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This document prepared by  
and after recording, return to:

*Ransford*  
Kathleen Ransford  
O'Hare Modernization Program  
City of Chicago  
10510 West Zemke Road  
Chicago, Illinois 60666



Doc#: 0923135069 Fee: \$96.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 08/19/2009 11:43 AM Pg: 1 of 31

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## TEMPORARY EASEMENT FOR ACCESS FOR CONSTRUCTION ACTIVITIES

THIS EASEMENT AGREEMENT ("Agreement") is entered into as of this 20th day of March, 2009 (the "Effective Date") by and between Franklin Avenue LLC, an Illinois Limited Liability Company ("Grantor") and the City of Chicago, an Illinois home rule municipality ("City")

### BACKGROUND

The City has a series of projects known as the O'Hare Modernization Program ("OMP"), which consists of a series of improvements needed to modernize the O'Hare International Airport, a facility owned and operated by the City ("O'Hare"). Among the improvements needed for a timely and successful completion of the OMP is the relocation of a portion of the right of way of the Union Pacific Railroad ("UP") so that UP can convey its existing right of way to the City for purposes of the OMP.

The Grantor's property is described in Exhibit A ("Grantor's Property"). The City has identified a portion of Grantor's Property, described in Exhibit B (the "Temporary Easement Parcel") which is necessary and appropriate for ingress and egress, storage, staging and other related activities related to the construction of a retaining wall that will be built completely within right of way of the UP ("Retaining Wall"). It is the intent of this Agreement that the Grantor grant to the City a non-exclusive temporary easement in and over the Temporary Easement Parcel for the purposes stated herein.

NOW, THEREFORE, in consideration of the mutual covenants and understandings herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Grantor agree as follows:

*31/8*  
**BOX 333-CT**

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## 1. Grant of Easement

The Grantor hereby grants and conveys to City a temporary non-exclusive easement in, on, over, and through the Temporary Easement Parcel for the purposes of ingress and egress, storage, staging and other related activities related to the construction of the Retaining Wall, all in accordance with the terms and conditions of this Agreement. The easement in the Temporary Easement Parcel shall commence upon the date stated in a written notice from City to the Grantor as provided in this agreement ("Commencement Date") and shall terminate thirty-six (36) months after the Commencement Date ("Easement Term").

## 2. Permitted uses

- a. **Easement Parcel. Grantor** may use or allow the use of the Temporary Easement Parcel only for those purposes that do not substantially interfere with access and use by the City. For purposes of this paragraph, any vehicle parked in the Temporary Easement Parcel, or any facility, structure or equipment that is stored or allowed to remain in the Temporary Easement Parcel after during the Easement Term shall be deemed to be substantial interference with such access and use.
- b. **Access through Grantor's Property.** In the event that any building, structure, improvement, facility, equipment, vehicle or any other obstruction is located in or is blocking the Temporary Easement Parcel in violation of this Agreement, the City may utilize any or all portions of the Grantor's Property for substitute access or use to the extent that access or use permitted under this Agreement has been restricted or denied. Such access through or use of Grantor's Property shall not include access through or use of any building, and such access through or use of the Grantor's Property for substitute access or use shall not be raised as a defense to a claim of breach of this Agreement including a request for damages, or specific or injunctive relief. In addition, the easement granted in this Agreement shall include rights of lateral and subjacent support in the Grantor's Property for the use of the Temporary Easement Parcel as permitted by this Agreement.

## 3. Indemnity

City agrees to defend, indemnify and hold harmless the Grantor, its employees and agents from and against any claim, demand or cause of action and any liability, cost or expense (including but not limited to reasonable attorney's fees and expenses incurred in the defense of Grantor), damage or loss, which may be made or asserted by City, City's employees or agents, contractors, or any third parties on account of personal injury or death or property damage proximately caused by the entry on the Grantor's Property authorized herein, except to the extent proximately caused by the negligent acts or willful misconduct of Grantor or its agents or employees.

## 4. Insurance (construction only)

The City of Chicago has arranged for an Owner Controlled Insurance Program ("OCIP") for the purpose of providing insurance coverage for work performed for the OMP at O'Hare Airport and

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upon other property to which the City has been granted easements. A description of the OCIP program is attached hereto as Exhibit C. Prior to entering the Temporary Easement Parcel, the City will cause its contractor to furnish a certificate of insurance, which conforms to the OCIP program naming the Grantor as an additional insured on General Liability policies.

**5. Notice.** Any notices required or desired to be given under this Agreement must be in writing and personally served, given by overnight express delivery, or given by mail. Facsimile notices will be deemed valid only to the extent (a) actually received by the individual to whom addressed and (b) followed by delivery of actual notice within three (3) business days. Notices given by mail must be sent, postage prepaid, by certified mail, return receipt requested. Express Delivery notices shall be deemed to be given upon receipt.

All notices must be addressed to the party to receive the notice at the following address or at such other address as the party may from time to time direct in writing:

Grantor: *Dan Cario gg ia*  
*11535 Franklin Ave.*  
*Franklin Park, Ill. 60131*  
*847-455-2424 Ext. 1311*

Facsimile: *847-451-2504*

City: Executive Director  
 O'Hare Modernization Program  
 10510 West Zemke Road  
 Chicago, Illinois 60666  
 Facsimile (773) 462-8557

With a copy to: General Counsel  
 O'Hare Modernization Program  
 10510 West Zemke Road  
 Chicago, Illinois 60666  
 Facsimile (773) 462-8557

Designated recipients for receipt of notices and copies may be changed by notice to the other party served in accordance with this section.

## 6. General provisions

- a. The rights conferred and obligations incurred pursuant to this Agreement shall run with Grantor's Property and inure to the benefit of and be enforceable by the City, the Grantor and their respective successors and assigns.

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- b. This Agreement, including all rights and obligations, shall be freely assignable by the City.
- c. In the event any term or provision of this easement shall for any reason be held invalid illegal or unenforceable by any court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision hereof, and this easement shall be interpreted and construed as if such term or provision, to the extent the same has been held to be invalid, illegal or unenforceable, had never been contained herein.
- d. The Agreement, together with the exhibits, constitutes the entire agreement of the parties on the subject matter hereof. It is understood and agreed to by the parties hereto that no oral or other promise of any character made by any individual allegedly speaking for either party shall be binding under this easement unless expressly stated herein.

(signatures appear on next page)

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IN WITNESS WHEREOF, said City and Grantor have caused their names to be signed to these presents on the day and year written above.

Franklin Avenue LLC, an Illinois Limited Liability Company

BY: *Anna Carney*  
VICE PRESIDENT

Date: 3-18-09

City of Chicago

By: *[Signature]*  
Executive Director  
O'Hare Modernization Program

Date: 3/20/09

Approved as to form and legality:

*John D. McDonald*  
Special Assistant Corporation Counsel

Authorized by ordinance approved April 11, 2007 (C.J. p. 102488, et seq.).

