

# CONTRACT FOR PROFESSIONAL SERVICES AND CONSTRUCTION

AGREEMENT NO. PS-803

THIS CONTRACT ("Agreement"), dated as of the 12th day of April, 2005, but actually executed on the date witnessed below, is entered into by and between the PUBLIC BUILDING COMMISSION OF CHICAGO, a municipal corporation of the State of Illinois, having its principal office at Room 200, Richard J. Daley Center, 50 W. Washington, Chicago, Illinois 60602, ("Commission"), and The McClier Corporation, a Delaware corporation, with offices located at 303 East Wacker Drive, Suite 900, Chicago, IL 60601, ("Construction Manager"), at Chicago, Illinois.

## RECITALS

WHEREAS, the Commission, on behalf of the City Colleges of Chicago (referred to in this Agreement as the "User Agency"), intends to undertake the construction and/or improvement of the following facility in Chicago, Illinois, described in Schedule A to this Agreement:

Project:  
Bidding and Construction Management of  
New Kennedy King College Campus  
located in the vicinity of  
W. 63<sup>rd</sup> and S. Halsted Streets  
Chicago, Illinois

called the "Project"; and

WHEREAS, the Commission requires certain professional bidding and construction management Services, described in Schedule A to this Agreement (the "Services"), in connection with the Project and desires to retain the Construction Manager, on the terms and conditions set forth in this Agreement, to perform such Services; and

WHEREAS, the Construction Manager desires so to be retained by the Commission and has represented to the Commission that the Construction Manager has the knowledge, skill, experience and other resources necessary to perform the Services in the manner herein provided; and

WHEREAS, the Construction Manager has consulted with the Commission, reviewed the Contract Documents (defined below) and taken such other actions as the Construction Manager has deemed necessary or advisable to familiarize itself with the scope and requirements of the Project and the Services; and

WHEREAS, the Construction Manager has made site inspections, consulted with the Commission and the User Agency, and is fully acquainted with the requirements of the foregoing Project described in the Program attached hereto; and

WHEREAS, the Construction Budget for the Project, (excluding the procurement, delivery, and installation of the FF&E and its components) including site Services, as determined by

Commission is \$93,000,000 and the Construction Manager will have until August 23, 2005 to confirm the foundation costs and until October 11, 2005 to confirm the superstructure costs in order to confirm to the Commission that such Construction Budget, based upon current area, volume or other unit costs, the requirements of the Program and allowances for cost escalation and Project contingencies, is reasonable for the construction of the Project. If the Construction Manager cannot confirm that the Project can be completed for \$93,000,000.00, the Construction Manager must work with the Commission to develop a mutually acceptable GMP; and

WHEREAS, the Construction Manager represents that it is qualified and competent by education, training and experience to perform the Services necessary to complete the construction of the Project in accordance with standards of reasonable professional skill and diligence; and

WHEREAS, the parties anticipate that the Construction Manager shall enter into one or more trade contracts or trade agreements with contractors (the "Subcontracts") in order to complete the development and construction of the Project;

NOW THEREFORE, the Commission and the Construction Manager, for the considerations hereinafter set forth, AGREE as follows:

#### TERMS

1. Incorporation of Recitals. The Recitals set forth herein above and the following documents are incorporated into this Agreement.
2. Definitions. The following phrases have the same meanings for the purposes of this Agreement:
  - a. Agreement means this Professional Services Agreement, including all exhibits or documents attached hereto and/or incorporated by reference herein, and all amendments, modifications, or revisions made in accordance with the terms hereof.
  - b. Alternate means a potential addition to, deletion from, or variation of the Services for which a separate price is attained and that is to be performed by the Construction Manager at the sole discretion of the Commission.
  - c. Architect or Architect of Record means any person or firm employed by the Commission for the purpose of designing and observing the Services embraced in the Contract Documents, acting directly or indirectly through any assistants to design or observe the Services or through any assistant having involvement in a portion thereof limited by the particular duties.
  - d. Change Order means the written order to the Construction Manager approved by the Commission directing changes in the Services and/or the time for completion of the Contract.
  - e. Commission as herein referred to shall include the Commission's Chairman, Secretary, Assistant Secretary, Executive Director, Chief of Staff, Director of Construction, Managing Architect, Project Manager, Director of Procurement or designated consultant or

consultants, acting on behalf thereof, as designated by the Commission in writing, for the purpose of giving authorizations, instructions, and/or approval pursuant to this Agreement.

f. Construction Manager means the company or other entity identified in this Agreement, and such successors or assigns, if any, as may be authorized by the terms and conditions of this Agreement.

g. Construction Budget means the total funds budgeted by the Commission for constructing the Project and furnishing all items necessitated by the Program which shall be shown or described in the Contract Documents to be prepared by the Architect.

h. Construction Guaranteed Maximum Price or GMP means all construction costs and all other projected costs of completing the construction of the Project all as more fully described in Schedule A of this agreement including, without limitation, the Construction Manager's Fee, the Construction Manager's GMP Contingency and General Conditions allowance including on-site staff, the Commission's Construction Contingency, the sum of the Cost of Services, including each anticipated trade contract amount, organized by trade categories or systems, payment and performance bonds, all as more fully described in Schedule A of this Agreement.

i. Construction Schedule means the Critical Path Method (CPM) schedule utilizing Primavera Project Planner P3E/C submitted by the Construction Manager establishing time frames for the performance of components of the Services.

j. Contingent Additional Services means additional Services to be provided by the Construction Manager for the Project pursuant to the provisions of Schedule A of this Agreement.

k. Contract Documents consists of all of the component parts of the Agreement between the Commission and the Construction Manager for the construction and improvement of the Project including, without limitation, the general and special conditions, technical specifications, drawings, addenda, bulletins and modifications thereto.

l. Contract Completion Date is the date determined by the Commission, on which the Project is to reach Substantial Completion. The Contract Completion Date will be determined based on the duration of the Project set by the Contract as adjusted by any Change Orders that extend or reduce the duration of the Project.

m. Contract Time is the duration of the Services, from when the Services is required to begin until the scheduled date for Substantial Completion of the Services, including approved time extensions.

n. Contract Price means the full amount of compensation to be paid for the Services to be performed by the Construction Manager as adjusted from time to time.

o. Control Estimate means the sum of the following (i) professional fees; (ii) reimbursable expenses; (iii) contingency; (iv) the then estimated Cost of Services based on the Construction Documents approved by the Commission and the User Agency. The Control Estimate is the budget estimate against which the actual costs will be measured.

- p. Cost of Services means the sum of all Subcontract costs related to development, construction and improvement of the Project.
- q. Day or Days means calendar day(s) unless otherwise specified.
- r. Design Development Documents means plans, elevations and other drawings and outline specifications which fix and illustrate the size and character of the Project in its essentials, including kinds of material, type of structure, mechanical and electrical systems and such other Services as may be required.
- s. Design Team means the licensed Architect of Record and its sub-consultants, including but not limited to, structural, civil, mechanical, electrical, plumbing and fire protection engineers, engaged by the Commission or the Architect for the design and development of the Project.
- t. Drawings and Specifications means the detailed drawings and technical specifications, prepared by a licensed Architect, which describe the scope of Services to be performed.
- u. Executive Director means the person employed by the Commission as its Executive Director or the duly authorized representative thereof.
- v. Final Completion and Acceptance of the Services means the last date on which all of the following events have occurred: substantial completion of the Services has been made after preliminary inspection by the Architect, the CM has obtained and delivered to the Commission, a certificate of occupancy for each building, the Commission has determined that all Punch List Services and any other remaining Services have been completed in accordance with the Contract Documents; final inspections have been completed and operations systems and equipment testing have been completed; final occupancy certifications have been issued; all deliverables have been provided to the Commission; and all contractual requirements for final payment have been completed.
- w. Local Government or City means the City of Chicago, Illinois within which the Project is situated.
- x. Notice to Proceed refers to three written notices issued by the Commission and directed to the Construction Manager, which defines the established date from which the time for performance of the Agreement or a phase thereof commences. The first hereinafter referred to as the "NTP1" is the Construction Manager's commencement date of services. The second is hereinafter referred to as the "NTP2" is the Construction Manager's commencement of the foundations. The third is hereinafter referred to as the "NTP3" is the Construction Manager's commencement of the superstructures.
- y. Project means the construction and/or improvement of the facility or facilities specified on page 1 of this Agreement.
- z. Punch List or Punch List Services means minor adjustments, repairs or deficiencies in the Services as determined at the reasonable discretion of the Commission. Items of incomplete Services that preclude full or beneficial use of any portion of the Services or that

preclude the Commission from full operation, maintenance, or security of the facility shall not be considered Punch List items.

- aa. Record Documents are all documents required under the terms of the Contract to be provided to the Commission by the Construction Manager, including but not limited to shop drawings, as-built drawings, blue line drawings, parts manuals, warranties and guarantees, operation and maintenance manuals, and Project manuals or specifications.
- bb. Reimbursable Expenses as herein referred to include actual expenditures, as identified in Schedule C, Section A.2, made by the Construction Manager.
- cc. Schedule of Values means the detailed list of the subcontractor value of each construction activity included in the Base Contract Price broken down by labor and materials that is submitted by the Construction Manager and approved by the Commission, as amended.
- dd. Services means collectively, the Services, duties and responsibilities that are required by the Commission and necessary for the Construction Manager to provide under this Agreement. The required Services are described in Schedule A of this Agreement.
- ee. Special Consultants includes, but is not limited to, cost analysis, kitchen design, masonry, roofing and elevator consultants that may be engaged by the Construction Manager with the prior written approval of the Commission as set forth in Schedule C, Section C.2.2.
- ff. Subcontract means any contract or agreement that may be entered between the Construction Manager and a Subcontractor for the construction of the Project or a portion thereof.
- gg. Subcontractor means any partnership, firm, corporation or entity other than an employee of the Construction Manager, that contracts with the Construction Manager to furnish labor, or labor and materials, at the Site. The term also includes subcontractors of any tier, suppliers, fabricators, trade contractors, specialty contractors or manufacturers whether or not in privity with the Construction Manager.
- hh. Submittal means a schedule, shop drawings, video tape, product data, samples, or other items as may be required by the Contract Documents for review and/or approval prior to prosecution of a portion of the Services.
- ii. Substantial Completion of the Services or Substantial Completion means the date on which the Commission has determined that the Contract Documents have been essentially completed except for Punch List Services, when the User is able to occupy and use the Project for the purpose intended, and when the Construction Manager has obtained and delivered to the Commission a "Certificate of Occupancy" and all other licenses issued by the authorities that have jurisdiction.
- jj. Technical Personnel as herein referred to includes partners, officers and all other personnel of the Construction Manager, including technical typists assigned to the Project, exclusive of general office employees.
- kk. User Agency or User means the municipal corporation, City Colleges of Chicago, that requested the Commission to undertake the construction and/or improvement of the Project.

II. Services means the obligations of the Construction Manager under the Contract Documents. Services includes, unless specifically excepted by the Contract Documents, the furnishing of all materials, labor, equipment, supplies, plant, tools, scaffolding, transportation, superintendence, permits, inspections, occupancy approvals, insurance, taxes, and all other services, facilities and expenses necessary for the full performance and completion of the requirements of the Contract Documents. Services also means that which is furnished, produced, constructed, or built pursuant to the Contract Documents.

3. Incorporation of Documents.

a. The following attachments are made a part of this Agreement:

Schedule A Detailed Scope of Services

Schedule B Contract Documents

Schedule C Compensation

Schedule D Contract Insurance Requirements

Exhibit 1 Parent Guaranty

b. The documents identified below in Schedule B are hereby incorporated in and made a part of this Agreement. By executing this Agreement, the Construction Manager acknowledges and agrees that the Construction Manager is familiar with the contents of each of such documents and will comply fully with all applicable portions thereof in performing the Services.

(i) Contract Documents. The plans and specifications for the Project, to the extent that plans and specifications for the Project have been prepared, as set forth and described on Schedule B to this Agreement.

(ii) Policies Concerning MBE and WBE. The Commission's policies concerning utilization of minority business enterprises ("MBE") and women business enterprises ("WBE"), as the same may be revised from time to time.

4. Engagement and Standards for Performing Services.

a. Engagement. The Commission hereby engages the Construction Manager, and the Construction Manager hereby accepts such engagement, to provide the Services described in Schedule A to this Agreement, as the same may be amended from time to time by mutual agreement of the Commission and the Construction Manager.

b. Personnel

(i) Adequate Staffing. Construction Manager must, upon receiving a fully executed copy of this Agreement, assign and maintain for the duration of this Agreement an adequate staff of competent personnel that is fully equipped, licensed as appropriate, available as needed, qualified and assigned exclusively to perform the Services. Construction Manager must include among its staff the Key Personnel and positions as identified below. The level of staffing may be revised from time to time

by notice in writing from Construction Manager to the Commission and with prior written consent of the Commission.

(ii) Key Personnel. Construction Manager must not reassign or replace Key Personnel without the written consent of the Commission. "Key Personnel" means those job titles or roles and the persons assigned to those positions as identified below in this subsection. The Commission may at any time in writing notify Construction Manager that the Commission will no longer accept performance of Services under this Agreement by one or more Key Personnel listed. Upon that notice Construction Manager must immediately suspend the key person or persons from performing Services under this Agreement and must replace him or them with a person or persons with comparable professional credentials and experience. Such replacements are subject to approval by the Commission. The Key Personnel are as follows:

<u>Name</u>	<u>Title/Role</u>	<u>Firm</u>
August Mitchell	Project Executive	McCluer Corporation
Chuck Minor	Senior Project Manager	McCluer Corporation
Ramesh Nair	Scheduling/Estimating	Vistara Constr. Svcs
Patrick T. Grealish	Superintendent.	McCluer Corporation
Fred Borich	Project Executive	McCluer Corporation
Paul Stewart	Community Outreach	Resolute Consulting

c. Nondiscrimination. The Construction Manager agrees that in performing this Agreement the Construction Manager will not discriminate against any worker, employee, applicant for employment, or any member of the public, because of race, color, creed, national origin, gender, age, or disability, or otherwise commit an unfair labor practice. The Construction Manager certifies that he/she is familiar with, and will comply with, all applicable provisions of the Civil Rights Act of 1964, 28 U.S.C. §1447, 42 U.S.C. §§ 1971, 1975a-1975d, 2000a to 2000h-6 (1992); the Age Discrimination in Employment Act of 1967, 29 U.S.C. §§623-634 (1992); the Americans with Disabilities Act of 1990, 29 U.S.C. §706, 42 U.S.C. §§ 12101-12213, 47 U.S.C. §§ 152, 221, 225, 611 (1992); 41 C.F.R. § 60 (1992); 41 C.F.R. § 60 (1992); reprinted in 42 U.S.C. 2000(e) note, as amended by Executive Order No. 11,375 32 Fed. Reg. 14,303 (1967) and by Executive Order No. 12,086, 43 Fed. Reg. 46,501 (1978); the Age Discrimination Act, 43 U.S.C. Sec. 6101-6106 (1981); P.L. 101-336; 41 C.F.R. part 60 *et seq.* (1990); the Illinois Human Rights Act, 775 ILCS 5/1-101 *et seq.* (1990), as amended; the Discrimination in Public Contracts Act, 775 ILCS 10/0.01 *et seq.* (1990), as amended; the Environmental Barriers Act., 410 ILCS 25/1 *et seq.*; and the Chicago Human Rights Ordinance, Chapter 2-160, Section 2-160-010 *et seq.* of the Municipal Code (1990), as amended. The Construction Manager further agrees to furnish such reports and information as may be requested by the Commission, the Illinois Department of Human Relations, or any other administrative or governmental entity overseeing the enforcement, or administration of, or compliance with, the above mentioned laws and regulations.

d. Employment procedures; preferences and compliance. Salaries of employees of the Construction Manager performing Services under this Agreement, shall be paid

unconditionally, and not less often than once a month, without deduction or rebate on any account except such payroll deductions as are mandatory or permitted by applicable law or regulations. The Construction Manager certifies that he/she is familiar with, and will comply with, all applicable provisions of 820 ILCS 130/0.01 through 130/12 thereof (Prevailing Wage Act), 30 ILCS 570/1 through 570/7 (Employment of Illinois Workers on Public Works Act) and 30 ILCS 560/0.01 through 560/7 (Public Works Preference Act). The Construction Manager shall also comply with all applicable "Anti-Kickback" laws and regulations, including the "Anti-Kickback" Act of 1986, 41 U.S.C. §§ 51-58 (1992); 18 U.S.C. § 874 (1992); 40 U.S.C. § 276c (1986) and the Illinois Criminal Code of 1961 720 ILCS 5/33E-1 *et. seq.* If, in the performance of this Agreement, there is any direct or indirect "kick-back", as defined in any of the above mentioned laws and regulations, the Commission may withhold from the Construction Manager, out of payments due to the Construction Manager, an amount sufficient to pay any underpaid employees the difference between the salaries required hereby to be paid and the salaries actually paid such employees for the total number of hours worked. The amounts withheld may be disbursed by the Commission for and on account of the Construction Manager to the respective employees to whom they are due, as determined by the Commission in its sole discretion.

- e. Compliance with Policies Concerning MBE and WBE. Without limiting the generality of the requirements of the policies of the Commission referred to in paragraph 2 above, the Construction Manager agrees to use its best efforts to utilize minority business enterprises for not less than 24% and women business enterprises for not less than 4% of the value of the Services, in accordance with the Resolution passed by the Board of Commissioners of the Commission on October 1, 2004, as amended from time to time, concerning participation of minority business enterprises and women business enterprises on contracts awarded by the Commission and to furnish to the Commission, such reports and other information concerning compliance with such Resolution as may be requested by the Commission from time to time.
- f. No Damages for Delay. The Construction Manager agrees that no charges for damages or claims for damages due to delays shall be asserted by it against the Commission for any delays or hindrances from any cause whatsoever during the progress of any portion of the Services. If not caused by Construction Manager or its subcontractors, such delays or hindrances, if any, shall be compensated for by an extension of time and actual costs to complete the Services, for such reasonable period as may be mutually agreed upon between the parties, it being understood, however, that the agreement of the Commission to allow the Construction Manager to complete the Services or any part of them after the time provided for the completion thereof herein shall in no way operate as a waiver on the part of the Commission of any of its rights hereunder. In addition, if the Construction Manager incurs additional costs and expenses due to delays that are beyond its reasonable control, then the Construction Manager shall be entitled to a reasonable adjustment of its compensation to address such actual costs.
- g. Records. The Construction Manager shall maintain accurate and complete records of expenditures, costs and time incurred by the Construction Manager and by



consultants engaged by the Construction Manager in connection with the Project and the Services. Such records shall be maintained in accordance with recognized commercial accounting practices. The Commission may examine such records at the Construction Manager's offices upon reasonable notice during normal business hours.

The Construction Manager shall retain all such records for a period of not less than 5 calendar years after the termination of this Agreement.

- h. Time of Essence. The Construction Manager acknowledges and agrees that time is of the essence in the performance of this Agreement and that timely completion of the Services is vital to the completion of the Project by the Commission. The Construction Manager agrees to use its commercially reasonable efforts to expedite performance of the Services and performance of all other obligations of the Construction Manager under this Agreement and any other agreements entered into by the Commission which are managed or administered by the Construction Manager as a result of the Construction Manager's engagement hereunder.
- i. Compliance with Laws. In performing its engagement under this Agreement, the Construction Manager shall comply with all applicable federal, state and local laws, including but not limited to, those referenced in subparagraphs (b) and (c) above and in the documents referred to in paragraph 3 of this Agreement.
- j. Progress Meetings. Meetings to discuss the progress of the Project and/or to review the performance of the Construction Manager will be scheduled at least once each week and as directed by the Commission, at mutually agreeable times and locations, and the Construction Manager agrees to cause such meetings to be attended by appropriate personnel of the Construction Manager engaged in performing or knowledgeable of the Services, and subcontractors, as required.
- k. Defects in Project. The Construction Manager shall notify the Commission immediately regarding any significant problems in connection with the Project including, but not limited to, construction defects, cost overruns or scheduling delays.
- l. Performance Standard. The Construction Manager represents and agrees that the Services performed under this Agreement will proceed with efficiency, promptness and diligence and will be executed in a competent and thorough manner, in accordance with reasonable professional standards in the field. The Construction Manager further agrees that it will assign to the Project at all times during the term of this Agreement the number of experienced, appropriately trained employees necessary for the Construction Manager to perform the Services in the manner required hereunder.
- m. Changes (Amendments). The Commission may from time to time, request changes to the terms of the Agreement or in the Scope of Services of the Construction Manager to be performed hereunder. Such changes, including any increase or decrease in the amount of compensation and revisions to the duration of the Services, which are mutually agreed upon by and between the Commission and Construction Manager, shall be incorporated in a written amendment to this Agreement. The Commission shall not be liable for any changes absent such written amendment.

- n. Energy Conservation Ordinance. Whenever the Services of the Construction Manager require the construction of new buildings and structures, addition or alteration of existing buildings and structures or portion thereof, Construction Manager must comply with the provisions of the Energy Conservation Ordinance, Chapter 18-13 of the Municipal Code of Chicago, as stipulated in the Contract Documents. The Construction Manager shall also select and/or recommend for installation by contractor energy-efficient mechanical, service water-heating, electrical distribution and illumination systems and equipment for the effective use of energy in these buildings and structures as appropriate.

5. Term.

- a. Duration. The term of this Agreement shall begin on the Commencement Date of Services specified in Schedule A to this Agreement and, subject to the provisions of subparagraph (b) below, shall expire upon completion of the Services and acceptance thereof by the Commission or, if the Services are of an on-going nature, on the Completion Date of Services specified in Schedule A, or if the parties are unable, after good faith efforts, to agree upon a GMP. The Commission and the Construction Manager may, from time to time, by mutual agreement, extend the term of this Agreement by amending Schedule A hereto.
- b. Termination or Suspension by the Commission. The Commission shall have the right, at any time, to terminate the term of this Agreement, with or without cause, by written notice given to the Construction Manager at least 30 days prior to the effective date of termination. In addition, the Commission shall have the right, at any time and from time to time, with or without cause, to suspend the performance of the Construction Manager hereunder with respect to all or any part of the Services, by written notice given to the Construction Manager at least 5 days prior to the effective date of suspension. Termination or suspension of this Agreement shall not relieve the Construction Manager from liability for the performance of any obligation of the Construction Manager under this Agreement performed or to have been performed by the Construction Manager on or before the effective date of termination or suspension. The compensation for termination or suspension shall include the cost of trade contractors' work completed and accepted by the Commission, as well as general conditions, fees associated with the demobilization, and the proportional share of insurance and bond costs, consistent with the terms of this Agreement, if not already reimbursed by the Commission. In no event shall the Commission be liable to the Construction Manager for any loss including lost profits, cost or damage which the Construction Manager or any other party may sustain by reason of the Commission terminating or suspending this Agreement as provided herein; provided, however, that the Commission may, in its sole discretion, reimburse the Construction Manager for actual expenses approved by the Commission.
- c. Termination by the Construction Manager. If the Project, in whole or substantial part, is stopped for a period longer than 30 days under an order of any court or other governmental authority having jurisdiction of the Project, or as a result of an act of government, such as a declaration of national emergency making materials

unavailable, through no act or fault of the Construction Manager, or if the Commission fails to make any payment or perform any other obligation hereunder, the Construction Manager shall have the right to terminate this Agreement, by written notice given to the Commission at least 60 days prior to the effective date of termination, and shall have the right to recover from the Commission all compensation and reimbursements due to the Construction Manager for periods up to the effective date of termination.

- d. Force Majeure. Neither of the parties is liable to the other for any delay or failure in performance hereunder due to a force majeure event. If a force majeure event occurs, the party delayed or unable to perform shall give prompt notice to the other party, and the Commission may, at any time during the continuation of the force majeure event, elect to suspend the performance of the Construction Manager under this Agreement for the duration of the force majeure event. The Commission is not obligated to pay for Services to the extent and for the duration that performance thereof is delayed or prevented by the force majeure event, but, provided the Construction Manager is not in default of any obligation of the Construction Manager hereunder, the Commission shall pay to the Construction Manager, according to the terms hereof, all compensation and reimbursements due to the Construction Manager for periods up to the effective date of suspension. The term "force majeure" means an extraordinary event or effect that the parties could not have anticipated or controlled and that renders performance impossible or impracticable for the duration of the event or effect. Such events or effects include but are not limited to: extraordinary acts of nature, such as tornadoes; or of people, such as acts of terrorism; or of governments, such as imposition of martial law. The term does not include, for example, typical Chicago inclement weather (i.e. weather the severity of which is less than a standard deviation from the 5-year mean for the Chicago Midway area as established by the National Oceanic and Atmospheric Administration) or labor strikes.

6. Compensation of the Construction Manager and Reimbursement for Expenses. The Commission shall compensate the Construction Manager in the amount and the manner set forth in Schedule C to this Agreement.

7. Rights and Obligations of Commission. In connection with the administration of the Project by the Commission and the performance of this Agreement by the Construction Manager, the Commission shall have the following rights and obligations, in addition to those provided elsewhere in this Agreement:

- a. Information. The Commission shall provide the Construction Manager all reasonably requested information concerning the Commission's requirements for the Project and the Services.
- b. Review of Documents. The Commission agrees to make a reasonable effort to examine documents submitted by the Construction Manager and render decisions pertaining thereto with reasonable promptness.
- c. Site Data. To the extent the Commission determines it to be necessary for the Construction Manager to perform the Services, the Commission may furnish, or may

authorize the Construction Manager to obtain from a consultant or consultants approved by the Commission as Reimbursable Expenses: (i) a certified survey of the site or sites; (ii) information concerning locations, dimensions and data pertaining to the site and other improvements; (iii) title information; and (iv) information concerning available service and utility lines; and (v) results of test borings and pits, as required, for determining subsoil conditions. The Construction Manager shall not be liable to the Commission for the substantive content of such tests and reports obtained from a consultant engaged by the Construction Manager and approved by the Commission, provided that the Construction Manager has exercised reasonable diligence in the selection of the consultant.

- d. Tests and Reports. To the extent required for the Construction Manager to perform the Services, the Commission may furnish structural, civil, chemical, mechanical, soil and/or other tests and reports or may authorize the Construction Manager to procure such tests and reports from a consultant or consultants approved in writing by the Commission as Reimbursable Expenses. The Construction Manager shall not be liable to the Commission for the substantive content of such tests and reports obtained from a consultant engaged by the Construction Manager and approved by the Commission, provided that the Construction Manager has exercised reasonable diligence in the selection of the consultant and provided that the Construction Manager has caused the consultant to purchase and maintain professional liability insurance in accordance with Section A.4 of Schedule D protecting the Commission, the User Agency, and the Construction Manager from any loss or claim arising out of the consultant's performance.
- e. Legal, Auditing and other Services. The Commission shall arrange and pay for such legal, auditing, insurance counseling and other Services as the Commission, in its sole discretion, may determine to be required for the Project. Such payments shall not include legal or auditing expenses arising out of or relating to any errors or omissions, or claimed errors or omissions, of the Construction Manager negligence, any act on by Commission.
- f. Designated Representatives. The Commission may designate, at its sole discretion, one or more representatives authorized to act on its behalf.
- g. Ownership of Documents. All documents, data, studies and reports prepared by the Construction Manager or any party engaged by the Construction Manager, pertaining to the Project and/or the Services are the property of the Commission.
  - (i) The parties intend and agree that, to the extent permitted by law, any documents, schedules, reports, data, etc. to be produced by the Construction Manager or its consultants or subcontractors pursuant to this Agreement shall conclusively be deemed "Works made for hire" within the meaning and purview of Section 101 of the United States Copyright Act, 17 U.S.C. § 101 *et seq.*, and that the Commission, the User Agency and their successors and assigns, will be the copyright owner of all aspects, elements and components thereof in which copyrights can subsist. To the extent that any of the foregoing does not qualify as a "Works made for hire," the

Construction Manager hereby irrevocably grants, conveys, bargains, sells, assigns, transfers and delivers to the Commission, the User Agency and their successors and assigns, all right, title, and interest in and to the copyrights and all U.S. and foreign copyright registrations, copyright applications and copyright renewals therefor, and all other intangible, intellectual property embodied in or pertaining to the Works contracted for under the Agreement, free and clear of any liens, claims or other encumbrances, to the fullest extent permitted by law. The Construction Manager will execute all documents and, at the expense of the Commission, perform all acts that the Commission may reasonably request in order to assist the Commission, the User Agency and their successors and assigns, in perfecting their rights in and to the copyrights relating to the Works.

(ii) The Construction Manager represents to the Commission, the User Agency and their successors and assigns, that (1) the any such documents constitute a Works of authorship; (2) the Construction Manager has not assigned any copyrights nor granted any licenses, exclusive or non-exclusive, to any other party; (3) the Construction Manager is not a party to any other agreement or subject to any other restrictions with respect to the Works; and (4) the plans and designs for the Works will, upon completion of the Works be complete, entire and comprehensive. Further, the Construction Manager agrees that it will not restrict or otherwise interfere with the Commission's and/or the User Agency's future actions in authorizing the use, adaptation, revision, or modification or destruction of the Works provided that the Construction Manager is indemnified for any damages resulting from any such future re-use or adaptation of the Works as may be authorized by the Commission.

h. Audits. The Commission shall have the right to audit the books of the Construction Manager and its consultants on all subjects relating to the Project and/or the Services.

8. Indemnification of Commission. The Construction Manager hereby agrees to indemnify, defend, keep and save harmless the Commission and the User Agency and their respective commissioners, board members, officers, agents, officials and employees, from and against all claims, demands, suits, losses, costs and expenses, including but not limited to, the reasonable fees and expenses of attorneys, experts, and court costs that may arise out of or be based on any injury to or death of persons or damage property that is or is claimed to be the result of the Construction Manager's performance associated with the Services and work or nonperformance of the terms of this Agreement, a negligent error, omission or negligent or willfully wrongful act of the Construction Manager, any person employed by the Construction Manager, or any consultant retained by or subcontractor hired by the Construction Manager in connection with this Project.

9. Insurance to be Maintained by the Construction Manager. The Construction Manager shall purchase and maintain at all times during the performance of Services hereunder, for the benefit of the Commission, the User Agency and the Construction Manager, insurance coverage which will adequately insure the Commission, the User Agency and the Construction Manager against claims and liabilities which could arise out of the performance of such Services, including but not limited to, the insurance coverages set forth in Schedule D to this Agreement.

10. Default.

a. Events of Default. Any one or more of the following occurrences shall constitute an Event of Default under this Agreement:

(i) Failure or refusal on the part of the Construction Manager duly to observe or perform any obligation or agreement on the part of the Construction Manager contained in this Agreement, which failure or refusal continues for a period of 10 days, or such longer period as the Commission, in its sole discretion, may determine if such failure is not capable of being cured within such 10-day period, after the date on which after the Commission gives written notice thereof to the Construction Manager;

(ii) Any representation or warranty of the Construction Manager set forth herein or otherwise delivered pursuant to this Agreement shall have been false in any material respect when so made or furnished;

(iii) The Construction Manager becomes insolvent or ceases doing business as a going concern, or makes an assignment for the benefit of creditors, or generally fails to pay, or admits in writing its inability to pay, its debts as they become due, or files a voluntary petition in bankruptcy, or is adjudicated a bankrupt or an insolvent, or files a petition seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar arrangement under any present or future statute, law or regulation relating to bankruptcy or insolvency, or files an answer admitting the material allegations of a petition filed against it in any such proceeding, or applies for, consents to or acquiesces in the appointment of a trustee, receiver, liquidator or other custodian of it or of all or any substantial part of its assets or properties, or if it or its principals shall take any action in furtherance of any of the foregoing; or

(iv) There shall be commenced any proceeding against the Construction Manager seeking reorganization, arrangement, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation relating to bankruptcy which is not vacated, stayed, discharged, bonded or dismissed within 60 days thereof, or there shall be appointed, without the Construction Manager's consent or acquiescence, any trustee, receiver, liquidator or other custodian of Custodian or of all or any substantial part of the Construction Manager's assets and properties, and such appointment shall not have been vacated, stayed, discharged, bonded or otherwise dismissed within 60 days thereof.

b. Remedies. If an Event of Default shall occur and be continuing, then the Commission may exercise any right, power or remedy permitted to it by law or in equity and shall have, in particular, without limiting the generality of the foregoing, the right to terminate this Agreement upon written notice to the Construction Manager, in which event the Commission shall have no further obligations hereunder or liability to the Construction Manager except as to payment for Services actually received and accepted by the Commission through the effective date of termination. No courses of dealing on the part of the Commission or delay or failure on the part of

the Commission to exercise any right shall operate as a waiver of such right or otherwise prejudice the Commission's rights, powers or remedies.

- c. Remedies not Exclusive. No right or remedy herein conferred upon or reserved to the Commission is exclusive of any right or remedy herein or by law or equity provided or permitted, but each shall be cumulative of every other right or remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise, and may be enforced concurrently therewith or from time to time.

11. Claims and Disputes. The declaration of the default or termination of this Contract are not matters that may be disputed under this provision of the Agreement.

Construction Manager's Request. In the event of any dispute arising out of a claim that the Construction Manager and the Commission Representative have attempted, but been unable, to resolve (including, without limitation, changes, extensions, claims, allowable costs, or any other issues of fact or Contract interpretation based upon, relating to, or arising under the Contract), the Construction Manager must submit a request for resolution to the Executive Director for final determination. The Construction Manager's failure to submit the dispute within 30 Days of the Commission Representative's written recommendation regarding the claim shall constitute waiver of the dispute and acceptance of the Commission Representative's recommendation.

Request Requirements. Requests for resolution of disputes must be made by the Construction Manager in writing, specifically referencing this section, and including 1) the issues(s) presented for resolution; 2) a statement of the respective positions of the Construction Manager and the Commission's Representative; 3) the facts underlying the dispute; 4) reference to the applicable provision of the Contract by page and section; 5) the identity of any other parties believed to be necessary to the resolution of the dispute; and 6) all documentation which describes and relates to the dispute. The Construction Manager must provide a copy of the request for resolution of the dispute to the Commission Representative on the same day it is given to the Executive Director.

Commission Representative's Response. The Commission Representative will have 30 Days to respond in writing to the Construction Manager's submission by supplementing the Construction Manager's submission or providing its own submission to the Executive Director and Construction Manager. Failure by the Commission Representative to respond is not deemed to be an admission of any allegations made in the request for dispute resolution, but may be deemed to constitute a waiver of the opportunity to respond to such allegation(s), if any.

Executive Director's Decision. The Executive Director's decision may be reached in accordance with such other information or assistance as the Executive Director deems reasonable, necessary or desirable. The Executive Director may also consider issues of Contract interpretation in connection with the decision. The Executive Director's final decision will be rendered in writing no more than 60 Days after the response of the Commission Representative was filed or was due, unless the Executive Director notifies the Construction Manager and Commission Representative before the end of the 60 Day period that additional time, not to exceed 30 Days, is necessary. The Executive Director's decision

is conclusive, final, and binding on all parties unless a judicial determination is sought in accordance with the provisions set forth below.

**Implementation of Decision.** The Executive Director's final decision will be implemented through a Change Order, if required, which will be made a part of the Contract with or without the acceptance of the Construction Manager if the Construction Manager refuses to accept the Change Order.

**Construction Manager's Remedy.** If the Construction Manager does not agree with the decision of the Executive Director, the sole and exclusive remedy is review by the Circuit Court of Cook County or any other court of competent jurisdiction. No suit or action on this Contract for the recovery of any claim shall be sustainable in any court of law or equity unless commenced within 12 months next after the date the Executive Director formally denies the claim but in no event longer than 90 Days after Substantial Completion of the Services.

**Construction Manager's Performance of Services.** The Construction Manager must not withhold performance of and must prosecute any Services required by the Commission during the dispute resolution period, including judicial resolution. The Construction Manager shall prosecute all of its Services including any disputed Services with the same diligence and effort as if no dispute existed. The Executive Director's written determination will be complied with pending final resolution, including judicial resolution of the dispute. Neither the Executive Director determination, nor the continued performance by either party, constitutes an admission as to any factual and/or legal position in connection with the dispute or a waiver of any rights under the Contract.

**Administrative Appeal of Dispute.** The Construction Manager must follow the procedures set forth in this Article 11 "Claims and Disputes" as a condition precedent to filing a complaint in any court of law or equity.

12. **Confidentiality.** All of the reports, information, or data prepared or assembled by the Construction Manager under this Agreement are confidential, and the Construction Manager agrees that such reports, information or data shall not be made available to any party without the prior written approval of the Commission. In addition, the Construction Manager shall not, without the prior written consent of the Commission, prepare or distribute any news releases, articles, brochures, advertisements or other materials concerning this Agreement, the Project or the Services. If the Construction Manager is served with a subpoena or other court document requiring the production of documents or information which is deemed confidential, the Construction Manager shall immediately notify the Commission in writing and provide a copy of the subpoena to the Commission in sufficient time for the Commission to attempt to quash, or take other action in relation to, the document.

13. **Assignment.** The Construction Manager acknowledges that the Commission is induced to enter into this Agreement by the personal qualifications of the principals, staff and employees of the Construction Manager and agrees, therefore, that neither this Agreement nor any right or obligation hereunder may be assigned by the Construction Manager, in whole or in part, without the prior written approval of the Commission. For purposes of this paragraph, if the Construction Manager undergoes a change in control, the change in control shall be deemed an assignment of the



Agreement; a change in control is defined as a transfer of more than 50% of the equity ownership of the Construction Manager during any 12 month period. In the event of an assignment by the Construction Manager without the prior written approval of the Commission, the Commission shall have the right to immediately terminate the Agreement without fault or responsibility. The Construction Manager further acknowledges that the Construction Manager has represented to the Commission the availability of certain members of the Construction Manager's staff who will be assigned to Project, and agrees, therefore, that in the event of the unavailability of such members due, the Construction Manager shall so notify the Commission in writing, and shall assign other qualified members of the Construction Manager's staff, as approved by the Commission, to the Project.

14. Relationship of Parties. The relationship of the Construction Manager to the Commission hereunder is that of an independent contractor, and the Construction Manager, except to the extent expressly provided to the contrary on Schedule A hereto, shall have no right or authority to make contracts or commitments for or on behalf of the Commission, to sign or endorse on behalf of the Commission any instruments of any nature or to enter into any obligation binding upon the Commission. This Agreement shall not be construed as an agreement of partnership, joint venture, or agency.

15. Parent Guaranty. As an inducement to the Commission to enter into this Agreement, the Construction Manager's sole shareholder, AECOM Technology Corporation, a Delaware corporation, offers a Parent Guaranty of the Construction Manager's Obligations under this Agreement in the amount of \$100,404,257, as set forth in Exhibit 1, and in which the term "Obligations" is defined, the term "Contractor" is intended to refer to the Construction Manager and the term "Contract" is intended to refer to this Agreement.

16. General.

- a. Construction Manager's Authority. Execution of this Agreement by the Construction Manager is authorized by a resolution of its Board of Directors, if a corporation, or similar governing document if a partnership or a joint venture, and the signature(s) of each person signing on behalf of the Construction Manager have been made with complete and full authority to commit the Construction Manager to all terms and conditions of this Agreement, including each and every representation, certification and warranty contained or incorporated by reference in it.
- b. Counterparts. This Agreement may be executed in any number of counterparts, any of which shall be deemed an original.
- c. Effect of Agreement. This Agreement supersedes any and all prior or contemporaneous oral or written representations or communications with respect to the subject matter hereof, all of which communications are merged herein. This Agreement shall not be modified, amended or in any way altered except by an instrument in writing signed by both of the parties hereto.
- d. Governing Law. This Agreement has been negotiated and executed in the State of Illinois and shall be construed under and in accordance with the internal laws of the State of Illinois and of the United States of America.

- e. No Waiver. The waiver by either party of any breach of this Agreement shall not constitute a waiver as to any succeeding breach.
- f. Notices. All notices required to be given hereunder shall be given in writing and shall be hand delivered or sent by United States certified or registered mail, postage prepaid, addressed to Commission and to the Construction Manager at their respective addresses set forth above. If given as herein provided, such notice shall be deemed to have been given on the date of delivery, if delivered by hand, and on the second business day after mailing, if given by mail. The Commission or the Construction Manager may, from time to time, change the address to which notices hereunder shall be sent by giving notice to the other party in the manner provided in this subparagraph.
- g. Non-liability of Public Officials. No board member, trustee, employee, agent, officer, or official of the Commission or User Agency shall be personally liable to Construction Manager or its consultants, and Construction Manager and its consultants are not entitled to, and must not attempt to, charge any of them with liability or expense or hold them personally liable to Construction Manager or its consultants under this Agreement.
- h. Severability. In the event that any provisions of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
- i. Successors and Assigns. Except as otherwise provided herein, this Agreement shall be binding upon and inure to the benefit of each of the parties hereto and their respective successors and assigns.
- j. Hazardous Materials. Notwithstanding anything to the contrary contained herein, it is expressly understood that the Construction Manager, its employees and subcontractors, have no responsibility, of any kind or nature, to design, inspect, remove, remediate, dispose of or test hazardous materials on site. The Construction Manager is responsible only to bid, negotiate, manage the process of, and quantify the environmental trade contractors' performance on the project. The Construction Manager will cause the environmental trade contractor(s) to provide all required insurance coverage for hazardous material removal and make the Commission an express third-party beneficiary of each environmental subcontract. Environmental trade contractors must provide the required insurance and permits for their work. PBC will contract separately for the design and field monitoring of the removal work on the site.
- k. Order of Precedence. In interpreting this Agreement, including its schedules, exhibits, documents incorporated by reference, as it may be amended from time to time, the parts of the Agreement have the following order of precedence, and any conflicting terms are to be construed in accordance with the document of the higher precedence:

1. This Contract For Professional Services And Construction Number PS 803, from page 1 through Schedule A, Schedule C, Schedule D, and Exhibit 1, Parent Guaranty, all as amended from time to time;
2. Attachment #1, Book 1 of Schedule B – Standard Terms and Conditions;
3. Attachment #2, Book 3 of Schedule B – Technical Specifications;
4. Attachment #3, Book 3A of Schedule B – Environmental Specifications and Drawings;
5. Attachments #6 through #13, Drawings;
6. Attachment #5 of Schedule B – Geotechnical Report;
7. Attachment #4 Book 3B of Schedule B – Traffic Control and Protection Specifications

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto as of the 15<sup>th</sup> day of June, 2005.

PUBLIC BUILDING COMMISSION  
OF CHICAGO

ATTEST:

By: [Signature]  
Secretary

By: [Signature]  
Chairman

THE MCCLIER CORPORATION

By: \_\_\_\_\_  
Title: Secretary/Assistant Secretary  
(select one)

By: [Signature]  
Title: President/Vice President  
(select one)

AFFIX CORPORATE  
SEAL HERE  
County of Cook  
State of IL

Subscribed and sworn to before me this 15<sup>th</sup> day of June, 2005,  
by Kenneth M. Terpin, as President/Vice President, and  
\_\_\_\_\_, as Secretary/Assistant Secretary of McCluer Corporation.

[Signature]  
Notary Public



SIGNATURE PAGE

**SCHEDULE A**

**DETAILED SCOPE OF SERVICES**

New Kennedy-King College Campus  
Located in the Vicinity of  
W. 63<sup>rd</sup> and S. Halsted Streets  
Chicago, Illinois

**A. BASIC SERVICES FOR CONSTRUCTION MANAGEMENT; MILESTONES**

Scope. The Construction Manager shall perform, or cause to be performed, the following bidding and Construction Management Services. The Services shall be performed in the following phases:

- A.1 Phase I - Pre-Construction/Mobilization
- A.2 Phase II - Bidding Activities
- A.2 Phase III - Construction
- A.4 Phase IV - Project Close Out

**Project Phasing**

Phase I:	Pre-Construction/Mobilization Period:	
	Site Mobilization	July 1, 2005 – August 1, 2005
Phase II	Bidding Period (Foundations and other Critical Path activities)	
		July 29, 2005 – August 23, 2005
	Bidding Period (Superstructure)	September 1, 2005 – October 11, 2005
	Permitting (Foundations)	July 1, 2005 – September 26, 2005
	Permitting (Superstructure)	July 1, 2005 – October 28, 2005
Phase III:	Construction Period:	
	Construction (Foundations)	September 27, 2005 – March 6, 2006
	Construction (Superstructure)	November 29, 2005 – June 24, 2007
	Certificate of Occupancy	June 25, 2007
	FF&E	July 23, 2007 – September 21, 2007
Phase IV	Project Close-Out	August 26, 2007 – November 24, 2007
	Punch-List	June 26, 2007 – August 25, 2007

Final Acceptance

November 25, 2007

If the Commission and the Construction Manager agree in writing, the Construction Phase may commence before the Pre-Construction Phase is completed, in which case both phases will proceed concurrently.

**Milestones.**

The duration of the Construction Management Services of this Agreement is as follows:

Commencement Date of Services	Date of NTP1
Preliminary Acceptance Date	June 25,2007
Final Acceptance Date	November 25, 2007
Completion Date of Services	December 31, 2007

**A.1 Pre-Construction Phase.**

The Construction Manager shall provide the following Services:

A.1.1 Complete peer review and constructability analyses of the design and construction documentation prior to issuing the foundation and superstructure packages for bid. Upon completion submit review comments to the Commission and its consultants for review. The Construction Manager shall fully coordinate these activities with the Commission and its consultants, as required, to ensure the completeness and accuracy of the construction documents.

All required peer review and constructability analyses must be completed prior to issuing the foundation and superstructure packages for bid.

A.1.2 Consult with the Commission and the User Agency regarding the goals and requirements of the project.

A.1.3 Review the requirements of any federal, state, or local agencies having jurisdiction over various aspects of the project with the Architect of Record, Commission and the User Agency regarding costs and alternatives.

A.1.4 Develop written project procedures and controls, in cooperation with the Commission that will be used as a guide for the management and coordination of this Project throughout the term of this Agreement.

A.1.5 Schedule and conduct regular meetings with the Architect of Record, the Commission and the User Agency not less than once each week. Prepare and distribute minutes of all project meetings within 2 business days.

A.1.6 Prepare detailed value-engineering procedures. Upon completion, review the construction documents along with any/all value engineering items with the Commission and its consultants to align the project scope with the project budget to the extent possible. Recommend potential value engineering and constructability alternatives, as required. The Construction Manager is required to provide value engineering services during the course of the Project. The value engineering project plan must be performed prior to bidding the work. The Construction Manager will not be required to prepare the value engineering management plan more than once

per GMP in order to meet the overall milestone dates. The Construction Manager shall be compensated by the Commission if required to redevelop the value engineering plan. The Construction Manager will coordinate these activities with the Commission and its consultants, as required.

A.1.6.1 After a complete review of the Project Program, evaluate the Contract Documents available at the time of the Construction Manager's commencement of Pre-Construction Services, and obtain an understanding of the intent of the Architect of Record, the Commission and the User Agency, provide value analysis/constructability Services and offer cost savings suggestions and best value recommendations to the Commission. All recommendations shall be in writing and must be fully reviewed with the Architect of Record, Commission and the User Agency and approved by the Commission prior to implementation.

A.1.6.2 Perform value analysis efforts to result in a design that is most effective in first costs as well as long term operational costs relative to issues of energy use and facility maintainability. The Architect of Record is responsible for performing the life cycle analysis of the alternatives and the Construction Manager will develop the cost analysis to support the effort of the team.

A.1.6.3 Prepare detailed cost estimates supporting any/all value analysis. Value analysis efforts shall also take into consideration applicable constructability issues that may decrease the duration of the construction schedule and/or decrease the construction cost. Propose recommendations to the Commission and User Agency on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction cost including estimates of alternative designs or materials, preliminary budgets and possible economies.

A.1.6.4 Promptly notify the Commission, the Architect of Record and the User Agency in writing upon observing any features in the design that appear to be ambiguous, confusing, conflicting or erroneous.

A.1.6.5 Provide value analysis recommendations must be provided within 30 days following the execution of the Contract. At a minimum, each such written report shall contain: (1) a description of the value analysis/ constructability issue with background information; (2) a summary of the Construction Manager's in-depth study/research; and, (3) written recommendations for addressing the issue.

A.1.7 Prepare a progress schedule for the project utilizing the Critical Path Method (CPM), in accordance with Book 1 of the Contract Documents. The Construction Manager shall utilize Primavera Project Planner P3E/C as a scheduling software package. The Construction Manager's CPM schedule, as a minimum, shall indicate commencement dates of the various phases/stages of Services, including, without limitation the mobilization activities, placing or orders, delivery of materials and equipment, preparation, submittal, and approval of all required submittals, preparation and procurement of material and equipment furnished by any contractors, vendors, and suppliers. Interface all activities performed by others upon which the Construction Managers schedule depends, all work activities and field construction operations, utility agency

related work, equipment installation, testing and balancing, and all required inspections by agencies having jurisdiction for permitting, licensing, and Certificate of Occupancy. The Construction Manager's schedule shall include estimates of craft hours and or crew sizes for each activity. The Construction Manager shall submit the base line CPM schedule within 15 Days after NTP1.

A.1.8 Prepare Construction Guaranteed Maximum Prices (GMPs) for review by the Commission and the User Agency for both the foundation, (no later than August 23, 2005 unless extended by sole option of Commission) and the superstructure, (no later than October 11, 2005 unless extended by sole option of Commission).

A.1.8.1 An overview of the current budget estimate compared to the Commission's budget.

A.1.8.2 A detailed comparison and reconciliation of the current budget estimate to the previous budget estimate, with an explanation of any variance by component.

A.1.8.3 A summary of all approved cost revisions.

A.1.8.4 A list of Drawings and Specifications, including all addenda thereto.

A.1.8.5 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the GMP to supplement the information contained in the Drawings and Specifications.

A.1.9 The Construction Manager shall also include Construction GMP Contingencies for both the Foundation and Superstructure Packages in amounts approved by the Commission, to help reduce the risks assumed by the Construction Manager in providing the GMP for the Project. The Commission and the Construction Manager acknowledge that the contingencies are included to adjust the estimates for eventualities that have not been taken into precise account in the establishment of the GMP including: (1) scope gaps between trade contractors, (2) contract default by trade contractors and, (3) costs of corrective work not provided for elsewhere.

Once established and approved by the Commission, these Construction GMP Contingencies may be increased by any value engineering savings or any savings as a result of best-and-final offers in bidding to Subcontractors, suppliers, and vendors for the work, (consistent with the requirements of Schedule A, section A.2), and savings and unused allowances in the Construction GMP, but not by any savings in the Reimbursable Expenses included under Sections C.2.2, C.2.3, or C.2.4, which involve Commission funds separate and apart from the items of work, goods, supplies, and services required to be included in the GMP.

A separate contingency will be established by the Commission to address (4) unforeseen field conditions, (5) design omissions which a prudent Construction Manager could not have reasonably detected during the discharge of the Construction Manager's pre-construction duties and (6) code compliance related changes. None of the contingency amounts include any fees required by the architect or engineer to: prepare bulletins, RFIs, field observation, punch list, permit meetings, re-design fees, scope changes or attendance at public meetings or bid openings.

A.1.9.1 The Construction GMP Contingency is not allocated to any particular item of the Cost of the Work and is established for the Construction Manager's use as may be



required for increases in costs as noted above. The Construction Manager will be required to obtain the Commission's written authorization prior to utilizing any portion of the Commission's contingency amount. The Construction Manager must manage its contingency and report to the Commission in writing on the utilization of the contingency on a monthly basis. It is understood that the amount of the Construction Manager-GMP Contingency is the maximum sum available to the Construction Manager to cover costs incurred as a result of such unanticipated causes or details, and that cost overruns in excess of the amount of the Construction GMP contingency will be borne by the Construction Manager.

A.1.9.2 The Construction GMP contingency may be applied to any items within the Cost of the Work with a change order to a subcontractor or consultant without resulting in any change in the GMP. The Construction Manager will be allowed to control the budget and use of the contingency. The Construction Manager shall provide documentation to the Commission on the use of the contingency.

A.1.9.3 The amount of the Construction GMP contingency is to be submitted to the Commission for review and approval as part of its review and approval of the GMP. No set amount or percentage for the Construction GMP contingency will be agreed to prior to the submittal of the GMP. The Commission retains the right to specifically request revisions to the amount of the Construction GMP contingency prior to the Commission's acceptance and approval of the GMP.

A.1.10 In the event that the Construction GMP exceeds the Project Construction Budget, the Commission may elect at its discretion to direct the Construction Manager as an Additional Service work in conjunction with the Architect of Record to re-design the Project as a final Good Faith effort to maintain the Project Program and meet the Project Construction Budget as follows:

A.1.10.1 The Construction Manager shall coordinate and cooperate with the Commission, the Commission's consultants, and the User Agency to alter and re-draft Construction Documents as necessary to accomplish the required reduction in cost.

A.1.10.2 The Construction Manager shall develop and provide to the Commission a Construction GMP in connection with the re-drafted and altered Construction Documents to accomplish the necessary reductions in costs.

A.1.10.3 The Construction Manager shall analyze the Architect of Record's originally submitted and as altered and re-drafted Construction Documents and make recommendations to the Commission as to ways and methods to reduce the costs of constructing the Project to a sum which does not exceed the Project Construction Budget.

A.1.11 The Commission has the right to reject or to withhold, in its discretion, approval of any Construction GMP as originally submitted or as adjusted. In that event, the Contract will terminate without penalty according to its terms at the end of the Pre-Construction Phase of the work under the Contract.

A.1.12 Within 10 calendar days following the agreement between the Commission and the Construction Manager establishing the GMP, as provided herein, the Construction Manager shall

provide the Commission with a Payment and Performance Bond in such form as may be approved by the Commission. At their election, the Commission and the Construction Manager may mutually agree to provide insurance to protect Construction Manager's subcontractors.

The Construction Manager shall also:

A.1.13 Create and maintain a cost control system that compares the Construction GMP with the actual cost for activities in progress and estimates for uncompleted tasks and proposed changes.

A.1.14 Make appropriate adjustments to the GMP if the Commission discovers any inconsistencies or inaccuracies in the information presented.

A.1.15 Prepare a bidding strategy(ies) for review and recommendation to the Commission and the User Agency. At a minimum the recommendation shall contain, (a) project scope, (b) cost estimate, (c) schedule (d) identify long lead items (e) proposed bidders, (f) impact on MBE/WBE/ community involvement participation.

A.1.15.1 Upon the Commission's approval of the Project Schedule, Guaranteed Maximum Price, and Bidding Strategy the Contract Documents shall consist of, in addition to schedule B, (i) this Agreement, (ii) General Conditions, Special Conditions and Project Specifications – Division 1 – Project Requirements) and (iii) modifications issued subsequent to the Commission's approval of the Control Estimate. If anything in the other Contract Documents is inconsistent with this Agreement, this Agreement shall govern.

A.1.16 Establish and maintain an open line of communication with the entire team, including the Commission, its consultants, and the User Agency throughout the project duration.

A.1.16.1 In connection with communications, the Construction Manager shall provide a secure internet-based storage program of all Project documentation, including, but not limited to, RFIs, submittals, schedule information, project photographs, financial information, project correspondence and project logs to facilitate communications among the Construction Manager, its subcontractors, the Commission, the Commission's consultants, and the User Agency. The Construction Manager shall coordinate all access requirements with the Commission.

A.1.16.2 The Construction Manager shall within the project's trailer complex/mobilization area provide for use by subcontractors networked computer workstations, for which the Construction Manager must provide all necessary necessary support and subcontractor training, as required to maintain and operate these workstations. The Construction Manager must ensure that the network has high speed internet connectivity, along with all proper licensing for hardware and software. The workstations must include at least the following operational and networked equipment and software:

- 6 dedicated, networked computer workstations, with Microsoft Office 2000 installed;
- 2 network-capable laser printers and one network capable scanner.

A.1.17 Prepare and identify design strategies that will assist in facilitating construction activities, which can reduce the overall construction duration.

A.1.18 Prepare a detailed cost estimate performed by a third party of the construction documents in accordance with the CSI Master Format upon execution of the contract for both the foundation and superstructure packages. The cost estimate must be prepared and issued to the Commission prior to issuing the foundation and superstructure packages for bid.

A.1.19 Provide site security, as required, from NTP1 through final acceptance.

A.1.20 Upon issuance of the building permits for both the foundation and superstructure packages, coordinate the issuance of the "Issue for Construction" drawings for each package with the Architect to ensure completeness and accuracy.

A.1.21 Coordinate and conduct pre-construction conferences with all bidders, as necessary, to review all contract requirements at a location designated by the Commission. Prepare and issue meeting minutes, as required.

## **A.2 Bidding Phase**

The Construction Manager shall:

A.2.1 Review the list of bid packages for all materials and work and provide full assignment, coordination and responsibility for the work. Provide the Commission a checklist of the Construction Manager's bidding process, from beginning to end.

A.2.2 Provide the Commission with a schedule for procurement of long-lead time items and confirm inclusion of all requirements for special receipt, handling, and installation of materials and equipment to meet the Project schedule. The Construction Manager shall procure and expedite the delivery of such long-lead time items in order to meet the Project schedule

A.2.3 Where appropriate, develop bidding alternatives on materials, construction techniques, fabrication and installation methods, to take advantage of current conditions in the construction marketplace.

A.2.4 Prepare a Notice of Bid Opportunity for the Commission's approval. Upon the Commission's approval deliver, via fax and/or Registered Mail, to all Subcontractors on the applicable Commission Pre-Qualified List for the scope of the work to be bid.

A.2.5 If a Commission Pre-Qualified List does not exist for the scope of work to be bid, then the Construction Manager shall either:

A.2.5.1 Bid the work in accordance with Section 20 of the Public Building Commission Act, 50 ILCS 20/20; or

A.2.5.2 Develop a Pre-Qualified List of Subcontractors in accordance with the Commission's pre-qualification procedures. The scope of work shall be bid in accordance with Section A.2.3 after a Pre-Qualified List has been established by the Construction Manager.

A.2.6 Pursuant to 50 ILCS 20/20, Notices of Bid Opportunity shall be placed in the following print publications once weekly for a period of 3 consecutive weeks in a daily newspaper of general circulation such as the Chicago Sun-Times, and at least once in each of the other publications listed below:

<p>Extra Publications  Attn: Jose Martinez  3906 W. North Avenue  Chicago, IL. 60647  Phone: 773 252-3534 Fax: 773 252-6031</p>	<p>Independence Bulletin  Attn: Thelma Green  1550 W. 88<sup>th</sup> Street, Suite 107  Chicago, IL. 60620  Phone: 773 233-6210 Fax: 773 233-6245</p>
<p>The Chicago Defender  Attn: Nekia Price  2400 S. Michigan Avenue  Chicago, IL. 60616  Phone: 312 225-2400 Fax: 312 225-5659</p>	<p>Beverly Review Editor  Attn: Teresa Davis  10546 S. Western Avenue  Chicago, IL. 60643  Phone: 773 238-3366 Fax: 773 238-1492</p>
<p>Chicago Sun Times  Attn: Mike Desmuke  350 N. Orleans  Chicago, IL. 60654  Phone: 312 321-2850 Fax: 312 321-2243</p>	<p>Daily Southtown  Attn: Linda Conrad  6901 W. 159th Street  Tinley Park, IL. 60477  Phone: 708 633-6803 Fax: 708 633-6850</p>
<p>LA RAZA Newspaper  Attn: Fatima Olvera  6001 N. Clark  Chicago, IL 60660  Phone: 773 273-2915 Fax: 773 273-2926</p>	<p>Chicago Crusader  Attn: Mr. John Smith  6429 South King Drive  Chicago, IL. 60637  Phone: 773 752-2500 Fax: 773 752-2817</p>
<p>N'Digo  Attn: Len Phillips  19 N. Sangamon  Chicago, IL. 60607  Phone: 312 822-0202 Fax: 312- 822-0288</p>	

A.2.7 Maintain accurate records of the bid notification process for each package. Provide a copy of these records to the Commission in a timely manner but in no event shall these records be presented to the Commission less than 5 Days prior to the bid opening.

A.2.8 Provide copies of each notice of bid package and the corresponding Pre-Qualified List of Subcontractors eligible to bid on the scope of work to the following agencies when the Notice of

Bid Opportunity letters are delivered or when the bidding opportunity is publicly advertised pursuant to 50 ILCS 20/20:

Chicago Urban League  
220 S. State, 11<sup>th</sup> Floor  
Chicago, Illinois 60604  
Tel: 312-692-0766 Fax: 312-692-0769

Hispanic American Construction Industry  
Association  
901 West Jackson, Suite 205  
Chicago, Illinois 60607  
Tel: 312-666-5910 Fax: 312-666-5962

Black Contractors United  
400 West 76<sup>th</sup> St, Suite 200  
Chicago, Illinois 60620  
Tel: 773-483-4000 Fax: 773-483-4150

Latin American Chamber Of Commerce  
3512 West Fullerton  
Chicago, Illinois 60647  
Tel: 773-252-5211 Fax: 773-252-7065

Federation Of Women Contractors  
5650 S. Archer Avenue  
Chicago, Illinois 60638  
Tel: 312-360-1122 Fax: 312-360-0239

Association Of Asian Construction Enterprises  
333 North Ogden Avenue  
Chicago, Illinois 60607  
Tel: 312-563-0746 Fax: 312-666-1785

African American Contractor's Association  
3706 South Indiana  
Chicago, Illinois 60653  
Tel: 312-915-5910 Fax: 312-657-9919

A.2.9 Schedule and administer pre-bid conference(s), scope review sessions at a location designated by the Commission, outline the proposed approach to the Project, project logistics, manpower requirements, schedule and sequence of operations; and prepare and distribute minutes of the pre-bid meetings.

A.2.10 During the bidding period(s) in conjunction with the Architect of Record, prepare and distribute written addendum, to plan holders and agencies, to address questions raised by potential Subcontractors.

A.2.10.1 The format of the addendum should correspond with the Commission's format.

A.2.10.2 Review addendum material with the Commission prior to issuing to sub contractors.

A.2.11 Schedule and administer Bid Opening(s) in accordance with Commission's Procurement protocol and in the presence of the Commission's Project Manger(s) and Affirmative Action Consultant at a location designated by the Commission.

A.2.12 Evaluate base bids, alternate proposals, unit prices, and such other data as may be pertinent.

A.2.12.1 Determine the lowest responsive and responsible bidder.

A.2.13 Recommend the award of a Subcontract for each scope of work to the Commission in writing.

A.2.14 After the Commission approves the award of a Subcontract for a specific scope of work in writing, the Construction Manager shall execute a Subcontract with the successful bidder on behalf of the Commission. The Subcontract shall contain all of the Commission's requirements, including, but not limited to, MBE/WBE participation, community hiring, and EEO requirements as indicated in the Subcontract Documents.

A.2.15 In accordance with the requirements of A.1.1, ensure that the "Issue for Bid" Contract Documents include all peer/constructability review comments.

A.2.16 Review and verify all necessary Instruction to Bidders, Proposal Forms, Contract Forms, General Conditions and Special Conditions of the contract supplied by the Commission.

A.2.17 Prepare and distribute bid packages, as required, for the project. Ensure that this activity is fully coordinated with the Commission, its consultants, and the Architect prior to distributing the bid packages.

A.2.18 Coordinate the preparation of all bid packages, as required, with the Commission's consultants, including but not limited to Material and Testing & Inspection and Environmental consultants.

A.2.19 Conduct and manage scope review sessions with all bidders upon submittal of bids for both the foundation and superstructure packages with the commission and its consultants to determine lowest responsive responsible bidder, as required, at a location designated by the Commission. Prepare and distribute written summaries of each scope review session to the Commission.

### **A.3 Construction Phase**

A.3.1 The Construction Phase shall commence on the earlier of:

A.3.1.1 the Commission's approval of the GMP and issuance of applicable Notice to Proceed; or

A.3.1.2 the Commission's first authorization to the Construction Manager to award a Subcontract, or to issue a purchase order for materials or equipment required for the Project.

A.3.2 Throughout the construction phase, the Construction Manager shall maintain the following project controls:

A.3.2.1 A project manager as the primary point of contact with the Commission, the User Agency, the Architect of Record members and Subcontractor(s) responsible for the day-to-day on-schedule and on-budget performance of the Work. The project manager shall monitor the Work of Subcontractors and coordinate the Work with the activities and responsibilities of the Commission, the Architect of record and Construction Manager to

complete the Project in accordance with the Commission's objectives of cost, time and quality.

A.3.2.2 The Construction Manager shall maintain a competent and adequate full-time staff approved by the Commission at the Project site to coordinate and provide adequate direction of the Work, and to monitor progress of the Subcontractors on the Project until final acceptance.

A.3.2.3 It is understood that the designated and approved on-site resident Construction Manager representatives will remain on the job and in-charge as long as those persons remain employed by the Construction Manager, unless the Commission has reason to agree otherwise during the course of the Project and a contract amendment is issued accordingly by the Commission.

A.3.2.4 The Construction Manager shall establish an on-site organization and lines of authority in order to carry out the overall plans of the Project Team.

A.3.2.5 The Construction Manager shall conduct orientation sessions for its on-site field staff and Subcontractor's staff, as applicable, as to the Project Procedures as developed during the Pre-Construction Phase. The Commission representatives may attend such sessions.

A.3.2.6 The Construction Manager will provide for all coordination with the on-site Subcontractors the necessary on-site services for the construction activities and on-site requirements of the Construction Manager, the Commission and Architect of Record.

A.3.2.7 The Construction Manager shall require all Subcontractors to submit a Daily Report which is to include, but not be limited to, a summary of work performed, information required, status of change order time and materials (T&M) work, materials received, and safety incidents. Such documents shall be provided to the Commission not less frequently than on a weekly basis.

A.3.2.8 The Construction Manager shall maintain a detailed daily diary of all events, which occur at the job site or elsewhere, and which affect, or may be expected to affect, project progress. The diary shall record weather data, including minimum and maximum temperatures, precipitation type and amount, sky conditions, and wind velocities. The diary shall also record all visitors, and include a detailed list of all material deliveries to the site. The diary shall be available to the Commission at all times and shall be turned over to the Commission upon completion of the Work.

A.3.2.9 The Construction Manager shall provide guidelines describing procedures for the safety of the workers on the site and provide on-going training to assist in preventing accidents or injury to any person on or about or adjacent to the site where the Work is being performed. The Construction Manager is responsible for monitoring and enforcing these guidelines. In addition, The Construction Manager will provide weekly subcontractor training seminars, including but not limited to RFI, Submittal, and Payment Request preparation and submission requirements. Seminars must be scheduled in advance and documented by the Construction Manager. Seminars must include any required presentations.

A.3.2.10 Develop a specific Quality Control (Q/C) plan for the project for review and approval by the Commission and its consultants. Upon approval, the Construction Manager shall maintain the approved Q/C plan throughout the duration of the project to ensure that the required standards of construction are achieved.

A.3.2.11 The Construction Manager shall arrange for storage, bonding, insurance, protection and security including UCC filings to protect the Commission's interest, for any Commission-purchased materials, systems and equipment that are a part of the Work until such items are turned over to the respective Subcontractors.

A.3.2.12 Continuously protect the Work and the Commission's and User Agency's property from damage, injury or loss.

A.3.2.13 Review the adequacy of the Subcontractors' supervision, personnel and equipment and the availability of necessary materials and supplies. Where inadequate, direct that the necessary action be taken to remedy the deficiency.

A.3.2.14 Maintain all Project documentation systems at the job site or at a mutually agreed location. These systems shall be used to organize and administer document updates and to continuously keep the Subcontractors up-to-date with the latest design conditions.

A.3.2.15 Establish and maintain on the site a complete library of all Construction Documents, addenda, bulletins, scope changes, approved shop drawings and material samples.

A.3.3 The Construction Manager shall schedule and conduct weekly progress meetings as conditions on the Project as required but at least weekly. The Commission, the Architect of Record, the User Agency, specialty consultants and the Subcontractor(s) must be in attendance. At a minimum agenda items should include review the overall project schedule, submittals, RFI's, bulletins, change orders, status of payments, pending issues and construction-related problems. The Construction Manager shall take and distribute complete minutes of meetings to all attendees and others as directed by the Commission within 3 days of such meetings. Representatives of the Commission may attend meetings and shall in any case receive all notices and minutes of meetings.

A.3.3.1 Throughout the Construction Phase, review and monitor, on a weekly basis, the Subcontractor(s) baseline and updated schedules for compliance with the individual general contract milestone dates and the Master CPM milestone dates using Primavera. In instances where schedule slippage and/or schedule conflicts are forecast to occur, recommend corrective action to the Commission as to how to remedy the schedule slippage and/or schedule conflicts.

A.3.3.2 Throughout the Construction Phase, monitor the approved Control Estimate. Show actual costs for activities in progress and estimates for uncompleted tasks by way of comparison with the approved control estimate.

A.3.3.3 Establish and implement procedures for, and maintain coordination among, the Architect of Record, the Commission, the User Agency, Subcontractor(s), and



other agencies having jurisdiction of the Project with respect to all construction aspects of the Project.

A.3.4 Provide the Commission with a monthly report containing the following:

A.3.4.1 Executive Summary - include a summary of financial status, highlights of construction progress and a Schedule summary.

A.3.4.2 Status of Construction - summarize Project construction activities, including current anticipated start and completion dates by Project elements.

A.3.4.3 Outstanding Items - include items to be completed by the Construction Manager, the Architect of Record, the Commission, the User Agency and Subcontractor(s).

A.3.4.4 Purchasing Activity - detail current status of materials procurement based upon information received from the Subcontractor(s).

A.3.4.5 Budget Status Report - include a summary of anticipated costs and status of scope changes that are approved, pending, and/or anticipated. Develop 30, 60 and 90 Day cash flow reports and forecasts for the Project. Advise the Commission as to variances between actual and estimated costs.

A.3.4.6 Schedules - include construction schedule indicating current Project status (both in CPM and summary bar chart form), updated cash flow and a look-ahead plan for the following period.

A.3.4.7 Progress Photographs - arrange for production and distribution of progress photographs as required by the Commission. Digital photographs are required.

A.3.4.8 Anticipated Project Activity - indicate, in narrative form, the activities of the Project in the upcoming month, actions to be taken during that period, and any scheduled governing agency reviews/ approvals, etc.

A.3.4.9 Other - include such additional or revised information as shall be required by the Commission.

A.3.4.10 Each Monthly Report must be submitted in both written and electronic format posted to the Commission's Portal Web site

A.3.5 Coordinate and conduct meetings/conferences with all agencies having jurisdiction over the building permit process and Certificate of Occupancy Inspections, including but not limited to the Department of Construction and Permits, Department of Buildings, Bureau of Fire Prevention, Mayor's Office with People with Disabilities, and Office of Certificate of Occupancy to assist in expediting the permitting and Certificate of Occupancy processes. The Construction Manager shall be responsible for assisting in securing all necessary orders, ordinances, re-zoning, licenses, or other approvals, as applicable, required by local, state, and federal regulatory agencies to permit construction of the project. Prepare and distribute meeting minutes, as required or directed by the Commission.

A.3.6 Expedite and assist in the clarification of the Construction Documents and provide additional information as required to facilitate Subcontractor decisions on-site. In the event that the interpretation of the meaning and intent of the Construction Documents becomes necessary during construction, ascertain the Architect of Record's interpretation and transmit such information to the Subcontractor.

A.3.7 Coordinate all Architect of Record directed testing required by the technical sections of the specification and applicable codes and regulations for compliance with the Contract Documents.

A.3.8 Review all Subcontractor payment applications to verify the accuracy of all such payment applications. After verification, approve and submit payment applications for approval and payment by the Commission.

A.3.9 Administer all payments to Subcontractors and perform all construction accounting consistent with the cost reporting system.

A.3.10 Solicit proposals from the Subcontractors to perform changes in the scope of work and assist the Commission in evaluating the cost of these changes.

A.3.10.1 Review all Subcontractor change order requests to ensure that such requests are appropriate.

A.3.10.2 Integrate all change order costs approved by the Commission into the established cost accounting system.

A.3.10.3 Evaluate requests for scope changes required by field conditions and other unforeseen conditions and submit such requests to, and obtain approval from, the Commission and User Agency prior to instituting any changes to the requirements of the Construction Documents.

A.3.10.4 Evaluate any construction claims originating from the Work and negotiate or otherwise settle all such construction claims.

A.3.10.5 Monitor all changes in the construction documents and confirm their approval by the Commission and User Agency.

A.3.11 Administer the testing, equipment training and demonstration, acceptance and turnover of all systems to the Commission, and assist with the move-in process.

A.3.12 Coordinate, procure and assemble all required permits, licenses, and certificates from the Subcontractors and arrange delivery of same to the Commission.

A.3.13 Develop and establish a quality control plan so that the required standards of construction are achieved. Upon completion submit copies to Commission for approval.

A.3.14 Coordinate review of all shop drawings, materials and all other required submittals by the Commission's Architect of Record. If requested by the Commission, requests for approval of Subcontractors, delivery schedules, material lists, shop drawings, samples, and the like will be commented upon and submitted to the Commission.

- A.3.15 Monitor and facilitate the flow of all documents and materials for proper sequence of approvals so as not to delay the progress of the Work.
- A.3.16 Establish and maintain a complete library of all Contract Documents, addenda, bulletins, scope changes, approved shop drawings and samples.
- A.3.17 Receive and review all change order requests from Subcontractors. Review unit prices, time and material changes and similar items. Submit recommendations to the Commission for approval.
- A.3.18 Review all scope changes proposed by the Commission, the User Agency, and/or design team and make recommendations regarding practicality, costs, effect on completion Schedule and risk to the Project.
- A.3.19 Monitor requests for change orders required by field conditions and other unforeseen conditions and submit such requests to the Commission for written approval prior to instituting any changes to the requirements of the Contract Documents. The Commission shall process interim change orders and proceed orders to utilize the Commission contingency to meet Project milestones.
- A.3.20 Monitor all scope changes during construction to ensure compliance with approved revisions.
- A.3.21 Monitor the specifications and the Commission's procedures for processing scope changes, including applications for extensions of time.
- A.3.22 Maintain cost accounting records of the Work performed in accordance with the specifications and the Commission's procedures.
- A.3.23 The Construction Manager shall fully mobilize to the project site and provide all necessary temporary facilities required to manage the project no later than August 1, 2005. All costs associated with establishing complete temporary facilities as stipulated above will be billed as subcontractor costs and not as general conditions costs. The Construction Manager will bid the costs and assign a subcontractor to provide maintain complete temporary facilities from August 1, 2005 through November 24, 2007. As an option, the Construction Manager shall consider leasing office space(s) in existing buildings within the contract limits or adjacent to the project site. The Construction Manager shall include its proposed temporary facilities layout plan in the mobilization drawing and submit it to the Commission for review and approval.
- A.3.24 The Construction Manager shall comply with the City of Chicago's *Construction Site Cleanliness Ordinance*, Section 13-25-125 of the Municipal Code of Chicago and assign this work to a subcontractor.
- A.3.25 The Construction Manager shall be responsible for the full and complete management of the procurement, delivery and installation of all Furniture Fixtures and Equipment (FF&E) and informational technology components for the project.
- A.3.26 The Construction Manager shall be responsible for managing the final cleaning requirements for the project. The Construction Manager will bid the costs and assign a subcontractor responsible for all final cleaning.

A.3.27 The Construction Manager shall be responsible for fully coordinating all required material and testing inspections with the Commission's material testing and inspection consultant.

A.3.28 The Construction Manager shall be responsible for establishing and maintaining complete RFI and submittal logs throughout the duration of the project. The CM shall distribute copies of these logs to the Commission, its consultants, and the User Agency as directed.

A.3.29 Identify and schedule all required pre-installation conferences prior to the commencement of the required construction activities.

#### **A.4 Project Close Out**

The Construction Manager shall:

A.4.1 Coordinate and attend a comprehensive final inspections by the Commission, the User Agency and the Architect of Record of the Project to verify that the materials furnished and Work performed are in accordance with the Contract Documents.

A.4.2 Coordinate issuance of the letter of Substantial Completion as prepared by the Architect of Record in consultation with the Commission and the User Agency.

A.4.3 Coordinate the preparation of punch list(s) as required by the Architect of Record indicating the items of work remaining to be accomplished. Coordinate the completion of such items within 60 days of the issuance of the Certificate of Occupancy or from June 25, 2007 whichever occurs first. Coordinate certificate of Final Completion as prepared by the Architect of Record in consultation with the Commission and the User Agency.

A.4.4 Coordinate and cause to be delivered to the Commission all guarantees, warranties, operating and maintenance manuals required by the Contract Documents after review by the Architect of Record. Coordinate equipment and systems training sessions for User Agency personnel. Make recommendations as to the withholding of payments to the Subcontractors. Determine the value of any uncorrected and/or deficient work.

A.4.5 Facilitate the preparation of record (i.e. "as-built") drawings as prepared by the Subcontractor(s) and operations and maintenance manuals of the project in accordance with the specifications. The record documents will be subject to the approval of the Commission, the Commission's Consultants and the User agency. Submit approved record documents to the User Agency upon completion of the Project. As an option the Commission may direct the Construction Manager to have the record documents prepared by a third party, as a reimbursable expense. The Commission's approval of the Construction Manager's request to have the record documents prepared by a third party as a reimbursable expense shall not be unreasonably withheld.

A.4.6 Prepare/develop specific project close-out procedures to ensure an expeditious close-out of the project. Submit copies of these procedures to the Commission for approval. Upon approval by the Commission, the Construction Manager will be fully responsible for the implementation of these procedures. Project close-out must be accomplished within 90 Days of the issuance of the Certificate of Occupancy.

A.4.7 Prepare/develop specific procedures to efficiently manage the close-out process of the subcontractor activities that are completed prior to the completion of the entire project to expedite the release of subcontractor retainage. Identify specific subcontractor activities that are completed in the early stages of the construction phase, and implement the above procedures to ensure an expeditious close-out of these trades.

A.4.8 Coordinate the development of preliminary and final acceptance procedures/requirements with the Commission, its consultants, and the User Agency.

A.4.9 Create and maintain a close-out log to track all close-out items/requirements.

A.4.10 Coordinate the development of the project's punch-list format, issuance, and completion procedures/requirements with the Commission, its consultants, and the User Agency.

## **B. CONTINGENT ADDITIONAL SERVICES**

The Construction Manager shall provide any or all of the following Contingent Additional Services as may be authorized in writing by the Commission at its sole election:

B.1 Furnish consulting services after occupancy of the building in connection with the operation of the building, including various electrical and mechanical systems.

B.2 Provide consultation concerning replacement of any Services damaged or destroyed by fire or other cause during construction and furnish additional Basic Services as may be required in connection with the replacement of the Services.

B.3 Provide additional Basic Services made necessary by the default of Subcontractors in the performance of the Subcontracts.

B.4 Furnish required Services in connection with additional site demolition beyond that described in the original Program.

B.5 Coordinate effort of the Architect of Record to provide all measured drawings of existing construction as required for the completion of the Project.

## **C. GUARANTEED MAXIMUM PRICE AND SHARED SAVINGS BONUS**

Construction Manager guarantees that the Project, as represented in the final design documents issued as a result of Construction Manager's professional review and approval, will be completed as designed, and will achieve all required building and occupancy permits and licenses for the agreed Guaranteed Maximum Price (GMP), or less. The GMP includes contingency amounts as identified and agreed upon between the Construction Manager and the Public Building Commission. Construction Manager represents that all other changes including but not limited to value engineering in the design presented for Construction Manager's review will be corrected during the design review, and will be included in the guaranteed maximum price. It is acknowledged and agreed by the parties to this Agreement that the design documents have been provided to the Construction Manager by the Commission's Architect of Record and the Architect of Record must certify that the design documents are in compliance with all applicable

codes, laws, rules and regulations. Further, the GMP includes a contingency amount as identified and agreed upon between the Construction Manager and the Commission to cover the cost of certain conditions, as specifically described in this Agreement.

The Construction Manager is entitled to bill, as an addition, a bonus amount equal to 50% of any unallocated balance in the GMP, if and only if, each and every one of the following conditions has been met:

1. Substantial completion has been achieved on or before the specified contractual milestone completion date for this Contract, including any extensions of time granted for Substantial Completion (as referenced in Book #1 of the Contract Documents) or due to Force Majeure events;
2. Final Completion has been achieved on or before the specified contractual milestone completion date in this Contract, including any extensions of the time granted for Final Completion (as referenced in Book #1 of the Contract Documents);
3. All deliverables called for in this contract have been received and approved by the PBC, the PBC's designated Consultants, and the Architect;
4. All close-out documentation as specified in the Contract Documents, including but not limited to, as-built drawings called for in this contract have been received and approved by PBC, the PBC's designated Consultants, and the Architect;
5. Attic and basement stock called for in this contract has been received and approved by PBC, the PBC's designated Consultants, and the Architect;
6. All certified payrolls from all Subcontractors called for in this Contract have been received and approved;
7. Final lien waivers from all Subcontractors, consultants and suppliers of every tier called for in this Contract have been received and approved;
8. There is no pending litigation against the PBC or the User Agency in which the PBC's and the User Agency's defense and indemnification has not been tendered to and accepted by the Construction Manager or another entity;
9. That at no time was litigation brought by the PBC against the Construction Managers pertaining to matters arising out of the performance of this Contract;
10. No notices of claim or mechanics lien complaints are pending on the project funds or the payment and performance bond. If permitted by a court of competent jurisdiction the Construction Manager may obtain bond acceptable to the Commission and the court for any mechanic's lien that has been filed and will be considered to have satisfied this condition if such a bond is obtained;
11. As of the time for final payment, all contract commitments and requirements for MBE, WBE, Economic Opportunity (commitments to minority and female work force), City Residency, and community hiring requirements have been met; and

12. A complete application for final payment, together with appropriate written evidence of fulfillment of each and every one of the foregoing conditions, is submitted within 30 Days of Final Completion and acceptance of work.

**SCHEDULE B**  
**CONTRACT DOCUMENTS**

Attachment #1, Book #1 – Standard Terms and Conditions.

Attachment #2, Book #3 – Technical Specifications.

Attachment #3, Book #3A – Environmental Specifications and Drawings #R1 through #R6.

Attachment #4, Book #3B – Traffic Control and Protection Specifications.

Attachment #5, Geotechnical Report.

Attachment #6, Volume #S Issue for Bid Drawings #G.1.S.1 through L.5.7.

Attachment #7, Volume #T Issue for Bid Drawings #G.1.T.1 through T.2.5.

Attachment #8, Volume #U Issue for Bid Drawings #G.1.U.1 through FS.1.2.4.

Attachment #9, Volume #V Issue for Bid Drawings #G.1.V.1 through T.4.V.4.

Attachment #10, Volume #W Issue for Bid Drawings #G.1.W.1 through FS.1.8.

Attachment #11, Volume #X Issue for Bid Drawings G.1.X.1 through T.4.X.3.

Attachment #12, Volume #Y Issue for Bid Drawings G.1.Y.1 through LF.Y.8.

Attachment #13, Volume #Z Issue for Bid Drawings G.1.Z.1 through FS.3.Z.1.



SCHEDULE C  
COMPENSATION

**C.1 COMPENSATION FOR CONSTRUCTION MANAGEMENT SERVICES**

C.1.1 Based on the agreed Construction GMP's not exceeding \$98,000,000, the Construction Manager shall be paid a lump sum fee of \$7,098,257. If, however, the Construction GMPS exceeds \$98,000,000, the Construction Manager will be paid the lump sum fee of \$7,098,257 plus an additional amount equal to the product of 1.75% times the difference between the actual Construction GMPS and \$98,000,000. The Construction Manager's fee ("Fee"), in the absence of either a change in scope of the Project by the Commission or the issuance of Commission-originated additive change orders, or both, constitutes the Construction Manager's full fee for Basic Services described in Schedule A, Section A1. The fee for Construction Manager Services will be allocated and payments made on a monthly basis on a mutually agreed to fee schedule but only as commensurate with the progress of the work.

C.1.2 The Construction Manager's fee will not include any Subcontractors costs, vendor costs, consultant costs, or any other construction costs.

**C.2 REIMBURSABLE EXPENSES**

The Construction Manager shall be reimbursed for actual costs incurred by the Construction Manager in the interest of the Project by the Construction Manager, with the Commission's prior written approval ("**Reimbursable Expenses**"). Reimbursable Expenses as referred to herein include the following: (i) General Conditions, (ii) Subcontractor Costs, (iii) Professional Consultant Costs and (iv) other miscellaneous costs as specified below:

C.2.1 **General Conditions.** The Construction Manager shall be paid an amount not to exceed \$306,000, of which \$36,000 is for pre-construction phases and \$270,000.00 is for the Construction phase, in equal monthly installments over a 30 month period for **General Conditions, which include the following:**

C.2.1.1 General and administrative expenses, including, without limitation:

C.2.1.1.1 Telephone service including local calls and site telephone service.

C.2.1.1.2 Computer charges, including internet service.

C.2.1.1.3 Postage and handling.

C.2.1.1.4 Parking and mileage

C.2.1.1.5 Office supplies, furniture and equipment.

C.2.1.3 Traffic control.

C.2.2 Costs or fees of specialty subcontractors and consultants. With regard to fees of consultants only, the Construction Manager may be reimbursed for actual cost of the consultant plus an additional 2% mark-up. For approved Subcontractor costs, the Construction Manager

shall submit an Application for Payment as per Section C.4 and Section 01025 of the Project Specifications, Division 1 - Project Requirements, as set forth in Appendix 1.

C.2.2.1 Increases or decreases in subcontractor costs (change order) require prior written approval by the Commission.

C.2.2.2 Consultants may include engineering, testing of materials, Commissioning consultants, site security personnel or firm, cost estimating, surveying for construction, printing of documents, Geotechnical, Environmental Technical Testing and Reporting Services, and other Specialty Consultants.

C.2.3 Expense of transportation and living of principals and employees traveling in connection with the Project, but not including travel and expense to and from the job site or within a 50-mile radius of downtown Chicago. Travel expenses requiring airfare or overnight accommodations require the advance written approval of the travel budget by the Commission. Travel expenses, when specifically requested by the Commission, and supported with proper documentation in the form of itemized invoices, shall be paid as a reimbursable expense:

C.2.3.1 Coach air fare.

C.2.3.2 Hotel per diem costs.

C.2.3.3 Car rental, gas, oil and insurance

C.2.4 Reproduction of bidding documents (including photographs) used for final review of Schematic Design, Design Development, and Construction Document phases. Reproduction of additional sets of documents requested by the Commission which are not otherwise a reimbursable expense, when specifically requested by the Commission, and supported with proper documentation in the form of itemized invoices, shall be paid as a reimbursable expense:

C. 2.4.1 Shop drawings

C. 2.4.2 Plans and specifications

C. 2.4.3 Presentation materials for public meetings

C.2.5 Separately from the items mentioned under Sections C.2.1. through C.2.2, but subject to the requirement for Commission pre-approval and the not-to-exceed limits set forth in Section C.2.6, the Commission will reimburse the Construction Manager for the cost of the following, without mark-up or surcharge:

C.2.5.1 The cost for Performance and Payment Bond.

C.2.5.2 For Commission-purchased materials, systems and equipment that are a part of the Work, the costs of storage, bonding, insurance, protection and security until such items are turned over to the respective Subcontractors.

C.2.5.3 The costs for leased office space near the worksite, dumpsters, portolets, pest control, temporary signage, temporary fencing, water, permit or tap fees, dust control, street cleaning, site building cleaning, site security, and site CCTV. However, the costs for temporary cooling, temporary power, and temporary lighting, for example, are not considered Reimbursable Expenses.

C.2.5.4 The cost of insurance premiums, supported by original invoices clearly identifying each line of coverage, for the duration of the Project, for Builder's Risk and

Railroad Protective Insurance. In addition, the cost of insurance premiums, supported by documentation evidencing the allocations for the cost to the Construction Manager for the duration of the Project, for Workers Compensation and Employer's Liability, Automobile, Valuable Papers, Professional Liability, Owner's Contractors Protective, and Contractors Pollution Coverage. Reimbursement for these insurance coverages will be made on the inception date of coverage and is subject to a cap of 1% of the GMP. If coverage is renewed annually, invoicing and documentation evidencing cost allocations to the Construction Manager must be made annually. Insurance costs will be based on the final GMP amount and Project schedule.

C.2.6 Costs of the Reimbursable Expenses identified in Sections C.2.2, C.2.3, C.2.4, and C.2.5 are on a not-to-exceed basis of \$4,000,000, based on a GMP of \$93,000,000. If the GMP exceeds \$93,000,000, the not-to-exceed amount of Reimbursable Expenses will be modified, as appropriate, by mutual agreement reflected in an amendment to the Agreement. All reimbursable expenses must be pre-approved by the Commission.

C.2.7 Reimbursable Expenses do not include office and other administrative expenses, including without limitation, telephonic or telecopier system expenses, photocopying and duplication costs, office or drafting supplies, delivery services and similar items.

### C.3 Compensation for Additional Services

C.3.1 The Commission may order changes in the Work and/or additional Services without invalidating the Agreement.

C.3.2 The Commission shall compensate the Construction Manager for Additional Services based upon a *Lump Sum Fee* or a *Time Card Not to Exceed Fee*, as approved by the Commission in writing. In the case of *Time Card* billings, rates of reimbursement for the Construction Manager's employees shall be the actual base salaries paid to the specific employee performing the Services not to exceed the maximum Commission salary rates, which include a multiplier of 2.5.

C.3.2.1 The maximum hourly rate including the multiplier the Commission shall pay the Construction Manager for its employees and consultant's employees shall be as follows:

<u>Position Title</u>	<u>Maximum Hourly Rate with Multiplier</u>
Principal	\$150.00
Senior Project Manager	\$125.00
Project Manager	\$115.00
Assistant Project Manager	\$80.00
Clerical/Administrative	\$50.00

**C.3.3 For purposes of Section C.3, the costs for matters enumerated under Sections C.3.3.1 through C.3.3.4 below are considered to be a part of the multiplier, and, together with profit, are not considered reimbursable expenses:**

C.3.3.1 Wages of individuals employed by the Construction Manager to perform the work at the site or, with the Commission's approval, at off-site workshops.

C.3.3.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site with the Commission's approval.

C.3.3.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged, at factories, workshop, or on the road, in expediting the production or transportation of materials or equipment required for the Project, but only for that portion of their time required for the Project.

C.3.3.4 Indirect Personnel Expenses.

C.3.3.4.1 Social Security Tax.

C.3.3.4.2 Worker's Compensation Insurance.

C.3.3.4.3 Unemployment Insurance.

C.3.3.4.4 Health insurance Benefits.

C.3.3.4.5 Long Term Disability Insurance.

C.3.3.4.6 Other Statutory and Non-Statutory Employee Benefits.

C.3.3.4.7 Pensions and Similar Contributions.

**C.4 Submission of Invoices for Compensation; Payment Applications of Subcontractors**

C.4.1 This provision replaces Section 16.01 and the first four paragraphs of Section 16.02 of Book 1 of the Contract Documents referenced in Schedule B of this Agreement. The Construction Manager shall submit detailed invoices no more frequently than once every 30 days to the Commission for approval in accordance with the provisions of Book 1. After approval of the invoices by the Commission, payment shall be remitted to the Construction Manager. The Commission will promptly review all invoices, and remit payment of any invoice within 30 days of submission with all required supporting documentation by the Construction Manager, unless there is a legal reason why the Commission is not permitted to do so.

C.4.2 It is the duty of the Construction Manager to effectively manage the payment application process and all related paperwork.

C.4.2.1 The Construction Manager is responsible to the Commission for securing and delivering all paperwork required under this Agreement to be submitted with payment applications, including subcontractor, consultant and material supplier trailing lien waivers, certified payrolls, and all other required documents. Lien waivers and certified payrolls will be submitted 1 month in arrears.

C.4.2.2 Failure by the Construction Manager to promptly submit its payment applications to the Commission, in proper and complete form, may constitute a material breach of this Agreement and constitute a cause for termination. No payment application may include payment for Work for which the Construction Manager has not been billed by the applicable subcontractor, material supplier, service provider or consultant.

C.4.2.3 To help build small subcontractor financial capacity, the Construction Manager will arrange to make payments to specific subcontractors, as proposed by the Construction Manager and approved by the Commission, every two weeks in advance of Construction Manager's receiving payment from the Commission.

C.4.2.4 The Construction Manager shall submit payment applications in such a manner so as not to delay payment to any subcontractor, material supplier, consultant or service provider whose billing and lien waiver paperwork is complete, as the result of incomplete billing or lien waiver paperwork of any other subcontractor, material supplier, consultant or service provider whose paperwork is incomplete. All required certified payrolls, trailing lien waivers, and other required paperwork must be submitted before or with the payment application. Construction Manager's payment application must not include any request for payment for work of any subcontractor material supplier, consultant, or service provider whose certified payrolls, trailing lien waivers, or other payment paperwork is incomplete at the time the payment application is submitted. Lien waivers and certified payrolls will be submitted 1 month in arrears.

SCHEDULE D  
CONTRACT INSURANCE REQUIREMENTS

Construction Management Services

Kennedy King

PS 803

For purposes of this Schedule D, the Construction Manager is referred to as the "Contractor" and this Agreement as "Contract." The Contractor must provide and maintain at Contractor's own expense (except as otherwise provided in Schedule C), **until Contract completion and during the time period following final completion if Contractor is required to return and perform any additional work**, the insurance coverage's 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 provide a service under this Contract and Employers Liability coverage with limits of not less than \$1,000,000 each accident or illness.

2) Commercial General Liability (Primary and Umbrella)

Commercial General Liability Insurance or equivalent with limits of not less than \$5,000,000 per occurrence and in the aggregate for bodily injury, personal injury, and property damage liability. Coverage's must include the following: All premises and operations, products/completed operations (for a minimum of 2 years following project completion), explosion, collapse, underground, separation of insureds, defense, and contractual liability (with no limitation endorsement). The Public Building Commission and Chicago City Colleges are to be named as additional insureds on a primary, non-contributory basis for any liability arising directly or indirectly from the work

Subcontractors performing work for the Contractor must maintain limits of not less than \$2,000,000 with the same terms herein.

3) Automobile Liability (Primary and Umbrella)

When any motor vehicles (owned, non-owned and hired) are used in connection with work to be performed, the Contractor must provide Automobile Liability Insurance with limits of not less than \$5,000,000 per occurrence and in the aggregate for bodily injury and property damage. The Public Building Commission and Chicago City Colleges are to be named as additional insureds on a primary, non-contributory basis.

Subcontractors performing work for the Contractor must maintain limits of not less than \$2,000,000 with the same terms herein.

4) Builders Risk

When Contractor undertakes any construction, including improvements, betterment's, and/or repairs, the Contractor must provide All Risk Builders Risk Insurance at replacement cost for materials, supplies, equipment, machinery and fixtures that are or will be part of the project. Coverage's must include but are not limited to the following: right to partial occupancy, material stored off-site and in-transit, collapse, water including overflow, leakage, sewer backup, or seepage, debris removal, faulty workmanship or materials, testing, and mechanical-electrical breakdown. The Public Building Commission is to be named as an additional insured and loss payee.

The Contractor is responsible for all loss or damage to Commission and Chicago City Colleges property at full replacement cost.

The Contractor is responsible for all loss or damage to personal property (including but not limited to materials, equipment, tools, and supplies) owned, rented, or used by Contractor.

5) 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 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 claim 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.

6.) Professional Liability

When any architects, engineers, construction managers or other professional consultants perform work in connection with this Contract, Professional Liability Insurance covering acts, errors, or omissions must be maintained with limits of not less than \$5,000,000 per claim and in the aggregate.

Coverage must include contractual liability. When 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 2 years.

Subcontractors performing work for the Contractor must maintain limits of not less than \$1,000,000 with the same terms herein.

7) Valuable Papers

When any plans, designs, drawings, specifications and 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.

8) Owner's and Contractor's Protective Liability

With respect to the operations performed by Contractor, an Owner's and Contractor's Protective Liability policy designating the Public Building Commission as named insured must be provided with limits of not less than \$2,000,000 per occurrence and in the aggregate, combined single limit, for losses arising out of bodily injuries to or death of all persons and for damage to or destruction of property.



9) Contractors Pollution Liability

When any work is performed which may cause a pollution exposure, Contractors Pollution Liability must be provided covering bodily injury, property damage and other losses caused by pollution conditions that arise from the Contract scope of services with limits of not less than \$1,000,000 per occurrence and in the aggregate. Coverage must include completed operations, contractual liability, defense, excavation, environmental cleanup, remediation and disposal. When policies are renewed or replaced, the policy retroactive date must coincide with or precede, start of work on the Contract. A claims-made policy that is not renewed or replaced must have an extended reporting period of 2 years. The Public Building Commission and Chicago City Colleges are to be named as additional insureds.

B. ADDITIONAL REQUIREMENTS

Contractor must furnish the Public Building Commission Procurement Department, Richard J. Daley Center, Room 200, Chicago, IL 60602, original Certificates of Insurance, or such similar evidence, to be in force on the date of this Contract, 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 to the Public Building Commission prior to Contract award. The receipt of any certificate does not constitute agreement by the Commission 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 Commission to obtain certificates or other insurance evidence from Contractor is not a waiver by the Commission 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 of the insurance conditions may constitute a violation of the Contract, and the Commission retains the right to stop work until proper evidence of insurance is provided, or the Contract may be terminated.

The insurance must provide for 60 days prior written notice to be given to the Commission 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, except for deductibles for Railroad Protective and Builder's Risk Insurance, which the Commission will reimburse.

The Contractor agrees that insurers waive their rights of subrogation against the Public Building Commission, its employees substantially changed, canceled, or non-renewed.

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 Commission and Chicago City Colleges 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.

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

If Contractor or subcontractor desires additional coverages, the party desiring the additional coverages is responsible for the acquisition and cost. At no additional cost to the PBC project, the Owner's Representative, Architect, and other consultants may request to be named as additional insureds to Contractor's policy, and must be responsible for monitoring their additional insured compliance.

The Public Building Commission maintains the right to modify, delete, alter or change these requirements.

### C. SAFETY AND LOSS CONTROL

The Contractor will be responsible for safety and loss control services for all risk exposures related to this Contract, in the manner described in Section A.3.2.9 of Schedule A. The Contractor must establish rules and procedures to ensure the safety of persons while on the property; the rules and procedures must be available to the Commission upon request.

Contractor will coordinate all available means of eliminating or controlling hazards and risks by carrying out the following responsibilities:

- Comply with all applicable local, state, and federal regulatory requirements.

- Plan, organize, coordinate, institute, maintain and monitor Safety and Loss Control programs related to safety and health hazards, property losses, and exposures.

- Disseminate knowledge of applicable safety and health standards and emergency procedures to employees through the issuance of documented policies, procedures, training and educational programs.

- Identify safety and health hazards and institute corrective action for their elimination or control.

- Institute a documented audit/inspection-monitoring program to assist in maintenance of regulatory requirements. Ensure that good housekeeping conditions are maintained at all times.

- Advise and assist in the investigation of accidents and losses to determine causes and develop programs to reduce, control or eliminate exposures.

- Ensure that injured or medically ill persons receive prompt first aid and/or medical treatment.

- Ensure that every accident/incident is promptly reported, documented, and investigated in a timely manner.

Provide monthly reports to the Project Manager, which must include copies of audit/inspection reports outlining corrective actions when applicable, and dates of completion of the corrections.

EXHIBIT 1  
PARENT GUARANTY

## KENNEDY KING COLLEGE

### PARENT GUARANTY

This GUARANTY, dated as of April 12, 2005 ("Guaranty"), is issued by AECOM Technology Corporation, a Delaware corporation, with its principal place of business in Los Angeles, California, ("Guarantor") in favor of The Public Building Commission of Chicago, an Illinois municipal corporation ("Owner").

WITNESSETH:

WHEREAS, the Guarantor is the sole shareholder of The McClier Corporation (the "Contractor"), a Delaware corporation with its principal place of business in Chicago, Illinois, ("Contractor"); and

WHEREAS, the Contractor is a party to that certain Contract for Professional Services and Construction in the amount of One Hundred Million Four Hundred Thousand Two Hundred Fifty Seven and Zero One Hundredths Dollars (\$100,404,257.00) dated as of June \_\_, 2005 by and between Owner and Contractor, as the same may be amended or supplemented from time to time in accordance with its terms, ("Contract"); and

WHEREAS, Guarantor will obtain benefits as a result of the Contractor entering into the Contract and the other transactions contemplated by the Contract.

NOW, THEREFORE, in consideration of the foregoing, the mutual agreements herein contained and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, Guarantor agrees as follows:

#### SECTION 1. RECITALS

The foregoing recitals are part of this Guaranty, and are incorporated in their entirety as operative provisions of this Guaranty.

#### SECTION 2. GUARANTY

The Guarantor guarantees the Contractor's performance in accordance with the terms and conditions set forth in the Contract. In the event of a dispute between McClier and a subcontractor or supplier over payment, the quantity or quality of the material, or labor provided by the subcontractor or supplier, PBC will not call on this guaranty for payment of the disputed amount until such time as the dispute between McClier and its subcontractor or supplier is resolved.

### SECTION 3. DEFINITIONS

Capitalized terms used in this Guaranty, including the recitals, and not otherwise defined herein shall have the respective meanings set forth in the Contract.

### SECTION 4. COVENANTS

*Section 4.1.* The Guarantor hereby unconditionally and irrevocably guarantees to the Owner, as primary obligor and not merely as surety, the due, punctual and full payment (when and as the same may become due and payable), and, as applicable, performance by the Contractor of the Contractor's obligations under the Contract pursuant to the Contract after giving effect to any notice and grace period provided therein as of and from the date of the Contract.

*Section 4.2* In the case of any failure by the Contractor to make any such guaranteed payment or perform such guaranteed obligation as and when the same shall become due and payable (by acceleration or otherwise), the Guarantor hereby agrees to make such payment or cause the performance of such obligation.

All such obligations and indebtedness set forth in Section 4.1 above and this Section 4.2 are referred to in this Guaranty as the "Obligations". The Obligations shall include, but shall not be limited to, the Guarantor's duty to remedy any defaults defined in the Contract in the time and manner described therein, to timely make all payments required therein for work performed in accordance with the terms of any existing contracts and/or subcontracts, and to be responsible for damages resulting from the Contractor's failure to perform in the manner described in the Contract.

*Section 4.3.* The obligations of the Guarantor contained herein are direct and independent obligations of the Guarantor and are continuing and are not conditioned in any way upon the institution of suit against Contractor and shall constitute a guaranty of payment and performance, and of collection, binding upon the Guarantor and its successors and assigns and shall remain in full force and effect and irrevocable notwithstanding any substitution, release or change of any other guaranty or any other security for any of the Obligations (other than a defense of payment or performance in full of the Obligations). Without limiting the generality of the foregoing, the Guarantor shall have no right to be released, relieved or discharged from its obligations hereunder, and such obligations shall be neither affected nor diminished on account of the following reasons (i) any subletting, assignments or transfer of the Contractor's interest in the contract in accordance with the terms thereof, (ii) any bankruptcy, insolvency, readjustment, composition, liquidation or similar proceeding with respect to the Contractor (iii) any furnishing or acceptance of security or any exchange, substitution, surrender or release of any security, (iv) any merger or consolidation of the Contractor or the Guarantor into or with any other person, or any change in the structure of the Contractor by the Guarantor, (v) any change in the manner or place of payment, and (vi) whether the Guarantor is related or unrelated to the Contractor.

## SECTION 5. GUARANTOR'S REPRESENTATIONS, WARRANTIES AND COVENANTS

*Section 5.1.* The Guarantor represents and warrants, as of the date hereof and to the best of its knowledge:

- (i) The Guarantor is duly organized, validly existing and in good standing under the laws of the State of Delaware, and has full power, authority and the legal right to execute, deliver and perform this Guaranty.
- (ii) The execution, delivery and performance by the Guarantor of this Guaranty has been duly authorized by all necessary corporate action. This Guaranty constitutes the legal, valid and binding obligation of the Guarantor enforceable against the Guarantor in accordance with its terms, except as such enforcement may be affected by applicable bankruptcy, insolvency, moratorium and other similar laws affecting creditors' rights generally and by general principles of equity.
- (iii) The execution, delivery and performance of this Guaranty will not (a) contravene any provision of law, rule or regulation to which the Guarantor is subject or any judgment, decree or order applicable to the Guarantor, (b) conflict or be inconsistent with or result in any breach of any terms, covenants, conditions or provisions of, or constitute a default under, or result in the creation or imposition of (or the obligation to create or impose) any lien or other encumbrance upon any of the property or assets of the Guarantor pursuant to the terms of any agreement or other instrument to which the Guarantor is a party or by which it or its property is bound or to which it or its property may be subject, in each case the violation of which would have a material adverse effect on the business, operations, prospects, properties or assets, or in the condition, financial or otherwise, of the Guarantor, or (c) violate any provision of the articles of incorporation or by-laws of the Guarantor.

## SECTION 6. OWNER'S RIGHTS

The Owner may at any time and from time to time, upon provided advance written notice to the Guarantor, without the consent of the Guarantor, without incurring responsibility to the Guarantor and without impairing or releasing the obligations of the Guarantor hereunder, upon or without any terms or conditions and in whole or in part:

- (a) change the manner, place or terms of payment of, and extend the time of payment of any of the Obligations, any security therefore, or any liability incurred directly or indirectly in respect thereof, and the Guaranty herein made shall apply to the Obligations as so changed, extended or renewed, so long as said change does not result in any increased costs to the Guarantor.
- (b) sell, exchange, release, surrender, realize upon or otherwise deal with in any manner in any order any property by whomsoever at any time pledged or mortgaged to secure, or howsoever securing, the Obligations;

- (c) exercise or refrain from exercising any rights against the Contractor or others or otherwise act or refrain from acting;
- (d) settle or compromise any of the Obligations, any security therefor or any liability (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof;
- (e) consent to or waive any breach of, or any act, omission or default under, any provision of the Contract or otherwise amend, modify or supplement the Contract or any such other instruments or agreements relating thereto.

## SECTION 7. SURVIVAL OF GUARANTY

Notwithstanding anything to the contrary herein, this Guaranty shall continue to be or be reinstated, as the case may be, if at any time any of the amounts paid to the Owner, in whole or in part, is required to be repaid upon the insolvency, bankruptcy, dissolution, liquidation, or reorganization of the Guarantor or the Contractor or any other person, or as a result of the appointment of a custodian, interviewer, receiver, trustee, or other officer with similar powers with respect to the Guarantor or the Contractor or any other person or any substantial part of the property of the Guarantor or the Contractor or such other person, all as if such payments had not been made.

## SECTION 8. REMEDIES; SUBROGATION

*Section 8.1. Remedies.* In the event the Guarantor shall fail to pay immediately any amounts due under this Guaranty, or to comply with any other term of this Guaranty, the Owner shall be entitled to all rights and remedies to which it may be entitled hereunder or at law, in equity or by statute and may proceed by appropriate court action to enforce the terms hereof and to recover damages for the breach hereof. Each and every remedy of the Owner shall, to the extent permitted by law, be cumulative and shall be in addition to any other remedy now or hereafter existing at law or in equity.

*Section 8.2. Subrogation.* The Guarantor will not exercise any rights that it may acquire by way of subrogation under this Guaranty, by any payment made hereunder or otherwise, until all of the Obligations shall have been paid in full. If any amount shall be paid to the Guarantor on account of such subrogation rights at any time when all of the Obligations shall not have been paid in full, such amount shall be held in trust for the benefit of the Owner and shall forthwith be paid to the Owner to be credited and applied to such Obligation, whether matured or unmatured, in accordance with the terms of the Contract. If (i) the Guarantor shall make payment to the Owner of all or any part of the Obligations and (ii) all of the Obligations shall be paid in full, the Owner will, at the Guarantor's request and expense, execute and deliver to the Guarantor appropriate documents, without recourse and with representation or warranty, necessary to evidence the transfer by subrogation to the Guarantor of an interest in the Obligations resulting from such payment by the Guarantor.



*Section 8.3 Waiver of Demands, Notices, Etc.*

This Guaranty is a continuing one and all of the Obligations shall be conclusively presumed to have been created in reliance hereon. No failure or delay on the part of the Owner in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof, or the exercise of any other right, power or privilege. The rights, powers and remedies herein expressly provided are cumulative and not exclusive of any rights, powers or remedies which the Owner would otherwise have.

*Section 8.4 Survival of Remedies and Subrogation Rights.* The provisions of this Section 8 shall survive the term of this Guaranty and the payment in full of the Obligations and the termination of the Contract.

## SECTION 9. MISCELLANEOUS

*Section 9.1. Amendments and Waivers.* No term, covenant, agreement or condition of this Guaranty may be terminated, amended or compliance therewith waived (either generally or in a particular instance, retroactively or prospectively) except by an instrument or instruments in writing executed by the Guarantor and consented to by the Owner.

*Section 9.2. Notices.* Unless otherwise expressly specified or permitted by the terms hereof, all communications and notices provided for herein shall be in writing or by facsimile machine capable of creating a written record, and any such notice shall become effective (a) upon personal delivery thereof, including, without limitation, by overnight mail or courier service, or (b) in the case of notice by United States mail, certified or registered, postage prepaid, return receipt requested, upon receipt thereof, or (c) in the case of notice by such a facsimile machine, upon transmission thereof provided such transmission is promptly confirmed by either of the methods set forth in clauses (a) or (b) above, in each case addressed to the Guarantor at its address set forth below or at such other address as such party may from time to time designate by written notice:

AECOM TECHNOLOGY CORPOPRATION  
555 Flower Street, 37<sup>th</sup> Floor  
Los Angeles, California 90071-2300  
Attention: Eric Chen, General Counsel

*Section 9.3. Survival.* Except as expressly set forth herein, the warranties and covenants made by the Guarantor shall not survive the expiration or termination of this Guaranty.

*Section 9.4. Assignment and Assumption.* This Guaranty may not be assigned by the Guarantor to or assumed by any successor to or assign of the Guarantor without the prior written consent of the Owner, which consent shall not be unreasonably withheld. Owner may assign this Guaranty at any time without Guarantor's consent to any person to whom the Contract is assigned

(including, without limitation, any lender or other financing party which provides financing in connection with the Project).

*Section 9.5. Governing Law.* This guaranty shall be in all respects governed by and construed in accordance with the laws of the State of Illinois, including all matters of construction, validity and performance (without giving effect to the conflicts of laws provisions).

*Section 9.6. Severability.* Any provision of this Guaranty that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

*Section 9.7. Headings.* The headings of the sections of this Guaranty are inserted for purposes of convenience only and shall not be construed to affect the meaning or construction of any of the provisions hereof.

*Section 9.8. Further Assurance.* The Guarantor will promptly and duly execute and deliver such further documents as may be reasonably requested by the Owner as may be reasonably necessary to affirm the Guarantor's obligations under this Guaranty.

*Section 9.9. Effectiveness of Guaranty.* This Guaranty has been dated as of the date first above written for convenience only. This Guaranty shall be effective on the date of execution and delivery by the Guarantor.

*Section 9.10. Acknowledgment by the Guarantor.* The Guarantor acknowledges that executed (or conformed) copy of the Contract has been made available to its principal executive officers and such officers are familiar with the contents thereof.

*Section 9.11. Consent to Jurisdiction.*

Any legal action or proceeding with respect to this Contract may be brought in the Circuit Court of Cook County, Illinois and Guarantor hereby irrevocably submits and consents to the jurisdiction of such court.

IN WITNESS WHEREOF, the Guarantor has caused this Guaranty to be duly executed and delivered by its officer hereunto duly authorized.

GUARANTOR

AECOM Technology Corporation

By:

  
President

Attest:

  
Secretary



**PUBLIC BUILDING COMMISSION OF CHICAGO**

**BOOK 1**  
**STANDARD TERMS AND CONDITIONS**  
**FOR CONSTRUCTION CONTRACTS**  
**(with Community Hiring requirement)**  
**(Construction Management)**

**New Kennedy-King College Campus Project**

**PUBLIC BUILDING COMMISSION OF CHICAGO**



**Mayor Richard M. Daley**  
**Chairman**

**Montel M. Gayles**  
**Executive Director**

**Room 200**  
**Richard J. Daley Center**  
**50 West Washington Street**  
**Chicago, Illinois 60602**  
**312-744-3090**  
**[www.pbcchicago.com](http://www.pbcchicago.com)**

Revised June 14, 2005

The Public Building Commission may revise these terms and conditions from time to time.

PUBLIC BUILDING COMMISSION OF CHICAGO

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## ARTICLE 1. GENERAL PROVISIONS

### Section 1.01 Definitions

Wherever used in any of the Contract Documents, the following meanings shall be given to the terms herein defined:

1. "Architect" or "Architect/Engineer" means any person or firm employed by the Commission for the purpose of designing and observing the Work embraced in this Contract, for compliance with the Contract Documents, acting directly or indirectly through any assistants to design or observe the Work or through any assistant having involvement in a portion thereof limited by the particular duties.
2. "Alternate" means a potential addition to, deletion from, or variation of the Work for which a separate price is attained and that is to be performed by the Construction Manager at the sole discretion of the Commission.
3. "Change Order" means the written order to the Construction Manager approved by the Commission directing changes in the Work and/or the time for completion of the Contract.
4. "Commission" means the Public Building Commission of Chicago, a municipal corporation organized under the Public Building Commission Act of the State of Illinois, as amended, or its duly authorized officers or employees.
5. "Commission Representative" means any person or firm employed by the Commission for the purpose of providing additional management and coordination services for the Project.
6. "Contingency Fund" means a fund, in an amount determined by the Executive Director and approved by the Commission, allocated for Change Orders not anticipated in the specifications.
7. "Contract" or "Contract Documents" means all of the following component parts, including exhibits attached thereto and/or incorporated therein by reference, and all amendments, modifications and revisions made from time to time in accordance with the provisions hereof:
  - a. Book 1
  - b. (omitted deliberately)
  - c. Book 3
  - d. Drawings
  - e. Addenda (if any)
  - f. Supplemental Sketches Issued by the Architect
8. "Contract Completion Date" is the date determined by the Commission, on which the Project is to reach Substantial Completion and a "Certificate of Occupancy" is obtained by the Construction Manager. The Contract Completion Date will be determined based on the duration for the Project set by the Contract as adjusted by any Change Orders that extend or reduce the duration of the Project.
9. "Contract Time" is the duration of the Work, from when the Work is required to begin until the scheduled date for Substantial Completion of the Work, including approved time extensions.
10. "Contract Price" means the full amount of compensation to be paid for the Work to be performed by the Construction Manager as adjusted from time to time.



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11. "Construction Manager" means the partnership, firm, corporation or entity entering into the Contract with the Commission to perform the Work embraced in the Contract Documents.
12. "Contractor" means the partnership, firm, corporation or entity entering into the Contract with the Commission to perform the Work embraced in the Contract Documents.
13. "Day" or "Days" means calendar day(s) unless otherwise specified.
14. "Drawings" are those enumerated in the Schedule of Drawings, and additional drawings and sketches, if any, incorporated into the Contract as the Work progresses.
15. "Environmental Laws" means all applicable Federal, State, and local laws, ordinances, rules, regulations, and executive orders pertaining to environmental matters.
16. "Executive Director" means the person employed by the Commission as its Executive Director or the duly authorized representative thereof.
17. "Force Majeure": The term "force majeure" means an extraordinary event or effect that the parties could not have anticipated or controlled and that renders performance impossible or impracticable for the duration of the event or effect. Such events or effects include but are not limited to: extraordinary acts of nature, such as tornadoes; or of people, such as acts of terrorism; or of governments, such as imposition of martial law. The term does not include, for example, typical Chicago inclement weather (i.e. weather the severity of which is less than a standard deviation from the 5-year mean for the Chicago Midway area as established by the National Oceanic and Atmospheric Administration) or labor strikes.
18. "Final Completion and Acceptance of the Work" means the last date on which all of the following events have occurred: the Commission has determined that all Punch List Work and any other remaining Work have been completed in accordance with the Contract Documents; final inspections have been completed and operations systems and equipment testing have been completed; final occupancy certifications and required licenses have been issued; all deliverables have been provided to the Commission; and all contractual requirements for final payment have been completed.
19. "Hazardous Materials" means asbestos and asbestos-containing materials, polychlorinated biphenyls (PCBs), oil or any other petroleum products, natural gas, special nuclear materials, and by-product materials regulated under the Atomic Energy Act (42 U.S.C. Sec. 2014, et seq.), pesticides under the Federal Insecticide, Fungicide and Rodenticide Act (7U.S.C. Sec. 136, et seq.) and any hazardous waste, toxic substance or related material, including any substance defined or treated as "hazardous waste," "special waste," "toxic substance," or a comparable term in any Environmental Law.
20. "Hazardous Waste" means those substances as defined at 40CFR Part 261, Illinois Environmental Protection Act 415 ILCS 5/3,220 and in Section 809.103 of Title 35: Environmental Protection; Subtitle G: Waste Disposal; Chapter I: Pollution Control Board.
21. "Local Government" or "City" means the City of Chicago, Illinois within which the Project is situated.
22. "Mobilization" means all activities including but not limited to the preparatory work and operations necessary for securing permits, moving personnel, equipment and supplies incidental to the project site. This pertains to the establishment of offices, buildings and other facilities necessary for the work or operations, which must be performed, including any costs incurred when beginning work on

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the project. All mobilization work/activities are subject to the requirements of the Contract Documents.

23. "Notice to Proceed" refers to the written notice issued by the Commission and directed to the Construction Manager, which defines the established date from which the time for performance commences.
24. "Project" means the collective improvements to be constructed by the Construction Manager in accordance with the Contract.
25. "Punch List" or "Punch List Work" means minor adjustments, repairs or deficiencies in the Work as determined at the sole discretion of the Commission. Items of incomplete Work that preclude full or beneficial use of any portion of the Work or that preclude the Commission from full operation, maintenance, or security of the facility shall not be considered Punch List items.
26. "Record Documents" are all documents required under the terms of the Contract to be provided to the Commission by the Construction Manager, including but not limited to shop drawings, as-built drawings, blue line drawings, parts manuals, operation and maintenance manuals, and Project manuals or specifications, and warranties and guarantee.
27. "Construction Schedule" means the Critical Path Method (CPM) schedule utilizing Primavera Project Planner P3E/C submitted by the Construction Manager establishing time frames for the performance of components of the Work.
28. "Schedule of Values" means the detailed list of the subcontractor value of each construction activity included in the Base Contract Price broken down by labor and materials that is submitted by the Construction Manager and approved by the Commission, as amended.
29. "Site" means the location(s) shown on the Drawings or described in Division 1 - Section 01010 - Summary of Work of the technical specifications, within which the Work shall be performed under the Contract Documents.
30. "Special Waste" means those substances as defined in the Illinois Environmental Protection Act, 415 ILCS 5/3.45, and further defined in Section 809.103 or 35 Illinois Administrative Code, Subtitle G, Ch. 1.
31. "Subcontractor" means any partnership, firm, corporation or entity other than an employee of the Construction Manager, that contracts with the Construction Manager to furnish labor, or labor and materials, at the Site. The term also includes subcontractors of any tier, suppliers, fabricators, or manufacturers whether or not in private with the Construction Manager.
32. "Submittal" means a schedule, shop drawings, video tape, product data, samples, or other items as may be required by the Contract for review and/or approval before prosecution of a portion of the Work.
33. "Substantial Completion of the Work" or "Substantial Completion" means the date on which the Commission have determined that the Contract Documents have been essentially completed except for Punch List Work, when the User is able to occupy and use the Project for the purpose intended, and when the Construction Manager has obtained and delivered to the Commission a "Certificate of Occupancy" along with all other licenses along with all other licenses issued by the authority that have jurisdiction.

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34. "User" or "User Agency" means the entity for which or on whose behalf the Commission has undertaken to cause the Work to be performed.
35. "Work" means the obligations of the Construction Manager under the Contract Documents. Work includes, unless specifically excepted by the Contract Documents, the furnishing of all materials, labor, equipment, supplies, plant, tools, scaffolding, transportation, superintendence, permits, inspections, occupancy approvals, insurance, taxes, and all other services, facilities and expenses necessary for the full performance and completion of the requirements of the Contract Documents. Work also means that which is furnished, produced, constructed, or built pursuant to the Contract Documents.

### Section 1.02 Usage and Interpretation

1. The specifications are separated into titled sections for convenience only and not to dictate or determine the trade or craft involved. Such separations shall not operate to make the Commission an arbiter for the division of responsibility between Construction Manager and Subcontractor, or between Subcontractors. Such separations shall not relieve the Construction Manager from the responsibility for the satisfactory completion of the Work regardless of the trade divisions.
2. The specifications are of abbreviated or "streamlined" type and include incomplete sentences. Omissions of words or phrases such as "the Construction Manager shall," "in conformity therewith," "shall be," "as noted on the Drawings," "according to the plans," "a," "an," "the," and "all" are intentional. Omitted words and phrases shall be supplied by inference in the same manner as they are when a "Note" occurs on Drawings. Words "shall be" or "shall" will be supplied by inference where colon (:) is used within sentences or phrases.
3. Where "as shown," "as indicated," "as detailed" or words of similar import are used, reference is made to the Drawings or specifications unless otherwise stated. Where "as directed," "as required," "as permitted," "as authorized," "as approved," "as accepted," "as selected," or words of similar import are used, the direction, requirement, permission, authorization, approval, acceptance, or selection by the Commission is intended unless otherwise stated.
4. As used herein, "provide" means "provide complete in place" or "furnish and install."
5. Where requirements of the Contract Documents differ from laws, ordinances, rules, regulations, orders, building codes, or the requirements of authorities having jurisdiction, the more stringent requirements shall govern. Such requirements shall be provided by the Construction Manager at no increase in the Contract Price.
6. Words in the singular shall include the plural whenever applicable or the context so indicates. Words importing the masculine may be applied to females and vice versa.
7. Whenever reference to a law is contained herein, such reference includes any amendment or revision to such law.

### Section 1.03 Standard Specifications

Any reference herein to standard specifications of any society, institute, association, or governmental authority (such standard specifications not forming a part of any statute or ordinance nor otherwise specified as to edition or date) is a reference to the standard specifications of such organization that are in effect on the thirtieth (30th) Day before the date of the first Advertisement for Bids. If such specifications are revised before completion of any part of the Work to which such revision would

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pertain, the Construction Manager may, if approved by the Architect and Commission, perform such Work in accordance with the revised specifications.

### **Section 1.04 Severability**

If any provision of this Contract is inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions because it conflicts with any other provision of this Contract, or of any constitution, statute, ordinance, rule of law, or public policy, or for any other reason, such circumstances shall not render the provision in question inoperative or unenforceable in any other case or circumstance, or render other provision or provisions of this Contract invalid, inoperative, or unenforceable to any extent whatever. The invalidity of any phrases, sentences, clauses, or sections contained in this Contract shall not affect the remaining portions of this Contract or any part thereof.

### **Section 1.05 Entire Agreement**

The Contract, including all Contract Documents and the exhibits attached to them and incorporated thereby, constitute the entire agreement between the parties with respect to the subject matter hereof, and no other oral or written understandings, representations, inducements, considerations, promises, or interpretations are implied or impressed upon this Contract that are not expressly addressed herein.

## **ARTICLE 2. PROJECT ORGANIZATION**

### **Section 2.01 The Owner**

The owner is:

Public Building Commission of Chicago  
Richard J. Daley Center  
66 West Washington Street, Room 200  
Chicago, Illinois 60602

### **Section 2.02 The Executive Director**

For purposes of this Contract, the Executive Director, or any successor office to the Executive Director, will represent the Commission in all matters relating to the Construction Manager's performance of this Work hereunder and will constitute the point of receipt for all deliverables required hereunder, unless expressly specified otherwise herein.

### **Section 2.03 The User Agency(ies)**

The Construction Manager will be required to indemnify the Public Building Commission and the City Colleges of Chicago, as deemed necessary. The Construction Manager shall not perform changes to the Work directed by the User unless authorized to do so by the Commission.

### **Section 2.04 The Commission Representative**

1. From time to time the Commission may decide to engage a consultant to assist in project management activities. The Commission Representative, occasionally referred to as Owner's Representative, shall be an additional representative of the Commission during the construction period and shall observe the Work in process on behalf of the Commission.
2. If engaged, the Commission Representative is responsible for keeping a complete log of communications related to the Project from the issue of the Notice to Proceed. **Therefore, the**

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**Construction Manager shall route all communication, notices, and submittals to the Commission Representative in triplicate. The Commission Representative shall also route responses from the Commission and Architect to the Construction Manager.**

3. The Commission Representative will have the authority to reject all or any portion of Work that does not conform to the Contract Documents.
4. The Commission Representative will not be responsible for acts or omissions of the Construction Manager or any Subcontractor.
5. The Commission, at its discretion, may delegate responsibilities to the Commission Representative. Such responsibilities may include, but are not limited to, the following:
  - a. Reviewing and monitoring, on a periodic basis, the Construction Manager's baseline and updated schedules for compliance with the Contract milestone dates and the master CPM milestone dates.
  - b. Conducting weekly meetings with the Commission, User, Construction Manager, Architect, and others to review the Project schedule, submittals, scope change, requests for information, outstanding bulletins, pending issues, and field problems.
  - c. Reviewing Construction Manager's payment applications in accordance with the Commission's policies and procedures and submit to Commission for approval and payment.
  - d. Establishing an on-Site organization line of authority to implement all construction phases of the Project in a coordinated and efficient manner.
  - e. Establishing and implementing procedures for, and maintain coordination among, the Commission, the User, Architect, Construction Manager, and other agencies having jurisdiction of the Project with respect to all construction aspects of the Project.
  - f. Coordinating the procurement and assembly of all required permits, licenses, and certificates with the Construction Manager and arrange delivery of same to the Commission.
  - g. Conducting Site observations of the Construction Manager to ensure that Work is progressing on schedule and in accordance with the requirements of the Commission and the Contract Documents.
  - h. Reviewing the adequacy of the supervision, personnel and equipment and the availability of necessary materials and supplies. Where inadequate, direct that the necessary action be taken to remediate the deficiency.
  - i. Receiving and reviewing all shop drawings, materials and all other required submittals before transmittal of these documents to the Architect. Requests for approval of subcontractors, delivery schedules, material lists, shop drawings, samples, and the like will be commented upon and submitted to the Commission for concurring approval.
  - j. Monitoring the flow of all documents and materials for proper sequence of approvals so as not to delay the progress of the work.
  - k. Receiving and reviewing all change order requests from the Construction Manager.
  - l. Conducting a comprehensive final inspection of the Project to verify that the materials furnished and work performed are in accordance with the Contract Documents.

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- m. Expediting the assembly and delivery to the Commission of all papers required by the Contract Documents, including but not limited to "as-built" drawings, guarantees, warranties, and operations and maintenance manuals. Reviewing, approving, and submitting such documents to the Commission upon completion of the Project.

### Section 2.05 The Architect

1. The Architect shall represent the Commission during the construction period and shall observe the Work.
2. The Architect is the initial interpreter of the Contract Documents. In the event of a dispute, the Architect shall render written interpretations regarding the items to be included within the Work. The Construction Manager shall abide by the written instructions and may elect to submit a claim as provided elsewhere in the Contract Documents.
3. The Architect will have the authority to reject all or any portion of Work that does not conform to the Contract Documents.
4. The Architect will not be responsible for acts or omissions of the Construction Manager or any Subcontractor.
5. The Commission, at its discretion, may delegate responsibilities to the Architect. Such responsibilities may include, but are not limited to, the following:
  - a. Considering written requests for product substitutions before receipt of bids.
  - b. Providing all drawings required during construction. Reviewing and approving schedules, samples, shop drawings, product data, as-built drawings, and other submissions to assure compliance with the design concept of the Project and fulfillment of the Construction Manager's obligations as set forth in the Contract Documents.
  - c. Reviewing Construction Managers' applications for payment, invoices and other supporting documentation in accordance with the Commission's policies and procedures.
  - d. Providing adequate and competent observations on the Project site at least twice weekly in order to determine if the Work is being performed in accordance with the Contract Documents.
  - e. Coordinating the Work so that the intent of the design is adequately carried out and monitoring the Construction Manager's adherence to the approved construction work schedule.
  - f. Issuing clarifications for proper execution of the Work required by the Contract Documents. However, the Architect shall not have control or charge of and shall not be responsible for construction means and methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work or for the act or omissions of the Construction Manager, subcontractors, or any other persons performing any of the Work in accordance with the Contract Documents.
  - g. Reviewing the Work to establish Substantial Completion of the Work.
  - h. Conducting a final inspection of the project with the Commission, User Agency and the Commission Representative to verify that the materials furnished and Work performed are in accordance with the Contract Documents.

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- i. Coordinating with the Construction Manager and the Commission Representative to expedite the assembly and delivery to the Commission of all papers required by the Contract Documents, including but not limited to "as-built" drawings, guarantees, warranties, and operation and maintenance manuals.
- j. Making recommendations as to the withholding of payments to the Construction Manager.
- k. Determining the value of any uncorrected and/or deficient Work.
- l. Issuing a Certificate of Final Completion and Acceptance upon completion of all Work, all Contract requirements, and all "punch list" items in accordance with the Contract Documents.

### Section 2.06 The Contractor

The Work is under the charge and care of the Contractor until Final Completion and Acceptance of the Work unless otherwise specified in the Contract Documents.

### Section 2.07 The Construction Manager

The Work is under the charge and care of the Construction Manager until Final Completion and Acceptance of the Work unless otherwise specified in the Contract Documents.

## ARTICLE 3. CONSTRUCTION MANAGER'S OBLIGATIONS

### Section 3.01 Construction Manager

1. The Construction Manager must begin the Work on the date specified in the Notice to Proceed. In addition, upon receipt of Notice to Proceed, the Construction Manager must assign and maintain during the term of the Contract and any extension of it, an adequate staff of competent personnel who are fully equipped, licensed as appropriate, available as needed, and qualified to manage and administer the performance of the Work. The Construction Manager must include among the staff such personnel and positions as may be required by the Contract Documents.
2. The Construction Manager shall be solely responsible for properly laying out the Work, and for all lines, elevations and measurements for all of the Work executed under the Contract Documents. The Construction Manager shall verify the figures shown on the Drawings before laying out the Work and will be held responsible for any errors or inaccuracies resulting from the failure to do so. Neither the Architect nor the Commission will be responsible for laying out the Work.
3. The Construction Manager is responsible for the coordination of the various parts of the Work so that no part shall be left in an unfinished or incomplete condition owing to any disagreement between the various Subcontractors or any of the Subcontractors and the Construction Manager, as to where the work of one begins and ends with relation to the work of the other.
4. If, in the reasonable opinion of the Commission, the performance of personnel of the Construction Manager or Subcontractors assigned to the Work is at an unacceptable level, or does not comply with Section 8.01 "Competency of Workers" of the Contract, such personnel must cease to be assigned to the Work. The Construction Manager must then furnish to the Commission the name of a substitute person or persons in accordance with paragraph 1 of this section. Absence of sufficient qualified personnel for the Work shall constitute an event of default.

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5. The Work is under the charge and care of the Construction Manager until Final Completion and Acceptance of the Work by the Commission, unless otherwise specified in the Contract Documents. The Construction Manager assumes all responsibility for injury or damage of the Work by action of elements, fire or any other causes whatsoever, including, but not limited to, injury or damage arising from the execution or non-execution of the Work. The Construction Manager must rebuild, repair, restore, and make good, at no additional cost to the Commission, damage to any portion of its Work before Final Completion and Acceptance of the Work. When equipment or materials are furnished to the Construction Manager by the Commission for use or inclusion in the Work, the Construction Manager's responsibility for safeguarding all such equipment and materials must be the same as for equipment and materials furnished by Construction Manager.
6. The Work will not be considered completed and accepted until the Construction Manager receives written notice from the Commission confirming the Final Completion and Acceptance of the Work.
7. The Construction Manager shall require each Subcontractor to become familiar with all provisions of the Contract Documents that may affect such Subcontractor's work.

### Section 3.02 Contract Documents

1. The Construction Manager shall carefully study and compare all Drawings, specifications, and other instructions; promptly report to the Commission any error or omission discovered; and thereafter proceed with the Work in accordance with instructions from the Architect concerning such error or omission.
2. The Contract Documents are complementary and intended to include all items required for the proper execution and completion of the Work. Any item of Work mentioned in the specifications and not shown on the Drawings, or shown on the Drawings and not mentioned in the specifications, shall be provided by the Construction Manager as if shown or mentioned in both.
3. Generally, the specifications describe Work which cannot be readily indicated on the Drawings and indicate types, qualities, and methods of installation of the various materials and equipment required for the Work. It is not intended to mention every item of Work in the specifications which can be adequately shown on the Drawings nor to show on the Drawings all items of Work described or required by the specifications even if they are of such nature that they could have been shown thereon. All materials or labor for Work which is shown on the Drawings or is reasonably inferable from them as being necessary to produce a finished Project shall be provided by the Construction Manager whether or not the Work is expressly covered in the specifications.
4. Materials which are shown on the Drawings and which may not be specifically described in the specifications or Drawings shall be furnished by the Construction Manager, suitable for the intended use, compatible with adjacent materials, and subject to review for conformance with the intent of the Contract Documents. Installation techniques not specified herein shall be in accordance with manufacturer's currently published instructions and industry standards.
5. Wherever typical parts or sections of the Work are completely detailed on the Drawings and other parts or sections which are essentially of the same construction are shown in outline only, the complete details shall apply to the Work which is shown in outline.
6. Dimensions of Work shall not be determined by scale or rule. Figured dimensions shall be followed at all times. If figured dimensions are lacking and cannot be calculated from other dimensions on Drawings, the Architect shall supply them in response to the Construction Manager's RFI.



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7. The Contract Drawings and specifications are complementary within themselves and between them. Distribution of these documents by the Construction Manager shall be in the form of complete sets. Distribution of partial sets of Contract Drawings and specifications shall be solely at the Construction Manager's own risk and shall not be cause for an adjustment to the Contract Sum or Contract Time as a result of incomplete pricing.
8. The Construction Manager must keep on hand at the Site, for reference, a complete set of documents pertaining to the Project, including, but not limited to, the complete Contract Documents, copies of all drawings and plans furnished by the Architect, all additional and revised drawings and plans furnished by the Architect, all orders issued to the Construction Manager by the Commission that relate to the Work, and all submittals, including shop drawings, meeting minutes, reports, payment applications, and correspondence relating to the Work.

### Section 3.03 Site Conditions and Inspection

1. Surveys, soil borings, geotechnical information, data, plans or other materials generally describing existing structures at the Site may be provided to the Construction Manager by the Commission. Such information is not warranted by the Commission to be accurate. The Construction Manager is not entitled to rely on it. When such information appears on Contract Documents, prepared by the Commission or its consultants, the Construction Manager acknowledges that the Commission and its consultants have not verified such information. Site plans do not constitute any representation by the Commission to the Construction Manager of Site boundaries or characteristics.
2. The Construction Manager must take field measurements, verify field conditions and carefully compare such field measurements and conditions and any other information known to the Construction Manager about the Contract Documents before commencing the Work. No allowance will be made to the Construction Manager for any extra labor and/or materials required due to Site conditions or discrepancies that might have been discovered by a thorough and proper inspection of the Site.
3. If conditions are encountered at the Site which are (i) subsurface or otherwise unknown or concealed physical conditions which differ materially from those indicated in the Contract Documents; or (ii) pre-existing unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in activities of the character provided for in Contract Documents, including the presence of unanticipated Hazardous Materials, then the Construction Manager must provide immediate written notice to the Commission before proceeding with such work or disturbing such areas.
4. If such conditions differ materially from those indicated in the Contract Documents, and cause a material increase or decrease in the Construction Manager's cost or time required for the performance of any of the Work, an equitable adjustment in the Contract Price or Contract Time, or both, will be made pursuant to Article 16 "Changes in the Work."

### Section 3.04 Relations of Construction Manager and Subcontractor

1. The Construction Manager shall require each Subcontractor to become familiar with all provisions of the Contract Documents that may affect Subcontractor's work.
2. Construction Manager must supervise and direct the Work completely and efficiently, devoting such attention and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract. Construction Manager is responsible for providing a finished Project that complies fully with the Contract.

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3. All rights and obligations under this Contract are by and between the Commission and the Construction Manager. Except as may otherwise be provided in the Contract Documents, there is no privity between subcontractors and the Commission. Subcontractors have no rights as third party beneficiaries under this Contract, except as may be provided in the MBE/WBE provisions. The Construction Manager agrees to implement such measures as may be necessary to ensure that its Subcontractors shall be bound by all applicable provisions of the Contract. The Construction Manager agrees to bind every Subcontractor and every Subcontractor agrees to be bound by the terms of the Contract Documents as far as applicable to its Work, including the following provisions of this Article, unless specifically noted to the contrary in a subcontract approved in writing as adequate by the Commission.
4. Nothing in this section shall create any obligation on the part of the Commission to pay to or to see to the payment of any sums to any Subcontractor. The Construction Manager is responsible in all aspects and at all times for any and all Subcontractor's work.
5. The Subcontractor agrees:
  - a. To be bound to the Construction Manager by the terms of the Contract Documents and to assume toward the Construction Manager all the obligations and responsibilities that the Construction Manager, by such documents, assumes toward the Commission.
  - b. To submit to the Construction Manager applications for payment in such reasonable time as to enable the Construction Manager to apply for payment as herein specified under Article 15 "Payments."
  - c. To make any claims for extras or for extensions of time to the Construction Manager in the manner provided in the General Conditions for like claims by the Construction Manager upon the Commission, except that the time limit for making claims for extra cost is seven (7) Days.
6. The Construction Manager agrees:
  - a. To be bound to the Subcontractor by all the obligations that the Commission assumes to the Construction Manager under the Contract Documents and by all the provisions thereof affording remedies and redress to the Construction Manager from the Commission.
  - b. To pay the Subcontractor, upon the issuance of certificates under the Schedule of Values herein described in Article 15 "Payments," the amount allowed and paid to the Construction Manager on account of the Subcontractor's Work to the extent of the Subcontractor's interest therein.
  - c. That no claim for services rendered or materials furnished by the Construction Manager to the Subcontractor shall be valid unless written notice thereof is given by the Construction Manager to the Subcontractor during the first ten (10) Days of the calendar month following that in which the claim originated.
  - d. To give the Subcontractor an opportunity to be present and to submit evidence in any decision involving its rights.

**Section 3.05 Construction Manager's Warranties and Representations**

Construction Manager warrants and represents that:

1. It has carefully examined and analyzed the provisions and requirements of this Contract; it has inspected the Site to the extent made available by the Commission; from its own analysis it has

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satisfied itself as to the nature and scope of Work, all conditions, any obstructions, and requirements needed for the performance of its Contract, the general and local conditions, and all other matters which in any way may affect this Contract or its performance; and the time available for such examination, analysis, inspection, and investigation was adequate.

2. This Contract is feasible of performance in accordance with all of its provisions and requirements and that the Construction Manager can and must perform, or cause to be performed, the Work in strict accordance with the provisions and requirements of this Contract.
3. Except for the contents of this Contract, no representation, statement or promise, oral or written, of any kind whatsoever, by the Commission, its officials, agents, representatives or employees, has induced the Construction Manager to enter into the Contract or has been relied upon by the Construction Manager, including any reference to (i) the meaning, correctness, suitability or completeness of any provisions or requirements of this Contract; (ii) the nature, existence, or location of materials, structures, obstructions, utilities or conditions, surface or subsurface, which may be encountered at or on the Site; (iii) the nature, quantity, quality or size of any materials, equipment, labor and other facilities needed for the performance of this Contract; (iv) the general conditions which may in any way affect this Contract or its performance; (v) the compensation provisions of the Contract; or (vi) any other matter.
4. The Construction Manager has the capability and financial resources to perform all of the provisions and requirements of this Contract.
5. The Construction Manager must perform all of its obligations under this Contract in accordance with all of the Contract's provisions and requirements.

### Section 3.06 Acceptance of Work

1. Substantial Completion of the Work
  - a. Substantial Completion of the Work will be made after preliminary inspection by the Architect when, in the opinion of the Commission, the requirements of the Contract Documents have been essentially completed except for Punch List Work, and when the Construction Manager has obtained and delivered to the Commission a "Certificate of Occupancy" along with all required licenses issued by the authority having jurisdiction. Upon Substantial Completion of the Work, the Commission may take over the Project for occupancy and use thereafter.
2. Final Completion and Acceptance of the Work
  - a. Punch List Completion
    - (1) The Construction Manager understands and agrees that time is of the essence in closing out the Work of this Contract. Upon Substantial Completion of the Work, the Punch List will be transmitted to the Construction Manager by the Commission. The Construction Manager agrees to begin performance of Punch List Work immediately after receipt of the Punch List.
    - (2) Failure of the Construction Manager or its Subcontractors to begin the Punch List Work within three (3) Days after receipt of the Punch List shall be construed as failure to prosecute the Work of the Contract.
    - (3) Punch List Work shall be continuously prosecuted once begun and completed within sixty (60) Days from the receipt of the Punch List from the Commission. Should the

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Construction Manager fail to complete the Punch List within this period of time, the liquidated damages as identified in Section 10.04 shall again begin to accrue, and shall continue until the Commission's written acceptance of Punch List Work.

- b. When the Construction Manager deems the Work to be complete, the Construction Manager must notify the Commission in writing that the Work will be ready for an inspection and/or test on a date specified by the Construction Manager. Such notice shall be given at least 5 Days in advance of the inspection date. If the Commission concurs that the Work will be ready for inspection or testing on the date given, the Commission will make such inspection within a reasonable period of time. The scheduling of the inspection to determine whether the Work is complete does not relieve the Construction Manager of its responsibilities under the Contract Documents. The Construction Manager must cooperate in all respects in the scheduling and performance of the inspection. Upon inspection, the Commission and User Agency will determine if Final Completion and Acceptance of the Work has been achieved and will issue a written notice to the Construction Manager confirming the Final Completion and Acceptance of the Work.
  - c. No action of the Commission or the Architect or their respective commissioners, board members, officers, employees, or agents shall be construed as accepting Work done or material furnished in the performance of this Contract, which Work or materials are not in accordance with those specified and required by the Contract. The issuance of the final payment shall in no way affect the right of the Commission against the Construction Manager (and the surety or sureties on the Performance and Payment Bond given by the Construction Manager) to enforce the complete performance of this Contract or to sue for the recovery of damages for failure to do so, nor shall it affect the terms of Construction Manager's guarantee in connection therewith.
3. Payment of Remaining Retainage at Final Completion and Acceptance of the Work

Unless expressly stated otherwise elsewhere, the balance of the Retainage will be paid when all Work, including Punch List Work, is complete and the Construction Manager submits to the Commission a sworn affidavit stating the following:

- a. All payrolls, invoices for materials and equipment, and all other indebtedness connected with the Work for which the Commission might in any way be responsible, have been paid or otherwise satisfied.
- b. All waivers of lien required by the Contract have been provided to the Commission.
- c. As of the date the affidavit is signed, all known claims made by Subcontractors of any tier, and others against the Construction Manager, the Commission, any agents or representatives of the Commission, pertaining to the Work required under this Contract, were provided, in writing, to the Commission.
- d. All claims made by Subcontractors of any tier, and others against the Construction Manager or the Commission pertaining to the Work required under this Contract have been resolved.
- e. The warranties and guarantees required by the Contract have been provided to the Commission.
- f. As of the date of final completion/acceptance of the work, the warranties and guarantees are in full force and effect.
- g. The surety's written consent, signed by its authorized representative, to final payment being made directly to the Construction Manager is attached to the affidavit.

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- h. The Construction Manager agrees that acceptance of final payment will constitute a general release to the Commission, its agents, representatives, officials and employees of all other claims of liability for anything done or furnished or relating to the Work or for any act or neglect of the Commission or its agents, representatives, officials and employees relating to or connected with this Contract.
- i. Record Documents have been provided to the Commission.
- j. All other documents requested by the Commission have been provided.
- k. A final certificate verifying wages and classifications for laborers and mechanics, including apprentices and trainees employed on the Project, in the following form:

The undersigned, Construction Manager on \_\_\_\_\_ (Contract No. \_\_\_\_\_) hereby certifies that all laborers, mechanics, apprentices and trainees employed by it or by a Subcontractor performing Work under the Contract have been paid wages at rates not less than those required by the Contract provisions, and that the Work performed by each such laborer, mechanic, apprentice or trainee conformed to the classifications set forth in the Contract or training program provisions applicable to the wage rate paid.

Signature and Title of Authorized Officer

\_\_\_\_\_  
Name Title

Construction Manager: \_\_\_\_\_

Project: \_\_\_\_\_

- l. Final Completion and Acceptance of the Work.

The undersigned, Construction Manager on \_\_\_\_\_ (Contract No. \_\_\_\_\_) hereby certifies that all laborers, mechanics, apprentices and trainees employed by it or by a Subcontractor performing Work under the Contract have been paid wages at rates not less than those required by the Contract provisions, and that the Work performed by each such laborer, mechanic, apprentice or trainee conformed to the classifications set forth in the Contract or training program provisions applicable to the wage rate paid.

Signature and Title of Authorized Officer

\_\_\_\_\_  
Name Title

Construction Manager: \_\_\_\_\_

Project: \_\_\_\_\_

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### ARTICLE 4. CONTRACTOR'S OBLIGATIONS

#### Section 4.01 Contractor

1. The Contractor agrees to perform everything required to be performed and to provide all of the labor, necessary tools, machinery and materials, and all facilities for the construction of the Project as described herein and other work necessary to perform and complete in a workmanlike manner, and within the specified time, all of the Work in strict accordance with the Contract Documents. Except as may be expressly provided otherwise in the Contract Documents, Contractor is solely responsible for selecting the means, methods, techniques, sequences, and procedures used in performing the Work.
2. The Contractor must begin the Work on the date specified in the Notice to Proceed. In addition, upon receipt of Notice to Proceed, the Contractor must assign and maintain during the term of the Contract and any extension of it, an adequate staff of competent personnel who are fully equipped, licensed as appropriate, available as needed, and qualified to perform the Work. The Contractor must include among the staff such personnel and positions as may be required by the Contract Documents.
3. The Contractor shall be solely responsible for properly laying out the Work, and for all lines, elevations and measurements for all of the Work executed under the Contract Documents. The Contractor shall verify the figures shown on the Drawings before laying out the Work and will be held responsible for any errors or inaccuracies resulting from the failure to do so. Neither the Architect nor the Commission Representative will be responsible for laying out the Work.
4. Except as hereinafter specified, the Contractor shall perform with its own organization and forces not less than 2% of the total amount of Work which is performed at the Site, computed on the basis of cost. The Commission may waive this requirement if, in its opinion, the requirement is impracticable or the waiver is deemed in the Commission's best interest.
5. The Contractor is responsible for the coordination of the various parts of the Work so that no part shall be left in an unfinished or incomplete condition owing to any disagreement between the various Subcontractors or any of the Subcontractors and the Contractor, as to where the work of one begins and ends with relation to the work of the other.
6. If, in the reasonable opinion of the Commission Representative, the performance of personnel of the Contractor assigned to the Work is at an unacceptable level, or does not comply with Section 8.01 "Competency of Workers" of the Contract, such personnel must cease to be assigned to this Work and must return to the Contractor. The Contractor must then furnish to the Commission Representative the name of a substitute person or persons in accordance with paragraph 2 of this section. Absence of sufficient qualified personnel for the Work shall constitute an event of default.
7. The Work is under the charge and care of the Contractor until Final Completion and Acceptance of the Work by the Commission, unless otherwise specified in the Contract Documents. The Contractor assumes all responsibility for injury or damage of the Work by action of elements, fire or any other causes whatsoever, including, but not limited to, injury or damage arising from the execution or non-execution of the Work. The Contractor must rebuild, repair, restore, and make good, at no additional cost to the Commission, all injuries or damages to any portion of its Work before Final Completion and Acceptance of the Work. When equipment or materials are furnished to the Contractor by the Commission for use or inclusion in the Work, the Contractor's responsibility for safeguarding all such equipment and materials must be the same as for equipment and materials furnished by Contractor.

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8. The Work will not be considered completed and accepted until the Contractor receives written notice from the Commission confirming the Final Completion and Acceptance of the Work.
9. The Contractor shall require each Subcontractor to become familiar with all provisions of the Contract Documents that may affect Subcontractor's work.

### Section 4.02 Contract Documents

1. The Contractor shall carefully study and compare all Drawings, specifications, and other instructions; promptly report to the Commission any error or omission discovered; and thereafter proceed with the Work in accordance with instructions from the Architect concerning such error or omission. The Contractor will not be allowed to take advantage for the discovery of any conflict, error or omission, or discrepancy in the Contract Documents after award of the Contract. Any work done after such discovery, unless authorized by the Commission, will be done at the Contractor's expense.
2. The Contract Documents are complementary and intended to include all items required for the proper execution and completion of the Work. Any item of Work mentioned in the specifications and not shown on the Drawings, or shown on the Drawings and not mentioned in the specifications, shall be provided by the Contractor as if shown or mentioned in both.
3. Generally, the specifications describe Work which cannot be readily indicated on the Drawings and indicate types, qualities, and methods of installation of the various materials and equipment required for the Work. It is not intended to mention every item of Work in the specifications which can be adequately shown on the Drawings nor to show on the Drawings all items of Work described or required by the specifications even if they are of such nature that they could have been shown thereon. All materials or labor for Work which is shown on the Drawings or is reasonably inferable from them as being necessary to produce a finished Project shall be provided by the Contractor whether or not the Work is expressly covered in the specifications.
4. Materials which are shown on the Drawings and which may not be specifically described in the specifications or Drawings shall be furnished by the Contractor, suitable for the intended use, compatible with adjacent materials, and subject to review for conformance with the intent of the Contract Documents. Installation techniques not specified herein shall be in accordance with manufacturer's currently published instructions and industry standards.
5. Wherever typical parts or sections of the Work are completely detailed on the Drawings and other parts or sections which are essentially of the same construction are shown in outline only, the complete details shall apply to the Work which is shown in outline.
6. Dimensions of Work shall not be determined by scale or rule. Figured dimensions shall be followed at all times. If figured dimensions are lacking and cannot be calculated from other dimensions on Drawings, the Architect shall supply them in response to the Contractor's RFI.
7. The Contract Drawings and specifications are complementary within themselves and between them. Distribution of these documents by the Contractor shall be in the form of complete sets. Distribution of partial sets of Contract Drawings and specifications shall be solely at the Contractor's own risk and shall not be cause for an adjustment to the Contract Sum or Contract Time as a result of incomplete pricing.
8. The Contractor must keep on hand at the Site, for reference, a complete set of documents pertaining to the Project, including, but not limited to, the complete Contract Documents, copies of all drawings

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and plans furnished by the Architect, all additional and revised drawings and plans furnished by the Commission Representative, all orders issued to the Contractor by the Commission that relate to the Work, and all submittals, including shop drawings, meeting minutes, reports, payment applications, and correspondence relating to the Work.

### Section 4.03 Site Conditions and Inspection

1. Surveys, soil borings, geotechnical information, data, plans or other materials generally describing the unimproved land or existing structures at the Site may be provided to the Contractor by the Commission. Such information is not warranted by the Commission to be accurate. The Contractor is not entitled to rely on it. When such information appears on Contract Documents, prepared by the Commission or its consultants, the Contractor acknowledges that the Commission and its consultants have not verified such information. Site plans do not constitute any representation by the Commission to the Contractor of Site boundaries or characteristics.
2. The Contractor must take field measurements, verify field conditions and carefully compare such field measurements and conditions and any other information known to the Contractor about the Contract Documents before commencing the Work. No allowance will be made to the Contractor for any extra labor and/or materials required due to Site conditions or discrepancies that might have been discovered by a thorough and proper inspection of the Site. If land surveying Work is required under this Contract, Contractor must have such Work performed by a surveyor as described in Section 8.06 "Surveyor."
3. If conditions are encountered at the Site which are (i) subsurface or otherwise unknown or concealed physical conditions which differ materially from those indicated in the Contract Documents; or (ii) pre-existing unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in activities of the character provided for in Contract Documents, including the presence of unanticipated Hazardous Materials, then the Contractor must provide immediate written notice to the Commission Representative before proceeding with such work or disturbing such areas.
4. If such conditions differ materially from those indicated in the Contract Documents, and cause a material increase or decrease in the Contractor's cost or time required for the performance of any of the Work, an equitable adjustment in the Contract Price or Contract Time, or both, will be made pursuant to Article 16 "Changes in the Work."

### Section 4.04 Relations of Contractor and Subcontractor

1. The Contractor shall require each Subcontractor to become familiar with all provisions of the Contract Documents that may affect Subcontractor's work.
2. Contractor must supervise and direct the Work completely and efficiently, devoting such attention and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract. Contractor is responsible for providing a finished Project that complies fully with the Contract.
3. All rights and obligations under this Contract are by and between the Commission and the Contractor. Except as may otherwise be provided in the Contract Documents, there is no privity between subcontractors and the Commission. Subcontractors have no rights as third party beneficiaries under this Contract, except as may be provided in the MBE/WBE provisions. The Contractor agrees to implement such measures as may be necessary to ensure that its Subcontractors shall be bound by all applicable provisions of the Contract. The Contractor agrees to bind every Subcontractor and every Subcontractor agrees to be bound by the terms of the Contract Documents



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as far as applicable to its Work, including the following provisions of this Article, unless specifically noted to the contrary in a subcontract approved in writing as adequate by the Commission.

4. Nothing in this section shall create any obligation on the part of the Commission to pay to or to see to the payment of any sums to any Subcontractor. The Contractor is responsible in all aspects and at all times for any and all Subcontractor's work.
5. The Subcontractor agrees:
  - a. To be bound to the Contractor by the terms of the Contract Documents and to assume toward the Contractor all the obligations and responsibilities that the Contractor, by such documents, assumes toward the Commission.
  - b. To submit to the Contractor applications for payment in such reasonable time as to enable the Contractor to apply for payment as herein-specified under Article 15 "Payments."
  - c. To make any claims for extras, for extensions of time to the Contractor in the manner provided in the General Conditions for like claims by the Contractor upon the Commission, except that the time limit for making claims for extra cost is seven (7) Days.
6. The Contractor agrees:
  - a. To be bound to the Subcontractor by all the obligations that the Commission assumes to the Contractor under the Contract Documents and by all the provisions thereof affording remedies and redress to the Contractor from the Commission.
  - b. To pay the Subcontractor, upon the issuance of certificates under the Schedule of Values herein described in Article 15 "Payments," the amount allowed and paid to the Contractor on account of the Subcontractor's Work to the extent of the Subcontractor's interest therein.
  - c. That no claim for services rendered or materials furnished by the Contractor to the Subcontractor shall be valid unless written notice thereof is given by the Contractor to the Subcontractor during the first ten (10) Days of the calendar month following that in which the claim originated.
  - d. To give the Subcontractor an opportunity to be present and to submit evidence in any decision involving its rights.

### Section 4.05 Contractor's Warranties and Representations

Contractor warrants and represents that:

1. It has carefully examined and analyzed the provisions and requirements of this Contract; it has inspected the Site to the extent made available by the Commission; from its own analysis it has satisfied itself as to the nature and scope of Work, all conditions, any obstructions, and requirements needed for the preparation of its bid and the performance of its Contract, the general and local conditions, and all other matters which in any way may affect this Contract or its performance; and the time available for such examination, analysis, inspection, and investigation was adequate.
2. This Contract is feasible of performance in accordance with all of its provisions and requirements and that the Contractor can and must perform, or cause to be performed, the Work in strict accordance with the provisions and requirements of this Contract.

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3. Except for the contents of this Contract, no representation, statement or promise, oral or written, or of any kind whatsoever, by the Commission, its officials, agents, representatives or employees, has induced the Contractor to submit a bid or has been relied upon by the Contractor, including any reference to (i) the meaning, correctness, suitability or completeness of any provisions or requirements of this Contract; (ii) the nature, existence, or location of materials, structures, obstructions, utilities or conditions, surface or subsurface, which may be encountered at or on the Site; (iii) the nature, quantity, quality or size of any materials, equipment, labor and other facilities needed for the performance of this Contract; (iv) the general conditions which may in any way affect this Contract or its performance; (v) the compensation provisions of the Contract; or (vi) any other matter.
4. The Contractor was given ample opportunity and time to review the Contract Documents before submittal of its bid in order that it might request an addendum to the Contract Documents that may entail the inclusion of this Contract or any statement, representation, promise or provision which it desired or on which it wished to place reliance; the Contractor did so review the Contract Documents; and that every such statement, representation, promise, or provision has been included in this Contract or else, if omitted, the Contractor expressly hereby relinquishes the benefit of any such omitted statement, representation, promise or provision and is willing to perform this Contract in its entirety without claiming reliance on any such omission or making any other claim on account of such omission.
5. The Commission materially relied upon the Contractor's bid in its selection of the Contractor to perform the Work.
6. Contractor's submittal of its bid establishes that the Contractor, in preparing and submitting its bid on which this Contract is based, has complied with and given full consideration to the following bidding requirements:
  - a. The Contractor did obtain for bidding purposes copies of the complete Contract Documents as identified in the advertisement for bids and all addenda issued by the Commission and has become familiar with the same and all Contract requirements and conditions described therein.
  - b. The Contractor has clarified to its satisfaction and complete understanding and acceptance any doubt as to the true meaning and intent of any part or parts of the specifications and plans or other portions of the Contract Documents.
  - c. The Contractor must have no claim for relief because of alleged mistakes or omissions in its bid and that the Contractor will be held strictly to its bid as presented.
7. The Contractor has the capability and financial resources to perform all of the provisions and requirements of this Contract.
8. The Contractor must perform all of its obligations under this Contract in accordance with all of the Contract's provisions and requirements.

### Section 4.06 Acceptance of Work

1. Substantial Completion of the Work
  - a. Substantial Completion of the Work will be made after preliminary inspection by the Architect when, in the opinion of the Commission, the requirements of the Contract Documents have been essentially completed except for Punch List Work, and when the Contractor has obtained and delivered, to the Commission a "Certificate of Occupancy" issued by the authority having

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jurisdiction. Upon Substantial Completion of the Work, the Commission may take over the Project for occupancy and use thereafter.

### 2. Final Completion and Acceptance of the Work

#### a. Punch List Completion

- (1) The Contractor understands and agrees that time is of the essence in closing out the Work of this Contract. Upon Substantial Completion of the Work, the Punch List will be transmitted to the Contractor from the Commission. The Contractor agrees to begin performance of Punch List Work immediately after receipt of the Punch List.
- (2) Failure of the Contractor or its Subcontractors to begin the Punch List Work within three (3) Days after receipt of the Punch List shall be construed as failure to prosecute the Work of the Contract.
- (3) Punch List Work shall be continuously prosecuted once begun and completed within thirty (30) Days from the receipt of the Punch List from the Architect. Should the Contractor fail to complete the Punch List within this period of time, the liquidated damages as identified in Section 10.04 shall again begin to accrue, and shall continue until Architect's written acceptance of Punch List Work.

b. When the Contractor deems the Work to be complete, the Contractor must notify the Commission Representative in writing that the Work will be ready for an inspection and/or test on a date specified by the Contractor. Such notice is given at least 5 Days in advance of said date. If the Commission concurs that the Work will be ready for inspection or testing on the date given, the Commission will make such inspection within a reasonable period of time. The scheduling of the inspection to determine whether the Work is complete does not relieve the Contractor of its responsibilities under the Contract Documents. The Contractor must cooperate in all respects in the scheduling and performance of the inspection. Upon inspection, the Commission will determine if Final Completion and Acceptance of the Work has been achieved and will issue a written notice to the Contractor confirming the Final Completion and Acceptance of the Work.

c. No action of the Commission or the Architect or their respective commissioners, board members, officers, employees, or agents shall be construed as accepting Work done or material furnished in the performance of this Contract, which Work or materials are not in accordance with those specified and required by the Contract. The issuance of the final payment shall in no way affect the right of the Commission against the Contractor (and the surety or sureties on the Performance and Payment Bond given by the Contractor) to enforce the complete performance of this Contract or to sue for the recovery of damages for failure to do so, nor shall it affect the terms of Contractor's guarantee in connection therewith.

### 3. Payment of Remaining Retainage at Final Completion and Acceptance of the Work

Unless expressly stated otherwise elsewhere, the remaining Retainage will be paid when all Work, including Punch List Work, is complete and the Contractor submits to the Commission Representative a sworn affidavit stating the following:

- a. All payrolls, invoices for materials and equipment, and all other indebtedness connected with the Work for which the Commission might in any way be responsible, have been paid or otherwise satisfied.

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- b. All waivers of lien required by the Contract have been provided to the Commission.
- c. As of the date the affidavit is signed, all known claims made by Subcontractors of any tier, and others against the Contractor, the Commission, any agents or representatives of the Commission, pertaining to the Work required under this Contract, were provided, in writing, to the Commission.
- d. All claims made by Subcontractors of any tier, and others against the Contractor or the Commission pertaining to the Work required under this Contract have been resolved.
- e. The warranties and guarantees required by the Contract have been provided to the Commission.
- f. The warranties and guarantees are in full force and effect.
- g. The surety's written consent, signed by its authorized representative, to final payment being made directly to the Contractor is attached to the affidavit.
- h. The Contractor agrees that acceptance of final payment will constitute a general release to the Commission, its agents, representatives, officials and employees of all other claims of liability for anything done or furnished or relating to the Work or for any act or neglect of the Commission or its agents, representatives, officials and employees relating to or connected with this Contract.
- i. Record Documents have been provided to the Commission.
- j. All other documents requested by the Commission have been provided.
- k. A final certificate verifying wages and classifications for laborers and mechanics, including apprentices and trainees employed on the Project, in the following form:

The undersigned, Contractor on \_\_\_\_\_ (Contract No. \_\_\_\_\_) hereby certifies that all laborers, mechanics, apprentices and trainees employed by it or by a Subcontractor performing Work under the Contract have been paid wages at rates not less than those required by the Contract provisions, and that the Work performed by each such laborer, mechanic, apprentice or trainee conformed to the classifications set forth in the Contract or training program provisions applicable to the wage rate paid.

Signature and Title of Authorized Officer

\_\_\_\_\_  
Name Title

Contractor: \_\_\_\_\_

Project: \_\_\_\_\_

The payment of the remaining retainage to Contractor will occur upon Final Completion and Acceptance of the Work.

**ARTICLE 5. INDEMNIFICATION, PERFORMANCE & PAYMENT BOND, AND INSURANCE**

**Section 5.01 Indemnification**

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1. The Construction Manager shall, and hereby covenants and agrees, to indemnify, save, and hold harmless the following indemnities: the Commission, the User, the Architect and their consultants, the Commission Representative and any additional persons named in Section 2.03, their respective commissioners, board members, officers, agents and employees and representatives, individually and collectively, from all claims, demands, actions and the like, of every nature and description, made or instituted, by third parties, arising or alleged to arise out of the Work under this Contract, as a result of any negligent or willful act or omission of either the Construction Manager or any Subcontractor, or any of their employees or agents. This indemnity shall include any and all expenses incurred in connection with the investigation of any claim or the defense of any lawsuit brought by any third party, including all court costs and actual attorneys' fees incurred by the indemnities herein. In the event of any injury (including death), loss or damage (or claim or claims therefor), the Construction Manager shall give immediate notice thereof to the Commission Representative.
2. The obligations of the Construction Manager under this Article shall not extend to the liability of the Architect, its agents or employees arising out of:
  - a. the preparation or approval of maps, Drawings, opinions, reports, surveys, Change Orders, designs or specifications; or
  - b. the giving or failure to give directions or instructions by the Architect, its agents, or employees provided such giving or failure to give directions or instructions is the primary cause of the injury or damage.

### Section 5.02 Performance and Payment Bond

1. Before award of the Contract, the Construction Manager will deliver to the Commission a Performance and Payment Bond in the amount set forth in Section 10.04. The surety or sureties issuing the bond must be acceptable to the Commission and the bond must be in the form provided by the Commission. The bond shall cover the warranty period required by the Contract.
2. In case of neglect, failure, or refusal of Construction Manager to provide satisfactory sureties when so directed within seven (7) Days after such notification, the Commission may declare this Contract forfeited, but such forfeiture shall not release Construction Manager or its surety or sureties from any liability which may have accrued before the date of such forfeiture.
3. If at any time the surety or sureties, or any one of them, upon such bond become insolvent, or are, in the sole opinion of the Commission, unsatisfactory, or unable to respond to damages in case of liability on such bond, the Commission will notify the Construction Manager and direct that a bond issued by a satisfactory surety or sureties be provided forthwith.
4. **Surety for Performance Bond.** The Performance Bond required by the Contract shall be secured by a Guarantee or surety company listed in the latest issue of U.S. Treasury Circular 570.
5. The Performance and Payment Bond required by the Contract shall be secured by a Guarantee or surety company listed in the latest issue of U.S. Treasury Circular 570 and otherwise acceptable to the Commission.

### Section 5.03 Insurance

1. The Construction Manager must procure and maintain at all times, at Construction Manager's own expense, through the completion of the warranty period, the types of insurance specified in the Contract Documents, with insurance companies authorized to do business in the State of Illinois,

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covering all operations under this Contract, whether performed by the Construction Manager or by Subcontractors. Upon written request by the Commission, the Construction Manager must allow the Commission to review and copy any original insurance policies the Construction Manager is obligated to maintain under this policy.

2. The Construction Manager hereby waives any and every claim or right of recovery from the Commission for any and all injuries and losses arising under this Contract or in any way related to the Work, including but not limited to any claim for loss of or damage to the Work or to the contents thereof, which injury, loss, or damage is covered by valid and collectible insurance policies, to the extent that such injury, loss, or damage is recoverable under said insurance policies. As this waiver will preclude the assignment of any claim by subrogation (or otherwise) to an insurance company (or any other person), the Construction Manager agrees to give each insurance company which has issued, or in the future may issue, its policies of insurance, written notice of the terms of this waiver, and to have said insurance policies properly endorsed, if necessary, to prevent the invalidation of insurance coverage by reason of said waiver. The Construction Manager must require each Subcontractor to include similar waivers of subrogation in favor of the Commission.
3. The Construction Manager shall cause contractual liability endorsement to be issued by the insurance companies and attached to the Comprehensive General Liability policies of each Construction Manager and/or Subcontractor to include under the coverage therein extended an obligation on the part of the insurers to insure against the Construction Manager and/or each Subcontractor's contractual liability under this Article. Such coverage shall be afforded therein against all claims arising out of the operation of any structural work law or law imposing liability arising out of the use of scaffolds, hoists, cranes, stays, ladders, supports, or other mechanical contrivances.
4. The Commission reserves the right to change, modify or delete insurance requirements set forth in the Contract Documents, including, without limitation, the right to request that the Construction Manager provide additional types of insurance.

### ARTICLE 6. PERMITS AND LICENSES

#### Section 6.01 Permits, Licenses, and Regulations

##### 1. Permits

- a. The Construction Manager is responsible for obtaining all permits, including but not limited to sewer, water, crane, fence, driveway, and building permits, as prescribed by the City of Chicago and public utilities, and any other permits that may be necessary. **The Commission will be responsible for the City of Chicago building permit cost; all other permit fees shall be borne by the Construction Manager.**
- b. The Commission shall assist the Construction Manager in the permit process however, the Construction Manager is solely responsible for obtaining all required permits in a timely fashion. Delays to the progress of the Work resulting from procurement of required permits shall not be granted.
- c. **The Construction Manager shall utilize the intergovernmental process within the Department of Buildings to procure the building permit.**
- d. The nature of the foundation systems required on portions of this Project may be such that submittals, permits, and coordination will be required with the City of Chicago Bureau of Underground. If such systems are required by the Contract, the Construction Manager, representing its familiarity with these systems and permit processes, shall be responsible for any

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and all submittals, fees, coordination, and any other items required to secure approvals required by the authorities having jurisdiction for the installation of these systems.

### 2. Licenses and Regulations

- a. The Construction Manager shall include in the bid for the Project, obtain, and pay for all licenses and certificates of inspection required or necessary for the execution and completion of the Work.
- b. The Construction Manager shall give all notices and comply with all laws, ordinances, codes, rules and regulations bearing on the conduct of the Work. If the Construction Manager observes that the Drawings and specifications are at variance therewith, prompt notification in writing shall be given to the Commission Representative, and any necessary changes shall be made in accordance with Article 16 "Changes in the Work." The Construction Manager shall bear all costs arising from any work performed that is contrary to such laws, ordinances, codes, rules, and regulations.
- c. The Construction Manager shall also comply with the current regulations of the National Board of Fire Underwriters where applicable, and all other codes named in the specifications for the various divisions of the Work.

## ARTICLE 7. CONSTRUCTION MANAGER'S PRACTICES AT SITE

### Section 7.01 Hours of Work

1. The Construction Manager shall furnish sufficient forces and work such shifts as may be required to ensure completion of the Work under the conditions and within the time stated in the Contract. If the nature of the Work requires that parts of it be performed outside of regular working hours, the cost of such Work including overtime wages for the User's Building Engineer, if applicable, shall be included in the Base Contract Price. If the Project falls behind schedule, the Construction Manager will be required to perform the Work by extra shifts or on overtime basis as may be necessary to complete the Work on time at no cost to the Commission.
2. The Construction Manager will not be entitled to additional compensation for extra shifts or overtime work for any reason or claim of whatever nature except as otherwise expressly stated in writing by the Commission; and then only to the extent of the direct cost of the premium portion of the time involved and without any charge for mark up, insurance, or taxes, except as might otherwise be required by law.
3. The Site may be occupied during construction. Construction Manager shall cooperate fully with the Commission, Commission Representative, Architect, and the User during construction operations to minimize conflicts and interference and to facilitate occupant usage and operations.
  - a. During occupied hours, the Construction Manager shall limit construction operations to methods and procedures which will not adversely and unduly affect the environment of occupied spaces. The Construction Manager shall provide proper protection and procedures to ensure that noise, dust, odors, air pollution, ambient discomfort, or poor lighting do not endanger or disrupt the activities of the User. The Construction Manager shall follow Federal, State and City safety procedures, and provide for the protection of the building occupants and furniture, fixtures and equipment as required for execution of the work.

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4. Whenever the Construction Manager desires to perform Work outside the hours of 7:00 am through 3:30 P.M., Monday through Friday, the Construction Manager shall request written authorization from the Commission not less than forty-eight (48) hours in advance.

### Section 7.02 Cleaning Up

1. During the Construction, the Construction Manager will keep the Site and streets as free from material, debris, and rubbish as is practicable and will remove the same entirely and at once, if in the opinion of the Commission, said material, debris, or rubbish constitutes a nuisance, a safety hazard, or is objectionable in any way to the public. Upon oral and/or written notification of unacceptable Site conditions by the Commission, the Construction Manager shall be responsible for immediate remediation within forty-eight (48) hours of notification. The Construction Manager's failure to act accordingly shall result in completion of remediation work by the Commission at the Construction Manager's expense.
2. As a condition of Final Completion and Acceptance of the Work, the Construction Manager shall remove from the Site and adjacent premises all machinery, equipment, surplus materials, falsework, excavated and useless materials, rubbish, temporary buildings, barricades, and signs, and shall restore the area surrounding the Site to the same general conditions that existed before the commencement of the Work.
3. The Construction Manager shall clean off all cement streaks or drippings, paint smears or drippings, rust stains, oil, grease, dirt, and any other foreign materials deposited or accumulated on any portion of the Work or existing work due to Construction Manager's operations.
4. Construction Manager shall be solely responsible for and shall assume all liability associated with off-Site disposal of any Hazardous Materials generated as a result of Construction Manager's construction activities.

### Section 7.03 Protection of Work and Property; Safety

1. The Construction Manager shall continuously protect the Work and the Commission's property from damage, injury or loss arising in connection with operations under the Contract Documents. The Construction Manager shall make good any such damage, injury or loss, except such as may be directly due to errors in the Contract Documents or caused by agents or employees of the Commission or Architect, or due to causes beyond the Construction Manager's control, fault, or negligence which would not reasonably be expected to occur in connection with or during performance of the Work. Construction Manager is responsible for Site security, watchmen, construction fencing, etc., as directed by the Commission. Dogs are not allowed on the Site at any time.
2. Unless otherwise noted, all existing fixtures, furniture, equipment, supplies, or similar items shall be carefully removed by the Construction Manager and legally stored in a nearby area, protected from damage of any kind, before construction start in said area. The Construction Manager shall return such items to the originally designated place at the finish of construction. For electronic or utility hook-ups, the Commission shall be notified in advance, and allowed sufficient time to disconnect items before removal. Hook-ups are to be reconnected by the Commission after replacement of furniture and equipment by the Construction Manager.
3. Adequate precautions shall be taken against fire throughout all the Construction Manager's and Subcontractors' operations. Flammable material shall be kept at an absolute minimum, and, if any, shall be properly handled and stored in accordance with all applicable codes and standards. Except as otherwise provided herein, the Construction Manager shall not permit fires to be built or open



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salamanders to be used in any part of the Work. Except in designated areas, smoking is not permitted on the Site at any time.

4. In occupied or partially occupied buildings, the Construction Manager shall provide all safeguards and protection necessary to protect the User from dust as may be created during any portion of the execution of the Work. The Construction Manager shall provide dust-proof barriers to isolate areas of Work from all occupants of the facility. The Construction Manager shall immediately cease operations if dust, debris, or objectionable odors from the performance of the Work spreads beyond the isolated dust barrier to occupied portions of the Site. Following cleaning of the occupied portions of the Site, re-establishment of the dust barriers, and the dissipation of all objectionable odors, the Construction Manager may resume operations. Such interruption in operations shall not be the cause for a claim for a time extension to the progress of the Work.
5. The Construction Manager shall protect all streets, sidewalks, light poles, hydrants, and concealed or exposed utilities of every description affected by or adjacent to the Work. If such items are damaged by the Construction Manager or Subcontractors, the Construction Manager shall make all necessary repairs thereto or replacements thereof at no cost to the Commission. Should the Construction Manager observe an area which may later be interpreted by the Commission or Architect as damaged, it is the Construction Manager's responsibility to provide photographic evidence of this condition and submit such to the Commission Representative before commencement of the Work.
6. If, in the prosecution of the Work, it is necessary to excavate or occupy any street, alley, or public grounds of the City of Chicago, the Construction Manager agrees to erect and maintain such barriers, and during the night, such lights as will effectively prevent the happening of any accidents or damage to life, limb, or property in consequence of such excavation or occupation of such street, alley, or public grounds. The Construction Manager is liable for all damage occasioned by the Construction Manager, its agents, employees, or Subcontractors of any tier in the excavation or occupation of any street, alley, or public grounds, and shall indemnify the Commission pursuant to **Section 4.01 "Indemnification."**
7. Whenever the construction period spans the winter season and other times in which cold or inclement weather may be anticipated. All provisions required and necessary to work during inclement or winter conditions so as to complete all work in accordance with the provisions of Section 9.01 **"Time Is Of the Essence,"** including, but not limited to, temporary protection and weatherproofing, temporary heat, temporary lighting, and any other measures necessary or prudent, in addition to those delineated in Division 1 – Section 01500 – Temporary Facilities and Services, shall be provided by the Construction Manager as part of the Base Contract Price.
8. The Construction Manager shall remove all snow and ice, and salt sidewalks, as may be required for the proper protection of pedestrians and/or prosecution of the Work pursuant to Section 10-8-180 of the City of Chicago Municipal Code. The Construction Manager shall at all times provide and maintain adequate protection against weather (including, but not limited to rain, winds, storms, snow, sleet, frost, or heat) so as to preserve all Work, materials, equipment, apparatus, and fixtures free from injury or damage.
9. The Construction Manager shall provide and maintain adequate protection for all properties adjacent to the Site. When required by law or for the safety of the Work, the Construction Manager shall shore up, brace, underpin and protect as necessary, adjacent pavements, foundations, and other portions of existing structures which are in any way affected by the operations under the Contract Documents. The cost of all such operations is considered to be included in the Contract Price whether indicated on the Contract Documents or not. The Construction Manager, before commencement of any part of the Work, shall give any notices required to be given to any adjoining landowner or other parties.

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10. If, in the opinion of the Commission, the Construction Manager's Work endangers adjoining property, upon written notice, the Work shall be stopped and the method of operation changed in a manner acceptable to the Commission.
11. Hazardous Materials
  - a. If the Construction Manager encounters on the Site material reasonably believed to be hazardous which has not been identified in the Contract Documents or rendered harmless, the Construction Manager shall immediately stop Work in the area affected and report the condition to the Commission Representative in writing. The Work in the affected area shall be resumed in the absence of Hazardous Materials, or when it has been rendered harmless, by written notification from the Commission to the Construction Manager.
  - b. The Construction Manager shall not be required to perform without consent any Work relating to Hazardous Materials.
  - c. If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from material or substance encountered on the Site by the Construction Manager, the Construction Manager shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Commission and Architect in writing.
  - d. The Commission shall be responsible for obtaining the services of a licensed laboratory to verify the presence or absence of the materials or substance reported by the Construction Manager and, if such material or substance is found to be present, to verify that it has been rendered harmless.
12. The Construction Manager shall take all necessary precautions to ensure the safety of the public and workers on the Site, and to prevent accidents or injury to any persons on, about, or adjacent to the Site where the Work is being performed.
13. The Construction Manager shall designate a responsible on-Site member of its organization as a safety coordinator whose duties shall include prevention of all accidents.
14. The Construction Manager shall comply with all laws, ordinances, codes, rules, and regulations relative to safety and the prevention of accidents, the Manual of Accident Prevention in Construction of the Associated General Contractors of America and the applicable provisions of the American Standard Safety Code for Building Construction, unless prevention of accidents is regulated by a more stringent local code or ordinance. The Construction Manager shall erect and properly maintain at all times, as required by laws and regulations and the conditions and progress of the Work, proper safeguards for the protection of workers and the public and post signs warning against the dangers created by openings, stairways, falling materials, open excavations, and all other hazardous conditions.
15. In accordance with the provisions of Article 8 "Coordination With Others," the Construction Manager shall cooperate with any other contractor that may be performing work on the Site in connection with the compliance with regulations of OSHA and all other federal, state, and municipal laws, rules and regulations relating to Site safety and practice including, as may be relevant, appealing decisions, correcting Work within abatement periods, appealing or requesting extensions on abatement periods when work has been done by other contractors, and furnishing such supporting information or material as may be necessary to fully protect the rights of the Commission, its representatives, and other contractors on pending or prospective violation orders.

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16. In an emergency affecting the safety of life, the Work or adjoining property, the Construction Manager, without special instructions from the Architect or authorization from the Commission, is permitted to act at its discretion to prevent such threatened loss or injury.

### Section 7.04 Accidents

1. The Construction Manager shall provide at the Site, and make available to all workers, medical supplies and equipment necessary to supply first aid service to all persons injured in connection with the Work.
2. If death, serious injury, or serious damages are caused, the Construction Manager shall notify the Commission Representative immediately via telephone or messenger.
3. The Construction Manager shall promptly report in writing to the Commission Representative all accidents whatsoever arising out of, or in connection with, the performance of the Work, whether on or off the Site, which caused death, personal injury, or property damage, giving full details and statements of witnesses. It shall be the responsibility of the Construction Manager to submit an accident report, within twenty-four (24) hours of the occurrence, containing the following:
  - a. Name of Person or Persons involved and Home Address(es)
  - b. Location of Occurrence
  - c. Time of Day and Date
  - d. Description of Occurrence
  - e. Statements of Witnesses
  - f. Signature of Construction Manager's Superintendent
  - g. Any other documentation of the accident, if any (i.e. a police report, medical documentation, etc.)
4. The Construction Manager shall send a copy of the accident report to the Commission's insurer, as directed by the Commission, and to the Commission Representative.
5. If any claim is made by anyone against the Construction Manager or any Subcontractor on account of any accident, the Construction Manager shall promptly report the facts and full details of the claim in writing to the Commission Representative.

## ARTICLE 8. COORDINATION WITH OTHERS

### Section 8.01 Separate Contracts

1. The Commission reserves the right to let other contracts in connection with the Work. The Construction Manager shall afford other contractors reasonable opportunity for the introduction and storage of their materials and for the performance of their work. Construction Manager shall coordinate and tie-in, where appropriate, its Work with that of others in an acceptable manner and perform the Work in proper sequence to the work of others. Such work being performed by the Commission's separate contractors shall not in any way constitute acceptance or partial acceptance of the Work by the Commission.
2. The Construction Manager must conduct the Work so as not to interfere with or hinder the progress or completion of the work being performed by other contractors within or adjacent to the Site.
3. If any part of the Construction Manager's Work depends, for proper performance or result, upon the work of any other contractor, the Construction Manager shall inspect and measure the work of the other contractor and promptly report to the Commission Representative any defects or discrepancies

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in such work. The Construction Manager's failure to inspect and make such report shall constitute an acceptance of the other contractor's work as fit and proper for the proper performance of the Work, except as to latent defects.

4. Wherever work being done by any such contractors or subcontractors is contiguous to Work covered by the Contract Documents, the respective rights of the parties shall be established by the Architect to secure the completion of the various portions of the Work in general harmony.

### Section 8.02 Mutual Responsibility of Contractors

1. The Construction Manager must assume all responsibility for Work not completed or accepted due to the presence and operations of other contractors.
2. The Construction Manager must assume all liability, financial or otherwise, in connection with this Contract, and must protect and save harmless the Commission from any and all damages or claims that may arise because of inconvenience, delay, or loss experienced due to the presence and operations of other contractors working within the limits of the Work.
3. The Construction Manager, where separate contractors or their subcontractors are employed on the Site, will not hold the Commission responsible for loss or damage or injury caused by any fault or negligence of such other contractor or subcontractor and the Construction Manager shall look to such contractors or subcontractors for recovery from them for any such damage or injury.
4. If any separate contractor or its subcontractor shall suffer loss or damage through any acts or omission on the part of the Construction Manager, or any of its subcontractors, the Construction Manager shall reimburse such other contractor or its subcontractor by agreement or arbitration if they will so settle. If such separate contractor or its subcontractor shall assert any claim against the Commission on account of any damage or loss alleged to have been so sustained, the Commission shall notify the Construction Manager, and the Construction Manager shall save the Commission harmless against such claims as provided in Section 4.01 "Indemnification."
5. When any damage is caused by other contractors to the Work performed by the Construction Manager, the Construction Manager must file claims with the other contractors, not against the Commission, and must obtain compensation for damage directly from such other contractors.

## ARTICLE 9. PERSONNEL

### Section 9.01 Competency of Workers

The Construction Manager must employ only competent and efficient laborers, mechanics or artisans and whenever, in the opinion of the Commission or its representatives, any worker is careless, incompetent, violates safety or security rules, obstructs the progress of the Work, acts contrary to instructions, acts improperly, or fails to follow the safety requirements of this Contract, the Construction Manager must, upon request by the Commission or its representatives, remove such worker from the Work. The Construction Manager must not permit any person or worker to enter any part of the Work or any buildings connected therewith who is under the influence of intoxicating liquors or controlled substances.

### Section 9.02 Administration and Supervision of the Work

1. The Construction Manager shall furnish a competent and adequate staff as necessary for the proper administration, coordination, and supervision of the Work; organize the procurement of all materials and equipment so that they will be available at the time they are needed for the Work; and keep an

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adequate force of skilled workers on the Site to complete the Work in accordance with all requirements of the Contract Documents and to the entire satisfaction of the Commission.

2. The Construction Manager shall keep on the Project throughout its duration a competent full-time, experienced and qualified Superintendent and any necessary assistants, all of whom must be satisfactory to the Commission. This Superintendent's résumé shall be submitted to the Commission for approval at the time the Performance and Payment Bond and certificate(s) of insurance are submitted, as described in the Contract Documents. The Superintendent shall be present at the Site when Construction Manager's personnel and/or Subcontractors are present.
3. Before commencement of the Work, the Construction Manager shall select a Project Manager and submit his/her résumé to the Commission for the approval at the time the Performance and Payment Bond and certificate(s) of insurance are submitted, as described in the Contract Documents. The Project Manager will have full responsibility for the prosecution of the Work with full authority to act in all matters as necessary for the proper coordination, direction, commitment of resources, and technical administration of the Work. The Project Manager shall attend meetings at such places and times as shall be decided by the Commission or Architect in order to render reports on the progress of the Work. The Project Manager shall be committed to this Project on a full-time basis and shall be stationed at the Site, unless otherwise agreed to by the Commission in writing. The Construction Manager shall not change Project Manager without the consent of the Commission, unless such staff member proves to be unsatisfactory to the Construction Manager and ceases to be in its employ.

### Section 9.03 Superintendence

1. The Construction Manager shall keep on the Project throughout its duration a competent full-time, **experienced and qualified** Superintendent and any necessary assistants, all of whom must be satisfactory to the Commission. This Superintendent's résumé shall be submitted to the Commission Representative for approval at the time the Performance and Payment Bond and certificate(s) of insurance are submitted, as described in the Contract Documents. Where the Project consists of multiple Sites, the Construction Manager shall assign a full time Superintendent to each Site. The Superintendent shall be present at the Site when Construction Manager's personnel and/or Subcontractors are present.
2. The Superintendent shall not be changed without the consent of the Commission unless the Superintendent proves to be unsatisfactory to the Construction Manager or becomes unavailable due to reasons beyond the control of Construction Manager. In order to change the Superintendent, the Construction Manager shall give the Commission Representative written notice and submit for approval the qualifications of the proposed replacement Superintendent at least fifteen (15) Days before the intended change.
3. The Superintendent shall represent the Construction Manager in the absence of the Construction Manager and all directions given to the Superintendent shall be as binding as if given to the Construction Manager.

### Section 9.04 Schedule

1. To assist in the preparation and maintenance of the Schedule, the Construction Manager may engage, at its own expense, a consultant who is skilled in the application of network techniques for construction projects and the use of Primavera Project Planner P3 E/C scheduling software. If the Construction Manager has qualified personnel on staff, the Construction Manager may perform the required scheduling with its own organization

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2. Before engaging a consultant or using staff personnel, and within 5 Days after award of Contract, the Construction Manager will submit to the Commission Representative:
  - a. The name and address of the proposed consultant or staff person
  - b. Sufficient information to show that the proposed consultant or the Construction Manager's staff has the qualifications to meet the Schedule requirements
  - c. A list of prior construction projects and three (3) selected Primavera network samples that the proposed consultant or Construction Manager's staff has prepared. These three (3) CPM Schedules must be for projects similar in complexity and magnitude to this Project
3. The Commission has the right to approve or disapprove employment of the proposed consultant or the performance of the Schedule requirements of the Contract by the Construction Manager's staff, and will notify the Construction Manager of its decision within seven (7) Days of receipt of the information. In case of disapproval, the Construction Manager will submit another person with supporting documents within seven (7) Days. The Commission also reserves the right to disqualify the consultant or Construction Manager's staff personnel at any time throughout the Project if the preparation, presentation, reporting, and updating of do not, in the Commission's opinion, meet the degree of detail described in the Contract Documents. Such approval or disapproval does not release the Construction Manager of any of its obligations under this Contract.

### Section 9.05 Mechanical, Electrical, Plumbing Coordinator

The Construction Manager shall provide a full-time staff member or members, as necessary, who have the sole responsibility to perform mechanical, electrical, and plumbing coordination, as described in Division 1 – Section 01010 – 3.5 – Mechanical and Electrical Coordinator.

### Section 9.06 Surveyor

Whenever required, the Construction Manager shall engage and pay for the services of a surveyor, subject to the approval of the Commission, who is licensed in the State of Illinois, who is not a regular employee of the Construction Manager, and who has no interest in the Contract.

### Section 9.07 Prevailing Wage Rates

1. Not less than the prevailing rate of wages as determined by the Illinois Department of Labor shall be paid to all laborers, mechanics, and other workers performing Work under this Contract.
2. Construction Manager's attention is called to the generally prevailing hourly rate of wages, as determined by the Illinois Department of Labor, which are bound in these Contract Documents and which are hereby incorporated into the Contract Documents.
3. The wage rates set forth in these Contract Documents were the rates in effect at the time these Contract Documents were issued. In the performance of the Work, however, Construction Manager shall be fully responsible for paying the generally prevailing hourly rate of wages in effect, as determined by the Department of Labor, at the time the Work is performed. One resource for determining the current prevailing wage rate is the Internet site [www.PrevailingRate.com](http://www.PrevailingRate.com) maintained by the Construction Industry Service Corporation. If the Department of Labor revises the prevailing rate of hourly wages to be paid for the Work before completion of the Project, the revised rate shall apply to the Contract from the effective date of such revision, provided, however that such revision shall not entitle the Construction Manager to any increased compensation under the terms hereof.

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4. As a condition of making payment to the Contract, the Commission may request the Construction Manager to submit an affidavit to the effect that not less than the prevailing hourly wage rate is being paid to laborers, mechanics, and other workers employed on this Contract in accordance with Illinois law.

### ARTICLE 10. SCHEDULE

#### Section 10.01 Time Is Of The Essence

Time is of the essence of this Contract. The Construction Manager agrees that it will commence the performance of the Work on the date set forth in the Notice to Proceed issued by the Commission and that it will complete the Work within the time set forth in the Contract Documents.

#### Section 10.02 Construction Manager's Construction Schedule

##### 1. General

- a. It is understood and agreed that "TIME IS OF THE ESSENCE" of the contract. The Construction Manager agrees to begin actual Work covered by this Contract in conformity with the provisions set forth herein and to prosecute the same with all due diligence, so as to complete the entire Work under this Contract within the Days stipulated, after the date for commencement of Work as specified in the written Notice to Proceed to the Construction Manager from the Commission. The Construction Manager shall, when necessary, use overtime, multiple shifts, weekend, and/or holiday work to maintain the approved schedule without additional compensation.
- b. The progress schedule for the Project will use the Critical Path Method (CPM). The Construction Manager shall utilize Primavera Project P3 E/C Planner as a scheduling software package.
- c. The Construction Manager's CPM schedule shall, as a minimum, indicate the dates for the starting and completion of the various stages of the Work, including, without limitation the placing of material orders, delivery of materials and equipment, preparation, submittal, and approval of all required Submittals; preparation and procurement of material and equipment furnished by the Construction Manager; interface activities performed by others upon which the Construction Manager's schedule depends; all Work activities and field construction operations, equipment installation, testing, and balancing. The Construction Manager shall provide estimates of craft hours and or crew sizes for each activity.
- d. The Commission approval of the Construction Manager's CPM schedule is done for the sole purpose of insuring that all CPM scheduling documents prepared by the Construction Manager conform to the Contract requirements. This approval does not relieve the Construction Manager of its sole responsibility for the means, methods, procedures, and sequence of the construction process nor does it provide any entitlement to additional funds for Project completion in a period that is less than the Contract Day duration.

##### 2. CPM Schedule

- a. The Construction Manager shall prepare a detailed Work progress schedule consisting of all Critical Path Method (CPM) diagrams as specified below. The format of the network diagram will utilize the Precedence Diagramming Method (PDM) showing the proposed starting and completion date for the various stages of the Project including any float time, and shall be prepared such that it can be used to plot actual progress against proposed progress. Unless

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otherwise expressly approved by the Commission, the Construction Manager's schedule shall be prepared using the Primavera Project Planner as a schedule software package. The Construction Manager's schedule shall be updated and submitted no less than monthly, or more frequently as directed by the Commission, or monthly payment will be withheld.

### b. Specifications applicable to Construction Manager's CPM schedule and network diagram

- (1) Each separate sheet shall include the Project name, Contract number, Construction Manager's name, Project file, data date, and plot date. If multiple diagrams are prepared, each must, in addition to the above, include a descriptive title of that portion of the Work included therein.
- (2) The Construction Manager's schedule shall show the order and interdependency of activities, indicating the sequence in which the Work is to be performed as planned by the Construction Manager. The schedule shall describe and indicate the critical path. Activities with total float less than ten (10) Days are defined as near critical.
- (3) The Construction Manager's schedule shall be submitted to the Commission Representative; six (6) color copies of the schedule are required, one of which shall be reproducible. A copy of the Construction Manager's schedule shall be submitted on a computer diskette acceptable to the Commission in Primavera Format.
- (4) The Construction Manager's revised and/or updated schedules, including the computer diskette, shall be submitted when the Construction Manager's planned sequence is changed, when Contract changes are made which affect the schedule, or when the Construction Manager prepares its monthly schedule update.
- (5) Activities shown on the CPM network diagrams shall include, as a minimum, field construction operations, submittal and approval of all Submittals, procurement of material and equipment furnished by the Construction Manager or Commission, interface activities performed by others upon which the Construction Manager's schedule may depend, and equipment installation and testing.

### c. The following items define the term "activities" as it pertains to the CPM Schedule:

- (1) Each activity shall be a unit of Work, which requires an amount of time for its performance.
- (2) Each activity shall be a logically separate part of the Work, defined by an observable start and an observable finish.
- (3) To establish the scope of an activity for CPM purposes, the Construction Manager shall form a single activity from the largest grouping of related operations, which permit a continuous and measurable flow of Work.
- (4) The scope of an activity shall be small enough to permit a reasonable appraisal of its status or as directed by the Commission.
- (5) Each activity on the Construction Manager's schedule shall be cost and craft hour loaded.



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- (6) The activities should be broken down such that the average activity has a value of approximately \$25,000, with no activity exceeding \$200,000 without the consent of the Commission. Activity duration shall not exceed twenty (20) Days.
- (7) Activities of other contractors or companies that must be completed before the start of the Construction Manager's Work or portion of Work shall be included in the Construction Manager's schedule as milestones and identified with a designation approved by the Commission.

d. The following information shall be furnished on the network diagram for each activity in the schedule:

- (1) Activity Number: The Construction Manager will utilize the Project Specification division and section numbers in assigning activity numbers to the related portions of Work.
- (2) Description of the activity.
- (3) Duration of the activity in Days, unless otherwise noted.
- (4) Cost Loading: The cost estimate/budget to perform the activity.
- (5) Craft Hour Loading: The estimated craft hours to perform the activity.
- (6) Each activity that is not performed by the Construction Manager shall be assigned a responsibility code indicating which subcontractor, supplier, fabricator, etc., is to perform the activity.
- (7) Each activity shall be identified with early/late start, early/late finish, and total float.
- (8) Calendar I.D.

e. In addition to the above, any activity whose start or finish date has been specified elsewhere in the documents shall reflect such specified date in the progress schedule.

**3. Completion Requirements**

- a. The Construction Manager shall submit a baseline CPM schedule fifteen (15) Days after Notice to Proceed.
- b. Upon receipt of the CPM Schedule, the Commission will review the schedule for conformance with the Contract Documents and degree of detail. The Commission within fourteen (14) Days after receipt of the detailed CPM schedule and supporting documents will either (1) approve the schedule, (2) approve the schedule as noted or (3) disapprove the schedule with the reasons set forth. If the CPM either is given a qualified approval or is disapproved, the Construction Manager must submit a revised CPM schedule within seven (7) Days.
- c. The baseline CPM Schedule shall be a firm schedule for the entire Contract duration.
- d. Failure by the Construction Manager to provide baseline CPM schedule within the required time period is grounds for the Commission to withhold monthly progress payments.

**4. Submittal, Acceptance, and Construction Manager's Responsibility for the Schedule**

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- a. Before submitting the baseline CPM schedule to the Commission Representative, the Construction Manager shall review and verify the procurement lead time for the fabrication and delivery of all construction materials and Project equipment along with the erection and/or installation duration for all the construction activities that make up the critical path of the Project.
- b. The Construction Manager shall coordinate its letting of subcontracts, material purchases, shop drawing submissions, delivery of material and sequence of operations to conform to the baseline CPM schedule and shall furnish proof of same as may be required by written notification from the Commission.
- c. Upon receipt of the baseline CPM Schedule the Commission will review the schedule for conformance with the Contract Documents and degree of detail the Commission within fourteen (14) Days after receipt of the detailed baseline CPM schedule and supporting documents will approve the schedule or reject it with written comments. If the detailed baseline CPM schedule is rejected, the Construction Manager must submit a revised baseline CPM schedule within seven (7) Days after the date of rejection.
- d. If the Construction Manager fails to provide or update the required CPM scheduling documents as outlined in this section within the time prescribed, the Construction Manager will be in default of the Contract requirements, and the Executive Director may, in addition to any other remedies available to the Commission, withhold monthly progress payments until the Construction Manager submits the required information.

### 5. Updating

- a. The Construction Manager shall not make any changes to the original duration, activity relationships, constraints, costs, add or delete activities, or alter the schedule's logic when updating the schedule.
- b. The originally approved baseline CPM schedule will be designated as the "Target Schedule" and shall only be changed based on a Change Order that extends the Contract duration. All updates will be plotted against the "Target Schedule."
- c. The Construction Manager shall update the CPM schedule on a monthly basis coincident with the submission of the monthly pay estimate. The updated information will include the original schedule detail and the following additional information:
  - (1) Actual start dates
  - (2) Actual finish dates
  - (3) Activity percent completion
  - (4) Remaining duration of activities in progress
  - (5) Identified or highlighted critical activities
- d. The Construction Manager shall submit scheduling documents in the same formats and number as indicated in this section.
- e. The Commission shall withhold progress payments if the Construction Manager does not submit updates as required.
- f. Upon receipt of the CPM schedule update, the Commission will review the schedule for conformance with the Contract Documents and degree of detail. The Commission, within

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fourteen (14) Days after receipt of the Updated CPM Schedule and supporting documents, will approve or reject it with written comments. If the Updated CPM Schedule is rejected, the Construction Manager must submit a Revised Updated CPM Schedule within seven (7) Days after the date of rejection.

- g. As part of the normal CPM schedule update, the Construction Manager shall prepare a written narrative report, highlighting the progress during the past update period. The written narrative report shall include but not be limited to the following information:
  - (1) Summary of Work accomplished during the past update period
  - (2) Contract Milestone comparison Chart
  - (3) Analysis of Critical Path(s)
  - (4) Analysis of time lost/gained during the update period
  - (5) Identification of problem areas
  - (6) Recommended solutions to current problems
- h. The Construction Manager is required to attend a monthly CPM schedule update review meeting with the Commission. The purpose of this meeting is to review past progress, current status, problem areas and future progress. The Construction Manager's narrative report will be reviewed at this meeting. The Construction Manager's representatives attending this meeting will have the authority to commit manpower and/or other resources to correct any negative impact to the schedule.
- i. Any possible means of shortening the schedule at no additional cost shall be brought to the attention of the Commission.
- j. The updated progress schedule will be used as a guide for verifying estimates of Work completed for which payment is requested and must accurately represent the Project's current status.

### 6. Construction Manager Changes to the Schedule

The Construction Manager shall comply with the following requirements regarding proposed changes to the approved baseline CPM schedule:

- a. If the Construction Manager proposes to make any changes in the approved baseline CPM schedule, Construction Manager shall notify the Commission Representative in writing, stating the reasons for the change, identifying each changed activity (including duration and interrelationships between activities) and providing a diskette of the proposed changed schedule.
- b. The Commission has the authority to approve or disapprove the proposed change in the baseline CPM schedule and shall do so in writing within ten (10) Days after receipt to the Construction Manager's submission. If the Commission approves the change in the baseline CPM schedule that changed schedule will be designated the new "Target Schedule." All monthly updates will be plotted against the new "Target Schedule."
- c. If the Commission approves a portion of the change to the baseline CPM schedule, the Construction Manager shall submit a revised CPM schedule incorporating such change(s) within ten (10) Days after approval along with a written description of the changes(s) to the schedule.

### 7. Recovery Schedule

- a. The Construction Manager shall maintain an adequate work force and the necessary materials, supplies and equipment to meet the current approved baseline CPM schedule. If the

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Construction Manager, in the judgment of the Commission, is failing to meet approved CPM schedule, including any Contract milestones, the Construction Manager shall submit a recovery schedule.

- b. The recovery schedule shall set forth a plan to eliminate the schedule slippage (negative float). The plan must be specific to show the methods to achieve the recovery of time, i.e. increasing manpower, working overtime, weekend work, employing multiple shifts. All costs associated with implementing the recovery schedule shall be borne by the Construction Manager.
- c. Upon receipt of the CPM recovery schedule, the Commission Representative will review the schedule for conformance with the Contract Documents and degree of detail. The Commission will approve the schedule or reject it with written comments within fourteen (14) Days of receipt of the recovery schedule and supporting documents. If the detailed CPM recovery schedule is rejected, the Construction Manager must submit a revised CPM recovery schedule within seven (7) Days of the date of rejection.
- d. If the Construction Manager refuses to follow the direction of the Commission, the Commission reserves the right, after serving seven (7) Days written notice to the Construction Manager, to procure the materials, equipment and labor to proceed with or to complete the Work or any portion of it and charge the cost to the Construction Manager. The Commission's rights under this provision are cumulative to rights under any other provisions of the Contract including the Commission's rights to terminate for default or convenience.

### 8. Revised Schedule

- a. The Commission Representative may direct the Construction Manager to revise the approved CPM schedule. Reasons for such direction may include, but are limited to, the following: (1) changes in the Work, (2) re-phasing of the Project or any phase, (3) a change in the duration of the Project or phase, and (4) acceleration of the Project or phase.
- b. The Commission Representative will direct the Construction Manager to provide a revised CPM schedule in writing.
- c. The Construction Manager will provide the revised CPM schedule with ten (10) Days of receipt of the Commission's written direction.
- d. The Commission has the authority, in its sole discretion, to approve or reject the revised CPM schedule and will do so in writing within ten (10) days after receipt of the Construction Manager's submission. If the Commission Representative approves the revised schedule, such schedule will be designated the new "Target Schedule."

### 9. Winter Suspension

- a. When the Contract requires a winter suspension, the Construction Manager will incorporate the winter suspension period into the CPM schedule. The winter suspension will begin and end on the dates specified in the Contract documents.
- b. The Construction Manager will prepare for the winter suspension period by removing or relocating any equipment, materials, stockpiles, or items that may interfere with or impair Site operations. The Construction Manager will participate in a Site inspection with the Commission Representative on or before the winter suspension commencement date. All costs associated with Site preparation for the winter suspension period are incidental to the Project and will be included in the Construction Manager's Base Bid.

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### 10. Work During the Winter Suspension Period

- a. If the Construction Manager elects to work during the specified winter suspension period, then the following rules will apply:
  - (1) The Construction Manager will submit a winter suspension CPM schedule for the work activities that it proposes to complete during the winter suspension period. The schedule will be in the same format as the approved CPM schedule. The winter suspension schedule will be submitted one month before the commencement date of the winter suspension.
  - (2) It is understood that no extension of time, regardless of the cause, or damages of whatever character, will be allowed for any work that may be delayed, hampered, disrupted, re-sequenced, changed, or stopped by the Commission or adverse weather during the weather suspension period.
  - (3) The Construction Manager will immediately remove and/or relocate any equipment, material, items, barricades, or stop Work, if directed by the Commission.
  - (4) Payment for Work completed, inspected, and accepted during the winter suspension period will be in accordance with the procedures established in Article 15 "Payments."
  - (5) It is understood that any increase in costs associated with the Work done during the winter suspension period is the Construction Manager's responsibility and the Construction Manager is not entitled to any additional compensation. Such costs include, but are not limited to, loss of productivity, winter heat, winter protection, snow removal, frost protection, disruptions to the Work, Work stoppages, temporary power, de-watering, winterized material (including but not limited to concrete, water, aggregate, and bituminous mixtures).
  - (6) Contract milestones and Substantial Completion date of the approved CPM schedule will not be altered, changed, or adjusted in any way based upon the Work accomplished during the winter suspension period.
  - (7) Any float the Construction Manager gains by doing Work during winter suspension on the approved CPM schedule for individual activities must be used by the Construction Manager before it seeks a time extension for the activity.
  - (8) All provisions of the Contract Documents apply to the Work being completed during the winter suspension.

#### Section 10.03 No Damages for Delay and Extensions of Time

1. Delays. Should the Construction Manager be delayed in the commencement, prosecution, or completion of the Work by any act of the Commission, including but not limited to a delay, change, addition, deletion, or modification in the Work; any omission, neglect, or default of the Commission; by order of the Commission, or anyone employed by or acting on behalf of the Commission; or by any cause beyond the Construction Manager's control, none of which are due to any fault, neglect, act or omission on Construction Manager's part, the Construction Manager's relief is limited to an extension of the Contract Time that is no greater than the duration of any such delay. Such extension of time releases and discharges the Commission, its employees, agents, and representatives from any and all claims for damages of whatever

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character, including but not limited to disruption, changes in sequence, interference, inefficiency, direct or indirect costs claimed by the Construction Manager on account of the aforesaid, or any other causes of delay. If the Construction Manager is unreasonably and unforeseeably delayed in the commencement, prosecution, or completion of the Work by the causes enumerated above, the Construction Manager is permitted to make a claim for the actual, demonstrable costs incurred.

2. Notice Required. The Construction Manager must give the Commission Representative written notice of any such delay within 5 Days of the commencement of such delay. The Construction Manager must also report to the Commission Representative the cessation of the cause for the delay within ten (10) Days after it ceases.
3. Consideration of a time extension for events beyond the reasonable control of the Contract will be made if the delay directly impacts critical path activities based on the latest approved CPM schedule. Events considered to be beyond the reasonable control of the Construction Manager are limited to force majeure events. The Construction Manager must have taken reasonable precautions to prevent delays owing to such causes.
4. The effects of weather less severe than the norm may be taken into account in considering the Construction Manager's requests for time extensions for the effects of more severe weather. Should Construction Manager's schedule exhibit delays, premium time, as well as additional protection and systems must be provided to recover such lost time at no cost to the Commission.
5. No extension of time will be granted for any delay caused by the action or inaction of the Construction Manager, including but not limited to the fault or negligence of the Construction Manager or its Subcontractors, or for which any remedies are provided for by any other provision of the Contract.
6. Any claim for an extension of time will be considered pursuant to this section and Article 17 "Claims and Disputes."

### Section 10.04 Liquidated Damages

1. If the Work is delayed, the Construction Manager will impose liquidated damages on its Subcontractors for every Day, as provided under its subcontract, the Contract Completion Date or a milestone completion date is not achieved, provided that such delay is not the result of a justifiable cause permitted under the Agreement. The specific amount of liquidated damages that the Construction Manager will impose on its Subcontractors must be appropriate to the size of the subcontract, and is to be recommended by the Construction Manager and approved by the Commission. Separate liquidated damages amounts must be established for Completion of the Work and Completion of the Punch List Work and will apply for each and every Day that the Subcontractor is in default after the time stipulated in its contract for completing the Work and/or the Punch List Work.
2. The Construction Manager will diligently attempt to recover liquidated damages by deducting the amount thereof out of any moneys due or that may become due the defaulting Subcontractor(s). The Commission will not hold the Construction Manager liable for uncollected Subcontractor liquidated damages nor shall the Commission impose liquidated damages against the Construction Manager under this Section 10.04. Liquidated damages collected by the Construction Manager for Completion of the Work and Completion of the Punch List Work will be available to the Construction Manager to apply for those purposes. Notwithstanding collection or non-collection of liquidated damages from the Subcontractors, this provision does not relieve Construction Manager from its obligation to complete the Work in accordance with the requirements of the Contract Documents.

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### **Section 10.05 Notice of Labor Disputes**

Whenever the Construction Manager has knowledge that any actual or potential labor disputes is delaying or threatens to delay the timely performance of this Contract, the Construction Manager must immediately give notice to the Commission Representative in accordance with the Notice provision and must include all available information with respect thereto to the Commission.

## **ARTICLE 11. MEETINGS**

### **Section 11.01 Pre-Construction Meeting**

Before beginning Work, the Commission will conduct a pre-construction meeting as detailed in Division 1 – Section 01010 – 3.1 – Pre-Construction Meeting. Representatives of the Construction Manager and Subcontractors must attend. The purpose of the meeting is to establish lines of authority and communications and to identify duties and responsibilities of the organizations. Discussion will cover specific Contract Drawings, specifications, unusual conditions, schedules of completion, and other features of the Contract. The Commission may conduct additional coordination meetings at its discretion.

### **Section 11.02 Review Meetings**

The Construction Manager shall conduct weekly coordination meetings at the Site. The Construction Manager's personnel and subcontractors must attend. The Construction Manager must take and distribute complete minutes within three days of coordination meeting. Before each meeting, the Construction Manager must submit its schedule of activities and interfaces in the format required by the Commission. The meetings may include the following:

1. Review of Work progress since the previous monthly review meeting.
2. Discussion of field observations, problems and decisions.
3. Review of off-Site fabrication problems and other problems affecting the schedule.
4. Review of equipment deliveries.
5. Discussion of corrective measures and procedures to achieve the Contract schedule.
6. Review of submittal schedules and effect on the construction schedule.
7. Review of proposed Contract changes and effect on the construction schedule.
8. Coordination requirements.
9. Clarification and decisions required of the Commission.
10. Review of Construction Manager's forces on the Work.
11. Review of Project Record Document status and content.

## **ARTICLE 12. PROPERTY**

### **Section 12.01 Ownership of Drawings, Specifications and Models**

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All copies of Drawings and specifications furnished by the Architect are the property of the Commission. Such copies are not to be used on any other work or project whatsoever and, with the exception of the signed Contract set, are to be returned to the Commission with a copy of the transmittal letter to the Commission Representative on request at the completion of the Work. All models are the property of the Commission.

### Section 12.02 Right of Entry

1. The Construction Manager, and any of its officers, employees, agents, and Subcontractors, are permitted to enter upon any part of the Site owned by the Commission or User in connection with the performance of the Work hereunder, subject to the terms and conditions contained herein and those rules that may be established by the Commission or User. The Construction Manager must provide advance notice to the Commission Representative of any intended entry. Consent to enter upon all or any part of the Site given by the Commission or User will not create, nor be deemed to imply the creation of, any additional responsibilities on the part of the Commission or User.
2. **Inspections.** The Construction Manager acknowledges that the Commission has the right of access to the Site at all times and the right to inspect all Work during the Contract period.
3. If User wishes to visit the Site to which the Construction Manager was given access, it must arrange such visits through the Commission and observe safety guidelines established by the Construction Manager while on the Site.
4. The Construction Manager must use, and must cause each of its officers, employees, agents, and Subcontractors to use, the highest degree of care when entering upon property owned by the Commission or User in connection with the Work. In the case of any property owned by the Commission or User, or property owned by and leased from the Commission or User, Construction Manager must comply, and must cause each of its officers, employees, agents, and Subcontractors to comply, with any and all instructions and requirements for the use of such property, including any licenses for which requirement is being hereby incorporated by reference. Any and all claims, suits, judgments, costs, or expenses, including reasonable attorneys' fees, arising from, by reason of, or in connection with any such entry is treated in accordance with the indemnification provisions contained in this Contract.

### Section 12.03 Damage to Property

If the Construction Manager causes damage to Commission or User property, the Construction Manager must, at the sole option of the Commission, either: 1) pay the cost of repair of the damage; or 2) repair or replace any property so damaged. The Commission has the right to a set-off against payments to the Construction Manager under this Contract for the cost of any such repairs.

### Section 12.04 Use of Completed Portions of the Work

1. After Substantial Completion of the Work in any space(s) in the Project and obtainment of the Certificate of Occupancy, the Commission shall have the right to use and occupy such space(s) in advance of Final Completion and Acceptance of the Work, providing the Commission's occupancy and use of such spaces shall not unduly interfere with the Construction Manager's operations nor delay completion of the Work. Occupancy and use of any space(s) in the building by the Commission or User shall not constitute Substantial Completion in the absence of written notification of Substantial Completion of the affected portion of the Work from the Architect.



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2. If the Commission desires to exercise the right of partial occupancy before completion and Final Completion and Acceptance of the Work as provided below, the Construction Manager shall cooperate with the Commission in making available for the Commission's use such services as heating, ventilating, cooling, water, lighting, and telephone for the space(s) to be occupied. If the equipment required to furnish such services is not entirely complete at the time the Commission desires to occupy the aforesaid space(s), the Construction Manager shall make effort to complete it as soon as possible to the extent that the necessary equipment can be put into operation and use.
3. During such partial occupancy before Final Completion and Acceptance of the Work, arrangements shall be made between the Commission and Construction Manager regarding the operation and cost of the necessary heating, ventilating, cooling, water, lighting and telephone services. The Commission shall assume responsibility for the operation of the equipment and utilities required to provide the above services, in part or in total, and arrangements shall be made as to the guarantees affecting all Work associated with the areas so occupied.
4. The Commission's occupancy or use of such space(s) in the Project shall not constitute the Commission's acceptance of any Work, materials, or equipment which are not in accordance with the requirements of the Contract Documents, nor relieve the Construction Manager from its obligations or responsibilities under the Contract.
5. In any case, when the Commission takes over space for occupancy or use, the Commission shall give the Construction Manager notice in writing of its take over of the space(s) involved.

### ARTICLE 13. QUALITY OF WORKMANSHIP, MATERIALS, AND EQUIPMENT

#### Section 13.01 Standard of Performance

In addition to performing the Work in full compliance with the Contract Documents, the Construction Manager shall perform, or cause to be performed, all Work required of it under the terms and conditions of this Contract with that degree of skill, care, and diligence normally exercised by qualified and experienced contractors in performing work in projects of a scope and magnitude comparable to the Work.

#### Section 13.02 Labor, Materials and Equipment

1. Unless otherwise specified, all materials and equipment shall be new, and of such quality as required to satisfy the Contract Documents. The Construction Manager shall, if required, furnish satisfactory evidence as to kind and quality of all materials and equipment. All labor shall be performed by workers skilled in their respective trades, and workmanship shall be of good quality so that first class work in accordance with the standards of construction set forth in the Contract Documents will result.
2. Any Work, materials or equipment which does not conform to these requirements or the standards set forth in the Contract Documents may be disapproved and rejected by the Architect or Commission, in which case it shall be removed and replaced by the Construction Manager as provided hereinafter in **Section 13.06** "Correction of Work Before Final Payment."
3. Any employee of the Construction Manager or a Subcontractor whose work is unsatisfactory or who is considered by the Commission to be unskilled or otherwise objectionable shall be dismissed from the Work upon written notice to the Construction Manager.

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4. The Construction Manager shall keep proper inventories, provide adequate protection against the weather, and maintain security measures against theft and vandalism with respect to all stored materials, fixtures, and equipment for items stored on-Site and not yet incorporated into the Work.
5. The Site shall not be utilized for the storage of vehicles, materials, equipment, or fixtures not intended for this Project.
6. The Construction Manager shall review any specified construction or installation procedures (including those recommended by any product manufacturer). The Construction Manager shall advise the Architect and Commission Representative in writing seven (7) Days before commencing Work, on items affected:
  - a. if any specified procedure deviates from good construction practice;
  - b. if following any specified procedure will affect any warranties; or
  - c. of any objections which the Construction Manager may have to any specified procedure.

### Section 13.03 Source of Materials

Construction Manager shall notify the Commission Representative in writing as soon as possible after the Contract has been awarded, but not less than three (3) weeks before the need for inspection and testing of the source (or sources) from which Construction Manager expects to obtain the various construction materials. The source of supply of each materials used shall be approved by the Commission before delivery is commenced. If sources previously approved are found to be unacceptable at any time and fail to produce materials satisfactory to the Commission, the Construction Manager shall furnish materials from other approved sources.

### Section 13.04 Substitution of Materials, Equipment or Processes

1. The Contract executed hereunder requires the use of the materials, equipment, or processes specifically named in the Contract Documents except as otherwise provided herein. The word "processes" as used herein includes methods or systems of construction.
2. For products specified only by references, e.g., ASTM standards and ANSI standards, the Construction Manager may select any product by any manufacturer that meets the referenced standards and the specifications.
3. Manufacturer and Products
  - a. Materials and equipment of the same general type shall be of the same manufacturer throughout the Project to provide uniform appearance, operation, and maintenance.
  - b. Materials and equipment furnished shall be of the current production and product of a manufacturer regularly engaged in the manufacture of such products, for which replacement parts are available.
  - c. Materials and equipment shall be new, Underwriters' Laboratories-labeled where applicable, and shall bear the manufacturer's name, model number, and ratings of equipment.
  - d. Manufacturers of equipment assemblies, which include components made by others, shall assume complete responsibility for the final assembled unit.

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### 4. Product Selection and Options

- a. **Product Specifications.** The products and materials to be provided shall meet the performance and technical requirements of the Contract Documents. If the Construction Manager submits a product that the Construction Manager believes is an equivalent or equal, but cannot meet the performance or technical specifications as stated, the Construction Manager shall describe, in writing, the exceptions to the technical specifications. The written description shall clearly indicate where the manufacturer or the Construction Manager cannot meet the specifications or take exceptions and how the alternate product shall perform as an equivalent. Exceptions to specified requirements shall be subject to acceptance by the Commission. Such submittals shall comply with requirements for substitutions as described in this section. Should the Commission reject such Construction Manager-proposed equivalent or equal, the Construction Manager shall provide products in full conformance with the Contract Documents at no addition to the Base Contract Price or the Contract Time.
- b. **Manufacturer's Name Listed.** Where the manufacturer's name is listed, the manufacturer shall furnish a product that shall meet the performance and technical specifications as stated. Listing the manufacturer's name does not relieve the Construction Manager from providing products that comply with the requirements of the specifications.
- c. **Manufacturer's Name and Model Number Listed.** Where the manufacturer's name and model number is listed, the manufacturer shall furnish that product, modified as required to meet the performance and technical specifications as stated. Listing the model number does not relieve the Construction Manager from providing a product that complies with the requirements of the specifications. Other products submitted shall also have similar features.
- d. **Performance of Technical Specifications.** Where a product is specified by performance requirements and the manufacturer's name or model number is not specified, the Construction Manager may select any manufacturer or product which meets the requirements of the specifications.
- e. When only one manufacturer or product is specified or when the term "or approved equal" is used in connection with specified products, the Construction Manager may offer for approval a substitute product which will completely accomplish the purpose of the Contract Documents.

### 5. Substitutions Before Bid Date

- a. The Architect will consider written requests for substitutions received at least ten (10) Days before bid date. Requests received after that time will not be considered.
- b. The Architect shall consider only those requests accompanied by a copy of the Request for Substitution form, Exhibit Q, bound herein, filled out completely, signed, and including the required attachments.
- c. Substitutions will not be considered if, in the opinion of the Architect, acceptance will require substantial revision of the Contract Documents.
- d. Notification of approved substitutions will be made by addendum.

### 6. Substitutions after Award of Contract

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- a. Following Contract award, the Architect shall consider formal requests from the Construction Manager for substitution of products and processes *in lieu* of those specified only under one or more of the following circumstances:
    - (1) When the Construction Manager demonstrates that the specified product is not available, proof shall be submitted that firm orders were placed in a timely manner or that the unavailability is due to strike, lockout, bankruptcy, discontinuance of manufacture, an act of God, or for other reasons acceptable to the Commission.
    - (2) When, in the opinion of the Construction Manager, the specified product or process will not fulfill the design intent.
  - b. The Architect shall consider only those requests accompanied by a copy of the Request for Substitution form, **Exhibit Q**, filled out completely, signed, including the required attachments, and submitted to the Commission Representative.
    - (1) Where acceptance of such substitutions would result in a change in the Construction Manager's costs, the amount to be added to, or deducted from, the Contract Price shall be indicated.
    - (2) Costs or schedule delays to the Construction Manager's or Subcontractor's installations resulting from differences in materials or equipment that are being submitted as a substitution shall be the responsibility of the Construction Manager initiating the substitution. This shall include, but shall not be limited to, the costs for changes such as engineering, structure, roof, or wall opening sizes.
  - c. Substitutions shall not be considered if, in the opinion of the Architect:
    - (1) The proposed substitution is indicated or implied on shop drawings or product data submittals without prior formal written request and acceptance, or
    - (2) Acceptance would require substantial revision of the Contract Documents, or
    - (3) No benefit to the Commission is determined.
  - d. The Architect shall forward requests for substitution, along with its recommendation, to the Commission for acceptance or rejection.
  - e. The Construction Manager shall present all substitutions so as not to delay the schedule for required reviews by the Architect and approvals by the Commission. Neither the Architect, nor the Commission Representative, nor the Commission shall be responsible for delays arising from submittal, acceptance, or rejection of a substitution.
  - f. Notification of acceptance of substitutions not affecting cost or time of performance will be made to the Construction Manager in writing by the Commission and requires the approval of the Executive Director. Notification of acceptance of substitutions involving changes in cost or time of performance will be made to the Construction Manager in the form of an approved Change Order.
7. At the discretion of the Commission, manufacturer's nameplates shall not be permanently attached to ornamental and miscellaneous metal work, furnishings and equipment, doors, frames, millwork and similar factory-fabricated products on which, in the Architect's opinion, the nameplate would be objectionable if visible after installation of the Work. This does not apply to Underwriters'

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Laboratories labels where required, nor to manufacturers' name and rating plates on mechanical and electrical equipment.

### Section 13.05 Adjustment of Equipment

Before the Work is turned over to the Commission, the Construction Manager must furnish the necessary instruments, test equipment, services, and personnel required to adjust and balance each piece of equipment in order to provide a smoothly functioning, well-integrated system complying with the letter and intent of the Contract Documents.

### Section 13.06 Correction of Work before Final Payment

1. The Construction Manager shall promptly remove from the Site all materials and equipment, whether incorporated in the Work or not, rejected by the Commission as failing to conform to the Contract Documents. The Construction Manager shall promptly replace and re-execute such Work in accordance with the Contract Documents and without expense to the Commission and shall bear the expense of making good all work of other contractors destroyed or damaged by such removal or replacement.
2. If the Construction Manager does not remove such rejected Work, materials, and equipment within a reasonable time, as determined by written notice of the Commission, the Commission may, at the expense of the Construction Manager, remove and dispose of as the Commission sees fit. If the Construction Manager does not pay the cost and expenses of such removal within ten (10) Days thereafter, the Commission may deduct all such costs and expenses from any monies due the Construction Manager.
3. If the Work deviates from the requirements of the Contract Documents, the Construction Manager shall be responsible for all resulting damages. A claim by the Construction Manager that performing the Work without deviation from what is required by the Contract Documents would also have caused or resulted in damages shall not be available to the Construction Manager as a defense or a claim to reduce the Construction Manager's liability. This provision does not limit the other rights of the Commission or Architect or other obligations of the Construction Manager.
4. When the Architect's additional services are required because of defective Work, neglect, failure, deficiencies, or default by the Construction Manager, the Architect's compensation for such services may be payable by the Construction Manager based on the Architect's invoice sent to the Commission. Deficiencies are defined to include, but not limited to, more than two (2) reviews of the same submittal of shop drawings and associated data due to incomplete, uncoordinated, or otherwise defective submissions as defined in Division 1 - General Requirements. The invoice, when approved by the Commission, along with other costs, damages, and liabilities incurred by the Commission and the Architect, at the option of the Commission, may be the basis for decreasing the Contract Price by a Change Order to compensate the Commission for the Architect's additional services.

### Section 13.07 Correction of Work after Final Payment

The final certificate, final payment, or any provision in the Contract Documents shall not relieve the Construction Manager of responsibility for faulty materials, equipment or workmanship. Unless otherwise specified, the Construction Manager shall remedy any defects due thereto and pay for any damage to other Work resulting therefrom, which shall appear within the guarantee period. The Commission shall give written notice of such defects with reasonable promptness. All questions arising under this Article shall be decided by the Commission.

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### Section 13.08 Guarantees and Warranties

1. The Construction Manager hereby guarantees all of the Work and each and every part thereof, including, by way of illustration and not in limitation thereof, all workmanship, materials, equipment, supplies, services, and facilities that are furnished, produced, fabricated, installed, constructed, or built pursuant to the Contract Documents for the respective periods of time called for by the respective requirements of the Contract Documents, and, if no period is specified, for a period of one (1) year, against defects which, in the opinion of the Architect, result from the use of defective or inferior materials, equipment, supplies, services, facilities or workmanship or from Work not in compliance with or not performed in accordance with the Drawings or specifications. The Construction Manager shall provide this guarantee to the Commission in writing using Exhibit T. The guarantee period shall run from and after the date of Final Completion and Acceptance of the Work required by the Contract Documents, unless the Contract Documents specify a different date for the commencement of the running of the guarantee period. No part of the Work will be held to be accepted until Final Completion and Acceptance of the Work (except where other arrangements have been made under **Section 11.04.3 "Use of Completed Portions of the Work"** hereof).
2. The Construction Manager agrees as part of this guarantee to repair or remove and replace as directed by the Commission and at no cost to the Commission all the Work, materials, equipment, supplies, services, and facilities which prove defective during the applicable guarantee period or which fail to conform to the Contract Documents; to repair, remove and replace, or pay for as directed by the Commission and at no cost to the Commission all damaged portions of the Project and the contents and equipment thereof, resulting from or which are incidental to such defects or failure to conform to the Drawings or specifications. All repairs or removals and replacements must be commenced within ten (10) Days of written notice from the Commission, and workers and materials sufficient in the opinion of the Commission must be furnished to ensure prompt completion thereof. The written notice from the Commission shall have attached to it the opinion of the Architect certifying that the defect has resulted from the furnishing or use of defective or inferior materials, equipment, supplies, services, facilities, or workmanship; or from Work not performed in accordance with the Drawings or specifications. Should the Construction Manager fail to proceed in accordance with the above, the Commission without further notice to the Construction Manager may furnish all labor and material necessary for repairs, or removals and replacements, and the Construction Manager agrees to pay the Commission all costs incurred thereby.
3. **Manufacturer's Warranties**
  - a. The Construction Manager will:
    - (1) ensure that all required Manufacturer's Warranties pass through to the Commission and/or User.
    - (2) Submit all applicable Manufacturer's Warranties to the Commission Representative and ensure that all warranty forms have been completed in the Commission's and/or User's name and registered with the appropriate manufacturers.
  - b. Repairs and replacements made by the Construction Manager pursuant to this section will include a Manufacturer's Warranty, if standard with the Manufacturer, in addition to the Construction Manager's Warranty.

## ARTICLE 14. TESTING AND INSPECTION

### Section 14.01 Inspection of Work

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1. The Commission, the Architect, and Commission Representative shall at all times have access to the Work wherever it is in process. The Construction Manager shall provide proper and safe facilities for access and inspection.
2. The Construction Manager shall also cooperate with other inspecting agencies and provide appropriate access. If the inspection is made by an authority other than the Architect, the Construction Manager shall inform the Architect in writing of the date fixed for such inspection not less than three (3) Days before such date.
3. If the specifications, the Architect's instructions, laws, ordinances or any public authority require any Work to be specifically tested or approved, the Construction Manager shall give the Commission Representative not less than three (3) Days written notice of the Work's readiness for inspection by the Architect. Required certificates of inspection shall be secured by the Construction Manager. Inspections by the Architect shall be promptly made, and where practicable, at the source of supply. When such tests and inspections indicate noncompliance of the Work with requirements of the Contract Documents, and the Architect's services are required for additional reviews or inspections of the Work, the Contract Price may be decreased by a Change Order in the amount of the Architect's invoice approved by the Commission as compensation for the Architect's additional services.
4. Any Work covered up without approval, inspection, or consent of the Architect where required by the Contract Documents, shall be uncovered for examination if required by the Architect or Commission and shall be replaced and/or re-covered all at the Construction Manager's expense. Examination of Work previously covered up with the approval or consent of the Architect may be ordered by the Architect to be uncovered, and if so ordered, such Work shall be uncovered by the Construction Manager. If such Work is found to be in accordance with the Contract Documents, the Commission shall reimburse the Construction Manager for such uncovering and re-covering. Such reimbursement shall be for actual cost incurred plus the percentages allowed by **Sections 15.02.1.a.(4) and 15.02.1.a.(5) "Payment for Changes."** If such Work is found to be not in accordance with the Contract Documents, the Construction Manager shall pay all costs of uncovering, replacement, and re-covering.
5. The Construction Manager shall place its field engineering force at the Architect's disposal for field checking during any inspection period. When layouts of the Work are to be made, the Construction Manager shall notify the Commission Representative in sufficient time that the Architect may be present.
6. Neither the presence nor the absence of the Architect at the Site shall relieve the Construction Manager from responsibility for compliance with the provisions of the Contract Documents, nor from responsibility for the removal and replacement of Work not in accordance therewith.
7. The Architect is not authorized to make any changes or modifications in the Contract Documents, to direct additional Work not required thereby, or to waive the performance by the Construction Manager of any requirements of the Contract Documents. Any changes to the Contract shall be in accordance with the provisions of Article 16 "Changes in the Work."

### Section 14.02 ASTM Standards

Unless otherwise provided, all materials will be sampled and tested in accordance with the latest published standards and methods of the American Society for Testing and Materials (ASTM) and any revisions thereof. If there are no ASTM standards that apply, applicable standard methods of other recognized standardizing agencies will be used. Construction Manager must provide the name and

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qualifications of any such standardizing agency to the Commission or its authorized representative for review and approval.

### Section 14.03 Testing Laboratory Labels

1. All equipment containing electrical wiring must be submitted to the Commission Representative for the Architect's acceptance before installation. Unless otherwise specified, all electrical components furnished and installed or assembled by the Construction Manager under this Contract must be approved and so labeled by one of the following Testing Laboratories:
  - a. Underwriters' Laboratories (UL)
  - b. Canadian Standards Association (CSA)
  - c. Electrical Testing Laboratory of New York (ETL)
  - d. Illinois Institute of Technology Research Institute (IITRI)
  - e. American Gas Association (AGA)
  - f. Factory Mutual Research Corporation (FMRC)
  - g. Maintenance and Electrical Testing (MET)
  - h. American Research Lab (ARL)
2. Any electrical unit comprised of a number of components, assembled at the factory, and considered custom made, must bear one of the above labels for the entire unit as well as for each component.
3. All costs in obtaining a testing laboratory label are paid by the Construction Manager at no additional cost to the Commission. Any delays in the completion of the Work caused by the manufacturer of equipment in obtaining the required testing laboratory labels and the Commission approval are not grounds for an extension of time beyond the time of completion indicated in the Contract Documents.

## ARTICLE 15. SHOP DRAWINGS, PRODUCT DATA, RECORDS, AND SAMPLES

### Section 15.01 Documents at the Site

The Construction Manager shall keep one complete set of all Drawings, specifications, and submittals at the Site in good order and available to the Commission, Architect and the Commission Representative. The Drawings, specifications and submittals shall be kept up to date by replacing obsolete sheets with revised sheets as they are issued.

### Section 15.02 Construction Manager's Responsibilities and Submittal Procedures

1. Shop drawings, product data, video tape and samples are part of the Work under this Contract and they must be provided whenever required to the satisfaction of the Commission at the expense of the Construction Manager.
2. The Construction Manager must submit to the Commission Representative such shop drawings, product data, video tape and samples required for the Work involved under this Contract for review by the Architect in accordance with the schedule.



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3. The Schedule must include proposed submittal dates. The dates listed in the schedule must allow sufficient time for review and processing by the Architect and re-submittal, if necessary, of the shop drawings or other data before the Work represented by shop drawings and samples is needed by the Construction Manager to complete its performance under this Contract. No extensions of time will be granted to Construction Manager because of its failure to have shop drawings, video tape, samples, and product data submitted in time to allow for review, re-submittal, and final review. Construction Manager must also submit a separate schedule (in table format), in addition to the Schedule, identifying all submittal dates to the Commission Representative for review and approval.
4. The Construction Manager must prepare and submit proper shop drawings, video tape, samples, and product data in accordance with its contractual obligations. By submitting shop drawings, video tape, product data, and samples, the Construction Manager represents that it has determined and verified all materials, field measurements, field conditions, and quantities and that it has checked and coordinated the information contained within submittal, including its subcontractors' submittals with the requirements of the Work and of the Contract Documents.
5. All shop drawings, video tape, product data, and samples must be dated and stamped by the Construction Manager and indicate that the submittal has been reviewed and checked before submittal and found to be in conformance with the Contract Documents. All submittals shall be transmitted to the Commission Representative. The Construction Manager must clearly identify each shop drawing, video tape, product data, and sample in accordance with the following for purposes of identification and record:

**SUBMITTAL IDENTIFICATION**

Name of Project: \_\_\_\_\_  
Contract Name and Number: \_\_\_\_\_  
Date of Submittal: \_\_\_\_\_  
Re-submittal Number: \_\_\_\_\_  
Identification of Deviations from Contract Documents: \_\_\_\_\_  
Specification Section, Page, and Paragraph No. and/or Drawing No.: \_\_\_\_\_  
Type of Material and Manufacture: \_\_\_\_\_  
Intended use: \_\_\_\_\_  
Applicable Standards such as ASTM numbers: \_\_\_\_\_

CHECKED AND SUBMITTED IN ACCORDANCE WITH DRAWINGS AND SPECIFICATION.  
Construction \_\_\_\_\_ Manager:

By: \_\_\_\_\_ Date: \_\_\_\_\_

6. Shop drawings must be submitted with accurate dimensions. The shop drawings must represent the actual manner in which the Work is manufactured and installed, and the relation of the Work installed to that of other trades, clearances, and all other pertinent data. Dimensions must be expressed in feet and inches. Designs prepared in the metric system may be submitted with metric units, but the equivalent English units must also be shown. All weights and dimensions must be certified before submission for review.
7. The Architect's review and acceptance of shop drawings in no way relieves Construction Manager from responsibility for errors or omissions that may exist in the Work or on the certified shop drawings. Where such errors or omissions are discovered, they must be corrected by the Construction Manager at no additional cost to the Commission. Construction Manager must submit all shop drawings, video tape, samples and product data to the Commission Representative for review of the Architect with an accompanying transmittal letter containing the above Submittal

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identification data and a list of items being submitted. The Construction Manager must coordinate Submittal into logical groups or sets to facilitate review of several related items.

8. Any Submittal that, in the opinion of the Architect, is not complete and in proper form will be returned to the Construction Manager without review. The Construction Manager must not submit duplicates or reproductions of any Contract Documents issued by the Commission as shop drawings.
9. Construction Manager must provide Submittal in the following quantities unless a greater number is specified elsewhere in the Contract Documents, or is required by the Commission:
  - a. Shop Drawings: Submit one (1) reproducible and six (6) prints on sheets a minimum of 24" by 30" in size. (Prints shall be collated into sets).
  - b. Product data: Submit six (6) copies of product data.
  - c. Samples: Submit four (4) samples.
  - d. Video tape: Submit one (1) video tape.
10. Before submitting shop drawings, product data, video tape, or samples, the Construction Manager must notify the Commission Representative in writing of any deviations in the Submittal from the requirements of the Contract. If deviations from the Contract requirements are rejected by the Architect or if evaluation of the deviations delays the progress of Work, any delay caused will not be compensable by a time extension.

### Section 15.03 Review by the Architect

1. Submittal will be reviewed by the Architect for compliance with the Contract Documents. In reviewing the Submittal, the Architect will not verify dimensions and field conditions. Any such review does not relieve the Construction Manager, Subcontractor, manufacturer, fabricator or supplier from responsibility for any deficiency that may exist or from any departures or deviations from the requirements of the Contract Documents, nor does it relieve them from responsibility for (i) errors of any sort in shop drawings, samples and product data, (ii) responsibility for proper fitting of the Work, or (iii) the necessity of furnishing any Work required by the Contract documents which may not be indicated on shop drawings when reviewed. The Construction Manager is solely responsible for any quantities that may be shown on the shop drawings. The Architect's review of a specific item does not indicate approval of an assembly of which the item is a component.
2. The Construction Manager must not fabricate products, begin Work, order or have delivered any material, equipment or system that requires a reviewed Submittal until return of the Submittal from the Architect with a stamp authorizing Work and/or delivery and installation to be performed, as described in Paragraph 3 immediately below.
3. The Architect will return Submittal stamped as follows:
  - a. "No Exceptions" means no changes are necessary on the reviewed Submittal. The Construction Manager may proceed with the Work for that Submittal. Re-submittal is not required.
  - b. "Exceptions as Noted" indicates that the Submittal is accepted subject to the corrections and/or comments noted. The Construction Manager may proceed with the Work for that Submittal if the Construction Manager incorporates the Architect's comments, and/or corrections. Re-submittal is not required.

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- c. "Revise and Resubmit" means that the Submittal does not meet all the requirements necessary to proceed with the Work associated with the Submittal. The Construction Manager must resubmit in accordance with the reviewer's comments and/or corrections. Submittal marked in this manner must not be released for fabrication, delivery, or construction.
4. If the Submittal requires revision, the Construction Manager must notify the Commission Representative and all pertinent subcontractors in writing that the reviewed set has been withdrawn.
5. Submittals that require revisions must be corrected and resubmitted to the Commission Representative for the review of the Architect to maintain the approved CPM schedule, but in no event more than three (3) Days after receipt of the Architect's comments.
6. Shop Drawings: After review by the Architect, one reproducible stamped by the Architect as described in paragraph 3 above will be returned to the Construction Manager.
7. Submission and Review of Samples: If a considerable range of color, graining, texture, or other characteristics may be anticipated in finished products, a sufficient number of Samples of the specified materials must be furnished by the Construction Manager to indicate the full range of such characteristics which will be present in the finished products. Any products delivered or erected without submittal and review of full range Samples shall be subject to rejection. Each tag or sticker shall have clear space for the stamps of the Construction Manager and Architect. Notice of the result of the review will be provided to the Construction Manager with one of the stamps indicated in Paragraph 3 above. Rejected samples will be returned. Accepted samples will be retained by the Commission and become the property of the Commission. Where color samples are required to be submitted, color samples must be submitted on the actual material which will finally be installed in the Work.
8. Product data: After review by the Architect, two (2) sets of product data stamped by the Architect as previously described will be returned to the Construction Manager.

### Section 15.04 As-Built Drawings

1. As the Work progresses, the Construction Manager, and the Subcontractor for each trade or division of Work under the direction of the Construction Manager, must keep a complete and accurate record of the following:
  - a. Changes between the Work as shown on the Contract Drawings and the shop drawings indicating the Work as actually installed.
  - b. The specific location of all infrastructure elements, including piping, valves, ductwork, equipment, driveways, catch basins, sewer lines, waterlines, water mains, and other such elements which were not accurately located or changed location or elevation from that shown on the Contract Drawings.
  - c. Equipment schedules indicating manufacturers' names and model numbers installed.
2. Changes must be neatly and correctly recorded daily on full-size prints of the Contract Drawings updated daily. This record set of Contract Drawings must be kept at the Site for inspection by the Commission. Upon completion of the Work, the Construction Manager shall submit a final set of full-size prints to the Commission Representative for the Architect's review and acceptance.
3. At the time as-built drawings are delivered to the Commission, the Construction Manager and each Subcontractor shall certify, in writing, that the as-built drawings are complete and accurate. The

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Construction Manager may obtain diskettes or original drawings from the Architect at its own expense for this purpose.

### Section 15.05 Record Shop Drawings and Product Data

1. As the Work progresses, the Construction Manager must keep a complete and accurate record of the changes and deviations from the Work as shown on the shop drawings and product data indicating the Work performed. The Construction Manager must furnish record shop drawings in a form and quantity acceptable to the Commission. Record shop drawings must be submitted for all items reviewed as shop drawings. Record shop drawings must be legibly drawn on sheets of Mylar or such other medium as directed by the Commission or elsewhere in the Contract. Unless otherwise specified, record shop drawings must be submitted on the same size sheets as the Contract Document Drawings and include an index of all items.
2. Unless otherwise specified, Construction Manager must furnish ten (10) record copies of product data loose-leaf binders. Loose-leaf binders must be subdivided by submittal numbers and must contain an index of all items unless otherwise specified.

### Section 15.06 Instructions, Parts List, Operation and Maintenance Manuals, and Warranties

1. The Construction Manager must furnish a complete list of equipment actually installed. The list must include at least the following information: a copy of pertinent nameplate data, name and address of local representative who stocks or furnishes repair or replacement parts, and name, address, and telephone number of the Subcontractor responsible to the Construction Manager for the equipment under the guarantee. Construction Manager must guarantee any such equipment with respect to the Commission.
2. The Construction Manager must submit suitable operating instructions for each major component of equipment and its controls in accordance with the specifications. Proposed instructions must be submitted to the Commission Representative for the Commission's review and acceptance in the amount provided for in the specifications. Upon acceptance, the Construction Manager must post applicable instructions as directed by the Commission.
3. The Construction Manager must submit to the Commission Representative maintenance data prepared by the manufacturer of each major component of equipment and its controls in accordance with the specifications. Data must include at least the following information: complete parts list; itemized lists of common purchase items of materials (e.g., bearing, packing, connectors, sealing devices, and other standard items) indicated by their standard trade designation; recommended routine and inspection maintenance, including testing recommendations to evaluate efficiency of performance; lists of special tools and gauges, lubricating instructions, and recommended spare parts; tolerance and clearances required for maintenance; and trouble-shooting guides prepared in a simple format to indicate complaint or problem, probable cause, and remedy. The proposed maintenance data must be submitted to the Commission Representative for the Commission's review and acceptance in the amount provided for in the specifications.
4. The Construction Manager must submit all applicable manufacturer's warranties as described in Section 12.08 "Guarantees and Warranties."

### Section 15.07 Record Documents

At Substantial Completion of the Work, the Construction Manager must deliver to the Commission and the User, in suitable transfer cases clearly marked "Record Documents," all as-built drawings, record shop drawings, video tape, product data, instructions, parts list, and operations and maintenance manuals

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arranged in proper order and indexed. At the discretion of the Commission, the Commission may make the submission of all Record Documents a prerequisite to reduction of retention from 5% to 3% under Section 15.06 "Retainage" of the Contract.

### Section 15.08 Project Account Records

#### 1. Project data and records

- a. The Construction Manager and each Subcontractor must keep an accurate record showing the names, occupation, and the actual hourly wages paid to all laborers, workers, and mechanics employed by them in connection with the Work. Such record must be open at all reasonable hours to the inspection of the Commission and to the Director of Labor of the State of Illinois and his/her deputies and agents. The Construction Manager also must furnish the Commission with certified copies of the payrolls in accordance with Section 15.02 "Payment Applications."
- b. The Construction Manager and all Subcontractors must furnish the Commission with such information as the Commission may require relating to labor and materials, including all information necessary to determine the cost of the Work, such as the number of workers employed, their pay, the distribution of labor into Work items, equipment time distribution, and any other information which the Commission may require. The Construction Manager must, on request, furnish the Commission with copies of delivery tickets and invoices covering the expenditures on the Contract.

#### 2. Audits

- a. The Construction Manager must furnish to the Commission Representative such information as may be requested relative to the progress, execution, and cost of the Work. The Construction Manager must maintain complete records showing actual time devoted and costs incurred. The Construction Manager must maintain its books, records, documents, and other evidence and adopt accounting procedures and practices sufficient to record properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred for or in connection with the Work for seven (7) years after final payment. This system of accounting must be in accordance with generally accepted accounting principles and practices, consistently applied throughout.
- b. All books and accounts kept by the Construction Manager in connection with the Work must be open to inspection and audit by authorized representatives of the Commission. The Construction Manager must make these records available at reasonable times during the performance of the Work and must retain them in a safe place and make them available for inspection and audit for at least seven (7) years after final payment. No provision in this Contract granting the Commission right of access to records documents is intended to impair, limit, or affect any right to access to such records and documents which the Commission would have had in the absence of such provisions.
- c. The Construction Manager must reimburse the Commission for the costs of such audits if the audit demonstrates that the Construction Manager overstated the amount due on any invoice by at least 2%.

#### 3. Confidentiality

All of the reports, information, or data prepared or assembled by or provided to the Construction Manager under this Contract are confidential and the Construction Manager agrees that, except as specifically authorized herein or as may be required by law, it shall not make available said reports,

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information, or data to any other individual or organization without the prior approval of the Commission. This requirement will survive expiration or termination of this Contract.

### ARTICLE 16. PAYMENTS

#### Section 16.01 Contract Price

This Section 16.01 is intentionally deleted.

See Schedule C in Contract for Professional Services and Construction, Agreement No. PS 803.

~~The Contract Price is the total dollar amount of the bid accepted by the Commission, including all approved Alternates and Change Orders, and includes all labor, equipment, materials, permits, licenses, fees, and taxes necessary to perform the Work, except the cost of the City of Chicago building permit, which will be paid by the Commission.~~

#### Section 16.02 Payment Applications

The first four unnumbered paragraphs of this Section 16.02 are intentionally deleted.

See Schedule C in Contract for Professional Services and Construction, Agreement No. PS 803.

~~It is the duty of the Construction Manager to effectively manage the payment application process and all related paperwork. The Construction Manager is responsible to the Commission for securing and delivering all paperwork required by the contract to be submitted with payment applications, including subcontractor, consultant and material supplier trailing lien waivers, certified payrolls, and all other required documents.~~

~~Failure of the Construction Manager to promptly submit its payment applications to the Commission, in proper and complete form, will constitute a material breach of this Contract, and constitute cause for termination. No payment application shall include payment for work for which the Construction Manager has not been billed by the applicable subcontractor, material supplier, service provider or consultant.~~

~~The Commission prohibits use by the Construction Manager of "pay when paid" forms of subcontract, material orders, consulting agreements and service agreements under this Contract. It is a contractual duty of Construction Manager to maintain sufficient working capital to pay its subcontractors, consultants, service providers and material suppliers without requiring them to wait for payment until the Construction Manager has been paid by the Commission. Use of "pay when paid" subcontracts, material orders, consulting agreements or service agreements under this contract shall be material breach of this Contract, and shall constitute cause for immediate termination. By entering into this Contract, Construction Manager expressly waives all "pay when paid" terms of any subcontract, material order, consulting agreement or service agreement for any part of the Work hereunder.~~

~~Construction Manager shall submit payment applications in such a manner so as not to delay payment to any subcontractor, material supplier, consultant or service provider whose billing and lien waiver paperwork is complete, as the result of incomplete billing or lien waiver paperwork of any other subcontractor, material supplier, consultant or service provider whose billing and lien paperwork is incomplete. All required certified payrolls, trailing lien waivers, and other required paperwork must be submitted before or with the payment application. Construction Manager's payment application shall not include any request for payment for work of any subcontractor, material supplier, consultant, or service provider whose certified payrolls, trailing lien waivers, or other payment paperwork is incomplete at the time the payment application is submitted.~~

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### 1. Schedule of Values

No later than fifteen (15) Days after the Notice to Proceed, the Construction Manager shall submit to the Commission Representative a Schedule of Values, in triplicate, showing values of the Work to be performed by it and its Subcontractors containing such supporting details or other evidence as to its correctness as the Architect and Commission Representative may require. The Schedule of Values shall list the value for each construction activity broken down by materials and labor to be included in the progress schedule. When approved by the Architect and Commission Representative, the Schedule of Values shall be used as a basis for certificates of payment unless it is found to be in error.

### 2. Multiple Locations

The Work may consist of multiple locations and therefore separate and independent Payment Applications shall be submitted for each location. Retainage, Substantial Completion of the Work and Final Completion and Acceptance of the Work shall be evaluated separately for each separate phase or location.

### 3. Target Date Requirements

The Commission will assign an invoice target date to the Construction Manager. Not later than ten (10) Days before the invoice target date, the Construction Manager shall submit to the Commission Representative, in triplicate, a pencil copy of the application for payment for Work completed through the end of the prior month and the monthly progress report required by Division 1 – Section 01200 – 3.4 – Progress Reports. Not later than 5 Days before the invoice target date, the pencil copy shall be reviewed for approval of value of the Work completed at the payment review meeting with the Architect and Commission Representative. Calculation of the value of Work completed shall be made by summarizing the individual values of Work completed as such completion is reported in the monthly progress report reviewed by the Architect for the approval of the Commission. Submission of the monthly progress report 5 Days before the payment review meeting shall be a condition precedent to the approval of the payment application. The pencil copy of the Payment Application shall not project completion of Work beyond the date of the review meeting of such with the Architect and Commission Representative.

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### 4. Sworn Statements

On or about the invoice target date of each month, the Construction Manager shall submit to the Commission Representative, in triplicate, an application for partial payment including a notarized affidavit stating that all monetary obligations to all Subcontractors for the periods covered by all prior applications for payment, if any, have been completely fulfilled and discharged supported by receipts or receipted vouchers, and lien waivers, evidencing payments for such materials, services, labor, and payments to Subcontractors, together with a waiver of lien covering the amount for which the current payment is being requested and such other evidence of the Construction Manager's right to payment as the Architect or Commission Representative may direct. The application for partial payment shall conform to approvals made by the Architect and Commission Representative at the payment review meeting.

### 5. Certified Payrolls

Three (3) copies of certified payrolls for the payment period are to be submitted by the Construction Manager and all Subcontractors working on the Site to the Commission or its designated representative every week. All payrolls must be identified with Construction Manager or Subcontractor's name and Contract name and number, and must be sequentially numbered. The payroll shall be submitted by the Construction Manager and Subcontractor until all Work by that Construction Manager or Subcontractor is completed. If there are periods of no Work by a Construction Manager or Subcontractor, a payroll labeled "NO WORK" shall be submitted. The final payroll shall be labeled "FINAL." Certified payrolls are required to assure EEO compliance as well as wage compliance. Race, worker classification, and gender must be clearly marked for each employee on the certified payroll along with all additional information required by the Commission. An employee's address should appear every time his/her name appears on the payroll. The Construction Manager must submit the certified payrolls and additional information regarding EEO and wage compliance by providing a Payroll Summary Report in the form required by the Commission. The EEO report form required by the City and the U.S. Department of Labor must be submitted by Construction Manager and each Subcontractor, reflecting fully the periods of Work covered by the partial payment request.

### 6. Payment for Material Stored on-Site

Payments for on-Site stored material shall be made only if the Commission specifically approves, at its sole discretion, such payments. If payments are to be made on account of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site, such payments shall be conditioned upon submission by the Construction Manager of bills of sale, waivers of lien, and other such documents and compliance with other such procedures as the Commission requires to establish its title to such materials or equipment or otherwise protect its interest, including applicable insurance and transportation to the Site.

### 7. Payment for Material Stored off-Site

Any payments required for off-Site stored materials which may be required to expedite the Project schedule and procurement of materials shall be the sole responsibility of the Construction Manager. Payments for stored material shall be made only if the Commission specifically approves, at its sole discretion, such payments. Payments for materials which are suitably stored but not incorporated in the Work shall be made at no more than fifty (50%) percent of their actual value).

### 8. Before final payment and Final Completion and Acceptance of the Work, the Construction Manager shall file the following papers with the Commission:



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- a. Manufacturers' operating instructions for all equipment.
  - b. Record "as-built drawings" required by Division 1 - Section 01720 - Site Documentation Requirements of the technical specifications.
  - c. A notarized affidavit stating that all monetary obligations to suppliers of material, services, labor and all Subcontractors have been completely fulfilled and discharged.
  - d. Proof that proper training of User occurred.
  - e. Lien waivers.
  - f. Final releases from Construction Manager, Subcontractors, and material suppliers.
9. Unless a written extension is granted by the Commission, the Construction Manager must submit the final payment application and waivers no later than four (4) weeks after the Architect's written acceptance of the Punch List Work. The Construction Manager's failure to do so within the required time period constitutes an event of default.

### Section 16.03 Payment for Changes

1. When directed in writing by the Commission or its representative, the Construction Manager shall proceed promptly in accordance with such Change Order. The adjustment of the Contract Price therefor shall be determined by one of the following methods:
  - a. Method 1 - Unit Price and/or Lump Sum Adjustment
    - (1) The Construction Manager shall submit promptly to the Commission Representative for approval and acceptance by the Commission a written proposal for changes in the Work. Such proposal shall be in a format acceptable to the Commission and based on agreed-upon unit prices, or, in their absence, a detailed cost estimate of labor, insurance, payroll taxes, itemized material, itemized equipment, and bond of the changed Work. If after receipt of the Construction Manager's proposal the parties can agree on an equitable lump sum adjustment of the Contract Price, a Change Order shall be issued establishing such adjustment.
    - (2) Where the change in the Work involves items for which agreed-upon unit prices have been established and where the net aggregate quantity of such items is in excess of the Contract requirements, payment for such items shall be at the established unit prices. When the net aggregate quantity is less than the Contract requirement, the credit shall be the established unit price less ten (10%) percent. Where the established unit price is a unit price bid on estimated quantities, the Commission may, at its option, demand a readjustment of such established unit price in any case where the requirements for the particular unit price item exceeds one hundred twenty-five (125%) percent of the estimated quantity bid.
    - (3) Where the change in the Work involves items for which agreed-upon unit prices have not been established, the Construction Manager's proposal shall be in a format acceptable to the Commission and based upon the estimated fair cost of the Construction Manager's labor, material, equipment, insurance and applicable taxes. In submitting such proposal, the Construction Manager shall use its ability and buying power to obtain the best possible prices from suppliers of material and equipment and from Subcontractors

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consistent with its general responsibility for the performance and completion of the Work. To this end, the Construction Manager, when submitting such a proposal, shall be deemed to have represented by the submittal that it has used the lowest prices obtained or obtainable from suppliers of material and equipment and from Subcontractors and that nothing has been added to such prices unless indicated in the proposal or billing. Should the Construction Manager at any time, without disclosing the fact, add any amount to the bill or proposal of any supplier of material or equipment or to the bill or proposal of any Subcontractor, and should the Commission act on the same or make payment on any Work covered by such proposal or billing, then, and in that event, the Commission shall have the right to recover from the Construction Manager any such amounts as may have been so added and not disclosed. Such recovery may be made by deducting the undisclosed additions from any payments due the Construction Manager, or by any and all other means available to the Commission.

- (4) For the cost of items of Work not covered by agreed-upon unit prices on additional Work ordered, the Construction Manager will be allowed fifteen (15%) percent for overhead and profit on labor performed by his own forces and material purchases. Subcontractors, likewise, will be permitted an allowance of fifteen (15%) percent for overhead and profit on their own work. The Construction Manager will further be allowed six (6%) percent on all of his subcontractor's work. The Subcontractor is not allowed any additional markup if he sublets its work. No overhead and profit shall be deducted from the price for changes deleting Work. The Construction Manager may include in its labor proposal only those workers and foremen directly involved in the Work. All other supervision is included in the fifteen (15%) percent overhead and profit allowed. The Construction Manager will be entitled to payment for labor, union fringe benefits, insurance, unemployment insurance, social security, and taxes paid on labor. No overhead or profit will be allowed on social security, unemployment insurance, or other insurance or premium time. The Construction Manager's material costs will include invoiced costs, transportation, applicable sales or use taxes, and actual rental costs whatsoever beyond those enumerated.
- (5) The overhead and profit charges referred to above shall constitute full reimbursement for all costs of field and office supervision, engineering, field and main office expense, premium on bonds, small tools, and incidental job burdens, general building and excess liability insurance, and transportation.

### b. Method 2 - Cost Plus Fee Adjustment

- (1) Where the change in the Work involves items in whole or in part for which a unit price determination cannot be made under Method 1 or where the parties are unable to determine and agree upon an equitable lump sum adjustment of the Contract Price for such items, a proceed order shall be issued and the Construction Manager shall proceed with the Work thereof on a cost plus fee basis. Cost shall mean the Construction Manager's actual cost of labor, material, equipment, insurance, and applicable taxes, as reviewed by the Architect and Commission Representative for the approval of the Commission. To the Construction Manager's cost so computed shall be added overhead and profit as defined under Method 1 above.
- (2) The Construction Manager and Subcontractors shall keep and present in such form as the Commission Representative may direct a correct accounting of the costs of all labor, material, equipment, insurance, and applicable taxes, together with supporting vouchers, receipts, and payroll records.

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- (3) Upon completion of the change and determination of the cost plus fee price thereof, a Change Order shall be issued establishing the adjustment of the Contract Price.
2. The Construction Manager's agreement to a Change Order constitutes a waiver and release by the Construction Manager for any claim for delay, cumulative impact, and any other indirect cost associated with the changes.
3. The Construction Manager shall include any claim for a time extension in the submission of his proposal. Such claim shall only be considered upon demonstration by the Construction Manager that a disruption to Critical Path activities has occurred. Construction Manager is required to furnish documentation in the form of proposed schedule revisions indicating impact in Critical Path activities and events previously approved by the Commission.
4. The Construction Manager will be required to use Exhibit U – "Construction Managers Proposal for Change Order" for any Change Order requests.

### Section 16.04 Deductions For Uncorrected Work

If the Commission deems it inexpedient to correct Work damaged or Work not performed in accordance with the Contract Documents, an equitable deduction from the Contract Price shall be made therefor.

### Section 16.05 Certificates for Payment

1. If the Construction Manager has complied with the requirements of Section 15.02 "Payment Applications," the Architect shall issue to the Construction Manager a certificate for such amount as the Architect determines to be properly due as agreed upon during the payment review meeting during the preceding payment period. The amount of each partial payment shall be the total sum of completed Work less prior partial payments, retainage, and payments withheld in accordance with the provisions of Section 16.07 "Payments Withheld."
2. No certificate issued for payment, nor payment to the Construction Manager, nor partial or entire use of the Work, nor occupancy of the Site by the Commission or the User shall be an acceptance of any Work or materials not in accordance with the Contract Documents.
3. The Architect's certificates for payment are for the benefit of the Commission and shall not be relied upon by any other party (including any surety or Subcontractor of the Construction Manager) in any action against the Commission, the Architect, or anyone acting on behalf of either of them.

### Section 16.06 Retainage

1. The Commission will retain ten percent (10%) of each approved monthly payment estimate covering the first fifty percent (50%) of the Contract Price, including approved Change Orders to date.
2. After Work consisting of fifty percent (50%) of the Contract Price is performed, the Commission shall maintain as retention an amount at least equal to five percent (5%) of the Contract Price, including approved Change Orders, plus the total accumulated liquidated damages for EEO, MBE, WBE, City Residency and Community Residency requirements, and delay, until Final Completion and Acceptance of the Work. If liquidated damages exceed the amount retained, the Commission may, at its option, increase the level of retention. If liquidated damages are primarily due to shortfall in EEO and City Residency requirements, the Commission may elect to deduct such amounts from the general conditions line item.

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3. Upon Final Completion and Acceptance of the Work and before the computation of the final quantities, the Commission may, at its sole discretion, release a portion of the retainage so that the amount retained by the Commission is not less than three percent (3%) of the Contract Price, provided that three (3%) percent is deemed appropriate to cover all liquidated damages accrued. The Commission may decline to reduce the retention withheld at its sole discretion if the Executive Director considers it necessary.
4. Upon (i) Final Completion and Acceptance of the Work; (ii) the Construction Manager's compliance with this Contract's conditions for payment and performance of the Work in accordance with all terms and conditions of the Contract; (iii) payment to all Subcontractors, workers, employees, supplies and material persons for Work performed and materials supplied; and (iv) computation of the final quantities of the Work; the retained amount, less any amount for damages or other amounts that the Executive Director determines should be deducted, will be paid to the Construction Manager as final payment.

### Section 16.07 Payments Withheld

1. The Architect or Commission Representative may recommend that the Commission withhold or nullify the whole or a part of any application for payment or any certificate for payment to such extent as may be necessary to protect the Commission from loss because of:
  - a. Defective Work not remedied.
  - b. Claims filed or reasonable evidence indicating probable filing of claims.
  - c. Failure of the Construction Manager to properly pay Subcontractors or for material, services, or labor.
  - d. A reasonable doubt that the Contract can be completed for the balance then unpaid.
  - e. Damage to the Work or property of the Commission, the User, or another contractor.
  - f. Erroneous estimates by the Construction Manager of the value of the Work performed.
  - g. Unauthorized deviations by the Construction Manager from the Contract Documents.
  - h. Liquidated damages.
2. When the above ground or grounds are removed, payments shall be made for amounts so withheld.

### Section 16.08 Payment to Subcontractors

The Construction Manager must pay all Subcontractors and suppliers within fourteen (14) Days of Construction Manager's receipt of payment from the Commission for that portion of the Work if the Subcontractor(s) has satisfactorily completed its Work in accordance with the Contract Documents. This is a statutory requirement under the Prompt Payment Act, 30 ILCS 540/1.01 *et. seq.*

or

The Construction Manager must pay all Subcontractors and suppliers within fourteen (14) Days of Construction Manager's receipt of payment from the Commission for that portion of the Work if the Subcontractor(s) has satisfactorily completed its Work in accordance with the Contract Documents.

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### Section 16.09 No Waiver of Legal Rights

The Commission will not be precluded or estopped from showing the true amount and character of the Work performed and materials furnished by the Construction Manager, or from showing that any measurement, estimate, or certificate is untrue or incorrectly made, or that the Work or materials do not conform in fact to the Contract. The Commission will not be precluded or estopped from recovering from the Construction Manager and its sureties such damages as the Commission may sustain by reason of Construction Manager's failure to comply with the terms of the Contract. Neither the acceptance by the Commission, or any representative of the Commission, nor any payment for possession taken by the Commission, will operate as a waiver of any portion of the Contract, or of any power herein reserved or any right to damages herein provided. If the Commission elects to waive any breach of this Contract, that waiver will not be held to be a waiver of any other or subsequent breach.

### Section 16.10 Liens

1. Whenever the Commission shall receive notice in writing of a lien or claim of money due from the Construction Manager to any Subcontractor, worker, or employee for Work performed or for materials or equipment furnished and used in or about the Work, the Commission may direct that the amount of such claim be deducted from payments due or to become due the Construction Manager and withheld by the Commission until such claim has been paid or otherwise discharged. This provision shall be construed as being solely for the benefit of the Commission, and will not require the Commission to determine or adjust any claims or disputes between the Construction Manager and its Subcontractors, workers, or employees, or to withhold any money for their protection, unless the Commission elects to do so. This provision shall not be construed as conferring any rights hereunder for the benefit of Subcontractors, workers or employees, or as enlarging or altering the application or effect of existing lien laws.
2. Neither the final payment nor any part of the retained percentage shall become due until the Construction Manager shall deliver to the Commission complete release of all liens, financial obligations or claims from the Construction Manager, Subcontractors, and other agents acting on its behalf in connection with the Work, arising out of the Work, and an affidavit that so far as it has knowledge or information, the releases include all the labor and material for which a claim could be made or a lien could be filed. If any lien remains unsatisfied after all payments have been made, the Construction Manager shall refund to the Commission all moneys that the latter may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

## ARTICLE 17. CHANGES IN THE WORK

### Section 17.01 Owner's Right to Change Work

The Commission reserves the right to order, in writing, changes in the Work or the Contract Time without prior notice to the Construction Manager's surety. The Construction Manager is obligated to perform in a timely manner the changed Work included in the written notice from the Commission. The Construction Manager will begin the changed Work upon receipt of a Change Order, approved by the Commission, unilaterally directing changes in the Work or Contract Time.

### Section 17.02 Changes in the Work

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1. The Commission may make changes in the Work by making alterations therein, or by making additions thereto, or by making deductions or omissions therefrom, without invalidating the Contract and without releasing or relieving the Construction Manager from any guarantee given pursuant to the Contract, without affecting the validity of the guarantee or Performance and Payment Bond and without relieving or releasing the surety or sureties of such bond. All such Work shall be executed under the conditions of the original Contract. The Construction Manager shall submit to the Commission Representative "as-built" or revised drawings clearly showing the revised Work, all as required by Division 1 – Section 01720 – Site Documentation Requirements.
2. Except in an emergency endangering life or property, no change shall be made by the Construction Manager without receipt of a Change Order, approved on its face by the Commission; and no claim for an adjustment of the Contract Price or time of performance shall be valid unless so ordered in writing.
3. The Construction Manager shall not perform changes to the Work directed by the User unless authorized to do so by the Commission.

### **Section 17.03 Construction Manager's Request for Adjustment**

The Construction Manager, within fourteen (14) Days of receipt of the written notice from the Commission, must submit to the Commission Representative a written request for adjustment to the Contract Price and/or Contract Time for such revised Work. The Construction Manager's failure to submit such request within the specified time will result in the issuance of a formal Change Order by the Commission for the adjustment to the Contract Price and/or Contract Time that the Commission deems appropriate for such revised Work.

### **Section 17.04 Change Order**

The final provisions of the Change Order, including the adjustment in the Contract Sum and/or the Contract Time, if any, will be incorporated into a written Change Order signed by the Commission.

### **Section 17.05 Construction Manager's Release**

Any and all Change Orders are a full release of the Commission from any liability for any additional compensation or extension of time arising or resulting from the Work performed pursuant to a Change Order. By acceptance of a Change Order, the Construction Manager accepts the compensation and/or time extension provided in full accord and satisfaction for that Change Order, and expressly waives, releases, and relinquishes any and all additional claims and demands relating to, or arising out of, the matters covered by that Change Order, including but not limited to direct or indirect costs, profit, or damages related to disruptions.

### **Section 17.06 Performance of Changed Work**

The Construction Manager shall promptly proceed with any changes in the Work or Contract Time as directed by a Change Order in accordance with Section 16.01 "Owner's Right to Change Work." The Construction Manager's refusal or failure to proceed promptly with the changed Work as directed constitutes an event of default under the Contract. No change to the Work by the Construction Manager as directed by the Commission will operate to invalidate the Contract or release Construction Manager's surety.

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### Section 17.07 Change Claims and Disputes

If the Construction Manager and Commission Representative are unable to agree on the price and/or time extension in connection with a change, the procedures set forth in Article 17 "Claims and Disputes" will govern.

## ARTICLE 18. CLAIMS AND DISPUTES

### Section 18.01 Claims

1. This provision of the Contract applies to claims for time and/or money based on changes under Article 16 "Changes in the Work" and all other claims made under this Contract.
2. Any claim made by the Construction Manager regarding the Project must be made in accordance with the requirements stated below:
  - a. The Construction Manager must provide written notice to the Commission Representative of the contractual and factual basis for the claim, designating the document "Notice of Claim." The Construction Manager must provide such Notice of Claim no later than fifteen (15) Days after completing the claim-related Work or, if the claim is for an extension of time, no later than ten (10) Days after the commencement of the delay. The Construction Manager's failure to provide a Notice of Claim within the stated periods constitutes a waiver of the claim.
  - b. Within sixty (60) Days of the Notice of Claim, the Construction Manager must submit documentation to support its claim. The claim must include a general statement of the basis for the claim, the facts underlying the claim, the notice to the Commission Representative of the event that gave rise to the claim, reference to the applicable Contract provisions, and all documents that describe, relate, and support the claim. Any claim for extension of time must state the cause of the delay, specifically demonstrate the impact of the delay on the Construction Manager's schedule, and state the number or extension Days requested.
  - c. The Commission Representative may, within thirty (30) Days of receipt of the claim, respond by requesting a meeting with the Construction Manager and/or making a written request for additional information from the Construction Manager.
  - d. Upon receipt of all necessary documentation from the Construction Manager, the Commission Representative has thirty (30) Days to render a written recommendation to the Commission and to advise the Construction Manager of its recommendation. Such recommendation shall detail its factual and contractual basis.
  - e. After receiving the Commission Representative's recommendation to the Commission, the Construction Manager must accept the recommendation of the Commission Representative or give written notice to the Commission Representative of its intent to file a Dispute with the Executive Director. If the Construction Manager intends to file a dispute, it must do so within thirty (30) Days in accordance with Section 17.02 "Disputes."
  - f. The Construction Manager's failure to file a dispute with the Executive Director within thirty (30) Days of the Commission Representative's recommendation will constitute a waiver of the claim.

### Section 18.02 Disputes

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1. The declaration of the default or termination of this Contract are not matters that may be disputed under this provision of the Contract.
2. **Construction Manager's Request.** In the event of any dispute arising out of a claim that the Construction Manager and the Commission Representative have attempted, but been unable, to resolve (including, without limitation, changes, extensions, claims, allowable costs, or any other issues of fact or Contract interpretation based upon, relating to, or arising under the Contract), the Construction Manager must submit a request for resolution to the Executive Director for final determination. The Construction Manager's failure to submit the dispute within thirty (30) Days of the Commission Representative's recommendation is a waiver of the dispute.
3. **Request Requirements.** Requests for resolution of disputes must be made by the Construction Manager in writing, specifically referencing this section, and including 1) the issues(s) presented for resolution; 2) a statement of the respective positions of the Construction Manager and Commission; 3) the facts underlying the dispute; 4) reference to the applicable provision of the Contract by page and section; 5) the identity of any other parties believed to be necessary to the resolution of the dispute; and 6) all documentation which describes and relates to the dispute. The Construction Manager must provide a copy of the request for resolution of the dispute to the Commission Representative on the same day it is given to the Executive Director.
4. **Commission Representative's Response.** The Commission Representative will have thirty (30) Days to respond in writing to the Construction Manager's submission by supplementing the Construction Manager's submission or to provide its own submission to the Executive Director and Construction Manager. Failure by the Commission Representative to respond is not deemed to be an admission of any allegations made in the request for dispute resolution, but may be deemed to constitute a waiver of the opportunity to respond to such allegation(s), if any.
5. **Executive Director's Decision.** The Executive Director's decision may be reached in accordance with such other information or assistance as the Executive Director deems reasonable, necessary or desirable. The Executive Director may also consider issues of Contract interpretation in connection with the decision. The Executive Director's final decision will be rendered in writing no more than sixty (60) Days after the response of the Commission Representative was filed or was due, unless the Executive Director notifies the Construction Manager and Commission Representative before the end of the sixty (60) Day period that additional time, not to exceed thirty (30) Days, is necessary. The Executive Director's decision is conclusive, final, and binding on all parties unless a judicial determination is sought in accordance with the provisions set forth below.
6. **Implementation of Decision.** The Executive Director's final decision will be implemented through a Change Order, if required, which will be made a part of the Contract with or without the acceptance of the Construction Manager if the Construction Manager refuses to accept the Change Order.
7. **Construction Manager's Remedy.** If the Construction Manager does not agree with the decision of the Executive Director, the sole and exclusive remedy is review by the Circuit Court of Cook County or any other court of competent jurisdiction. No suit or action on this Contract for the recovery of any claim shall be sustainable in any court of law or equity unless commenced within twelve (12) months next after the date the Executive Director formally denies the claim but in no event longer than ninety (90) Days after Substantial Completion of the Work.
8. **Construction Manager's Performance of Work.** The Construction Manager must not withhold performance of and must prosecute any Work required by the Commission during the dispute resolution period, including judicial resolution. The Construction Manager shall prosecute all of its Work including any disputed Work with the same diligence and effort as if no dispute existed. The Executive Director's written determination will be complied with pending final resolution, including



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judicial resolution of the dispute. Neither the Executive Director determination, nor the continued performance by either party, constitutes an admission as to any factual and/or legal position in connection with the dispute or a waiver of any rights under the Contract.

9. **Administrative Appeal of Dispute.** The Construction Manager must follow the procedures set forth in this Article 17 "Claims and Disputes" as a condition precedent to filing a complaint in any court of law or equity.

### **Section 18.03 No Waiver of Legal Rights**

1. Neither the acceptance by the Commission or any representative of the Commission, nor any payment for or acceptance of the whole or any part of the Work, nor any extension of time, nor any possession taken by the Commission will operate as a waiver by the Commission of any portion of the Contract, or of any power herein reserved or any right of the Commission to damages herein provided. A waiver of any breach of the Contract is not held to be a waiver of any other or subsequent breach.
2. Whenever under this Contract, the Commission by a proper authority waives the Construction Manager's performance in any respect or waives a requirement or condition to either the Commission or the Construction Manager's performance, the waiver so granted, whether express or implied, only applies to the particular instance and is not deemed a waiver forever or for subsequent instances of performance, requirement, or condition. No such waiver is construed as a modification of this Contract regardless of the number of times the Commission may have waived the performance requirement or condition.

## **ARTICLE 19. EVENTS OF DEFAULT AND TERMINATION**

### **Section 19.01 Events of Default**

The following shall constitute events of default. If the Construction Manager shall:

1. become insolvent or bankrupt, attempt assignment of all or any part of the proceeds of this Contract, make a general assignment for the benefit of creditors, or if a receiver shall be appointed on account of insolvency;
2. fail to begin the Work at the time specified;
3. fail to perform in accordance with the Contract Documents;
4. fail to perform the Work with sufficient workers, equipment, or materials to ensure the completion of the Work or any part of the Work within the time specified by the Contract;
5. persistently or repeatedly refuse or fail (except in cases for which extension of time is provided) to supply adequate skilled workers or proper materials;
6. discontinue performance of the Work;
7. fail to promptly remove materials, or repair, or replace Work that was rejected as defective or unsuitable;
8. fail to make prompt payment to Subcontractors, or for material, or labor;

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9. fail to submit all documents required by the Commission, including but not limited to timely submission of payment applications;
10. fail to prosecute the Work in a manner acceptable to the Commission;
11. persistently disregard laws, ordinances, or instructions of the Commission, Architect, or Commission Representative; or,
12. otherwise be guilty of a substantial violation of any provision of the Contract Documents.

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### Section 19.02 Remedies

In the event of default, the Executive Director, at her sole discretion, may send the Construction Manager notice of its intent to exercise remedies pursuant to the following:

1. **Termination.** The Commission may terminate the Contract. Written notification of the default and termination of the Contract will be provided to the Construction Manager and the surety by the Executive Director. The Executive Director's decision and declaration of termination is final and effective.
2. **Opportunity to Cure.** The Executive Director may provide the Construction Manager the opportunity to cure the default. The Construction Manager must cure the default within ten (10) Days of receipt of the notice from the Executive Director. If the Executive Director does not receive written notification from the Construction Manager providing cure to default within the 10 Day cure period, the Executive Director may at any time thereafter terminate the Contract, in which event the termination of the Contract is final and effective.
3. In addition to the foregoing, upon an event of default in Section 18.01, "Events of Default," the Commission may invoke any or all of the following remedies:
  - a. The right of set-off against any payments due or to become due to the Construction Manager and against any retention.
  - b. The right to take over and complete the Work, or any part thereof, either directly or through others. The Commission may use the Construction Manager's Subcontractors, materials, and equipment to complete the Work. Upon the Commission's notification to the Construction Manager invoking this remedy, any and all rights the Construction Manager may have in or under its subcontracts are assigned to the Commission at the Commission's discretion. The sole obligation accepted by the Commission under such Subcontractors is to pay for Work satisfactorily performed after the date of the assignment. If a conditional assignment has not been executed, the Construction Manager must execute, or cause to be executed, any assignment, agreement, or other document which may be necessary, in the sole opinion of the Executive Director and her Legal Counsel, to evidence or effect compliance with this provision. The Construction Manager must promptly deliver such documents upon the Commission's request. In case of any subcontract so assigned and accepted by the Commission, the Construction Manager remains liable to the Subcontractor for any payment already invoiced to and paid by the Commission, and for any claim, suit, or cause of action based on or resulting from any error, omission, negligence, fraud, willful or intentionally tortuous conduct, or any other act or omission, or breach of Contract, by the Construction Manager, its officers, employees, agents, and other Subcontractors, arising before the date of assignment to the Commission, when such claim, suit, or cause of action has not been discharged, disposed of, or otherwise resolved as of that date. The Construction Manager must notify its Subcontractors of these requirements.

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- c. The right to terminate the Contract as to any or all of the Work yet to be performed.
- d. The right of specific performance, an injunction, or any other appropriate equitable remedy as may be applicable.
- e. The right of money damages, including, but not limited to all expert witness or other consultant fees, court costs, and attorney's fees which the Commission may incur in connection with any claim, suit, or action based upon, related to, or arising from, directly or indirectly, an event of default hereunder.
- f. The right to withhold all or any part of the Construction Manager's compensation to be awarded by the Commission.
- g. The right to terminate any or all other contracts that Construction Manager may have with the Commission
- h. The right to deem the Construction Manager non-responsible in future contracts to be awarded by the Commission.

### Section 19.03 Non-exclusivity of Remedies

The remedies under the terms of this Contract are not intended to be exclusive of any other remedies provided, but each and every remedy is cumulative and is in addition to any other remedies, existing now or hereafter, at law or in equity. No delay or omission to exercise any right or power accruing upon any event of default impairs any such right or power, nor construes it as a waiver of any event of default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient.

### Section 19.04 Commission's Right To Terminate Contract

1. The Commission may, at its sole discretion, exercise the right to send the Construction Manager notice under Section 18.02.1 or 18.02.2 "Remedies." Whether to declare the Construction Manager in default is within the sole discretion of the Executive Director and neither that decision nor the factual basis for it is subject to review or challenge under Article 17 "Claims and Disputes."
2. In the event of termination of the Contract by the Commission under Section 18.02.1 or 18.02.2 "Remedies," the Commission may use the material and equipment, whether owned or leased, which is within the scope of the Work or necessary for completion of the Work paid for by the Commission (whether located on or off the Site) to complete the Work. The Construction Manager shall receive no further payment until the Work is completed. However, if the cost of completion exceeds the unpaid balance of the Contract, the Construction Manager must pay the difference to the Commission immediately upon demand.
3. In the event of termination, all costs and changes incurred by the Commission, together with the cost of completing the Work, are deducted from any moneys due or which may become due to the Construction Manager. When the expense incurred by the Commission exceeds the sum which would have been payable under the Contract, the Construction Manager and the surety are liable and shall pay the Commission the amount of such excess.

### Section 19.05 Adjudication of Termination

If the Contract is terminated by the Commission for cause and it is subsequently determined by a court of competent jurisdiction that such termination, an early termination, was without cause, such termination

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shall thereupon be deemed under Section 18.06 "Termination for Convenience," and the provisions of Section 18.06 "Termination for Convenience" apply.

### Section 19.06 Termination for Convenience

1. The Commission reserves the right, for its convenience, to terminate the Work of the Construction Manager by written notice stating the effective date of such termination. In such case, the Construction Manager and Subcontractors shall (except for services necessary for the orderly termination of the Work): stop all Work; place no further orders or subcontracts for materials, services, equipment, or supplies; assign to the Commission (in the manner and to the extent directed) all of the rights of the Subcontracts relating to the Work; take any action necessary to protect property of the Commission and property in the Construction Manager's possession in which the Commission has, or may acquire, an interest; and take any other action toward termination of the Work which the Commission may direct. The Commission shall thereafter pay to the Construction Manager, subject to the limitations herein set forth, the proportion of the Construction Manager's Compensation and the Cost of the Work that the Work actually performed (including materials delivered to the Site) at the date of termination bears to the entire Work to be performed. No payments will be made for Work not actually performed.
2. After receipt of a notice of termination pursuant to this Section 18.06 "Termination for Convenience," Construction Manager shall submit to the Commission Representative its final invoice in the required form, with supporting documentation. The Commission may require certified payrolls, receipts, and other proof of expenditures. The final invoice must be submitted promptly, but in no event more than sixty (60) Days after the effective date of termination. Failure to submit the final invoice within sixty (60) Days after the effective date of termination constitutes a waiver of the final invoice.

### Section 19.07 Suspension

1. The Commission reserves the right to suspend the Work wholly or in part by written stop order for such period as is necessary for the protection of the Commission's interest. Such stop order shall remain in effect until released in writing. The Commission shall not assume any liability for damages or loss of anticipated profits resulting from such stoppage of Work, but the Construction Manager may be granted an extension of time commensurate with the period of actual delay in completion of Work if the stop order was not necessitated by the acts, failure to act, or negligence of the Construction Manager. The Construction Manager shall take all means and precautions as may be required to properly protect the finished and partially finished Work during the period or periods of the stop order.
2. Whether as a result of termination for default, termination for convenience, suspension of the Work, breach of contract, negligence, or otherwise, the Commission, Architect, and Commission Representative, either as a unit or as separate entities, shall not be liable for any special, indirect, or consequential damages of any kind, including damages for loss of profits, loss of use, loss of revenue, or loss of bonding capacity. The Commission's total liability for any loss, claim, or damage arising out of this Contract, or the performance or breach thereof, shall be limited to the value of the Work performed or the Contract Price, whichever is less.

### Section 19.08 Construction Manager's Right To Stop Work or Terminate Contract

If the Work should be stopped under an order of any court or other public authority for a period of one-hundred and eighty (180) Days through no act or fault of the Construction Manager or of anyone employed by the Construction Manager, then the Construction Manager may, upon seven (7) Days

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written notice to the Commission and the Commission Representative, stop Work or terminate this Contract.

### Section 19.09 Termination by Mutual Agreement

If the cause of termination is neither default nor convenience, the Commission and Construction Manager may agree to terminate the Contract by mutual agreement. The terms of termination shall be agreed upon by both parties. Each party shall agree to abide by the terms of such termination agreement.

## ARTICLE 20. ASSIGNMENT

### Section 20.01 Assignment of Contract by Construction Manager

The Contract will not be assigned, in whole or in part, without the prior written consent of the Commission. Such consent of the Commission will not relieve the Construction Manager from any obligations hereunder, or in any way change the terms of this Contract.

### Section 20.02 Assignment of Funds or Claims by Construction Manager

The Construction Manager must not transfer, pledge, or assign any Contract funds or claims due or to become due without the prior written consent of the Commission. The transfer, pledge, or assignment of any Contract funds, either in whole or in part, or any interest in such Contract funds which are due or become due to the Construction Manager without the prior written consent of the Commission, is void with respect to the Commission, and constitutes an event of default.

### Section 20.03 The Subcontractor

1. The Construction Manager shall, before an individual Subcontractor commences Work on any portion of the Project, notify the Commission Representative in writing of the names of Subcontractors proposed for the principal parts of the Work and such others as the Commission may direct, with a written statement containing such information as the Commission may require concerning the experience, ability, and responsibility of the proposed Subcontractor and the scope of the subcontract. The Construction Manager shall not thereafter substitute another Subcontractor without the prior approval of the Commission.
2. All requests to subcontract must be accompanied by three (3) copies of a written subcontract agreement which sets forth the scope of services to be subcontracted, the lump sum or unit price for such services and the signature of the subcontracting parties. Proposed subcontractors shall not commence Work on any portion of the Project without prior written approval by the Commission or its representatives.
3. The Construction Manager agrees that it is as fully responsible to the Commission for the acts and omissions of its Subcontractors and of persons either directly or indirectly employed by the Subcontractor, as the Construction Manager is for the acts and omissions of persons directly employed by it.
4. Each Subcontractor shall report to the Construction Manager before commencing the Work and when resuming Work after an absence from the Project.

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5. Nothing in the Contract Documents shall be deemed or construed to impose upon the Commission any obligation, liability, or duty to a Subcontractor; or to create any contractual relation between any Subcontractor and the Commission, Commission Representative, or Architect; or to prejudice remedies granted by applicable laws.

### Section 20.04 Assignment of Contract by Commission

The Commission reserves the right to assign or otherwise transfer all or any part of its interest hereunder without the consent or approval of Construction Manager.

### Section 20.05 Assigns

All of the terms and conditions of this Contract are binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors, transferees, and assigns.

## ARTICLE 21. ENVIRONMENTAL REQUIREMENTS

### Section 21.01 Compliance with Environmental Laws

1. The Construction Manager must comply with all Environmental Laws including, without limitation, those listed in the Disclosure Affidavit that must be executed and notarized by the Construction Manager, and any analogous future local, state, or federal ordinance or statute, rule, and regulation promulgated under or pursuant to the foregoing, and any other present or future law, ordinance, rule, regulation, permit or permit condition, order, or directive which regulates, relates to, imposes liability for, or establishes standards of conduct concerning any Hazardous Materials that may set forth by the Federal government, any state or any political subdivision thereof, or any agency, court, or body of the Federal government, any state or any political subdivision thereof exercising executive, legislative, judicial, regulatory, or administrative functions.
2. If the Construction Manager is required pursuant to any Environment Laws to file any notice or report of a release or threatened release of Hazardous Materials or Special Wastes on or about any premises used by Construction Manager to perform the Work required hereunder, the Construction Manager must provide a copy of such report or notice to the Commission Representative. In the event of a release or threatened release of Hazardous Materials or Special Waste into the environment, or in the event of any claim, demand, action or notice is made against the Construction Manager regarding the Construction Manager's failure or alleged failure to comply with any Environmental Law, the Construction Manager must notify the Commission Representative pursuant to Section 20.06 "Disposal of Materials, Construction Debris, Soil, and Waste" herein below.
3. If the Construction Manager fails to comply with any Environmental Law, the Commission may terminate this Contract in accordance with the default provisions of this Contract and may adversely affect Construction Manager's eligibility for future contract awards.

### Section 21.02 Environmental Permits

1. The Construction Manager must show evidence of, and keep current throughout the term of this Contract, all waste hauling, Special Waste hauling, disposal permits and insurance certificates required by Federal, State, City, or other local governmental body or agency pursuant to any Environmental Law.
2. When requested by the Commission Representative, the Construction Manager must submit copies of all hauling permits required by any Environmental Law. Copies of all permits and insurance certificates that require periodic renewal must be forwarded to the Commission Representative

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throughout the duration of this Contract. Noncompliance with this requirement may be cause for rejection of the bid and/or termination of this Contract.

3. Environment Records and Reports: The Construction Manager is required to prepare and maintain proper, accurate and complete records of accounts of all transactions related to the performance of this Contract, including, but not limited to the following:
  - a. Vehicle maintenance records.
  - b. Safety and accident reports.
  - c. IEPA or OSHA manifests.
  - d. Disposal records, including disposal site used, date, truck number and disposal weight.
  - e. Permit documentation and all other documentation and transactions pertaining to all Environmental Laws.

### Section 21.03 Energy Conservation Ordinance

Whenever the Construction Manager is required to build new building(s) or structures; construct additions or make alterations to existing buildings; install systems such as mechanical, service water-heating, electrical distribution, and illumination; or install other equipment, it shall be required to comply with Chapter 18-13 of the Municipal Code of Chicago.

### Section 21.04 Environmental Control

In performing the Work, the Construction Manager shall become thoroughly familiar with all Federal, State, and local statutes, ordinances, and directives with respect to the elimination of excessive noise and pollution of air, water, and soil due to construction and other operations. Attention shall be given to reduce the noise of heavy construction equipment and to the control of dust, smoke, and fumes from construction equipment and other operations on the Site, and the dirt and noise created by heavy truck operations over City streets in accordance with ordinances of the City and orders of the Commission. The discharge of Hazardous Materials into waterways and City sewers will not be permitted.

### Section 21.05 Equipment and Environmental Control during Transport

The Construction Manager must haul materials, construction debris, soil, and other wastes in vehicles and/or containers complying with all applicable Environmental Laws. All equipment used to transfer materials, construction debris, soil and other wastes shall be designed to prevent spillage during the hauling operation. The Construction Manager's equipment must fully comply with all City, State, and Federal regulations, laws, and ordinances pertaining to size, load, weight, safety, and any Environmental Law.

### Section 21.06 Disposal of Materials, Construction Debris, Soil, and Waste

1. The Construction Manager is responsible for the proper disposal of all materials, construction debris, soil and other waste. Hauling and disposal by a Subcontractor does not relieve the Construction Manager from responsibility for proper disposal. Disposal of all materials, construction debris, soil, and other wastes must be at a disposal site that is properly licensed and permitted to accept the particular materials, construction debris, soil and other wastes delivered to it in accordance with all Environmental Laws. The Construction Manager shall identify the disposal site(s) or transfer station(s) to which it has contractual access and for which proper, sanitary landfill permits and/or licenses have been obtained.

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2. The Construction Manager must provide the Commission or its designated representative with copies of all load tickets, manifests, bills of lading, scale tickets, and other pertinent documents. When requested by the Commission Representative, the Construction Manager shall provide copies of all permits and/or licenses for the proposed transfer station, permitted disposal facility and/or licensed landfill. If the transfer station, permitted disposal facility and/or licensed landfill proposed for use by the Construction Manager does not possess the necessary permits and/or licenses to accept the materials, construction debris, soil or other wastes, the Construction Manager will replace the transfer station, permitted disposal facility and/or licensed landfill submitted as part of their bid proposal at no additional cost to the Commission. If the Construction Manager disposes of materials, construction debris, soil or other wastes at a site which is not properly permitted, the Construction Manager will be responsible for all costs associated with the removal of the waste to a properly licensed/permitted landfill or disposal site.
3. The Construction Manager must notify the Commission Representative within 24 hours of receipt of any environmental complaints, fines, citations, violations, or notices of violation ("Claim") by any governmental body or regulatory agency against the Construction Manager by any third party relating to the loading, hauling, or disposal of materials, construction debris, soil, or other wastes. The Construction Manager will provide evidence to the Commission that any such Claim has been addressed to satisfaction of the issuer or initiator of such Claim.
4. The Construction Manager must notify the Commission Representative of any community meeting, media involvement, or media coverage related to the loading, hauling or disposal of materials, construction debris, soil, and other wastes under this Contract in which the Construction Manager is asked to participate.
5. The Construction Manager must verify, in writing, whenever requested by the Commission, that all materials, construction debris, and other waste accepted by the Construction Manager from the Commission has been disposed of in compliance with all Environmental Laws.
6. The form for identifying the Construction Manager's debris disposal/hauling site(s) and acknowledging terms and conditions relating thereto which has been executed by the Construction Manager and attached to this Contract is hereby incorporated by reference (the "Form"). In addition to the representations and requirements contained in the Form, the Construction Manager understands and agrees that the Construction Manager, unless otherwise authorized in writing by the Commission, must not continue to use a disposal/hauling site identified in the Form that (i) has been cited as being in violation of any Environmental Law, regulation, or any City ordinance; or (ii) does not have a necessary permit. If only one site was identified in the Form, the Construction Manager must arrange for a substitute disposal/hauling site that meets the requirements specified in the Form and provide a revised Form to the Commission. The Construction Manager further understands and agrees that any such substitution is at no additional cost to the Commission, regardless of the reason necessitating such substitution.

### Section 21.07 Open Dumping Prohibited

1. The removal of all recyclable materials and garbage, refuse, or other waste material, including but not limited to broken concrete, bricks, rocks, paving asphalt, and incidental debris generated from all construction or demolition activities performed under this Contract, must be transported to a facility that is zoned and permitted to accept such material pursuant to Section 11-4 of the City of Chicago Municipal Code and all applicable local, state, and federal regulations.
2. Bills of Lading, manifests, or other confirmatory receipts signed by a representative of accepting facility for each load of material must be retained by the Construction Manager and made available to the Commission upon request.



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ARTICLE 22. COMPLIANCE WITH ALL LAWS

Section 22.01 Construction Manager Must Comply with All Laws

1. The Construction Manager must at all times observe and comply, and must cause its Subcontractors to observe and comply, with all applicable Federal, State and local laws, ordinances, codes, rules, regulations, and executive orders, now existing or hereinafter in effect, which may in any manner affect the performance of the Contract. Provision(s) required by law, ordinance, codes, rules, regulations, or executive orders to be inserted in this Contract are deemed inserted, whether or not they appear in this Contract. In no event does the failure to insert such provision(s) prevent the enforcement of such provision(s) of this Contract.
2. In performing the Work, the Construction Manager must follow the most stringent of the applicable agency and code requirements. The Construction Manager is fully responsible for ascertaining and complying with all agency and code requirements applicable to the Work.

Section 22.02 Employment and Payment

1. The Construction Manager will be required to comply with all laws with respect to the employment of labor and payment of local prevailing wage rates.
2. Non-Discrimination
  - a. It shall be an unlawful employment practice for a Construction Manager to fail to hire, to refuse to hire, to discharge, or to discriminate against any individual with respect to compensation or the terms, conditions, or privileges of employment because of such individual's race, color, religion, sex, age, handicap, or national origin; or to limit, segregate, or classify employees or applicants for employment or otherwise; or to adversely affect such individual's status as an employee because of such individual's race, color, religion, sex, age, handicap, or national origin.
  - b. Federal Requirements. Each Construction Manager shall comply with the Civil Rights Act of 1964, 42 U.S.C. Sec. 2000 et seq. (1981), as amended. Each Construction Manager shall further comply with all applicable provisions of the Civil Rights Act of 1964, 28 U.S.C. 1447, 42 U.S.C. 1971, 1975a-1975d, 2000a to 2000h-6 (1992); the Age Discrimination in Employment Act of 1967, 29 U.S.C. 623-634 (1992); the Americans with Disabilities Act of 1990, 29 U.S.C. 706, 42 U.S.C. 12101-12213, 47 U.S.C. 152, 221, 225, 611 (1992); 41 C.F.R. 60 (1992); reprinted in 42 U.S.C. 2000(e) note, as amended by Executive Order No. 11,375 32 Fed. Reg. 14,303 (1967) and by Executive Order No. 12,086, 43 Fed. Reg. 46,501 (1978); the Age Discrimination Act, 43 U.S.C. Sec. 6101-6106 (1981); P.L. 101-336; 41 C.F.R. part 60 et seq. (1990).
  - c. State Requirements. Each Construction Manager shall comply with the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq. (1990), as amended, the Discrimination in Public Contracts Act, 775 ILCS 10/0.01 et seq. (1990), as amended, and the Environmental Barriers Act, 410 ILCS 25/1 et seq. The Construction Manager will furnish such reports and information as requested by the Commission and the Illinois Department of Human Relations.
  - d. City Requirements. Each Construction Manager shall comply with the Chicago Human Rights Ordinance, Chapter 2-160, Section 2-160-010 et seq. of the Municipal Code (1990), as amended. Further, each Construction Manager shall furnish such reports and information as requested by the Chicago Commission of Human Relations.

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- e. Subcontractors. Each Contractor shall agree that all of the above provisions will be incorporated in all agreements entered into with any suppliers of materials, providers of services, subcontractors of any tier, and labor organizations which furnish skilled, unskilled, and craft union skilled labor, or which may provide any such materials, labor, or services in connection with this Contract.
3. Employment procedures: Preferences and Compliance
    - a. Salaries of employees of Construction Manager, performing Work under this agreement, shall be paid unconditionally, and not less often than once a month, without deduction or rebate on any account except such payroll deductions as are mandatory or permitted by applicable law or regulations.
    - b. Construction Manager certifies that it is familiar with, and will comply with, all applicable provisions of 820 ILCS 130/0.01 through 130/12 thereof (Prevailing Wage Act), 30 ILCS 570/1 through 570/7 (Employment of Illinois Workers on Public Works Act) and 30 ILCS 560/0.01 through 560/7 (Public Works Preference Act).
    - c. The Construction Manager shall also comply with all applicable Anti-Kickback laws and regulations, including the Anti-Kickback Act of June 13, 1934 (48 Stat. 948; 62 Stat. 740; 63 Stat. 108; 18 U.S.C. § 874; 40 U.S.C. § 276c) and the Illinois Criminal Code of 1961 720 ILCS 5/33E-1 *et. seq.* If, in the performance of this agreement, there is any direct or indirect kickback as defined in any of the above-mentioned laws and regulations, the Commission may withhold from the Construction Manager, out of payments due to the Construction Manager, an amount sufficient to pay any underpaid employees the difference between the salaries required hereby to be paid and the salaries actually paid such employees for the total number of hours worked. The amounts withheld may be disbursed by the Commission for and on account of the Construction Manager to the respective employees to whom they are due, as determined by the Commission in its sole discretion.
  4. The Construction Manager shall assume all liability for the payment of any unemployment benefits payable under any federal or state law to individuals employed by it during the progress of the Work covered by this Contract.
  5. The Construction Manager agrees that in performing this Contract it will comply with resolutions passed by the Board of Commissioners of the Public Building Commission of Chicago on February 11, 1992 and August 9, 1994 concerning participation of Minority Business Enterprises, Women Business Enterprises, and residency requirements, respectively, for contracts awarded by the Commission.
  6. A breach of any of the stipulations of this Section may be grounds for termination of the Contract.

### Section 22.03 Chicago Residents As Employees

1. Policy and Terms
  - a. Attention is called to an ordinance passed by the City of Chicago on May 18, 1994, *City of Chicago Residence Preference Ordinance* and the resolution of the Board of Commissioners of the Public Building Commission adopted August 9, 1994.
  - b. The Construction Manager agrees to ensure that in the aggregated hours of Work to be performed by the Construction Manager and Site Work subcontractors under this Contract: at least fifty (50%) percent of the on-Site worker shall be performed by actual residents of the City of

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Chicago. These minimal percentage levels of Chicagoans as laborers and skilled trade Workers shall not be understood as limiting or determining the fuller utilization of Chicagoans beyond these numerical levels, but are intended instead as minimum requirements unless the Commission grants a waiver based upon demonstration by the Construction Manager of impracticability or excessive cost of complying with the specified percentages. A waiver or reduction shall be considered if the Construction Manager has unsuccessfully solicited a sufficient number of residents of the City of Chicago to perform the Work and has documented such effort to the satisfaction of the Commission. In addition, a Construction Manager seeking a waiver or reduction shall provide timely notice of the need for qualified residents of the City of Chicago to an appropriate source of referrals, which source shall be entitled to comment on any waiver or reduction application.

### c. Community Hiring

- (1) With respect to this major construction contract, it is the policy of the Public Building Commission of Chicago to encourage creation of career opportunities for interested residents of the project community within the construction trades, and to encourage employment of both skilled and unskilled workers from among available residents of the project community. The following project community resources are available as employment referral sources in connection with this Contract:

#### a) Skill Builders

Skill Builders was created through a joint effort by the Public Building Commission, City of Chicago, and Cook County Building and Construction Trades Council, City Colleges of Chicago, Mayor's Office of Workforce Development, and community-based organizations. The goal of Skill Builders is to increase the number of Chicago residents in building and construction trades. The program provides pre-apprenticeship training and support to students from entry into the Skill Builders program until employment on a job site.

The Construction Manager should utilize minority and female participants who have gone through the program successfully whenever possible. Information regarding the program and its participants is available from the Public Building Commission at (312) 744-3090. Utilization of such participants may assist the Construction Manager in meeting its commitment in the minority and female apprentice categories.

- (2) The Construction Manager also agrees that 15% of the aggregated hours of Work to be performed by the Construction Manager and Site Work subcontractors under this Contract will be performed by residents of the project community.
- (3) In order to encourage maximum employment of interested and available residents of the project community on this project, the following bonus calculation shall apply: In calculating the on-Site worker hours performed by actual residents of the City of Chicago, hours worked by residents of the project community shall be multiplied by 1.5.
- (4) The Commission is aware that certain subcontract agreements under this Contract may obligate subcontractors to fulfill requirements for employment of City of Chicago residents under this Contract. Should the Construction Manager receive bonus calculations under the foregoing provisions as a result of residents of the project community employed by any subcontractor obligated to fulfill requirements for

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employment of City of Chicago residents, then the Construction Manager must allow a bonus, in the same amount it receives, in favor of each and every such Subcontractor.

### 2. Definitions

- a. "Actual residents of the City of Chicago" shall mean persons domiciled within the City of Chicago. Salaried superintendents are excluded from the coverage of this Section. Domicile is an individual's one and only true, fixed, and permanent home and principal establishment.
- b. Residents of the project community" shall mean persons domiciled within the City of Chicago and within the Ward in which the Project Site is located.

### 3. Compliance and Reporting

- a. The Construction Manager shall provide for the maintenance of adequate employee residency records to document that actual Chicago residents and community residents are employed on the Project. The Construction Manager (and Subcontractors) shall maintain copies of personnel documents supportive of every Chicago employee's record of actual residence.
- b. Weekly Certified Payroll reports (U.S. Department of Labor Form WH-347 or equivalent) submitted to the Commission shall identify clearly the actual residence of every employee on each submitted certified payroll. The first time that an employee's name appears on a payroll, the date that the company hired the employee should be written in after the employee's name.
- c. Full access to the Construction Manager's and Subcontractors' employment records shall be granted to the Commission or any duly authorized representative thereof. The Construction Manager and Subcontractors shall maintain all relevant personnel data for a period of at least three (3) years after Final Completion and Acceptance of the Work.
- d. At the direction of the Commission, affidavits and other supporting documentation will be required of the Construction Manager to verify or clarify an employee's actual address or change of actual address when doubt or lack of clarity has arisen.

### 4. Non-compliance

- a. Good faith efforts on the part of the Construction Manager to provide utilization of actual Chicago residents and community residents shall not suffice to replace the actual, verified achievement of the requirement concerning the worker hours performed by actual Chicago residents.
- b. For the purpose of adjusting the level of retainage, the Commission will review compliance at 50%, 75%, and 90% completion of the Work. If the Commission has determined that the Construction Manager was not compliant in the fulfillment of the required percentages of aggregated worker hours by actual Chicago residents, or has failed to report in the manner indicated above under "Compliance and Reporting," the Commission will thereby be damaged in the failure to provide the benefit of demonstrable employment to Chicagoans and community residents to the degree stipulated in this Section. Therefore, in such case of non-compliance it is agreed that 1/20 of 1 percent, 0.0005, of the Adjusted Contract Price shall be withheld by the Commission in payment for each percentage of shortfall toward the stipulated residency requirement. Failure to report the residency and hours of all employees entirely and correctly shall result in the surrender of the entire liquidated damages as if no Chicago residents were employed in either of the categories.

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- c. Liquidated damages, if any, will be calculated when work is 50% completed, 75% completed, and 90% completed upon submission of the Construction Manager's pay request reflecting percentage of completion, together with all attendant certified payrolls, schedules of values, lien releases, and other required documentation of minority and women business participation. The amount of liquidated damages due to the Commission under this provision will bear compound interest at the rate of 5% per annum, compounded monthly from the date of the Notice to Proceed to the date of approval of a deductive change order for liquidated damages. Should the total amount of liquidated damages due under all provisions of this contract exceed the amount of the Commission's retainage, compound interest on the amount over and above the retainage will continue to accrue until the entire amount of liquidated damages and compound interest is paid to the Commission.
  - d. Failure of the Construction Manager to meet the 15% minimum community hiring requirement, or failure to pay any balance due the Commission, may result in the Executive Director determining that the Construction Manager must re-qualify and that the Construction Manager is no longer a responsible bidder.
5. Nothing herein provided shall be construed to be a limitation upon the Notice of Requirements for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246) and Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246), or other affirmative action requirements under the regulations promulgated by applicable federal, state or local authorities.

### Section 22.04 Veteran's Preference

1. The Construction Manager shall ensure that the following provision is inserted in all contracts entered into with any subcontractors and labor organizations which furnish skilled, unskilled and craft union skilled labor, or which may provide any material, labor, or services in connection with this Contract.
2. Construction Manager shall comply with the provisions of 330 ILCS 55/0/01 et. seq., which requires that a preference be given to veterans in the employment and appointment to fill positions in the construction, addition, or alteration of all public works. In the employment of labor (except executive, administrative, and supervisory positions) preference shall be given to veterans of the Vietnam era and disabled veterans; however, this preference may be given only where the individuals are available and qualified to perform the Work to which the employment relates.

### Section 22.05 Trade Regulations

Wherever any provision of any section of the specifications conflicts with any agreements or regulations of any kind at any time in force among members of any trade associations, unions, or councils which regulate or distinguish what work shall or shall not be included in the work of any particular trade, the Construction Manager shall make all necessary arrangements to reconcile any such conflict without delay, damage or cost to the Commission and without recourse to the Commission, Architect, or the Commission Representative. In case the progress of the Work is affected by any undue delay in furnishing or installing any items of material or equipment required under the Contract because of a conflict involving any such agreement or regulation, the Architect may require that other material or equipment of equal kind and quality be provided at no additional cost to the Commission.

### Section 22.06 Steel Products

To the extent permitted by law, this Contract shall be subject to all provisions of the "Steel Products Procurement Act," 30ILCS 565/1 *et seq.* as it may be amended from time to time. Steel products issued

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or supplied in the performance of this Contract or any subcontract thereto shall be manufactured or produced in the United States. For purposes of this Section, "United States" means the United States and any place subject to the jurisdiction thereof and "Steel Products" means products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated, or otherwise similarly processed or processed by a combination of two or more such operations, from steel made in the United States by the open hearth, basic oxygen, electric furnace, Bessemer, or other steel-making process. Knowing violation of this Section may result in the filing and prosecution of a complaint by the Attorney General of the State of Illinois and will subject violators to a fine of the greater of \$5,000 or the payment price received as a result of such violation.

### **Section 22.07 Inspector General**

1. It shall be the duty of any bidder, proposer, Construction Manager, all subcontractors and all officers, directors, agents, partners and employees of any such entities on City-funded contracts to cooperate with the Inspector General of the City in any investigation or hearing undertaken pursuant to Chapter 2-56 of the Chicago Municipal Code. Each Construction Manager understands and will abide by all provisions of Chapter 2-56 of the Municipal Code of Chicago.
2. All Construction Managers shall inform their respective subcontractors of this provision and require compliance herewith.

### **Section 22.08 Covenant against Contingent Fees**

The Construction Manager warrants that it has not employed any person to solicit or secure this Contract upon any agreement for a commission, percentage, brokerage, or contingent fee. Breach of this warranty shall give the Commission the right to terminate the Contract, or, in its discretion, to deduct from the Contract Price or consideration the amount of such commission, percentage, brokerage, or contingent fees. This warranty shall not apply to any commission payable by the Construction Manager upon contracts or sales secured or made through bona fide established commercial or selling agencies maintained by the Construction Manager for the purpose of securing business.

### **Section 22.09 Taxes**

1. The Construction Manager shall pay for all federal, state, and local taxes on all materials, labor, or services furnished, and all taxes arising out of the operations under this Contract. Such taxes shall include, by way of illustration and not in limitation thereof, Retailers' Occupational, Old Age Benefit, Unemployment, customs, duties, and all deductions for income taxes now in force or hereafter enacted before Final Completion and Acceptance of the Work. This requirement excludes taxes and assessments on real property comprising the Site and Illinois, County and Municipal Retailers' Occupation and Service Occupation Taxes and Illinois Use, Sales and Service Use Taxes on building materials and fixtures to be incorporated into the Work but does include such taxes on building materials and equipment consumed or used in performing the construction, but not incorporated in it.
2. The Public Building Commission of Chicago, a municipal corporation and political subdivision of the State of Illinois, is exempt from federal Excise Taxes. The State of Illinois Tax Exemption Identification Number is E9978-1506-04 and the Federal Tax Exemption Identification Number is #36-6009523.

### **Section 22.10 Royalties and Patents**

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1. All fees for any patent invention, article or arrangement or other appurtenances that may be used upon or in any manner connected with the construction, erection or maintenance of the Work, or any part thereof embraced in the Contract, shall be included in the Base Contract Price.
2. The approval of any method of construction, invention, appliance, process, article, device, or material of any kind by the Commission shall only be an approval of its adequacy for the Work, and shall not be an approval of the use thereof by the Construction Manager in violation of any patent or other rights of any third person.

### Section 22.11 Conflict of Interest

No member of the governing body of the Commission and no other officer, employee, or agent of the Commission or other unit of government who exercises any functions or responsibilities in connection with this Contract shall have any personal interest, direct or indirect, in this Contract. Each Construction Manager shall covenant that it; its officers, directors and employees; the officers, director and employees of each of its members if a joint venture; and subcontractors presently have no interest and shall acquire no interest, direct or indirect, in the Project which would conflict in any manner or degree with the performance of the Work hereunder. Each Construction Manager shall further covenant that in the performance of this Contract, no person having any such interest shall be employed. Each Construction Manager shall agree that if the Commission determines that any of a Construction Manager's work for others conflicts with the Work, that Construction Manager shall terminate such other services immediately upon request of the Commission.

### Section 22.12 Governmental Ethics Ordinance

1. Each Construction Manager shall comply with Chapter 2-156 of the Municipal Code of Chicago, Governmental Ethics, including but not limited to Section 2-156-120 of that chapter pursuant to which no payment, gratuity, or offer of employment shall be made in connection with any Commission contract, by or on behalf of a subcontractor to the prime Construction Manager or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.
2. Any contract negotiated, entered into, or performed in violation of any of the provisions of this Section shall be voidable at the Commission's option..

### Section 22.13 Disclosure Affidavit

1. The Construction Manager is required to file a fully executed Disclosure Affidavit with the Commission no less than annually. Such document must be signed by an authorized officer of the company before a notary and is incorporated by reference into this Contract.
2. Such Disclosure Affidavit certifies, among other things, that the Construction Manager and each joint venture partner, its agents, employees, officers, and any subcontractors:
  - a. have not engaged in or been convicted of bribery or attempted bribery of a public officer or employee of the City of Chicago, the State of Illinois, the Commission, any agency of the federal government or any state or local government in the United States;
  - b. have not been engaged in or been convicted of bid-rigging or bid-rotation activities as defined in the Disclosure Affidavit;
  - c. are not presently debarred or suspended by any local, state or federal procurement agency;

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- d. do not owe any debts to the State of Illinois, in accordance with 65 ILCS 5/11-42.1-1; and
- e. do not owe any debts to the City of Chicago in violation of Chapter 2-92-380 of the Municipal Code of Chicago.

### Section 22.14 Disclosure of Retained Parties

The Construction Manager is required to submit a fully executed Disclosure of Retained Parties within 5 days of Notice of Award. Such documents must be signed by an authorized officer of the company before a notary and are incorporated by reference into this Contract.

### Section 22.15 Non-Collusion, Bribery of a Public Officer or Employee

1. Each Construction Manager, in performing under this Contract, shall comply with Section 2-92-320 of the Municipal Code of Chicago as follows:
  - a. No person or business entity shall be awarded a Contract or subcontract if that person or business entity:
    - (1) Has been convicted of bribery or attempting to bribe a public officer or employee of the City of Chicago, the State of Illinois, or any agency of the federal government or any state or local government in the United States, in that officers or employees official capacity; or
    - (2) Has been convicted of agreement or collusion among bidders or prospective bidders in restraint of freedom of competition by agreement to bid a fixed price, or otherwise; or
    - (3) Has made an admission of guilt of such conduct described in (1) or (2) above which is a matter of record but has not been prosecuted for such conduct.
2. For purposes of this section, where an official, agent or employee of a business entity has committed any offense under this section on behalf of such an entity and pursuant to the direction or authorization of a responsible official thereof, the business entity shall be chargeable with the conduct. One business entity shall be chargeable with the conduct of an affiliated agency.
3. Ineligibility under this section shall continue for three years following such conviction or admission. The period of ineligibility may be reduced, suspended, or waived by the Commission under certain specific circumstances. Reference is made to Section 2-92-320 of the Municipal Code of Chicago for a definition of affiliated agency, and a detailed description of the conditions that would permit the Commission to reduce, suspend, or waive the period of ineligibility.

### Section 22.16 Parking Violations

1. The Commission shall set off a portion of the Contract Price or compensation due under the Contract in an amount equal to the amount of the fines and penalties for each outstanding parking violation complaint and/or the amount of any debt owed by the contracting party to the City in all contracts undertaken with City of Chicago funds.
2. For purposes of this provision, outstanding parking violation complaint means a parking ticket, notice of parking violation, or parking violation complaint on which neither has payment been made nor an appearance filed in the Circuit Court of Cook County within the time specified on the



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complaint. Debt means a specified sum of money owed to the City for which the period granted for payment has expired.

3. Notwithstanding the provisions of paragraph 1 above, no such debt(s) or outstanding violation complaint(s) shall be set off from the Contract Price or compensation due under the Contract if one or more of the following conditions are met:
  - a. The contracting party has entered into an agreement with the Department of Revenue, or other appropriate City department, for the payment of all outstanding parking complaints and/or debts owed to the City and the contracting party is in compliance with the agreement; or
  - b. The contracting party is contesting liability for or the amount of the debt in a pending administrative or judicial proceeding; or
  - c. The contracting party has filed a petition in bankruptcy and the debts owed in the City are dischargeable in bankruptcy.

### Section 22.17 Child Support Ordinance

1. The City of Chicago through passage of the Child Support Arrearage Ordinance, Municipal Code of Chicago Section 2-92-415, seeks to protect the public interest in contracting with entities which demonstrate financial responsibility, integrity, and lawfulness, and finds that it is especially inequitable for contractors or their owners to obtain the benefits of public funds while failing to pay court-ordered child support, which shifts the support of their dependents onto the public treasury.
2. For purposes of this section, "Substantial Owner" means any person who owns or holds a ten percent (10%) or more percentage of interest in the Construction Manager; where the Construction Manager is an individual or sole proprietorship, Substantial Owner means that individual or sole proprietor.
3. Percentage of interest includes direct, indirect and beneficial interests in the Construction Manager. Indirect or beneficial interest means that an interest in the Construction Manager is held by a corporation, joint venture, trust, partnership, association, estate or other legal entity, in which the individual holds an interest, or by agent(s) or nominees(s) on behalf of an individual entity. For example, if Corporation B holds or owns a twenty percent interest in Construction Manager, and an individual or entity has a fifty percent or more percentage of interest in Corporation B, then such individual or entity indirectly has a ten percent or more percentage of interest in the Construction Manager. If Corporation B is held by another entity, then this analysis similarly must be applied to that next entity.
4. In accordance with Section 2-92-415 of the Municipal Code of Chicago, if an Illinois court of competent jurisdiction has issued an order declaring one or more Substantial Owners in arrearage on their child support obligations and: (1) at least one such Substantial Owner has not entered into a court-approved agreement for the payment of all such child support owed, or (2) at least one such Substantial Owner is not in compliance with a court-approved agreement for the payment of all such child support owed or both (1) and (2), then:
5. For those bidders in competitive bid contracts, the Commission shall assess an eight percent penalty. This penalty shall increase their bid price for the purpose of canvassing the bids in order to determine who is to be the lowest responsible bidder. This penalty shall apply only for purposes of comparing bid amounts and shall not affect the amount of any contract payment.

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6. The provisions of this section shall apply only where not otherwise prohibited by federal, state or local law.

### Section 22.18 Local Business Preference

The following provision shall apply for Projects funded by the City:

1. Since the cost of doing business is higher for firms located in the City of Chicago due to higher taxes and other operating expenses, and the City of Chicago benefits from the presence of those firms in the City, the Commission applies a Local Business Preference to bids on projects funded by the City of Chicago. To be considered a local business, a firm must:
  - be located within the corporate limits of the City of Chicago,
  - have the majority of its regular, full-time work force located within the City of Chicago, and
  - be subject to City of Chicago taxes.
2. For City-funded projects, a contract in the amount of the total Base Bid will be awarded to the responsible local business submitting the lowest Award Criteria Figure, provided that the Award Criteria Figure does not exceed the lowest Award Criteria Figure submitted by a responsible non-local business by more than two percent (2%).
3. If the Bidder is a joint venture, the joint venture shall be considered a local business if:
  - all partners to the joint venture are Local Businesses, or
  - one of the partners to the joint venture is a Local Business and holds at least a fifty percent (50%) interest in the joint venture.
4. A local business has a fifty percent (50%) interest in the joint venture only if it holds subcontracts equal to fifty percent (50%) or more of the amount of the bid. Joint venture bidders shall submit information and documentation (including, but not limited to, the joint venture agreement and subcontracts) with their bids to establish their eligibility for the Local Business Preference.
5. Each Bidder seeking classification as a Local Business must complete and sign the Affidavit of Local Business and shall submit documentation to support the assertions in the affidavit. The following documentation must be included with the affidavit:
  - a copy of the current City of Chicago Business license issued to the Bidder by the City of Chicago for the Bidder's address within the corporate limits of the city of Chicago.
6. The Commission's determination of a bidder's eligibility for the Local Business Preference shall be final.

## ARTICLE 23. MISCELLANEOUS

### Section 23.01 Counterparts

This Contract is comprised of several identical counterparts, each to be fully executed by the parties and each to be deemed and original having identical legal effect.

### Section 23.02 Governing Law

This Contract is governed in accordance with the State of Illinois without regard to choice of law principles. The Construction Manager hereby irrevocably submits and causes its Subcontractors to

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submit to the original jurisdiction of those State or Federal courts located within the County of Cook, State of Illinois, with regard to any controversy arising out of, relating to, or in any way concerning the execution or performance of this Contract. The Construction Manager agrees that service of process on the Construction Manager may be made, at the option of the Commission, either by registered or certified mail addressed to the applicable office as provided for in this Contract, by registered or certified mail addressed to the office actually maintained by the Construction Manager, or by personal delivery on any officer, director, or managing or general agent of the Construction Manager.

### Section 23.03 Consent to Service of Process and Jurisdiction

All judicial proceedings brought against the Construction Manager with respect to this Contract may be brought in (1) any court of the State of Illinois of competent jurisdiction; and (2) any Federal court of competent jurisdiction having *situs* within the boundaries of the Federal court district of the Northern District of Illinois, and by execution and delivery of this Contract, the Construction Manager accepts, for itself and in connection with it properties, generally and unconditionally, the exclusive jurisdiction of the aforesaid courts, and irrevocably agrees to be bound by any final judgment rendered thereby from which no appeal has been taken or is available. The Construction Manager shall designate and appoint a representative as its agent in Chicago, Illinois to receive on its behalf service of all process in any such proceedings in such court (which representative shall be available to receive such service at all times). Said agent may be changed only upon the giving of written notice by the Construction Manager to the Commission Representative of the name and address of a new Agent for Service of Process who works within the geographical boundaries of the City of Chicago and is retained or employed by the Construction Manager. The Construction Manager irrevocably waives any objection (including without limitation any objection of the laying of venue or based on the grounds of *forum non conveniens*) which it may now or hereafter have to bring any action or proceeding with respect to this Contract in the jurisdiction set forth above. Nothing herein will affect the right to serve process in any other manner permitted by law or will limit the right to the Commission to bring proceedings against the Construction Manager in the courts of any other jurisdiction.

### Section 23.04 No Third Party Beneficiaries

Except as otherwise be provided herein, the parties agree that this Contract is solely for the benefit of the parties and nothing herein is intended to create any third party beneficiary rights for Subcontractors or other third parties.

### Section 23.05 Notices

1. Notices, unless expressly provided for otherwise in this Contract, must be in writing and may be delivered personally or by placing in the United States mail, first class and certified, return receipt requested, with postage prepaid and addressed as indicated in the Contract Documents.
2. Notices delivered by mail are deemed effective three (3) Days after mailing in accordance with this section. Notices delivered personally are deemed effective upon receipt. The addresses stated herein may be revised without need for modification or amendment of this Contract, provided written notification is given in accordance with this section.

### Section 23.06 Authority

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1. **Commission's Authority.** This Contract is entered into by virtue of the authority conferred on the Commission in accordance with 50 ILCS 20/21.
2. **Construction Manager's Authority.** Execution of this Contract by the Construction Manager is authorized and signature(s) of each person signing on behalf of the Construction Manager have been made with complete and full authority to commit the Construction Manager to all terms and conditions of this Contract, including each and every representation, certification, and warranty contained herein, attached hereto and collectively incorporated by reference herein, or as may be required by the terms and conditions hereof. If other than a sole proprietorship, Construction Manager must provide satisfactory evidence that the execution of the Contract is authorized in accordance with the business entity's rules and procedures.

### ARTICLE 24. MBE/WBE SPECIAL CONDITIONS

#### Section 24.01 MBE/WBE Program

1. Introduction - Remedial Program for Utilization of Minority Business Enterprise ("MBE"), Women Business Enterprise ("WBE") and Economically Disadvantaged Firms
  - a. In February 1992 the Board of Commissioners (the "Board") of the Public Building Commission of Chicago (the "Commission") adopted a Remedial Program for Utilization of MBE and WBE firms (the "Program") as a means of providing open access to the award of Commission Contracts and to remedy the effects of racial and sexual discrimination which have placed such firms at a competitive disadvantage in the award of Commission Contracts.
  - b. In 2003, District Judge James B. Moran in the case *Builders Association of Greater Chicago v. City of Chicago*, No. 96 C 1122 (N.D. Ill.) held that the evidence introduced at trial demonstrated that past and current discriminatory practices continue to place MBE and WBE firms at a competitive disadvantage in the award of governmental contracts and such practices have and continue to impede the growth and success of MBE and WBE firms.
  - c. The Commission has a compelling interest in preventing public funds from perpetuating the past and current discrimination against MBE and WBE firms, which currently exist in the market.
  - d. The February 1992 Program adopted by the Commission has not been sufficient to ameliorate the effects of racial and gender discrimination in the marketplace.
  - e. The remedies adopted herein by the Commission will not overly burden non-MBE and non-WBE firms in the award of Commission Contracts.
  - f. The Commission will periodically review MBE and WBE participation on contracts awarded by the Commission to insure that the Commission continues to have a compelling interest in remedying discrimination against MBE and WBE firms in the award of Commission Contracts and that the measures adopted herein remain narrowly tailored to accomplish that objective.

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### 2. Policy Statement

- a. It is the policy of the Commission to ensure competitive business opportunities for MBE and WBE firms in the performance of Contracts, to prohibit discrimination in the award of or participation in Contracts, and to abolish arbitrary barriers to full participation in Contracts by all persons, regardless of race, sex or ethnicity. Therefore, during the performance of this Contract, the Contractor must agree that it shall not discriminate against any person or business on the basis of race, color, religion, ancestry, age, marital status, physical or mental handicap, unfavorable discharge from military service, parental status, sexual orientation, national origin or sex, in the solicitation or the purchase of goods and services or the subcontracting of work in the performance in this Contract.
- b. The Commission shall require the Contractor also agrees to take affirmative action to ensure that MBE and WBE firms shall have the maximum opportunity to compete for and perform subcontracts with respect to this Contract.

### 3. Definitions

- a. For purposes of this Special Condition, the following definitions shall apply:
  - (1) "Affiliate" of a person or entity means a person or entity that directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with the person or entity. In determining whether persons or entities are affiliates, the Commission shall consider all appropriate factors including common ownership, common management and contractual relationships. Affiliates shall be considered together in determining whether a firm is a Small Business Enterprise.
  - (2) "Broker" means a person or entity that fills orders by purchasing or receiving supplies from a third party supplier rather than out of existing inventory and provides no commercially useful function other than acting as a conduit between a supplier and a customer.
  - (3) "Certification" or "Certified" shall mean a person or entity qualified or granted certification as a Minority Business Enterprise (MBE) or Woman Business Entity (WBE) by the City of Chicago.
  - (4) "Commercially useful function" means responsibility for the execution of a distinct element of the work of the contract, which is carried out by actually performing, managing and supervising the work involved or fulfilling responsibilities as a joint venture.
  - (5) "Construction Contract" means a contract for the construction, repair, alteration, renovation or improvement of any building, facility or other structure.
  - (6) "Contract" means any contract awarded by the Commission which is to be paid from funds belonging to or administered by the Commission regardless of source.
  - (7) "Contract Specific Goals" means the subcontracting goals for MBE and WBE participation established for a particular contract based upon the availability of MBEs and WBEs to perform and anticipated scope of work of the contract and the Commission's progress towards meeting the aspirational goals.

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- (8) "Contractor" means any person or business entity that seeks to enter into a Construction Contract with the Commission and includes all partners, affiliates and joint ventures of such person or entity.
- (9) "Economically disadvantaged" means an individual whose personal net worth is less than \$750,000, indexed annually for the Chicago Metro Area Consumer Price Index published by the U.S. Department of Labor, Bureau of Labor Standards, beginning January, 1999.
- (10) "Executive Director" means the Executive Director of the Commission or his duly designated representative as appointed in writing.
- (11) "Good faith efforts" means actions undertaken by a Contractor to achieve a Contract Specific Goal that by their scope, intensity and appropriations to the objective can reasonably be expected to fulfill the Program's requirements.
- (12) "Joint venture" means an association of two or more persons or entities or any combination of two or more business enterprises and persons numbering two or more, proposing to perform a single for-profit business enterprise, in which each joint venture partner contributes property, capital, efforts, skill and knowledge, and in which the MBE or WBE is responsible for a distinct, clearly-defined portion of the work of the contract and whose share in the capital contribution, control, management, risks and profits of the joint venture is equal to its ownership interest. Joint ventures must have an agreement in writing specifying the terms and conditions of the relationships between the parties and their relationship and responsibilities to the contract.
- (13) "Local business enterprise" means, for purposes of Certification, a business entity located within the counties of Cook, DuPage, Kane, Lake, McHenry or Will in the State of Illinois (the "Six County Region"), which has the majority of its regular, full time work force located within the Six County Region.
- (14) "Minority" means:
- (a) Any individual in the following racial or ethnic groups, members of which are rebuttably presumed to be socially disadvantaged:
    - (i) African-Americans or Blacks, which includes persons having origins in any of the Black racial groups of Africa;
    - (ii) Hispanics, which includes persons of Spanish culture with origins in Mexico, South or Central America or the Caribbean Islands, regardless of race; and
  - (b) Individual members of other groups, including but not limited to Asian-Americans, Arab-Americans and Native-Americans, found by the Commission to be socially disadvantaged by having suffered racial or ethnic prejudice or cultural bias within American society, without regard to individual qualities, resulting in decreased opportunities to compete in Chicago area markets or to do business with the Commission.
- (15) "Minority-owned business enterprise" or "MBE" means a small local business enterprise which is at least 51 percent owned by one or more economically disadvantaged minority persons, or in the case of a publicly held corporation at least 51 percent of all classes of the stock of which is owned by one or more economically disadvantaged minority persons whose management, policies, major decisions and daily business operations are independently managed and controlled by one or more economically disadvantaged minority persons.

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- (16) "Owned" means having all of the customary incidents of ownership, including the right of disposition and sharing in all of the risks, responsibilities and profits commensurate with the degree of ownership.
- (17) "Personal net worth" means the net value of the assets of an individual after total liabilities are deducted. An individual's personal net worth does not include the individual's ownership interest in an applicant or other certified MBE or WBE or the individual's equity in his or her primary place of residence. As to assets held jointly with his or her spouse, an individual's personal net worth includes only that individual's share of such assets. An individual's net worth also includes the present value of the individual's interest in any vested pension plans, Individual Retirement Accounts, 401(K) accounts or other retirement savings or investment programs less the tax and interest penalties that would be imposed if the asset were distributed at the present time.
- (18) "Program" means the minority- and women-owned business enterprise construction procurement program established in this special condition.
- (19) "Small business enterprise" means a small business as defined by the U.S. Small Business Administration pursuant to the business size standards found in 13 C.F.R Part 121 relevant to the scope(s) of work the firm seeks to perform on Commission contracts. A firm is not an eligible small business enterprise in any fiscal year in which its gross receipts, averaged over the firm's previous five fiscal years, exceed the size standards of 13 C.F.R Part 121.
- (20) "Small local business enterprise" means a business that is a small business enterprise and a local business enterprise.
- (21) "Woman" means a person of the female gender, who is presumed to be socially disadvantaged.
- (22) "Women-owned business enterprise" or "WBE" means a small local business enterprise which is at least 51 percent owned by one or more economically disadvantaged women or in the case of a publicly owned business, at least 51 percent of all classes of the stock of which is owned by one or more economically disadvantaged women, whose management, policies, major decisions and daily business operations are independently managed and controlled by one or more economically disadvantaged women.

#### 4. Aspirational and Contract Specific Goals

- a. Upon the effective date of these Special Conditions, the bi-annual aspirational goals shall be to award 24 percent of the annual dollar value of all Commission Construction Contracts to certified MBEs and 4 percent of the annual dollar value of all Commission Contracts to qualified WBEs and 25 percent of the annual dollar value of all other Commission Contracts to certified MBEs and 5 percent of the annual dollar value of the all other Commission Contracts to certified WBEs.

The Commission shall establish subsequent bi-annual aspirational goals for the award of Commission Contracts based on the best available evidence. Quotas are hereby prohibited.

- b. As one method to achieve the aspirational goals, the Executive Director is authorized to establish contract specific goals for MBE and WBE participation for each contract let through competitive bidding. Contract specific goals shall be based on normal industry practice, as determined in consultation with other governmental agencies, the scope of work of the contract, the availability of at least three MBEs and three WBEs to perform the functions of those individual contracts, and the Commission's progress to date towards meeting the bi-annual, aspirational goals of Section 4.1. The Executive Director shall implement administrative

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procedures to establish contract-specific goals.

- c. Each Bidder's commitment to utilization of certified MBE and WBE firms shall be considered as further evidence of the responsibility of the Bidder. Further, the Bidder must agree to use its best efforts to include MBE and WBE firms in any Contract modification work that increases the Contract value of ten (10%) percent of the initial Contract value or fifty thousand (\$50,000) dollars, whichever is less.
- d. Failure to carry out the commitments and policies set forth in this Program shall constitute a material breach of contract and may result in termination of the Contractor or such other remedy, as the Commission deems appropriate.

### 5. Race and Gender-Neutral Measures

- a. The Commission shall develop and use race and gender-neutral measures to facilitate the participation of small business enterprises in Commission Contracts. Race and gender-neutral measures shall be used to the maximum feasible extent to meet the bi-annual aspirational goals established in Section 4.1. These measures may include, but are not limited to:
  - (1) Arranging solicitation times for the presentations of bids, specifications, and delivery schedules so as to facilitate the participation of interested contractors and subcontractors;
  - (2) Segmenting contracts so as to facilitate the participation of small business enterprises;
  - (3) Providing assistance to businesses in overcoming barriers such as difficulty in obtaining bonding and financing;
  - (4) Providing timely informational programs on contracting procedures, bid preparation and specific contracting opportunities;
  - (5) Holding pre-bid conferences, where appropriate, to explain the projects and to encourage contractors to use small business enterprises as subcontractors;
  - (6) Adopting prompt payment procedures, including requiring by contract that prime contractors pay subcontractors within specified days of receipt of payment from the Commission and where necessary, issuing payments directly to subcontractors in lieu of payments to prime contractors;
  - (7) Reviewing bonding, insurance and retainage requirements so as to eliminate unnecessary barriers to and reduce the burdens of contracting with the Commission;
  - (8) Expediting payments and advancing payments to cover start-up and mobilization costs, where appropriate;
  - (9) Providing information concerning small business loan programs and other programs providing access to capital to small business enterprises;
  - (10) Collecting information from all prime contractors on Commission construction contracts detailing the bids received from all subcontractors for Commission construction contracts and the expenditures to subcontractors utilized by prime contractors on Commission construction contracts;
  - (11) At the discretion of the Executive Director, letting a representative sample of Commission construction contracts without goals to determine MBE and WBE utilization in the absence of goals;



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- (12) Providing a bid preference on construction contracts of 2 percent for firms bidding on prime contracts whose principal place of business is located in the City of Chicago;
- (13) Limiting the self-performance of prime contractors, where appropriate;
- (14) Creating a target market program for bidding on Commission prime construction contracts by small local business enterprises;
- (15) To the extent practicable, awarding contracts requiring the expenditure of funds not exceeding \$5,000 to small local business enterprises; and
- (16) Referring complaints of discrimination against MBEs or WBEs to appropriate authorities, for investigation and resolution.

**6. Contract Provision**

- a. Each Commission Contract let through competitive bidding with an estimated value in excess of \$5,000 for which contract specific goals have been established shall contain the following requirements:
  - (1) Include with the bid specifications for each competitively bid contract a list of certified MBEs and WBEs that are available to perform the work required by the specifications or otherwise make such a list available to potential contractors.
  - (2) A description of this Special Condition and the program including the requirement of an approved compliance plan; the requirements related to achieving the goals and counting MBE or WBE participation towards meeting the goals; if goals are not met, the requirement of documentation of the Contractor's good faith efforts to achieve the goals including the good faith efforts of MBEs and WBEs to achieve the goal for which they do not qualify; and a requirement that the Contractor commit to the expenditure of at least the dollar value of the contract specific goals with one or more MBEs and one or more WBEs or make good faith efforts to do so. This commitment may be met by the contractor's status as a MBE or WBE, a joint venture with one or more MBEs or WBEs as prime contractor (to the extent of the MBE's or WBE's participation in such joint venture), subcontracting a portion of the work to one or more MBEs or WBEs, purchasing materials or services for the work from one or more MBEs or WBEs or by any combination of the foregoing;
  - (3) A requirement that prime contractors on Commission construction contracts notify MBEs and WBEs utilized on those contracts about opportunities on contracts without affirmative action contracting goals;
  - (4) A requirement that where the Contractor cannot achieve the contract specific goals it must document its good faith efforts to do so. In determining whether the contractor has made such good faith efforts, the performance of other contractors in meeting the goals may be considered. The Executive Director or his designee shall consider, at a minimum, the Contractor's efforts to do the following:
    - (a) Soliciting through reasonable and available means the interest of MBEs or WBEs that have the capability to perform the work of the contract. The contractor must solicit this interest within sufficient time to allow the MBEs or WBEs to respond. The contractor must take appropriate steps to follow up initial solicitations with interested MBEs or WBEs.

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- (b) Provide interested MBEs or WBEs with adequate information about the plans, specifications and requirements of the contract, including addenda, in a timely manner to assist them in responding to the solicitation.
  - (c) Negotiating in good faith with interested MBEs or WBEs that have submitted bids. Documentation of negotiation must include the names, addresses and telephone numbers of MBEs or WBEs that were solicited; the date of each such solicitation; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why agreements could not be reached with MBEs or WBEs to perform the work. That there may be some additional costs involved in solicitation and using MBEs and WBEs is not a sufficient reason for a contractor's failure to meet the goals, as long as such costs are reasonable.
  - (d) Not rejecting MBEs or WBEs as being unqualified without sound reasons based on the thorough investigation of their capabilities. The MBEs' or WBEs' standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations are not legitimate causes for rejecting or not soliciting bids to meet the goals.
  - (e) Making a portion of the work available to MBE or WBE subcontractors and suppliers and to select those portions of the work or material consistent with the available MBE or WBE subcontractors and suppliers, so as to facilitate meeting the goals.
  - (f) Making good faith efforts despite the ability or desire of a Contractor to perform the work of a contract with its own organization. A Contractor that desires to self-perform the work of a contract must demonstrate good faith efforts unless the goals have been met.
  - (g) Selecting portions of the work to be performed by MBEs or WBEs in order to increase the likelihood that the goals will be met. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate MBE or WBE participation even when the Contractor might otherwise prefer to perform these work items with its own forces.
  - (h) Making efforts to assist interested MBEs or WBEs in obtaining bonding lines of credit or insurance as required by the Commission or Contractor.
  - (i) Making efforts to assist interested MBEs or WBEs in obtaining necessary equipment, supplies, materials or related assistance or services, including participation in a mentor-protégée program; and
- (5) Effectively using the services of the Commission; minority or women community organizations; minority or women contractors' groups; local, state and federal minority or women business assistance offices; and other organizations to provide assistance in the recruitment and placement of MBEs or WBEs.
- (6) Provide a procedure whereby the Contractor may protest the determination that it did not make good faith efforts.

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- (7) Negotiate with any Contractor whose contract is in excess of \$25,000 in value and is not awarded by competitive bidding a commitment, where practicable, to meet at least the aspirational goals as percentages of the dollar value of the contract.
- (8) Include MBEs and WBEs on solicitation mailing lists and encourage that they be solicited for suitable contracts.
- (9) Publicize the Program through appropriate means, in order to attract qualified MBEs and WBEs.
  - b. To achieve the contract specific goals, the Executive Director shall undertake, in addition to the other measures provided herein, the following:
    - (1) Include uniform provisions permitting the termination of the contract by the Commission upon the disqualification of the Contractor as a MBE or WBE if the contractor's status as MBE or WBE was a factor in the award of the contract and such status was misrepresented by the Contractor;
    - (2) Include uniform provisions permitting termination of the contract by the Commission upon the disqualification of any MBE or WBE if the subcontractor's or supplier's status as a MBE or WBE was a factor in the award of the contract and the status of the subcontractor or supplier was misrepresented by the contractor. If the contractor is determined not to have been involved in any misrepresentation of the status of the disqualified subcontractor or supplier, the contractor shall discharge the disqualified subcontractor or supplier and make good faith efforts to engage a qualified MBE or WBE replacement;
    - (3) Include uniform provisions allowing the Executive Director access to the Contractor's books and records, including without limitation payroll records, tax returns and records and books of account, to determine the Contractor's compliance with its commitment to MBE and WBE participation and the status of any MBE or WBE performing any portion of the contract. This provision shall be in addition to, and not a substitute for, any other provision allowing inspection of the Contractor's records by the Commission for any purpose;
    - (4) Review each proposed contract modification request that, by itself or aggregated with previous modification requests, increases the contract value by ten percent of the initial contract value or \$50,000.00, whichever is less, for opportunities to increase participation of MBEs or WBEs. Where the proposed contract modification involves work which can be performed by MBEs or WBEs already performing work on the contract such MBEs and WBEs shall participate in such work specified in the contract modification;
    - (5) Insert in each contract containing a commitment to MBE and/or WBE participation:
      - (a) A requirement of periodic reporting by the Contractor to the Executive Director on all expenditures made to achieve compliance with the foregoing provisions. Such reports shall include the name and business address of each subcontractor and supplier actually involved in the contract, a description of the work performed and/or product or service supplied by each such subcontractor or supplier, the date and amount of each expenditure, and such other information as may assist the Executive Director in determining the Contractor's compliance with the foregoing provisions;
      - (b) A requirement that the Contractor cannot make changes to its contractual MBE and WBE commitments or substitute such MBE or WBE subcontractors without the prior written approval of the Executive Director. Unauthorized changes or substitutions, including performing the work designated for a subcontractor with the contractor's

## PUBLIC BUILDING COMMISSION OF CHICAGO

own forces, shall be a violation of this section and a breach of the contract with the Commission, and may cause termination of the contract for breach, and/or subject the Contractor to contract remedies or other sanctions. The facts supporting the request must not have been known nor reasonably should have been known by the parties before entering into the subcontract.

- (6) Substitutions of the subcontractor shall be permitted only on the following bases:
- (a) Unavailability after receipt of reasonable notice to proceed;
  - (b) Failure of performance;
  - (c) Financial incapacity;
  - (d) Refusal by the subcontractor to honor the bid or proposal price or scope;
  - (e) Mistake of fact or law about the elements of the scope of work of a solicitation where a reasonable price cannot be agreed;
  - (f) Failure of the subcontractor to meet insurance, licensing or bonding requirements;
  - (g) The subcontractor's withdrawal of its bid or proposal; or
  - (h) Decertification of the subcontractor as MBE or WBE.

Where the Contractor has established the basis for the substitution to the satisfaction of the Executive Director, it must make good faith efforts to substitute with a MBE or WBE subcontractor. If the MBE or WBE contract specific goal cannot be reached and good faith efforts have been made, the Contractor may substitute with a non-MBE or non-WBE. If a Contractor plans to hire a subcontractor on any scope of work that was not previously disclosed within the compliance plan the Contractor must obtain the approval of the Executive Director to modify the compliance plan and must make good faith efforts to ensure that MBEs or WBEs have a fair opportunity to bid on the new scope of work.

### 7. Determining MBE/WBE Utilization

The methodology for determining MBE and WBE utilization shall be determined for purposes of analysis with respect to this contract as follows:

- a. The total dollar value of the contract awarded to the certified MBE or WBE firm shall be credited to such participation. Only minority business participation may be counted toward MBE participation and only women business participation may be counted toward WBE participation.
- b. The total dollar value of a contract with a firm owned and controlled by minority women is counted toward either the MBE or WBE goal, but not both. The Contractor employing the firm may choose the goal to which the contract value is applied. Various work done by one and the same subcontractor shall be considered, for the purpose of this principle, as work effectively done under one subcontract only, which subcontractor may be counted toward only one of the goals, not toward both.
- c. In a firm owned and controlled by both minority males and minority females, if the minority females own and control 51% or more of the business, then the total dollar value of a contract

## PUBLIC BUILDING COMMISSION OF CHICAGO

with such firm may be counted toward either MBE participation or WBE participation, but not both. If the minority females, however, own and control less than 51% of the firm, then the firm's participation may be counted only toward MBE utilization.

d. A Contractor may count toward its MBE or WBE goal the portion of the total dollar value of a contract with an eligible joint venture equal to the percentage of the ownership and control of the MBE or WBE partner in the joint venture. A joint venture seeking to be credited for MBE participation may be formed among certified MBE and WBE firms, or between certified MBE and WBE firms and a non-MBE/WBE firm. A joint venture satisfies the eligibility standards of this Program if the certified MBE or WBE participant of the joint venture:

(1) Shares in the ownership, control, management responsibilities, risks and profits of the joint venture; and

(2) Is responsible for a clearly defined portion of work to be performed in proportion to the MBE or WBE ownership percentage.

e. A Contractor may count toward its MBE and WBE goals only expenditures to firms that perform a commercially useful function in the work of a contract. A firm is considered to perform a commercially-useful function when it is responsible for execution of a distinct element of the work of a contract and carries out its responsibilities by actually performing, managing, and supervising the work involved. To determine whether a firm is performing a commercially useful function, the Commission shall evaluate the amount of work subcontracted, industry practices and other relevant factors.

f. Consistent with normal industry practices, a MBE or WBE firm may enter into subcontracts. If a MBE or WBE contractor subcontracts a significantly greater portion of the work of a contract than would be expected on the basis of normal industry practices, the MBE or WBE shall be rebuttably presumed not to be performing a commercially-useful function.

g. A Contractor may count toward its goals expenditures to MBE or WBE manufacturers (i.e., suppliers that produce goods from raw materials or substantially alters them before resale).

h. A Contractor may count toward its goals expenditures to MBE or WBE suppliers provided that the supplier performs a commercially useful function in the supply process.

### 8. Submission of Bid Proposals

a. The following schedules and documents constitute the Bidder's MBE/WBE compliance proposal and must be submitted at the time of the bid or proposal or within such extended period as provided in Section VII hereof:

(1) Evidence of Certification/Schedule A: Affidavit of MBE/WBE. A copy of each proposed MBE and WBE firm's Letter of Certification from the certifying agency must be submitted. Where the Bidder's MBE/WBE compliance proposal includes any MBE or WBE firm that is not currently certified (as evidenced by a Letter of Certification), "Schedule A: Affidavit of MBE/WBE" executed by the proposed MBE or WBE must be submitted.

(2) Schedule B: Affidavit of MBE/Non-MBE or WBE/Non-WBE Joint Ventures. Where the Bidder's MBE/WBE compliance proposal includes participation of any MBE or WBE as a joint venture participant on any tier, the Bidder must submit a "Schedule B: Affidavit of MBE/Non-MBE or WBE/Non-WBE Joint Venture" with an attached copy of the joint venture agreement proposed among the parties. The Schedule B and the joint venture agreement must clearly evidence that the

## PUBLIC BUILDING COMMISSION OF CHICAGO

MBE or WBE participant will be responsible for a clearly defined portion of the work to be performed and that the MBE or WBE firm's responsibilities are in proportion with its ownership percentage. In order to demonstrate the MBE or WBE participant's share in the ownership, control, management responsibilities, risks and profits of the joint venture, the proposed joint venture agreement should include specific details related to:

- (a) The contributions of capital and equipment;
  - (b) Work items to be performed by the MBE or WBE firm's own forces;
    - (c) Work items to be performed under the supervision of the MBE or WBE participant; and
    - (d) The commitment of management, supervisory and operational personnel employed by the MBE or WBE to be dedicated to the performance of the contract.
  - (3) Schedule C: Letter of Intent to Perform as a Subcontractor, Subconsultant, or Material Supplier, Schedule C, executed by the MBE/WBE firm (or Joint Venture Subcontractor) must be submitted by the Bidder for each MBE/WBE included on the Schedule D. Schedule C must accurately detail the work to be performed by the MBE or WBE firm and the agreed rates and prices to be paid.
  - (4) Schedule D: Affidavit of Prime Contractor Regarding MBE or WBE Utilization. A completed Schedule D committing to the utilization of each listed MBE or WBE firm. Unless the Bidder has submitted a completed request for a waiver of participation by MBE/WBE firms (See Request for Waiver procedures in Section VIII hereof), the Bidder must include the specific dollar amount of participation of each MBE/WBE firm listed on its Schedule D. The total dollar commitment to proposed MBE firms must at least equal the MBE goal, and the total dollar commitment to proposed WBE firms must at least equal the WBE goal. Bidders are responsible for calculating the dollar equivalent of MBE or WBE utilization as percentages of their total base bid.
    - b. The submittals must have all blank spaces on the Schedule pages applicable to the contract correctly filled in. Agreements between a Bidder and a MBE/WBE in which the MBE/WBE promises not to provide subcontracting quotations to other Bidders are prohibited.
9. Evaluation of Bid Proposals
- a. During the period between bid opening and contract award, the submitted documentation will be evaluated by the Commission. The Bidder agrees to provide, upon request, earnest and prompt cooperation to the Executive Director or his designee in submitting to interviews that may be necessary, in allowing entry to places of business, in providing further documentation, or in soliciting the cooperation of a proposed MBE or WBE firm in providing such assistance. A bid may be treated as non-responsive by reason of the determination that the Bidder's proposal did not contain a sufficient level of Certified MBE or WBE participation, that the Bidder was unresponsive or uncooperative when asked for further information relative to the proposal, or that false statements were made in the Schedules.
  - b. If the Commission's review of a Bidder's proposal concludes that the MBE or WBE proposal was deficient, the Commission shall promptly notify the Bidder of the apparent deficiency and instruct the Bidder to submit (within three (3) Days of such notice given by the Commission) a modification of the MBE or WBE Proposal, in proper format, which remedies the deficiencies cited. Failure to correct all deficiencies cited by the Commission will be cause for rejection of the Bidder's proposal as non-responsive.

## PUBLIC BUILDING COMMISSION OF CHICAGO

- c. Bidders will not be permitted to modify their MBE/WBE compliance proposal except insofar as directed to do so by the Commission. Therefore, all terms and conditions stipulated for prospective MBE and WBE subcontractors or suppliers should be satisfactorily negotiated before the submission to the Commission of the Bidder's MBE/WBE compliance proposal with the bid. If circumstances should arise, however, where a proposed MBE/WBE is no longer available, the process described in Section 6.2(f) should be followed.

### 10. Request for Waiver

- a. If a Bidder is unable to identify qualified MBE and WBE firms to perform sufficient work to fulfill the MBE or WBE percentage goals for this Contract, the bid or proposal must include a written request for waiver. A request for waiver shall set forth the Bidder's inability to obtain sufficient MBE and WBE firms notwithstanding good faith attempts to achieve such participation.

- b. Examples of such good faith efforts may include, but are not limited to, the following:

- (1) Attendance at the Pre-bid conference;
- (2) The Bidder's general affirmative action policies regarding the utilization of MBE and WBE firms, plus a description of the methods used to carry out those policies;
- (3) Advertisement in trade association newsletters and minority and women-oriented and general circulation media for specific sub-bids;
- (4) Timely notification of specific sub-bids to minority and women contractor assistance agencies and associations;
- (5) Description of direct negotiations with MBE and WBE firms for specific sub-bids, including:
  - (a) The name, address and telephone number of MBE and WBE firms contacted;
  - (b) A description of the information provided to MBE and WBE firms regarding the portions of the work to be performed; and
  - (c) The reasons why additional MBE and WBE firms were not obtained in spite of negotiations.
- (6) A statement of the efforts made to select portions of the work proposed to be performed by MBE and WBE firms (such as sub-supplier, transport, engineering, distribution, or any other roles contributing to production and delivery as specified in the contract) in order to increase the likelihood of achieving such participation.
- (7) As to each MBE and WBE contacted, which the Bidder considers to be not, qualified, a detailed statement of the reasons for the Bidder's conclusion.
- (8) Efforts made by the Bidder to expand its search for MBE and/or WBE firms beyond usual geographic boundaries.
- (9) General efforts made to assist MBE and WBE firms to overcome participation barriers.

## PUBLIC BUILDING COMMISSION OF CHICAGO

c. The Executive Director, after review and evaluation of the documents provided by the Bidder, may grant a waiver request upon the determination that:

- (1) Sufficient qualified MBE and/or WBE firms capable of providing the goods or services required by the contract are unavailable despite the good faith efforts of the Bidder;
- (2) The Bidder is the sole source for work to be performed under the contract; or
- (3) The price(s) quoted by potential MBE and/or WBE firms for goods or services is above competitive levels to an extent unwarranted by any increased cost of doing business attributable to the present effects of disadvantage or discrimination.

### 11. Reporting and Record-Keeping Requirements

a. The Contractor, within 5 days of contract award, shall execute a formal subcontract or purchase order in compliance with the terms of the Contractor's bid proposal and MBE/WBE assurances, and submit to the Commission a copy of the MBE and WBE subcontracts or purchase orders, each showing acceptance of the subcontract or purchase order by the MBE and WBE firms. During the performance of the contract, the Contractor shall submit partial and final waivers of lien from MBE and WBE subcontractors and suppliers indicating the current payment amount and the cumulative dollar amount of payments made to date. The Contractor shall file regular MBE and WBE utilization reports on the form entitled "Status Report of MBE and WBE (Sub) Contract Payments" at the time of submitting each monthly payment voucher ("Summary of Estimate"), which reflects the current status of cumulative and projected payments to MBE and WBE firms.

b. The Contractor shall maintain records of all relevant data with respect to the utilization of MBE and WBE firms, including without limitation payroll records, tax returns and records, and books of account, and retain such records for a period of at least three (3) years after final acceptance of the work. Full access to such records shall be granted to the Commission and/or its designees, on 5 \*Days' notice in order for the Commission to determine the Contractor's compliance with its MBE and WBE commitments and the status of any MBE or WBE firm performing any portion of the contract.

### 12. Non-Compliance and Liquidated Damages

a. The Executive Director has the authority to apply suitable sanctions to the Contractor if the Contractor is found to be in non-compliance with the MBE and WBE requirements. Failure to comply with the MBE or WBE terms of this contract or failure to use MBE and WBE firms as stated in the Contractor's assurances constitutes a material breach of the contract, and may lead to the suspension or termination of the contract in part or in whole, disqualification from entering into future contracting arrangements with the Commission, and criminal liability. In some cases, monthly progress payments may be withheld until corrective action is taken.

b. When the contract is completed, if the Executive Director has determined that the Contractor did not comply in the fulfillment of the required MBE and/or WBE goals, and a grant of relief of the requirements was not obtained, the Commission will thereby be damaged in the failure to provide the benefit of participation to minority or women business to the degree set forth in this Special Condition. Therefore, in case of such non-compliance, the Commission will deduct as liquidated damages one (1%) percent (or fraction thereof) deficiency toward the MBE goal or WBE goal.

### 13. Review and Sunset



## **PUBLIC BUILDING COMMISSION OF CHICAGO**

These Special Conditions shall be reviewed no later than 5 years from their adoption and shall expire on October 31, 2009 unless the Commission find that its remedial purposes have not been fully achieved and there is a compelling interest in continuing narrowly tailored remedies to redress discrimination against MBEs or WBEs so that the Commission will not function as a passive participant in a discriminatory marketplace.

### **14. Severability**

If any section, subsection, paragraph, clause, provision or application of these Special Conditions shall be held invalid by any court, the invalidity of such section, paragraph, clause or provision shall not affect any of the remaining provisions hereof.

**PUBLIC BUILDING COMMISSION OF CHICAGO**

**ARTICLE 25. PROJECT FORMS**

The attached Forms, Exhibits "A" through "T" are to be used, completed, and executed by the party whose signature is called for thereon:

- Exhibit A Construction Manager's Sworn Statement and Affidavit for Partial Payment
- Exhibit B Construction Manager's Waiver of Lien for Partial Payment
- Exhibit C Subcontractor's Sworn Statement and Affidavit for Partial Payment
- Exhibit D Subcontractor's Waiver of Lien for Partial Payment
- Exhibit E Supplier's Waiver of Lien for Partial Payment
- Exhibit F Construction Manager's Sworn Statement and Affidavit for Final Payment
- Exhibit G Construction Manager's Final Release and Waiver of Lien
- Exhibit H Release by Construction Manager
- Exhibit I Subcontractor's Sworn Statement and Affidavit for Final Payment
- Exhibit J Subcontractor's Final Release and Waiver of Lien
- Exhibit K Release by Subcontractor
- Exhibit L Supplier's Final Release and Waiver of Lien
- Exhibit M Release by Supplier
- Exhibit N Payment Request Form
- Exhibit O Construction Manager's Payroll Record
- Exhibit P Construction Manager's Recapitulation of Minority and Female Worker Hours and Percentages
- Exhibit Q Request for Substitution Form
- Exhibit R Status Report of MBE/WBE (Sub) Contract Payments
- Exhibit S Certificate of Architect - Engineer
- Exhibit T Guarantee Form
- Exhibit U Construction Manager's Proposal







**PUBLIC BUILDING COMMISSION OF CHICAGO**

**EXHIBIT A**

**CONSTRUCTION MANAGER'S SWORN STATEMENT AND AFFIDAVIT FOR PARTIAL PAYMENT  
(3 of 3)**

AMOUNT OF ORIGINAL CONTRACT	\$	TOTAL AMOUNT REQUESTED	\$
EXTRAS TO CONTRACT	\$	LESS % RETAINED	\$
TOTAL CONTRACT AND EXTRAS	\$	NET AMOUNT EARNED	\$
CREDITS TO CONTRACT	\$	AMOUNT OF PREVIOUS PAYMENTS	\$
ADJUSTED CONTRACT PRICE	\$	AMOUNT DUE THIS PAYMENT	\$
	\$	BALANCE TO COMPLETE	\$

These provisions should not be construed as conferring any rights hereunder for the benefit of Subcontractors, suppliers, workers or employees, nor as enlarging or altering the application or effect of existing lien laws.

Construction Manager certifies

- that to the best of its knowledge, information and belief, the work is in accordance with the Contract Documents;
- that suppliers of materials, services, labor and all Subcontractors (including all significant sublevels thereof) are being currently paid,
- that the amount of the payments applied for are justified.
- That the Waivers of Lien are submitted herewith by affiant for affiant and each of the aforesaid persons, are true, correct, and genuine;
- that each and every Waiver of Lien was delivered unconditionally;
- that there is no claim either legal or equitable to defeat the validity of any of said Waivers of Lien;
- that said Waivers of Lien include such Waivers of Lien from all Subcontractors, suppliers of material or other agents acting on behalf of affiant in connection with the Work or arising out of the Work; and
- that so far as affiant has knowledge or information, the said Waivers of Lien include all the labor and material for which a claim could be made and for which a lien could be filed;
  
- that neither the partial payment nor any part thereof has been assigned;
  
- that said Construction Manager herein expressly affirms that should it at any time appear that any illegal or excess payments have been made to said Construction Manager by or on behalf of the PUBLIC BUILDING COMMISSION OF CHICAGO, the said Construction Manager will repay on demand to the PUBLIC BUILDING COMMISSION OF CHICAGO the amount or amounts so paid; and
- that if any lien remains unsatisfied after all payments are made, the Construction Manager shall refund to the PUBLIC BUILDING COMMISSION OF CHICAGO all moneys that the latter may be compelled to pay in discharging such a lien including all costs and a reasonable attorney's fee.

\_\_\_\_\_  
(To be signed by the President or a Vice President)

\_\_\_\_\_  
(Typed name of above signature)

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Notary Public  
My Commission expires:

PUBLIC BUILDING COMMISSION OF CHICAGO

EXHIBIT B

CONSTRUCTION MANAGER'S WAIVER OF LIEN FOR PARTIAL PAYMENT

STATE OF ILLINOIS }  
                          } SS  
COUNTY OF COOK }

TO ALL WHOM IT MAY CONCERN:

WHEREAS,

\_\_\_\_\_ an  
\_\_\_\_\_ corporation, has been employed by the PUBLIC BUILDING COMMISSION OF CHICAGO,  
as Owner, under Contract No. \_\_\_\_\_ dated the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_, to (describe nature of work)

for (Designate Project and Location)

NOW, THEREFORE, KNOW YE, that the undersigned, for and in consideration of a partial payment of

\$ \_\_\_\_\_

on the adjusted contract price of

\$ \_\_\_\_\_

and other good and valuable considerations, the receipt whereof is hereby acknowledged, the undersigned does hereby waive and release any and all lien, or claim, or right of lien under the Statutes of the State of Illinois relating to Mechanics' Liens, on account of labor or materials, or both, furnished by the undersigned to the extent of that part of the aforesaid work for which partial payment is requested.

IN WITNESS WHEREOF, the undersigned has caused its corporate seal to be hereunto affixed and these presents to be signed by its \_\_\_\_\_ and attested by its \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_, pursuant to authority given by the \_\_\_\_\_ of said Corporation.

(SEAL)

\_\_\_\_\_

ATTEST:

BY \_\_\_\_\_

\_\_\_\_\_

Title \_\_\_\_\_

President or Vice President

Secretary or Assistant Secretary







**PUBLIC BUILDING COMMISSION OF CHICAGO**  
**EXHIBIT C**

**SUBCONTRACTOR'S SWORN STATEMENT AND AFFIDAVIT FOR PARTIAL PAYMENT (3 of 3)**

These provisions should not be construed as conferring any rights hereunder for the benefit of subcontractors, suppliers, workmen or employees, nor as enlarging or altering the application or effect of existing lien laws.

Subcontractor certifies

- that to the best of its knowledge, information and belief, the work is in accordance with the Contract Documents;
- that suppliers of materials, services, labor and all subcontractors (including all significant sublevels thereof) are being currently paid;
- that the amount of the payments applied for are justified.
- that the Waivers of Lien submitted herewith by affiant and each of the aforesaid persons, are true, correct, and genuine;
- that each and every Waiver of Lien was delivered unconditionally;
- that there is no claim either legal or equitable to defeat the validity of any of said Waivers of Lien;
- that said Waivers of Lien include such Waivers of Lien from all subcontractors, suppliers of material or other agents acting on behalf of affiant in connection with the work or arising out of the work; and
- that so far as affiant has knowledge or information, the said Waivers of Lien include all the labor and material for which a claim could be made and for which a lien could be filed.

\_\_\_\_\_  
(To be signed by the President or a Vice President)

\_\_\_\_\_  
(Typed name of above signature)

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

\_\_\_\_\_  
Notary Public

My Commission expires:

**PUBLIC BUILDING COMMISSION OF CHICAGO**  
**EXHIBIT D**  
**SUBCONTRACTOR'S WAIVER OF LIEN FOR PARTIAL PAYMENT**

STATE OF ILLINOIS }  
                          } SS  
COUNTY OF COOK }

TO ALL WHOM IT MAY CONCERN:

WHEREAS, \_\_\_\_\_  
an \_\_\_\_\_ corporation, has been employed by \_\_\_\_\_  
\_\_\_\_\_ under Subcontract dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, to

for (Designate Project and Location)

NOW, THEREFORE, KNOW YE, that the undersigned, for and in consideration of a partial payment of

\$ \_\_\_\_\_

on the adjusted subcontract price of

\$ \_\_\_\_\_

by \_\_\_\_\_ the \_\_\_\_\_ said  
\_\_\_\_\_ and other  
good and valuable considerations, the receipt whereof is hereby acknowledged, the undersigned does hereby waive and release any and all  
lien, or claim, or right of lien under the Statutes of the State of Illinois relating to Mechanics' Liens, on account of labor or materials, or  
both, furnished by the undersigned to the extent of that part of the aforesaid work for which partial payment is requested.

IN WITNESS WHEREOF, the undersigned has caused its corporate seal to be hereunto affixed and these presents to be signed by its  
\_\_\_\_\_ and attested by its \_\_\_\_\_ on this  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, pursuant to authority given by the  
\_\_\_\_\_ of said Corporation.

(SEAL)

ATTEST:

\_\_\_\_\_

Secretary or Assistant Secretary

BY \_\_\_\_\_

Title \_\_\_\_\_

President or Vice President

**PUBLIC BUILDING COMMISSION OF CHICAGO**  
**EXHIBIT E**  
**SUPPLIER'S WAIVER OF LIEN FOR PARTIAL PAYMENT**

STATE OF ILLINOIS }  
                          } SS  
COUNTY OF COOK }

TO ALL WHOM IT MAY CONCERN:

WHEREAS,

an \_\_\_\_\_ corporation, has furnished

to (Designate Project and Location)

for \_\_\_\_\_, under purchase orders dated

NOW, THEREFORE, KNOW YE, that the undersigned, for and in consideration of a partial payment of

\$ \_\_\_\_\_

on said purchase orders in the aggregate amount of

\$ \_\_\_\_\_

by the said \_\_\_\_\_, and other good and valuable considerations, the receipt whereof is hereby acknowledged, the undersigned does hereby waive and release any and all lien, or claim, or right of lien under the Statutes of the State of Illinois relating to Mechanics' Liens, on account of labor or materials, or both, furnished by the undersigned to the extent of that part of the aforesaid work for which partial payment is requested.

IN WITNESS WHEREOF, the undersigned has caused its corporate seal to be hereunto affixed and these presents to be signed by its \_\_\_\_\_ and attested by its \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, pursuant to authority given by the \_\_\_\_\_ of said Corporation.

(SEAL)

\_\_\_\_\_

ATTEST:

BY \_\_\_\_\_

\_\_\_\_\_

Title \_\_\_\_\_

President or Vice President

\_\_\_\_\_  
Secretary or Assistant Secretary





**PUBLIC BUILDING COMMISSION OF CHICAGO**

**EXHIBIT F**

**CONSTRUCTION MANAGER'S SWORN STATEMENT AND AFFIDAVIT FOR FINAL PAYMENT (3 of 3)**

AMOUNT OF ORIGINAL CONTRACT	\$	FINAL ADJUSTED CONTRACT PRICE	\$
EXTRAS TO CONTRACT	\$	LESS	\$
TOTAL CONTRACT AND EXTRAS	\$	NET AMOUNT EARNED	\$
CREDITS TO CONTRACT	\$	AMOUNT OF PREVIOUS PAYMENTS	\$
FINAL ADJUSTED CONTRACT PRICE	\$	AMOUNT DUE THIS PAYMENT	\$

Construction Manager certifies that to the best of its knowledge, information and belief, the work is in accordance with the Contract Documents; that suppliers of materials, services, labor and all Subcontractors (including all significant sublevels thereof) have been paid in full. These provisions should not be construed as conferring any rights hereunder for the benefit of Subcontractors, suppliers, workmen or employees, nor as enlarging or altering the application or effect of existing lien laws.

That the Final Waivers of Lien and Releases submitted herewith by affiant for affiant and each of the aforesaid persons, are true, correct, and genuine; that each and every Final Waiver of Lien and Release was delivered unconditionally; that there is no claim either legal or equitable to defeat the validity of any of said Final Waivers of Lien and said Releases; that said Final Waivers of Lien and said Releases include such Final Waivers of Lien and such Releases from all subcontractors, suppliers of material or other agents acting on behalf of affiant in connection with the work or arising out of the work; and that so far as affiant has knowledge or information, the said Final Waivers of Lien and said Releases include all the labor and material for which a claim could be made and for which a lien could be filed.

That neither the final payment nor any part thereof has been assigned.

That said Construction Manager herein expressly affirms that should it at any time appear that any illegal or excess payments have been made to said Construction Manager by or on behalf of the PUBLIC BUILDING COMMISSION OF CHICAGO, whether included in a partial payment or in the final payment, the said Construction Manager will repay on demand to the PUBLIC BUILDING COMMISSION OF CHICAGO the amount or amounts so paid; and if any lien remains unsatisfied after all payments are made, the Construction Manager shall refund to the PUBLIC BUILDING COMMISSION OF CHICAGO all moneys that the latter may be compelled to pay in discharging such a lien including all costs and a reasonable attorney's fee.

\_\_\_\_\_  
(To be signed by the President or a Vice President)

\_\_\_\_\_  
(Typed name of above signature)

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

\_\_\_\_\_  
Notary Public  
My Commission expires:

**PUBLIC BUILDING COMMISSION OF CHICAGO**  
**EXHIBIT G**  
**CONSTRUCTION MANAGER'S FINAL RELEASE AND WAIVER OF LIEN**

STATE OF ILLINOIS }  
                          } SS  
COUNTY OF COOK }

TO ALL WHOM IT MAY CONCERN:

WHEREAS,

an \_\_\_\_\_ corporation, has been employed by the  
PUBLIC BUILDING COMMISSION OF CHICAGO, as Owner, under Contract No. \_\_\_\_\_, dated the \_\_\_\_\_ day  
of \_\_\_\_\_, 20\_\_\_\_\_, to

for (Designate Project and Location)  
\_\_\_\_\_  
\_\_\_\_\_

NOW, THEREFORE, KNOW YE, that the undersigned, for and in consideration of the final payment of

\$ \_\_\_\_\_

on the final adjusted contract price of

\$ \_\_\_\_\_

and other good and valuable considerations, the receipt whereof is hereby acknowledged, the undersigned does hereby waive and release any and all lien, or claim, or right of lien under the Statutes of the State of Illinois relating to Mechanics' Liens, on account of labor or materials, or both, furnished by the undersigned to or on account of the aforesaid work.

IN WITNESS WHEREOF, the undersigned has caused its corporate seal to be hereunto affixed and these presents to be signed by its  
and attested by its

on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, pursuant to authority given  
by the \_\_\_\_\_ of said Corporation.

(SEAL) \_\_\_\_\_

ATTEST:

\_\_\_\_\_

Secretary or Assistant Secretary

BY \_\_\_\_\_

Title \_\_\_\_\_

President or Vice President



PUBLIC BUILDING COMMISSION OF CHICAGO

EXHIBIT H

RELEASE BY CONSTRUCTION MANAGER

STATE OF ILLINOIS }  
                          } SS  
COUNTY OF COOK }

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS,  
an \_\_\_\_\_ corporation, has been employed by the PUBLIC BUILDING  
COMMISSION OF CHICAGO, as Owner, under Contract No. \_\_\_\_\_, dated the \_\_\_\_\_ day of  
20\_\_\_\_, to \_\_\_\_\_

for (Designate Project and Location)  
\_\_\_\_\_

NOW, THEREFORE, for and in consideration of the final payment of

\$ \_\_\_\_\_

on the final adjusted contract price of

\$ \_\_\_\_\_

and other good and valuable considerations, the receipt whereof is hereby acknowledged, the undersigned does hereby release and discharge the PUBLIC BUILDING COMMISSION OF CHICAGO, its Commissioners, officers, and agents, and each of them from any and all manner of action, cause and causes of action, suits, debts, sums of money, accounts, controversies, agreements, promises, damages, financial obligations, claims, and demands whatsoever, in law or in equity, and particularly, without limiting the generality of the foregoing, from all financial obligations, claims, and demands arising under said contract and from all financial obligations, claims and demands for any additional and extra work, labor, materials, equipment and supplies prepared for or furnished in connection with the aforesaid work for the said designated project which the undersigned, its successors and assigns, ever had, now has, or hereafter can, shall, or may have against the said PUBLIC BUILDING COMMISSION OF CHICAGO, its Commissioners, officers, employees and agents, and their respective heirs, personal representatives, successors and assigns, for or by any reason of any cause, matter, or thing whatsoever at any time before the date of these presents.

IN WITNESS WHEREOF, the undersigned has caused its corporate seal to be hereunto affixed and these presents to be signed by its  
and attested by its \_\_\_\_\_, 20\_\_\_\_, pursuant to authority given  
on this \_\_\_\_\_ day of \_\_\_\_\_ of said Corporation.  
by the \_\_\_\_\_

(SEAL) \_\_\_\_\_

ATTEST:

BY \_\_\_\_\_

Title \_\_\_\_\_

President or Vice President

\_\_\_\_\_  
Secretary or Assistant Secretary





**PUBLIC BUILDING COMMISSION OF CHICAGO**

**EXHIBIT I**

**SUBCONTRACTOR'S SWORN STATEMENT AND AFFIDAVIT FOR FINAL PAYMENT (3 of 3)**

Subcontractor certifies that to the best of its knowledge, information and belief, the work is in accordance with the Contract Documents; that suppliers of materials, services, labor and all subcontractors (including all significant sublevels thereof) have been paid in full. These provisions should not be construed as conferring any rights hereunder for the benefit of Subcontractors, suppliers, workers or employees, nor as enlarging or altering the application or effect of existing lien laws.

The Final Waivers of Lien and Releases submitted herewith by affiant for affiant and each of the aforesaid persons, are true, correct, and genuine; that each and every Final Waiver of Lien and Release was delivered unconditionally; that there is no claim either legal or equitable to defeat the validity of any of the Final Waivers of Lien and said Releases; that the Final Waivers of Lien and Releases include such Final Waivers of Lien and such Releases from all subcontractors, suppliers of material or other agents acting on behalf of affiant in connection with the Work or arising out of the Work; and that so far as affiant has knowledge or information, the said Final Waivers of Lien and said Releases include all the labor and material for which a claim could be made and for which a lien could be filed.

\_\_\_\_\_  
(To be signed by the President or a Vice President)

\_\_\_\_\_  
(Typed name of above signature)

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 120 \_\_\_\_\_

\_\_\_\_\_  
Notary Public

My Commission expires:

**PUBLIC BUILDING COMMISSION OF CHICAGO**  
**EXHIBIT J**  
**SUBCONTRACTOR'S FINAL RELEASE AND WAIVER OF LIEN**

STATE OF ILLINOIS }  
                          } SS  
COUNTY OF COOK }

TO ALL WHOM IT MAY CONCERN:

WHEREAS,

an \_\_\_\_\_ corporation, has been employed by  
under Subcontract \_\_\_\_\_, dated the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, to

for (Project and Location)  
\_\_\_\_\_  
\_\_\_\_\_

NOW, THEREFORE, KNOW YE, that the undersigned, for and in consideration of full payment of the final adjusted subcontract price of  
\$ \_\_\_\_\_

by the said  
and other good and valuable considerations, the receipt whereof is hereby acknowledged, the undersigned does hereby waive and release  
any and all lien, or claim, or right of lien under the Statutes of the State of Illinois relating to Mechanics' Liens, on account of labor or  
materials, or both, furnished by the undersigned to or on account of the aforesaid work.

IN WITNESS WHEREOF, the undersigned has caused its corporate seal to be hereunto affixed and these presents to be signed by its  
and attested by its  
on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, pursuant to authority given  
by the \_\_\_\_\_ of said Corporation.

(SEAL)

ATTEST:

\_\_\_\_\_  
Secretary or Assistant Secretary

BY \_\_\_\_\_  
Title \_\_\_\_\_  
President or Vice President

PUBLIC BUILDING COMMISSION OF CHICAGO

EXHIBIT K

RELEASE BY SUBCONTRACTOR

STATE OF ILLINOIS }  
                          } SS  
COUNTY OF COOK }

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS,  
an \_\_\_\_\_ corporation, has been employed by  
under Subcontract dated the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, to

for (Project and Location)  
\_\_\_\_\_  
\_\_\_\_\_

NOW, THEREFORE, for and in consideration of the final payment of

\$ \_\_\_\_\_ on the final adjusted subcontract price of

\$ \_\_\_\_\_ by the said  
and release and payment of retained funds, or a part thereof by or on behalf of the PUBLIC BUILDING COMMISSION OF CHICAGO to  
the said

and other good and valuable considerations, the receipt whereof is hereby acknowledged, the undersigned does hereby release and  
discharge the PUBLIC BUILDING COMMISSION OF CHICAGO, its Commissioners, officers, employees and agents, and each of them,  
from any and all manner of action, cause and causes of action, suits, debts, sums of money, accounts, controversies, agreements, promises,  
damages, financial obligations, claims, and demands whatsoever, in law or in equity, and particularly, without limiting the generality of the  
foregoing, from all financial obligations, claims, and demands arising under such subcontract and from all financial obligations, claims and  
demands for any additional and extra work, labor, materials, equipment and supplies prepared for or furnished in connection with the  
aforesaid work for the designated project which the undersigned, its successors and assigns, ever had, now has, or hereafter can, shall, or  
may have against the said PUBLIC BUILDING COMMISSION OF CHICAGO, its Commissioners, officers, employees and agents, and  
their respective heirs, personal representatives, successors and assigns, for or by reason of any cause, matter, or thing whatsoever at any  
time before the date of these presents.

IN WITNESS WHEREOF, the undersigned has caused its corporate seal to be hereunto affixed and these presents to be signed by its  
and attested by its \_\_\_\_\_ on this \_\_\_\_\_  
day of \_\_\_\_\_, 20\_\_\_\_, pursuant to authority given by the \_\_\_\_\_ of said Corporation.

(SEAL)

ATTEST:

BY \_\_\_\_\_

Title \_\_\_\_\_

President or Vice President

\_\_\_\_\_  
Secretary or Assistant Secretary

**PUBLIC BUILDING COMMISSION OF CHICAGO**  
**EXHIBIT L**  
**SUPPLIER'S FINAL RELEASE AND WAIVER OF LIEN**

STATE OF ILLINOIS }  
                          } SS  
COUNTY OF COOK }

TO ALL WHOM IT MAY CONCERN:

WHEREAS,  
an \_\_\_\_\_ corporation, has furnished

to

for (Project and Location)

\_\_\_\_\_

under purchase orders dated

NOW, THEREFORE, KNOW YE, that the undersigned, for and in consideration of full payment of all said purchase orders in the aggregate amount of

\$ \_\_\_\_\_  
by the said

\_\_\_\_\_, and other good and valuable considerations, the receipt whereof is hereby acknowledged, the undersigned does hereby waive and release any and all lien, or claim, or right of lien under the Statutes of the State of Illinois relating to Mechanics' Liens, on account of labor or materials, or both, furnished by the undersigned to or on account of the aforesaid work.

IN WITNESS WHEREOF, the undersigned has caused its corporate seal to be hereunto affixed and these presents to be signed by its \_\_\_\_\_ and attested by its \_\_\_\_\_, on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, pursuant to authority given by the \_\_\_\_\_ of said Corporation.

(SEAL)

ATTEST:

\_\_\_\_\_  
Secretary or Assistant Secretary

\_\_\_\_\_  
BY \_\_\_\_\_  
Title \_\_\_\_\_  
President or Vice President

**PUBLIC BUILDING COMMISSION OF CHICAGO**

**EXHIBIT M  
RELEASE BY SUPPLIER**

STATE OF ILLINOIS }  
                          } SS  
COUNTY OF COOK }

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS,  
an \_\_\_\_\_ corporation, has furnished

to

for ( Project and Location)

\_\_\_\_\_   
under purchase orders dated

NOW, THEREFORE, for and in consideration of the final payment of

\$ \_\_\_\_\_ due on said purchase orders  
by the said

and the release and payment of retained funds, or a part thereof, by or on behalf of the PUBLIC BUILDING COMMISSION OF CHICAGO to the said

\_\_\_\_\_   
and other good and valuable considerations, the receipt whereof is hereby acknowledged, the undersigned does hereby release and discharge the PUBLIC BUILDING COMMISSION OF CHICAGO, its Commissioners, officers, employees and agents, and each of them, from any and all manner of action, cause and causes of action, suits, debts, sums of money, accounts, controversies, agreements, promises, damages, financial obligations, claims, and demands whatsoever, in law or in equity, and particularly, without limiting the generality of the foregoing, from all financial obligations, claims, and demands arising under said purchase orders and from all financial obligations, claims and demands for any additional and extra work, labor, materials, equipment and supplies prepared for or furnished in connection with the aforesaid work for the said designated project which the undersigned, its successors and assigns, ever had, now has, or hereafter can, shall, or may have against the said PUBLIC BUILDING COMMISSION OF CHICAGO, its Commissioners, officers, employees and agents, and their respective heirs, personal representatives, successors and assigns, for or by reason of any cause, matter, or thing whatsoever at any time before the date of these presents.

IN WITNESS WHEREOF, the undersigned has caused its corporate seal to be hereunto affixed and these presents to be signed by its \_\_\_\_\_ and attested by its \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, pursuant to authority given by the \_\_\_\_\_ of said Corporation.

(SEAL)

ATTEST:

BY \_\_\_\_\_

Title \_\_\_\_\_  
President or Vice President

\_\_\_\_\_  
Secretary or Assistant Secretary







**PUBLIC BUILDING COMMISSION OF CHICAGO**

**EXHIBIT N  
STORED MATERIAL (3 of 4)**

Monthly Estimate No \_\_\_\_\_  
 For the Period \_\_\_\_\_ to \_\_\_\_\_  
 Contract No \_\_\_\_\_

Date \_\_\_\_\_  
 Sheet \_\_\_\_\_ of \_\_\_\_\_

To \_\_\_\_\_  
 For Work on Account of \_\_\_\_\_

MATERIAL STORED - PREVIOUS ESTIMATE NO \_\_\_\_\_ (\$ \_\_\_\_\_ )

ITEM NO	MATERIAL DELIVERED THIS PERIOD	QUANTITY	UNIT	UNIT PRICE	AMOUNT	50% AMOUNT
<b>TOTAL DELIVERED THIS PERIOD</b>						

ITEM NO	MATERIAL USED THIS PERIOD	QUANTITY	UNIT	UNIT PRICE	AMOUNT	50% AMOUNT
<b>TOTAL USED THIS PERIOD</b>						
<b>DEBIT OR CREDIT THIS PERIOD</b>						

MATERIAL STORED - THIS ESTIMATE \_\_\_\_\_

**PUBLIC BUILDING COMMISSION OF CHICAGO**

**EXHIBIT N**

**SUMMARY OF ESTIMATE SHEETS (4 of 4)**

Monthly Estimate No \_\_\_\_\_  
 For the Period \_\_\_\_\_ to \_\_\_\_\_  
 Contract No \_\_\_\_\_

Date \_\_\_\_\_ of \_\_\_\_\_  
 Sheet \_\_\_\_\_ of \_\_\_\_\_

To \_\_\_\_\_  
 For Work on Account of \_\_\_\_\_

SUMMARY OF ESTIMATE SHEETS		(1)	(2)	(3)
DESCRIPTION		TOTAL CONTRACT ESTIMATE	CURRENT ESTIMATE	TOTAL ESTIMATE TO DATE
1	Sheet No. 1		\$	\$
2				
3				
4				
5				
6	Total Awarded Contract Amount			
7	Awarded Contract Amounts Completed		\$	\$
8	Add: Total Authorized Changes - Sheet No. _____			
9	Add: Materials Stored - Sheet No. _____			
10	Total Approved Value & Amounts Earned	\$	\$	\$
11	Deduct: Current Reserve Adjustment		\$	
12	Deduct: Total Reserve To Date (Column 3)			\$
13	Deduct: Current Liquidated Damages (Line 25)		\$	
14	Deduct: Total Liquidated Damages (Line 23)			\$
15	Total Paid To Date - including this estimate			\$
16	Deduct: Total Earned To Date (Line 10, Col. 3)	\$		
17	Net Amount Open on Contract			
18	NET CURRENT PAYMENT		\$	
	<b>RESERVE COMPUTATION</b>	Current Reserve Withheld	Previous Reserve Withheld	Total Reserve Withheld
19	Percentage Computation - 10% Reserve*	\$	\$	\$
20	Percentage Computation - 5% Reserve*	\$	\$	\$
21	Total Reserve Withheld	\$	\$	\$

\*Note: Column 1 is computed at the rate of 10% for all monthly estimates up to 50% of contract.

LIQUIDATED DAMAGES COMPUTATION			
23	Total Liquidated Damages to Date	Days	\$
24	Deduct: Amount Previously Withheld		\$
25	CURRENT LIQUIDATED DAMAGES		\$
	Approx. % Contract Completed	%	Total Contract Time (Incl. Time Extens) Days
	Starting Date:		Total Time Used Days

Verified By: Architect's Contract Administrator  
 RECOMMENDED FOR APPROVAL:

Architect's Project Manager

Name of Construction Manager  
 By \_\_\_\_\_ Date \_\_\_\_\_

Title

**PUBLIC BUILDING COMMISSION OF CHICAGO**  
**EXHIBIT O**  
**CONSTRUCTION MANAGER'S PAYROLL RECORD FORM RE-48 (Rev. PW 1982)**  
**(1 of 2)**

PAYROLL																
Name of <u>    </u> Construction Manager & No. <u>    </u> or <u>    </u> Subcontractor & No. <u>    </u>				Project No.		Location										
Address				Project Name												
Name, Address and Social Security # of Employee	Ethnic Group	Work Classification	OT or ST	Hours and Days Worked							Total Hours	Rate of Pay	Total Earned	Deduc		
				S	M	T	W	Th	F	S				Federal WH Tax	FICA	
			S													
			O													
			S													
			O													
			S													
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			S													
			O													
			S													
			O													
Total No. Hours (Straight & Overtime) this Page																

Reviewed By: \_\_\_\_\_ No Work \_\_\_\_\_ Suspended \_\_\_\_\_ Completed \_\_\_\_\_



PUBLIC BUILDING COMMISSION OF CHICAGO

EXHIBIT P

CONSTRUCTION MANAGER'S RECAPITULATION OF MINORITY AND FEMALE WORKER HOURS AND  
(1 of 2)

CONTRACT NO. \_\_\_\_\_

CONSTRUCTION MANAGER \_\_\_\_\_

REQUEST NO. \_\_\_\_\_

JOB SITE \_\_\_\_\_

DATE \_\_\_\_\_

COMPLETE \_\_\_\_\_

	MALE JOURNEY WORKERS			MALE APPRENTICES			MA	
	Commitment %		%	Commitment %		%	Ct	
	WHITE	MINORITY	MINORITY	WHITE	MINORITY	MINORITY	WHITE	
TOTAL MONTH								
TOTAL TO DATE								

	FEMALE JOURNEY WORKERS		FEMALE APPRENTICES		FEM		
	Commitment %		%	Commitment %		%	Ct
	FEMALE	FEMALE	FEMALE	FEMALE	FEMALE		
TOTAL MONTH							
TOTAL TO DATE							

CITY RESIDENCY REQUIREMENTS:

	ALL JOURNEY WORKERS AND APPRENTICES		ALL LABORERS		ALL JOURNEY WORKERS	AI
	Requirement 50%		Requirement 50%			
	CITY RESIDENCY	PERCENT	CITY RESIDENCY	PERCENT		
TOTAL MONTH						
TOTAL TO DATE						

**PUBLIC BUILDING COMMISSION OF CHICAGO**

---

**CONSTRUCTION MANAGER'S SIGNATURE**



PUBLIC BUILDING COMMISSION OF CHICAGO

EXHIBIT P (2 of 2)

CONSTRUCTION MANAGER'S MONTHLY BREAKDOWN OF MALE WORKER HOURS BY ETHNIC

ETHNIC GROUP	MALE JOURNEY WORKERS		MALE APPRENTICES			
	CITY	NON CITY	CITY	NON CITY	CIT	
	WHITE					
BLACK (AFRICAN AMERICAN)						
HISPANIC						
ASIAN/PACIFIC						
NATIVE AMERICAN						
OTHER						
TOTAL						

CONSTRUCTION MANAGER'S MONTHLY BREAKDOWN OF FEMALE WORKER HOURS BY ETHNIC G

ETHNIC GROUP	FEMALE JOURNEY WORKERS		FEMALE APPRENTICES		F	
	CITY	NON CITY	CITY	NON CITY	CIT	
	WHITE					
BLACK (AFRICAN AMERICAN)						
HISPANIC						
ASIAN/PACIFIC						
NATIVE AMERICAN						
OTHER						
TOTAL						

PUBLIC BUILDING COMMISSION OF CHICAGO

EXHIBIT Q  
REQUEST FOR SUBSTITUTION FORM

(1 of 3)

To: Public Building Commission of Chicago

From:

Name of Construction Manager \_\_\_\_\_

Street Address \_\_\_\_\_

City, State and Zip \_\_\_\_\_

Phone and Facsimile Number \_\_\_\_\_

Name of Person to Contact \_\_\_\_\_

Project:

Name of Project \_\_\_\_\_

Location of Project \_\_\_\_\_

City, State and Zip \_\_\_\_\_

Project Number \_\_\_\_\_

1. Specification Section and Paragraph Numbers of Product specified:

\_\_\_\_\_

\_\_\_\_\_

2. Proposed Substitute:

A. Name and Model Number:

\_\_\_\_\_

B. Description:

\_\_\_\_\_

\_\_\_\_\_

C. Attach applicable submittals as required by the referenced specification section (*i.e.*, product data, materials list, shop drawings, samples, design data, test reports, and certificates). Attach shop drawings, to show the effect of the proposed substitution on adjacent components of the work.

D. Insert numbers of applicable reference standards:

\_\_\_\_\_

E. Attach a color chart, if applicable.

F. Attach installation instructions.

**PUBLIC BUILDING COMMISSION OF CHICAGO**

**EXHIBIT Q**

**REQUEST FOR SUBSTITUTION FORM (2 of 3)**

3. **Manufacturer's Reputation:** Attach the following:
  - A. Evidence of reputation for prompt delivery in the form of references.
  - B. Evidence of reputation for efficiency in servicing products in the form of references.
4. **Comparison:** Attach an itemized comparison of the proposed substitution with product specified.
5. **Changes in Work:** Attach data relating to changes required in other work to permit use of proposed substitution and changes required in construction schedule.
6. **Cost Data:** Attach accurate cost data on proposed substitution in comparison with product specified.
7. **Previous Installation:** Provide the following information on similar projects on which proposed substitution was used. List projects in the locale of the Project primarily and then in other areas that best represent its application on this Project:

Name and Address of Project	Date of Installation	Name, Address, and Phone Number of Architect
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

8. In making a request for substitution the manufacturer, the installer and the Construction Manager each represents that:
  - A. It has examined the drawings and specifications and has determined that, to the best of his knowledge, the proposed substitution is appropriate for the use intended in the drawings and specifications.
  - B. It shall provide the same or better warranty for substitution as for product or method specified.
  - C. The product is equal or better in quality and serviceability to the specified item.
9. In making a request for substitution installer and the Construction Manager each represents that:
  - A. It shall coordinate the installation of accepted substitution into the Work, making such changes as may be required for the Work to be complete.
  - B. It waive claims for additional costs related to substitution which consequently become apparent.
  - C. Costs data is complete and includes related costs under the Contract, but excludes costs under separate contract and the Architect's redesign costs.



**PUBLIC BUILDING COMMISSION OF CHICAGO**  
**EXHIBIT R**  
**STATUS REPORT OF MBE/WBE (SUB) CONTRACT PAYMENTS**  
**(1 of 2)**

Name of Project \_\_\_\_\_ Contract Number \_\_\_\_\_  
 Monthly Estimate No. \_\_\_\_\_ PBCC Project No. \_\_\_\_\_  
 Date \_\_\_\_\_

STATE OF ILLINOIS }  
 } SS  
 COUNTY OF COOK }

In connection with the above-captioned contract:

I HEREBY DECLARE AND AFFIRM that I

\_\_\_\_\_  
 (Name of Affiant)  
 am the

\_\_\_\_\_  
 (Title) \_\_\_\_\_ and duly authorized representative of

\_\_\_\_\_  
 (Name of Company)  
 whose address is

and that the following Minority and Women Business Enterprises have been contracted with, and have furnished, or are furnishing and preparing materials for, and have done or are doing labor on the above-captioned contract; that there is due and to become due them, respectively, the amounts set opposite their names for materials or labor as stated; and that this is a full, true, and complete statement of all such MBEs/WBEs and of the amounts paid, due, and to become due to them:

MBE/WBE Name	Contract For	Amount of Contract	Total Previous Requests	Amount This Request	Balance to Complete
<b>TOTALS</b>					

**PUBLIC BUILDING COMMISSION OF CHICAGO**  
**EXHIBIT R**  
**STATUS REPORT OF MBE/WBE (SUB) CONTRACT PAYMENTS (2 of 2)**

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THE FOREGOING DOCUMENT ARE TRUE AND CORRECT, AND THAT I AM AUTHORIZED, ON BEHALF OF THE ABOVE FIRM, TO MAKE THIS AFFIDAVIT.

\_\_\_\_\_  
(Affiant)

\_\_\_\_\_  
(Date)

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

before me, \_\_\_\_\_, the undersigned officer, personally appeared \_\_\_\_\_, known to me to be the person described in the foregoing Affidavit and acknowledged that he (she) executed the same in the capacity therein stated and for the purposes therein contained.

In witness thereof, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public  
Commission Expires \_\_\_\_\_

(Seal)

**PUBLIC BUILDING COMMISSION OF CHICAGO  
EXHIBIT S  
CERTIFICATE OF ARCHITECT - ENGINEER**

Date: \_\_\_\_\_  
Project \_\_\_\_\_

To: Public Building Commission of Chicago

In accordance with Resolution No. \_\_\_\_\_, adopted by the Public Building Commission of Chicago on \_\_\_\_\_, relating to the \$ \_\_\_\_\_ Revenue Bonds issued by the Public Building Commission of Chicago for the financing of this project (and all terms used herein shall have the same meaning as in said Resolution), I hereby certify to the Commission and to its Trustee, that:

1. Obligations in the amounts stated herein have been incurred by the Commission and that each item thereof is a proper charge against the Construction Account and has not been paid; and
2. No amount hereby approved for payment upon any contract will, when added to all amounts previously paid upon such contract, exceed 90% of current estimates approved by the Architect - Engineer until the aggregate amount of payments withheld equals 5% of the Contract Price (said retained funds being payable as set forth in said Resolution).

**THE CONSTRUCTION MANAGER:** \_\_\_\_\_

**FOR:** \_\_\_\_\_  
Is now entitled to the sum of: \_\_\_\_\_

<b>ORIGINAL CONTRACT PRICE</b>		_____
<b>ADDITIONS</b>	\$	_____
<b>DEDUCTIONS</b>	\$	_____
<b>NET ADDITION OR DEDUCTION</b>	\$	_____
<b>ADJUSTED CONTRACT PRICE</b>	\$	_____
<hr/>		
<b>TOTAL AMOUNT EARNED</b>	\$	_____
<b>TOTAL RETENTION</b>	\$	_____
a) Reserve Withheld @ 10% of Total Amount Earned, but Not to Exceed 5% of Contract Price	\$	_____
b) Liens and Other Withholding	\$	_____
c) Liquidated Damages Withheld	\$	_____
<b>TOTAL PAID TO DATE (Include this Payment)</b>	\$	_____
<b>LESS: AMOUNT PREVIOUSLY PAID</b>	\$	_____
<b>AMOUNT DUE THIS PAYMENT</b>	\$	_____

\_\_\_\_\_  
Architect - Engineer

**PUBLIC BUILDING COMMISSION OF CHICAGO**

**EXHIBIT T  
GUARANTEE FORM**

I, \_\_\_\_\_ (name) \_\_\_\_\_ of \_\_\_\_\_ (Construction  
(title) \_\_\_\_\_, herewith guarantee the (description of the work)  
Manager) \_\_\_\_\_ against defects in materials and workmanship for a period of  
\_\_\_\_\_ year(s) from (the date of final acceptance) \_\_\_\_\_ as defined in the  
Contract Documents and agree to correct any defects within this period at no cost to the Public Building  
Commission and to pay for any damages to other work resulting from the defects or the repair of the same.

Signed \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_



**PUBLIC BUILDING COMMISSION OF CHICAGO  
EXHIBIT U  
CONSTRUCTION MANAGER PROPOSAL**

**PUBLIC BUILDING COMMISSION OF CHICAGO**  
Daley Center Plaza, Room 200  
Chicago, Illinois 60602

**CONSTRUCTION MANAGER PROPOSAL**

Construction  
Manager:

Bulletin No.:

Project Name:

PBC Contract No.

Architect / Consultant:

Note: Detailed breakdown of costs for each subcontractor and each trade performed by the General Construction Manager and documentation supporting any request for time extension must be submitted with this proposal form.

**I. WORK OF SUBCONTRACTORS**

<u>Subcontractor Firm Name</u>	<u>Trade</u>	<u>Value of Work</u>	<u>6% Markup</u>	<u>Total</u>
_____	_____	\$ _____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____	\$ _____
_____	_____	\$ _____	\$ _____	\$ _____
(A) Total of Work by Subcontractors				\$ _____

**II. GENERAL CONSTRUCTION MANAGERS WORK**

<u>Description of Work</u>	<u>Value of Work</u>	<u>15% Markup</u>	<u>Total</u>
_____	\$ _____	\$ _____	\$ _____
_____	\$ _____	\$ _____	\$ _____
_____	\$ _____	\$ _____	\$ _____
_____	\$ _____	\$ _____	\$ _____
_____	\$ _____	\$ _____	\$ _____
_____	\$ _____	\$ _____	\$ _____
(B) Total of Work by General Construction Manager			\$ _____

**III. PROPOSAL**

(C) Total Cost of Work of this Bulletin (A+B)

(D) Time Extension - Additional days requested

\$ \_\_\_\_\_  
\_\_\_\_\_ days

The Total Cost (Line C) and the Time Extension (Line D) represent all costs and additional time required to complete all aspects of the work included in this Bulletin. No additional costs or time extension related to this Bulletin will be requested by the Construction Manager.

Prepared and Submitted for Approval by:

\_\_\_\_\_  
Construction Manager

By: \_\_\_\_\_

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Date \_\_\_\_\_





Richard J. Daley Center  
50 West Washington  
Room 200  
Chicago, Illinois 60602  
(312) 744-3090  
(312) 744-8005 Fax  
www.pbcchicago.com

**BOARD OF COMMISSIONERS**

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John E. Wilson, Ltd.  
Certified Public Accountants

Secretary  
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Assistant Secretary  
JOE HARMENING

June 16, 2005

Mr. August Mitchell  
McClier Corporation  
303 East Wacker Drive, Suite #900  
Chicago, Illinois 60601

**Re: The New Kennedy-King College  
Professional Service Agreement for Construction Manager  
PBC Contract No. PS803  
Notice to Proceed #1 (NTP1)**

Dear Mr. Mitchell:

Pursuant to Professional Service Agreement No. #PS803, which was authorized by the Public Building Commission (PBC) on April 12, 2005, and executed on June 15, 2005, McClier Corporation (McClier) is hereby notified that the commencement date for the New Kennedy-King project is June 16, 2005.

Under this Agreement, all construction work, except for punch list work, is to be completed by June 24, 2007, which is 738 consecutive calendar days after the commencement date. The date for Full Certificates of Occupancy for all six buildings is established as June 25, 2007. The Final Acceptance date for the project is established as November 25, 2007. The completion date of services for this Agreement is established as December 31, 2007. The specific milestone dates for the various phases of the project are set forth in Schedule A of the Agreement.

NTP2 for the foundation scope of work and NTP3 for the superstructure scope of work will be issued upon McClier's delivery and the PBC's acceptance of the respective Guaranteed Maximum Prices in accordance with the provisions of the Agreement.



The administration and inspection of the work included in this Agreement is under the direction of the PBC. Please submit original copies of all correspondence pertaining to this work to the PBC's designated representative listed below. Please reference the Agreement No. on all correspondence.

- Mr. Ray Giderof, Project Manager  
Public Building Commission  
Richard J. Daley Center, Room #200  
50 West Washington Street  
Chicago, Illinois 60602  
Phone: 312.744.9253  
Fax: 312.744.3572

This Notice to Proceed authorizes McClier to enter upon the project site and commence with the work as stipulated in the Contract Documents.

Sincerely,

A handwritten signature in cursive script that reads "Montel M. Gayles".

Montel M. Gayles  
Executive Director

- cc:
- R. Huberman - Mayor's Office
  - W. Watson - City Colleges of Chicago
  - B. Donahue - City Colleges of Chicago
  - B. Spight - Public Building Commission
  - E. Benodin - Public Building Commission
  - R. Giderof - Public Building Commission
  - G. Hill - Public Building Commission
  - J. Hall - Public Building Commission
  - C. Lee - Kennedy King Architects, LLC.