BOOK 1

DESIGN-BUILD AGREEMENT
BETWEEN

PUBLIC BUILDING COMMISSION OF CHICAGO

AND

BERGLUND CONSTRUCTION COMPANY

2013 SCHOOL INVESTMENT PROGRAM
PROJECT NUMBER 10
CONTRACT NUMBER PS1972

Mayor Rahm Emanuel
Chairman

Erin Lavin Cabonargi
Executive Director

Public Building Commission
Room 200
Richard J. Daley Center
50 West Washington Street
Chicago, Illinois 60602
312-744-3090
www.pbcchicago.com

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DESIGN-BUILD AGREEMENT BETWEEN COMMISSION AND DESIGN-BUILDER

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EXECUTION PAGE

ARTICLE 1
AGREEMENT

This Agreement is made by and between the Public Building Commission of Chicago, a municipal corporation and body politic organized and operating under the Constitution of the State of Illinois ("Commission" or "PBC") and **BERGLUND CONSTRUCTION COMPANY** ("Design-Builder") the for services in connection with the Facility Scopes of Work as set forth in Exhibit 2 – Scope and Performance Criteria, with an Effective Date listed on the Execution Page of this Design-Build Agreement for the following facilities:

18610 CARNEGIE, 18550 DULLES, 18560 DUMAS, 18190 FERMI SOUTH SHORE FA, 18820 HYDE PARK, 18950 O'KEEFE

ARTICLE 2
GENERAL PROVISIONS

2.1 RELATIONSHIP The Commission and the Design-Builder agree to proceed with the Project(s) on the basis of trust, good faith and fair dealing and shall take all actions reasonably necessary to perform this Agreement in an economical and timely manner, including consideration of design modifications and alternative materials or equipment that will permit the Scopes of Work to be constructed within the Guaranteed Maximum Price (GMP) and by the Dates of Substantial Completion and Final Completion for each Scope. The Design-Builder agrees to procure or furnish, as permitted by the laws of Illinois, the design phase services and construction phase services as set forth below.

2.1.1 The Design-Builder represents that it is an independent contractor and that it is familiar with the type of work it is undertaking.

2.2.2 Neither the Design-Builder nor any of its agents or employees shall act on behalf of or in the name of the Commission unless authorized in writing by the Commission's Representative.

2.1.3 The Commission and the Design-Builder shall perform their obligations with integrity, ensuring at a minimum that:

2.1.3.1 Conflicts of interest shall be avoided or disclosed promptly to the other Party; and

2.1.3.2 The Design-Builder and the Commission warrant that they have not and shall not pay nor receive any contingent fees or gratuities to or from the other Party, including their agents, officers and employees, Subcontractors or others for whom they may be liable, to secure preferential treatment.

2.2 ARCHITECT/ENGINEER Architectural and engineering services shall be procured from licensed, independent design professionals retained by the Design-Builder or furnished by licensed employees of the Design-Builder, as permitted by the law of the State of Illinois. The person or entity providing architectural and engineering services shall be referred to as the Architect/Engineer. If the Architect/Engineer is an independent design professional, the

architectural and engineering services shall be procured pursuant to a separate agreement between the Design-Builder and the Architect/Engineer. The Architect/Engineer for the Project is/are: **KOO & ASSOCIATES**.

2.3 EXTENT OF AGREEMENT This Agreement is solely for the benefit of the Parties, represents the entire and integrated agreement between the Parties, and supersedes all prior negotiations, representations or agreements, either written or oral. The Commission and the Design-Builder agree to look solely to each other with respect to the performance of the Agreement. The Agreement and each and every provision are for the exclusive benefit of the Commission and the Design-Builder and not for the benefit of any third party nor any third party beneficiary except to the extent expressly provided in the Agreement.

2.4 DEFINITIONS

2.4.1 The Contract Documents consist of:

a. Change Orders and written amendments to this Agreement including exhibits and appendices, signed by both the Commission and the Design-Builder;

b. this Agreement except for the existing Contract Documents set forth in item e. below;

c. the most current documents approved by the Commission pursuant to Subparagraph 3.1.2

d. the information provided by the Commission pursuant to Clause 4.1.2.1;

e. the Contract documents in existence at the time of execution of this Agreement which are set forth in Article 15; and

f. the Commission's Program provided pursuant to Subparagraph 4.1.1.

In case of any inconsistency, conflict or ambiguity among the Contract Documents, the documents shall govern in the order in which they are listed above; further, Book 1 will govern over Book 2 and Book 2A, and Book 2 Shall govern over Book 2A.

2.4.2 The term Day shall mean calendar day, unless otherwise specifically defined.

2.4.3 Design-Builder's Fee means the compensation paid to the Design-Builder for its profit.

2.4.4 Defective Work is any portion of the Work not in conformance with the Contract Documents as more fully described in Article 3.

2.4.5 The term fast-track means accelerated scheduling which involves commencing construction prior to the completion of drawings and specifications and then using means such as bid packages and efficient coordination to compress the overall schedule.

2.4.6 Final Completion occurs on the date when the Design-Builder's obligations under this Agreement are complete and accepted by the Commission and the final payment becomes due and payable.

2.4.7 A Material Supplier is a party or entity retained by the Design-Builder to provide material and equipment for the Work.

2.4.8 Others means other contractors and all persons at the Worksite who are not employed by Design-Builder, its Subcontractors or Material Suppliers.

2.4.9 The term Overhead shall have the meaning set forth in Section 8.2.9 below.

2.4.9.1 The Commission is the person or entity identified as such in this Agreement and includes the Commission's Representative.

2.4.10 The Commission's Program is an initial description of the Commission's objectives, that may include budget and time criteria, space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.

2.4.11 The Project as identified in Article 1, is the building(s), facility(ies) or other improvements for which the Design-Builder is to perform the Work under this Agreement. It may also include improvements to be undertaken by the Commission or Others.

2.4.12 A Subcontractor is a party or entity retained by the Design-Builder as an independent contractor to provide the onsite labor, materials, equipment or services necessary to complete a specific portion of the work. The term Subcontractor does not include the Architect/Engineer or any separate contractor employed by the Commission or any separate contractor's subcontractor.

2.4.13 Substantial Completion of the Work, or of a designated portion of the Work, occurs on the date when the Design-Builder's obligations are sufficiently complete in accordance with the Contract Documents so that the Commission may occupy or utilize the Project, or a designated portion, for the use for which it is intended, in accordance with Section 3.06 of Book 2. The issuance of a Certificate of Occupancy is not a prerequisite for Substantial Completion if the Certificate of Occupancy cannot be obtained due to factors beyond the Design-Builder's control. This date shall be confirmed by a Certificate of Substantial Completion signed by the Commission and the Design-Builder. The Certificate shall state the respective responsibilities of the Commission and the Design-Builder for security, maintenance, heat, utilities, or damage to the Work, and insurance. The Certificate shall also list the items to be completed or corrected, and establish the time for their completion and correction, within the time frame, if any, established for the Date of Final Completion.

2.4.14 A Sub-subcontractor is a party or entity who has an agreement with a Subcontractor to perform any portion of the Subcontractor's work.

2.4.15 Terrorism means a violent act, or an act that is dangerous to human life, property or infrastructure, that is committed by an individual or individuals and that appears to be part of an effort to coerce a civilian population or to influence the policy or affect the

conduct of any government by coercion. Terrorism includes but is not limited to, any act certified by the United States Secretary of Treasury as an act of terrorism pursuant to the Terrorism Risk Insurance Act, as amended.

2.4.16 The Work is the Design Phase services procured or furnished in accordance with Paragraph 3.1, the GMP Proposal provided in accordance with Paragraph 3.2, the Construction Phase services provided in Paragraph 3.3, additional services that may be provided in accordance with Paragraph 3.10, and other services which are necessary to complete the Project in accordance with and reasonably inferable from the Contract Documents.

2.4.17 Deliverables are any and all documents, including but not limited to plans, specifications, drawings, and reports prepared by the Design-Builder in the performance of the Work.

2.4.18 Worksite means the geographic area at the location(s) mentioned in Article 1 where the Work is to be performed.

2.4.19 User Agency means the unit of local government on the behalf of which the Commission is undertaking the design and construction of the Project.

ARTICLE 3

DESIGN-BUILDER'S RESPONSIBILITIES

The Design-Builder shall be responsible for procuring or furnishing the design and for the construction of the Work consistent with the Commission's Program, as such Program may be modified by the Commission during the course of the Work. The Design-Builder shall exercise reasonable skill and judgment in the performance of its services consistent with the team relationship described in Paragraph 2.1, but does not warrant nor guarantee schedules and estimates other than those that are part of the GMP proposal. The Design-Builder shall at all times comply in letter and spirit with, and demonstrate good faith efforts to achieve, the affirmative action goals of the Commission and its User Agency, as those goals may be set forth in the MBE/WBE Special Conditions for Design Build Contracts, Book 2, Article 23, attached hereto and incorporated by reference herein, and in any other terms and provisions of this Agreement.

3.1 DESIGN PHASE SERVICES. In addition to the Design Phase Services set forth below, the Design-Builder shall provide those design services specified in Exhibit 1 - Design Builder Design Services, attached hereto and incorporated by reference herein.

3.1.2 CONSTRUCTION DOCUMENTS The Design-Builder shall submit for the Commission's written approval Construction Documents based on the approved Scope and Performance Criteria Documents. The Construction Documents shall set forth in detail the requirements for construction of the Work, and shall consist of drawings and specifications based upon codes, laws and regulations enacted at the time of their preparation. When the Design-Builder submits the Construction Documents, the Design-Builder shall identify in writing all material changes and deviations that have taken place from the Scope and Performance Criteria Documents. Construction shall be in accordance with these approved Construction Documents. One set of these documents shall be furnished to the Commission prior to commencement of construction; provided, however, that in the event that the Commission decides, in its sole option and opinion, to fast-track the Work, or any portion thereof, the Design-Builder

shall proceed to perform such fast-track Work regardless of the status of the Construction Documents. The Commission will identify fast-track Work in its Notice-to-Proceed to the Design-Builder. The Design-Builder shall provide a final GMP for each Scope of Work and a final update of the schedule with the Construction Documents for each Scope of Work.

3.1.3 OWNERSHIP OF DOCUMENTS

3.1.3.1 OWNERSHIP OF DRAWINGS AND DOCUMENTS All Deliverables, data, findings or information in any form prepared, assembled or encountered by or provided to Design-Builder under this Agreement are property of the Commission, including all copyrights inherent in them or their preparation. During performance of the Work, Design-Builder is responsible for any loss or damage to the Deliverables, data, findings or information while in Design-Builder's or any Subcontractor's possession. Any such lost or damaged Deliverables, data, findings or information must be restored at the expense of the Design-Builder. If not restorable, Design-Builder must bear the cost of replacement and of any loss suffered by the Commission.

3.1.3.2 COPYRIGHT Design-Builder and the Commission agree that, to the extent permitted by law, the Deliverables to be produced by Design-Builder at the Commission's instance and expense under this Agreement are conclusively considered "works made for hire" within the meaning and purview of Section 101 of the United States Copyright Act, 17 U.S.C. §101 *et seq.*, and that the Commission will be the sole copyright owner of the Deliverables and of all aspects, elements and components of them in which copyright can subsist, and of all rights to apply for copyright registration or prosecute any claim of infringement.

To the extent that any Deliverable does not qualify as a "work made for hire," Design-Builder hereby irrevocably grants, conveys, bargains, sells, assigns, transfers and delivers to the Commission, its successors and assigns, all right, title and interest in and to the copyrights and all U.S. and foreign copyright registrations, copyright applications and copyright renewals for them, and other intangible, intellectual property embodied in or pertaining to the Deliverables prepared for the Commission under this Agreement, and all goodwill relating to them, free and clear of any liens, claims, or other encumbrances, to the fullest extent permitted by law. Design-Builder will, and will cause all of its subconsultants and Subcontractors, employees, agents and other persons within its control to execute all documents and perform all acts that the Commission may reasonably request in order to assist the Commission in perfecting its rights in and to the copyrights relating to the Deliverables, at the sole expense of the Commission. Design-Builder warrants to the Commission, its successors and assigns, that on the date of transfer Design-Builder is the lawful owner of good and marketable title in and to the copyrights for the Deliverables and has the legal rights to fully assign them. Design-Builder further warrants that it has not assigned and will not assign any copyrights and that it has not granted and will not grant any licenses, exclusive or non-exclusive, to any other party, and that it is not a party to any other agreements or subject to any other restrictions with respect to the Deliverables. Design-Builder warrants and represents that the Deliverables are complete, entire and comprehensive, and that the Deliverables constitute a work of original authorship.

3.1.3.3 USE OF DOCUMENTS IN EVENT OF TERMINATION In the event of a termination of this Agreement pursuant to Article 12, the Commission shall have the right to use, to reproduce, and to made derivative works of the Documents to complete the Project, regardless of whether there has been a transfer of copyright under Subparagraph 3.1.3.2, provided payment has been made pursuant to the Contract Documents. The Commission's use of the Documents without the Design-Builder's involvement is at the Commission's sole risk, except for the Design-Builder's indemnification obligations pursuant to Article 11.

3.1.3.4 COMMISSION'S USE OF DOCUMENTS AFTER COMPLETION OF PROJECT After completion of the Project, the Commission may reuse, reproduce or make derivative works from the Documents solely for the purposes of maintaining, renovating, remodeling or expanding the Project at the Worksite. The Commission's use of the Documents without the Design-Builder's involvement or on other projects is at the Commission' sole risk, except for the Design-Builder's indemnification obligations pursuant to Article 11.

3.1.3.5 DESIGN-BUILDER'S USE OF DOCUMENTS Where the Design-Builder has transferred its copyright interest in the Documents under Subparagraph 3.1.3.2, the Design-Builder may reuse Documents prepared by it pursuant to this Agreement in its practice, but only in their separate constituent parts and not as a whole.

3.1.3.6 The Design-Builder shall obtain from its Architect/Engineer, Subcontractors and consultants rights and rights of use that correspond to the rights given by the Design-Builder to the Commission in this Agreement, and the Design-Builder shall provide evidence that such rights have been secured.

3.2 GUARANTEED MAXIMUM PRICE ("GMP")

3.2.1 GMP PROPOSAL The GMP shall be the sum of the ~~estimated~~ Cost of the Work for each Scope of Work as defined in Article 8 and the Design-Builder's Fee as defined in Article 7. The GMP is subject to modification as provided in Article 9. The Design-Builder does not guarantee any specific line item provided as part of the GMP, but agrees that it will be responsible for paying all costs of completing the Work which exceed the GMP as adjusted in accordance with this Agreement.

The Commission and the Design-Builder may agree that: (i) elements of the Work may be performed by sub-contractors pursuant to lump sum sub-contracts, and (ii) the Cost of the Work may itself become a lump sum. Sub-contracts may only be lump sum with the agreement of the Commission. For each approved lump sum sub-contracts, the Design-Builder agrees that the Work included in each sub-contract shall be completed by the Design-Builder for the lump sum price of that sub-contract, which lump sum may only be increased by approval of the Commission and an amendment to this Agreement.

3.2.2 BASIS OF GUARANTEED MAXIMUM PRICE The Design-Builder shall include with the GMP Proposal a written statement of its basis, which shall include:

3.2.2.1 a list of the drawings and specifications, including all addenda, which were used in preparation of the GMP Proposal;

3.2.2.2 a list of allowances and a statement of their basis;

3.2.2.3 a list of the assumptions and clarifications made by the Design-Builder in the preparation of the GMP Proposal to supplement the information contained in the drawings and specifications issued as part of the RFP;

3.2.2.4 the Date of Substantial Completion and the Date of Final Completion upon which the proposed GMP is based, and the Schedule of Work upon which the Date of Substantial Completion or the Date of Final Completion is based;

3.2.2.5 a schedule of applicable alternate prices;

3.2.2.6 a schedule of applicable unit prices;

3.2.2.7 Design-Builder's Lump Sum its General Conditions (i.e., Design-Builder's project staff) and an estimate/budget for its Requirements (i.e., overhead direct costs and expenses).

3.2.2.8 a statement of Additional Services included, if any,

3.2.2.9 the Design-Builder's Contingency as provided in Subparagraph 3.2.3;

3.2.2.10 a statement of any work to be self-performed by the Design-Builder; and

3.2.2.11 a statement identifying all patented or copyrighted materials, methods or systems selected by the Design-Builder and incorporated in the Work that are likely to require the payment of royalties or license fees.

3.2.3 DESIGN-BUILDER'S CONTINGENCY The GMP will contain, as part of the estimated Cost of the Work, the Design-Builder's Contingency, a sum mutually agreed upon and monitored by the Design-Builder and the Commission to cover costs which are properly reimbursable as a Cost of the Work but are not the basis for a Change Order. The Design-Builder's Contingency shall not exceed three and one-half percent (3.5%) of the Cost of the Work. The Design-Builder's Contingency shall not be used for changes in scope or for any item that would be the basis for an increase in the GMP. The Design-Builder shall provide the Commission with: (i) prompt notice of its intent to use the Design-Builder's Contingency and (ii) an accounting of charges against the Design-Builder's Contingency.

3.2.4 [reserved]

3.2.5 COST REPORTING The Design-Builder shall keep such full and detailed accounts on a per facility basis as are necessary for proper financial management under this Agreement. The Design-Builder shall maintain a complete set of all books and records prepared or used by the Design-Builder with respect to the Project. The Design-Builder's records supporting its performance and billings under this Agreement shall be current, complete and accurate and maintained according to generally accepted accounting principles for each facility included within the Project. The Commission shall be afforded reasonable access during normal business hours to all the Design-Builder's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda

and similar data relating to this Agreement. The Design-Builder shall present all such records for a period of five years after the final payment or longer where required by law.

3.3. CONSTRUCTION PHASE SERVICES

3.3.1 The Construction Phase of each Scope of Work will commence upon the issuance by the Commission of a written notice to proceed with construction (NTP).

3.3.2 The Design-Builder shall procure or provide the Construction Phase Services including, without limitation, all necessary construction supervision, inspection, construction equipment, labor, materials, tools and subcontracted items necessary to complete the Work and the Project in accordance with the terms and conditions of this Contract.

3.3.3 The Design-Builder shall give all notices and comply with all laws and ordinances legally enacted at the date of execution of the Agreement which govern the proper performance of the Work.

3.3.4 The Design-Builder shall obtain the building permits necessary for the construction of the Project.

3.3.5 The Design-Builder shall provide periodic written reports to the Commission on the progress of the Work in such detail as is required by the Commission and as agreed to by the Commission and the Design-Builder.

3.3.6 The Design-Builder shall develop a system of cost reporting for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes in the Work. The reports shall be acceptable in form to the Commission and presented to the Commission at mutually agreeable intervals, but no less frequently than weekly during the performance of the Construction Phase Services.

3.3.7 The Design-Builder shall regularly remove debris and waste materials at each Worksite resulting from the Work. Prior to discontinuing Work in an area, the Design-Builder shall clean the area and remove all rubbish and its construction equipment, tools, machinery, waste and surplus materials. The Design-Builder shall minimize and confine dust and debris resulting from construction activities. At the completion of the Work, the Design-Builder shall remove from the Worksite all construction equipment, tools, surplus materials, waste materials and debris.

3.3.8 The Design-Builder shall prepare and submit to the Commission final marked-up as built drawings and updated electronic data in general documenting how the various elements of the Work including changes were actually constructed or installed, or as defined by the Parties by attachment to the Agreement.

3.4 CONSTRUCTION MEANS AND METHODS Design-Builder is solely responsible for the means, methods, techniques, sequences and procedures of the Construction Phase Services within the parameters set forth by this Agreement. Nothing in this Section 3.4 shall be deemed to limit the Design-Builder's obligations to provide the

Commission access to all Work as provided in other Sections of this Agreement, nor shall the Commission's observation of the Work be construed to relieve the Design-Builder of its obligation to correct defective Work if defects are discovered after an observation.

3.5 SCHEDULE OF THE WORK The Design-Builder shall prepare and submit a Schedule of Work for the Commission's acceptance and written approval as to milestone dates and activities pursuant to Article 10 of Book 2. This schedule shall indicate the dates for the start and completion of the various stages of the Work, including the dates when information and approvals are required from the Commission. The Schedule shall be revised as required by the conditions of the Work and as agreed upon by the Parties and as otherwise provided in Article 10 of Book 2.

3.6 SAFETY OF PERSONS AND PROPERTY

3.6.1 SAFETY PRECAUTIONS AND PROGRAMS The Design-Builder shall have overall responsibility for safety precautions and programs in the performance of the Work. While the provisions of this Paragraph establish the responsibility for safety between the Commission and the Design Builder, they do not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with the provisions of applicable laws and regulations.

3.6.2 The Design-Builder shall seek to avoid injury, loss or damage to persons or property by taking reasonable steps to protect:

3.6.2.1 its employees and other persons at the Worksite;

3.6.2.2 materials, supplies and equipment stored at the Worksite for use in performance of the Work; and

3.6.2.3 the Project and all property located at the Worksite and adjacent to work areas, whether or not said property or structures are part of the Project or involved in the Work.

3.6.3 DESIGN-BUILDER'S SAFETY REPRESENTATIVE The Design-Builder shall designate an individual at the Worksite in the employ of the Design-Builder who shall act as the Design-Builder's designated safety representative with a duty to prevent accidents. The Design-Builder will report immediately in writing all accidents and injuries occurring at the Worksite to the Commission. When the Design-Builder is required to file an accident report with a public authority, the Design-Builder shall furnish a copy of the report to the Commission.

3.6.4 The Design-Builder shall provide the Commission with copies of all notices required of the Design-Builder by law or regulation. The Design-Builder's safety program shall comply with the requirements of all governmental authorities having jurisdiction over the Work.

3.6.5 Damage or loss not insured under property insurance which may arise from the performance of the Work, to the extent of the negligence attributed to such acts or omissions of the Design-Builder, or anyone for whose acts the Design-Builder may be

liable, or any third party, shall be promptly remedied by the Design-Builder. Damage or loss attributable to the acts or omissions of the Commission and not to the Design-Builder shall be promptly remedied by the Commission; provided, however, that the Commission may direct the Design-Builder to remedy such damage or loss, and the Commission shall pay for such remedy as a Cost of the Work.

3.6.6 If the Commission deems any part of the Work or Worksite unsafe, the Commission, without assuming responsibility for the Design-Builder's safety program, may require the Design-Builder to stop performance of the Work or take corrective measures satisfactory to the Commission, or both. If the Design-Builder does not adopt corrective measures, the Commission may perform them and reduce by the costs of the corrective measures the amount of the GMP, or in the absence of a GMP, the Cost of the Work as provided in Article 8. The Design-Builder agrees to make no claim for damages, for an increase in the GMP, compensation for Design Phase services, the Design-Builder's Fee or the Date of Substantial Completion or the Date of Final Completion based on the Design-Builder's compliance with the Commission's reasonable request.

3.7 HAZARDOUS MATERIALS

3.7.1 A Hazardous Material is any substance or material identified as hazardous under any federal, state or local law or regulation, or any other substance or material which may be considered hazardous or otherwise subject to statutory or regulatory requirements governing handling, disposal or clean-up. The Design-Builder shall not be obligated to commence or continue work until all Hazardous Material discovered at the Worksite has been removed, rendered or determined to be harmless by the Commission as certified by an independent testing laboratory approved by the appropriate government agency.

3.7.2. If after the commencement of the Work, Hazardous Material is discovered at the Project, the Design-Builder shall (i) stop Work in the affected area (ii) report the condition to the Commission and the government agency with jurisdiction, as required, immediately, and (iii) proceed to remediate the Hazardous Material in accordance with this Agreement and the law.

3.7.3 The Design-Builder shall be responsible for retaining an independent testing laboratory to determine the nature of the material encountered and whether it is a Hazardous Material requiring corrective measures or remedial action. Such measures shall be the sole responsibility of the Design-Builder. The Design-Builder shall resume Work in the area affected by any Hazardous Material only after the Hazardous Material has been removed or rendered harmless and only after approval, if necessary, of the governmental agency or agencies with jurisdiction.

3.7.4 If the Design-Builder incurs additional costs or is delayed due to the presence or remediation of Hazardous Material, the Design-Builder shall be entitled to an equitable adjustment in the GMP, compensation for Design Phase services, the Design-Builder's Fee.

3.7.5 Material Safety Data (MSD) sheets as required by law and pertaining to materials or substances used or consumed in the performance of the Work, whether obtained by the Design-Builder, Subcontractors, the Commission or Others, shall be maintained at

the Project by the Design-Builder and made available to the Commission and Subcontractors.

3.7.6 During the Design-Builder's performance of the Work, the Design-Builder shall be responsible for the proper handling of all materials brought to the Worksite by the Design-Builder. Upon issuance of the Certificate of Substantial Completion, the Commission shall be responsible under this Paragraph for materials and substances brought to the site by the Design-Builder if such materials or substances are required by the Contract Documents.

3.7.7 The terms of this Paragraph 3.7 shall survive the completion of the Work under this Agreement or any termination of this Agreement.

3.8 WARRANTIES AND COMPLETION

3.8.1 The Design-Builder warrants that all materials and equipment furnished under the Construction Phase of this Agreement will be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. Warranties shall commence on the Date of Substantial Completion of the Work. The Design-Builder agrees to correct all construction performed under this Agreement which is defective in workmanship or materials within a period of one year from the Date of Substantial Completion or for such longer periods of time as may be set forth with respect to specific warranties required by the Contract Documents.

3.8.2 To the extent products, equipment, systems or materials incorporated in the Work are specified and purchased by the Commission, they shall be covered exclusively by the warranty of the manufacturer. There are no warranties which extend beyond the description on the face of any such warranty. The Design-Builder shall assist the Commission in pursuing warranty claims. ALL OTHER WARRANTIES EXPRESSED OR IMPLIED INCLUDING THE WARRANTY OF MERCHANTABILITY AND THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY DISCLAIMED.

3.8.3 The Design-Builder shall secure any and all required certificates of inspection, testing or approval and deliver them to the Commission.

3.8.4 The Design-Builder shall collect all written warranties and equipment manuals and deliver them to the Commission in a format directed by the Commission.

3.8.5 The Design-Builder shall direct the commissioning checkout of utilities and start-up operations, and adjusting and balancing of systems and equipment for readiness.

3.9 CONFIDENTIALITY The Design-Builder shall treat as confidential and not disclose to third persons, except Subcontractors, Sub-subcontractors and the Architect/Engineer as is necessary for the performance of the Work, or use for its own benefit any of the Commission's developments, confidential information, know-how, discoveries, production methods and the like that may be disclosed to the Design-Builder or which the Design-Builder may acquire in connection with the Work. The Commission shall treat as confidential information all of the Design-Builder's estimating systems and historical and parameter cost data that may be disclosed to the Commission in connection with the performance of this Agreement. The

Commission and the Design-Builder shall each specify those items to be treated as confidential and shall mark them as "Confidential." Notwithstanding the foregoing, the Parties acknowledge and agree that the Commission is a unit of local government, and as such is subject to Freedom of Information Act, 5 ILCS 140/1 *et seq.*

Design-Builder will not issue any publicity, news releases or grant press interviews, and, except as may be required by law during or after the performance of this Agreement, disseminate any information regarding its Work or the Project to which the Work pertains without the prior written consent of the Commission.

If Design-Builder is presented with a request for documents by any administrative agency, or with a *subpœna duces tecum* regarding any records, data or documents which may be in Design-Builder's possession by reason of this Agreement, Design-Builder shall immediately give notice to the Commission and its legal counsel with the understanding that the Commission will have the opportunity to contest such process by any means available to it before the records or documents are released to a court or other third party. Design-Builder is not, however, obligated to withhold the delivery beyond the time ordered by the court or administrative agency unless the *subpœna* or request is quashed, or the time to produce is otherwise extended.

3.10 ADDITIONAL SERVICES The Design-Builder shall provide or procure the following Additional Services upon the request of the Commission. A written amendment to this Agreement between the Commission and the Design-Builder shall define the extent of such Additional services before they are performed by the Design-Builder. If a GMP has been established for the Work or any portion of the Work, such Additional services shall be considered a change in the Work.

3.10.1 Development of the Commission's Program, establishing the Project budget, investigating sources of financing, general business planning and other information and documentation as may be required to establish the feasibility of the Project.

3.10.2 Surveys, site evaluations, legal descriptions and aerial photographs.

3.10.3 Appraisals of existing equipment, existing properties, new equipment and developed properties.

3.10.4 Soils, subsurface and environmental studies, reports and investigations required for submission to governmental authorities or others having jurisdiction over the Project.

3.10.5 Consultations and representations before governmental authorities or others having jurisdiction over the Project other than normal assistance in securing building permits.

3.10.6 Investigation or making measured drawings of existing conditions or the reasonably required verification of Commission-provided drawings and information.

3.10.7 Artistic renderings, models and mockups of the Project or any part of the Project or the Work.

3.10.8 Making revisions to the, Design Development or Construction Documents or documents forming the basis of the GMP after they have been approved by the Commission, and which are due to causes beyond the control of the Design-Builder.

Causes beyond the control of the Design-Builder do not include acts or omissions on the part of Subcontractors, Material Suppliers, Sub-subcontractors or the Architect/Engineer.

3.10.9 Design, coordination, management, expediting and other services supporting the procurement of materials to be obtained or work to be performed, by the Commission, including not limited to telephone systems, computer wiring networks, sound systems, alarms, security systems and other specialty systems which are not a part of the Work.

3.10.10 Estimates, proposals, appraisals, consultations, negotiations and services in connection with the repair or replacement of an insured loss, provided such repair or replacement did not result from the negligence of the Design-Builder.

3.10.11 Out-of-town travel by the Architect/Engineer in connection with the Work, except between the Architect/Engineer's office, the Design-Builder's office, the Commission's office and the Worksite.

3.10.12 Obtaining service contractors and training maintenance personnel, assisting and consulting in the use of systems and equipment after the initial start-up.

3.10.13 Services for tenant or rental spaces not a part of this Agreement.

3.10.14 Services requested by the Commission or required by the Work which are not specified in the Contract Documents and which are not normally part of generally accepted design and construction practice.

3.10.15 Serving or preparing to serve as an expert witness in connection with any proceeding, legal or otherwise, regarding the Project.

3.10.16 Providing services relating to Hazardous Material discovered at the Worksite.

3.10.17 Other services as agreed to by the Parties.

3.11 STANDARD OF CARE

3.11.1 Design-Builder shall perform all services required by this Agreement with that degree of skill, care and diligence consistent with the professional standards prevailing in the Chicago metropolitan area for services of comparable scope and magnitude.

3.11.2 Design-Builder is and remains responsible for the professional and technical accuracy of all services or Deliverables furnished, whether by Design-Builder, the Architect Engineer, or others on its or their behalf. All Deliverables must be prepared in a form and content satisfactory to the Commission and delivered in a timely manner consistent with the requirements of this Agreement. Subsequent editions of design Deliverables, including drawings and specifications, shall supersede earlier editions, provided that any items that have changed on the design Deliverables are explicitly noted. Subsequent design Deliverables shall represent further development of the design Deliverables and shall not change or omit previously approved features or elements unless such differences or deviations are: (i) explicitly noted and identified in writing on the Deliverable, and (ii) expressly and unambiguously accepted by the Commission in writing. The Commission's inadvertent approval of a design Deliverable

that contains an unapproved difference or deviation from any requirement of this Agreement shall not be construed as a waiver of such requirement.

3.11.3 Design-Builder shall, consistent with the Illinois Architecture Practice Act of 1989, 225 ILCS 305 *et seq.*, and other applicable state licensing laws, provide through qualified, licensed design professionals employed by Design-Builder, or procured from qualified independent licensed design professionals, the necessary design services, including architectural, engineering and other design professional services, for the preparation of the required drawings, specifications and other design submittals to permit Design Builder to complete the Work consistent with the Contract Documents. Design-Builder must assure that all services that require the exercise of professional skills or judgment are accomplished by professionals qualified and competent in the applicable discipline and appropriately licensed, if required by law. Design-Builder must provide copies of any such licenses.

3.11.4 Any or all agreements between the Design-Builder and the Architect Engineer shall provide that the Commission is a third party beneficiary of such agreement, and shall provide further that the Commission shall have a direct right and cause of action against the Architect Engineer for any error or omission by the Architect Engineer in the performance of the Design Services for and in furtherance of the Work.

3.12 PROJECT PROCEDURES The Commission has developed certain procedures with regard to procurement, construction management, project controls, project management, safety and design for the duration of the Project. The Project Procedures as set forth in Book 2A of this Agreement are material terms of this Agreement. It is the intent of the Parties and this Agreement that the approved Project Procedures are solely for the purpose of adding additional and explanatory detail to the requirements of this Agreement. In the event of a contradiction or inconsistency, the provisions of the Contract Documents take precedence over an approved Project Procedure. In no event shall approved Project Procedures be interpreted to diminish Design-Builder's duties or obligations under this Agreement, or to impose additional duties or liabilities not otherwise set forth in this Agreement upon the Commission.

3.13 DESIGN-BUILDER'S STAFFING/KEY PERSONNEL

3.13.1 STAFFING Immediately upon execution of this Agreement, Design-Builder will assign and maintain throughout the term of the Agreement an adequate staff of competent personnel who are fully equipped, licensed as appropriate, available as needed, qualified and assigned to perform the Work.

3.13.2 KEY PERSONNEL In the event that any such Key Personnel are unable to continue to perform Work, the Design-Builder will promptly notify the Commission. Any change or substitution with respect to Key Personnel requires the approval of the Commission. In the event that, in the opinion of the Executive Director, the performance of Key Personnel or any of Design-Builder's staff assigned to the Work, is at an unacceptable level, Design-Builder will remove them from the Project upon written notice from the Commission, and will provide a replacement for the Commission's approval within seven Days of receipt of the notice to remove.

3.13.3 CHICAGO PUBLIC SCHOOLS CAREER AND TECHNICAL EDUCATION ("CTE") STUDENT EMPLOYMENT REQUIREMENTS. The PBC requires that Design-Build Entities commit to employ CTE student interns. CTE student interns will be 18 years of age or older and will be paid $10.00 per hour. Each student intern will be

employed for a minimum of 120 hours over the 6 week summer construction phase of the program. At least six (6) CTE Student Interns are to be employed by the Design-Build Entity on each Project. Proposers shall submit a description of student employment opportunities that will be made available to the CTE student interns.

3.14 RIGHT OF ENTRY The Design-Builder and any of its officers, employees, agents, subconsultants and Subcontractors will be permitted to enter upon any part of the Project Worksite(s) in connection with the performance of the Work hereunder, subject to the terms and conditions contained herein and those rules established by the Commission. Commission's consent to enter upon all or any part of the Project Site will not create nor be deemed to imply the creation of any additional responsibilities on the part of the Commission.

The Design-Builder will use, and will cause each of its officers, employees, agents, subconsultants and subcontractors to use reasonable care, unless otherwise expressly set forth in this Agreement, when entering upon the Project Site in connection with the Work. The Design-Builder will comply and will cause each of its officers, employees, agents, subconsultants and subcontractors to comply with any and all instructions and requirements for the use of the Project Worksite(s), and any express licenses for such use are hereby incorporated by reference. Any and all claims, suits, judgments, costs, or expenses, including reasonable attorneys' fees, arising from or by reason of or in connection with any such entry will be treated in accordance with the applicable terms and conditions of the Agreement, including, without limitation, the indemnification provisions contained in this Agreement. If the Design-Builder, or anyone for whom it is responsible, causes damage to Commission property, or the property of the owner of the Project Worksite(s), the Design-Builder must, at the option of the Commission, either 1) pay the cost of repair of the damage or 2) repair or replace the damaged property. The Commission shall have the right of set-off against the payments to the Design-Builder for the cost of repairs.

3.15 DESIGN-BUILDER'S REPRESENTATIVE The Design-Builder shall designate a person who shall be the Design-Builder's authorized representative.

ARTICLE 4

COMMISSION'S RESPONSIBILITIES

4.1 INFORMATION AND SERVICES PROVIDED BY THE COMMISSION

4.1.1 The Commission shall provide full information in a timely manner regarding requirements for the Project, including the Commission's Program and other relevant information.

4.1.2 The Commission shall provide:

4.1.2.1 all available information describing the physical characteristics of the site, including surveys, site evaluations legal descriptions, existing conditions, subsurface and environmental studies, reports and investigations.

4.1.2.2 inspection and testing services during construction as required by law or as mutually agreed; and

4.1.2.3 unless otherwise provided in the Contract Documents, necessary approvals, site plan review, rezoning, easements and assessments, fees and

charges required for the construction, use, occupancy or renovation of permanent structures, including legal and other required services.

4.1.3 The Design-Builder shall be entitled to rely on the completeness and accuracy of the information and services required by this Paragraph 4.1.

4.2 RESPONSIBILITIES DURING DESIGN PHASE

4.2.1 The Commission shall provide the Commission's Program at the inception of the Design Phase and shall review and timely approve in writing schedules, Design Development Documents and Construction Documents furnished during the Design Phase as set forth in Paragraph 3.1, and the GMP Proposal as set forth in Paragraph 3.2.

4.3 RESPONSIBILITIES DURING CONSTRUCTION PHASE

4.3.1 The Commission shall review the Schedule of the Work as set forth in Paragraph 3.5 and timely approve the milestone dates set forth pursuant to Article 10 of Book 2.

4.3.2 If the Commission becomes aware of any error, omission or failure to meet the requirements of the Contract Documents or any fault or defect in the Work, the Commission shall give prompt written notice to the Design-Builder. The failure of the Commission to give such notice shall not relieve the Design-Builder of its obligations to fulfill the requirements of the Contract Documents.

4.3.3 The Commission shall communicate with the Design-Builder's Subcontractors, Material Suppliers and the Architect/Engineer only through or in the presence of the Design-Builder. The Commission shall have no contractual obligations to Subcontractors or suppliers.

4.3.4 The Commission shall provide insurance for the Project as provided in Article 11.

4.4 COMMISSION'S REPRESENTATIVE The Commission's Representatives are its Director of Design and Director of Construction and the Project Team Leader. The Representatives:

4.4.1 shall be fully acquainted with the Project;

4.4.2 agree to furnish the information and services required of the Commission pursuant to Paragraph 4.1 so as not to delay the Design-Builder's Work; and

4.4.3 shall have authority to bind the Commission in all matters requiring the Commission's approval, authorization or written notice. If the Commission changes its representatives or the representatives' authority as listed above, the Commission shall notify the Design-Builder in writing in advance.

4.5 TAX EXEMPTION If in accordance with the Commission's direction the Design-Builder claims an exemption for taxes, the Commission shall indemnify and hold the Design-Builder harmless for all liability, penalty, interest, fine, tax assessment, attorneys' fees or other expense or cost incurred by the Design-Builder as a result of any action taken by the Design-Builder in accordance with the Commission's direction.

4.6 ELECTRONIC DOCUMENTS If the Commission requires that the Commission and Design-Builder exchange documents and data in electronic or digital form, prior to any such exchange, the Commission and Design-Builder shall agree on a written protocol governing all such exchanges in a separate agreement, which, at a minimum, shall specify: (1) the definition of documents and data to be accepted in electronic or digital form or to be transmitted electronically or digitally; (2) management and coordination responsibilities; (3) necessary equipment, software and services; (4) acceptable formats, transmission methods and verification procedures; (5) methods for maintaining version control; (6) privacy and security requirements; and (7) storage and retrieval requirements. The Parties shall each bear their own costs for the requirements identified in the protocol. In the absence of a written protocol, use of documents and data in electronic or digital form shall be at the sole risk of the recipient.

ARTICLE 5

SUBCONTRACTS

Work not performed by the Design-Builder with its own forces shall be performed by Subcontractors or the Architect Engineer.

5.1 RETAINING SUBCONTRACTORS The Design-Builder shall not retain any subcontractor that has been debarred by the City of Chicago or the User Department from doing business with the debarring agency, or any Subcontractor to whom the Commission has a reasonable and timely objection. The Design-Builder shall not make any substitute for a Subcontractor that has been accepted by the Commission without the written approval of the Commission.

5.2 MANAGEMENT OF SUBCONTRACTORS The Design-Builder shall be responsible for the management of the Subcontractors in the performance of their work. The Commission will communicate with the Design-Builder regarding the Work, except that the Commission shall have the right to communicate directly with the Design-Builder's Subcontractors as the Commission deems reasonably necessary to address matters such as MBE and WBE issues, direct payments to Subcontractors, lien and surety matters, and other matters where such direct communication may reasonably be required.

5.3 CONTINGENT ASSIGNMENT OF SUBCONTRACT

5.3.1 If this Agreement is terminated, each subcontract agreement shall be assigned by the Design-Builder to the Commission, subject to the prior rights of any surety, provided that:

5.3.1.1 this Agreement is terminated by the Commission pursuant to Article 19 of Book 2; and

5.3.1.2 the Commission accepts such assignment, after termination by notifying Subcontractor and Design-/Builder in writing, and assumes all rights and obligations of the Design-Builder pursuant to each subcontract agreement.

5.3.2 If the Commission accepts such assignment and the Work has been suspended for more than thirty (30) consecutive Days, following termination, if appropriate, the Subcontractor's compensation shall be equitably adjusted as a result of the suspension.

5.4 BINDING OF SUBCONTRACTORS AND MATERIAL SUPPLIIERS The Design-Builder agrees to bind every Subcontractor and Material Supplier (and require every Subcontractor to

so bind its Sub-subcontractors and Material Suppliers) to all the provisions of this Agreement and the Contract Documents.

5.5 DESIGN-BUILDER'S LIABILITY FOR SUBCONTRACTORS The Design-Builder is responsible for all Subcontractor Work and for all acts, failures to act, and omissions of its subcontractors. For the purposes of this Agreement, the Design-Builder's acts and omissions include those of its Subcontractors to the same extent as if they had been committed by the Design-Builder. Notwithstanding the foregoing, there is no privity between Subcontractors and the Commission. Except as set forth in Book 2, Article 23 "MBE/WBE Special Conditions for Construction Contracts" and Book 2 Article 24 "MBE/WBE Special Conditions for Professional Services Contracts," Subcontractors have no rights as third-party beneficiaries under this Agreement. However, all subcontracts of every tier shall state that the Commission is an intended third-party beneficiary of the subcontract.

ARTICLE 6

TIME

6.1 DATE OF COMMENCEMENT The Date of Commencement is the Effective Date of this Agreement as first written in Article 1 unless otherwise set forth below:

The Work shall proceed in general accordance with the Design-Build Schedule as such schedule may be amended from time to time, subject, however, to other provisions of this Agreement.

6.2 SUBSTANTIAL/FINAL COMPLETION Unless the Parties agree otherwise, the Date of Substantial Completion or the date of Final Completion shall be established, and subject to adjustments, as provided for in the Contract Documents. The Commission and the Design-Builder may agree not to establish such dates, or in the alternative to, establish one but not the other of the two dates in this Agreement. If such dates are not established upon the execution of this Agreement, at such time as a GMP is accepted a Date of Substantial Completion or Date of Final Completion of Work shall be established in the Notice to Proceed for each Scope of Work or by amendment to this Agreement.

6.2.1 Time limits stated in the Contract Documents are of the essence.

6.2.2 Unless instructed by the Commission in writing, the Design-Builder shall not knowingly commence the Work before the effective date of insurance that is required to be provided by the Design-Builder or the Commission.

6.2.3 Substantial completion date for this project is August 12, 2013. For facilities containing scope with vertical transportation, completion date shall be December 31, 2013.

6.3 DELAYS IN THE WORK

6.3.1 Delays and time extensions shall be administered as provided in Article 10 of Book 2.

6.4 LIQUIDATED DAMAGES **[reserved]**

6.5 COMMISSION'S RIGHT TO OCCUPY PORTIONS OF THE WORK

6.5.1 The Commission my occupy and use the Project or Scope of Work, or portions thereof, in advance of Substantial Completion. If the Commission desires to exercise partial occupancy and use prior to Substantial Completion, the Commission shall provide written notice to the Design-Builder, and the Design-Builder shall cooperate with the Commission in making available for the Commission's use such Project services as heating, ventilating, cooling, water, lighting and telephone for space or spaces to be occupied, and if the equipment required to furnish such services is not entirely completed at the time the Commission desires to occupy and use the space or spaces, then the Design-Builder will make every reasonable effort to complete that Work.

6.5.2 In the event of occupancy/turn-over prior to Substantial Completion:

6.5.2.1 Within fourteen (14) days after receiving notice of the planned early occupancy, the Design-Builder will provide written notice to the Commission of the following: (i) the current condition of the space desired for early occupancy; (ii) the anticipated condition of the space at the date of anticipated early occupancy; (iii) a preliminary estimate of any potential additional costs, if any, as a direct or indirect result of the early occupancy; and (iv) a preliminary estimate of any potential impact to the Project Schedule, if any, as a result of the early occupancy.

6.5.2.2 If the early occupancy is necessitated by a delay in Substantial Completion beyond the scheduled date of Substantial Completion and is not the subject of a Change Order, Design-Builder shall be responsible for all additional costs associated with the preparation of the space for the early occupancy.

6.5.2.3 The following conditions will apply to the spaces and/or equipment that is affected by the Commission's early occupancy:

6.5.2.3.1 A punch list will be assembled by the Commission, Design-Builder and its subcontractors, and an inspection of the affected space by the Commission will be accomplished prior to the start of early occupancy.

6.5.2.3.2 Warranties will begin to run only on those portions of systems and materials actively used, and shall not begin to run on those portions of systems and materials not used. Warranties of systems that are common to both the occupied and unoccupied parts of the Project will begin to run at Substantial Completion.

6.5.2.3.3 Risk of loss associated with the finished Work which the Commission occupies early transfers to the Commission at the start of the early occupancy.

6.5.2.3.4 As part of the Change Order for early occupancy, the Parties will agree and set forth in writing the scope and date of early occupancy, and what effect early occupancy will have on Liquidated Damages (if applicable) and insurance coverage.

ARTICLE 7

COMPENSATION

7.1 DESIGN PHASE COMPENSATION

7.1.1 To the extent required by applicable law, the costs of services performed directly by the Architect/Engineer is computed separately and is independent from the Design-Builder's compensation for work or services performed directly by the Design-Builder, these costs shall be shown as separate items on applications for payment. If an Architect/Engineer is retained by the Design-Builder, the payments to the Architect/Engineer shall be as detailed in a separate agreement between the Design-Builder and the Architect/Engineer.

7.1.2 The Commission shall compensate the Design-Builder for services performed during the Design Phase as described in Paragraph 3.1 as set forth in Article 1 of Exhibit 7 – Compensation/Cost of the Work of this Agreement.

7.1.3 The Design-Builder's Fee as established in Paragraph 7.3, paid as set forth in Article 16 of Book 2 of this Agreement.

7.1.4 Within five (5) Days after receipt of each monthly application for payment, the Commission shall give written notice to the Design-Builder of the Commission's acceptance or rejection, in whole or in part, of such application for payment. Within fifteen (15) Days after accepting such application, the Commission shall pay directly to the Design-Builder the appropriate amount for which application for payment is made, less amounts previously paid by the Commission. If such application is rejected in whole or in part, the Commission shall indicate the reasons for its rejection. If the Commission and the Design-Builder cannot agree on a revised amount then, within ten (10) Days after its initial rejection in part of such application, the Commission shall pay directly to the Design-Builder the appropriate amount for those items not rejected by the Commission for which application for payment is made, less amounts previously paid by the Commission. Those items rejected by the Commission shall be due and payable when the reasons for the rejection have been removed.

7.2 CONSTRUCTION PHASE COMPENSATION

7.2.1 The Commission shall compensate the Design-Builder for Work performed following the commencement of the Construction Phase on the following basis:

7.2.1.1 the Cost of the Work as allowed in Article 8; and

7.2.1.2 the Design-Builder's fee and overhead paid in proportion to the services performed.

7.2.2 The compensation to be paid under this Paragraph 7.2 shall be limited to the Guaranteed Maximum Price ("GMP"), as the GMP may be adjusted under Article 9.

7.2.3 Payment for Construction Phase services shall be as set forth in Article 10. If Design Phase services continue to be provided after construction has commenced, the Design-Builder shall continue to be compensated as provided in Paragraph 7.1, or as mutually agreed.

7.3 DESIGN-BUILDER'S FEE and OVERHEAD. The Design-Builder's Fee and Overhead shall be as set forth in Article 1 of Exhibit 7 – Compensation/Cost of the Work of this Agreement and shall be paid pursuant to Section 16.2.3 of Book 2 of this Agreement.

ARTICLE 8

COST OF THE WORK

The Commission agrees to pay the Design-Builder for the Cost of the Work as defined in this Article and as further described in Exhibit 5, "Design Builder's Guaranteed Maximum Price Proposal" and Exhibit 7, "Compensation/Cost of Work." This payment shall be in addition to the Design-Builder's Fee stipulated in Paragraph 7.3.

8.1 COST ITEMS FOR DESIGN PHASE SERVICES

8.1.1 Compensation for Design Phase services as provided in Paragraph 7.1 and in Exhibit 7 – Compensation/Cost of the Work.

8.2 COST ITEMS FOR CONSTRUCTION PHASE SERVICES

8.2.1 Wages paid for labor in the direct employ of the Design-Builder in the performance of the Work.

8.2.2 Salaries of the Design-Builder's employees when stationed at the field office, in whatever capacity employed, employees engaged on the road expediting the production or transportation of material and equipment, and employees from the principal or branch office performing the functions listed below:

Project management, administrative assistance and project engineering directly associated with the Work.

8.2.3 Cost of all employee benefits and taxes including but not limited to Workers' Compensation, unemployment compensation, Social Security, health, welfare, retirement and other fringe benefits as required by law, labor agreements, or paid under the Design-Builder's standard personnel policy, insofar as such costs are paid to employees of the Design-Builder who are included in the Cost of the Work under Subparagraphs 8.2.1 and 8.2.2.

8.2.4 Cost of all materials, supplies and equipment incorporated in the Work, including costs of inspection and testing if not provided by the Commission, transportation, storage and handling.

8.2.5 Payments made by the Design-Builder to Subcontractors for work performed under this Agreement.

8.2.6. Fees and expenses for design services procured or furnished by the Design-Builder except as provided by the Architect/Engineer and compensated in Paragraph 7.1.

8.2.7 Cost, including transportation and maintenance of all materials, supplies, equipment, temporary facilities and hand tools not owned by the workers that are used

or consumed in the performance of the Work, less salvage value or residual value; and cost less salvage value on such items used, but not consumed that remain the property of the Design-Builder.

8.2.8 Rental charges of all necessary machinery and equipment, exclusive of hand tools owned by workers, used at the Worksite, whether rented from the Design-Builder or Others including installation, repair and replacement, dismantling, removal, maintenance, transportation and delivery costs. Rental from unrelated third parties shall be reimbursed at actual cost. Rentals from the Design-Builder or its affiliates, subsidiaries or related parties shall be reimbursed at the prevailing rates in the locality of the Worksite up to eighty-five percent (85%) of the value of the piece of equipment.

8.2.9 A Lump Sum which will compensate the Design-Builder for its Fee, a lump sum for its Overhead (i.e., the Design-Builder's office employees, general and administrative expenses), and a Lump Sum for General Conditions (i.e., Design-Builder's Project staff). Other Overhead and General Requirements will be billed directly to the Commission or as set forth in Exhibit 7 – Compensation/Cost of the Work.

8.2.10 Cost of the premiums for all insurance and surety bonds which the Design-Builder is required to procure, and approved by the Commission, including any additional premium incurred as a result of any increase in the GMP.

8.2.11 Sales, use, gross receipts or other taxes, tariffs or duties related to the Work for which the Design-Builder is liable.

8.2.12 Permits, fees, licenses, tests, royalties, damages for infringement of patents or copyrights, including costs of defending related suits for which the Design-Builder is not responsible as set forth in Paragraph 11.2, and deposits lost for causes other than the Design-Builder's negligence.

8.2.13 Losses, expenses or damages to the extent not compensated by insurance or otherwise, and the cost of corrective work or redesign during the Construction Phase and for a period of one year following the Date of Substantial Completion, provided that such corrective work or redesign did not arise from the negligence of the Design-Builder.

8.2.14 All costs associated with establishing, equipping, operating, maintaining and demobilizing the field office.

8.2.15 Reproduction costs, photographs, facsimile transmissions, long-distance telephone calls, data processing services, postage, express delivery charges, data transmission, telephone service, and computer-related costs at the Worksite, to the extent such items are used and consumed in the performance of the Work or are not capable of use after completion of the Work.

8.2.16 All water, power and fuel costs necessary for the Work.

8.2.17 Cost of removal of all non-hazardous substances, debris and waste materials.

8.2.18 Costs incurred due to an emergency affecting the safety of persons or property.

8.2.19 All costs directly incurred in the performance of the Work or in connection with the Project, and not included in the Design-Builder's Fee as set forth in Article 7, which are reasonably inferable from the Contract Documents as necessary to produce the intended results.

ARTICLE 9

CHANGES IN THE WORK

Changes in the Work which are within the general scope of this Agreement may be accomplished, without invalidating this Agreement, by Change Order pursuant to the provisions of Article 17 of Book 2: Changes in the Work.

ARTICLE 10

PAYMENT FOR CONSTRUCTION PHASE SERVICES

Payment applications and procedures shall be as defined in Article 16 of Book 2.

ARTICLE 11

INDEMNITY, INSURANCE, BONDS, AND WAIVER OF SUBROGATION

11.1 Indemnity, Insurance, Bonds and Waiver of Subrogation shall be as provided in Article 5 of Book 2 and Exhibit 9 unless otherwise specified herein.

11.2 ROYALTIES, PATENTS AND COPYRIGHTS The Design-Builder shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods or systems selected by the Design-Builder and incorporated in the Work. The Design-Builder shall defend, indemnify and hold the Commission harmless from all suits or claims for infringement of any patent rights or copyrights arising out of any patented or copyrighted materials, methods or systems specified by the Commission.

11.3 LIENS If any of the Design-Builder's subconsultants, subcontractors, employees, officials, agents or other person directly or indirectly acting for, through or under any of them files or maintains a lien or claim pursuant to the Illinois Public Mechanics' Lien Act, 770 ILCS 60/23, against the public funds for the Project, then the Design-Builder agrees to cause such liens and claims to be satisfied, removed or discharged within thirty (30) days from the date of filing thereof; provided, however, that the Commission may extend the thirty (30) day period if the Commission determines that such lien claim cannot be so satisfied, removed or discharged in such period and that the Design-Builder is proceeding diligently to cause such liens or claims to be satisfied, removed or discharged. The Commission will have the right, in addition to all other rights and remedies provided under this Agreement, Book 2 Article 16, or by law, to cause such liens or claims to be satisfied, removed or discharged by any means at the Design-Builder's sole cost, such cost to include reasonable legal fees.

The Design-Builder will give, or cause to be given, a copy of these provisions to all subcontractors and will include these provisions in all agreements with subcontractors, and/or give written notice to all subcontractors or other persons having oral or written agreements with such subcontractors.

11.4 LIMITED MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES Except for damages mutually agreed upon by the Parties as liquidated damages in Paragraph 6.4 and excluding losses covered by insurance required by the Contract Documents, the Commission and the Design-Builder agree to waive all claims against each other for any consequential damages that may arise out of or relate to this agreement, except for those specific items of damages excluded fromaq this waiver as mutually agreed upon by the Parties and identified below. The Commission agrees to waive damages including but not limited to the Commission's loss of use of the Project, loss of reputation, or insolvency. The Design-Builder agrees to waive damages including but not limited to loss of business, loss of financing, principal office overhead and expenses, loss of profits not related to this Project, loss of bonding capacity, loss of reputation, or insolvency. The provisions of this Paragraph shall also apply to the termination of this Agreement and shall survive such termination.

The Commission and the Design-Builder shall require similar waivers in contracts with Subcontractors and others retained for the Project.

ARTICLE 12

SUSPENSION AND TERMINATION OF THE AGREEMENT AND COMMISSION'S RIGHT TO PERFORM DESIGN-BUILDER'S RESPONSIBILITIES

Suspension and Termination shall be as defined in Article 19 of Book 2.

ARTICLE 13

DISPUTE MITIGATION AND RESOLTUION

Claims and Disputes shall be as defined in Article 18 of Book 2.

ARTICLE 14

MISCELLANEOUS PROVISIONS

14.1 GOVERNING LAW This Agreement shall be governed by the laws of the State of Illinois.

14.2 SEVERABILITY The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision.

14.3 NO WAIVER OF PERFORMANCE The failure or either Party to insist, in any one or more instances, on the performance of any of the terms, covenants, or conditions of this Agreement or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right with respect to further performance.

14.4 TITLES AND GROUPINGS The titles given to the articles of this Agreement are for ease of reference only and shall not be relied upon or cited for any other purpose. The grouping of the articles in this Agreement and of the Commission's specifications under the various headings is solely for the purpose of convenient organization and in no event shall the grouping of provisions, the use of paragraphs or the use of headings be construed to limit or alter the meaning of any provisions,.

14.5 JOINT DRAFTING The Parties to this Agreement expressly agree that this Agreement was jointly drafted, and that both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms prior to execution. Therefore, this Agreement shall be construed neither against nor in favor of either Party, abut shall be construed in a neutral manner.

14.6 RIGHTS AND REMEDIES The Parties' rights, liabilities, responsibilities and remedies with respect to this Agreement, whether in contract, tort, negligence or otherwise, shall be exclusively those expressly set forth in this Agreement.

ARTICLE 15

EXISTING CONTRACT DOCUMENTS

The Contract Documents in existence at the time of execution of this Agreement are as follows:

As defined in Subparagraph 2.4.1, the following Exhibits are a part of and fully incorporated into this Agreement:

- Book 2 — Standard Terms and Conditions for Design Build Contracts, JULY 2013
- Book 2A — Standard Terms and Conditions Procedures Manual for Design Build Contracts, JULY 2013
- Exhibit 1 — Design Builder Design Services
- Exhibit 2 — Scope and Performance Criteria
- Exhibit 3 — Exceptions/Clarifications To Construction Drawings And Specifications
- Exhibit 4 — Reserved
- Exhibit 5 — Design Build GMP Form
- Exhibit 6 — Reserved
- Exhibit 7 — Compensation/Cost of the Work
- Exhibit 8 — Reserved
- Exhibit 9 — Insurance and Bonding Requirements
- Exhibit 10 — Project Community Area Map
- Exhibit 11 — Schedule C – Letters of Intent from MBE/WBE Sub-contractors
- Exhibit 12 — Schedule D – MBE/WBE Utilization Plan
- Exhibit 13 — Disclosure Affidavit (as submitted from initial RFP)
- Exhibit 14 — Disclosure of Retained Parties (as submitted from initial RFP)

[EXECUTION PAGE FOLLOWS]

<Execution Page for Design-Build Agreement between Public Building Commission of Chicago and BERGLUND CONSTRUCTION COMPANY with an Effective Date of May 16, 2013>

This Agreement is executed by the Parties stated below, and made effective by such execution pursuant to its terms.

PUBLIC BUILDING COMMISSION OF CHICAGO

By: _____
Rahm Emanuel, Chairman

By: _____
Erin Lavin Cabonargi, Executive Director

By: _____
Lori Ann Lypson, Secretary

Approved as to Form and Legality:

By: _____
David P. Winters

BERGLUND CONSTRUCTION COMPANY

By: _____

Print Name: Fred Berglund

Title: President

County of COOK
State of Illinois

AFFIX CORPORATE SEAL, IF ANY, HERE

Subscribed and sworn before me by FRED BERGLUND

as PRESIDENT of BERGLUND CONSTRUCTION this 5th day of AUGUST, 2013.

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Notary Public

My Commission Expires 6/3/2015.

NOTARY PUBLIC OFFICIAL SEAL STATE OF ILLINOIS
ILYAS A LAKADA
MY COMMISSION EXPIRES
JUNE 3, 2015