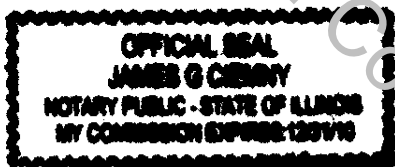
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STATE OF ILLINOIS )  
 )SS  
 COUNTY OF Cook )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that DANIEL CAIROGIA, the VICE-PRESIDENT of Franklin Avenue LLC, an Illinois Limited Liability Company who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument, as the free and voluntary act of such Trustee, for the uses and purposes therein set forth.

Given under my hand and official seal, this 18<sup>th</sup> day of MARCH, 2009.



[Signature]

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Rosemarie Andolino personally known to me to be the Executive Director of the O'Hare Modernization Program of the City of Chicago appeared before me this day in person and acknowledged that she signed the said instrument as her free and voluntary act, and as the free and voluntary act of such City, for the uses and purposes therein set forth.

Given under my hand and official seal, this 20 day of March, 2009.



[Signature]

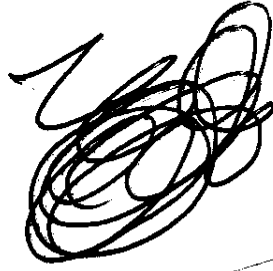
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EXHIBITS:

Exhibit A – Grantor’s Property

Exhibit B – Permanent Easement Parcel

Exhibit C – Insurance (OCI P)



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## EXHIBIT A

THE LAND REFERRED TO IN THIS COMMITMENT IS DESCRIBED AS FOLLOWS :

THAT PART OF THE NORTHEAST 1/4 OF SECTION 19, TOWNSHIP 40 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE POINT OF INTERSECTION OF THE WEST LINE OF SAID NORTHEAST 1/4 WITH THE SOUTHWESTERLY LINE OF FRANKLIN AVENUE, SAID LINE BEING 50 FEET SOUTHWESTERLY OF AND PARALLEL TO THE CENTER LINE OF SAID AVENUE AND FORMING AN ANGLE OF 67 DEGREES 28 MINUTES 07 SECONDS WITH SAID WEST LINE OF THE NORTHEAST 1/4; THENCE SOUTHEASTERLY ALONG SAID SOUTHWESTERLY LINE FOR A DISTANCE OF 427.64 FEET TO A POINT; THENCE SOUTH PARALLEL TO SAID WEST LINE FOR A DISTANCE OF 228.00 FEET TO A POINT; THENCE WEST AT RIGHT ANGLES TO SAID LAST DESCRIBED LINE FOR A DISTANCE OF 395.00 FEET TO A POINT IN THE WEST LINE OF SAID NORTHEAST 1/4; THENCE NORTH ON SAID WEST LINE FOR A DISTANCE OF 391.86 FEET TO THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS.

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## EXHIBIT C

### INSURANCE REQUIREMENTS OMP

#### I. OWNER CONTROLLED INSURANCE PROGRAM (OCIP)

The City has purchased insurance coverage for the City, the Contractor and its enrolled Subcontractors of any tier for work performed on the Project. The OCIP will also cover all other projects under the OMP.

The OCIP coverage is only for Work performed in and from the Project Site and operations necessary or incidental to the work performed at the Project Site. Project Site shall mean O'Hare Airport and any other adjacent property owned or acquired by the City or to which the City has been granted easements or rights of access. The City assumes no liability if the limits of coverage provided by the City are inadequate or exhausted. The City's failure to procure any such insurance shall not be deemed to be a breach of the Contract or an event of default and shall not diminish Contractor's obligation to perform.

While it is the intent of the City to keep the OCIP in force throughout the term of this Project and all other projects under the OMP, the City reserves the right to terminate or modify the terms, limits and conditions of the OCIP coverage. To exercise this right, the City shall provide thirty (30) days advance written notice of termination or material modification to Contractor and all Subcontractor(s) of any tier covered by the OCIP. In the event that the OCIP is terminated in whole or in part by the City or the coverages are reduced below those required by Section II below, the Contractor shall be required to obtain replacement or additional coverage as described in Section II.

Upon Final Completion of the Contractor's Work, the OCIP coverage for the Contractor's Work will be terminated. If the Contractor or any Subcontractor of any tier returns to do any work on the Project Site after Final Completion of the Project, including warranty or any other repair work, the Contractor and any Subcontractors of any tier must procure and maintain the insurance coverages required by Section II and provide certificates of insurance for the coverages to the Director, prior to beginning the work.

The Contractor shall not include in its base bid price the cost of any insurance to be provided by the City under the City's OCIP described herein.

The furnishing of the OCIP shall in no way be interpreted as relieving the Contractor or any Subcontractors of any tier of any obligation or responsibility whatsoever under the Contract or otherwise. Contractor or its Subcontractors of any tier may carry, at their own expense, such additional insurance as the Contractor and/or its Subcontractors of any tier may deem necessary.

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An OCIP Project Manual will be provided to the Contractor and its enrolled Subcontractors of any tier that will detail aspects of the OCIP and the Contractor and Subcontractors of any tier reporting requirements.

Contractor and Subcontractors of any tier agree that the purpose of this section is to provide information and a general understanding of the insurance coverages that may be provided and that the City is considering obtaining under the OCIP. Contractor and Subcontractors of any tier agree that the policies actually procured and their limits of liability, coverage scope and terms, conditions, endorsement and exclusions shall determine the actual scope of coverage provide by and under the OCIP. The City does not covenant that the actual OCIP policies will provide, and conform to, the coverages described herein. In addition, termination of or reduction of coverages under the OCIP (once placed) arising from loss or reduction in market insurance capacity shall not result in either liability or additional costs to the City.

A. Insurance coverages to be included in OCIP:

1) Workers Compensation and Employers Liability

Workers Compensation as prescribed by applicable law covering all employees who are to perform Work under this Contract and all other Work under the OMP and Employers Liability coverage with limits of \$1,000,000 each accident or illness; \$1,000,000 for disease; \$1,000,000 aggregate for disease.

