ARTICLE 1  
THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, the Conditions of the Contract (General, Supplementary and other Conditions), the Drawings, the Specifications, all Addenda issued prior to and all Modifications issued after execution of this Agreement. These form the Contract, and all are as fully a part of the Contract as if attached to this Agreement or repeated herein. An enumeration of the Contract Documents appears in Article 7. Contractor acknowledges that he has reconciled the information presented in these documents with the observations from his personal inspection of the Project Site.

ARTICLE 2  
THE WORK

The Contractor shall perform all the Work required by the Contract Documents, ~~for~~, or reasonably inferable by the *(Here insert the caption descriptive of the Work as used on other Contract Documents.)*

Contractor as necessary to produce the results intended by the Contract Documents, For:

Demolition of interior partition walls, removal of concrete bases at floor, and other items specifically called out on Sheets A6 & A7 of the Demolition Drawings, dated January 14, 1993, and found North of the existing wall approximately coinciding with column line 4.

This Contractor shall obtain all permits required for demolition from the City of Chicago. This Contractor shall abide by all requirements of the Occupational Safety and Health Act (OSHA).

This Owner-Contractor Agreement incorporates by reference the Contract Documents consisting of the General Conditions of Construction, the Supplementary General Conditions, the Specifications, and the Drawings. All Work shall conform to the Scope of work expressed, implied, and required to complete a satisfactory and safe demolition of the selected items.

The Certificate of Insurance is due in this office as soon as possible and no later than five (5) working days prior to your scheduled start on the project site.

ARTICLE 3  
TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

The Work to be performed under this Contract shall be commenced on \_\_\_\_\_, 1993, and diligently prosecuted thereafter

and, subject to authorized adjustments, Substantial Completion of the Work shall be achieved not later than \_\_\_\_\_, 19\_\_\_\_

~~The parties agree that it would be extremely difficult and impracticable under the presently known and anticipated facts and circumstances to ascertain and fix the actual damages Owner would incur should Contractor delay in achieving Substantial Completion by the date set forth in this Article 3, and accordingly the parties agree that if Contractor fails to so achieve Substantial Completion within such time, then the Owner's sole and exclusive remedy for such failure shall be to recover from Contractor the sum of \_\_\_\_\_ Dollars(\$ \_\_\_\_\_)~~  
The parties agree that it would be extremely difficult and impracticable under the presently known and anticipated facts and circumstances to ascertain and fix the actual damages Owner would incur should Contractor delay in achieving Substantial Completion by the date set forth in this Article 3, and accordingly the parties agree that if Contractor fails to so achieve Substantial Completion within such time, then the Owner's sole and exclusive remedy for such failure shall be to recover from Contractor the sum of \_\_\_\_\_ Dollars(\$ \_\_\_\_\_) for each calendar day Substantial Completion is so delayed by Contractor. The Contractor acknowledges that the timely completion of the work may require coordination with other contractors that will be working on the project. The Contractor agrees to coordinate his work with the work of such other contractors as may be required to insure timely completion of the work.

**ARTICLE 4**  
**CONTRACT SUM**

The Owner shall pay the Contractor in current funds for the <sup>proper</sup> performance of the Work, subject to additions and deductions by Change Order as provided in the Contract Documents, the Contract Sum of

The Contract Sum is determined as follows:

*(State here the base bid or other lump sum amount, accepted alternates and unit prices, as applicable.)*

if the Owner consents in writing,

**ARTICLE 5**  
**PROGRESS PAYMENTS**

including all  
supporting documents

Based upon Applications for Payment submitted to the Construction Manager by the Contractor and Project Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided in the Contract Documents for the period ending the last day of each month as follows: See Paragraph 5.1 on Page 3.A

Not later than forty-five (45) days following the end of the period covered by the Application for Payment, ninety percent (90 %) of the portion of the Contract Sum properly allocable to labor, materials and equipment incorporated in the Work and ninety percent (90 %) of the portion of the Contract Sum properly allocable to materials and equipment suitably stored at the site or at some other location agreed upon in writing, for the period covered by the Application for Payment, less the aggregate of previous payments made by the Owner; and upon Substantial Completion of the Work, a sum sufficient to increase the total payments to percent ( %) of the Contract Sum, less such amounts as the Architect shall determine for all incomplete Work and unsettled claims as provided in the Contract Documents. See Paragraphs 5.2-5.5 on Page 3.A.

*(If not covered elsewhere in the Contract Documents, here insert any provision for limiting or reducing the amount retained after the Work reaches a certain stage of completion.)*

and less amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Paragraph 9.6 of the General Conditions and any retainage held by Owner;

~~Payments due and unpaid under the Contract Documents shall be a lien in favor of the Contractor against the Work and the proceeds of the sale of the Work in the absence of any other lien having priority over the Contractor's lien.~~  
~~(This lien shall survive the completion of the Work.)~~

*(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Contractor's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Specific legal advice should be obtained with respect to deletion, modification or other requirements such as written disclosures or waivers.)*

5.1 Each Application for Payment shall be based upon the Schedule of Values submitted by the Contractor in accordance with the Contract Documents. Applications for Payment shall indicate the percentage of proper completion of each portion of the Work as of the end of the period covered by the Application for Payment.

5.2 Owner shall have the option, but not the obligation, to reduce the retainage requirements of this Agreement or release any portion of retainage prior to the date specified in the Contract Documents. Any exercise of this option, however, shall not be a waiver of (a) any of Owner's rights to retainage in connection with other payments to Contractor, or (b) any other right or remedy that Owner has under the Contract Documents, at law or in equity.

5.3 Owner may request verbal or written confirmation directly from any sub-contractor, vendor, material supplier, fabricator, labor supplier or other person regarding any contract amount, purchase order amount, and payments made or amounts due or to become due under said contracts or purchase orders pertaining to any obligation arising in connection with the Project.

5.4 Contractor shall produce satisfactory evidence of payment for all materials and supplies furnished and for all work, labor and services performed, upon demand by the Owner. The Contractor agrees and covenants that money received for the performance of this Contract shall be used solely for the benefit of persons and firms supplying labor, materials, supplies, tools, machines, equipment or services exclusively for this Project in connection with this Contract; and that any money paid to the Contractor pursuant to this Contract shall immediately become and constitute a trust fund for the benefit of said persons and firms, and shall not in any instance be diverted by Contractor to any other purpose until all obligations arising hereunder have been fully discharged and all claims arising herefrom have been fully paid.

5.5 If any subcontractor, supplier or materialman files a lien against the Owner's property, Contractor shall take all steps which are necessary to remove the encumbrance of such lien from the Owner's property within twenty-five (25) days. Except from liens which arise as a result of Owner's failure to make payments when due hereunder, failure by the Contractor to remove the encumbrance of the lien within said 25 day period shall constitute a default under the Contract by the Contractor.

not more than forty-five (45) days after the date

**ARTICLE 6  
FINAL PAYMENT**

properly

Final payment, constituting the entire unpaid balance of the Contract Sum, shall be paid by the Owner to the Contractor when the Work has been completed, the Contract fully performed, and the Architect has issued a Project Certificate for Payment which approves the final payment due the Contractor, and the Work is capable of being beneficially occupied for its intended use.

**ARTICLE 7  
MISCELLANEOUS PROVISIONS**

7.1 Terms used in this Agreement which are defined in the Conditions of the Contract shall have the meanings designated in those Conditions.

7.2 The Contract Documents, which constitute the entire agreement between the Owner and the Contractor, are listed in Article 1 and, except for Modifications issued after execution of this Agreement, are enumerated as follows:

*(List below the Agreement, the Conditions of the Contract [General, Supplementary and other Conditions], the Drawings, the Specifications, and any Addenda and accepted alternates, showing page or sheet numbers in all cases and dates where applicable.)*

1. The Agreement is this executed Standard Form of Agreement between Owner and Contractor, AIA Document A 101/CM, 1980 Edition.
2. The General Conditions are the General Conditions of the Contract of Construction, AIA Document A 201/CM, 1980 Edition.
3. Supplementary General Conditions
4. The Specifications, dated January 14, 1993
5. The Drawings, Dated January 14, 1993.

7.3 Temporary facilities and services:

(Here insert temporary facilities and services which are different from or in addition to those included elsewhere in the Contract Documents.)

7.4 Working Conditions:

(Here list any special conditions affecting the Contract.)

7.5 See Page 5.A.

This Agreement entered into as of the day and year first written above.

OWNER NWS, INC.

CONTRACTOR

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



**CAUTION: You should sign an original AIA document which has this caution printed in red.**

**An original assures that changes will not be obscured as may occur when documents are reproduced.**

This Agreement has been photocopied for the sole purpose of ensuring that each copy of this Agreement, as revised, is identical. You should sign this Agreement only if it is attached to an original AIA document which has the foregoing caution in red.

**7.5.1** Contractor represents and warrants the following to Owner (in addition to any of the representations and warranties contained in the Contract Documents), as an inducement to Owner to execute this Agreement, which representations and warranties shall survive the execution and delivery of this Agreement, any termination of this Agreement and the final completion of the Work:

- (a) that he and his subcontractors are financially solvent, able to pay all debts as they mature and possessed of sufficient working capital to complete and perform all obligations hereunder;
- (b) that he is able to furnish the tools, materials, supplies, equipment and labor required to complete the Work and perform his obligations hereunder and has sufficient experience and competence to do so;
- (c) that he is authorized to do business in the State of Illinois and properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over him and over the Work and the Project;
- (d) that his execution of this Agreement and his performance thereof is within his duly authorized powers;
- (e) that his duly authorized representative has visited the site of the Project and familiarized himself with the local conditions under which the Work is to be performed and correlated his observations with the requirements of the Contract Documents; and
- (f) that he is a sophisticated Contractor who possesses a high level experience and expertise in projects of this size, complexity and nature of this particular Project, and will perform the Work with the care, skill and diligence of such a Contractor.

**7.5.2** If Owner is entitled to reimbursement or payment from Contractor under or pursuant to the Contract Documents, such payment shall be made promptly upon demand by Owner. In the event such payment is not made, however, Owner shall have the option to either (a) deduct an equal amount for any payment then or thereafter due Contractor; or (b) issue a change order reducing the Contract Sum by an equal amount.

**7.5.3** Notwithstanding anything to the contrary in the Contract Documents, the Contract and all its terms and conditions are subject to approval or modification by Owner's construction lender, if any.

13.2.2A Notwithstanding anything to the contrary herein contained, it is understood and agreed that the foregoing warranty and guarantee shall not affect, limit or impair Owner's rights against Contractor with regard to latent defects in the work which do not appear within the applicable warranty period following completion or use or occupancy and which could not, by the exercise of reasonable care and due diligence, be ascertained or discovered by Owner within such warranty period. Contractor shall be and remain liable and responsible to correct and cure any such latent defects which are reported to Contractor by Owner in writing within one (1) year after any such latent defects first appear or could, by the exercise of reasonable care and due diligence, be ascertained or discovered by Owner. All guarantees or warranties upon any work, labor, materials, or equipment by any subcontractor or supplier of Contractor shall be deemed made by Contractor to Owner. It is expressly understood and agreed that Contractor shall be and remain bound and obligated upon this warranty according to its terms; acceptance of the work and final payment shall not in any way or to any extent release or discharge Contractor from its guarantees and warranties, which shall be assignable to any person or entity who succeeds Owner in the ownership of all or a part of the Project, and Contractor agrees to faithfully and diligently perform any guarantee or warrantee work arising hereunder for the benefit of any successor or assign of Owner.

# THE AMERICAN INSTITUTE OF ARCHITECTS



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*AIA Document A201/CM*

CONSTRUCTION MANAGEMENT EDITION

## General Conditions of the Contract for Construction

*THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES; CONSULTATION  
WITH AN ATTORNEY IS ENCOURAGED.*

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### 1980 EDITION TABLE OF ARTICLES

- |                                             |                                        |
|---------------------------------------------|----------------------------------------|
| 1. CONTRACT DOCUMENTS                       | 8. TIME                                |
| 2. ADMINISTRATION OF THE CONTRACT           | 9. PAYMENTS AND COMPLETION             |
| 3. OWNER                                    | 10. PROTECTION OF PERSONS AND PROPERTY |
| 4. CONTRACTOR                               | 11. INSURANCE                          |
| 5. SUBCONTRACTORS                           | 12. CHANGES IN THE WORK                |
| 6. WORK BY OWNER OR BY SEPARATE CONTRACTORS | 13. UNCOVERING AND CORRECTION OF WORK  |
| 7. MISCELLANEOUS PROVISIONS                 | 14. TERMINATION OF THE CONTRACT        |

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## INDEX

- Acceptance of Defective or Non-Conforming Work . . . 6.2.2, 13.3  
 Acceptance of Work . . . . . 9.5.5, 9.8.1, 9.9.1, 9.9.3  
 Access to Work . . . . . 2.3.6, 6.2.1  
 Accident Prevention . . . . . 2.3.5, 10  
 Acts and Omissions . . . . . 4.18.3, 7.4, 7.6.2, 8.3.1, 10.5  
 Addenda, Definition of . . . . . 1.1.1  
 Additional Costs, Claims for . . . . . 12.3  
**ADMINISTRATION OF THE CONTRACT . . . . . 2, 4.3.3**  
 Agreement, Extent of . . . . . 1.1, 1.2  
 All Risk Insurance . . . . . 11.3.1  
 Allowances . . . . . 4.8  
 Applications for Payment, Contractor's . . . . . 2.3.8, 9.2.1, 9.3.1,  
 9.3.3., 9.5.3, 9.7.1, 9.8.2, 9.9.1, 9.9.3, 9.9.5, 11.3.1, 14.2.2  
 Applications for Payment,  
 Project . . . . . 2.3.8, 2.3.9, 9.3.1, 9.4, 9.6.1, 9.7.1  
 Approvals . . . . . 2.3.18, 3.4, 4.3.3, 4.5, 4.12.4,  
 4.12.5, 4.12.6, 4.12.8, 4.13.2, 7.7, 9.3.2  
 Arbitration . . . . . 2.3.15, 2.3.23, 6.2.5, 7.9, 8.3.1, 11.3.7, 11.3.8  
 Architect, Definition of . . . . . 2.1  
 Architect, Extent of Authority . . . . . 2.3, 3.4, 4.12.8, 5.2, 7.7.2,  
 8.1.3, 8.1.4, 8.3.1, 9.2, 9.3.1, 9.4, 9.5.3, 9.6, 9.8, 9.9.1, 9.9.3,  
 12.1.1, 12.1.4, 12.3.1, 12.4.1, 13.1, 13.2.1, 13.2.5, 14.2  
 Architect, Limitations of Authority and Responsibility . . . . . 2.3.2  
 through 2.3.5, 2.3.13 through 2.3.18, 2.3.22, 4.12.6,  
 5.2.1, 9.4.2, 9.5.4, 9.5.5, 12.4  
 Architect's Additional Services . . . . . 3.4, 7.7.2, 13.2.1, 13.2.5, 14.2.2  
 Architect's Approvals . . . . . 2.3.18, 3.4, 4.5, 4.12.6, 4.12.8, 4.18.3  
 Architect's Authority to Reject Work . . . . . 2.3.16, 4.5, 13.1.2, 13.2  
 Architect's Copyright . . . . . 1.3  
 Architect's Decisions . . . . . 2.3.10 through 2.3.16, 7.7.2,  
 7.9.1, 9.2, 9.4, 9.6.2, 9.8.1, 12.1.4, 12.3.1  
 Architect's Inspections . . . . . 2.3.16, 2.3.21, 9.4.2, 9.8.1, 9.9.1  
 Architect's Instructions . . . . . 2.3.16, 2.3.19, 7.7.2, 12.4, 13.1  
 Architect's Interpretations . . . . . 2.3.10 through 2.3.13, 12.3.2  
 Architect's On-Site Observations . . . . . 2.3.4, 2.3.6, 2.3.9, 7.7.1,  
 7.7.4, 9.4.2, 9.6.1, 9.9.1  
 Architect's Relationship with Contractor . . . . . 1.1.2, 2.3.5, 2.3.6,  
 2.3.13, 2.3.16, 4.3.3, 4.5, 4.7.3, 4.12.6, 4.18, 11.3.6  
 Architect's Relationship with  
 Subcontractors . . . . . 1.1.2, 2.3.16, 9.5.3, 9.5.4  
 Architect's Representations . . . . . 9.4.2, 9.6.1, 9.9.1  
 Artistic Effect . . . . . 1.2.3, 2.3.14, 2.3.15, 7.9.1  
 Attorneys' Fees . . . . . 4.18.1, 6.2.5, 9.9.2  
 Award of Separate Contracts . . . . . 6.1.1  
 Award of Subcontracts and Other Contracts for  
 Portions of the Work . . . . . 5.2  
  
 Boiler and Machinery Insurance . . . . . 11.3.2  
 Bonds, Lien . . . . . 9.3.3, 9.9.2  
 Bonds, Performance, Labor and Material Payment . . . . . 7.5, 9.9.3  
 Building Permit . . . . . 4.7  
  
 Certificate of Substantial Completion . . . . . 9.8.1, 9.8.2, 9.8.3, 9.8.4  
 Certificates of Inspection, Testing or Approval . . . . . 7.7.3  
 Certificates of Insurance . . . . . 9.3.2, 11.1.4  
 Certificates for Payment, Project . . . . . 2.3.9, 2.3.21, 9.4, 9.5.1,  
 9.5.5, 9.6.1, 9.7.1, 9.8.2, 9.9.1, 9.9.3, 12.1.4, 14.1.1, 14.2.2  
 Change Orders . . . . . 1.1.1, 2.3.19, 3.4, 4.8.2.3, 4.11.1,  
 5.2.3, 7.7.2, 8.3.1, 9.7, 9.9.3, 11.3.1, 11.3.5, 11.3.7,  
 12.1, 12.2.1, 12.3.1, 13.1.2, 13.2.5, 13.3.1  
 Change Orders, Definition of . . . . . 12.1.1  
**CHANGES IN THE WORK . . . . . 2.3.19, 4.11.1, 12**  
  
 Claims for Additional Cost or Time . . . . . 8.3.2, 8.3.3, 12.2.1, 12.3  
 Claims for Damages . . . . . 6.1.1, 6.2.5, 7.4, 8.3, 9.6.1.2  
 Claims and Disputes Between Contractor  
 and Owner . . . . . 2.3.12, 2.3.15, 2.3.23, 4.18.2, 7.9  
 Cleaning Up . . . . . 4.15, 6.3  
 Commencement of the Work, Conditions Relating to . . . . . 3.2.1, 4.2,  
 4.7.1, 4.10, 5.2.1, 6.2.2, 7.5, 9.2, 11.1, 11.3.4  
 Communications . . . . . 2.3.2, 3.2.6, 4.9.1, 4.16  
 Completion,  
 Conditions Relating to . . . . . 2.3.21, 4.11, 4.15, 9.4.2, 9.9, 13.2.2  
**COMPLETION, PAYMENTS AND . . . . . 9**  
 Completion of the Project, Substantial . . . . . 8.1.4, 9.8.3, 9.8.4,  
 9.9.4, 9.9.5, 9.9.6, 13.2.1, 13.2.2  
 Completion of the Work, Substantial . . . . . 2.3.21, 8.1.1, 8.1.3,  
 8.2.2, 9.8, 9.4.2, 9.9.3, 11.3.9  
 Compliance with Laws . . . . . 1.3, 2.1.1, 4.6, 4.7, 4.13, 7.1,  
 7.6.1, 7.7.1, 10.2.2, 14.2.1  
 Concealed Conditions . . . . . 12.2  
 Consent, Written . . . . . 2.3.22, 4.14.2, 7.2, 7.6.2,  
 9.8.1, 9.9.2, 9.9.3, 11.3.9  
 Construction Manager, Definition of . . . . . 2.2  
 Construction Manager's Approval . . . . . 4.10.1, 4.13.2  
 Construction Manager's  
 Additional Services . . . . . 3.4, 7.7.2, 13.2.1, 13.2.5, 14.2.2  
 Construction Manager's Authority and Responsibility . . . . . 2.3.3,  
 2.3.5, 2.3.16, 2.3.10, 2.3.22, 4.8.1, 4.17.1, 4.18.3,  
 7.7.4, 9.2, 10.2.5, 11.3.6, 12.1.4, 14.1.1  
 Construction Manager's Confirmation . . . . . 9.9.3  
 Construction Manager's Consultation with the Architect . . . . . 2.3.12,  
 2.3.16, 2.3.19, 2.3.21, 3.4.1, 9.6.1, 9.8.1, 12.1.4, 12.3.1, 14.2.1  
 Construction Manager's Coordination and Scheduling . . . . . 2.3.7,  
 2.3.17, 4.3.1, 4.10.1, 4.12.4  
 Construction Manager's Decisions . . . . . 6.3, 8.3.1  
 Construction Manager's Determinations . . . . . 2.3.3, 6.3.1, 7.7.2, 8.3.1  
 Construction Manager's Interests . . . . . 11.3.1, 11.3.2  
 Construction Manager's Recommendations . . . . . 2.3.8, 2.3.9, 9.3.1,  
 9.4.1, 9.7.1, 9.9.1, 12.1.1  
 Construction Manager's Relationship  
 with Architect . . . . . 1.1.2, 2.3.1, 2.3.3, 2.3.21  
 Construction Manager's Relationship with Contractor . . . . . 1.1.2,  
 2.3.15, 2.3.16, 3.2.6, 4.2.1, 4.3.3, 4.5, 4.7.3, 4.11.1, 4.12.4, 4.12.6,  
 4.16.1, 4.17.1, 4.18, 5.2, 6.2.1, 6.2.2, 7.6.2, 7.7, 7.9.1, 7.9.2,  
 8.3.1, 8.3.2, 9.4.1, 9.5.4, 9.8.1, 9.9.1, 10.2.6, 11.1.4, 11.3.6  
 Construction Manager's Relationship  
 with Subcontractors . . . . . 1.1.2, 2.3.16, 5.3.1  
 Construction Manager's Review . . . . . 2.3.8, 2.3.17, 5.2.1  
 Construction Schedule, Contractor's . . . . . 4.10  
 Contract, Definition of . . . . . 1.1.2  
 Contract Administration . . . . . 2.3, 4.3.3  
 Contract Award and Execution,  
 Conditions Relating to . . . . . 4.7.1, 4.10, 5.2, 7.5, 11.1, 11.3.4  
**CONTRACT DOCUMENTS . . . . . 1**  
 Contract Documents,  
 Copies Furnished and Use of . . . . . 1.3, 3.2.5, 5.3  
 Contract Documents, Definition of . . . . . 1.1.1  
 Contract Modifications . . . . . 1.1.1, 12  
 Contract Sum, Definition of . . . . . 9.9.1  
 Contract Termination . . . . . 14  
 Contract Time, Definition of . . . . . 8.1.1  
**CONTRACTOR . . . . . 4**  
 Contractor, Definition of . . . . . 4.1, 6.1.2  
 Contractor's Construction Schedule . . . . . 4.10

Contractor's Employees .....	4.3.2, 4.4.2, 4.8.1, 4.9, 4.18, 10.2.1 through 10.2.4, 10.2.6, 10.3, 11.1.1
Contractor's Liability Insurance .....	11.1
Contractor's Relationship with Architect .....	1.1.2, 2.3.5, 2.3.6, 2.3.13, 2.3.16, 4.3.3, 4.5, 4.7.3, 4.12.6, 4.18, 11.3.6
Contractor's Relationship with Construction Manager .....	1.1.2, 2.3.15, 2.3.16, 3.2.6, 4.2.1, 4.3.3, 4.5, 4.7.2, 4.11.1, 4.12.4, 4.12.6, 4.16.1, 4.17.1, 4.18, 5.2, 6.2.1, 6.2.2, 7.6.2, 7.7, 7.9.1, 7.9.2, 8.3.1, 8.3.2, 9.4.1, 9.5.4, 9.8.1, 9.9.1, 10.2.6, 11.1.4, 11.3.6
Contractor's Relationship with Separate Contractors and Owner's Forces .....	3.2.7, 6
Contractor's Relationship with Subcontractors .....	1.2.4, 5.2, 5.3, 9.5.2, 11.3.3, 11.3.6
Contractor's Representations .....	1.2.2, 4.3, 4.12.5, 9.3.3
Contractor's Responsibility for Those Performing the Work .....	4.3.2, 4.18, 10
Contractor's Review of Contract Documents .....	1.2.2, 4.2, 4.7.3
Contractor's Right to Stop the Work .....	9.7
Contractor's Right to Terminate the Contract .....	14.1
Contractor's Submittals .....	2.3.18, 4.10, 4.12, 5.2.1, 5.2.3, 9.2, 9.3.1, 9.8.1, 9.9.2, 9.9.3
Contractor's Superintendent .....	4.9, 10.2.6
Contractor's Supervision and Construction Procedures .....	1.2.4, 2.3.5, 4.3, 4.4, 10
Contractual Liability Insurance .....	11.1.3
Coordination and Correlation .....	1.2.2, 1.2.4, 4.3.1, 4.10.1, 4.12.5, 6.1.3, 6.2.1
Copies Furnished of Drawings and Specifications .....	1.3, 3.2.5, 5.3
Correction of Work .....	3.3, 3.4, 10.2.5, 13.2
Cost, Definition of .....	12.1.4
Costs .....	3.4, 4.8.2, 4.15.2, 5.2.3, 6.1.1, 6.2.3, 6.2.5, 6.3, 7.7.1, 7.7.2, 9.7, 11.3.1, 11.3.5, 12.1.3, 12.1.4, 12.3, 13.1.2, 13.2, 14.2.2
Cutting and Patching of Work .....	4.14
Damage to the Work .....	4.14.2, 10.2.1.2, 10.2.7, 11.3.1
Damage to Work .....	4.14.2, 4.18.1, 6.2.4, 6.2.5, 9.6.15, 10.2.1.3, 10.3.2, 10.2.5, 10.3, 13.2.6
Damages, Claims for .....	6.1.1, 6.2.5, 7.4, 9.6.1.2
Damages for Delay .....	6.1.1, 8.3.4, 9.7
Day, Definition of .....	8.1.5
Decisions of the Architect .....	2.3.10 through 2.3.16, 7.7.2, 7.9.1, 9.2, 9.4, 9.6.1, 9.8.1, 12.1.4, 12.3.1
Decisions of the Construction Manager .....	6.3, 8.3.1
Defective or Non-Conforming Work, Acceptance, Rejection and Correction of .....	2.3.4, 2.3.16, 3.3, 3.4, 4.5, 6.2.2, 6.2.3, 9.6.1.1, 9.9.4.2, 13
Definitions .....	1.1, 2.1, 2.2, 3.1, 4.1, 4.12.1 through 4.12.3, 5.1, 6.1.2, 8.1, 9.1.1, 12.1.1, 12.1.4
Delays and Extensions of Time .....	8.3
Disputes .....	2.3.12, 2.3.15, 2.3.23, 6.2.5, 6.3, 7.9.1
Documents and Samples at the Site .....	4.11
Drawings and Specifications, Use and Ownership of .....	1.3, 3.2.5, 4.11, 5.3
Easements .....	3.2.3
Emergencies .....	10.3
Employees, Contractor's .....	4.3.2, 4.4.4, 4.8.1, 4.9, 4.18, 10.2.1 through 10.2.4, 10.2.6, 10.3, 11.1.1
Equipment, Labor, Materials and .....	1.1.1, 4.4, 4.5, 4.12, 4.13, 4.15.1, 6.2.1, 9.3.2, 9.3.3, 9.6.1.3, 9.9.2, 10.2.1.2, 11.3.1, 12.1.4, 13.2.2, 13.2.5, 14
Execution and Progress of the Work .....	1.1.3, 1.2.3, 2.3.4, 2.3.5, 2.3.11, 4.2, 4.4.1, 4.5, 4.7.1, 6.2.2, 7.9.3, 8.2.2, 8.3.1, 8.3.2, 9.6.1, 10.2.3, 10.2.4, 14.2
Execution, Correlation and Intent of the Contract Documents .....	1.2, 4.7.1
Extensions of Time .....	8.3, 12.1.1, 12.1.2
Failure of Payment by Owner .....	9.7, 14.1
Failure of Payment of Subcontractors .....	9.6.1.3, 9.9.2, 14.2.1
Failure to Carry out the Work .....	2.3.5
Final Completion and Final Payment .....	2.3.15, 2.3.21, 9.9, 13.3.1
Financial Arrangements, Owner's .....	3.2.1
Fire and Extended Coverage Insurance .....	11.3.1
Governing Law .....	7.1
Indemnification .....	4.17, 4.18, 6.2.5, 9.9.2
Identification of Contract Documents .....	1.2.1
Identification of Subcontractors and Suppliers .....	5.2.1
Information and Services Required of the Owner .....	3.2, 6.1, 9, 11.2, 11.3
Inspections .....	2.3.16, 2.3.21, 4.3.3, 7.7, 12.1.2, 9.9.1
Instructions to Bidders .....	1.1.1
Instructions to the Contractor .....	2.3.2, 3.2.6, 4.8.1, 7.7.2, 12.1.2, 12.1.4
INSURANCE .....	9.8.1, 11
Insurance, Contractor's Liability .....	11.1
Insurance, Loss of Use .....	11.4
Insurance, Owner's Liability .....	11.2
Insurance, Property .....	11.3
Insurance, Boiler and Machinery .....	11.3.2
Insurance, Special Hazards .....	11.3.5
Insurance, Stored Materials .....	9.3.2, 11.3.1
Insurance Companies, Consent to Partial Occupancy .....	11.3.9
Insurance Companies, Settlement With .....	11.3.8
Intent of the Contract Documents .....	1.2.3, 2.3.10, 2.3.13, 2.3.14, 12.4
Interest .....	7.8
Interpretations, Written .....	1.1.1, 2.3.11, 2.3.12, 2.3.13, 12.4
Labor, Materials and Equipment .....	1.1.3, 4.4, 4.5, 4.12, 4.13, 4.15.1, 6.2.1, 9.3.2, 9.3.3, 9.6.1.3, 9.2.2, 10.2.1.2, 11.3.1, 12.1.4, 13.2.2, 13.2.5, 14
Labor and Material Payment Bond .....	7.5
Labor Disputes .....	8.3.1
Laws and Regulations .....	1.3, 2.1.1, 4.6, 4.7, 4.13, 7.1, 7.6.1, 7.7.1, 10.2.2, 14
Liens .....	9.3.3, 9.9.2, 9.9.4.1
Limitations of Authority .....	2.3.2, 11.3.8, 12.4.1
Limitations of Liability .....	2.3.13, 2.3.16, 2.3.18, 3.3, 4.2, 4.7.3, 4.12.6, 4.17, 4.18, 6.2.2, 7.6.2, 9.4.2, 9.5.4, 9.9.4, 9.9.5, 10.2.5, 11.1.2, 11.3.6
Limitations of Time, General .....	2.3.11, 2.3.18, 3.2.1, 3.2.4, 4.2, 4.7.1, 4.7.3, 4.12.4, 4.15.1, 5.2.1, 5.2.3, 6.2.2, 7.4, 7.7, 7.9.2, 8.2, 9.5.2, 9.6.1, 9.8, 9.9, 11.3.1, 11.3.4, 11.3.9, 12.1.4, 12.4, 13.2.1, 13.2.2, 13.2.5
Limitations of Time, Specific .....	3.4, 4.10, 7.9.2, 8.2, 8.3.2, 8.3.3, 9.2, 9.3.1, 9.4.1, 9.5.1, 9.7, 11.1.4, 11.3.8, 12.2, 12.3.1, 13.2.2, 13.2.7, 14.1, 14.2.1
Limitations, Statutes of .....	7.9.2, 13.2.2, 13.2.7
Loss of Use Insurance .....	11.4

