

CHATHAM RIDGE COMMUNITY  
SHOPPING CENTER  
REDEVELOPMENT AGREEMENT

Location: 87th and the  
Dan Ryan Expressway  
Chicago, Illinois

Developer: L&O Partnership, No. 2  
910 West Van Buren  
Suite 700  
Chicago, Illinois 60607

8002290

TABLE OF CONTENTS

<u>ARTICLE</u>		<u>PAGE</u>
	Recitals	1
I	Incorporation of Recitals	3
II	Certain Developer's Covenants, Representations and Warranties	4
III	City Covenants	8
IV	Construction of the Shopping Center and Other Improvements	9
	4.01 Developer's Covenant to Redevelop	9
	4.02 Time for Commencement and Completion of Improvements	9
	4.03 Compliance with Laws	10
	4.04 Plans and Specifications	10
	4.05 Time for Submission of Plans and Specifications	10
	4.06 Time for Submission of Corrected Plans and Specifications	11
	4.07 Time for Department Action	11
	4.08 Limited Applicability of the Commissioner's Approval	11
	4.09 Time for Submission of Evidence of Equity, Capital and Mortgage Financing	12
V	Certification of Completion	12
VI	Utility Connections and Permit Fees	13
	6.01 Utility Connections	13
	6.02 Permit Fees	13
VII	Performance Bond	14
VIII	TIF Improvements	14
	8.01 Developer Authorized to Construct Certain TIF Improvements	14
	8.02 Bid Requirements	15
	8.03 City TIF Improvements	16
	8.04 Costs of TIF Improvements	16
	8.05 Preconditions for Disbursement of TIF Funds	17
IX	Failure of Developer to Complete TIF Improvements	18

X	Disbursement and Obligations	18
	10.01 TIF Bonds	18
	10.02 Deposition of Funds	19
	10.03 Disbursement of Funds	19
	10.04 Amount of Payment for TIF Improvements	22
	10.05 Amount of Payment for Redevelopment Planning and Bond Issuance Costs	23
	10.06 Warranties and Representations	23
	10.07 Modification to TIF Improvements	23
	10.08 Title Insurance	23
XI	Developer's Obligation to Obtain Other Financing	24
	11.01 Bank Financing	24
	11.02 Equity Financing	25
	11.03 Default	25
XII	Performance	25
	12.01 Time of the Essence	25
	12.02 Delay	25
	12.03 No Waiver by Delay	26
	12.04 Breach	28
XIII	Indemnity	27
XIV	Insurance	28
XV	Department's Right to Audit Developer's Books and Records	29
XVI	Real Estate Taxes/Tax Increment Financing	29
	16.01 Acknowledgement of Taxes	29
	16.02 No Exemption	30
	16.03 No Reduction	30
	16.04 No Objections	30
	16.05 Understanding of the Parties	31
	16.06 Covenants Running with the Land	31
	16.07 Sales Taxes	32
XVII	City Fees	33
XVIII	Restrictions	33
XIX	Transfers and Encumbrances	34
	19.01 Prohibition Against Transfers	34
	19.02 Limitation Upon Encumbrance of Property	34

XX	Covenants Running with the Land	35
XXI	Amendments	36
XXII	No Other Agreements	36
XXIII	Consent	36
XXIV	Conflict of Interest: City Representatives Not Individually Liable	36
XXV	Equal Employment Opportunity	37
XXVI	City Equity Participation	40
XXVII	Mutual Assistance	42
XXVIII	Conveyance of Foundations to the City	43
XXIX	Miscellaneous Provisions	43
	29.01 Definitions of Developer to Include Trustee	43
	29.02 Remedies Cumulative	43
	29.03 Disclaimer	43
	29.04 Exculpation of Trustee	44
	29.05 Notices	44
	29.06 Paragraph Headings	46
	29.07 Counterparts	46
	29.08 Recordation of Agreement	46
	29.09 Successors and Assignees	46
	29.10 Severability	46
	29.11 Conflict	46
	29.12 Representations Warranties and Conditions	47
	29.13 Rights of Mortgages	
	Schedule of Exhibits	51

CHATHAM RIDGE COMMUNITY SHOPPING CENTER  
REDEVELOPMENT AGREEMENT

This Agreement made as of this 1st day of November, 1987 by and among the City of Chicago, Illinois, an Illinois municipal corporation (the "City"), L & O Partnership No. 2, an Illinois limited partnership (the "Developer"), and American National Bank and Trust Company of Chicago, not personally but as Trustee under Trust Agreement dated June 27, 1986 and known as Trust Number 67592 (the "Trust").

RECITALS

A. The City has the authority to promote the health, safety and welfare of the City and its inhabitants, to prevent the spread of blight and to encourage private development in order to enhance the local tax base and create employment, and to enter into contractual agreements with third parties for the purpose of achieving the aforesaid purposes.

B. Developer desires to purchase certain property (sometimes hereinafter referred to as the "Property" or "Redevelopment Site") legally described on Exhibit A attached hereto and made a part hereof, consisting of approximately 14 acres, and desires to construct thereon a shopping center consisting of approximately 186,000 square feet of gross rentable area. The Property is located within a tax increment redevelopment area which is legally described on Exhibit B attached hereto and made a part hereof, and designated the Chatham Ridge Redevelopment Project Area (the "Redevelopment Project Area") by an ordinance hereinafter described. The Property together with all

improvements contemplated pursuant to the redevelopment plan adopted by the City Council for the Redevelopment Project Area ("Redevelopment Plan") are herein sometimes referred to as the "Project."

C. The City is authorized under the provisions of the Tax Increment Allocation Redevelopment Act, Sections 11-74.4-1 et seq., of Ch. 24, Ill. Rev. Stat., as amended (the "Act"), to finance redevelopment in accordance with the conditions and requirements set forth in the Act.

D. To stimulate and induce the acquisition and redevelopment of the Redevelopment Project Area, and pursuant to the Act, the City Council of the City of Chicago ("City Council"), on December 18, 1986, adopted the following ordinances: (1) "An Ordinance of the City of Chicago, Illinois, approving a Tax Increment Redevelopment Plan and Redevelopment Project, for the Chatham Ridge Redevelopment Project Area," (2) "An Ordinance of the City of Chicago, Illinois, designating the Chatham Ridge Redevelopment Project Area of said City a Redevelopment Project Area pursuant to the Tax Increment Allocation Redevelopment Project Act," (3) "An Ordinance of the City of Chicago, Illinois adopting Tax Increment Allocation financing for the Chatham Ridge Redevelopment Project Area," and (4) "An Ordinance authorizing the Department of Revenue to certify and cause to be paid to the City of Chicago, Illinois, an amount equal to the increase in certain taxes paid in a portion of said City". Said ordinances are collectively referred to as the "Ordinances."

E. For the purpose of paying a portion of the redevelopment project costs for the Project (hereinafter defined), the City Council, on November 4, 1987 adopted "An Ordinance of the City of Chicago, Illinois, providing for the issuance of not to exceed \$5,585,000 Chatham Ridge Tax Increment Revenue Bonds, Series 1987 (the "Bond Ordinance")." The proceeds from the sale of the bonds ("TIF Funds") will be used to finance certain costs relating to the Project, the construction of public improvements and certain other costs and expenses related to such improvements and/or otherwise authorized for payment pursuant to the Bond Ordinance as described in Exhibit C attached hereto and incorporated by reference herein ("TIF Improvements") and as described in Exhibit D attached hereto and incorporated by reference herein ("City TIF Improvements").

FOR AND IN CONSIDERATION of the mutual covenants described above and the agreements contained below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

#### I. INCORPORATION OF RECITALS

The recitations set forth in the foregoing recitals are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though they were fully set forth in this Section I, and this Agreement shall be construed in accordance therewith.

II

CERTAIN DEVELOPER'S COVENANTS,  
REPRESENTATIONS AND WARRANTIES

Developer represents, warrants and covenants to the City as follows:

A. Developer shall be governed by, adhere to and obey any and all applicable federal, state and local laws, statutes, ordinances, rules, regulations and executive orders applicable to the Project as may be in effect from time to time.

B. Developer shall proceed diligently to carry out the purchase of the Property and the construction of the Project as required pursuant to this Agreement.

C. (i) Developer is a limited partnership organized and validly existing and in good standing under the laws of the State of Illinois; (ii) Developer has the right and power and is authorized to enter into, execute, deliver and perform this Agreement; (iii) the execution, delivery and performance by Developer and the Trust of this Agreement shall not, by the lapse of time, the giving of notice or otherwise, constitute a violation of any applicable law or breach of any provision contained in Developer's limited partnership agreement, the Trust's trust agreement, or any instrument or document to which either Developer, or the Trust or any general partner of Developer is now a party or by which any of them is bound; (iv) Developer, including its general partners, and the Trust shall cause title to the Property to be maintained in merchantable condition as granted to it free and clear of all liens, claims, security interests and encumbrances except those of the initial mortgage as provided in



Section XI, any liens or encumbrances otherwise permitted pursuant to this Agreement and any exceptions to title approved by the City; (v) Developer and its general partners are now solvent and able to pay their debts as they mature; (vi) there are no actions at law or similar proceedings which are pending or threatened against Developer, any of its general partners, the Trust or the Property which might result in any material and adverse change to either the Trust's, Developer's or any of Developer's general partners' financial condition, or materially affect the Trust's, or Developer's or any of Developer's general partners' assets as of the date of this Agreement; (vii) the Trust and Developer have all government permits, certificates and consents (including, without limitation, appropriate environmental clearances and approvals) necessary to continue to conduct its business and to own or lease and operate its properties (including, without limitation, the Property) as now owned or leased by it; (viii) no default has been declared with respect to any indenture, loan agreement, mortgage, deed or other similar agreement relating to the borrowing of monies to which any of the Trust, Developer or any of Developer's general partners is a party or by which any of them is bound; (ix) the financial materials furnished by or on behalf of Developer to the City ("Financials") fairly and accurately present the assets, liabilities and financial conditions and results of operations of Developer, including its general partners, as of the dates thereof; and (x) there has been no material or adverse change in the assets, liabilities or financial condition of Developer or its general partners since the

dates of the Financials and the date of this Agreement other than as a result of the ordinary and customary conduct of its business.

D. Developer shall not, without the prior written consent of the Commissioner of the Department of Economic Development or his or her designee (the "Commissioner"), which the Commissioner may or may not give in his or her sole discretion, concurrently or hereafter, except as permitted under Section 11.01 or under Section 11.02, (i) grant, suffer or permit a lien, claim or encumbrance upon the Project or any portion thereof, provided that this shall not be construed to preclude, limit or require the Commissioner's consent to any lessee mortgaging its leasehold estate; (ii) permit or suffer any levy, attachment or restraint to be made affecting any of the Property; (iii) enter into any transaction not in the ordinary course of its business which materially and adversely affects Developer's ability to pay its debts as such may then exist. This subsection shall apply until full payment of the indebtedness evidenced by the outstanding TIF Bonds.

E. Developer shall pay promptly when due all Charges (hereinafter defined) arising or incurred from and after the date hereof with respect to the Project. Subject to Section XVI hereof, Developer may permit or suffer Charges to attach to its assets and may dispute the same without prior payment thereof, provided that Developer in good faith shall be contesting said Charges in an appropriate proceeding and Developer has given such additional collateral and/or assurances as the Commissioner, in

his or her sole discretion, deems necessary under the circumstances, except that with respect to real estate taxes, such taxes may only be disputed if prior payment is made. In the event, at any time or times after the date hereof and prior to the later to occur of issuance of a certificate of completion by the Commissioner or full payment of the indebtedness evidenced by the TIF Bonds, Developer shall fail to pay the Charges or to obtain discharge of the same, Developer shall so advise the Commissioner thereof in writing, at which time the City may, without waiving or releasing any obligation or liability of Developer under this Agreement, in its sole discretion, make such payment, or any part thereof, or obtain such discharge and take any other action with respect thereto which the Commissioner deems advisable. All sums so paid by the City and any expenses, including reasonable attorneys' fees, court costs, expenses and other charges relating thereto, shall be payable by Developer to the City with interest at the rate of interest per annum being paid on the TIF Bonds from the date expended until paid. As used herein the term "Charges" shall mean all national, federal, state, county, city, municipal or other governmental (or any instrumentality, division, agency, body or department thereof) taxes, levies, assessments, charges, liens, claims or encumbrances or non-governmental claims or liens upon relating to the Project, Developer's business, Developer's income or gross receipts.

F. (i) The Trust is a duly organized and existing land trust in the State of Illinois; (ii) Developer is the owner of

one hundred percent of the beneficial interest of the Trust and has the sole power of direction over the Trust; (iii) the Trust has the right and power and authority to enter into, execute, deliver and perform this Agreement.

G. All of the information contained in the Redevelopment Plan regarding the Redevelopment Project Area, the Project, the Property and Developer is true, correct and complete to the best of the Developer's knowledge.

H. All of the information contained in that certain Private Placement Memorandum dated September 7, 1988 City of Chicago, Illinois Chatham Ridge Tax Increment Allocation Revenue Bonds, Series 1988 ("Private Placement Memo") set forth in the sections titled PROJECT and TAX INCREMENT PROJECT: SOURCE AND USE OF FUNDS is true, correct and complete to the best of Developer's knowledge.

I. The tax receipts estimated to be received from the Property for the years set forth in Exhibit E hereto are accurate to the best of Developer's knowledge and are incorporated herein by reference.

### III. CITY'S COVENANTS

The City represents and warrants that it has authority under its home rule powers to execute, deliver and perform the terms and obligations of this Agreement, including, without limitation, the right, power and authority to issue and sell the TIF Bonds for payment of the TIF Improvements.

IV

CONSTRUCTION OF THE SHOPPING CENTER AND OTHER IMPROVEMENTS

4.01 Developer's Covenant to Redevelop. Promptly after the date hereof, Developer shall redevelop the Property in accordance with the Redevelopment Plan, the ordinances adopted with respect to the Redevelopment Project Area referred to in the Recitals (the "Ordinances") and the Site Plan attached hereto as Exhibit M and incorporated herein by reference and shall plan and construct a multi-tenant retail shopping center (the "Shopping Center") consisting of a primary structure containing approximately 153,000 square feet of gross leaseable area, approximately 6 outlot buildings aggregating approximately 33,000 square feet of gross leaseable area, parking for approximately 700 cars and landscaping, all as more particularly described on Exhibit F consistent with the Redevelopment Plan and the Ordinances, in accordance with the Plans and Specifications to be prepared by Developer and approved by the Department of Economic Development of the City of Chicago (the "Department") or the Commissioner as provided in this Section IV.

4.02 Time For Commencement and Completion of Improvements. Developer shall commence work on the TIF Improvements within 4 months after the date of execution of this Agreement and shall commence construction of the Shopping Center within 6 months after the date of execution of this Agreement. Except as otherwise provided in this Agreement, Developer shall complete construction of the Shopping Center and the TIF Improvements within 24 months after the date of execution hereof.

4.03 Compliance With Laws. The Shopping Center and the TIF Improvements shall be constructed in accordance with the requirements of this Agreement and shall be in conformity with all applicable laws, ordinances and regulations.

4.04 Plans and Specifications. Prior to commencing construction of the Shopping Center or the TIF Improvements, Developer shall cause to be delivered to the Commissioner for review and approval complete construction documents containing working drawings and specifications for such improvements ("Plans and Specifications"). Developer shall cause the Shopping Center and the TIF Improvements to be constructed in accordance with the Plans and Specifications approved by Commissioner. The Plans and Specifications to be prepared by Developer shall conform to the Site Plan and the Redevelopment Plan as amended from time to time, and all applicable state and local laws, ordinances and regulations. Any amendment to any of the Plans and Specifications or change in the Site Plan must be submitted by Developer to the Commissioner for approval, which approval shall not be unreasonably withheld or delayed. The Site Plan shall set forth the outline of the exterior perimeters of buildings. The location of interior walls may be changed to suit various tenants' needs without securing the City's approval. Developer may simultaneously submit Plans and Specifications to the Commissioner, the City Building Department and other City regulatory agencies as required.

4.05 Time for Submission of Plans and Specifications. The time within which Developer shall submit its Plans and

Specifications to the Commissioner, in any event, shall not be later than seventy-five (75) days from the date of execution of this Agreement with respect to TIF Improvements and no later than ninety (90) days from the date of execution of this Agreement with respect to the Shopping Center.

4.06 Time for Submission of Corrected Plans and Specifications. Except as provided in subsection 4.05, the time within which Developer shall submit any new or corrected Plans and Specifications shall not be later than fifteen (15) days after the date Developer receives written notice from the Commissioner of his or her rejection of any of the Plans and Specifications referred to in the last such notice.

4.07 Time for Department Action. The time within which the Commissioner may reject the Plans and Specifications or any change in the Plans or Specifications or the Site Plan hereof shall be twenty-one (21) days after the date of Commissioner's receipt of written notice of such change. If the City disapproves any drawing, plan or specification, it shall state its reasons in a written statement to the Developer. Failure to give such written statement within the period specified in Section 4.07 shall be deemed approval by the City of such Plans and Specifications or change therein.

4.08 Limited Applicability of the Commissioner's Approval. Any approvals made by the Commissioner or the Department of the Plans and Specifications and the Site Plan are for the purposes of this Agreement only and do not affect or constitute approvals required for building permits or the approvals required pursuant to any other ordinance of the City nor does any approval

by the Commissioner or the Department pursuant to this Agreement constitute approval of the quality, structural soundness or the safety of the Shopping Center, the TIF Improvements and other improvements.

4.09 Time for Submission of Evidence of Equity, Capital and Mortgage Financing. Developer shall submit evidence to the Commissioner as to its commitment for equity capital and a preliminary commitment for financing from Aetna Life & Casualty for an initial first mortgage loan of not less than \$15,000,000 no later than the day preceding the date of the closing of the sale of the TIF Bonds and a preliminary commitment for financing from First National Bank of Hoffman Estates for a second mortgage loan of not less than \$2,000,000.

V

CERTIFICATION OF COMPLETION

After completion of the construction of the Shopping Center and the TIF Improvements in accordance with this Agreement, the Commissioner, at the Developer's request, shall promptly furnish Developer with an appropriate instrument so certifying. The certification by the Commissioner shall be conclusive determination of satisfaction and termination of the covenants in this Agreement with respect to the obligations of Developer and its successors and assigns to construct or cause to be constructed the Shopping Center and the TIF Improvements. The certification shall be in such form as will enable it to be recorded. The Commissioner shall respond to Developer's request within sixty (60) days after the Commissioner's receipt thereof, either with a



certificate of completion or a written statement, indicating in adequate detail, how Developer has failed to complete the construction in conformity with the Redevelopment Plan or this Agreement, or is otherwise in default, and what measures or acts will be necessary, in the opinion of the Commissioner, for Developer to take or perform in order to obtain the certification. If the Commissioner requires additional measures or acts of Developer to assure compliance, Developer shall resubmit a written request for a certificate of completion upon compliance with the Commissioner's response. Failure of the City to respond to Developer's request for a certificate of completion within such sixty (60) day period shall be deemed an approval of the completion of the Project.

## VI

### UTILITY CONNECTIONS AND PERMIT FEES

6.01 Utility Connections. The City hereby agrees that Developer shall have the right to connect all on-site water lines and sanitary and storm sewer lines constructed on the Property to City utility lines existing on the Property or near the perimeter of the Property, provided that Developer complies with all requirements of general applicability promulgated by the City for such connections.

6.02 Permit Fees. The City agrees that Developer shall be obligated to pay, in connection with the development of the Shopping Center, only those building, permit, engineering, tap on, and inspection fees that are assessed on a uniform basis

throughout the City and are of general applicability to other property within the City.

## VII

### PERFORMANCE BOND

Developer shall require each contractor and subcontractor for the TIF Improvements and the Shopping Center to be bonded to the extent they actually engage in construction work as a Major Construction Contractor (as herein defined). With respect to construction of the Shopping Center, however, Major Construction Contractors shall be bonded, with the City being shown as additional obligee, as required by the Construction Lender, provided that the bonds are in form, substance and amounts reasonably satisfactory to the City. A "Major Construction Contractor" is any contractor or subcontractor performing work or supplying materials for the Project in an amount of Two Hundred Thousand Dollars (\$200,000) or more. Bonds required by this Section shall be issued by sureties having a AA rating or better using American Institute of Architects' form No. A311 or its equivalent with the City being shown as obligee.

## VIII

### TIF IMPROVEMENTS

8.01 Developer Authorized To Construct Certain TIF Improvements. In order to further the development of the Redevelopment Project Area, the City hereby authorizes Developer to cause the TIF Improvements as set forth in Exhibit C, to be carried out in accordance with this Agreement and the Plans and

Specifications approved by the City pursuant to Section IV at an aggregate cost not to exceed the costs set forth in Exhibit C.

8.02 Bid Requirement. Prior to entering into an agreement with a contractor for construction of the TIF Improvements, Developer shall solicit bids from qualified contractors eligible to do business with and having an office located in the City. Developer shall solicit bids in accordance with the requirements of the Illinois Purchasing Act, Ill. Rev. Stat. Ch. 24, par. 8-10-1 et seq., a copy of which is attached hereto as Exhibit G and incorporated herein by reference and the City Guidelines attached hereto as Exhibit H. Developer shall select the contractor submitting the lowest responsible bid who can complete the TIF Improvements in a timely manner. The City shall have the right to inspect all bids submitted and shall have final approval over the selection of the Contractor. Developer shall enter into a contract with said contractor in accordance with this Agreement to build said TIF Improvements. The contract shall conform to the guidelines prescribed by the Purchasing Agent of the City of Chicago for city purchasing contracts and provide for payment in accordance with this Agreement and the Bond Ordinance. Nothing herein contained shall be construed to permit construction to commence before the Plans and Specifications for the work are completed and approved by applicable City departments as provided in this Agreement. Developer shall incorporate into the contract with each contractor all obligations contained in this Agreement regarding construction of the TIF Improvements, compliance with the First Source and Affirmative Action Agreements, and shall

require each contractor to include all such requirements in each subcontract.

8.03 City TIF Improvements. Notwithstanding anything contained in this Agreement to the contrary, the City shall prepare the Plans and Specifications for, and install, the City TIF Improvements as designated on Exhibit D. The cost of such design and construction shall be paid for from the TIF Funds specifically allocated for said City TIF Improvements. The City further reserves the right to complete additional improvements necessary to protect the health, safety or welfare of the public, as may be determined by the City and pay for the cost thereof from the TIF Funds.

