

PUBLIC BUILDING COMMISSION OF CHICAGO

**BOOK 1
STANDARD TERMS AND CONDITIONS
FOR CONSTRUCTION CONTRACTS**

**(with Community Hiring requirement)
(Construction Management)**

Kennedy-King College Campus Project

PUBLIC BUILDING COMMISSION OF CHICAGO



**Mayor Richard M. Daley
Chairman**

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Executive Director**

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Revised January 6, 2005

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

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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. Book 2
 - 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" means, for the purpose of this Contract, _____ necessary for the effective implementation of the Project.
12. "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.
13. "Contractor" means the partnership, firm, corporation or entity entering into the Contract with the Commission to perform the Work embraced in the Contract Documents.
14. "Day" or "Days" means calendar day(s) unless otherwise specified.
15. "Drawings" are those enumerated in the Schedule of Drawings, and additional drawings and sketches, if any, incorporated into the Contract as the Work progresses.
16. "Environmental Laws" means all applicable Federal, State, and local laws, ordinances, rules, regulations, and executive orders pertaining to environmental matters.
17. "Executive Director" means the person employed by the Commission as its Executive Director or the duly authorized representative thereof.
18. "Force Majeure Event": A force majeure event shall be any act of war; act of terrorism; or natural disaster declared as such by the government of the State of Illinois or of the United States of America, but only if such act of war or terrorism, or natural disaster shall have damages or destroyed more than 25% of the value of work in place at the project on the date of the act of war or terrorism or the natural disaster.
19. "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.
20. "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.
21. "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.
22. "Local Government" or "City" means the City of Chicago, Illinois within which the Project is situated.
23. "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.

24. "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.
25. "Project" means the collective improvements to be constructed by the Construction Manager in accordance with the Contract.
26. "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.
27. "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.
28. "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.
29. "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.
30. "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.
31. "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.
32. "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.
33. "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 prior to prosecution of a portion of the Work.
34. "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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35. "User" or "User Agency" means the entity for which or on whose behalf the Commission has undertaken to cause the Work to be performed.
36. "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 prior to the date of the first Advertisement for Bids. If such specifications are revised prior to 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 User(s) identified in Book 2 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 prior to 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 prior to 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. In the event that, 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 therefrom 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) business 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 Book 2 I.D. "Time of Completion of Punch List Work" 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 five (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 in Book 2 or Book 3, 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.

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- 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.
- 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: _____

ARTICLE 4. CONTRACTOR'S OBLIGATIONS

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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 25% 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. In the event that, 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.
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.

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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 therefrom 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 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

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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. In the event that 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 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.

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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.
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

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

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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) business 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 Book 2 I.D. "Time of Completion of Punch List Work" 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 five (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 in Book 2 or Book 3, 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.
- b. All waivers of lien required by the Contract have been provided to the Commission.

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- 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

- 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,

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the Commission Representative and any additional persons named in Book 2, 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 Book 2. 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 prior to 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 Book 2 of the Contract Documents, with insurance companies authorized to do business in the State of Illinois, 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

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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 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.

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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.
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.

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

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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 in the event 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 prior to 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 shall 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.
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.

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11. Hazardous Materials

- a. In the event 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, in the event 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.
 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.

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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 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.

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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 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

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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 Book 2, Section V.AA. "Performance and Payment Bond and Insurance." The Superintendent shall be present at the Site when Construction Manager's personnel and/or Subcontractors are present.

3. Prior to 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 Book 2, Section V.AA. "Performance and Payment Bond and Insurance." 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 Book 2, Section V.AA. "Performance and Payment Bond and Insurance." 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 prior to 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 Scheduler

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
2. Prior to engaging a consultant or using staff personnel, and within five (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

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- 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 Book 2 of 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 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 prior to 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.
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.

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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 Book 2.

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 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.

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- 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.
 - (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 prior to the start of the Construction Manager's Work or portion of Work shall be included in the

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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

- a. Prior to 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.

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- 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. In the event 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 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.

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- 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. In the event that the 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.

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- 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. In the event 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.

10. Work During the Winter Suspension Period

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- 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 prior to 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. 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 relieve 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 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. In the event the Construction Manager is unreasonably and unforeseeably delayed in the commencement, prosecution, or completion of the

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Work by the causes enumerated above, the Construction Manager is permitted to make a claim for the actual, demonstrable costs incurred.

or

Should the Construction Manager or any Subcontractor 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 or Subcontractor's, as applicable, part, 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 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. In the event 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. It is expressly understood and agreed by the Construction Manager that the Construction Manager shall not be entitled to any damages on account of any delay or delays resulting from any cause whatsoever.

2. The Construction Manager must give the Commission Representative written notice of any such delay within five (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 acts of God, acts of the public enemy, fires, floods, earthquakes, epidemics, quarantine restrictions, labor strikes at the Site, freight embargoes, or weather significantly more severe than the norm according to the provisions set forth below, provided that the listed causes were not foreseeable and did not result from the fault or negligence of the Construction Manager, and provided further that the Construction Manager took reasonable precautions to prevent delays owing to such causes.
4. Unless otherwise provided in the Contract Documents, the Contract Time is based on normal weather conditions and an extension is granted for weather significantly more severe than the norm only if the Construction Manager demonstrates to the satisfaction of the Commission that any delay in the progress of the Work was due to such weather. The basis used to define normal weather will be the "normal" data as compiled by the United States Department of Commerce, National Oceanic and Atmospheric Administration in their most current report entitled "Local Climatological Data, Annual Summary with Comparative Data" for the month for which the time extension is sought. 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 shall 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."

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Section 10.04 Liquidated Damages

1. If the Work is delayed, the Construction Manager is liable for liquidated damages for every Day the Contract Completion Date or a milestone completion date that provides for liquidated damages is not achieved, provided that such delay is not the result of a justifiable cause permitted pursuant to **Section 9.04.2 “Liquidated Damages”** below. The specific amount of liquidated damages for which the Construction Manager is liable is set forth in Book 2 of this Contract.
2. The Commission will recover liquidated damages by deducting the amount thereof out of any moneys due or that may become due the Construction Manager. If said moneys are insufficient to cover said damages, the Construction Manager or its surety must pay the amount due. Nothing herein contained is construed as limiting the right of the Commission to recover from the Construction Manager any and all amounts due or to become due, and any and all costs and expenses sustained by the Commission for improper performance hereunder, repudiation of the Contract by the Construction Manager, failure to begin Work on the date of commencement or failure to perform the Work with adequate forces, equipment or materials or other resources, or breaches in any other respect, including but not limited to defective workmanship or materials. In addition to liquidated damages for failure to meet any milestones, the Construction Manager is liable to the Commission for any other damages sustained as the result of the Construction Manager’s refusal or failure to perform the Work.
3. In the event that the Commission permits the Construction Manager to continue to perform Work despite the Construction Manager’s failure to meet any milestone date set forth in the Contract Documents, such action in no way constitutes a waiver by the Commission of any rights or remedies that exist under this Contract, at law or in equity.

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

Prior to 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. Prior to 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:

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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

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

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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.
2. In the event that the Commission desires to exercise the right of partial occupancy prior to 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 prior to 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

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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.
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 prior to 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 prior to 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

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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.
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

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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 Prior to Bid Date

- a. The Architect will consider written requests for substitutions received at least ten (10) Days prior to 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

- 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