Materials, Labor and Equipment .....	1.1.3, 4.4, 4.5, 4.12, 4.13, 4.15.1, 6.2.1, 9.3.2, 9.3.3, 9.6.1.3, 9.9.2, 10.2.1.2, 11.3.1, 12.1.4, 13.2.2, 13.2.5, 14
Material Suppliers .....	4.12.1, 5.2.1, 9.3.3
Means, Methods, Techniques, Sequences and Procedures of Construction .....	2.3.5, 4.3.1, 9.4.2
Minor Changes in the Work .....	1.1.1, 2.3.19, 12.4
<b>MISCELLANEOUS PROVISIONS</b> .....	<b>7</b>
Modifications, Definition of .....	1.1.1
Modifications to the Contract .....	1.1.1, 1.1.2, 2.3.2, 2.3.22, 4.11.1, 4.7.3, 12
Mutual Responsibility .....	6.2
Non-Conforming Work, Acceptance of Defective or .....	13.3
Notice, Written .....	2.3.11, 2.3.15, 4.2, 4.7.3, 4.7.4, 4.9, 4.12.6, 4.12.7, 5.2.1, 7.3, 7.4, 7.9.2, 8.1.2, 8.3.2, 8.3.3, 9.4.1, 9.6.1, 9.7, 9.9.1, 9.9.5, 10.2.6, 11.1.4, 11.3.1, 11.3.5, 11.3.7, 11.3.8, 12.2, 12.3, 13.2.2, 13.2.5, 14
Notices, Permits, Fees and .....	2.3.2, 4.7, 4.13.1, 10.2.2
Notice of Testing and Inspections .....	7.7
Notice to Proceed .....	8.1.2
Observations, Contractor's .....	1.2.2, 4.7.3
Occupancy .....	8.1.3, 8.1.4, 9.5.5, 11.3.9
On-Site Inspections by the Architect .....	2.3.16, 2.3.21, 9.4.2, 9.8.1, 9.9.1
On-Site Observations by the Architect .....	2.3.4, 2.3.6, 2.3.9, 7.7.1, 7.7.4, 9.4.2, 9.6.1, 9.9.1
Orders, Written .....	3.3, 4.9, 12.1.4, 12.4.1, 13.1
<b>OWNER</b> .....	<b>3</b>
Owner, Definition .....	3.1
Owner, Information and Services Required of the .....	3.2, 4.7.1, 6.1.3, 6.2, 9, 11.2, 11.3
Owner's Authority .....	2.3.21, 7.7.2, 9.3.1, 9.3.2, 9.8.1, 11.3.8, 12.1.2, 12.1.4
Owner's Financial Capability .....	3.2.1
Owner's Liability Insurance .....	11.2
Owner's Relationship with Subcontractors .....	1.1.2, 9.5.4
Owner's Right to Carry Out the Work .....	3.4, 13.2.4
Owner's Right to Clean Up .....	4.15.2, 6.3
Owner's Right to Perform Work and to Award Separate Contracts .....	6.1
Owner's Right to Terminate the Contract .....	14.2
Owner's Right to Stop the Work .....	3.3
Ownership and Use of Documents .....	1.3, 3.2.5, 5.3
Patching of Work, Cutting and .....	4.14
Patents, Royalties and .....	4.17.1
Payment Bond, Labor and Material .....	7.5
Payment, Contractor's Applications for .....	2.3.8, 9.2, 9.3, 9.4, 9.5.3, 9.6.1, 9.7.1, 9.8.2, 9.9.1, 9.9.5, 14.2.2
Payment, Project Certificates for .....	2.3.9, 2.3.21, 9.4, 9.5.1, 9.5.5, 9.6.1, 9.7.1, 9.8.2, 9.9.1, 9.9.3, 12.1.4, 14.1.1, 14.2.2
Payment, Failure of .....	9.5.2, 9.6.1.3, 9.7, 9.9.2, 14
Payment, Final .....	2.3.15, 2.3.21, 9.9, 13.3.1
Payments, Progress .....	7.8, 7.9.3, 9.5.5, 9.8.2, 9.9.3, 12.1.4
<b>PAYMENTS AND COMPLETION</b> .....	<b>9</b>
Payments to Subcontractors .....	9.5.2, 9.5.3, 9.5.4, 9.6.1.3, 11.3.3, 14.2.1
Payments Withheld .....	9.6

Performance Bond and Labor and Material Payment Bond .....	7.5
Permits, Fees and Notices .....	3.2.3, 4.7, 4.13, 10.2.2
<b>PERSONS AND PROPERTY, PROTECTION OF</b> .....	<b>10</b>
Product Data, Definition of .....	14.2.2
Product Data, Shop Drawings, Samples and .....	2.3.18, 4.2.1, 4.12
Progress and Completion .....	2.3.4, 7.9.3, 8.2
Progress Payments .....	7.8, 7.9.3, 9.5.5, 9.8.2, 9.9.3, 12.1.4
Project, Definition of .....	1.1.4
Project Construction Schedule .....	4.10
Property Insurance .....	11.3
<b>PROTECTION OF PERSONS AND PROPERTY</b> .....	<b>10</b>
Record Documents .....	4.11
Regulations and Laws .....	1.3, 2.1.1, 4.6, 4.7, 4.13.1, 7.1, 10.2.2, 14
Rejection of Work .....	2.3.16, 4.5.1, 13.2
Releases of Waivers and Liens .....	9.9.2, 9.9.4
Representations .....	1.2.2, 4.5, 4.12.5, 9.4.2, 9.6.1, 9.9.1
Representatives .....	2.1, 2.2, 2.3.2, 2.3.22, 3.1, 4.1, 4.9, 5.1, 9.3.3
Responsibility for Those Performing the Work .....	2.3.5, 4.3.2, 6.1.3, 6.2, 9.8.1
Retainage .....	9.3.1, 9.5.2, 9.8.2, 9.9.2, 9.9.3
Review of Contract Documents by the Contractor .....	1.2.2, 4.2, 4.7.3
Reviews of Contractor's Submittals by Owner and Architect .....	2.3.18, 4.10, 4.12, 5.2.1, 5.2.3, 9.2
Rights and Remedies .....	1.1.2, 2.3.15, 2.3.16, 3.3, 3.4, 5.3, 6.1, 6.3, 7.6, 7.9, 8.3.1, 9.6.1, 9.7, 10.3, 12.1.2, 12.2, 13.2.2, 14
Royalties and Patents .....	4.17
Safety of Persons and Property .....	10.2
Safety Precautions and Programs .....	2.3.5, 10.1
Samples, Definition of .....	4.12.3
Samples, Shop Drawings, Product Data and .....	2.3.17, 2.3.18, 4.2, 4.12
Samples at the Site, Documents and .....	4.11
Schedule, Contractor's Construction .....	4.10
Schedule, Project Construction .....	4.10
Schedule of Values .....	9.2
Separate Contracts and Contractors .....	4.14.2, 6, 11.3.6, 13.1.2
Shop Drawings, Definition .....	4.12.1
Shop Drawings, Product Data and Samples .....	2.3.17, 2.3.18, 4.2, 4.12
Site, Use of .....	4.13, 6.2.1
Site Inspections .....	1.2.2, 2.3.4, 2.3.21, 7.7, 9.8.1, 9.9.1
Site Visits, Architect's .....	2.3.4, 2.3.6, 2.3.9, 7.7.1, 7.7.4, 9.4.2, 9.6.1, 9.9.1
Special Inspection and Testing .....	2.3.16, 7.7
Special Hazards Insurance .....	11.3.5
Specifications .....	1.1.1, 1.2.4, 1.3
Statutes of Limitations .....	7.9.2, 13.2.2, 13.2.7
Stopping the Work .....	3.3, 9.7.1, 10.3, 14.1
Stored Materials .....	6.2.1, 9.3.2, 10.2.1.2, 11.3.1, 13.2.5
<b>SUBCONTRACTORS</b> .....	<b>5</b>
Subcontractors, Definition of .....	5.1.1
Subcontractors, Work by .....	1.2.4, 2.3.5, 4.3.1, 4.3.2
Subcontractual Relations .....	5.3
Submittals .....	1.3, 2.3.18, 4.10, 4.12, 5.2.1, 5.2.3, 9.2, 9.3.1, 9.8.1, 9.9.1, 9.9.3

Subrogation, Waiver of .....	11.3.6	Time Limits, Specific .....	3.4, 4.10, 7.9.2, 8.2, 8.3.2, 8.3.3, 9.2, 9.3.1, 9.4.1, 9.5.1, 9.7, 11.1.4, 11.3.8, 12.2, 12.3.1, 13.2.2, 13.2.7, 14.1, 14.2.1
Substantial Completion of the Project .....	8.1.4, 9.8.3, 9.8.4, 9.9.4, 9.9.5, 9.9.6, 13.2.1, 13.2.2	Title to Work .....	9.3.2, 9.3.3
Substantial Completion of the Project, Definition of .....	8.1.4	<b>UNCOVERING AND CORRECTION OF WORK</b> .....	13
Substantial Completion of the Work .....	2.3.21, 8.1.1, 8.1.3, 8.2.2, 9.4.2, 9.8, 9.9.3, 11.3.9	Uncovering of Work .....	13.1
Substantial Completion of the Work, Definition of .....	8.1.3	Unforeseen Conditions .....	8.3.1, 12.2
Substitution of Subcontractors .....	5.2.3, 5.2.4	Unit Prices .....	12.1.3.2, 12.1.5
Substitution of the Architect .....	2.3.23	Use of Documents .....	1.3, 3.2.5, 5.3
Substitution of the Construction Manager .....	2.3.23	Use of Site .....	4.13, 6.2.1
Substitutions of Materials .....	4.5, 12.1.4	Values, Schedule of .....	9.2
Sub-subcontractors, Definition of .....	5.1.2	Waiver of Claims by the Contractor ....	7.6.2, 8.3.2, 9.9.5, 11.3.6
Subsurface Conditions .....	12.1.1	Waiver of Claims by the Owner .....	7.6.2, 9.9.4, 11.3.6, 11.4.1
Successors and Assigns .....	7.2	Waiver of Liens .....	9.9.2
Supervision and Construction Procedures .....	1.2.4, 2.3.5, 4.3, 4.4, 10	Warranty and Warranties .....	2.3.21, 4.5, 9.3.3, 9.8.4, 9.9.4, 13.2.2, 13.2.7
Superintendent, Contractor's .....	4.9, 10.2.6	Weather Delays .....	8.3.1
Surety, Consent of .....	9.9.2, 9.9.3	Words, Recognized Meaning of .....	1.2.3
Surveys .....	3.2.2, 4.18.3	Work, Definition of .....	1.1.3
Taxes .....	4.6	<b>WORK BY OWNER OR BY SEPARATE CONTRACTORS</b> .....	6
Termination by the Contractor .....	14.1	Written Consent .....	2.3.22, 4.14.2, 7.2, 7.6.2, 9.8.1, 9.9.3
Termination by the Owner .....	14.2	Written Interpretations .....	1.1.1, 2.3.11, 12.3.2
Termination of the Architect .....	2.3.23	Written Notice .....	2.3.11, 2.3.15, 4.2; 4.7.3, 4.7.4, 4.9, 4.12.6, 4.12.7, 5.2.1, 7.3, 7.4, 7.7.2, 7.9.2, 8.1.2, 8.3.2, 8.3.3, 9.4.1, 9.6.1, 9.7, 9.9.1, 10.2.6, 11.1.4, 11.3.1, 11.3.5, 11.3.7, 11.3.8, 12.2, 12.3, 13.2.2, 13.2.5, 14
Termination of the Construction Manager .....	2.3.23	Written Orders .....	3.3, 4.9, 12.1.4, 12.4.1, 13.1
<b>TERMINATION OF THE CONTRACT</b> .....	14		
Tests .....	2.3.16, 4.3.3, 7.7, 9.4.2		
<b>TIME</b> .....	8		
Time, Definition of .....	8.1		
Time, Delays and Extensions of .....	8.3, 12.1, 12.3, 13.2.7		

Claims for additional compensation or extensions of time to complete the Work due to failure of the Contractor to familiarize himself with the conditions of the site and the surrounding environment which might affect the Work shall not be allowed.

## GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION

### ARTICLE 1 CONTRACT DOCUMENTS

#### 1.1 DEFINITIONS

##### 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents consist of the Owner-Contractor Agreement, the Conditions of the Contract (General, Supplementary and other Conditions), the Drawings, the Specifications, and all Addenda issued prior to and all Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a written interpretation issued by the Architect pursuant to Subparagraph 2.3.11, or (4) a written order for a minor change in the Work issued by the Architect pursuant to Paragraph 12.4. The Contract Documents do not include Bidding Documents such as the Advertisement or Invitation to Bid, the Instructions to Bidders, sample forms, the Contractor's Bid or portions of Addenda relating to any of these, or any other documents unless specifically enumerated in the Owner-Contractor Agreement.

##### 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. This Contract represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification as defined in Subparagraph 1.1.1. The Contract Documents shall not be construed to create any contractual relationship of any kind between the Architect and the Contractor, between the Construction Manager and the Contractor or between the Architect and the Construction Manager, but the Architect and the Construction Manager shall be entitled to performance of the obligations of the Contractor intended for their benefit and to enforcement thereof. Nothing contained in the Contract Documents shall create any contractual relationship between the Owner, the Construction Manager or the Architect and any Subcontractor or Sub-subcontractor.

##### 1.1.3 THE WORK

The Work comprises the completed construction required of the Contractor by the Contract Documents, and includes all labor necessary to produce such construction, and all materials and equipment incorporated or to be incorporated in such construction.

##### 1.1.4 THE PROJECT

The Project, as defined in the Owner-Contractor Agreement, is the total construction of which the Work performed under the Contract Documents is a part.

#### 1.2 EXECUTION, CORRELATION AND INTENT

1.2.1 The Contract Documents shall be signed ~~in not less than quadruplicate~~ by the Owner and the Contractor. If either the Owner or the Contractor or both do not sign the Conditions of the Contract, Drawings, Specifications

or any of the other Contract Documents, the Architect shall identify such Documents.

1.2.2 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become familiar with the local conditions under which the Work is to be performed, and has correlated personal observations with the requirements of the Contract Documents.

1.2.3 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work. The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. Work not covered in the Contract Documents will not be required unless it is consistent therewith and is reasonably inferable therefrom as being necessary to produce the intended results. Words and abbreviations which have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.

1.2.4 The organization of the Specifications into divisions, sections and articles, and the arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

#### 1.3 OWNERSHIP AND USE OF DOCUMENTS

1.3.1 All Drawings, Specifications and copies thereof furnished by the Architect are and shall remain the property of the Architect. They are to be used only with respect to this Project and are not to be used on any other project. With the exception of one contract set for each party to the Contract, such documents are to be returned or suitably accounted for to the Architect on request at the completion of the Work. Submission or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's common law copyright or other reserved rights.

Except as expressly agreed upon between Owner and Architect.

### ARTICLE 2

#### ADMINISTRATION OF THE CONTRACT

##### 2.1 THE ARCHITECT

2.1.1 The Architect is the person lawfully licensed to practice architecture, or an entity lawfully practicing architecture, identified as such in the Owner-Contractor Agreement. The term Architect means the Architect or the Architect's authorized representative.

##### 2.2 THE CONSTRUCTION MANAGER

2.2.1 The Construction Manager is the person or entity identified as such in the Owner-Contractor Agreement. The term Construction Manager means the Construction Manager or the Construction Manager's authorized representative.

##### 2.3 ADMINISTRATION OF THE CONTRACT

2.3.1 The Architect and the Construction Manager will

and become familiar with

except as expressly agreed upon between Owner and Architect.

not agent

provide administration of the Contract as hereinafter described.

2.3.2 The Architect and the Construction Manager will be the Owner's representatives during construction and until final payment to all contractors is due. The Architect and the Construction Manager will advise and consult with the Owner. All instructions to the Contractor shall be forwarded through the Construction Manager. The Architect and the Construction Manager will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified by written instrument in accordance with Subparagraph 2.3.22.

2.3.3 The Construction Manager will determine in general that the Work of the Contractor is being performed in accordance with the Contract Documents, and will endeavor to guard the Owner against defects and deficiencies in the Work of the Contractor.

2.3.4 The Architect will visit the site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of on-site observations as an architect, the Architect will keep the Owner informed of the progress of the Work, and will endeavor to guard the Owner against defects and deficiencies in the Work of the Contractor. See page 7A.

2.3.5 Neither the Architect nor the Construction Manager will be responsible for or have control or charge of construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, and neither will be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. Neither the Architect nor the Construction Manager will be responsible for or have control or charge over the acts or omissions of the Contractor, Subcontractors, or any of their agents or employees, or any other persons performing any of the Work. See page 7A.

2.3.6 The Architect and the Construction Manager shall at all times have access to the Work wherever it is in preparation and progress. The Contractor shall provide facilities for such access so that the Architect and the Construction Manager may perform their functions under the Contract Documents.

2.3.7 The Construction Manager will schedule and coordinate the Work of all contractors on the Project including their use of the site. The Construction Manager will keep the Contractor informed of the Project Construction Schedule to enable the Contractor to plan and perform the Work properly, and will reasonably attempt to

2.3.8 The Construction Manager will review all Applications for Payment by the Contractor, including final payment, and will assemble them with similar applications from other contractors on the Project into a combined Project Application for Payment. The Construction Manager will then make recommendations to the Architect for certification for payment, in accordance with Owner's

2.3.9 Based on the Architect's observations, the recom-

, with the Construction Manager's written approval, prepared and executed by Construction Manager

recommendations of the Construction Manager and an evaluation of the Project Application for Payment. The Architect will determine the amount owing to the Contractor and will issue a Project Certificate for Payment incorporating such amount, as provided in Paragraph 9.4.

2.3.10 The Architect will be the interpreter of the requirements of the Contract Documents and the judge of the performance thereunder by both the Owner and the Contractor.

2.3.11 The Architect will render interpretations necessary for the proper execution or progress of the Work, with reasonable promptness and in accordance with agreed upon time limits. Either party to the Contract may make written request to the Architect for such interpretations, only upon written request of Owner, Construction

2.3.12 Claims, disputes and other matters in question between the Contractor and the Owner relating to the execution or progress of the Work or the interpretation of the Contract Documents shall be referred initially to the Architect for decision. After consultation with the Construction Manager, the Architect will render a decision in writing within a reasonable time. Any such decision shall be subject to judicial review.

2.3.13 All interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in graphic form. In this capacity as interpreter and judge, the Architect will endeavor to secure faithful performance by both the Owner and the Contractor, will not show partiality to either, and will not be liable for the result of any interpretation or decision rendered in good faith in such capacity, conformity with the requirements and standards set forth in the Architect's

2.3.14 The Architect's decisions in matters relating to artistic effect will be final if consistent with the intent of the Contract Documents, and if made in consultation with, and the prior written approval of, Owner and Construction

2.3.15 Any claim, dispute or other matter in question between the Contractor and the Owner referred to the Architect through the Construction Manager, except those relating to artistic effect as provided in Subparagraph 2.3.14 and those which have been waived by the making or acceptance of final payment as provided in Subparagraphs 9.9.4 through 9.9.6, inclusive, shall be subject to arbitration upon the written demand of either party. However, no demand for arbitration of any such claim, dispute or other matter may be made until the earlier of (1) the date on which the Architect has rendered a written decision, or (2) the tenth day after the parties have presented their guidance to the Architect or have been given a reasonable opportunity to do so if the Architect has not rendered a written decision by that date. When such a written decision of the Architect states (1) that the decision is final but subject to appeal, and (2) that any demand for arbitration of a claim, dispute or other matter covered by such decision must be made within thirty days after the date on which the party making the demand receives the written decision, failure to demand arbitration within said thirty day period will result in the Architect's decision becoming final and binding upon the Owner and the Contractor. If the Architect renders a decision after arbitration proceedings have been initiated, such decision may be entered as evidence but will not supersede any arbitration proceedings, unless the decision is acceptable to all parties concerned.

the overall design concept and all applicable laws (as hereinafter defined)

which shall be prepared and executed by Construction Manager

will not

Manager or Contractor

may

Agree

Manager

shall

judicial review

\*schedule all of the work for Project in order to complete the Project and its phases within the time periods established for such completion.

\*\*agreement with Architect (the "Architect's Agreement")

2.3.4 - (cont.) The Architect shall visit the site an average of once per week during the Construction Phase or more frequently if required. Such weekly visits shall be made by a registered architect; provided, however, that the foregoing shall not be construed as a requirement that every other site visit be made by a registered architect, if Architect, in the exercise of its professional judgment, does not deem it necessary for any particular site visit to be conducted by a registered architect. Architect shall summarize each visit in writing and provide copies to Owner and Construction Manager. Architect shall at all times during the performance of the Work by the Contractors have a registered architect familiar with the Project available to render approvals and provide clarification to the Construction Manager and the Contractors within a reasonable time. The Architect will exercise the utmost care and diligence in discovering and promptly reporting to the Owner any defects or deficiencies in the Work performed by Contractors or any of their subcontractors, or their agents or employees, or any other person performing any of the Work in the construction of the Project. The Architect represents that it will follow the highest professional standards in performing all architectural services under this Agreement. Any designs or specifications furnished by the Architect which do not comply with Applicable Laws as interpreted by the governmental authorities responsible for enforcement thereof, or instructions previously given by the Owner or which were not prepared in accordance with professional architectural standards will be promptly corrected by Architect at no cost to the Owner and the Architect will reimburse the Owner for all damages, if any, resulting from the use of such defective designs or specifications. The Owner's approval, acceptance, use of or payment for all or any part of the Architect's services hereunder or of the Project itself shall in no way alter the Architect's obligations or the Owner's rights hereunder.

2.3.5 - (cont.) but shall be responsible for reporting promptly to the Construction Manager and Contractor any and all defects and deficiencies in the Work discovered by the Architect as a result of such on-site observations, for determining that any such defects or deficiencies so discovered have been properly and expeditiously corrected by the Contractor in compliance with the Contract Documents, and for withholding the Certificate(s) of Payment, or adjusting the same, if required, to induce the Contractor to so correct such defects of deficiencies.

and Owner

the requirements of the Contract Documents and conformance with Applicable Laws.

2.3.16 The Architect will have authority to reject Work which does not conform to the Contract Documents, and to require special inspection or testing, but will take such action only after consultation with the Construction Manager. Subject to review by the Architect, the Construction Manager will have the authority to reject Work which does not conform to the Contract Documents. Whenever, in the Construction Manager's opinion, it is considered necessary or advisable for the implementation of the intent of the Contract Documents, the Construction Manager will have authority to require special inspection or testing of the Work in accordance with Subparagraph 7.7.2 whether or not such Work be then fabricated, installed or completed. The foregoing authority of the Construction Manager will be subject to the provisions of Subparagraphs 2.3.10 through 2.3.16, inclusive, with respect to interpretations and decisions of the Architect. However, neither the Architect's nor the Construction Manager's authority to act under this Subparagraph 2.3.16, nor any decision made by them in good faith either to exercise or not to exercise such authority shall give rise to any duty or responsibility of the Architect or the Construction Manager to the Contractor, any Subcontractor, any of their agents or employees, or any other person performing any of the Work.

2.3.17 The Construction Manager will receive from the Contractor and review all Shop Drawings, Product Data and Samples, coordinate them with information contained in related documents, and transmit to the Architect those recommended for approval.

2.3.18 The Architect will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for conformance with the design concept of the Work and the information given in the Contract Documents. Such action shall be taken with reasonable promptness so as to cause no delay. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

2.3.19 Following consultation with the Construction Manager, the Architect will take appropriate action on Change Orders in accordance with Article 12, and will have authority to order minor changes in the Work as provided in Subparagraph 12.4.1.

2.3.20 The Construction Manager will maintain at the Project site one record copy of all Contracts, Drawings, Specifications, Addenda, Change Orders and other Modifications pertaining to the Project, in good order and marked currently to record all changes made during construction, and approved Shop Drawings, Product Data and Samples. These shall be available to the Architect and the Contractor, and shall be delivered to the Architect for the Owner upon completion of the Project.

2.3.21 The Construction Manager will assist the Architect in conducting inspections to determine the dates of Substantial Completion and final completion and will receive and forward to the Owner for the Owner's review written warranties and related documents required by the Contract and assembled by the Contractor. The Architect will issue a final Project Certificate for Payment upon compliance with the requirements of Paragraph 9.9.

2.3.22 The duties, responsibilities and limitations of authority of the Architect and the Construction Manager as the Owner's representatives during construction as set forth in the Contract Documents, will not be modified or extended without written consent of the Owner, the Contractor, the Architect and the Construction Manager, which consent shall not be unreasonably withheld. Failure of the Contractor to respond within ten days to a written request shall constitute consent by the Contractor.

2.3.23 In case of the termination of the employment of the Architect or the Construction Manager, the Owner shall appoint an architect or a construction manager against whom the Contractor makes no reasonable objection and whose status under the Contract Documents shall be that of the former architect or construction manager, respectively. Any dispute in connection with such appointments shall be subject to arbitration.

### ARTICLE 3 OWNER

#### 3.1 DEFINITION

3.1.1 The Owner is the person or entity identified as such in the Owner-Contractor Agreement. ~~The term Owner means the Owner or the Owner's authorized representative.~~

#### 3.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

~~3.2.1 The Owner shall, at the request of the Contractor, at the time of execution of the Owner-Contractor Agreement furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Unless such reasonable evidence is furnished, the Contractor is not required to execute the Owner-Contractor Agreement or to commence the Work.~~

in its possession

3.2.2 The Owner shall furnish all surveys describing the physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site.

3.2.3 Except as provided in Subparagraph 4.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

3.2.4 Information or services under the Owner's control shall be furnished by the Owner with reasonable promptness to avoid delay in the orderly progress of the Work.

3.2.5 Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, all copies of Drawings and Specifications reasonably necessary for the execution of the Work.

3.2.6 The Owner shall forward all instructions to the Contractor through the Construction Manager, with simultaneous notification to the Architect.

3.2.7 The foregoing are in addition to other duties and responsibilities of the Owner enumerated herein and especially those in respect to Work By Owner or By Separate Contractors, Payments and Completion, and Insurance in Articles 6, 9 and 11, respectively.

will prepare for Owner a list of items, materials or systems that require replacement or additional work by Contractor(s)

2.3.20 - (cont.) All of Contractor's books, records and other documents relating to the Project, including but not limited to Contractor's sworn statements, subcontracts, purchase orders, waivers of lien, paid receipts and invoices, shall be available at Contractor's offices for inspection, copying, audit and examination by an authorized representative of the City of Chicago at Contractor's expense.