8.04 Costs of TIF Improvements. The parties anticipate that the TIF Funds will be sufficient to pay for the construction of the TIF Improvements and City TIF Improvements. If the costs of the TIF Improvements undertaken by Developer as described in Exhibit C or the costs of the City TIF Improvements undertaken by the City as described in Exhibit D are in excess of the amounts specifically allocated for such improvements as set forth in Exhibit C or Exhibit D, as the case may be, Developer shall be fully responsible for, and shall hold the City harmless from all costs and expenses of completing the TIF Improvements and the City TIF Improvements in excess of the allocated TIF Funds. If any portion of the TIF Improvements listed in Part I of Exhibit C are completed, or anticipated to be completed, at a cost which is less than the amount listed on any line item contained in Exhibit C, the savings shall first be applied to any excess costs for

the City TIF Improvements, then to other TIF Improvements listed in Part 1 of Exhibit C, and subject to the verification by the Department, any amounts remaining shall be applied to TIF Improvements listed on Part II of Exhibit C. If any portion of the TIF Improvements listed in Exhibit D are completed or anticipated to be completed at a cost which is less than the amount listed on any line item contained in Exhibit D, the savings shall first be applied to any excess costs for any other City TIF Improvements, then to other TIF Improvements listed in Part I of Exhibit C, and any remaining amounts shall be applied to TIF Improvements listed on Part II of Exhibit C. If cost savings yet remain after completion of all TIF Improvements listed in Exhibit C and City TIF Improvements, Exhibit D, then remaining TIF Funds may or may not be applied to other TIF eligible Redevelopment Project Costs (as defined in the Bond Ordinance) at the Department's sole discretion.

#### 8.05 Preconditions For Disbursement of TIF Funds.

Developer understands that the TIF Funds shall not be available for disbursement unless there is compliance with certain preconditions set forth in the Bond Ordinance, the Private Placement Memo or that certain Bond Purchase Agreement dated September 7, 1988 between the City, Van Kampen Merritt, Inc., Van Kampen Merritt Tax Free High Income Fund, First National Realty & Development Company, Inc. and the Developer (the "Purchase Contract"). Developer agrees to comply with and satisfy the preconditions to disbursement of the TIF Funds as provided in the Bond Ordinance, Private Placement Memo or the Purchase Contract,

and shall furnish evidence of compliance with such preconditions prior to disbursement of the TIF Funds.

IX

FAILURE OF DEVELOPER TO COMPLETE  
TIF IMPROVEMENTS

If Developer fails to complete the TIF Improvements in accordance with the terms hereof, after notice and after expiration of all cure periods as provided for herein, then the City shall have the right (but not the obligation) to complete said improvements and to pay for the costs thereof (including interest costs) out of the TIF Funds, as appropriate. If, and to the extent, the aggregate cost to the City of completing the TIF Improvements and City TIF Improvements exceed the amount of TIF Funds available for such purpose, Developer agrees to pay to the City all costs and expenses expended by the City to complete the TIF Improvements and City TIF Improvements in excess of the TIF Funds then available for disbursement together with interest thereon at the rate of interest per annum being paid on the TIF Bonds from the date expended until paid.

X

DISBURSEMENT AND OBLIGATIONS

10.01 TIF Bonds. The parties agree that tax increment allocation financing implemented in accordance with the terms and provisions of the Act shall be the primary source of funding for the TIF Improvements and City TIF Improvements, provided however, Developer shall pay the amount to which the actual costs of the TIF Improvements and City TIF Improvements exceed the TIF Funds.

The City agrees to issue bonds in accordance with the Bond Ordinance (the "TIF Bonds") in an amount not to exceed \$5,585,000.

The City agrees to apply the proceeds realized upon sale of TIF Bonds to the extent available to the costs and in the manner set forth in the Bond Ordinance. In no event shall the TIF Bonds be or become general obligations of the City nor shall the cost of the TIF Improvements and City TIF Improvements be paid from any funds other than the TIF Funds or Developer's own funds.

10.02 Depository of Funds. The City, in its sole discretion, with consent of the underwriter from the TIF Bonds, and subject to the terms of the Bond Ordinance, shall determine whether the TIF Funds shall be held by the City Treasurer for disbursement on an "as expended" basis as provided in this Section or deposited with the Trustee (as defined in the Bond Ordinance but herein referred to as the "Depository") chosen by the City and designated as a depository for City funds.

10.03 Disbursement of Funds. The parties shall enter into a construction escrow agreement (the "Escrow") in form and substance customarily used by the City for projects similar in nature to the Project and reasonably acceptable to the City, Developer and Trustee, with a title insurance company (the "Escrowee") reasonably acceptable to all parties. The Escrow shall allow Developer to present the Trustee with invoices and accompanying documentation approved for payment by the Commissioner after inspection and approval of work completed for which payment is being submitted which the Trustee shall then submit to the Escrowee. Not less than fourteen (14) days before Developer

submits a written request for payment or reimbursement to the City, Developer shall notify the City that the City or the City's representative may visit the Project and submit to the City or its representative all documentation which the Developer is required to submit to the Commissioner with its written request for payment, as hereinafter provided. Not less than fourteen (14) days prior to any date upon which Developer desires payment or reimbursement hereunder to be deposited by the City or the Depository, as the case may be, into the Escrow, Developer shall submit a written request therefore to the Commissioner setting forth the amount for which payment or reimbursement is sought and, if applicable, Developer's estimate of the percentage of completion of each TIF Improvement with respect to which payment or reimbursement is sought. Each request for payment or reimbursement shall be accompanied by a Developer's sworn statement recommending payment, the General Contractor's sworn statement, and such bills, contracts, invoices, contractors' sworn statements, lien waivers and other evidence as the Commissioner and the Escrowee shall reasonably require to evidence Developer's right to payment or reimbursement hereunder, and Developer's records relating to all costs paid by Developer, and such other information as is necessary for Commissioner to evaluate Developer's compliance with the terms hereof. The Commissioner shall have fourteen (14) days after receipt of any request for payment or reimbursement to approve or disapprove any such request. Upon approval of the request the City shall be obligated to promptly disburse the funds needed for such payment or reimbursement or



send a disbursement authorization to the Depository authorizing payment to the Escrowee, as the case may be. In the event the Commissioner finds an error in the request or disputes the work performed in respect thereto or finds that the request is not in accordance with this Agreement, the Commissioner shall specify such error or dispute in detail in writing within such fourteen (14) days after receipt of any request for payment or reimbursement, and the request or the work shall be corrected prior to approval of the request affected. Failure of the Commissioner to respond to Developer's request for payment within such fourteen (14) business day period shall constitute approval of the request.

It is expressly provided and agreed that the following are conditions precedent to any disbursement of funds from the Escrow:

(i) The Escrowee, title insurance company, shall issue its title insurance endorsement in the form satisfactory to the City and to the Trustee insuring that there are no liens affecting the Redevelopment Project Area and that all documents received have been reviewed and are sufficient to waive all rights of lien; and

(ii) Developer shall have secured financing from a lender acceptable to the City and shall have on hand and available the proceeds thereof for the construction of the Shopping Center and necessary appurtenances, as herein set forth; and

(iii) Developer shall have delivered to Trustee and to the City executed leases for at least sixty percent (60%) of the net leasable space in the Shopping Center, provided that (a) each of such leases shall be for a term of at least five years and shall be renewable for at least a term of five years and (b) no more than thirty thousand square feet (30,000 sq. ft.) subject to such leases shall be leased for use by entities other than retailers or servicemen which do pay or which will pay those taxes on transaction at places of businesses within the Redevelopment Project Area which are identified in Section 8(a) (1) of the Act.

10.04 Amount of Payment for TIF Improvements. Developer shall be paid no more than the applicable amount set forth in Exhibit C for the TIF Improvements. Payments to Developer shall be made based upon the percentage of each item of work satisfactorily completed as determined in the sole judgment of the Commissioner, provided that there shall be withheld from each such payment an amount equal to 10% of such payment until such time as 50% of the TIF Improvements are completed, and 5% of each such payment thereafter. The retained amount shall be held by the City or Depository, as the case may be, and shall be paid upon completion of the TIF Improvements in accordance with this Agreement. No funds in excess of the amounts budgeted for each of the TIF Improvements described in Exhibit C shall be disbursed unless Developer satisfies the Department that there are sufficient funds available with which to complete the remaining TIF Improvements, or Developer, with the City's consent as provided in Sec-

tion 10.07, has reduced the scope of the TIF Improvements so that the remaining funds are adequate to pay for the cost of completion.

10.05 Amount of Payment for Redevelopment Planning and Bond Issuance Costs. Developer represents and warrants that all planning costs incurred by Developer were incurred before December 18, 1986, when the City adopted tax increment financing and created the Redevelopment Project Area.

10.06 Warranties and Representations. Each request for payment or reimbursement submitted by Developer to the Commissioner shall have incorporated therein a warranty by Developer that there are no material defects in design, materials or workmanship in the work heretofore completed and that all construction completed to date has been performed in a good and workmanlike manner in accordance with the Plans and Specifications relating thereto, and in compliance with all applicable laws, ordinances and regulations. Notwithstanding the foregoing, the Commissioner may withhold his or her approval of any request for payment or reimbursement if, and so long as, Developer or any contractor or subcontractor is in material default in connection with the redevelopment of the Shopping Center or any provision of this Agreement or the Redevelopment Plan.

10.07 Modifications to TIF Improvements. Developer may, with the prior written approval of the Commissioner, reduce costs which are in excess of the amounts budgeted in Exhibit C by changing the scope of the TIF Improvements, provided that there is full compliance with the Redevelopment Plan and Act.

10.08 Title Insurance. At Developer's expense, Developer shall provide the City with a commitment for an owner's title insurance policy naming the City as insured in the amount determined by the City to be adequate covering the portion of the Redevelopment Project Area owned by the City or upon which TIF Improvements are to be constructed. Said commitment shall be later dated and appropriately endorsed at the time of each request for payment or reimbursement.

XI

DEVELOPER'S OBLIGATION TO OBTAIN OTHER FINANCING

11.01 Bank Financing. Developer agrees to procure an initial first mortgage loan in an amount no less than \$15,000,000 for construction of the Project from Metna Life Insurance Company, and if necessary, a second mortgage loan from the First National Bank of Hoffman Estates (the "Financial Institutions") for \$2,000,000 under the terms contained in those certain loan commitments dated July 6, 1988 and March 22, 1988 from the respective institutions. Developer shall not obtain its initial first and second mortgage loans from an alternative financial institution without the prior written consent of the Commissioner, which consent shall not be unreasonably withheld. The Developer may refinance the initial first and second mortgage loans described above prior to issuance of the Certificate of Completion provided that it provides written notice to the City of the refinancing which notice contains the substantive terms of the refinancing, the new loan is not in excess of \$17,000,000 plus the amount, if any, expended by Developer to complete the

TIF Improvements, the City TIF Improvements in excess of the TIF Funds and the Shopping Center, and said said notice is given not less than 30 days prior to the disbursement of funds resulting from the refinancing. At the time the Developer submits documentation to the Financial Institutions for draw-downs under its loan agreement, it shall also deliver a copy of said documentation to the City. After the issuance of the Certificate of Completion, Developer may refinance the initial first mortgage loan subject to provisions of Section XXVI.

11.02 Equity Financing. Developer agrees to contribute a minimum in equity funds for the Project, as more fully described in Exhibit I attached hereto, which is hereby incorporated by reference.

11.03 Default. Any default under the financing referred to in sections 11.01 or 11.02 above shall be a material default under this Agreement.

## XII

### PERFORMANCE

12.01 Time of the Essence. Time is of the essence of this Agreement.

12.02 Delay. For the purposes of any of the provisions of this Agreement, neither the City nor Developer, as the case may be, nor any successor in interest, 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 materials, 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 like event or condition beyond the reasonable control of the party affected which in fact interferes with the ability of such party to discharge its respective obligations hereunder; nor shall either the City or Developer be considered in breach of, or default in its obligations under this Agreement, in the event of any delay resulting from the conduct of any judicial, administrative or legislative proceeding or caused by litigation or proceedings challenging the authority or right of the City or Developer to act or perform under the Redevelopment Plan, the Ordinances, or this Agreement. The City shall diligently contest any such proceedings and any appeals therefrom. The City may settle a contested proceeding at any point, so long as the settlement results in the City's ability to perform pursuant to this Agreement and so long as any such settlement does not impose additional obligations on the Developer or increase its obligations under this Agreement; provided, however, that the party seeking the benefit of the provisions of this Section 12.02 shall, within ten (10) days after the beginning of any such enforced delay, have first notified the other party thereof in writing, and of the cause or causes thereof, and requested an extension for the period of the enforced delay.

**12.03 No Waiver by Delay.** Any delay by the City in instituting or prosecuting any actions or proceedings or otherwise asserting its rights shall not operate as a waiver of such rights or to deprive it of or limit such rights in any way (it being the intent of this provision that the City and the Develop-

er should still hope otherwise to resolve the problems created by the default involved). No waiver in fact made by the City with respect to any specific default by Developer should be considered or treated as a waiver of the rights of the City with respect to any other defaults by Developer or with respect to the particular default except to the extent specifically waived in writing. No waiver in fact made by the Developer with respect to any specific default by City should be considered or treated as a waiver of the rights of the Developer with respect to any other defaults by City or with respect to the particular default except to the extent specifically waived in writing.

12.04 Breach. Upon a breach of this Agreement, either of the parties in any court of competent jurisdiction, by any action or proceeding at law or in equity, may secure the specific performance of the covenants and agreements herein contained or may be awarded damages for failure of performance or both. Before any failure of any party of this Agreement to perform its obligations under this Agreement shall be deemed to be a breach of this Agreement, the party claiming such failure shall notify, in writing, the party alleged to have failed to perform of the alleged failure and shall demand performance. No breach of this Agreement may be found to have occurred if performance has commenced to the satisfaction of the complaining party within thirty (30) days of giving such notice. In addition to the foregoing, in the event of a default under this Agreement by Developer or the Trust, the City may suspend disbursement of TIF Funds until such breach is cured within the applicable cure period.

XIII

INDEMNITY

Developer hereby agrees to indemnify, defend and hold the City harmless from and against any losses, costs, damages, liabilities, claims, suits, actions, causes of action and expenses (including without limitation, attorneys' fees and court costs) suffered or incurred by the City arising from or in connection with (i) the failure of Developer or the Trust to comply with any of the terms, covenants and conditions contained in this Agreement, or (ii) the failure of Developer, the Trust or any contractor to pay contractors, subcontractors, or materialmen in connection with TIF Improvements or the Shopping Center, or (iii) the existence of any material misrepresentations or omissions in the Private Placement Memorandum or Redevelopment Plan which are the result of information supplied or omitted by the Developer or by agents, employees, contractors, or persons acting under the control or at the request of the Developer, or (iv) the failure of Developer to cure any misrepresentations or omissions in this Agreement or any other agreement relating hereto.

XIV

INSURANCE

Developer agrees to provide the City with all policies of insurance which the City may reasonably require in forms, coverage, companies and amounts satisfactory to the City including without limitation, comprehensive liability, workmen's com-



pensation and builder's risk insurance coverage naming the City as an additional insured on said policies.

XV

DEPARTMENT'S RIGHT TO AUDIT DEVELOPER'S BOOKS AND RECORD

Developer agrees that the Commissioner shall have the right and authority to review and audit, from time to time, the books and records of the Trust, the Developer and its general partners relating to the Project, including without limitation, the TIF Improvements (including Developer loan statements, general contractor's sworn statements, general contracts, subcontracts purchase orders, waivers of lien, paid receipts and invoices) in order to confirm that the TIF Funds are or have been expended for purposes of undertaking the TIF Improvements or other purposes permitted under the Act. Developer further agrees to incorporate the Commissioner's right to audit books and records as described herein into all contracts entered into by Developer, the Trust or any contractor with respect to this Agreement or the Project.

XVI

REAL ESTATE TAXES/TAX INCREMENT FINANCING

16.01 Acknowledgment of Taxes. The Trust and Developer agree: (i) that for the purposes of this Agreement the estimates of the total minimum assessed value ("Minimum Assessed Value") of the respective portions of the Property and the Project are shown on Exhibit J attached hereto and incorporated by reference herein for the years as noted on that Exhibit and

(ii) that the real estate taxes anticipated to be generated and derived from the respective portions of the Property and the Project pledged from the incremental tax revenues described in the Bond Ordinance are estimated as shown in Exhibit E attached hereto.

16.02 No Exemption. With reference the Property and the Project or any part thereof, neither the Trust nor Developer nor any assignee or transferee of, or successor in interest to, either the Trust or the Developer shall for any year that the Chatham Ridge Tax Increment Redevelopment Area Plan and Project as provided in the Ordinances, as may be amended from time to time, is in effect apply for, seek, or authorize any exemption (as such term is used and defined in the Illinois Constitution, Article IX, Section 6 (1970)).

16.03 No Reduction. Neither the Trust nor Developer nor any agent, representative, lessee, tenant, assignee or transferee of, or successor in interest to, either the Trust or Developer shall for any year referred to in Exhibit E attached hereto directly or indirectly, initiate, apply for, or seek to lower the assessed values below the amount of the Minimum Assessed Value as shown in Exhibit J while any portion of the TIF Bonds are outstanding.

16.04 No Objections. Neither the Trust nor Developer nor any agent, representative, lessee, tenant, assignee or transferee of, or successor in interest to, Developer or the Trust shall, for any year referred to in Exhibit E or for any year that the Chatham Ridge Tax Increment Redevelopment Area Plan and Proj-

ect is in effect, as may be amended from time to time, object to or in any way seek to prevent, on procedural or any other grounds, the filing of any underassessment complaint with, and full participation in all related proceedings before, the Cook County Assessor or the Cook County Board of Appeals, by either the City, or by any taxpayer.

16.05 Understanding of the Parties. The foregoing covenants in subsections 16.02, 16.03 and 16.04 above shall be construed and interpreted as an express agreement by Developer with the City that a major incentive inducing the City to enter into the arrangements and transactions described in this Agreement is to increase the assessed valuation of and the general real estate taxes payable with respect to the Property and Project. This Agreement and the Exhibits attached hereto may be used by the City, in the City's discretion, as admissions against Developer's interest in any proceeding.

16.06 Covenants Running with Land. The parties agree that the restrictions contained in this Section 16 are covenants running with the land and a memorandum thereof or this Agreement shall be recorded with the Cook County Recorder of Deeds. These restrictions shall be binding upon the Trust and Developer, and their respective agents, representatives, tenants, lessees, successors, assigns and transferees from and after the date hereof; provided, however that the covenants shall be null and void if and when the TIF Bonds have been fully redeemed or paid. The Trust and Developer agree that any sale, conveyance or transfer of title to all or any portion of the Property from and after the

date hereof shall be made subject to such covenants and restrictions. The Trust and Developer further agree, that to the extent either of them is obligated to pay any portion of the real estate tax bills for the Property, they shall pay such taxes promptly before the date of delinquency of such tax bills.

16.07 Sales Taxes. The City and Developer agree that pursuant to the Ordinance Of The City of Chicago, Illinois Providing For The Issuance Of Not To Exceed \$5,585,000 Chatham Ridge Tax Increment Revenue Bonds, Series 1987 (the "Bond Ordinance"), the City has expressly covenanted and agreed to deposit in the 1986 Chatham Ridge Tax Increment Project Area Special Tax Allocation Fund (the "Incremental Taxes Fund") Incremental Sales Taxes as defined in the Bond Ordinance and meaning those taxes credited to the Incremental Taxes Fund pursuant to Section 11-74.4-8a(1) of the Tax Increment Allocation Redevelopment Act. Those incremental municipal taxes which the City is obligated to deposit in the Incremental Taxes Fund are part of those taxes authorized to be collected by the City pursuant to the Municipal Retailers' Occupation Tax Act (Chap. 24, Sec. 8-11-1 (Ill.Rev.Stat. 1987)) and the Municipal Service Occupation Tax Act, (Chap. 24, Sec. 8-11-5 (Ill.Rev.Stat. 1987)) which taxes are in fact imposed by the City by municipal ordinance and collected and distributed to the City.

To the extent that taxes from the Municipal Retailers' Occupation Tax Act and the Municipal Service Occupation Tax Act can no longer be imposed, replacement sales tax income which is attributable to businesses located in the Redevelopment Project

Area for the abolished taxes from whatever source, including, but not limited, to sales tax reform income legislation which establishes a Local Government Tax Fund or other funds is replacement tax revenue receipts, if, as and when received.

XVII

CITY FEES

At the time of the closing of the sale of the TIF bonds, the City shall be paid a fee of \$100,000.00 out of TIF funds to reimburse various departments of the City for the cost of administration and monitoring of the construction of the TIF improvements and the City TIF Improvements, and legal and other expenses incurred by the City with respect to the TIF Improvements and the City TIF Improvements.

XVIII

RESTRICTIONS

The Trust and the Developer agree for themselves, their successors and assigns, and every successor in interest to the Property, or any part thereof, that the Trust, Developer and their successors and assigns shall:

- A. develop the Property in accordance with the uses set forth herein and in the Redevelopment Plan;  
and
- B. not discriminate upon the basis of race, color, religion, sex or national origin, in the sale, lease or rental, or in the use or occupancy of the

Property or any improvements located or to be erected thereon, or any part thereof.

XIX

TRANSFERS AND ENCUMBRANCES

19.01 Prohibition Against Transfers. Prior to the issuance of a certificate of completion for the TIF Improvements and the Shopping Center, neither the Trust nor Developer shall make, create or suffer to be made any sale, transfer, assignment, or conveyance with respect to this Agreement or the Property, or any part thereof or any interest therein, including without limitation, any transfer or assignment of the beneficial interest in the Trust or any part thereof, or contract or agree to do any of the same, without the prior written approval of the Commissioner, which approval may not be unreasonably withheld, except Developer may mortgage the Property pursuant to Section XI.

19.02 Limitation Upon Encumbrance of Property. Prior to the issuance of a certificate of completion for the TIF Improvements and the Shopping Center, neither Developer, the Trust nor any successor in interest to the Property or the beneficial interest in the Trust shall engage in any financing or any other transaction creating any mortgage or other encumbrance or lien upon the Property, except as specifically permitted in this Agreement.

XX

COVENANTS RUNNING WITH THE LAND

20.00 Covenants Running With The Land. It is intended and agreed, that all covenants provided in Sections II, B, D, E, IV, VII, VIII, IX, X, XI, XII, XIII, XIV, XV, XVI, XVII, XVIII, XIX, XXV, and XXVI of this Agreement on the part of the Trust or Developer to be performed or observed shall be covenants running with the land binding to the fullest extent permitted by law and equity on the Trust and the Developer and their respective agents, representatives, tenants, lessees, successors, assigns and transferees from and after the date hereof for the benefit and in favor of, and enforceable by the City, and any successor in interest to the Property, or any part thereof, and the owner of any other land (or of any interest in such land) in the Redevelopment Project Area which is subject to the land use requirements and restrictions of the Redevelopment Plan; provided, however, that the covenants in paragraphs II, B, D, E, IV, VII, VIII, IX, X, XI, XII, XVIII A and XIX, shall be released upon the filing of the Certificate of Completion with the Recorder of Deeds of Cook County, Illinois and shall then be null and void.

The covenants set forth in Sections XIII, XIV, XV shall be null and void when and if the TIF Bonds have been fully redeemed or paid.

The covenants set forth in Section XXVI shall be null and void after ten years from the date of the issuance of the Certificate of Completion.

The covenants set forth in Sections XVIII B and XXV shall be null and void after 23 years from the date of the adoption of the tax increment Redevelopment Plan.