Workers' Compensation and Employer's Liability Insurance will be provided in accordance with applicable State laws. Limits of Liability and coverage are being sought as follows:

- (a) Workers' Compensation, form WC 00 00 00 A, (4/1/92 edition date or its equivalent) - With Applicable State Statutory Benefits
  - (b) Employer's Liability with limits of:
    - (i) \$1,000,000 Bodily Injury each Accident
    - (ii) \$1,000,000 Bodily Injury by Disease - Policy Limit
    - (iii) \$1,000,000 Bodily Injury by Disease - Each Employee
  - (c) Employers Liability Exclusions as follows:
    - (i) liability assumed under a contract;
    - (ii) punitive or exemplary damages;
    - (iii) bodily injury to an employee while knowingly employed in violation of the law;
    - (iv) obligations imposed by a workers compensation, occupational disease or similar law;
    - (v) bodily injury intentionally caused or aggravated by the insured;
    - (vi) bodily injury occurring outside of the United States of America;
- any personnel practices, policies acts or omissions;

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- (vii) bodily injury to any person subject to any federal workers or workmen's compensation law or occupational disease law;
- (viii) bodily injury to any person in work subject to the Federal Employers' Liability Act;
- (ix) bodily injury to a master or member of the crew of any vessel;
- (x) fines or penalties imposed for violation of federal or state law;
- (xi) damages payable under the Migrant and Seasonal Agricultural Worker Protection Act.

(d) Additional Forms and Endorsements:

- (i) WC 00 00 01, Information Page
- (ii) Policy Jacket
- (iii) WC 00 03 01 A, Alternate Employer Endorsement (Where required by written contract or agreement.), includes loaned employees.
- (iv) Designated Workplaces Exclusion Endorsement (Excludes all workplaces except work performed in and from the Project Site and operations necessary or incidental to the Project.
- (v) WC 00 03 03 C, Employers Liability Coverage Endorsement or its equivalent (Stop Gap)
- (vi) WC 34 03 01 B, Ohio Employers Liability Coverage or its equivalent (Stop Gap).
- (vii) WC 00 03 11 A (or its equivalent) Voluntary Compensation and Employers Liability (All officers and employees not subject to workers compensation law except masters and members of the crew of any vessel.)
- (viii) WC 00 03 13 (or its equivalent), Waiver of Our Right to Recover from Others (Where required by written contract or agreement.)
- (ix) Premium Discount
- (x) WC 00 04 14 (or its equivalent), Notification of Change in Ownership (You must report change of ownership within 90 days.)
- (xi) WC 00 04 19 (or its equivalent), Premium Due Date
- (xii) Terrorism Risk Insurance Act, if available.
- (xiii) Consent to Transfer of Your Rights and Duties (Transfer of rights and duties for premium payment and reimbursement of losses to the City of Chicago)
- (xiv) Unintentional Errors and Omissions (Unintentional misrepresentations prior to policy inception will not impair your rights under the policy.) WC 12 06 01 C, Illinois Amendatory Endorsement

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- (xv) Illinois Notice to Policyholder (Premium reduction if you accept a \$1,000 medical deductible per claim.)
- (xvi) Illinois Loss Reimbursement Endorsement (Program large deductible endorsement – deductible applies only to the City of Chicago.)
- (xvii) Notice of Cancellation (60 days except nonpayment of premium.)
- (xviii) Illinois Industrial Commission Operations Fund Surcharge
- (xix) Named Insured and Address Schedule and FEIN Number
- (xx) Large Risk Rating Plan Endorsement
- (xxi) Waiver of Rights under Kotecki (Blanket are required by written contract or agreement.)
- (xxii) Classification and Rating Schedule
- (xxiii) Knowledge of Occurrence (Risk Manager, City of Chicago)
- (xxiv) Knowledge of Occurrence (Knowledge by one insured does not constitute knowledge by any other insured.)

## 2) Commercial General Liability

Commercial General Liability Insurance is being sought on an "occurrence" form under a master liability policy with the following Limits of Liability, Coverages, and Terms:

- (a) Limit of Liability:  
\$2,000,000 Combined Single Limit any one occurrence and \$4,000,000 in the aggregate
- (b) Deductible:  
The Contractor and Subcontractors of any tier will be responsible for a deductible of \$10,000 each claim for property damage claims only, to be borne by the insured who becomes legally obligated to pay the damages).
- (c) Coverage and Terms:
  - (i) Occurrence Basis, CG 00 01 (12/04 edition date or its equivalent);
  - (ii) Products and Completed Operations (Three Year Term); with a term aggregate of \$4,000,000;
  - (iii) Personal and Advertising Injury Liability \$2,000,000 per occurrence subject to the General Aggregate.
- (d) Exclusions:
  - (i) Expected or Intended Injury;
  - (ii) Contractual Liability;
  - (iii) Liquor Liability;

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- (iv) Workers' Compensation and Similar Laws;
  - (v) Employer's Liability;
  - (vi) Pollution;
  - (vii) Aircraft, Auto or Watercraft
  - (viii) Mobile Equipment;
  - (ix) War;
  - (x) Damage to Property;
  - (xi) Damage To Your Product;
  - (xii) Damage To Your Work;
  - (xiii) Damage To Impaired Property Or Property Not Physically Injured;
  - (xiv) Recall of Products, Work Or Impaired Property;
  - (xv) Electronic Data;
  - (xvi) Exclusion- Engineers, Architects Or Surveyors Professional Liability, form CG 22 43;
- (e) Exclusions for Medical Payments:
- (i) Any Insured;
  - (ii) Hired Person;
  - (iii) Injury On Normally Occupied Premises;
  - (iv) Workers Compensation And Similar Laws;
  - (v) Athletic Activities;
  - (vi) Products-Completed Operations Hazard;
  - (vii) Coverage A Exclusions
- (f) Exclusions for Personal And Advertising Injury Liability:
- (i) Knowing Violation Of Rights Of Another;
  - (ii) Material Published With Knowledge Of Falsity;
  - (iii) Material Published Prior To Policy Period;
  - (iv) Criminal Acts;
  - (v) Contractual Liability;
  - (vi) Breach Of Contract;
  - (vii) Quality Or Performance Of Goods- Failure To Conform To Statements;
  - (viii) Wrong Description Of Prices
  - (ix) Infringement Of Copyright, Patent, Trademark Or Trade Secret;
  - (x) Insureds In Media And Internet Type Business;
  - (xi) Electronic Chatrooms Or Bulletin Boards;
  - (xii) Unauthorized Use Of Another's Name Or Product;
  - (xiii) Pollution;
  - (xiv) Pollution- Related;
  - (xv) War;
- (g) Additional Forms and Endorsements:
- (i) Declarations Pages

