



REQUEST FOR PROPOSALS (RFP) #2023-28-M
RENOVATION OF HOTEL GUESTROOMS & CORRIDORS

ADDENDUM NO. (1)

August 29, 2023

This Addendum No. 1 consists of nineteen (19) pages and has the following information to be incorporated into the Request for Proposals (RFP). Proposers must acknowledge receipt of this Addendum No. 1 in their RFP submittal in Required Form A, Form of Transmittal Letter.

Item #1: Attachment 1 – Form of Agreement

Item #2: Proposers’ questions and/or requests and the MPEA’s responses are provided below.

	Bidders’ Question:	MPEA’s Response:
1	Is there a shortlist of hotel operators MPEA will be choosing from that will be selected in Q4 2023 and could that be made available?	MPEA is in an active procurement for the Hotel Operator RFP and cannot share this information at this time.
2	<p>Performance Bond (related questions):</p> <ul style="list-style-type: none"> a. In our experience, the services being requested in this RFP would not require a performance bond as the services are a consultant/advisory role and not a construction/performance service. Could MPEA please confirm that a performance bond is not a requirement? b. Can you confirm bond is not required for the PM Scope of work? c. Regarding Item 6 of the submission content and bonding capacity. Does this request apply to the Owner’s Project Manager, given we will not be performing the physical construction? d. Paragraph 6. Bonding capacity – because we are not providing general contractor or construction management services, we believe this request is not applicable and will not provide information on bonding capacity. Please confirm this is acceptable. 	The Owner’s Project Manager (OPM) position does not require a performance bond.
3	<p>Diversity (related questions):</p> <ul style="list-style-type: none"> a. Are the 25% MBE and 5% WBE participation goals for every firm involved (including the Owner’s Project Manager) in the project or are they goals for the entirety of the project and can be accomplished with the firms that will make up the majority of the costs, such as the construction firms and trades? b. For minority and WBE requirements, is the PM firm included in those percentages or is that solely for procurement of material (i.e.: furniture vendors, subcontractors, etc.)? c. Do candidates who are working with an MBE/WBE firm as a subcontractor need to provide separate submittals for both firms in the RFP for sections such as Financial Stability, Criminal or Civil Actions, etc.? 	The minority and women business enterprise goals for this contract are 25% and 5%, respectively. Please carefully read Required Form I – Special Conditions Regarding Minority and Women Owned Business Enterprises.

	<ul style="list-style-type: none"> d. If the % allocation for MBE/WBE exceeds the goals for either MBE or WBE, (i.e., 50% of one or the other) is that an approach that will be considered? e. If we propose as the prime contractor as a WBE firm, would we be required to subcontract 25% to an MBE? Does the MPEA look favorably on approaching it this way – 75% WBE plus 25% MBE – or would the MPEA be fully satisfied with participation as 100% WBE? f. If we propose as a subcontractor to a non-qualifying prime contractor, would our participation at 30% WBE satisfy the requirements, or would the team be required also to bring an MBE onto the team at 25%? g. Are the noted M/WBE participation levels at 25% and 5% a goal or a requirement? Can MBE and WBE percentages be blended, or must they be min 25% / 5% M/WBE? h. We generally do not subcontract any of our services to outside firms due to the nature of the services and the need to maintain control over the entire project among our core team. Additionally, we generally do not purchase materials or supplies in any significant amounts that would generate participation to meet the goals. We can commit to including diverse suppliers for other portions of the project (construction, FF&E, etc.). Would this approach cause our proposal to be deemed non-responsive? Do we need to solicit help from assistance agencies per section VIII.a.2 since we would not plan to engage any subcontractors for any portion of the project management services? 	
4	<p>Project Budget (related questions):</p> <ul style="list-style-type: none"> a. For the requested budget, can the Hyatt PIP be shared and is that the base scope for the requested budget? If not, where is the scope for the project to be budgeted and scheduled? b. Has the project budget been established? c. What is the project budget and how much is funded through DCEO? d. Does MPEA have a preliminary budget for this project, and if so, can this be shared? e. What is the estimated overall project budget for the project? f. What is the overall budget for this project? g. What is the estimated total cost for this project? 	<p>No additional project budget information is being shared with proposers at this time.</p> <p>The DCEO grant is for, up to, approximately \$8.8 million.</p>
5	<p>Project Cost/Estimate (related questions):</p> <ul style="list-style-type: none"> a. The Proposal Submission section states, “3. Project Schedule and Cost Estimate.” Please clarify. The RFP does not include 	<p>No preliminary cost estimate is required at this time. See response to Item 14.</p>