XXI

AMENDMENT

This Agreement, and any exhibits attached hereto, may be amended only by the mutual consent of the parties by the adoption of an ordinance or resolution of the City approving said amendment, as provided by law, and by the execution of said amendment by the parties or their successors in interest.

XXII

NO OTHER AGREEMENTS

Except as otherwise expressly provided herein, this Agreement supersedes all prior agreements, negotiations and discussions relative to the subject matter hereof and is a full integration of the agreement of the parties.

XXIII

CONSENT

Except as otherwise provided in this Agreement, whenever herein consent or approval of either party is required, such consent or approval shall not be unreasonably withheld.

XXIV

CONFLICT OF INTEREST: CITY'S REPRESENTATIVES  
NOT INDIVIDUALLY LIABLE

No member, official, or employee of the City shall have any personal interest, direct or indirect, in this Agreement; or



shall any such member, official, or employee participate in any decision relating to this Agreement which affects his personal interests or the interests of any corporation, partnership, or association in which he is directly or indirectly interested. No member, official, or employee of the City shall be personally liable to Developer or any successor in interest in the event of any default or breach by the City or for any amount which may become due to Developer or successor or on any obligation under the terms of this Agreement.

#### XXV

#### EQUAL EMPLOYMENT OPPORTUNITY

The Trust and Developer, for themselves and their successors, assigns, contractors, subcontractors, agree that so long as any TIF Bonds remain outstanding:

A. Developer will not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin. Developer will take affirmative action to ensure that applicants are employed and employees are treated during employment without regard to their race, religion, color, sex or national origin. 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. Developer agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided

by the City setting forth the provisions of this nondiscrimination clause.

B. To the greatest extent feasible, Developer is required to present opportunities for training and employment that are to be given to lower income residents of the project area, hereby defined as the City of Chicago; and that contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part, by persons residing in the project area.

C. Developer will, in all solicitations or advertisements for employees placed by or on behalf of Developer, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex or national origin.

D. Simultaneously upon the execution and delivery of this Agreement, the Developer and the City of Chicago, Mayor's Office of Employment and Training ("MET") will enter into a "First Source Agreement" to be substantially in the form attached hereto as Exhibit K and as amended from time to time by mutual consent.

E. Developer agrees to comply with the Affirmative Action Plan, attached hereto as Exhibit L, and incorporated herein by reference, and to comply with Federal and State of Illinois Equal Employment and Affirmative Action statutes, rules and regulations, including but not limited to the Illinois Human Rights Act, as in effect from time to time, and regulations promulgated pursuant thereto.

F. Developer will include the provisions of paragraphs (A), (B), (C), (D) and (E) in every contract, and will require the inclusion of these provisions in every subcontract entered into by any of its contractors, so that such provision will be binding upon each such contractor, or sub-contractor, as the case may be. Failure to comply with these provisions will be a basis to institute remedies under the provision of Section XII of this Agreement. For purposes of this Section XXV, the term Developer shall be deemed to include Developer's successors, assigns, contractors and subcontractors.

In reference to tenants with whom the Developer is negotiating leases prior to entry into the Redevelopment Agreement, the Developer has referred all said tenants to MET in order that MET may negotiate First Source Agreements with said Tenants and the Developer shall use its best efforts to cause said tenants to enter into First Source Agreements with MET prior to the execution of the Redevelopment Agreement.

In reference to tenants with whom the Developer negotiates leases subsequent to the entry into the Redevelopment Agreement, the Developer shall refer all said tenants to MET in order that MET may negotiate First Source Agreements with said tenants and the Developer shall use its best efforts to cause said tenants to enter into First Source Agreements with MET prior to the execution of leases with said tenants.

XXVI

CITY EQUITY PARTICIPATION

In the event of a Sale, (as hereinafter defined) of all or any portion of the Project within 10 years from the date of issuance of the Certificate of Completion provided for in Section V of this Agreement, the Developer, or its successors or assigns shall pay to the City an amount ("Equity Payment"), which shall be the applicable percentage of the Net Proceeds, as hereinafter defined, of any Sale as follows:

For any Sale which is closed in the first 5 years following the issuance of the Certificate of Completion, 23% of the Net Proceeds;

For any Sale which is closed during the 6th and 7th years following the issuance of the Certificate of Completion, 18% of the Net Proceeds;

For any sale which is closed during the 8th, 9th and 10th years following the issuance of the Certificate of Completion, 15% of Net Proceeds.

For any and all Sales completed after 10 years or more from the issuance of the Certificate of Completion, no Equity Payment shall be required, and the City shall not in any way be entitled to such payment.

The term "Sale" shall mean the consumation of any of the following transactions within 10 years from the date of issuance of the Certificate of Completion,

(1) Any sale, exchange, assignment or conveyance of the Property or an interest therein including, but not limited to

an interest in the beneficial interest in the Trust holding title to the Property or the Partnership which is the beneficial title holder under the trust. If the sale is pursuant to contract for sale, articles of agreement, or an option to purchase, the City shall be entitled to a pro-rata share of the Equity Payment as payments are made during the term of the contract for sale, articles of agreement, or an option to purchase.

(2) Any master lease, or single lease covering all or substantially all of the Property, but only if at the termination of the lease there is a transfer of title of the Property to the lessee or other third party.

(3) Any refinancing in excess of the Base Cost, as hereinafter defined, of any debt secured by the Property or the beneficial interest in the Trust by mortgage, other incumbrances, or hypothecation.

(4) Any other transfer of the Project and/or any part or interest in the Project, directly or indirectly.

If any interest less than 100% in the Property is the subject of a Sale, then the Equity Payment of the City for the sale of such interest shall be limited to the percent of interest which is the subject matter of the sale.

The Net Proceeds of any Sale shall constitute the net amount received by the Seller, for any interest in the Property. In reference to the first Sale of any interest in the Property, the Net Proceeds shall be calculated by first determining the Gross Sale Price (which shall be the total sale price for any interest) or total of the refinancing proceeds, as the case may

be, for the Property and then subtracting therefrom the Base Cost and the reasonable, customary expenses of closing the Sale. The Base Cost shall constitute the following costs expended by the Developer related to the development of the Shopping Center: (1) the initial loans described in Section 11.01 and the refinancing of said initial loans permitted by said Section, (2) the Developer's documented reasonable and customary costs and expenses approved by the City associated with a Sale, and (3) the Developer's equity as set forth in Exhibit I and approved by the City.

The Base Cost for the Sale of any interest in the Property which is less than the total interest in the Property shall be the pro rata portion of the Base Cost allocated to the interest which is the subject matter of the Sale.

After the first Sale of any interest in the Property, the Base Cost for any such interest shall be the price paid by the Purchaser for any such interest in the Property together with the Purchaser's reasonable, customary expenses related to the cost of purchase. The Net Proceeds shall be determined by determining the Gross Sales Price for the interest in the Property and then subtracting therefrom the prior purchase price paid by the Seller together with the expenses of closing the Sale.

The Equity Payment shall be paid to the City at the closing of each sale.

XXVII.

MUTUAL ASSISTANCE

The Parties agree to take such actions, including the execution and delivery of such documents, instruments, petitions

and certifications, as may be necessary or appropriate to carry out the terms, provisions and intent of this Agreement.

XXVIII.

CONVEYANCE OF FOUNDATIONS TO THE CITY

On or before the disbursement of funds by the Trustee for TIF Improvements, Developer shall cause the Seller of the Property to convey to the City by quit claim deed all buildings, building foundations, any improvements, building debris and construction material located below, at and above grade level of the Property at the date hereof. The City shall deposit in escrow a quit claim deed from the City to the Trust to be delivered by the escrowee on completion of demolition clearance and site preparation when such work has been completed to the satisfaction of the City and full payment for said work has been made.

XXIX.

MISCELLANEOUS PROVISIONS

29.01 Definition of "Developer" to Include "Trust". It is the intention of the parties that the word "Developer" as used herein shall be construed to include the Trust.

29.02 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 of the other remedies of such party unless specifically so provided herein.

29.03 Disclaimer. Nothing contained in this Agreement nor any act of the City, shall be deemed or construed by any of

the parties, or by third persons, to create any relationship of third-party beneficiary, or of principal or agent, or of limited or general partnership, or of joint venture, or of any association or relationship involving the City.

29.04 Exculpation of Trustee. This Agreement is executed by American National Bank and Trust Company of Chicago, not personally but as Trustee under a Trust Agreement dated July 9, 1926, and known as Trust Number 67592. It is expressly understood and agreed that nothing in this Agreement contained shall be construed as creating any liability whatsoever against said Trustee personally and in particular, without limiting the generality of the foregoing, there shall be no personal liability to pay any liability occurring hereunder or to perform any covenant, either express or implied, herein contained, to keep, preserve or sequester any property of said Trust, and that all personal liability of said Trustee, of any sort, if any, is hereby expressly waived by every person now or hereafter claiming any right hereunder. It is further understood and agreed that the said Trustee has no agents or employees and merely holds naked title to the property herein described and has no control over the management thereof or the income therefrom and has no knowledge with respect to said premises, except as represented to it by the beneficiary or beneficiaries of said Trust.

29.05 Notices. All notices, certificates, approvals, consents or other communications desired or required to be given hereunder shall be in writing and shall be sufficiently given on the second day following the day on which the same shall have



been mailed by registered or certified mail, postage and fees prepaid, return receipt requested addressed as follows:

If to City:

City of Chicago  
Department of Economic Development  
20 North Clark Street  
Room 2800  
Chicago, Illinois 60602  
Attention: Commissioner

With Copies to:

City of Chicago  
Department of Economic Development  
Capital Improvement Division  
Room 6A  
510 North Peshtigo Court  
Chicago, Illinois 60611  
Attn: Deputy Commissioner

City of Chicago  
Department of Law  
Finance and Economic  
Development Division  
Room 511, City Hall  
121 N. LaSalle Street  
Chicago, Illinois 60602  
Attn: Deputy Corporation Counsel

If to Developer:

L & O Partnership No. 2  
910 West Van Buren, Suite 700  
Chicago, Illinois 60607

With Copies to:

Kai Nebel  
Keck, Mahin and Cate  
233 South Wacker Drive-83rd Fl.  
Chicago, Illinois 60606

If to Aetna:

Aetna Life Insurance Company  
City Place  
Hartford, Connecticut 06158  
Attn: Loan Servicing

With a Copy to:

Dustin E. Neumark  
Sonnenschein, Carlin, Nath &  
Rosenthal  
8000 Sears Tower  
233 South Wacker Drive  
Chicago, Illinois 60606

The parties, by notice given hereunder, may designate any further or different addresses to which subsequent notices, certificates, approvals, consents or other communications shall be sent.

29.06 Paragraph Headings. The paragraph headings and references are for the convenience of the parties and are not intended to limit, vary, define or expand the terms and provisions contained in this Agreement and shall not be used to interpret or construe the terms and provisions of this Agreement.

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

29.08 Recordation of Agreement. The parties agree to execute and deliver the original of this Agreement in proper form for recording and/or indexing in the appropriate land for governmental records.

29.09 Successors and Assignees. The terms, covenants and conditions of this Agreement are to apply to and bind the successors and assignees of the City and the successors and assigns of Developer and the Trust.

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

29.11 Conflict. If there is a direct conflict between any of the terms of this Agreement and the terms of the Bond Ordinance, the Bond Ordinance shall control and the parties agree

that with respect to such term and conflict, they will each comply with the Bond Ordinance.

29.12 Representations, Warranties and Conditions. The representations, warranties and conditions of this Agreement shall not terminate on the Closing of any transactions set forth herein, but shall remain in full force and effect in accordance with the terms of this Agreement.

29.13 Rights of Mortgagees

- A. It is understood and agreed that the prohibitions stated in Section 19.01 shall not apply to or preclude the Financial Institutions or their successors or assigns (referred to in this Section 29.13 as the "Mortgagees") from acquiring title to the Property pursuant to a foreclosure of any mortgage permitted by Section 11.01, or deed in lieu of foreclosure.
- B. A Mortgagee shall have the right and option to complete the TIF Improvements and the City TIF Improvements pursuant to the provisions of this Agreement in the event of a default under its mortgage. Upon complying with the terms and conditions hereof, a Mortgagee shall have the right to receive any unexpended TIF Funds for the purpose of completing the TIF Improvements and the City TIF Improvements. It is understood and agreed that in the event that a Mortgagee elects to complete the TIF Improvements and the City TIF Improvements, Mortgagee shall not be obligated

with respect to any damages or indemnifications described in Article XIII hereof.

C. Notwithstanding anything to the contrary contained in this Agreement, (i) a Mortgagee shall not be obligated with respect to any indemnification provided for in this Agreement in favor of the City or any other party, including but not limited to any indemnification described in Article XIII hereof, and (ii) up to the date on which the Mortgagee acquires title to the Property (and assumes possession thereof), unless directly and solely caused by the Mortgagee prior to said date, a Mortgagee shall not be obligated with respect to any damages provided for in this Agreement in favor of the City or any other party.

D. Notwithstanding anything to the contrary contained in this Agreement or in any of the documents referred to herein, a Mortgagee shall not be obligated to construct or complete the Shopping Center, the TIF Improvements, the City TIF Improvements or any other improvements in the Redevelopment Area, provided that nothing in this Section or any other provision of this Agreement shall be deemed or construed to permit or authorize a Mortgagee to devote the Property or any part thereof to any uses or construct any improvement thereon, other than as provided or permitted in the Redevelopment Plan.

E. No Equity Payment shall be due the City pursuant to Article XXVI hereof at the time of a transfer of the Property to a Mortgagee by foreclosure or deed in lieu of foreclosure. Upon a subsequent sale of the Property by a Mortgagee, Base Cost (as defined in Article XXVI) shall mean the principal amount of the applicable loan, all interest, fees and other charges relating to the loan (including prepayment charges) which were owed but were unpaid, all sums advanced by the Mortgagee to protect its security prior to the date it obtains possession of the Property (such as construction costs to complete the Shopping Center, real estate taxes and insurance premiums), all sums paid by the Mortgagee to obtain possession of and title to the Property (such as legal fees and costs of the foreclosure proceeding), and all sums paid by the Mortgagee after the date it obtains possession of the Property to pay operating deficits arising from the Property (after taking into account all revenues received by Mortgagee from the Property).

IN WITNESS WHEREOF, the parties hereto have executed  
this Agreement on the 7th day of September, 1988.

CITY OF CHICAGO

BY: \_\_\_\_\_  
COMMISSIONER OF ECONOMIC DEVELOPMENT

L & O PARTNERSHIP NO. 2

By Lefkas General Partners, No. 2, General Partnership.

BY: \_\_\_\_\_  
Demetrios Dellaportas, Managing Partner

AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO  
UNDER TRUST NO. 67592

By: \_\_\_\_\_  
Its: VICE/PRESIDENT

Attest: \_\_\_\_\_  
Its: ASSISTANT SECRETARY

(1100/K)

IN WITNESS WHEREOF, the parties hereto have executed  
this Agreement on the 7th day of September, 1988.

CITY OF CHICAGO

BY: Frank W. Wright III  
COMMISSIONER OF ECONOMIC DEVELOPMENT

L & O PARTNERSHIP NO. 2

By Lefkas General Partners, No. 2, General Partnership

By: Demetrios Dellaportas, Managing Partner

AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO  
UNDER TRUST NO. 67592

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

Attest: \_\_\_\_\_  
Its: \_\_\_\_\_

(1100/K)

SCHEDULE OF EXHIBITS

Exhibit A	Legal Description of Redevelopment Site
Exhibit B	Legal Description of Redevelopment Project Area
Exhibit C	TIF Improvements
Exhibit D	City TIF Improvements
Exhibit E	Estimated Tax Revenues from the Property
Exhibit F	Detailed Description of Project
Exhibit G	Illinois Purchasing Act
Exhibit H	City's Guidelines for Bidding
Exhibit I	Developer's Equity Contribution
Exhibit J	Minimum Assessed Values
Exhibit K	First Source Agreement
Exhibit L	Affirmative Action Plan
Exhibit M	Site Plan

(1100, K)



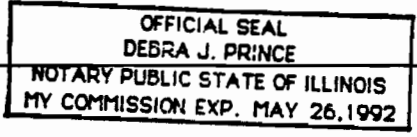
STATE OF ILLINOIS )  
                          ) SS  
COUNTY OF COOK    )

I, Debra J. Prince, a Notary Public in  
and for the County and State aforesaid, do hereby certify that  
Demetrios Bellaportas, to be the managing  
general partner of an Illinois partnership, and personally known  
to me to be the same person whose name is subscribed to the fore-  
going instrument, appeared before me this day in person and ac-  
knowledge that he signed said instrument as his free and volun-  
tary act and as the free and voluntary act of said partnership  
for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 7th day of  
September, 1988.

Debra J. Prince  
Notary Public

My Commission expires:  
(1100, R)



STATE OF ILLINOIS     )  
                                  ) SS  
COUNTY OF COOK        )

I, \_\_\_\_\_, a Notary Public  
in and for said County, in the State aforesaid, do hereby certify  
that \_\_\_\_\_,  
President and \_\_\_\_\_,  
Secretary of \_\_\_\_\_ as Trustee under  
Trust Agreement dated and known as Trust Number \_\_\_\_\_, a  
Bank organized and existing under the laws of the  
\_\_\_\_\_ and personally known to me  
to be the same persons whose names are subscribed to the forego-  
ing instrument, appeared before me this day in person and being  
\_\_\_\_\_ President and \_\_\_\_\_ Secretary,  
they signed and delivered the said instrument as their own free  
and voluntary act and as the free and voluntary act of said Bank  
for the uses and purposes therein set forth; and the said  
\_\_\_\_\_ Secretary, as custodian of the corpo-  
rate seal of said Bank caused the corporate seal of said Bank to  
be affixed to said instrument as said \_\_\_\_\_ Secre-  
tary's own free and voluntary act and as the free and voluntary  
act of said Bank for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this \_\_\_\_ day of  
\_\_\_\_\_, 1988.

\_\_\_\_\_  
Notary Public

(SEAL)

My Commission expires: \_\_\_\_\_

(1100/K)

**Exhibit A.**

***Legal Description Of Redevelopment Site.***

**The South 10 acres (except the East 370 feet as measured at right angles to the East line) of the East 1/2 of the Southeast 1/4 of Section 33, Township 38 North, Range 14, East of the Third Principal Meridian, excepting that part of aforesaid 10 acres taken for Public Street, recorded May 22, 1916 as document 5837765, in Cook County, Illinois.**

**The South 300 feet of the North 25 acres of the South 35 acres of the East 1/2 of the Southeast 1/4 of Section 33, Township 38 North, Range 14, East of the Third Principal Meridian lying West of a line that is 370 feet (measured perpendicularly) West of and parallel to the East line of said Section 33, in Cook County, Illinois.**

**The South 51.50 feet of the West 450.00 feet of the South 351.00 feet of the North 25 acres of the South 35 acres of the East 1/2 of the Southeast 1/4 of Section 33, Township 38 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.**

*Exhibit B.*

*Legal Description Of Redevelopment Project Area.*

**Parcel I.**

That Part Of The South 35.00 Acres (Except The East 304 Feet As Measured At Right Angles To The East Line Thereof) Of The East 1/2 Of The Southeast 1/4 Of Section 33, Township 38 North, Range 14 East Of The Third Principal Meridian In Cook County, Illinois, Lying South Of The Following Described Line:

Commencing At A Point In The East Line Of The Aforesaid South East 1/4 That Is 629.10 Feet North Of The South East Corner Of The Aforesaid Section 33; Thence West In A Line Parallel To The South Line Of The Aforesaid South East 1/4 (Being The North Line Of The South 300 Feet Of The North 25.00 Acres Of The Said South 35 Acres) To A Point That Is 450.00 Feet East Of The West Line Of The Aforesaid East Half Of The South East 1/4; Thence North On A Line At A Right Angle To The Last Described Line A Distance Of 51.5 Feet; Thence West On A Line At A Right Angle To The Last Described Line And Parallel To The South Line Of The Aforesaid South East 1/4 A Distance Of 450.00 Feet More Or Less To The West Line Of The East 1/2 Of The Southeast Quarter Of Said Section 33, Including That Part Falling In West 87th Street.

**Parcel II.**

That Part Of The Northeast Quarter And The East 1/2 Of The Northwest 1/4 Of Section 4, Township 37 North, Range 14 East Of The Third Principal Meridian In Cook County, Illinois Lying Northerly Of The Southerly Line, And Said Southerly Line Extended, Of West 87th Street, West Of A Line 304 Feet (Measured At Right Angles Thereto) West Of The East Line Of Said Northeast 1/4 Section And East Of The West Line Of Parnell Avenue.

**Parcel III.**

That Part Of The West 1/2 Of The Southeast 1/4 Of Section 33, Township 38 North, Range 14 East Of The Third Principal Meridian, In Cook County, Illinois Lying South Of The South Line, And Said South Line Extended West, Of Lots 4 And 14 In Seymour Estate Subdivision (A Subdivision Of The West 1/2 Of The Said Southeast Quarter) And Including 87th Street And Holland Road Falling Within, Excepting Therefrom That Portion Of The Above Described Land Lying South And Adjoining Lots 4 And 14 In Said Seymour Estate Subdivision Bounded As Follows: Commencing On A Point On The Center Line Of South Stewart Avenue Extended Southerly, Which Point Is Also On The Southerly Line Of Said Lot 4, Extended Westerly; Thence Easterly Along Said Extended Line And The Southerly Lines Of Said Lots 4 And 14, 815 Feet, More Or Less; Thence Southerly At Right Angles To The Last Described Line 125 Feet, More Or Less; Thence Westerly On A Line Parallel To The Southerly Line Of Said Lots 4 And 14, A Distance Of 500 Feet; Thence Southerly On A Line At Right Angles To The Last Described Line, A Distance Of 625.00 Feet; Thence Westerly On A Line Parallel To The Southerly Line Of Said Lots 4 And 14, 312.50 Feet More Or Less To A Point On The Easterly Boundary Line Of The C.&W.I. Railroad Right-Of-Way; Thence Northwesterly Along Said Line Until Intersecting With The Line Of The Center Line Of South Stewart Avenue Extended Southerly; Thence Northerly Until Reaching The Point Of Beginning.

**Parcel IV.**

That Part Of The East 1/2 Of The West 1/2 Of Section 33, Township 38 North, Range 14 East Of The Third Principal Meridian In Cook County, Illinois Lying Southwesterly Of The Northerly Line Of 83rd Street, And Said Northerly Line Extended Northwesterly To The Westerly Line Of Vincennes Avenue And Southeasterly Of The Westerly Line Of Vincennes Avenue, (Excepting Thereof Those Parts Falling In Blocks 1 And 3 Of William O. Cole's South Englewood Park Subdivision, A Subdivision Of That Part Of South Englewood Known On The Original Plat As Steven A. Newman's Private Grounds In The East 1/2 Of The Southwest 1/4 Of Said Section Recorded September 11, 1873, Book 5, Page 99 And Block 17 Of The Plat Of Part Of South Englewood, A Subdivision Of That Portion Of Said Section, Which Lies West And Southwest Of Holland Settlement Road And South And Southeast Of Vincennes Avenue And East Of The Center Line Of The C.R.I. & P.R.R. Recorded January 16, 1873, Book 3, Page 80, And Those Parts Of 85th Street, 86th Street And 87th Street Which Lie West Of The West Line, And Said West Line Extended, Of Parnell Avenue), Including Those Parts Falling In 83rd Street, 84th Street, 87th Street And Vincennes Avenue, And Including All Those Other Streets And Alleys, Dedicated Or Otherwise, Falling Within Said Land Or Which May Revert To The Public In The Future: But Excepting Therefrom The Parcel Of Land Bounded As Follows: By The Easterly Boundary Line Of The C&W.I. Railroad Right-Of-Way, The Northerly Line Of South Vincennes Avenue, The Northerly Line of West 83rd Street And The Westerly Line Of South Stewart Avenue, (Consisting Of Approximately 8.2206 Acres, More Or Less).

EXHIBIT C  
TIF IMPROVEMENTS TO BE COMPLETED BY DEVELOPER

PART I

1. Building	\$1,115,000
2. Site Improvements	1,509,886
(a) Demolition	
(b) Clear & remove infrastructure	
(c) Grading	
3. Relocate electric utility lines	396,114
electrical and lighting street repair	
side walks and curb cuts	
	<hr/>
	\$3,021,000

PART II

1. Architect & Engineer fees related to tax increment financing planning	61,600
2. Tax increment financing planning expenses	28,000
3. Tax increment financing legal expense pertaining to plan	38,000
4. Tax increment financing market study	<hr/> 2,800
	\$ 130,400

EXHIBIT D  
CITY TIF IMPROVEMENTS TO BE COMPLETED BY THE CITY

Traffic signal

\$100,000

**Exhibit E.**

**Estimated Tax Revenue  
From The Property.**

<b>Year</b>	<b>Estimated Tax Revenues</b>
1990 (1)	\$555,246 (2)
1991	555,246
1992	555,246
1993	555,246
1994	555,246
1995	555,246
1996	555,246
1997	555,246
1998	555,246
1999	555,246
2000	555,246
2001	555,246
2002	555,246
2003	555,246
2004	555,246
2005	555,246
2006	555,246
2007	555,246



## Exhibit F

### Detailed Description Of Project

The Chatham Ridge Community Shopping Center is a multitenant retail shopping center to be located on the south side of Chicago at 87th and the Dan Ryan Expressway at the southwest corner of 87th Street and Lafayette Street. The site will consist primarily of a primary structure containing approximately 153,000 square feet of gross leaseable area, approximately 6 outlot buildings containing approximately 33,000 square feet of gross leaseable area and parking for approximately 700 cars. The shopping center will accommodate approximately thirty (30) retailers, both nationally and locally based.

The Center is scheduled to open in the Fall of 1989. Development of the shopping center will provide approximately 225 construction jobs and an additional 450 jobs at the retail service level.

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

- Par
- § 10-1 Short title.
  - § 10-2 Additional powers and duties.
  - § 10-3. Purchase orders and contracts—Competitive bids.
  - § 10-4 Contracts not requiring competitive bids.
  - § 10-5 Emergency contracts.
  - § 10-6 Requisition agents.
  - § 10-7 Advertisements for bids—Deposits.
  - § 10-8 Collusion among bidders and disclosures—Prohibition
  - § 10-9 Opening of bids.
  - § 10-10 Awarding of contracts—Filing of purchase order or contract—Public inspection.
  - § 10-11 Responsibility of bidders—Determination.
  - § 10-12 Rejection of bids.
  - § 10-13 Bonds of bidders.
  - § 10-14 Assignment of contracts.
  - § 10-15 Purchasing agents—Tenure—Removal—Salary—Bond—Exemption from civil service.
  - § 10-16 Purchasing agent—Powers and duties.
  - § 10-17 Revolving fund—Pecuniary interest in contracts—Penalty.
  - § 10-18 Purchasing agent—Execution of contracts.
  - § 10-19 Board of standardization—Powers and duties
  - § 10-20 Ordinances—Adoption and publication.
  - § 10-21 Contracts executed in violation of this division—Effect.
  - § 10-22 Local improvement contracts.
  - § 10-23 Audits of expenditures—Reports.
  - § 10-24 Specifications relating to construction, alteration, rehabilitation or repair of realty—Preparation—Approval—Modification.

**§ 10-1. Short title**

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

**§ 10-2. Additional powers and duties**

§ 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 privi-

leges and shall be subject to the duties and obligations conferred thereon by this Division 10

**§ 10-3. Purchase orders and contracts—Competitive bids**

§ 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>

Amended by P.A. 81-1376, § 1, eff. Aug. 9, 1980.

<sup>1</sup> Chapter 29, § 36 et seq.

**§ 10-4. Contracts not requiring competitive bids**

§ 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 sys-

**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.

Amended by P.A. 81-1376, § 1, eff. Aug. 9, 1980.

**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.

**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 quantity of the services, supplies, materials, equipment or labor does not conform to requirements or if the public interest may otherwise be served thereby.

**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.

Amended by P.A. 81-1376, § 1, eff. Aug. 9, 1980.

**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 success-

ful 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.

Amended by Laws 1967, p. 3599, eff. Sept. 5, 1967.

**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, 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.

Paragraph 10-1-1 et seq. of this chapter

**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.

Amended by Laws 1967, p. 3599, eff. Sept. 5, 1967.

#### 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.

Amended by P.A. 77-2500, § 1, eff. Jan. 1, 1973.

#### 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.

#### 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 employes of the municipality but only those such members who are not officers or employes 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.

Amended by Laws 1967, p. 3599, eff. Sept. 5, 1967.

#### 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.

#### 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.

#### 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>

<sup>1</sup> Paragraph 9-2-1 et seq. of this chapter

#### 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.

#### 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

tem, 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.

Amended by Laws 1967, p. 3599, eff. Sept. 5, 1967.

#### 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.

Amended by P.A. 81-1376, § 1, eff. Aug. 9, 1980.

#### 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.

Amended by P.A. 81-1376, § 1, eff. Aug. 9, 1980.

#### 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 general 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 or a comptroller's certificate of moneys owed the particular vendor, 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.

Amended by P.A. 81-1376, § 1, eff. Aug. 9, 1980.

#### 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.

#### 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.

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.

Added by Laws 1967, p. 3599, eff. Sept. 5, 1967.

#### DIVISION 11. CERTAIN REVENUE TAXES

Par.

- §-11-1. Municipal Retailers' Occupation Tax Act.
- §-11-2. Taxation of occupations or privileges.
- §-11-3. Cigarette tax.
- §-11-4. Motor vehicle tax.
- §-11-5. Municipal Service Occupation Tax Act.
- §-11-6. Municipal Use Tax Act.
- §-11-7. Municipal Automobile Renting Occupation Tax Act.
- §-11-8. Municipal Automobile Renting Use Tax Act.
- §-11-9. Replacement vehicle tax.
- §-11-9. Quarterly tax report—Contents.
- §-11-10. Repealed.
- §-11-11. Motor vehicle leasing tax.
- §-11-15. Motor fuel tax—Referendum—Liability.

#### §-11-1. Municipal Retailers' Occupation Tax Act

§ 8-11-1 The corporate authorities of a municipality may impose a tax upon all persons engaged in the business of selling tangible personal property at retail in the municipality at the rate of not to exceed  $\frac{3}{4}$  of 1% prior to October 1, 1969, and 1% commencing October 1, 1969, of the gross receipts from such sales made in the course of such business. The tax imposed by a municipality pursuant to this Section and all civil penalties that may be assessed as an incident thereof shall be collected and enforced by the State Department of Revenue. The certificate of registration which is issued by the Department to a retailer under the "Retailers' Occupation Tax Act", approved June 28, 1933, as amended,<sup>1</sup> shall permit such retailer to engage in a business which is taxable under any ordinance or resolution enacted pursuant to this Section without registering separately with the Department under such ordinance or resolution or under this Section. The Department shall have full power to administer and enforce this Section; to collect all taxes and penalties due hereunder; to dispose of taxes and penalties so collected in the manner hereinafter provided, and to determine all rights to credit memoranda, arising on account of the erroneous payment of tax or penalty hereunder. In the administration of, and compliance with, this Section, the Department and persons who are subject to this Section shall have the same rights, remedies, privileges, immunities, powers and duties, and be subject to the same conditions, restrictions, limitations, penalties and definitions of

terms, and employ the same modes of procedure, as are prescribed in Sections 1, 1a, 2<sup>2</sup> (in respect to all provisions therein other than the State rate of tax, and shall include exemptions (a-1), (a-2), (a-3), (d), (f) and (g) therein unless the corporate authorities provide otherwise by ordinance), 2c, 3<sup>3</sup> (except as to the disposition of taxes and penalties collected and except for the provision allowing retailers a deduction from the tax to cover certain costs), 4, 5, 5a, 5b, 5c, 5d, 5e, 5f, 5g, 5h, 5i, 5j, 6<sup>4</sup> (except that credit memoranda issued hereunder may not be used to discharge any State tax liability), 6a, 6b, 6c, 7, 8, 9, 10, 11, 12, 13 and 13 $\frac{1}{2}$  of the "Retailers' Occupation Tax Act", as the same are now or may hereafter be amended,<sup>5</sup> as fully as if provisions contained in those Sections of the "Retailers' Occupation Tax Act" were set forth herein.

The exemption provided for in Sections 1d, 1e and 1f of the "Retailers' Occupation Tax Act", as now or hereafter amended,<sup>6</sup> shall be applicable to the tax imposed by this Section, as fully as if the provisions contained in those Sections of the "Retailers' Occupation Tax Act" were set forth herein, except that the corporate authorities shall determine which officer shall certify whether a business enterprise meets the criteria specified in Section 1f of that Act; provided further, the corporate authorities must adopt an ordinance authorizing such exemption, and provided further, the corporate authorities shall determine the period during which such exemption from the taxes imposed under this Section is in effect, which shall not exceed 20 years.

The Department of Commerce and Community Affairs shall have no power to certify the eligibility of a business enterprise for the exemption from the tax imposed by this Section; nor shall the Department of Commerce and Community Affairs have power to determine the length of the exemption.

Upon adoption of the local ordinance granting the exemption, the municipal clerk shall transmit a certified copy of such ordinance to the Department of Revenue.

Persons subject to any tax imposed pursuant to the authority granted in this Section may reimburse themselves for their seller's tax liability hereunder by separately stating such tax as an additional charge, which charge may be stated in combination, in a single amount, with State tax which sellers are required to collect under the "Use Tax Act",<sup>7</sup> pursuant to such bracket schedules as the Department may prescribe.

Whenever the Department determines that a refund should be made under this Section to a claimant instead of issuing a credit memorandum, the Department shall notify the State Comptroller, who shall cause the order to be drawn for the amount specified, and to the person named, in such notification from the Department. Such refund shall be paid by the State Treasurer out of the municipal retailers' occupation tax fund.

With respect to amounts paid by users to reimburse Illinois retailers for municipal retailers' occupation tax and refunded by the Department to such users pursuant to the authority granted by "An Act authorizing the Department of Revenue to make certain refunds, and making an appropriation in connection therewith", enacted by the 77th General Assembly,<sup>8</sup> the Department shall determine how much is chargeable to each municipality and shall deduct the appropriate amount so determined from each such municipality's municipal retailers' occupation tax distribution or distributions from the municipal retailers' occupation tax fund, and shall have all amounts so deducted

500,000 shall become indebted in any manner or for any purpose, to an amount, including existing indebtedness in the aggregate exceeding 8.625% on the value of the taxable property therein, to be ascertained by the last assessment for state and county purposes, previous to the incurring of the indebtedness or, until January 1, 1963, if greater, the sum that is produced by multiplying the municipality's 1978 equalized assessed valuation by the debt limitation percentage in effect on January 1, 1979.

The indebtedness limitation set forth in this Section may be inapplicable to indebtedness incurred for the purpose of pumping water from Lake Michigan to one or more municipalities having a population of less than 500,000, whether before or after such indebtedness is incurred, if the majority of voters in such municipality approve such inapplicability at an election on the issue held in accordance with the general election law. The governing authority of any such municipality may, by proper ordinance or resolution, cause the proposition of the inapplicability of the limitation of indebtedness set forth in this Section to the indebtedness incurred for such purpose to be certified to the proper election authorities and submitted to the voters of the municipality at a regularly scheduled election in accordance with the general election law. If a majority of the votes cast on the proposition are in favor thereof, indebtedness incurred for the purpose of pumping water from Lake Michigan to one or more municipalities shall not be subject to the limitation set forth in this Section.

The indebtedness limitation set forth in this Section shall not apply to any indebtedness of any municipality incurred to finance the cost of the acquisition, construction or improvement of water or wastewater treatment facilities mandated by a compliance order issued by the United States Environmental Protection Agency or the Illinois Pollution Control Board.

Any village or incorporated town may provide by resolution, and any city may provide by ordinance, for the taking of a census of the population thereof in order to determine the number of that population for any purpose of this Division 5. The courts in this state shall take judicial notice of the population of any municipality as it appears from the latest municipal census so taken. However, no municipal census shall be taken by the authority of this section, oftener than once in 3 years.

The amendatory Act of 1978 is not a limit upon any municipality which is a home rule unit.

Amended by P.A. 84-1227, § 1, eff. July 24, 1986.

P.A. 84-1227 incorporated the amendment by P.A. 84-708 and P.A. 84-967 (see § 8-5-1, Ill. Rev. Stat. 1985).

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

Par.

8-10-7. Advertisements for bids—Deposits.

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 general 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 excepted.

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.

Amended by P.A. 84-1269, § 1, eff. Aug. 11, 1986.

**DIVISION 11. CERTAIN REVENUE TAXES**

Par.

8-11-1. Municipal Retailers' Occupation Tax Act.

8-11-2. Taxation of occupations or privileges.

8-11-5. Municipal Service Occupation Tax Act.

8-11-6. Municipal Use Tax Act.

8-11-1. Municipal Retailers' Occupation Tax Act

§ 8-11-1. The corporate authorities of a municipality may impose a tax upon all persons engaged in the business of selling tangible personal property at retail in the municipality at the rate of not to exceed 1/2% of 1% prior to October 1, 1969, and 1% commencing October 1, 1969, of the gross receipts from such sales made in the course of such business. The tax imposed by a municipality pursuant to this Section and all civil penalties that may be assessed as an incident thereof shall be collected and enforced by the State Department of Revenue. The certificate of registration which is issued by the Department to a retailer under the "Retailers' Occupation Tax Act", approved June 28, 1933, as amended, shall permit such retailer to engage in a business which is taxable under this ordinance or resolution enacted pursuant to this Section without registering separately with the Department under such ordinance or resolution or under this Section. The Department shall have full power to administer and enforce this Section; to collect all taxes and penalties hereunder; to dispose of taxes and penalties so collected in the manner hereinafter provided, and to determine all rights to credit memoranda, arising on account of the erroneous payment of tax or penalty hereunder. In the administration of, and compliance with, this Section, the Department and persons who are subject to this Section shall have the same rights, remedies, privileges, immunities, powers and duties, and be subject to the same conditions, restrictions, limitations, penalties and definitions of

MEMORANDUM

**TO:** Susan Lopez  
Assistant Corporation Counsel  
Finance & Economic Development Division

**FROM:** Kim M. Megaro  
Kim M. Megaro  
Deputy Purchasing Agent

**RE:** Standard Requirements for Demolition Contracts

**DATE:** July 27, 1988

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Per your request, enclosed are several form documents which are included in the City's standard contract package for demolition work. These documents include Instructions to Bidders, the Executive Order 85-2 MBE/WBE Compliance documents, Anti-Apartheid affidavit and Disclosure of Ownership Interest forms.

In addition to these requirements, it is a requirement that the appropriate wrecking bonds and insurance certificates are on file with the Department of Inspectional Services prior to the award of a contract. DIS's guidelines are attached hereto for your information.

If you require any further information, please contact me or Michael Kincaid (extension 9767), the contract administrator who handles the City's demolition contracts.

KMM/jl

cc: Paul Spieles  
Michael Kincaid





October 22, 1987

**MEMORANDUM:**

**TO:** Mr. John P. Noonan,  
Director of Conservation

**FROM:** Mr. Mel Hopkins,  
Director of Demolition

**RE:** Bond and Insurance Requirements for Wrecking Contractors  
Doing Business in the City of Chicago

All Wrecking Contractors are required to have proper Bond and Insurance on file with the Department of Inspectional Services, Demolition Bureau.

Bonds must be submitted and approved each year. \$20,000.00 Bond will allow the demolition of a building up to and including 3 stories. \$40,000.00 Bond will allow wrecked to wreck all buildings.

Bond must be approved by the Office of the Corporation Counsel (Mary Richardson) then submitted to (Karla Deas, Room 803 - City Hall.)

Insurance Policies must be approved by Corporation Counsel Milton Gordon, then taken to the Risk Management Office, Lee Hartle for approval.

After approval of the above the approved copy of Policy is to be submitted to the Demolition Bureau, Room 905 - City Hall, for their files.

Insurance Coverage no less than Public Liability \$250,000.00 with \$500,000.00 aggregate. Property damage \$100,000.00 with \$300,000.00 aggregate. Although this has now been changed by Mr. Gordon to \$1,000,000.00 coverage with \$1,000,000.00 aggregate.

Insurance Policies must also show in compliance with Chicago Zoning Ordinance of Municipal Code, Chapter 43 as published August 30, 1972, page 3665 Journal Proceedings.

Also all Insurance Policies must show City of Chicago as additional insured.

MEL HOPKINS  
Director of Demolition

MH/pmf

## DETAILED SPECIFICATIONS

### 1. SPECIAL REQUIREMENTS

- A. Record of an approved Surety Bond (Wrecker's Bond) and Comprehensive Public Liability and Property Damage Insurance, as required by Chapter 43, Section 43-20, Municipal code of Chicago, must be on file with the Department of Inspectional Service Prior to award of contract.
- B. Part II of the Demolition Specifications is an integral part of this Contract Document and, if copy of same is not in your possession, it can be obtained in Room 401, City Hall - Chicago, Illinois.
- C. All demolition work performed for the City of Chicago must be in accord with form C.P. 32 and Special Conditions of Part I and Detailed Specifications and Special Conditions of Part II.

### 2. EXCAVATION

There is to be No Excavation work done on any part of a lot where a contract has been let for Demolition of a Building, nor will any excavation be allowed on adjoining or nearby lots.

The building(s) under contract is to be Demolished, debris removed from the site, basement area to be cleaned of all debris and after site has been inspected (Called In) the basement area is to be filled in accordance with existing specifications and leveled to existing grade.

### SPECIAL SPECIFICATIONS FOR DEPRESSED LOTS

Specifications for installation of chain link fence, or equivalent, to be erected at from sidewalk where demolition occurs at depressed lot. Fence to be used in lieu of use of slop fill. Use of fence to be specified on request on request for bids and usage to be allowed only at discretion of the Inspectional Services Departments, and only where usage of fill is not feasible.

### MATERIAL

- 9 gauge galvanized mesh, new or equivalent
- 2 1/2" outside dimension end posts, new or equivalent
- 2" outside dimension line (intermediate) posts, new or equivalent
- 1 3/4" outside dimension top and bottom rails, new or equivalent
- 9 gauge ties
- Required fittings for proper installation of above.

### METHOD

Posts are to be set at a depth of no less than 29" below ground level and anchored in concrete to full depth.

Posts are to be of sufficient length to extend from proper depth below grade to approximately 37" above surface of existing of existing sidewalk or extended sufficiently enough to insure proper installation of mesh and top and bottom rails. Posts will be properly capped.

## DETAILED SPECIFICATIONS

### METHOD (CONT'D)

End and line posts will be evenly spaced at a distance of no greater than 10 0" apart, center to center. Posts will be strapped or affixed to the existing sidewalk in an approved manner when necessary to insure required stability to fence.

Fence shall be erected with top and bottom rails of 1-3/8" outside diameter and ties securing the mesh to the rails will be spaced at a distance of no greater than 2 at the bottom and 2 6" at the top. Top and bottom rails will be secured with proper fittings to corner and intermediate posts.

In the event used materials are installed in lieu of new materials, the used materials are to be free of rust and in no way deformed. If slight rusting is evident, usage is permissible only if mesh and structural elements are painted with aluminum paint. Painting to be done in a workmanlike manner.

In all cases, the mesh will be erected with the finished or smooth edge upward.

# 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

A proposal shall, when required in the advertisement, be accompanied by bid bond, cashier's check, certified check, or Comptroller's Certificate of moneys owed the

particular vendor, 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.

All certified or cashier's 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.

Any proposal submitted without being accompanied by any of the foregoing when required may be considered informal and be rejected. Any proposal accompanied by a bid deposit not properly executed in the opinion of the Purchasing Agent may be rejected.

### 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 the 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" 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. 1971.

### 6. SUBMISSION OF PROPOSALS

All prospective bidders shall submit sealed proposals in TRIPLICATE in envelopes provided for that purpose in the office of the Purchasing Agent, Room 401, City Hall, and if proposals are submitted in envelopes other than

## REQUIREMENTS FOR BIDDING AND INSTRUCTIONS FOR BIDDERS

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 considered and will be returned unopened.

### 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) 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 48 hours 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.

### 10. ACCEPTANCE OF PROPOSALS

The Purchasing Agent will accept in writing one of the proposals or reject all proposals, within sixty (60) days, or within ninety (90) 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 after acceptance of the bidders' proposal by 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. 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 after acceptance of the bidder's proposal by the City, then the bid deposit of the bidder, or the amount of the Comptroller's Certificate, as the case may be, 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 any 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 provided on proposal page. Oral explanations will not be binding.

## REQUIREMENTS FOR BIDDING AND INSTRUCTIONS FOR BIDDERS

### 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.

The reference to the above catalog is intended to be descriptive but not restrictive and only to indicate to the prospective bidder articles 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 article 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 article 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 within twenty (20) calendar days after the opening of bids. 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 proposal has been accepted by the City and the acceptance by the City of satisfactory performance bond 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 January first (1st) of the current year. 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 401, City Hall, Chicago, Illinois 60602.

# GENERAL CONDITIONS

## 1. NON-DISCRIMINATION

Contractor, in performing under this contract, shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, creed, color, religion, age, sex or national origin, nor otherwise commit an unfair employment practice. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, creed, color, religion, age, sex or national origin. 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. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause. Contractor further agrees that this clause will be incorporated in all contracts entered into with suppliers of materials or services, contractors and subcontractors and all labor organizations, furnishing skilled, unskilled and craft union skilled labor, or who may perform any such labor or services in connection with this contract.

Attention is called to Executive Order 11246 issued September 24, 1965, 3 CFR, 1964-65 Compilation p. 399, as modified by Executive Order 11375 issued October 13, 1967, 3 CFR, 1967 Compilation, p. 320; The Civil Rights Act of 1964, Pub. L. 88-352, July 2, 1964, 78 Stat. 241 et sub.; to the State Acts approved July 28, 1961, Ill. Rev. Stat. 1971, Ch. 38, Secs 13-1 to 13-4 inclusive; July 8, 1933, Ill. Rev. Stat. 1971, Ch. 29 Secs. 17 to 24 inclusive; July 21, 1961, Ill. Rev. Stat. 1971 Ch. 48 Secs. 851 to 866 inclusive, and July 26, 1967, Ill. Rev. Stat. 1971, Ch. 48, Secs. 881 to 887; an ordinance passed by the City Council of the City of Chicago, August 21, 1945, page 3877 of the Journal of Proceedings (Mun. Code of the City of Chicago, Ch. 198.7A); and the provisions of 41 CFR Chapter 60.

To demonstrate compliance the Contractor and subcontractors will furnish such reports and information as requested by the Chicago Commission on Human Relations.

## 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. 1971.

## 4. WAGES

The Contractor shall comply with "AN ACT regulating wages of laborers, mechanics and other workmen employed under contract for public works," approved June 26, 1941, as amended. Attention is called to Chapter 48, Section 39a, Ill. Rev. Stats. 1971, regarding "General Prevailing Hourly Rates."

## 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.

## 6. 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.

## 7. 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

# GENERAL CONDITIONS

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.

## 8. SUPERINTENDENCE

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

## 9. 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.

## 10. 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.

## 11. 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.

## 12. 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 if requested by the Purchasing Agent to furnish certificates of any or all insurance policies listing the City as a co-insured thereunder within five days after award of contract.

## 13. 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.

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.

All partial payment estimates shall be subject to correction by the final estimate.

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



## GENERAL CONDITIONS

payments made on the contract until subcontractors, workmen and employees have been paid, and the Contractor shall neglect or refuse for the space 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 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.

### 14. 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.

### 15. 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 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 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.

### 16. 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

# GENERAL CONDITIONS

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.

## 17. 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 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 monies 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.

## 18. 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.

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

Contractor, in performing under this contract shall comply with the Municipal Code of Chicago, Chapter 26 Section 26-26, 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 other public entity, in that officer or employee's official capacity; nor (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. Ineligibility under this section shall continue for three years following such conviction or admission.

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.

## SPECIAL CONDITIONS

### REVISIONS OF REQUIREMENTS FOR BIDDING AND INSTRUCTIONS TO BIDDERS

Delete paragraph 4 titled Bid Deposit from the General Conditions and add the following:

#### 1. REQUIREMENT FOR BID DEPOSIT

Bid deposit shall be required for all competitive sealed bidding for contracts when required in the 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, certified check, or Comptroller's Certificate of monies owed the particular vendor. All certified or cashier's 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 is not an acceptable form of bid deposit.

#### 2. AMOUNT OF BID DEPOSIT

Bid deposit 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 or the bid security 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.

#### 3. REJECTION OF BIDS FOR NONCOMPLIANCE WITH BID DEPOSIT REQUIREMENTS

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.

#### 4. WITHDRAWAL OF BIDS

After the bids are opened, they shall be irrevocable for the period specified in the Invitation for Bids. If a bidder is permitted to withdraw its bid before award, no action shall be had against the bidder or the bid deposit.

##### A. Page R-2, Article 6, SUBMISSION OF PROPOSALS, delete:

"sealed proposals in TRIPLICATE,"  
in first line and replace with:

"only one copy of Part I and any supplement thereto for bidding purposes on demolition work for the City of Chicago.

**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 Minority Business Enterprises (MBE) and Women Business Enterprises (WBE) as defined in City of Chicago Executive Order 85-2 and Regulations Governing Certification of Minority and Women-owned Businesses shall have the maximum opportunity to participate fully in the performance of contracts financed under this agreement.

B. Accordingly, the contractor agrees to expend not less than 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:

MBE participation goal: 25%  
WBE participation goal: 5%

C. This commitment may be met by the contractor's status as a MBE or WBE, or by a joint venture with one or more MBEs or WBEs, 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 any combination of the foregoing.

D. The contractor may also 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, the contractor shall, in determining the manner of MBE/WBE participation, first consider involvement of MBE/WBE firms 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 MBE and WBE firms directly in the performance of this contract.

**II. Definitions**

A. "Minority Business Enterprise" or "MBE" means a firm awarded certification as a minority owned and controlled business in accordance with City Regulations.

B. "Women Business Enterprise" or "WBE" means a firm awarded certification as a women owned and controlled business in accordance with City Regulations.

(Copies of the Regulations Governing Certification of Minority and Women-owned Businesses are available from the Department of Purchases, Room 401, 121 N. LaSalle Street, Chicago, Illinois 60602).

C. "Directory" means the Directory of Certified "Disadvantaged Business Enterprises" "Minority Business Enterprises" and "Women Business Enterprises" maintained and published by the Department of Purchases. 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 their 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 Department of Purchases 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 MBE/WBE firms 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 MBE/WBE firms or between 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.

### 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.

C. The participation of MBE and WBE firms who have been certified as "brokers" shall be credited at a rate equal to no more than twenty percent (20%) of the actual dollar value of the goods and/or services "brokered" by the MBE or WBE firm. The Purchasing Agent reserves the right to grant credit for the participation of MBE and WBE brokers at rates of less than twenty percent (20%) 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 twenty percent (20%) 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. 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. 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 MBE/WBE firms as joint venture partners shall be based upon a detailed 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 of loss and management control over the joint venture that is not commensurate with or in proportion to its joint venture ownership.

#### IV. Grant of Relief for Bidders: Waiver of MBE/WBE Goals

A. If a bidder or proposer finds it impossible to fully meet the MBE goal and/or WBE goal of this contract, the bid or proposal must include a signed petition for grant of relief from this Special Condition on bidder or proposer's letterhead, accompanied by documentation showing that all reasonable good faith efforts were made toward fulfilling the goal.

B. The bidder or proposer requesting a waiver or variance of the MBE/WBE goals should generally demonstrate the following in its petition:

- (1) Evidence of direct negotiations with MBE/WBE firms including, at a minimum (i) the names, addresses and telephone numbers of MBE/WBE contacts; (ii) a description of the information provided to the MBE/WBE firms regarding potential work to be performed; and (iii) a statement indicating why negotiations failed to result in any agreement;
- (2) A detailed statement of the efforts made to identify and select portions of direct contract work to be performed by MBE/WBE firms;
- (3) A detailed statement of the efforts made to identify opportunities for MBE and WBE firms to perform work for the bidder/proposer where such MBE/WBE contracting would not directly relate to the performance of this contract;
- (4) Evidence of the bidder/proposer's general affirmative policies regarding the utilization of MBE/WBE firms, including an exposition of the methods used to carry out these policies; and
- (5) Evidence of the bidder/proposer's past performance with regard to the participation of MBE and WBE firms in City of Chicago contracts and in proportion with the bidder/proposer's overall expenditures for goods and services.

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

## 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.** (1). A Schedule C-1, executed by the MBE/WBE firm (or Joint Venture Subcontractor) must be submitted by the bidder for each MBE/WBE included on their Schedule D-1 and must accurately detail the work to be performed by the MBE/WBE firm and the agreed rates and prices to be paid.

(2). If any fully complete and executed Schedule C-1 is not or cannot be submitted with the bid, it must be received by the Contract Administrator within three (3) business days after the date of the bid opening. (All post bid submissions must be in triplicate with original signatures on all documents). Failure to submit completed Schedule C-1s in accordance with this section will be cause for finding bid/proposal non-responsive and may result in rejection of bid/proposal.

**B. Letters of Certification.** (1). 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.

(2). All Letters of Certification are dated and are valid for one year from date of issue by the City.

(3). 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.** (1). If the bidder's MBE/WBE proposal includes the participation of MBE/WBE firm as joint venture on any tier (either as the bidder or as a subcontractor), bidder must provide a copy of the joint venture agreement.

(2). 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 firm; (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. Schedule D-1: Affidavit of Prime Contractor Regarding DBE/MBE/WBE.** (1). Bidders must submit, together with the bid, a completed Schedule D-1 committing them to the utilization of each listed MBE/WBE firm.

(2). Except in cases where the bidder has submitted a complete request for a waiver or variance of the MBE/WBE goals in accordance with Section IV herein, the bidder 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 MBE firms 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.

(3). All commitments made by the bidder's Schedule D-1 must conform to those presented in the submitted Schedule C-1s. Where Schedule C-1s will be submitted after the bid opening (See Section

V., A. above), the bidder may submit a revised Schedule D-1 (executed and notarized in triplicate) to conform with the Schedule C-1s. Except in cases where substantial and documented justification is provided, bidders will not be allowed to reduce the dollar commitment made to any MBE or WBE in order to achieve conformity between the Schedules C-1 and D-1.

## VI. Reporting Requirements During The Term of The Contract

A. The Contractor shall, within thirty days of receiving the awarded contract, execute formal contracts or purchase orders with the MBE and WBE firms included in their approved MBE/WBE Utilization Plan. These written agreements shall be made available to the Purchasing Agent upon request.

B. During the term of annual contracts (i.e. term agreements), 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.

C. In the case of one time procurements with either single or multiple deliveries, a "MBE/WBE Utilization Report," indicating final MBE and WBE payments shall be submitted directly to the Department of Purchases 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.")

D. "MBE/WBE Utilization Reports" are to be submitted directly to: Department of Purchases, Division of Contract Monitoring and Compliance, City Hall, Room 400, 121 N. LaSalle Street, Chicago, Illinois 60602.

## VII. MBE/WBE Substitutions

A. Arbitrary changes by the Contractor of the commitments earlier certified in the Schedule D-1 are prohibited. Further, after once entering into each approved MBE and WBE subagreement, the Contractor shall thereafter neither terminate the subagreement, nor reduce the scope of the work to be performed by the MBE/WBE, nor decrease the price to the MBE/WBE, without in each instance receiving the prior written approval of the Purchasing Agent.

B. In some cases, however, it may become necessary to substitute a new MBE or WBE in order actually to fulfill the MBE/WBE requirements. In such cases, the Purchasing Agent must be given reasons justifying the release by the City of prior specific MBE/WBE commitments established in the Contractor's bid proposal. The substitution procedure will be as follows:

- (1) The Contractor must notify the Purchasing Agent immediately in writing of an apparent necessity to reduce or terminate a MBE/WBE subcontract and to propose a substitute firm for some phase of work, if needed in order to sustain the fulfillment of the MBE/WBE contract goals.
- (2) The Contractor's notification should include the specific reasons for the proposed substitution. Stated reasons which would be acceptable include any of the following examples: A previously committed MBE/WBE was found not to be able to perform, or not to be able to perform on time; a committed MBE/WBE was found not to be able to produce acceptable work;



a committed MBE/WBE was discovered later to be not bona fide; a MBE/WBE previously committed at a given price later demands an unreasonable escalation of price.

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

- (3) The Contractor's notification should include the name, address, and principal official of any proposed substitute MBE/WBE and the dollar value and scope of work of the proposed subcontract. Attached should be all the same MBE/WBE affidavits and documents, which are required of bidders, as enumerated above in Section V., "Procedure to Determine Bid Compliance."
- (4) The City will evaluate the submitted documentation, and respond within 15 working days to the request for approval of a substitution. The response may be in the form of requesting more information, or requesting an interview to clarify or mediate the problem. In the case of an expressed emergency need to receive the necessary decision for the sake of job progress, the City will instead respond as soon as practicable.
- (5) Actual substitution of a replacement MBE/WBE to fulfill contract requirements should not be made before City approval is given of the substitute MBE/WBE. Once notified of City approval, the substitute MBE/WBE subcontract must be executed within five working days, and a copy of the MBE/WBE subcontract with signatures of both parties to the agreement should be submitted immediately to the City.

C. 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.

D. 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 "Grant of Relief for Bidders: Waiver of MBE/WBE Goals".

E. In a case where an enterprise under contract was previously considered to be a MBE/WBE but is later found not to be, or whose work is found not to be creditable toward MBE/WBE goals fully as planned, the City will consider the following special criteria in evaluating a waiver request:

- (1) Whether the prime contractor was reasonable in believing the enterprise was a MBE/WBE or that eligibility or "counting" standards were not being violated;
- (2) The adequacy of unsuccessful efforts taken to obtain a substitute MBE/WBE (as outlined in the section above entitled "Grant of Relief for Bidders: Waiver of MBE/WBE Goals").

F. The Purchasing Agent has sole authority regarding all matters of MBE/WBE compliance, including the granting of waivers or other relief to bidders.

## VIII. NON-COMPLIANCE AND LIQUIDATED DAMAGES

A. The Purchasing Agent shall have the discretion to apply suitable sanctions to the Contractor if the Contractor is found to be in non-compliance with the MBE/WBE requirements. Failure to comply with the MBE or WBE terms of this contract or failure to use MBEs /WBEs as stated in the Contractor's assurances constitutes a material breach of this contract, and may lead to the suspension or termination of this contract in part or in whole; furthermore, continued eligibility to enter into future contracting arrangements with the City may be jeopardized as a result of non-compliance. In some cases, payments may be withheld until corrective action is taken.

B. When work is completed, in the event that the City has determined that the Contractor was not compliant in the fulfillment of the required MBE/WBE goals, and a grant of relief of the requirements was not obtained, the City will thereby be damaged in the failure to provide the benefit of participation to minority or women business to the degree set forth in this Special Condition.

C. Therefore, in such case of non-compliance, the City will deduct as liquidated damages cumulative amounts computed as follows:

For each one percent (or fraction thereof) of shortfall toward the MBE goal or WBE goal, one percent of the base bid for this contract shall be surrendered by the contractor to City in payment as liquidated damages.

**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 dated \_\_\_\_\_.

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 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) or have had a complete application for MBE/WBE certification on file 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, first consider involvement with MBE/WBE firms as joint venture partners, subcontractors, and suppliers 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 Letter of Certification. (Certification of the bidder/proposer as a MBE satisfies the MBE goal 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 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.

**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 after bid 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 so 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 Amount of participation
_____	\$ _____	_____ %
_____	\$ _____	_____ %
_____	\$ _____	_____ %
_____	\$ _____	_____ %
_____	\$ _____	_____ %
<b>Total Direct MBE Participation:</b>	<b>\$ _____</b>	<b>_____ %</b>

**2. MBE Indirect Participation (from Section II.):**

<u>MBE Firm Name</u>	Dollar Amount of Participation	Percent Amount of participation
_____	\$ _____	_____ %
_____	\$ _____	_____ %
_____	\$ _____	_____ %
_____	\$ _____	_____ %
<b>Total Indirect MBE Participation:</b>	<b>\$ _____</b>	<b>_____ %</b>

**B. WBE Proposal:**

**1. WBE Direct Participation (from Section I.):**

<u>WBE Firm Name</u>	Dollar Amount of Participation	Percent Amount of participation
_____	\$ _____	_____ %
_____	\$ _____	_____ %
_____	\$ _____	_____ %
_____	\$ _____	_____ %
_____	\$ _____	_____ %
<b>Total Direct WBE Participation:</b>	<b>\$ _____</b>	<b>_____ %</b>

**2. WBE Indirect Participation (from Section II.):**

<u>WBE Firm Name</u>	Dollar Amount of Participation	Percent Amount of participation
_____	\$ _____	_____ %
_____	\$ _____	_____ %
_____	\$ _____	_____ %
_____	\$ _____	_____ %
<b>Total Indirect WBE Participation:</b>	<b>\$ _____</b>	<b>_____ %</b>

## MBE/WBE UTILIZATION REPORT

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 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 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)

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).

\_\_\_\_\_  
Signature of Notary Public

(Seal)

## DETAILED SPECIFICATIONS (CONT'D)

### TRAP DOORS, GRATINGS, ETC.

The Contractor shall remove all coal hole covers, trap doors, sidewalk lights, gratings, and similar appurtenances that occur in the public sidewalk adjacent to the buildings to be removed. The openings left in the sidewalks thereby shall be filled to within four (4) inches of the top of the adjoining sidewalk and covered with not less than four (4) inches of compacted gravel or granulated cinder fill graded and pitched to the elevation of the adjacent walks.

Frames for the aforesaid appurtenances shall be removed from the sidewalk area if the conditions of such frames is detrimental to the public safety. The Contractor shall not remove, damage or disturb the vaults or other appurtenances of private utilities.

### WATER CONNECTIONS

The Contractor shall order the water disconnected and pay for same, unless otherwise specified herein.

It will be the responsibility of the Contractor to determine how many water services are to be cut off. There is a separate charge for each service.

### SAFETY PRECAUTIONS

The Contractor shall avoid hazards to persons and property, and interference with the use of adjacent buildings or interruption of free passage to and from such buildings. Care shall also be taken to prevent the spread of dust and flying particles. After work is started on any building, the work on that building shall be continued to completion promptly and expeditiously. On completion of work at each building, premises shall be left in a condition satisfactory to the Commissioner. The cleaning up of the premises shall include the removal and disposal of any rubbish, refuse or other trash lying within the parcel areas, whether or not such conditions have resulted from operations under this contract.

### SEALING PERMITS

No buildings, structure or premise shall be wrecked or destroyed without prior notice thereof in writing being given to the Commissioner of Water and Sewers of the City of Chicago.

The Contractor shall obtain a sealing permit from the Bureau of Streets, Department of Water and Sewers, City of Chicago, prior to wrecking any building or structure. This permit shall serve as the notice immediately hereinabove required.

After the water to any particular building has been shut off by the Water Department, the Contractor shall locate, cut, flatten and crimp, as directed, the lead service line to that building. Also, the Contractor shall disconnect and seal in any approved manner the sewer outlet to each building.

## DETAIL SPECIFICATIONS (CONT'D)

### UTILITY SERVICE

Prior to the commencement of work on each building, the Contractor will check all utilities, including electric, telephone, water and gas service for shut off in accordance with the requirements and regulations of the City of Chicago and the utility companies. It shall be the responsibility of the Contractor to arrange for the disconnecting and/or removal of all utilities including sewer and water service. If any such utility is not shut off, the Contractor shall notify the Commissioner before starting work. Any damage to the utility services to remain shall be repaired at the expense of the Contractor.

### BURNING

The Contractor, his representative or employees shall not burn or cause to be burned, at any time, within the site of the work any paper, wood or other combustible refuse, waste or other material resulting from wrecking or other operation under this contract.

### USE OF EXPLOSIVES

The use of explosives in the performance of the work under this contract is prohibited.

### ARTISTIC AND HISTORICAL MATTER

Any and all matter on the site or contained on or in the structure scheduled for demolition that has artistic or historical significance shall remain the property of the department. The Commissioner or his duly authorized agent shall have the sole discretion in determining what is historical or artistic.

## SPECIAL CONDITIONS

### DAMAGE OR THEFT

It is expressly understood and agreed by the Contractor that the City does not assume any responsibility for any building or the contents thereof, including but not limited to salvageable furnishings fixtures or attachments of whatever kind or nature being in the same condition as existed at the time of advertising for bids or thereafter. City shall in any event not be liable to Contractor for any loss, destruction, theft or removal of any property from the premises; not shall Contractor be entitled to any allowance or other claim against the City should any of said acts occur.

### TIME OF PERFORMANCE

In as much as the City may not obtain demolition orders for all of the buildings listed in the Proposal Page, the "Notice to Proceed" in these cases will be delayed until the required court order is obtained.

Work shall start within ten (10) calendar days of the date of written notification to proceed by the Department of Buildings.

Work shall be completed not later than forty (40) calendar days after date of written notice to proceed from the Department of Buildings.

Under no condition, except emergency demolitions, shall the Contractor start demolition until he received his "Letter of Authorization" to proceed.

Under no condition, except emergency demolitions, shall work begin prior to obtaining the required permits. Emergency demolition permits must be obtained within (72) hours of the commencement time. Insurance certificates submitted for Emergency demolition permits must specify the commencement date.

Where an invitation to bid covers the demolition of several buildings at different addresses, each building will be considered as a separate entity and awarded as a separate contract unless otherwise stated.

### PENALTY

Failure to perform in accordance with the specifications is cause for disqualification on all pending and future City demolition work. Time is of the essence.

### CANCELLATION

The City shall have the right to cancel any contract awarded, on which demolition has not started if the court decree of demolition previously entered has been stayed or vacated by the courts. The City shall not be liable for cancellation of any demolition contract it awards if the building or structure is demolished or is being demolished under a contract by the owner or a third party.

Cancellation of any contract, because of court order or other reasons, on which authorized demolition has started, shall be permitted and all costs and expenses incurred by the Contractor shall be paid by the City, if liable, or by the defendant(s) if the court so orders.

SPECIAL CONDITIONS (CONT'D)

SUB-LETTING

The undersigned certifies that this work will not be sublet to others, and that he will perform the entire work with his own forces.

SPECIAL CONDITIONS (CONT'D)

EQUAL EMPLOYMENT OPPORTUNITY (IF CONTRACT COST IS LESS THAN \$10,000)

During the performance of this contract,  
the Contractor agrees as follows:

- a. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color or national origin. The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the municipality setting forth the provisions of this nondiscrimination clause.
- b. The Contractor will, in all solicitation or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- c. The Contractor will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this contract so that such provisions will be binding upon each sub-contractor, provided that the foregoing provisions shall not apply to contracts or sub-contracts for standard commercial supplies or raw materials.

EQUAL EMPLOYMENT OPPORTUNITY (IF CONTRACT COST EXCEEDS \$10,000)

During the performance of this contract,  
the Contractor agrees as follows:

- a. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color or national origin. The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the municipality setting forth the provisions of this nondiscrimination clause.

SPECIAL CONDITIONS (CONT'D)

EQUAL EMPLOYMENT OPPORTUNITY (IF CONTRACT COST EXCEEDS \$10,000).

During the performance of this contract, the contractor agrees as follows:

- b. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race color, religion, sex, or national origin.
- c. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the municipality, advising the said labor union or workers' representative of the Contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- d. The Contractor will comply with all provisions of Executive Order 10925 of March 6, 1961, as amended by Executive Order 11114 of June 22, 1963, as amended by Executive Order 11246 of October 13, 1968, and of the rules, regulations and relevant orders of the President's Committee of Equal Employment Opportunity created thereby.
- e. The Contractor will furnish all information and reports required by Executive Order 10925 of March 6, as amended by Executive Order 11114 of June 22, 1963, as amended by Executive Order 11246 of October 13, 1968, and by the rules, regulations and orders of the said Committee or by the Housing and Home Finance Agency pursuant thereto, and will permit access to his books, records and accounts by the municipality, the Housing and Home Finance Agency and the Committee for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- f. In the event of the Contractor's noncompliance with the non-discrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be cancelled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further contracts in accordance with procedures authorized in Executive Order 10925 of March 6, 1961, as amended by Executive Order 11114 of June 22, 1963, as amended by Executive Order 11246 of October 13, 1968, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order or by rule, regulation or order of the President's Committee on Equal Employment Opportunity or as otherwise provided by law.



SPECIAL CONDITIONS (CONT'D)

EQUAL EMPLOYMENT OPPORTUNITY (IF CONTRACT COST EXCEEDS \$10,000)(CONT'D)

- g. The Contractor will include the provisions of paragraphs a. through g. in every subcontract or purchase order unless exempted by rules, regulations or orders of the President's Committee on Equal Employment Opportunity issued pursuant to Section 303 of Executive Order 10925 of March 6, 1961, as amended by Executive Order 11114 of June 22, 1963, as amended by Executive Order 11246 of October 13, 1968, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the municipality may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event the Contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the municipality, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

CONTRACTOR'S INSURANCE

The Contractor shall not commence work under the contract until he has obtained at his expense; and filed said insurance with the Department of Buildings as requested by the City of Chicago Building Code all insurance required herein and until one signed duplicate of each of the policies covering such insurance have been delivered to and approved by the City.

All insurance required by the contract documents shall remain in full force and effect until the work is fully completed and accepted.

All such insurance shall be placed in financially responsible companies, authorized under the insurance laws of the State of Illinois to do business in the State of Illinois, and satisfactory to the Comptroller. Copy of each policy shall be delivered to the Commissioner before beginning work.

WORKMEN'S COMPENSATION INSURANCE

Contractor hereby agrees to indemnify and save harmless the City of Chicago from any and all claims and demands whatsoever which may accrue to each and every person who shall be employed by said Contractor, in or about the performance of said contract, by said Contractor, in or about the performance of said contract and further agrees that during the life of the contract, Contractor shall take out and maintain such insurance as the City may deem to be adequate to insure Contractor's liability to to pay the compensation, which may accrue to each and every person who shall be employed by them or any of them in or about the performance of said contract, or which shall accrue to the beneficiaries or dependents of any such person, under the provisions of an Act of the General Assembly of the State of Illinois, entitled "An Act to Promote the General Welfare of the people of this State by providing compensation for accidental injuries or death suffered in the course of employment:

## SPECIAL CONDITIONS (CONT'D)

### WORKMEN'S COMPENSATION INSURANCE (CONT'D)

providing for enforcement and administration thereof, and to repeal an Act herein named", approved July 9 1931, and under the provisions of an Act of the General Assembly of the State of Illinois entitled "An Act providing for the protection and safety of persons in and about the construction, repairing, alteration or removal of buildings bridges, viaducts and other structures and to provide for the enforcement thereof", approved June 3, 1907, as amended and generally known as the SCAFFOLDING ACT", and under the provisions of any amendments to any of such Acts.

### WORKMEN'S COMPENSATION

The limits of liability under Coverage "B", the Employer's Liability Section of the standard form of Workmen's Compensation and Employee's Liability Policy, shall not be less than \$100,000.00 per person.

### PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE

The Contractor shall take out and maintain during the life of the contract such Comprehensive Public Liability and Property Damage Insurance as shall protect him from claims for damages for personal injury, including accidental death, as well as from claim for property damages, which may arise from activities under or incidental to the contract, both on or off the site of the work, whether such activities by himself or by anyone directly or indirectly employed by the Contractor. The amounts of such insurance shall be as specified below.

#### PUBLIC LIABILITY

Public Liability Insurance in an amount not less than \$250,000.00 for injury including accidental death to any one person and subject to the same limits for each person, in an amount not less than \$500,000.00 on account of any one accident.

#### PROPERTY DAMAGE

Property Damage Insurance in an amount not less than \$100,000.00 for damage to property in any one accident with an aggregate limit of not less than \$300,000. If, as a result of any one or more accidents, the City shall decide that the foregoing Property Damage Insurance aggregate limits have been either exhausted or threatened to become exhausted, Contractor shall immediately take out, at Contractor's expense, such additional Property Damage Insurance as City, in said City's sole discretion, may direct.

## SPECIAL CONDITIONS (CONT'D)

### OWNER'S PROTECTIVE INSURANCE

The Contractor shall take out and maintain during the life of the contract OWNER'S PROTECTIVE INSURANCE for the protection of the City in the same amounts and affording to the City the same protection from liability as is above specified for the COMPREHENSIVE PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE.

Compliance with these provisions, however, shall not relieve the Contractor of his responsibility of liability to any person or persons, nor shall it relieve him of any obligation to indemnify and save harmless the City and its representatives from and against any and all claims asserted by such person or persons.

### INSURANCE COVERING SPECIAL HAZARDS

The following special hazards shall be covered by the Contractor, whose work involves these hazards by rider or riders to the Comprehensive Public Liability and Property Damage Insurance Policies hereinabove required (or by separate policies of insurance), in amounts as specified hereinabove for said policies:

- (A) Blasting, Explosion and Collapse.
- (B) Damage to Underground Utilities
- (C) Trucking and Motor Vehicle Operations
- (D) Any other hazards involved in the work to be performed under the contract which, in the opinion of the City at any time during the contract period, appears to be sufficiently dangerous to require special insurance.

### AUTOMOBILE INSURANCE

The Contractor shall take out and maintain during the life of the contract Comprehensive Automobile Liability Insurance with Bodily Injury, including death, limits in an amount not less than \$250,000.00 per person and \$500,000.00 per accident and Property Damage Limits in an amount not less than \$100,000.00 per accident. The Contractor shall be named insured.

All of the insurance hereinabove required shall be in addition to any other insurance the Contractor may have been required, or may hereafter be required, to furnish by other contracts with the City covering work not included in this contract.

### SPECIAL INSURANCE PROVISION

Failure on the part of the lowest responsible bidder to furnish Contractor's Performance Bond may be considered by the City as just cause for City to withhold the award to said bidder and to award the contract without additional advertising to anyone of the remaining lowest responsible bidders, as the best interests of the City will be served.

All of the policies covering the various types of insurance required shall contain a provision that the insurance company or companies issuing the policies will not change, cancel or terminate said insurance without thirteen (13) days prior written notice to the City.

SPECIAL CONDITIONS (CONT'D)

SPECIAL INSURANCE PROVISION (CONT'D)

In the event any policies are to be cancelled or terminated, according to such notice, Contractor shall within said thirteen days deliver to City new policies of like amount and kind as those being cancelled or terminated, and such new policies must be satisfactory to the City in all respects and be issued by responsible insurance companies which are satisfactory to the City.

Any change in policies not agreed to by the City shall be deemed a non-compliance by Contractor with the insurance requirements and shall be regarded the same as if such policies had been cancelled or terminated.

# Federal Labor Standards Provisions

U.S. Department of Housing  
and Urban Development



## Applicability

The Project or Program to which the construction work covered by this Contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

A. 1. (f) Minimum Wages. All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project) will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits or cash equivalents thereof due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provision of 29 CFR 5.5(a)(1)(v), also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein. Provided That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conforming under 29 CFR Part 5.5(a)(1)(iii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(f) (i) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(f) (ii) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

(f) (iii) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate),

HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

(f) (iv) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(f) (v) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as listed in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(f) (vi) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program. Provided, That the Secretary of Labor has found, upon the written request of the contractor that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

2. Withholding. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract, in the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract. HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance or guarantee of funds until such violations have ceased. HUD or its designee may after written notice to the contractor or subcontractor such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

3. (a) Payrolls and basic records. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949 in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-Bacon Act, daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such

benefits is enforceable that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborer or mechanics affected, and records which show the costs allocated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the rates and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

(f) (i) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR Part 5.16(a)(3)(ii). This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 025-COS-00014-1) U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

(ii) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who gives or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under 29 CFR Part 5.16(a)(3)(ii) and that such information is correct and complete.

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3.

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed as specified in the applicable wage determination incorporated into the contract.

(c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph A.3.1(i)(b) of this section.

(d) The violation of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 2381 of Title 31 of the United States Code.

(e) The contractor or subcontractor shall make the records required under paragraph A.3.1(i) of this section available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor and shall permit such representatives to interview employees during working hours on the job if the contractor or subcontractor fails to submit the required records or to make them available. HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR Part 5.12.

4. (f) Apprentices and Trainees. Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency where appropriate, to be eligible for probationary employment as an

apprentice. The allowable rate of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the rates and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits based on the wage determination for the classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(g) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits based on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(h) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract.

6. Subcontractors. The contractor or subcontractor will insert in any subcontracts the clauses contained in 29 CFR 5.16(a)(1) through (10) and such other clauses as HUD or its designee may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR Part 5.5.

7. **Contract termination; debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. **Compliance with Davis-Bacon and Related Act Requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. **Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and MUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

10. **(A) Certification of Eligibility.** By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(B) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(C) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally U.S. Criminal Code, Section 1010 Title 18 U.S.C., "Federal Housing Administration transactions", provides in part "Whoever for the purpose of influencing in any way the action of such Administration makes, utters or publishes any statement, knowing the same to be false shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

11. **Complaints, Proceedings, or Testimony by Employees.** No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

**B Contract Work Hours and Safety Standards Act.** As used in this paragraph the terms "laborers" and "mechanics" include watchmen and guards.

(1) **Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of eight hours in any calendar day or in excess of forty hours in such workweek unless such laborer or mechanic receives com-

penation at a rate not less than one and one-half times the basic rate; pay for all hours worked in excess of eight hours in any calendar day or excess of forty hours in such workweek, whichever is greater.

(2) **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of \$10 for each calendar day which such individual was required or permitted to work in excess of eight hours or in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in subparagraph (1) of this paragraph.

(3) **Withholding for unpaid wages and liquidated damages.** MUD or designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contract, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

(4) **Subcontracts.** The contractor or subcontractor shall insert in all subcontracts the clauses set forth in subparagraphs (1) through (4) of this paragraph and also a clause requiring the subcontractors to include the clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

#### C. Health and Safety

(1) No laborer or mechanic shall be required to work in surroundings or under working conditions which are unhealthily, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

(2) The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 (formerly part 1518) and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act (Public Law 91-56 83 Stat.

(3) The Contractor shall include the provisions of this Article in every subcontract so that such provisions will be binding on each subcontractor. The Contractor shall take such action with respect to any subcontractor, the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

GENERAL WAGE DECISION NO. IL86-9

Supersedes General Wage Decision NO. IL85-5020

State: ILLINOIS

County(ies): COOK

Construction Type: Building, Residential, Heavy & Highway

Construction Description: Building, Residential, Heavy, and Highway Projects

Modification Record:

No.	Publication Date	Page No.(s)
1	Mar. 21, 1986	37



	BASIC HOURLY RATES	FRINGE BENEFITS
<b>TRUCK DRIVERS:</b>		
<b>Building &amp; Residential:</b>		
2-3 Axles	15.175	d, e, f
4 Axles	15.425	d, e, f
5 Axles	15.625	d, e, f
6 Axles	15.825	d, e, f
<b>Heavy &amp; Highway</b>		
2-3 Axles	15.15	3.40e, f
4 Axles	15.40	3.40e, f
5 Axles	15.60	3.40e, f
6 Axles	15.80	3.40e, f
<b>LABORERS (WRECKING)</b>		
General	13.40	1.92
Wallmen, Wreckers, Burners & Hammermen	13.90	1.92
Smokestack or High Man	14.25	1.92
<b>LANDSCAPE:</b>		
Landscape Plantsman	8.85	g, h
Truck Driver, 2 axles	8.90	g, h
Truck Driver, 3 axles, and Equipment Operator	9.35	g, h
<b>LABORERS (BUILDING &amp; RESIDENTIAL)</b>		
Group 1	13.90	2.62
Group 2	13.975	2.62
Group 3	14.00	2.62
Group 4	14.05	2.62
Group 5	14.10	2.62
Group 6	14.125	2.62
Group 7	14.225	2.62
Group 8	14.25	2.62
Group 9	14.35	2.62
Group 10	14.475	2.62
<b>LABORERS (HEAVY &amp; HIGHWAY)</b>		
Group 1	13.90	1.92
Group 2	13.975	1.92
Group 3	14.05	1.92
Group 4	14.175	1.92
<b>LABORERS (Sewer &amp; Tunnel)</b>		
Group 1	13.90	1.92
Group 2	14.025	1.92
Group 3	14.125	1.92
Group 4	14.25	1.92
<b>POWER EQUIPMENT OPERATORS:</b>		
<b>Building &amp; Residential Construction</b>		
Group 1	18.60c	5.55
Group 2	17.30c	5.55
Group 3	15.65c	5.55
Group 4	13.90c	5.55
<b>POWER EQUIPMENT OPERATORS:</b>		
<b>Sewer, Heavy, and Highway Construction:</b>		
Group 1	18.45	5.55
Group 2	17.90	5.55
Group 3	16.75	5.55
Group 4	15.35	5.55
Group 5	14.15	5.55

LABORERS CLASSIFICATIONS (Building & Residential):

- Group 1 - Construction; Plasterers' Tenders; & Pumps for Dewatering & other Power Equipment
- Group 2 - Cement Gun
- Group 3 - Chimney over 40 ft.; Scaffold
- Group 4 - Cement Gun Nozzle (Gunite)
- Group 5 - Stone Derricks & Handlers
- Group 6 - Jackhammers; & Power Driven Concrete Saws & Other Power Equipment
- Group 7 - Firebrick & Boiler Setters
- Group 8 - Chimney on Fire Brick; Caisson Diggers; & Well Point System Men
- Group 9 - Boiler Setter Plastic
- Group 10 - Jackhammers on Fire Brick

LABORERS CLASSIFICATIONS (Heavy & Highway):

- Group 1 - Construction; Tenders; Material Expeditor (Asphalt Plant); Street Paving Grade Separation, Sidewalk, Curb & Gutter, Stripers & All Laborers not Otherwise Mentioned
- Group 2 - Asphalt Tampers & Smoothers; Cement Gun
- Group 3 - Cement Gun Nozzle (Laborers) Gunite
- Group 4 - Rakers & Lutemen; Machine-Screwmen; Kettlemen; Mixermen; Drum-Men; Jackhammers (Asphalt); Paintmen; Mitre Box Spreaders; Laborers on Birch, Overman & Similar Spreader Equipment; Laborers on Apsco; Laborers on Air Compressors; Paving Form Setter; Jackhammers (Concrete); Power Driven Concrete Saws; Other Power Equipment

LABORERS CLASSIFICATIONS (Sewer & Tunnel):

- Group 1 - Top laborers, and all laborers not otherwise mentioned
- Group 2 - Concrete laborers; steel setters
- Group 3 - Cement carriers; cement mixers; Concrete repairmen; Mortar men; Scaffold men; and Second bottom men
- Group 4 - Air trac drill operations; Bottom men; Bracers-bracing; Bricklayer's tender; Catch basin digger; Drainlayer; Dynamiter; Form men; Jackhammers; Pipelayers; Rodders; Welders & burners; Well point system men

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POWER EQUIPMENT OPERATOR:

Building & Residential Construction:

GROUP 1 - Mechanic; Asphalt Plant; Asphalt Spreader; Autograde; Batch Plant; Benoto; Boiler and Throttle Valve; Caisson Rigs; Central Red-Mix Plant; Combination Back Hoe Front Endloader Machine; Compressor and Throttle Valve; Concrete Breaker (Truck Mounted); Concrete Conveyor; Concrete Paver over 27E cu. ft.; Concrete Paver 27E cu. ft.-and under; Concrete Placer; Concrete Pump (Truck Mounted); Concrete Tower; Cranes; Cranes, Hammerhead; Cretar Crane; Crusher, Stone, etc; Derricks; Derricks, Traveling; Formless Curb and Gutter Machine; Grader, Elevating; Grouting Machines; Highlift Shovels or Front Endloader 2 1/4 yd. and Over; Hoists, Elevators, Outside Type rack and Pinion and Similar Machines; Hoists, One, Two, and Three Drum; Hoists, Two Tugger One Floor; Hydraulic Backhoes; Hydraulic Boom Trucks; Locomotive; Motor Patrol; Pile Drivers and Skid Rig; Post Hole Digger; Pre-Stress Machine; Pump Cretes Dual Ram; Pump Cretes: squeeze Cretes-screw type pumps Gypsum bulker and pump; Raised and Blind Hole Drill; Rock Drill (self-propelled); Rock Drill (truck Mounted); Roto Mill Grinder (36") and over); Roto Mill Grinder (less than 36"); Scoops-Tractor Drawn; Slip-Form Paver; Straddle Buggies; Tournapull; Tractor with Boom, and side boom; & Trenching Machines

GROUP 2 - Bobcat (over 3/4 cu. yd.); Boiler; Brick Forklift; Broom, Power Propelled; Bulldozers; Concrete Mixer (Two Bag and over); Conveyor, Portable; Forklift Trucks; Greaser Engine; Highlift Shovels or Front Endloaders under 2 1/4 yd.; Hoists, Automatic; Hoists, Inside Freight Elevators; Hoists, Sewer Drapping Machine; Hoists, Tugger Single Drum; Rollers; Steam Generators; Tractors; Tractors Drawn Vibratory Roller (Receives an additional \$.50 per hour); & Winch Trucks with "A" Frame

GROUP 3 - Air Compressor-Small 150 and under (1 to 5 not to exceed a total of 300 ft.); Air Compressor-Large over 150; Combination-Small equipment operator; Generator-Small 50 kw and under; Generator-Large over 50kw; Heaters, Mechanical; Hoists; Inside Elevators (rheostat manual controlled); Hydraulic Power units (Pile driving and extracting); Pumps over 3" (1 to 3 not to exceed a total of 300 ft); Pumps, well points; Welding machines (2 through 5); Winches, 4 small electric drill winches; Bobcat (up to and including 3/4 cu. yd.) and Brick Forklift

GROUP 4 - Oilers; Hoists; Inside elevators (Pushbutton with automatic doors)

## Sewer, Heavy, and Highway Construction:

GROUP 1 - Asphalt plant; Asphalt Heater and Planer Combination; Asphalt Spreader; Autograder; Belt Loader; Caisson Rigs; Car Dumper; Central Redi-Mix Plant; Combination Backhoe Front End-loader Machine (1 cu. yd. Backhoe bucket or over with attachment); Concrete Breaker (Truck Mounted); Concrete Conveyor; Concrete Paver over 27E cu. ft.; Concrete Placer; Concrete Tube Float; Cranes, all Attachments; Cranes, Hammerhead, Linden, Peco & Machines of a like nature; Creter Crane; Crusher, Stone, etc.; Derricks; Derricks Boats; Derricks, Traveling; Dredges; Field Mechanic-Welder; Formless Curb and Gutter Machine; Gradall and machines of a like nature; Grader, Elvevating; Grader, Motor Grader, Motor Patrol, Auto Patrol, Form Grader, Pull Grader, Subgrader; Guard Rail Post Driver Mounted; Hoists, One, Two, and Three Drum; Hydraulic Backhoes; Locomotive Mucking Machine; Pile Drivers and Skid Rig; Pre-Stress Machine; Pump Cretes Dual Ram; Rock Drill-Crawler or Skid Rig; Rock Drive-Truck Mounted; Roto Mill Grander (36" and over); Roto Mill Grinder (less than 36"); Slip-Form Paver; Soil Test Drill Rig (Truck Mounted); Straddle Buggies; Hydraulic Telescoping form (tunnel); Tractor Drawn Belt Loader; Tractor Drawn Belt Loader with attach pusher; Tractor with Boom; Tractaire with Attachment; Trenching Machine; Truck Mounted Concrete Pump with boom; Underground Boring and/or Mining Machines under 5 ft.; Wheel Excavator; & Widener (Apsco); Raised or Blind Hole Drill

GROUP 2 - Batch Plant; Bituminous Mixer; Bobcats (over 3/4 cu. yd.); Boiler and Throttle Valve; Bulldozer; Car Loader Trailing Conveyors; Combination backhoe Front Endloader Machine (less than 1 cu. yd. Backhoe bucket or over or with attachments); Compressor and Throttle Valve; Compressor, common receiver (3); Concrete Breaker or Hydro Hammer; concrete Grinding Machine; Concrete Mixer or Paver 7S series to and including 27 cu. ft.; Concrete Spreader; Concrete Curing Machine; Burlap Machine; Belting Machine and Sealing Machine; Conveyor Muck Cars (Haglund or similar type); Finishing Machine-concrete; Greaser Engines; Highlift Shovels or Front Endloader; Hoist-Sewer Dragging Machine; Hydraulic Boom Trucks (all attachments); Locomotives, Dinkey; Pump Cretes: Squeeze cretes-screw type pumps Gypsum Bulker and pump; Boiler Asphalt; Rotary Snow Plows; Rototiller, seaman, etc. Self-propelled; Scoops-Tractor drawn; Self-prop. Compactor; Spreader-Chip-Stone, etc.; Scraper; Scraper-prime mover in tandem (Add \$1.00 to Class 2 hourly rate for each hour and for each machine attached thereto); Tank Car Heater; Tractors, Push, Pulling sheeps foot, Disc, Compactor. etc. & Tug Boats

GROUP 3 - Boilers; Brooms All Power Propelled; Cement Supply Tender; Compressor. Common receiver (2); concrete Mixer (Two Bag and Over); Conveyor, Portable; Farm-type Tractors used for mowing, Seeding, etc.; Fireman on Boilers; Forklift Trucks; Grouting Machines; Hoists, Automatic; HOists, All Elevators; Hoists, Tugger Single Drum; Jeep Diggers; Pipe Jacking Machines; Post-Hole Digger; Power Saw, Concrete, Power Driven; Pug Mills; Rollers, other than Asphalt; Seed and Straw Blower; Steam Generators; Stump Machine; Winch Trucks with "A" Frame; Work Boats; & Tamper- form-Motor driven

GROUP 4 - Air Compressor-small 170 and under (1 to 5 not to exceed a total of 300 ft.); Air Compressor-large over 170; Asphalt Spreader Backend Man; Combination-Small Equipment Operator; Generators-Small 50kw and under; Generators-Large over 50 kw; heaters, Mechanical; Hydraulic Power Unit (pile driving or extracting); Light Plants (1 through 5); Pumps, over 3" (1 to 3 not to exceed a total of 300 ft.); Pumps, Well Points; Tractaire; Welding Machines (2 through 5); Winches, 4 small electric drill winches; & Bobcats (up to and including 3/4 cu. yd.); Hydraulic Power Unit

GROUP 5 - Oilers

PAID HOLIDAYS: (Where Applicable)

A-New Year's Day  
D-Labor Day  
G-Christmas Day

B-Memorial Day  
E-Thanksgiving Day

C-Independence Day  
F-Day after Thanksq:

FOOTNOTES:

- a. Paid Holidays: A through G
- b. Employer contributes 8% of regular hourly rate to vacation pay credit for employees who have more than five years of service and 6% for those with less than five years of service
- c. Employees who are required to wear a dosimeter radiation detection device will have an additional 50c per hour added to their hourly rate of pay
- d. \$117.00 per week
- e. Paid Holidays: A, B, C, D, E, G, and Decoration Day
- f. 90 straight time hours or more in 1 calendar year for the same employer shall receive 1 week paid vacation; 3 years - 2 weeks paid vacation; 10 years - 3 weeks paid vacation; 20 years - 4 weeks paid vacation
- g. Paid Holidays: A, B, C, D, E, G
- h. 1 Year's service - 1 week paid vacation; 3 or more years service - 2 weeks paid vacation

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a) (1) (11)).

EXHIBIT I

The Developer has committed in equity funds for the Project the following payments:

To: Johnson Products, Inc. from June 9, 1986 through June 22, 1988	\$1,332,500.00
Laventhal & Horwath preparation of Redevelopment Plan and Project	91,087.71
Zimmerman appraisal	3,500.00
Keck, Mahin & Cate attorneys' fees	11,281.31
Hess, Kaplan & McDowell attorneys' fees	10,781.40
	<hr/>
TOTAL:	\$1,449,150.42

*Minimum Assessed Values.*

<b>Year</b>	<b>Estimated Minimum Assessed Valuation</b>	<b>Minimum Equalized Assessed Valuation (1)</b>
1989	\$3,158,972	\$5,713,000
1990	3,158,972	5,713,000
1991	3,158,972	5,713,000
1992	3,158,972	5,713,000
1993	3,158,972	5,713,000
1994	3,158,972	5,713,000
1995	3,158,972	5,713,000
1996	3,158,972	5,713,000
1997	3,158,972	5,713,000
1998	3,158,972	5,713,000
1999	3,158,972	5,713,000
2000	3,158,972	5,713,000
2001	3,158,972	5,713,000
2002	3,158,972	5,713,000
2003	3,158,972	5,713,000
2004	3,158,972	5,713,000
2005	3,158,972	5,713,000
2006	3,158,972	5,713,000
2007	3,158,972	5,713,000

(1) The multiplier utilized is 1.8085. All figures are estimates. If the completion of the project is delayed, the assessed valued and resulting tax will apply to subsequent years.

**Exhibit K.**

**City Of Chicago  
Chicago First Employment Plan  
First Source Agreement.**

The First Source Agreement for recruitment, referral and hiring is between the City of Chicago, Mayor's Office of Employment and Training, Chicago First Office (hereinafter referred to as the "Agency"), and L & O Partnership No. 2, (hereinafter referred to as "Employer"). Under this First Source Agreement, Employer will use the Agency as its first source of recruitment and referral in hiring for "covered positions" as defined in 2A below.

**Witnesseth:**

Whereas, a primary objective of the City's First Source Hiring Program is to ensure that unemployed Chicago residents are considered first for jobs created through community or economic development projects subsidized with public funds; and

Whereas, Employer is a recipient, directly or indirectly, of the benefits of some form of economic assistance from the City of Chicago given, in part, in consideration for Employer's consent and commitment to negotiate and enter this First Source Agreement;

Now, Therefore, the parties hereto represent and agree as follows:

**I. General Items.**

- A. The Agency wishes to assure continuing employment opportunities for unemployed City residents with employers within the Chicago Metropolitan area.
- B. The Employer agrees to use the Agency as a first source of recruitment and referral in hiring for employees in covered positions. The terms of this agreement will be accomplished through the cooperation of the Chicago First Office.



- C. The Agency will provide employment recruitment and referral services to the Employer subject to the limitations set out in this agreement.
- D. This Agreement shall take effect when signed by the parties below and shall be in full force and effect so long as any T.I.F. Bonds remain outstanding.

## **II. Recruitment.**

- A. The Agency and Employer agree that for purposes of this agreement, "covered positions" include all of the Employer's negotiated positions. These may include job vacancies made available after internal promotions and terminations or openings created by an expansion of the Employer's work force all of which will be negotiated. Nothing in this agreement will release the Employer from his obligation to interview candidates for covered positions with persons referred by the Agency except as stated below in items III (Referral) and IV (Hiring).
- B. At least twenty (20) working days prior to the anticipated hiring dates, the Employer will notify the Agency of its need for new employees in covered positions by completing a "Job Order Form" (Attachment B) for each job title. This form is to be completed in consultation with a Chicago First representative. Applicants who meet these quantifiable and objective minimum job qualifications will be deemed to be "qualified persons" for purposes of this agreement.
- C. The Employer will also notify the Agency of all position vacancies which are not "covered positions" as described in Sections II A, B, and C, above as they occur. Notification should include qualifications, the rate of pay and the anticipated hiring dates. The Employer will also notify the Agency of the date by which the Agency must refer qualified applicants to the Employer for management, technical and professional vacancies.
- D. Job openings to be filled by internal promotion from within the Employer's local work force need not be referred to the Agency for referral and hiring. If, however, a job opening is created as a result of an internal promotion, the provisions of Section II A above shall apply.

## **III. Referral.**

- A. The Agency will refer eligible job applicants to the Employer in response to the notification of need for new employees described in Section II above. It will be the responsibility of the Agency to refer only qualified applicants who meet the profile of the Employer as detailed in the Job Order Form. (Attachment B)
- B. The Agency will screen applicants according to the qualifications agreed upon with the Employer.
- C. The Agency will make all referrals to the Employer no later than ten (10) working days prior to the anticipated hiring date. In the event that no referrals can be made, the employer will be notified no later than five (5) working days

prior to the anticipated hiring date. The Agency will make every reasonable effort to refer at least one qualified person for each job opening.

- D. In the event that the Agency cannot refer the total number of qualified personnel requested, the Employer will be free to directly fill remaining positions for which no qualified applicants have been referred. In this event, the Employer will make a good faith effort to hire unemployed Chicago residents.
- E. In the event the employer does not hire referred personnel the employer should, at a minimum, indicate in writing the reasons for not hiring.

#### IV Hiring.

- A. The Employer will make all decisions of hiring new employees. However, the Employer agrees to make a good faith effort to hire from referrals made.
- B. The Agency will track job retention of employees hired under this agreement for 120 days following hiring. The Employer agrees to cooperate in the Agency's follow-up efforts.
- C. The Agency is required to monitor Employer's adherence to this agreement. Employer will cooperate in the Agency's monitoring efforts and will submit Quarterly Hiring Summaries in accordance with Attachment "C".
- D. After the Employer has selected its employees, the Agency will not be responsible for the employees actions and the Employer hereby releases the Agency of any liability for their actions.

#### V Controlling Regulations And Laws.

- A. If this agreement conflicts with any Labor Laws or other government regulation, the laws or regulation shall prevail.
- B. The Employer will provide the Agency with written documentation that the Employer has provided the representative of any involved collective bargaining unit with a copy of this agreement and has requested comments or objections. If the representatives have any comments or objections, the Employer will provide them to the agency.
- C. The Employer will not discriminate against any applicant for employment because of race, religion, age, handicap, color, sex, national origin, citizenship, or political affiliation.

[Signature forms omitted for printing purposes.]

Exhibit "L"

*Affirmative Action Plan*

*For The*

*Chatham Ridge Shopping Center*

*87th And The Dan Ryan Expressway.*

**Policy Statement.**

The City of Chicago is committed to a policy of providing fair and representative employment and business opportunities for minorities and women in order to remediate the adverse effects of historically exclusionary practices within the society, including the procurement of goods and services and the award of construction findings of past discrimination against minorities and women, and in recognition of this affirmative action policy, on December 9, 1983, the City Council of the City of Chicago adopted an Ordinance (the "Ordinance") requiring affirmative action to promote employment opportunities for minority and female workers and for residents of the City in City projects. In addition, on April 3, 1985, the Mayor of the City of Chicago issued Executive Order 85-2 requiring greater utilization of minority and female-owned business entities in the City's contracting process.

The L & O Partnership, No. 2 (the "Partnership") recognizes the importance of successful Affirmative Action Programs to the continued growth and vitality of the City of Chicago. The Partnership will establish, implement and maintain a continuing Affirmative Action Program designed to promote equal opportunity in every aspect of employment and procurement of goods and services. The program will include 1) a written affirmative action plan committing the developer to provide maximum opportunity for minorities and females in its development project; 2) designation of adequate personnel to administer the program; 3) establishment of goals which are higher than the prevailing levels for minority and female employment during both the construction period and the operation of facilities; 4) formulation of achievable goals for utilization of women/minority business enterprises in the development; 5) creation of a program to provide, in cooperation with the City of Chicago, assistance and advice in the areas of leasing, planning and marketing programs in neighborhood-based projects; 6) implementation of procedures to assure achievement of program goals, including provision of objective standards to determine how goals are being met.

The purposes of this Affirmative Action Plan are to remedy such past discriminatory underutilization of minorities and women and to promote the economic welfare of the people of the City of Chicago by assisting minority and women businesses to actively participate in the Project, and by providing employment opportunities to ensure equitable participation in the Project by minority persons, women and residents of the City of Chicago. In accordance with the guidelines and goals set forth below, the Partnership shall

implement a comprehensive strategy, encouraging and providing for the greatest practicable participation throughout the project by business enterprises owned by minorities and women, and by minority and women employees, which shall apply prospectively from the date of the Agreement. The City agrees to assist the Partnership with the implementation of the Plan as provided herein.

The terms and provisions of this Plan are deemed to satisfy the Ordinance and Executive Order 85-2. Moreover, the requirements and provisions of this Plan do not establish legal or contractual rights for any person or organization other than the City and the Partnership and their successors and assigns.

The City recognizes that it is Partnership's intent to hire qualified, responsible contractors for the construction of the Improvements. The City agrees that it is not the purpose or intent of this Plan to impose upon Partnership or its contractors the obligation or require Partnership or its contractors to take actions which significantly affect the cost of the Improvements or any portion thereof (or the operation or management thereof) or result in a delay in completion of the Improvements, and it is further understood that Partnership or its Contractors (consistent with the obligation to exercise good faith required by this Plan) shall be entitled to judge the qualifications of M.B.E./W.B.E. contractors utilized for the completion of the Improvements or the operation or management thereof.

#### 1. Definitions.

Whenever the following words or terms are used in this Plan, unless otherwise defined, they shall have the meaning ascribed to them in this Section. Capitalized terms not defined herein shall have the meanings defined in the Agreement.

- 1.1 "Agency" shall mean the City of Chicago by its designee, initially the Department of Economic Development for all areas of administration of this Plan with the exception of certification procedures as provided in Section 3.5 hereof. The City may designate in writing any other City agency, or a City employee or consultant, to perform any function or duty required by this Plan.
- 1.2 "Agreement" means the redevelopment agreement between the City of Chicago and the Partnership dated as of \_\_\_\_\_, 1987, to which this Plan is appended.
- 1.3 "City Residents" or "Residents" shall mean persons domiciled within the City of Chicago.
- 1.4 "Component" means one of the divisions of work described below whereby M.B.E. and W.B.E. participation goals are minority and women employment goals will be applied.
- 1.5 "Contractor" means any person who has a contract with the Partnership (in which the parties do not stand in the relationship of an employer and an employee), which provides for any portion of the Partnership's obligation under the

Agreement to be performed, undertaken or assumed. "Subcontractor" means any person who has such a contract with a contractor or with a subcontractor.

1.6 "Controlled" shall be determined by considering the degree to which minority group members or women participate in the possession and management of the partnership, corporation or joint venture, including consideration of their participation in the decisions affecting the day-to-day management and operations of the business, and of their proportionate interest in the capital, assets, profits and losses of the business.

1.7 "Construction Component" means, but shall not be limited to, the performance during construction of:

- (1) Earth moving including shoring
- (2) Demolition
- (3) Concrete-reinforced
  - a. Forms and fabrication
  - b. Reinforced steel
  - c. Placement of concrete
  - d. Finish concrete
- (4) Masonry-bricklayers, granite
- (5) Structural steel
- (6) Metal decking
- (7) Miscellaneous metals
- (8) Ornamental metals
- (9) Carpentry-rough and finish
- (10) Moisture protection (roofing, etc.)
- (11) Penetration-all exteriors, interiors, which will include hardware, doors, glass, etc.
- (12) Finish trades (other than tenant improvements)
  - a. Floors
  - b. Walls

- c. Ceilings
  - d. Lath and plaster
  - e. Partitions
  - f. Tile work
  - g. Painting
  - h. Wall coverings
  - i. Carpets
- (13) Vertical transportation
- (14) Mechanical trades
- a. Electrical
  - b. Plumbing
  - c. Fire protection
  - d. H.V.A.C.
- (15) Trash hauling and cleanup
- (16) Field administration
- (17) Water service
- (18) Office supplies
- (19) Security
- (20) Janitorial
- (21) Progress photos
- (22) Printing
- (23) Maintenance and mechanics
- (24) Fencing/scaffolding
- (25) Final cleanup

(26) Equipment rental

Excluded are: energy and utility costs; taxes; permits and fees; city services; traditionally reimbursable expenses; and tenant improvements undertaken by tenants.

- 1.8 An "Eligible" M.B.E. or W.B.E. Firm including any contractor or subcontractor providing services, products or materials in the Project, who has been certified by the Agency as provided in §3.5 below.
- 1.9 "Goals" means the targets established in this agreement for M.B.E. and W.B.E. participation in the Project, or for minority and women employment in conjunction with the Project. Goals are not quotas, but instead provide a benchmark to measure the success of the affirmative action steps taken to assure the greatest practicable M.B.E. and W.B.E. participation and minority and women employment. The establishment of specific goals herein as to M.B.E. or W.B.E. participation or minority and women employment is not intended, and shall not be used, to discriminate against any business, contractor, subcontractor, applicant or employee. Failure to meet a goal will alert the Partnership that further actions may be necessary, but shall not, by itself, establish that Purchaser has failed to use good faith efforts.
- 1.10 "Local Business" means a business located within the corporate limits of the City of Chicago, and which has the majority of its regular, fulltime work force located within the City.
- 1.11 "Minority" means a person who is a citizen or lawful permanent resident of the United States and who is Black; Hispanic, regardless of race; Asian-American and Pacific Islanders; American Indian or Alaskan native.
- 1.12. "Minority Business Enterprise" ("M.B.E.") means a business that is owned and controlled by one or more minority persons.
- 1.13 "Owned" means a business which is (1) a sole proprietorship legitimately owned by a minority person or woman, (2) a partnership or joint venture in which at least 51 percent of the beneficial ownership interest legitimately are held by minority persons or women, or (3) a corporation or other entity in which a least 51 percent of the beneficial ownership interests legitimately are held by minority persons or women.
- 1.14 "Person" or "Persons" includes any natural person, corporation, partnership, unincorporated association, or joint venture.
- 1.15 "Post-Construction Component" means all of the activities and obligations of the Partnership which may apply in the operation of the Shopping Center.

1.16 "Project" or "Development" means all design, construction and development of improvements required by the Agreement with the exception of the following areas of activity or cost to the extent that said areas of activities are performed by independent third party contractors:

- (1) Brokerage
- (2) Financing
- (3) Management
- (4) Syndication
- (5) Accounting
- (6) Legal Services
- (7) Architecture

1.17 "Small Business" means a business employing fewer than 100 employees, and which is neither dominant in its field nor the parent, affiliate or subsidiary of a business dominant in its field.

1.18 "Women Business Enterprise" ("W.B.E.") means a business that is owned and controlled by one or more women.

## 2 Administration And Monitoring.

2.1 Partnership's obligation under this Plan is to make good faith efforts to comply with all provisions and meet all goals set forth herein. The Agency agrees to act reasonably and not arbitrarily in administering this Plan.

2.2 To facilitate and assure that good faith efforts are made, Partnership will assign an Affirmative Action ("A.A.") Officer to assist with the monitoring and implementation of this Plan. Partnership will provide adequate staff and support for its A.A. Officer to administer the Plan and to act as liaison with the Agency.

2.3 The Partnership's A.A. Officer shall have responsibility for coordinating all of the affirmative action activities undertaken by the Partnership on the Project. The A.A. Officer's major focus shall be the implementation of the Plan, assuring good faith efforts to meet the established goals, and the documentation and reporting of the efforts and results. The duties of the A.A. Officer shall include responsibility for the following:

- (a) Ensuring that all aspects of the Plan are properly implemented; that all employment and procurement practices of the Partnership are consistent with the Plan; and that all technical or procedural phases of compliance are met.



- (b) Designing, implementing and monitoring internal record-keeping systems to measure the effectiveness of the Plan; making regular reports to management personnel on the effectiveness of the Plan; identifying problem areas and establishing programs to aid in problem solving; informing management of the latest developments in the area of affirmative action; and recommending further policies and programs to implement the Plan.
- (c) Compiling and submitting Affirmative Action Reports required by the Plan; reviewing Agency responses and recommendations; and meeting with Agency representatives when necessary to provide additional information or address problems concerning implementation of the Plan.
- (d) Reviewing and monitoring Contractor Affirmative Action Reports, including, if necessary, making periodic onsite inspections to insure reported numbers on minority and female participation and minority, women and Resident employees are reflected by actual construction work force; and meeting with, assisting and counseling contractors and trade unions as necessary on meeting minority and female hiring goals.
- (e) Developing Affirmative Action program and policy statements; making presentations to business associations, social agencies and other organizations to increase awareness of Partnership's Affirmative Action program and of its commitment to M.B.E. and W.B.E. participation and minority and women employment; and maintaining communications between the Partnership and relevant organizations as necessary.
- (f) Researching the availability of M.B.E. and W.B.E. firms and of minority and women prospective employees for business and employment opportunities.
- (g) Counseling and assisting M.B.E. and W.B.E. contractors and suppliers wishing to qualify for participation in the Development, including with respect to:
  - (1) submission of bids, (2) securing bonding and insurance, (3) formation of joint ventures with majority contractors, and (4) obtaining certification from the City of Chicago.

2.4 The Agency shall designate an Affirmative Action ("A.A.") Coordinator operating under the auspices of the Department of Economic Development or the Mayor's Office of Employment and Training. The A.A. Coordinator shall be responsible for the Agency's duties under the Plan, for monitoring the Plan on behalf of the Agency, and for receiving Partnership communications and Reports and transmitting Agency responses and other communications.

2.5 The Partnership shall require its contractors and subcontractors to furnish to its A.A. Officer reports and information reasonably requested by the Agency to implement and monitor this Plan.

2.6 The A.A. Coordinator shall promptly review the Affirmative Action Reports submitted by the Partnership on a monthly basis during construction and on a quarterly basis during post-construction. The A.A. Coordinator shall forward such reports to the Commissioner of the Department of Economic Development and the Mayor's Office of Employment and Training. The Commissioner and the Mayor's Office of Employment and Training is authorized to review, on behalf of the City, the administration of the Plan. Upon review of the Reports, the A.A. Coordinator may request further information pertinent to evaluation of the Plan implementation. If the Agency has any substantial concerns about the adequacy of implementation of this Plan, the A.A. Coordinator shall provide notice to the A.A. Officer within 30 days after receipt of the A.A. Reports regarding the results of the review and, if necessary, shall contact the A.A. Officer to promptly meet, and discuss and attempt to resolve areas of concern regarding implementation of the Plan. If any substantial concerns are not resolved by such discussions and negotiations, the A.A. Coordinator through the Commissioner of the Department of Economic Development or the Mayor's Office of Employment and Training shall report all negotiations regarding the adequacy of implementation of the Plan to the Contract Compliance Officer of the City of Chicago. Failure of the A.A. Coordinator to provide such notice shall be deemed approval of the Affirmative Action Reports.

2.7 The Partnership, through the A.A. Officer, in cooperation with the Agency, will develop two different Reports: (1) a "short form" which provides data on dollar value of total contracts awarded, dollar value of total contracts awarded to M.B.E. and W.B.E. firms, identity of participating M.B.E. and W.B.E. firms, and actual numbers and percentages of minority and women employment in the Project; and (2) a "comprehensive report" containing a narrative description of the efforts undertaken, further analysis of results and problems, if any, and suggested further steps if required. The short form Report will be submitted to the Agency's A.A. Coordinator on a monthly basis, and the Comprehensive Report on a quarterly basis, throughout the pre-construction and construction components.

### 3. Minority And Women Business Enterprises Participation Plan.

#### 3.1 Introduction.

The following plan and goals are adopted by the Partnership for participation by minority and women business enterprises in the Development. The Partnership shall make good faith efforts to meet the minority and women business enterprise goals established hereunder.

#### 3.2 Methods To Ensure M.B.E. and W.B.E. Participation.

3.2.1 In making reasonable good faith efforts to meet the goals for M.B.E. and W.B.E. participation, the Partnership will request the assistance of the Agency's A.A. Coordinator in referring minority and women businesses for contracts, subcontracts and other purchases. The Partnership will make the M.B.E. and W.B.E. provisions and goals set forth in Sections 3.2 and 3.3 of this Plan applicable as appropriate to all contractors and subcontractors in construction components of the Project; including appropriate provisions and goals for M.B.E. and W.B.E. participation in construction contracts let by Partnership, and requiring the inclusion of such provisions and goals in subcontracts entered into by contractors; and providing that all subcontractors must report to contractors and all contractors must report to Partnership on a monthly basis, information necessary for monitoring implementation of the Plan and reporting to the Agency concerning M.B.E. and W.B.E. participation.

3.2.2 The methods and procedures to achieve the goals set forth therein, and use of which may be evaluated to determine whether the Partnership has made all good faith efforts, shall include the following:

- (a) Encouragement of joint ventures between majority and M.B.E. and W.B.E. contractors as a bid package.
- (b) Breaking out contracts into smaller packages to allow for bidding by smaller M.B.E.s and W.B.E.s.
- (c) Advertising invitations to bid, particularly in minority media, including statements in the advertisements indicating the Partnership intent to encourage M.B.E. and W.B.E. participation in the project.
- (d) Assisting, other than financially, M.B.E.s and W.B.E.s in obtaining bonding and insurance.
- (e) Assisting, other than financially, M.B.E.s and W.B.E.s in submitting bids by offering Partnership's consultation.
- (f) Assisting, other than financially, M.B.E.s and W.B.E.s in obtaining certification.
- (g) Requesting the assistance of the Agency's A.A. Coordinator in identifying certified, pending and certifiable minority and women businesses for contracts, subcontracts and other purchases.
- (h) Contracting the organizations listed below, or similar organizations, and soliciting assistance in obtaining M.B.E. and W.B.E. participation:
  - (a) Chicago Urban League;

- (b) Chicago Economic Development Corporation;
- (c) Chicago United;
- (d) Illinois Department of Commerce and Community Affairs Small Business Office;
- (e) Minority Economic Resource Corporation;
- (f) National Association of Women Business Owners;
- (g) Alexander Grant & Company, Minority Business Development Center;
- (h) Association of Asian Construction Enterprises;
- (i) Black Contractors United;
- (j) Hispanic-American Construction Industry Association (H.A.C.I.A.);
- (k) City of Chicago, Department of Purchases, Office of Contract Monitoring and Supplies;
- (l) National Minority Suppliers Development Council, Inc.;
- (m) Chicago Regional Purchasing Council;
- (n) Such other organizations as the City may specify from time to time.

3.2.3 If the Commissioner of the Department of Planning, in consultation with the Purchasing Agent and Contract Compliance Officer, determines that it is impossible or economically unreasonable to obtain M.B.E.'s or W.B.E.'s to perform sufficient work to fulfill the commitment stated in 3.3.2 hereof, a waiver of all or a portion of the goals may be granted.

3.3 M.B.E. and W.B.E. Participation Components and Goals.

3.3.1 The M.B.E. and W.B.E. Participation Components shall be: (1) construction; and (2) post-construction.

3.3.2 The dollar goals for participation by eligible M.B.E.s and W.B.E.s in the Construction Components shall be 50% M.B.E. and 10% for W.B.E. firms of the aggregate costs for such components, and 50% for Local Businesses.

3.3.3 To the extent practicable, the Partnership shall identify contracts requiring the expenditure of funds not exceeding \$10,000 for bids to be submitted solely by M.B.E., W.B.E., Small Business and Local Business firms.

- 3.4 Additional Provisions Concerning Calculating M.B.E. and W.B.E. Participation.**
- 3.4.1** In the event that less than 51% of a Joint Venture is owned by a non- M.B.E. or non-W.B.E. partners or owners, the Partnership shall receive proportionate credit towards meeting the M.B.E. and W.B.E. goals. For example, a 25% minority-owned joint venture that receives a \$100,000 contract would entitle the Partnership to a \$25,000 credit.
- 3.4.2** Where an eligible M.B.E. or W.B.E. firm is awarded a contract, and said firm subcontracts the performance of a portion of that contract, the Partnership shall receive credit only for that portion of the contract as actually performed by the eligible M.B.E. or W.B.E. firm and for those amounts subcontracted to another eligible M.B.E. or W.B.E. firm. Partnership shall receive credit or, and there shall not be excluded, dollars spent by an eligible M.B.E. or W.B.E. firm to purchase materials and supplies specific to this project from non-M.B.E. or W.B.E. firms.
- 3.4.3** Where a firm which is not an M.B.E. or W.B.E. is awarded a contract, and said firm subcontracts a portion of that contract to an eligible M.B.E. or W.B.E. firm or Local Business, the Partnership shall receive credit of the portion of the contract subcontracted to the M.B.E. or W.B.E. firm or Local Business. Partnership shall receive credit for dollars spent by a firm which is not an M.B.E. or W.B.E. firm or Local Business to purchase materials and supplies specific to this project from an M.B.E. or W.B.E. firm or Local Business.
- 3.4.4** The Partnership shall be considered to have made a reasonable good faith effort to implement the goals and requirements of the plan if the Partnership demonstrates to the Agency that there are not sufficient M.B.E.s or W.B.E.s reasonably or readily available to fulfill the requirements of this Plan. The reasons for which such determination shall be warranted shall include, without limitation the following:
- (a)** Lack of a sufficient supply of Local Businesses and certified, responsible M.B.E.s or W.B.E.s (with respect to such characteristics as financial capacity and capacity to meet the requirements of the work) in the Chicago Metropolitan Area ("S.M.A.S.").
  - (b)** Inability to obtain competitive prices from available Local Businesses, M.B.E.s and W.B.E.s in the S.M.S.A., based upon prevailing prices on the open market as determined by Partnership, provided that in all such cases there shall be submitted to the Agency a statement listing the name and bid amount of each person or firm bidding on the same portion or part of the contract as bid by such M.B.E.s or W.B.E.s or Local Businesses.
  - (c)** Failure of available Local Businesses, M.B.E.s or W.B.E.s to submit bids with respect to particular aspects of the Project.

3.5 Agency Certification Of Eligibility Of Minority And Women Business Enterprises.

3.5.1 The Department of Purchases, Contracts and Supplies of the City of Chicago shall develop and maintain a list of certified minority and women business enterprises, and shall be available to review the qualifications of, and certify if appropriate, any firms (identified by the Partnership or otherwise) who represent that they qualify as minority or women business enterprises. In either instance, the Department of Purchases, Contracts and Supplies shall certify each firm's (a) status as an M.B.E. or W.B.E. entity, and (b) area(s) of specialty or expertise determined by the Purchasing Agent to be most reflective of the firm's true specialty or expertise. Certification by the Agency shall be conclusive as to the M.B.E. or W.B.E. eligibility of a firm.

3.5.2 All requests for certification and additional information required, if any, should be submitted to the Director of the Office of Contract Monitoring and Compliance of the Department of Purchases, Contracts and Supplies of the City of Chicago with a copy of all materials to the Contract Compliance Officer and the Agency's A.A. Coordinator. Upon request, the Agency shall advise the Partnership whether a proposed or bidding M.B.E. or W.B.E. firm has been previously certified within seven (7) working days by the City and, with respect to other firms, within fourteen (14) days that (a) a firm has been certified as any M.B.E. or W.B.E., or (b) that additional information is required in order to complete the certification process. If additional information is required, such shall be furnished by the applying firm within seven days after notification by the Department of Purchasing, and a final determination shall be made relative to certification within seven days after receipt of such additional information. In all cases, applying firms and Partnership will receive at least preliminary certification or denial—upon which the Partnership may rely for the purpose of this Development and Plan—within 28 days of initial application. If the Partnership has not received the preliminary determination within 28 days, then the proposed M.B.E. or W.B.E. firm shall be presumed to be an eligible firm for the purposes of this Plan. On request of the Partnership and applying firm the time for submission of additional information and Agency determination of eligibility shall be extended, in which case the presumption of eligibility shall not apply.

3.5.3 If at any time it is determined that any M.B.E. or W.B.E. certification has been falsely obtained, the Partnership may seek to cure or correct the defect by whatever remedy is necessary. The Partnership's M.B.E. and W.B.E. contracts shall provide that all such contracts and subcontracts may be terminated if (a) the contractor's or subcontractor's status as M.B.E. or W.B.E. was a factor in the award of such contract or subcontract, and (b) the status of the contractor or subcontractor was misrepresented. In such event, the Partnership shall discharge the disqualified M.B.E. or W.B.E. and, if possible identify a qualified M.B.E. or W.B.E. as its replacement.

3.5.4 The Partnership's minority and women business enterprise contracts shall require that all M.B.E.s and W.B.E.s report within 14 days to the Partnership's

A.A. Officer, and justify any changes in the ownership and control of the firm that occur during the duration of that contract. The partnership shall promptly notify the Purchasing Agent and the A.A. Coordinator of any and all changes in the ownership and control of an M.B.E. and W.B.E. firm.

- 3.5.5 Any disputes arising between Partnership and the City concerning the eligibility of M.B.E.s and W.B.E.s shall be resolved in accordance with the Dispute Resolution provisions contained in Section 5. The Agency's certification procedures shall be uniformly applied to all applicants. Such procedures shall not be subject to arbitration.

#### 4. Minority And Women Employment Plan.

- 4.1 The following plan and goals are adopted by the Partnership for employment of minority and women workers in the Construction Component of the Development. During the construction of the improvements provided for in the Agreement, Partnership shall make good faith efforts to achieve the minority and women employment goals set forth hereunder.
- 4.2 The goals for minority and women employment during the Construction Component shall be 50% minority and 10% women employees. The employment goals for residents of the City of Chicago shall be 75%.
- 4.3 The Partnership may submit a written request for a waiver of all or a portion of such goals to the Commissioner of the Department of Planning who may, for good cause shown and following consultation with the Contract Compliance Office of the City, approve such request for modification or reduction of employment goals as specified herein.
- 4.4 The Partnership shall take affirmative actions to eliminate any possible discrimination against any employee or applicant for employment because of race, color, religion, sex or national origin. These affirmative actions shall include, but not be limited to, the following reasons: employment, upgrading, demotion, transfer, recruitment, advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- 4.5 The Partnership will post in conspicuous places notices setting forth its affirmative action policy, particularly as reflected in Section 4.4.
- 4.6 All solicitations of advertisements for employees by or on behalf of the Partnership shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin. The Partnership will cause the foregoing provisions to be inserted in all contracts and subcontracts for any work performed in this Development so that such provisions will be binding upon each contractor or subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

4.7 The Partnership will notify recruitment sources, and minority and women organizations of this affirmative action policy and encourage them to refer minorities and women for employment and to otherwise assist in achieving these affirmative action objectives. In particular, Partnership will contact, or will require contractors to contact, the organizations listed below and similar organizations and solicit assistance in obtaining minorities and women to be employed on the Project and maintain a record of such organization's responses:

- (a) Department of Planning;
- (b) Mayor's Office of Employment and Training;
- (c) Chicago Urban League;
- (d) Chicago Economic Development Corporation;
- (e) such other organizations as may be specified from time to time by the City.

4.8 The Partnership will ensure and maintain a working environment free of harassment, intimidation, and coercion at the Development, and in all facilities at which employees are assigned to work, and will specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of affirmative action policy. The Partnership will use its best efforts to ensure that seniority practices, job classifications, work assignments and other personnel practices do not have a discriminatory effect by continually monitoring all personnel employment-related activities to ensure the E.E.O. policy is being implemented.

4.9 The Partnership will notify all contractors and use its best efforts to require its contractors to notify all subcontractors in writing of this affirmative action policy and require supportive action on their part in the relevant contracts.

In particular, Partnership will require substantially the following provisions in all construction contracts and subcontracts:

- (a) The Contractor will take affirmative actions to eliminate any possible discrimination against any employee or applicant for employment because of race, sex, religion, color, national origin or ancestry. These affirmative actions shall include, but not be limited to, the following areas: employment, upgrading, demotion, transfer, recruitment, recruitment advertising, layoffs, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- (b) The Contractor agrees to identify and use minority men and women subcontractors for any work subcontracted by it, whenever possible. Further, it is understood and agreed that the contractor shall have a goal of subcontracting twenty-five percent (25%) of the work to M.B.E. enterprises and an additional five percent (5%) of subcontractors to



W.B.E. enterprises. The contractor further agrees that upon the Partnership's request, it shall prepare in written form and send to the Partnership, a minority and women head count for its total work and subcontractors employed.

- (c) The Contractor agrees to post, in conspicuous places available to employees and applicants for employment, notices setting forth the policy reflected in, and meeting the requirements of, these affirmative action provisions.
- (d) The Contractor agrees that all solicitations or advertisements for employees placed on behalf of or by the Contractor in connection with the work will state that all qualified applicants will receive consideration without regard to race, sex, religion, color, national origin or ancestry.
- (e) The Contractor agrees to use its best efforts to insure that all of the work is performed by work forces containing the greatest practicable level of minority and women employees. The Contractor shall report in writing to the Partnership as often as may be required by the Partnership its efforts to secure such minority group and women employees and also any reasons for its being unable to employ minority and women employees.
- (f) The Contractor agrees that, in the execution of its work, it shall use the maximum number of apprentices allowed by the various trade agreements with the labor unions. Should the Contractor be unable to hire the specified maximum number of apprentices for any trade, it shall so report in writing to the Partnership as often as may be required by the Partnership. Such report shall include not only its efforts to secure such maximum allowable apprentices, but also the reasons for its being unable to employ apprentices.
- (g) The Contractor agrees to identify and use minority and women subcontractors for any work subcontracted by it whenever practicable. Reports documenting such efforts will be submitted to the Partnership as often as may be required by the Partnership.
- (h) The Contractor agrees to make and submit to the Partnership manpower utilization reports including the hours worked on the Project by minority and women employees and by City residents as often as may be required by Partnership.
- (i) Meetings of Partnership's and Contractor's supervisory and personnel office employees will be conducted as required by Partnership, at which time affirmative action policy and its implementation will be reviewed and explained.
- (j) The Contractor agrees to comply with all applicable federal, state, and local requirements governing minority and women business enterprise utilization and minority and women employment.

- (k) During the contract period, the Contractor will maintain and make available to the Partnership documentation regarding minority and women business enterprise utilization and employment affirmative action. Documentation shall contain at a minimum, names and addresses of subcontracting minority and women business enterprises, extent of minority or women ownership, and actual dollar amount of contract award.
- (l) The Contractor agrees that these affirmative action provisions are to be inserted in each contract for any of the work subcontracted by the Contractor to others, and that the Contractor will be responsible for enforcing such provisions. The Contractor will report such enforcement efforts to the Partnership as often as may be required by the Partnership.
- (m) The Contractor agrees, unless precluded by a valid bargaining agreement, that, in addition to union halls, other sources will be used to solicit minority and women employees.
- (n) The Contractor agrees that the following steps shall be taken in relation to all trade unions with which it has bargaining agreements and/or whose members shall perform any of the work:
  - (1) The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice advising the labor or union or worker's representative of the Contractor's commitments made in this contract and shall deliver copies of such notices of Partnership.
  - (2) Prior to the beginning of the work, the Contractor will notify all trade unions of its desire to receive referrals of qualified minority and women individuals.

## 5 Dispute Resolution.

- 5.1 If any time during the existence of this Plan the Agency believes that the Partnership is substantially failing to comply with the terms of this Plan, the Agency's A.A. Coordinator shall provide a written report to the Partnership's A.A. officer explicitly invoking this section of the Plan, explaining the alleged non-compliance, describing the grounds for such belief, and proposing the further implementation steps the Agency believes should be taken.
- 5.2 If the Partnership disagrees with the Agency's evaluation, the A.A. Coordinator and A.A. officer shall meet within fifteen (15) days and make every good faith effort to resolve the differences. If resolution is still not obtained, senior representatives of the Department of Planning and the Partnership shall meet and consult and attempt in good faith to resolve their differences as to the proper and adequate method of implementing the Plan.

5.3 If the Agency and the Partnership have consulted pursuant to Section 5.2 but been unable to resolve their differences within forty-five (45) days following the Notice of the City invoking this section, the matter shall be submitted to binding arbitration. The Agency shall be given the opportunity to demonstrate in arbitration that the Project is required by the Plan. The sole issues which may be presented and decided in arbitration are whether such proposed steps are required to comply with the Plan and issues concerning the financial capability of M.B.E.s and W.B.E.s as described in Section 3.5.5. The Arbitrators shall only have the authority to direct the Purchasers to undertake specific actions in order to demonstrate good faith efforts as required by this Plan. Such arbitration shall be the sole method of final dispute resolution concerning Section 17 of the Agreement and the implementation of this Plan, in lieu of any other remedies. The arbitration shall be conducted in accordance with the Federal Rules of Evidence.

5.4 Such arbitration shall be conducted by a panel of three persons, one designated by the Partnership, one by the Agency and the third selected by agreement of the first two arbitrators. The Partnership and the Agency shall designate their respective arbitrators within thirty (30) days after the submission of the dispute to arbitration, and the third arbitrator shall be selected within thirty (30) days thereafter. In other respects the arbitration shall be conducted pursuant to the rules and procedures of the American Arbitration Association, except as modified by agreement of the parties.

The determination of the arbitration panel shall be in writing and based upon the hearing record, and shall include a statement of findings and reasons therefor. The determination of the arbitrators shall be final and binding on the parties, and shall be judicially enforceable. Notwithstanding any other provision contained herein, it is understood that the arbitrators shall have no authority to award damages.

## 6. Resident Employment And Post-Construction Provisions.

### 6.1 General Provisions.

6.1.1 During the time that tax increment financing obligations are outstanding for the Project, the Partnership shall make good faith efforts, in accordance with the provisions of this Part 6, to achieve certain affirmative action goals in the following areas:

- (a) With regard to the direct employees of the Partnership, the employment of city resident workers in the post-construction component of the Project; and
- (b) Participation of M.B.E.s and W.B.E.s and of minority and women employees in the post-construction operations of the Partnership with respect to the Project.
- (c) Participation of M.B.E.s and W.B.E.s in the leasing of the shopping center as set forth in 6.4.

6.1.2 The Partnership's obligations in these areas are to make good faith efforts and to report to the Agency about its activities and the results. The nature of the good faith efforts shall be consistent with the efforts described in Parts 2-4, as relevant to the respective M/W.B.E. or employment activities described in Part 6.

6.2 **Employment of City Residents in the Post-Construction Component.**

6.2.1 With regard to direct employees of the Partnership, the Partnership will make good faith efforts, consistent with those described in Part 4, to achieve an employment goal of 75% for City resident workers in the post-construction component of the Project.

6.2.2 The Partnership will seek to incorporate into the reports described in Section 2.7 information on its efforts and results with respect to resident employment. In any event, Partnership will report at least quarterly to the Agency the level of resident employment achieved.

6.3 **M.B.E. and W.B.E. Participation and Minority and Female Employment During Post-Construction Operations.**

6.3.1 During post-construction operations, the Partnership will make good faith efforts, consistent with those described in Parts 3 and 4, to achieve the levels of M.B.E. and W.B.E. participation and minority and women employment described below.

6.3.2 Employment goals will be applicable to direct employees (those employed full-time specifically for the operation of this development). The goals shall apply to such direct employees whether they are employed by the Partnership, a property management firm affiliated with the Partnership or a contractor.

6.3.3 The M.B.E. and W.B.E. goals shall apply to contracts for the procurement of direct commodities and services (those which are purchased or provided specifically for the operation of this development).

6.3.4 With respect to any overlap in the activities identified in Sections 6.3.2 and 6.3.3, either employment or M.B.E./W.B.E. goals shall be applicable at the election of the developer.

6.3.5 The M.B.E./W.B.E. goals for the Post-Construction Component shall be 50% for M.B.E. firms, 10% for W.B.E. firms and 75% for local businesses.

6.3.6 The Partnership is responsible for collecting employment and M.B.E./W.B.E. utilization statistics. This data, and a narrative describing the good faith efforts by the responsible entities to achieve compliance with Section 6.3, will be submitted to the City on a quarterly basis, beginning with the construction completion date.

**6.3.7** The Partnership will include provisions in all relevant contracts specifying employment or M.B.E./W.B.E. obligations, as applicable, and encouraging contractors to make all good faith efforts to achieve those goals.

**6.4** The Partnership shall make good faith efforts in accordance with this Agreement to achieve certain affirmative action goals in respect to the rental of space in the Project in the following areas:

(a) the Partnership shall invite M.B.E.s and W.B.E.s to submit proposals in respect to rental space. In order to have a viable development, it is necessary to anchor the development with stores which have names which are recognized on a national or regional basis. To the extent that these stores are operated on a franchise or distributorship basis, the Partnership will encourage the establishment of franchises and distributorships which are M.B.E.s and W.B.E.s and use those good faith efforts consistent with those described in Parts 3 and 4 to establish local M.B.E.s and W.B.E.s. In addition, the Partnership will cooperate and work with local community and business organizations to achieve the goals.

(b) The vitality and success of the Project is also dependent on local businesses being a part of the tenant mix. A portion of the rentable space to be determined by the City and the Partnership with the input of local community and business organizations shall be offered to qualified local businesses which are M.B.E.s and W.B.E.s.

(c) The Partnership shall advise all tenants of the employment goals of this Agreement and shall use its good efforts to achieve these goals.

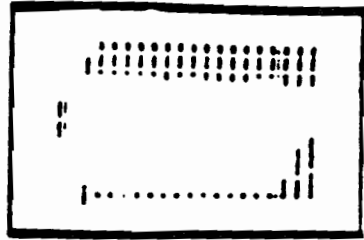
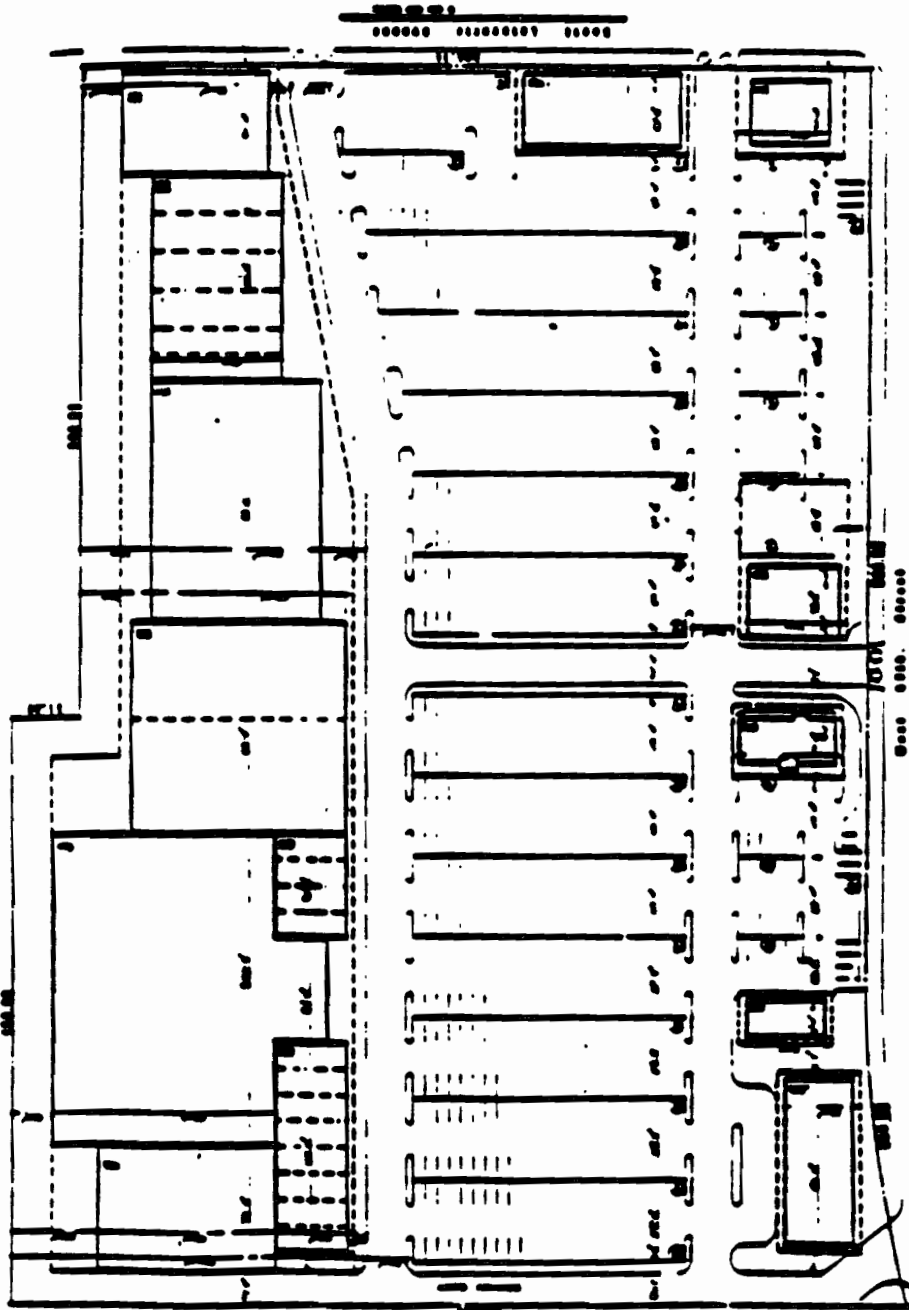
**6.4.1** All Partnership efforts shall be consistent with the good faith efforts described in Parts 3 and 4 and other applicable provisions of this Agreement

#### **7. No Third Party Benefit**

**7.1** This Plan shall be construed as an agreement between the Partnership and the City and no third-party shall be entitled to enforce any of the provisions hereof.

**7.2** The Partnership and the City of Chicago agree that actions for the enforcement of this Plan pursuant to Section 5 hereof may be brought only by the City and by no other party, whether or not the provisions hereof may be construed as benefitting any third party and no party shall be construed as or have the rights of a third-party beneficiary under this Plan.

Exhibit 01



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