If the Owner shall order the Contractor to stop the Work as herein provided, then the Owner shall not be responsible or obligated for any increase in the cost of Work resulting from, arising out of or in connection with such stoppage, all such increases to be borne by the Contractor.

3.3 OWNER'S RIGHT TO STOP THE WORK

3.3.1 If the Contractor fails to correct defective Work as required by Paragraph 13.2, or persistently fails to carry out the Work in accordance with the Contract Documents, the Owner, ~~by a written order signed personally or by an agent specifically so empowered by the Owner in writing,~~ may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right ~~of the Owner~~ to stop the Work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Subparagraph 6.1.3

or the Construction Manager

and shall coordinate all portions of the Work under the Contract, subject to the overall coordination of the Construction Manager.

4.3.2 The Contractor shall be responsible to the Owner for the acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and any other persons performing any of the Work under a contract with the Contractor.

4.3.3 The Contractor shall not be relieved from the Contractor's obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of the Construction Manager or the Architect in their administration of the Contract, or by inspections, tests or approvals required or performed under Paragraph 7.7 by persons other than the Contractor.

3.4 OWNER'S RIGHT TO CARRY OUT THE WORK

3.4.1. If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents, and fails within seven days after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may after seven days following receipt by the Contractor of an additional written notice and without prejudice to any other remedy the Owner may have, make good such deficiencies. In such case an appropriate Change Order shall be issued deducting from the payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation for the Architect's and the Construction Manager's additional services made necessary by such default, neglect or failure. ~~Such action by the Owner and the amount charged to the Contractor are both subject to the prior approval of the Architect, after consultation with the Construction Manager.~~ If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

but shall not be obligated to

Insurance

See 14.4.4 on Page 9B.

4.4 LABOR AND MATERIALS furnish, install, hook-up

4.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. See 14.4.1A on Page 9A.

4.4.2 The Contractor shall at all times enforce strict discipline and good order among the Contractor's employees and shall not employ on the Work any unfit person or anyone not skilled in the task assigned them.

4.4.3 The Contractor shall comply with all state and federal laws affecting the laborers employed by or under Contractor on the Work.

4.5 WARRANTY

4.5.1 The Contractor warrants to the Owner, the Architect and the Construction Manager that all materials and equipment furnished under this Contract will be new unless otherwise specified, and that all Work will be of good quality, free from faults and defects and in conformance with the Contract Documents. All Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by the Architect or the Construction Manager, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty is not limited by the provisions of Paragraph 13.2.

ARTICLE 4 CONTRACTOR

4.1 DEFINITION

4.1.1 The Contractor is the person or entity identified as such in the Owner-Contractor Agreement. The term Contractor means the Contractor or the Contractor's authorized representative. See 14.1.1A on Page 9A.

4.2 REVIEW OF CONTRACT DOCUMENTS

4.2.1 The Contractor shall carefully study and compare the Contract Documents and shall at once report to the Architect and the Construction Manager any error, inconsistency or omission that may be discovered. The Contractor shall not be liable to the Owner, the Architect or the Construction Manager for any damage resulting from any such errors, inconsistencies or omissions in the Contract Documents. The Contractor shall perform no portion of the Work at any time without Contract Documents or, where required, approved Shop Drawings, Product Data or Samples for such portion of the Work.

See 14.2.2-4.2.4 on Page 9A. 4.3 SUPERVISION AND CONSTRUCTION PROCEDURES

4.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures;

4.6 TAXES

4.6.1 The Contractor shall pay all sales, consumer, use and other similar taxes for the Work or portions thereof provided by the Contractor which are legally enacted at the time bids are received, whether or not yet effective.

4.7 PERMITS, FEES AND NOTICES

4.7.1 Unless otherwise provided in the Contract Documents, the Owner shall secure and pay for the building permit and the Contractor shall secure and pay for all other permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required at the time bids are received.

4.7.2 The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and lawful orders ~~relating to the performance of the Work.~~ Applicable Laws.

\*except for damage resulting from errors, inconsistencies or omissions known by Contractor and not reported as required above

4.1.1 The term "Contractor" shall also be used to mean any one of the several Contractors or Sub-Contractors that will be utilized to complete each of the specified portions of the Project. The Contractor shall be that entity that has a contractual agreement with the Owner to complete the work as defined by the Contract Documents.

4.2.2 Dimensions of the Work shall not be determined by scale or rule from the Drawings. Figured dimensions on the Drawings shall be followed at all times. If figured dimensions are lacking in the Drawings, the Architect shall supply them on request of the Contractor.

4.2.3 Wherever typical parts or sections of the Work are completely detailed on the drawings, and other parts or sections which are essentially the same construction are shown in outline only, the complete details shall apply to the Work which is shown in outline.

4.2.4 Existing finishes which are damaged by a Contractor or Sub-Contractor during the execution of the Work shall be repaired or replaced to the satisfaction of the Owner by the Contractor or Sub-Contractor at his own expense.

4.4.1A

- (a) Within ten (10) days after the receipt of a notice to proceed with the Work, the Contractor shall provide a list of all products proposed for use or installation in the Project, including the name of the manufacturer, fabricator, or subcontractor/installer of each, for review by both the Consultant and the Owner.
- (b) Products are generally specified by ASTM or other reference standard, and/or by manufacturer's name and model number or trade name. When specified only by reference standard(s), the Contractor may select any product meeting this standard. When several products or manufacturers are specified as being equally acceptable, the Contractor has the option of using any products specified in the Contract Documents.
- (c) Substitutions will be allowed only under the following conditions:
  - (1) The request is accompanied by complete data on the proposed substitution substantiating compliance with the Contract Documents including product identification and description, performance and test data, references and samples where applicable,

and an itemized comparison of the proposed substitution with the products specified or named by Addenda, with data relating to any impact on the Construction Schedule and design.

- (2) The request is accompanied by accurate cost data on the proposed substitution in comparison with the product specified whether or not modification of the Contract Sum is to be a consideration.
- (3) Contractor represents that he has personally investigated the proposed substitute product and determined that it is equal to or superior in all respects to the product specified; and that it will fit into the space provided and that it will be compatible with adjacent material; and
- (4) Contractor shall provide the same guarantee for the substitution that he would for the specified product or material.

4.4.4 The Contractor shall not permit employment of any persons under the influence of any chemical, drug, alcohol, narcotic, nor any other influence that will cause that person to be nor become impaired, drowsy, anxious, or any other health, vision, or muscle coordination effect that may be construed as unsafe or unsuitable in any manner for construction procedures.

4.7.3 It is not the responsibility of the Contractor to make certain that the Contract Documents are in accordance with Applicable Laws, ~~statutes, building codes and regulations~~. If the Contractor observes that any of the Contract Documents are at variance therewith in any respect, the Contractor shall promptly notify the Architect and the Construction Manager in writing, and any necessary changes shall be accomplished by appropriate Modification.

~~Applicable~~  
4.7.4 If the Contractor ~~performs any Work knowing it to be contrary to such laws, ordinances, rules and regulations~~, and without such notice to the Architect and the Construction Manager, the Contractor shall assume full responsibility therefor and shall bear all costs attributable thereto.

#### 4.8 ALLOWANCES

4.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by these allowances shall be supplied for such amounts and by such persons as the Construction Manager may direct, but the Contractor will not be required to employ persons against whom the Contractor makes a reasonable objection.

4.8.2 Unless otherwise provided in the Contract Documents:

- .1 these allowances shall cover the cost to the Contractor, less any applicable trade discount, of the materials and equipment required by the allowance, delivered at the site, and all applicable taxes;
- .2 the Contractor's costs for unloading and handling on the site, labor, installation costs, overhead, profit and other expenses contemplated for the original allowance shall be included in the Contract Sum and not in the allowance;
- .3 whenever the cost is more or less than the allowance, the Contract Sum shall be adjusted accordingly by Change Order, the amount of which will recognize changes, if any, in handling costs on the site, labor, installation costs, overhead, profit and other expenses.

#### 4.9 SUPERINTENDENT

4.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during the progress of the Work. The superintendent shall represent the Contractor and all communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be so confirmed on written request in each case.

#### 4.10 CONTRACTOR'S CONSTRUCTION SCHEDULE

4.10.1 The Contractor, immediately after being awarded the Contract, shall prepare and submit for the Construction Manager's approval a Contractor's Construction Schedule for the Work which shall provide for expeditious and practicable execution of the Work. This schedule shall be coordinated by the Construction Manager with the Project Construction Schedule. The Contractor's Construction Schedule shall be revised as required by the

conditions of the Work and the Project, subject to the Construction Manager's approval.

#### 4.11 DOCUMENTS AND SAMPLES AT THE SITE

4.11.1 The Contractor shall maintain at the Project site, on a current basis, one record copy of all Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to record all changes made during construction, and approved Shop Drawings, Product Data and Samples. These shall be available to the Architect and the Construction Manager. The Contractor shall advise the Construction Manager on a current basis of all changes in the Work made during construction.

#### 4.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

4.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or any Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

4.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate a material, product or system for some portion of the Work.

4.12.3 Samples are physical examples which illustrate materials, equipment or workmanship, and establish standards by which the Work will be judged.

4.12.4 The Contractor shall prepare, review, approve and submit through the Construction Manager, with reasonable promptness and in such sequence as to cause no delay in the Work or in the work of the Owner or any separate contractor, all Shop Drawings, Product Data and Samples required by the Contract Documents. The Contractor shall cooperate with the Construction Manager in the Construction Manager's coordination of the Contractor's Shop Drawings, Product Data and Samples with those of other separate contractors.

4.12.5 By preparing, approving and submitting Shop Drawings, Product Data and Samples, the Contractor represents that the Contractor has determined and verified all materials, field measurements and field construction criteria related thereto, or will do so with reasonable promptness, and has checked and coordinated the information contained within such submittals with the requirements of the Work, the Project and the Contract Documents.

4.12.6 The Contractor shall not be relieved of responsibility for any deviation from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data or Samples under Subparagraph 2.3.18, unless the Contractor has specifically informed the Architect and the Construction Manager in writing of such deviation at the time of submission and the Architect has given written approval to the specific deviation. The Contractor shall not be relieved from responsibility for errors or omissions in the Shop Drawings, Product Data or Samples by the Architect's approval of them.

4.12.7 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data or Samples, to revisions other than those requested by the Architect on previous submittals.

4.12.8 No portion of the Work requiring submission of a Shop Drawing, Product Data or Sample shall be commenced until the submittal has been approved by the Architect as provided in Subparagraph 2.3.18. All such portions of the Work shall be in accordance with approved submittals.

#### 4.13 USE OF SITE

4.13.1 The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents, and shall not unreasonably encumber the site with any materials or equipment.

4.13.2 The Contractor shall coordinate all of the Contractor's operations with, and secure approval from, the Construction Manager before using any portion of the site.

#### 4.14 CUTTING AND PATCHING OF WORK

4.14.1 The Contractor shall be responsible for all cutting, fitting or patching that may be required to complete the Work or to make its several parts fit together properly.

4.14.2 The Contractor shall not damage or endanger any portion of the Work or the work of the Owner or any separate contractors by cutting, patching or otherwise altering any work, or by excavation. The Contractor shall not cut or otherwise alter the work of the Owner or any separate contractor except with the written consent of the Owner and of such separate contractor. The Contractor shall not unreasonably withhold from the Owner or any separate contractor consent to cutting or otherwise altering the Work.

#### 4.15 CLEANING UP

4.15.1 The Contractor shall at all times keep the premises free from accumulation of waste materials or rubbish caused by the Contractor's operations. At the completion of the Work, the Contractor shall remove all the Contractor's waste materials and rubbish from and about the Project as well as all the Contractor's tools, construction equipment, machinery and surplus materials.

4.15.2 If the Contractor fails to clean up at the completion of the Work, the Owner may do so as provided in Paragraph 3.4 and the cost thereof shall be charged to the Contractor.

#### 4.16 COMMUNICATIONS

4.16.1 The Contractor shall forward all communications to the Owner and the Architect through the Construction Manager.

#### 4.17 ROYALTIES AND PATENTS

4.17.1 The Contractor shall pay all royalties and license fees, shall defend all suits or claims for infringement of any patent rights and shall save the Owner and the Construction Manager harmless from loss on account thereof, except that the Owner, or the Construction Manager as the case may be, shall be responsible for all such loss when a particular design, process or the product of a particular manufacturer or manufacturers is selected by such person or such person's agent. If the Contractor, or the Construction Manager as the case may be, has reason to believe that the design, process or product selected is an infringement of a patent, that party shall be responsible for such loss unless such information is promptly given to the others and also to the Architect.

#### 4.18 INDEMNIFICATION

4.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, the Architect, the Construction Manager, and their agents and employees from and against all claims, damages, losses and expenses, including, but not limited to, attorneys' fees arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property ~~(other than the Work itself)~~ including the loss of use resulting therefrom, and ~~is~~ is caused in whole or in part by any negligent act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Paragraph 4.18, [See Paragraph 4.18.1 on pg. 11A]

4.18.2 In any and all claims against the Owner, the Architect, the Construction Manager or any of their agents or employees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Paragraph 4.18 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

4.18.3 The obligations of the Contractor under this Paragraph 4.18 shall not extend to the liability of the Architect or the Construction Manager, their agents or employees, arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications, or (2) the giving of or the failure to give directions or instructions by the Architect or the Construction Manager, their agents or employees, provided such giving or failure to give is the primary cause of the injury or damage.

See ¶4.19 on Page 11A

### ARTICLE 5 SUBCONTRACTORS

#### 5.1 DEFINITION

5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform any of the Work at the site. The term Subcontractor means a Subcontractor or a Subcontractor's authorized representative. The term Subcontractor does not include any separate contractor or any separate contractor's subcontractors.

5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform any of the Work at the site. The term Sub-subcontractor means a Sub-subcontractor or an authorized representative thereof.

#### 5.2 AWARDS OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

5.2.1 Unless otherwise required by the Contract Docu-

4.18.1 - (cont.) (2) arises out of the failure of the Contractor, any Subcontractor and/or any Sub-Subcontractor to observe and comply with any and all Applicable Laws; or (3) results from any failure on the part of the Contractor, any Subcontractor or any Sub-Subcontractors or materialmen to perform or comply with the covenants, agreements and obligations under the Contract Documents. This indemnity shall include any and all expenses and costs incurred in connection with the investigation of any claim or the defense of any suit or action initiated by any third party, including all court costs and actual attorneys' fees and expenses incurred by any indemnified party.

4.19 The Contractor shall not assign the whole or any part of this Contract or any monies due or to become due hereunder without written consent of the Owner. In case the Contractor, with Owner's consent, assigns all or any part of any monies due or to become due under this Contract, the instrument of assignment shall contain a clause to the effect that it is agreed that the right of the assignee in and to any monies due or to become due to the Contractor shall be subject to prior claims of all persons, firms and corporations for services rendered or materials supplied for the performance of the work called for in this Contract.

ments or the Bidding Documents, the Contractor, as soon as practicable after the award of the Contract, shall furnish to the Construction Manager in writing for review by the Owner, the Architect and the Construction Manager, the names of the persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each of the principal portions of the Work. The Construction Manager will promptly reply to the Contractor in writing stating whether or not the Owner, the Architect or the Construction Manager, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Construction Manager to reply promptly shall constitute notice of no reasonable objection.

5.2.2 The Contractor shall not contract with any such proposed person or entity to whom the Owner, the Architect or the Construction Manager has made reasonable objection under the provisions of Subparagraph 5.2.1. The Contractor shall not be required to contract with anyone to whom the Contractor has a reasonable objection.

5.2.3 If the Owner, the Architect or the Construction Manager has reasonable objection to any such proposed person or entity, the Contractor shall submit a substitute to whom the Owner, the Architect and the Construction Manager have no reasonable objection, and the Contract Sum shall be increased or decreased by the difference in cost occasioned by such substitution and an appropriate Change Order shall be issued; however, no increase in the Contract Sum shall be allowed for any such substitution unless the Contractor has acted promptly and responsibly in submitting names as required by Subparagraph 5.2.1.

5.2.4 The Contractor shall make no substitution for any Subcontractor, person or entity previously selected if the Owner, the Architect or the Construction Manager makes reasonable objection to such substitution.

See 5.2.5 on Page 12A.

### 5.3 SUBCONTRACTUAL RELATIONS approved by Owner and Construction Manager

5.3.1 By an appropriate agreement written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by these Documents, assumes toward the Owner, the Architect and the Construction Manager. Said agreement shall preserve and protect the rights of the Owner, the Architect and the Construction Manager under the Contract Documents with respect to the Work to be performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the Contractor-Subcontractor Agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by these Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with their Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the Subcontract, copies of the Contract Documents to which the Subcontractor will be bound by this Paragraph 5.3, and identify to the Subcontractor any terms and conditions of the pro-

and  
Owner

posed Subcontract which may be at variance with the Contract Documents. Each Subcontractor shall similarly make copies of such Documents available to their Sub-subcontractors.

[See Paragraphs 5.3.2, 5.3.3 and 5.3.4 on page 12A].

## ARTICLE 6 WORK BY OWNER OR BY SEPARATE CONTRACTORS

### 6.1 OWNER'S RIGHT TO PERFORM WORK AND TO AWARD SEPARATE CONTRACTS

6.1.1 The Owner reserves the right to perform work related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other work on the site under these or similar Conditions of the Contract. If the Contractor claims that delay, damage or additional cost is involved because of such action by the Owner, the Contractor shall make such claim as provided elsewhere in the Contract Documents.

6.1.2 When separate contracts are awarded for different portions of the Project or other work on the site, the term Contractor in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

6.1.3 The Owner will provide for the coordination of the work of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate therewith as provided in Paragraph 6.2.

### 6.2 MUTUAL RESPONSIBILITY

6.2.1 The Contractor shall afford the Owner, the Construction Manager and separate contractors reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work, and shall connect and coordinate the Work with theirs as required by the Contract Documents.

6.2.2 If any part of the Contractor's Work depends for proper execution or results upon the work of the Owner or any separate contractor, the Contractor shall, prior to proceeding with the Work, promptly report to the Construction Manager any apparent discrepancies or defects in such other work that render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acceptance of the Owner's or separate contractor's work as fit and proper to receive the Work, except as to defects which may subsequently become apparent in such work by others.

6.2.3 Any costs caused by defective or ill-timed work shall be borne by the party responsible therefor.

6.2.4 Should the Contractor wrongfully cause damage to the work or property of the Owner, or to other work or property on the site, the Contractor shall promptly remedy such damage as provided in Subparagraph 10.2.5.

6.2.5 Should the Contractor wrongfully delay or cause damage to the work or property of any separate contractor, the Contractor shall, upon due notice, promptly attempt to settle with such other contractor by agreement, or otherwise to resolve the dispute. If such separate contractor sues or initiates an arbitration proceeding against the Owner on account of any delay or damage alleged to have been caused by the Contractor, the Owner shall

5.2.5 Proper and complete execution of all work shall be the responsibility of the Contractor and should he elect to sublet certain parts of the Work, the Contractor shall remain responsible for proper and complete execution of any sublet work. If the Contractor elects to enter into a subcontract for any section of work, he shall assume all responsibility of ascertaining that the Subcontractor is thoroughly acquainted with all conditions of the Work and that Subcontractor has included all materials and appurtenances in connection therewith. It shall also be the responsibility of the Contractor to notify sub-bidders at time of request for bids of all requirements of the General Conditions of the Owner-Contractor Agreement that the Contractor intends to include as a part of the subcontract.

5.3.2 The Contractor shall require each of his Subcontractors to furnish appropriate sworn statements and waivers of liens covering all work performed by such Subcontractor and his Sub-subcontractors to the extent of the payment or payments made to the Subcontractor and shown on the Application for Payment submitted by the Contractor in connection with each payment.

5.3.3 Full cooperation between the Contractor and the Subcontractor and his Sub-subcontractors shall be mandatory at all times, and the Contractor shall cause the Subcontractor and the Sub-subcontractors to cooperate with each other in a fully coordinated, competent and efficient manner at all times.

5.3.4 The Owner hereby reserves the right, upon written notice to the Contractor to make, at any time and from time to time, payments directly to each Subcontractor and if such right shall be exercised by the Owner, then the Contractor is relieved and released from his obligation to pay each Subcontractor as provided under this paragraph 5.3, but not from any of his other responsibilities as to the Owner and the Subcontractors.

Contractor's

notify the Contractor who shall defend such proceedings at the ~~Contractor's~~ expense, and if any judgment or award against the Owner arises therefrom, the Contractor shall pay or satisfy it and shall reimburse the Owner for all attorneys' fees and court or arbitration costs which the Owner has incurred.

and expenses

6.3 OWNER'S RIGHT TO CLEAN UP

6.3.1 If a dispute arises between the Contractor and separate contractors as to their responsibility for cleaning up as required by Paragraph 4.13, the Owner may clean up and charge the cost thereof to the contractors responsible therefor as the Construction Manager shall determine to be just.

See 16.4 on Page 13A.

ARTICLE 7

MISCELLANEOUS PROVISIONS

7.1 GOVERNING LAW

7.1.1 The Contract shall be governed by the law of the ~~place where the Project is located.~~ State of Illinois.

7.2 SUCCESSORS AND ASSIGNS

7.2.1 The Owner and the Contractor, respectively, bind themselves, their ~~business~~, successors, assigns and legal representatives to the other party hereto and to the ~~part-ness~~, successors, assigns and legal representatives of such other party with respect to all covenants, agreements and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract or sublet it as a whole without the written consent of the other.

~~7.3 WRITTEN NOTICE~~

~~7.3.1 Written notice shall be deemed to have been duly served if delivered in person to the individual or member of the firm or entity or to an officer of the corporation for whom it was intended, or if delivered at or sent by registered or certified mail to the last business address known to the party giving the notice.~~

7.4 CLAIMS FOR DAMAGES

7.4.1 Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the other party or of any of the other party's employees, agents or others for whose acts such party is legally liable, claim shall be made in writing to such other party ~~within a reasonable time after the first observance of such injury or damage.~~ promptly

7.5 PERFORMANCE BOND AND LABOR AND MATERIAL PAYMENT BOND

7.5.1 ~~The Owner shall have the right to require the Contractor to furnish bonds covering the faithful performance of the Contract and the payment of all obligations arising thereunder if and as required in the Bidding Documents or the Contract Documents.~~ in the form attached hereto as Exhibit A.

7.6 RIGHTS AND REMEDIES

7.6.1 The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law.

7.6.2 No action or failure to act by the Owner, the Architect, the Construction Manager or the Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

7.7 TESTS

7.7.1 If the Contract Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any portion of the Work to be inspected, tested or approved, the Contractor shall give the Architect and the Construction Manager timely notice of its readiness so the Architect and the Construction Manager may observe such inspection, testing or approval. The Contractor shall bear all costs of such inspections, tests or approvals conducted by public authorities. Unless otherwise provided, the Owner shall bear all costs of other inspections, tests or approvals.

7.7.2 If the Architect or the Construction Manager determines that any Work requires special inspection, testing or approval which Subparagraph 7.7.1 does not include, the Construction Manager will, upon written authorization from the Owner, instruct the Contractor to order such special inspection, testing or approval, and the Contractor shall give notice as provided in Subparagraph 7.7.1. If such special inspection or testing reveals a failure of the Work to comply with the requirements of the Contract Documents, the Contractor shall bear all costs thereof, including compensation for the Architect's and the Construction Manager's additional services made necessary by such failure; otherwise the Owner shall bear such costs, and an appropriate Change Order shall be issued.

7.7.3 Required certificates of inspection, testing or approval shall be secured by the Contractor and the Contractor shall promptly deliver them to the Construction Manager for transmittal to the Architect.

7.7.4 If the Architect or the Construction Manager wishes to observe the inspections, tests or approvals required by the Contract Documents, they will do so promptly and, where practicable, at the source of supply.

7.8 INTEREST

7.8.1 Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing at the place of the Project.

7.9 ARBITRATION See Section 7.9, page 13B

7.9.1 All claims, disputes and other matters in question between the Contractor and the Owner arising out of or relating to the Contract Documents or the breach thereof, except as provided in Subparagraph 2.3.14 with respect to the Architect's decisions on matters relating to artistic effect, and except for claims which have been waived by the making or acceptance of final payment as provided by Subparagraphs 9.9.4 through 9.9.6, inclusive, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining ~~unless the parties mutually~~ may

Prior to the commencement of Work, Contractor shall furnish bonds to Owner

6.4 OWNER'S RIGHT TO DO CORRECTIVE WORK

6.4.1 The Contractor and all Subcontractors agree that if any Contractor or Subcontractor should neglect to prosecute the Work properly or with due diligence, or should fail to perform any provision of the Contract, the Owner, after three (3) days written notice to the Contractor may, without prejudice to any other remedy he may have, employ workmen directly or employ another contractor or contractors and make good such deficiencies. Owner may deduct the cost of such remedial work, plus supervision, from any payment then or thereafter due the Contractor (or any defaulted Subcontractor, if direct payments are made). The Contractor and all Subcontractors agree that at any time after the project is fifty percent (50%) completed or any part of the Project is occupied, Owner may, by written notice to Contractor and any Subcontractor involved, elect to perform any corrective or callback work determined by Owner to be required due to defective or incomplete work, with workmen and material supplied by Owner. Owner may deduct the cost of such work from any payment then or thereafter due Contractor or Subcontractor.

7.3 All notices given under the Contract Documents shall be in writing and shall be deemed properly served if: (1) delivered in person to the individual to whom such notice is addressed; (2) sent by Federal Express or other like courier service; or (3) sent postage prepaid by United States registered or certified mail, return receipt requested, address as follows:

(a) If to the Owner: NWS, Inc.  
3247 South Kedzie Avenue  
Chicago, Illinois 60623  
Attn: Percy Stone

With a copy to: Burke, Warren & MacKay, P.C.  
225 West Washington Street  
24th Floor  
Chicago, Illinois 60606  
Attn: John P. Stephens

(b) If to Construction  
Manager: NWS Construction Management Department  
3247 South Kedzie Avenue  
Chicago, Illinois 60623  
Attn: Joseph Bridwell

or to such other address or addressee as any party entitled to receive notice hereunder shall designate to all other parties in the manner provided herein for the service of notice. Any notice when mailed shall be deemed delivered on the second (2nd) business day following the postmark and any notice delivered in person or by special courier shall be delivered when received.

7.10 As used herein the term "Applicable Laws" should mean and refer to all applicable zoning ordinances, building codes, handicapped-person accessibility statutes and other similar laws, statutes, ordinances, codes, orders, rules and regulations applicable to the Work or the Project.

and a certificate of occupancy has been issued by the appropriate governmental authority having jurisdiction thereover

~~agree otherwise. No arbitration arising out of or relating to the Contract Documents shall include, by consolidation, joinder or in any other manner, the Architect, the Construction Manager, their employees or consultants except by written consent containing a specific reference to the Owner-Contractor Agreement and signed by the Architect, the Construction Manager, the Owner, the Contractor and any other person sought to be joined. No arbitration shall include by consolidation, joinder or in any other manner, parties other than the Owner, the Contractor and any other persons substantially involved in a common question of fact or law, whose presence is required if complete relief is to be accorded in the arbitration. No person other than the Owner or the Contractor shall be included as an original third party or additional third party to an arbitration whose interest or responsibility is insubstantial. Any consent to arbitration involving an additional person or persons shall not constitute consent to arbitration of any dispute not described therein or with any person not named or described therein. The foregoing agreement to arbitrate and any other agreement to arbitrate with an additional person or persons duly consented to by the parties to the Owner-Contractor Agreement shall be specifically enforceable under the prevailing arbitration law. ~~The award rendered by the arbitrator shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.~~~~

~~7.9.2 Notice of the demand for arbitration shall be filed in writing with the other party to the Owner-Contractor Agreement and with the American Arbitration Association, and a copy shall be filed with the Architect and the Construction Manager. ~~The demand for arbitration shall be made within the time limits specified in Subparagraph 2.3.15 where applicable, and in all other cases within a reasonable time after the claim, dispute or other matter in question has arisen; and in no event shall it be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.~~~~

request

request

7.9.3 Unless otherwise agreed in writing, the Contractor shall carry on the Work and maintain its progress during any arbitration proceedings, and the Owner shall continue to make payments to the Contractor in accordance with the Contract Documents.

ARTICLE 8  
TIME

8.1 DEFINITIONS

8.1.1 Unless otherwise provided, the Contract Time is the period of time allotted in the Contract Documents for Substantial Completion of the Work as defined in Subparagraph 8.1.3, including authorized adjustments thereto.

8.1.2 The date of commencement of the Work is the date established in a notice to proceed. If there is no notice to proceed, it shall be such other date as may be established in the Owner-Contractor Agreement or elsewhere in the Contract Documents.

8.1.3 The Date of Substantial Completion of the Work or designated portion thereof is the Date certified by the Architect when construction is sufficiently complete, in

accordance with the Contract Documents, so that the Owner or separate contractors can occupy or utilize the Work or a designated portion thereof for the use for which it is intended.

8.1.4 The Date of Substantial Completion of the Project or designated portion thereof is the Date certified by the Architect when construction is sufficiently complete so the Owner can occupy or utilize the Project or designated portion thereof for the use for which it was intended.