	<p>renderings or sufficient scope information to generate a project cost estimate or schedule of any level as defined by AACE. Are the schedule and estimate required as a part of the RFP response? If so, please provide information referenced in Item 3.</p> <p>b. Paragraph 3. Preliminary cost estimate. The RFP does not include enough information (we did not receive the noted renderings) to prepare a Cost Estimate for the project. Is there any more information on scope of work, finishes, and equipment specifications that can be provided to allow an estimate to be prepared?</p>	
6	<p>Drawings (related questions):</p> <p>a. Are there current drawings that can be shared? Is there a room matrix that can be shared?</p> <p>b. Can you provide any as-built documentation for current conditions?</p> <p>c. Does the property have record drawings (accurate as built architectural (PDF/CAD/BIM)) and matrices of current FF&E layouts?</p>	<p>As-built drawings of existing conditions that are available to be shared at this time are at the following links -</p> <p>1998 Hyatt 800 Room Tower and Garage</p> <p>2010 Hyatt 400 Room Expansion and Renovation</p>
7	<p>Mechanical (related questions):</p> <p>a. Please provide a scope breakdown of requested “mechanical upgrades” in scope.</p> <p>b. Can you provide more clarity around the nature of the possible mechanical upgrade scope?</p> <ul style="list-style-type: none"> • Exhaust fans • AHU replacement • Controls <p>c. Confirm what the anticipated Mechanical Upgrades for the project are</p>	<p>Potential mechanical scope includes refurbishment or replacement of approximately 800 fan coil units in the South Tower.</p>
8	<p>Phased Schedule (related questions)</p> <p>a. RFP schedule notes phased construction but later notes potential to phase construction. Is there a phasing preference? One tower at a time?</p> <p>b. Can you provide details around the potential phasing plans?</p> <p>c. Confirm phased project approach and allowable rooms out at a time.</p> <p>d. What are your current assumptions on room-out/phasing schedule to accommodate the room renovations?</p>	<p>Phasing discussion to be led by selected Owner’s Project Manager in collaboration with the hotel operator, MPEA, and other consulting partners to minimize disruption to guest occupancy.</p>
9	<p>Project Schedule (related questions)</p> <p>a. For the requested schedule, will average occupancies be shared alongside preferred number of floors/rooms OOO at any given time?</p> <p>b. Is there a required number of keys that must remain in operation at all times?</p>	<p>All information necessary to have an informed phasing discussion, led by the selected OPM, will be shared after selection of the OPM. Projected schedule information available at this time is in the RFP.</p>

	<p>c. Is there an anticipated number of floors that we will be able to take down on each turn?</p> <p>d. Are there any black-out work periods when work is not allowed due to occupancy or events in the hotel?</p> <p>e. Does MPEA have any restrictions or constraints that we should be aware of to be included in the project schedule?</p> <p>f. To build the fee schedule/project schedule – should January 2, 2024 be the established start date for baseline (noting it can shift according to final approvals)</p> <p>g. Can you share any anticipated restrictions to taking a certain number or percent of rooms out of service at a given time, and the likely duration of these restrictions?</p> <p>h. Was the exclusion of activity during Q1 2025 intentional? Are any activities allowed during this time?</p> <p>i. Is Q1 2027 the anticipated substantial completion window with Final completion to follow later or should the project be completely closed out by the end of Q1 2027?</p> <p>j. Does a preliminary schedule exist, and can we request a copy? Is there additional anticipated schedule information, and/or phasing or sequencing thought that better outlines the construction, procurement, and installation phase? Is the schedule anticipated to work around low occupancy times frames (with variability), or will the facility be planned to have a set schedule and sequence, and dates held for turnover?</p>	
10	<p>Rooms (related questions):</p> <p>a. How many different model room types would you expect to be executed?</p> <p>b. How many room types? Number of suites? Suites seemed to be 3x standard K or DD.</p> <p>c. Can you provide a unit matrix and quantities of unit types for budgeting purposes?</p> <p>d. Please provide the anticipated number and type of model rooms that will need to be reviewed in 2024.</p>	<p>Total Keys – (1258)</p> <p>North Tower Keys – 462 keys</p> <ul style="list-style-type: none"> • 191 King Rooms • 267 Queen/Double Rooms (to be converted to Queen/Queen) • 4 Suites <p>South Tower Keys - 796 keys</p> <ul style="list-style-type: none"> • 289 King Rooms • 455 Queen/Double Rooms (to be converted to Queen/Queen) • 52 Suites <p>Model Rooms – To be confirmed</p> <ul style="list-style-type: none"> • 1 King room and bathroom • 1 Double room and bathroom • 1 Corridor section
11	<p>Electrical / Technology (related questions):</p> <p>a. Any IT / low voltage scope currently anticipated?</p> <ul style="list-style-type: none"> ○ Speakers are currently stand alone – integrated? ○ Updated DAS, phones, t-stat to be included in project scope? <p>b. Will you expect the scope to include any LV / Technology infrastructure upgrades?</p>	<p>The DAS system in the room corridors has been recently upgraded.</p> <p>Minor upgrades to electrical and low voltage are possible to integrate technology into the new case goods.</p>

