

METROPOLITAN PIER AND EXPOSITION AUTHORITY

CONTRACT FOR GASOLINE AND DIESEL FUEL SUPPLY AND DELIVERY IFB #2018-05-M

This contract ("Contract") entered into as of the [*insert day*] day of [*insert month*], [*insert year*] ("Effective Date") by and between the Metropolitan Pier and Exposition Authority (the "Authority") a unit of local government, political subdivision, body politic and municipal corporation organized and existing under Illinois law located at 301 East Cermak Road, Chicago, Illinois 60616, and [*insert Contractor*], a(n) [State and Type of Entity] whose current address is [*insert address of Contractor*] (the "Contractor").

1. Definitions

- a. **"Authority"** means the Metropolitan Pier and Exposition Authority.
- b. **"Bid"** means the Contractor's submittal in response to the IFB.
- c. **"Bid Document"** means the documents issued by the Authority for the procurement of GASOLINE AND DIESEL FUEL including the Bid Form, all exhibits, instructions, attachments and addenda.
- d. **"Pricing Form"** is the document upon which the Proposer or Proposer submits prices correlating to the goods and services that the Authority intends to purchase. The Pricing Form is attached as Exhibit 2 to this Contract.
- e. **"Contract"** means this contract for GASOLINE AND DIESEL FUEL
- f. **"Contractor"** means the individual, partnership, corporation, or joint venture with which the Authority signs this Contract.
- g. **"Goods" or "Materials" or "Supplies"** are the items outlined in this Bid Document that the Authority intends to purchase as defined by the Article 2 of the Uniform Commercial Code adopted by the State of Illinois. 810 ILCS 2/101 et. seq.
- h. **"IFB"** means the INVITATION FOR BIDS, dated **February 23, 2018** including all forms, exhibits, instructions, attachments and addenda.
- i. **"Include"** Whenever the term "include" (in any of its forms) is used, it means "include, without limitation."
- j. **"Services"** means all the tasks outlined in this Bid Document for which the Authority engages the Contractor, including all tasks reasonably necessary to complete them, in conformance with the price, standards and specification of this Contract.

2. Term: This Contract begins on the Effective Date and shall remain in effect for two years. The Authority shall have the option to extend this Contract under the same terms and conditions for an additional period not to exceed two years. In addition, the Authority has the right to extend any expiration date for a period of not more than thirty (30) days.

3. Contract Documents: The Contract shall be deemed to include this document and the following exhibits and attachments, all of which are incorporated into and made a part of this Contract as the Contract Document. In the event of a conflict between this document and any Exhibit, the provisions of this document shall control.

- a. **Exhibit 1 – Scope of Services**
- b. **Exhibit 2 – Pricing Form**
- c. **Exhibit 3 – Insurance Requirements and Certificate of Insurance**
- d. **Exhibit 4 – Special Conditions Regarding Minority and Women Business Enterprises and Compliance Plan**

4. Scope of Service: This is a contract for Goods and Services ordered on an as needed basis. The Scope of Services and Schedule covered by this Contract are as set forth in the Contract Documents and generally consist of the following: Gasoline and Diesel Fuel Supply and Delivery.

5. Equipment: The Contractor shall at all times during this Contract, have and maintain all necessary equipment in sufficient amounts and capabilities, and properly maintained, certified and licensed as needed to perform all Services and as required by law for the equipment engaged in the Services. On signing this Contract, and subsequent thereto as changes in equipment are made, Contractor shall identify the equipment to be used under this Contract. The Authority shall have the right to review and approve such equipment, and may require additional or different equipment in the event the Authority determines, in its sole discretion, that the equipment provided is inadequate in amount or quality or capability.

6. Assigned Personnel: On signing this Contract, and subsequent thereto as changes in personnel are made, Contractor shall identify the person on Contractor's staff who will serve as day to day liaison for the Services. Contractor shall assign and maintain a staff of dedicated and competent personnel that is fully equipped and qualified to perform the Services required by this Contract. Provided, the Authority shall have the right to review and approve such personnel selections, and may reject any such personnel at any time whenever the Authority, in its sole and unlimited discretion, determines that such personnel is not qualified or otherwise unfit for such work.

7. Materials: The Contractor shall at all times during this Contract, have all necessary materials in sufficient amounts and capabilities, and properly maintained, as needed to perform all Services. The Contractor shall use and supply only materials, of the highest quality and consistency and, where applicable, within budgeted allowance. Contractor shall identify the source for any materials, to be used at the Authority's facilities as part of the Services. Contractor shall only use providers approved from time to time by the Authority related to integrity, quality and market rates. The Authority shall have the absolute right to review and approve such material providers, and may reject any such providers at any time in its sole and unlimited discretion.

8. Manner of Performance: Contractor shall perform all Services as set forth in the Contract Documents with that degree of skill, care and diligence customarily required of a professional performing services of comparable scope, purpose and magnitude in the Chicago area, and in conformance with the applicable professional standards. Contractor shall at all times use its best efforts on behalf of the Authority to assure timely and satisfactory rendering and completion of its Services. Contractor and all of Contractor's

employees or subcontractors performing Services under this Contract shall be qualified and competent in the applicable discipline or industry, shall be appropriately licensed as required by law, shall comply with all City of Chicago, State of Illinois, and federal laws applicable to the Services and shall conform to the terms of the Bid Documents and this Contract. Contractor remains responsible for the professional and technical accuracy of all Services and deliverables furnished, whether by the Contractor or others on its behalf. No review, approval, acceptance, nor payment for any and all of the Services by the Authority shall relieve the Contractor from its responsibilities.

9. Contractor as Independent Contractor: Contractor as well as Contractor's agents, employees and assigned personnel provided under this Contract are Independent Contractors. Under no circumstances shall any such entity or person represent themselves as employees of the Authority.

10. Taxes:

a. The Contract prices include all applicable federal and state taxes in effect as of the Effective Date. The acquisition of supplies and materials under this Contract is to be completed in a manner that, to the extent permitted by law, such purchase is exempt from taxes, including manufacturers' and retailers' state sales and occupation taxes. Upon the request of the Contractor the Authority shall provide a copy of the appropriate tax exemption certificate with respect to such excluded taxes.

b. If, after the Effective Date, there shall be imposed or charged any tax other than a tax upon the income of the Contractor and said imposition or charge shall be made applicable directly on the use, production, manufacture, sale, or transportation of the items covered hereby, which is applicable to the Contractor because of a specific contractual obligation or by the operation of law, and the Authority is not otherwise exempt from such tax, then:

1) the Contract prices herein stated shall be accordingly adjusted and any amount due to the Contractor as a result of the adjustment in such prices shall be charged to the Authority and entered upon such invoices as a separate item; or,

2) At its option, when exempt from the payment of such tax, the Authority, in lieu of payment of such increase, shall furnish to the Contractor appropriate tax exemption certificates or furnish other proof of exemption with respect to such tax or charge.

c. If the Contractor is relieved from the payment of any tax imposed, or portion thereof, included in the Contract Prices herein stated, by reason of the decrease or elimination of such tax, the Contractor shall promptly submit to the Authority a statement showing the amount of such decrease or elimination and the Contract Prices herein stated shall be adjusted to reflect such decreases or elimination.

11. Inspections and Approvals:

a. The Authority shall have the right to inspect all Goods and Services provided by the Contractor to determine compliance with the provisions of this Contract. Provided, under no circumstances shall such inspection relieve Contractor from any obligation set forth in this Contract, including all obligations mandated by law or industry safety requirements, or latent defects. Further, such inspection is for the purpose of determining the quality and completeness of the Goods and Services, including materials

used, and is not for the purpose of determining compliance with applicable laws or industry safety requirements.

b. Goods and Services determined by the Authority to be non-compliant with this Contract shall be corrected or replaced within five (5) days after notification to the Contractor.

c. Goods and Services determined by the Authority to be compliant with this Contract shall be accepted upon proper delivery.

12. Risk of Loss: The risk for loss shall remain with the Contractor until any Goods that may be required to be delivered pursuant to this Contract or the Bid Documents are delivered to the Authority in accordance with the terms hereof. Contractor shall carry on the work of furnishing and delivering the Goods at Contractor's own risk and expense until the same is fully completed and accepted by the Authority and shall be solely liable and responsible for the safety and security thereof.

13. Reports and Records: The Authority shall have the right, but not the obligation, to inspect all records of the Contractor in relation to the performance of Services under this Contract. Contractor shall make such records reasonably available to the Authority, including its authorized representatives. Contractor shall keep and preserve, for at least five (5) years following the performance of Services hereunder, full and accurate accounting records relating to such Services. Contractor shall give the Authority and its designated representatives (which representatives may include, without limitation, independent auditors) access to such records during such period of time to review and/or audit the records, from time to time, upon request. Contractor shall also provide, at Contractor's own expense, copies of all or a portion of the records when so requested by the Authority. If any audit conducted by an independent auditor demonstrates a variance of more than five percent (5%) on an annual basis in the amount determined by such auditor to represent the fair purchase cost of any Services performed hereunder and the amount actually paid to Contractor for such Services, Contractor shall pay to the Authority the reasonable cost of such audit. In any event, Contractor shall promptly pay to the Authority the amount of any such variance which results in an overpayment by the Authority to Contractor.

14. Time is of the Essence: Contractor shall proceed to perform the Services under the terms of this Contract promptly and diligently, in accordance with the Contract Documents. Unless otherwise provided herein or as otherwise specified at time of order, services and materials shall be performed or delivered in conformance with specifications within 24 hours of or as ordered by the Authority.

15. Coordination: Contractor shall coordinate its Services with the Authority's agents, tenants, customers and contractors, if any, so no delays or interference will occur in completion of any part or all of the Authority's projects or operations.

16. Compensation:

a. Contractor shall receive compensation in the amount and schedule as set forth on Exhibit 2. All invoicing and requests for payment shall be in such form and with such documentation as required by the Authority. Under no circumstances shall the Compensation exceed the agreed upon pricing set forth in Exhibit 2 without a prior written amendment to this Contract as provided herein.

b. It is understood that the prices set forth in Exhibit 2 are firm prices for the term of this Contract.

c. Most Favored Nations: The Contractor shall provide prices for Materials and Services at a rate not greater than the rate offered to the State of Illinois or any other unit of local government. In the event that the Contractor agrees to provide Materials or Services to the State of Illinois or any other unit of local government at a rate lower than that then in effect under this Contract, Contractor shall offer to adjust the price to the Authority accordingly.

d. The Contractor shall submit invoices for payment to the Authority upon delivery of the Goods and Services, indicating the Goods and Services provided and any authorized reimbursable expenses incurred during the preceding month and the charges therefore as any approved Additional Services conducted during the preceding billing period.

1) Payment will be made on the basis of approved invoices and such supporting documentation as the Authority may require.

2) If the Authority objects to all or any portion of any invoice, it shall promptly notify Contractor of its objection and both parties shall immediately make every effort to promptly settle the disputed portion of the invoice. In the event the settlement of a disputed portion of an invoice is not reached by the date that payment authorization is due, then the Authority shall pay only that portion of the invoice that is not in dispute.

3) Neither the initial payment nor any later progress payment constitutes acceptance of the Services or any deliverables provided under this Contract.

4) No additional or altered terms and conditions shall be included with the invoice except as are permitted and consistent with the terms of the Contract Documents.

e. Contractor shall be solely responsible to ensure that sub-Contractors are timely paid all amounts due them in connection with the performance of this Contract. After the first partial payment under the Contract, the Authority may withhold later partial payments until Contractor submits evidence satisfactory to the Authority that all amounts Contractor owes in connection with performance of this Contract have been paid. Further, the Authority is entitled, after giving notice to Contractor, to pay all persons who have not been paid the monies due to them in connection with the Contract, whether or not a claim or lien has been filed, unless Contractor, within ten (10) calendar days after notice is given either (i) demonstrates to the Authority's reasonable satisfaction that these sums are not due or (ii) provides the Authority adequate security.

f. Each Party shall have the right to set-off and net against any amounts owed to it by the other Party under this Contract, including without limitation any termination payment.

17. Additional Services: No change increasing or decreasing the quantity or price of any item or service to be furnished pursuant to this Contract, or change from the terms set forth in the Bid Documents for any such item or service shall be made unless previously

authorized by the Authority as required by law, and no claim for extra compensation will be considered unless such prior authorization has been obtained. When the Contractor believes that work in excess of that set forth in **Exhibit 1** (Scope of Services and Schedule) are required or requested by the Authority (Additional Services), the Contractor shall, prior to performing such Additional Services, so notify the Authority and provide a written statement of the Additional Services that the Contractor believes will be required or have been requested and proposed changes to **Exhibit 1** (Scope of Services and Schedule) and **Exhibit 2** (Pricing Form - Pricing and Payment Schedule). The Contractor shall not commence performing any services constituting Additional Services until it has received prior written approval from the Authority authorizing the Contractor to proceed with such Additional Services. The Contractor acknowledges that Additional Services involving costs may require the prior approval of the Board of the Authority. Upon approval of Additional Services by the Authority, the Authority and the Contractor shall execute an amendment to **Exhibit 1** and **Exhibit 2**, or such other portions of this Contract as may be necessary the Contract evidencing the Contract of the parties regarding such Additional Services.

18. Clean Condition: The Contractor shall, at all times, keep the Authority's facilities free from accumulations of waste materials or rubbish caused by its employees or work and shall remove all its rubbish at the completion of its work to the total satisfaction of the Authority. Use of the Authority's open boxes is not permissible. Contractor must provide open boxes and/or trucks for hauling of debris as part of their services. All debris must be hauled off site at the Contractor's expense.

19. Insurance: Before beginning to perform any Services, Contractor shall procure and maintain at all times during the term of this Contract and at Contractor's expense, the insurance coverage set forth in the Insurance Requirement as set forth in **Exhibit 3** (Insurance Requirements), and shall provide the Authority with original certificates evidencing the required coverage. Contractor's insurance policies shall name the following as additional insured on all certificates of insurance: "**Metropolitan Pier and Exposition Authority, its Board members, officers, employees, agents, and Contractors**". Contractor's duty to indemnify the Authority is independent from, and not limited in any manner by, Contractor's insurance coverage obtained pursuant to this Section or otherwise.

20. Indemnification:

a. **Duty.** Contractor shall at its sole expense defend and hold the Authority, its Board members, officers, agents and employees (collectively, the "Indemnified Parties") harmless against all injuries, death, losses, damages, claims (including intellectual property claims) suits, liabilities, judgments, and expenses (including attorney fees and court costs) (individually or collectively, "Loss"), which may in any way accrue against any Indemnified Party in consequence of this Contract or its performance, or which may in any way result from them, whether or not it is alleged or determined that the Loss was caused through the negligence or omission of Contractor, its employees or agents or that of Contractor's sub-Contractors or their respective employees. Contractor shall appear, defend and pay all charges of attorneys and all costs and other expenses arising from or incurred in connection with a claim, regardless of the perceived merits. If any judgment is rendered against any Indemnified Party in an action, Contractor shall, at its sole expense, satisfy and discharge it. To the extent permissible by law, Contractor waives any limits to the amount of its obligations to indemnify, defend or contribute to any sums due pursuant to Contractor's obligations under this Article 12, including any claim by any employee of Contractor that may be subject to the Workers Compensation Act, 820 ILCS 305/1 *et seq.* or any other law or judicial decision (such as *Kotecki v. Cyclops Welding Corporation*, 146 Ill. 2d 155 (1991)). The Indemnified Parties, however, do not waive any limitations they have on

liability under the Illinois Workers' Compensation Act, the Illinois Local Government and Governmental Employees Tort Immunity Act, or any other statute.

b. **Limitation.** Contractor's duty to indemnify does not apply to a Loss that arises solely out of the intentional misconduct on the part of the Indemnified Party seeking indemnification.

c. **No Limitation on Account of Insurance.** The insurance Contractor is required by this Contract to carry, or does carry, or the insurance carried by any Indemnified Party, in no way limits or relieves Contractor of its duty to defend and indemnify the Indemnified Parties under this Contract.

d. **Affirmative Obligation.** Contractor's defense, indemnification and hold harmless obligations to any Indemnified Party will remain an affirmative obligation of Contractor unless and until a court of competent jurisdiction finally determines otherwise and all opportunities for appeal have been exhausted or have lapsed.

e. **Survival.** The provisions set forth in this Section shall survive the termination of this Contract.

f.

21. Equal Employment Opportunity/Non Discrimination and Minority and Women-Owned Business Enterprise Goals:

a. **Equal Employment Opportunity/Non-Discrimination.** Throughout the term of this Contract, Contractor agrees as follows:

1) Contractor will comply with the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq., and the rules and regulations of the Illinois Department of Human Rights ("IDHR") and all other applicable federal, state and local laws, rules and regulations which prohibit unlawful discrimination and discrimination based on citizenship status in employment and undertake affirmative action to assure equality of employment opportunity and eliminate the effects of past discrimination.

2) Contractor, in performing its obligations under this Contract shall comply with the procedures and requirements of the Illinois Department of Human Rights' (IDHR) regulations concerning equal employment opportunities and affirmative action.

3) Provide such information, with respect to its employees and applicants for employment, and assistance as the Authority and the IDHR may reasonably request.

4) Contractor shall have written sexual harassment policies that shall include those requirements as set forth by the IDHR:

5) Contractor will send to each labor organization or representative or workers with which it has or is bound by a collective bargaining or other Contract or understanding, a notice advising such labor organization or representative of Contractor's obligations under the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq., and the IDHR's rules and regulations. If any such labor organization or representative fails or refuses to cooperate with Contractor in its efforts to comply with such Act and rules and regulations, Contractor will promptly so notify the IDHR and the Authority, and will recruit employees from other resources when necessary.

6) Contractor further agrees that it shall not commit an unfair labor practice.

7) Contractor shall include, verbatim or by reference, the provisions of this Section in every contract it awards under which any portion of its obligations

under this Contract are undertaken or assumed, so that such provisions shall be binding upon each such sub-Contractor. Contractor shall be responsible and liable for compliance with the pertinent provisions of this Section by such sub-Contractors, and, further Contractor shall promptly notify the Authority and IDHR if any sub-Contractor fails or refuses to comply therewith. In addition, Contractor will not utilize any sub-Contractor declared ineligible by IDHR or the Illinois Human Rights Commission for contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations.

8) In the event of Contractor's non-compliance with any provision of this Section, the Illinois Human Rights Act, or the rules and regulations of IDHR, Contractor may be declared ineligible for future contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations, and this Contract may be canceled or voided, in whole or in part, or such other sanctions or penalties that may be imposed or remedies invoked as provided by law.

b. **Minority and Women Business Enterprise Goals.** The Authority has adopted and maintains an affirmative action program with respect to its contracts. The purpose of the Authority's affirmative action program is to promote the ability of Minority Business Enterprises ("MBE") and Women-Owned Business Enterprises ("WBE") to have the maximum possible opportunity to participate in Authority contracts. As a minimum, the Authority strives to ensure that, for goods, work and services necessary for the performance of this Contract, 25% of total contract amount is payable to MBE firms and 5% of the total contract amount is payable to WBE firms. Unless and only to the extent the Authority grants an expressed waiver, Contractor shall comply with the Special Conditions Regarding Minority and Women-Owned Business Enterprises, as outlined in **Exhibit 4**, throughout the term of this Contract.

1) **Compliance.** As part of its review and approval of Contractor's monthly payment requests, the Authority will monitor Contractor's performance to reasonably satisfy itself that Contractor will meet its commitment and use its good faith efforts to achieve the maximum MBE/WBE allocation. In order for the Authority to ensure that Contractor complies with its MBE/WBE commitment, Contractor shall submit certified monthly statements with its invoices that include information on the level and scope of MBE and WBE participation in monetary terms as well as a description of the Services provided by each MBE and WBE.

2) **Remedies for Noncompliance.** In the event Contractor fails to fulfill its obligations under this Section 21, the Authority shall have available to it appropriate remedies at law or in equity, including the right to withhold amounts due to Contractor for any work until Contractor submits a corrective action plan which has been approved by the Authority or demonstrates to the Authority's satisfaction that all good faith efforts to comply with the goals set forth herein have been exhausted, together with the ability to disqualify Contractor from future work that may, from time to time, be undertaken by the Authority as well as all unfinished work under this Contract.

22. Authority's Proprietary Rights:

a. **Names and Logos.** The Authority owns all rights to the name "Navy Pier," "Navy Pier Chicago," "McCormick Place," "McCormick Square," certain Navy Pier and McCormick Place likenesses, and to certain logos and service mark(s). Contractor shall not use the Navy Pier or McCormick Place name as part of Contractor's business or trade name, and Contractor shall not use the Authority's logos or service marks or sell merchandise or

Services with the Navy Pier or McCormick Place name or likeness or with the Authority's logos or service marks without the Authority's express written consent. Also, Contractor shall not permit anyone else to do so.

b. **Sponsorship Program.** In addition, the Authority has entered into Contracts to grant exclusive sales or advertising rights ("Sponsorship Contracts") to certain products, brands or services ("Official Brands") on Authority property. Accordingly, to the extent permitted by law Contractor shall not advertise, promote, or display at any competing products, brands, or Services at the Authority's facilities, including through displays or signs in or on any equipment, visible through or on any windows facing onto any part of the Authority's facilities or in advertisements, promotional material, or displays referring to the Authority's facilities or utilizing (if the Authority has not given its express written consent to it) the Authority's logos or service marks. Contractor shall not interfere with the Authority's sponsors' events.

23. Contractor Warrant and Representations:

a. Contractor warrants that it is fully staffed, equipped, trained and otherwise capable to perform the Services under this Contract. Contractor further represents that, by its own independent investigation it has ascertained the nature of the Services required, the conditions involved in performing the Services, and Contractor's obligations under this Contract. Contractor is responsible to verify all information furnished by the Authority as to the correctness and accuracy of that information. Any failure by Contractor to investigate independently and become fully informed will not relieve Contractor from its responsibilities under this Contract.

b. Contractor warrants that all Services, materials, equipment and systems provided (a) shall be of good quality and workmanship, and that all materials furnished will be new unless otherwise specified in the Bid Documents or specifically approved in writing by the Authority, (b) shall be merchantable, (c) shall be free from faults, deficiencies, and defects, both latent and patent, (d) shall be delivered free of the rightful claim of any person by way of infringement or the like and free of any security interest, lien or encumbrance or the like, (e) shall comply with all City of Chicago, State of Illinois, and Federal laws applicable to the Goods or Services, and (f) shall conform to the terms of this Contract. Without limitation to the foregoing, Contractor warrants that all Services, including materials, equipment and systems provided shall be free from defects in materials and workmanship for a period of at least 12 months from the date of final acceptance by the Authority; or such time as provided in the Contract Documents; or such time as provided in any manufacturers, producers, suppliers or other warranty; whichever is longer. Contractor shall promptly re-perform and/or replace any work, materials, equipment and systems which fails.

c. The Contractor further warrants that it is either the original manufacturer of the Goods and is capable of providing genuine parts, assemblies and/or accessories, or is capable of transferring and/or assigning original warranties to the Authority. The Authority may return any nonconforming or defective materials to Contractor or require replacement of the materials at the time the defect is discovered, all at the Contractor's expense. Contractor must replace any nonconforming or defective materials within ten (10) days of notification from the Authority's designated representative. Acceptance of materials and supplies by the Authority by payment shall not relieve Contractor of the responsibilities herein.

d. Contractor warranty shall survive the termination or expiration of this Contract.

e. Contractor has the full power and authority to enter into this Contract and perform each of its obligations hereunder.

f. No litigation or pending or threatened claims or litigation exist which do or might adversely affect Contractor's ability to fully perform its obligations hereunder or the rights granted by Contractor to the Authority under this Contract.

g.

24. Termination:

a. **Termination for Convenience:** The Authority has the right to terminate this Contract, in whole or in part, for any reason, including the convenience of the Authority, by providing Contractor with written notice specifying the date of termination. On the date specified in the notice, this Contract will terminate. The Authority will pay Contractor the amount earned or reimbursable to it (if any) up to the termination date. After termination, Contractor has no further contractual claim against the Authority based upon this Contract.

b. Termination for Cause:

1) This Contract may be terminated if an event of Default occurs. The following constitute events of default by Contractor:

- (i) Refusal or failure to provide sufficient properly skilled workers, adequate supervision, or adequate materials and equipment of the proper quality;
- (ii) Failing in any material respect to prosecute the Services according to the Authority's schedule;
- (iii) Causing, by any action or omission, the stoppage or delay of or interference with the Services or work of any employee or other Contractor or sub-Contractor;
- (iv) Failure to comply with any provision of this Contract or the Specifications described in the IFB, including, but not limited to matters pertaining to insurance, indemnification, and MBE/WBE use;
- (v) Becoming insolvent, making a general assignment for the benefit of its creditors, or having a receiver appointed;
- (vi) Inability to perform the Services under the Contract as a result of insolvency, bankruptcy, or having a receiver appointed;
- (vii) Failure to timely provide Services in accordance with IFB or contract terms with respect to the nature, quantity, quality, or timeliness of delivery;
- (viii) Conviction in a criminal court or a finding of liability in civil court relating to the goods or services that Contractor provides to the

Authority or involving fraud or misconduct adversely affecting any governmental entity;

(ix) Any other acts or omissions specifically identified in this Contract as an event of default.

2) The Authority, in its sole discretion, shall determine whether a default is material and whether it can be cured. In the event the Authority determines that an event of default can be cured, it shall provide Contractor with notice setting forth the event of default and cure requirements, including the time period permitted for cure. Contractor shall cure any event of default as provided in the notice.

3) If Contractor fails to cure a default as provided in the notice, the Authority may, at its sole option, declare Contractor in default. The Authority will give Contractor written notice of the default and the Authority's termination of this Contract. The Authority's decision is final and takes effect when notice is given or such time as set forth in the termination notice. Contractor shall discontinue any Services, unless otherwise directed in the notice, and deliver all materials accumulated in performing under this Contract, whether completed or in the process, to the Authority.

4) In the event of default, the Authority may invoke any or all of the following remedies. These remedies are not intended to be exclusive of any other remedies available. Rather, every remedy is cumulative and in addition to any other remedies, existing now or later at law, in equity or under the Contract.

- (i) The right to acquire Goods or procure Services from an alternate source. Contractor shall pay all additional costs incurred by the Authority.
- (ii) The right to take over and complete the Services or any part of them as agent for and at the cost of Contractor, either directly or through others. Contractor has, in that event, the right to offset from the cost the amount the Authority would have paid Contractor under the terms and conditions of this Contract had Contractor completed the Services.
- (iii) The right to terminate this Contract as to any or all of the Services yet to be performed effective at a time specified by the Authority.
- (iv) The right to money damages.
- (v) The right to deem Contractor non-responsive in future contracts to be awarded by the Authority.
- (vi) The right to take assignment of any or all of Contractor's subcontracts and complete the Services, by itself or through others, by whatever method the Authority considers expedient.
- (vii) The right of set-off against any sums owing Contractor.
- (viii) Such other remedies as permitted by law.

5) No delay or omission to exercise any right or power occurring upon any event of default impairs the right or power nor is it a waiver of or acquiescence in any event of default. Every right and power may be exercised from time to time and as often as the Authority considers expedient.

6) If a court of competent jurisdiction determines that the Authority wrongfully terminated Contractor, then the termination shall be treated as a termination for convenience.

25. Cooperation: The Parties shall cooperate in good faith to implement the terms of this Contract. At such time as this Contract is terminated or expires, the Parties shall undertake in good faith efforts to assure an orderly transition to another provider of the Services, if any. Contractor shall make an orderly demobilization of its own operations, provide, uninterrupted, the Services until the effective date of termination or expiration, and otherwise comply with the reasonable requests and requirements of the Authority in connection with the termination or expiration.

26. Confidentiality:

a. All reports, data or information in any form prepared, assembled or encountered by or provided to Contractor under this Contract are confidential, and Contractor shall not disclose these (or make them available) to any other individual or organization without the prior written approval of the Authority, except as specifically authorized in this Contract or as may be required by law. Contractor shall implement whatever measures are necessary to ensure that its staff and its sub-Contractors are bound by these confidentiality provisions.

b. Contractor shall not issue publicity news releases or grant press interviews, or, except as may be required by law during or after the performance of this Contract, disseminate any information regarding its Services or the project to which the Services pertain without the prior written consent of the Authority.

c. If Contractor is presented with a request for documents by any administrative agency or with a *subpoena duces tecum* regarding any records, data or documents that are in Contractor's possession by reason of this Contract, Contractor shall immediately give notice to the Authority with the understanding that the Authority will have the opportunity to contest the process by any means available to it before the records or documents are submitted to a court or other third party. Contractor, however, is not obligated to withhold delivery beyond the time ordered by the court or administrative agency, unless the subpoena or request is quashed or the time to produce is otherwise extended.

27. Conflict of Interest: Contractor warrants that no member of the Authority's Board nor any officer, employee or agent of the Authority has or will acquire any interest, direct or indirect, in this Contract or in the Services to which this Contract pertains. Contractor promises that no person having any such interest will be employed in performing this Contract. Contractor further warrants that Contractor has no contracts with third parties that would conflict in any manner or degree with Contractor's performance of the Services.

28. Changes: No changes to this Contract are effective unless in a written amendment signed by the authorized representatives of the parties.

29. Assignment and Sub-Contracting:

a. The Authority may assign this Contract upon 30 days written notice to the Contractor. Provided, any assignee shall be obligated to provide written acceptance and commitment to be bound by all terms and conditions as set forth herein. Upon such assignment, the Authority shall be relieved from any further liability or obligation under this Contract, it being understood that the assignee shall have all of the Authority's rights, duties and obligations. In the event of such assignment, the term "Authority" as used herein shall mean the assignee.

b. Contractor and shall not assign or subcontract this Contract, or any part thereof, without the prior written consent of the Authority which consent may be granted, denied or conditioned in the sole, unfettered discretion of the Authority.

30. Covenants: Contractor hereby covenants as follows:

(a) Contractor shall not occupy or use any Authority facility, nor shall interfere with the activities of any Authority facility, except as is reasonably necessary to perform its obligations hereunder.

(b) Contractor shall not cause or permit any Hazardous Material to be used, stored, or generated on, or transported to and from any Authority facility. **"Hazardous Material"** shall mean, without limitation, those substances included within the definitions of "hazardous substances", "hazardous materials", "toxic substances", or "solid waste" in any applicable state or federal environmental law.

(c) Contractor shall not make any alterations or improvements to any Authority facility without the prior written consent of the Authority.

(d) Contractor shall not operate any equipment or materials belonging to the Authority without the prior written approval of Authority.

(e) No portion of any passageway or exit at any Authority facility shall be blocked or obstructed in any manner whatsoever, and no exit door or any exit shall be locked, blocked, or bolted while an Authority facility is in use. Moreover, all designated exit ways shall be maintained in such manner as to be visible at all times.

31. Compliance with Laws:

a. Contractor shall at its own expense comply with all federal, state and local laws, codes, ordinances and regulations applicable to this Contract and the performance of the Services hereunder whether by reason of general law or the specific Services required. Contractor shall pay all contributions, premiums, or taxes of whatever nature (including any interest or penalties) that are required of it under any federal, state or local laws arising out of the performance of this Contract.

b. Contractor shall comply with all applicable requirements in the Metropolitan Pier and Exposition Authority Act (70 ILCS 210/et seq.), including Section 25.5(a) prohibiting any business entity whose contracts with the Authority annually total more than \$50,000 and any affiliated entities or affiliated persons of such business entity from making any contributions to any political committees established to promote the candidacy of (i) the officeholder responsible for awarding the contract(s) or (ii) any other declared candidate for that office. The prohibition in Section 25.5(a) is effective for the duration of the term of office

of the incumbent officeholder awarding the contracts or for a period of two (2) years following the expiration or termination of the contract(s), whichever is longer.

c.

d. Contractor shall comply with applicable licenser or permit requirements and hold the Authority harmless against any liability in connection with licenser, permitting, or taxes. Contractor shall obtain and pay for all permits, licenses, and fees which may be necessary for the prosecution and completion of its duties and obligations under the Contract, including royalties for playing, using, or performing right-protected Services. Contractor and all sub-Contractors shall be duly licensed to operate in the State of Illinois and the City of Chicago. Contractor is liable to the Authority for all losses, expenses, including attorneys fees, attributable to any acts of commission or omission by Contractor, its employees and agents, and sub-Contractors resulting from failure to comply with any federal, state or local laws, codes, ordinances or regulations including, but not limited to, any fines, penalties, or corrective measures.

32. Applicable Law/Venue: This Contract shall be governed by the laws of the State of Illinois. Any suit regarding this Contract or any alleged breach thereof shall be brought only in courts located in Chicago, Illinois, and the parties consent to the jurisdiction and venue of the courts located in the County of Cook, State of Illinois.

33. Accuracy and Update of Information: In connection with the IFB and this Contract, Contractor has furnished and will continue to furnish various certifications, affidavits and other information and reports. Contractor represents that any such material and information furnished in connection with the IFB or this Contract is truthful and complete. Contractor shall promptly update such material and information to be complete and accurate as needed due to events or changes occurring after the date of this Contract.

34. Notices: Any notice required to be given under this Contract shall be in writing and shall be given by facsimile, by personal delivery, by United States registered or certified mail, return receipt requested, or by a courier service, with all delivery and postage charges prepaid. A notice is considered to have been given on the day actually received (facsimile, personal delivery, or courier) or refused (personal delivery, courier, or mail), or if unclaimed, on the third day following the day on that it was sent by courier or deposited with the United States Post Office. Any such communication intended for the Authority shall be addressed:

METROPOLITAN PIER AND EXPOSITION AUTHORITY
301 E. Cermak Road
Chicago, Illinois 60616
Attention: Director of Procurement
Fax No. (312) 791-6156
Email: mpeaprocurement@mpea.com

with copies to:

METROPOLITAN PIER AND EXPOSITION AUTHORITY
301 East Cermak Road
Chicago, Illinois 60616
Attention: General Counsel
Fax no. (312) 791-7125
Email: legal@mpea.com

Any such communication intended for Contractor shall be addressed to:

[Contractor's name and address and fax no.]

Either party may, at any time, change its address for notices by sending a notice to the other party stating the change and setting forth the new address.

35. Severability and Waiver:

a. The partial or complete invalidity of any one or more provisions of this Contract shall not affect the validity or continuing force and effect of any other provision. If any provision is invalid, in whole or in part, the provision shall be considered reformed to reflect the intent thereof to the greatest extent possible consistent with law.

b. The failure of either party to insist, in any one or more instances, upon the performance of any of the terms, covenants, or conditions of this Contract, or to exercise any right herein, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right as respects further performance.

36. Interpretation: Headings of this Contract are for convenience of reference only and do not modify, define or limit the provisions thereof. Words of any gender shall be deemed and construed to include correlative words of the other genders. Words importing the singular number shall include the plural number and vice versa, unless the context shall otherwise indicate. All references to any exhibit or document shall be deemed to include all supplements and/or amendments thereto entered into in accordance with the terms of this Contract. All references to any person or entity shall be deemed to include any person or entity succeeding to the rights, duties and obligations of such person or entity in accordance with the terms of this Contract.

37. Entire Contract: This Contract represents the entire Contract between the parties with respect to the matters covered in it. No other Contracts, representations, warranties or statements, whether oral or written, are binding on either party.

Remainder of Page is Blank

IN WITNESS WHEREOF, the parties here to have executed this Contract the day and year first-above written.

METROPOLITAN PIER AND EXPOSITION AUTHORITY

BY: _____ **DATE:** _____
LORI T. HEALEY
CHIEF EXECUTIVE OFFICER

CONTRACTOR'S NAME

BY: _____ **DATE:** _____
Name
Title

Reviewed as to form and legality:

MPEA STAFF ATTORNEY