8.1.5 The term day as used in the Contract Documents shall mean calendar day unless specifically designated otherwise.

8.2 PROGRESS AND COMPLETION

8.2.1 All time limits stated in the Contract Documents are of the essence of the Contract.

8.2.2 The Contractor shall begin the Work on the date of commencement as defined in Subparagraph 8.1.2. The Contractor shall carry the Work forward expeditiously with adequate forces and shall achieve Substantial Completion of the Work within the Contract Time.

8.3 DELAYS AND EXTENSIONS OF TIME

8.3.1 If the Contractor is delayed at any time in the progress of the Work by any act or neglect of the Owner, the Architect, the Construction Manager, any of their employees, any separate contractor employed by the Owner, or by changes ordered in the Work, labor disputes, fire, unusual delay in transportation, adverse weather conditions not reasonably anticipatable, unavoidable casualties, any causes beyond the Contractor's control, delay authorized by the Owner pending arbitration, or by any other cause which the Construction Manager determines may justify the delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Construction Manager may determine.

8.3.2 Any claim for extension of time shall be made in writing to the Construction Manager not more than ~~seven~~ five days after the commencement of the delay; otherwise it shall be waived. In the case of a continuing delay only one claim is necessary. The Contractor shall provide an estimate of the probable effect of such delay on the progress of the Work.

8.3.3 If no agreement is made stating the dates upon which interpretations as provided in Subparagraph 2.3.11 shall be furnished, then no claim for delay shall be allowed on account of failure to furnish such interpretations until fifteen days after written request is made for them, and not then unless such claim is reasonable.

8.3.4 This Paragraph 8.3 does not exclude the recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9  
PAYMENTS AND COMPLETION

9.1 CONTRACT SUM

9.1.1 The Contract Sum is stated in the Owner-Contractor Agreement and, including authorized adjustments thereto, is the total amount payable by the Owner to the Contractor for the performance of the Work under the Contract Documents.

has submitted

the Owner

after diligent inspection in accordance with the requirements of the Contract Documents

## 9.2 SCHEDULE OF VALUES

9.2.1 ~~Before the first Application for Payment, The Contractor shall submit to the Construction Manager a schedule of values allocated to the various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Architect and the Construction Manager may require. This schedule, unless objected to by the Construction Manager or the Architect, shall be used only as a basis for the Contractor's Applications for Payment.~~

9.2.2 [See Paragraph 9.2.2 on page 15A]

## 9.3 APPLICATIONS FOR PAYMENT

9.3.1 At least fifteen days before the date for each progress payment established in the Owner-Contractor Agreement, the Contractor shall submit to the Construction Manager an itemized Application for Payment, notarized if required, supported by such data substantiating the Contractor's right to payment as the Owner, the Architect or the Construction Manager may require, and reflecting retainage, if any, as provided elsewhere in the Contract Documents. The Construction Manager will assemble the Application with similar applications from other contractors on the Project into a combined Project Application for Payment and forward it with recommendations to the Architect within seven days. \*See 19.3.1 on Page 15A

9.3.2 Unless otherwise provided in the Contract Documents, payments will be made on account of materials or equipment not incorporated in the Work but delivered and suitably stored at the site and, if approved in advance by the Owner, payments may similarly be made for materials or equipment suitably stored at some other location agreed upon in writing. Payments for materials or equipment stored on or off the site shall be conditioned upon submission by the Contractor of bills of sale or such other procedures satisfactory to the Owner to establish the Owner's title to such materials or equipment or otherwise protect the Owner's interest, including applicable insurance and transportation to the site for those materials and equipment stored off the site. A

9.3.3 The Contractor warrants that title to all Work, materials and equipment covered by an Application for Payment will pass to the Owner either by incorporation in the construction or upon receipt of payment by the Contractor, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances, herein-after referred to in this Article 9 as "liens"; and that no Work, materials or equipment covered by an Application for Payment will have been acquired by the Contractor, or by any other person performing Work at the site or furnishing materials and equipment for the Project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person.

## 9.4 CERTIFICATES FOR PAYMENT after written approval by

9.4.1 The Architect will, within seven days after the receipt of the Project Application for Payment ~~with the recommendations of the Construction Manager,~~ review the Project Application for Payment and either issue a Project Certificate for Payment to the Owner ~~with a copy to the Construction Manager for distribution to the Contractor~~ for such amounts as the Architect determines are properly due, or notify the Construction Manager in writing of

the reasons for withholding a Certificate as provided in Subparagraph 9.6.1. Such notification will be forwarded to the Contractor by the Construction Manager.

9.4.2 The issuance of a Project Certificate for Payment will constitute a representation by the Architect to the Owner that, based on the Architect's observations at the site as provided in Subparagraph 2.3.4 and the data comprising the Project Application for Payment, the Work has progressed to the point indicated; that, to the best of the Architect's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion of the Work, to the results of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in the Certificate) and that the Contractor is entitled to payment in the amount certified. However, by issuing a Project Certificate for Payment, the Architect shall not thereby be deemed to represent that the Architect ~~has made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, has reviewed the construction means, methods, techniques, sequences or procedures, or has made any examination to ascertain how or for what purpose the Contractor has used the monies previously paid or account of the Contract Sum.~~ subject to Construction Manager's approval

## 9.5 PROGRESS PAYMENTS in writing

9.5.1 After the Architect has issued a Project Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents. in a form approved by the Construction Manager

9.5.2 The Contractor shall promptly pay each Subcontractor upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's Work, the amount to which said Subcontractor is entitled, reflecting the percentage actually retained, if any, from payments to the Contractor on account of such Subcontractor's Work. The Contractor shall, by an appropriate agreement with each Subcontractor, require each Subcontractor to make payments to their Sub-subcontractors in similar manner.

9.5.3 The Architect may, on request and at the Architect's discretion, furnish to any Subcontractor, if practicable, information regarding the percentages of completion or the amounts applied for by the Contractor and the action taken thereon by the Architect on account of Work done by such Subcontractor.

9.5.4 Neither the Owner, the Architect nor the Construction Manager shall have any obligation to pay or to see to the payment of any monies to any Subcontractor except as may otherwise be required by law, or as provided in

9.5.5 No certification of a progress payment, any progress payment, or any partial or entire use or occupancy of the Project by the Owner, shall constitute an acceptance of any Work not in accordance with the Contract Documents.

## 9.6 PAYMENTS WITHHELD

9.6.1 The Architect, following consultation with the Construction Manager, may decline to certify payment

Notwithstanding the foregoing sentence to the contrary, prior to the incorporation of any such materials or equipment in the Work, the Contractor shall bear all risk of loss or damage to such materials.

together with all other documents as provided in Paragraph 9.3.1 above, assembled and executed by Construction

Subject to the right reserved under Paragraph 5.3.4 hereof.

approved all sworn statements and lien waivers when required in compliance with the Contract Documents.

Paragraph 5.3.4 hereof

Manager pursuant to Paragraph 2.3.8 above,

Contractor shall not withhold or use any part of any payment made by Owner to offset or satisfy any claim arising between Contractor and any Subcontractor or supplier for claims or matters in dispute that are not related to this Project.

9.2.2 Upon the execution of the Contract, the Contractor shall furnish to the Owner a sworn statement, fully notarized, listing the names and addresses of all of his Subcontractors, and opposite each Subcontractor and Sub-Subcontractor, the description and dollar amount of the Work to be performed by such Subcontractor.

9.3.1 - (cont.) including, without limitation, (i) a sworn statement executed by the Contractor, fully notarized, listing the names and addresses of each of his Subcontractors and Sub-Subcontractors, the description of the Work to be performed by each such Subcontractor and Sub-Subcontractor, the total amount paid or payable to date, and the total amount then remaining unpaid to each such Subcontractor and Sub-Subcontractor, (ii) a partial waiver of lien from the Contractor for the total amount set forth in this Application for Payment, and (iii) a partial or final waiver of lien, whichever may be appropriate, from each Subcontractor and Sub-Subcontractor for the amount, if any, requested in the Application for Payment.

failure of Contractor to procure or maintain satisfactory insurance coverage

and may withhold the Certificate in whole or in part to the extent necessary to reasonably protect the Owner, if, in the Architect's opinion, the Architect is unable to make representations to the Owner as provided in Subparagraph 9.4.2. If the Architect is unable to make representations to the Owner as provided in Subparagraph 9.4.2, and to certify payment in the amount of the Project Application, the Architect will notify the Construction Manager as provided in Subparagraph 9.4.1. If the Contractor and the Architect cannot agree on a revised amount, the Architect will promptly issue a Project Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also decline to certify payment or, because of subsequently discovered evidence or subsequent observations, the Architect may nullify the whole or any part of any Project Certificate for Payment previously issued to such extent as may be necessary, in the Architect's opinion, to protect the Owner from loss because of:

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims;
- .3 failure of the Contractor to make payments properly to Subcontractors, or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or another contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time; ~~or~~
- .7 ~~persistent~~ failure to carry out the Work in accordance with the Contract Documents.

9.6.2 When the grounds in Subparagraph 9.6.1 above are removed, payment shall be made for amounts withheld because of them.

#### 9.7 FAILURE OF PAYMENT

9.7.1 If the Construction Manager should fail to issue recommendations within seven days of receipt of the Contractor's Application for Payment, or if, through no fault of the Contractor, the Architect does not issue a Project Certificate for Payment within seven days after the Architect's receipt of the Project Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents any amount certified by the Architect or awarded by arbitration, then the Contractor may, upon seven additional days' written notice to the Owner, the Architect and the Construction Manager, stop the Work until payment of the amount owing has been received. The Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, which shall be effected by appropriate Change Order in accordance with Paragraph 12.3.

#### 9.8 SUBSTANTIAL COMPLETION

9.8.1 When the Contractor considers that the Work, or a designated portion thereof which is acceptable to the Owner, is substantially complete as defined in Subparagraph 8.1.3, the Contractor shall prepare for the Construction Manager a list of items to be completed or corrected. The failure to include any items on such list does

not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. When the Architect, on the basis of inspection and consultation with the Construction Manager, determines that the Work or designated portion thereof is substantially complete, the Architect will then prepare a Certificate of Substantial Completion of the Work which shall establish ~~the Date of Substantial Completion of the Work~~ shall state the responsibilities of the Owner and the Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall complete the items listed therein, and The Certificate of Substantial Completion of the Work shall be submitted to the Owner and the Contractor for their written acceptance of the responsibilities assigned to them in such Certificate.

9.8.2 Upon Substantial Completion of the Work or designated portion thereof, and upon application by the Contractor and certification by the Architect, the Owner shall make payment, reflecting adjustment in retainage, if any, for such Work or portion thereof as provided in the Contract Documents.

9.8.3 When the Architect, on the basis of inspections, determines that the Project or designated portion thereof is substantially complete, the Architect will then prepare a Certificate of Substantial Completion of the Project, which shall establish the Date of Substantial Completion of the Project and fix the time within which the Contractor shall complete any uncompleted items on the Certificate of Substantial Completion of the Work.

9.8.4 Warranties required by the Contract Documents shall commence on the Date of Substantial Completion of the Project or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion of the Work or designated portion thereof.

#### 9.9 FINAL COMPLETION AND FINAL PAYMENT

9.9.1 Following the Architect's issuance of the Certificate of Substantial Completion of the Work or designated portion thereof, and the Contractor's completion of the Work, the Contractor shall forward to the Construction Manager a written notice that the Work is ready for final inspection and acceptance, and shall also forward to the Construction Manager a final Application for Payment. Upon receipt, the Construction Manager will make the necessary evaluations and forward recommendations to the Architect who will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will issue a Project Certificate for Payment which will approve the final payment due the Contractor. This approval will constitute a representation that, to the best of the Architect's knowledge, information and belief, and on the basis of observations and inspections, the Work has been completed in accordance with the Terms and Conditions of the Contract Documents and that the entire balance found to be due the Contractor, and noted in said Certificate, is due and payable. The Architect's approval of said Project Certificate for Payment will constitute a further representation that the conditions precedent to the Contractor's being entitled to final payment as set forth in Subparagraph 9.9.2 have been fulfilled.

See Paragraph 9.6.1 on page 16A

In the form attached to the Architect's Agreement as Exhibit A.

9.6.1 The Architect may also decline to approve any Applications for Payment because of (a) the failure by the Contractor to then submit in proper form sworn statements and waivers of liens in accordance with the Contract Documents or (b) the rejection of the Work by any inspector retained by the City of Chicago pursuant to the Redevelopment Agreement dated \_\_\_\_\_, 1993 between Owner and the City of Chicago. If the Architect shall nullify any Certificate of Payment previously issued, and if the Owner has made a payment on account thereof, then in addition to and not in derogation of any other rights, powers and remedies, the Owner shall be entitled to immediate reimbursement from the Contractor, or to set-off against subsequent payments on account of the Contract Sum, to the extent of the nullifications by the Architect, provided that the Contractor does not correct the cause or basis for such nullification. Failure, neglect or forbearance of Architect to deduct or withhold such payments shall not release, relieve, or discharge Contractor from liability hereunder.

9.9.2 Neither the final payment nor the remaining retainage shall become due until the Contractor submits to the Architect, through the Construction Manager, (1) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might in any way be responsible, have been paid or otherwise satisfied, (2) consent of surety, if any, to final payment, ~~and~~ (3) if required by the Owner, other data establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of liens arising out of the Contract, to the extent and in such form as may be designated by the Owner. If any Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against any such lien. If any such lien remains unsatisfied after all payments are made, the Contractor shall refund to the Owner all monies that the latter may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

9.9.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by the issuance of Change Orders affecting final completion, and the Construction Manager so confirms, the Owner shall, upon application by the Contractor and certification by the Architect and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than the retainage stipulated in the Contract Documents, and if bonds have been furnished as provided in Paragraph 7.5, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Construction Manager prior to certification of such payment. Such payment shall be made under the Terms and Conditions governing final payments, except that it shall not constitute a waiver of claims.

9.9.4 The making of final payment shall, after the Date of Substantial Completion of the Project, constitute a waiver of all claims by the Owner except those arising from:

- .1 unsettled liens;
  - .2 faulty or defective Work appearing after Substantial Completion of the Work;
  - .3 failure of the Work to comply with the requirements of the Contract Documents; or
  - .4 terms of any special warranties required by the Contract Documents.
  - .5 faulty or defective Work known or concealed\*
- 9.9.5 The acceptance of final payment shall, after the Date of Substantial Completion of the Project, constitute a waiver of all claims by the Contractor except those previously made in writing and identified by the Contractor as unsettled at the time of the final Application for Payment.

9.9.6 All provisions of this Agreement, including without limitation those establishing obligations and procedures, shall remain in full force and effect notwithstanding the making or acceptance of final payment prior to the Date of Substantial Completion of the Project.

## ARTICLE 10

### PROTECTION OF PERSONS AND PROPERTY

#### 10.1 SAFETY PRECAUTIONS AND PROGRAMS

10.1.1 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. See ¶10.1.1A on Page 17A.

#### 10.2 SAFETY OF PERSONS AND PROPERTY

10.2.1 The Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:

- .1 all employees on the Work and all other persons who may be affected thereby;
- .2 all the Work and all materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of the Contractor or any of the Contractor's Subcontractors or Sub-subcontractors;<sup>and work</sup>
- .3 other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction; and
- .4 the work of the Owner or other separate contractors.

10.2.2 The Contractor shall give all notices and comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the safety of persons or property or their protection from damage, injury or loss. See ¶10.2.2A and 10.2.2B on P. 17.

10.2.3 The Contractor shall erect and maintain, as required by existing conditions and the progress of the Work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent utilities.

10.2.4 When the use or storage of explosives or other hazardous materials or equipment is necessary for the execution of the Work, the Contractor shall exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel.

10.2.5 The Contractor shall promptly remedy all damage or loss (other than damage or loss insured under Paragraph 11.3) to any property referred to in Clauses 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, any Subcontractor, any Sub-subcontractor, anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, and for which the Contractor is responsible under Clauses 10.2.1.2 and 10.2.1.3, except damage or loss attributable to the acts or omissions of the Owner, the Architect, the Construction Manager or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Paragraph 4.18.

10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless

9.9.2A - (cont.) all Maintenance and Operating Manuals; marked sets of drawings and specifications reflecting "as built" conditions; reproducible mylar drawings (to be supplied by Architect) upon which Contractor shall have transferred all changes in the location of any concealed utilities, mechanical or electrical systems and components; any special guarantees or warranties required by the Contract Documents; an assignment and/or transfer of all guarantees and warranties from Subcontractors, vendors, suppliers and manufacturers; a contractor's Sworn Statement setting forth the total amount of all subcontracts, purchase orders or other obligations which have arisen during the course of constructing the Project, together with the name and address of all subcontractors and suppliers, amounts previously paid and the final amount due to each of them; and a signed and notarized Chicago Title Insurance Company Form of Final Waiver of Mechanics Lien claims from each subcontractor and supplier that has furnished labor, material or equipment related to the Project, including a final waiver of lien from the Contractor.

10.1.1 A. The Contractor shall take all reasonable safety precautions with respect to the Work to be performed hereunder and shall comply with all safety measures required by applicable laws, ordinances, rules, regulations and orders of any public authority for the safety of persons or property. The Contractor shall report to the Construction Manager any injury to any of its agents or employees at the site immediately after its occurrence. The Construction Manager will be furnished a copy of the Contractor's report of accident as filed with its insurance carrier within three (3) days of its occurrence.

10.2.2 A. Whenever any notice is required to be given by the Owner or by the Contractor to any adjoining or adjacent landowner or other party before commencement of any work, such notice shall be given by the Contractor.

10.2.2 B. All Contractors shall comply with the rules and regulations set forth in the publication entitled 'Safety and Health Regulations for Construction', Chapter 13 of the Bureau of Labor Standards Construction Safety Act. A copy of these rules and regulations shall be obtained by the Contractor and shall be available for review in the Contractor's office.

10.2.8 The Contractor shall bear all risk of loss or damage to materials or equipment not incorporated into the Work.

otherwise designated by the Contractor in writing to the Owner and the Construction Manager.

10.2.7 The Contractor shall not load or permit any part of the Work to be loaded so as to endanger its safety.

10.3 EMERGENCIES

10.3.1 In any emergency affecting the safety of persons or property the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Any additional compensation or extension of time claimed by the Contractor on account of emergency work shall be determined as provided in Article 12 for Changes in the Work.

ARTICLE 11 INSURANCE

11.1 CONTRACTOR'S LIABILITY INSURANCE

11.1.1 The Contractor shall purchase and maintain insurance for protection from the claims set forth below which may arise out of or result from the Contractor's operations under the Contract, whether such operations be by the Contractor or by any Subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 claims under workers' or workmen's compensation, disability benefit and other similar employee benefit acts;
- .2 claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees; act of omission
- .4 claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an accident directly or indirectly related to the employment of such person by the Contractor, or (2) by any other person;
- .5 claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom; and
- .6 claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

together with evidence of payment of premium thereon,

and to the City of Chicago

~~11.1.2 The insurance required by Subparagraph 11.1.1 shall be written for not less than any limits of liability specified in the Contract Documents or required by law, whichever is greater. [See Paragraph 11.1.2 on pg. 18A]~~

11.1.3 The insurance required by Subparagraph 11.1.1 shall include contractual liability insurance applicable to the Contractor's obligations under Paragraph 4.18.

11.1.4 Certificates of Insurance acceptable to the Owner shall be submitted to the Construction Manager for transmittal to the Owner prior to commencement of the Work. These Certificates shall contain a provision that coverages afforded under the policies will not be canceled until at least thirty days' prior written notice has been given to the Owner. [See Paragraph 11.1.4 on pg. 18B]

Change Order, modified or renewed

11.2 OWNER'S LIABILITY INSURANCE

11.2.1 The Owner shall be responsible for purchasing and maintaining Owner's liability insurance and, at the Owner's option, may purchase and maintain insurance for protection against claims which may arise from operations under the Contract.

11.3 PROPERTY INSURANCE

11.3.1 Unless otherwise provided, the Owner shall purchase and maintain property insurance upon the entire Work at the site to the full insurable value thereof. This insurance shall include ~~the interests of the Owner, the Construction Manager, the Contractor, Subcontractors and Sub-subcontractors in the Work~~ and shall insure against the perils of fire and extended coverage and shall include "all risk" insurance for physical loss or damage including, without duplication of coverage, theft, vandalism and malicious mischief. If the Owner does not intend to purchase such insurance for the full insurable value of the entire Work, the Owner shall inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance which will protect the interests of the Contractor, the Contractor's Subcontractors and the Sub-subcontractors in the Work, and by appropriate Change Order: the cost thereof shall be charged to the Owner. If the Contractor is damaged by failure of the Owner to purchase or maintain such insurance and to so notify the Contractor, then the Owner shall bear all reasonable costs properly attributable thereto. If not covered under the all risk insurance or otherwise provided in the Contract Documents, the Contractor shall effect and maintain similar property insurance on portions of the Work stored off the site or in transit when such portions of the Work are to be included in an Application for Payment under Subparagraph 9.3.2. \*See Paragraph 11.3.1 on page 18B.

~~11.3.2 The Owner shall purchase and maintain such boiler and machinery insurance as may be required by the Contract Documents or by law. This insurance shall include the interests of the Owner, the Construction Manager, the Contractor, Subcontractors and Sub-subcontractors in the Work. [See Paragraph 11.3.2 on Page 18C]~~

11.3.3 Any loss insured under Subparagraph 11.3.1 is to be adjusted with the Owner and made payable to the Owner as trustee for the insureds, as their interests may appear, subject to the requirements of any applicable mortgagee clause and of Subparagraph 11.3.8. The Contractor shall pay each Subcontractor a just share of any insurance monies received by the Contractor, and by appropriate agreement, written where legally required for validity, shall require each Subcontractor to make payments to their Sub-subcontractors in similar manner.

~~11.3.4 The Owner shall file a copy of all policies with the Contractor before an exposure to loss may occur.~~

11.3.5 If the Contractor requests in writing that insurance for risks other than those described in Subparagraphs 11.3.1 and 11.3.2, or other special hazards, be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate

and the City of Chicago from the insurer.

11.1.2 Without limiting the generality of the contractor's covenants and obligations under Paragraph 11.1.1 hereof, and further, without limiting its liability under this Contract, the Contractor shall, during the term of the Contract, maintain insurance in the following forms and minimum amounts and with financially responsible companies qualified to transact business in the State in which the work is being performed and such insurance shall provide primary coverage and so state by endorsement:

1. Commercial General Liability

• Limit of Liability

\$10,000,000.00 Combined

This limit must cover bodily injury and property damage and apply on an occurrence basis. Any aggregate limit must apply per location or per job and must be unimpaired. The limit of liability may be achieved through combination with an excess or umbrella liability policy.

- Premises/operation; independent contractors; products/ completed operations; personal injury; contractual liability must be included.
- Broad Form Property Damage endorsement (including contractual liability) must be covered.
- The "x", "c" or "u" perils (explosion, collapse and underground hazard, respectively) must be included, where applicable.

2. Comprehensive Automobile Liability in amounts not less than the following:

Bodily injury, including death	-	\$2,000,000.00	each
		person	
	-	\$2,000,000.00	each
		occurrence	
Property damage, including the loss of use thereof			
	-	\$2,000,000.00	each
		occurrence	

Such insurance shall include, but not be limited to, all owned, non-owned and hired automobiles.

3. Workers Compensation

- Statutory limits for the state in which the work is being performed, and
- Employers Liability with minimum limits of:  
\$1,000,000.00 for injury by accident  
\$1,000,000.00 for injury by disease

The Employers Liability Limits may be combined with either an excess or umbrella liability policy.

4. Owner's Protective Liability Policy in the name of the Owner in amounts no less than the limits set forth in Paragraph 11.1.2.1.

Each such policy or policies of insurance required under Paragraphs 11.1.2.1 and 11.1.2.2 hereof shall include the Owner and such other interested person(s) or entities(s) as the Owner may direct, as named additional insureds thereunder.

11.1.4 If any part of the Work of the Contractor hereunder be sublet, then each Subcontractor shall, during the term of his subcontract, maintain insurance for that part of the Work which such Subcontractor has contracted to perform. The insurance to be maintained by each Subcontractor shall be in the amounts and with coverages set forth in Exhibit D attached to and forming a part of the Agreement. The Contractor shall obtain from each Subcontractor and each Sub-Subcontractor, certificates evidencing the insurance to be maintained by such Subcontractor (i) prior to the commencement of work by such Subcontractor, or (ii) if such Subcontractor is now engaged in work on the Project, then upon the execution of this Contract.

11.3.1 - (cont.) (i) as additional insureds, the City of Chicago, the Architect, Contractor and each of his Subcontractors, provided that the Contractor shall in writing notify the Owner of the names and addresses of each such Subcontractor, as and when contracted, (ii) contain a clause of endorsement waiving subrogation between and among insureds, and (iii) cover all items of labor and materials connected with the Work, whether in or adjacent thereto, materials in place or to be used as part of a permanent construction, including surplus material, shanties, protective fences, temporary structures, miscellaneous materials and supplies incidental to the Work and such scaffolding, stagings, towers, forms and equipment as are not owned or rented by the Contractor, the cost of which is included in the cost of the Work.

11.3.2 The insurance provided by the Owner under this Section 11.3 shall not cover any tools, apparatus, machinery, scaffolding, hoists, forms, stagings, or shorings commonly referred to as construction equipment, owned or rented by the Contractor or any of his Subcontractors or any Sub-Subcontractor, the capital value of which is not included in the cost of the Work. The Contractor shall make his own arrangements for any insurance he may require on such equipment. The Owner shall not be liable in any way to the Contractor or any of his Subcontractors or any Sub-Subcontractor for any loss due to fire, other casualty, theft, burglary, disappearance or any loss of any such equipment.

\*Except as otherwise required by any mortgage, or other funding agreement

11.3.6 The Owner and the Contractor waive all rights against (1) each other and the Subcontractors, Sub-subcontractors, agents and employees of each other, and (2) the Architect, the Construction Manager and separate contractors, if any, and their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other perils to the extent covered by insurance obtained pursuant to this Paragraph 11.3 or any other property insurance applicable to the Work, except such rights as they may have to the proceeds of such insurance held by the Owner as trustee. The foregoing waiver afforded the Architect, the Construction Manager, their agents and employees shall not extend to the liability imposed by Subparagraph 4.18.3. The Owner or the Contractor, as appropriate, shall require of the Architect, the Construction Manager, separate contractors, Subcontractors and Sub-subcontractors by appropriate agreements, written where legally required for validity, similar waivers each in favor of all other parties enumerated in this Subparagraph 11.3.6.

~~11.3.7 If required in writing by any party in interest the Owner as trustee shall upon the occurrence of an insured loss, give bond for the proper performance of the Owner's duties. The Owner shall deposit in a separate account any money so received, and shall distribute it in accordance with such agreement as the parties in interest may reach, or in accordance with an award by arbitration in which case the procedure shall be as provided in Paragraph 7.9. If after such loss no other special agreement is made, replacement of damaged Work shall be covered by an appropriate Change Order.~~

~~11.3.8 The Owner, as trustee, shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object, in writing within five days after the occurrence of loss, to the Owner's exercise of this power, and if such objection be made, arbitrators shall be chosen as provided in Paragraph 7.9. The Owner as trustee shall, in that case, make settlement with the insurers in accordance with the directions of such arbitrators. If distribution of the insurance proceeds by arbitration is required, the arbitrators will direct such distribution.~~

11.3.9 If the Owner finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion thereof, such occupancy shall not commence prior to a time mutually agreed to by the Owner and the Contractor and to which the insurance company or companies providing the property insurance have consented by endorsement to the policy or policies. This insurance shall not be canceled or lapsed on account of such partial occupancy. Consent of the Contractor and of the insurance company or companies to such occupancy or use shall not be unreasonably withheld.

#### 11.4 LOSS OF USE INSURANCE

11.4.1 The Owner, at the Owner's option, may purchase and maintain insurance for protection against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused, to the extent covered by insurance under this Paragraph 11.4.

## ARTICLE 12 CHANGES IN THE WORK

### 12.1 CHANGE ORDERS

12.1.1 A Change Order is a written order to the Contractor signed to show the recommendation of the Construction Manager, the approval of the Architect and the authorization of the Owner, issued after execution of the Contract, authorizing a change in the Work or an adjustment in the Contract Sum or the Contract Time. The Contract Sum and the Contract Time may be changed only by Change Order. A Change Order signed by the Contractor indicates the Contractor's agreement therewith, including the adjustment in the Contract Sum or the Contract Time.

12.1.2 The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and the Contract Time being adjusted accordingly. All such changes in the Work shall be authorized by Change Order, and shall be performed under the applicable conditions of the Contract Documents.

12.1.3 The cost or credit to the Owner resulting from a change in the Work shall be determined in one or more of the following ways:

- .1 by mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 by unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 by cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 by the method provided in Subparagraph 12.1.4.

12.1.4 If none of the methods set forth in Clauses 12.1.3.1, 12.1.3.2 or 12.1.3.3 is agreed upon, the Contractor, provided a written order signed by the Owner is received, shall promptly proceed with the Work involved. The cost of such Work shall then be determined by the Architect, after consultation with the Construction Manager, on the basis of the reasonable expenditures and savings of those performing the Work attributable to the change, including, in the case of an increase in the Contract Sum, a reasonable allowance for overhead and profit. In such case, and also under Clauses 12.1.3.3 and 12.1.3.4 above, the Contractor shall keep and present, in such form as the Owner, the Architect or the Construction Manager may prescribe, an itemized accounting together with appropriate supporting data for inclusion in a Change Order. Unless otherwise provided in the Contract Documents, cost shall be limited to the following: cost of materials, including sales tax and cost of delivery; cost of labor, including social security, old age and unemployment insurance, and fringe benefits required by agreement or custom; workers' or workmen's compensation insurance; bond premiums; rental value of equipment and machinery; and the additional costs of supervision and field office personnel directly attributable to the change. Pending final determination of cost to the Owner, payments on account shall be made on the Architect's approval of a Project Certificate for Payment.

The amount of credit to be allowed by the Contractor to the Owner for any deletion or change which results in a net decrease in the Contract Sum will be the amount of the actual net cost as confirmed by the Architect after consultation with the Construction Manager. When both additions and credits covering related Work or substitutions are involved in any one change, the allowance for overhead and profit shall be figured on the basis of the net increase, if any, with respect to that change.

12.1.5 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if the quantities originally contemplated are so changed in a proposed Change Order that application of the agreed unit prices to the quantities of Work proposed will cause substantial inequity to the Owner or the Contractor, the applicable unit prices shall be equitably adjusted.

See 12.1.6 on Page 20A

#### 12.2 CONCEALED CONDITIONS

12.2.1 Should concealed conditions encountered in the performance of the Work below the surface of the ground or should concealed or unknown conditions in an existing structure be at variance with the conditions indicated by the Contract Documents, or should unknown physical conditions below the surface of the ground or should concealed or unknown conditions in an existing structure of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract, be encountered, the Contract Sum shall be equitably adjusted by Change Order upon claim by either party made within ~~twenty~~ <sup>five (5)</sup> days after the first observance of the conditions.

#### 12.3 CLAIMS FOR ADDITIONAL COST

12.3.1 If the Contractor wishes to make a claim for an increase in the Contract Sum, the Contractor shall give the Architect and the Construction Manager written notice thereof within twenty days after the occurrence of the event giving rise to such claim. This notice shall be given by the Contractor before proceeding to execute the Work, except in an emergency endangering life or property in which case the Contractor shall proceed in accordance with Paragraph 10.3. No such claim shall be valid unless so made. If the Owner and the Contractor cannot agree on the amount of the adjustment in the Contract Sum, ~~it shall be determined by the Architect after consultation with the Construction Manager.~~ Any change in the Contract Sum resulting from such claim shall be authorized by Change Order.

12.3.2 If the Contractor claims that additional cost is involved because of, but not limited to, (1) any written interpretation pursuant to Subparagraph 2.3.11, (2) any order by the Owner to stop the Work pursuant to Paragraph 3.3 where the Contractor was not at fault, or any such order by the Construction Manager as the Owner's agent, ~~(3) any written order for a minor change in the Work issued pursuant to Paragraph 12.4, or (4) failure of payment by the Owner pursuant to Paragraph 9.7,~~ the Contractor shall make such claim as provided in Subparagraph 12.3.1.

#### 12.4 MINOR CHANGES IN THE WORK

12.4.1 ~~The Architect will have authority to order minor changes in the Work not involving an adjustment in the~~

~~Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order issued through the Construction Manager, and shall be binding on the Owner and the Contractor. The Contractor shall carry out such written orders promptly.~~

### ARTICLE 13

#### UNCOVERING AND CORRECTION OF WORK

##### 13.1 UNCOVERING OF WORK

13.1.1 If any portion of the Work should be covered contrary to the request of the Architect or the Construction Manager, or to requirements specifically expressed in the Contract Documents, it must, if required in writing by either, be uncovered for their observation and shall be replaced at the Contractor's expense.

13.1.2 If any other portion of the Work has been covered which the Architect or the Construction Manager has not specifically requested to observe prior to its being covered, either may request to see such Work and it shall be uncovered by the Contractor. If such Work be found in accordance with the Contract Documents, the cost of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If such Work be found not in accordance with the Contract Documents, the Contractor shall pay such costs unless it be found that this condition was caused by the Owner or a separate contractor as provided in Article 6, in which event the Owner shall be responsible for the payment of such costs.

##### 13.2 CORRECTION OF WORK

13.2.1 The Contractor shall promptly correct all Work rejected by the Architect or the Construction Manager as defective or as failing to conform to the Contract Documents whether observed before or after Substantial Completion of the Project and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected Work, including compensation for the Architect's and the Construction Manager's additional services made necessary thereby.

13.2.2 If, within one year after the Date of Substantial Completion of the Project or designated portion thereof, or within one year after acceptance by the Owner of designated equipment, or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be defective or not in accordance with the Contract Documents, the Contractor shall correct it promptly after receipt of a written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. This obligation shall survive both final payment for the Work or designated portion thereof and termination of the Contract. The Owner shall give such notice promptly after discovery of the condition. See 13.2.2A on

13.2.3 The Contractor shall remove from the site all portions of the Work which are defective or nonconforming and which have not been corrected under Subparagraphs 4.5.1, 13.2.1 and 13.2.2, unless removal is waived by the Owner.

13.2.4 If the Contractor fails to correct defective or nonconforming Work as provided in Subparagraphs 4.5.1,

at its sole cost and expense

12.1.6 Notwithstanding any other provision of this Section 12 to the contrary no Change Order shall be authorized or permitted by Owner, and Contractor shall not carry out such Change Order prior to receipt of the written approval of such Change Order by the Department of Planning and Development ("DPD") of the City of Chicago, however, if such Change Order will increase or decrease the Contract Sum by less than \$25,000.00, no such approval shall be required unless as a result of such Change Order the aggregate increase or decrease in the Contract Sum based on all Change Orders to date exceeds \$100,000.00. In case of a Change Order which does not require DPD approval, Owner shall give DPD written notice thereof prior to implementation.

13.2.2A Notwithstanding anything to the contrary herein contained, it is understood and agreed that the foregoing warranty and guarantee shall not affect, limit or impair Owner's rights against Contractor with regard to latent defects in the work which do not appear within the applicable warranty period following completion or use or occupancy and which could not, by the exercise of reasonable care and due diligence, be ascertained or discovered by Owner within such warranty period. Contractor shall be and remain liable and responsible to correct and cure any such latent defects which are reported to Contractor by Owner in writing within one (1) year after any such latent defects first appear or could, by the exercise of reasonable care and due diligence, be ascertained or discovered by Owner. All guarantees or warranties upon any work, labor, materials, or equipment by any subcontractor or supplier of Contractor shall be deemed made by Contractor to Owner. It is expressly understood and agreed that Contractor shall be and remain bound and obligated upon this warranty according to its terms; acceptance of the work and final payment shall not in any way or to any extent release or discharge Contractor from its guarantees and warranties, which shall be assignable to any person or entity who succeeds Owner in the ownership of all or a part of the Project, and Contractor agrees to faithfully and diligently perform any guarantee or warranty work arising hereunder for the benefit of any successor or assign of Owner.

through no fault of Contractor

or a Sub-Subcontractor

13.2.1 and 13.2.2, the Owner may correct it in accordance with Paragraph 3.4.

13.2.5 If the Contractor does not proceed with the correction of such defective or nonconforming Work within a reasonable time fixed by written notice from the Architect issued through the Construction Manager, the Owner may remove it and may store the materials or equipment at the expense of the Contractor. If the Contractor does not pay the cost of such removal and storage within ten days thereafter, the Owner may, upon ten additional days' written notice, sell such Work at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs that should have been borne by the Contractor, including compensation for the Architect's and the Construction Manager's additional services made necessary thereby. If such proceeds of sale do not cover all costs which the Contractor should have borne, the difference shall be charged to the Contractor and an appropriate Change Order shall be issued. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

13.2.6 The Contractor shall bear the cost of making good all work of the Owner or separate contractors destroyed or damaged by such correction or removal.

13.2.7 Nothing contained in this Paragraph 13.2 shall be construed to establish a period of limitation with respect to any other obligation which the Contractor might have under the Contract Documents, including Paragraph 4.5 hereof. The establishment of the time periods noted in Subparagraph 13.2.2, or such longer period of time as may be prescribed by law or by the terms of any warranty required by the Contract Documents, relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the Contractor's obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

13.3 ACCEPTANCE OF DEFECTIVE OR NONCONFORMING WORK

13.3.1 If the Owner prefers to accept defective or nonconforming Work, the Owner may do so instead of requiring its removal and correction, in which case a Change Order will be issued to reflect a reduction in the Contract Sum where appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 14

TERMINATION OF THE CONTRACT

14.1 TERMINATION BY THE CONTRACTOR

14.1.1 If the Work is stopped for a period of thirty days under an order of any court or other public authority

having jurisdiction, or as a result of an act of government such as a declaration of a national emergency making materials unavailable, through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing any of the Work under a contract with the Contractor, or if the Work should be stopped for a period of thirty days by the Contractor because of the Construction Manager's failure to recommend or the Architect's failure to issue a Project Certificate for Payment as provided in Paragraph 9.7 or because the Owner has not made payment thereon as provided in Paragraph 9.7, then the Contractor may, upon seven additional days' written notice to the Owner, the Architect and the Construction Manager, terminate the Contract and recover from the Owner payment for all Work executed and for any proven loss sustained upon any materials, equipment, tools, construction equipment and machinery, including reasonable profit and damages.

14.2 TERMINATION BY THE OWNER

14.2.1 If the Contractor is adjudged a bankrupt, or makes a general assignment for the benefit of creditors, or if a receiver is appointed on account of the Contractor's insolvency, or if the Contractor persistently or repeatedly refuses or fails, except in cases for which extension of time is provided, to supply enough properly skilled workers or proper materials, or fails to make prompt payment to Subcontractors or for materials or labor, or persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of a substantial violation of a provision of the Contract Documents, and fails within seven days after receipt of written notice to commence and continue correction of such default, neglect or violation with diligence and promptness, the Owner, upon certification by the Architect after consultation with the Construction Manager that sufficient cause exists to justify such action, may, ~~after seven days following receipt by the Contractor of an additional written notice and without~~ prejudice to any other remedy the Owner may have, terminate the employment of the Contractor and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever methods the Owner may deem expedient. In such case the Contractor shall not be entitled to receive any further payment until the Work is finished.

14.2.2 If the unpaid balance of the Contract Sum exceeds the costs of finishing the Work, including compensation for the Architect's and the Construction Manager's additional services made necessary thereby, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or to the Owner, as the case may be, shall be certified by the Architect, upon application, in the manner provided in Paragraph 9.4, and this obligation for payment shall survive the termination of the Contract.

## ARTICLE 15

### EMPLOYMENT OPPORTUNITY

15.1 Contractor and its successors and assigns hereby agree, and shall contractually obligate and use reasonable efforts to cause its or their subcontractors (collectively with the Contractor, the "Employers") to agree, that during the period of any such party's provision of services hereunder:

- (a) Employer shall not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, national origin, ancestry, age, mental or physical disability, sexual orientation, marital status, parental status, military discharge status or source of income, as defined in the City of Chicago Human Rights Ordinance adopted December 21, 1988. Each Employer will take affirmative action to insure that applicants are employed and employees are treated during employment without regard to their race, color, religion, sex, national origin, ancestry, age, mental or physical disability, sexual orientation, marital status, parental status, military discharge status or source of income. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training including apprenticeship. Each Employer agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by City setting forth the provisions of this non-discrimination clause.
- (b) To the greatest extent feasible, each Employer shall create training and employment opportunities for the benefit of low and moderate income residents of the "Redevelopment Area" legally described in Exhibit B. Moreover, to the greatest extent possible, contracts for the Work shall be awarded by Employer to business concerns located in, or owned in substantial part by persons residing in, the Redevelopment Area.
- (c) All solicitation or advertisement for employees placed by or on behalf of any Employer shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, ancestry, age, mental or physical disability, sexual orientation, marital status, parental status, military discharge status or source of income.

- (d) Each Employer shall comply with federal, state and local equal employment and affirmative action statutes, rules, and regulations, including but not limited to the Human Rights Act of the State of Illinois and City of Chicago, and any subsequent amendments and regulations promulgated pursuant thereto.
- (e) Each Employer agrees to be bound by and comply with the Minority Business Enterprise and Women Business Enterprise Commitment provisions contained in Exhibit C attached hereto. For the purposes of this Agreement, the following terms used in Exhibit C shall have the following meanings: (i) "Year Advertised" shall mean 1993, (ii) "Contractor, Bidder and Proposer" shall mean each Employer, (iii) "Total Contract Prices" shall mean the Contract Sum, and (iv) "Purchasing Agent" shall mean the Department of Planning and Development of the City of Chicago.
- (f) Each Employer will include the foregoing provisions in every contract entered into in connection with the Work, and will require the inclusion of these provision in every subcontract entered into by any subcontractors, so that such provision will be binding upon each contractor or subcontractor, as the case may be.

EXHIBIT A

PERFORMANCE BOND AND  
LABOR AND MATERIAL PAYMENT BOND

# ATTACHMENT A

Revised 8/21/92

## ASSIST AGENCIES

### NON CONSTRUCTION

Cando  
343 S. Dearborn - Suite 910  
Chicago, Illinois 60604  
Attn: Pat Bell  
(312) 939-7171  
(312) 939-7236\*

Latin American Chamber of  
Commerce  
2539 N. Kedzie - Suite 12  
Chicago, Illinois 60647  
Attn: D. Lorenzo Padron  
(312) 252-5211  
(312) 252-7065\*

Women In Business Yellow Pages  
7358 Lincoln Ave., Ste 150  
Chicago, Illinois 60646  
Attn: Ida Bialik  
(708) 679-7800  
(708) 679-7845\*

Asian American Small  
Business Association  
5023 N. Broadway  
Chicago, Illinois 60640  
Attn: Charles Soo  
(312) 728-1030

Minority Economic Resource  
Corp.  
1565 Ellinwood Street  
Des Plaines, Illinois 60016  
Attn: William Morgan  
(708) 297-4705  
(708) 297-5343\*

National Association of Women  
Business Owners-Chicago Chapt.  
825 Greenbay Road, Ste. 270  
Wilmette, Illinois 60091  
Attn: Kevin Boyer  
(708) 256-1563  
(708) 256-8954\*

Midwest Women's Center  
828 S. Wabash  
Chicago, Illinois 60604  
Attn: Mary Morten  
(312) 922-8530  
(312) 922-8931\*

Small Business Development Ct.  
Chicago State University  
95th Street & King Drive  
Chicago, Illinois 60628  
Attn: Esther Crawford  
(312) 995-3944  
(312) 995-2269\*

Illinois Dept. of Commerce  
and Community Affairs  
100 W. Randolph - Ste. 3-400  
Chicago, Illinois 60601  
Attn: Mollie Cole  
(312) 814-6111  
(312) 814-6732\*

Industrial Council of Northwest  
Chicago  
2023 W. Carroll. Ave.  
Chicago, Illinois 60612  
Attn: Andrew Goldsmith  
(312) 421-3941

Grant Thornton  
Minority Business Devel  
Center  
130 East Randolph - Sui  
Chicago, Illinois 60601  
Attn: Gus Vargas  
(312) 856-0200  
(312) 565-4719\*

North River Commissio  
4745 N. Kedzie  
Chicago, Illinois 60625  
Attn: Joel Bookman  
(312) 478-0202

Uptown Center Hull Ho  
4520 N. Beacon  
Chicago, Illinois 60640  
Attn: Ed Jacob/Curt Ro  
(312) 561-3500

The Neighborhood Insti  
2255 E. 75th Street  
Chicago, Illinois 60649  
Attn: Olivia Grady/Adr  
(312) 933-2021  
(312) 933-2039\*

\* Facsimile Number

# ATTACHMENT A

Revised 8/21/92

## ASSIST AGENCIES

### NON CONSTRUCTION

Illinois Assoc. of Black Women  
Business Owners  
40 E. 9th Street #1305  
Chicago, Illinois 60605  
Attn: Audrey Davis  
(312) 363-3316

International Trade Bureau  
Operation Push  
930 E. 50th Street  
Chicago, Illinois 60615  
(312) 373-3366  
(312) 373-3571\*

Chicago Regional Purchasing  
Council  
36 S. Wabash - Suite 725  
Chicago, Illinois 60603  
Attn: Maye Foster Thompson  
(312) 263-0105  
(312) 263-0280\*

Cosmopolitan Chamber of  
Commerce  
1326 S. Michigan - Suite 100  
Chicago, Illinois 60605-2602  
Attn: Consuelo Pope/Donna  
Green  
(312) 786-0212  
(312) 786-9079\*

Westside Small Business  
Development Corp.  
112 N. Pulaski Road  
Chicago, Illinois 60624  
Attn: Coy Pugh/Anthony  
Springer  
(312) 638-1990

Women's Business Development  
Center  
8 South Michigan Ave. - Suite 400  
Chicago, Illinois 60603-3306  
Attn: Hedy Ratner/Elizabeth  
Scully  
(312) 853-3477  
(312) 853-0145\*

Little Village 26th Street  
Area Chamber of Commerce  
3610 West 26th Street  
Chicago, Illinois 60623  
Attn: Abundio Zaragoza, Jr.  
(312) 521-5387  
(312) 521-7103\*

Chicago Business Development  
Center  
180 N. LaSalle St. Suite 2920  
Chicago, Illinois 60601  
Attn: Ben Liddell  
(312) 444-9884

Chicago Minority Business  
Development Center  
Operated by: Burgos &  
Associates, Inc.  
35 E. Wacker Dr. - Suite 922  
Chicago, Illinois 60601  
Attn: Dan Drapala  
(312) 977-9190  
(312) 977-9196\*

Chicago Urban League  
4510 S. Michigan  
Chicago, Illinois 60653  
Attn: Lee V. Smith  
(312) 285-5800 X383  
(312) 285-7772\*

Mexican American Chamber  
of Commerce of Illinois  
111 East Wacker Drive  
Chicago, Illinois 60601  
Attn: Alphonse C. Gor  
(312) 616-2737  
(312) 226-3791\*

\* Facsimile Number

# ATTACHMENT A

Revised 8/21/92

## ASSIST AGENCIES

### CONSTRUCTION

Association of Asian  
Construction Enterprises  
333 North Ogden Avenue  
Chicago, IL 60607  
Attn: Mr. Samuel Chung,  
President  
(312) 421-6788  
(312) 921-4188\*

Chicago Urban League  
1346 S. Michigan Avenue  
Chicago, Illinois 60605  
Attn: Taylor Cotton  
(312) 663-9216  
(312) 663-9809\*

Black Contractors United  
1603 S. Michigan Ave., Suite 503  
Chicago, IL 60616-1209  
Attn: Jerome E. Peters  
(312) 663-0704  
(312) 663-0706\*

Mexican American Chamber  
of Commerce of Illinois  
111 East Wacker Drive, Ste. 500  
Chicago, Illinois 60601  
Attn: Alphonse C. Gonzales  
(312) 616-2737  
(312) 226-3791\*

Hispanic-American Construction  
Industry Associations (HACIA)  
531 S. Plymouth Ct., Suite 102  
Chicago, IL 60605-1527  
Attn: Carlos Ponce  
(312) 786-0101

African American Contractors  
Association  
1344 South Michigan Avenue  
Chicago, IL 60605  
Attn: Omar Shareef, President  
(312) 915-5960  
(312) 663-9809\*

Women Construction Owners &  
Executives  
6723 S. Pulaski Road  
Chicago, IL 60629  
Attn: Theresa Kern  
(312) 582-9800  
(312) 582-9850\*

Natl. Assoc. of Women In  
Construction  
c/o Kelso-Burnett Company  
223 W. Jackson Ave., Suite 1216  
Chicago, IL 60606  
Attn: Margie Homer  
(312) 922-2610  
(312) 922-2629\*

\* Facsimile Number

ATTACHMENT E

(ON BIDDER/PROPOSER'S LETTERHEAD)

RETURN RECEIPT REQUESTED

(Date) - -

Re: Specification No: \_\_\_\_\_

Description: \_\_\_\_\_

(Assist Agency Name and Address)

Dear \_\_\_\_\_:

(Bidder/Proposer) intends to submit a bid/proposal in response to the above referenced specification with the City of Chicago. Bids are due \_\_\_\_\_ advertised specification with the City of Chicago.

The following areas have been identified for subcontracting opportunities on both a direct and indirect basis:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Our efforts to identify potential subcontractors have not been successful in order to meet the Disadvantaged/Minority/Women Business Enterprise contract goal. Due to the inability to identify an appropriate DBE/MBE/WBE firm certified by the City of Chicago to participate as a subcontractor or joint venture partner, a request for the waiver of the contract goals will be submitted. If you are aware of such a firm, please contact \_\_\_\_\_ at

\_\_\_\_\_  
Name of Company Representative

\_\_\_\_\_ within (10) ten working

\_\_\_\_\_ address/phone

days of receipt of this letter.

Under the City of Chicago's MBE/WBE/DBE Ordinance, your agency is entitled to comment upon this waiver request to the City of Chicago. Written comments may be directed within fifteen (15) working days of your receipt of this letter to:

Diane E. Minor, Contract Compliance Administrator  
Department of Purchases, Contracts and Supplies  
City of Chicago  
121 North LaSalle Street, Room 403  
Chicago, Illinois 60602

If you wish to discuss this matter, please contact the undersigned at \_\_\_\_\_.

Sincerely,

\_\_\_\_\_

SCHEDULE B: Affidavit of Joint Venture (MBE/WBE)

This form need not be submitted if all joint venturers are MBEs and/or WBEs. In such a case however, a written joint venture agreement among the MBE and WBE venturers must be submitted. In all proposed joint ventures, each MBE and/or WBE venturer must submit a copy of their own Letter of Certification.

ALL INFORMATION REQUESTED BY THIS SCHEDULE MUST BE ANSWERED IN THE SPACE PROVIDED. DO NOT REFER TO YOUR JOINT VENTURE AGREEMENT EXCEPT TO EXPLAIN YOUR ANSWERS PROVIDED ON THIS FORM. IF ADDITIONAL SPACE IS REQUIRED, ADDITIONAL SHEETS MAY BE ATTACHED.

I. Name of joint venture: \_\_\_\_\_  
Address of joint venture: \_\_\_\_\_  
\_\_\_\_\_  
Phone number of joint venture: \_\_\_\_\_

II. Identify each non-MBE/WBE venturer(s):  
Name of Firm: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Contact person for matters concerning MBE/WBE compliance: \_\_\_\_\_

III. Identify each MBE/WBE venturer(s):  
Name of Firm: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Contact person for matters concerning MBE/WBE compliance: \_\_\_\_\_

IV. Describe the role(s) of the MBE and/or WBE venturer(s) in the joint venture:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

V. Attach a copy of the joint venture agreement. In order to demonstrate the MBE and/or WBE venturer's share in the ownership, control, management responsibilities, risks and profits of the joint venture, the proposed joint venture agreement must include specific details related to: (1) the contributions of capital and equipment; (2) work items to be performed by the MBE/WBE on its own forces; (3) work items to be performed under the supervision of the MBE/WBE venturer and (4) the commitment of management, supervisory and operative personnel employed by the MBE/WBE to be dedicated to the performance of the project.

VI. Ownership of the Joint Venture.  
A. What are the percentage(s) of MBE/WBE ownership of the joint venture?  
MBE/WBE ownership percentage(s) \_\_\_\_\_  
Non-MBE/WBE ownership percentage(s) \_\_\_\_\_

**VI. Ownership of the Joint Venture (continued):**

**B. Specify MBE/WBE percentages for each of the following (provide narrative description other detail as applicable):**

1. Profit and loss sharing: \_\_\_\_\_

2. Capital contributions:

(a) Dollar amounts of initial contribution: \_\_\_\_\_

(b) Dollar amounts of anticipated on-going contributions: \_\_\_\_\_

3. Contributions of equipment (Specify types, quality and quantities of equipment provided by each venturer): \_\_\_\_\_

4. Other applicable ownership interests, including ownership options or other agreements which restrict or limit ownership and/or control: \_\_\_\_\_

5. Provide copies of all written agreements between venturers concerning this project.

6. Identify each current City of Chicago contract (and each contract completed during past two (2) years) by a joint venture of two or more firms participating in this joint venture: \_\_\_\_\_

**VIII. Control of and Participation in the Joint Venture. Identify by name and firm those individuals who are, or will be, responsible for, and have the authority to engage in the following management functions and policy decisions. (Indicate any limitations to their authority as dollar limits and co-signatory requirements.):**

**A. Joint venture check signing:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**B. Authority to enter contracts on behalf of the joint venture:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**C. Signing, co-signing and/or collateralizing loans:**

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**D. Acquisition of lines of credit:**

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**E. Acquisition and indemnification of payment and performance bonds:**

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**F. Negotiating and signing labor agreements:**

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**G. Management of contract performance. (Identify by name and firm only):**

1. Supervision of field operations: \_\_\_\_\_

2. Major purchases: \_\_\_\_\_

3. Estimating: \_\_\_\_\_

4. Engineering: \_\_\_\_\_

**IX. Financial Controls of joint venture:**

A. Which firm and/or individual will be responsible for keeping the books of account?

B. Identify the "managing partner," if any, and describe the means and measure of compensation:

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C. What authority does each venturer have to commit or obligate the other to insurance bonding companies, financing institutions, suppliers, subcontractors, and/or other parties participating in the performance of this contract or the work of this project?

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The undersigned affirms that the foregoing statements are correct and include all the information necessary to identify and explain the terms and operations of our joint venture and intended participation of each venturer in the undertaking. Further, the undersigned covenants to agree to provide to the City current, complete and accurate information regarding actual joint venture work and the payment therefor, and any proposed changes in any provision of the joint venture agreement, and to permit the audit and examination of the books, records and files of the joint venture, or those of each venturer relevant to the joint venture by authorized representatives of the City or the Federal funding agency.

Any material misrepresentation will be grounds for terminating any contract which may be awarded and for initiating action under federal or state laws concerning false statements.

Note: If, after filing this Schedule B and before the completion of the joint venture's work on the project, there is any change in the information submitted, the joint venture must inform the City of Chicago, either directly or through the prime contractor if the joint venture is a subcontractor.

Name of MBE/WBE Partner Firm	Name of Non-MBE/WBE Partner Firm
Signature of Affiant	Signature of Affiant
Name and Title of Affiant	Name and Title of Affiant
Date	Date

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, the above-signed officers

(names of affiants)

personally appeared and, known to me be the persons described in the foregoing Affidavit, acknowledged that they executed the same in the capacity therein stated and for the purpose therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

\_\_\_\_\_  
Signature of Notary Public

My Commission Expires: \_\_\_\_\_

(SEAL)

**SCHEDULE C-1**  
Letter of Intent from MBE/WBE to Perform  
as Subcontractor, Supplier and/or Consultant

Name of Project/Contract: \_\_\_\_\_

Specification Number: \_\_\_\_\_

From: \_\_\_\_\_  
(Name of MBE/WBE Firm)

MBE: Yes \_\_\_\_\_; No \_\_\_\_\_  
WBE: Yes \_\_\_\_\_; No \_\_\_\_\_

To: \_\_\_\_\_ and the City of Chicago:  
(Name of Prime Contractor - Bidder/Proposer)

The undersigned intends to perform work in connection with the above projects as a:

\_\_\_\_\_ Sole Proprietor                      \_\_\_\_\_ Corporation  
\_\_\_\_\_ Partnership                              \_\_\_\_\_ Joint Venture

The MBE/WBE status of the undersigned is confirmed by the attached letter of Certification from the City of Chicago effective date of \_\_\_\_\_ to \_\_\_\_\_ for a period of one year.

The undersigned is prepared to provide the following described services or supply the following described goods in connection with the above named project/contract:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The above described performance is offered for the following price and described terms of payment:

\_\_\_\_\_  
\_\_\_\_\_

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

The undersigned will enter into a formal written agreement for the above work with you as a Prime Contractor, conditioned upon your execution of a contract with the City of Chicago, and will do so within (3) three working days of receipt of a signed contract from the City of Chicago.

\_\_\_\_\_  
(Signature of Owner or Authorized Agent)

\_\_\_\_\_  
Name/Title (Print)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Phone

SCHEDULE D-1

Affidavit of MBE/WBE Goal Implementation Plan

Contract Name \_\_\_\_\_

Specification No.: \_\_\_\_\_

State of \_\_\_\_\_

County (City) of \_\_\_\_\_

I HEREBY DECLARE AND AFFIRM that I am duly authorized representative of:

\_\_\_\_\_  
Name of Bidder/Proposer

and that I have personally reviewed the material and facts set forth herein describing our prop  
plan to achieve the MBE/WBE goals of this contract.

All MBE/WBE firms included in this plan have been certified as such by the City of Chicago (Le  
of Certification Attached) or have had a complete application for MBE/WBE certification o  
with the City of Chicago for at least 30 days.

**I. Direct Participation of MBE/WBE Firms**

(Note: The bidder/proposer shall, in determining the manner of MBE/WBE participation, fir  
consider involvement with MBE/WBE firms as joint venture partners, subcontractors, and supplier  
of goods and services directly related to the performance of this contract.)

- A. If bidder/proposer is a certified MBE or WBE firm, attach copy of City of Chicago I  
of Certification. (Certification of the bidder/proposer as a MBE satisfies the MBE  
only. Certification of the bidder/proposer as a WBE satisfies the WBE goal only.)
- B. If bidder/proposer is a joint venture and one or more joint venture partners are cer  
MBEs or WBEs, attach copies of Letters of Certification and a copy of Joint Ven  
Agreement clearly describing the role of the MBE/WBE firm(s) and its ownership int  
in the joint venture.

**C. MBE/WBE Subcontractors/Suppliers/Consultants:**

1. Name of MBE/WBE: \_\_\_\_\_

Address: \_\_\_\_\_

Contact Person: \_\_\_\_\_ Phone: \_\_\_\_\_

Dollar Amount Participation \$ \_\_\_\_\_

Percent Amount of Participation: \_\_\_\_\_ %

Schedule C-1 attached? Yes \_\_\_\_\_ No \_\_\_\_\_ \* (see page 2)

2. Name of MBE/WBE: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Contact Person: \_\_\_\_\_ Phone: \_\_\_\_\_  
 Dollar Amount Participation \$ \_\_\_\_\_  
 Percent Amount of Participation: \_\_\_\_\_ %  
 Schedule C-1 attached? Yes \_\_\_\_\_ No \_\_\_\_\_ \*
3. Name of MBE/WBE: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Contact Person: \_\_\_\_\_ Phone: \_\_\_\_\_  
 Dollar Amount Participation \$ \_\_\_\_\_  
 Percent Amount of Participation: \_\_\_\_\_ %  
 Schedule C-1 attached? Yes \_\_\_\_\_ No \_\_\_\_\_ \*
4. Name of MBE/WBE: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Contact Person: \_\_\_\_\_ Phone: \_\_\_\_\_  
 Dollar Amount Participation \$ \_\_\_\_\_  
 Percent Amount of Participation: \_\_\_\_\_ %  
 Schedule C-1 attached? Yes \_\_\_\_\_ No \_\_\_\_\_ \*
5. Name of MBE/WBE: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Contact Person: \_\_\_\_\_ Phone: \_\_\_\_\_  
 Dollar Amount Participation \$ \_\_\_\_\_  
 Percent Amount of Participation: \_\_\_\_\_ %  
 Schedule C-1 attached? Yes \_\_\_\_\_ No \_\_\_\_\_ \*
6. Attach additional sheets as needed.

\* All Schedule C-1s and Letters of Certification not submitted with bid/proposal must be submitted so as to assure receipt by the Contract Administrator within three (3) business days at opening (or proposal due date.)

## II. Indirect Participation of MBE/WBE Firms

(Note: This section need not be completed if the MBE/WBE goals have been met through the direct participation outlined in Section I. If the MBE/WBE goals have not been met through direct participation, contractor will be expected to demonstrate that the proposed MBE/WBE direct participation represents the maximum achievable under the circumstances. Only after such a demonstration will indirect participation be considered.)

**MBE/WBE Subcontractors/Suppliers/Consultants proposed to perform work or supply goods or services where such performance does not directly relate to the performance of this contract:**

A. Name of MBE/WBE: \_\_\_\_\_

Address: \_\_\_\_\_

Contact Person: \_\_\_\_\_ Phone: \_\_\_\_\_

Dollar Amount Participation \$ \_\_\_\_\_

Percent Amount of Participation: \_\_\_\_\_ %

Schedule C-1 attached? Yes \_\_\_\_\_ No \_\_\_\_\_ \*

B. Name of MBE/WBE: \_\_\_\_\_

Address: \_\_\_\_\_

Contact Person: \_\_\_\_\_ Phone: \_\_\_\_\_

Dollar Amount Participation \$ \_\_\_\_\_

Percent Amount of Participation: \_\_\_\_\_ %

Schedule C-1 attached? Yes \_\_\_\_\_ No \_\_\_\_\_ \*

C. Name of MBE/WBE: \_\_\_\_\_

Address: \_\_\_\_\_

Contact Person: \_\_\_\_\_ Phone: \_\_\_\_\_

Dollar Amount Participation \$ \_\_\_\_\_

Percent Amount of Participation: \_\_\_\_\_ %

Schedule C-1 attached? Yes \_\_\_\_\_ No \_\_\_\_\_ \*

D. Name of MBE/WBE: \_\_\_\_\_

Address: \_\_\_\_\_

Contact Person: \_\_\_\_\_ Phone: \_\_\_\_\_

Dollar Amount Participation \$ \_\_\_\_\_

Percent Amount of Participation: \_\_\_\_\_ %

Schedule C-1 attached? Yes \_\_\_\_\_ No \_\_\_\_\_ \*

E. Attach additional sheets as needed.

\*All Schedule C-1s and Letters of Certification not submitted with bid/proposal must be submitted as to assure receipt by the Contract Administrator within three (3) business days after bid opening (or proposal due date).

III. Summary of MBE/WBE Proposal:

A. MBE Proposal:

1. MBE Direct Participation (from Section I.):

<u>MBE Firm Name</u>	Dollar Amount of Participation	Percent Am of particip
_____	\$ _____	_____
_____	\$ _____	_____
_____	\$ _____	_____
_____	\$ _____	_____
_____	\$ _____	_____
<b>Total Direct MBE Participation:</b>	<b>\$ _____</b>	_____

2. MBE Indirect Participation (from Section II.):

<u>MBE Firm Name</u>	Dollar Amount of Participation	Percent Am of particip
_____	\$ _____	_____
_____	\$ _____	_____
_____	\$ _____	_____
_____	\$ _____	_____
<b>Total Indirect MBE Participation:</b>	<b>\$ _____</b>	_____

B. WBE Proposal:

1. WBE Direct Participation (from Section I.):

<u>WBE Firm Name</u>	Dollar Amount of Participation	Percent Am of particip
_____	\$ _____	_____
_____	\$ _____	_____
_____	\$ _____	_____
_____	\$ _____	_____
_____	\$ _____	_____
<b>Total Direct WBE Participation:</b>	<b>\$ _____</b>	_____

2. WBE Indirect Participation (from Section II):

<u>WBE Firm Name</u>	Dollar Amount of Participation	Percent Am of particip
_____	\$ _____	_____
_____	\$ _____	_____
_____	\$ _____	_____
_____	\$ _____	_____
<b>Total Indirect WBE Participation:</b>	<b>\$ _____</b>	_____

To the best of my knowledge, information and belief, the facts and representations contained in Schedule are true, and no material facts have been omitted.

The contractor designates the following person as their MBE/WBE Liaison Officer:

Name \_\_\_\_\_ Phone Number: \_\_\_\_\_

I do solemnly declare and affirm under penalties of perjury that the contents of the foregoing document are true and correct, and that I am authorized, on behalf of the contractor, to make this affidavit.

\_\_\_\_\_  
Signature of Affiant (Date)

State of \_\_\_\_\_

County of \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_ (date)  
by \_\_\_\_\_ (name /s of person/s)  
as \_\_\_\_\_ (type of authority, e.g., officer, trustee, etc.)  
of \_\_\_\_\_ (name of party on behalf of whom instrument  
was executed).

\_\_\_\_\_  
Signature of Notary Public

(Seal)

## DBE/MBE/WBE UTILIZATION REPORT

NOTICE: THIS REPORT IS NOT TO BE COMPLETED AT THE TIME OF BID OR PROPOSAL SUBMISSION. AWARDED A CONTRACT WITH AN APPROVED DBE/MBE/WBE PLAN, THE PRIME CONTRACTOR IS REQUIRED TO SUBMIT THIS REPORT IN ACCORDANCE WITH THE REPORTING REQUIREMENTS STATED IN THE SPECIAL CONDITION REGARDING DISADVANTAGED OR MINORITY AND WOMEN BUSINESS ENTERPRISE COMMITMENT.

Contract Administrator: \_\_\_\_\_ Specification No. \_\_\_\_\_  
 Phone No. \_\_\_\_\_ Contract No. \_\_\_\_\_  
 Date of Award: \_\_\_\_\_  
 Utilization Report No. \_\_\_\_\_

STATE OF: \_\_\_\_\_ )

COUNTY (CITY) OF: \_\_\_\_\_ )

In connection with the above-captioned contract:

I HEREBY DECLARE AND AFFIRM that I am the \_\_\_\_\_  
(Title - Print or Type)

and duly authorized representative of \_\_\_\_\_  
(Name of Company - Print or Type)

\_\_\_\_\_ (\_\_\_\_\_) \_\_\_\_\_  
(Address of Company) (Phone)

and that the following Disadvantaged, Minority and Women Business Enterprises have been contracted and have furnished, or are furnishing and preparing materials for, and rendering services stated in the contract agreement.

The following Schedule accurately reflects the value of each DBE/MBE/WBE sub-agreement and the amount of money paid to each to date.

DBE/MBE/WBE NAME	INDICATE IF FIRM (DBE/MBE OR WBE)	AMOUNT OF CONTRACT	AMOUNT PAID TO DATE
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$

AMOUNT BILLED TO CITY: \$ \_\_\_\_\_

AMOUNT PAID TO PRIME CONTRACTOR: \$ \_\_\_\_\_



I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT  
CONTENTS OF THE FOREGOING DOCUMENT ARE TRUE AND CORRECT, AND THAT  
AUTHORIZED, ON BEHALF OF THE CONTRACTOR, TO MAKE THIS AFFIDAVIT.

Name of Contractor: \_\_\_\_\_  
(Print or Type)

Signature: \_\_\_\_\_  
(Signature of Affiant)

Name of Affiant: \_\_\_\_\_  
(Print or Type)

Date: \_\_\_\_\_  
(Print or Type)

State of \_\_\_\_\_  
County (City) of \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_ (date)  
by \_\_\_\_\_ (name/s of person/s)  
as \_\_\_\_\_ (type of authority, e.g., officer, trustee, etc.)  
of \_\_\_\_\_ (name of party on behalf of whom instrument  
was executed).

\_\_\_\_\_  
Signature of Notary Public

(Seal)

THE AMERICAN INSTITUTE OF ARCHITECTS



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AIA Document A311

Performance Bond

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KNOW ALL MEN BY THESE PRESENTS: that

*(Here insert full name and address or legal title of Contractor)*

as Principal, hereinafter called Contractor, and,

*(Here insert full name and address or legal title of Surety)*

as Surety, hereinafter called Surety, are held and firmly bound unto

*(Here insert full name and address or legal title of Owner)*

as Obligee, hereinafter called Owner, in the amount of

Dollars (\$ \_\_\_\_\_ ),

for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS,

Contractor has by written agreement dated

19 \_\_\_\_\_, entered into a contract with Owner for

*(Here insert full name, address and description of project)*

in accordance with Drawings and Specifications prepared by

*(Here insert full name and address or legal title of Architect)*

which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

# PERFORMANCE BOND

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Contractor shall promptly and faithfully perform said Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The Surety hereby waives notice of any alteration or extension of time made by the Owner.

Whenever Contractor shall be, and declared by Owner to be in default under the Contract, the Owner having performed Owner's obligations thereunder, the Surety may promptly remedy the default, or shall promptly

1) Complete the Contract in accordance with its terms and conditions, or

2) Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsible bidder, or, if the Owner elects, upon determination by the Owner and the Surety jointly of the lowest responsible bidder, arrange for a contract between such bidder and Owner, and make available as Work progresses (even though there should be a default or a succession of

defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the contract price," as used in this paragraph, shall mean the total amount payable by Owner to Contractor under the Contract and any amendments thereto, less the amount properly paid by Owner to Contractor.

Any suit under this bond must be instituted before the expiration of two (2) years from the date on which final payment under the Contract falls due.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the Owner named herein or the heirs, executors, administrators or successors of the Owner.

Signed and sealed this

day of

19

	<p style="text-align: center;">(Principal)</p> <p style="text-align: right;">(Seal)</p>
(Witness)	
	<p style="text-align: center;">(Surety)</p> <p style="text-align: right;">(Seal)</p>
(Witness)	

THE AMERICAN INSTITUTE OF ARCHITECTS



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AIA Document A311

**Labor and Material Payment Bond**

THIS BOND IS ISSUED SIMULTANEOUSLY WITH PERFORMANCE BOND IN FAVOR OF THE OWNER CONDITIONED ON THE FULL AND FAITHFUL PERFORMANCE OF THE CONTRACT

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KNOW ALL MEN BY THESE PRESENTS: that

(Here insert full name and address or legal title of Contractor)

as Principal, hereinafter called Principal, and,

(Here insert full name and address or legal title of Surety)

as Surety, hereinafter called Surety, are held and firmly bound unto

(Here insert full name and address or legal title of Owner)

as Obligee, hereinafter called Owner, for the use and benefit of claimants as hereinbelow defined, in the

amount of

(Here insert a sum equal to at least one-half of the contract price)

Dollars (\$ \_\_\_\_\_),

for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS,

Principal has by written agreement dated \_\_\_\_\_

19\_\_\_\_, entered into a contract with Owner for

(Here insert full name, address and description of project)

in accordance with Drawings and Specifications prepared by

(Here insert full name and address or legal title of Architect)

which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

# LABOR AND MATERIAL PAYMENT BOND

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Principal shall promptly make payment to all claimants as hereinafter defined, for all labor and material used or reasonably required for use in the performance of the Contract, then this obligation shall be void; otherwise it shall remain in full force and effect, subject, however, to the following conditions:

1. A claimant is defined as one having a direct contract with the Principal or with a Subcontractor of the Principal for labor, material, or both, used or reasonably required for use in the performance of the Contract, labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the Contract.

2. The above named Principal and Surety hereby jointly and severally agree with the Owner that every claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90) days after the date on which the last of such claimant's work or labor was done or performed, or materials were furnished by such claimant, may sue on this bond for the use of such claimant, prosecute the suit to final judgment for such sum or sums as may be justly due claimant, and have execution thereon. The Owner shall not be liable for the payment of any costs or expenses of any such suit.

3. No suit or action shall be commenced hereunder by any claimant:

a) Unless claimant, other than one having a direct contract with the Principal, shall have given written notice to any two of the following: the Principal, the Owner, or the Surety above named, within ninety (90) days after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial

accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the Principal, Owner or Surety, at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process may be served in the state in which the aforesaid project is located, save that such service need not be made by a public officer.

b) After the expiration of one (1) year following the date on which Principal ceased Work on said Contract, it being understood, however, that if any limitation embodied in this bond is prohibited by any law controlling the construction hereof such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

c) Other than in a state court of competent jurisdiction in and for the county or other political subdivision of the state in which the Project, or any part thereof, is situated, or in the United States District Court for the district in which the Project, or any part thereof, is situated, and not elsewhere.

4. The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment by Surety of mechanics' liens which may be filed of record against said improvement, whether or not claim for the amount of such lien be presented under and against this bond.

Signed and sealed this

day of

19

\_\_\_\_\_  
(Witness)

(Principal)

Seal

(Title)

\_\_\_\_\_  
(Witness)

(Surety)

Seal

(Title)

EXHIBIT B  
REDEVELOPMENT AREA

EXHIBIT C

MINORITY BUSINESS ENTERPRISE AND WOMEN  
BUSINESS ENTERPRISE COMMITMENT PROVISIONS

**SPECIAL CONDITION REGARDING  
MINORITY BUSINESS ENTERPRISE COMMITMENT  
AND WOMEN BUSINESS ENTERPRISE COMMITMENT**

**I. Policy and Terms**

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

The Purchasing Agent has established a goal of awarding not less than 25% of the annual dollar value of all contracts to certified MBEs and 5% of the annual dollar value of all contracts to certified WBEs.

B. Accordingly, the contractor commits to expend at least the following percentages of the total contract price (inclusive of any and all modifications and amendments), if awarded, for contract participation by MBEs and WBEs:

<u>Year Advertised</u>	<u>MBE Percentage</u>	<u>WBE Percentage</u>
1991	21.1%	5%
1992	19.5%	4.9%
1993	17.7%	4.8%
after 1993	16.9%	4.5%

C. This commitment is met by the contractor's status as a MBE or WBE, or by a joint venture with one or more MBEs or WBEs as prime contractor (to the extent of the MBE or WBE participation in such joint venture), or by subcontracting a portion of the work to one or more MBEs or WBEs, or by the purchase of materials used in the performance of the contract from one or more MBEs or WBEs, or by the indirect participation of MBEs or WBEs in other aspects of the contractor's business (but no dollar of such indirect MBE or WBE participation shall be credited more than once against a contractor's MBE or WBE commitment with respect to all contracts of such contractor), or by any combination of the foregoing. **Note: MBE/WBE participation goals are separate and those businesses certified with the City of Chicago as both a MBE/WBE shall not be credited more than once against a contractor's MBE or WBE commitment in the performance of the contract.**

D. As noted above, the contractor may meet all or part of this commitment by contracting with MBEs or WBEs for the provision of goods or services not directly related to the performance of this contract. However, in determining the manner of MBE/WBE participation, the contractor shall first consider involvement of MBEs/WBEs as joint venture partners, subcontractors, and suppliers of goods and services directly related to the performance of this contract. In appropriate cases, the Purchasing Agent will require the contractor to demonstrate the specific efforts undertaken by it to involve MBEs and WBEs directly in the performance of this contract.

E. The contractor also may meet all or part of this commitment through credits received pursuant to Section 2-92-530 of the Municipal Code of Chicago for the voluntary use of MBEs or WBEs in private sector projects.

## II. Definitions

A. "Minority Business Enterprise" or "MBE" means a firm awarded certification as a minority owned and controlled business in accordance with City Ordinances and Regulations.

B. "Women Business Enterprise" or "WBE" means a firm awarded certification as a women owned and controlled business in accordance with City Ordinances and Regulations.

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

D. "Area of Specialty" means the description of a MBE or WBE firm's business which has been determined by the Purchasing Agent to be most reflective of the MBE or WBE firm's claimed specialty or expertise. Each MBE/WBE letter of certification contains a description of its Area of Specialty. This information is also contained in the Directory. Credit toward this contract's MBE and WBE participation goals shall be limited to the participation of firms performing within their Area of Specialty.

**NOTICE:** The City does not make any representation concerning the ability of any MBE/WBE to perform work within their Area of Specialty. It is the responsibility of all contractors to determine the capability and capacity of MBEs/WBEs to satisfactorily perform the work proposed.

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

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

F. "Contract Compliance Administrator" means the officer appointed pursuant to Section 2-92-490 of the Municipal Code of Chicago.

## III. Counting MBE/WBE Participation Toward the Contract Goals

A. The inclusion of any MBE or WBE in the contractor's MBE/WBE Utilization Plan shall not conclusively establish the contractor's right to full MBE/WBE credit for that firm's participation in the contract.

B. The Purchasing Agent reserves the right to deny or limit MBE/WBE credit to the contractor where any MBE or WBE is found to be engaged in substantial subcontracting or pass-through activities with others. In this regard, a contractor may count toward its MBE and WBE goals only expenditures to firms that perform a commercially useful function. A firm is considered to perform a commercially useful function when it is responsible for the performance of a clearly defined and distinct element of work and is carrying out its responsibilities by actually performing, managing, and supervising the

work involved. To determine whether a firm is performing a commercially useful function, the Purchasing Agent shall evaluate the amount of work subcontracted, industry practices, and other relevant factors. The amount of MBE/WBE participation credit shall be based upon an analysis by the Purchasing Agent of the specific duties that will be performed by the MBE or WBE. Each MBE/WBE shall be expected to actually perform a substantial (i.e., more than eighty-five percent (85%) ) portion of the work contemplated for it by any subcontract or agreement through the use of its own employees and equipment.

Requested information may include, without limitation: (1) specific information concerning brokers' fees and/or commissions; (2) intended sub-suppliers or other sources of goods and/or services; and (3) specific financial or other risks to be assumed by the MBE/WBE.

C. The participation of MBEs and WBEs who have been certified as "brokers" shall be credited at a rate equal to no more than ten percent (10%) of the actual dollar value of the goods and/or services "brokered" by the MBE or WBE for contracts advertised in 1991, five percent (5%) for contracts advertised in 1992, and zero thereafter. The Purchasing Agent reserves the right to grant credit for the participation of MBE and WBE brokers at lesser rates where, based upon an analysis of the specific functions and duties of the MBE or WBE "broker" and other relevant factors (including common industry practices), it is determined that the value of the services provided by the MBE or WBE "broker" are either unsubstantiated or are clearly worth less than the applicable percentage of the value of the proposed (sub) contract. In order to facilitate this analysis by the Purchasing Agent, MBE/WBE "brokers" shall provide, upon request, relevant information concerning their proposed participation. The Purchasing Agent further reserves the right to deny credit to MBE/WBE brokers where the MBE/WBE participation, as proposed, will bring little or no value to the proposed transaction as a result of pass-through activities with other firms.

D. Credit for the participation of MBEs/WBEs as joint venture partners shall be based upon an analysis of the duties, responsibilities and risks undertaken by the MBE/WBE as specified by the joint venture's executed joint venture agreement. The Purchasing Agent reserves the right to deny or limit MBE/WBE credit to the contractor where any MBE/WBE joint venture partner is found to have duties, responsibilities, risks or loss and management control over the joint venture that is not commensurate with or in proportion to its joint venture ownership.

#### IV. Regulations Governing Reductions To or Waiver of MBE/WBE Goals

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

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

Bidders/proposers will be considered responsive to the terms and conditions of these Regulations if a waiver request and proof of notification to an assist agency is submitted at the time of bid/proposal opening. Once the bids have been opened, the lowest responsive and responsible bidder so deemed by the Purchasing Agent or authorized designee will have no more than fourteen (14) calendar days to submit to the Department of Purchases complete documentation that adequately addresses the conditions for waiver described herein. Proposers responding to Request

for Proposals (RFPs) who have been identified as a short listed candidate and/or a prospective awardee will be given a designated time allowance, but no more than fourteen (14) calendar days to submit to the Department of Purchases complete documentation that adequately addresses the conditions for waiver described herein. Respondents to Request for Information and or Qualifications (RFI/RFQs) deemed by the Purchasing Agent or authorized designee to be the most responsive and responsible shall submit documentation that adequately addresses the conditions for waiver described herein during negotiations. Failure to submit documentation sufficient to support the waiver request will cause the bid/proposal to be found non-responsive by the Purchasing Agent, and the bid/proposal will be rejected. In such cases the remedies to be taken by the Purchasing Agent, in his discretion, may include, but are not limited to, forfeiture of bid deposit; negotiating with the next lowest bidder/proposer; or readvertising the bid/proposal. All bidders/proposers are encouraged to submit all required documents at the time of bid opening to expedite the contract award.

#### A. Direct/Indirect Participation

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

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

OR

2. Subcontractor participation will be deemed excessively costly when the MBE/WBE subcontractor proposal exceeds the average price quoted by more than twenty percent (20%). In order to establish that a subcontractor's quote is excessively costly, the bidder/proposer must provide the following information:
  - a. A detailed statement of the work identified for MBE/WBE participation for which the bidder/proposer asserts the MBE/WBE quote(s) were excessively costly (in excess of 20% higher).
    - i) A listing of all potential subcontractors contacted for a quotation on that work item:
    - ii) Prices quoted for the subcontract in question by all such potential subcontractors for that work item.
  - b. Other documentation which demonstrates to the satisfaction of the Purchasing Agent that the MBE/WBE proposals are excessively costly, even though not in excess of 20% higher than the average price quoted. This determination will be based on factors that include, but are not limited to the following:
    - i) The City's estimate for the work under a specific subcontract:
    - ii) The bidder/proposer's own estimate for the work under the subcontract:
    - iii) An average of the bona fide prices quoted for the subcontract:
    - iv) Demonstrated increase in other contract costs as a result of subcontracting to the M/WBE or other firm.

#### **B. Assist Agency Participation**

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

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

#### **C. Impracticability**

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

This may occur whenever the Purchasing Agent determines that for reasons of time, need, industry practices or standards not previously known by the Purchasing Department administrator, or such other extreme circumstances as may be deemed appropriate, such a Waiver is in the best interests of the City. This determination may be made in connection with

a particular contract, whether before the contract is let for bid, during the bid or award process, before or during negotiation of the contract, or during the performance of the contract.

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

## V. PROCEDURE TO DETERMINE BID COMPLIANCE

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

### A. Schedule C-1: Letter of Intent from MBE/WBE to Perform as Subcontractor, Supplier and/or Consultant.

A Schedule C-1 executed by the MBE/WBE (or Schedule B/Joint Venture Subcontractor) must be submitted by the bidder/proposer for each MBE/WBE included on their Schedule D-1 and must accurately detail the work to be performed by the MBE/WBE and the agreed rates and prices to be paid.

If any fully completed and executed Schedule C-1 is not submitted with the bid/proposal, it must be received by the Contract Administrator within ten (10) days of the bid/proposal opening. (All post bid/proposal submissions must be in triplicate with original signatures on all documents). Failure to submit a completed Schedule C-1 in accordance with this section shall entitle the City to deem the bid/proposal non-responsive and therefore reject the bid/proposal.

### B. Letters of Certification.

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

All Letters of Certification issued by the City of Chicago include a statement of the MBE/WBE firm's Area of Specialty. The MBE/WBE firm's scope of work, as detailed by their Schedule C-1, must conform to their stated Area of Specialty.

### C. Joint Venture Agreements.

If the bidder's/proposer's MBE/WBE proposal includes the participation of a MBE/WBE as joint venture on any tier (either as the bidder/proposer or as a subcontractor), the bidder/proposer must provide a copy of the joint venture agreement and a Schedule B.

In order to demonstrate the MBE/WBE partner's share in the ownership, control, management responsibilities, risks and profits of the joint venture, the proposed joint venture agreement must include specific details related to: (1) contributions of capital and equipment; (2) work responsibilities or other performance to be undertaken by the MBE/WBE; and (3) the commitment of management, supervisory and operative personnel employed by the MBE/WBE to be dedicated to the performance of the contract. The joint venture agreement must also clearly define each partner's authority to contractually obligate the joint venture and each partner's authority to expend joint venture funds (e.g., check signing authority).

### D. Required Schedules Regarding DBE/MBE/WBE Utilization.

Bidders must submit, together with the bid, a completed Schedule D-1 committing them to the utilization of each listed MBE/WBE firm.

Except in cases where the bidder/proposer has submitted a request for a complete waiver of or variance from the MBE/WBE commitment in accordance with Section IV herein, the bidder/proposer

must commit to the expenditure of a specific dollar amount of participation by each MBE/WBE firm included on their Schedule D-1. The total dollar commitment to proposed MBEs must at least equal the MBE goal, and the total dollar commitment to proposed WBEs must at least equal the WBE goal. Bidders are responsible for calculating the dollar equivalent of the MBE and WBE goals as percentages of their total base bids or in the case of Term Agreements, as percentages of the total estimated usage.

All commitments made by the bidder's Schedule D-1 must conform to those presented in the submitted Schedule C-1. If Schedule C-1 is submitted after the opening (See Section V.A. above), the bidder/proposer may submit a revised Schedule D-1 (executed and notarized in triplicate to conform with the Schedules C-1). Except in cases where substantial and documented justification is provided bidders/proposers will not be allowed to reduce the dollar commitment made to any MBE or WBE in order to achieve conformity between the Schedules C-1 and D-1.

All commitments for joint venture agreements must be delineated in the Schedule B.

## VI. Reporting Requirements During The Term of The Contract

A. The Contractor shall, not later than thirty (30) days from the award of a contract by the City execute formal contracts or purchase orders with the MBEs and WBEs included in their approved MBE/WBE Utilization Plan. These written agreements shall be made available to the Purchasing Agent upon request.

B. In the case of one time procurements of supplies with either single or multiple deliveries to be performed in less than one year from the date of contract award, a "MBE/WBE Utilization Report," indicating final MBE and WBE payments shall be submitted directly to the Department of Purchases Contracts and Supplies so as to assure receipt either at the same time, or before the using Department receives contractor's final invoice. (NOTICE: Do not submit invoices with "MBE/WBE Utilization Reports.") Final payments may be held until the Utilization Reports have been received.

C. During the term of all other contracts, the contractor shall submit regular "MBE/WBE Utilization Reports," a copy of which is attached. The frequency with which these reports are to be submitted will be determined by the Purchasing Agent, but in no case will reports be required less often than on a quarterly basis. In the absence of written notice from the Purchasing Agent, the contractor's first "MBE/WBE Utilization Report" will be due ninety (90) days after the date of contract award, and reports will be due quarterly thereafter.

D. "MBE/WBE Utilization Reports" are to be submitted directly to: Department of Purchases Contracts and Supplies, Division of Contract Monitoring and Compliance, City Hall, Room 400, 121 N LaSalle Street, Chicago, Illinois 60602.

E. The Contract Compliance Administrator shall be entitled to examine, on five (5) business days notice, the contractor's books and records including without limitation payroll records, tax returns and records, and books of account, to determine whether the contractor is in compliance with its commitment to MBE/WBE participation and the status of any MBE or WBE performing any portion of the contract. Such rights are in addition to any other audit inspection rights contained in the contract.

## VII. MBE/WBE Substitutions

Changes by the contractor of the commitments earlier certified in the Schedule D-1 are prohibited. In some cases, however, it may become necessary to substitute a new MBE or WBE in order to actually fulfill the MBE/WBE requirements.

The contractor must notify the Purchasing Agent immediately in writing of the necessity to reduce or terminate a MBE/WBE subcontract and to utilize a substitute firm for some phase of work. The contractor's notification should include the name, address and principal official of the substitute MBE/WBE and the dollar value and scope of work of the subcontract. Attached should be all the requisite MBE/WBE affidavits and documents, as enumerated above in Section V, "Procedure to Determine Bid Compliance."

The City will not approve extra payment for escalated costs incurred by the contractor when a substitution of subcontractors becomes necessary for the contractor in order to comply with MBE/WBE contract requirements.

After award of contract, no relief of the MBE/WBE requirements will be granted by the City except in exceptional circumstances. Requests for complete or partial waiver of the MBE/WBE requirements of this contract must be made in writing, stating all details of the request, the circumstances, and any additional relevant information. The request must be accompanied by a record of all efforts taken by the contractor to locate specific firms, solicit MBE/WBE bids, seek assistance from technical assistance agencies, etc., as outlined above in the section entitled "Regulations Governing Reductions To or Waiver of MBE/WBE Goals."

### VIII. NON-COMPLIANCE AND DAMAGES

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

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

In the event that the contractor is determined not to have been involved in any misrepresentation of the status of the disqualified subcontractor or supplier, the contractor shall discharge the disqualified subcontractor or supplier and, if possible, identify and engage a qualified MBE or WBE as its replacement. Furthermore, continued eligibility to enter into future contracting arrangements with the City may be jeopardized as a result of non-compliance. Payments due to the contractor may be withheld until corrective action is taken.

In the event the contractor has not complied with the contractual MBE/WBE percentages, underutilization of MBEs or WBEs shall entitle the affected MBEs and/or WBEs to recover from the contractor damages suffered by these MBEs and/or WBEs as a result of such underutilization. Therefore, the contractor hereby agrees that any disputes between the contractor and such affected MBEs and WBEs regarding damages shall be resolved by binding arbitration before an independent arbitrator other than the City, with reasonable expenses, including attorneys' fees, being recoverable by a prevailing MBE/WBE in accordance with applicable City regulations. This provision is intended for the benefit of any MBE or WBE affected by underutilization and grants them specific third party beneficiary rights. In cases where deemed appropriate by the Purchasing Agent, notification of a dispute by the affected MBE, WBE or prime contractor may lead to the withholding of final contract payouts until the City receives a copy of the final arbitration decision.

**IX. Record Keeping**

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

**X. Assistance Agencies**

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

**U.S. Small Business Administration**  
219 South Dearborn Street Suite 437  
Chicago, Illinois 60604  
Attention: Mr. Jack Smith  
(312) 353-4529

**Bond Guarantee Program**  
**Surety Bond**  
230 South Dearborn Street  
Fifth Floor  
Chicago, Illinois 60604  
Attention: Tony Zanetello  
(312) 353-7331

**Procurement Assistance**  
230 South Dearborn Street Fifth Floor  
Chicago, Illinois 60604  
Attention: Mr. Robert Murphy  
(312) 353-1395

Project information and general MBE/WBE information:

**City of Chicago**  
**Department of Purchases**  
Contract Monitoring and Compliance  
City Hall-Room 403  
Chicago, Illinois 60602  
Attention: Patricia J. Martin  
(312) 744-1895

**City of Chicago**  
**Department of Purchases**  
Contract Administration Division  
City Hall - Room 403  
Chicago, Illinois 60602  
Attention: Diana Mingauw  
(312) 744-4926

Directory of Certified Disadvantaged, Minority and Women Business Enterprises:

**City of Chicago**  
**Department of Purchases**  
Certification Unit  
City Hall-Room 403  
Chicago, Illinois 60602  
Attention: Carnice Carey  
(312) 744-1986

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

**National Minority Suppliers**  
**Development Council, Inc.**  
1412 Broadway - 11th Floor  
New York, New York 10018  
Attention: Anne Astrion  
(212) 944-2430

**Chicago Regional**  
**Purchasing Council**  
36 South Wabash - Suite 925  
Chicago, Illinois 60602  
Attention: Maye Foster Thompson  
(312)263-0105

EXHIBIT LPERMITTED INDEBTEDNESS

1. American National Bank and Trust Company Mortgage Loan dated April 1, 1992 in the principal amount of \$3,750,000.00, of which \$1,250,000.00 has been disbursed as of the date of this Agreement.
2. Mortgage Loan from INB National Bank as agent for a consortium of banks (the "Bank Group") in the original principal amount of \$4,250,000.00, all of which has been disbursed as of the date of this Agreement for acquisition of the existing NWS Property. This Mortgage also serves as collateral as of the date of this Agreement for additional borrowings under a revolving loans of up to \$31,000,000.00 by Developer from the Bank Group.
3. State of Illinois mortgage loan to be made subsequent to the date of this Agreement in the principal amount of \$750,000.00, none of which has been disbursed as of the date of this Agreement.
4. Any mortgages, security agreements and financing statements recorded against the Property after the issuance of a Certificate of Completion pursuant to this Agreement.
5. Revolving Loans, Letters of Credit and Term Loans from NBD Bank, N.A., as Agent for NBD Bank, N.A.; INB National Bank; Bank One, Indianapolis, N.A.; BA Business Credit, Inc.; Continental Bank, N.A. and LaSalle National Bank in an amount not to exceed \$115,000,000.00.

## EXHIBIT M

### SECTION 8.13. CONDITIONAL PROVISIONS

(a) Governmental Charges. Developer agrees to pay or cause to be paid when due all Governmental Charges (as defined below) which are assessed or imposed upon Developer, the NWS Property or the Project, or become due and payable, and which create, may create, or appear to create a lien upon Developer or all or any portion of the NWS Property or the Project. "Governmental Charge" shall mean all federal, State, county, City, or other governmental (or any instrumentality, division, agency, body, or department thereof) taxes, levies, assessments, charges, liens, claims or encumbrances relating to Developer, the NWS Property or the Project including but not limited to real estate taxes. Developer shall have the right before any delinquency occurs to contest or object in good faith to the amount or validity of any Governmental Charge by appropriate legal proceedings properly and diligently instituted and prosecuted in such manner as shall stay the collection of the contested Governmental Charge and prevent the imposition of a lien or the sale or forfeiture of the NWS Property. Developer's right to challenge real estate taxes applicable to the NWS Property is limited as provided for in Section 8.13(b) below; provided, that such real estate taxes must be paid in full when due and may be disputed only after such payment is made. No such contest or objection shall be deemed or construed in any way as relieving, modifying or extending Developer's covenants to pay any such Governmental Charge at the time and in the manner provided in this Agreement unless Developer has given prior written notice to DPD of Developer's intent to contest or object to a Governmental Charge and, unless, at DPD's sole option, (i) Developer shall demonstrate to DPD's satisfaction that legal proceedings instituted by Developer contesting or objecting to a Governmental Charge shall conclusively operate to prevent a lien against or the sale or forfeiture of all or any part of the NWS Property to satisfy such Governmental Charge prior to final determination of such proceedings and/or (ii) Developer shall furnish a good and sufficient bond or other security satisfactory to DPD in such form and amounts as DPD shall require, or a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of any such sale or forfeiture of the NWS Property during the pendency of such contest, adequate to pay fully any such contested Governmental Charge and all interest and penalties upon the adverse determination of such contest. If Developer fails to pay any Governmental Charge or to obtain discharge of the same, Developer shall advise DPD thereof in writing, at which time DPD may, but

shall not be obligated to, and without waiving or releasing any obligation or liability of Developer under this Agreement, in DPD's sole discretion, make such payment, or any part thereof, or obtain such discharge and take any other action with respect thereto which DPD deems advisable. All sums so paid by DPD, if any, and any expenses, if any, including reasonable attorneys' fees, court costs, expenses and other charges relating thereto, shall be promptly disbursed to DPD by Developer. Notwithstanding anything contained herein to the contrary, this paragraph shall not be construed to obligate City to pay any such Governmental Charge. [Additionally, if Developer fails to pay any Governmental Charge, City, in its sole discretion, may require Developer to submit to City audited Financial Statements at Developer's own expense.]

(b) Real Estate Taxes.

(i) Acknowledgement of Real Estate Taxes. Developer agrees that (A) for the purpose of this Agreement, the total projected minimum assessed value of the NWS Property which is necessary to support the debt service indicated ("Minimum Assessed Value") is shown on Exhibit P attached hereto and incorporated herein by reference for the years noted on Exhibit P; (B) Part II of Exhibit P sets forth the specific improvements which will generate the fair market values, assessments, equalized assessed values and taxes shown thereon; and (C) the real estate taxes anticipated to be generated and derived from the respective portions of the NWS Property and the Project for the years shown are fairly and accurately indicated in Exhibit P.

(ii) Real Estate Tax Exemption. With respect to the NWS Property or the Project, neither Developer nor any agent, representative, lessee, tenant, assignee, transferee or successor in interest to Developer shall apply for, seek, or authorize any exemption (as such term is used and defined in the Illinois Constitution, Article IX, Section 6 (1970)) for any year that the Redevelopment Plan is in effect.

(iii) No Reduction in Real Estate Taxes. Neither Developer nor any agent, representative, lessee, tenant, assignee, transferee or successor in interest to Developer shall directly or indirectly, initiate, seek or apply for proceedings in order to lower the assessed value of all or any portion of the NWS Property or the Project below the amount of the Minimum Assessed Value as shown in Exhibit P.

(iv) No Objections. Neither Developer nor any agent, representative, lessee, tenant, assignee, transferee or successor in interest to Developer, shall object to or in any way seek to interfere with, on procedural or any other grounds, the filing of any Underassessment Complaint or subsequent proceedings related thereto with the Cook County Assessor or with the Cook County Board of Appeals, by either City or by any taxpayer. The term

"Underassessment Complaint" as used in this Agreement shall mean a complaint seeking to increase the assessed value of the Project.

(v) Covenants Running with the Land. The parties agree that the restrictions contained in this Section 8.11 are covenants running with the land and this Agreement shall be recorded by Developer as a memorandum thereof, at Developer's expense, with the Cook County Recorder of Deeds on the Closing Date. These restrictions shall be binding upon Developer and its agents, representatives, lessees, successors, assigns and transferees from and after the date hereof, provided however, that the covenants shall be released when the Redevelopment Area is no longer in effect. Developer agrees that any sale, conveyance, or transfer of title to all or any portion of the NWS Property or Redevelopment Area from and after the date hereof shall be made subject to such covenants and restrictions.

(c) Insurance. In addition to the insurance required pursuant to Section 12 hereof, Developer shall at all times provide, maintain and keep in force the following insurance:

(i) All Risk Property Insurance

- (A) Developer shall obtain All Risk Property insurance in the amount of the full replacement value of Developer's property located in the Redevelopment Area, including but not limited to the NWS Property.
- (B) Post-construction, Developer shall obtain an All Risk Property policy, including improvements and betterments in the amount of full replacement value of Developer's property located in the Redevelopment Area, including but not limited to the NWS Property. Coverage extensions shall include business interruption/loss of rents, flood and boiler and machinery, if applicable.

**EXHIBIT N**

**FIRST SOURCE POLICY**

Developer agrees to make a good faith effort to hire City residents for any temporary or permanent job vacancies created by the rehabilitation, development and/or use of the Project.

Developer shall make a good faith effort to secure the participation of any contractors and subcontractors involved in the rehabilitation, development and use of the Project in complying with the terms stated in this Exhibit N.

Developer shall submit reports to DPD detailing its compliance with the terms of this Exhibit N within thirty (30) days after receipt of a written request from the Commissioner of DPD for such reports.

EXHIBIT O

**SPECIAL CONDITION REGARDING  
MINORITY BUSINESS ENTERPRISE COMMITMENT  
AND WOMEN BUSINESS ENTERPRISE COMMITMENT**

**I. Policy and Terms**

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

The Purchasing Agent has established a goal of awarding not less than 25% of the annual dollar value of all contracts to certified MBEs and 5% of the annual dollar value of all contracts to certified WBEs.

B. Accordingly, the contractor commits to expend at least the following percentages of the total contract price (inclusive of any and all modifications and amendments), if awarded, for contract participation by MBEs and WBEs:

<u>Year Advertised</u>	<u>MBE Percentage</u>	<u>WBE Percentage</u>
1991	21.1%	5%
1992	19.5%	4.9%
1993	17.7%	4.8%
after 1993	16.9%	4.5%

C. This commitment is met by the contractor's status as a MBE or WBE, or by a joint venture with one or more MBEs or WBEs as prime contractor (to the extent of the MBE or WBE participation in such joint venture), or by subcontracting a portion of the work to one or more MBEs or WBEs, or by the purchase of materials used in the performance of the contract from one or more MBEs or WBEs, or by the indirect participation of MBEs or WBEs in other aspects of the contractor's business (but no dollar of such indirect MBE or WBE participation shall be credited more than once against a contractor's MBE or WBE commitment with respect to all contracts of such contractor), or by any combination of the foregoing. Note: MBE/WBE participation goals are separate and those businesses certified with the City of Chicago as both a MBE/WBE shall not be credited more than once against a contractor's MBE or WBE commitment in the performance of the contract.

D. As noted above, the contractor may meet all or part of this commitment by contracting with MBEs or WBEs for the provision of goods or services not directly related to the performance of this contract. However, in determining the manner of MBE/WBE participation, the contractor shall first consider involvement of MBEs/WBEs as joint venture partners, subcontractors, and suppliers of goods and services directly related to the performance of this contract. In appropriate cases, the Purchasing Agent will require the contractor to demonstrate the specific efforts undertaken by it to involve MBEs and WBEs directly in the performance of this contract.

## SPECIAL CONDITION FOR PROFESSIONAL SERVICE CONTRACTS (MBE/WBE)

E. The contractor also may meet all or part of this commitment through credits received pursuant to Section 2-92-530 of the Municipal Code of Chicago for the voluntary use of MBEs or WBEs in private sector projects.

### II. Definitions

A. "Minority Business Enterprise" or "MBE" means a firm awarded certification as a minority owned and controlled business in accordance with City Ordinances and Regulations.

B. "Women Business Enterprise" or "WBE" means a firm awarded certification as a women owned and controlled business in accordance with City Ordinances and Regulations.

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

D. "Area of Specialty" means the description of a MBE or WBE firm's business which has been determined by the Purchasing Agent to be most reflective of the MBE or WBE firm's claimed specialty or expertise. Each MBE/WBE letter of certification contains a description of its Area of Specialty. This information is also contained in the Directory. Credit toward this contract's MBE and WBE participation goals shall be limited to the participation of firms performing within their Area of Specialty.

**NOTICE:** The City does not make any representation concerning the ability of any MBE/WBE to perform work within their Area of Specialty. It is the responsibility of all contractors to determine the capability and capacity of MBEs/WBEs to satisfactorily perform the work proposed.

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

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

F. "Contract Compliance Administrator" means the officer appointed pursuant to Section 2-92-490 of the Municipal Code of Chicago.

## SPECIAL CONDITION FOR PROFESSIONAL SERVICE CONTRACTS (MBE/WBE)

### III. Counting MBE/WBE Participation Toward the Contract Goals

A. The inclusion of any MBE or WBE in the contractor's MBE/WBE Utilization Plan shall not conclusively establish the contractor's right to full MBE/WBE credit for that firm's participation in the contract.

B. The Purchasing Agent reserves the right to deny or limit MBE/WBE credit to the contractor where any MBE or WBE is found to be engaged in substantial subcontracting or pass-through activities with others. In this regard, a contractor may count toward its MBE and WBE goals only expenditures to firms that perform a commercially useful function. A firm is considered to perform a commercially useful function when it is responsible for the performance of a clearly defined and distinct element of work and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To determine whether a firm is performing a commercially useful function, the Purchasing Agent shall evaluate the amount of work subcontracted, industry practices, and other relevant factors. The amount of MBE/WBE participation credit shall be based upon an analysis by the Purchasing Agent of the specific duties that will be performed by the MBE or WBE. Each MBE/WBE shall be expected to actually perform a substantial (i.e., more than eighty-five percent (85%) ) portion of the work contemplated for it by any subcontract or agreement through the use of its own employees and equipment.

Requested information may include, without limitation: (1) specific information concerning brokers' fees and/or commissions; (2) intended sub-suppliers or other sources of goods and/or services; and (3) specific financial or other risks to be assumed by the MBE/WBE.

C. The participation of MBEs and WBEs who have been certified as "brokers" shall no longer be considered eligible to participate on contracts awarded by the City in 1993 and thereafter until further notice for any consideration of MBE or WBE credit.

D. Credit for the participation of MBEs/WBEs as joint venture partners shall be based upon an analysis of the duties, responsibilities and risks undertaken by the MBE/WBE as specified by the joint venture's executed joint venture agreement. The Purchasing Agent reserves the right to deny or limit MBE/WBE credit to the contractor where any MBE/WBE joint venture partner is found to have duties, responsibilities, risks or loss and management control over the joint venture that is not commensurate with or in proportion to its joint venture ownership.

### IV. Regulations Governing Reductions To or Waiver of MBE/WBE Goals

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

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

## SPECIAL CONDITION FOR PROFESSIONAL SERVICE CONTRACTS (MBE/WBE)

Bidders/proposers will be considered responsive to the terms and conditions of these Regulations if a waiver request and proof of notification to an assist agency is submitted at the time of bid/proposal opening. Once the bids have been opened, the lowest responsive and responsible bidder so deemed by the Purchasing Agent or authorized designee will have no more than fourteen (14) calendar days to submit to the Department of Purchases complete documentation that adequately addresses the conditions for waiver described herein. Proposers responding to Request for Proposals (RFPs) who have been identified as a short listed candidate and/or a prospective awardee will be given a designated time allowance, but no more than fourteen (14) calendar days to submit to the Department of Purchases complete documentation that adequately addresses the conditions for waiver described herein. Respondents to Request for Information and or Qualifications (RFI/RFQs) deemed by the Purchasing Agent or authorized designee to be the most responsive and responsible shall submit documentation that adequately addresses the conditions for waiver described herein during negotiations. Failure to submit documentation sufficient to support the waiver request will cause the bid/proposal to be found non-responsive by the Purchasing Agent, and the bid/proposal will be rejected. In such cases the remedies to be taken by the Purchasing Agent, in his discretion, may include, but are not limited to, forfeiture of bid deposit; negotiating with the next lowest bidder/proposer; or readvertising the bid/proposal. All bidders/proposers are encouraged to submit all required documents at the time of bid opening to expedite the contract award.

### A. Direct/Indirect Participation

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

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

## SPECIAL CONDITION FOR PROFESSIONAL SERVICE CONTRACTS (MBE/WBE)

- v) Affirmation that good faith efforts have been demonstrated by choosing subcontracting opportunities likely to achieve MBE/WBE goals by not imposing any limiting conditions which were not mandatory for all subcontractors; or denying the benefits ordinarily conferred on MBE/WBE subcontractors for the type of work that was solicited.

OR

- 2. Subcontractor participation will be deemed excessively costly when the MBE/WBE subcontractor proposal exceeds the average price quoted by more than twenty percent (20%). In order to establish that a subcontractor's quote is excessively costly, the bidder/proposer must provide the following information:
  - a. A detailed statement of the work identified for MBE/WBE participation for which the bidder/proposer asserts the MBE/WBE quote(s) were excessively costly (in excess of 20% higher).
    - i) A listing of all potential subcontractors contacted for a quotation on that work item;
    - ii) Prices quoted for the subcontract in question by all such potential subcontractors for that work item.
  - b. Other documentation which demonstrates to the satisfaction of the Purchasing Agent that the MBE/WBE proposals are excessively costly, even though not in excess of 20% higher than the average price quoted. This determination will be based on factors that include, but are not limited to the following:
    - i) The City's estimate for the work under a specific subcontract;
    - ii) The bidder/proposer's own estimate for the work under the subcontract;
    - iii) An average of the bona fide prices quoted for the subcontract;
    - iv) Demonstrated increase in other contract costs as a result of subcontracting to the M/WBE or other firm.

### B. Assist Agency Participation

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

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

### C. Impracticability

- 1. If the Purchasing Agent determines that a lesser MBE and/or WBE percentage standard is appropriate with respect to a particular contract subject to competitive bidding prior to the bid solicitations for such contract, bid specifications shall include a statement of such revised standard.

## SPECIAL CONDITION FOR PROFESSIONAL SERVICE CONTRACTS (MBE/WBE)

2. The requirements set forth in these Regulations shall not apply where the Purchasing Agent determines prior to the bid solicitations that MBE/WBE subcontractor participation is impracticable.

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

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

### V. Procedure To Determine Bid Compliance

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

#### A. Schedule C-1: Letter of Intent from MBE/WBE to Perform as Subcontractor, Supplier and/or Consultant.

A Schedule C-1 executed by the MBE/WBE (or Schedule B/Joint Venture Subcontractor) must be submitted by the bidder/proposer for each MBE/WBE included on their Schedule D-1 and must accurately detail the work to be performed by the MBE/WBE and the agreed rates and prices to be paid.

If any fully completed and executed Schedule C-1 is not submitted with the bid/proposal, it must be received by the Contract Administrator within ten (10) days of the bid/proposal opening. (All post bid/proposal submissions must be in triplicate with original signatures on all documents). Failure to submit a completed Schedule C-1 in accordance with this section shall entitle the City to deem the bid/proposal non-responsive and therefore reject the bid/proposal.

#### B. Letters of Certification.

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

All Letters of Certification issued by the City of Chicago include a statement of the MBE/WBE firm's Area of Specialty. The MBE/WBE firm's scope of work, as detailed by their Schedule C-1, must conform to their stated Area of Specialty.

#### C. Joint Venture Agreements.

If the bidder's/proposer's MBE/WBE proposal includes the participation of a MBE/WBE as joint venture on any tier (either as the bidder/proposer or as a subcontractor), the bidder/proposer must provide a copy of the joint venture agreement and a Schedule B.

In order to demonstrate the MBE/WBE partner's share in the ownership, control, management responsibilities, risks and profits of the joint venture, the proposed joint venture agreement must include specific details related to: (1) contributions of capital and equipment; (2) work responsibilities or other performance to be undertaken by the MBE/WBE; and (3) the commitment of management, supervisory and operative personnel employed by the MBE/WBE to be dedicated to the performance of the contract. The joint venture agreement must also clearly define each partner's authority to contractually obligate the joint venture and each partner's authority to expend joint venture funds (e.g., check signing authority).

## SPECIAL CONDITION FOR PROFESSIONAL SERVICE CONTRACTS (MBE/WBE)

### D. Required Schedules Regarding DBE/MBE/WBE Utilization.

Bidders must submit, together with the bid, a completed Schedule D-1 committing them to the utilization of each listed MBE/WBE firm.

Except in cases where the bidder/proposer has submitted a request for a complete waiver of or variance from the MBE/WBE commitment in accordance with Section IV herein, the bidder/proposer must commit to the expenditure of a specific dollar amount of participation by each MBE/WBE firm included on their Schedule D-1. The total dollar commitment to proposed MBEs must at least equal the MBE goal, and the total dollar commitment to proposed WBEs must at least equal the WBE goal. Bidders are responsible for calculating the dollar equivalent of the MBE and WBE goals as percentages of their total base bids or in the case of Term Agreements, as percentages of the total estimated usage.

All commitments made by the bidder's Schedule D-1 must conform to those presented in the submitted Schedule C-1. If Schedule C-1 is submitted after the opening (See Section V.A. above), the bidder/proposer may submit a revised Schedule D-1 (executed and notarized in triplicate to conform with the Schedules C-1). Except in cases where substantial and documented justification is provided, bidders/proposers will not be allowed to reduce the dollar commitment made to any MBE or WBE in order to achieve conformity between the Schedules C-1 and D-1.

All commitments for joint venture agreements must be delineated in the Schedule B.

## VI. Reporting Requirements During The Term of The Contract

A. The Contractor shall, not later than thirty (30) days from the award of a contract by the City, execute formal contracts or purchase orders with the MBEs and WBEs included in their approved MBE/WBE Utilization Plan. These written agreements shall be made available to the Purchasing Agent upon request.

B. In the case of one time procurements of supplies with either single or multiple deliveries to be performed in less than one year from the date of contract award, a "MBE/WBE Utilization Report," indicating final MBE and WBE payments shall be submitted directly to the Department of Purchases, Contracts and Supplies so as to assure receipt either at the same time, or before the using Department receives contractor's final invoice. (NOTICE: Do not submit invoices with "MBE/WBE Utilization Reports.") Final payments may be held until the Utilization Reports have been received.

C. During the term of all other contracts, the contractor shall submit regular "MBE/WBE Utilization Reports," a copy of which is attached. The frequency with which these reports are to be submitted will be determined by the Purchasing Agent, but in no case will reports be required less often than on a quarterly basis. In the absence of written notice from the Purchasing Agent, the contractor's first "MBE/WBE Utilization Report" will be due ninety (90) days after the date of contract award, and reports will be due quarterly thereafter.

D. "MBE/WBE Utilization Reports" are to be submitted directly to: Department of Purchases, Contracts and Supplies, Division of Contract Monitoring and Compliance, City Hall, Room 400, 121 N. LaSalle Street, Chicago, Illinois 60602.

E. The Contract Compliance Administrator shall be entitled to examine, on five (5) business days notice, the contractor's books and records including without limitation payroll records, tax returns and records, and books of account, to determine whether the contractor is in compliance with its commitment to MBE/WBE participation and the status of any MBE or WBE performing any portion of the contract. Such rights are in addition to any other audit inspection rights contained in the contract.

## VII. MBE/WBE Substitutions

Changes by the contractor of the commitments earlier certified in the Schedule D-1 are prohibited. In some cases, however, it may become necessary to substitute a new MBE or WBE in order to actually fulfill the MBE/WBE requirements.

The contractor must notify the Purchasing Agent immediately in writing of the necessity to reduce or terminate a MBE/WBE subcontract and to utilize a substitute firm for some phase of work. The contractor's notification should include the name, address and principal official of the substitute MBE/WBE and the dollar value and scope of work of the subcontract. Attached should be all the requisite MBE/WBE affidavits and documents, as enumerated above in Section V, "Procedure to Determine Bid Compliance."

The City will not approve extra payment for escalated costs incurred by the contractor when a substitution of subcontractors becomes necessary for the contractor in order to comply with MBE/WBE contract requirements.

After award of contract, no relief of the MBE/WBE requirements will be granted by the City except in exceptional circumstances. Requests for complete or partial waiver of the MBE/WBE requirements of this contract must be made in writing, stating all details of the request, the circumstances, and any additional relevant information. The request must be accompanied by a record of all efforts taken by the contractor to locate specific firms, solicit MBE/WBE bids, seek assistance from technical assistance agencies, etc., as outlined above in the section entitled "Regulations Governing Reductions To or Waiver of MBE/WBE Goals."

## VIII. Non-Compliance and Damages

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

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

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

**IX. Arbitration**

A. In the event a contractor has not complied with the contractual MBE/WBE percentages in its Schedule D, under utilization of MBEs/WBEs shall entitle the affected MBE/WBE to recover from the contractor damages suffered by such entity as a result of being underutilized; provided, however, that this provision shall not apply to the extent such underutilization occurs pursuant to a waiver or substitution approved by the City. The Ordinance and contracts subject thereto provide that any disputes between the contractor and such affected MBEs/WBEs regarding damages shall be resolved by binding arbitration before an independent arbitrator other than the City, with reasonable expenses, including attorney's fees, being recoverable by a prevailing MBE/WBE in accordance with these regulations. This provision is intended for the benefit of any MBE/WBE affected by underutilization and grants such entity specific third party beneficiary rights. Any rights conferred by this regulation are non-waivable and take precedence over any agreement to the contrary, including but not limited to those contained in a subcontract, suborder, or communicated orally between a contractor and a MBE/WBE.

B. A MBE/WBE desiring to arbitrate shall contact the contractor in writing to initiate the arbitral process. Except as otherwise agreed to in writing by the affected parties subject to the limitation contained in the last sentence of the previous paragraph, within ten (10) days of the contractor receiving notification of the intent to arbitrate from the MBE/WBE the above-described disputes shall be arbitrated in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA"), a not-for profit agency, with an office at 205 West Wacker Drive, Suite 1100, Chicago, Illinois 60606-1212 [Phone: (312) 346-2282; Fax: (312) 346-0135]. All such arbitrations shall be initiated by the MBE/WBE filing a demand for arbitration with the AAA; shall be conducted by the AAA; and held in Chicago, Illinois.

C. All fees of the arbitrator are the initial responsibility of the MBE/WBE; provided, however, that the arbitrator is authorized to award reasonable expenses, including attorney's and arbitrator fees, as damages to a prevailing MBE/WBE.

D. The MBE/WBE must send the City a copy of the "Demand for Arbitration" within ten (10) days after it is filed with the AAA. The MBE/WBE also must send the City a copy of the decision of the arbitrator within ten (10) days of receiving such decision. Judgment upon the award rendered by the arbitrator may be entered in any court of competent jurisdiction.

**X. Record Keeping**

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

**SPECIAL CONDITION FOR PROFESSIONAL SERVICE CONTRACTS (MBE/WBE)**

**XI. Information Sources**

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

**U.S. Small Business Administration**  
219 South Dearborn Street Suite 437  
Chicago, Illinois 60604  
Attention: Jack Smith, District Director  
(312) 353-4529

**Bond Guarantee Program**  
**Surety Bond**  
230 South Dearborn Street  
Fifth Floor  
Chicago, Illinois 60604  
Attention: Tony Zanetello  
(312) 353-7331

**Procurement Assistance**  
230 South Dearborn Street Fifth Floor  
Chicago, Illinois 60604  
Attention: Robert Murphy, Assistant Regional Administrator  
(312) 353-1395

Project information and general MBE/WBE information:

**City of Chicago**  
**Department of Purchases**  
Contract Monitoring and Compliance  
City Hall-Room 403  
Chicago, Illinois 60602  
Attention: Patricia J. Martin  
(312) 744-1895

**City of Chicago**  
**Department of Purchases**  
Contract Administration Division  
City Hall - Room 403  
Chicago, Illinois 60602  
Attention: Diana Mingauw  
(312) 744-4926

Directory of Certified Disadvantaged, Minority and Women Business Enterprises:

**City of Chicago**  
**Department of Purchases**  
Certification Unit  
City Hall-Room 403  
Chicago, Illinois 60602  
Attention: Carnice Carey  
(312) 744-1896

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

**National Minority Suppliers**  
**Development Council, Inc.**  
1412 Broadway - 11th Floor  
New York, New York 10018  
Attention: Anne Astrion  
(212) 944-2430

**Chicago Regional**  
**Purchasing Council**  
36 South Wabash -Suite 925  
Chicago, Illinois 60602  
Attention: Maye Foster Thompson  
(312)263-0105

# ATTACHMENT A

Revised 11/25/92

## ASSIST AGENCIES

### NON CONSTRUCTION

Cando  
343 S. Dearborn - Suite 910  
Chicago, Illinois 60604  
Attn: Pat Bell  
(312) 939-7171  
(312) 939-7236\*

National Association of Women  
Business Owners-Chicago Chapt.  
825 Greenbay Road, Ste. 270  
Wilmette, Illinois 60091  
Attn: Kevin Boyer  
(708) 256-1563  
(708) 256-8954\*

Uptown Center Hull House  
4520 N. Beacon  
Chicago, Illinois 60640  
Attn: Ed Jacob/Curt Roeschley  
(312) 561-3500

Latin American Chamber of  
Commerce  
2539 N. Kedzie - Suite 12  
Chicago, Illinois 60647  
Attn: D. Lorenzo Padron/  
Christina Hernandez  
(312) 252-5211  
(312) 252-7065\*

Midwest Women's Center  
828 S. Wabash  
Chicago, Illinois 60604  
Attn: Mary Morten  
(312) 922-8530  
(312) 922-8931\*

The Neighborhood Institute  
2255 E. 75th Street  
Chicago, Illinois 60649  
Attn: Olivia Grady/Adrian Hill  
(312) 933-2021  
(312) 933-2039\*

Women In Business Yellow Pages  
7358 Lincoln Ave., Ste 150  
Chicago, Illinois 60646  
Attn: Ida Bialik  
(708) 679-7800  
(708) 679-7845\*

Illinois Dept. of Commerce  
and Community Affairs  
100 W. Randolph - Ste. 3-400  
Chicago, Illinois 60601  
Attn: Mollie Cole  
(312) 814-6111  
(312) 814-6732\*

International Trade Bureau  
Operation Push  
930 E. 50th Street  
Chicago, Illinois 60615  
(312) 373-3366  
(312) 373-3571\*

Asian American Small  
Business Association  
5023 N. Broadway  
Chicago, Illinois 60640  
Attn: Charles Soo  
(312) 728-1030

Industrial Council of Northwest  
Chicago  
2023 W. Carroll Ave.  
Chicago, Illinois 60612  
Attn: Andrew Goldsmith  
(312) 421-3941

Chicago Regional Purchasing  
Council  
36 S. Wabash - Suite 725  
Chicago, Illinois 60603  
Attn: Maye Foster Thompson  
(312) 263-0105  
(312) 263-0280\*

Minority Economic Resource  
Corp.  
Minority Business Dept.  
2570 E. Devon Ave.  
Des Plaines, Illinois 60018  
Attn: Carlina Rodriguez  
(708) 297-4705  
(708) 297-5343\*

North River Commission/Ladcor  
4745 N. Kedzie  
Chicago, Illinois 60625  
Attn: Joel Bookman  
(312) 478-0202

\* Facsimile Number

# ATTACHMENT A

Revised 11/25/92

## ASSIST AGENCIES

### NON CONSTRUCTION

Cosmopolitan Chamber of  
Commerce  
1326 S. Michigan - Suite 100  
Chicago, Illinois 60605-2602  
Attn: Consuelo Pope/Donna  
Green  
(312) 786-0212  
(312) 786-9079\*

Chicago Business Development  
Center  
180 N. LaSalle St. Suite 2920  
Chicago, Illinois 60601  
Attn: Ben Liddell  
(312) 444-9884

Westside Small Business  
Development Corp.  
112 N. Pulaski Road  
Chicago, Illinois 60624  
Attn: David Young  
(312) 638-1990

M.E.G.A. Center  
Operated by: Burgos &  
Associates, Inc.  
105 W. Adams St., 7th Fl.  
Chicago, Illinois 60603  
Attn: Dan Drapala  
(312) 977-9190  
(312) 977-9196\*

Women's Business Development  
Center  
8 South Michigan Ave. - Suite 400  
Chicago, Illinois 60603-3306  
Attn: Hedy Ratner/Elizabeth  
Scully  
(312) 853-3477  
(312) 853-0145\*

Chicago Urban League  
4510 S. Michigan  
Chicago, Illinois 60653  
Attn: Lee V. Smith  
(312) 285-5800 X383  
(312) 285-7772\*

Little Village 26th Street  
Area Chamber of Commerce  
3610 West 26th Street  
Chicago, Illinois 60623  
Attn: Abundio Zaragoza, Jr.  
(312) 521-5387  
(312) 521-7103\*

Mexican American Chamber  
of Commerce of Illinois  
111 East Wacker Drive, Ste. 500  
Chicago, Illinois 60601  
Attn: Alphonse C. Gonzales  
(312) 616-2737  
(312) 226-3791\*

\* Facsimile Number

# ATTACHMENT A

Revised 11/25/92

## ASSIST AGENCIES

### CONSTRUCTION

Association of Asian  
Construction Enterprises  
739-741 S. Cicero Avenue  
Chicago, IL 60644  
Attn: Mr. Samuel Chung,  
President  
(312) 421-6788  
(312) 921-4188\*

Black Contractors United  
1603 S. Michigan Ave., Suite 503  
Chicago, IL 60616-1209  
Attn: Jerome E. Peters  
(312) 663-0704  
(312) 663-0706\*

Hispanic-American Construction  
Industry Associations (HACIA)  
531 S. Plymouth Ct., Suite 102  
Chicago, IL 60605-1527  
Attn: Carlos Ponce  
(312) 786-0101

African American Contractors  
Association  
1344 South Michigan Avenue  
Chicago, IL 60605  
Attn: Omar Shareef, President  
(312) 915-5960  
(312) 663-9809\*

Women Construction Owners &  
Executives  
6723 S. Pulaski Road  
Chicago, IL 60629  
Attn: Theresa Kern  
(312) 582-9800  
(312) 582-9850\*

Natl. Assoc. of Women In  
Construction  
c/o Kelso-Burnett Company  
223 W. Jackson Ave., Suite 1216  
Chicago, IL 60606  
Attn: Margie Homer  
(312) 922-2610  
(312) 922-2629\*

Mexican American Chamber  
of Commerce of Illinois  
111 East Wacker Drive, Ste. 500  
Chicago, Illinois 60601  
Attn: Alphonse C. Gonzales  
(312) 616-2737  
(312) 226-3791\*

\* Facsimile Number

ATTACHMENT B

(ON BIDDER/PROPOSER'S LETTERHEAD)

RETURN RECEIPT REQUESTED

(Date)

Re: Specification No: \_\_\_\_\_

Description: \_\_\_\_\_

(Assist Agency Name and Address)

Dear \_\_\_\_\_:

\_\_\_\_\_  
(Bidder/Proposer) intends to submit a bid/proposal in response to the above referenced specification with the City of Chicago. Bids are due \_\_\_\_\_ advertised specification with the City of Chicago.

The following areas have been identified for subcontracting opportunities on both a direct and indirect basis:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Our efforts to identify potential subcontractors have not been successful in order to meet the Disadvantaged/Minority Women Business Enterprise contract goal. Due to the inability to identify an appropriate DBE/MBE/WBE firm certified by the City of Chicago to participate as a subcontractor or joint venture partner, a request for the waiver of the contract goals will be submitted. If you are aware of such a firm, please contact \_\_\_\_\_ at

\_\_\_\_\_  
Name of Company Representative

\_\_\_\_\_ within (10) ten working  
address phone

days of receipt of this letter.

Under the City of Chicago's MBE WBE/DBE Ordinance, your agency is entitled to comment upon this waiver request to the City of Chicago. Written comments may be directed within fifteen (15) working days of your receipt of this letter to:

Diane E. Minor, Contract Compliance Administrator  
Department of Purchases, Contracts and Supplies  
City of Chicago  
121 North LaSalle Street, Room 403  
Chicago, Illinois 60602

If you wish to discuss this matter, please contact the undersigned at \_\_\_\_\_.

Sincerely,

\_\_\_\_\_

SCHEDULE B: Affidavit of Joint Venture (MBE/WBE)

This form need not be submitted if all joint venturers are MBEs and/or WBEs. In such a case, however, a written joint venture agreement among the MBE and WBE venturers must be submitted. In all proposed joint ventures, each MBE and/or WBE venturer must submit a copy of their current Letter of Certification.

ALL INFORMATION REQUESTED BY THIS SCHEDULE MUST BE ANSWERED IN THE SPACES PROVIDED. DO NOT REFER TO YOUR JOINT VENTURE AGREEMENT EXCEPT TO EXPAND ON ANSWERS PROVIDED ON THIS FORM. IF ADDITIONAL SPACE IS REQUIRED, ADDITIONAL SHEETS MAY BE ATTACHED.

I. Name of joint venture: \_\_\_\_\_  
Address of joint venture: \_\_\_\_\_

Phone number of joint venture: \_\_\_\_\_

II. Identify each non-MBE/WBE venturer(s):

Name of Firm: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Contact person for matters concerning MBE/WBE compliance: \_\_\_\_\_

III. Identify each MBE/WBE venturer(s):

Name of Firm: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Contact person for matters concerning MBE/WBE compliance: \_\_\_\_\_

IV. Describe the role(s) of the MBE and/or WBE venturer(s) in the joint venture:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

V. Attach a copy of the joint venture agreement. In order to demonstrate the MBE and/or WBE venturer's share in the ownership, control, management responsibilities, risks and profits of the joint venture, the proposed joint venture agreement must include specific details related to: (1) the contributions of capital and equipment; (2) work items to be performed by the MBE/WBE's own forces; (3) work items to be performed under the supervision of the MBE/WBE venturer; and (4) the commitment of management, supervisory and operative personnel employed by the MBE/WBE to be dedicated to the performance of the project.

VI. Ownership of the Joint Venture.

A. What are the percentage(s) of MBE/WBE ownership of the joint venture?

MBE/WBE ownership percentage(s) \_\_\_\_\_

Non-MBE/WBE ownership percentage(s) \_\_\_\_\_

**VI. Ownership of the Joint Venture (continued):**

**B. Specify MBE/WBE percentages for each of the following (provide narrative descriptions and other detail as applicable):**

**1. Profit and loss sharing:** \_\_\_\_\_

**2. Capital contributions:**

**(a) Dollar amounts of initial contribution:** \_\_\_\_\_

**(b) Dollar amounts of anticipated on-going contributions:** \_\_\_\_\_

**3. Contributions of equipment (Specify types, quality and quantities of equipment to be provided by each venturer):** \_\_\_\_\_

**4. Other applicable ownership interests, including ownership options or other agreements which restrict or limit ownership and/or control:**

**5. Provide copies of all written agreements between venturers concerning this project.**

**6. Identify each current City of Chicago contract (and each contract completed during the past two (2) years) by a joint venture of two or more firms participating in this joint venture:**

**VIII. Control of and Participation in the Joint Venture. Identify by name and firm those individuals who are, or will be, responsible for, and have the authority to engage in the following management functions and policy decisions. (Indicate any limitations to their authority such as dollar limits and co-signatory requirements.):**

**A. Joint venture check signing:**

**B. Authority to enter contracts on behalf of the joint venture:**

**C. Signing, co-signing and/or collateralizing loans:**

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**D. Acquisition of lines of credit:**

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**E. Acquisition and indemnification of payment and performance bonds:**

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**F. Negotiating and signing labor agreements:**

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**G. Management of contract performance. (Identify by name and firm only):**

1. Supervision of field operations: \_\_\_\_\_

2. Major purchases: \_\_\_\_\_

3. Estimating: \_\_\_\_\_

4. Engineering: \_\_\_\_\_

**IX. Financial Controls of joint venture:**

**A. Which firm and/or individual will be responsible for keeping the books of account?**

\_\_\_\_\_

**B. Identify the "managing partner," if any, and describe the means and measure of their compensation:**

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**C. What authority does each venturer have to commit or obligate the other to insurance and bonding companies, financing institutions, suppliers, subcontractors, and/or other parties participating in the performance of this contract or the work of this project?**

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The undersigned affirms that the foregoing statements are correct and include all material information necessary to identify and explain the terms and operations of our joint venture and the intended participation of each venturer in the undertaking. Further, the undersigned covenant and agree to provide to the City current, complete and accurate information regarding actual joint venture work and the payment therefore, and any proposed changes in any provision of the joint venture agreement, and to permit the audit and examination of the books, records and files of the joint venture, or those of each venturer relevant to the joint venture by authorized representatives of the City or the Federal funding agency.

Any material misrepresentation will be grounds for terminating any contract which may be awarded and for initiating action under federal or state laws concerning false statements.

Note: If, after filing this Schedule B and before the completion on the joint venture's work on the project, there is any change in the information submitted, the joint venture must inform the City of Chicago, either directly or through the prime contractor if the joint venture is a subcontractor.

_____ Name of MBE/WBE Partner Firm	_____ Name of Non-MBE/WBE Partner Firm
_____ Signature of Affiant	_____ Signature of Affiant
_____ Name and Title of Affiant	_____ Name and Title of Affiant
_____ Date	_____ Date

On this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_, the above-signed officers

\_\_\_\_\_  
(names of affiants)

personally appeared and, known to me be the persons described in the foregoing Affidavit, acknowledged that they executed the same in the capacity therein stated and for the purpose therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

\_\_\_\_\_  
Signature of Notary Public

My Commission Expire: \_\_\_\_\_

(SEAL)

**SCHEDULE C-1**  
**Letter of Intent from MBE/WBE to Perform**  
**as Subconsultant/Subcontractor/Supplier**

Name of Project/Contract: \_\_\_\_\_

Specification Number: \_\_\_\_\_

From: \_\_\_\_\_  
(Name of MBE/WBE Firm)

MBE: Yes \_\_\_\_\_; No \_\_\_\_\_  
WBE: Yes \_\_\_\_\_; No \_\_\_\_\_

To: \_\_\_\_\_ and the City of Chicago:  
(Name of Prime Consultant/Contractor)

The undersigned intends to perform work in connection with the above projects as a:

\_\_\_\_\_ Sole Proprietor                      \_\_\_\_\_ Corporation  
\_\_\_\_\_ Partnership                              \_\_\_\_\_ Joint Venture

The MBE/WBE status of the undersigned is confirmed by the attached letter of Certification from the City of Chicago effective date of \_\_\_\_\_ to \_\_\_\_\_ for a period of one year.

The undersigned is prepared to provide the following described services or supply the following described goods in connection with the above named project/contract:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The above described performance is offered for the following price and described terms of payment:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

The undersigned will enter into a formal written agreement for the above work with you as a Prime Consultant/Contractor, conditioned upon your execution of a contract with the City of Chicago, and will do so within (3) three working days of receipt of a signed contract from the City of Chicago.

\_\_\_\_\_  
(Signature of Owner or Authorized Agent)

\_\_\_\_\_  
Name/Title (Print)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Phone

**SCHEDULE D-1**

**Affidavit of MBE/WBE Goal Implementation Plan**

**Project Name:** \_\_\_\_\_

**State of** \_\_\_\_\_

**County (City) of** \_\_\_\_\_

**I HEREBY DECLARE AND AFFIRM that I am duly authorized representative of:**

\_\_\_\_\_  
**Name of Prime Consultant/Contractor**

and that I have personally reviewed the material and facts set forth herein describing our proposed plan to achieve the MBE/WBE goals of this contract.

All MBE/WBE firms included in this plan have been certified as such by the City of Chicago (Letters of Certification Attached).

**I. MBE or WBE Prime Consultant/Contractor.** If prime consultant is a certified MBE or WBE firm, attach copy of City of Chicago Letter of Certification. (Certification of the prime consultant as a MBE satisfies the MBE goal only. Certification of the prime consultant as a WBE satisfies the WBE goal only.)

**II. MBEs and WBEs as Joint Venturers.** If prime consultant is a joint venture and one or more joint venture partners are certified MBEs or WBEs, attach copies of Letters of Certification and a copy of Joint Venture Agreement clearly describing the role of the MBE/WBE firm(s) and its ownership interest in the joint venture.

**III. MBE/WBE Subconsultants.** Complete for each MBE/WBE subconsultant/subcontractor/supplier.

1. **Name of MBE/WBE:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Contact Person:** \_\_\_\_\_ **Phone:** \_\_\_\_\_

**Dollar Amount of Participation \$** \_\_\_\_\_

**Percent Amount of Participation:** \_\_\_\_\_ %

2. **Name of MBE/WBE:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Contact Person:** \_\_\_\_\_ **Phone:** \_\_\_\_\_

**Dollar Amount of Participation \$** \_\_\_\_\_

**Percent Amount of Participation:** \_\_\_\_\_ %

3. Name of MBE/WBE: \_\_\_\_\_  
Address: \_\_\_\_\_  
Contact Person: \_\_\_\_\_ Phone: \_\_\_\_\_  
Dollar Amount of Participation \$ \_\_\_\_\_  
Percent Amount of Participation: \_\_\_\_\_ %
4. Name of MBE/WBE: \_\_\_\_\_  
Address: \_\_\_\_\_  
Contact Person: \_\_\_\_\_ Phone: \_\_\_\_\_  
Dollar Amount of Participation \$ \_\_\_\_\_  
Percent Amount of Participation: \_\_\_\_\_ %
5. Name of MBE/WBE: \_\_\_\_\_  
Address: \_\_\_\_\_  
Contact Person: \_\_\_\_\_ Phone: \_\_\_\_\_  
Dollar Amount of Participation \$ \_\_\_\_\_  
Percent Amount of Participation: \_\_\_\_\_ %
6. Name of MBE/WBE: \_\_\_\_\_  
Address: \_\_\_\_\_  
Contact Person: \_\_\_\_\_ Phone: \_\_\_\_\_  
Dollar Amount of Participation \$ \_\_\_\_\_  
Percent Amount of Participation: \_\_\_\_\_ %
7. Name of MBE/WBE: \_\_\_\_\_  
Address: \_\_\_\_\_  
Contact Person: \_\_\_\_\_ Phone: \_\_\_\_\_  
Dollar Amount of Participation \$ \_\_\_\_\_  
Percent Amount of Participation: \_\_\_\_\_ %
8. Attach additional sheets as needed.

**IV. Summary of MBE Proposal:**

<u>MBE Firm Name</u>	Dollar Amount of Participation	Percent Amount of participation
_____	\$ _____	_____ %
_____	\$ _____	_____ %
_____	\$ _____	_____ %
_____	\$ _____	_____ %
_____	\$ _____	_____ %
<b>Total MBE Participation:</b>	<b>\$ _____</b>	<b>_____ %</b>

**V. Summary of WBE Proposal:**

<u>WBE Firm Name</u>	Dollar Amount of Participation	Percent Amount of participation
_____	\$ _____	_____ %
_____	\$ _____	_____ %
_____	\$ _____	_____ %
_____	\$ _____	_____ %
_____	\$ _____	_____ %
<b>Total WBE Participation:</b>	<b>\$ _____</b>	<b>_____ %</b>

To the best of my knowledge, information and belief, the facts and representations contained in this Schedule are true, and no material facts have been omitted.

The contractor designates the following person as their MBE/WBE Liaison Officer:

Name \_\_\_\_\_ Phone Number: \_\_\_\_\_

I do solemnly declare and affirm under penalties of perjury that the contents of the foregoing document are true and correct, and that I am authorized, on behalf of the contractor, to make this affidavit.

\_\_\_\_\_  
Signature of Affiant (Date)

State of \_\_\_\_\_

County of \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_ (date)  
 by \_\_\_\_\_ (name /s of person/s)  
 as \_\_\_\_\_ (type of authority, e.g., officer, trustee, etc.)  
 of \_\_\_\_\_ (name of party on behalf of whom instrument  
 was executed).

(Seal)

\_\_\_\_\_  
Signature of Notary Public

## MBE/WBE UTILIZATION REPORT

Utilization Report No. \_\_\_\_\_

Specification No. \_\_\_\_\_

Contract No. \_\_\_\_\_

Project Name: \_\_\_\_\_

STATE OF: \_\_\_\_\_ )

COUNTY (CITY) OF: \_\_\_\_\_ )

In connection with the above-captioned contract:

I HEREBY DECLARE AND AFFIRM that I am the \_\_\_\_\_  
(Title - Print or Type)

and duly authorized representative of \_\_\_\_\_  
(Name of Prime Consultant/Contractor - Print or Type)

\_\_\_\_\_  
(Address of Prime Consultant/Contractor) ( ) (Phone)

and that the following Minority and Women Business Enterprises have been contracted with, and have furnished, or are furnishing and preparing materials for, and rendering services stated in the contract agreement.

The following Schedule accurately reflects the value of each MBE/WBE sub-agreement and the amounts of money paid to each to date.

MBE/WBE NAME	GOODS/SERVICES PROVIDED	AMOUNT OF CONTRACT	AMOUNT PAID TO DATE
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$

TOTAL MBE: \$ \_\_\_\_\_

TOTAL WBE: \$ \_\_\_\_\_

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THE FOREGOING DOCUMENT ARE TRUE AND CORRECT, AND THAT I AM AUTHORIZED, ON BEHALF OF THE ONTRACTOR, TO MAKE THIS AFFIDAVIT.

Name of Contractor: \_\_\_\_\_  
(Print or Type)

Signature: \_\_\_\_\_  
(Signature of Affiant)

Name of Affiant: \_\_\_\_\_  
(Print or Type)

Date: \_\_\_\_\_  
(Print or Type)

State of \_\_\_\_\_

County (City) of \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_ (date)  
by \_\_\_\_\_ (name/s of person/s)  
as \_\_\_\_\_ (type of authority, e.g., officer, trustee, etc.)  
of \_\_\_\_\_ (name of party on behalf of whom instrument  
was executed).

\_\_\_\_\_  
Signature of Notary Public

(Seal)

NWS INC. PRELIMINARY TIF PROJECTION 10 Nov.02  
 CITY OF CHICAGO  
 STEVENSON/SANTARY & BIHP CANAL TIF

<b>ASSUMPTIONS:</b>			<b>SQ. FT.</b>	<b>TAXES/S.F.</b>	<b>OCCUPANCY</b>
ANNUAL INFLATION:	3.00%	<b>NWS WISE, SQ. FT.:</b>	320,000	\$1.35	NOW
AVERAGE TAX RATE: (TEN YR. AVG.)	0.0385%	<b>NWS EXPANSION:</b>	300,000	\$0.95	1/94
AVERAGE STATE MULTPR: (TEN YR. AVG.)	1.9121	<b>VACANT LAND VALUE:</b>	\$500,000		1/94
INDUSTRIAL ASMENT. RAT	30.00%				

	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
<b>ESTIMATE OF TAXES</b>												
<b>EQUALIZED ASSESSED VALUATION (EAV)</b>												
1) NWS EXISTING SPACE	4,348,732	4,749,702	4,749,702	4,749,702	5,190,228	5,190,228	5,190,228	5,671,500	5,671,500	5,671,500	6,197,401	6,197,401
2) NWS EXPANSION SPACE	0	3,441,163	3,441,163	3,441,163	3,760,252	3,760,252	3,760,252	4,108,929	4,108,929	4,108,929	4,489,937	4,489,937
3) VACANT LAND	344,178	378,093	378,093	378,093	410,967	410,967	410,967	440,074	440,074	440,074	490,718	490,718
4) TOTAL EAV	4,692,910	8,567,048	8,567,048	8,567,048	9,361,444	9,361,444	9,361,444	10,220,503	10,220,503	10,220,503	11,178,054	11,178,054
5) ESTIMATE OF BASE EAV (REFER TO SCHEDULE E)	2,291,974	2,291,974	2,291,974	2,291,974	2,291,974	2,291,974	2,291,974	2,291,974	2,291,974	2,291,974	2,291,974	2,291,974
6) INCREMENTAL EAV	2,398,936	6,275,074	6,275,074	6,275,074	7,069,470	7,069,470	7,069,470	7,937,529	7,937,529	7,937,529	8,886,080	8,886,080
7) TAX INCREMENT NOTE TAXES ARE COLLECTED FROM PRIOR YR. EAV	238,418	238,418	623,648	623,648	623,648	702,509	702,509	702,509	788,871	788,871	788,871	883,143
8) PRELIM. BOND ANALYSIS ASSUME 1993 ISSUANCE ASSUME 1.3x COVERAGE AMOUNT AVAILABLE FOR	0	0	479,729	479,729	479,729	540,481	540,481	540,481	606,824	606,824	606,824	679,341
9) RESIDUAL TO TIF ACCOUNT CUMULATIVE AMOUNT	238,418	238,418	143,919	143,919	143,919	182,138	182,138	182,138	182,047	182,047	182,047	203,802

**NET PRESENT VALUE ANALYSIS PRELIMINARY BOND SIZING**  
 INTEREST RATE  
 9.50%      9.00%

<b>GROSS BON</b>	8,224,244	8,431,203
<b>NET BONDS*</b>	4,440,807	4,819,523

RESIDUAL      1,723,700      1,760,805

\* ASSUMES 10% DEBT RESERVE AND 5% COSTS OF ISSUANCE.  
 TAX FLOWS ARE DISCOUNTED TO DATE OF BOND ISSUANCE

EXHIBIT 'P'  
 REAL ESTATE TAX

NWS INC PRELIMINARY TIF PROJECTION 10-Nov-02  
 CITY OF CHICAGO  
 STEVENSON/SANITARY & SHIP CANAL TIF

	2005	2006	2007	2008	2009	2010	2011	2012	2013
<b>ESTIMATE OF TAXES</b>									
<b>EQUALIZED ASSESSED</b>									
<b>VALUATION (EAV)</b>									
1) NWS EXISTING SPACE	6,197,401	6,772,067	6,772,067	6,772,067	7,400,021	7,400,021	7,400,021	8,066,203	8,066,203
2) NWS EXPANSION SPACE	4,489,937	4,906,276	4,906,276	4,906,276	5,361,220	5,361,220	5,361,220	5,858,350	5,858,350
3) VACANT LAND	400,716	636,218	636,218	636,218	585,040	585,040	585,040	640,272	640,272
4) TOTAL EAV	11,178,054	12,214,561	12,214,561	12,214,561	13,347,181	13,347,181	13,347,181	14,564,825	14,564,825
5) ESTIMATE OF BASE EAV (REFER TO SCHEDULE)	2,291,974	2,291,974	2,291,974	2,291,974	2,291,974	2,291,974	2,291,974	2,291,974	2,291,974
6) INCREMENTAL EAV	8,886,080	9,922,587	9,922,587	9,922,587	11,055,207	11,055,207	11,055,207	12,292,851	12,292,851
7) TAX INCREMENT NOTE TAXES ARE COLLECTED FROM PRIOR YR. EAV	863,143	863,143	966,166	966,166	966,166	1,066,722	1,066,722	1,066,722	1,221,725
8) PRELIM. BOND ANALYSIS ASSUME 1995 ISSUANCE ASSUME 1.3% COVERAGE AMOUNT AVAILABLE FOR	679,341	679,341	758,582	758,582	758,582	845,171	845,171	845,171	939,788
9) RESIDUAL TO TIF ACCOUNT CUMULATIVE AMOUNT	203,602	203,602	227,575	227,575	227,575	253,651	253,651	253,651	281,937
	2,348,754	2,652,650	2,780,131	3,007,705	3,235,280	3,468,831	3,742,382	3,905,833	4,277,870

EXHIBIT 1  
CONTINUED