	c. Is it anticipated there will be electrical relocations or is it assumed fixtures will be replaced in the same location?	
12	Labor (related questions): a. Can you confirm if prevailing wages requirements apply to this solicitation? b. Do you have Union requirements?	Refer to Section III – Project Details and Scope of Services; Project Labor Agreement and Prevailing Wage (page 11 of RFP).
13	Will MPEA’s internal architect be the AOR, or will the design RFP be inclusive of both interior design and AOR?	The OPM will be assisting MPEA in procuring a full design and construction team for the project per the RFP.
14	In the RFP, renderings were indicated as provided, can you provide those renderings in order to complete the cost estimate? We could not locate any renderings in the RFP uploads.	No renderings are available to share. Please replace Proposal Submission Requirement #3 on page 13 of the RFP with the following: Project Schedule: Provide a comprehensive project schedule indicating how target dates will be met and identifying key dates for critical path items. Identify any risks associated with this schedule and how they will be mitigated.
15	The preliminary cost estimate will be provided in the proposal submission as requested; however, the estimate will be based on assumptions and qualifications to be outlined within the proposal. What is the effect of the cost price estimate on the decision making?	See response to Item 14.
16	Regarding scope item 1.5.1 – Is MPEA requesting Owner’s Project Manager to be onsite full time during construction and furniture installation? If not, is MPEA advise on approximate percentage or onsite presence?	This section requests a representative of the OPM to be onsite. Full or part time should be determined by the OPM and identified in the response to the RFP.
17	Regarding scope Item 1.5.9 - Will the furniture delivery and installation contract be a prime contract with MPEA and managed through Owner’s Project Manager? Or will Owner’s Project Manager assist the Construction Manager in soliciting proposals and selecting the correct subcontractors for freight management, delivery, and installation?	MPEA will not be procuring the furniture or case goods directly. The OPM will assist in the selection of the appropriate procurement agents to complete and oversee this work. The procurement agents will be contracted to MPEA, not the CM.
18	Confirm all keys will be renovated and level of anticipated renovation <ul style="list-style-type: none"> o Confirm South Tower only will have tub to shower conversions and % of conversions for the South Tower – RFP notes majority. o Please advise any North tower exceptions (tub/shower conversions) 	Yes, all keys will be renovated. Yes, the tub/shower conversions are only in the South Tower.
19	Any FF&E/OSE planned for reuse? (i.e., Mattresses, TV’s etc.)	No.
20	Confirm if project scope will include any updated Brand Standards for OSE. <ul style="list-style-type: none"> o Mattress, sheets, towels, TVs, alarm clock, etc. o RFP does not mention suite appliances – what is the intention with existing appliances vs. new? 	Yes, selections will reflect brand standards of selected hotel operator. All FF&E and OSE to be replaced.
21	Confirm if any property testing has been contemplated/required: <ul style="list-style-type: none"> o Acoustics? o ADA Survey? Confirm property is current with ADA requirements 	No testing or surveys have been done.

22	Confirm there will be no crossover in Project management of Meeting Space – MPEA to complete PM of that scope.	Correct. The Meeting Space renovation will be completed in Q2 of 2024.
23	Are the penthouses being renovated?	The mechanical penthouses are not in scope.
24	Outside of providing the Hotel Operator standards, how active will the Hotel Operator be in guiding the renovation design?	They will be an active partner.
25	Does the MPEA currently utilize a Project Management Information System (PMIS)? If yes, which PMIS does the MPEA use?	No.
26	In sections 1.2.3 and 1.5.2, the terms “Procurement Agent” and “Purchasing Agent” are capitalized. These are not defined terms within the RFP. Can you please clarify who the Procurement and/or Purchasing Agent is? Are they the same entity?	These agents will be purchasing FF&E and OSE.
27	Section 1.2.4 refers to project delivery methods. There are several references to the Construction Manager throughout the RFP. Does the MPEA have a preferred project delivery methodology for this project?	The OPM should advise on collaborative methods, advantageous to MPEA that comply with our procurement requirements.
28	In 4a of the Proposal Submission section, please confirm that this item is referring to the Project Manager’s approach to managing the Construction Manager and Purchasing Agent’s responsibility for ensuring that their subcontracts meet MPEA requirements (PLA, MBE/WBE goals). Please also confirm that the language in the “Minority & Women owned Business Utilization Plan” section refers solely to the Project Manager and not the CM.	See response to Item 3.
29	In the Required Forms section (Page 14) of the Submission Requirements section, this list appears inconsistent with the attached forms. Please confirm if the forms need to be replaced or this list needs to be revised.	All Required Forms listed are consistent with all attached forms. All forms are required to be completed as outlined in the RFP.
30	Required Form F, “Fee Proposal” is broken into phases that align with the scope of services and generally align with the Project Schedule outline. The Term is defined on page 11 as, “For purposes of pricing for this proposal assume a total Pre-construction term of one year and a total Construction term of one year, potentially in two phases.” Should respondents include costs for the responsibilities during the Preliminary Planning, Design, and Close-out phases on form F, or follow the duration outline per Term?	Complete Required Form F. Additional breakdown of fees per phase can be provided in additional documentation.
31	Required Form G. Notice of Exceptions – Please provide a copy of Exhibit 2 – Form of Agreement	Refer to Addendum 1, Item #1 – Attachment 1 Form of Agreement.
32	Paragraph 4. Estimator – this scope of services should not require the services of a dedicated estimator. Our team will work with the appropriate third-party contractors and vendors to prepare cost estimates but will not include an estimator on our proposed team. Please advise if this is acceptable.	Yes, this is acceptable, provide this detail in your proposal.
33	We understand that a new hotel operator will be selected in Q4 '23. Will the Project Manager play any role in this process?	No, the Project Manager will not be involved in the selection of the Hotel Operator.
34	Will all 1,258 guest rooms be included in the project scope?	Yes.

35	We understand that a design team selection process will begin in Q4 '23. Has MPEA previously completed any programming or preliminary design that will be incorporated into this project?	No.
36	For the purposes of selecting vendors to execute the work on this assignment, are there stringent requirements for the publication of all RFPs and selection process?	Yes.
37	Please confirm if the Project Manager will be responsible for the development of cost estimates during the design stages, or if the Project Manager will be review and comment on the estimate provided by another party. Accordingly, shall the cost for producing estimates be included as part of the Project Manager's scope?	The OPM will be responsible for the cost estimating during this phase. A separate consultant is not necessarily required. See response to Item 32.
38	Are there any other capital improvements projects happening concurrently with the room renovation?	No major concurrent projects planned in the hotel.
39	What is the envisioned staff/ staff support from MPEA? Will there be any dedicated staff to the project to be liaison for the Hotel?	The MPEA Development Department and Operations staff of both MPEA and the hotel will be involved with the project.
40	Would we be at a disadvantage as a smaller firm going after this on our own? And would it be better if we partnered with a firm like CBRE to have the larger financial backing?	It is possible to propose as a partner within multiple teams and it is not a disadvantage to do so.
41	Has all funding been secured? If not, what portion funding has been secured for the project?	We anticipate funding from several sources for this Hyatt Guestroom Renovation Project. All funding sources have not been secured.
42	Will there be a dedicated laydown area for construction and FFE?	TBD
43	Will parking be made available for construction crews?	TBD
44	Can you confirm the anticipated scope of services in corridors and BOH spaces on guest room floors? b. Ice / vending rooms c. Elevator lobbies d. HC closets	<ul style="list-style-type: none"> • Ice / vending rooms - Fully renovated • Elevator lobbies – Fully renovated • HC closets - TBD
45	Can you provide a list of group sales events already under contract during the expected construction period?	Hotel sales events are not available for publication. McCormick Place events are listed here - https://www.mccormickplace.com/events/
46	With the exception of the tub-to-shower conversions, are all plumbing renovations a one-for-one replacement? Or should we consider in-wall infrastructure work in our schedule and estimate?	Other plumbing work is minimal. See response to Item 14.
47	Can you confirm if you require a GL insurance certificate?	Yes, it is required.

ADDENDUM 1 – ATTACHMENT 1: FORM OF AGREEMENT

FORM OF AGREEMENT ATTACHED
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**METROPOLITAN PIER AND EXPOSITION AUTHORITY
CONTRACT FOR
OWNERS CONSTRUCTION CONSULTING SERVICES
2023-28-M**

This Owners Construction Consulting Services Contract ("Contract") is entered into by and between the **METROPOLITAN PIER AND EXPOSITION AUTHORITY** ("Authority"), a municipal corporation located at 301 East Cermak Road, Chicago, Illinois 60616 and **CONTRACTOR**, a STATE corporation authorized to conduct business in the State of Illinois ("Consultant") located at ADDRESS. It takes effect as of DATE ("Effective Date").

BACKGROUND

The Authority issued a Request for Proposals ("RFP") for Owners Construction Consulting Services (the "Services") related to the management of design and construction activities for the renovation of guestrooms and corridors at a 1,258-room hotel and conference center located adjacent to McCormick Place, which is currently managed by the Hyatt Corporation. The Services are set forth more particularly in the Scope of Services (defined below). Consultant submitted a response to the RFP ("Proposal") and represents that it is ready and able to perform the Services specified in the Contract. The parties therefore agree as follows.

TERMS

1. **Term:** This Contract shall commence on the Effective Date, and unless sooner terminated in accordance with this Contract, ends upon completion of the Services, which are anticipated to be in accordance with the timeline stated in the RFP.
2. **Contract Documents:** The Contract shall be deemed to include this document, Consultant's Proposal and the following exhibits and attachments, all of which are incorporated into and made a part of this Contract (the "Contract Documents"). In the event of a conflict between this document and any exhibit, the provisions of this Contract shall control:
 - a. **Exhibit 1** - Scope of Services (attached)
 - b. **Exhibit 2** - Pricing Forms - Pricing and Payment Schedules (attached)
 - c. **Exhibit 3** - Staffing Plan and Organizational Chart (attached)
 - d. **Exhibit 4** - RFP #2023-28-M for Owners Construction Consulting Services, including Consultant's response, to the extent it is consistent with the RFP documents, and all attachments which are incorporated herein by reference
 - e. **Exhibit 5** - Insurance Requirements (attached)
3. **Scope of Service:** Consultant shall perform the Services listed in the Scope of Services attached as Exhibit 1.
4. **Assigned Personnel:** On signing this Contract, and subsequent thereto as changes in personnel are made, Consultant shall identify the person on Consultant's staff who will serve as day-to-day liaison for the Services. Consultant 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. 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 is otherwise unfit for such work.
5. **Subcontractors:** Consultant will advise the Authority prior to entering into any subcontracting agreements, and the Authority reserves the right to reject any proposed subcontract prior to its execution when, in the Authority's sole discretion, the Authority deems it is in its best interests to do so. Consultant shall cause all subcontractors to be bound to the same terms and conditions as those in this Contract. Consultant may award fixed amount lump sum contracts to its subcontractors solely upon prior written approval by the Authority. All billing by Consultant to the Authority for Services performed by a subcontractor shall be at actual cost, with no markup by Consultant. Consultant shall endeavor to

coordinate activities and use third party services for the benefit of the Authority to the extent such subcontracts are necessary.

6. Standard of Performance: Consultant 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 service of comparable scope, purpose and magnitude in the Chicagoland area, and in conformance with the applicable professional standards. Consultant shall at all times use its best efforts on behalf of the Authority to assure timely and satisfactory rendering and completion of its Services. Consultant shall ensure that Consultant and all of its employees or subcontractors performing Services under this Contract shall be: (i) qualified and competent in the applicable discipline or industry; (ii) appropriately licensed as required by law; (iii) strictly comply with all City of Chicago, State of Illinois, and federal laws applicable to the Services; and (iv) strictly conform to the terms of the RFP and this Contract. Consultant remains responsible for the professional and technical accuracy of all Services and deliverables furnished, whether such services are rendered by the Consultant or others on its behalf. No review, approval, acceptance, nor payment for any and all of the Services by the Authority shall relieve the Consultant from the responsibilities referenced herein.

7. Time is of the Essence: Consultant shall proceed to perform the Services under the terms of this Contract promptly and diligently in accordance with the Contract. Unless otherwise provided herein or as otherwise specified at time of order, Services shall be performed in conformance with specifications set forth by the Authority.

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

9. No Damages for Delay: Consultant is not entitled to and must make no charges for damages for any delays or hindrances from any cause whatsoever during the progress of any portion of the Services specified in this Contract unless a project is suspended or abandoned in part or in whole for more than three (3) months. In the event of a project's suspension or abandonment, Consultant shall be paid the reasonable expenses incurred by the Consultant resulting from such suspension or abandonment without waiver of any other rights the Consultant may have.

10. Consultant as Independent Consultant: Consultant as well as Consultant's agents, employees and assigned personnel provided under this Contract are independent contractors. Nothing in this Contract is intended or should be construed as in any way creating or establishing the relationship of partners or joint venturers between the Authority and Consultant, or as constituting Consultant or any officer, owner, employee or agent of Consultant as an agent, representative or employee of the Authority for any purpose or in any manner whatsoever. Consultant shall be responsible for any and all personal injury or property damage that Consultant may suffer in the course of or in connection with the performance of the Services under this Contract, unless due to the gross negligence or intentional misconduct of the Authority. Consultant agrees not to make any claims against the Authority or any of its board members, officers, employees, agents or assigns for any injury or loss that Consultant may suffer, unless due to the gross negligence or intentional misconduct of the Authority. As an independent contractor, Consultant is solely responsible for determining the means and methods for performing the Services.

11. Audit, Inspection and Retention of Records: Consultant shall maintain and retain records showing the actual time expended in performance of the Services for which Consultant seeks compensation, and receipts evidencing the actual costs for all reimbursable expenses for which Consultant requests compensation. The Consultant shall permit an authorized representative of the Authority to inspect, copy and audit all data and records of the Consultant for the performance of the Services. Such records shall be made available at the office of the Consultant during the term of the Services and shall be retained for a period of no less than five (5) years subsequent to the expiration of the Contract.

12. Compensation:

a. Basis of Payment: Consultant shall be paid an hourly rate for the performance of Services by each individual assigned to each of the projects, plus reimbursable expenses, all subject to a Guaranteed Maximum Price. The Guaranteed Maximum Price for the Services

contemplated herein is DOLLAR AMOUNT. The Guaranteed Maximum Price for each phase of the projects is set forth on Exhibit 2. Hourly rates shall include all direct payroll costs, overhead burden, fringes, office supplies, office equipment, telephones, computers, facsimiles and incidentals required by Consultant in the normal course of business, indirect costs and profit. The Authority, in its exclusive discretion, may re-allocate any unexpended funds from one phase to another. Consultant shall be reimbursed for Services performed by Consultant and by its subcontractors, professional and technical personnel and Authority approved nonprofessional and nontechnical personnel assigned to the project on a full-time basis, while working directly on the project, at the approved hourly billing rates set forth on Exhibit 2 but in no event shall such personnel be reimbursed for more than eight (8) hours per day or forty (40) hours per week without the prior written approval of the Authority. Hourly billings and reimbursable costs shall not exceed the Guaranteed Maximum Price.

b. Reimbursable Expenses: Consultant shall be reimbursed for the following items subject to prior approval of the Authority's designated representative. All other costs incurred by the Consultant shall be compensated by the hourly rate paid by the Authority for the performance of Services by the individuals assigned to the project. All billing of such reimbursable items shall be at actual costs with no surcharge added when submitted for payment.

- 1) Reproduction and binding of memoranda, reports, drawings and other deliverables, or reproduction of existing drawings and data for Consultant's use.
- 2) Special services or supplies applicable to the Services, such as photography, purchase of maps, renderings, presentation models, mock-ups and samples. Consultant shall provide prior notice to the Authority of any such expenditure that may exceed \$500, and the Authority reserves the right to reject any such proposed expenditure.
- 3) Transportation and subsistence when on trips required for the performance of the Services, but only upon prior written approval by the Authority.
- 4) Long distance telephone and faxes, express shipments and postage.

c. Method of Payment: Consultant shall submit an invoice to the Authority no later than the twenty-fifth (25th) day of each month during the performance of the Services. The invoice shall be itemized as required by the Authority. Payment will be made upon the basis of approved invoices and supporting documents. Supporting documents shall include proof of payment by Consultant to any subcontractors who performed Services invoiced by Consultant on the preceding invoice. The Authority will utilize its best efforts to make payment by the last day of the month subsequent to the month that the invoice was submitted. Each invoice shall be accompanied by a statement by the Consultant of the percentage of completion of the Services through the date of the invoice, and an estimate of the approximate value of the remaining Services to be provided by Consultant.

d. Payment of Subcontractors: Consultant shall be solely responsible to ensure that subcontractors 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 Consultant submits evidence satisfactory to the Authority that all amounts Consultant owes in connection with performance of this Contract have been paid. Further, the Authority is entitled, after giving notice to Consultant, 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 Consultant, 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.

e. Lien Waivers: In the event any work performed under this Contract entitles a party to a lien, Consultant shall provide the Authority with a lien waiver in a form acceptable to the authority.

13. 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 RFP 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 Consultant believes that Services in excess of those set forth in Exhibit 1 are required or requested by the Authority ("Additional Services"), the Consultant shall, prior to performing such Additional Services, so notify the Authority and provide a written statement of the Additional Services that the Consultant believes will be required or have been requested and the proposed changes to Exhibit 1 and Exhibit 2. The Consultant shall not commence performing any services constituting Additional Services until it has received prior written approval from the Authority authorizing the Consultant to proceed with such Additional Services. The Consultant 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 Consultant shall execute an amendment to Exhibit 1 and Exhibit 2, or such other portions of this Contract as may be necessary evidencing the agreement of the parties regarding such Additional Services.

14. Insurance: Before beginning to perform any Services, Consultant shall procure and maintain at all times during the term of this Contract and at Consultant's expense, the insurance coverage set forth in the Insurance Requirement as set forth in Exhibit 5 to this Contract, which is incorporated herein by reference, and shall provide the Authority with original certificates evidencing the required coverage. Consultant's insurance policies shall name the following as additional insured on all certificates of insurance: **"The Metropolitan Pier and Exposition Authority, its facilities, agents, officers, board members and employees."** Consultant's duty to indemnify the Authority is independent from, and not limited in any manner by, Consultant's insurance coverage obtained pursuant to this Section or otherwise.

15. Indemnification:

a. Duty. Consultant shall at its sole expense defend and hold the Authority, its Board members, officers, and employees (collectively, the "Indemnified Parties") harmless against all third-party 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, provided it is alleged or determined that the Loss was caused through the negligence or omission of Consultant, its employees or agents or that of Consultant's subcontractors or their respective employees. Consultant 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, Consultant shall, at its sole expense, satisfy and discharge it. To the extent permissible by law, Consultant waives any limits to the amount of its obligations to indemnify, defend or contribute to any sums due pursuant to Consultant's obligations under this Section 15, including any claim by any employee of Consultant 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).

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

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

16. 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, Consultant, in performing the Services under this Contract, shall not discriminate against any worker, employee or applicant, nor any member of the public on the basis of race, color,

religion, age, sex or national origin, ancestry, pregnancy, marital status, physical or mental handicap unrelated to the person's ability to perform the duties of a particular job or position, or unfavorable discharge from military service, nor otherwise commit an unfair labor practice, with respect to, but not limited to, the following actions: recruitment, hiring, training, employment, transfer, upgrading, promotion, compensation, working conditions, layoffs and termination. Consultant shall post in conspicuous places, available to employees and applicants for employment or apprenticeship programs, notices setting forth the provisions of this non-discrimination clause. Consultant shall take affirmative action to assure equality of employment opportunity and to eliminate the effects of past discrimination, shall comply with the procedures and requirements of and cooperate with the Illinois Department of Human Rights. Attention is particularly drawn to the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq.; to the Illinois Veterans Preference Act, 330 ILCS 55/0.01 et seq.; to the Civil Rights Act of 1964, 42 U.S.C. Sec. 2000 et seq.; (1988) and the Civil Rights Act of 1991; The Age Discrimination in Employment Act, 42 U.S.C. Sec. 6101 et seq. (1988); the Rehabilitation Act of 1973, 29 U.S.C. Secs. 793-94 (1988); the Americans with Disabilities Act, all as amended from time to time, and to applicable federal, state and local rules and regulations. Consultant shall further incorporate this clause in all contracts with subcontractors and with all labor organizations furnishing skilled, unskilled and craft union skilled labor, or who may perform any such labor or services in connection with this Contract.

b. Special Conditions. The Authority has adopted and maintains a minority and women-owned business enterprise procurement program for any and all work undertaken on behalf of the Authority. The Authority's overall goals for MBE and WBE participation in the performance of all goods and services are 25% and 5% respectively. Consultant acknowledges and agrees that it shall comply with the Special Conditions Regarding Minority and Women-Owned Business Enterprises, as detailed in Exhibit 3.

c. Compliance. As part of its review and approval of the Consultant's monthly payment requests, the Authority will monitor the Consultant's performance to reasonably satisfy itself that the Consultant 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 the Consultant complies with its MBE/WBE commitment, the Consultant 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.

d. Remedies for Noncompliance. In the event the Consultant fails to fulfill its obligations under this Section 16, the Authority shall have available to it appropriate remedies at law or in equity, including the right to withhold amounts due to the Consultant for any of the Services until the Consultant provides 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 the Consultant from all future work that may from time to time be undertaken by the Authority as well as all unfinished Services on the projects.

17. Authority's Proprietary Rights:

a. Names and Logos. The Authority owns all right, title and interest in: (a) the trademarks/service marks NAVY PIER®, NAVY PIER and Design and GO A LITTLE OVERBOARD™; MCCORMICK PLACE®; MCCORMICK PLACE and Design (b) certain likenesses of Navy Pier® and McCormick Place®; and (c) certain other logos, trademarks, trade names and service marks (collectively the "MPEA Marks"). Consultant may not use the MPEA Marks for any purpose without the Authority's express written consent, nor may Consultant permit anyone else to do so.

b. Sponsorship Program. In addition, the Authority has entered into contracts to grant exclusive sales or advertising rights to certain products, brands or services on Authority property. Accordingly, to the extent permitted by law, Consultant must not advertise, promote, or display any competing products, brands, or services at Navy Pier or McCormick Place, including through displays or signs in or on any equipment, visible through or on any windows facing onto any part of Navy Pier or McCormick Place, or in advertisements, promotional material, or displays referring to Navy Pier or McCormick Place, or utilizing (if the Authority has not given its express written consent

to it) the Authority's logos or service marks. Consultant must not interfere with the Authority's sponsors' events.

18. Consultant Representations: Consultant warrants that it is fully qualified to perform this Contract in its area of expertise, and represents that (a) by its own independent investigation it has ascertained (i) the nature of the Services required, (ii) the conditions involved in performing the Services, and (iii) its obligations under this Contract, and will (b) verify all information furnished by the Authority, satisfying itself as to the correctness and accuracy of that information, and if incorrect or inaccurate, has taken appropriate exception and has determined correct and accurate information. Any failure by Consultant to investigate independently and become fully informed will not relieve Consultant from its responsibilities under this Contract.

19. 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 Consultant with written notice specifying the date of termination, which date shall be at a minimum thirty (30) days from the date of the notice. On the date specified in the notice, this Contract will terminate. The Authority will pay Consultant the amount earned or reimbursable to it (if any) up to the termination date. After termination, Consultant 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 Consultant:

(A) Refusal or failure to provide sufficient properly skilled workers, adequate supervision, or adequate materials and equipment of the proper quality;

(B) Failing in any material respect to prosecute the Services according to the Authority's schedule;

(C) Causing, by any action or omission, the stoppage or delay of or interference with the Services or work of any employee or other consultant or subcontractor;

(D) Failure to comply with any provision of this Contract or the Specifications described in the RFP, including, but not limited to matters pertaining to insurance, indemnification, and MBE/WBE use;

(E) Becoming insolvent, making a general assignment for the benefit of its creditors, or having a receiver appointed;

(F) Inability to perform the Services under the Contract as a result of insolvency, bankruptcy, or having a receiver appointed;

(G) Failure to timely provide Services in accordance with RFP or contract terms with respect to the nature, quantity, quality, or timeliness of delivery;

(H) Conviction in a criminal court or a finding of liability in civil court relating to the goods or services that Consultant provides to the Authority or involving fraud or misconduct adversely affecting any governmental entity;

(I) 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 Consultant with notice setting forth the event of default and

cure requirements, including the time period permitted for cure. Consultant shall cure any event of default as provided in the notice.

3) If Consultant fails to cure a default as provided in the notice, the Authority may, at its sole option, declare Consultant in default. The Authority will give Consultant 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. Consultant 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.

(A) The right to take over and complete the Services or any part of them as agent for and at the cost of Consultant either directly or through others. Consultant has, in that event, the right to offset from the cost the amount the Authority would have paid Consultant under the terms and conditions of this Contract had Consultant completed the Services.

(B) 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.

(C) The right to money damages.

(D) The right to deem- Consultant non-responsive in future contracts to be awarded by the Authority.

(E) The right to take assignment of any or all of Consultant's subcontracts and complete the Services, by itself or through others, by whatever method the Authority considers expedient.

(F) The right of set-off against any sums owing Consultant.

(G) 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 Consultant, then the termination shall be treated as a termination for convenience.

20. 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. Consultant 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.

21. Ownership of Documents: All documents, data, studies, reports, plans, drawings and designs as instruments of service (collectively, the "Deliverables") are to be property of the Authority. During the performance of the Services, the Consultant will be responsible for any loss or damage to the Deliverables while they are in its possession and any such loss or damage to the Deliverables will be restored at the expense of the Consultant. Full access to the work during the preparation of all

Deliverables to be provided by the Consultant under this Contract will be available to the Authority during normal business hours upon reasonable notice.

22. Copyright: The Consultant and the Authority intend that, to the extent permitted by law, the Deliverables to be produced by the Consultant at the Authority's instance and expense pursuant to this Contract are conclusively deemed "works made for hire" within the meaning and purview of Section 101 of the United States Copyright Act, 17 U.S.C. Section 101 *et seq.*, and that the Authority will be the copyright owner of the Deliverables and of all aspects, elements and components of them in which copyright can subsist.

To the extent that any Deliverable does not qualify as a "work made for hire", the Consultant hereby irrevocably grants, conveys, bargains, sells, assigns, transfers and delivers to the Authority, its successors and assigns, all right, title and interest in and to the copyrights and all U.S. and foreign copyright registrations, copyright applications and copyright renewals for them, and other intangible, intellectual property embodied in or pertaining to the Deliverables prepared for the Authority under this Contract, free and clear of any liens, claims or other encumbrances, to the fullest extent permitted by law. The Consultant will execute all documents and perform all acts that the Authority may reasonably request in order to assist the Authority in perfecting their rights in and to the copyrights relating to the Deliverables, at the sole expense of the Authority. The Consultant warrants to the Authority, its successors and assigns, that on the date of transfer the Consultant is the lawful owner of good and marketable title in and to the copyrights for the Deliverables and has the legal rights to fully assign them. The Consultant further warrants that it has not assigned any copyrights nor granted any licenses, exclusive or nonexclusive, to any other party, and that it is not a party to any other agreements or subject to any other restrictions with respect to the Deliverables. The Consultant warrants and represents that the Deliverables are complete, entire and comprehensive, and that the Deliverables constitute a work of original authorship.

23. Confidentiality of Information and Documents:

a. All reports, data or information in any form prepared, assembled or encountered by or provided to Consultant under this Contract are confidential, and Consultant 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. Consultant shall implement whatever measures are necessary to ensure that its staff and its subcontractors are bound by these confidentiality provisions.

b. Consultant 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 Consultant 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 Consultant's possession by reason of this Contract, Consultant 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. Consultant, 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.

24. Conflict of Interest: Consultant 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. Consultant promises that no person having any such interest will be employed in performing this Contract. Consultant further warrants, that to the best of its knowledge, as of the date of this Contract, Consultant has no contracts with third parties that would conflict in any manner or degree with Consultant's performance of the Services.

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

26. Assignment and Subcontracting: Consultant shall not assign the Contract, or any portion thereof, or any payment due under the Contract, without the written consent of the Authority. In no case shall such consent relieve the Consultant from the obligations herein entered into or change the terms of this Contract and each and every one of the covenants, promises, and agreements of the Consultant shall extend to and be binding upon the successors and assigns of the Consultant.

27. Compliance with Laws:

a. Consultant 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. Consultant 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. Consultant shall comply with applicable licenser or permit requirements and hold the Authority harmless against any liability in connection with licenser, permitting, or taxes. Consultant 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. Consultant and all subcontractors shall be duly licensed to operate in Chicago, Illinois. Consultant is liable to the Authority for all losses, expenses, including attorneys fees, attributable to any acts of commission or omission by Consultant, its employees and agents, and subcontractors 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.

28. Applicable Law and Venue: This Contract shall be governed by and construed in accordance with 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.

29. Accuracy and Update of Information: In connection with the RFP and this Contract, Consultant has furnished and will continue to furnish various certifications, affidavits and other information and reports. Consultant represents that any such material and information furnished in connection with the RFP or this Contract is truthful and complete. Consultant 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.

30. 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.

**METROPOLITAN PIER AND
EXPOSITION AUTHORITY**
301 E. Cermak
Chicago, Illinois 60616
Attention: Director of Procurement
Fax No. (312) 791-6156

CONSULTANT
ADDRESS
Attn: NAME

With copies to:

**METROPOLITAN PIER AND
EXPOSITION AUTHORITY**
301 E. Cermak
Chicago, Illinois 60616
Attention: General Counsel
Fax no. (312) 791-7125

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.

31. 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

32. 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.

33. Entire Agreement: This Contract as defined in Section 2 represents the entire agreement 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. This Contract may be amended or modified only by a written instrument executed by the parties.

34. Consents and Approvals: The parties represent and warrant to each other that each have obtained all requisite consents and approvals, whether required by internal operating procedures or otherwise, for entering into this Contract and the undertakings contemplated hereby

35. Counterparts: This Contract may be executed in one or more counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

36. Exhibits: All of the Exhibits referenced in Section 2 are attached hereto and incorporated as part of this Contract and shall have the same meaning as if they were incorporated fully within the text of this Contract.

37. Limitation on Liability: Notwithstanding anything else contained herein to the contrary, each party waives any claims for punitive, consequential, speculative or exemplary damages, including, without limitation, lost revenue or profit, even if a party has knowledge of the possibility of such damages; and, except for Consultant's liability to third parties for bodily injury, death or property damage, in no event shall Consultant's liability exceed and amount equal to the greater of annual fees paid or Seven Million Dollars (\$7,000,000.00)

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IN WITNESS WHEREOF, the parties hereto have duly executed this Contract the day and year first above written.

Metropolitan Pier and Exposition Authority,

By: _____
Name: Larita D. Clark
Title: Chief Executive Officer

Approved as to form and legality:

By: _____
MPEA Staff Attorney

CONTRACTOR

By: _____
Name:
Title: