

IN THE MATTER OF: James McHugh Construction Co.
FTA-2014-0551

ADMINISTRATIVE SETTLEMENT AND COMPLIANCE AGREEMENT

I. Parties

This Administrative Settlement and Compliance Agreement (“Agreement”) is entered into between the Federal Transit Administration (FTA) and the Federal Highway Administration (FHWA), Operating Administrations of the United States Department of Transportation (DOT), (collectively DOT), the Chief Procurement Officer for the Illinois Department of Transportation (IDOT) and the Chief Procurement Officer for General Services for the State of Illinois, (collectively “State CPOs”), the City of Chicago (“City”), acting through its Corporation Counsel and its Chief Procurement Officer, and James McHugh Construction Co. (McHugh) (FTA, FHWA, the State CPOs, the City, and McHugh are referred to generally as the “Parties”) under the authority of and in accord with Executive Order 12549, the DOT implementing regulations found at 2 C.F.R. Part 180 as adopted by 2 C.F.R. Part 1200, DOT Order 4200.5E and FHWA Order No. 2000.2A, and under the authority of and in accord with 30 ILCS 500, *et seq.*, and 605 ILCS 10, *et seq.*, and the implementing regulations found at 44 Ill. Admin. Code 1.5560 and 6.480-6.690, and under the authority and in accord with Chicago Municipal Code, §§ 2-92-010 and 2-60-020, and the Illinois Municipal Purchasing Act, 65 ILCS 5/8-10-1, *et seq.*

II. Background

A. From 2004 to 2011, McHugh worked as a prime contractor on seven (7) construction projects in Illinois for transit and highway facilities funded in whole or in part with federal and/or State of Illinois funds. The contracts included Washington Boulevard and Monroe Street over I-90/94 in Chicago (Chicago Department of Transportation (“CDOT”) E-1-001), the Chicago Transit Authority (“CTA”) Red Line Howard Station (C05FR100178574), the North Avenue Bridge Reconstruction over the North Branch of the Chicago River in Chicago (CDOT E-5-422), the CTA Brown Line (C05FI100209763), the Eastbound I-88/Fox River Bridge in North Aurora (Illinois State Toll Highway Authority (“ISTHA”) I-06-5472), the Westbound I-88/Fox River Bridge in North Aurora (ISTHA I-06-5462), and the Wacker Drive Viaduct Reconstruction from Randolph Street to Monroe Street in Chicago (CDOT E-9-127). DOT, the State CPOs, and the City have considered allegations that on these seven (7) Illinois projects, McHugh falsely claimed credit for participation by disadvantaged business enterprises, including Perdel Contracting Corporation (Perdel) and Accurate Steel Installers, Inc. (Accurate). McHugh allegedly used Perdel and Accurate as pass-through entities to create the false appearance that Perdel and Accurate worked as disadvantaged business enterprises providing commercially useful functions on these projects. McHugh made allegedly false claims for payment to DOT, IDOT, ISTHA, and other agencies, in certain cases through CDOT and the CTA, and so violated the federal and Illinois false claims acts. (The acts described in this Paragraph II.A, limited solely to McHugh’s performance under the seven (7) named contracts, are hereinafter referred to generally as the “Covered Conduct”).

B. Under 2 C.F.R. §180.635, the DOT is authorized to administratively settle a suspension action if settlement is determined to be in the best interests of the Federal Government. Under 44 Ill. Admin. Code 1.5560 and 6.480-6.690, the State CPOs are authorized to administratively settle and resolve disputes. Under Chicago Municipal Code §§, 2-92-010 and 2-60-020, and under the Illinois Municipal Purchasing Act, 65 ILCS 5/8-10-1, *et seq.*, the City, through its Corporation Counsel and Chief Procurement Officer, is authorized to administratively settle and resolve disputes.

C. Without admission of criminal, civil, or any other liability on the part of McHugh, McHugh recognizes and understands the seriousness of the alleged Covered Conduct described in section II.A above, and has agreed to undertake, and has undertaken already, remedial measures to be compliant in federal, state, and local governments and public entities in Illinois' disadvantaged, minority- and women-owned business enterprise and equivalent ("DBE") programs, including the City's minority- and women-owned business program ("M/WBE") (all such federal, state, and local programs referred to collectively herein as "DBE," "DBE requirements," or "DBE Programs"), as further described and appended to this Agreement, including but not limited to: (1) adoption and implementation of a Code of Ethics and Corporate Compliance Program; (2) appointment of a Corporate Compliance Officer who is knowledgeable on DOT's, Illinois' and local governments and public entities in Illinois' requirements for DBE Programs; (3) retention of an Independent Monitor who is knowledgeable on DOT's, Illinois' and local governments and public entities in Illinois' DBE Programs, to evaluate McHugh's compliance with this Agreement and submit periodic reports directly to the FTA, the State CPOs, the City, and others; and (4) making six (6) presentations to be determined and scheduled by the FTA, the State CPOs, and the City, to discuss and promote compliant policies and procedures for working with DBE firms.

D. The DOT, the State CPOs, and the City have determined that by McHugh's agreement to implement and its implementation of the measures required by this Agreement, the DOT, the State CPOs, and the City can consider McHugh to be presently responsible and that it is in the best interest of the Governments to enter into an Administrative Monitoring and Compliance Agreement.

The Parties agree as follows:

III. TERMS AND CONDITIONS

A. Effective Period of the Agreement

This Agreement will be effective for three (3) years from the date the Agreement is signed by the FTA and FHWA debarring officials, the State CPOs, and the City ("the Monitoring Term").

B. Scope of the Agreement.

1. As part of its recognition and understanding of the seriousness of the alleged Covered Conduct described in section II.A above, and without admitting liability, McHugh has agreed to undertake remedial measures, as further described and appended to this Agreement, including but not limited to: (1) adoption and implementation of a Corporate Compliance Program; (2)

appointment of a Corporate Compliance Officer who is knowledgeable on DOT's, Illinois' and local governments and other public entities in Illinois' DBE Programs and who has not been involved in the Covered Conduct; (3) retention of an Independent Monitor who is knowledgeable on DOT's, Illinois' and local governments and other public entities in Illinois' DBE Programs to evaluate McHugh's performance of this Agreement and to submit periodic reports directly to the FTA, the State CPOs, the City, and others; and (4) making six (6) presentations to be determined and scheduled by the FTA, the State CPOs, and the City, to discuss and promote compliant policies and procedures for working with DBE firms.

2. The monitoring activities required by this Agreement, including the scope of the Independent Monitor's actions as described at Terms and Conditions section III.F.3, must occur at all locations in Illinois where McHugh oversees, constructs, manufactures and/or keeps any records for construction projects funded in whole or in part by the federal, state, and/or local governments or other public entities in Illinois (hereinafter, referred to generally as "Public Construction Projects").

C. Suspension and Debarment

1. The DOT, the State CPOs, and the City will not pursue any suspension or debarment action against McHugh or any of its predecessors, successors, assigns, affiliates, subsidiaries, divisions, and current directors, officers, representatives, and agents with the exception of those individuals identified in Section IV.A, below, based upon any of the Covered Conduct described in II.A, unless McHugh materially breaches the terms of this Agreement, McHugh misrepresented a fact material to the DOT, the State CPOs, or the City in connection with this Agreement, or there is a criminal indictment of individuals currently employed with McHugh arising from the Covered Conduct.

2. This Agreement in no way restricts the authority, responsibility, or ability of the FTA, FHWA, or any other Federal, State, County, City or public agency, to consider and institute, at any time, suspension or debarment proceedings against McHugh based on information constituting an independent cause for such proceedings, including:

a. Upon reliable evidence that McHugh has misrepresented any material fact in connection with this Agreement, the FTA, the State CPOs, or the City may, at each entity's discretion, initiate suspension or debarment proceedings in accordance with 2 C.F.R. Part 180, 44 Ill. Admin. Code 1.5560 and 6.480-6.690, the City of Chicago Department of Procurement Services' Debarment Rules ("City Debarment Rules"), or other statutory, administrative, or regulatory authority, based on both the violation of the Agreement for misrepresentation of any material fact, and upon the Covered Conduct described in section II.A of this Agreement. Material facts in this Agreement include, but are not limited to, any facts described or related to those in section II of this Agreement, facts regarding McHugh's affiliated companies, or facts represented to DOT, the State CPOs, or the City that McHugh's Corporate Compliance Officer or any controlling directors, senior managers, or officers (aside from those identified in Section IV.A, below) were not involved in the Covered Conduct.

b. Upon reliable evidence that McHugh has engaged in any material breach or violation of this Agreement, the FTA, the State CPOs, or the City may, at each entity's discretion, initiate suspension or debarment proceedings in accordance with 2 C.F.R. Part 180, 44 Ill. Admin. Code 1.5560 and 6.480-6.690, the City Debarment Rules, or other statutory,

administrative, or regulatory authority, based on both the material breach or violation of the Agreement, and upon the Covered Conduct described in section II of this Agreement; provided, however, that McHugh will have ten (10) business days from the date of receipt of notice from the FTA, the State CPOs, or the City of a material breach or violation to correct that breach or violation. If correction is not possible within ten (10) business days, for reasons beyond the control of McHugh, McHugh must present to the FTA, the State CPOs, and the City, within those ten (10) business days, an acceptable plan for correction. Any failure to correct the violation, or present an acceptable plan, may constitute an independent cause for suspension or debarment. If such a failure occurs, or if the FTA's Region V Office, the State CPOs, and/or the City find a corrective plan inadequate, or if the FTA's Region V Office, the State CPOs, and/or the City find a cure is not acceptable considering the breach, the entity finding a failure to correct the violation, finding the corrective plan inadequate or finding a cure is not acceptable will provide McHugh with a written explanation of its finding. The entity which has found a failure to correct the violation, found the corrective plan inadequate or found a cure is not acceptable will notify McHugh of its decision on suspension or debarment, or treat the information as a new referral of a potential independent cause for suspension and debarment.

c. Upon a criminal indictment of individuals still employed with McHugh that would constitute an independent cause for suspension or debarment proceedings.

d. Evidence of any compliance problems with Federal, State, or local laws or ethics requirements not covered by the scope of this Agreement, including any issue that raises questions about the present responsibility of McHugh that could serve as a cause for a suspension and proposed debarment referral.

3. McHugh does not, by this Agreement, or otherwise, waive its rights to oppose future action(s) under 2 C.F.R. Part 180, 44 Ill. Admin. Code 1.5560 and 6.480-6.690, the City Debarment Rules, or any other substantive, procedural, or due process rights it may assert.

D. Corporate Compliance Program

1. Code of Ethics

McHugh has adopted and implemented a Code of Ethics that provides for compliance with DBE requirements, a copy of which is attached as Attachment 1. This Code is to be distributed to, and acknowledged in writing by, each of McHugh's employees, including all full or part-time employees, and distributed to McHugh's sub-contractors on Public Construction Projects to whom those DBE requirements apply.

2. Corporate Compliance Program

McHugh has adopted and implemented a Corporate Compliance Program, a copy of which is attached as Attachment 2, to assist and ensure that all employees understand and adhere to the Code of Ethics and specifically DBE requirements.

E. Corporate Compliance Officer

1. McHugh represents to the DOT, the State CPOs, and the City that it has created and will maintain a separate and independent position of Corporate Compliance Officer, held by a

person who is knowledgeable on DOT's, Illinois' and local governments and other public entities in Illinois' DBE Programs, responsible for the implementation and day-to-day administration of its Corporate Compliance Program. The Corporate Compliance Officer shall report directly to McHugh's Board of Directors and provide reports to the Independent Monitor as defined in section III.F. McHugh affirmatively states that the person retained and appointed as its Corporate Compliance Officer was not involved in the Covered Conduct described in section II.A of this Agreement.

2. The Corporate Compliance Officer is responsible for conducting an appropriate investigation of each complaint and/or information concerning ethics or corporate compliance, as well as complaints and/or information alleging any violation or lack of compliance with this Agreement. For each investigation relating to compliance on Public Construction Projects, the Corporate Compliance Officer will prepare and present a written report to McHugh's Board of Directors presenting findings, conclusions, and recommendations, including corrective action(s). Copies of each written report will be provided to the Independent Monitor, the FTA, the State CPOs, the City, and any contracting agency or agencies referenced in the report ("Contracting Agency"). The FTA, the State CPOs, the City, and the Contracting Agency may require the Corporate Compliance Officer to brief the FTA, the State CPOs, the City, and the Contracting Agency at McHugh's expense, regarding the Corporate Compliance Program, or any particular complaint or investigation.

3. The Corporate Compliance Officer will maintain a Compliance Log of all reported information, complaints, and investigations relating to compliance on Public Construction Projects, showing the date and time information when a complaint was received and an investigation initiated, the date of the alleged misconduct, a summary of the allegation, inquiry or investigation, which must include names of any persons allegedly involved, and the resolution or referral of the matter. The Independent Monitor, the FTA, the State CPOs, or the City may request this log at any time, and upon such request, will be provided a copy of the log at McHugh's expense.

4. McHugh represents that it has created and will maintain a dedicated private hotline which is independently administered and allows for the anonymous reporting of suspected instances of improper conduct to the Corporate Compliance Officer, and will ensure that all hotline calls can be made in confidence. McHugh has and will continue to publicize the existence of the hotline to all employees and to all subcontractors on Public Construction Projects. In addition, McHugh will inform all employees and subcontractors on Public Construction Projects of any applicable government fraud hotline, including where applicable the telephone number of the DOT's FraudNet Hotline (1-800-424-9071), the State's Office of the Executive Inspector General Hotline, the IDOT Fraud Hotline, the ISTHA Office of Inspector General, and the City's Office of Inspector General, and will post these telephone numbers on its website with text about the purpose of the telephone numbers; McHugh will also post this information at its construction locations. The Independent Monitor, the FTA, the State CPOs, or the City may request copies of documents related to publicizing the hotline numbers at McHugh's expense.

5. McHugh represents to the DOT, State CPOs, and the City that it has retained and appointed Natalie T. Pedraza, McHugh's Director of Compliance, as the Corporate Compliance Officer, and the DOT, the State CPOs, and the City are satisfied that her training and experience qualify her for this position, and that, based upon information provided by McHugh, she was not

involved in the Covered Conduct described in section II.A of this Agreement. If McHugh needs to replace Ms. Pedraza during the term of this Agreement, McHugh must notify the FTA, the State CPOs, and the City within ten (10) days of McHugh's determination of a need for a replacement and any replacement will be subject to the joint approval of DOT, the State CPOs, and the City.

F. Independent Monitoring

1. On or before May 1, 2014, McHugh agrees to hire and retain for the duration of the Monitoring Term an Independent Monitor who is knowledgeable on DOT's, Illinois' and local governments and other public entities in Illinois' DBE Programs to oversee implementation of its Corporate Compliance Program, to provide random unannounced monthly inspections of McHugh's current Public Construction Projects as of the execution date of this Agreement, and Public Construction Projects arising after the execution date of this Agreement, and to inspect records for all Public Construction Projects.

- a. The Independent Monitor contract ("IM Contract") will apply to McHugh and any other affiliated company that performs work on Public Construction Projects.
- b. The IM Contract will specify that the Independent Monitor is to report only to the FTA, the State CPOs, and the City, and is subject only to the FTA, the State CPOs, and the City's control and discretion, and the terms of its contract.
- c. The IM Contract will require the Independent Monitor to submit periodic reports directly to the FTA, the State CPOs, and the City, with copies to McHugh, regarding McHugh's institution and implementation of the measures required by this Agreement, and to any Contracting Agency where the Contracting Agency is referenced in a report. The reports will include a summary of the Independent Monitor's activities and findings in monitoring McHugh's DBE compliance. A report will be submitted quarterly (every three (3) months) and a final report will be submitted at the end of the third year.
- d. The IM Contract will provide that the Independent Monitor will communicate any DBE compliance issues to FTA, the State CPOs, the City, and, as applicable, the Contracting Agency, as well as McHugh, so that McHugh may either explain the issue to the Independent Monitor or take necessary corrective action. However, the IM Contract will also provide that the Independent Monitor may, at its discretion, confidentially communicate a compliance issue to the FTA, the State CPOs, and the City for appropriate guidance. Any such compliance issues, and their resolution, shall be documented in the Independent Monitor's next report.
- e. The IM Contract will provide that the Independent Monitor will review any DBE compliance related issues identified by the FTA, the State CPOs, the City, or a Contracting Agency from a previous report. The results of any such review may be included in either the Independent Monitor's next report or in a special report, as the FTA, the State CPOs, or the City deem appropriate, which will be disclosed to McHugh, after review by the FTA, the State CPOs, and the City.

- f. The IM Contract will allow the Independent Monitor to freely engage and communicate with the FTA, the State CPOs, the City, and applicable Contracting Agencies in confidence.
- g. The IM Contract will give the Independent Monitor the authority to utilize all necessary and reasonable resources to carry out his/her obligations, including permission to hire, at a reasonable cost, outside legal counsel, accountants, and/or other third-party professionals as may be reasonably needed, subject to the prior approval of the FTA, the State CPOs, the City, and McHugh.
- h. During the Monitoring Term, McHugh will allow the Independent Monitor access to all records and information, wherever the records are located, except those that are attorney-client or work-product privileged. Access will also be given to project sites, facilities, and employees. In the event McHugh objects to disclosing any records or information to the Independent Monitor, McHugh will provide to the Independent Monitor the basis for each objection, along with the date, author, and nature of the document or information which is withheld. The Independent Monitor will promptly report all such assertions to the FTA, the State CPOs, and the City for further consideration.
- i. All of the Independent Monitor's fees and expenses are the sole responsibility of McHugh, which will establish and fund an escrow account through which the fees and expenses will be paid within 15 days from the date this Agreement is signed by the debarring officials. The escrow account will be maintained by an independent trustee, who will pay all fees and expenses from funds in the account. McHugh may select the trustee subject to prior approval by DOT, the State CPOs, and the City, and McHugh will be responsible for payment of all the trustee's expenses for administering the fund. The trustee will pay the Independent Monitor's fees and expenses. Should a dispute arise as to whether any activity or expense is within the scope of this Agreement or is otherwise necessary, the trustee will promptly inform the FTA, the State CPOs, and the City in writing of the dispute. The FTA, the State CPOs, and the City will decide the matter in dispute, and their decision is final.

2. The Independent Monitor must be approved by DOT, the State CPOs, and the City, and is subject to the control and direction of the FTA, the State CPOs, and the City only. The Independent Monitor will report directly to the FTA, the State CPOs, and the City. The Independent Monitor will not be considered an employee or agent of McHugh, and his/her work will not be subject to any assertion of attorney-client privilege or work-product doctrine by McHugh.

3. Scope of the monitoring investigations and reports:

- a. The Independent Monitor will develop a review checklist and schedule which are subject to the prior approval of the FTA's Region V Civil Rights Officer, the FHWA Division Office, the State CPOs, and the City. The review checklist will be used at McHugh's primary office and any other location storing DBE records, and on all of McHugh's Public Construction Projects. The review checklist will cover requirements for all relevant DBE Programs. At a minimum, the review checklist will verify the following:

(1) DBE commercially useful function (CUF) certifications for DBEs working on the projects, as outlined in the DBE CUF Inspection Review Guidelines, which are in Attachment 3 to this Agreement;

(2) DBEs are providing commercially useful functions on the projects;

(3) McHugh used good faith efforts to obtain DBEs for each Public Construction Project on which it proposed to work, to the extent required by law or contract; and

(4) Accurate reporting of DBE work on the projects.

b. The Independent Monitor will review McHugh's DBE Compliance Plan and verify that McHugh is taking all actions and processes required by the USDOT DBE Regulation at 49 C.F.R. Part 26, or as applicable, the DBE requirements set forth in McHugh's current contracts for Public Construction Projects.

c. The Independent Monitor's report at a minimum must include the following:

(1) Status of McHugh's adherence to the applicable DBE requirements;

(2) A summary of the documents and activities reviewed in McHugh's office;

(3) A summary of the documents and activities reviewed at McHugh's project sites and facilities;

(4) All failures or discoveries at each site or facility that did not meet the appropriate DBE requirements;

(5) Answers to the following questions:

(a) Has McHugh's Corporate Compliance Officer conducted appropriate investigations of each complaint and/or information received concerning DBE implementation efforts, and has any corrective action been taken?

(b) Has McHugh's Corporate Compliance Officer conducted appropriate investigations of complaints and/or information alleging any violation or lack of compliance with this Agreement, and has any corrective action been taken?

(c) Has McHugh's Corporate Compliance Officer maintained a Compliance Log of the reported information, complaints, and investigations?

(d) Has McHugh's Corporate Compliance Officer maintained the required dedicated private and independently administered hotline for the anonymous reporting of suspected instances of improper conduct to the Compliance Officer, as described in this Agreement?

d. Upon each anniversary of the effective date of this Agreement during his/her tenure, the Independent Monitor will furnish the FTA, the State CPOs, and the City with an affidavit certifying that he/she has no financial interest in, or other relationship with McHugh or any of its affiliates, other than that arising from his/her services as the Independent Monitor.

e. If the Independent Monitor finds evidence of any compliance problems with Federal, Illinois, or local laws or ethics requirements or other statutory, administrative or regulatory authority in Illinois not covered by the scope of this Agreement, including any issue that raises questions about the present responsibilities or obligations of McHugh that could cause a suspension and proposed debarment referral, the Independent Monitor will report those problems promptly to the FTA, the DOT's Office of the Inspector General, the State CPOs, the City, the Contracting Agency (or Agencies) and McHugh's Corporate Compliance Officer.

f. The Independent Monitor's actions will occur in addition to, and will not replace, U.S. DOT's, Illinois', and the City's requirements under the DBE Programs.

4. The parties have agreed that the Independent Monitor will be Colette Holt of Colette Holt & Associates, an attorney with extensive experience in advising and consulting governments and private entities regarding, among other affirmative action programs, DBE programs. The DOT, the State CPOs, and the City are satisfied that Ms. Holt's training and experience makes her qualified for the position. Ms. Holt will work in conjunction with three additional team members who will assist her in her duties as Independent Monitor, including by actively participating in the monitoring activities described herein. These team members may include Robert C. Ashby; Kim Stewart of Abaci Research and Consulting, LLC; and Sandi Llano of Sandi Llano & Associates, Inc. Each of these team members may also be assisted by additional members of their firms.

5. Should Ms. Holt plan to no longer serve as the Independent Monitor, then McHugh shall notify the FTA, the State CPOs, and the City within ten (10) days of learning of the need for a replacement. McHugh will provide the FTA, the State CPOs, and the City with at least two possible replacements for approval, and any replacement will be subject to the joint approval of DOT, the State CPOs, and the City.

G. Presentations

1. During the term of this agreement, McHugh's Corporate Compliance Officer and at least one other executive officer of McHugh will make six (6) presentations to be determined and scheduled by the DOT, the State CPOs, and the City. These presentations will provide information about DBE requirements, including but not limited to guidelines such as the commercially useful function requirement, and provide examples from McHugh's experience.

2. Upon request, McHugh will provide the State CPOs and the City with all materials it intends to display, share, or distribute at each presentation at least fourteen (14) days in advance. All materials to be displayed, shared, or distributed by McHugh at each presentation are subject to prior review and approval by the State CPOs and the City. If materials are submitted to the State CPOs and the City and McHugh receives no comment regarding those materials, they will be deemed approved.

3. All costs and expenses incurred by McHugh in associated with making these six (6) presentations shall be at McHugh's expense.

IV. Additional Provisions

A. Individuals

1. McHugh will not hire or retain Michael Gould in any capacity after the date of the execution of this Agreement.

2. McHugh will not hire or retain Ben Johnston in any capacity after the date of the execution of this Agreement, with the limited exception that McHugh may consult Ben Johnston on non-DBE matters until sixty (60) days after a new General Counsel is hired or later to the extent required to comply with any applicable legal requirement.

3. Neither Michael Gould nor Ben Johnston will be permitted to hold any equity in McHugh.

4. On any Public Construction Projects, McHugh will not contract with any entity if it knows that the entity employs Michael Gould or Ben Johnston. McHugh will apply due diligence in investigating whether an entity with which it is contracting employs Michael Gould or Ben Johnston.

B. Modification of Agreement

Any requirements imposed on McHugh by this Agreement may be discontinued by the FTA, the State CPOs, and the City, in their joint discretion. Other modifications to this Agreement may be made only in writing and upon mutual consent of all Parties.

C. Sales, Mergers, Transfers, Bankruptcy; Survival of Agreement

If, during the term of this Agreement, McHugh establishes new companies or subsidiaries, merges with another company, or transfers the entire company or a substantial percentage of its assets to new owners, McHugh must notify the FTA, the State CPOs, and the City no later than ninety (90) days in advance of such action and must provide copies of all corporate documents. This Agreement will inure to the benefit of, and be binding upon, the parties and respective successors and assigns; provided, however, that the surviving entity, if other than McHugh, may request and show good cause why this Agreement should not be applicable to its operations. Bankruptcy proceedings will not prevent or stay the enforcement of this Agreement or any suspension or debarment proceedings instituted by the FTA, the State CPOs, or the City based on McHugh's alleged failure to comply with the terms of this Agreement, or based on allegations that McHugh engaged in other conduct that is a cause for suspension or debarment or that McHugh's Corporate Compliance Officer or any controlling directors, senior managers, or officers were involved in DBE noncompliance.

D. Public Document

This Agreement is a public document, and any information in the DOT's, the State CPO's, or the City's possession pursuant to the terms of the Agreement, is subject to the federal Freedom of Information Act (FOIA), 5 U.S.C. 552 *et seq.*, DOT implementing regulations (49 C.F.R. Part 7), and the Illinois FOIA, 5 ILCS 140, *et seq.*, respectively. To the extent that any of the requested information implicates the criteria of FOIA Exemption 4 or 5 ILCS 140/7(1)(g), the FTA, the State CPOs, or the City, respectively, will notify McHugh that a request has been received and will identify the records in its possession that are responsive to the request. McHugh will have the opportunity to object to the release of the information, such as under 49 C.F.R. § 7.17.

E. Administration of Agreement

All communications from DOT, the State CPOs, or the City to McHugh regarding this Agreement will be delivered to:

Natalie Pedraza
Corporate Compliance Officer
James McHugh Construction Co.
1737 S. Michigan Avenue
Chicago, IL 60616

and

Daniel Rosenberg
General Counsel
James McHugh Construction Co.
1737 S. Michigan Avenue
Chicago, IL 60616

All submissions from McHugh to DOT, the State CPOs, the City and/or any Contracting Agency, as required by this Agreement, shall be delivered to:

Regional Administrator
FTA
200 W. Adams, Suite 320
Chicago, Illinois 60606

Chief Procurement Officer
Illinois Department of Transportation
200 Hanley Building
2300 South Dirksen Parkway
Springfield, Illinois 62764

Chief Procurement Officer for General Services
401 South Spring Street
Suite 712 Stratton Office Building
Springfield, Illinois 62706

Corporation Counsel
City of Chicago Department of Law
121 N. LaSalle, Suite 600
Chicago, Illinois 60602

Chief Procurement Officer
City of Chicago Department of Procurement Services
121 N. LaSalle, Suite 806
Chicago, Illinois 60602

Additionally, copies should be sent to the General Counsel for any involved Contracting Agencies.

F. Entire Agreement and Effective Date

This Agreement constitutes the entire agreement between the DOT, the State CPOs, the City, and McHugh, superseding any prior agreements or understandings, oral or written, with respect to the subject matter of this Agreement. This Agreement is effective on the date of the signature of the FTA Suspending and Debarring Official, the State CPOs, and the City.

G. Signatures

Facsimiles and electronic (pdf) copies of signatures are deemed acceptable, binding signatures for purposes of this Agreement. This Agreement may be executed in counterparts, each of which will be deemed an original document, and all of which will constitute one and the same Agreement.

FOR THE FTA:

MATTHEW CROUCH
Associate Administrator for Administration
Suspending and Debarring Official

Date

FOR MCHUGH CONSTRUCTION:

BRUCE E. LAKE
President
James McHugh Construction Company

Date

FOR FHWA:

WALTER C. WAIDELICH, JR.
Associate Administrator
for Infrastructure
Suspending and Debarring Official

Date

FOR THE CITY:

STEPHEN R. PATTON
Corporation Counsel
City of Chicago

Date

JAMIE L. RHEE
Chief Procurement Officer
City of Chicago

Date

FOR THE STATE CPOs:

BILL GRUNLOH
Chief Procurement Officer
Illinois Department of Transportation

Date

MATT BROWN
Chief Procurement Officer
General Services

Date

Attachments: (1) McHugh Code of Ethics
(2) McHugh Corporate Compliance Program
(3) DBE Commercially Useful Function Inspection Review Guidelines