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- (ii) IL 0017, Common Policy Conditions
- (iii) IL 0003, Calculation of Premium
- (iv) CG 0062, War Liability Exclusion
- (v) CG 0200, Illinois Changes - Cancellation and Non-renewal
- (vi) CG 2144, Limitation of Coverage to Designated Premises or Project (Excludes all workplaces except work performed in and from the Project Site and operations necessary or incidental to the Project).
- (vii) Additional Insured Endorsements – Where required by written contract or agreement, coverage to apply on a primary basis.
  - i. CG 2010 0704, Additional Insureds – Owners, Lessees or Contractors
  - ii. CG 2037 0704, Additional Insureds – Owners, Lessees or Contractors – Completed Operations
  - iii. CG 2015 0704 Additional Insured - Vendors
  - iv. CG 2034 0704 Additional Insured - Lessor of Leased Equipment
  - v. CG 2012 0798 Additional Insured-State or Political Subdivisions-Permits
- (viii) CG 2404 1093, Waiver of Transfer of Rights of Recovery Against Others to Us (Blanket as required by written contract or agreement.)
- (ix) Amendment of Duties in the Event of Occurrence, Offense, Claim or Suit (duties under the policy in the event of a claim)
- (x) Unintentional Errors and Omissions (Including Claim Reporting) (Unintentional misrepresentations prior to policy inception will not impair your rights under the policy.)
- (xi) Consent to Transfer of Your Rights and Duties (Transfer of rights and duties for premium payment and reimbursement of losses to the City of Chicago.)
- (xii) No exclusion for "X, C, U" hazards. (Explosion, collapse, underground.)
- (xiii) Named Insured Endorsement (Broad/automatic coverage)
- (xiv) Complete Operations Extension Endorsement – three year term
- (xv) Amendment of Fellow Employee Exclusion (Provides coverage for supervisory employees)
- (xvi) Composite Rating Plan Premium Endorsement
- (xvii) Large Risk Rating Plan/Deductible Endorsement (Program large deductible endorsement – applies only to the City of Chicago.)
- (xviii) Deductible Endorsement – Property Damage (applies to property damage only, \$10,000 each claim, to be borne by

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- the insured who becomes legally-obligated to pay the damages.)
- (xix) Notice of Cancellation (60 days except nonpayment of premium.)
  - (xx) Additional Definitions Endorsement (Defines Contractor, Project Site and Project.)
  - (xxi) CG 2417 1001, Contractual Liability - Railroads (Amend Definition of Insured Contract to Delete Exclusion within 50 feet of a Railroad)
  - (xxii) Delete Exclusion for assumed liability from the Personal Injury coverage part
  - (xxiii) Knowledge of Occurrence (Risk Manager, City of Chicago)
  - (xxiv) Knowledge of Occurrence (Knowledge by one insured does not constitute knowledge by any other insured.)
  - (xxv) Notice of Occurrence (Notice of a claim under the workers compensation policy that later develops into a liability claim shall not be deemed late notice.)
  - (xxvi) Extended Bodily Injury or Property Damage (use of reasonable force to protect persons or property.)
  - (xxvii) Exclusion for Continuing or Progressive Bodily Injury, Personal and Advertising Injury or Property Damage
  - (xxviii) Damage to Property Exclusion Modified (Excludes coverage for claims insured under the builders risk insurance policy.)
  - (xxix) Asbestos Exclusion
  - (xxx) Silica, Dust and Particulate Matter Exclusion
  - (xxxi) Mold/Fungus Exclusion
  - (xxxii) Radioactive Matter Exclusion
  - (xxxiii) CG 2155 0999 (or its equivalent), Total Pollution Exclusion with Hostile Fire Exception
  - (xxxiv) Total Lead Exclusion
  - (xxxv) EIFS (Exterior Insulation Finish Systems) Exclusion
  - (xxxvi) CG 2279 0798 (or its equivalent), Exclusion - Contractors Professional Liability
  - (xxxvii) CG 2147-0798 (or its equivalent), Employment-Related Practices Exclusion
  - (xxxviii) Exclusion -- Violation of Statutes in Connection with Sending, Transmitting or Communicating any Material or Information
  - (xxxix) Terrorism exclusion
  - (xl) IL 0021 0702(or its equivalent), Nuclear Energy Liability Exclusion (Broad Form)



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## 3) Excess

Excess Liability Insurance limits of not less than \$100,000,000 per occurrence and aggregate, if commercially available at a reasonable price, excess of Commercial General Liability including Completed Operations and Employers Liability.

Coverage will be provided on an "occurrence" form under a master liability policy with the following Limits of Liability, Coverages, and Terms:

- (a) Additional Forms and Endorsements
- (i) Excess Liability Declarations Page
  - (ii) Excess Liability Policy Form
  - (iii) Insurer Policy Jacket
  - (iv) Schedule of Underlying Insurance
  - (v) Specified/Designated Location and/or Project Endorsement
  - (vi) Completed Operations Extension Endorsement (three years)
  - (vii) Terrorism Risk Insurance Act if available after December 31, 2005.
  - (viii) Contractors Professional Liability Exclusion
  - (ix) Care, Custody or Control Exclusion
  - (x) Automobile Liability Exclusion
  - (xi) EIFS (Exterior Insulation Finish Systems) Exclusion
  - (xii) Exclusion for Continuing or Progressive Bodily Injury, Personal and Advertising Injury or Property Damage
  - (xiii) Damage to Property Exclusion Modified (Excludes coverage for claims insured under the builders risk insurance policy.)
  - (xiv) Asbestos Exclusion
  - (xv) Silica, Dust and Particulate Matter Exclusion
  - (xvi) Mold/Fungus Exclusion
  - (xvii) Radioactive Matter Exclusion
  - (xviii) Total Pollution Exclusion with Hostile Fire Exception
  - (xix) Total Lead Exclusion
  - (xx) Employment-Related Practices Exclusion
  - (xxi) Nuclear Energy Liability Exclusion (Broad Form)
  - (xvii) Terrorism Exclusion except as covered under the Terrorism Risk Insurance Act.

## 4) All Risk Builders Risk

Builder's Risk Insurance is being sought to provide Cause of Loss, Special (All-Risk) coverage on a replacement cost basis with a loss limit to be determined by the City, but in

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no event less than the maximum probable maximum loss of all projects insured under the policy. The policy will include: 1) coverage for all materials, equipment, machinery, fixtures, and furniture; labor, reasonable overhead and profit; and forms, form work and temporary structures to be "used up" in the construction, 2) coverage for loss arising out of testing, including "hot" testing; resulting damage arising out of error or omission in design, plans or specifications; and resulting damage arising out of faulty or defective workmanship or materials, freezing, and collapse coverage, 3) a waiver of subrogation for Contractor and all Subcontractors of any tier, 4) permission for use or occupancy of the Work while insured by the policy, 5) sub-limits for off-premises utility interruption and changes in ordinances or laws and resulting increased cost of construction, 6) sub-limits of each claim for off-premises storage of materials, materials in-transit to the job-site and extra expense, 7) sub-limits for flood and earthquake coverage and 8) debris removal as 25% of the loss. In addition to policy sublimits and the standard policy exclusions, the policy may contain an exclusion for acts of terrorism.

The Builder's Risk will not provide coverage against loss, including by theft or disappearance, of any materials (unless the materials are to be incorporated into the Project), tools, or equipment of the Contractor or any tier of Subcontractor, or any other person furnishing labor or materials for the Work.

Contractor and all tiers of Subcontractors shall be responsible for the first \$25,000 of each and every loss, except for flood insurance coverage in which Contractor and Subcontractors of any tier shall be responsible for the first \$100,000 of each and every loss, the policy deductible.

- (a) Policy exclusions
  - (i) Consequential loss
  - (ii) Faulty or defective workmanship (but resulting damage from an insured peril is not excluded)
  - (iii) Faulty or defective error in design (but resulting damage from an insured peril is not excluded.)
  - (iv) Wear and tear, gradual deterioration, inherent vice, latent defect, corrosion, rust, dampness or dryness of atmosphere (but resulting damage from an insured peril is not excluded.)
  - (v) Hostile or warlike action
  - (vi) Insurrection, rebellion, revolution, etc.
  - (vii) Seizure or destruction of property by order of governmental authority
  - (viii) Loss or damage from nuclear reaction or radiation
  - (ix) Loss due to disappearance or inventory shortage
  - (x) Infidelity or dishonesty of the insured or any of their employees
  - (xi) Expenses or fines imposed by a governmental agency, court or other authority
  - (xii) Loss caused by contaminants or pollutants

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- (xiii) Any form of fungus, mold or mildew
- (xiv) Asbestos removal
- (xv) Loss or damage covered by a guarantee or warranty by any manufacturer or supplier
- (xvi) Loss caused by cessation of work unless due to a covered peril
- (xvii) Subsidence, settling, cracking, expansion, contraction or shrinkage of walls, floors, ceilings, buildings, foundations, patios, walkways, driveways, runways, roadways or pavement
- (xviii) With respect to trees, plants, shrubs and landscaping, usual insect, rodent and weather exclusions apply.
- (xix) Erosion of graded, finished or rough grade from expected or predictable precipitation and/or water runoff
- (xx) Software loss including programming errors
- (xxi) Ordinance or Law
- (xxii) Loss of Use or Loss of Market
- (xxiii) Hidden or latent defect, mechanical breakdown or failure
- (b) Additional Forms and Endorsements
  - (i) Insurer Policy Jacket
  - (ii) Policy Declarations Page
  - (iii) Builders Risk Coverage Part
  - (iv) Common Policy Conditions
  - (v) Named Insured Endorsement
  - (vi) Location Schedule

## 5) Contractor's Pollution Liability

Contractors' Pollution Liability is being sought with limits of liability of \$10,000,000 each claim and aggregate for the term of and insuring all of the projects under the OMP with a deductible to be borne by Contractor and its Subcontractors of any tier of \$25,000 each claim. The policy may be written either on an occurrence form or, in a claims made form, and if a claims made form, the policy will include an extended discovery endorsement with a four year term.

The policy will provide coverage for sums that Contractor and Subcontractors of any tier become legally obligated to pay for loss as a result of claims for bodily injury, property damage or clean-up costs caused by pollution incident. Pollution incidents will include the discharge, dispersal, release or escape of any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, medical waste, waste materials, lead, hydrocarbons and microbial matter, including fungi, bacterial or viral matter which reproduces through release of spores or the splitting of cells or other means, including but not limited to, mold, mildew and viruses, whether or not such microbial matter is living.

- (a) Forms and Endorsements

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- (i) Insurer Policy Jacket
- (ii) Contractor's Pollution Liability Policy Declarations Page
- (iii) Contractor's Pollution Liability Insurance Policy

i. Policy Exclusions:

1. Contractual Liability
  2. Employers Liability
  3. Fines and Penalties
  4. Insured's internal expenses arising from a claim
  5. Damage to Insured's property
  6. Intentional Acts
  7. Known Conditions
  8. Non-owned disposal sites, unless specifically scheduled
  9. Nuclear Hazards
  10. Products Liability
  11. Professional Liability
  12. Claims arising out of the Use of Vehicles except as used in the performance of your operations at the project site
  13. War or hostile acts
  14. Workers Compensation
  15. Knowing or willful noncompliance with statutes, regulations, etc.
  16. Claims arising out of transportation beyond the boundaries of the project site.
  17. Terrorism except as covered under the Terrorism Risk Insurance Act.
- (iv) Broad Named Insured
  - (v) Duties of First Named Insured
  - (vi) Definition of Insured
  - (vii) Insured versus Insured claims exclusion
  - (viii) Joint Defense Endorsement
  - (ix) Amendment to Transportation Exclusion
  - (x) Completed Operations Extension - three years
  - (xi) Mold/Fungus (claims-made coverage form)
  - (xii) Terrorism Risk Insurance Act if available after December 31, 2005.
  - (xiii) EIFS (Exterior Insulation Finish Systems) Exclusion
  - (xiv) Blanket Waiver of Subrogation as required by written contract or agreement
  - (xv) Illinois Service of Suit Endorsement

6) Railroad Protective Liability

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When any work is to be done adjacent to or on railroad or transit property, the City is seeking to will procure Railroad Protective Liability Insurance in the name of railroad or transit entity, with limits of \$2,000,000 per occurrence and \$6,000,000 in the aggregate.

- (a) Forms and Endorsements
  - (i) Insurer Policy Jacket
  - (ii) Railroad Protective Liability Policy Declarations Page
  - (iii) Railroad Protective Liability Coverage Part
    - i Exclusions
      - 1. Expected or Intended injury
      - 2. Contractual liability
      - 3. Completed Work
      - 4. Acts or Omissions of the insured (Railroad)
      - 5. Workers Compensation
      - 6. Pollution
      - 7. Damage to owned, leased or entrusted property
      - 8. Nuclear incidents
  - (iv) Illinois Service of Suit Endorsement
  - (v) Securities and Financial Interest Exclusion
  - (vi) War Exclusion
  - (vii) Asbestos Exclusion

## B. Contractor's and Subcontractors of any tier' Responsibilities:

The Contractors and Subcontractors of any tier are required to cooperate with the City or its representatives, and insurance carriers with regard to the administration and operation of the OCIP. The Contractor's and Subcontractors of any tier responsibilities shall include, but not be limited to:

- (1) Complying with applicable construction safety requirements, the OMP Construction Safety Manual, the OCIP Project Manual and Claims Procedures;
- (2) Providing necessary contract, operations and insurance information;
- (3) Immediately notifying the City of all Subcontractors of any tier upon award of a subcontract prior to start of Subcontractor's work;
- (4) Maintaining payroll records and other records as necessary for premium audit;
- (5) Immediately notifying the City when any Contractor or Subcontractor of any tier provided coverages have been canceled, materially changed, or non-renewed;
- (6) Timely completion of OCIP Forms; and
- (7) All enrolled Contractors and Subcontractors of any tier in the OCIP must submit monthly payroll reports by workers compensation class codes to comply with the National Council of Compensation Insurance Premium Audit Rules certified by Contractor and Subcontractors of any tier to their accuracy.

## C. ADDITIONAL REQUIREMENTS

The City and Contractor waive their rights of subrogation against each other and against any

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other parties that are covered by the OCIP insurance policies ("Covered Parties") for any injury to persons or loss of or damage to property where such injury, loss or damage is insured (or is required by this Contract to be insured) either under an OCIP policy or another insurance policy (collectively, "Covered Losses"). Contractor shall require its insurers and its Subcontractors of any tier and their insurers to waive their rights of subrogation against each other, the City and all other Covered Parties for such Covered Losses. The City shall require its insurers to waive their rights of subrogation against each other and against Covered Parties, including Contractor and its eligible Subcontractors of any tier, for Covered Losses and shall include a similar provision in its contracts with other Covered Parties. Nothing herein precludes a party from seeking recovery from other parties for injuries, losses and damages that are not Covered Losses (to the extent that the party seeking recovery has not otherwise waived such claims against the other parties) or the City from collecting a deductible that is payable by the Contractor or a Subcontractor of any tier in accordance with the insurance requirements of this Contract.

## II. INSURANCE TO BE PROVIDED IN EVENT OCIP IS TERMINATED OR REDUCED

The Contractor and all Subcontractors of any tier shall promptly obtain quotations for appropriate replacement insurance coverage as listed below. If such quotations are reasonably acceptable to City, then Contractor and Subcontractors of any tier shall promptly bind such replacement coverage. If quotations obtained by Contractor or any of the Subcontractors of any tier are not reasonably acceptable to the City, the Contractor will work with the City to identify appropriate cost for replacement insurance coverage that is reasonably acceptable to the City. Except as provided in Section I, the actual documented cost of such replacement insurance will be reimbursed by the City. Also, if replacement insurance is required due to the duration of the Work exceeding the duration of the term for the OCIP for reasons not deemed to be excusable delays as defined by the City, then the cost of such replacement insurance shall be at Contractor and Subcontractors of any tier expense.

Contractor and all eligible Subcontractors of any tier will be required to provide copies of their current declaration pages and premium rate pages for their workers' compensation, general liability and umbrella/excess liability policies and railroad protective if applicable, to verify the rates they are charging. If Contractor or Subcontractors of any tier have insurance policies with deductibles or other loss sensitive programs, they must provide copies of the past five years audited workers compensation payrolls, currently dated claim loss runs for those same five years for their workers compensation, general liability, umbrella/excess liability and railroad protective and copies of their deductible or program agreement with their insurance carrier to support the calculation of the loss rate and fixed cost (premium) rate being utilized.

The Contractor must provide and maintain at Contractor's own expense, until Final Completion of work and during the time period following final completion if Contractor is required to return and perform any additional work, the insurance coverages and requirements specified below, insuring all operations related to the Contract.

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## A. Insurance To Be Provided

### 1) Workers Compensation and Employers Liability

Workers Compensation as prescribed by applicable law covering all employees who are to provide a service under this contract and Employers Liability coverage with limits of not less than \$1,000,000 each accident or illness; \$1,000,000 for disease.

Coverage must include, at a minimum, the coverage described in the Section I or the actual coverage provided by the OCIP which ever is greater. All policy terms and conditions must be approved by the City prior to placement of coverage.

### 2) Commercial General Liability

Commercial General Liability Insurance or equivalent with limits of not less than \$1,000,000 per occurrence/ per project for bodily injury, personal injury, and property damage liability. Coverage must include the following: All premises and operations, products/completed operations (maintained for a minimum of five (5) years following Final Completion), explosion, collapse, underground, separation of insureds, defense, and contractual liability. The City of Chicago, DMJM Aviation Partners JV, Parsons Brinkerhoff Construction Services, and the Architect/Engineer are to be named as an additional insured and others as required by the City on a primary, non-contributory basis for any liability arising directly or indirectly from the work.

Coverage must include, at a minimum, the coverage described in the Section I or the actual coverage provided by the OCIP which ever is greater. All policy terms and conditions must be approved by the City prior to placement of coverage.

### 3) Excess

Umbrella/Excess Insurance limits of not less than \$50,000,000 per occurrence and \$50,000,000 per project annual aggregate or a lesser amount as deemed reasonable by City's Risk Manager, excess of Commercial General Liability including Complete Operations and Employers Liability Coverage must include the following: All premises and operations, products/completed operations (maintained for a minimum of five (5) years following Final Completion), explosion, collapse, underground, separation of insureds, defense, and contractual liability. The City of Chicago, DMJM Aviation Partners JV, Parsons Brinkerhoff Construction Services, and the Architect/Engineer are to be named as an additional insured and others as required by the City on a primary, non-contributory basis.

Subcontractors of any tier performing work for Contractor must maintain limits of not less than \$5,000,000 with the same terms in this subsection.

Coverage must include, at a minimum, the coverage described in the Section I or the

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actual coverage provided by the OCIP which ever is greater. All policy terms and conditions must be approved by the City prior to placement of coverage.

#### 4) All Risk Builders Risk

The Contractor must provide Builder's Risk providing Cause of Loss, Special (All-Risk) coverage on a replacement cost basis with a loss limit to be determined by the City, but in no event less than the maximum probable maximum loss of the Project insured under the policy. The policy will include 1) coverage for all materials, equipment, machinery, fixtures, and furniture; labor, reasonable overhead and profit; and forms, form work and temporary structures to be "used up" in the construction, 2) coverage for loss arising out of testing, including "hot" testing; resulting damage arising out of error or omission in design, plans or specifications; and resulting damage arising out of faulty or defective workmanship or materials, freezing, and collapse coverage, 3) a waiver of subrogation for Contractor and all Subcontractors of any tier of every tier, 4) permission for use or occupancy of the Work while insured by the policy, 5) sub-limits for off-premises utility interruption and changes in ordinances or laws and resulting increased cost of construction, 6) sub-limits of each claim for off-premises storage of materials, materials in-transit to the job-site and extra expense, 7) sub-limits for flood and earthquake coverage and 8) debris removal as 25% of the loss. In addition to policy sublimits and the standard policy exclusions, the policy may contain an exclusion for acts of terrorism. The City of Chicago is to be named insured and loss payee.

Coverage must include, at a minimum, the coverage described in the Section I or the actual coverage provided by the OCIP which ever is greater. All policy terms and conditions must be approved by the City prior to placement of coverage.

#### 5) Contractor's Pollution Legal Liability

When any work is performed which may cause a pollution exposure, Contractor must provide Contractor's Pollution Legal Liability with limits of not less than \$5,000,000 per occurrence. The policy will provide coverage for sums that Contractor and Subcontractors of any tier become legally obligated to pay for loss as a result of claims for bodily injury, property damage, environmental cleanup, remediation, transportation and disposal caused by pollution condition and other losses caused by pollution conditions that arise from the Work. Pollution conditions will include the discharge, dispersal, release or escape of any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to asbestos, smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, medical waste, waste materials, lead, hydrocarbons and microbial matter, including fungi, bacterial or viral matter which reproduces through release of spores or the splitting of cells or other means, including but not limited to, mold, mildew and viruses, whether or not such microbial matter is living.

When the policies are renewed or replaced, the policy retroactive date must coincide with or precede, start of work on the Contract. A claims-made policy which is not renewed or replaced must have an extended reporting period of three (3) years. The City of Chicago,



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DMJM Aviation Partners JV, Parsons Brinkerhoff Construction Services, and the Architect/Engineer are to be named as an additional insured and others as required by the City on a primary, non-contributory basis.

Subcontractors of any tier performing work for Contractor must maintain limits of not less than \$1,000,000 with the same terms in this subsection.

Coverage must include, at a minimum, the coverage described in the Section I or the actual coverage provided by the OCIP which ever is greater. All policy terms and conditions must be approved by the City prior to placement of coverage.

## 6. Railroad Protective Liability

When any work is to be done adjacent to or on railroad or transit property, Contractor must provide, with respect to the operations that Contractor or Subcontractors of any tier perform, Railroad Protective Liability Insurance in the name of railroad or transit entity. The policy must have limits of not less than \$2,000,000 per occurrence and \$6,000,000 in the aggregate for losses arising out of injuries to or death of all persons, and for damage to or destruction of property, including the loss of use thereof.

Coverage must include, at a minimum, the coverage described in the Section I or the actual coverage provided by the OCIP which ever is greater. All policy terms and conditions must be approved by the City prior to placement of coverage.

## B. Additional Requirements

The Contractor must furnish the City of Chicago, O'Hare Modernization Program, 10510 West Zenke Road, 60666, original Certificates of Insurance, or such similar evidence, to be in force on the date of this Contract or beginning or continuation of work, and Renewal Certificates of Insurance, or such similar evidence, if the coverages have an expiration or renewal date occurring during the term of this Contract. The Contractor must submit evidence of insurance on the City of Chicago Insurance Certificate Form (copy attached) or equivalent prior to Contract award. The receipt of any certificate does not constitute agreement by the City that the insurance requirements in the Contract have been fully met or that the insurance policies indicated on the certificate are in compliance with all Contract requirements. The failure of the City to obtain certificates or other insurance evidence from Contractor showing compliance with the requirements of the contract is not a waiver by the City of any requirements for the Contractor to obtain and maintain the specified coverages. The Contractor shall advise all insurers of the Contract provisions regarding insurance. Non-conforming insurance does not relieve Contractor of the obligation to provide insurance as specified herein. Nonfulfillment by the Contractor of the insurance conditions constitutes a default of the Contract, and the City retains the right to stop work until proper evidence of insurance is provided, obtain the required insurance at the Contractor's cost and either recover the amount spent or deduct it from any amounts due the Contractor or to exercise any remedies available to the City under the contract.

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The insurance must provide for 60 days prior written notice to be given to the City in the event coverage is substantially changed, canceled, or non-renewed.

Any deductibles or self-insured retentions on referenced insurance coverages must be borne by Contractor.

The Contractor hereby waives and agrees to require their insurers to waive their rights of subrogation against the City of Chicago, its employees, elected officials, agents, or representatives.

The coverages and limits furnished by Contractor in no way limit the Contractor's liabilities and responsibilities specified within the Contract or by law.

Any insurance or self-insurance programs maintained by the City of Chicago do not contribute with insurance provided by the Contractor under the Contract.

The required insurance to be carried is not limited by any limitations expressed in the indemnification language in this Contract or any limitation placed on the indemnity in this Contract given as a matter of law.

If Contractor is a partnership, joint venture or a limited liability company, the insurance policies must name the partnership, joint venture or the limited liability company as a named insured.

The Contractor must require all Subcontractors of any tier to provide the insurance required herein or Contractor may provide the coverages for Subcontractors of any tier. All Subcontractors of any tier are subject to the same insurance requirements of Contractor unless otherwise specified in this Contract.

If Contractor or subcontractor of any tier desires additional coverages, the party desiring the additional coverages is responsible for the acquisition and cost.

The City of Chicago Risk Management Division maintains the right to modify, delete, alter or change these requirements.

### **III. INSURANCE TO BE PROVIDED BY CONTRACTOR FOR COVERAGE NOT INCLUDED IN THE OCIP AND INSURANCE TO BE PROVIDED FOR CONTRACTORS NOT INSURED BY THE OCIP**

The OCIP does not include activities of the Contractor and Subcontractors of any tier not solely related to the Work including but not limited to, home and branch office activities off-site, warehouse or manufacturing facilities, the interest of vendors, suppliers, manufacturers and others who merely supply or transport personnel, materials, parts or equipment or any other items to or from the Project Site and any other activities of Contractors not solely related to the Work.

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The Contractor must provide and maintain at Contractor's own expense, until Final Completion and during the time period following Final Completion if Contractor is required to return and perform any additional work, including warranty or any other repair work, the insurance coverages and requirements specified below, insuring all operations related to the Contract.

## A. Insurance to Be Provided

### 1) Workers Compensation and Employers Liability

Workers Compensation Insurance as prescribed by applicable law, covering all employees who are to perform work under this Contract and not covered by the OCIP and Employers Liability coverage with limits of not less than \$500,000 each accident or illness; \$500,000 for disease. Coverage shall include other states enforcement, alternate employer and voluntary compensation.

### 2) Commercial General Liability (Primary and Umbrella)

Commercial General Liability Insurance or equivalent for operations not covered by the OCIP with limits of not less than \$5,000,000 per occurrence for bodily injury, personal injury and property damage liability. Coverages must include the following: All premises and operations, products/completed operations (maintained for a minimum of 2 (two) years following final completion), separation of insureds, defense and contractual liability. The City of Chicago, DMJM Aviation Partners JV, Parsons Brinkerhoff Construction Services, and the Architect/Engineer are to be named as an additional insured and others as required by the City on a primary, non-contributory basis for any liability arising directly or indirectly from the work.

Subcontractors of any tier performing work for Contractor must maintain limits of not less than \$2,000,000 with the same terms in this subsection.

### 3) Automobile Liability (Primary and Umbrella)

When any motor vehicles (owned, non-owned and hired) are used in connection with Services to be performed, Contractor must provide Automobile Liability Insurance with limits of not less than \$5,000,000 per occurrence for bodily injury and property damage. The City of Chicago, DMJM Aviation Partners JV, Parsons Brinkerhoff Construction Services, and the Architect/Engineer are to be named as an additional insured and others as required by the City on a primary, non-contributory basis.

### 4) Professional Liability Insurance (Errors & Omissions)

The Contractor and Subcontractors of any tier whose contracts require design services or other professional services will maintain professional liability insurance with limits of not less than \$2,000,000 each claim, providing coverage for claims allegedly arising out of errors, omissions, negligent acts or breach of professional duties due to their performance, or failure to perform services

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including design, architectural, engineering, land surveying or interior design. When the policies are renewed or replaced, the policy retroactive date must coincide with or precede, start of work on the Contract. A claims-made policy, which is not renewed or replaced, must have an extended reporting period of two (2) years.

Subcontractors of any tier performing work for Contractor must maintain limits of not less than \$1,000,000 with the same terms in this subsection.

5) Valuable Papers

When any plans, designs, drawings, specifications, data, media, and any other documents are produced or used under this Contract, Valuable Papers Insurance must be maintained in an amount to insure against any loss whatsoever, and must have limits sufficient to pay for the re-creation and reconstruction of such records.

6) Property

Contractor will purchase and maintain Property Insurance, covering all property owned, leased, borrowed, or in control of, Contractor which is not to be incorporated into the Work, including, without limitation, tools, equipment and materials. Contractor and all Subcontractors of any tier shall maintain Contractors' Equipment Floater Insurance for owned, leased, or borrowed equipment including equipment under its care, custody and control.

The City shall not be responsible for, nor shall they insure, the property of Contractor or any subcontractor of any tier, including, but not limited to, tools and equipment, located at the job site which is not intended to be incorporated into the work.

7) Watercraft and Aircraft Liability

In the event that the Contractor or Subcontractor of any tier utilizes watercraft and/or aircraft in connection with the work, Contractor or Subcontractor of any tier shall maintain protection and indemnity coverage and/or aircraft liability coverage in amounts not less than \$10,000,000 per occurrence, combined single limit for bodily injury liability and Property Damage. The City of Chicago, DMJM Aviation Partners JV, Parsons Brinkerhoff Construction Services, and the Architect/Engineer are to be named as an additional insured and other, as required by the City on a primary, non-contributory basis.

## B. ADDITIONAL REQUIREMENTS

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The Contractor must furnish the City of Chicago, O'Hare Modernization Program, 10516 West Zemke Road, 60666, original Certificates of Insurance, or such similar evidence, to be in force on the date of this Contract or beginning or continuation of work, and Renewal Certificates of Insurance, or such similar evidence, if the coverages have an expiration or renewal date occurring during the term of this Contract. The Contractor must submit evidence of insurance on the City of Chicago Insurance Certificate Form (copy attached) or equivalent prior to Contract award. The receipt of any certificate does not constitute agreement by the City that the insurance requirements in the Contract have been fully met or that the insurance policies indicated on the certificate are in compliance with all Contract requirements. The failure of the City to obtain certificates or other insurance evidence from Contractor showing compliance with the requirements of the contract is not a waiver by the City of any requirements for the Contractor to obtain and maintain the specified coverages. The Contractor shall advise all insurers of the Contract provisions regarding insurance. Non-conforming insurance does not relieve Contractor of the obligation to provide insurance as specified herein. Nonfulfillment by the Contractors of the insurance conditions constitutes a default of the Contract, and the City retains the right to stop work until proper evidence of insurance is provided, obtain the required insurance at the Contractor's cost and either recover amount spent or deduct it from any amounts due the Contractor or to exercise any remedies available to the City under the contract.

The insurance must provide for 60 days prior written notice to be given to the City in the event coverage is substantially changed, canceled, or non-renewed.

Any deductibles or self-insured retentions on referenced insurance coverages must be borne by Contractor.

The Contractor hereby waives and agrees to require their insurers to waive their rights of subrogation against the City of Chicago, its employees, elected officials, agents, or representatives.

The coverages and limits furnished by Contractor in no way limit the Contractor's liabilities and responsibilities specified within the Contract or by law.

Any insurance or self-insurance programs maintained by the City of Chicago do not contribute with insurance provided by the Contractor under the Contract.

The required insurance to be carried is not limited by any limitations expressed in the indemnification language in this Contract or any limitation placed on the indemnity in this Contract given as a matter of law.

If Contractor is a partnership, joint venture or a limited liability company, the insurance policies must name the partnership, joint venture or the limited liability company as a named insured.

The Contractor must require all Subcontractors of any tier to provide the insurance required herein. Contractor may provide the coverages for Subcontractors of any tier. All Subcontractors of any tier are subject to the same insurance requirements of Contractor unless otherwise specified in this Contract.

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If Contractor or subcontractor of any tier desires additional coverages, the party desiring the additional coverages is responsible for the acquisition and cost.

The City of Chicago Risk Management Division maintains the right to modify, delete, alter or change these requirements.

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## MORTGAGEE'S CONSENT AND SUBORDINATION

The undersigned ("Mortgagee"), represents that it is the mortgagee under that certain Mortgage dated February 28, 2005 and recorded March 4, 2005 as document number 0506304144 and the Assignment of Rents recorded that same day as document number 0506304145 (together hereinafter "Mortgage") and hereby consents to the easements attached hereto as Exhibits A,B, C and D which are incorporated herein by this reference ("Easement Agreements"). Mortgagee agrees to subordinate the Mortgage to said Easement Agreements and further agrees that said Easement Agreements shall not be terminated on any foreclosure on any parcel of land covered by said Easement Agreements

MORTGAGEE:

AMERICAN COMMUNITY BANK AND TRUST

By: [Signature]

Name: ROBERT A. HETTERMANN

It's: V.P.

Date: 3/20/09

STATE OF Illinois

COUNTY OF McHenry

On this 20 day of March 2009, before me, a Notary Public within and for the State and County aforesaid, do hereby certify that on this day appeared before me Robert Hetterman, who acknowledged himself/herself to be VP of American Community Bank and Trust Company a Illinois corporation, who being duly sworn, did acknowledge the due execution of the forgoing instrument in writing by himself/herself on behalf of said parties, as the act and deed of said parties, by authority duly given.

WITNESS my hand and official seal or stamp this 20 day of March, 2009.

[Signature]

Notary Public

My commission expires:

