

COMMITTEE OF THE WHOLE MEETING
No. 2014-08-2
TUESDAY, AUGUST 19, 2014

6:30 P.M.

CALL TO ORDER

ROLL CALL

ADMINISTRATION

1. Presentation of Mesirow Financial on a potential Bond Issue
2. Condition of potential Bond Issue Option
3. Consideration of a revised offer to purchase the Villas of Glenwood property from Hyatt International Realty, Inc.
4. Ordinance Vacating Certain Easements Located on Lot 1, Lot 2, Lot 3 and Outlot B of the Plat of the Industrial North Subdivision Recorded in the Office of the Cook County Recorder of Deeds as Document Number 1108916064 on March 3, 2011
5. Purchase of Chlorination Equipment at a cost not to exceed \$10,000.00
6. Purchase of new backhoe at a cost not to exceed \$97,000.000 (replacing 2001 backhoe that will be transferred to Glenwoodie Grounds Department) to be funded with Capital Reserve Budget Funds
7. Ordinance amending the Village's Code of Ordinances to amend Section 10-49
8. Resolution approving Intergovernmental Agreement by and between the Village of Glenwood and the Metropolitan Water Reclamation District of Greater Chicago for Construction and Perpetual Maintenance of a Relief Storm Sewer along Glenwood Avenue

OPEN TO THE PUBLIC

Executive Closed Session under Section 2 (c) (1) Personnel, Section 2 (c) (5) Real Estate, Section 2 (c) (6) setting the price for the sale of property and Section 2 (c) 11 Litigation

ADJOURNMENT

Sincerely,



Donna M. Gayden
Village Administrator

Posted and distributed 8/16/14

**ADDENDUM TO
REAL ESTATE SALE AND PURCHASE CONTRACT**

For and in consideration of Ten and No/100 Dollars (\$10.00), the sufficiency of which is acknowledged as in-hand paid, and pursuant to Paragraph 25 (a) of the Real Estate Sale and Purchase Contract ("Contract") between the VILLAGE OF GLENWOOD ("Seller") and HYATT INTERNATIONAL REALTY, INC. or its Assignee or Designee ("Purchaser"), Seller and Purchaser agree to amend said Contract, as follows:

- A. Purchaser agrees to allow the Earnest Money to be non-refundable; and
- B. The proposed Real Estate Sale and Purchase Contract now shall be considered a cash deal; and
- C. The prior, proposed Addendum and letter to counsel for the Village requesting an extension of the Due Diligence period and Village financing for the transaction is hereby rescinded; and
- D. Should there be any discrepancy between the terms of the Contract and this Addendum, the terms of this Addendum shall control; and
- E. In all other respects, the provisions duties, responsibilities, and requirements of the Contract between Seller and Purchaser shall remain in full force and effect; and
- F. The closing on the transfer contemplated in the Contract shall occur on or before September 12, 2014.

Dated: _____

Dated: August 12 2014

SELLER:

PURCHASER:

Village of Glenwood

Hyatt International Realty, Inc.,
an Illinois Corporation or its Assignee or Designee

By: _____

By:  _____

Title: _____

Title: President

Witness: _____

Witness: _____

Prepared by:
Gary S. Mueller, Esq.
Gary S. Mueller & Associates, Ltd.
91 North 129th Infantry Drive, Joliet, IL 60435
815-725-7300 Telephone
815-725-7320 Fax

VILLAGE OF GLENWOOD

COOK COUNTY, ILLINOIS

ORDINANCE NO. 2014-_____

AN ORDINANCE VACATING CERTAIN EASEMENTS LOCATED ON LOT 1, LOT 2,
LOT 3 AND OUTLOT B OF THE PLAT OF THE INDUSTRIAL NORTH SUBDIVISION
RECORDED IN THE OFFICE OF THE COOK COUNTY RECORDER OF DEEDS AS
DOCUMENT NUMBER 1108916064 ON MARCH 3, 2011

ADOPTED BY THE PRESIDENT AND
BOARD OF TRUSTEES OF THE
VILLAGE OF GLENWOOD
THIS _____ TH DAY OF _____, 2014

Published in pamphlet form
by authority of the President
and Board of Trustees of the
Village of Glenwood, Cook
County, Illinois this _____ day
of _____ 2014.

ORDINANCE NO. 2014- ____

AN ORDINANCE VACATING CERTAIN EASEMENTS LOCATED ON LOT 1, LOT 2, LOT 3 AND OUTLOT B OF THE PLAT OF THE INDUSTRIAL NORTH SUBDIVISION RECORDED IN THE OFFICE OF THE COOK COUNTY RECORDER OF DEEDS AS DOCUMENT NUMBER 1108916064 ON MARCH 3, 2011

WHEREAS, the Village of Glenwood is a home rule unit of local government pursuant to the provisions of Article VII, Section 6 of the Illinois Constitution;

WHEREAS, on March 3, 2011 a Plat of the Industrial North Subdivision was recorded in the Office of the Cook County Recorder of Deeds as document number 1108916064;

WHEREAS, the recorded Plat of the Industrial North Subdivision established certain easements on Lots 1, 2, 3 and Outlot B of the Industrial North Subdivision;

WHEREAS, the Village of Glenwood was the owner of Lots 1, 2, 3 and Outlot B of the Plat of the Industrial North Subdivision at the time said Plat was recorded on March 3, 2011 and has since then continuously remained the owner of Lots 1, 2, 3 and Outlot B of the Plat of the Industrial North Subdivision;

WHEREAS, no lot created by the Plat of the Industrial North Subdivision has been sold;

WHEREAS, the Village of Glenwood and the Northern Illinois Gas Company, as the owners of all the property comprising the Plat of the Industrial North Subdivision have in Section 14 of an Agreement recorded as document number 1422019156 on August 8, 2014 agreed to execute a plat in conformity with Exhibit 3 of the same Agreement which resubdivides Lot 2, Lot 3, Outlot A and Outlot B of the Industrial North Subdivision;

WHEREAS, prior to the completion and recording of the plat resubdividing Lot 2, Lot 3, Outlot A and Outlot B of the Industrial North Subdivision, it is necessary and desirable for the Village of Glenwood to vacate certain easements on Lots 1, 2, 3 and Outlot B of the Industrial

North Subdivision pursuant to the document titled "Partial Vacation of a Plat" which is attached to this Ordinance as Exhibit 1;

WHEREAS, the corporate authorities of the Village of Glenwood find and determine that there are no, and have never been any, Public Service Facilities or Public Utility Facilities in any of those easements that are indentified as being vacated and released in the document titled "Partial Vacation of a Plat" which is attached to this Ordinance as Exhibit 1;

WHEREAS, the Village of Glenwood pursuant to its rights under 765 ILCS 205/7 ("Vacation of Part of Plat") herein finds that it is in the best interests of the Village to approve the document titled "Partial Vacation of a Plat" which is attached to this Ordinance as Exhibit 1, which vacates and releases those Public Utility, Drainage and Access Easements contained in Lot1, Lot 2, Lot 3 and Outlot B of the Plat of the Industrial North Subdivision recorded in the Office of the Cook County Recorder of Deeds as document number 1108916064 that are delineated and described in Exhibit A of the "Partial Vacation of a Plat" that is attached to this Ordinance as Exhibit 1;

NOW, THEREFORE, be it ordained by the President and Board of Trustees of the Village of Glenwood, Cook County Illinois, pursuant to their home rule as follows:

SECTION 1: Recitals.

The Recitals of this Ordinance are declared to be true and correct and are incorporated into this Section as if they are fully set forth herein.

SECTION 2: Approval of Exhibit 1, titled "Partial Vacation of a Plat"

The document titled "Partial Vacation of a Plat" attached as Exhibit 1 and all Exhibits to said document are herein approved. The Village President, Kerry Durkin, is authorized to execute the document titled "Partial Vacation of a Plat" attached as Exhibit 1 to this Ordinance

for and on behalf of the Village of Glenwood. A certified copy of this approved ordinance shall further be attached as Exhibit B to the "Partial Vacation of a Plat" and shall be referenced therein.

SECTION 3: Recording.

After its execution by the Village President and the attachment of a certified copy of this approved Ordinance, the "Partial Vacation of a Plat" and all its exhibits shall be recorded in the Office of the Cook County Recorder of Deeds.

SECTION 4: Home Rule.

This Ordinance, and each of its terms, shall be the effective legislative act of a home rule municipality without regard to whether such Ordinance should: (a) contain terms contrary to the provisions of current or subsequent non-preemptive state law; or (b) legislate in a manner or regarding a matter not delegated to municipalities by state law. It is the intent of the corporate authorities of the Village of Glenwood that to the extent that the terms of this Ordinance should be inconsistent with any non-preemptive state law, this Ordinance shall supersede state law in that regard within its jurisdiction.

SECTION 5: Invalidity.

In the event any portion of this ordinance is found to be invalid, the remaining portions of this ordinance shall be severable from any such invalid portion and enforced to the fullest extent possible.

SECTION 6: Effective date.

This Ordinance shall be immediately in full force and effect upon its passage and approval and shall subsequently be published in pamphlet form as provided by law.

SECTION 7: Repealer.

The specific terms and conditions of this Ordinance shall prevail against other existing ordinances of the Village to the extent there may be any conflict.

PASSED by roll call vote this _____ day of _____, 2014.

AYES:

NAYS:

ABSENT:

ABSTAIN:

APPROVED this ___ day of _____, 2014.

Kerry Durkin, Village President

ATTEST:

Ernestine Dobbins, Village Clerk

STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

CERTIFICATE

I, Ernestine Dobbins, certify that I am the duly elected and acting municipal clerk of the Village of Glenwood, Cook County, Illinois.

I further certify that on _____, the Corporate Authorities of the Village of Glenwood passed and approved Ordinance No. 2014-_____, entitled,

**AN ORDINANCE VACATING CERTAIN EASEMENTS LOCATED ON LOT 1, LOT 2,
AND LOT 3 OF PLAT OF THE INDUSTRIAL NORTH SUBDIVISION RECORDED IN
THE OFFICE OF THE COOK COUNTY RECORDER OF DEEDS AS DOCUMENT
NUMBER 1108916064 ON MARCH 3, 2011**

which provides by its terms that it should be published in pamphlet form.

The pamphlet form of Ordinance No. 2014-___, including the Ordinance and a cover sheet thereof, was prepared, and a copy of such Ordinance was posted in the Village Hall, commencing on _____, 2014, and continuing for at least 10 days thereafter. Copies of such ordinance were also available for public inspection upon request at the Village Hall. A true and correct copy of Ordinance No. _____ is attached

Dated at Glenwood, Illinois, this _____ day of _____, 2014.

Ernestine Dobbins
Municipal Clerk

EXHIBIT 1
Partial Vacation of a Plat

Prepared by and after recording
return to:

John F. Donahue
Rosenthal, Murphey, Coblenz
& Donahue
30 N. LaSalle, Suite 1624
Chicago, Illinois 60602

PARTIAL VACATION OF A PLAT

WHEREAS, on March 3, 2011 a Plat of the Industrial North Subdivision was recorded in the Office of the Cook County Recorder of Deeds as document number 1108916064;

WHEREAS, the recorded Plat of the Industrial North Subdivision established certain easements on Lots 1, 2, 3 and Outlot B of the Industrial North Subdivision.

WHEREAS, the Village of Glenwood was the owner of Lots 1, 2, 3 and Outlot B of the Plat of the Industrial North Subdivision at the time said Plat was recorded on March 3, 2011 and has since then continuously remained the owner of Lots 1, 2, 3 and Outlot B of the Plat of the Industrial North Subdivision..

WHEREAS, no lot created by the Plat of the Industrial North Subdivision has been sold.

WHEREAS, the Village of Glenwood and the Northern Illinois Gas Company, as the owners of all the property comprising the Plat of the Industrial North Subdivision have in Section 14 of an Agreement recorded as document number 1422019156 on August 8, 2014 agreed to execute a plat in conformity with Exhibit 3 of the same Agreement which resubdivides Lot 2, Lot 3, Outlot A and Outlot B of the Industrial North Subdivision.

WHEREAS, prior to the completion and recording of the plat resubdividing Lot 2, Lot 3, Outlot A and Outlot B of the Industrial North Subdivision, it is necessary and desirable for the Village of Glenwood to vacate certain easements on Lots 1, 2, 3 and Outlot B of the Industrial North Subdivision.

WHEREAS, there are no, and have never been any, Public Service Facilities or Public Utility Facilities in any of those easements vacated by this instrument.

NOW THEREFORE, in accordance with the above recitals which are true, correct and incorporated herein, the Village of Glenwood pursuant to its rights under 765 ILCS 205/7 ("Vacation of Part of Plat") herein vacates and releases those Public Utility, Drainage and Access Easements contained in Lot 1, Lot 2, Lot 3 and Outlot B of the Plat of the Industrial North Subdivision recorded in the Office of the Cook County Recorder of Deeds as document number 1108916064 that are delineated and described in the attached Exhibit A.

Approved by Village of Glenwood Ordinance 2014-___ on August 19, 2014, a certified copy of which is attached as Exhibit B.

Dated this _____ day of August, 2014.

Kerry Durkin, Village President
Village of Glenwood

STATE OF ILLINOIS, COUNTY OF COOK ss.

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, CERTIFY THAT Kerry Durkin, personally known to me to be the person whose name is subscribed to the foregoing **PARTIAL VACATION OF A PLAT**, appeared before me this day in person, and acknowledged that he signed, sealed, and delivered the said instrument in his capacity as the Village President of the Village of Glenwood as the free and voluntary act of the Village of Glenwood, for the uses and purposes therein set forth.

Given under my hand and official seal, this _____ day of August, 2014.

(Notary Public)

EXHIBIT A

Partial Plat of Vacation

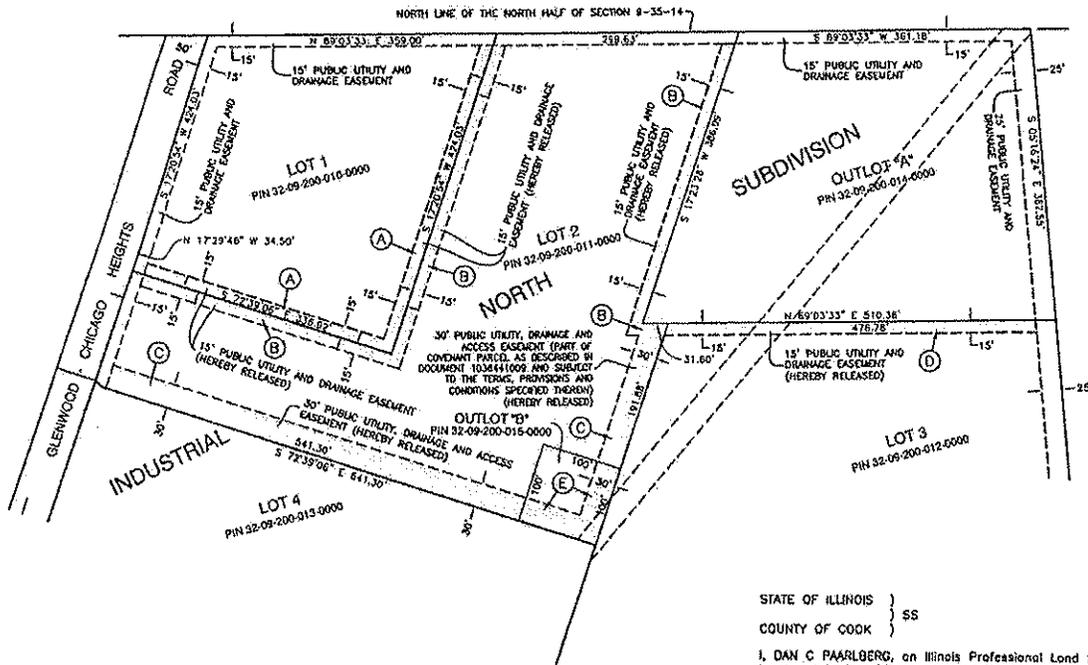
The Village of Glenwood, Illinois herein vacates and releases those Public Utility, Drainage and Access Easements contained in the Plat of the Industrial North Subdivision recorded as document number 1108916064 with the Cook County Recorder of Deeds on March 03, 2011 that are delineated and described below:

- A. Lot 1: 15 foot Public Utility and Drainage Easements along the easterly and southerly lines (adjacent to Lot 2).
- B. Lot 2: 15 foot Public Utility and Drainage Easements along the westerly and northerly lines (adjacent to Lot 1), the easterly line (west of Outlot A), and the north line (south of Outlot A).
- C. Lot 2: 30 foot Public Utility, Drainage and Access Easements along the easterly line (adjacent to Lot 3) and southerly line (adjacent to Lot 4).
- D. Lot 3: 15 foot Public Utility and Drainage Easement along the north line.
- E. Outlot B: 30 foot Public Utility, Drainage and Access Easements along the easterly line (adjacent to Lot 3) and the southerly line (adjacent to Lot 4).

Affects PIN's: 32-09-200-010-0000, 32-09-200-011-0000, 32-09-200-012-0000, 32-09-200-015-0000



100 0 100
SCALE 1" = 100'



STATE OF ILLINOIS }
COUNTY OF COOK } SS

I, DAN C PAARLBERG, an Illinois Professional Land Surveyor, do hereby state that I have prepared the hereon drawn plat, for the purpose of vacating the properly described in the caption of the hereon drawn plat as shown hereon.

SOUTH HOLLAND, ILLINOIS August 07, 2014

Certificate No. 035-003243
Expires November 30, 2014



10-363

ROBINSON ENGINEERING, LTD.
CONSULTING ENGINEER, PROFESSIONAL ENGINEER,
AND PROFESSIONAL LAND SURVEYOR
1200 SOUTH PARK AVENUE SOUTH HOLLAND, ILLINOIS 60471
(708) 331-8100 FAX (708) 331-3405
ILLINOIS DESIGN FIRM REGISTRATION NO. 18602138

VILLAGE OF GLENWOOD

COOK COUNTY, ILLINOIS

ORDINANCE NO. 2014 - _____

**AN ORDINANCE AMENDING THE VILLAGE'S CODE OF ORDINANCES TO
AMEND SECTION 10-49**

ADOPTED BY THE PRESIDENT AND
BOARD OF TRUSTEES OF THE
VILLAGE OF GLENWOOD
THIS 19TH DAY of AUGUST 2014

Published in pamphlet form
by authority of the President
and Board of Trustees of the
Village of Glenwood, Cook
County, Illinois this _____ day
of August 2014.

ORDINANCE NO. 2014 - _____

**AN ORDINANCE AMENDING THE VILLAGE'S CODE OF ORDINANCES TO
AMEND SECTION 10-49**

WHEREAS, the Board of Trustees of the Village of Glenwood has determined that it is in the Village's best interest to amend Section 10-49 of the Village's Code of Ordinances to further address and regulate the individual sale of beer containers as set forth herein; and

NOW, THEREFORE, be it ordained by the President and Board of Trustees of the Village of Glenwood, Cook County Illinois, pursuant to their home rule powers as follows:

SECTION 1: Recitals.

The Recitals of this Ordinance are declared to be true and correct and are incorporated into this Section as if they are fully set forth herein.

SECTION 2: Amendment of Section 10-49.

Section 10-49 of the Village of Glenwood's Code of Ordinances is herein amended to state in its entirety as follows:

Sec. 10-49. Restrictions on the retail package sale of alcohol, spirits, wine or beer for holders of class A, B, D, E or G liquor licenses.

The holders of class A, B, D, E or G liquor licenses shall not engage in the retail package sale of any containers of alcohol, spirits or wine containing an amount less than 200 milliliters (6.76 ounces) of alcohol, spirits or wine. The holders of class A, B, D, E or G liquor licenses shall not engage in the retail package sale, for off-premises consumption, of any single can, single bottle or other single container of any beer unless: (1) the net sales price paid by the purchaser is \$5.00 or more and (2) the individual can, bottle or other container of beer is marketed for individual sale. It shall be a violation of this Code to sell individual cans, bottles or other individual containers of beer that are removed from a six-pack, 12-pack, case, or other type of packaging with more than one can, bottles or container of beer. After holding a hearing as required by State statute, the Liquor Commissioner may impose a fine for a violation of this section that shall not exceed \$1,000 for a first violation in a 12-month period, \$1,500 for a second violation in a 12-month period

and \$2,500 for a third or subsequent violation in a 12-month period. Not more than \$15,000.00 in fines may be imposed against any license during the period of the license. For the purpose of this section the terms "alcohol," "spirits," "wine" and "beer" shall have the same meaning as that set forth, in the Illinois Liquor Control Act.

SECTION 3: Home Rule.

This Ordinance, and each of its terms, shall be the effective legislative act of a home rule municipality without regard to whether such Ordinance should: (a) contain terms contrary to the provisions of current or subsequent non-preemptive state law; or (b) legislate in a manner or regarding a matter not delegated to municipalities by state law. It is the intent of the corporate authorities of the Village of Glenwood that to the extent that the terms of this Ordinance should be inconsistent with any non-preemptive state law, this Ordinance shall supersede state law in that regard within its jurisdiction.

SECTION 4: Invalidity.

In the event any portion of this ordinance is found to be invalid, the remaining portions of this ordinance shall be severible from any such invalid portion and enforced to the fullest extent possible. Nothing contained in this Ordinance shall be intended to amend or change subsections 58-31(b) or 58-31(c) of Section 58-31 of the Village's Code

SECTION 5: Repealer.

The specific terms and conditions of this Ordinance shall prevail against other existing ordinances of the Village to the extent there may be any conflict. All existing ordinances of the Village which directly conflict with the terms of this Ordinance are herein repealed.

SECTION 6: Effective date.

This Ordinance shall be in full force and effect from and after its passage, approval and

publication in pamphlet form as provided by law.

PASSED by roll call vote this 19th day of August, 2014.

AYES:

NAYS:

ABSENT:

ABSTAIN:

APPROVED this 19th day of August, 2014

Kerry Durkin, Village President

ATTEST:

Ernestine Dobbins, Village Clerk

VILLAGE OF GLENWOOD

COOK COUNTY, ILLINOIS

RESOLUTION NO. 2014 - _____

**A RESOLUTION AUTHORIZING THE APPROVAL OF AN INTERGOVERNMENTAL
AGREEMENT BETWEEN THE VILLAGE OF GLENWOOD AND THE
METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO
FOR THE DESIGN, CONSTRUCTION AND PERPETUAL MAINTENANCE OF A
RELIEF STORM SEWER ALONG GLENWOOD AVENUE**

ADOPTED BY THE PRESIDENT AND
BOARD OF TRUSTEES OF THE
VILLAGE OF GLENWOOD
THIS 19TH DAY OF AUGUST 2014

RESOLUTION NO. 2014 - _____

A RESOLUTION AUTHORIZING THE APPROVAL OF AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE VILLAGE OF GLENWOOD AND THE METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO FOR THE DESIGN, CONSTRUCTION AND PERPETUAL MAINTENANCE OF A RELIEF STORM SEWER ALONG GLENWOOD AVENUE

WHEREAS, the Village of Glenwood is a home rule unit of local government pursuant to the provisions of Article VII, Section 6 of the Illinois Constitution; and

WHEREAS, the Metropolitan Water Reclamation District of Greater Chicago (“MWRD”) has proposed an Intergovernmental Agreement pursuant to which the MWRD will pay the Village up to \$820,000.00 for the Village to design, construct and perpetually maintain a 1000 linear feet relief Storm sewer along Glenwood Avenue from School Street to an outfall to Thorn Creek; and

WHEREAS, the Village’s corporate authorities have reviewed the Intergovernmental Agreement attached as Exhibit A and finds that it is in the Village’s best interest to approve this Intergovernmental Agreement; and

NOW, THEREFORE, be it resolved by the President and Board of Trustees of the Village of Glenwood, Cook County Illinois, pursuant to its home rule powers as follows:

SECTION 1: Recitals.

The foregoing recitals are a material part of this Resolution and are incorporated herein as if they were fully set forth herein.

SECTION 2: Approval of Intergovernmental Agreement.

The corporate authorities of the Village of Glenwood do hereby approve the Intergovernmental Agreement attached as Exhibit A with the Metropolitan Water Reclamation

District of Greater Chicago and authorize the Village President to execute this agreement on behalf of the Village of Glenwood.

SECTION 3: Home Rule.

This resolution and each of its terms shall be the effective legislative act of a home rule municipality without regard to whether such resolution should (a) contain terms contrary to the provisions of current or subsequent non-preemptive state law, or (b) legislate in a manner or regarding a matter not delegated to municipalities by state law. It is the intent of the corporate authorities of the Village of Glenwood that to the extent that the terms of this resolution should be inconsistent with any non-preemptive state law, that this resolution shall supersede state law in that regard within its jurisdiction.

SECTION 4: Effective date.

This Resolution shall be effective immediately.

PASSED by roll call vote this 19th day of August, 2014.

AYES:

NAYS:

ABSENT:

ABSTAIN:

APPROVED this 19th day of August, 2014.

Kerry Durkin, Village President

ATTEST:

Ernestine Dobbins, Village Clerk

**INTERGOVERNMENTAL AGREEMENT BY AND BETWEEN THE VILLAGE OF
GLENWOOD AND THE METROPOLITAN WATER RECLAMATION DISTRICT OF
GREATER CHICAGO FOR CONSTRUCTION AND PERPETUAL MAINTENANCE
OF A RELIEF STORM SEWER ALONG GLENWOOD AVENUE**

THIS INTERGOVERNMENTAL AGREEMENT (hereinafter the "Agreement") by and between the Metropolitan Water Reclamation District of Greater Chicago, a unit of local government and body corporate and politic, organized and existing under the laws of the State of Illinois (hereinafter the "District") and the Village of Glenwood, a municipal corporation and home rule unit of government organized and existing under Article VII, Section 6 of the 1970 Constitution of the State of Illinois (hereinafter the "Village").

WITNESSETH:

WHEREAS, on November 17, 2004, the Illinois General Assembly passed Public Act 093-1049 (the "Act"); and

WHEREAS, the Act declares that stormwater management in Cook County shall be under the general supervision of the District; and

WHEREAS, the Act specifically authorizes the District to plan, manage, implement, and finance activities relating to stormwater management in Cook County; and

WHEREAS, the Act further authorizes the District to assume responsibility for maintaining any stream within Cook County; and

WHEREAS, the Village is located within the boundaries of Cook County; and

WHEREAS, pursuant to Article 11 of the Illinois Municipal Code, 65 ILCS 5/11, the Village has the authority to construct and maintain relief storm sewers within its corporate limits; and

WHEREAS, Thorn Creek is a regional waterway tributary to the Little Calumet River; and

WHEREAS, water from Thorn Creek backs up into local neighborhood storm sewers in the Village, along Glenwood Avenue during heavy rainfall events and causes flooding; and

WHEREAS, the Village proposes to construct a relief storm sewer along Glenwood Avenue, which will discharge to Thorn Creek, to alleviate flooding along Glenwood Avenue; and

WHEREAS, the relief storm sewer may be approached more effectively, economically, and comprehensively with the Village and District cooperating and using their joint efforts and resources; and

WHEREAS, the Intergovernmental Cooperation Act, 5 ILCS 220/1 *et seq.*, and Section 10 of Article VII of the Illinois Constitution, allow and encourage intergovernmental cooperation; and

WHEREAS, on August 7, 2014, the District's Board of Commissioners authorized the District to enter into an intergovernmental agreement with the Village; and

WHEREAS, on _____, 201_ the Village's Board of Trustees authorized the Village to enter into an intergovernmental agreement with the District; and

NOW THEREFORE, in consideration of the matters set forth, the mutual covenants and agreements contained in this Agreement, and for other good and valuable consideration, the Village and District hereby agree as follows:

Article 1. Incorporation of Recitals. The recitals set forth above are incorporated herein by reference and made a part hereof.

Article 2. Scope of Work.

1. The scope of work for the Project will include: (1) design, construction, and perpetual maintenance of 1,000 linear feet of relief storm sewer along Glenwood Avenue from School Street to Thorn Creek, in the Village; (2) an outfall to Thorn Creek; and (3) any other necessary appurtenances required for this relief storm sewer (hereinafter "Project"), as depicted on Exhibit 1 of this Agreement. The scope of work under this Project excludes road pavement and adjustments to existing inlets and manholes.
2. The Village, at its sole cost and expense, shall cause to be prepared construction drawings, specifications, and details (hereinafter "Construction Documents") for the Project.
3. The Project shall realize all benefits, which consist of the alleviation of flooding along Glenwood Avenue in the Village.
4. The Village shall provide the District with a copy of final Construction Documents for the District's review and approval as to the Project's intended stormwater benefit to the public.

5. The District shall review and provide comments to the Village as to the Project's intended stormwater benefit to the public in writing within 30 calendar days of receipt of the final Construction Documents referenced in Article 2, Subsection 2 of this Agreement. The Village shall incorporate the District's review comments into the Construction documents.
6. The Village, at its sole cost and expense, shall construct the Project in accordance with the final Construction Documents.
7. The Village will award all Project-related construction contracts using the District's Purchasing Act, 70 ILCS 2605/11.1-11.24, the District's Multi-Project Labor Agreement and Memorandum of Understanding, as well as the District's Affirmative Action Requirements and Affirmative Action Ordinance (attached as Exhibits 2, 3, and 4 respectively) as minimum requirements. The Village may impose more stringent requirements than those contained in Exhibits 2, 3, and 4 when awarding Project-related construction contracts, but in no event shall the Village's requirements fall below the District's general standards
8. The Village shall comply with the Prevailing Wage Act, 820 ILCS 130/0.01 *et seq.* Current prevailing wage rates for Cook County are determined by the Illinois Department of Labor. The prevailing wage rates are revised by the Illinois Department of Labor and are available on the Department's official website. It is the responsibility of the Village to obtain and comply with any revisions to the rates should they change during the Duration of the Agreement.
9. The Village, at its sole cost and expense, shall provide final project design, land acquisition, construction oversight, and administrative support for the Project.
10. The District shall reimburse the Village for the construction of the Project in the amount of \$820,000.00, but in no event shall that amount exceed \$820,000.00, which corresponds to the estimated construction cost of the Project. All reimbursement provided by the District shall be used exclusively for the construction of the Project. The Village shall be solely responsible for change orders or any increase in cost of the Project.
11. The District shall disburse funds specified in Article 2, paragraph 10 of this Agreement to the Village in accordance with the following schedule:
 - a. \$200,000.00 at 25% completion of construction of the Project;
 - b. \$200,000.00 at 50% completion of construction of the Project;
 - c. \$200,000.00 at 75% completion of construction of the Project; and
 - d. \$220,000.00 at final completion of construction of the Project.

12. As a condition for reimbursement, the Village shall submit copies of construction invoices to the District for the District's review and approval. Reimbursement by the District to the Village shall not exceed the amount invoiced for construction of the Project. In the event the amount invoiced for construction of the Project is less than the reimbursement amount specified in Article 2, Section 10 of this Agreement, the District shall only reimburse the Village for the amount invoiced for construction of the Project.
13. The Village shall return all funds provided by the District if the Project is not completed within two years of award of the construction contract, unless the District approves extension(s); such approvals will not be unreasonably withheld. In the event that the Village does not use all of the District's disbursed funds for the Project, the Village shall return any unused funds to the District within sixty (60) days.

Article 3. Permits and Fees.

1. Federal, State, and County Requirements. The Village shall obtain all federal, state, and county permits required by law for the construction of the Project, and shall assume any costs in procuring said permits. Additionally, the Village will obtain all consents and approvals required by federal, state, and/or county regulations for the construction of the Project, and will assume any costs incurred in procuring all such consents and approvals.
2. Maintenance. The Village shall obtain any and all permits necessary for the performance of the maintenance work set forth in the Operations and Maintenance Plan ("O&M Plan")—attached hereto as Exhibit 5 and hereby incorporated into this agreement—and in accordance with Article 5 of this Agreement.

Article 4. Property Interests.

1. Prior to construction, the Village will make best efforts to acquire from property owners any temporary easements, permanent easements, and/or fee simple title necessary for construction of, maintenance of, and access to the Project at the Village's own expense.
2. Should the acquisition of property interests via condemnation be necessary, the Village shall incur all associated costs, including the purchase price and/or easement fee as well as any attorney's fees.
3. Whereupon the Village acquires permanent easements for maintenance and access from property owners, the rights and obligations for maintenance and access shall be shared by the District and the Village; however, in no event shall this provision be construed in contradiction to the provisions in Article 5 below, whereby the maintenance costs and

obligations shall be the sole responsibility of the Village, with the exception of the joint annual inspections of both the District and the Village.

4. The Village shall record all easements.

Article 5. Maintenance.

1. The Village, at its sole cost and expense, shall perpetually maintain the Project and any other appurtenances associated with this Project pursuant to the O&M Plan.
2. The District and Village shall conduct joint annual inspections to ensure adequate maintenance. The Village shall prepare a report detailing its annual inspection, observations, and conclusions including whether the Project is operating as designed, functioning, and providing the intended public benefit. The annual inspection report shall be stamped by a Professional Engineer licensed by the State of Illinois. The stamped annual inspection shall be provided to the District within thirty (30) days of completion.
3. The District shall have the right (including any necessary right of access) to conduct its own annual inspection.
4. In the event of failure of the Village to maintain the Project as described above to the satisfaction of the District, the District may issue a thirty (30) day written notice by certified or registered mail to the Village directing the Village to perform such maintenance. If maintenance required by the O&M Plan has not been accomplished on or before thirty (30) days after such notice, the District may cause such maintenance to be performed and the Village shall pay the District the entire cost the District incurred to perform the required maintenance.
5. In performing their obligations under this Article, the Village and District shall comply with all access restrictions and notice requirements set forth in the easements recorded pursuant to Article 4 of this Agreement.

Article 6. Notification.

1. Bid Advertisement. The Village will provide the District with 30 days notice prior to Bid Advertisement for the Project.
2. Construction. The Village shall provide the District with a construction schedule and provide the District a minimum of 72 hours notice before the following project milestones:
 - Start of work
 - Substantial completion
 - Completion of work

Article 7. Termination by the Village. Prior to commencement of Construction of the Project, the Village may, at its option, and upon giving notice to the District in the manner provided in Article 25 below, terminate this Agreement as it pertains to the entire Project. The Village shall return all Project-related funds received from the District no later than 14 days following its termination of the Agreement.

Article 8. Termination by the District. Prior to Bid Advertisement of the Project, the District may, at its option, and upon giving notice to the Village in the manner provided in Article 25 below, terminate this Agreement as it pertains to the entire Project.

Article 9. Effective Date. This Agreement becomes effective on the date that the last signature is affixed hereto.

Article 10. Duration. Subject to the terms and conditions of Articles 7 and 8 above, this Agreement shall remain in full force and effect for perpetuity.

Article 11. Non-Assignment. Neither party may assign its rights or obligations hereunder without the written consent of the other party.

Article 12. Waiver of Personal Liability. No official, employee, or agent of either party to this Agreement shall be charged personally by the other party with any liability or expenses of defense incurred as a result of the exercise of any rights, privileges, or authority granted herein, nor shall he or she be held personally liable under any term or provision of this Agreement, or because of a party's execution or attempted execution of this Agreement, or because of any breach of this Agreement.

Article 13. Indemnification.

1. If the Village is performing all or any part of the Project work, including but not limited to design, construction, operation and/or perpetual maintenance, itself (the "Village Work"), the Village shall defend, indemnify, and hold harmless the District, its Commissioners, officers, employees, and other agents ("District Party") from liabilities of every kind, including losses, damages and reasonable costs, payments and expenses (such as, but not limited to, court costs and reasonable attorneys' fees and disbursements), claims, demands, actions, suits, proceedings, judgments or settlements, any or all of which are asserted by any individual, private entity, or public entity against the District Party and arise out of or are in any way related to: (1) the Village Work; or

- (2) the exercise of any right, privilege, or authority granted to the Village under this Agreement.
2. If the Village contracts out the Project work (the "Contract Work"), then the Village must cause its contractor(s) to add every District Party as an additional indemnitee for the Project work to defend, indemnify, and hold harmless the District from liabilities of every kind, including losses, damages and reasonable costs, payments and expenses (such as, but not limited to, court costs and reasonable attorneys' fees and disbursements), claims, demands, actions, suits, proceedings, judgments or settlements, any or all of which are asserted by any individual, private entity, or public entity against the District party and arise out of or are in any way related to: (1) the Contract Work; or (2) the exercise of any right, privilege, or authority granted by the Village to its contractor(s) under this Agreement.

Article 14. Representations of the Village. The Village covenants, represents, and warrants as follows:

- (1) The Village has full authority to execute, deliver, and perform or cause to be performed this Agreement;
- (2) The individuals signing this Agreement and all other documents executed on behalf of the Village are duly authorized to sign same on behalf of and to bind the Village;
- (3) The execution and delivery of this Agreement, consummation of the transactions provided for herein, and the fulfillment of the terms hereof will not result in any breach of any of the terms or provisions of or constitute a default under any agreement of the Village or any instrument to which the Village is bound or any judgment, decree, or order of any court or governmental body or any applicable law, rule, or regulation; and
- (4) The Village has secured necessary funds for this Project in addition to funds to be provided by the District under this Agreement.

Article 15. Representations of the District. The District covenants, represents, and warrants as follows:

- (1) The District has full authority to execute, deliver, and perform or cause to be performed this Agreement;
- (2) The individuals signing this Agreement and all other documents executed on behalf of the District are duly authorized to sign same on behalf of and to bind the District;
- (3) The execution and delivery of this Agreement, consummation of the transactions provided for herein, and the fulfillment of the terms hereof will not result in any breach of any of the terms or provisions of or constitute a default under any agreement of the District or any instrument to which the District is bound or any judgment, decree, or order of any court or governmental body or any applicable law, rule, or regulation.

Article 16. Disclaimers. This Agreement is not intended, nor shall it be construed, to confer any rights, privileges, or authority not permitted by Illinois law. Nothing in this Agreement shall be construed to establish a contractual relationship between the District and any party other than the Village.

Article 17. Waivers. Whenever a party to this Agreement by proper authority waives the other party's performance in any respect or waives a requirement or condition to performance, the waiver so granted, whether express or implied, shall only apply to the particular instance and shall not be deemed a waiver for subsequent instances of the performance, requirement, or condition. No such waiver shall be construed as a modification of this Agreement regardless of the number of times the performance, requirement, or condition may have been waived.

Article 17. Severability. If any provision of this Agreement is held to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability will not affect any other provisions of this Agreement, and this Agreement will be construed as if such invalid, illegal, or unenforceable provision has never been contained herein. The remaining provisions will remain in full force and will not be affected by the invalid, illegal, or unenforceable provision or by its severance. In lieu of such illegal, invalid, or unenforceable provision, there will be added automatically as part of this Agreement a provision as similar in its terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

Article 18. Necessary Documents. Each party agrees to execute and deliver all further documents, and take all further action reasonably necessary to effectuate the purpose of this Agreement. Upon the completion of the Project, the Village shall provide the District with a full sized set (24" x 36"), unbounded on vellum, of "As-Built" drawings for the Project. The drawings shall be affixed with the "As-Built" printed mark and must be signed by both the resident engineer and the contractor.

Article 19. Deemed Inclusion. Provisions required (as of the effective date) by law, ordinances, rules, regulations, or executive orders to be inserted in this Agreement are deemed inserted in this Agreement whether or not they appear in this Agreement or, upon application by either party, this Agreement will be amended to make the insertions. However, in no event will the failure to insert such provisions before or after this Agreement is signed prevent its enforcement.

Article 20. Entire Agreement. This Agreement, and any exhibits or riders attached hereto, shall constitute the entire agreement between the parties. No other warranties, inducements, considerations, promises, or interpretations shall be implied or impressed upon this Agreement that are not expressly set forth herein.

Article 21. Amendments. This Agreement shall not be amended unless it is done so in writing and signed by the authorized representatives of both parties.

Article 22. References to Documents. All references in this Agreement to any exhibit or document shall be deemed to include all supplements and/or authorized amendments to any such exhibits or documents to which both parties hereto are privy.

Article 23. Judicial and Administrative Remedies. The parties agree that this Agreement and any subsequent Amendment shall be governed by, and construed and enforced in accordance with, the laws of the State of Illinois in all respects, including matters of construction, validity, and performance. The parties further agree that the proper venue to resolve any dispute which may arise out of this Agreement is the appropriate Court of competent jurisdiction located in Cook County, Illinois.

This Agreement shall not be construed against a party by reason of who prepared it. Each party agrees to provide a certified copy of the ordinance, bylaw, or other authority to evidence the reasonable satisfaction of the other party that the person signing this Agreement for such party is authorized to do so and that this Agreement is a valid and binding obligation of such party. The parties agree that this Agreement may be executed in quadruplicate.

The rights and remedies of the District or the Village shall be cumulative, and election by the District or the Village of any single remedy shall not constitute a waiver of any other remedy that such party may pursue under this Agreement.

Article 25. Notices. Unless otherwise stated in this Agreement, any and all notices given in connection with this Agreement shall be deemed adequately given only if in writing and addressed to the party for whom such notices are intended at the address set forth below. All notices shall be sent by personal delivery, UPS, Fed Ex or other overnight messenger service, first class registered or certified mail, postage prepaid, return receipt requested, or by facsimile. A written notice shall be deemed to have been given to the recipient party on the earlier of (a) the date it is hand-delivered to the address required by this Agreement; (b) with respect to notices sent by mail, two days (excluding Sundays and federal holidays) following the date it is properly addressed and placed in the U.S. Mail, with proper postage prepaid; or (c) with respect to notices sent by facsimile, on the date sent, if sent to the facsimile number(s) set forth below and upon proof of delivery as evidenced by the sending fax machine. The name of this Agreement i.e., "INTERGOVERNMENTAL AGREEMENT BY AND BETWEEN THE VILLAGE OF GLENWOOD AND THE METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO FOR CONSTRUCTION AND PERPETUAL MAINTENANCE OF A RELIEF STORM SEWER ALONG GLENWOOD AVENUE" must be prominently featured in the heading of all notices sent hereunder.

Any and all notices referred to in this Agreement, or that either party desires to give to the other, shall be addressed as set forth in Article 26, unless otherwise specified and agreed to by the parties.

Article 26. Representatives. Immediately upon execution of this Agreement, the following individuals will represent the parties as a primary contact and receipt of notice in all matters under this Agreement.

For the District:
Director of Engineering
Metropolitan Water Reclamation District
of Greater Chicago
100 East Erie Street
Chicago, Illinois 60611
Phone: (312) 751-7905
FAX: (312) 751-5681

For the Village:
Village Administrator
One Asselborn Way
Glenwood, Illinois 60425
Phone: (708) 753-2400
FAX: (708) 753-2406

Each party agrees to promptly notify the other party of any change in its designated representative, which notice shall include the name, address, telephone number and fax number of the representative for such party for the purpose hereof.

IN WITNESS WHEREOF, the Metropolitan Water Reclamation District of Greater Chicago and the Village of Glenwood, the parties hereto, have each caused this Agreement to be executed by their duly authorized officers, duly attested and their seals hereunto affixed on the dates specified below.

VILLAGE OF GLENWOOD

BY: _____
Kerry Durkin, Mayor

Date

ATTEST:

Ernestine Dobbins, Village Clerk

Date

METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO

Chairman of the Committee on Finance

Date

Executive Director

Date

ATTEST:

Clerk

Date

APPROVED AS TO ENGINEERING, OPERATIONS, AND TECHNICAL MATTERS:

Engineer of Stormwater Management

Date

Assistant Director of Engineering

Date

Director of Engineering

Date

Director of Maintenance and Operations

Date

Director of Monitoring and Research

Date

APPROVED AS TO FORM AND LEGALITY:

Head Assistant Attorney

Date

General Counsel

Date

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Exhibit 1



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Exhibit 2: District's Purchasing Act

(70 ILCS 2605/11.1) (from Ch. 42, par. 331.1)

Sec. 11.1. Sections 11.1 through 11.24 of this amendatory Act of 1963 shall be known and may be cited as the "Purchasing Act for the Metropolitan Sanitary District of Greater Chicago."

(Source: P.A. 82-1046.)

(70 ILCS 2605/11.2) (from Ch. 42, par. 331.2)

Sec. 11.2. In addition to all the rights, powers, privileges, duties and obligations conferred thereon in "An Act to create sanitary districts and to remove obstructions in the Des Plaines and Illinois rivers", approved May 29, 1889, as amended, the Metropolitan Sanitary District of Greater Chicago shall have the rights, powers and privileges and shall be subject to the duties and obligations conferred thereon by this amendatory Act of 1963.

(Source: Laws 1963, p. 2498.)

(70 ILCS 2605/11.3) (from Ch. 42, par. 331.3)

Sec. 11.3. Except as provided in Sections 11.4 and 11.5, all purchase orders or contracts involving amounts in excess of the mandatory competitive bid threshold and made by or on behalf of the sanitary district for labor, services or work, the purchase, lease or sale of personal property, materials, equipment or supplies, or the granting of any concession, shall be let by free and open competitive bidding after advertisement, to the lowest responsible bidder or to the highest responsible bidder, as the case may be, depending upon whether the sanitary district is to expend or receive money.

All such purchase orders or contracts which shall involve amounts that will not exceed the mandatory competitive bid threshold, shall also be let in the manner prescribed above whenever practicable, except that after solicitation of bids, such purchase orders or contracts may be let in the open market, in a manner calculated to insure the best interests of the public. The provisions of this section are subject to any contrary provisions 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. For purposes of this Section, the "mandatory competitive bid threshold" is a dollar amount equal to 0.1% of the total general fixed assets of the district as reported in the most recent required audit report. In no event, however, shall the mandatory competitive bid threshold dollar amount be less than \$10,000 or more than \$40,000.

Notwithstanding the provisions of this Section, the sanitary district is expressly authorized to establish such procedures as it deems appropriate to comply with state or federal regulations as to affirmative action and the utilization of small and minority businesses in construction and procurement contracts.

(Source: P.A. 92-195, eff. 1-1-02.)

(70 ILCS 2605/11.4) (from Ch. 42, par. 331.4)

Sec. 11.4. Contracts which by their nature are not adapted to award by competitive bidding, such as, but not only, 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 the purchase or sale of utilities and contracts for materials economically procurable only from a single source of supply and leases of real property where the sanitary district is the lessee shall not be subject to the competitive bidding requirements of this Act. The sanitary district is expressly authorized to procure from any federal, state or local governmental unit or agency such surplus materials, as may be made available without conforming to the competitive bidding requirements of this Act. Regular employment contracts, whether classified in civil service or not, shall not be subject to the competitive bidding requirements of this Act. (Source: Laws 1963, p. 2498.)

(70 ILCS 2605/11.5) (from Ch. 42, par. 331.5)

Sec. 11.5. In the event of an emergency affecting the public health or safety, so declared by action of the board of trustees, which declaration shall describe the nature of the injurious effect upon the public health or safety, contracts may be let to the extent necessary to resolve such emergency without public advertisement. The declaration shall fix the date upon which such emergency shall terminate. The date may be extended or abridged by the board of trustees as in its judgment the circumstances require.

The executive director appointed in accordance with Section 4 of this Act shall authorize in writing and certify to the director of procurement and materials management those officials or employees of the several departments of the sanitary district who may purchase in the open market without filing a requisition or estimate therefor, and without advertisement, any supplies, materials, equipment or services, for immediate delivery to meet bona fide operating emergencies where the amount thereof is not in excess of \$50,000; provided, that the director of procurement and materials management shall be notified of such emergency. A full written account of any such emergency together with a requisition for the materials, supplies, equipment or services required therefor shall be submitted immediately by the requisitioning agent to the executive director and such report and requisition shall be submitted to the director of procurement and materials management 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 authority in respect to purchases for such bona fide operating emergencies shall not be dependent upon a declaration of emergency by the board of trustees under the first paragraph of this Section. (Source: P.A. 95-923, eff. 1-1-09; 96-165, eff. 8-10-09.)

(70 ILCS 2605/11.6) (from Ch. 42, par. 331.6)

Sec. 11.6. The head of each department shall notify the director of procurement and materials management of those officers and employees authorized to sign requests for purchases. Requests for purchases shall be void unless executed by an authorized officer or employee and approved by the director of procurement and materials management. Requests for purchases may be executed, approved and signed manually or electronically.

Officials and employees making requests for purchases shall not split or otherwise partition for the purpose of evading the competitive bidding requirements of this Act, any undertaking involving amounts in excess of the mandatory competitive bid threshold.

(Source: P.A. 95-923, eff. 1-1-09.)

(70 ILCS 2605/11.7) (from Ch. 42, par. 331.7)

Sec. 11.7. All proposals to award purchase orders or contracts involving amounts in excess of the mandatory competitive bid threshold shall be published at least 12 calendar days in advance of the date announced for the receiving of bids, in a secular English language newspaper of general circulation in said sanitary district and shall be posted simultaneously on readily accessible bulletin boards in the principal office of the sanitary district. Nothing contained in this section shall be construed to prohibit the placing of additional advertisements in recognized trade journals. Advertisements for bids shall describe the character of the proposed contract or agreement in sufficient detail either in the advertisement itself or by reference to plans, specifications or other detail on file at the time of publication of the first announcement, to enable the bidders to know what their obligation will be. The advertisement shall also state the date, time and place assigned for the opening of bids. 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 the same newspaper of general circulation in said sanitary district stating the date to which bid opening has been extended. The time of the extended bid opening shall not be less than 5 days after publication, Sundays and legal holidays excluded.

Cash, cashier's check or a certified check payable to the clerk and drawn upon a bank, as a deposit of good faith, in a reasonable amount not in excess of 10% of the contract amount, may be required of each bidder by the director of procurement and materials management on all bids involving amounts in excess of the mandatory competitive bid threshold. If a deposit is required, the advertisement for bids shall so specify. Instead of a deposit, the director of procurement and materials management may allow the use of a bid bond if the bond is issued by a surety company that is listed in the Federal Register and is authorized to do business in the State of Illinois.

(Source: P.A. 95-923, eff. 1-1-09.)

(70 ILCS 2605/11.8) (from Ch. 42, par. 331.8)

Sec. 11.8. 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 bidder 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 or collusion. Any disclosure in advance of the opening of bids, on the terms of the bids submitted in response to an advertisement, made or permitted by the director of procurement and materials management or any officer or employee of said sanitary district shall render the proceedings void and shall require re-advertisement and re-award.

(Source: P.A. 95-923, eff. 1-1-09.)

(70 ILCS 2605/11.9) (from Ch. 42, par. 331.9)

Sec. 11.9. All sealed bids shall be publicly opened by the director of procurement and materials management, or his designee, and such bids shall be open to public inspection for a period of at least 48 hours before award is made; provided, this provision shall not apply to the sale of bonds, tax anticipation warrants or other financial obligations of the sanitary district.

(Source: P.A. 95-923, eff. 1-1-09.)

(70 ILCS 2605/11.10) (from Ch. 42, par. 331.10)

Sec. 11.10. Every contract or purchase order involving amounts in excess of the mandatory competitive bid threshold shall be signed by the president or other duly authorized officer of the board of commissioners, by the executive director, by the clerk and by the director of procurement and materials management. Each bid with the name of the bidder shall be entered upon a record which shall be open to public inspection in the office of the director of procurement and materials management. After the award is made, the bids shall be entered in the official records of the board of commissioners.

All purchase orders or contracts involving amounts that will not exceed the mandatory competitive bid threshold shall be let by the director of procurement and materials management. They shall be signed by the director of procurement and materials management and the clerk. All records pertaining to such awards shall be open to public inspection for a period of at least one year subsequent to the date of the award.

An official copy of each awarded purchase order or contract together with all necessary attachments thereto, including assignments and written consent of the director of procurement and materials management shall be retained by the director of procurement and materials management 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. Certified copies of all completed contracts and purchase orders shall be filed with the clerk. After the appropriate period, purchase orders, contracts and attachments in the clerk's possession may be destroyed by direction of the

director of procurement and materials management.

The provisions of this Act are not applicable to joint purchases of personal property, supplies and services made by governmental units in accordance with Sections 1 through 5 of "An Act authorizing certain governmental units to purchase personal property, supplies and services jointly," approved August 15, 1961.

(Source: P.A. 95-923, eff. 1-1-09.)

(70 ILCS 2605/11.11) (from Ch. 42, par. 331.11)

Sec. 11.11. In determining the responsibility of any bidder, the director of procurement and materials management may take into account, in addition to financial responsibility, past records of transactions with the bidder, experience, adequacy of equipment, ability to complete performance within a specific time and other pertinent factors, including but not limited to whether the equipment or material is manufactured in North America.

(Source: P.A. 95-923, eff. 1-1-09.)

(70 ILCS 2605/11.12) (from Ch. 42, par. 331.12)

Sec. 11.12. Any and all bids received in response to an advertisement may be rejected by the director of procurement and materials management if the bidders are not deemed responsible, or the character or quality of the services, supplies, materials, equipment or labor do not conform to requirements, or if the public interest may be better served thereby.

(Source: P.A. 95-923, eff. 1-1-09.)

(70 ILCS 2605/11.13) (from Ch. 42, par. 331.13)

Sec. 11.13. Bond, with sufficient sureties, in such amount as shall be deemed adequate by the director of procurement and materials management not only to insure performance of the contract in the time and manner specified in said contract but also to save, indemnify and keep harmless the sanitary district against all liabilities, judgments, costs and expenses which may in anywise accrue against said sanitary district in consequence of the granting of the contract or execution thereof shall be required for all contracts relative to construction, rehabilitation or repair of any of the works of the sanitary district and may be required of each bidder upon all other contracts in excess of the mandatory competitive bid threshold when, in the opinion of the director of procurement and materials management, the public interest will be better served thereby.

In accordance with the provisions of "An Act in relation to bonds of contractors entering into contracts for public construction", approved June 20, 1931, as amended, all contracts for construction work, to which the sanitary district is a party, shall require that the contractor furnish bond guaranteeing payment for materials and labor utilized in the contract.

(Source: P.A. 95-923, eff. 1-1-09.)

(70 ILCS 2605/11.14) (from Ch. 42, par. 331.14)

Sec. 11.14. No contract to which the sanitary district is a party shall be assigned by the successful bidder without the written consent of the director of procurement and materials management. In no event shall a contract or any part thereof be assigned to a bidder who has been declared not to be a responsible bidder in the consideration of bids submitted upon the particular contract.

(Source: P.A. 95-923, eff. 1-1-09.)

(70 ILCS 2605/11.15) (from Ch. 42, par. 331.15)

Sec. 11.15. No person shall be employed upon contracts for work to be done by any such sanitary district unless he is a citizen of the United States or has in good faith declared his intention to become such a citizen. In all cases where an alien after filing his declaration of intention to become a citizen of the United States, shall for the space of three months after he could lawfully do so, fail to take out his final papers and obtain his citizenship such failure shall be prima facie evidence that his declaration of intention was not made in good faith.

(Source: Laws 1963, p. 2498.)

(70 ILCS 2605/11.16) (from Ch. 42, par. 331.16)

Sec. 11.16. The executive director, with the advice and consent of the board of trustees, shall appoint the director of procurement and materials management. Any person appointed as the director of procurement and materials management must have served at least 5 years in a responsible executive capacity requiring knowledge and experience in large scale purchasing activities.

In making the appointment, the president shall appoint an advisory committee consisting of 5 persons, one of whom shall be the executive director, which advisory board shall submit not fewer than 3 names to the general superintendent for the appointment. The executive director shall make the appointment from nominees submitted by the Advisory Committee after giving due consideration to each nominee's executive experience and his ability to properly and effectively discharge the duties of the director of procurement and materials management.

The director of procurement and materials management may be removed for cause by the executive director. He is entitled to a public hearing before the executive director prior to such anticipated removal. The director of procurement and materials management is entitled to counsel of his own choice. The executive director shall notify the board of trustees of the date, time, place and nature of each hearing and he shall invite the board to appear at each hearing.

(Source: P.A. 95-923, eff. 1-1-09.)

(70 ILCS 2605/11.17) (from Ch. 42, par. 331.17)

Sec. 11.17. Powers of director of procurement and materials management. The director of procurement and materials management shall: (a) adopt, promulgate and from time to time revise rules and regulations for the proper conduct of his office; (b) constitute the agent of the sanitary district in contracting for labor, materials, services, or work, the purchase, lease or sale of personal property, materials, equipment or supplies in conformity with this Act; (c) open all sealed bids; (d) determine the lowest or highest responsible bidder, as the case may be; (e) enforce written specifications describing standards established pursuant to this Act; (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 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 sanitary district 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, donate, or dispose of any materials, supplies, or equipment that may become surplus, obsolete, or unusable; except that materials, supplies, and equipment may be donated only to not-for-profit institutions; (j) control and maintain adequate 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 the sanitary district; (k) assume such related activities as may be assigned to him from time to time by the board of trustees; and (m) submit to the board of trustees an annual report describing the activities of his office. The report shall be placed upon the official records of the sanitary district or given comparable public distribution. (Source: P.A. 95-923, eff. 1-1-09.)

(70 ILCS 2605/11.18) (from Ch. 42, par. 331.18)

Sec. 11.18. The board of trustees is expressly authorized to establish a revolving fund to enable the director of procurement and materials management to purchase items of common usage in advance of immediate need. The revolving fund shall be reimbursed from appropriations of the using agencies. No officer or employee of a sanitary district organized pursuant to this Act shall be financially interested, directly or indirectly, in any bid, purchase order, lease or contract to which such sanitary district is a party. For purposes of this Section an officer or employee of the sanitary district is deemed to have a direct financial interest in a bid, purchase order, lease or contract with the district, if the officer or employee is employed by the district and is simultaneously employed by a person or corporation that is a party to any bid, purchase order, lease or contract with the sanitary district.

Any officer or employee convicted of a violation of this section shall forfeit his office or employment and in addition shall be guilty of a Class 4 felony.

(Source: P.A. 95-923, eff. 1-1-09.)

(70 ILCS 2605/11.19) (from Ch. 42, par. 331.19)

Sec. 11.19. No department, office, agency or instrumentality, officer or employe of the sanitary district, shall be empowered to execute any purchase order or contract except as expressly authorized by this Act.

(Source: Laws 1963, p. 2498.)

(70 ILCS 2605/11.19a) (from Ch. 42, par. 331.19a)

Sec. 11.19a. Purchases made pursuant to this Act shall be made in compliance with the "Local Government Prompt Payment Act", approved by the Eighty-fourth General Assembly.

(Source: P.A. 84-731.)

(70 ILCS 2605/11.20) (from Ch. 42, par. 331.20)

Sec. 11.20. There shall be a board of standardization, composed of the director of procurement and materials management of the sanitary district who shall be chairman, and 4 other members who shall be appointed by the president of the board of trustees of the sanitary district. The members shall be responsible heads of a major office or department of the sanitary district and shall receive no compensation for their services on the board. The board shall meet at least once each 3 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 describing the proceedings of each meeting. The report shall be transmitted to each member and shall be made available to the president and board of trustees of such sanitary district within 5 days subsequent to the date of the meeting and all such reports shall be open to public inspection, excluding Sundays and legal holidays.

The board of standardization shall: (a) classify the requirements of the sanitary district, including the departments, offices and other boards thereof, with respect to supplies, materials and equipment; (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 the sanitary district; 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. However, all specifications pertaining to the construction, alteration, rehabilitation or repair of any real property of such sanitary district shall be prepared by the engineering agency engaged in the design of such construction, alteration, rehabilitation or repair, prior to approval by the director of procurement and materials management. The specification shall form a part of the purchase order or contract, and the performance of all such contracts shall be supervised by the engineering agency designated in the contracts.

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 order or contract for the purchase of any commodity, material, supply or equipment. The specifications shall be made available to the public upon request.
(Source: P.A. 95-923, eff. 1-1-09.)

(70 ILCS 2605/11.21) (from Ch. 42, par. 331.21)

Sec. 11.21. Official ordinances authorized by this Act shall be adopted by formal action of the board of trustees of the sanitary district and shall be published for the information of the public.
(Source: Laws 1963, p. 2498.)

(70 ILCS 2605/11.22) (from Ch. 42, par. 331.22)

Sec. 11.22. Any purchase order or contract executed in violation of this Act shall be null and void. Public funds which have been expended thereon, may be recovered in the name of the sanitary district in any court of competent jurisdiction.
(Source: Laws 1963, p. 2498.)

(70 ILCS 2605/11.23) (from Ch. 42, par. 331.23)

Sec. 11.23. The comptroller of the sanitary district shall conduct audits of all expenditures incident to all purchase orders and contracts awarded by the director of procurement and materials management. The comptroller shall report the results of such audits to the president and board of trustees.
(Source: P.A. 95-923, eff. 1-1-09.)

(70 ILCS 2605/11.24) (from Ch. 42, par. 331.24)

Sec. 11.24. (a) A person or business entity shall be disqualified from doing business with The Metropolitan Sanitary District of Greater Chicago for a period of 5 years from the date of conviction or entry of a plea or admission of guilt, if that person or business entity:

1. has been convicted of an act of bribery or attempting to bribe an officer or employee of the federal government or of a unit of any state or local government or school district in that officer's or employee's official capacity; or
2. has been convicted of an act of bid-rigging or attempting to rig bids as defined in the Federal Sherman Anti-Trust Act and Clayton Act; or
3. has been convicted of bid-rigging or attempting to rig bids under the laws of the State of Illinois or any other state; or
4. has been convicted of an act of price-fixing or attempting to fix prices as defined by the Federal Sherman Anti-Trust Act and Clayton Act; or
5. has been convicted of price-fixing or attempting to fix prices under the laws of the State of Illinois or any other state; or

6. has been convicted of defrauding or attempting to defraud the Federal government or a unit of any state or local government or school district; or

7. has made an admission of guilt of such conduct as set forth in subsections 1 through 6 above, which admission is a matter of record, whether or not such person or business entity was subject to prosecution for the offense or offenses admitted to; or

8. has entered a plea of nolo contendere to charges of bribery, price-fixing, bid-rigging, or fraud as set forth in subsections 1 through 6 above.

(b) "Business entity" as used in this section means a corporation, partnership, trust, association, unincorporated business or individually owned business.

(c) A business entity shall be disqualified if the following persons are convicted of, have made an admission of guilt, or enter a plea of nolo contendere to a disqualifying act described in paragraph (a), subsections 1 through 6, regardless of whether or not the disqualifying act was committed on behalf or for the benefit of such business entity:

- (1) a person owning or controlling, directly or indirectly, 20% or more of its outstanding shares; or
- (2) a member of its board of directors; or
- (3) an agent, officer or employee of such business entity.

(d) Disqualification Procedure. After bids are received, whether in response to a solicitation for bids or public advertising for bids, if it shall come to the attention of the director of procurement and materials management that a bidder has been convicted, made an admission of guilt, a plea of nolo contendere, or otherwise falls within one or more of the categories set forth in paragraphs (a), (b) or (c) of this Section, the director of procurement and materials management shall notify the bidder by certified mail, return receipt requested, that such bidder is disqualified from doing business with the Sanitary District. The notice shall specify the reasons for disqualification.

(e) Review Board. A review board consisting of 3 individuals shall be appointed by the Executive Director of the Sanitary District. The board shall select a chairman from its own members. A majority of the members shall constitute a quorum and all matters coming before the board shall be determined by a majority. All members of the review board shall serve without compensation, but shall be reimbursed actual expenses.

(f) Review. The director of procurement and materials management's determination of disqualification shall be final as of the date of the notice of disqualification unless, within 10 calendar days thereafter, the disqualified bidder files with the director of procurement and materials management a notice of appeal. The notice of appeal shall specify the exceptions to the director of procurement and materials management's determination and shall include a request for a hearing, if one is desired. Upon receipt of the notice of appeal, the director of procurement and materials management shall provide a copy to each member of the review

board. If the notice does not contain a request for a hearing, the director of procurement and materials management may request one within 5 days after receipt of the notice of appeal. If a hearing is not requested, the review board may, but need not, hold a hearing.

If a hearing is not requested, the review board, unless it decides to hold a hearing, shall review the notice of disqualification, the notice of appeal and any other supporting documents which may be filed by either party. Within 15 days after the notice of appeal is filed, the review board shall either affirm or reverse the director of procurement and materials management's determination of disqualification and shall transmit a copy to each party by certified mail, return receipt requested.

If there is a hearing, the hearing shall commence within 15 days after the filing of the notice of appeal. A notice of hearing shall be transmitted to the director of procurement and materials management and the disqualified bidder not later than 12 calendar days prior to the hearing date, by certified mail, return receipt requested.

Evidence shall be limited to the factual issues involved. Either party may present evidence and persons with relevant information may testify, under oath, before a certified reporter. Strict rules of evidence shall not apply to the proceedings, but the review board shall strive to elicit the facts fully and in credible form. The disqualified bidder may be represented by an attorney.

Within 10 calendar days after the conclusion of the hearing, the review board shall make a finding as to whether or not the reasons given in the director of procurement and materials management's notice of disqualification apply to the bidder, and an appropriate order shall be entered. A copy of the order shall be transmitted to the director of procurement and materials management and the bidder by certified mail, return receipt requested.

(g) All final decisions of the review board shall be subject to review under the Administrative Review Law.

(h) Notwithstanding any other provision of this section to the contrary, the Sanitary District may do business with any person or business entity when it is determined by the director of procurement and materials management to be in the best interest of the Sanitary District, such as, but not limited to contracts for materials or services economically procurable only from a single source.

(Source: P.A. 95-923, eff. 1-1-09.)

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Exhibit 3:
Multi-Project Labor Agreement
And
Memorandum of Understanding

SEPT 2005

MULTI-PROJECT LABOR AGREEMENT

with

CERTIFICATE OF COMPLIANCE

and

MEMORANDUM OF UNDERSTANDING

CONTAINS:

- 1) MPLA - JULY 1998**
- 2) MEMORANDUM OF UNDERSTANDING - JULY 2002**
- 3) CERTIFICATE OF COMPLIANCE - SEPT 2005**

**METROPOLITAN WATER RECLAMATION DISTRICT
OF GREATER CHICAGO
MULTI-PROJECT LABOR AGREEMENT**

This Agreement is entered into by and between the Metropolitan Water Reclamation District of Greater Chicago ("the District"), as owner, and each of the undersigned labor organizations signatory hereto on July 9, 1998 in Chicago, Illinois.

Due to the size, duration, cost and important public purpose to be served by the construction of District facilities, the District has determined that it is in its best interests to have construction projects covered by this Agreement as defined below ("covered projects") completed in the most timely, productive, efficient, economical and orderly manner possible, without labor disputes resulting in lost time or disruptions of any kind, including economic or area standards disputes or jurisdictional disputes which might interfere with or delay the projects.

The parties have further determined the desirability of eliminating the potential for friction and disruption of any construction site by ensuring that all work performed on covered projects, and at any location of any covered project, is performed by the trade union(s) which have traditionally performed and have trade and geographic jurisdiction over such work in the geographic jurisdiction of the District.

The parties acknowledge and agree that the District shall not be considered an employer of any employee of any contractor or subcontractor on any covered project.

To further these goals and to maintain a spirit of harmony, labor-management cooperation and stability, the parties hereto agree as follows:

1. Construction projects performed pursuant to contracts advertised and awarded by the District's Board of Commissioners after the date of execution of this Agreement shall be "covered projects" under this Agreement. Construction projects means all fixed works constructed for public use, and specifically excluding such matters as janitorial service, cafeteria service, truck hauling, landscaping, security service, window cleaning, clerical, thermographic inspection services, repair of heavy equipment, contracts for work to be performed in Fulton County and similar matters. The District shall be solely responsible for determining which projects are covered projects under this Agreement. Within a reasonable time after the District has determined in its sole discretion that a project is not covered by this Agreement it shall notify the Chicago & Cook County Building & Construction Trades Council ("the Council"). In the event of a disagreement as to coverage, the Council shall have fifteen (15) days from the time it is notified of coverage to file a protest with the District's Purchasing Agent. The parties shall thereafter endeavor to resolve the matter to their mutual satisfaction, but in any event, the District shall be solely responsible for determining coverage. Nothing herein shall prohibit or otherwise affect the District's right to cancel or otherwise terminate a contract.
2. A pre-job conference attended by representatives of the District, the contractors and the unions may be scheduled for a mutually available date prior to commencement of a covered

project. The nature of the project, the covered work, the work assignments and any other matters of mutual interest will be discussed.

3. During the term of this Agreement, the District, as owner, shall not contract or subcontract, nor permit any other person, firm, company or entity to contract or subcontract, any construction, alteration, painting, repair, or other construction or construction related work to be done on any covered project under this Multi-Project Labor Agreement to any person, firm, company or entity that does not have, or does not agree to be bound by and operate under, a current collective bargaining agreement with a union or labor organization affiliated with the AFL-CIO Building Trades Department, and the Council, or their Affiliates which have jurisdiction over the particular work in question. Copies of all such current appropriate agreements constitute Appendix "A" to this Agreement, attached hereto and made an integral part hereof and as may be modified from time to time during the term of this Multi-Project Labor Agreement. The provisions of this Agreement shall apply to the parties, their agents and affiliates, as well as to all contractors and subcontractors of whatsoever tier level, performing work on, or for, covered projects under this Multi-Project Labor Agreement. Said provisions of this agreement shall be included in all requests or advertisements for bid and all construction contracts and/or subcontracts pertaining to covered projects.
4. With respect to a contractor or subcontractor who is the successful bidder but is not signatory to the applicable collective bargaining agreement, the collective bargaining agreement executed by said bidder shall strictly be limited in scope to the situs of the covered project.
5. The unions understand that due to the varied nature and size of covered projects, materials and equipment will in many cases be procured from sources outside of the geographic areas of the signatory unions. Such materials and equipment may be delivered by independent cargo haulers, rail, ship and/or truck drivers. The District agrees that it will request its contractors to request union affiliate employees to make deliveries to the covered project sites. The union agrees that deliveries will be made without disruption to any work on the covered project.
6. The unions acknowledge that some equipment and materials will be used on covered projects that is preassembled or prefabricated. To the extent consistent with existing collective bargaining agreements and applicable law, there will be no refusal by the unions to handle, transport, install or connect such equipment or materials.
7. During the term of this Agreement, the District and their contractors and subcontractors, shall engage in no lockout at the covered project sites.
8. During the term of this Agreement, no union or any of its members, officers, stewards, agents or representatives, or any employee, shall instigate, authorize, support, sanction, maintain, or participate in any strike, walkout, work stoppage, work slowdown, work curtailment, cessation or interruption of production, or in any picketing or handbilling of the covered project sites or any other District site for any reason whatsoever, including, but not limited to, a dispute between the District or any contractor or subcontractor and any union

or any employee, or by and between any union, or in sympathy with any union or employee or with any other individual or group.

9. Each union agrees that it will use its best efforts to prevent any of the acts forbidden in Section 8 and that, in the event any such act takes place or is engaged in by any employee or group of employees, each union further agrees that it will use its best efforts (including its full disciplinary power under its applicable Constitution and By-Laws) to cause an immediate cessation thereof. Each union also agrees that if any union, individual or group of employees on covered projects engages in any handbilling, picketing, strike, walkout, work stoppage, work slowdown, work curtailment, cessation or interruption, the other unions will consider such picketing or other work action as unauthorized and will refuse to honor any picket line established and the unions further agree to instruct their members to cross such unauthorized lines. Failure of any union or groups of employees to cross such unauthorized picket lines on any covered project shall be a violation of this agreement.
10. Any contractor or subcontractor shall have the right to discharge or discipline any employee who violates the provisions of this agreement or any project rules and regulations established pursuant to Section 12. Such discharge or discipline by a contractor or subcontractor shall be subject to the grievance-arbitration procedure of the applicable collective bargaining contract only as to the fact of such employee's violation of this agreement. If such fact is established, the penalty imposed shall not be subject to review and shall not be disturbed.
11. The unions understand and acknowledge that the District's contractors and subcontractors are responsible to perform the covered projects as required by the District. Therefore, the contractors have the complete authority, subject to any District approval provided by the contract, and applicable Collective Bargaining Agreements to:
 - a) Plan, direct and control the operation of all work.
 - b) Hire and lay off employees as the contractor feels appropriate to meet work requirements and/or skills required.
 - c) Determine work methods and procedures.
 - d) Determine the need and number of foremen.
 - e) Require all employees to observe contractor and/or District rules and regulations.
 - f) Require all employees to observe all safety regulations prescribed by the contractor and/or District and to work safely.
 - g) Discharge, suspend or discipline employees for proper cause.
12. It is agreed that contractors may implement reasonable project rules and regulations, and such rules and regulations shall be distributed to all employees on the project. It is

understood that these rules and regulations shall not be inconsistent with the terms of this agreement. Violation of the project rules and regulations is just cause for disciplinary action subject to the grievance procedure of the applicable Collective Bargaining Agreement as provided in Section 10.

13. The parties expressly authorize a court of competent jurisdiction to order appropriate injunctive relief to restrain any violation of this agreement and any form of self-help remedy is expressly forbidden.
14. The term of this agreement shall be three (3) years and shall be continued from year to year thereafter unless a sixty-day notice is given by the District or the council. Any project commencing during and determined to be covered under this agreement shall continue to be covered by its terms until the final acceptance of the project by the District. A project shall be deemed to commence with execution of the construction contracts and to conclude upon issuance by the District of a letter of final acceptance to the general contractor.
15. In addition to the obligations set forth in this agreement, in the event of a jurisdictional dispute by and between any of the unions, such unions shall take all steps necessary to promptly resolve the dispute. In the event of a dispute relating to trade or work jurisdiction, all parties, including the employers (contractors or subcontractors), agree that a final and binding resolution of the dispute shall be achieved as follows:
 - a) Representatives of the affected trades shall meet on the job site within forty-eight (48) hours after receiving notice in an effort to resolve the dispute. (In the event there is a dispute between affiliate locals of the same International, the decision of the General President, or his/her designee, as the internal jurisdictional decision authority of that International, shall constitute a final and binding decision.)
 - b) If no settlement is reached during the proceedings contemplated by Paragraph "15(a)" above, the matter shall be immediately referred to the Joint Conference Board, established by Standard Agreement between the Construction Employers' Association and the Chicago & Cook County Building & Construction Trades Council for final and binding resolution of said dispute (a copy of the Standard Agreement is attached hereto and made a part hereof as Appendix "B".)

It is explicitly agreed to by all parties that the parties to this agreement, as well as each of their contractors and subcontractors, specifically are bound to the jurisdiction of the Joint Conference Board. Said provision shall become a provision in all contractors and subcontracts issues under the scope of work envisioned in the District's construction contracts.
16. The District, all contractors and all unions signatory to this agreement shall not discriminate against any employees because of race, creed, color or national origin, age or sex as required

by laws, and they will conform with all state and federal laws, regulations or executive orders dealing with fair employment practices and civil rights.

17. This agreement shall be incorporated into and become a part of the Collective Bargaining Agreements by and between the District's contractors and subcontractors and each union signatory hereto. In the event of inconsistency between this agreement and any such Collective Bargaining Agreement, the terms of this agreement shall supersede and prevail.
18. This agreement constitutes the entire agreement between the parties hereto and may not be changed or modified except by the subsequent written agreement of the parties.
19. All parties represent that they have the full legal authority to enter into this agreement.
20. If any provision, section, subsection or other portion of this agreement shall be determined by any court of competent jurisdiction to be invalid, illegal or unenforceable in whole or in part, and such determination shall become final, such provision or portion shall be deemed to be severed or limited, but only to the extent required to render the remaining provisions and portions of this agreement enforceable. This agreement, as thus amended, shall be enforced so as to give effect to the intention of the parties insofar as that is possible. In addition, the parties hereby expressly empower a court of competent jurisdiction to modify any term or provision of this agreement to the extent necessary to comply with existing law and to enforce this agreement as modified.
21. Any liability under this agreement of the District, or any contractor or union signatory hereto shall be several and not joint. The District shall not be liable for any violations of this agreement by any contractor or signatory union, and any contractor or any signatory union shall not be liable for any violations of this agreement by any other contractor or any other union. In the event any provision of this agreement is determined to be invalid, illegal or unenforceable as specified in paragraph 20 neither the District, any contractor or any signatory union shall be liable for any action taken, or not taken, to comply with any court order.
22. In the event a dispute shall arise between a contractor or subcontractor any signatory union and/or fringe benefit fund as to the obligation and/or payment of fringe benefits provided for under the appropriate Collective Bargaining Agreement, upon notice to the District by the appropriate union signatory hereto of a claim for such benefits, the District shall forward such notification to the surety upon the contract, and to the general contractor. Neither contractors nor their subcontractors will be required to submit Certified Payroll Forms on covered projects.

THIS AGREEMENT and its attachments are made in duplicate and each copy is an original copy.

Executed at Chicago, Illinois, this 9th day of July, 1998.

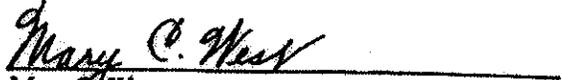
For the Metropolitan Water Reclamation District of Greater Chicago

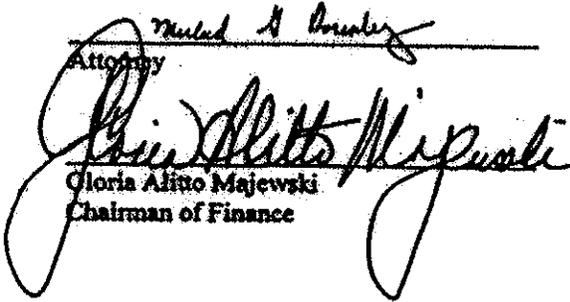

Hugh H. McMillan
General Superintendent

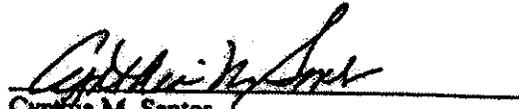

Darlene A. LoCasio
Purchasing Agent

Approved as to Form and Legality


Head Assistant Attorney


Mary C. West
Director of Finance/Clerk


Attorney
Gloria Alino Majewski
Chairman of Finance


Cynthia M. Santos
Chairman Committee on Labor and Industrial
Relations

Approved:


Terrence J. O'Brien, President

MEMORANDUM OF UNDERSTANDING

WHEREAS, the Metropolitan Water Reclamation District of Greater Chicago ("District"), the Chicago & Cook County Building & Construction Trades Council ("Council"), and certain labor organizations on July 9, 1998 entered into a Multi-Project Labor Agreement ("MPLA"); and

WHEREAS, one of the labor organizations that is a party to the MPLA has notified the District of its intent not to continue its participation in the MPLA; and

WHEREAS, in that same spirit of harmony, labor-management cooperation and stability between the parties which culminated in the initial MPLA, the parties have endeavored to find that common ground which will allow all parties to remain as active participants in the MPLA, including the labor organization that gave notice of its intent not to continue its participation in the MPLA;

NOW THEREFORE, it is agreed between and among the parties that paragraph one of the MPLA shall be amended as follows:

- "1. Construction projects performed pursuant to contracts advertised and awarded by the District's Board of Commissioners after the date of execution of this Agreement shall be "covered projects" under this agreement. Construction projects means all fixed works constructed for public use, and specifically excluding such matters as janitorial service, cafeteria service, truck hauling, security service, window cleaning, clerical, contracts for work to be performed in Fulton County and similar matters. Within a reasonable time after the District has determined that a project is not covered by this Agreement it shall notify the Chicago & Cook County Building & Construction Trades Council ("the Council"). In the event of a disagreement as to coverage, the Council shall have fifteen (15) days from the time it is notified of coverage to file a protest with the District's Purchasing Agent. Then parties shall thereafter endeavor to resolve the matter to their mutual satisfaction. Nothing herein shall prohibit or otherwise affect the District's right to cancel or otherwise terminate a contract."

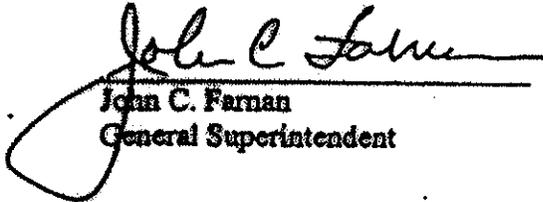
In all other respects, the MPLA entered into between the parties and dated July 9, 1998 shall remain unchanged.

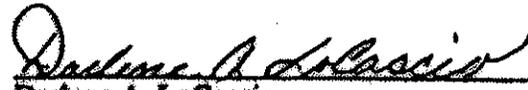
THIS MEMORANDUM OF AGREEMENT is made in duplicate and each copy is an

original copy.

Executed at Chicago, Illinois, this 22 day of July, 2002.

For the Metropolitan Water Reclamation District of Greater Chicago

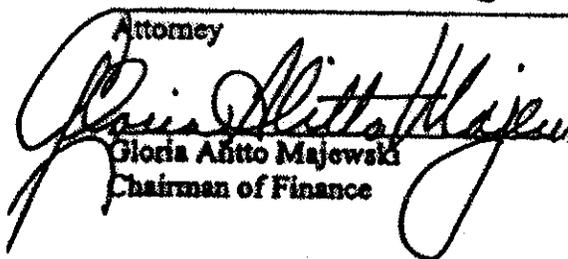

Joan C. Farnan
General Superintendent

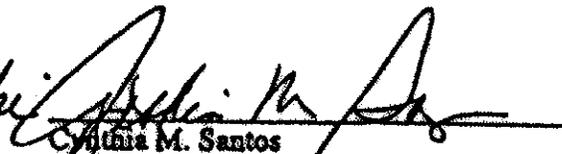

Darlene A. LoCascio
Purchasing Agent

Approved as to Form and Legality

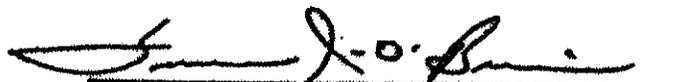

Head Assistant Attorney
Michael H. Perry


Mary C. West
Director of Finance/Clerk

Attorney

Gloria Anitto Majewski
Chairman of Finance


Cynthia M. Santos
Chairman Committee on Labor and
Industrial Relations

Approved:


Terrence J. O'Brien, President

Approved, for itself, and for the labor organizations
signatory to the MPLA dated July 9, 1998:


Michael P. O'Neil
President - Chicago & Cook County Building & Construction Trades Council

Exhibit 4:
Affirmative Action Requirements
And
Affirmative Action Ordinance

**NOTICE OF REQUIREMENT FOR AFFIRMATIVE
ACTION TO ENSURE EQUAL EMPLOYMENT
OPPORTUNITY (EXECUTIVE ORDER 11246)**

1. The offerer's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.

2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

APPENDIX A

The following goals and timetables for female utilization shall be included in all Federal and federally assisted construction contracts and subcontracts in excess of \$10,000.00. The goals are applicable to the Contractor's aggregate on-site construction workforce whether or not part of that workforce is performing work on a Federal or federally assisted construction contract or subcontract.

AREA COVERED

Goals for Women apply nationwide.

GOALS AND TIMETABLES

<u>Timetable</u>	<u>Goals (percent)</u>
From April 1, 1980 until further notice	6.9

APPENDIX B

Until further notice, the following goals and timetables for minority utilization shall be included in all Federal or federally assisted construction contracts and subcontracts in excess of \$10,000.00 to be performed in the respective covered areas. The goals are applicable to the Contractor's aggregate on-site construction work-force whether or not part of that workforce is performing work on a Federal or federally assisted construction contract or subcontract.

CHICAGO, ILLINOIS, AREA

Area covered -- Cook, DuPage, Kane, Lake, McHenry, and Will Counties.

GOALS AND TIMETABLES

<u>Time</u> <u>Table</u>	<u>Trade</u>	<u>Fulton</u> <u>County</u> <u>Goal</u> <u>(Percent)</u>	<u>Cook</u> <u>County</u> <u>Goal</u> <u>(Percent)</u>
Until further notice	Asbestos Workers	3.3	19.6
	Bricklayers	3.3	19.6
	Carpenters	3.3	19.6
	Electricians	3.3	19.6
	Elevator installers	3.3	19.6
	Glaziers	3.3	19.6
	Ironworkers	3.3	19.6
	Metal lathers	3.3	19.6
	Painters	3.3	19.6
	Plumbers	3.3	19.6
	Pipe fitters	3.3	19.6
	Plasterers	3.3	19.6
	Roofers	3.3	19.6
	Sheetmetal workers	3.3	19.6
	Sprinkler fitters	3.3	19.6
Operating engineers	3.3	19.6	

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3 (a) and its efforts to meet the goals established for the geographical area where the contract resulting from this solicitation is to be performed. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000.00

at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address, and telephone number of the subcontractor, estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.

4. As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is the Chicago, Illinois area including Cook, DuPage, Kane, Lake, McHenry, and Will Counties or Fulton County.

**STANDARD FEDERAL EQUAL
EMPLOYMENT OPPORTUNITY
CONSTRUCTION CONTRACT
SPECIFICATIONS
(Executive Order 11246)**

1. As used in these specifications:

a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;

b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;

c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.

d. "Minority" includes:

- (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
- (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
- (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
- (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2. Whenever the Contractor or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in

each subcontract in excess of \$10,000.00 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

3. If the Contractor is participating (pursuant to 42 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. The Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11245, or the regulations promulgated pursuant thereto.

6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment

opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The Contractor shall take specific affirmative actions to ensure equals employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall implement affirmative action steps at least as extensive as the following:

a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction projects. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.

d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority persons or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/ or participate in training programs for the area which expressly include minorities and women, including

upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources complied under 7b above.

f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year, and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc.. prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women

and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's workforce.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on

behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12. The Contractor shall carry out such sanctions and penalties or violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.5.

14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade,

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union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a

limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

16. For those Contracts containing Special Apprenticeship Provisions, as specified in the Agreement Section of the Contract, the attached "Declaration of Policy" and "Special Provisions for Apprenticeships" shall become a part of this Appendix C.

AFFIRMATIVE ACTION INTERIM ORDINANCE
APPENDIX D
OF THE
METROPOLITAN WATER RECLAMATION DISTRICT
OF GREATER CHICAGO

Section 1. Declaration of Policy

Whereas, it is the policy of the Metropolitan Water Reclamation District of Greater Chicago (the "District") to ensure competitive business opportunities for small, minority- and women-owned business enterprises in the award and performance of District contracts, to prohibit discrimination on the basis of race, sex, gender, color, racial group or perceived racial group, disability, age, religion, national origin or ethnicity, sexual orientation, veteran or military discharge status, association with anyone with these characteristics, or any other legally protected characteristic in the award of or participation in District contracts, and to abolish barriers to full participation in District contracts by all persons, regardless of race, ethnicity or sex;

Whereas, the District pursuant to its authority under 70 ILCS 2605/11.3, is committed to establishing procedures to implement this policy as well as state and federal regulations to assure the utilization of minority-owned, women-owned and small business enterprises in a manner consistent with constitutional requirements;

Whereas, the District is committed to equal opportunity for minority-, women-owned and small businesses to participate in the award and performance of District contracts;

Whereas, the Supreme Court of the United States in *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989), has enunciated certain standards that are necessary to maintain effective contracting affirmative action programs in compliance with constitutional requirements;

Whereas, the District is committed to implementing its affirmative action program in conformance with the United States Supreme Court's decision in *Croson* and its progeny;

Whereas, in furtherance of this commitment, the Board of Commissioners directed the District staff and its outside consultants in 1990 to conduct an investigation into the scope of any discrimination in the award of and participation in District construction contracts as well as in the construction industry in Metropolitan Chicago, the extent to which such discrimination or the effects thereof has denied and continues to deny minority and women's business enterprises equal opportunity to participate in District contracts and to recommend the appropriate affirmative action steps to be taken to eliminate any such discrimination and its continuing effects.

Whereas, on June 21, 2001, the District adopted its Revised Appendix D, Notice of Requirements for Affirmative Action Program to Ensure Minority, Women and Small Business Participation ("Appendix D"); and

Whereas, in 2006 the Board of Commissioners undertook a review of Appendix D, the District's contracting policy and operation under Appendix D and an investigation into the existence of continued discrimination against minority and women-owned businesses in the

Metropolitan Chicago construction industry to evaluate the continued need for Appendix D and any necessary revisions thereto;

Whereas, the Board of Commissioners has undertaken a review in 2012 of Appendix D, the District's contracting policy and operation under Appendix D and an investigation into the existence of continued discrimination against minority and women-owned businesses in the Metropolitan Chicago construction industry to evaluate the continued need for Appendix D and any necessary revisions thereto.

Section 2. Findings

The Board of Commissioners, having reviewed the report of the District's staff, its outside consultants and the reports of the District's Affirmative Action Administrator, finds:

1. In 2003, the U.S. District Court in *Builders Association of Greater Chicago v. City of Chicago*, 298 F. Supp.2d 725 (N.D. Ill. 2003) held that the evidence introduced at trial demonstrated that past and current discriminatory practices continue to place MBE and WBE firms at a competitive disadvantage in the award of governmental contracts and such practices have and continue to impede the growth and success of MBEs and WBEs.
2. In 2004, a study of the Metropolitan Chicago Construction Industry by Timothy Bates, Distinguished Professor, Wayne State University, concluded that the evidence that African-American, Hispanic and women-owned businesses have been, and continue to be disadvantaged in the construction industry and small businesses is strong, has remained consistent and that compelling evidence indicates that African-American, Hispanic, and women-owned businesses face barriers in the Metropolitan Chicago construction industry greater than those faced by white males.
3. A November, 2005 study of the Metropolitan Chicago construction industry by David Blanchflower, Professor of Economics at Dartmouth College, has determined that discrimination against Asian-owned businesses existed in the business community in areas of business financing and construction wages and that this, together with evidence of individual discrimination against Asian-owned construction companies, leads to the conclusion that discrimination against Asian owned businesses continues to exist in the Metropolitan Chicago construction industry.
4. In 2005, the U.S. District Court held in *Northern Contracting, Inc. v. Illinois Department of Transportation*, 2005 U.S. Dist. LEXIS 19868 (N.D. Ill. Sept. 8, 2005) that there is strong evidence of the effects of past and current discrimination against MBEs and WBEs in the construction industry in the Chicago area.
5. The trial court's decision was affirmed in *Northern Contracting, Inc. v. Illinois Department of Transportation*, 473 F.3d 715 (7th Cir. 2007).
6. In 2006, the Board of Commissioners of Cook County, Illinois accepted a report it had commissioned titled, "Review of Compelling Evidence of Discrimination Against Minority- and Women-Owned Business Enterprise in the Chicago Area Construction Industry and Recommendations for Narrowly Tailored Remedies for Cook County, Illinois" (Cook County 2006 Report), which concluded that there is extensive evidence of discrimination against MBEs and WBEs in the Chicago area construction marketplace, and the participation of MBEs and

WBEs in the County's construction prime contracts and subcontracts is below the availability of such firms.

7. In 2006, the Illinois State Toll Highway Authority commissioned a study for the availability of Disadvantaged Business Enterprises ("DBEs") in its geographic and procurement markets, to ensure that its DBE program was narrowly tailored as required by constitutional standard, which found 19.56% DBE availability in construction, 19.36% DBE availability in construction-related professional services, and that DBE utilization had steadily increased from 2.40% in 2004 to 24.72% in 2010.

8. Board of Commissioners of Cook County commissioned a new report, entitled "The Status of Minority and Women-Owned Business Enterprises Relevant to Construction Activity in and Around Cook County, Illinois" (Cook County 2010 Study), which found that MBEs and WBEs were not utilized in all aspects in proportion to their availability.

9. In 2010 the U.S. Department of Justice produced a report to Congress, entitled "Compelling Interest for Race- and Gender-Conscious Federal Contracting Programs: An Update to the May 23, 1996 Review of Barriers to Minority- and Women-Owned Businesses," that updated the original basis for the U.S. Department of Transportation's DBE program and concluded that discriminatory barriers continue to impede the ability of MBEs and WBEs to compete with other firms on a fair and equal footing in government contracting markets, including in the construction industry.

10. In 2012, the District commissioned a report on barriers to construction opportunities in the Chicago area market and recommendations for District efforts to reduce such barriers, which found continuing disparities in the Chicago area construction market.

11. The District has determined that it has a continuing compelling interest in preventing public funds in construction contracts awarded by the District from perpetuating the effects of past discrimination and current discrimination against minority-owned and women-owned firms in its construction market.

12. The Affirmative Action Program adopted by the District and amended April 2, 2009 is hereby modified to further continue to ameliorate the effects of racial and gender discrimination in the marketplace.

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

14. The Commissioners shall periodically review minority-owned and women-owned participation in contracts awarded by the District to ensure that the District continues to have a compelling interest in remedying discrimination against minority and women-owned firms in the award of District construction contracts and that the measures adopted herein remain narrowly tailored to accomplish that objective.

Now, therefore, the District Board of Commissioners hereby adopts this Interim Appendix D:

Section 3. Purpose and Intent

The purpose and intent of this Interim Ordinance is to mitigate the present effects of discrimination on the basis of race, ethnicity or sex in opportunities to participate on the District's prime contracts and associated subcontracts and to achieve equitable utilization of minority-owned, women-owned and small business enterprises in District construction contracts.

Section 4. Coverage

The following provisions, to be known as "Appendix D" together with relevant forms, shall apply and be appended to every construction contract awarded by the District where the estimated total expenditure is in excess of \$100,000.00, except contracts let in the event of an emergency pursuant to 70 ILCS 2605/11.5.

Section 5. Definitions

The meaning of these terms in this Interim Ordinance are as follows:

- (a) "Administrator" means the District's Affirmative Action Program Administrator.
- (b) "Affiliate" of a person or entity means a person or entity that directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person or entity. In determining Affiliation, the District shall consider all appropriate factors, including common ownership, common management, and contractual relationships.
- (c) "Annual Participation Goals" mean the targeted levels established by the District for the annual aggregate participation of MBEs and WBEs in District construction contracts.
- (d) "Bidder" means an individual, a business enterprise, including a sole proprietorship, a partnership, a corporation, a not for profit corporation, a limited liability company or any other entity which has submitted a bid on a District contract.
- (e) "Books and Records" include, but are not limited to, payroll records, bank statements, bank reconciliations, accounts payable documents, account receivable documents, ledgers, all financial software, and all employer business tax returns.
- (f) "Contract Specific Goals" means the Goals established for a particular project or contract based upon the availability of MBEs or WBEs in the scope(s) of work of the Project.
- (g) "Construction contract" means any District construction contract or amendment thereto, providing for a total expenditure in excess of One Hundred Thousand Dollars (\$100,000.00) for the construction, demolition, replacement, major repair or renovation and maintenance of real property and improvement thereon or sludge hauling and any other related contract which the District deems appropriate to be subject to Appendix D consistent with the Interim Ordinance.
- (h) "Commercially Useful Function" means responsibility for the execution of a distinct element of the work of the contract, which is carried out by actually performing, managing, and supervising the work involved, or fulfilling responsibilities.

(i) "Contract Goals" means the numerical percentage goals for MBE, WBE or SBE participation to be applied to an eligible District construction contract subject to Appendix D for the participation of MBEs, WBEs and SBEs, based upon the scopes of work of the contract, the availability of MBEs, WBEs and SBEs to meet the goals, and the District's progress towards meeting its Annual MBE, WBE and SBE goals.

(j) "Director" means the District's Director of Procurement and Materials Management, formerly known as the Purchasing Agent.

(k) "Economically Disadvantaged" means an individual with a Personal Net Worth less than \$2,000,000.00, indexed annually for the Chicago Metro Area Consumer Price Index, published by the U.S. Department of Labor, Bureau of Labor Standards, beginning January 2008.

(l) "Executive Director" means the chief administrative officer of the District, formerly known as the General Superintendent.

(m) "Expertise" means demonstrated skills, knowledge or ability to perform in the field of endeavor in which certification is sought by the firm as defined by normal industry practices, including licensure where required.

(n) "Good Faith Efforts" means those honest, fair and commercially reasonable actions undertaken by a contractor to meet the MBE or WBE goal which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the Program's goals.

(o) "Hearing Officer" is an attorney licensed to practice in the State of Illinois, appointed by the Board of Commissioners, to conduct hearings as provided in this Interim Ordinance regarding a contractor's compliance or non-compliance with this Interim Ordinance.

(p) "Joint Venture" means an association of two or more persons, or any combination of types of business enterprises and persons numbering two or more, proposing to perform a single for profit business enterprise, in which each Joint Venture partner contributes property, capital, efforts, skill and knowledge, and in which the certified firm is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the Joint Venture are equal to its ownership interest. Joint Ventures must have an agreement in writing specifying the terms and conditions of the relationships between the partners and their relationship and responsibility to the contract.

(q) "Job Order Contract" or "JOC" means a firm, fixed price, indefinite quantity contract designed to complete a large number of construction projects quickly.

(r) "Local business" means a business located within the counties of Cook, DuPage, Kane, Lake, McHenry or Will in the State of Illinois or Lake County in the State of Indiana which has the majority of its regular full-time work force located in this region or a business which has been placed on the District's vendor list or has bid on or sought District construction work.

(s) "Minority-owned business enterprise" or "MBE" means a Local Small business entity, including a sole proprietorship, partnership, corporation, limited liability company, Joint Venture or any other business or professional entity, which is at least fifty-one percent (51%) owned by one or more members of one or more minority groups, or, in the case of a publicly held corporation, at least fifty-one percent (51%) of the stock of which is owned by one or more members of one or more minority groups, and whose management, policies, major decisions and daily business operations are controlled by one or more Minority individuals.

(t) "Minority Individual" means a natural person who is a citizen of the United States or lawful permanent resident of the United States and one of the following:

(i) African-American - A person having origins in any of the Black racial groups of Africa and is regarded as such by the African American Community of which the person claims to be a part.

(ii) Asian-American - A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands or the Northern Marianas, and is regarded as such by the Asian American community of which the person claims to be a part.

(iii) Hispanic-American - A person having origins from Mexico, Puerto Rico, Cuba and South or Central America and is regarded as such by the Hispanic community of which the person claims to be a part, regardless of race.

(iv) Native-American - A person having origins in any of the original peoples of North America and who is recognized through tribal certification as a Native American by either a tribe or a tribal organization recognized by the Government of the United States of America.

(v) Individual members of other groups whose participation is required under state or federal regulations or by court order.

(vi) Individual members of other groups found by the District to be Socially Disadvantaged by having suffered racial or ethnic prejudice or cultural bias within American society, without regard to individual qualities, resulting in decreased opportunities to compete in the District's marketplace or to do business with the District.

(u) "Personal Net Worth" means the net value of the assets of an individual after total liabilities are deducted. An individual's personal net worth does not include the individual's ownership interest in an applicant or other certified MBE or WBE, provided that the other firm is certified by a governmental agency that meets the District's eligibility criteria or the individual's equity in his or her primary place or residence. As to assets held jointly with his or her spouse or recognized civil partner, an individual's personal net worth includes only that individual's share of such assets. An individual's net worth also includes the present value of the individual's interest in any vested pension plans, individual retirement accounts, or other retirement savings or investment programs less the tax and interest penalties that would be imposed if the asset were distributed at the present time.

(v) "Prime Contractor" means a contractor that is awarded a District contract and is at risk for the completion of an entire District project, including purchasing all materials, hiring and paying subcontractors, and coordinating all the work.

(w) "Small Business Enterprise" or "SBE" means a small business as defined by the U.S. Small Business Administration (SBA), pursuant to the business size standards found in 13 CFR Part 121, relevant to the scope(s) of work the firm seeks to perform on District contracts, except that the size standard for specialty trade construction firms shall be 150 percent of the SBA size standard. A firm is not an eligible SBE in any calendar fiscal year in which its gross receipts, averaged over the firm's previous five fiscal years, exceed the size standards of 13 CFR Part 121.

(x) "Socially Disadvantaged" means a Minority Individual or Woman who has been subjected to racial, ethnic or gender prejudice or cultural bias within American society because of his or her identity as a member of a group and without regard to individual qualities. Social

disadvantage must stem from circumstances beyond the individual's control. A Socially Disadvantaged Individual must be a citizen or lawfully admitted permanent resident of the United States.

(y) "Subcontractor" means a party that enters into a subcontract agreement with a District Prime Contractor to perform work or provide materials on a District project.

(z) "Tier" refers to the relationship of a subcontractor to the prime contractor. A subcontractor having a contract with the prime contractor, including a material supplier to the prime contractor, is considered a "first-tier subcontractor," while a subcontractor's subcontractor is a "second-tier subcontractor" and the subcontractor's material supplier is a "third-tier subcontractor." The subcontractor is subject to the same duties, obligations and sanctions as the contractor under this Ordinance.

(aa) "Utilization Plan" means the plan, in the form specified by the District, which must be submitted by a Bidder listing the MBEs, WBEs and SBE that the Bidder intends to use in the performance of a contract, the scopes of the work and the dollar values or the percentages of the work to be performed.

(bb) "Vendor list" means the District's list of firms that are certified as minority-owned or women-owned by the City of Chicago, the County of Cook, the State of Illinois, the Women's Business Development Center, or the Chicago Minority Supplier Development Council, or as a Disadvantaged Business Enterprise by the Illinois Unified Certification Program, or as a Small Disadvantaged Business by the U.S. Small Business Administration.

(cc) "Women-owned business enterprise" or "WBE" means a Local and Small business entity which is at least fifty-one percent (51%) owned by one or more women, or, in the case of a publicly held corporation, fifty-one percent (51%) of the stock of which is owned by one or more women, and whose management and daily business operations are controlled by one or more women. Determination of whether a business is at least fifty-one percent (51%) owned by a woman or women shall be made without regard to community property laws.

Section 6. Non-Discrimination and Affirmative Action Clause

As a precondition to selection, a Contractor must include in its bid proposal for a covered contract the following commitments:

During the performance of this contract, the Contractor agrees:

(a) It shall not discriminate on the basis of race, sex, gender, color, racial group or perceived racial group, disability, age, religion, national origin or ethnicity, sexual orientation, veteran or military discharge status, association with anyone with these characteristics, or any other legally protected characteristic in the solicitation for or purchase of goods in the performance of this contract.

(b) It shall actively solicit bids for the purchase or subcontracting of goods or services from qualified MBEs, WBEs and SBEs.

(c) It shall undertake Good Faith Efforts in accordance with the criteria established in this Interim Ordinance, to ensure that qualified MBEs, WBEs and SBEs are utilized in the performance of this contract and share in the total dollar value of the contract in accordance with

each of the applicable utilization goals established by the District for the participation of qualified MBEs, WBEs and SBEs.

(d) It shall require its subcontractors to make similar good faith efforts to utilize qualified MBEs, WBEs and SBEs.

(e) It shall maintain records and furnish the District all information and reports required by the District for monitoring its compliance with this Interim Ordinance.

(f) It shall designate a person to act as an Affirmative Action Coordinator to facilitate the review of all concerns related to the participation MBEs, WBEs and SBEs.

Section 7. Race and Gender Neutral Measures to Ensure Equal Opportunities for All Contractors and Subcontractors

The District shall develop and use measures to facilitate the participation of all firms in District construction contracting activities. These measures shall include, but are not limited to:

(a) Unbundling contracts to facilitate the participation of MBEs, WBEs and SBEs as Prime Contractors.

(b) Arranging solicitation times for the presentations of bids, specifications, and delivery schedules to facilitate the participation of interested contractors and subcontractors.

(c) Providing timely information on contracting procedures, bid preparation and specific contracting opportunities, including through an electronic system and social media.

(d) Assisting MBEs, WBEs and SBEs with training seminars on the technical aspects of preparing a bid for a District contract.

(e) Providing assistance to businesses in overcoming barriers such as difficulty in obtaining bonding and financing, and support for business development such as accounting, bid estimation, safety requirements, quality control.

(f) Prohibiting Prime Contractors from requiring bonding for subcontractors, where appropriate.

(g) Holding pre-bid conferences, where appropriate, to explain the contract and to encourage Bidders to use all available firms as subcontractors.

(h) Adopting prompt payment procedures, including, requiring by contract that Prime Contractors promptly pay subcontractors and investigating complaints or charges of excessive delay in payments.

(i) Developing Linked Deposit and other financing and bonding assistance programs to assist small firms.

(j) Reviewing retainage, bonding and insurance requirements and their application to bid calculations to eliminate unnecessary barriers to contracting with the District.

(k) Collecting information from all Prime Contractors on District construction contracts detailing the bids received from all subcontractors for District construction contracts and the expenditures to subcontractors utilized by Prime Contractors on District construction contracts.

(l) Limiting the self-performance of prime contractors, where appropriate.

(m) To the extent practicable, developing future policies to award contracts to SBEs.

(n) Maintaining information on all firms bidding on District prime contracts and subcontracts.

(o) At the discretion of the Board of Commissioners, awarding a representative sample of District construction contracts without goals, to determine MBE, WBE and SBE utilization in the absence of goals.

(p) Referring complaints of discrimination against MBEs, WBEs or SBEs to the appropriate authority for investigation and resolution.

Section 8. Certification Eligibility

(a) Only businesses that meet the criteria for certification as a MBE, WBE or SBE may be eligible for credit towards meeting Utilization Contract Goals. The applicant has the burden of production and persuasion by a preponderance of the evidence at all stages of the certification process.

(b) Only a firm owned by a Socially and Economically Disadvantaged person(s) may be certified as a MBE or WBE.

(i) The firm's ownership by a Socially and Economically Disadvantaged person(s) must be real, substantial, and continuing, going beyond *pro forma* ownership of the firm as reflected in ownership documents. The owner(s) must enjoy the customary incidents of ownership and share in the risks and profits commensurate with that ownership interest.

(ii) The contributions of capital or Expertise by the Socially and Economically Disadvantaged owner(s) to acquire the ownership interest must be real and substantial. If Expertise is relied upon as part of a Socially and Economically Disadvantaged owner's contribution to acquire ownership, the Expertise must be of the requisite quality generally recognized in a specialized field, in areas critical to the firm's operations, indispensable to the firm's potential success, specific to the type of work the firm performs and documented in the firm's records. The individual whose Expertise is relied upon must have a commensurate financial investment in the firm.

(c) Only a firm that is managed and controlled by a Socially and Economically Disadvantaged person(s) may be certified as a MBE or WBE.

(i) A firm must not be subject to any formal or informal restrictions that limit the customary discretion of the Socially and Economically Disadvantaged owner(s). There can be no restrictions through corporate charter provisions, by-law provisions, contracts or any other formal or informal devices that prevent the Socially and Economically Disadvantaged owner(s), without the cooperation or vote of any non-Socially and Economically Disadvantaged person, from making any business decision of the firm, including the making of obligations or the dispersing of funds.

(ii) The Socially and Economically Disadvantaged owner(s) must possess the power to direct or cause the direction of the management and policies of the firm and to make day-to-day as well as long term decisions on management, policy, operations and work.

(iii) The Socially and Economically Disadvantaged owner(s) may delegate various areas of the management or daily operations of the firm to persons who are not and Economically Disadvantaged. Such delegations of authority must be revocable, and the Socially and Economically Disadvantaged owner(s) must retain the power to hire and fire any such person. The Socially and Economically Disadvantaged owner(s) must actually exercise control over the firm's operations, work, management and policy.

(iv) The Socially and Economically Disadvantaged owner(s) must have an overall understanding of, and managerial and technical competence, experience and Expertise, directly related to the firm's operations and work. The Socially and Economically Disadvantaged owner(s) must have the ability to intelligently and critically evaluate information presented by other participants in the firm's activities and to make independent decisions concerning the firm's daily operations, work, management, and policymaking.

(v) If federal, state and/or local laws, regulations or statutes require the owner(s) to have a particular license or other credential to own and/or control a certain type of firm, then the Socially and Economically Disadvantaged owner(s) must possess the required license or credential. If state law, District ordinance or other law regulations or statute does not require that the owner possess the license or credential, that the owner(s) lacks such license or credential is a factor, but is not dispositive, in determining whether the Socially and Economically Disadvantaged owner(s) actually controls the firm.

(vi) A Socially and Economically Disadvantaged owner cannot engage in outside employment or other business interests that conflict with the management of the firm or prevent the owner from devoting sufficient time and attention to the affairs of the firm to manage and control its day to day activities.

(d) Only an independent firm may be certified as a MBE, WBE or SBE. An independent firm is one whose viability does not depend on its relationship with another firm. Recognition of an applicant as a separate entity for tax or corporate purposes is not necessarily sufficient to demonstrate that a firm is independent and non-Affiliated. In determining whether an applicant is an independent business, the Director will:

(i) Evaluate relationships with non-certified firms in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources.

(ii) Consider whether present or recent employer/employee relationships between the Socially and Economically Disadvantaged owner(s) of the applicant for MBE or WBE certification or any owners of the applicant for SBE certification and non-certified firms or persons associated with non-certified firms compromise the applicant's independence.

(iii) Examine the applicant's relationships with non-certified firms to determine whether a pattern of exclusive or primary dealings with non-certified firm compromises the applicant's independence.

(iv) Consider the consistency of relationships between the applicant and non-certified firms with normal industry practice.

(e) An applicant shall be certified only for specific types of work in which the Socially and Economically Disadvantaged owner(s) for MBEs and WBEs or the majority owner for SBEs has the ability and Expertise to manage and control the firm's operations and work.

(f) The District shall certify the eligibility of Joint Ventures involving MBEs, WBEs or SBEs and non-certified firms.

(g) The certification status of all MBEs, WBEs and SBEs shall be reviewed periodically by the Administrator. Failure of the firm to seek recertification by filing the necessary documentation with the Administrator as provided by rule may result in decertification.

(h) It is the responsibility of the certified firm to notify the Administrator of any change in its circumstances affecting its continued eligibility. Failure to do so may result in the firm's decertification.

(i) The Administrator shall decertify a firm that does not continuously meet the eligibility criteria.

(j) Decertification by another agency shall create a *prima facie* case for decertification by the District. The challenged firm shall have the burden of proving by a preponderance of the evidence that its District certification should be maintained.

(k) A firm that has been denied certification or recertification or has been decertified may protest the denial or decertification by filing a written appeal with the Executive Director within 10 calendar days of receipt of the denial of District certification, recertification or decertification.

The appeal should set forth in detail the facts upon which it is based, and attach all relevant documentations. The Executive Director shall render a decision within 15 calendar days of receipt of a timely appeal. The Executive Director's decision shall be final.

(I) A firm found to be ineligible may not apply for certification for two years after the effective date of the final decision.

Section 9. Schedule of Goals for Minority-Owned, Women-Owned and Small Business Enterprise Utilization

In fulfillment of its policy to provide MBEs, WBEs and SBEs full and equitable opportunities to participate in the District's construction prime contracts and subcontracts, the District shall establish annually goals for MBE, WBE and SBE participation, based on the availability of MBEs and WBEs in the District's geographic and procurement marketplace.

Section 10. Contract Goals.

(a) The Director, in consultation with the Administrator and the User Department, shall establish Contract Goals for construction contracts based upon the availability of at least three MBEs and three WBEs registered on the District's vendor list to perform the anticipated subcontracting functions of the contract and the District's utilization of MBEs and WBEs to date.

(b) Where a substantial portion of the total construction contract cost is for the purchase of equipment, the Director may designate goals for only that portion of the contract relating to construction work and related supplies and/or modify the limitations on the credit for M/WBE suppliers herein.

(c) The Contract Goal(s) shall be designated in the contract documents.

Section 11. Counting MBE, WBE and SBE Participation towards Contract Goals

(a) A Bidder may achieve the Utilization Contract Goals by its status as a MBE, WBE or SBE or by entering into a Joint Venture with one or more MBEs, WBEs and SBEs or by first-tier subcontracting a portion of the work to one or more MBEs, WBEs and SBEs or by direct purchase of materials or services from one or more MBEs, WBEs and SBEs or by any combination of the above.

(b) If a firm is certified as both a MBE and a WBE, the Bidder may count the firm's participation either toward the achievement of its MBE or WBE goal, but not both.

(c) A Bidder may count toward the achievement of its SBE goal the utilization of any MBE or WBE that also satisfies the definition of a SBE.

(d) A Bidder may count the entire amount of that portion of a contract that is performed by MBEs, WBEs or SBEs own forces, including the cost of supplies and materials obtained and installed by the MBE, WBE or SBE for the work of the contract, and supplies purchased or equipment leased by the MBE, WBE or SBE used to directly perform the work of the contract (except supplies and equipment the MBE, WBE or SBE purchases or leases from the Prime Contractor or the Prime Contractor's Affiliate).

(e) Where a Bidder or first-tier subcontractor engages in a Joint Venture to meet the Contract Goal, the Administrator shall review the profits and losses, initial capital investment, actual participation of the Joint Venture in the performance of the contract with its own forces

and for which it is separately at risk, and other pertinent factors of the joint venture, which must be fully disclosed and documented in the Utilization Plan in the same manner as for other types of participation, to determine the degree of MBE, WBE or SBE participation that will be credited towards the Contract Goal. The Joint Venture's Utilization Plan must evidence how it will meet the goal or document the Bidder's Good Faith Efforts to do so. The Administrator has the authority to review all records pertaining to Joint Venture agreements before and after the award of a contract in order to assess compliance with this Ordinance. The MBE, WBE or SBE Joint Venture partner must have a history of proven expertise in performance of a specific area of work and will not be approved for performing only general management of the Joint Venture. The specific work activities for which the MBE, WBE or SBE Joint Venture partner will be responsible and the assigned individuals must be clearly designated in the Joint Venture Agreement. The Joint Venture must submit to the Administrator quarterly work plans, including scheduling dates of the tasks. The Administrator must approve the quarterly plans for the MBE, WBE or SBE Joint Venture partner's participation to be credited towards the Contract Goals.

(f) Only the participation of MBEs, WBEs or SBEs that will perform as first-tier subcontractors will be counted towards meeting the Utilization Contract Goals.

(g) Only expenditures to a MBE, WBE or SBE that is performing a Commercially Useful Function shall be counted towards the Utilization Contract Goal.

(i) A firm is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work of a contract and carries out its responsibilities by actually performing, managing, and supervising the work involved. The firm must pay all costs associated with personnel, materials and equipment. The firm must be formally and directly responsible for the employment, supervision and payment of its workforce must own and /or lease equipment, and must be responsible for negotiating price, determining quality and quantity and paying for and ordering materials used. The firm cannot share employees with the Prime Contractor or its Affiliates. No payments for use of equipment or materials by the firm can be made through deductions by the Prime Contractor. No family members who own construction related businesses are allowed to lease, loan or provide equipment, employees or materials to the firm.

(ii) A firm does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction through which funds are passed in order to obtain the appearance of MBE, WBE or SBE participation. The Prime Contractor is responsible for ensuring that the firm is performing a commercially useful function.

(iii) The District will evaluate the amount of work subcontracted, industry practices, and whether the amount the MBE, WBE or SBE is to be paid under the contract is commensurate with the work it is actually performing and other relevant factors.

(iv) If a firm subcontracts a greater portion of the work of a contract than would be expected based on normal industry practice, it is presumed not to perform a Commercially Useful Function. When a firm is presumed not to be performing a Commercially Useful Function, the firm may present evidence to rebut this presumption.

(h) Credit towards the Contract Goals will be allowed only for those direct services performed or materials supplied by MBEs, WBEs or SBEs or first-tier subcontractor MBEs, WBEs or SBEs. MBEs, WBEs or SBEs must perform no less than eighty-five percent (85%) of

their work with their own forces, through the use of its own management and supervision, employees and equipment. If industry standards and practices differ, the firm must furnish supporting documentation for consideration by the District.

(i) Purchase of materials and supplies must be pre-approved if their purchase is related to goal attainment. Bidder may count payments to MBE, WBE or SBE regular dealers or manufacturers who offer only furnish and deliver contracts for materials and supplies for no more than twenty-five percent (25%) of each MBE, WBE or SBE goal, unless approved by the Administrator. If the bidder exceeds the supplier exception amount allowable as stated in the bid documents, the bid will be viewed as non-responsive.

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

(k) If a firm ceases to be a certified during its performance on a contract, the dollar value of work performed under a contract with that firm after it has ceased to be certified shall not be counted.

(l) In determining achievement of Utilization Contract Goals, the participation of a MBE, WBE or SBE shall not be counted until that amount has been paid to the MBE, WBE or SBE.

Section 12. Utilization Plan Submission

(a) Compliance documents must be submitted as provided in the solicitation. Failure to do so will render the bid non-responsive. The Director shall review each bid submission to determine if it meets the requirements herein.

(b) A Bidder must either meet the Utilization Contract Goals or establish its Good Faith Efforts to do so as described in Appendix D and the solicitation.

(c) Each Bidder shall submit with its bid a completed and signed Utilization Plan that lists the names, addresses, telephone numbers, email addresses and a description of the work with contract item number and contact person of the businesses intended to be used as subcontractors, subconsultants and suppliers, including those firms proposed to meet the Contract Goal(s); the type of work or service each business will perform; and the dollar amount to be allocated to the certified firm(s). Each Bidder's Utilization Plan shall commit to MBE, WBE or SBE participation equal to or greater than each of the Contract Goals set forth in the solicitation, unless the Bidder requests a partial or total waiver of the requirement that it file a Utilization Plan or achieve a particular goal by submitting with the bid a signed Waiver Request in the form specified in the solicitation.

(d) Each Bidder must submit with its bid a signed M/W/SBE Subcontractor's Letter of Intent for each firm in the form specified in the solicitation, with either a copy of each MBE,

WBE or SBE's current Letter of Certification from a state or local government or agency or documentation demonstrating that the firm is a MBE, WBE or SBE within the meaning of this Appendix D. In the event of a conflict between the amounts stated on the Utilization Plan and the M/W/SBE Subcontractor's Letter of Intent, the terms stated on the Utilization Plan shall control. An original or facsimile copy of the M/W/SBE Subcontractor's Letter of Intent will be acceptable.

(c) Where a Bidder had failed to meet the Contract Goal(s), it must file a Waiver request documenting its Good Faith Efforts to meet the Goal(s) as provided in the format described in the solicitation, the Administrator shall require the contractor to file a Contractor Information Form and provide additional documentation of its good faith efforts in attempting to fulfill such goals.

(i) Such Good Faith Efforts, as defined herein, shall include, but are not limited to, the following:

(i) Attend any pre-bid conference conducted by the District to acquaint contractors with MBEs, WBEs and SBEs available to provide relevant goods and services and to inform MBEs, WBEs and SBEs of subcontract opportunities on the contract;

(ii) Review lists of available MBEs, WBEs and SBEs maintained by the District and other state and local governments and agencies prior to the bid opening to identify qualified MBEs, WBEs and SBEs for solicitation for bids;

(iii) Advertise, not less than 15 calendar days before the bid opening date, in one or more daily newspapers and/or trade publications, for proposals or bids by MBEs, WBEs and SBEs for subcontracts or the supply of goods and services on the contract;

(iv) Make timely written solicitations of available MBEs, WBEs and SBEs identified on the District's vendor list that provide relevant services for subcontracts or the supply of goods and services;

(v) Provide MBEs, WBEs and SBEs with convenient and timely opportunities to review and obtain relevant plans, specifications or terms and conditions of the contract to enable such MBEs, WBEs and SBEs to prepare an informed response to a contractor solicitation;

(vi) Divide total contract requirements into small tasks or quantities and adjust performance bond and insurance requirements or otherwise assist MBEs, WBEs and SBEs in obtaining the required bonding, insurance or financing, where economically feasible, to encourage participation of MBEs, WBEs and SBEs;

(vii) Follow up initial solicitation of MBEs, WBEs and SBEs by contacting them to determine if the enterprises are interested in making bids or proposals;

(viii) Negotiate in good faith with MBEs, WBEs and SBEs prior to the bid opening and do not reject as unsatisfactory any bids or proposals submitted by M/WBEs without justifiable reason, including the lack of bonding capacity or the ability to obtain insurance requirements such as Completed Builders Risk (All Risk) Insurance, Comprehensive General Liability Insurance, Contractor Contractual Liability Insurance and Public Liability Insurance;

(ix) Establish delivery schedules, where the requirements of the work permit, which will encourage participation by MBEs, WBEs and SBEs;

(x) Establish joint ventures with MBEs, WBEs and SBEs;

(xi) Use the services and assistance of the District, the Small Business Administration, the Office of Minority Business Enterprises of the U.S. Department of Commerce and appropriate community and minority and women's business organizations;

(ii) Failure of a Bidder to provide requested information to the Administrator or to cooperate with the Administrator's investigation, may be grounds for the rejection of a bid and/or a Waiver request.

(iii) Upon completion of the investigation, the Administrator shall inform the Director of his or her findings.

(iv) The Director, after consultation with the Administrator, shall determine whether to grant the Waiver request based on the Bidder's Good Faith Efforts at the time of bid submission.

(v) Where the Director determines that a Bidder has not made Good Faith Efforts, the Director shall declare the bid submission non-responsive and will reject the bid.

(d) A contractor's submission of a Utilization Plan that commits to a M/WBE participation equal to or greater than the applicable utilization goals shall not provide a basis for a higher bid, an increase in contract price or a later change order.

(e) The requirement to submit a Utilization Plan and M/W/SBE Subcontractor's Letters of Intent applies when the individual project is awarded under Job Order Contracts awarded by the District.

(i) A Prime Contractor issued a Job Order Contract shall submit with each work order issued under such a Contract its Utilization Plan that lists the name, address, telephone number, email address and contact person for each M/W/SBE to be used on the work order, as well as a description of work to be performed and a dollar amount to be allocated to such M/W/SBE. The Prime Contractor shall submit with each work order a M/W/SBE Subcontractor's Letter of Intent from each certified firm.

(ii) A Prime Contractor awarded a Job Order Contract shall be subject to the compliance monitoring provisions herein. The Prime Contractor must submit to the Administrator monthly documentation, as specified by the Administrator, demonstrating that the Contractor has attained the Contract Goals for the completed portion of the Job Order Contract, or that it has been unable to do so despite its good faith efforts. Good Faith efforts must be documented as provided in this Ordinance

Section 13. Compliance Review

(a) The Director shall declare the bid submission non-responsive if a Bidder:

(i) Failed to submit with its bid a completed and signed Utilization Plan.

(ii) Failed to commit in its Utilization Plan to MBE, WBE and SBE participation equal to or greater than each of the Utilization Contract Goals unless the Bidder submitted with its bid a request for a total or partial waiver of the Goal(s).

(iii) Failed to identify in its Utilization Plan the MBE, WBE and SBE by name, scope of work, contract item number, and dollar value of work or percentage of participation equal to or greater than each of the Contract Goal(s).

(iv) Failed to submit with its bid the M/W/SBE Subcontractor's Letter of Intent from each MBE, WBE and SBE listed on its Utilization Plan.

(b) Where, after consultation with the Administrator, the Director determines that Utilization Plan submitted by a Bidder is false or fraudulent, the bid shall be rejected or, if the determination is made after the bid award, the contract may be forfeited in accordance with the provision of Article 28 of the General Conditions.

(c) If a Mentor-Protégé relationship is proposed to meet the Contract Goal, the Mentor-Protégé Development Plan must be submitted to the Administrator for approval prior to contract award. "Mentor-Protégé relationship" describes an association between large business prime contractor firms and socially disadvantaged firms designed to motivate, encourage and to provide mutually beneficial developmental assistance to those socially disadvantaged firms.

(d) Prior to the award of any contract, the Administrator shall review the Utilization Plan, M/W/SBE Subcontractor's Letter(s) of Intent and Letter(s) of Certification, and Contractor Information and Waiver Request Forms as specified in the solicitation, submitted by the apparent low bidder on a contract and conduct any other investigation the Administrator deems appropriate to determine compliance.

(e) Within thirty (30) calendar days after demand, the Prime Contractor shall furnish executed copies of all MBE, WBE and SBE subcontracts to the Administrator. Subsequently, the contractor shall obtain and submit a copy of all MBE, WBE and SBE related subtier contracts on demand.

(f) The Prime Contractor shall set timetables for use of its subcontractors before fifty percent (50%) of the work is completed.

(g) If requested by the Administrator, the Prime Contractor must submit a MBE, WBE and SBE Work Plan projecting the work tasks associated with certified firms' commitments prior to the award of the contract. The Work Plan must provide a description of the work to be subcontracted to other MBEs, WBEs and SBEs and non-certified firms and the dollar amount and the name of the all tiers of subcontractors. The Work Plan becomes part of the Prime Contractor's contractual commitment and the contract record, and may not be changed without prior approval of the Administrator.

Section 14. Contract Performance Compliance

(a) After the award of a contract, the Administrator shall review the Prime Contractor's compliance with its M/W/SBE commitments during the performance of the contract.

(b) The Prime Contractor shall be required to submit the Affirmative Action Monthly MBE/WBE/SBE Status Report providing the information and in the format as specified by the District with every payment request. The Contractor's failure to do so may result in a delay of the progress payment.

(c) Evidence of MBE, WBE and SBE subcontractor participation and payments must be submitted as required by the District to confirm subcontractors' participation and payment.

(d) District contract compliance officers and auditors, or their designees, shall have access to the contractor's and subcontractor's books and records, including certified payroll records, bank statements, employer business tax returns and all records including all computer records and books of account to determine the contractor and MBE, WBE and SBE subcontractor compliance with the goal commitment. Audits may be conducted at any time and without notice in the total discretion of the District. A Prime Contractor must provide the Administrator any additional compliance documentation within 14 calendar days of such request. Audits may be conducted without notice at any time at the discretion of the District.

(e) If District personnel observe that any purported MBE, WBE and SBE subcontractor other than those listed on the Utilization Plan are performing work or providing materials and/or equipment for those M/WBE subcontractors listed on the Utilization Plan, the Prime Contractor will be notified in writing that an apparent violation is taking place and progress payments may be withheld. The contractor will have the opportunity to meet with the Affirmative Action Administrator prior to a finding of noncompliance.

(f) Where a partial or total Waiver of the Contract Goal(s) has been granted, the Prime Contractor must continue to make Good Faith Efforts during the performance of the contract to meet the Goal(s), and the Administrator shall provide technical assistance with respect to such efforts. The Administrator shall require the Prime Contractor to provide documentation of its continuing Good Faith Efforts in attempting to fulfill its commitments.

(g) The Prime Contractor cannot make any changes to the approved Utilization Plan or substitutions of the MBE(s), WBE(s) or SBE(s) listed in the Utilization Plan throughout the life of the contract without the prior, written approval of the Administrator. This includes, but is not limited to, instances in which the Prime Contractor seeks to perform work originally designated for a MBE, WBE or SBE subcontractor with its own forces or those of an affiliate, a non-certified firm or another MBE, WBE and SBE. Failure to obtain the prior, written approval of the Administrator in the format specified by the District shall constitute a breach of the contract, and subject the Prime Contractor to any and all available sanctions. The participation of certified firms that did not receive prior, written approval by the Administrator will not be counted towards the Contract Goal(s).

(i) The Prime Contractor must demonstrate good cause to terminate or reduce the scope of work of the MBE, WBE or SBE to the satisfaction of the Administrator. Good cause is limited to the following circumstances:

(1) The listed MBE, WBE or SBE subcontractor fails or refuses to execute a written contract.

(2) The listed MBE, WBE or SBE subcontractor becomes bankrupt, insolvent or exhibits credit unworthiness.

(3) The listed MBE, WBE or SBE is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to federal or state or local law.

(4) The Administrator has determined that the listed MBE, WBE or SBE subcontractor is not a responsible contractor.

(5) The listed MBE, WBE or SBE subcontractor voluntarily withdraws from the project and provides the Administrator written notice of its withdrawal.

(6) The listed MBE, WBE or SBE subcontractor is ineligible to receive credit for the type of work required.

(7) The MBE, WBE or SBE owner dies or becomes disabled with the result that the listed MBE, WBE or SBE subcontractor is unable to complete its work on the contract.

(8) Other good cause as determined in the Administrator's sole discretion.

(ii) Good cause does not include where the Contractor seeks to terminate a MBE, WBE or SBE it relied upon to obtain the contract so that the Contractor can self-perform the work or substitute another MBE, WBE or SBE or non-certified subcontractor to perform the work for which the MBE, WBE or SBE was engaged or listed on the Utilization Plan.

(iii) The Prime Contractor must give the MBE, WBE or SBE notice in writing, with a copy to the Administrator, of its intent to request to terminate and/or substitute, and the detailed reasons for the request.

(iv) If the Prime Contractor proposes to terminate or substitute a MBE, WBE or SBE subcontractor for any reason, the Contractor must make Good Faith Efforts as defined herein to find a substitute MBE, WBE or SBE subcontractor for the original MBE, WBE or SBE to meet its MBE, WBE or SBE contractual commitment. Its Good Faith Efforts shall be directed at finding another MBE, WBE or SBE to perform or provide at least the same amount of work, material or service under the contract as the original MBE, WBE or SBE to the extent necessary to meet its MBE, WBE or SBE contractual commitment.

(v) The Prime Contractor must submit an MBE, WBE or SBE Subcontractor's Letter of Intent for each proposed new MBE, WBE or SBE subcontractor.

(vi) The Administrator will approve or disapprove the substitution based on the Prime Contractor's documented compliance with these provisions.

(h) In the event a Prime Contractor fails to achieve the level of MBE, WBE or SBE participation described in its Utilization Plan as the result of the District's deletion of the work to be performed by a MBE, WBE or SBE, the Prime Contractor shall notify the Administrator in writing and may request an amendment of its Utilization Plan. A letter of release signed by the subcontractor must be included with the request.

(i) In the event a Prime Contractor, in the performance of its contract, determines that the conditions of the work warrant a reduction in the scope of work to be performed by a MBE, WBE or SBE, the Prime Contractor must utilize Good Faith Efforts to fulfill its MBE, WBE or SBE contractual commitment. The Prime Contractor must notify the Administrator in writing within fourteen (14) calendar days of the determination to request an amendment of its Utilization Plan. The Prime Contractor must give the MBE, WBE or SBE notice in writing, with a copy to the Administrator, of its intent to request to reduce the scope of work, and the detailed reasons for the request. The Administrator will approve or disapprove the reduction based on the Prime Contractor's documented compliance with these provisions.

(j) Where contract change orders are made individually or in the aggregate that increase the total value of the contract by more than ten percent (10%) of the original contract value, the Prime Contractor shall increase the utilization of all MBEs, WBEs or SBEs, where feasible, so that the total value of the percentage of work performed by MBEs, WBEs or SBEs as to increased contract value bears the same relationship to the total value of the contract (as

modified by change orders) as the percentage of MBEs, WBEs or SBEs utilization committed to in the contractor's original Utilization Plan.

Section 15. Sanctions for Non-Compliance

(a) Where the Administrator believes that the Prime Contractor or subcontractor has committed fraud or misrepresentation against the District or has failed to comply with this Ordinance or its contract, or provided false or fraudulent documentation, the Administrator shall notify the Prime Contractor and/or subcontractor in writing of such determination of noncompliance and withhold up to one hundred percent (100%) of the current progress or final payment due the Prime Contractor for up to 90 days. The amount to be withheld shall be based upon a determination of the degree to which the Prime Contractor has failed to meet its MBE, WBE or SBE contractual commitments and to what extent the Prime Contractor has made Good Faith Efforts to achieve such commitments. The Prime Contractor and/or subcontractor shall have the right to meet with the Administrator within 10 calendar days of receipt of the notice. After conference and conciliation, the Administrator will determine whether the Prime Contractor and/or subcontractor is in compliance.

(b) If the Administrator determines the Prime Contractor and/or subcontractor is not in compliance and the violation cannot be resolved by conference and conciliation, the Administrator shall refer the matter to the Executive Director and the Executive Director may return the referral to the Administrator with direction or may direct the Prime Contractor and/or subcontractor to show cause on a date certain why further sanctions should not be imposed.

(i) The Prime Contractor or subcontractor shall have fifteen (15) calendar days after receipt of the show cause notice within which to file a response in writing with the Administrator. A hearing before a duly appointed Hearing Officer shall be convened to provide the contractor and/or subcontractor an opportunity to be heard with respect to the non-compliance. Within thirty (30) calendar days after the Executive Director's referral, the Hearing Officer shall schedule a hearing to be held within thirty (30) calendar days of receipt of the referral for hearing at which the District, the contractor and/or subcontractor may present evidence of the purported violation and/or the absence thereof. The District will carry the burden of proof by a preponderance of the evidence. The Prime Contractor and/or subcontractor may present additional evidence and witnesses to show cause why sanctions should not be imposed. An official record will be kept with the Clerk of the District. All filings by the District or the respondents should be made with the Clerk of the District, with courtesy copies going to the parties and the Hearing Officer.

(ii) The Hearing Officer shall conduct such show cause hearings involving the Ordinance and shall render findings of fact, conclusions of law and recommendations regarding disposition of the hearings. Procedures and rules governing the show cause hearings will be adopted by the Board of Commissioners. The Hearing Officer will not become co-counsel with any attorneys appearing before him/her at any time during the hearing.

(iii) All Show Cause Hearings must be conducted on the record and all testimony must be under oath and transcribed verbatim by a court reporter. All parties shall be given the opportunity to present and respond to evidence. The Hearing Officer shall conduct a fair hearing and maintain order and shall abide by the Judicial Canons of Ethics enacted by the Illinois Supreme Court.

(iv) Within thirty (30) calendar days after the hearing with the Prime Contractor and/or subcontractor, the Hearing Officer shall issue in writing to the Executive Director his/her written findings of fact, conclusions of law as to compliance and recommendations with respect to any appropriate sanctions. The Executive Director shall transmit the Hearing Officer's findings, conclusions and recommendations to the Board of Commissioners which may impose sanctions for a Prime Contractor's and/or subcontractor's noncompliance with this Ordinance including, but not limited to:

(1) Withholding up to fifty percent (50%) of the current progress or final payment due the contractor until the Administrator determines that the contractor is in compliance. Following the withholding of up to fifty percent (50%) of the current progress payment, up to one hundred percent (100%) of further progress payments may be withheld until the contractor is found to be in compliance with the requirements of this Ordinance. The amount to be withheld will be based upon a determination of the degree to which the Prime Contractor has failed to meet its MBE, WBE or SBE contractual commitments and to what extent the Prime Contractor has made good faith efforts to achieve such commitments.

(2) Declaring the Prime Contractor and/or subcontractor to be non-responsible and disqualify/debar the Prime Contractor and/or subcontractor from eligibility to bid on District construction contracts for a period of not less than one (1) year, and not more than three (3) years. An entity that is disqualified pursuant to the provisions of this Ordinance shall be precluded from participation on any District contract as a Prime Contractor, subcontractor and supplier for the period of disqualification. In cases of the use of false documentation, the making of false statements, fraud or misrepresentation, the disqualification period will be not less than eighteen (18) months, and not more than three (3) years for the second violation of the Ordinance and not less than twenty-four (24) months and not more than three (3) years for the third violation of the Ordinance from the date of disqualification established in the Board Order.

(3) Rejecting bids by the Prime Contractor for other contract(s) not yet awarded to that Bidder in instances of the use of false documentation, the making of false statements, fraud or misrepresentation.

(4) For any MBE, WBE or SBE that has misrepresented its MBE, WBE or SBE status and/or failed to operate as an independent business concern performing a Commercially Useful Function, declaring by the Director that the MBE, WBE or SBE ineligible to participate as a MBE, WBE or SBE in District contracts. A firm that has been declared ineligible may not participate as a MBE, WBE or SBE for a period of not less than one (1) year and not more than three (3) years.

(5) Forfeiting and deducting from the Prime Contractor's progress or final payments under the contract an amount up to the dollar amount of its MBE, WBE goal commitment that the contractor has failed to meet. The amount to be deducted will be based upon a determination of the extent to which the Prime Contractor made Good Faith Efforts to achieve such commitments.

(6) Referring the matter to the Office of the Attorney General or Cook County State's Attorney for follow-up action.

(c) The Administrator and Director will take action to prevent a contract from being awarded to a Prime Contractor or first-tier subcontractor disqualified from bidding hereunder for the period of disqualification.

(d) The District's attorneys' fees and costs will be assessed against the Prime Contractor and/or subcontractor where the Hearing Officer makes a finding that the Prime

Contractor or subcontractor used false documentation, made false statements, or committed fraud or misrepresentation.

(e) Notice of sanctions imposed by the Board of Commissioners for violations of the Ordinance by the Prime Contractor, subcontractor and/or supplier will be spread upon the public record by the District, including but not limited to publication in the Record of Proceedings of the Board of Commissioners, posting on the District's web site, publication in any type of media, newspaper publication and direct notice by letter to governmental entities.

(f) Any sanctions imposed against an entity shall also apply personally to all officers and directors of the entity or partners of the entity, and their successors and assigns with knowledge of the acts and omissions that give rise to the sanctions against the entity.

(g) The District may take other action, as appropriate, within the discretion of the Administrator, subject to the approval of the Hearing Officer and the Board of Commissioners.

Section 16. Other Federal Regulations

The provisions of this Interim Ordinance shall not apply to any contract to the extent that different procedures or standards are required by any law or regulation of the United States and nothing herein shall be interpreted to diminish or supplant the present Equal Employment Opportunity Requirements contained in Appendices B and C of Grant funded contracts or Appendix C non-Grant funded contracts.

Section 17. Reporting and Review

The Board of Commissioners directs the District staff to report to the Board of Commissioners on an annual basis with respect to the following:

(a) The level of MBE, WBE or SBE participation achieved in each year in District construction contracts subject to Appendix D.

(b) Identification of any problems with the enforcement of Appendix D; and

(c) Any recommendations with respect to improving the implementation of Appendix D.

Section 18. Sunset Provision

This Appendix D shall be reviewed no later than two years from its adoption and shall expire on December 6, 2014 unless the District finds that its remedial purposes have not been fully achieved and that there is a compelling interest in continuing to implement narrowly tailored remedies to redress discrimination against M/WBEs so that the District will not function as a passive participant in a discriminatory marketplace in the Metropolitan Chicago construction industry.

Section 19. Repeal of Prior Inconsistent Provisions

All enactments and provisions heretofore adopted by this Board of Commissioners in the area of affirmative action in connection with construction contracts subject to this Interim

Ordinance that are inconsistent with the provisions of this Interim Ordinance are hereby expressly repealed.

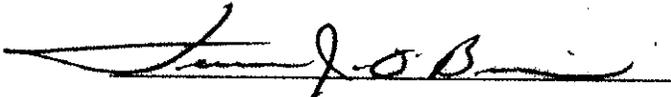
Section 20. Severability

If any clause, sentence, paragraph, section or part of this Interim Ordinance shall be adjudged by any court of competent jurisdiction to be invalid, the judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part of this Interim Ordinance directly involved in the controversy in which the judgment shall have been rendered.

Section 21. Effective Dates

This amendment to revised Appendix D shall be effective and apply to all bids for contracts advertised after December 6, 2012.

ADOPTED:

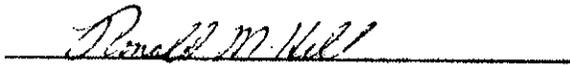


TERRENCE J. O'BRIEN, President
Board of Commissioners of the
Metropolitan Water Reclamation
District of Greater Chicago

Approved as to form and legality:



Head Assistant Attorney ^{MTC}



General Counsel

EXHIBIT 5: Operation and Maintenance Plan (O&M Plan)

MAINTENANCE	RESPONSIBILITY	LOCATION	FREQUENCY
1. Inspect the Project, including all manholes and the outfall.	District, Village	Glenwood Avenue from School Street to the Outfall at Thorn Creek	District and Village Annually
2. Inspect the outfall.	Village	Thorn Creek.	After rainfall events exceeding two inches
3. Prepare an inspection report.	Village	Glenwood Avenue from School Street to the Outfall at Thorn Creek	Annually
4. Remove debris and sediment from manholes .	Village	Glenwood Avenue from School Street to the Outfall at Thorn Creek	As necessary
5. Maintain all cover, pavement, and vegetation above the relief storm sewer.	Village	Glenwood Avenue from School Street to the Outfall at Thorn Creek	As necessary
6. Replace manholes, pipe segments, and outfall.	Village	Glenwood Avenue from School Street to the Outfall at Thorn Creek	As necessary

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