# BOOK 2

# STANDARD TERMS AND CONDITIONS FOR DESIGN BUILD CONTRACTS

## CONTRACT NUMBERS PS1963 to PS1979

## 2013 SCHOOL INVESTMENT PROGRAM PROJECT NUMBERS 01 to 17

## PUBLIC BUILDING COMMISSION OF CHICAGO


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# ARTICLE 1. GENERAL PROVISIONS

SECTION 1.01 Definitions

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

1. "Architect Engineer" means the person or firm employed by or hired by the Design-Builder for the purpose of designing the project. 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 laws of the State of Illinois.

2. "Career and Technical Education" ("CTE") means the Board of Education of Chicago's Department of Career and Technical Education, formerly known as the Board's Department of Education to Careers.

3. "Change Order" is the document signed by the Design-Builder and the Commission, or, in circumstances stated in Book 2, the Commission alone, which authorizes a change in the Work that does not result in an adjustment to the GMP. Changes to the Work that result in a change to the GMP require an amendment to 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 the person assigned, in writing, by the Executive Director to be the Commission's Representative for the project.

6. "Commission's Architect" means the architect or design firm retained by the Commission to prepare the Scope and Performance Criteria forming the basis of design for the Architect/Engineer.

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, including without limitation, the items provided in Section 2.4.1 of Book 1:

   a. Book 1 – Design-Build Agreement Between Public Building Commission and Design Builder ("Agreement")
   b. Book 2 – Standard Terms and Conditions for Design-Build Contracts
   c. Book 2A - Standard Terms and Conditions Procedures Manual for Design-Build Contracts

8. "Contract Completion Date" is the date on which the Design-Builder must achieve Substantial Completion. The Contract Completion Date will be determined based on the time for completion of the Work stated in Book 1, Section II.B, adjusted by any Change Orders that extend or reduce the time for completion of the Work.

9. "CPS Student" means an individual enrolled in a public school within the purview of the Board of Education of Chicago.

10. "Design-Builder" means the partnership, firm, corporation, joint venture or entity entering into the Contract with the Commission to perform the Work required by the Contract Documents.

11. "Day" or "Days" means calendar day(s) unless otherwise specified.

12. "Drawings" are those drawings and plans provided in the Request for Proposals as part of the Scope and Performance Criteria.

13. "Environmental Law(s)" means all applicable Federal, State, and local laws, ordinances, rules, regulations, and executive orders pertaining to environmental matters.

14. "Executive Director" means the person employed by the Commission as its Executive Director or the duly authorized representative thereof.

15. "Field Order" means a written order to the Design-Builder, signed by the Commission Representative unilaterally directing changes in the Work or the Project CPM Schedule.

16. "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 operating systems and equipment testing have been completed; final occupancy certifications have been issued; Design-Builder's LEED Commissioning responsibilities required by the Contract Documents have been completed; all deliverables have been provided to the Commission; and all contractual requirements for final payment have been completed.

17. "First-tier Subcontractor" means any Subcontractor that has a contract with the Design-Builder.

18. "Guaranteed Maximum Price" or "GMP" means the sum of the estimated Cost of the Work, as defined in Article 8 of Book 1, the Design-Builder's Contingency, the Commission Contingency and the Design-Builder's Fee as defined in Article 7 of Book 1.

19. "Hazardous Materials" means asbestos and asbestos-containing materials, polychlorinated biphenyls (PCBs), oil or any other petroleum products, natural gas, special nuclear materials, and by-product materials regulated under the Atomic Energy Act (42 U.S.C. Sec. 2014, et seq.), pesticides under the Federal Insecticide, Fungicide and Rodenticide Act (7U.S.C. Sec. 136, et seq.) and any hazardous waste, toxic substance or related material, including any substance defined or treated as "hazardous waste," "special waste," "toxic substance," or a comparable term in any Environmental Law.

20. "Local Government" or "City" means the City of Chicago, Illinois.

21. "Notice to Proceed" refers to the written notice issued by the Executive Director and directed to the Design-Builder, which states the date for the Design-Builder to begin performance of the Work.

22. "Program Safety Manager" means the person assigned, in writing, by the Executive Director to be the Commission's Safety Manager for all Commission projects.

23. "Project" means the collective improvements to Chicago Public School facilities by the Design-Builder in accordance with the Contract as specified in Article 1 of Book 1.

24. "Project Community" means the area designated as the Project Community in Book 2, shown in Exhibit 10 for Book 1, "Project Community Area Map."

25. "Project Community Residents" means persons domiciled within the Project Community as designated by the Commission as stated in Book 2, Section 21.03.

26. "Punch List" is the list of Punch List Work, and "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 are not considered Punch List Work.

27. "Record Documents" are all documents required under the terms of the Contract to be provided to the Commission by the Design-Builder, including, but not limited to, shop drawings, as-built drawings, blue line drawings, parts manuals, operation and maintenance manuals, and Project manuals or specifications.

28. "Request for Information" or "RFI" means the document transmitted by the Design-Builder to the Commission Representative seeking clarification or direction with respect to ambiguity, contradictions, errors or omissions in the Scope and Performance Criteria.

29. "Residents of the Project Community" means persons domiciled within the project area as designated by Exhibit 10.

30. "Schedule" means the critical path method (CPM) schedule submitted by the Design-Builder establishing time frames for the performance of components of the Work.

31. "Schedule of Values" means the detailed list of the value of each construction activity included in the Guaranteed Maximum Price broken down by labor and materials that is submitted by the Design-Builder and approved by the Commission, as amended.

32. "Site" means the location(s) shown on the Drawings or described in Book 2A – Section 01010 – Summary of Work of the Technical Specifications, within which the Work will be performed under the Contract Documents.

33. "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.

34. "Subcontractor" means any partnership, firm, corporation or entity other than an employee of the Design-Builder that furnishes labor and/or materials to the Design-Builder, whether or not the Subcontractor is in privity with the Design-Builder.

35. "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.

36. "Substantial Completion" means the date the Commission Representative has determined that: (i) the Project has been constructed in accordance with the Contract Documents such that it is ready for occupancy, utilization and continuous operation for the uses and purposes intended by the User, without material interference from incomplete or improperly completed Work, and with only Punch List Work remaining to be completed, (ii) the Design-Builder has obtained and delivered to the Commission a "Certificate of Occupancy" issued by the authority that has jurisdiction noting that the 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, and (iii) the Executive Director, or his or her designee, has issued written notice to the Design-Builder of its acceptance of substantial completion.

37. "User" or "User Agency" means the entity for which or on whose behalf the Commission has undertaken to cause the Work to be performed.

38. "Work" means the obligations of the Design-Builder 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, design services 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 1.03 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 30th Day prior to the date of the first Advertisement of the Request for Proposal.

SECTION 1.04 Severability

If any provision of this Contract is inoperative or unenforceable as applied in any particular case 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 will 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 do 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, constitutes 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
50 West Washington Street, Room 200
Chicago, Illinois 60602

SECTION 2.02 The Executive Director

The Executive Director is the person employed by the Commission in that title.

SECTION 2.03 The User Agency(ies)

The User Agency is the Board of Education of Chicago and the Chicago Public Schools ("CPS") for which the Commission is constructing the Project.

SECTION 2.04 The Commission Representative(s)

1. The Executive Director will assign an individual or individuals to be the Commission's Representative(s) for the Project. The Executive Director will notify the Design-Builder of the assignment in the Notice To Proceed letter.

2. **The Design-Builder must route all Project communication and notices to the Commission Representative.** The Commission Representative will also route responses from the Commission to the Design-Builder.

3. The Commission Representative has 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 Design-Builder or any Subcontractor.

5. The Commission Representative is responsible for the following:

   a. Reviewing and monitoring, on a periodic basis, the Design-Builder'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, CPS, Design-Builder and others to review the Project schedule, submittals, scope change, requests for information, outstanding bulletins, pending issues, and field problems.

   c. Reviewing Design-Builder's payment applications in accordance with the Commission's policies and procedures and submitting the payment applications 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, CPS, Design-Builder, and other agencies having jurisdiction of the Project with respect to all construction aspects of the Project.

   f. Coordinating the submission, processing, procurement and assembly of all required permits,

licenses, and certificates with the Design-Builder and arrange delivery of same to the Commission.

g. Conducting Site observations of the Design-Builder and Project 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. Requests for approval of subcontractors, delivery schedules, material lists, shop drawings, samples, and the like will be commented upon by the Commission for 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 requests for additional compensation and time extensions sought by the Design-Builder.

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.

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 Commission's Architect

The Commission's Architect is the firm retained by the commission to prepare the Scope and Performance Criteria documents for the Request for Proposal. The Design-Builder will have no direct contact with the Commission's Architect except as authorized by the Commission Representative.

The Commission's Architect will not be responsible for acts or omissions of the Design-Builder, the Architect/Engineer or any Subcontractor or subconsultant.

SECTION 2.06 The Design-Builder

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

SECTION 2.07 The Subcontractors

1. Except as may be otherwise provided in the Contract, all transactions of the Commission will be with the Design-Builder.

2. The Design-Builder is wholly responsible and liable to the Commission for any and all Work performed by any of its Subcontractors.

## ARTICLE 3. DESIGN-BUILDER'S OBLIGATIONS

SECTION 3.01 Design-Builder

1. The Design-Builder must perform everything required to be performed and provide all of the labor, necessary tools, machinery, materials, schedules and other documents 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. Design-Builder is solely responsible for selecting the means, methods, techniques, sequences, and procedures used in performing the Work.

2. The Design-Builder must begin the Work on the date specified in the Notice to Proceed. In addition, upon receipt of Notice to Proceed, the Design-Builder 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 Design-Builder must include among the staff such personnel and positions as may be required by the Contract Documents.

3. The Design-Builder is 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 Design-Builder must verify the figures shown in the Scope and Performance Criteria and reference documents before laying out the Work and will be held responsible for any errors or inaccuracies resulting from the failure to do so. Neither the Commission nor the Commission Representative will be responsible for laying out the Work.

4. The Design-Builder is responsible for the coordination of the various parts of the Work so that no part is left in an unfinished or incomplete condition owing to any disagreement between the various Subcontractors or any of the Subcontractors and the Design-Builder.

5. The Design-Builder must require each Subcontractor to become familiar with all provisions of the Contract Documents that may affect Subcontractor's work.

6. The Design-Builder shall at all times be responsible for the performance of the Work by its Subcontractors. The Design-Builder will manage and coordinate the Work of Subcontractors such that the Work progresses in an efficient, orderly and timely manner. In the event of any claim or dispute between Subcontractors, or any Subcontractor and Design-Builder, Design-Builder shall manage the resolution of any such claim or dispute. The Design-Builder shall at all times deal with its Subcontractors in good faith, and use all reasonable efforts to resolve claims or disputes in a prompt, cost-effective manner.

7. In the event that, in the reasonable opinion of the Commission Representative, the performance of personnel of the Design-Builder assigned to the Work is at an unacceptable level, or does not comply with Section 9.01 "Competency of Workers" of the Contract, the Commission Representative may provide a written notice to the Design-Builder. Upon receipt of the notice, such personnel must cease to be assigned to this Work and must return to the Design-Builder. The Design-Builder must then furnish to the Commission Representative the name of a proposed substitute person or persons, in accordance with paragraph 2 of this section for approval by the Commission Representative. Absence of sufficient qualified personnel for the Work constitutes an event of default.

8. The Work is under the charge and care of the Design-Builder until Final Completion and Acceptance of the Work by the Commission, unless otherwise specified in the Contract Documents. The Design-Builder assumes all responsibility for injury or damage of the Work by action of elements, fire or any other causes whatsoever, including, injury or damage arising from the execution or non-execution of the Work. The Design-Builder 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; provided, however, that the cost of repairs that are not a result of the negligence of the Design-Builder or its Subcontractors is a

compensable Cost of the Work. When equipment or materials are furnished to the Design-Builder by the Commission for use or inclusion in the Work, the Design-Builder's responsibility for safeguarding all such equipment and materials must be the same as for equipment and materials furnished by Design-Builder.

9. The Work will not be considered complete and accepted until the Design-Builder receives written notice from the Commission confirming the Final Completion and Acceptance of the Work.

SECTION 3.02 Contract Documents

1. The Design-Builder must carefully review and compare all Scope and Performance Criteria and other Contract Documents. In the event the Design-Builder identifies an error or omission, the Design-Builder will promptly notify the Commission Representative, in writing, and then proceed with the Work in accordance with instructions from the Commission Representative concerning such error or omission. The Design-Builder acknowledges and agrees that any such errors or omissions are to the detriment of the Owner. Design-Builder shall not seek to take advantage of the discovery of any conflict, error or omission, or discrepancy in the Scope and Performance Criteria after award of the Contract, but shall cooperate with the Commission to resolve any such errors or omissions in a prompt and cost-effective manner. In the event such resolution involves a change to the Work, such change will be accomplished pursuant to Article 17 hereof.
2. The Design-Builder must keep 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, all additional and revised drawings and plans furnished by the Commission Representative, all orders issued to the Design-Builder 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, and a set of updated as-built drawings.

SECTION 3.03 Document Control

1. The PBC has an on-line collaboration and document management system, OCDM (the "System"). Design-Builder shall use the System to: track the Work, manage the Project, and follow the Commission's procedures for electronic submission and receipt of documents as directed by the Commission Representative. The System shall be the mode of conveyance and repository for all Project Record Documents. Design-Builder shall post all Project-related documents, including all Record Documents, on the System. By executing its Contract, Design-Builder agrees to comply with all terms and conditions required by the Commission for the use of the System.

2. Within 5calendar days of the Notice to Proceed, Design-Builder shall designate an employee that will serve as its System Coordinator. Design-Builder's System Coordinator will be the point of contact for the Commission for implementation and support for Design-Builder's use of the System.

3. Employees of Design-Builder, its Subcontractors and Suppliers who will use the System must complete the training provided by the Commission. Each such employee must furnish a valid e-mail address to the Authorized Commission Representative prior to the training.

4. The System requires a broadband connection with the Internet (e.g., at a minimum, T1, cable modem, or DSL) for effective use. Design-Builder must furnish its own hardware and software, including, but not limited to, personal computers, peripheral software, virus protection software and high-speed document scanners. All written communication and document transmittal from Design-Builder to the Commission will occur via the System. In the event that hand signatures and/or stamps are required for a document, unless otherwise directed by the Authorized Commission Representative, the transmittal of such document shall be made simultaneously via the System and hard copy; hard copy shall be transmitted as required by the Contract Documents. Signed and/or stamped documents must then be scanned and uploaded to the System.

5. Design-Builder shall be solely responsible for its use of the System, as well as use of the System by its Subcontractors and Suppliers.

SECTION 3.04 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 Design-Builder by the Commission.

2. The Design-Builder must take field measurements, verify field conditions and carefully compare such field measurements and conditions and any other information known to the Design-Builder about the Contract Documents before commencing the Work. No allowance will be made to the Design-Builder for any extra labor and/or materials required due to Site conditions or discrepancies that might have been discovered by a thorough and proper inspection of the Site. If land surveying Work is required under this Contract, Design-Builder must have such Work performed by a surveyor as described in Section 9.06 "Surveyor."

3. If conditions are encountered at the site that are:

   (a) Subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents, or

   (b) Pre-existing unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, including the presence of unanticipated Hazardous Materials, then the Design-Builder will take no action to disturb the area until providing **IMMEDIATE** written notice to the Commission Representative .

4. If conditions differ materially from those indicated in the Contract Documents and could not have been known to the Design-Builder at the time the Contract was bid, and such conditions will cause a material increase or decrease in the Design-Builder's cost of, or time required for, the performance of any part of the Work, payment from the Commission Contingency or an equitable adjustment in the Guaranteed Maximum Price or Contract term or both, will be made based upon Article 17, "Changes in the Work."

5. The Design-Builder must follow the requirement of written notice in Section 3.04.3b above and the requirements set out in Article 18. Claims and Disputes, regarding a claim for changed site conditions. The Design-Builder must also provide written notice of any claim regarding the changed site condition to the Commission Representative within one (1) day after its discovery. The notice of changed site conditions must state the nature of the changed site condition, its location, and the work that is affected by it.

SECTION 3.05 Design-Builder's Warranties and Representations

Design-Builder 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 proposal 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 Design-Builder 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 Design-Builder to submit a proposal or has been relied upon by the Design-Builder, 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 Design-Builder was given ample opportunity and time to review the Scope and Performance Criteria prior to submittal of its proposal.

5. The Design-Builder acknowledges and understands that the Commission materially relied upon the Design-Builder's proposal in its selection of the Design-Builder to perform the Work.

6. Design-Builder's submittal of its proposal establishes that the Design-Builder, in preparing and submitting its proposal on which this Contract is based, has complied with and given full consideration to the following proposal requirements:

   a. The Design-Builder did obtain for proposal purposes copies of the complete Scope and Performance Criteria as identified in the Request for Proposal and all addenda issued by the Commission and has become familiar with the same and all Contract requirements and conditions described therein.

   b. The Design-Builder 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 Design-Builder waives any claim for relief because of alleged mistakes or omissions in its proposal and that the Design-Builder will be held strictly to its GMP as agreed.

7. The Design-Builder has the capability and financial resources to perform all of the provisions and requirements of this Contract.

8. The Design-Builder 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 Milestones, Phases and Project

   a. The Design-Builder will notify the Commission Representative, in writing, of a date that the work on a milestone, phase, or the Project as a whole will be ready for inspection by the Executive Director, Commission Representative and Representatives of the User Agency, to determine whether the Work is Substantially Complete. Notice will be given by the Design-Builder at least seven (7) days in advance of that date. If the Commission Representative concurs that the work will be ready for inspection and/or testing on the date stated, including all those items listed in Section 01025.3.5.c of Book 2A, the Executive Director, Commission Representative and other parties, selected by the Executive Director (which may include the architect retained by the Commission to prepare the Scope and Performance Criteria), will make such inspection within a reasonable period of time. The scheduling of the inspection will not relieve the Design-Builder of its responsibilities under the Contract Documents. The Design-Builder is required to furnish access to all parts of the Project for the inspection.

   b. Upon inspection, the Commission will direct the preparation of a Certificate of Substantial Completion for execution by the Design-Builder. The Certificate shall then be submitted to the Commission Representative. The Executive Director, or his or her designee, will determine whether Substantial Completion has been achieved and will issue a written notice to the Design-Builder of its acceptance of the Certificate of Substantial Completion for the pertinent Milestone, Phase or Project.

2. Final Completion and Acceptance of the Work

a. Punch List Completion

(1) The Design-Builder 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 Design-Builder from the Commission. The Design-Builder agrees to begin performance of Punch List Work immediately after receipt of the Punch List.

(2) Failure of the Design-Builder or its Subcontractors to begin the Punch List Work within 3 business Days after receipt of the Punch List will be construed as failure to prosecute the Work of the Contract.

(3) Punch List Work will be continuously prosecuted once begun and completed within the period set forth in the Punch List by the Commission Representative. The Commission Representative shall establish the period for completion of the Punch List Work after consultation with the Design-Builder. The period established by the Commission Representative will be based on the Commission Representative's reasonable, good faith estimate of the time necessary for the Design-Builder to complete the Punch List Work.

b. When the Design-Builder deems the Work, including all Punch List Work, to be complete, the Design-Builder 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 Design-Builder. Such notice is to be given at least 5 Days in advance of said date. If the Commission Representative concurs that the Work will be ready for inspection or testing on the date given, including those items listed in Section 01025.3.6.a and 01025.3.6.b of Book 2A, 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 Design-Builder of its responsibilities under the Contract Documents. The Design-Builder 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 Design-Builder confirming the Final Completion and Acceptance of the Work.

c. No action of the Commission, the Commission Representative, the Commission's Architect, or their respective Executive Directors, board members, officers, employees, or agents is to 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 notice of Final Completion or the final payment does not affect the rights of the Commission against the Design-Builder (and the surety or sureties on the Performance and Payment Bond given by the Design-Builder) to enforce the complete performance of this Contract or to sue for the recovery of damages for failure to do so, nor affect the terms of Design-Builder's guarantee in connection therewith.

## ARTICLE 4. DESIGN-BUILDER'S RIGHTS OF ASSIGNMENT AND SUBCONTRACTS

SECTION 4.01 No Assignment of Contract

The Contract must not be assigned or any part of the same subcontracted without the written consent of the Executive Director. If the Executive Director provides consent, such consent does not relieve the Design-Builder from any of its obligations under the terms of the Contract and Design-Builder shall remain responsible for satisfactory performance of all Work undertaken by its Subcontractor(s).

SECTION 4.02 No Assignment of Contract Funds

The Design-Builder will not transfer or assign any Contract funds or claims due or to become due without the prior written consent of the Executive Director. The transfer or assignment of any Contract funds, either in whole or in part, or any interest therein, which will be due or to become due to the Design-Builder, without the prior written consent of the Executive Director, is void so far as the Commission is concerned.

SECTION 4.03 Subcontracts

1. All Subcontractors are subject to the approval of the Executive Director before they may provide material, labor or services on the Project. The Design-Builder, upon entering into any agreement with a Subcontractor that has been approved by the Executive Director must furnish the Executive Director with one (1) copy of a written contract evidencing such agreement signed by the Design-Builder and Subcontractor. All subcontracts must be in writing. Design-Builder shall include a provision in all subcontracts for the Work that incorporates this Contract by reference, and requires all Subcontractors to comply with the terms and conditions of this Contract. All subcontracts must require that any Work to be performed will be performed in strict accordance with this Contract

2. All requests to subcontract must be submitted on the form provided by the Commission.

3. The Design-Builder may not make any substitution for a Subcontractor that has been accepted by the Executive Director unless such substitution is acceptable to the Executive Director. Design-Builder shall provide the Executive Director with timely notice of any proposed substitution so as not to impede the progress of the Work.

4. The Design-Builder shall, in each of its subcontracts for the Work, include the following provision whereby each Subcontractor agrees to the assignment of its subcontract to the Commission, or the Commission's assignee, without further approval or action by such Subcontractor:

   "Design-Builder has assigned this subcontract to the Commission, effective upon written assumption of such assignment by the Commission in the event of Design-Builder's default or early termination of Design-Builder's contract with the Commission. Subcontractor hereby consents to such assignment and assumption. Subcontractor acknowledges and agrees that, in the event of such an assignment and assumption, the Commission will have no liability to Subcontractor for work performed by Subcontractor prior to the effective date of the assignment and assumption for which the Design-Builder has been paid by the Commission, and that Subcontractor shall look solely to Design-Builder for any compensation or other obligations arising under the subcontract prior to such date."

5. The Design-Builder hereby assigns any or all subcontracts to the Commission, effective upon the Commission's exercise, in its sole discretion, of its rights to assume such assignment as a remedy for Design-Builder's default or in the event of early termination.

6. The subcontract must preserve the rights of the Commission under this Contract with respect to the Work performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights. Where appropriate, the Design-Builder must require each Subcontractor to enter into similar subcontracts with its Subcontractors. The Design-Builder will provide to each

Subcontractor, prior to the execution of such subcontract, copies of the provisions of this Contract to which the Subcontractor will be bound.

7. There is no privity between Subcontractors and the Commission. Except as may otherwise be explicitly provided in the Contract Documents, Subcontractors have no rights as third-party beneficiaries under this Contract. The Design-Builder will require the Subcontractors to communicate with the Commission through the Design-Builder only.

8. The Design-Builder shall at all times be responsible for payments to Subcontractors for Work performed by such Subcontractors. Notwithstanding the foregoing, the Commission reserves the right to make direct payments to Subcontractors in the event the Executive Director, in his sole discretion, deems it to be in the best interests of the Commission to make such direct payments.

9. The Design-Builder shall require its Subcontractors to agree, in writing, to submit to the Design-Builder applications for payment in such reasonable time as to enable the Design-Builder to apply for payment as herein-specified under Article 16. "Payments."

10. Design-Builder shall provide Subcontractors an opportunity to be present and to submit evidence in any decision involving a Subcontractor's rights.

11. The Design-Builder shall, in each of its subcontracts for the Work, require the Subcontractors to agree to pursue any claims or disputes that a Subcontractor may have with respect to the Work through the process for resolving claims and disputes set forth in Article 18 hereof.

SECTION 4.04 Commission's Right to Assign

The Commission expressly reserves the right to assign or otherwise transfer all or any part of its interests hereunder without the consent or approval of the Design-Builder.

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

## SECTION 5.01 Indemnification

1. The Design-Builder covenants to and must indemnify, defend and hold harmless the following indemnitees: the Commission, the User Agency, the Commission's Architect and its consultants, the Commission Representative and any additional persons named in the Agreement, their respective Executive Directors, board members, officers, employees and representatives, individually and collectively, ("Indemnitees") 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. This indemnity includes 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. This indemnification is not limited by any amount of insurance required under this Contract. Further, the indemnity contained in this section will survive the expiration or termination of this Contract. If any injury (including death), loss or damage (or claim or claims therefore) occurs or is alleged to have occurred, the Design-Builder must give immediate notice thereof to the Commission Representative.

   To the extent permissible by law, Design-Builder waives any limits to the amount of its obligations to indemnify, defend or contribute to any sums due under any losses, including any claim by an employee of Design-Builder that may be subject to the Workers Compensation Act, 820 ILCS 305/1 et seq or any other law or judicial decision (such as *Kotecki v. Cyclops Welding Corporation*, 146 Ill. 2d 155 (1991). The Commission, however, does not waive any limitation it may have on its liability under the Workers' Compensation Act or the Illinois Pension Code.

2. The Design-Builder shall be solely responsible for the defense of any and all claims, demands, or suits against the Indemnitees, including, without limitation, claims by an employee, subcontractors, agents, or servants of Design-Builder even though the claimant may allege that the Indemnified Parties were in charge of the Work or allege negligence on the part of the Indemnified parties. The Commission will have the right, at its sole option, to participate in the defense of any such suit, without relieving the Design-Builder of its obligations hereunder.

3. The obligations of the Design-Builder under this Article do not extend to the liability of the Commission's Architect, its agents or employees arising out of: the preparation or approval of maps, Drawings, opinions, reports, surveys, Change Orders, Scope and Performance Criteria, designs or specifications, or the giving or failure to give directions or instructions by the Commission's Architect, its agents, or employees, provided such giving or failure to give directions or instructions is the primary cause of the injury or damage.

4. The Design-Builder will promptly provide, or cause to be provided, to the Executive Director and Commission Representative, copies of such notices as Design-Builder may receive of any claims, actions, or suits as may be given or filed in connection with the Design-Builder's performance or the performance of any Subcontractor and for which the Indemnified parties are entitled to indemnification hereunder and to give the Indemnities authority, information, and assistance for the defense of any claim or action.

## SECTION 5.02 Performance and Payment Bond

1. Before mobilization, the Design-Builder will deliver to the Commission a Performance and Payment Bond in the amount set forth in Exhibit 9 to Book 1. 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 must cover the warranty period required by the Contract.

2. In case of neglect, failure, or refusal of Design-Builder to provide satisfactory sureties when so directed within seven (7) Days after such notification, the Commission may declare this Contract forfeit, but such forfeiture will not release Design-Builder 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 Design-Builder and direct that a bond issued by a satisfactory surety or sureties be provided forthwith.

4. Surety for Bond. The Performance and Payment Bond required by the Contract must be secured by a guarantee or surety company listed in the latest issue of U.S. Treasury Circular 570.

SECTION 5.03 Insurance

1. The Design-Builder must procure and maintain at all times, at Design-Builder's own expense, through the completion of the Design-Builder's warranty period, the types of insurance specified in Exhibit 9 to Book 1 of the Contract Documents, with insurance companies authorized to do business in the State of Illinois and acceptable to the Commission, covering all operations under this Contract, whether performed by the Design-Builder or by Subcontractors. Upon written request by the Commission, the Design-Builder must allow the Commission to review and copy any original insurance policies the Design-Builder is obligated to maintain under this policy.

2. The Design-Builder waives any and every claim or right of recovery from the Commission, the User Agency and the Commission's Architect, 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 Design-Builder 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 Design-Builder must require each Subcontractor to include similar waivers of subrogation in favor of the Commission.

3. The Design-Builder must cause contractual liability endorsement to be issued by the insurance companies and attached to the Commercial General Liability policies of each Design-Builder and/or Subcontractor to include under the coverage therein extended an obligation on the part of the insurers to insure against the Design-Builder and/or each Subcontractor's contractual liability under this Article. Such coverage will 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 Design-Builder provide additional types of insurance.

## ARTICLE 6. PERMITS AND LICENSES

SECTION 6.01 Permits, Licenses, and Regulations

1. Permits

   a. The Design-Builder 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 will be borne by the Design-Builder.**

   b. The Design-Builder will confer with the Commission Representative prior to applying for the City building permit, and the parties will agree on the process for obtaining the City building permit prior to Design-Builder's application for such permit. The Commission Representative will assist the Design-Builder in the building permit process, but the Design-Builder is solely responsible for obtaining all required permits in a timely fashion.

   c. 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 Design-Builder, representing its familiarity with these systems and permit processes, is 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.

2. Licenses and Regulations

   a. The Design-Builder will include in the proposal 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 Design-Builder must give all notices and comply with all laws, ordinances, codes, rules and regulations bearing on the conduct of the Work. If the Design-Builder observes that the Scope and Performance Specifications are at variance therewith, prompt notification in writing must be given to the Commission Representative, and any necessary changes must be made in accordance with Article 17 "Changes in the Work." If the Design-Builder fails to provide such notice, or otherwise performs the Work contrary to pertinent law, ordinances, codes, rules or regulations, the Design-Builder will bear all costs arising from any Work performed that is contrary to such laws, ordinances, codes, rules, and regulations.

   c. The Design-Builder must 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.

   d. Regulations applicable to this Project include, but are not limited to the most current editions of, the following:

      1. City of Chicago Building Codes
      2. NEC
      3. NFPA
      4. Illinois Plumbing Code
      5. Illinois Accessibility Standards
      6. Americans with Disabilities Act Guidelines (ADAG)
      7. ASHRAE/IES, Standard Efficiency Guidelines

   e. Where requirements of the applicable building codes differ, the Authorized Commission Representative shall determine which requirement shall govern and the Design-Builder shall comply with the governing requirement. If the Design-Builder believes it is entitled to

additional compensation it must follow the requirements set out in Article 18 "Claims and Disputes" of Book 2.

f. Submit copies of all permits, licenses, and similar permissions obtained, and receipts for fees paid, to the Commission Representative.

g. It shall be the responsibility of the Design-Builder to coordinate, procure and pay for all ties necessary for the completion and operation of the fire alarm system. Design-Builder shall arrange and pay for all fees as required by the City of Chicago Bureau of Electricity.

## ARTICLE 7. DESIGN-BUILDER'S PRACTICES AT SITE

SECTION 7.01 Hours of Work

1. The Design-Builder will 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 Agency's Building Engineer, if applicable, is to be included in the GMP. Book 2A addresses project specific requirements. If the Project falls behind schedule, the Design-Builder 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 additional cost to the Commission.

2. The Design-Builder 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. Design-Builder will cooperate fully with the Commission, Commission Representative, and the User during construction operations to minimize conflicts and interference and to facilitate occupant usage and operations.

   During occupied hours, the Design-Builder will limit construction operations to methods and procedures which will not adversely and unduly affect the environment of occupied spaces. The Design-Builder must 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 Design-Builder must 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 Design-Builder desires to perform Work outside the hours of 6:30 a.m. through 3:30 p.m., Monday through Friday, and 6:30 a.m. to 2:30 p.m. on Saturday, the Design-Builder will request written authorization from the Commission not less than 14 calendar days in advance.

SECTION 7.02 Cleaning Up

1. During the Construction, the Design-Builder will keep the Site and adjacent premises 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 Design-Builder is responsible for immediate remediation within 48 hours of notification. The Design-Builder's failure to act accordingly will result in completion of remediation work by the Commission at the Design-Builder's expense.

2. As a condition of Final Completion and Acceptance of the Work, the Design-Builder must remove from the Site and adjacent premises all machinery, equipment, surplus materials, falsework, excavated and useless materials, rubbish, temporary buildings, barricades, and signs, and must restore the area surrounding the Site to the same general conditions that existed prior to the commencement of the Work.

3. The Design-Builder will 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 facilities or infrastructure due to Design-Builder's operations.

4. Design-Builder is solely responsible for and assumes all liability associated with off-Site disposal of any Hazardous Materials generated as a result of Design-Builder's construction activities.

SECTION 7.03 Project Health and Safety

The Design-Builder is responsible for project health and safety as of the date stated in the Note to Proceed.

1. Worker's Health and Safety

   a. Design-Builder has sole and complete responsibility for implementation of a safety program. The Design-Builder's safety program ("Safety Program") must include the Work of all the Design-Builder's Subcontractors. The Safety Program must be submitted to the Commissioner before the start of the Work. The Safety Program shall, at a minimum, set forth and maintain the standards stated in the Commission's Project Specific Safety Plans for the Design-Builder and for Subcontractors. In the event that Design-Builder elects to adopt the Commission's Safety Manual as a part of Design-Builder's Safety Program, Design-Builder acknowledges and agrees that adopting the Safety Manual does not in any way attenuate, limit, transfer or otherwise affect Design-Builder's sole and complete responsibility and liability for its Safety Program.

   b. The Design-Builder shall designate a safety representative for the project. This person shall be present whenever work is being performed at the site or whenever delivery of materials, products or equipment is being made at the site. The safety representative must have successfully completed the OSHA 30 hour course.

   c. Although the Commission Representative will observe construction and give the Design-Builder opinions and suggestions about safety defects and deficiencies, the Commission Representative's suggestions on safety will in no way relieve the Design-Builder of its responsibility for safety on the project. The Design-Builder has sole responsibility for safety.

   d. The Design-Builder must comply with the requirements of Regulations 29 CFR Part 1926 (originally CFR Part 1518) – Safety and Health Regulations for Construction of the Williams-Steiger Occupation Safety and Health Act of 1970 (Federal, OSHA). Copies may be obtained from the Regional Administrator of the Department of Labor, Federal Office Building, Chicago, Illinois.

   e. The Design-Builder's must also comply with the "Health and Safety Act" of the State of Illinois. The rules pursuant to this Act are on file with the Secretary of State of Illinois and identical in every respect with the standards in effect under the Federal, OSHA, and law, pursuant to orders of the Illinois Industrial Commission. The Federal and State standards require that the Design-Builder provide reasonable protection to the lives, health and safety of all persons employed under the Contract. The State act, rules and the applicable parts thereof will be considered as part of these specifications.

   f. The Design-Builder must comply with all local safety laws including, those set forth in Title 15 of the Municipal Code of Chicago, Ch. 15-4, Art. 5, and Ch. 15-20, Art. 1.

   g. The Design-Builder must take any precautions that may be necessary to render all portions of the Work secure in every respect to decrease the possibility of accidents from any cause. The Design-Builder will furnish and install all necessary facilities to provide safe means of access to all points where Work is being performed and make all necessary provisions to insure the safety of workers and of consultants and inspectors during the performance of the Work.

   h. The Design-Builder must keep on the site of the Work, completely equipped first aid kits readily accessible at all times. The Design-Builder will designate a person on each shift, acceptable to the Commission Representative, to be in charge of first aid and will cause such person to receive proper instructions therein.

   i. Only such materials and equipment as are necessary for the construction of the Work under this Contract, as determined by the Commission Representative, will be placed, stored or allowed to occupy any such space of the site of the Work. If gasoline, flammable oils, or other highly combustible materials must be stored at the site, they will be stored in approved safety

containers.

2. Hazardous Materials

a. If the Design-Builder encounters material on the Site reasonably believed to be hazardous which has not been identified in the Contract Documents or rendered harmless, the Design-Builder will immediately stop Work in the Area affected and report the condition to the Commission Representative in writing. The Work in the affected area will be resumed in the absence of Hazardous Materials, or when it has been rendered harmless, by written notification from the Commission Representative to the Design-Builder.

b. The Design-Builder will not be required to perform, without its consent, any Work in the presence of 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 Design-Builder, the Design-Builder, will, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Commission Representative in writing.

3. Coordination With Other Contractors - Safety

In accordance with the provisions of Article 8. "Coordination With Others," the Design-Builder will 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, correcting Work within abatement periods, 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.

4. Public Health and Safety

a. The Design-Builder must prevent the public from gaining access to the Project Site.

b. The Design-Builder will take all necessary precautions to ensure the safety of the public and to prevent accidents or injury to persons or damage to property adjacent to the Site where the Work is being performed.

c. The Design-Builder will 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 the public and post signs warning against the dangers created by falling materials, open excavations, and all other hazardous conditions.

d. The Design-Builder must remove all snow and ice, and salt all sidewalks adjacent to the project site for the proper protection of pedestrians pursuant to Section 10-8-180 of the Chicago Municipal Code.

e. 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 Design-Builder 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 Design-Builder is liable for all damage caused by the Design-Builder, its agents, employees, or Subcontractors of any tier in the excavation or occupation of any street, alley, or public grounds, and indemnifies the Commission pursuant to Section 5.01 "Indemnification."

5. Construction Site Cleanliness

a. The Design-Builder must comply with all requirements of Section 13-32-125 of the "Chicago Municipal Code entitled, "Construction site cleanliness."
b. The Design-Builder must mow all grass or weeds on the site as directed by the Commission Representative.

SECTION 7.04 Protection of Work and Property

1. The Design-Builder will continuously protect the Work and the Commission's property from damage, injury or loss arising in connection with operations under the Contract Documents. The Design-Builder will make good any such damage, injury or loss. Design-Builder is responsible for Site security, including, but not limited to, watchmen and construction fencing. Dogs are not allowed on the Site at any time.

2. The Design-Builder will 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.

3. The construction period may span the winter season and other times in which cold or inclement weather may be anticipated. The Design-Builder must make all provisions required and necessary to work during inclement or winter conditions so as to complete all work in accordance with the approved schedule. The actions necessary include, but are not limited to, temporary protection and weatherproofing, temporary heat, temporary lighting, and any other measures necessary or prudent, in addition to those delineated in Book 2A – Section 01500 – Temporary Facilities and Services, which will be provided by the Design-Builder as part of the Base Contract Price.

4. Adequate precautions will be taken against fire throughout all the Design-Builder's operations. Flammable material must be kept at an absolute minimum, and, will be properly handled and stored in accordance with all applicable codes and standards. Except as otherwise provided herein, the Design-Builder must 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.

5. In occupied or partially occupied buildings, the Design-Builder must 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 Design-Builder will provide dust-proof barriers to isolate areas of Work from all occupants of operations if dust, debris, or objectionable odors from the performance of the Work spreads beyond the isolated dust barrier to occupied portions of the Site. Following cleaning of the occupied portions of the Site, re-establishment of the dust barriers, and the dissipation of all objectionable odors, when authorized by the Commission Representative, the Design-Builder may resume operations. Any such disruption to the progress of the Work shall not be the basis for a claim by Design-Builder.

6. Unless otherwise noted, all existing fixtures, furniture, equipment, supplies, or similar items must be carefully removed by the Design-Builder and properly stored in a nearby area, protected from damage of any kind, prior to Work being performed in that area. The Design-Builder will return such items to their original place at the completion of construction. For electronic or utility hook-ups, the Commission will be notified in advance, and allowed sufficient time to disconnect items prior to removal. Hook-ups will be reconnected by the Commission after replacement of furniture and equipment by the Design-Builder.

7. The Design-Builder must provide and maintain adequate protection for all properties adjacent to the Site. When required by law or for the safety of the Work, the Design-Builder will 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 costs of all such operations are part of the GMP. The Design-Builder, before commencement of any part of the Work, must give any notices required to be given to any adjoining landowner or other parties.

8. If, in the opinion of the Commission, the Design-Builder's Work endangers adjoining property, the Work will be stopped when directed in writing by the Commission Representative, and the

method of operation changed in a manner acceptable to the Commission.

9. The Design-Builder must 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 Design-Builder, the Design-Builder will make all necessary repair thereof or replacements thereof at no cost to the Commission. It is the Design-Builder's responsibility to provide photographic evidence of the condition of the site as well as adjacent property, and submit such to the Commission Representative prior to commencement of the Work.

SECTION 7.05 Accidents

1. If death, serious injury, including any time an ambulance is called to the site, or serious damages are caused, the Design-Builder must notify the Commission Representative immediately via telephone or messenger.

2. The Design-Builder will 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 will be the responsibility of the Design-Builder to submit a written accident report, within 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 Design-Builder's Superintendent
   g. Any other documentation of the accident, if any (i.e. a police report, OSHA report, medical documentation, etc.)

3. The Design-Builder must send a copy of the accident report to the Commission Risk Manager, and to the Commission Representative.

4. If any claim is made by anyone against the Design-Builder or any Subcontractor on account of any accident, the Design-Builder will promptly report the facts and full details of the claim in writing to the Commission Representative.

# ARTICLE 8. COORDINATION WITH OTHERS

SECTION 8.01 Other Contractors on the Site

1. The Commission reserves the right to let other contracts in connection with the Work. The Design-Builder will afford other contractors reasonable opportunity for the introduction and storage of their materials and for the performance of their work. Design-Builder will 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 will not in any way constitute acceptance or partial acceptance of the Work by the Commission.

2. The Design-Builder 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 Design-Builder's Work depends, for proper performance or result, upon the work of any other contractor, the Design-Builder will inspect and measure the work of the other contractor and promptly report to the Commission Representative any defects or discrepancies in such work. The Design-Builder's failure to inspect and make such report will constitute an acceptance of the other contractor's work as fit and proper for the proper performance of the Work, except as to latent defects.

4. Wherever work being done by any such contractors or subcontractors is contiguous to Work covered by the Contract Documents, the respective rights of the parties will be established by the Commission Representative to secure the completion of the various portions of the Work in a coordinated manner.

SECTION 8.02 Mutual Responsibility of Contractors

1. The Design-Builder is responsible for Work not completed or accepted due to the presence and operations of other contractors.

2. The Design-Builder is liable, financially 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 Design-Builder, where separate contractors or their subcontractors are employed on the Site, will not make claims against the Commission for loss or damage or injury caused by any fault or negligence of such other contractor or subcontractor. The Design-Builder will look solely to such contractors or subcontractors for recovery for any such damage or injury.

4. If any separate contractor or its subcontractor suffers loss or damage through any acts or omission on the part of the Design-Builder, or any of its subcontractors, the Design-Builder will reimburse such other contractor or subcontractor. If such separate contractor or its subcontractor asserts any claim against the Commission on account of any damage or loss alleged to have been so sustained, the Commission will notify the Design-Builder, and the Design-Builder will save the Commission harmless against such claims as provided in Section 5.01 "Indemnification."

## ARTICLE 9. PERSONNEL

SECTION 9.01 Competency of Workers

The Design-Builder must employ only competent and efficient laborers, mechanics or artisans. 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 Design-Builder must, upon request by the Commission Representative, remove such worker from the Work. The Design-Builder 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 Design-Builder will 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. In the event the Executive Director determines, in his or her sole discretion, that additional supervision or administration is required, Design-Builder shall furnish sufficient personnel to perform such supervision or administration, all at Design-Builder's own expense.

2. Subsequent to notice of contract award, but prior to the commencement of Construction Phase activities, the Design-Builder will select a Project Manager and submit his/her résumé to the Commission Representative for the approval of the Commission. 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 will attend meetings at such places and times as will be decided by the Commission in order to render reports on the progress of the Work. The Design-Builder will not change Project Manager without the consent of the Commission, unless such staff member proves to be unsatisfactory to the Design-Builder and ceases to be in its employ.

SECTION 9.03 Superintendence

1. The Design-Builder must keep on the Project throughout its duration a competent, experienced and qualified Superintendent and any necessary assistants, all of whom must be satisfactory to the Commission. This Superintendent's résumé will be submitted to the Commission Representative for approval at the time the Performance and Payment Bond and certificate(s) of insurance are submitted, or sooner if so requested by the Commission. The Superintendent will be present at the Site when Design-Builder's personnel and/or Subcontractors are present.

2. The Superintendent will not be changed without the consent of the Commission, unless the Superintendent proves to be unsatisfactory to the Design-Builder or becomes unavailable due to reasons beyond the control of Design-Builder. In order to change the Superintendent, the Design-Builder will give the Commission Representative written notice and submit for approval the qualifications of the proposed replacement Superintendent at least 15 Days prior to the intended change.

3. The Superintendent will represent the Design-Builder in the absence of the Project Manager and all directions given to the Superintendent will be as binding as if given to the Project Manager.

SECTION 9.04 Scheduler

1. To assist in the preparation and maintenance of the Schedule, the Design-Builder 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 scheduling software. If the Design-Builder has qualified personnel on staff, the Design-Builder may perform the required scheduling with its own organization.

2. Prior to engaging a consultant or using staff personnel,, the Design-Builder will submit to the Commission Representative:

   a. The name and address of the proposed consultant or staff person

   b. Sufficient information to show that the proposed consultant or the Design-Builder's staff has the qualifications to meet the Schedule requirements

   c. A list of prior construction projects and 3 selected Primavera network samples that the proposed consultant or Design-Builder's staff has prepared. These 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 Design-Builder's staff, and the Commission Representative will notify the Design-Builder of its decision within 7 Days of receipt of the information. In case of disapproval, the Design-Builder will submit another person with supporting documents within 7 Days. The Commission also reserves the right to disqualify the consultant or Design-Builder'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 Design-Builder of any of its obligations under this Contract.

SECTION 9.05 Mechanical And Electrical Coordinator

The Design-Builder will provide a staff member or members, as necessary, who have the sole responsibility to perform the mechanical and electrical coordination responsibilities, as described in Book 2A – Section 01010 – 2.5 – Mechanical and Electrical Coordinator, Section 2.5 B through L.

SECTION 9.06 Surveyor

Whenever required, the Design-Builder will engage and pay for the services of a surveyor. The surveyor is subject to the approval of the Commission. The surveyor must be licensed in the State of Illinois, must not be an employee of the Design-Builder, and must not have any interest in the Contract.

SECTION 9.07 Wage Rates

1. Not less than the prevailing rate of wages as determined by the Illinois Department of Labor must be paid to all laborers, mechanics, and other workers performing Work under this Contract.

2. Design-Builder's attention is called to the generally prevailing hourly rate of wages in effect at the time of bidding, as determined by the Illinois Department of Labor, which can be found athttp://www.illinois.gov/idol/Laws-Rules/CONMED/Pages/Rates.aspx and which are incorporated into the Contract Documents as if fully set forth herein.

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, the Design-Builder is 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 determ ining the current prevailing wage rate is the Internet site http://www.illinois.gov/idol/Laws-Rules/CONMED/Pages/Rates.aspx maintained by the State of Illinois Department of Labor. 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 will apply to the Contract from the effective date of such revision, provided, however that such revision will not entitle the Design-Builder to any increased compensation under the terms hereof.

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

with Illinois law.

# ARTICLE 10. SCHEDULE

SECTION 10.01 Time Is Of The Essence

TIME IS OF THE ESSENCE IN THIS CONTRACT. The Design-Builder agrees that it will commence the performance of the Work on the date set forth issued by the Commission and that it will complete the Work within the time set forth in the Design Build Schedule.

SECTION 10.02 Design-Builder's Construction Schedule

1. General

Prior to commencement of Construction Phase activities, the Commission Representative shall lead a scheduling meeting with the Design-Builder to review the schedule and confirm updating requirements for the Project.

Design-Builder shall provide two schedule reports. The Target Schedule shall be submitted and approved as provided herein and shall serve as the schedule for the Project. The Target Schedule will be updated periodically (at least every week) with progress information and may include changes to activity relationships or logic, but may not change Project duration or milestones. The 3-week Look-Ahead schedule will show current planned activities on the Project.

a. Design-Builder shall, prior to the start of Construction Phase Activities, submit a Proposed Target Schedule for the Work to the Commission for review and approval that meets all the requirements of this Section 10.02.1 including the Cost and Resource loading requirements of Paragraph 10.02.1.g.(4) and (5). The Proposed Target Schedule and the Target Schedule must be provided in hard copy and editable electronic format.

b. The Schedule will use the critical path method (CPM). The Design-Builder will utilize Primavera Project Planner (P3 version 3.1 or P6 version 6.1), as a scheduling software package.

c. The Schedule will, at 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; submittal and approval of all required Submittals; procurement of material and equipment furnished by the Design-Builder; interface activities performed by others upon which the Design-Builder's schedule depends; all Work activities and field construction operations including any weather related scheduling requirements to account for weather delays due to adverse conditions that are less than 25% more severe than the monthly averages for temperature or precipitation for Chicago (as determined by the National Oceanic & Atmospheric Administration); equipment installation, testing, and balancing; commissioning activities; and all Project Milestones as required in the Design Build Schedule.

d. The Design-Builder's Schedule will consist of detailed 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 must be prepared such that it can be used to plot actual progress against the Target Schedule.

e. Specifications applicable to the Schedule and network diagram

(1) Each separate sheet will include the Project name, Contract number, Design-Builder'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 Schedule will show the order and interdependency of activities, indicating the sequence in which the Work is to be performed "as planned" by the Design-Builder. The Schedule will clearly describe

and indicate the critical path – which shall be defined as the longest path sequence of activities in the Project Schedule Network which requires the longest total amount of time to complete.

(3) The Schedule shall utilize a Work Breakdown Structure (WBS) that consists of at least three levels of detail as described below:

| WBS Level | Detail Level | Information Shown |
|---|---|---|
| Level 1 | Project | Overall Project duration and milestone dates. |
| Level 2 | Summary Elements | Elements of the Work organized by CSI Division or trade applicable to the Activity. |
| Level 3 | Individual Activities | Activities as defined in Section 10.02.1(f) below. |

Design-Builder may utilize a more detailed WBS provided it is clearly defined in the Schedule submission.

(4) Two color copies and one electronic copy on CD (editable in the software used to produce the Schedule) of the Schedule will be submitted to the Commission Representative.

a. The following items define the term "Activities" as it pertains to the Schedule:

(1) Each Activity will be a unit of Work, which requires an amount of time for its performance and shall be a component of a Summary Element.

(2) Each activity will 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 Design-Builder will 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 will be small enough to permit a reasonable appraisal of its status or as directed by the Commission, with no activity durations in excess of five (5) days, except such non-construction activities as procurement, delivery or submittal activities or other activities as may be approved by the Commission.

(5) Each Individual Activity on the Design-Builder's Target Schedule shall be cost and resource loaded.

(6) Activities performed by others – including, but not limited to other contractors, agencies, utilities or companies, that must be completed prior to the start of the Design-Builder's Work or portion of Work must be included in the Design-Builder's schedule as milestones and identified with a designation approved by the Commission.

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

(1) Activity ID: The Design-Builder will utilize the CSI division and section numbers in assigning activity IDs to the related portions of Work.

(2) Description of the activity.

(3) Duration of the activity.

(4) Cost Loading: The cost estimate/budget to perform the Individual Activity of work. The total cost loading of all Individual Activities shall equal the total Construction Costs

(5) Resource Loading: The estimated total number of hours required to perform the Individual Activity of work.

(6) Each activity that is not performed by the Design-Builder will be assigned a responsibility code indicating which Subcontractor is to perform the activity.

(7) Each activity will be identified with early/late start, early/late finish, and total float.

(8) Calendar I.D.

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

2. Schedule Submittal Requirements

a. The Design-Builder will submit all Schedules in hard copy and editable electronic format as specified in Section 10.02.1(a).

b. Upon receipt of the Target Schedule, the Commission will review each Schedule for conformance with the Contract Documents and degree of detail. Within two (2) Days after receipt of the Target Schedule and supporting documents, the Commission will either: (1) approve the Schedule: (2) approve the Schedule as noted (AAN); or (3) disapprove the Schedule with the reasons set forth. If the Schedule is approved as noted or is disapproved, the Design-Builder must submit a revised Schedule addressing specific comments within two (2) days.

c. The Target Schedule must have the same total duration for the performance of Work as stated in Book 1.

d. Failure by the Design-Builder to provide the, Target Schedule or periodic updated schedules within the required time period may be deemed an event of default by the Executive Director.

3. Submittal, Acceptance, and Design-Builder's Responsibility for the Schedule

a. Prior to submitting any Schedule to the Commission Representative, the Design-Builder will review and verify the procurement lead time for the fabrication and delivery of all construction materials and equipment along with the erection and/or installation duration for all the construction activities that make up the critical path of the Project.

b. The Design-Builder will coordinate its letting of subcontracts, material purchases, shop drawing submissions, delivery of material and sequence of operations to conform to the Schedule and will furnish proof of same as may be required by written notification from the Commission.

c. The Commission's approval of any Schedule is done for the sole purpose of insuring that all CPM scheduling documents prepared by the Design-Builder conform to the Contract requirements. This approval does not relieve the Design-Builder of its sole responsibility for the means, methods, procedures, and sequence of the construction process, nor does it provide any entitlement to additional funds.

4. Updating

a. Target Schedule

(1) The Design-Builder may make non-material changes to the original duration, activity relationships, constraints, costs, add or delete activities, and/or alter the Target Schedule's logic ties. The Design-Builder shall not make any material changes or changes that affect Milestones set forth in the original Target Schedule unless such

changes are fully explained in the periodic update schedule narrative and are approved by the Commission. Design-Builder shall indicate progress on the Target Schedule on a periodic basis by updating the Target Schedule with the following:

(i) Actual start dates
(ii) Actual finish dates
(iii) Activity percent completion
(iv) Remaining duration of activities in progress
(v) Identified or highlighted critical activities

b. Updates to Target Schedule

(1) The Progress reported in the periodic update to the Target Schedule shall be applied against the cost loaded Target Schedule to support determination of the earned value available for payment. The Target Schedule must accurately reflect the Project's current status and the cumulative Earned Value of the summary level elements. The earned value available for payment may be decreased or increased as deemed necessary by the Commission Representative to accurately reflect actual work in place on the Project.

c. The Design-Builder will submit periodic updates of the Target Schedule in number, form and format acceptable to the Commission Representative.

d. As part of the normal periodic Schedule update for the Target Schedule, the Design-Builder will prepare a written narrative report, highlighting the progress during the past update period. The written narrative report will include but not necessarily 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

e. Upon receipt of the Target Schedule update, the Commission Representative will review the Schedule update and narrative for conformance with the Contract Documents and degree of detail. The Commission Representative, within seven (7) days after receipt of the Schedule update and supporting documentation, will approve or reject any such schedule update with written comments. If any Schedule update is rejected, the Design-Builder must submit a revised schedule update within five (5) days after the date of rejection.

f. The Design-Builder is required to attend a weekly Schedule update review meeting with the Commission Representative. The purpose of this meeting is to review past progress, current status, problem areas and future progress. The Design-Builder's narrative report will be reviewed at this meeting. The Design-Builder's representatives attending this meeting will have the authority to commit manpower and/or other resources to correct any negative impact to the Schedule as indicated on the Schedule.

g. Three Week Look-Ahead Schedule

(1) The Design-Builder shall also provide weekly schedule updates and participate in a weekly schedule review (which may occur as part of the weekly progress meeting) to review the 3-Week Look-Ahead Schedule. The 3-Week Look-Ahead Schedule shall be a time-scaled logic diagram that may be generated directly from the current Target Schedule and provided as an electronic file in its native P3 or P6 format or it may be generated by another method approved by the Commission Representative, provided that the activities, durations and logic correspond directly to the activities, durations and logic in the current Target Schedule. Activities on the 3-week Look Ahead Schedule shall include an activity ID and description (relatable to the Activity ID and description used in

the Target Schedule). The timeline for the 3-week Look-Ahead shall be the previous week's actual activities and the forecast activities for the upcoming two (2) weeks. The weekly Schedule Update review shall include a review of the status of any potential delays, change modifications, delays or requested revisions to the schedule.

5. Changes to the Target Schedule

a. If the Design-Builder proposes to make any changes to Milestone Dates in the Target Schedule, Design-Builder will 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 fragment of the proposed schedule change in editable electronic format. However, such revisions or revised schedule shall not change or modify the Project Duration set forth in the Target Schedule or the Design Build Schedule.

b. The Commission has the authority to approve or disapprove the proposed change in the Target Schedule Milestones and will do so in writing within two (2) days after receipt of the Design-Builder's submission. If the Commission approves the change(s) to the Milestones in the Target Schedule the changed schedule will be designated the new "Target Schedule." All subsequent periodic updates will be plotted against the new "Target Schedule."

c. If it appears that the Target Schedule no longer represents the actual prosecution and progress of the Work at the Individual Activity Level, the Commission Representative may request, and the Design-Builder shall submit within two (2) days of the request, a revision to or revised Target Schedule along with a statement agreeing with the proposed change or setting forth Design-Builder's justification for not incorporating said revision. However, such revisions or revised schedule shall not change or modify the Project Duration set forth in the Target Schedule or the Design Build Schedule. The Commission Representative shall review and approve or disapprove Design-Builder's revision or revised Target Schedule within seven (7) days of receipt. Upon approval, the revision to the Target Schedule or revised Target Schedule shall be designated the new Target Schedule.

d. The Commission reserves the right to request a proposal from the Design-Builder to accelerate or compress the schedule in lieu of granting a Time Extension request in order to maintain the Contract Substantial Completion Date or original project duration (Acceleration Proposal). The Commission shall make any such Acceleration Proposal request in writing within ten (10) days of receipt of the Design-Builder's Time Extension Request. Design-Builder shall provide the Acceleration Proposal within three (3) days of the Commission's request and the Commission shall have three (3) days from the receipt of the Acceleration Proposal to advise Design-Builder of its recommendation regarding the Acceleration Proposal and Time Extension Request. Design-Builder's Acceleration Proposal shall include a detailed cost estimate and description of its proposed methodology for accelerating the schedule. If the Commission elects to proceed with the Design-Builder's Acceleration Proposal, the Commission shall issue a Field Order incorporating the Acceleration Proposal and a subsequent Change.

6. Recovery Schedule

a. The Design-Builder must maintain an adequate work force and the necessary materials, supplies and equipment to meet the Target Schedule. If the Design-Builder, in the judgment of the Commission, is failing to meet the Target Schedule, including any Contract milestones, the Design-Builder, upon the written request of the Commission Representative, shall submit a recovery schedule.

b. The recovery schedule will 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 will be borne by the Design-Builder.

c. Upon receipt of the recovery schedule, the Commission Representative will review the

recovery schedule for conformance with the Contract Documents and degree of detail. The Commission will approve the recovery schedule or reject it with written comments within two (2) days of receipt. If the detailed CPM recovery schedule is rejected, the Design-Builder must submit a revised CPM recovery schedule within two (2) days of the date of rejection.

d. If the Design-Builder refuses to follow the direction of the Commission, the Commission reserves the right, after serving three (3) days written notice to the Design-Builder, 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 Design-Builder. 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.

7. Target Schedule Changes Directed by the Commission

a. The Commission Representative may direct the Design-Builder to revise the Target Schedule. Reasons for such direction may include, but are not 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; or (4) acceleration of the Project or phase.

b. The Commission Representative will direct the Design-Builder to provide a revised Target Schedule in writing.

c. The Design-Builder will provide the revised Target Schedule within three (3) Days of receipt of the Commission's written direction, which revisions to the Target Schedule may be submitted as fragnet portions of the Schedule which, upon approval and incorporation into the Target Schedule will satisfy the Commission's direction to revise the Schedule. Design-Builder shall also submit a written description of the schedule changes necessitated by the Commission's request and a detailed explanation of any cost impacts to effectuate the requested Schedule changes.

d. The Commission has the authority, in its sole discretion, to approve or reject the Design-Builder's proposed revised Target Schedule and will do so in writing within three (3) days after receipt of the Design-Builder's submission. If the Commission Representative approves the revised Target Schedule, the Commission will initiate a Change Order, pursuant to which such revised Target Schedule will be designated the new Target Schedule and adjustment to the GMP (if any) to adjust the Project Schedule to achieve the Commission required schedule modifications.

SECTION 10.03 Non-Compensable Delays; Causes of Compensable Delay; Compensation for Delays; Delays Which Do Not Qualify for Time Extensions; Procedure For Time Extension Requests

1. Non-compensable Delays

For a cumulative period of 25% of the as-bid duration of the project in Calendar Days (the "Non-Compensable Delay Period"), the Design-Builder will not be compensated for the following delays: Adverse weather delay days due to adverse weather conditions that when measured monthly are less than 25% more severe than the monthly averages for temperature or precipitation for Chicago (as determined by the National Oceanic & Atmospheric Administration); a delay 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 or any omission, neglect or default of the Commission, or by order of the Executive Director, or the Commission Representative; or by any cause beyond the Design-Builder's control, none of which are due to any fault, neglect act or omission on Design-Builder's part. However, the Design-Builder will be entitled to a Change Order providing a time extension for such delays. The Design-Builder agrees that the Change Order providing the time extension shall release the Commission, its employees and representatives from any and all claims for damages of whatever character, including but not limited to, disruption, changes in sequence, interference, inefficiency, field or home office costs for delays described above which cumulate to the number of days in the Non-Compensable Delay Period.

2. Causes of Compensable Delay

a. If any of the following listed events results in delays to critical path activities and progress of the work which cumulatively have exceeded the Non-Compensable Delay Period, and the Design-Builder has not caused a concurrent delay, such delays shall entitle the Design-Builder to compensation as provided in Section 10.03.3 Compensable Delays.

(1) Delays caused by the Commission or the Commission Representative, as described in Section 10.03.1 above;

(2) Acts of God, acts of the public enemy, fires, floods, earthquakes, epidemics, quarantine restrictions, labor strikes at the job site, or freight embargoes, provided that the listed causes were not foreseeable and did not result from the fault or negligence of the Design-Builder, and provided further that the Design-Builder has taken reasonable precautions to prevent further delays owing to such causes;

(3) Acts (including delays in acting or failure to act) of the State, City or other governmental or regulatory authority, including, without limitation, restraining orders or injunctions requiring that the Work be stopped, delays in permit issuance or occupancy inspection, that are not the result of any fault or negligence of the Design-Builder or any of its Subcontractors;

(4) Adverse weather delay days due to adverse weather conditions that when measured monthly are more than 25% more severe than the monthly averages for temperature or precipitation for Chicago (as determined by the National Oceanic & Atmospheric Administration), provided that actual adverse weather delays prevent work on critical path activities for more than 4 hours of a scheduled work day or cause a decrease in the field labor workforce hours on critical path activities of more than 70% on a scheduled work day; and

(5) Delays resulting from subsurface or otherwise concealed conditions encountered at the project site which differ materially from those indicated in the contract documents as described in Section 3.04 Site Conditions and Inspection.

3. Compensation for Delays

Payment for delays exceeding the Non-Compensable Delay Period, from the causes listed in Section 10.03.2. Causes of Compensable Delays will be made for: extended field staff time for the prosecution of the work, labor inefficiency, idle time for equipment (provided that Design-Builder proves that it took reasonable steps to mitigate damages regarding he idle equipment), relocation or storage of the material (on the site), winter protection costs (if applicable) and the cost of re-sequencing the work. The Design-Builder shall submit documentation satisfactory to the Commission Representative demonstrating costs incurred as a result of the Compensable Delay as part of its Time Extension Analysis pursuant to Section 10.03.5 below. Design-Builder shall be entitled to compensation only for those compensable delay days beyond the Non-Compensable Delay Period per Section 10.03.01 and not for the days in the Non-Compensable Delay Period established pursuant to this Section 10.03. The Design-Builder shall not be entitled to compensation for any cost not expressly provided for in this paragraph.

4. Delays Which Do Not Qualify For Time Extensions

No extension of time will be granted under this section for any delay: (1) if the delay was caused by the action and/or inaction of the Design-Builder, including, but not limited to, the fault or negligence of the Design-Builder or any of its Subcontractors; or (2) for which any remedies are provided for or excluded by any other provision of the Contract. The Executive Director's permitting the Design-Builder to proceed with its Work, or any part thereof, after such extension will in no way operate as a waiver of any other rights on the part of the Commission.

5. Procedure For Time Extension Requests

a. No time extensions will be allowed unless they are set forth in a Change Order which has been approved and executed by the Commission.

b. The Design-Builder expressly consents to both the time requirements and notice content requirements for requesting an extension of time set forth in this Section 10.03.5. The Design-Builder acknowledges that the notice requirements set forth in this section 10.03.5 shall be strictly enforced and agrees that any failure on the part of the Design-Builder to provide notice strictly in accordance with the requirements of this Section 10.03.5 shall constitute a waiver of the Design-Builder's right to seek an extension of time or to file a dispute to the Executive Director under Section 18. The Design-Builder further acknowledges that the time requirements and content requirements of Section 10.03.5 have the purpose, among others, of allowing the Commission Representative and Commission to evaluate the time extension request contemporaneously with the event that has been claimed to cause the delay.

c. In order to request a Time Extension, a "Notice of Delay" or "Commencement of Delay" notice must be provided in writing to the Commission Representative, no more than five (5) calendar days after the commencement of the delay, otherwise the claim for the time extension is waived. A "Notice of Delay" shall be provided for a delay event that commenced and terminated within the five (5) day notice period. The Notice of Delay shall indicate the date of commencement of the delay and the date on which the delay terminated and shall include a brief description of the delaying event.

d. A "Commencement of Delay" notice shall be provided for an event of delay that continues beyond the five (5) day period for providing notice. If the cause of the delay continues for more than five (5) calendar days after the start of the delay, a "Termination of Delay" notice must be provided in writing, to the Commission Representative along with the "Request for Time Extension" within ten (10) calendar days after the termination of the delay.

e. The Design-Builder must submit its "Request for Time Extension" in writing to the Commission Representative within ten (10) calendar days after the termination of the delay. The "Request for Time Extension shall:

1. State the cause of the delay, identifying the type of Excusable Delay; state the facts giving rise to the delay; and state the number of days requested.
2. Specifically demonstrate the negative impact of the delay on the critical path of the Target Schedule by submitting a complete Time Impact Analysis (TIA) which shall include a fragmentary critical path network (Fragnet) that accounts for any float on the project and illustrates the impact of the alleged delay on the Target Schedule.

f. The Commission Representative shall advise the Design-Builder of its recommendation regarding the Time Extension request, in writing, within ten (10) days of receipt. If the Design-Builder and Commission Representative agree on the Time Extension to be granted, a Change Order will be processed and approved stating the Time Extension to be provided and any change to the Contract Amount.

g. The Executive Director may: 1) recommend that the entire Time Extension be granted; 2) recommend that a portion of the Time Extension be granted; or 3) deny the Time Extension. The Executive Director will provide the Design-Builder a final decision in writing within fifteen (15) days of receipt of the Time Extension request from the Commission Representative, or such additional time as the Executive Director requires, but not to exceed ten (10) additional days.

h. The Design-Builder must make a Dispute to the Executive Director, as required by Article 18, regarding any Time Extension request to which the Commission Representative and Design-Builder do not agree, as limited by this Section 10.03.5.h. The Design-Builder may not dispute the decision of the Commission Representative unless the Time Extension request exceeds five (5) calendar days or the liquidated damages exceed $10,000. The decision of the Executive Director is final for each Time Extension request of less than five (5) days, or if

the liquidated damages assessed are less than $10,000.

Section 10.04 Liquidated Damages

[Reserved]

Section 10.05 Completion of Punch List

1. It is also understood and agreed that TIME IS OF THE ESSENCE IN CLOSING OUT THE WORK. The Design-Builder agrees to begin performance immediately after receipt of notice of the Punch List Work.

2. The period to complete Punch List Work will be determined in the sole discretion of the Commission Representative. The time period for completion of the Punch List Work begins the day after the Punch List is provided to the Design-Builder. The Commission Representative may extend the period to complete Punch List Work for specific Work which requires the receipt of long lead-time materials. However, all other Punch List Work must be completed as required by this Section 10.05.

   a. Unless otherwise directed by the Commission Representative, failure of the Design-Builder or its Subcontractors to begin the Punch List Work prior to the expiration of three (3) days after receipt of the Punch List will be construed as failure to prosecute the Work of the Contract.

   b. It is further understood and agreed that the Punch List Work will be continuously prosecuted once begun. Therefore, any gap of three (3) days during which Punch List Work is not being performed on the job site will also be construed as failure to prosecute the Work of the Contract.

Section 10.06 Notice of Labor Disputes

Whenever the Design-Builder has knowledge that any actual or potential labor disputes is delaying or threatens to delay the timely performance of this Contract, the Design-Builder must immediately give notice to the Commission Representative in accordance with the Notice provision of Section 22.05 and must include all available information with respect thereto to the Commission.

# ARTICLE 11. MEETINGS

Section 11.01 Pre-Construction Meeting

Prior to commencing construction Phase Activities, the Commission will conduct a pre-construction meeting as detailed in Book 2A – Section 01010 – 2.1 – Pre-Construction Meeting. Representatives of the Design-Builder 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 Drawings, Technical 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 Design-Builder is responsible for conducting and documenting weekly coordination meetings at the Site. The Design-Builder will arrange for Subcontractors to attend the meetings if expressly requested by the Commission Representative. Prior to each meeting, the Design-Builder must submit its schedule of activities and interfaces in the format required by the Commission. The meetings may include the following:

1. Review of Work progress since the previous 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 Design-Builder will use 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. Clarifications and decisions required of the Commission.
10. Review of Design-Builder's forces on the Work.
11. Review of Project Record Document status and content.
12. Review of the three (3) week look ahead schedule.
13. Review of LEED issues.
14. Review of Utility Coordination
15. Review RFI Submittals and Nonconformance logs
16. LEED Coordination
17. Pre-Commissioning and Commissioning
18. Construction coordination among disciplines
19. Commissioning

## ARTICLE 12. COMMISSION PROPERTY

Section 12.01 Ownership of Drawings, Specifications and Models

A. All copies of the Scope and Performance Criteria furnished by the Commission or the Commission's Architect are the property of the Commission. Such copies are not to be used on any other work or project 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 at the completion of the Work. All models are the property of the Commission. During the performance of its Work, the Design-Builder shall be responsible for any loss or damage to documents while in the Design-Builder's possession or the possession of a Subcontractor and any such documents so lost or damaged shall be restored at the expense of the Design-Builder

B. The Design-Builder shall deliver, or cause to be delivered at any time during the term of this Contract, all documents, including but not limited to drawings, models, specifications, estimates, reports, studies, maps and computations, prepared by or for the Commission, to the Commission Representative promptly upon reasonable demand therefore or upon termination or completion of the Work hereunder. In the event of the failure by the Design-Builder to make such delivery, the Design-Builder shall pay to the Commission damages the Commission may sustain by reason thereof, including consequential damages.

Section 12.02 Confidentiality

All of the reports information, or data, prepared or assembled by or provided to the Design-Builder under this Contract are confidential and the Design-Builder agrees that, except as specifically authorized herein or as may be required by law, it shall not make available said reports, information, or data, to any other individual or organization, without the prior approval of the Commission

Section 12.03 Right of Entry

1. The Design-Builder, 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 Agency 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 Agency. The Design-Builder must provide advance notice to the Commission Representative of Design-Builder's initial entry onto the Site. Consent to enter upon all or any part of the Site given by the Commission or User Agency will not create, nor be deemed to imply the creation of, any additional responsibilities on the part of the Commission or User Agency.

2. **Inspections**. The Design-Builder acknowledges that the Commission has the right of access to the Site at all times and the right to inspect all Work during the term of the Contract.

3. The Design-Builder 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 Agency in connection with the Work. In the case of any property owned by the Commission or User Agency, or property owned by and leased from the Commission or User Agency, Design-Builder 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 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 12.04 Damage to Property

If the Design-Builder causes damage to Commission or User Agency property other than the Work, the Design-Builder 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 Design-Builder under this Contract for the cost of any such repairs.

Section 12.05 Use of Completed Portions of the Work

1. After Substantial Completion of the Work in any space(s) in the Project, the Commission will have the right to use and occupy such space(s) in advance of Final Completion and Acceptance of the Work, provided that the Commission's occupancy and use of such spaces will not unduly interfere with the Design-Builder's operations nor delay completion of the Work. Occupancy and use of any space(s) in the building by the Commission or User Agency will not constitute Substantial Completion in the absence of written acceptance of Substantial Completion of the affected portion of the Work from the Commission.

2. If the Commission desires to exercise the right of partial occupancy prior to Substantial Completion and Final Completion and Acceptance of the Work as provided below, the Design-Builder will 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 Design-Builder will make all reasonable efforts to complete it as soon as possible. The cost of utilities to partially or temporarily occupied Work pursuant to this Section 12.05 is a cost of the Work, unless the Commission notifies Design-Builder otherwise prior to use of such utilities.

3. The Commission's occupancy or use of such space(s) in the Project will 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 Design-Builder from its obligations or responsibilities under the Contract.

4. In any case, when the Commission occupies or begins to use any portion of the Work pursuant to this Section 12.05, the Commission will give the Design-Builder notice in writing of its occupancy and/or use of the space(s) involved.

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

Section 13.01 Standard of Performance

In addition to performing the Work in full compliance with the Contract Documents, the Design-Builder will 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 design-builders in performing work in projects of a scope and magnitude comparable to the Project.

Section 13.02 Design-Builder's Quality Program

1. Scope of Design-Builder's Quality Program (DBQP)
   a. Quality is the responsibility of the Design-Builder. This responsibility includes development and implementation of a Design-Builder's Quality Program for quality management and construction activities. The DBQP must satisfy the requirements of the Contract Documents. The Design-Builder must develop and implement an appropriate quality program to achieve a level of quality consistent with the Contract requirements.

   b. Throughout the course of the work, the DBQP will be subject to continual monitoring to assess the effectiveness of the quality processes employed by the Design-Builder. The Design-Builder's implementation of and compliance with its DBQP are subject to monitoring and audit by the Commission. The Design-Builder must address the Commission's concerns and audit findings. The Commission will pursue its remedies under the Contract for Design-Builder's failure to appropriately resolve such concerns and findings.

2. Design-Builder's Quality Program
   a. The Design-Builder must establish, implement, and maintain an effective quality program to manage, control, and document the work and assure that the Work conforms to the requirements of the Contract. The Design-Builder must communicate, implement, and follow the DBQP at all levels of its organization.

   b. The DBQP must describe the policies, plans, procedures, and organization necessary to exercise control and ensure quality. It must cover materials, equipment, workmanship, fabrication, and operations furnished both onsite and offsite by the Design-Builder. The DBQP must be an internally approved document, signed by the Design-Builder's management representative, and must contain a revision number and effective date. The DBQP must also include a written statement, signed by the Design-Builder's Quality Representative, that the program satisfies the requirements of the Contract.

   c. Organization of the quality functions and activities for the Project must be supported by the management structure of the Design-Builder. The choice and level of application of the quality program must be appropriate for the Project.

   d. Responsibility for achievement of quality must be acknowledged by all management, construction and support personnel of the Design-Builder. Subcontractors (including suppliers), testing laboratories, and consultants employed by the Design-Builder must also conform to the commitments specified in the Contract and the DBQP.

3. Submittal of Design-Builder's Quality Program
   a. Prior to commencement of Construction Phase activities the Design-Builder must provide its internally approved DBQP to the Commission Representative for review and acceptance. If the Design-Builder fails to submit its DBQP within the required time, or if the DBQP is not accepted, the Commission may suspend the Work until the Design-Builder furnishes an acceptable DBQP. The Design-Builder shall not receive a time extension for the period of any such suspension.

4. Acceptance of the Design-Builder's Quality Program
   a. The Commission Representative is responsible for reviewing and accepting the DBQP. This acceptance is conditional based on satisfactory performance throughout the course of the

work. As work progresses, the Design-Builder may be required to revise the DBQP to maintain a quality of construction consistent with the Contract. Should this revision of the DBQP be required, the revised DBQP will again be subject to acceptance by the Commission Representative.

5. Proposed Changes to the Design-Builder's Quality Program
   a. The Design-Builder must notify the Commission Representative, in writing, of any proposed change to the DBQP. Any changes to the accepted DBQP will be subject to the same acceptance process stated in Section 13.02.4.a. above.

Section 13.03 Labor, Materials and Equipment

1. Unless otherwise specified, all materials and equipment will be new, and of such quality as required to comply with the Contract Documents. The Design-Builder will, when required, furnish satisfactory evidence as to kind and quality of all materials and equipment. All labor will be performed by workers skilled in their respective trades, and workmanship will 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 Commission, in which case it will be removed and replaced by the Design-Builder as provided hereinafter in **Section 13.08,** "Correction of Work Before Final Payment."

3. The Design-Builder will 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.

4. The Site will not be utilized for the storage of vehicles, materials, equipment, or fixtures not intended for this Project.

5. The Design-Builder will review any specified construction or installation procedures (including those recommended by any product manufacturer). The Design-Builder will advise the Commission Representative in writing 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. if there are any objections which the Design-Builder may have to any specified procedure.

Section 13.04 Source of Materials

Design-Builder will notify the Commission Representative in writing as soon as possible after the Contract has been awarded, but not less than 3 weeks prior to the need for inspection and testing of the source (or sources) from which Design-Builder expects to obtain the various construction materials. The source of supply of each materials used will 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 Design-Builder will furnish materials from other approved sources.

Section 13.05 Products

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. Manufacturer and Products. The term "product" as used herein refers to items to be purchased for incorporating into the Work, whether purchased for the Project or taken from previously purchased stock. The term "product" includes the terms "material," "equipment," "system" and words of similar

intent.

a. Products of the same general type will be from the same manufacturer throughout the Project to provide uniform appearance, operation, and maintenance.

b. Products furnished will be of current production and product of a manufacturer regularly engaged in the manufacture of such products, for which replacement parts are available.

c. Products must be new, Testing Laboratory-labeled, by a laboratory listed in Section 14.03, where applicable, and will bear the manufacturer's name, model number, and ratings of equipment. "New" means products that have not previously been incorporated into another project or facility, except that products consisting of recycled content materials are allowed, unless explicitly stated otherwise. Products salvaged or recycled from other projects are not considered new products.

d. Manufacturers of equipment assemblies, which include components made by others, will assume complete responsibility and warranty for the final assembled unit.

3. Product Selection and Options

a. Product Specifications. The products and materials to be provided must meet the performance and technical requirements of the Contract Documents. Provide products complete with accessories, trim, finish, fasteners, and other items needed for a complete installation and indicated use and effect. If available, and unless custom products or non-standard options are specified, provide standard products of types that have been produced and used successfully in similar situations on other projects. The Commission reserves the right to limit selection to products with warranties that do not conflict with the requirements of the Contract Documents. Where products are accompanied by the term "as selected," the Authorized Commission Representative will provide the selection. Where products are accompanied by the term "match sample," the sample to be matched is that provided by the Authorized Commission Representative. Where products are specified by name and accompanied by the term "or equal," or "or approved equal," or "or approved," the product proposed by Design-Builder must be approved by the substitution process set forth in Section 13.06 below.

b. Named Products: Items identified by manufacturer's product name, including make or model number or other designation, shown or listed in manufacturer's published product literature, that is current as of the date of the Contract Documents.

c. Comparable Product: Product that is demonstrated and approved through the substitution process set forth below to have the indicated qualities related to the type, function, dimension, in-service performance, physical properties, appearance and other characteristics that equal or exceed those of the listed product.

d. Basis-of-Design Products: Where a specific manufacturer's product is named and accompanied by the words "basis of design," including make or model number or other designation, to establish the significant qualities related to type, function, dimension, in-service performance, physical properties, appearance and other characteristics for purposes of evaluating comparable products of other named manufacturers. Submission for approval of a Basis-of-Design product which is not of a named manufacturer is to be through the substitution process.

e. Product Selection Procedures:

(1) Products: Where specification paragraphs or subparagraphs titled "Products" provide a list of names of both products and manufacturers, Design-Builder must provide one of the products listed that complies with the requirements of the specification.

(2) Manufacturers: Where specification paragraphs or subparagraphs titled "Manufacturers" provide a list of manufacturers' names, Design-Builder must provide a product by one of the manufacturers listed that complies with the requirements of the specification.

(3) Available Products: Where specification paragraphs or subparagraphs titled "Available Products" provide a list of names of both products and manufacturers, Design-Builder must provide one of the products listed that complies with the requirements of the specification.

(4) Available Manufacturers: Where specification paragraphs or subparagraphs titled "Available Manufacturers" provide a list of manufacturers' names, Design-Builder must provide a product by one of the manufacturers listed that complies with the requirements of the specification.

(5) Product Options: Where specification paragraphs or subparagraphs titled "Product Options" indicate that size, profiles, and dimensional requirements on drawings are based on a specific product or system, provide either the specific product or system indicated, or a comparable product or system by one of the other named manufacturers. As stated in Subparagraph 3.a above, products must be approved by the substitution process set forth below in order to be deemed "comparable."

(6) Basis-of-Design Products: Where specification paragraphs or subparagraphs titled "Basis-of-Design Products" are included, and provide or refer to a list of manufacturers' names, provide either the specified product or a comparable product by one of the other named manufacturers. Drawings and specifications indicate sizes, profiles, dimensions and other characteristics that are based on the product named. As stated in Subparagraph 3.a above, products must be approved by the substitution process set forth below in order to be deemed "comparable."

Section 13.06 Substitution of Products or Materials

1. The Authorized Commission Representative will receive and consider the Design-Builder's request for substitution if, and only if, all of the following conditions are met. If Design-Builder fails to meet these conditions, the Authorized Commission Representative will return the request without action, other than to record non-compliance with these requirements.

   (a) The reason for proposing the substitution is one of the following:

      (1) The specified product or method of construction is no longer available.
      (2) There is no condition under which the specified product or method of construction can be installed as shown on the Contract Documents.
      (3) There is no condition under which the specified product or method of construction can be provided within the time limits of the Contract.

   (b) Extensive revisions to the Contract Documents are not required.
   (c) Proposed substitutions are in keeping with the general intent of the Contract Documents.
   (d) The request is timely, fully documented and properly submitted.

2. Changes in products, materials, equipment, systems and methods of construction required by the Scope and Performance Criteria and proposed by the Design-Builder after award of the Contract are considered to be requests for substitutions and will be addressed in the manner set forth below. Requests for substitution will be considered only in case of product unavailability or other conditions beyond the control of the Design-Builder. The following are not considered to be requests for substitutions and are not subject to the provisions of this Section:

   (a) changes requested during the proposal period and accepted by the Commission by addendum prior to the award of the contract;

   (b) revisions to the Scope and Performance Criteria requested by the Commission or the Commission's Architect and issued to the Design-Builder via a design bulletin or addendum.

(c) specified options of products and construction methods included in the Contract Documents.

3. Each request for substitution must be submitted separately and must include:

a. Three copies of the request, using the form included in Book 2A.
b. Design-Builder must identify the product or fabrication or installation method to be replaced in each request, including the related Specification Section and/or Drawing numbers.
c. Design-Builder must provide complete documentation showing compliance with the requirements for substitutions, and the following information, as appropriate:

(1) Coordination information, including a list of changes or modifications needed to other parts of the Work and to construction performed by other contractors that will be necessary to accommodate the proposed substitution.
(2) A detailed comparison of significant qualities of the proposed substitution with those of the Work specified. Significant qualities may include elements such as performance, weight, size, durability and visual effect.
(3) Product data, including Drawings and descriptions of products and fabrication and installation procedures.
(4) Samples, where applicable or requested by the Authorized Commission Representative.
(5) A statement indicating the substitution's effect on the Design-Builder's Construction Schedule compared to the schedule without approval of the substitution. The proposed substitution will not extend the Term of the Contract.
(6) Cost information, including a proposal of the net change in the Contract Sum, if any, submitted in the format required for Change Order requests and the designation of any required license fees or royalties.
(7) Design-Builder's certification that the proposed substitution conforms to the requirements of the Contract Documents in every respect and is appropriate for the applications indicated.
(8) Design-Builder must designate the availability of maintenance services and source of replacement materials for any proposed substitution.
(9) The Design-Builder's waiver of rights to additional payment or time that may become necessary because of the failure of the substitution to perform in accordance with the Contract Documents.

4. The Design-Builder warrants and represents that in making a formal request for substitution that:

a. The proposed substitution is equivalent to or superior in all respects to the product specified,

b. At a minimum, the same warranties and guarantees will be provided for the substitute as for the product specified.

c. The Design-Builder will coordinate the installation of accepted substitutes into the Work and will make such changes as may be required for the Work to be complete in all respects.

5. If the evidence presented by the Design-Builder does not provide reasonable certainty that the proposed substitution or deviations will provide a quality or result at least equal to that attainable by the product specified, the Commission Representative may reject the proposed substitution or deviation without further investigation.

6. The Commission Representative will judge the design and appearance of proposed substitutes on the basis of their suitability in relation to the overall design of the Project, as well as for their intrinsic merits. The Commission Representative will not approve proposed substitutes as equal to items specified which, in the Commission Representative's opinion, would be inconsistent with the character, quality or design of the Project.

7. Any additional cost, or any loss or damage, arising from the substitution of any material or method for those specified must be borne by the Design-Builder, including the cost for damages incurred by other contractors, notwithstanding approval or acceptance of such substitution by the Commission Representative, unless such substitution was initiated at the written request or direction of the Commission Representative.

8. The Commission reserves the right to request additional information from the Design-Builder for any request for substitution within 7 days of the submittal of Design-Builder's request. The Authorized Commission Representative will notify the Design-Builder of acceptance or rejection of the substitution within 14 days of receipt of the request, or 7 days of receipt of additional information, whichever is later. If the Authorized Commission Representative fails to respond within the time frame stated herein, Design-Builder must use the product specified.

9. Approval by the Commission Representative of a substitution of material must be given pursuant to a Contract modification as required in Article 17, "Changes in the Work."

10. The Design-Builder's submittal, and the Commission's acceptance, of Shop Drawings, Product Data or Samples for construction activities not complying with the Contract Documents does not constitute an acceptable or valid request for substitution, nor do they constitute approval of a substitution.

11. Manufacturer's nameplates will not be permanently attached to ornamental and miscellaneous metal work, furnishings and equipment, doors, frames, millwork and similar factory-fabricated products on which, in the Commission's opinion, the nameplate would be objectionable if visible after installation of the Work, without the prior written consent of the Commission Representative. This does not apply to Underwriters' Laboratories labels where required, nor to manufacturers' name and rating plates on mechanical and electrical equipment.

Section 13.07 Adjustment of Equipment

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

Section 13.08 Correction of Work Before Final Payment

1. When Work is rejected by the Commission as failing to conform to the Contract Documents, the Design-Builder must promptly remove such Work, including all related materials and equipment, whether incorporated in the Work or not, from the Site. The Design-Builder will promptly replace and re-execute such Work in accordance with the Contract Documents.

2. If the Design-Builder does not remove such rejected Work, materials, and equipment within a reasonable time, as determined by written notice of the Commission, the Commission may, at the expense of the Design-Builder, remove and dispose of such rejected Work as the Commission sees fit. If the Design-Builder does not pay the cost and expenses of such removal within 10 Days, the Commission may deduct all such costs and expenses from any monies due the Design-Builder.

3. If the Work deviates from the requirements of the Contract Documents, the Design-Builder will be responsible for all resulting damages. A claim by the Design-Builder that performing the Work without deviation from what is required by the Contract Documents would also have caused or resulted in damages will not be available to the Design-Builder as a defense or a claim to reduce the Design-Builder's liability. This provision does not limit the other rights of the Commission or other obligations of the Design-Builder.

4. When the Commission is required to provide additional services because of defective Work, neglect, failure, deficiencies, or default by the Design-Builder, the Commission's compensation for such services are payable by the Design-Builder. The Commission's Staff Costs or the Commission's Architect's invoice, as approved by the Commission, along with other costs,

damages, and liabilities incurred by the Commission and/or the Commission's Architect, may, in the Commission's sole discretion be the basis for decreasing the GMP by amendment in order for the Commission to recover the cost of additional services.

Section 13.09 Correction of Work after Final Payment

The final certificate of occupancy, final acceptance of the Project, final payment, or any provision in the Contract Documents does not relieve the Design-Builder of responsibility for faulty materials, equipment or workmanship. Unless otherwise specified, the Design-Builder will remedy any defects and pay for any damage to other Work resulting therefrom. The Commission will give timely written notice of such defects.

Section 13.10 Guarantees and Warranties

1. Unless stated otherwise in the Scope and Performance Criteria, the Design-Builder guarantees all of the Work and each and every part thereof, including, by way of illustration and not limitation, all workmanship, materials, equipment, supplies, services, and facilities that are furnished, produced, fabricated, installed, constructed, or built pursuant to the Contract Documents for the respective periods of time called for by the respective requirements of the Contract Documents, and, if no period is specified, for a period of one (1) year, against defects which, in the opinion of the Commission, result from the use of defective or inferior materials, equipment, supplies, services, facilities or workmanship or from Work not in compliance with or not performed in accordance with the Drawings or specifications. The Design-Builder will provide this guarantee to the Commission in writing using Exhibit Q. The guarantee period will run from and after the date of Substantial Completion of the Work required by the Contract Documents, unless the Contract Documents specify a different date for the commencement of the running of the guarantee period. No part of the Work will be held to be accepted until Substantial Completion of the Work (except where other arrangements have been made under Section 12.05 "Use of Completed Portions of the Work" hereof).

2. The Design-Builder agrees as part of this guarantee to repair or remove and replace as directed by the Commission and, at no cost to the Commission, all the Work, materials, equipment, supplies, services, and facilities which prove defective during the applicable guarantee period or which fail to conform to the Contract Documents; to repair, remove and replace, or pay for as directed by the Commission, at no cost to the Commission, all damaged portions of the Project and the contents and equipment thereof, resulting from or which are incidental to such defects or failure to conform to the Contract Documents. All repairs, removals and replacements must be commenced within 10 Days of written notice from the Commission, and sufficient labor and materials sufficient must be furnished to ensure prompt completion thereof. Should the Design-Builder fail to proceed in accordance with the above, the Commission, without further notice to the Design-Builder, may furnish all labor and material necessary for repairs, or removals and replacements, and the Design-Builder agrees to pay the Commission all such costs incurred.

3. Manufacturer's Warranties

a. The Design-Builder will:

(1) Ensure that all required Manufacturer's Warranties are assignable, and assigned, to the Commission and/or User Agency.

(2) Submit all applicable Manufacturer's Warranties to the Commission Representative and ensure that all warranty forms have been completed in the Commission's and/or User Agency's name and registered with the appropriate manufacturers.

b. Repairs and replacements made by the Design-Builder pursuant to this section will include a Manufacturer's Warranty, if standard with the Manufacturer, in addition to the Design-Builder's Warranty.

## ARTICLE 14. TESTING AND INSPECTION

Section 14.01 Inspection of Work

1. The Commission, the Commission Representative, and all consultants of the Commission retained to do testing, commissioning or inspection, will at all times have access to the Work wherever and whenever it is in process. The Design-Builder must provide proper and safe facilities for access and inspection.

2. The Design-Builder will cooperate with inspecting agencies and provide appropriate access. If the inspection is made by an authority other than the Commission, the Design-Builder will inform the Commission Representative in writing of the date fixed for such inspection no less than 3 business days prior to such date.

3. If the specifications, laws, ordinances or any public authority require any Work to be specifically tested or approved, the Design-Builder will give the Commission Representative no less than 3 business days written notice of the Work's readiness for inspection by the Commission. Required certificates of inspection must be secured by the Design-Builder. Inspections by Commission will be promptly made, and where practicable, at the source of supply

4. Any Work covered up without approval, inspection, or consent of the Commission when such approval, inspection or consent is required by the Contract Documents, will be uncovered for examination as required by the Commission, and will be replaced and/or re-covered, all at the Design-Builder's expense. Examination of Work previously covered up with the approval or consent of the Commission may be ordered by the Commission to be uncovered, and if so ordered, such Work will be uncovered by the Design-Builder. If such Work is found to be in accordance with the Contract Documents, the Commission will reimburse the Design-Builder for such uncovering and re-covering. Such reimbursement will be for actual cost incurred plus the percentages allowed by Sections 16.03.1.a.(4) and 16.03.1.a.(5) "Payment for Changes." If such Work is found to be not in accordance with the Contract Documents, the Design-Builder will pay all costs of uncovering, replacement, and re-covering, as well as any corrections or repairs made to the Work.

5. The Design-Builder will place its field engineering force at the Commission Representative's disposal for field checking during any inspection period. When layouts of the Work are to be made, the Design-Builder will notify the Commission Representative in sufficient time that the Commission Representative may be present.

6. The Commission's Architect is not authorized to make any changes or modifications in the Contract Documents, to direct the performance of additional Work, or to waive the performance by the Design-Builder of any requirements of the Contract Documents. Any changes to the Work will be in accordance with the provisions of Article 17. "Changes in the Work."

Section 14.02 ASTM Standards

Unless otherwise provided, all materials will be sampled and tested in accordance with the latest published standards and methods of the American Society for Testing and Materials (ASTM) and any revisions thereof. If there are no ASTM standards that apply, applicable standard methods of other recognized standardizing agencies will be used. Design-Builder must provide the name and qualifications of any such standardizing agency to the Commission or its authorized representative for review and approval.

Section 14.03 Testing Laboratory Labels

1. All equipment containing electrical wiring must be submitted to the Commission Representative for acceptance before installation. Unless otherwise specified, all electrical components furnished and installed or assembled by the Design-Builder under this Contract must be approved and so labeled by one of the following Testing Laboratories:

   a. Underwriters' Laboratories (UL)

b. Canadian Standards Association (CSA)

c. Electrical Testing Laboratory of New York (ETL)

d. Illinois Institute of Technology Research Institute (IITRI)

e. American Gas Association (AGA)

f. Factory Mutual Research Corporation (FMRC)

g. Maintenance and Electrical Testing (MET)

h. American Research Lab (ARL)

2. Any electrical unit comprised of a number of components, assembled at the factory, and considered custom made, must bear one of the above labels for the entire unit as well as for each component.

3. All costs in obtaining a testing laboratory label are paid by the Design-Builder at no additional cost to the Commission. Any delays in the completion of the Work caused by the manufacturer of equipment in obtaining the required testing laboratory labels and the Commission approval are not grounds for an extension of time beyond the time of completion indicated in the Contract Documents.

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

Section 15.01 Documents at the Site

The Design-Builder must keep one complete set of the Contract Documents, including all Drawings, specifications, and submittals, at the Site, in good order and available to the Commission, and the Commission Representative. The Drawings, specifications and submittals must be kept up to date by replacing obsolete sheets with revised sheets as they are issued.

Section 15.02 Design-Builder's Responsibilities and Submittal Procedures

1. Shop drawings, product data, video tape and samples ("Submittals") are part of the Work under this Contract and they must be provided whenever required to the satisfaction of the Commission at the expense of the Design-Builder.

2. The Design-Builder must submit to the Commission Representative such shop drawings, product data, video tape and samples Submittals required for the Work involved under this Contract. Submittals shall be approved by the Design Builder's Architect prior to delivery to the Commission

3. The Schedule must indicate Submittal preparation and review activities by the Design Builder. No extensions of time will be granted to Design-Builder because of its failure to properly manage review of Submittals on the Project. Design-Builder shall submit a separate schedule (in table format) identifying all Submittals and approximate. The Commission Representative shall designate which, if any, of the Submittals will require approval by the Commission.

4. The Design-Builder must prepare and submit proper Submittals in accordance with its contractual obligations. By submitting shop drawings, video tape, product data, and samples, the Design-Builder represents that it has determined and verified all materials, field measurements, field conditions, and quantities and that it has checked and coordinated the information contained within each submittal, including its subcontractors' submittals, with the requirements of the Work and of the Contract Documents. The Commission shall have no obligation to review Submittals

5. All Submittals must be dated and stamped by the Design-Builder and indicate that the submittal has been reviewed and checked by the Design-Builder prior to submittal and found to be in conformance with the Contract Documents. All submittals will be transmitted to the Commission Representative. The Design-Builder must clearly identify each shop drawing, video tape, product data, and sample in accordance with the following for purposes of identification and record:

SUBMITTAL IDENTIFICATION

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

CHECKED AND SUBMITTED IN ACCORDANCE WITH DRAWINGS AND SPECIFICATION.
Design-Builder:

_____
By: _____ Date: _____

6. Shop drawings must be submitted with accurate dimensions. The shop drawings must represent the actual manner in which the Work is manufactured and installed, and the relation of the Work installed to that of other trades, clearances, and all other pertinent data. Dimensions must be expressed in feet and inches. Designs prepared in the metric system may be submitted with

metric units, but the equivalent English units must also be shown. All weights and dimensions must be certified prior to submission for review.

7. Transmittal of Submittals to the Commission and the Commission's approval of any Submittals does not relieve Design-Builder from its standard of care for the performance of the Work. Design-Builder must submit all shop drawings, video tape, samples and product data to the Commission Representative with an accompanying transmittal letter containing the above Submittal identification data and a list of items being submitted. The Design-Builder should coordinate Submittals into logical groups or sets of related items.

8. Any Submittal that, in the opinion of the Commission, is not complete and in proper form will be returned to the Design-Builder without review. The Design-Builder must not submit duplicates or reproductions of any Contract Documents issued by the Commission as shop drawings.

9. Design-Builder must provide Submittals in the form and quantities acceptable to the Commission.

10. The Design-Builder must notify the Commission Representative in writing of any deviations in the Submittal from the Commission approved Contract Documents or Scope and Performance Criteria. If deviations from the Commission approved Contract Documents or Scope and Performance Criteria are not accepted by the Commission or if evaluation of the deviations delays the progress of Work, Design-Builder will not receive a time extension for any delay caused by the and proposed deviations in the Submittal.

11. Additional requirements for submittals are stated in Book 2A, Section 1300.

Section 15.03 Review by the Commission

1. Submittals may be reviewed by the Commission for compliance with the Commission Approved Contract Documents and Scope and Performance Criteria. In reviewing the Submittal, the Commission will not verify dimensions and field conditions. Any such review does not relieve the Design-Builder, Subcontractor, manufacturer, fabricator or supplier from responsibility for any deficiency that may exist, or from any departures or deviations from the requirements of the Commission Approved Contract Documents, nor does it relieve them from responsibility for (i) errors of any sort in shop drawings, samples and product data, (ii) responsibility for proper fitting of the Work, or (iii) the necessity of furnishing any Work required by the Contract documents which may not be indicated on shop drawings. The Design-Builder is solely responsible for any quantities that may be shown on the shop drawings. The Commission's review of a specific item does not indicate approval of an assembly of which the item is a component.

2. The Design-Builder must not fabricate products, begin Work, order or have delivered any material, equipment or system that the Commission has indicated requires approval of the Submittal until return of the Submittal from the Commission with a stamp authorizing Work and/or delivery and installation to be performed, as described in Paragraph 3 immediately below.

3. The Commission will return Submittals requiring Commission Approval stamped as follows:

   a. "No Exceptions" means no changes are necessary on the reviewed Submittal. The Design-Builder may proceed with the Work for that Submittal. Re-submittal is not required.

   b. "Exceptions as Noted" indicates that the Submittal is accepted subject to the corrections and/or comments noted. The Design-Builder may proceed with the Work for that Submittal if the Design-Builder incorporates the Commission's comments, and/or corrections. Re-submittal is not required.

   c. "Revise and Resubmit" means that the Submittal does not meet all the requirements necessary to proceed with the Work associated with the Submittal. The Design-Builder must resubmit in accordance with the reviewer's comments and/or corrections. Submittal marked in this manner must not be released for fabrication, delivery, or construction.

d. "Rejected" means the submittal does not meet the requirements set out in the Commission Approved Contract Documents or Scope and Performance Criteria. The Design-Builder must resubmit in accordance with the Commission Approved Contract Documents and Scope and Performance Criteria and any corrections and/or comments made regarding the Submittal by the reviewer. Submittals marked in this manner shall not be released for fabrication, delivery, or construction.

4. If the Submittal requires revision, the Design-Builder must notify the Commission Representative and all pertinent Subcontractors in writing that the reviewed set has been withdrawn.

5. Submittals that require revisions must be corrected and resubmitted to the Commission Representative to maintain the approved CPM schedule, but in no event more than 5 Days after receipt of the Commission's comments.

6. Shop Drawings: After review, one reproducible stamped by the Commission as described in paragraph 3 above will be returned to the Design-Builder.

7. Submission and Review of Samples: If a considerable range of color, graining, texture, or other characteristics may be anticipated in finished products, a sufficient number of samples of the specified materials must be furnished by the Design-Builder to indicate the full range of such characteristics which will be present in the finished products. Any products delivered or erected without submittal and review of full range Samples will be subject to rejection. Each tag or sticker will have clear space for the stamps of the Design-Builder and Commission. Notice of the result of the review will be provided to the Design-Builder with one of the stamps indicated in Paragraph 3 above. Rejected samples will be returned. Accepted samples will be retained by the Commission and become the property of the Commission. Where color samples are required to be submitted, color samples must be submitted on the actual material which will finally be installed in the Work.

8. Product data: After review, two (2) sets of product data stamped by the Commission as previously described will be returned to the Design-Builder.

Section 15.04 As-Built Drawings

1. As the Work progresses, the Design-Builder, and the Subcontractor for each trade or division of Work under the direction of the Design-Builder, must keep a complete and accurate record of the following:

   a. Changes between the Work as shown on the Contract Drawings and the shop drawings indicating the Work as actually installed.

   b. The specific location of all infrastructure elements, including piping, valves, ductwork, equipment, driveways, catch basins, sewer lines, waterlines, water mains, and other such elements which were not accurately located or changed location or elevation from that shown on the Contract Drawings.

   c. Equipment schedules indicating manufacturers' names and model numbers installed.

2. Changes must be neatly and correctly recorded daily on full-size prints of the Contract Drawings. This record set of Contract Drawings must be kept at the Site for inspection by the Commission.

3. Upon completion of the Work, the Design-Builder will submit a final set of full-size prints to the Commission Representative for review and acceptance.

4. At the time as-built drawings are delivered to the Commission, the Design-Builder and each Subcontractor will certify, in writing, that the as-built drawings are complete and accurate..

Section 15.05 Record Shop Drawings and Product Data

1. As the Work progresses, the Design-Builder must keep a complete and accurate record of the changes and deviations from the Work as shown on the shop drawings and product data indicating

the Work performed. The Design-Builder must furnish record shop drawings in a form and quantity acceptable to the Commission. Record shop drawings must be submitted for all items reviewed as shop drawings. Record shop drawings must be provided in an editable electronic medium and hard copy as directed by the Commission. Unless otherwise specified, record shop drawings must be submitted on the same size sheets as the Contract Document Drawings and include an index of all items.

2. Unless otherwise specified, Design-Builder must furnish 7 record copies of product data loose-leaf binders. Loose-leaf binders must be subdivided by submittal numbers and must contain an index of all items unless otherwise specified.

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

1. The Design-Builder must furnish a complete list of equipment actually installed. The list must include at least the following information: a copy of pertinent nameplate data, name and address of local representative who stocks or furnishes repair or replacement parts, and name, address, and telephone number of the Subcontractor responsible to the Design-Builder for the equipment under the guarantee.

2. The Design-Builder must submit operating instructions for each major component of equipment and its controls in accordance with the specifications. Proposed instructions must be submitted to the Commission Representative for the Commission's review and acceptance in the amount provided for in the specifications. Upon acceptance, the Design-Builder must post applicable instructions as required by the specifications or as otherwise directed by the Commission.

3. The Design-Builder must submit to the Commission Representative any and all maintenance data prepared by the manufacturer of each major component of equipment and its controls in accordance with the specifications. Data must include at least the following information: complete parts list; itemized lists of common purchase items of materials (e.g., bearing, packing, connectors, sealing devices, and other standard items) indicated by their standard trade designation; recommended routine and inspection maintenance, including testing recommendations to evaluate efficiency of performance; lists of special tools and gauges, lubricating instructions, and recommended spare parts; tolerance and clearances required for maintenance; and trouble-shooting guides prepared in a simple format to indicate complaint or problem, probable cause, and remedy. The proposed maintenance data must be submitted to the Commission Representative for the Commission's review and acceptance in the quantity provided for in the specifications.

4. The Design-Builder must submit all applicable manufacturer's warranties as described in Section 13.08 "Guarantees and Warranties."**Section 15.07 Record Documents**

At Substantial Completion of the Work, the Design-Builder must deliver to the Commission and the User Agency, in suitable transfer cases clearly marked "Record Documents," all as-built drawings, record shop drawings, video tape, product data, instructions, parts list, and operations and maintenance manuals arranged in proper order and indexed. The submission of all Record Documents is a prerequisite to reduction of retention from 3% to 1% under Section 16.08, "Release of Retainage."

Section 15.08 Project Account Records

1. Project data and records

   a. The Design-Builder and each Subcontractor must keep an accurate record showing the names, occupation, and the actual hourly wages paid to all laborers, workers, and mechanics employed by them in connection with the Work. Such record must be open at all reasonable hours to the inspection of the Commission and to the Director of Labor of the State of Illinois and his/her deputies and agents. The Design-Builder also must furnish the Commission with certified copies of its payrolls in accordance with Section 16.02 "Payment Applications."

   b. The Design-Builder and all Subcontractors acknowledge and agree that the Work shall be performed on an open-book basis, and accordingly must furnish the Commission with such

information as the Commission may require relating to labor and materials, including all information necessary to determine the cost of the Work, such as the number of workers employed, their pay, the distribution of labor into Work items, equipment time distribution, and any other information which the Commission may require. The Design-Builder must furnish the Commission with copies of delivery tickets and invoices covering the expenditures for all costs for which the Design-Builder seeks payment, including all costs incurred by Subcontractors, under the Contract.

2. Audits

a. The Design-Builder must furnish to the Commission Representative such information as may be requested relative to the progress, execution, and cost of the Work. The Design-Builder must maintain complete records showing actual time devoted and costs incurred. The Design-Builder must maintain its books, records, documents, and other evidence and adopt accounting procedures and practices sufficient to record properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred for or in connection with the Work for 7 years after final payment. This system of accounting must be in accordance with generally accepted accounting principles and practices, consistently applied throughout.

b. All books and accounts kept by the Design-Builder in connection with the Work, whether in hard copy, digital or other electronic form, must be open to inspection and audit by authorized representatives of the Commission. The Design-Builder must make these records available at reasonable times during the performance of the Work and must retain them in a safe place and make them available for inspection and audit for at least 7 years after final payment. No provision in this Contract granting the Commission right of access to records documents is intended to impair, limit, or affect any right to access to such records and documents which the Commission would have had in the absence of such provisions.

c. The Design-Builder must reimburse the Commission for the costs of such audits if the audit demonstrates that the Design-Builder overstated the amount due on any invoice by 2% or more. This is in addition to the Design-Builder's obligation to reimburse the Commission for any overstated amount that might have been paid to Design-Builder.

3. Confidentiality

All of the reports, information, or data prepared or assembled by or provided to the Design-Builder under this Contract are confidential and the Design-Builder agrees that, except as specifically authorized herein or as may be required by law, it will not make available said reports, information, or data to any other individual or organization without the prior approval of the Commission. This requirement will survive expiration or termination of this Contract.

# ARTICLE 16. PAYMENTS

Section 16.01 Guaranteed Maximum Price ("GMP")

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

Section 16.02 Payment Applications

It is the duty of the Design-Builder to effectively manage the payment application process and all related paperwork for processing of Construction Payment Applications or Professional Service Invoices. The Design-Builder is responsible to the Commission for securing and delivering all paperwork required by the Contract to be submitted for payment, including Subcontractor, consultant and material supplier lien waivers, certified payrolls, and all other required documents or invoice cover sheets.

Design-Builder shall follow the directions provided by the Commission regarding the electronic submission of payment applications, invoices and supporting documentation. Those instructions are stated in Book 2A, Standard Terms and Conditions Procedures manual Section 01025 – Payment, Change Order and Substantial Completion procedures.

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

Design-Builder will submit payment applications in such a manner so as not to delay payment to any Subcontractor, material supplier, consultant or service provider whose billing and lien waiver paperwork is complete.

1. Schedule of Values

   If required, prior to commencement of Construction activities, the Design-Builder will submit to the Commission Representative a Schedule of Values, consistent with the Design Build Schedule of Values per Exhibit 6 of Book 1 showing values of the Work to be performed by it and its Subcontractors containing such supporting details or other evidence as to its correctness as the Commission Representative may require. The Schedule of Values will list the value for each construction activity broken down by materials and labor to be included in the Schedule. When approved by the Commission Representative, the Schedule of Values will be used as a basis for certificates of payment unless it is found to be in error. Additional requirements for the Schedule of Values are stated in Book 2A.

2. Multiple Locations

   The Work may be performed at multiple locations. Separate, independent Payment Applications, each supported by its own Sworn Statement will be submitted for each location. Retainage, Substantial Completion of the Work and Final Completion and Acceptance of the Work will be evaluated separately for each separate location.

3. Schedule for Payment

   Invoices will be submitted and payments shall be made as follows in this Section 16.02.3:

   a. The initial invoice from the Design-Builder shall be submitted on June 3, 2013. This invoice shall include a request for payment of all costs incurred to date by the Design-Builder for Design-Builder's payment and performance bond and insurance, supported by substantiation of such costs as required by this Contract. In addition, Design-Builder shall invoice an amount equal to five percent (5%) of Design-Builder's Cost of the Work, which amount shall be payable

to Design-Builder as compensation for mobilization. Payment for the approved June 3, 2013 invoice shall be made on or about June 17, 2013.

b. The second invoice from the Design-Builder shall be submitted on July 1, 2013. This invoice shall include a request for payment of all Costs of the Work incurred to date by the Design-Builder, supported by substantiation of such costs as required by this Contract. The Commission shall deduct the 5% of the Cost of the Work paid for mobilization from the amount for payment requested by the Design-Builder in its July 1, 2013 invoice. This amount shall be retained by the Commission to ensure the Design-Builder's continued performance and compliance with the terms of the Contract. In addition to its Costs of the Work incurred to date, the Design-Builder shall include: (i) a request for payment of fifty percent (50%) of its estimated labor costs of the Work to be performed during July, 2013; (ii) a request for payment of twenty-five percent (25%) of the Design-Builder's Fee; and (iii) a request for payment of twenty-five percent (25%) of the Lump Sum **for** Overhead ~~portion of its~~ **and the** General Conditions and Requirements. Payment for the approved July 1, 2013 invoice shall be made on or about July 15, 2013.

c. The third invoice from the Design-Builder shall be submitted on August 1, 2013. This invoice shall include a request for payment of all Costs of the Work incurred to date by the Design Builder supported by substantiation of such costs as required by this Contract. The Commission shall deduct the amount paid to the Design-Builder for the estimated labor costs for July, 2013 from the August 1, 2013 invoice. In addition to the Costs of the Work included on the August 1, 2013 invoice, the Design-Builder shall also include: (i) a request for payment of fifty percent (50%) of its estimated labor costs of the Work to be performed during August, 2013; (ii) a request for payment of twenty-five percent (25%) of the Design-Builder's Fee; and (iii) a request for payment of twenty-five percent (25%) of the Lump Sum **for** Overhead ~~portion of its~~ **and the** General Conditions and Requirements. Payment for the approved August 1, 2013 invoice shall be made on or about August 15, 2013.

d. The fourth invoice from the Design-Builder shall be submitted on September 3, 2013. This invoice shall include a request for payment of all Costs of the Work incurred through Substantial Completion of the Work. The Commission shall deduct the amount paid to the Design-Builder for the estimated labor costs for August, 2013 from the September 3, 2013 invoice. In addition to the Costs of the Work included on the August 1, 2013 invoice, the Design-Builder shall also include a request for payment of twenty-five percent (25%) of the Design-Builder's Fee. The Design-Builder may also request payment for: (i) up to fifty percent (50%) of the amount retained by the Commission pursuant to Section 16.02.3(b) above; and (ii) twenty-five percent (25%) of the Lump Sum **for** Overhead ~~portion of~~ **and** the General Conditions and Requirements. Payment for the approved September 3, 2013 invoice shall be made on or about September 17, 2013.

e. Final Payment. Fifteen of the seventeen Projects within the Commission Program include the installation of elevators ("Elevator Projects"). The Design-Builders for the Elevator Projects shall invoice for final payment for such Projects upon completion of the installation and acceptance of the elevators in compliance with this Contract. Unless otherwise directed by the Commission Representative, the final invoice for the Elevator Projects shall be submitted on February 1, 2014. The invoice for final payment for the other two Projects shall be submitted on October 1, 2013. The final invoice shall request payment for (i) any Cost of the Work that was not submitted for payment in a prior invoice, (ii) the remaining twenty-five percent (25%) of the Design Builder's Fee due to the Design Builder, (iii) payment of the remaining twenty-five percent (25%) of the Lump Sum **for** Overhead ~~portion of~~ **and** the General Conditions and Requirements and (iv) payment of the remaining amount retained by the Commission pursuant to Section 16.02.3(b) above. The Commission shall include any Performance Achievement Payment due to the Design-Builder in its final payment to the Design-Builder. Payment for the final invoice shall be made promptly upon completion of the close-out of the Contract by the Commission and Design-Builder. Any amounts owed by the Design-Builder to the Commission shall be deducted from the final payment. In the event that the amount owed by the Design-Builder to the Commission exceeds the amount due to the Design-Builder as final payment for the Work and Design-Builder's Fee, the Design-Builder shall promptly remit the net amount due

and owing to the Commission.

4. Payment Application Procedures

On the due date of the invoice for each month as prescribed above, the Design-Builder will submit to the Commission Representative, in triplicate, an application for partial payment including a notarized affidavit stating that it has complied with the requirements of Section 16.02.8. The submission shall be one (1) original hard copy to the Commission Representative and at the same time submission electronically through the Commission's designated web based system. The form for the Application and Certification for Payment is attached as Article 26, Exhibit A. The Design-Builder must also provide a Design-Builder's Sworn Statement and Affidavit for Partial Payment, attached as Article 26, Exhibit B. The affidavit must be supported by receipts or receipted vouchers evidencing payments for such materials, services, labor, and payments to Subcontractors who are providing labor or material to the Project. The application for partial payment will conform to approvals made by the Commission Representative at the payment review meeting. The procedures for Payment Applications are stated in Book 2A, Section 01025-Payment, Change Order, and Substantial Completion Procedures. Article 26, Project Forms, contains the various forms used for payment applications.

5. Certified Payrolls

Three copies of certified payrolls for the payment period are to be submitted by the Design-Builder and all Subcontractors working on the Site to the Commission every week. The Commission may elect to utilize a Web-based method for electronic submittal of certified payrolls. In the event that the Commission elects to utilize electronic submittal, Design-Builder shall follow the directions provided by the Commission as a supplement to Subsection 3.6 of Section 01300, "Submittals," of Book 2A, Standard Terms and Conditions Procedures Manual, and submit its certified payrolls electronically, as a replacement for the three hard copy submittals. All payrolls must be identified with Design-Builder or Subcontractor's name and Contract name and number, and must be sequentially numbered. The payroll will be submitted by the Design-Builder and Subcontractor until all Work by that Design-Builder or Subcontractor is completed. If there are periods of no Work by Design-Builder or a Subcontractor, a payroll labeled "NO WORK" will be submitted. The final payroll will be labeled "FINAL." Certified payrolls are required to assure EEO compliance as well as wage compliance. Race, worker classification, and gender must be clearly marked for each employee on the certified payroll along with all additional information required by the Commission. An employee's address should appear every time his/her name appears on the payroll. The Design-Builder must submit the certified payrolls and additional information regarding EEO and wage compliance by providing a Payroll Summary Report in the form required by the Commission. The EEO report form required by the City and the U.S. Department of Labor must be submitted by Design-Builder and each Subcontractor, reflecting fully the periods of Work covered by the partial payment request.

6. Payment for Material Stored on-Site

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

b. Payment of stored material on the Site will be one hundred percent (100%) of a valid invoice less applicable retainage (as described in Section 16.06) when the Design-Builder has provided the following documents:

(1) A paid invoice from the supplier showing the unit, quantity, description of the material or equipment and costs.
(2) A final waiver of lien from the supplier for the total amount of the material purchased.
(3) Inspection tickets for all the material stored

7. Payment for Material Stored Off-Site

a. Payment for material stored off-site, if authorized in Book 3 of the Contract, or when approved in writing by the Executive Director and Commission Representative, will be one hundred percent (100%) of a valid invoice less applicable retainage (as described in Section 16.06) when the Design-Builder has provided documents and complied with the requirements listed below.

(1) A paid invoice from the supplier showing the unit, quantity, description of the material or equipment and costs.

(2) A final waiver of lien from the supplier for the total amount of the material purchased.

(3) Inspection tickets for all the material stored.

(4) The Design-Builder must furnish the Commission Representative with a certified statement giving the exact location of the materials or equipment, and stating that:

a) Such materials are suitably stored and maintained at a bonded, secure and environmentally appropriate location agreed upon and subject to such conditions required or established by the Commission.

b) The Design-Builder has complied with procedures satisfactory to the Executive Director to establish the Commission's title to such materials or otherwise protect the Commission's interest therein, including but not limited to, insurance, storage and transportation to the Project Site for such materials stored off-site, as the Executive Director or Commission Representative may reasonably require.

c) The materials, equipment, and associated fabricated components will not be diverted away from the Project.

(5) The risk of loss will remain with the Design-Builder. The Design-Builder must provide the Commission Representative with a certificate of insurance coverage for the stored material for which payment is requested

(6) Simultaneously with payment for such material, the Design-Builder must prepare and execute any and all documents required to transfer title to the Commission, including, without any limitation, any Uniform Commercial Code Documentation necessary to perfect transfer of title.

(7) All material and Work covered by payments made will thereupon become the sole property of the Commission.

(8) The Design-Builder must pay the Commission's reasonable costs for consultants or attorneys relating to administration of the payment for material stored off Site, to verify and review required filings and documents, inspect materials, and travel. Travel costs are to be paid based upon the current Commission Travel Guidelines.

8. Documentation Supporting Monthly Payment Applications

a. For the June 1, 2013 invoice, the Design-Builder must provide its own Design-Builder's Sworn Statement and Affidavit for Partial Payments (Design-Builder's Sworn Statement), as required by Section 16.02.4 and its Design-Builder's Waiver of Lien for Partial Payment (Design-Builder's Waiver of Lien) in support of the Payment Application. The Application and Certification For Payment is Exhibit A of this Book 2 and the Waiver of Lien is Exhibit C.

b. For the July 1, 2013 invoice, and all subsequent invoices except the final one, the Design-Builder must provide: its own Design-Builder's Sworn Statement, its own Design-Builder's Waiver of Lien for the current Payment Application and the Contractor's Affidavit from all of its Subcontractors. The Subcontractor's Affidavit is Exhibit D of this Book 2. In addition, the

Design-Builder must provide Supplier's Waiver of Lien for Final Payment (Supplier's Partial Waiver) for its material suppliers from the prior Payment Application. The Supplier's Final Waiver is Exhibit J of this Book 2.

c. For the Final Payment Application, the Design-Builder must provide the Design-Builder's Sworn Statement and Affidavit for Final Payment (Book 2 Exhibit F) and the Design-Builder's Final Release and Waiver of Lien (Book 2, Exhibit G). In addition, the Design-Builder must provide Final Waiver of Lien and Subcontractor's Affidavits (Book 2, Exhibit I) for all its Subcontractors, and provide the Supplier Final Release and Waiver of Lien for all Suppliers (Book 2, Exhibit K) that have not previously furnished a Final Release and Waiver of Lien.

d. Prior to final payment, the Design-Builder must comply with the requirements of Section 16.08, below.

Section 16.03 Payment for Changes

1. The Design-Builder shall comply with the terms and conditions of Section 17.03 below and provide the Commission Representative with prompt notice of any change to the Work.

a. If the Commission Representative determines that the change identified by the Design-Builder is not a change to the Work, but either is or is not compensable from the Design-Builder's Contingency, the Commission Representative will promptly notify the Design-Builder of such determination. In the event that the Design-Builder disagrees with such determination, the Design-Builder may file a Claim pursuant to Article 18 of this Book 2.

b. If the Commission Representative determines that the change identified by the Design-Builder is a change to the Work that is compensable from the Commission Contingency, the Commission Representative shall issue a Field Order and Change Order for such changed Work to the Design-Builder.

c. If the Commission Representative determines that the change identified by the Design-Builder is a change to the Work that requires an increase to the GMP, the Commission Representative shall issue a Field Order and amendment to the Contract to that effect to the Design-Builder.

When directed in writing by a Field Order signed by the Commission Representative, the Design-Builder will proceed promptly in accordance with such Field Order. Any adjustment to the GMP that may be required by a Field Order will be determined by one of the following methods:

d. Method 1 - Cost Plus Fee Adjustment

(1) Where the parties are unable to determine and agree upon an equitable cost for a change to the Work, a Field Order will be issued and the Design-Builder will proceed with the Work on a cost plus fee basis. The Commission will compensate the Design-Builder for fifty percent (50%) of the cost of the change to the Work from the Commission Contingency. Cost means the Design-Builder's actual cost of labor, material, equipment, insurance, and applicable taxes, as reviewed and approved by the Commission. To the Design-Builder's cost so computed will be added an amount equal to 10% of such cost as Design-Builder's Fee to compensate the Design-Builder for the overhead and profit associated with the change to the Work.

(2) The Design-Builder and Subcontractors must keep and present in such form as the Commission Representative may direct a correct accounting of the costs of all labor, material, equipment, insurance, and applicable taxes, together with supporting vouchers, receipts, and payroll records.

2. The Design-Builder's agreement to a Change Order constitutes a waiver and release by the Design-Builder for any claim for additional payment or a time extension associated with the changes as stated in Section 17.05.

3. The Design-Builder will include any claim for a time extension in the submission of his proposal.

Such claim will only be considered upon demonstration by the Design-Builder that a disruption to Critical Path activities has occurred. Design-Builder is required to furnish documentation in the form of proposed schedule revisions indicating impact in Critical Path activities and events previously approved by the Commission.

4. The Design-Builder will be required to use **Exhibit O** – "Design-Builder's Proposal for Change Order" for any Change Order requests.

Section 16.04 Deductions for Uncorrected Work

The Commission reserves the right to, in its sole discretion, deduct the cost of damaged or non-conforming Work from the GMP rather than require Design-Builder to repair or replace such damaged or non-conforming Work.

Section 16.05 Certificates for Payment and Direct Deposit of Funds

1. If the Design-Builder has complied with the requirements of Section 16.02, "Payment Applications," the Commission Representative will issue to the Design-Builder a certificate for such amount as the Commission Representative determines to be properly due as agreed upon during the payment review meeting during the preceding payment period. The amount of each partial payment will be the total sum of completed Work less prior partial payments, retainage, and payments withheld in accordance with the provisions of Section 16.07 "Payments Withheld."

2. No certificate issued for payment, nor payment to the Design-Builder, nor partial or entire use of the Work, nor occupancy of the Site by the Commission or the User will be an acceptance of any Work or materials not in accordance with the Contract Documents.

3. Any certificates for payment are for the benefit of the Commission and will not be relied upon by any other party (including any surety or Subcontractor of the Design-Builder) in any action against the Commission, the Commission's Architect, or anyone acting on behalf of either of them.

4. The Design-Builder may make a written request to the Commission Representative for payment of Payment Applications by direct electronic deposit to the Design-Builder's bank account. The Design-Builder will also have to follow the administrative procedures required by the Commission in order to receive payment by electronic deposit.

Section 16.06 Retainage

1. The Commission will retain ten percent (10%) from the invoice sums approved and due the Design-Builder up to a total of fifty percent (50%) of the Cost of the Work, including approved Change Orders. The amount so retained ("Retainage") which is five percent (5%) of the Cost of the Work including approved Change Orders, will be released to Design-Builder in accordance with section 16.08 below.

2. The Executive Director, at the Executive Director's sole discretion, may increase the amount of the Retainage withheld if the Executive Director considers the Design-Builder's performance or the progress of the Work to be such that the Commission will likely incur damages, including but not limited to liquidated damages, in excess of the amount of Retainage.

3. The Design-Builder must not withhold retainage from its Subcontractors in excess of the percentage Retainage withheld by the Commission from payments to the Design-Builder and must release Retainage to the Subcontractors under Section 16.08 or the prompt payment to Subcontractors required by Section 16.09.

Section 16.07 Payments Withheld

1. No payment shall be made to the Design-Builder until certificates of insurance, bonds, or other

evidence of compliance by the Design-Builder with all the requirements of the Contract for insurance and bonds have been provided to the Commission.

2. The Commission Representative may decline processing a Payment Application if, in the Executive Director's opinion, the Payment Application is not adequately supported. Failure to submit an approvable monthly schedule update concurrent with each Payment Application may be considered a failure to adequately support a Payment Application. Any Payment Application not supported by an approvable schedule update shall result in the Design Builder's waiver of anny right to assert by CPCO, Claim or otherwise, the right to a time extension (compensable or non-compensable) arising out of work performed or events that occurred during the period covered by the Payment Application. If the Design-Builder and Commission Representative cannot agree on a revised amount to process an inadequately supported Payment Application for, the Commission Representative will process the Payment Application in the amount the Executive Director deems appropriate.

3. The Commission's rights under Section 16.07 are cumulative to any other rights provided under the Contract.

Section 16.08 Release of Retainage

1. At Substantial Completion. When the Project is Substantially Complete, the Design-Builder must notify the Commission Representative, in writing, that the Project will be ready for inspection and/or testing on a definite date. Such notice must be given at least seven (7) calendar days in advance of said date. If the Commission Representative concurs that the Project will be ready for inspection and/or testing on the date given, the Executive Director and other parties will make such inspection as is convenient for all parties, but within a reasonable period of time. The scheduling of the inspection to determine whether the Project is Substantially Complete shall not relieve the Design-Builder of its responsibilities under the Contract Documents. The Design-Builder is required to furnish access for the inspection. If the Executive Director finds that the Work is acceptable under the Contract Documents and has been fully and satisfactorily performed on a timely basis, Retainage will be reduced to an amount equal to three percent (3%) of the Cost of the Work, including any approved Change Orders; provided that the Design-Builder has furnished: a) complete certified payrolls; b) documentation of the turnover of "as-built" drawings, record shop drawings, and product data; c) spare stock of materials, spare parts, accessories, special tools, O & M manuals, guarantees, warranties; d) and all other items required by the Contract Documents or reasonably required by the Commission Representative.

3. At Project Final Completion. The remaining Retainage will be paid when all remaining Work and punch list Work is complete and the Design-Builder submits to the Commission Representative a sworn affidavit that states the following:

   a. All payrolls, bills 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. The "Design-Builder's Sworn Statement and Affidavit" for final release of retainage has been provided to the Commission Representative.

   c. All claims made by Subcontractors of any tier, suppliers, and others against the Design-Builder, the Commission, any agents of the Commission, the Executive Director or Commission Representative have been resolved.

   d. "Final Waiver of Lien and Contractor's Affidavit" forms for all Subcontractors of any tier have been provided to the Commission Representative.

   e. The Warranties and Guarantees, required by the Contract, have been provided to the Commission Representative.

f. All Warranties and Guarantees are in full force and effect.

g. Design-Builder has provided manufacturers' operating instructions for all equipment, and furnished proof that appropriate training of User Agency personnel has been completed.

h. The surety's written consent, signed by its authorized representative, for final payment to be made directly to the Design-Builder, has been provided to the Commission Representative.

i. The Design-Builder agrees that acceptance of final payment will constitute a general release to the Commission, its representatives, officials and employees of all claims of liability for anything done or furnished or relating to the Work of the Contract or for any act or neglect of the Commission or its agents officials and employees relating to or connected with the Contract.

j As-Built documentation including but not limited to As-Built Contract Drawings, As-Built Shop Drawings and Operation and Maintenance Manuals have been provided to the Commission Representative.

k. All other documents requested by the Commission Representative have been provided.

l. The Design-Builder must remove all of the Design-Builder's trailers, equipment, leftover materials, and trash from the Project site, staging area(s) or anywhere else on the Project Site. The Design-Builder must also restore the Design-Builder's staging area(s) to its pre-construction condition. If the Design-Builder does not comply with this requirement, the Commission Representative may provide written notice to comply within a period of time determined by the Commission Representative. If the Design-Builder fails to comply with the written notice, the Commission Representative may have the work done by others, and deduct the charge from the Design-Builder's Retainage.

m. The Design-Builder furnishes the Commission with a certificate in the following form (Book 2, Exhibit P) verifying wages and classifications for laborers and mechanics, including apprentices and trainees employed on the Project:

> The undersigned, Contractor on _____, (PBC Contract No. _____), 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: _____

4. Notwithstanding the foregoing, the Commission Representative, in his sole discretion, may decline to release all or a portion of Retainage if the Commission Representative considers the Design-Builder's performance or the progress of the Work to be such that the Commission or User Agency has incurred or will likely incur damages greater than the Retainage, including but not limited to liquidated damages.

Section 16.09 Prompt Payment to Subcontractors

1. The term "Subcontractor" is defined in Section 1.01. Design-Builder must state the requirements of the Prompt Payment provision in all Subcontracts and purchase orders. If Design-Builder fails to incorporate these provisions in all Subcontracts and purchase orders, the provisions of this Section are deemed to be incorporated in all Subcontracts and purchase orders. Design-Builder and the Subcontractors have a continuing obligation to make prompt payment to their respective Subcontractors. Compliance with this obligation is a condition of Design-Builder's participation and that of its Subcontractors on the Project.

2. The Illinois Prompt Payment Act, 30 ILCS 540/1.01 *et. seq.* requires prompt payment to subcontractors and suppliers, by the Design-Builder for work that has been satisfactorily completed.

3. The Design-Builder must make payment to its Subcontractors within fourteen (14) days of receipt of payment from the Commission for each monthly invoice, but only if the Subcontractor has satisfactorily completed its Work in accordance with the Contract Documents and provided the Design-Builder with all of the documents and information required of the Design-Builder by Article 16. "Payments". The Design-Builder may delay or postpone payment for a Payment Application when the Subcontractor's Work or materials do not comply with the requirements of the Contract Documents, and the Design-Builder is acting in good faith and not in retaliation for a Subcontractor exercising legal or contractual rights.

4. The Design-Builder must make final payment to its Subcontractors within fourteen (14) days after the Subcontractor has satisfactorily completed all of its Work, including but not limited to, completion of punch list work, providing final lien waivers, and providing all of the documents required by the Contract Documents for payment of Retainage at Final Completion of the Project as provided for in Section 16.08. Retainage must be paid to Subcontractors as required by this section, whether the Project has been determined to have reached Substantial Completion as defined in Section 1.01, or whether the Design-Builder has received payment from the Commission for Retainage. The Design-Builder may request that the Commission release the portion of the Retainage held by the Commission that the Design-Builder owes to the Subcontractor. The Design-Builder may delay or postpone payment of Retainage if the Subcontractor's Work or materials do not comply with the requirements of the Contract Documents, the Design-Builder has substantial grounds for and has acted reasonably in making the determination, and the Design-Builder is acting in good faith and not in retaliation for a Subcontractor exercising legal or contractual rights.

5. Design-Builder must make payment to Subcontractors so that they receive it within fourteen (14) days of Design-Builder's receipt of payment from the Commission. Payment is deemed received by the Subcontractor at the time of hand delivery by the Design-Builder, or three (3) calendar days after mailing by the Design-Builder.

6. To the extent feasible, to facilitate the flow of information to Subcontractor, the Commission Representative will post at the Project Field Office and on the PBC website (www.pbcchicago.com), a list of Design-Builder's Payment Applications, including the Subcontractors identified in them, submitted to the Commission for payment and the date of payments made to the Design-Builder by the Commission.

7. Design-Builder must not delay or refuse to timely submit pay requests for a Subcontractor's work or materials. The Commission may construe such delay or refusal as Design-Builder's failure to act in good faith. "Timely", in this context, means within thirty (30) days after the portion of the Subcontractor's work that the Subcontractor has invoiced is in place in the Project or the materials delivered to the Commission (or off-site if this Contact permits payments for off-site delivery). In addition, Design-Builder must not delay or postpone payment for an undisputed portion of a Subcontractor's invoice or in connection with claims or disputes involving different Payment Applications on the same Project or different projects.

8. The Executive Director may withhold payment from the Design-Builder when the Executive Director determines that the Design-Builder has not complied with this Section 16.09.

9. These provisions do not confer any rights in Subcontractors against the Commission. Nothing in this section is to be construed to limit the rights of and remedies available to the Commission,

including but not limited to various rights under the General Conditions.

Section 16.10 Subcontractor Claims

The Design-Builder must pay all lawful claims made against it by its Subcontractors and all lawful claims made against Design-Builder by other third persons arising out of, in connection with, or because of its performance of this Contract. The Design-Builder further will cause all of its Subcontractors to pay all lawful claims made against them. In the even such lawful claims are not satisfied, the Commission is hereby empowered to disburse such sums for and on account of the Design-Builder directly to the respective parties to which such sums are due and owed.

Section 16.11 Pay Applications and Payments Subject to Review

The Commission shall not be precluded or estopped by any measurement, estimate, or certificate made by Design-Builder or any Subcontractor either before or after the completion and acceptance of the Work and payment therefore, from showing the true amount and character of the Work performed and materials furnished by the Design-Builder, or from showing that any such measurement, estimate, or certificate is untrue or incorrectly made, or that the Work or materials do not conform in fact to the Contract. The Commission will not be precluded or estopped, notwithstanding any such measurement, estimate, or certificate and payment in accordance therewith, from recovering from the Design-Builder and its sureties such damages as the Commission may sustain by reason of the Design-Builder's failure to comply with the terms of the Contract.

Section 16.12 No Waiver of Legal Rights

Neither the acceptance by the Commission nor any payment by the Commission will operate as a waiver of any portion of the Contract, or of any power herein reserved, or any right to damages herein provided. If the Commission elects to waive any breach of this Contract, that waiver will not be held to be a waiver of any other or subsequent breach.

The Commission will not be precluded or estopped from showing the true amount and character of the Work performed and materials furnished by Design-Builder, or from showing that any measurement, estimate, or certificate is untrue or incorrectly made, or that the Work or materials do not conform to the Contract. The Commission will not be precluded or estopped from recovering from the Design-Builder and/or its sureties such damages as the Commission may sustain by reason of Design-Builder's failure to comply with the terms of the Contract.

Section 16.13 Liens

Whenever the Commission receives notice in writing of a lien or claim of money due from the Design-Builder to any Subcontractor, worker, or employee for Work performed or for materials or equipment furnished and used in or about the Work, the Commission may direct that the amount of such claim be deducted from payments due or to become due the Design-Builder and withheld by the Commission until such claim has been paid or otherwise discharged. This provision is to be construed as being solely for the benefit of the Commission, and will not require the Commission to determine or adjust any claims or disputes between the Design-Builder and its Subcontractors, workers, or employees, or to withhold any money for their protection, unless the Commission elects to do so. This provision is not to be construed as conferring any rights hereunder for the benefit of Subcontractors, workers or employees, or as enlarging or altering the application or effect of existing lien laws.

The final payment will not become due until the Design-Builder delivers to the Commission complete release of all liens, financial obligations or claims from the Design-Builder, Subcontractors, and other agents acting on its behalf in connection with the Work, arising out of the Work, and an affidavit that so far as it has knowledge or information, the releases include all the labor and material for which a claim could be made or a lien could be filed. If any lien remains unsatisfied after all payments have been made, the Design-Builder must refund to the Commission all moneys that the Commission may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

# ARTICLE 17. CHANGES IN THE WORK

Section 17.01 Owner's Right to Change Work

The Commission reserves the right to order, in writing, changes in the Work or the Schedule without prior notice to the Design-Builder's surety. The Design-Builder is obligated to perform the changed Work included in the written notice from the Commission in a timely manner. The Design-Builder must begin the changed Work upon receipt of a Field Order signed by the Commission Representative unilaterally directing changes in the Work or Schedule.

Section 17.02 Owner Directed Changes in the Work

1. The Commission may make changes in the Work by making alterations therein, or by making additions thereto, or by making deductions or omissions therefrom, without invalidating the Contract and without releasing or relieving the Design-Builder from any guarantee given pursuant to the Contract, without affecting the validity of the guarantee or Performance and Payment Bond and without relieving or releasing the surety or sureties of such bond. All such Work will be executed under the conditions of the original Contract. The Design-Builder will submit to the Commission Representative "as-built" or revised drawings clearly showing the revised Work, all as required by Book 2A – Section 01720 – Site Documentation Requirements.

2. Except in an emergency endangering life or property, no change in the Work will be made by the Design-Builder without receipt of a Field Order signed by the Commission Representative.

3. The Design-Builder will not perform changes to the Work directed by the User unless authorized to do so by the Commission based upon a Field Order signed by the Commission Representative.

Section 17.03 Changes to the Work Initiated by Design-Builder

1. In the event that Design-Builder identifies or encounters a differing site condition as set forth in Section 3.04.4 hereof, the Design-Builder shall submit a Request For Information (RFI) to the Commission Representative. If, upon receipt of a response from the Commission Representative to the RFI, the Design-Builder believes that there has been a change to the Work, the Design-Builder will submit a Design-Builder Proposed Change Order (CPCO) to the Commission Representative. The CPCO will state: the issue presented; any change to the Work that, in the opinion of the Design-Builder the issue requires; Design-Builder's proposed resolution of the issue; and the cost of the Work.

The Commission Representative will respond promptly to the CPCO. The response will take one of two forms: i) the Commission Representative concurs with the Design-Builder, and issues a Field Order that incorporates the terms stated in the CPCO or a Field Order with other terms; ii) the Commission Representative denies the CPCO, and issues a response notifying the Design-Builder that there is no change to the Work, and directing the Design-Builder to perform the Work pursuant to the answer to the RFI.

In the event that a CPCO is denied, the Design-Builder may file a claim pursuant to Article 18, "Claims and Disputes."

2. The Design-Builder, within 2 Days of receipt of a Field Order, must submit to the Commission Representative a CPCO for the revisions to the Work directed by the Field Order. The Design-Builder's failure to submit such request within the specified time will result in the issuance of a Change Order by the Commission for the adjustment to the GMP and/or time for the performance of the Work, if any, that the Commission deems appropriate for the Field Order.

Section 17.04 Change Orders or Amendments to Finalize the Terms of Field Orders

The final terms and provisions of a Field Order, including any adjustment in the GMP and/or the time for the performance of the Work, will be memorialized in a written Change Order or Amendment to the GMP signed first by the Design-Builder then by the Executive Director.

Section 17.05 Design-Builder's Release

Any and all Change Orders and amendments are a full release of the Commission from any liability for any additional compensation or extension of time arising or resulting from the circumstances that gave rise to, and the Work performed pursuant to, a Change Order or amendment. By acceptance of a Change Order or amendment, the Design-Builder accepts the compensation and/or time extension provided in full accord and satisfaction for that Change Order or amendment, and expressly waives, releases, and relinquishes any and all additional claims and demands relating to, or arising out of, the matters covered by that Change Order or amendment. The release that the Design-Builder must sign will state: "By executing this Change Order, Design-Builder certifies that it has reviewed and accepts the compensation and/or time extension provided in full accord and satisfaction for this Change Order and that it expressly waives and releases any and all additional claims and demands relating to, or arising out of, the matters covered by this Change Order as more fully described in the exhibit attached hereto including but not limited to: direct, indirect, overhead, home or field office costs; profits; damages; disruptions and impact."

Section 17.06 Performance of Changed Work

The Design-Builder will promptly proceed with any changes in the Work or Target Schedule as directed by a Field Order in accordance with Section 17.01 "Owner's Right to Change Work." The Design-Builder's refusal or failure to proceed promptly as directed with the changed Work or changes in the Target Schedule constitutes an event of default under the Contract. No change to the Work by the Design-Builder as directed by the Commission will invalidate the Contract or release the Design-Builder's surety.

Section 17.07 Change Claims and Disputes

If the Design-Builder and Commission Representative are unable to agree on the price and/or time extension in connection with a Field Order, the procedures set forth in Article 18 "Claims and Disputes" will govern.

## ARTICLE 18. CLAIMS AND DISPUTES

Section 18.01 Claims

1. This provision of the Contract applies to claims for time and/or money based on: a differing site condition (Section 3.04), changes in the work under Article 17, including CPCOs that have been denied pursuant to Section 17.03, and all other claims made under the Contract.

2. Any claim made by the Design-Builder regarding the Project must be made in accordance with the requirements stated below.

   a. The Design-Builder expressly consents to both the time requirements and notice content requirements for making a Claim or Dispute under this Section 18.01.2. The Design-Builder acknowledges that the notice requirements set forth in this Section 18.01.2. will be strictly enforced and agrees that any failure on the part of the Design-Builder to provide notice strictly in accordance with the requirements of this Section 18.01.2. will constitute a waiver of the Design-Builder's right to make a Claim to the Commission Representative or submit a Dispute to the Executive Director. The Design-Builder further understands and agrees that, notwithstanding any case law decision to the contrary, the notice requirements of this Section 18.01.2. will not be subject to or diminished by any claim on the part of the Design-Builder that the Commission Representative or Executive Director or any person acting on behalf of either of them had actual or constructive knowledge of any Claim or Dispute or any facts or circumstances supporting any such Claim or Dispute.

   b. The Design-Builder must provide notice, in writing, to the Commission Representative of any claim for differing site conditions within one (1) day of discovery as required by Section 3.04.

   c. The Design-Builder must provide notice, in writing, to the Commission Representative of any claim that may be made, within five (5) days after starting the work that is affected by the claim. The notice shall be referenced as a "Notice of Claim Related Work" and must state the nature of the claim, the work that is affected by the claim, and the anticipated duration of the Work.

   d. The Design-Builder must provide notice, in writing, to the Commission Representative of any claim based on: a differing site condition; a change in the Work directed by the Commission Representative; or any other cause within fifteen (15) days of completion of the changed Work.

   e. The Design-Builder will designate the document "Claim." The Claim must include:

(1) The amount of money and/or time extension sought by the Design-Builder, and the contractual and factual basis for each;
(2) A general statement of the basis for the claim;
(3) The facts underlying the claim;
(4) The Notice of Claim Related Work to the Commission Representative;
(5) Reference to the applicable Contract provisions and;
(6) All documentation that describes, relates to, and/or supports the claim.

   f. The Commission Representative will, within thirty (30) days of receipt of the Claim, respond by: requesting a meeting with the Design-Builder; making a written request for additional information from the Design-Builder; taking other action to attempt to resolve the Claim; and/or advising the Design-Builder, in writing of the Commission Representative's position regarding the relief sought in the Claim. If the Commission Representative's written response is that the Claim is denied, the letter will also advise the Design-Builder of its right to file a Dispute to the Executive Director. Any steps taken by the Commission Representative to resolve the Claim will not exceed sixty (60) days from receipt of the Claim, unless the Design-Builder agrees to an additional amount of time in writing.

   g. If the Claim is denied by the Commission Representative, the Design-Builder must file its Dispute within thirty (30) days of receipt of the written denial of the Claim.

Section 18.02 Disputes

1. Design-Builder's Request: In the event of any disagreement between the Design-Builder and the Commission Representative which the Design-Builder and the Commission Representative have attempted, but been unable, to resolve, including, without limitation, changes, time extensions, claims, allowable costs or any other issues of fact or Contract interpretation based upon, relating to, or arising under the Contract, a request for resolution of the Dispute must be submitted to the Executive Director by the Design-Builder for final determination. The Design-Builder may not file a Dispute until there has been a denial of the Claim, which was the basis for the Dispute, by the Commission Representative. The default or termination of the Design-Builder are not matters that may be disputed under this provision of the Contract. The Design-Builder's failure to submit the Dispute within thirty (30) days of receipt of the Commission Representative's response to the Design-Builder's Claim is a waiver of the Dispute. The Executive Director may consider issues of Contract interpretation in connection with decisions to be made in resolving Disputes.

2. Request Requirements: Requests for resolution of Disputes must be made by the Design-Builder in writing, specifically referencing this section, and include: 1) the issue(s) presented for resolution; 2) a statement of the respective positions of the Design-Builder and Commission Representative; 3) the facts underlying the Dispute; 4) reference to the applicable provision of the Contract Documents by page and section; 5) the identity of any other parties believed to be necessary to the resolution of the Dispute; 6) all documentation which describes and relates to the Dispute and 7) if applicable, a statement explaining why the Design-Builder believes that prior to rendering a final decision, the Executive Director should meet with the Design-Builder, Commission Representative or any other parties believed to be necessary to the resolution of the Dispute. Copies of the request for resolution of the Dispute must promptly be provided to the Executive Director and Commission Representative on the same day. In addition, the Design-Builder's Dispute and any subsequent correspondence that relates to the Dispute which the Design-Builder provides to the Executive Director, must be copied to the Commission Representative. The Commission Representative shall have thirty (30) days to respond in writing to the Design-Builder's submission by supplementing the Design-Builder's submission or to provide its own submission to the Executive Director and Design-Builder. However, the Commission Representative may request, and the Executive Director may allow an additional period of time to respond. Failure by the Commission Representative to respond shall not be deemed to be an admission of any allegations made in the request for dispute resolution, but may be deemed to constitute a waiver of the opportunity to respond to such allegation(s), if any, at this stage of the Dispute. The Executive Director's decision may thereafter be reached in accordance with such other information or assistance as may be deemed reasonable, necessary or desirable by the Executive Director.

3. Executive Director's Decision: The Executive Director's final decision shall be rendered in writing no more than thirty-five (35) days after receipt of the response of the Commission Representative was filed or was due, unless the Executive Director notifies the Design-Builder and Commission Representative before the end of the thirty-five (35) day period that an additional period, not to exceed thirty (30) days, is needed for the Executive Director to respond. The Executive Director's decision shall be conclusive, final, and binding on all parties unless a judicial determination is sought in accordance with the provisions set forth below.

4. Implementation of Decision: In the event that the Executive Director's final decision requires a change to the Contract, the Executive Director's final decision shall be implemented through a Change Order which shall be made a part of the Contract, with or without the signature of the Design-Builder (if the Design-Builder refuses to sign the Change Order).

5. Design-Builder's Remedy: If either the Design-Builder or Commission does not agree with the decision of the Executive Director, the sole and exclusive remedy is judicial review by a common law writ of certiorari. Unless such review is sought within thirty-five (35) days of receipt of the Executive Director's decision, all right to seek judicial review is waived.

6. Design-Builder's Performance of Work: The Design-Builder may not withhold performance of and must prosecute any Work required by the Contract during the dispute resolution period, including judicial resolution. The Design-Builder must prosecute all of its Work, including any disputed

Work, with the same diligence and effort as if no dispute existed. The Executive Director's written determination must be complied with pending final resolution, including judicial resolution of the Dispute. Neither the Executive Director's determination, nor the actions of the Design-Builder or the Commission Representative in connection therewith, nor the continued performance by either party, shall constitute an admission as to any factual and/or legal position in connection with the dispute or a waiver of any rights under the Contract.

7. Administrative Appeal of Dispute: The Design-Builder must follow the procedures set out in this Article 18, "Claims and Disputes", and receive the Executive Director's final decision as a condition precedent to filing a judicial review of the decision by common law writ of certiorari.

Section 18.03 No Waiver of Legal Rights

1. Neither the acceptance by the Commission or any representative of the Commission, nor any payment for or acceptance of the whole or any part of the Work, nor any extension of time, nor any possession taken by the Commission will operate as a waiver by the Commission of any portion of the Contract, or of any power herein reserved or any right of the Commission to damages herein provided. A waiver of any breach of the Contract is not held to be a waiver of any other or subsequent breach.

2. Whenever under this Contract, the Commission by a proper authority waives the Design-Builder's performance in any respect or waives a requirement or condition to either the Commission or the Design-Builder's performance, the waiver so granted, whether express or implied, only applies to the particular instance and is not deemed a waiver forever or for subsequent instances of performance, requirement, or condition. No such waiver is construed as a modification of this Contract regardless of the number of times the Commission may have waived the performance requirement or condition.

# ARTICLE 19. EVENTS OF DEFAULT AND TERMINATION

Section 19.01 Events of Default

The Design-Builder's failure to perform any of its obligations under the Contract, including but not limited to the following, are events of default:

1. failure to begin the Work at the time specified;

2. failure to perform the Work in accordance with the Contract Documents;

3. failure to perform the Work with sufficient workers, equipment, or materials to ensure the completion of the Work or any part of the Work within the time specified by the Contract;

4. persistent or repeated refusal or failure (except in cases for which extension of time is provided) to supply adequate skilled workers or proper materials;

5. unauthorized discontinuance of the Work;

6. failure to promptly remove materials, or repair, or replace Work that was rejected as defective or unsuitable;

7. failure to make prompt payment to Subcontractors, whether for material or labor;

8. failure to submit all documents required by the Contract Documents or Commission, including but not limited to timely submission of payment applications;

9. failure to prosecute the Work in a manner acceptable to the Commission or in a manner that does not comply with all laws applicable to the Work.

10. persistently disregarding laws, ordinances, or instructions of the Commission, or Commission Representative; or,

11. failure to comply with any other term of the Contract that states an event of default or otherwise engages in a substantial violation of any provision of the Contract Documents.

12. interruption or delay of Work for reasons within the Design-Builder's control, including, but not limited to, labor interests or disputes;

13. failure to comply with federal, state, or local safety requirements;

14. the Design-Builder's default on a contract with the PBC, CPS, CHA, CTA, or City of Chicago;

15. the Design-Builder's failure to be licensed as a "General Contractor" as required by Chapter 4-36 of the Chicago Municipal Code, at all times throughout the term of the Contract or Design-Builder's loss of its general license;

16. disqualification as an MBE or WBE of the Design-Builder or any joint venture partner, Subcontractor or supplier if its status as an MBE or WBE was a factor in the award of the Contract and such status was misrepresented by Design-Builder;

17. Design-Builder becomes insolvent or bankrupt, attempts assignment of all or any part of the proceeds of this Contract, makes a general assignment for the benefit of creditors, or if a receiver is appointed on account of insolvency any of which negatively impacts Design-Builder's ability to pay Subcontractors or perform the work.

Section 19.02 Remedies

In the event of a default by Design-Builder, the Commission, in its sole discretion, may send the Design-Builder notice of the Commission's intent to exercise any or all of the remedies below.

1. **Termination.** The Commission may terminate the Contract. Written notification of the default and termination of the Contract will be provided to the Design-Builder and the surety by the Executive Director. The Executive Director's decision and declaration of termination is final and effective.

2. **Notice to Cure.** The Executive Director may provide the Design-Builder the opportunity to cure the default. The Design-Builder must cure the default within 10 Days of receipt of the notice from the Executive Director or such time period stated in the Notice to Cure. If the Executive Director does not receive written acknowledgement from the Design-Builder that it will cure the default within the stated cure period or if the Design-Builder does not act to cure the default, the Executive Director may terminate the Contact, in which event the termination of the Contract is final and effective.

3. In addition to the foregoing, upon an event of default in Section 19.01, "Events of Default," the Commission may invoke any or all of the following remedies:

   a. The right of set-off against any payments due or to become due to the Design-Builder and against any Retainage.

   b. The right to take over and complete the Work, or any part thereof, either directly or through others, and to hold the Design-Builder liable for any amounts paid for such Work above those amounts the Commission would have paid the Design-Builder for that same Work

   c. The Commission may use the Design-Builder's Subcontractors, materials, and equipment to complete the Work. Upon the Commission's notification to the Design-Builder invoking this remedy, any and all rights the Design-Builder may have in or under its subcontracts are assigned to the Commission, based on the assignment required by Section 4.03.4 and 4.03.5. The Design-Builder must promptly deliver such documents upon the Commission's request. In case of any subcontract so assigned and accepted by the Commission, the Design-Builder remains liable to the Subcontractor for any payment already invoiced to and paid by the Commission, and for any claim, suit, or cause of action based on or resulting from any error, omission, negligence, fraud, willful or intentionally tortious conduct, or any other act or omission, or breach of Contract, by the Design-Builder, its officers, employees, agents, and other Subcontractors, arising prior to the date of assignment to the Commission, when such claim, suit, or cause of action has not been discharged, disposed of, or otherwise resolved as of that date. The Design-Builder must notify its Subcontractors of these requirements.

   d. The right to terminate the Contract as to any or all of the Work yet to be performed.

   e. The right of specific performance as identified below, an injunction, or any other appropriate equitable remedy as may be applicable:

      1. Immediate transfer of title and delivery of permanent equipment or materials;
      2. Immediate delivery and transfer of software, software licenses, project related data files/data bases and other intellectual property rights;
      3. Immediate assignment of purchase orders and leases;
      4. Reasonable access to Key Personnel, who do not necessarily have to be physically present in Chicago.

   f. The right of money damages, including, but not limited to all expert witness or other consultant fees, court costs, and attorney's fees which the Commission may incur in connection with any claim, suit, or action based upon, related to, or arising from, directly or indirectly, an event of default hereunder.

g. The right to withhold all or any part of the Design-Builder's compensation yet to be paid by the Commission.

h. The right to terminate any or all other contracts that Design-Builder may have with the Commission.

i. The right to deem the Design-Builder non-responsible in future contracts to be awarded by the Commission.

Section 19.03 Non-exclusivity of Remedies

The remedies under the terms of this Contract are not intended to be exclusive of any other remedies, but each and every remedy is cumulative and is in addition to any other remedies, existing now or hereafter, at law or in equity. No delay or omission to exercise any right or power accruing upon any event of default impairs any such right or power, nor do they waive any event of default or acquiesce thereto, and every such right and power may be exercised by the Commission from time to time and as often as may be deemed appropriate.

Section 19.04 Commission's Right to Terminate Contract

1. The Commission may, at its sole discretion, exercise the right to send the Design-Builder notice under Section 19.02.1 "Commission's Right to Terminate Contract," or 19.02.2 "Notice to Cure." Whether to declare the Design-Builder in default is within the sole discretion of the Executive Director and neither that decision nor the factual basis for it is subject to review or challenge under Article 18 "Claims and Disputes."

2. If termination of the Contract occurs by the Commission under Section 19.02.1 or 19.02.2, the Commission may use the material and equipment, whether owned or leased, which is within the scope of the Work or necessary for completion of the Work and paid for by the Commission (whether located on or off the Site) to complete the Work. The Design-Builder will receive no further payment until the Work is completed. However, if the cost of completion exceeds the unpaid balance of the Contract, the Design-Builder must pay the difference to the Commission immediately upon demand.

3. If termination occurs, all costs and changes incurred by the Commission, together with the cost of completing the Work, are deducted from any moneys due or which may become due to the Design-Builder. When the expense incurred by the Commission exceeds the sum which would have been payable under the Contract, the Design-Builder and the surety are liable and will pay the Commission the amount of such excess.

Section 19.05 Court Adjudication of Termination

If the Contract is terminated by the Commission for cause and it is subsequently determined by a court of competent jurisdiction that such termination, an early termination, was without cause, such termination will thereupon be deemed under Section 19.06 "Termination for Convenience," and the provisions of Section 19.06 "Termination for Convenience" apply.

Section 19.06 Termination for Convenience

1. The Commission reserves the right, for its convenience, to terminate the Work of the Design-Builder by written notice stating the effective date of such termination. In such case, the Design-Builder and Subcontractors will (except for services necessary for the orderly termination of the Work): stop all Work; place no further orders or subcontracts for materials, services, equipment, or supplies; assign to the Commission (in the manner and to the extent directed) all of the rights of the Subcontracts relating to the Work; take any action necessary to protect property of the Commission and property in the Design-Builder's possession in which the Commission has, or may acquire, an interest; and take any other action toward termination of the Work which the Commission may direct.
2. If the Commission terminates this Agreement other than as set forth in Section 19.02.1 or Section 19.02.2, the Commission shall pay the Design-Builder for all Work executed and for all proven loss,

cost or expense in connection with the Work, plus all demobilization costs. In addition, the Design-Builder shall be paid an amount calculated as set forth below:

a. If the Commission terminates this Agreement prior to commencement of the Construction Phase, the Design-Builder shall be paid for the Design-Builder's Design Phase services provided to date as set forth in Subparagraph 7.1.2 and 7.1.3 of Book 1..

b. If the Commission terminates this Agreement after commencement of the Construction Phase, the Design-Builder shall be paid for the Construction Phase services provided to date pursuant to Subparagraph 7.2.1 of Book 1.

c. The Commission shall also pay to the Design-Builder fair compensation, either by purchase or rental at the election of the Commission, for all equipment retained. The Commission shall assume and become liable for obligations, commitments and unsettled claims that the Design-Builder has previously undertaken or incurred in good faith in connection with the Work or as a result of the termination of this Agreement. As a condition of receiving the payments provided under this Article 19, the Design-Builder shall cooperate with the Commission by taking all steps necessary to accomplish the legal assignment of the Design-Builder's rights and benefits to the Commission, including the execution and delivery of required papers.

3. After receipt of a notice of termination pursuant to this Section 19.06 "Termination for Convenience," Design-Builder will submit to the Commission Representative its final invoice in the required form, with supporting documentation. The Commission may require certified payrolls, receipts, and other proof of expenditures. The final invoice must be submitted promptly, but in no event more than 60 Days after the effective date of termination.

Section 19.07 Suspension of Work

1. The Commission has authority to suspend the Work, wholly or in part, for such period of time as the Commission may deem necessary due to conditions unfavorable for the satisfactory prosecution of the Work, or conditions which, in the Commission's opinion, warrant such actions; or for such time as is necessary to carry out directions given by the Commission Representative; or to perform any or all provisions of the Contract. The Design-Builder will not receive compensation for suspension of part of the work. If the Commission suspends the entire project for a period exceeding seven (7) calendar days, the Design-Builder will be compensated for the following listed costs for each day thereafter. The costs to be paid are limited to: demobilization and remobilization, the Design-Builder's field supervision costs (based upon the approved staffing plan), and idle equipment costs as provided in Article 17, "Changes In The Work." This provision is not applicable if the suspension and/or costs were caused by any act or omission of the Design-Builder.

2. If it becomes necessary to stop Work for an indefinite period of time, the Design-Builder must store all materials in such manner that they will not become damaged in any way, take every precaution to prevent damage or deterioration of the Work performed and erect temporary structures where necessary. The Design-Builder must not suspend work without written consent from the Commission.

## ARTICLE 20. ENVIRONMENTAL REQUIREMENTS

Section 20.01 Compliance with Environmental Laws

1. The Design-Builder must comply with all environmental laws including, without limitation, those listed in the Disclosure Affidavit that must be executed and notarized by the Design-Builder, and any analogous future local, state, or federal ordinance or statute, rule, or regulation promulgated under or pursuant to the foregoing, and any other present or future law, ordinance, rule, regulation, permit or permit condition, order, or directive which regulates, relates to, imposes liability for, or establishes standards of conduct concerning any Hazardous Materials that may be set forth by the Federal government, any state or any political subdivision thereof, or any agency, court, or body of the Federal government, any state or any political subdivision thereof, exercising executive, legislative, judicial, regulatory, or administrative functions (collectively, "Environmental Laws").

2. If the Design-Builder is required, pursuant to any Environment Laws, to file any notice or report of a release or threatened release of Hazardous Materials or Special Wastes on or about any premises used by Design-Builder to perform the Work required hereunder, the Design-Builder must provide a copy of such report or notice to the Commission Representative. If a release or threatened release of Hazardous Materials or Special Waste into the environment occurs, or if any claim, demand, action or notice is made against the Design-Builder regarding the Design-Builder's failure or alleged failure to comply with any Environmental Law, the Design-Builder must notify the Commission Representative pursuant to Section 20.06 "Disposal of Materials, Construction Debris, Soil, and Waste" herein below.

3. If the Design-Builder fails to comply with any Environmental Law, the Commission may terminate this Contract in accordance with the default provisions of this Contract, which may adversely affect Design-Builder's eligibility for future contract awards.

Section 20.02 Environmental Permits

1. The Design-Builder must show evidence of, and keep current throughout the term of this Contract, all waste hauling, Special Waste hauling, disposal permits and insurance certificates required by Federal, State, City, or other local governmental body or agency pursuant to any Environmental Law.

2. When requested by the Commission Representative, the Design-Builder must submit copies of all hauling permits required by any Environmental Law. Copies of all permits and insurance certificates that require periodic renewal must be forwarded to the Commission Representative throughout the duration of this Contract. Noncompliance with this requirement may be cause for rejection of the proposal and/or termination of this Contract.

3. Environmental Records and Reports: The Design-Builder is required to prepare and maintain proper, accurate and complete records of accounts of all transactions related to the performance of this Contract, including, but not limited to the following:

   a. Vehicle maintenance records.
   b. Safety and accident reports.
   c. IEPA or OSHA manifests.
   d. Disposal records, including disposal site used, date, truck number and disposal weight.
   e. Permit documentation and all other documentation and transactions pertaining to all Environmental Laws.

Section 20.03 Energy Conservation Ordinance

Whenever the Design-Builder is required to build new building(s) or structures; construct additions or make alterations to existing buildings; install systems such as mechanical, service water-heating, electrical distribution, and illumination; or install other equipment, it will be required to comply with Chapter

18-13 of the Municipal Code of Chicago, as well as any other pertinent Environmental Laws.

Section 20.04 Environmental Control

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

Section 20.05 Equipment and Environmental Control during Transport

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

Section 20.06 Disposal of Materials, Construction Debris, Soil, and Waste

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

2. The Design-Builder must provide the Commission or its designated representative with copies of all load tickets, manifests, bills of lading, scale tickets, and other pertinent documents. When requested by the Commission Representative, the Design-Builder will provide copies of all permits and/or licenses for the proposed transfer station and/or landfill. If the transfer station and/or landfill proposed for use by the Design-Builder does not possess the necessary permits and/or licenses to accept the materials, construction debris, soil or other wastes, the Design-Builder will replace the transfer station and/or landfill submitted as part of their proposal at no additional cost to the Commission. If the Design-Builder disposes of materials, construction debris, soil or other wastes at a site which is not properly permitted, the Design-Builder will be responsible for all costs associated with the removal of the waste to a properly licensed/permitted landfill or disposal site.

3. The Design-Builder must notify the Commission Representative within 24 hours of receipt of any environmental complaints, fines, citations, violations, or notices of violation ("Claim") by any governmental body or regulatory agency against the Design-Builder by any third party relating to the loading, hauling, or disposal of materials, construction debris, soil, or other wastes. The Design-Builder will provide evidence to the Commission that any such Claim has been addressed to satisfaction of the issuer or initiator of such Claim.

4. The Design-Builder must notify the Commission Representative of any community meeting, media involvement, or media coverage related to the loading, hauling or disposal of materials, construction debris, soil, and other wastes under this Contract in which the Design-Builder is asked to participate.

5. The Design-Builder must verify, in writing, whenever requested by the Commission, that all materials, construction debris, and other waste accepted by the Design-Builder from the Commission has been disposed of in compliance with all Environmental Laws.

6. The form for identifying the Design-Builder's debris disposal/hauling site(s) and acknowledging terms and conditions relating thereto which has been executed by the Design-Builder may be attached to this Contract and incorporated by reference, as appropriate. In addition to the

representations and requirements contained in the form, the Design-Builder understands and agrees that the Design-Builder, unless otherwise authorized in writing by the Commission, must not continue to use a disposal/hauling site identified in the form that (i) has been cited as being in violation of any Environmental Law, regulation, or any City ordinance; or (ii) does not have a necessary permit. If only one site was identified in the form, the Design-Builder must arrange for a substitute disposal/hauling site that meets the requirements specified in the form and provide a revised form to the Commission. The Design-Builder further understands and agrees that any such substitution is at no additional cost to the Commission, regardless of the reason necessitating such substitution.

Section 20.07 Open Dumping Prohibited

1. The removal of all recyclable materials and garbage, refuse, or other waste material, including but not limited to broken concrete, bricks, rocks, paving asphalt, and incidental debris generated from all construction or demolition activities performed under this Contract, must be transported to a facility that is zoned and permitted to accept such material pursuant to Section 11-4 of the City of Chicago Municipal Code and all applicable local, state, and federal regulations.

2. Bills of Lading, manifests, or other confirmatory receipts signed by a representative of accepting facility for each load of material must be retained by the Design-Builder and made available to the Commission upon request.

Section 20.08 LEED Certification Requirements

1. The Design-Builder must assist the PBC to achieve the LEED Certification level required for this project. The Design-Builder must implement construction of the Project and provide documentation, in accordance with the requirements of the LEED version promulgated by the US Green Building Council so that the Commission can achieve the LEED rating and sustainability goals identified in the Scope and Performance Criteria.

2. The Design-Builder must have a LEED Accredited Professional (LEED AP) assist the Design-Builder in fulfilling all LEED required tasks. The LEED AP is subject to the approval by the Commission, and must have had LEED experience in projects of a similar size and complexity, in order to be approved by the Commission.

3. Regarding commissioning of the Project systems, the Design-Builder must provide the appropriate labor to operate, adjust, and observe the systems, as directed by the Commissioning Authority to ensure that all the LEED requirements for commissioning of the heating ventilation and air conditioning systems and the electrical systems and other systems to be commissioned as identified in the Technical Specifications are met.

4. The Design-Builder must make all required LEED submittals to the Commission Representative. The format and number of submittals must be approved by the Commission.

5. The Design-Builder must take the actions listed below, regarding LEED, within the time periods specified.

   a. Design-Builder LEED AP qualifications must be submitted with fifteen (15) calendar days of the Notice to Proceed (NTP).

   b. Erosion and Sedimentation Control Plan must be submitted within fifteen (15) days of the NTP. The Design-Builder must implement the approved Plan prior to start of work on the Project site. The Design-Builder may be required to incorporate or maintain an existing Plan from a previous phase of the work.

   c. Construction Waste Management Plan must be submitted within fifteen (15) days of NTP. The Construction Waste Management Coordinator must be identified and the approved plan be completed prior to the start of construction.

   d. Materials and Resources Plan must be submitted within thirty (30) days of the NTP

e. Volatile Organic Compounds Plan must be submitted within thirty (30) days of NTP

f. Construction Indoor Air Quality Plan must be submitted within thirty (30) days of NTP.

## ARTICLE 21. COMPLIANCE WITH ALL LAWS

Section 21.01 Design-Builder Must Comply with All Laws

1. The Design-Builder must at all times observe and comply, and must cause its Subcontractors to observe and comply, with all applicable Federal, State and local laws, ordinances, codes, rules, regulations, and executive orders, now existing or hereinafter in effect, which may in any manner affect the performance of the Contract. Provision(s) required by law, ordinance, codes, rules, regulations, or executive orders to be inserted in this Contract are deemed inserted, whether or not they appear in this Contract. In no event does the failure to insert such provision(s) prevent the enforcement of such provision(s) of this Contract.

2. In performing the Work, the Design-Builder must follow the most stringent of the applicable agency and code requirements. The Design-Builder is fully responsible for ascertaining and complying with all agency and code requirements applicable to the Work.

Section 21.02 Equal Employment Opportunity

1. The Design-Builder will be required to comply with all laws with respect to the employment of labor and payment of local prevailing wage rates.

2. Non-Discrimination

   a. It is an unlawful employment practice for a Design-Builder to fail to hire, to refuse to hire, to discharge, or to discriminate against any individual with respect to compensation or the terms, conditions, or privileges of employment because of such individual's race, color, religion, sex, age, handicap, or national origin; or to limit, segregate, or classify employees or applicants for employment or otherwise; or to adversely affect such individual's status as an employee because of such individual's race, color, religion, sex, age, handicap, or national origin.

   b. Federal Requirements. Each Design-Builder will comply with the Civil Rights Act of 1964, 42, U.S.C. Sec. 2000 et seq. (1981), as amended. Each Design-Builder will further comply with all applicable provisions of the Civil Rights Act of 1964, 28 U.S.C. 1447, 42 U.S.C. 1971, 1975a-1975d, 2000a to 2000h-6 (1992); the Age Discrimination in Employment Act of 1967, 29 U.S.C. 623-634 (1992); the Americans with Disabilities Act of 1990, 29 U.S.C. 706, 42 U.S.C. 12101-12213, 47 U.S.C. 152, 221, 225, 611 (1992); 41 C.F.R. 60 (1992); reprinted in 42 U.S.C. 2000(e) note, as amended by Executive Order No. 11,375 32 Fed. Reg. 14,303 (1967) and by Executive Order No. 12,086, 43 Fed. Reg. 46,501 (1978)/; the Age Discrimination Act, 43 U.S.C. Sec. 6101-6106 (1981); P.L. 101-336; 41 C.F.R. part 60 et seq. (1990).

   c. State Requirements. Each Design-Builder must comply with the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq. (1990), as amended, the Discrimination in Public Contracts Act, 775 ILCS 10/0.01 et seq. (1990), as amended, and the Environmental Barriers Act, 410 ILCS 25/1 et seq. The Design-Builder will furnish such reports and information as requested by the Commission and the Illinois Department of Human Relations.

   d. City Requirements. Each Design-Builder must comply with the Chicago Human Rights Ordinance, Chapter 2-160, Section 2-160-010 et seq. of the Municipal Code (1990), as amended. Further, each Design-Builder will furnish such reports and information as requested by the Chicago Commission of Human Relations.

   e. Subcontractors. Each Design-Builder agrees that all of the above provisions will be incorporated in all agreements entered into with any suppliers of materials, providers of services, subcontractors of any tier, and labor organizations which furnish skilled, unskilled, and craft union skilled labor, or which may provide any such materials, labor, or services in connection with this Contract.

3. Employment procedures: Preferences and Compliance

a. Salaries of employees of Design-Builder, performing Work under this agreement, will be paid unconditionally, and not less often than once a month, without deduction or rebate on any account except such payroll deductions as are mandatory or permitted by applicable law or regulations.

b. Design-Builder certifies that it is familiar with, and will comply with, all applicable provisions of 820 ILCS 130/0.01 through 130/12 thereof (Prevailing Wage Act), 30 ILCS 570/1 through 570/7 (Employment of Illinois Workers on Public Works Act) and 30 ILCS 560/0.01 through 560/7 (Public Works Preference Act).

c. The Design-Builder will also comply with all applicable Anti-Kickback laws and regulations, including the Anti-Kickback Act of June 13, 1934 (48 Stat. 948; 62 Stat. 740; 63 Stat. 108; 18 U.S.C. § 874; 40 U.S.C. § 276c) and the Illinois Criminal Code of 1961 720 ILCS 5/33E-1 *et. seq.* If, in the performance of this agreement, there is any direct or indirect kickback as defined in any of the above-mentioned laws and regulations, the Commission may withhold from the Design-Builder, out of payments due to the Design-Builder, an amount sufficient to pay any underpaid employees the difference between the salaries required to be paid and the salaries actually paid such employees for the total number of hours worked. The amounts withheld may be disbursed by the Commission for and on account of the Design-Builder to the respective employees to whom they are due, as determined by the Commission in its sole discretion.

4. The Design-Builder assumes all liability for the payment of any unemployment benefits payable under any federal or state law to individuals employed by it during the progress of the Work covered by this Contract.

5. The Design-Builder agrees that in performing this Contract it will comply with: the Minority Business Enterprise/Women Business Enterprise Special Conditions of Article 23 MBE/WBE Special Conditions and residency requirements of Section 21.03 Chicago Residents As Employees.

6. A breach of any of the requirements of this Section 21.02 may be grounds for termination of the Contract.

Section 21.03 Chicago Residents and Community Residents As Employees

1. Policy and Terms

Attention is called to an ordinance passed by the City of Chicago on May 18, 1994, *City of Chicago Residence Preference Ordinance* and the resolutions of the Board of Commissioners of the Public Building Commission adopted August 9, 1994 and May 12, 2009. Pursuant to such resolutions, it is the policy of the Commission that at least 50% of the project labor shall be performed by Chicago Residents and at least 7.5% of the project labor shall be performed by Project Community Residents. The Project Community is defined Exhibit 10 of Book 1; please refer to the attached maps therein.

a. The Design-Builder agrees to ensure that the aggregated hours of Work to be performed by the Design-Builder its subcontractors under this Contract will be performed such that at least 50% of the on-site Work is performed by actual residents of the City of Chicago and 7.5% of the on-site work is performed by Project Community Residents. These minimal percentage levels of Chicagoans and Project Community Residents as laborers and skilled trade Workers are not to be understood as limiting or determining the fuller utilization of Chicagoans and Project Community Residents beyond these numerical levels, but are intended instead as minimum requirements unless the Commission grants a waiver based upon demonstration by the Design-Builder of impracticability or excessive cost of complying with the specified percentages. A waiver or reduction will be considered if the Design-Builder has unsuccessfully solicited a sufficient number of residents of the City of Chicago and Project Community Residents to perform the Work and has documented such effort to the satisfaction of the Commission. In addition, a Design-Builder seeking a waiver or reduction will provide timely

notice of the need for qualified residents of the City of Chicago and Project Community Residents to an appropriate source of referrals, in which the source is entitled to comment on any waiver or reduction application.

b. Community Hiring

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

Community Residents Requirements. At least 7.5% of the project labor must be performed by "Project Community Residents as defined in this Contract and included on the "Project Community Area Map" in Exhibit 10 to Book 1. The aggregate hours of Work to be performed by the Contractor and Subcontractors under this contract may be compiled through residents who are trade or non-trade workers. These positions may include but are not limited to trade workers, field engineer, superintendent, project manager, security, data entry clerks, schedulers, traffic monitoring personnel, and site administrative support staff. In order to comply with the Community Hiring requirement, the Design-Builder must attend four (4) application intake sessions. These application intake sessions will be held at Malcolm X Community College, the Salvation Army headquarters for Chicago, and Truman College. After these sessions have concluded, the Design-Builder will receive an application database from all four (4) sessions.

2. Definitions

a. "City of Chicago Residents" means persons domiciled within the City of Chicago. Salaried superintendents are excluded from the coverage of this Section. Domicile is an individual's one and only true, fixed, and permanent home and principal establishment.

b. "Project Community Residents" means persons domiciled within the "Project Community," as defined in Exhibit 10 to Book 1.

3. Compliance and Reporting

a. The Design-Builder will provide for the maintenance of adequate employee residency records to document that actual Chicago residents and community residents are employed on the Project. The Design-Builder (and Subcontractors) will maintain copies of personnel documents supportive of every Chicago employee's record of actual residence.

b. Weekly Certified Payroll reports (U.S. Department of Labor Form WH-347 or equivalent) submitted to the Commission will identify clearly the actual residence of every employee on each submitted certified payroll. The first time that an employee's name appears on a payroll, the date that the company hired the employee should be written in after the employee's name.

c. Full access to the Design-Builder's and Subcontractors' employment records will be granted to the Commission or any duly authorized representative thereof. The Design-Builder and Subcontractors will maintain all relevant personnel data for a period of at least 3 years after Final Completion and Acceptance of the Work.

d. At the direction of the Commission, affidavits and other supporting documentation will be required of the Design-Builder to verify or clarify an employee's actual address or change of actual address when doubt or lack of clarity has arisen.

4. Non-compliance

a. Good faith efforts on the part of the Design-Builder to provide utilization of Chicago residents and community residents will not suffice to replace the actual, verified achievement of the requirement concerning the worker hours performed by actual Chicago residents and Community Residents.

b. For the purpose of adjusting the level of Retainage, the Commission will review compliance at 50%, 75%, and 90% completion of the Work. If the Commission has determined that the Design-Builder was not compliant in the fulfillment of the required percentages of aggregated worker hours by actual Chicago residents or Project Community Residents, or has failed to report in the manner indicated above under "Compliance and Reporting," the Commission will be damaged in the failure to provide the benefit of demonstrable employment to Chicagoans and community residents to the degree stipulated in this Section. Therefore, in such case of non-compliance it is agreed that 1/20 of 1 %, (0.0005), of the Cost of Construction, as adjusted by any Change Orders will be withheld by the Commission in payment for each percentage of shortfall toward the stipulated residency requirement.

c. The Executive Director, in his sole discretion, shall determine when to withhold such liquidated damages.

5. Nothing herein provided is to be construed to be a limitation upon the Notice of Requirements for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246) and Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246), or other affirmative action requirements under the regulations promulgated by applicable federal, state or local authorities.

Section 21.04 CPS Student CTE Job Shadow Internship Initiative

In order to provide a work experience in which current CPS Students learn about a job by walking through the work day as a shadow to a competent work, Design-Builder agrees to participate in the Career and Technical Education (CTE) Job Shadow Initiative which is designed to increase career awareness, help model student behavior through examples and reinforce in the student the link between classroom learning and work requirements.

Activities may include:

- Introduction to the company and its departments
- Tour of the company
- Pairing of the student(s) with a professional to assist with a project, discuss specific duties of the professional, ask questions and seek advice.
- Learn about various functions within the workplace
- Learn about skills needed to succeed in a particular career path
- Take advantage of opportunities to apply those skills during the internship; for construction sites, this may include hands-on or administrative work.

The ideal internship will be structured through an agreement between the Design-Builder and the CTE Liaison, established specifically for the CTE student's career pathway and will integrate classroom learning with real world applications. A worksite supervisor will be assigned to review assignments, provide necessary training and submit a performance evaluation. Acceptable internships will place a student in a work environment related to their pathway but the student will not perform the precise functions related to their pathway, e.g., an auto student working in an auto shop that assists the mechanic rather than actually working on the cars themselves. Students are to be hired as part-time employees in their career pathway and receive the same training as other employees even if the experience is not wholly targeted or structured for them.

Examples of unacceptable internships include: (i) a one-day experience; (ii) presentations at capstones or participation in competitions; or (iii) working in a position wholly unrelated to the career pathway. The Commission will determine, in its sole discretion, if a Design-Builder is complying with the terms of an internship.

Design-Builder agrees to employ a minimum of six (6) CTE student interns for a minimum of 120 hours for

each Intern during the course of the Project. Each Intern shall be compensated a minimum of $10.00 per hour.

Design-Builder agrees to abide any applicable state and federal labor laws.

Section 21.05 Veteran's Preference

The Design-Builder will ensure that the following provision is inserted in all contracts entered into with any subcontractors and labor organizations which furnish skilled, unskilled and craft union skilled labor, or which may provide any material, labor, or services in connection with this Contract.

"Contractor will comply with the provisions of 330 ILCS 55/0/01 et. seq., which requires that a preference be given to veterans in the employment and appointment to fill positions in the construction, addition, or alteration of all public works. In the employment of labor (except executive, administrative, and supervisory positions) preference will be given to veterans of hostilities and disabled veterans; however, this preference may be given only where the individuals are available and qualified to perform the Work to which the employment relates."

Section 21.06 Trade Regulations

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

Section 21.07 Steel Products

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

Section 21.08 PBC Inspector General

The Design-Builder and its Subcontractors, including all officers, directors, agents, partners and employees of such entities shall cooperate with the Inspector General of the Public Building Commission and the Inspector General of CPS in any investigation or hearing undertaken pursuant to Public Building Commission Resolution 7576 adopted by the Board of Commissioners of the Public Building Commission of Chicago on October 1, 2010.

Section 21.09 Covenant against Contingent Fees

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

Section 21.10 Taxes

1. The Design-Builder will pay for all federal, state, and local taxes on all materials, labor, or services furnished, and all taxes arising out of the operations under this Contract. Such taxes include, by way of illustration and not in limitation thereof, Retailers' Occupational, Old Age Benefit, Unemployment, customs, duties, and all deductions for income taxes now in force or hereafter enacted prior to Final

Completion and Acceptance of the Work. This requirement excludes taxes and assessments on real property comprising the Site and Illinois, County and Municipal Retailers' Occupation and Service Occupation Taxes and Illinois Use, Sales and Service Use Taxes on building materials and fixtures to be incorporated into the Work but does include such taxes on building materials and equipment consumed or used in performing the construction, but not incorporated in it.

2. The Public Building Commission of Chicago, a municipal corporation and political subdivision of the State of Illinois, is exempt from federal Excise Taxes. The State of Illinois Tax Exemption Identification Number is E9978-1506-05.

Section 21.11 Royalties and Patents

1. All fees for any patent invention, article or arrangement or other appurtenances that may be used upon or in any manner connected with the construction, erection or maintenance of the Work, or any part thereof embraced in the Contract, will be included in the GMP.

2. The approval of any method of construction, invention, appliance, process, article, device, or material of any kind by the Commission will only be an approval of its adequacy for the Work, and will not be an approval of the use thereof by the Design-Builder in violation of any patent or other rights of any third person.

Section 21.12 Conflict of Interest

No member of the governing body of the Commission and no other officer, employee, or agent of the Commission or other unit of government who exercises any functions or responsibilities in connection with this Contract will have any personal interest, direct or indirect, in this Contract. Each Design-Builder covenants that it; its officers, directors and employees; the officers, director and employees of each of its members if a joint venture; and subcontractors presently have no interest and will not acquire interest, direct or indirect, in the Project which would conflict in any manner or degree with the performance of the Work hereunder. Each Design-Builder further covenants that in the performance of this Contract, no person having any such interest will be employed. Each Design-Builder agrees that if the Commission determines that any of a Design-Builder's work for others conflicts with the Work, that the Design-Builder will terminate such other services immediately upon request of the Commission.

Section 21.13 Ethics Resolution

The Design-Builder has read and agrees to comply with all provisions of the Code of Ethics Resolution passed by the Commission on October 3, 2011, which is available on the Commission's website athttp://www.pbcchicago.com/pdf/RES_PBC_ecr_CodeofEthicsConsolApril%202013_20130405.pdf, and is incorporated into this Agreement by reference. Any contract negotiated, entered into, or performed in violation of any of the provisions of this Section will be voidable by the Commission.

Section 21.14 Disclosure Affidavit

1. The Design-Builder is required to file a fully executed Disclosure Affidavit with the Commission no less than annually. Such document must be signed by an authorized officer of the company before a notary and is incorporated by reference into this Contract.

2. Such Disclosure Affidavit certifies, among other things, that the Design-Builder and each joint venture partner, its agents, employees, officers, and any subcontractors:

   a. have not engaged in or been convicted of bribery or attempted bribery of a public officer or employee of the City of Chicago, the State of Illinois, the Commission, any agency of the federal government or any state or local government in the United States;

   b. have not been engaged in or been convicted of bid-rigging or bid-rotation activities as defined in the Disclosure Affidavit;

c. are not presently debarred or suspended by any local, state or federal procurement agency;

d. do not owe any debts to the State of Illinois, in accordance with 65 ILCS 5/11-42.1-1; and

e. do not owe any debts to the City of Chicago in violation of Chapter 2-92-380 of the Municipal Code of Chicago.

Section 21.15 Disclosure of Retained Parties

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

Section 21.16 Non-Collusion, Bribery of a Public Officer or Employee

1. Each Design-Builder, in performing under this Contract, will comply with Section 2-92-320 of the Municipal Code of Chicago as follows:

   a. No person or business entity will be awarded a Contract or subcontract if that person or business entity:

   b. Has been convicted of bribery or attempting to bribe a public officer or employee of the City of Chicago, the State of Illinois, or any agency of the federal government or any state or local government in the United States, in that officers or employees official capacity; or

   c. Has been convicted of agreement or collusion among bidders or prospective bidders in restraint of freedom of competition by agreement to bid a fixed price, or otherwise; or

   d. Has made an admission of guilt of such conduct described in (1) or (2) above which is a matter of record but has not been prosecuted for such conduct.

2. For purposes of this section, where an official, agent or employee of a business entity has committed any offense under this section on behalf of such an entity and pursuant to the direction or authorization of a responsible official thereof, the business entity is chargeable with the conduct. One business entity will be chargeable with the conduct of an affiliated agency.

3. Ineligibility under this section will continue for 3 years following such conviction or admission. The period of ineligibility may be reduced, suspended, or waived by the Commission under certain specific circumstances. Reference is made to Section 2-92-320 of the Municipal Code of Chicago for a definition of affiliated agency, and a detailed description of the conditions that would permit the Commission to reduce, suspend, or waive the period of ineligibility.

Section 21.17 Parking Violations

1. The Commission will set off a portion of the Contract Price or compensation due under the Contract in an amount equal to the amount of the fines and penalties for each outstanding parking violation complaint and/or the amount of any debt owed by the contracting party to the Commission in all contracts undertaken with City of Chicago funds.

2. For purposes of this provision, outstanding parking violation complaint means a parking ticket, notice of parking violation, or parking violation complaint on which neither has payment been made nor an appearance filed in the Circuit Court of Cook County within the time specified on the complaint. Debt means a specified sum of money owed to the Commission for which the period granted for payment has expired.

3. Notwithstanding the provisions of paragraph 1 above, no such debt(s) or outstanding violation complaint(s) will be set off from the Contract Price or compensation due under the Contract if one or more of the following conditions are met:

a. The contracting party has entered into an agreement with the Department of Revenue, or other appropriate City department, for the payment of all outstanding parking complaints and/or debts owed to the Commission and the contracting party is in compliance with the agreement; or

b. The contracting party is contesting liability for or the amount of the debt in a pending administrative or judicial proceeding; or

c. The contracting party has filed a petition in bankruptcy and the debts owed in the City are dischargeable in bankruptcy.

Section 21.18 Child Support Ordinance

1. The City of Chicago through passage of the Child Support Arrearage Ordinance, Municipal Code of Chicago Section 2-92-415, seeks to protect the public interest in contracting with entities which demonstrate financial responsibility, integrity, and lawfulness, and finds that it is especially inequitable for contractors or their owners to obtain the benefits of public funds while failing to pay court-ordered child support, which shifts the support of their dependents onto the public treasury.

2. For purposes of this section, "Substantial Owner" means any person who owns or holds a 10% or more percentage of interest in the Design-Builder; where the Design-Builder is an individual or sole proprietorship, Substantial Owner means that individual or sole proprietor.

3. Percentage of interest includes direct, indirect and beneficial interests in the Design-Builder. Indirect or beneficial interest means that an interest in the Design-Builder is held by a corporation, joint venture, trust, partnership, association, estate or other legal entity, in which the individual holds an interest, or by agent(s) or nominees(s) on behalf of an individual entity. For example, if Corporation B holds or owns a 20% interest in Design-Builder, and an individual or entity has a 50% or more percentage of interest in Corporation B, then such individual or entity indirectly has a 10% or more percentage of interest in the Design-Builder. If Corporation B is held by another entity, then this analysis similarly must be applied to that next entity.

4. In accordance with Section 2-92-415 of the Municipal Code of Chicago, if an Illinois court of competent jurisdiction has issued an order declaring one or more Substantial Owners in arrearage on their child support obligations and: (1) at least one such Substantial Owner has not entered into a court-approved agreement for the payment of all such child support owed, or (2) at least one such Substantial Owner is not in compliance with a court-approved agreement for the payment of all such child support owed or both (1) and (2), then:

5. For those bidders in competitive bid contracts, the Commission will assess an 8% penalty. This penalty will increase their bid price for the purpose of canvassing the bids in order to determine who is to be the lowest responsible bidder. This penalty will apply only for purposes of comparing bid amounts and will not affect the amount of any contract payment.

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

Section 21.19 Lists Maintained by Certain Federal Agencies

1. Neither the Design-Builder nor any affiliate of the Design-Builder can be listed on any of the following lists maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the Bureau of Industry and Security of the U.S. Department of Commerce or their successors, or any other list of persons or entities with which the Commission may not do business under any applicable law, rule, regulation, order or judgment: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List and the Debarred List. For purposes of the subparagraph only, the term "affiliate," when used to indicate a relationship with a specified person or entity, means a person or entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with such specified person or entity, and a person or entity shall be deemed to be

controlled by another person or entity, if controlled in any manner whatsoever that results in control in fact by that other person or entity (or that other person or entity and any persons or entities with whom that other person or entity is acting jointly or in concert), whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise.

## ARTICLE 22. MISCELLANEOUS

Section 22.01 Counterparts

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

Section 22.02 Governing Law

This Contract is governed in accordance with the State of Illinois without regard to choice of law principles. The Design-Builder irrevocably submits and causes its Subcontractors to submit to the original jurisdiction of those State or Federal courts located within the County of Cook, State of Illinois, with regard to any controversy arising out of, relating to, or in any way concerning the execution or performance of this Contract. The Design-Builder agrees that service of process on the Design-Builder may be made, at the option of the Commission, either by registered or certified mail addressed to the applicable office as provided for in this Contract, by registered or certified mail addressed to the office actually maintained by the Design-Builder, or by personal delivery on any officer, director, or managing or general agent of the Design-Builder.

Section 22.03 Consent to Service of Process and Jurisdiction

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

Section 22.04 No Third Party Beneficiaries

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

Section 22.05 Notices

1. Notices, unless expressly provided for otherwise in this Contract, must be in writing and may be delivered personally or by placing in the United States mail, first class and certified, return receipt requested, with postage prepaid and addressed as indicated in Book 2.

2. Notices delivered by mail are deemed effective 3 Days after mailing in accordance with this section. Notices delivered personally are deemed effective upon receipt. The addresses stated herein may be revised without need for modification or amendment of this Contract, provided written notification is given in accordance with this section.

Section 22.06 Authority

1. **Commission's Authority.** This Contract is entered into by virtue of the authority conferred on the Commission in accordance with 50 ILCS 20/21.

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

# ARTICLE 23. MBE/WBE SPECIAL CONDITIONS FOR DESIGN BUILD CONTRACTS

Section 23.01 MBE/WBE Program

1. Policy Statement

   a. It is the policy of the Commission to ensure competitive business opportunities for MBE and WBE firms in the performance of Contracts, to prohibit discrimination in the award of or participation in Contracts, and to abolish arbitrary barriers to full participation in Contracts by all persons, regardless of race, sex or ethnicity. Therefore, during the performance of this Contract, the Design-Builder must agree that it will not discriminate against any person or business on the basis of race, color, religion, ancestry, age, marital status, physical or mental handicap, unfavorable discharge from military service, parental status, sexual orientation, national origin or sex, in the solicitation or the purchase of goods and services or the subcontracting of work in the performance in this Contract.

   b. The Commission requires the Design-Builder also agree to take affirmative action to ensure that MBE and WBE firms have the maximum opportunity to compete for and perform subcontracts with respect to this Contract.

   c. The Commission requires the Design-Builder to notify MBE and WBE firms, utilized on this contract, about opportunities on contracts without affirmative action goals.

2. Aspirational Goals

   a. Upon the effective date of these Special Conditions, the aspirational goals for this project are to award **30% of the total dollar value** of all Design Build Costs (as defined in Exhibit 5) **to MBEs** and **5% of the total dollar value** of all Design Build Costs (as defined in Exhibit 5) **to WBEs**.

   b. Further, the Design-Builder must agree to use its best efforts to include MBE and WBE firms in any Contract modification work that increases the Cost value by 10% of the initial Design Build Cost value or $50,000, whichever is less. Where the proposed contract modification involves work which can be performed by MBEs and WBEs already performing work on the contract such MBEs and WBEs will participate in such work specified in the contract modification.

   c. Failure to carry out the commitments and policies set forth in this Program constitute a material breach of contract and may result in termination of the Design-Builder or such other remedy, as the Commission deems appropriate.

3. Definitions

   a. For purposes of this Special Condition, the following definitions applies:

(1) "Certified Minority Business Enterprise" means a person or entity granted certification by the City of Chicago or County of Cook.

(2) "Certified Women's Business Enterprise" means a person or entity granted certification by the City of Chicago or County of Cook.

(3) "Construction Contract" means a contract for the construction, repair, alteration, renovation or improvement of any building, facility or other structure.

(4) "Contract Specific Goals" means the subcontracting goals for MBE and WBE participation established for a particular contract based upon the availability of MBEs and WBEs to perform and anticipated scope of work of the contract and the Commission's progress towards meeting the aspirational goals.

(5) "Contractor" means any person or business entity that seeks to enter into a Construction Contract with the Commission and includes all partners, affiliates and joint ventures of such person or entity.

(6) "Executive Director" means the Executive Director of the Commission or his duly designated representative as appointed in writing.

(7) "Good faith efforts" means actions undertaken by a Design-Builder to achieve a Contract Specific Goal that by their scope, intensity and appropriateness to the objective can reasonably be expected to fulfill the Program's requirements.

(8) "Joint venture" means an association of two or more persons or entities or any combination of two or more business enterprises and persons numbering two or more, proposing to perform a single for-profit business enterprise, in which each joint venture partner contributes property, capital, efforts, skill and knowledge, and in which the MBE or WBE is responsible for a distinct, clearly-defined portion of the work of the contract and whose share in the capital contribution, control, management, risks and profits of the joint venture is equal to its ownership interest. Joint ventures must have an agreement in writing specifying the terms and conditions of the relationships between the parties and their relationship and responsibilities to the contract.

(9) "Program" means the minority- and women-owned business enterprise construction procurement program established in this special condition.

4. Determining MBE/WBE Utilization

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

a. The total dollar value of the contract awarded to the certified MBE or WBE firm will be credited to such participation as a percentage of the Cost of the Work as defined in Exhibit 7 of Book 1. Only minority business participation may be counted toward MBE participation and only women business participation may be counted toward WBE participation.

b. The total dollar value of a contract with a firm owned and controlled by minority women is counted toward either the MBE or WBE goal, but not both. The Design-Builder employing the firm may choose the goal to which the contract value is applied. Various work done by one and the same subcontractor will be considered, for the purpose of this principle, as work effectively done under one subcontract only, which subcontractor may be counted toward only one of the goals, not toward both.

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

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

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

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

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

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

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

5. Submission of Proposals

a. The following schedules and documents constitute the Proposer's MBE/WBE compliance proposal and must be submitted at the time of the bid or proposal or within such extended period as provided in Article 23.

(1) Evidence of Certification: Affidavit of MBE/WBE. A copy of each proposed MBE and WBE firm's Letter of Certification from the City of Chicago, Department of Procurement Services or any other entity listed in Section 23.01.3.a(1) and Section 23.01.3.a(2) must be submitted.

(2) Schedule B: Affidavit of MBE/Non-MBE or WBE/Non-WBE Joint Ventures. Where the Proposer's MBE/WBE compliance proposal includes participation of any MBE or WBE as a joint venture participant, the Proposer must submit a "Schedule B: Affidavit of MBE/Non-MBE or WBE/Non-WBE Joint Venture" with an attached copy of the joint venture agreement proposed among the parties. The Schedule B and the joint venture agreement must clearly evidence that the MBE or WBE participant will be responsible for a clearly defined portion of the work to be performed and that the MBE or WBE firm's responsibilities are in proportion with its ownership percentage.

(3) Schedule C: Letter of Intent to Perform as a Subcontractor, Subconsultant, or Material Supplier, Schedule C, executed by the MBE/WBE firm (or Joint Venture Subcontractor) must be submitted by the Proposer for each MBE/WBE included on the Schedule D. Schedule C must accurately detail the work to be performed by the MBE or WBE firm and the agreed rates and prices to be paid.

(4) Schedule D: Affidavit of Prime Design-Builder Regarding MBE or WBE Utilization. A completed Schedule D committing to the utilization of each listed MBE or WBE firm. Unless the Proposer has submitted a completed request for a waiver of participation by MBE/WBE firms (See Request for Waiver procedures in Section 23.01.10), the Proposer must include the specific dollar amount of participation of each MBE/WBE firm listed on its Schedule D. The total dollar commitment to proposed MBE firms must at least equal the MBE goal, and the total dollar commitment to proposed WBE firms must at least equal the WBE goal. Proposers are responsible for calculating the dollar equivalent of MBE or WBE utilization as percentages of their total Construction Cost.

b. The submittals must have all blank spaces on the Schedule pages applicable to the contract correctly filled in. Agreements between a Proposer and a MBE/WBE in which the MBE/WBE promises not to provide subcontracting quotations to other Proposers are prohibited.

6. Evaluation of Compliance Proposals

a. During the negotiation of the GMP Proposal, the Proposer's MBE/WBE compliance proposal will be evaluated by the Commission. The Proposer agrees to provide, upon request, earnest and prompt cooperation to the Executive Director or his designee in submitting to interviews that may be necessary, in allowing entry to places of business, in providing further documentation, or in soliciting the cooperation of a proposed MBE or WBE firm in providing such assistance. A proposal may be treated as non-responsive by reason of the determination that the Proposer's proposal did not contain a sufficient level of Certified MBE or WBE participation, that the Proposer was unresponsive or uncooperative when asked for further information relative to the proposal, or that false statements were made in the Schedules.

b. If the Commission's review of a Proposer's proposal concludes that the MBE or WBE proposal was deficient, the Commission will promptly notify the Proposer of the apparent deficiency and instruct the Proposer to submit (within 3 business days of such notice given by the Commission) a modification of the MBE or WBE Proposal, in proper format, which remedies the deficiencies cited. Failure to correct all deficiencies cited by the Commission will be cause for rejection of the Proposer's proposal as non-responsive.

c. Proposers will not be permitted to modify their MBE/WBE compliance proposal except insofar as directed to do so by the Commission. Therefore, all terms and conditions stipulated for prospective MBE and WBE subcontractors or suppliers should be satisfactorily negotiated prior to the submission to the Commission of the Proposer's MBE/WBE compliance proposal with the proposal. If circumstances should arise, however, where a proposed MBE/WBE is no longer available, the process described in Section 23.01 should be followed.

d. If the compliance proposal includes participation by material suppliers, the Commission will request copies of the offers from such suppliers. The offers must be furnished to the Commission within three (3) business days of the Design-Builder's receipt of the request for such offers from the Commission. The Commission may make such requ est by electronic mail. The offers must specify; (1) the particular materials, equipment and/or supplies that will be furnished; (ii) the supplier's price for each of the items; (iii) the total price to be furnished by the supplier, (iv_ the supplier's source for the items (e.g., manufacturer, wholesaler) and (v) the subconsultant that the supplies will be purchased by.

7. Request for Waiver

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

b. Good Faith efforts to achieve participation include but are not limited to:

(1) Attendance at the Pre-proposal conference;

(2) The Proposer's general affirmative action policies regarding the utilization of MBE and WBE firms, plus a description of the methods used to carry out those policies;

(3) Advertisement in trade association newsletters and minority and woman-oriented and general circulation media for specific sub-bids;

(4) Timely notification of specific sub-bids to minority and woman contractor assistance agencies and associations;

(5) Description of direct negotiations with MBE and WBE firms for specific sub-bids, including:

i. The name, address and telephone number of MBE and WBE firms con tacted;

ii. A description of the information provided to MBE and WBE firms regarding the portions of the work to be performed; and

iii. The reasons why additional MBE and WBE firms were not obtained in spite of negotiations.

(6) A statement of the efforts made to select portions of the work proposed to be performed by MBE and WBE firms (such as sub-supplier, transport, engineering, distribution, or any other roles contributing to production and delivery as specified in the contract) in order to increase the likelihood of achieving sub participation.

(7) As to each MBE and WBE contacted which the Proposer considers to be not qualified, a detailed statement of the reasons for the Proposer's conclusion.

(8) Efforts made by the Proposer to expand its search for MBE and/or WBE firms beyond usual geographic boundaries.

(9) General efforts made to assist MBE and WBE firms to overcome participation barriers.

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

(1) Sufficient qualified MBE and/or WBE firms capable of providing the goods or services required by the contract are unavailable despite the good faith efforts of the Proposer;

(2) The price(s) quoted by potential MBE and/or WBE firms for goods or services is above competitive levels to an extent unwarranted by any increased cost of doing business attributable to the present effects of disadvantage or discrimination.

8. Failure To Achieve Goals

a. If the Design-Builder cannot achieve the contract specific goals, as the Project proceeds, it must have documented its good faith efforts to do so. In determining whether the Design-Builder has made such good faith efforts, the performance of other contractors in meeting the goals may be considered. The Executive Director or his designee shall consider, at a minimum, the Design-Builder's efforts to do the following:

(1) Soliciting through reasonable and available means the interest of MBEs or WBEs that Provide interested MBEs or WBEs with adequate information about the plans, specifications and requirements of the contract, including addenda, in a timely manner to assist them in responding to the solicitation.

(2) Provide interested MBEs or WBEs with adequate information about the plans, specifications and requirements of the contract, including addenda, in a timely manner to assist them in responding to the solicitation.

(3) Negotiating in good faith with interested MBEs or WBEs that have submitted bids. Documentation of negotiation must include the names, addresses and telephone numbers of MBEs or WBEs that were solicited; the date of each such solicitation; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why agreements could not be reached with MBEs or WBEs to perform the work. That there may be some additional costs involved in solicitation and using MBEs and WBEs is not a sufficient reason for a Design-Builder's failure to meet the goals, as long as such costs are reasonable.

(4) Not rejecting MBEs or WBEs as being unqualified without sound reasons based on the thorough investigation of a their capabilities. The MBEs' or WBEs' standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations are not legitimate cases for rejecting or not soliciting bids to meet the goals.

(5) Making a portion of the work available to MBE or WBE subcontractors and suppliers and to select those portions of the work or material consistent with the available MBE or WBE subcontractors and suppliers, so as to facilitate meeting the goals.

(6) Making good faith efforts despite the ability or desire of a Design-Builder to perform the work of a contract with its own organization. A Design-Builder that desires to self-perform the work of a contract must demonstrate good faith efforts unless the goals have been met.

(7) Selecting portions of the work to be performed by MBEs or WBEs in order to increase the likelihood that the goals will be met. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate MBE or WBE participation even when the Contract might otherwise prefer to perform these items with its own forces.

(8) Making efforts to assist interested MBEs or WBEs in obtaining bonding lines of credit or insurance as required by the Commission or Design-Builder.

(9) Making efforts to assist interested MBEs or WBEs in obtaining necessary equipment, supplies, materials or related assistance or services, including participation in a mentor-protégée program; and

(10) Effectively using the services of the Commission; minority or women community organizations; minority or women contractors' groups; local, state and federal minority or women business assistance offices; and other organizations to provide assistance in the recruitment and placement of MBEs or WBEs.

In the event the Commission determines that the Design-Builder did not make a good faith effort to achieve the goals, the Design-Builder may file a Dispute to the Executive Director as provided in Section 18.02. Disputes Book 2.

9. Reporting and Record-Keeping Requirements

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

b. The Design-Builder must maintain records of all relevant data with respect to the utilization of MBE and WBE firms, including without limitation payroll records, tax returns and records, and books of account in such detail as the Commission requires, and retain such records for a period of at least 3 years after final acceptance of the work. Full access to such records will be granted to the Commission and/or its designees, on 5 business days' notice in order for the Commission to determine the Design-Builder's compliance with its MBE and WBE commitments and the status of any MBE or WBE firm performing any portion of the contract.

10. Disqualification of MBE or WBE

a. The Contract may be terminated by the Executive Director upon the disqualification of the Design-Builder as an MBE or WBE if the Design-Builder's status as an MBE or WBE was a factor in the award and such status was misrepresented by the Design-Builder.

b. The Contract may be terminated by the Executive Director upon the disqualification of any MBE or WBE if the Subcontractor's or supplier's status as an MBE or WBE was a factor in the award of the contract and the status of the subcontractor or supplier was misrepresented by the Design-Builder. If the Design-Builder is determined not to have been involved in any misrepresentation of the status of the disqualified subcontractor or supplier, the Design-Builder shall make good faith efforts to engage a qualified MBE or WBE replacement.

11. Prohibition On Changes To MBE/WBE Commitments

The Design-Builder must not make changes to its contractual MBE and WBE commitments or substitute such MBE or WBE subcontractors without the prior written approval of the Executive Director. Unauthorized changes or substitutions, including performing the work designated for a subcontractor with the Design-Builder's own forces, is a violation of this section and a breach of the contract with the Commission, and may cause termination of the contract for breach, and/or subject the Design-Builder to contract remedies or other sanctions. The facts supporting the request must not have been known nor reasonably should have been known by the parties prior to entering into the subcontract.

12. MBE/WBE Substitution Requirements and Procedures

a. Arbitrary changes by the Design-Builder of the commitments earlier certified in the **Schedule D** are prohibited. Further, after once entering into each approved MBE and WBE sub-contract agreement, the Design-Builder shall thereafter neither terminate the subcontract, nor reduce the scope of the work to be performed by the MBE or WBE, nor decrease the price to the MBE or WBE, without in each instance receiving the prior written approval of the Executive Director. In some cases, however, it may become necessary to substitute a new MBE or WBE in order to actually fulfill the MBE or WBE requirements. In such cases, the Executive Director must be given reasons justifying the release by the Design-Builder of prior specific MBE or WBE commitments established in the contract, and will need to review the eligibility of the MBE or WBE presented as a substitute. The substitution procedure will be as follows:

(1) The Design-Builder must notify the Executive Director immediately in writing of an apparent necessity to reduce or terminate a MBE or WBE subcontract and to propose a substitute firm for some phase of work, if needed in order to sustain the fulfillment of the MBE/WBE contract requirements.

(2) The Design-Builder's notification should include the specific reasons for the proposed substitution. Stated reasons which would be acceptable include any of the following reasons: a) Unavailability after receipt of reasonable notice to proceed; b) failure of performance; c)financial incapacity; d) refusal by the subcontractor to honor the bid or proposal price or scope; e) mistake of fact or law about the elements of the scope of work of a solicitation where a reasonable price cannot be agreed; f) failure of the subcontractor to meet insurance, licensing or bonding requirements; g) the subcontractor's withdrawal of its bid or proposal; or h) decertification of the subcontractor as MBE or WBE.

The Design-Builder's position must be fully explained and supported with adequate documentation. Stated reasons which will not be acceptable include: replacement firm has been recruited to perform the same work under terms more advantageous to the Design-Builder; issues about performance by the committed MBE or WBE were disputed (unless every reasonable effort has already been taken to have the issues resolved or mediated satisfactorily); an MBE or WBE has requested reasonable price escalation which may be justified due to unforeseen circumstances.

(3) The Design-Builder's notification should include the names, address and principal official of any proposed substitute MBE or WBE and the dollar value and scope of work of the proposed subcontract. Attached should be all the same MBE/WBE affidavits, documents and Letters of Intent which are required of the proposed MBE or WBE firms, as enumerated above in Section 20.5. Submission of Proposals.

(4) The Executive Director will evaluate the submitted documentation, and respond within fifteen (15) working days to the request for approval of a substitution. The response may be in the form of requesting more information, or requesting an interview to clarify or mediate the problem. In the case of an expressed emergency need to receive the necessary decision for the sake of job progress, the Executive Director will instead respond as soon as practicable.

(5) Actual substitution of a replacement MBE or WBE to fulfill contract requirements must not be made before the Executive Director's approval is given of the acceptability of the substitute MBE or WBE. This subcontract must be executed within five (5) working days, and a copy of the MBE WBE subcontract with signatures of both parties to the agreement should be submitted immediately to the Executive Director.

b. The Executive Director will not approve extra payment for escalated costs incurred by the Design-Builder when a substitution of subcontractors becomes necessary for the Design-Builder in order to comply with MBE/WBE contract requirements.

c. No relief of the MBE/WBE requirements will be granted by the Executive Director except in exceptional circumstances. Requests for complete or partial waiver of the MBE/WBE requirements of this contract must be made in writing, stating all details of the request, the circumstances, and any additional relevant information. The request must be accompanied by a record of all efforts taken by the Design-Builder to locate specific firms, solicit MBE and WBE

bids, seek assistance from technical assistance agencies, and other good faith efforts undertaken to achieve compliance with the MBE/WBE goals.

13. Non-Compliance

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

b. When the contract is completed, if the Executive Director has determined that the Design-Builder did not comply in the fulfillment of the required MBE and/or WBE goals, and a grant of relief of the requirements was not obtained, the Commission will be damaged in the failure to provide the benefit of participation to minority or women business to the degree set forth in this Special Condition. In that case, the Commission may disqualify the Design-Builder from entering into future contracts with the Commission.

14. Severability

a. If any section, subsection, paragraph, clause, provision or application of these Special Conditions is held invalid by any count, the invalidity of such section, paragraph, clause or provision will not affect any of the remaining provisions hereof.

## ARTICLE 24. EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS

Design Builder has proposed to meet the following requirements:

Actual amounts of minority and female work will be measured from the total hours of construction workers employed on the Project within each of the categories of Journey Workers, Apprentices and Laborers by the Design-Builder and all of the worksite subcontractors.

CONSTRUCTION WORKER MINIMUM REQUIREMENTS:

| | |
|---|---|
| Percentage of total Journey Worker hours required to be worked by minority Journey Workers during construction of the Project | 25% |
| Percentage of the total Apprentice hours required to be worked by minority Apprentices during construction of the Project. | 25% |
| Percentage of the total Laborers hours required to be worked by minority Laborers during construction of the Project. | 40% |
| Percentage of the total Journey Worker hours required to be worked by female Journey Workers during construction of the Project. | 7% |
| Percentage of the total Apprentice hours required to be worked by female Apprentices during construction of the Project | 7% |
| Percentage of the total Laborer hours required to be worked by female Laborers during construction of the Project. | 10% |

The percentage figures set forth above shall not deter or restrict the fuller utilization of minority or female employees for the Project. Compliance with the above requirements for minority and female work will be measured by dividing the hours actually worked by minority or female employees on the Project within each of the categories of journeyworkers, apprentices; laborers by the Design-Builder and all of the worksite subcontractors by the total hours of construction workers employed on the Project within each of those same categories and then multiplying the product for each category by 100 to arrive at the actual percentage of minority or female utilization for each category. Design Builder agrees during the construction of the Project to fulfill every numerical commitment set forth in the Construction Worker Minimum Requirements above. Relief from the Design Builder's obligations as established under the Construction Worker Minimum Requirements is not available due to any limiting condition or circumstance which may affect referral, hiring, or deployment of construction trades employees found to exist during construction.

## ARTICLE 25. PROJECT FORMS

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

| | |
|---|---|
| Exhibit A | Application and Certification for Payment |
| Exhibit B | Design-Builder's Sworn Statement and Affidavit for Partial Payment |
| Exhibit C | Design-Builder's Waiver of Lien for Partial Payment |
| Exhibit D | Subcontractor's Waiver of Lien To Date and Affidavit |
| Exhibit E | Supplier's Waiver of Lien for Partial Payment |
| Exhibit F | Design-Builder's Sworn Statement and Affidavit for Final Payment |
| Exhibit G | Design-Builder's Final Release and Waiver of Lien |
| Exhibit H | Release by Design-Builder |
| Exhibit I | Subcontractor's Final Waiver of Lien and Affidavit |
| Exhibit J | Release by Subcontractor |
| Exhibit K | Supplier's Final Waiver of Lien |
| Exhibit L | Final Release by Supplier |
| Exhibit M | Payment Application Form Change Order |
| Exhibit N | Contractor's Payroll Record |
| Exhibit O | Design-Builder Proposal |
| Exhibit P | Design-Builder's Prevailing Wage Certification |
| Exhibit Q | Project Guarantee Form |
| Exhibit R | Request for Subcontractor/Supplier Approval Form |

EXHIBIT A

APPLICATION AND CERTIFICATION FOR PAYMENT

TO OWNER:
Public Building Commission of Chicago
Richard J. Daley Center
50 W. Washington Street, Room 200
Chicago, Illinois 60602

PROJECT:

FROM CONTRACTOR:

VIA ARCHITECT:

APPLICATION NO:

PERIOD TO:

PROJECT NOS:

CONTRACT DATE:

Distribution to:
☐ OWNER
☐ ARCHITECT
☐ CONTRACTOR
☐
☐

*CONTRACT FOR:*

## CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract.
Continuation Sheet, AIA Document G703, is attached.

| | | |
|---|---|---|
| 1. ORIGINAL CONTRACT SUM | | $ 0.00 |
| 2. Net change by Change Orders | | $ 0.00 |
| 3. CONTRACT SUM TO DATE (Line 1 ± 2) | | $ 0.00 |
| 4. TOTAL COMPLETED & STORED TO DATE (Column G on G703) | | $ 0.00 |
| 5. RETAINAGE: | | |
| a. 10 % of Completed Work (Column D + E on G703) | $ 0.00 | |
| b. ____ % of Stored Material (Column F on G703) | $ | |
| Total Retainage (Lines 5a + 5b or Total in Column I of G703) | | $ 0.00 |
| 6. TOTAL EARNED LESS RETAINAGE (Line 4 Less Line 5 Total) | | $ 0.00 |
| 7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate) | | $ 0.00 |
| 8. CURRENT PAYMENT DUE | | $ 0.00 |
| 9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less 6) | | $ 0.00 |

| CHANGE ORDER SUMMARY | ADDITIONS | DEDUCTIONS |
|---|---|---|
| Total changes approved in previous months by Owner | | |
| Total approved this Month | | |
| TOTALS | | |
| NET CHANGES by Change Order | | |

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR:

By: _____ Date: _____

Subscribed and sworn to before me this _____ day of _____ , 2009

County of: _____ State of: _____

Notary Public: _____

My Commission expires on: _____

## ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising the application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED ..... $ _____

*(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and onthe Continuation Sheet that are changed to conform with the amount certified.)*

AIA DOCUMENT G702 - APPLICATION AND CERTIFICATION FOR PAYMENT - 1992 EDITION - AIA - ©1992 THE AMERICAN INSTITUTE OF ARCHITECTS, 1735 NEW YORK AVE., N.W., WASHINGTON, DC 20006-5292

**Users may obtain validation of this document by requesting a completed AIA Document D401 - Certification of Document's Authenticity from the Licensee.**

EXHIBIT B
DESIGN-BUILDER'S SWORN STATEMENT AND AFFIDAVIT FOR PARTIAL PAYMENT

## EXHIBIT B

## CONTRACTOR'S SWORN STATEMENT AND AFFIDAVIT FOR PARTIAL PAYMENT (1 0F 2)

PROJECT NAME: Project Name
PBC PROJECT #: XXXXX

CONTRACTOR: Contractor Name
Contractor Address 1
Contractor Address 2

DATE: _____

JOB LOCATION: Project Address 1
Project Address 2

OWNER: PUBLIC BUILDING COMMISSION OF CHICAGO

APPLICATION FOR PAYMENT #

PERIOD FROM: Start & End

STATE OF ILLINOIS )
) SS
COUNTY OF COOK )

The affiant, _____ first being duly sworn on oath, deposes and says that he/she is _____ for the CONTRACTOR NAME, a(n) _____ corporation, and duly authorized to make this Affidavit on behalf of said corporation and for him/herself individually; that he/she is well acquainted with the facts set forth herein and that said corporation is the Contractor with the PUBLIC BUILDING COMMISSION OF CHICAGO, Owner, under Contract No. _____, dated the _____ day of _____ 20___, for the General Construction on the following project:

Project Name
Project Address 1
Project Address 2

That the following statements are made for the purpose of procuring a partial paymer $ - under the terms of said Contract;
That, for the purpose of said Contract, the following persons have been contracted with, and have furnished or prepared materials, equipment, supplies, and services for, and have done labor on said improvement;
That, the respective amounts set forth opposite their names is the full amount of money due and to become due to each of them respectively;
That, the work for which payment has been requested has been competed, free and clear of any and all claims, liens, charges and expenses of any kind whatsoever and in full compliance with the Contract Documents and the requirements of said Owner under them;
That this statement is a full, true, and complete statement of all such persons and of the full amount now due and the amount heretofore paid to each of them for such labor, materials, equipment, supplies and services, furnished or prepared by each of them to or on account of said work, as stated:

| CSI Designation | 1<br>Subcontractor Name (Trade Description)<br>Subcontractor Address | 2<br>Original Contract Amount | 3<br>Change Orders | 4<br>Adjusted Contract Amount | 5<br>% COMPL | 6<br>---WORK COMPLETED---<br>PREVIOUS | 7<br>CURRENT | 8<br>TOTAL | 9<br>RETAINAGE | 10<br>PREVIOUS BILLINGS | 11<br>NET AMOUNT DUE | 12<br>REMAINING TO BILL |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | | | | |
| | Subtotal Subcontractor Costs | | | | | | | | | | | |
| | General Conditions<br>Construction Contingency<br>Allowances<br>Contractor Overhead & Profit | | | | | | | | | | | |
| | Sub-Total General Conditions, Contingency, Allowances, OH&P | | | | | | | | | | | |
| | TOTAL BASE AGREEMENT | | | | | | | | | | | |

**EXHIBIT B**

**DESIGN-BUILDER'S SWORN STATEMENT AND AFFIDAVIT FOR PARTIAL PAYMENT (2 of 2)**

# EXHIBIT B

# CONTRACTOR'S SWORN STATEMENT AND AFFIDAVIT FOR PARTIAL PAYMENT (2 OF 2)

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | AMOUNT OF ORIGINAL CONTRACT<br>EXTRAS TO CONTRACT<br>TOTAL CONTRACT AND EXTRAS<br>CREDITS TO CONTRACT<br>ADJUSTED TOTAL CONTRACT | | | | | | | WORK COMPLETED TO DATE (Col. 7)<br>TOTAL RETAINED (Col. 9)<br>NET AMOUNT EARNED (Col.8 - Col.9)<br>PREVIOUSLY PAID (Col. 10)<br>NET AMOUNT DUE THIS PAYMENT (Col. 11) | | |

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

Contractor certifies that to the best of its knowledge, information and belief, the work is in accordance with the Contract Documents; that suppliers of materials services, labor and all Subcontractors (including all significant sublevels thereof) are being currently paid; that the Waivers of Lien submitted herewith by affiant for affiant and each of the aforesaid persons are true, correct and genuine; that each and every Waiver of Lien was delivered unconditionally; that there is no claim either legal or equitable to defeat the validity of any of said Waivers of Lien; that said Waivers of Lien include such Waivers of Lien from all subcontractors, suppliers of material or other agents acting on behalf of affiant in connection with the work or arising out of the work; that so far as affiant has knowledge or information, the said Waivers of Lien include all the labor and material for which a claim could be made and for which a lien could be filed; that neither the partial payment for any part thereof has been assigned; that said Contractor herein expressly affirms that should it at any time appear that any illegal or excess payments that have been made to said Contractor by or on behalf of the PUBLIC BUILDING COMMISSION OF CHICAGO, the said Contractor will repay on demand to the PUBLIC BUILDING COMMISSION OF CHICAGO the amount or amounts so paid; and that if any lien remains unsatisfied after all payments are made, the Contractor will refund to the PUBLIC BUILDING COMMISSION OF CHICAGO all moneys that the latter may be compelled to pay in discharging such a lien including all costs and reasonable attorney's fees.

Signed: _____
(to be signed by the President or Vice President)

Print Name: _____

Title: _____

Subscribed and sworn to before me this _____ day of _____, 20__

_____
Notary Public
My Commission expires: _____

EXHIBIT C
DESIGN-BUILDER'S WAIVER OF LIEN TO-DATE AND AFFIDAVIT

STATE OF ILLINOIS }
} SS
COUNTY OF COOK }

TO ALL WHOM IT MAY CONCERN:

WHEREAS,

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

for (Designate Project and Location)

That the undersigned, for and in consideration of a partial payment of

$_____

on the adjusted contract price of

$_____

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

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

(SEAL)

_____

ATTEST:

BY _____

_____

Title _____
President or Vice President

_____
Secretary or Assistant Secretary

EXHIBIT D
SUBCONTRACTOR'S WAIVER OF LIEN-TO-DATE AND AFFIDAVIT

## WAIVER OF LIEN TO DATE

STATE OF ILLINOIS } SS
COUNTY OF }

Qty # _____

Escrow # _____

TO WHOM IT MAY CONCERN:

WHEREAS the undersigned has been employed by _____

to furnish _____

for the premises known as _____

of which _____ is the owner.

THE undersigned, for and in consideration of _____ ($_____) Dollars, and other good and valuable considerations, the receipt whereof is hereby acknowledged, do(es) hereby waive and release any and all lien or claim of, or right to, lien, under the statutes of the State of Illinois, relating to mechanics' liens, with respect to and on said above-described premises, and the improvements thereon, and on the material, fixtures, apparatus or machinery furnished, and on the moneys, funds or other considerations due or to become due from the owner, on account of all labor, services, material, fixtures, apparatus or machinery, furnished to this date by the undersigned for the above-described premises, INCLUDING EXTRAS.*

DATE _____ COMPANY NAME _____

ADDRESS _____

SIGNATURE AND TITLE _____

*EXTRAS INCLUDE BUT ARE NOT LIMITED TO CHANGE ORDERS, BOTH ORAL AND WRITTEN, TO THE CONTRACT.

## CONTRACTOR'S AFFIDAVIT

STATE OF ILLINOIS } SS
COUNTY OF }

TO WHOM IT MAY CONCERN:

THE UNDERSIGNED, (NAME) _____ BEING DULY SWORN, DEPOSES AND SAYS THAT HE OR SHE IS (POSITION) _____ OF (COMPANY NAME) _____ WHO IS THE CONTRACTOR FURNISHING _____ WORK ON THE BUILDING LOCATED AT _____

OWNED BY _____

That the total amount of the contract including extras* is $_____ on which he or she has received payment of $_____ prior to this payment. That all waivers are true, correct and genuine and delivered unconditionally and that there is no claim either legal or equitable to defeat the validity of said waivers. That the following are the names and addresses of all parties who have furnished material or labor, or both, for said work and all parties having contracts or sub contracts for specific portions of said work or for material entering into the construction thereof and the amount due or to become due to each, and that the items mentioned include all labor and material required to complete said work according to plans and specifications:

| NAMES AND ADDRESSES | WHAT FOR | CONTRACT PRICE INCLDG EXTRAS* | AMOUNT PAID | THIS PAYMENT | BALANCE DUE |
|---|---|---|---|---|---|
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| TOTAL LABOR AND MATERIAL INCLUDING EXTRAS* TO COMPLETE. | | | | | |

That there are no other contracts for said work outstanding, and that there is nothing due or to become due to any person for material, labor or other work of any kind done or to be done upon or in connection with said work other than above stated.

DATE _____ SIGNATURE: _____

SUBSCRIBED AND SWORN TO BEFORE ME THIS _____ DAY OF _____, ____.

*EXTRAS INCLUDE BUT ARE NOT LIMITED TO CHANGE ORDERS, BOTH ORAL AND WRITTEN, TO THE CONTRACT.

_____
NOTARY PUBLIC

f.1722 R5/96

Provided by Chicago Title Insurance Company

EXHIBIT E
SUPPLIER'S WAIVER OF LIEN FOR PARTIAL PAYMENT

STATE OF ILLINOIS }
} SS
COUNTY OF COOK }

TO ALL WHOM IT MAY CONCERN:

WHEREAS,

_____

an _____ corporation, has furnished

to (Designate Project and Location)

for _____ , under purchase orders dated

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

$_____

on said purchase orders in the aggregate amount of

$_____

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

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

(SEAL)

_____

ATTEST:

BY _____

_____

Title _____
President or Vice President

_____
Secretary or Assistant Secretary

EXHIBIT F
CONTRACTOR'S SWORN STATEMENT AND AFFIDAVIT FOR FINAL PAYMENT
**(1 of 2)**

## EXHIBIT F

## CONTRACTOR'S SWORN STATEMENT AND AFFIDAVIT FOR FINAL PAYMENT (1 OF 2)

PROJECT NAME: Project Name
PBC PROJECT #: XXXXX

CONTRACTOR: Contractor Name
Contractor Address 1
Contractor Address 2

DATE: _____

JOB LOCATION: Project Address 1
Project Address 2

OWNER: PUBLIC BUILDING COMMISSION OF CHICAGO

APPLICATION FOR PAYMENT #

PERIOD FROM: Start & End

STATE OF ILLINOIS
COUNTY OF COOK

The affiant, _____ first being duly sworn on oath, deposes and says that he/she is _____ for the CONTRACTOR NAME, a(n) _____ corporation, and duly authorized to make this Affidavit on behalf of said corporation and for him/herself individually; that he/she is well acquainted with the facts set forth herein and that said corporation is the Contractor with the PUBLIC BUILDING COMMISSION OF CHICAGO, Owner, under Contract No. _____, dated the _____ day of _____ 20___, for the General Construction on the following project:

Project Name
Project Address 1
Project Address 2

That the following statements are made for the purpose of the release and payment of: $ - held by said Owner under the terms of said Contract;
That the whole work of said contract has been completed, free and clear of any and all claims, liens, charges and expenses of any kind or nature whatsoever and in full compliance with the Contract Documents and the requirements of said Owner under them;
That, for the purpose of said Contract, the following persons have been contracted with, and have furnished or prepared materials, equipment, supplies, and services for, and have done labor on said improvement;
That, the respective amounts set forth opposite their names are the full amounts of money due and to become due to each of them respectively, and that the full amounts of all of said monetary obligations have been completely fulfilled and discharged;
That this statement is a full, true, and complete statement of all such persons and of the full amount due and the amount heretofore paid to each of them for such labor, materials, equipment, supplies and services, furnished or prepared by each of them to or on account of said work, as stated:

| 1 | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| CSI Designation | Subcontractor Name (Trade Description) Subcontractor Address | Original Contract Amount | Change Orders | Adjusted Contract Amount | % COMPL | WORK COMPLETED PREVIOUS | WORK COMPLETED CURRENT | WORK COMPLETED TOTAL | RETAINAGE | PREVIOUS BILLINGS | NET AMOUNT DUE | REMAINING TO BILL |
| | | | | | | | | | | | | |
| | Subtotal Subcontractor Costs | | | | | | | | | | | |
| | General Conditions<br>Construction Contingency<br>Allowances<br>Contractor Overhead & Profit | | | | | | | | | | | |
| | Sub-Total General Conditions, Contingency, Allowances, OH&P | | | | | | | | | | | |
| | TOTAL BASE AGREEMENT | | | | | | | | | | | |

**EXHIBIT F**

**CONTRACTOR'S SWORN STATEMENT AND AFFIDAVIT FOR FINAL PAYMENT (2 of 2)**

## EXHIBIT F

## CONTRACTOR'S SWORN STATEMENT AND AFFIDAVIT FOR FINAL PAYMENT (2 OF 2)

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | AMOUNT OF ORIGINAL CONTRACT<br>EXTRAS TO CONTRACT<br>TOTAL CONTRACT AND EXTRAS<br>CREDITS TO CONTRACT<br>ADJUSTED TOTAL CONTRACT | | | | | | | WORK COMPLETED TO DATE (Col. 7)<br>TOTAL RETAINED (Col. 9)<br>NET AMOUNT EARNED (Col.8 - Col.9)<br>PREVIOUSLY PAID (Col. 10)<br>NET AMOUNT DUE THIS PAYMENT (Col. 11) | | |

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

Contractor certifies that to the best of its knowledge, information and belief, the work is in accordance with the Contract Documents; that suppliers of materials services, labor and all Subcontractors (including all significant sublevels thereof) have been paid in full; that the Final Waivers of Lien and Releases submitted herewith by affiant for affiant and each of the aforesaid persons are true, correct and genuine; that each and every Final Waiver of Lien and Release was delivered unconditionally; that there is no claim either legal or equitable to defeat the validity of any of said Final Waivers of Lien and such Releases; that said Final Waivers of Lien and said Releases include such Final Waivers of Lien and such releases from all subcontractors, suppliers of material or other agents acting on behalf of affiant in connection with the work or arising out of the work; and that so far as affiant has knowledge or information, the said Final Waivers of Lien and said Releases include all the labor and material for which a claim could be made and for which a lien could be filed; That neither the final payment for any part thereof has been assigned; That said Contractor herein expressly affirms that should it at any time appear that any illegal or excess payments have been made to said Contractor by or on behalf of the PUBLIC BUILDING COMMISSION OF CHICAGO, whether included in a partial payment or in the final payment, the said Contractor will repay on demand to the PUBLIC BUILDING COMMISSION OF CHICAGO the amount or amounts so paid; and if any lien remains unsatisfied after all payments are made, the Contractor will refund to the PUBLIC BUILDING COMMISSION OF CHICAGO all moneys that the latter may be compelled to pay in discharging such a lien including all costs and reasonable attorney's fees.

Signed: _____
(to be signed by the President or Vice President)

Print Name: _____

Title: _____

Subscribed and sworn to before me this _____ day of _____, 20___

_____
Notary Public
My Commission expires: _____

EXHIBIT G
CONTRACTOR'S FINAL RELEASE AND WAIVER OF LIEN

STATE OF ILLINOIS }
} SS
COUNTY OF COOK }

TO ALL WHOM IT MAY CONCERN:

WHEREAS,
an
corporation, has been employed by the PUBLIC BUILDING COMMISSION OF CHICAGO, as Owner, under Contract No. _____, dated the _____ day of _____ 20 _____, to

for (Designate Project and Location)
_____
_____
_____
_____

That the undersigned, for and in consideration of the final payment of

$_____

on the final adjusted contract price of

$_____

and other good and valuable considerations, the receipt is acknowledged, the undersigned waives and release any and all lien, or claim, or right of lien under the Statutes of the State of Illinois relating to Mechanics' Liens, on account of labor or materials, or both, furnished by the undersigned to or on account of the aforesaid work.

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

(SEAL)

_____

ATTEST:

BY _____

_____

Title _____
President or Vice President

_____
Secretary or Assistant Secretary

## PUBLIC BUILDING COMMISSION OF CHICAGO

EXHIBIT H
RELEASE BY CONTRACTOR

STATE OF ILLINOIS }
} SS
COUNTY OF COOK }

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS,
an corporation, has been employed by the PUBLIC BUILDING COMMISSION OF CHICAGO, as Owner, under Contract No. , dated the day of 20 , to

for (Designate Project and Location)

_____
_____
_____
_____

NOW, THEREFORE, for and in consideration of the final payment of

$_____

on the final adjusted contract price of

$_____

and other good and valuable considerations, the receipt is acknowledged, the undersigned releases and discharges the PUBLIC BUILDING COMMISSION OF CHICAGO, its Executive Directors, officers, and agents, and each of them from any and all manner of action, cause and causes of action, suits, debts, sums of money, accounts, controversies, agreements, promises, damages, financial obligations, claims, and demands whatsoever, in law or in equity, and particularly, without limiting the generality of the foregoing, from all financial obligations, claims, and demands arising under said contract and from all financial obligations, claims and demands for any additional and extra work, labor, materials, equipment and supplies prepared for or furnished in connection with the aforesaid work for the said designated project which the undersigned, its successors and assigns, ever had, now has, or hereafter can, will, or may have against the said PUBLIC BUILDING COMMISSION OF CHICAGO, its Executive Directors, officers, employees and agents, and their respective heirs, personal representatives, successors and assigns, for or by any reason of any cause, matter, or thing whatsoever at any time prior to the date of these presents.

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

(SEAL)

_____

ATTEST:

BY _____

_____

Title _____
President or Vice President

_____
Secretary or Assistant Secretary

EXHIBIT I
SUBCONTRACTOR'S FINAL WAIVER OF LIEN-TO-DATE AND AFFIDAVIT

# FINAL WAIVER OF LIEN

STATE OF ILLINOIS }
COUNTY OF } SS

Qty # _____

Escrow # _____

TO WHOM IT MAY CONCERN:

WHEREAS the undersigned has been employed by _____

to furnish _____

for the premises known as _____

of which _____ is the owner.

THE undersigned, for and in consideration of _____ ($_____) Dollars, and other good and valuable considerations, the receipt whereof is hereby acknowledged, do(es) hereby waive and release any and all lien or claim of, or right to, lien, under the statutes of the State of Illinois, relating to mechanics' liens, with respect to and on said above-described premises, and the improvements thereon, and on the material, fixtures, apparatus or machinery furnished, and on the moneys, funds or other considerations due or to become due from the owner, on account of all labor, services, material, fixtures, apparatus or machinery, heretofore furnished, or which may be furnished at any time hereafter, by the undersigned for the above-described premises, INCLUDING EXTRAS.*

DATE _____ COMPANY NAME _____

ADDRESS _____

SIGNATURE AND TITLE _____

*EXTRAS INCLUDE BUT ARE NOT LIMITED TO CHANGE ORDERS, BOTH ORAL AND WRITTEN, TO THE CONTRACT.

# CONTRACTOR'S AFFIDAVIT

STATE OF ILLINOIS }
COUNTY OF } SS

TO WHOM IT MAY CONCERN:

THE UNDERSIGNED, (NAME) _____ BEING DULY SWORN, DEPOSES AND SAYS THAT HE OR SHE IS (POSITION) _____ OF (COMPANY NAME) _____ WHO IS THE CONTRACTOR FURNISHING _____ WORK ON THE BUILDING LOCATED AT _____ OWNED BY _____

That the total amount of the contract including extras* is $_____ on which he or she has received payment of $_____ prior to this payment. That all waivers are true, correct and genuine and delivered unconditionally and that there is no claim either legal or equitable to defeat the validity of said waivers. That the following are the names and addresses of all parties who have furnished material or labor, or both, for said work and all parties having contracts or sub contracts for specific portions of said work or for material entering into the construction thereof and the amount due or to become due to each, and that the items mentioned include all labor and material required to complete said work according to plans and specifications:

| NAMES AND ADDRESSES | WHAT FOR | CONTRACT PRICE INCLDG EXTRAS* | AMOUNT PAID | THIS PAYMENT | BALANCE DUE |
|---|---|---|---|---|---|
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| TOTAL LABOR AND MATERIAL INCLUDING EXTRAS* TO COMPLETE. | | | | | |

That there are no other contracts for said work outstanding, and that there is nothing due or to become due to any person for material, labor or other work of any kind done or to be done upon or in connection with said work other than above stated.

DATE _____ SIGNATURE: _____

SUBSCRIBED AND SWORN TO BEFORE ME THIS _____ DAY OF _____, ____,

*EXTRAS INCLUDE BUT ARE NOT LIMITED TO CHANGE ORDERS, BOTH ORAL AND WRITTEN, TO THE CONTRACT.

_____
NOTARY PUBLIC

F.3870 R5/96

Provided by Chicago Title Insurance Company

## PUBLIC BUILDING COMMISSION OF CHICAGO

EXHIBIT J
RELEASE BY SUBCONTRACTOR

STATE OF ILLINOIS }
} SS
COUNTY OF COOK }

KNOW ALL MEN BY THESE PRESENTS:

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

for (Project and Location)
_____
_____
_____
_____

NOW, THEREFORE, for and in consideration of the final payment of

$_____on the final adjusted subcontract price of

$_____ by the said
and release and payment of retained funds, or a part thereof by or on behalf of the PUBLIC BUILDING COMMISSION OF CHICAGO to the said
_____
_____
and other good and valuable considerations, the receipt is acknowledged, the undersigned releases and discharges the PUBLIC BUILDING COMMISSION OF CHICAGO, its Executive Directors, officers, employees and agents, and each of them, from any and all manner of action, cause and causes of action, suits, debts, sums of money, accounts, controversies, agreements, promises, damages, financial obligations, claims, and demands whatsoever, in law or in equity, and particularly, without limiting the generality of the foregoing, from all financial obligations, claims, and demands arising under such subcontract and from all financial obligations, claims and demands for any additional and extra work, labor, materials, equipment and supplies prepared for or furnished in connection with the aforesaid work for the designated project which the undersigned, its successors and assigns, ever had, now has, or hereafter can, will, or may have against the said PUBLIC BUILDING COMMISSION OF CHICAGO, its Executive Directors, officers, employees and agents, and their respective heirs, personal representatives, successors and assigns, for or by reason of any cause, matter, or thing whatsoever at any time prior to the date of these presents.

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

(SEAL)

_____

ATTEST:

BY _____

_____

Title _____
President or Vice President

_____
Secretary or Assistant Secretary

EXHIBIT K
SUPPLIER'S FINAL RELEASE AND WAIVER OF LIEN

STATE OF ILLINOIS }
} SS
COUNTY OF COOK }

TO ALL WHOM IT MAY CONCERN:

WHEREAS,
an corporation, has furnished

to

for (Project and Location)

_____
_____
_____
_____

under purchase orders dated

NOW, THEREFORE, KNOW YE, that the undersigned, for and in consideration of full payment of all said purchase orders in the aggregate amount of

$_____
by the said

, and other good and valuable considerations, the receipt is acknowledged, the undersigned waives and releases any and all lien, or claim, or right of lien under the Statutes of the State of Illinois relating to Mechanics' Liens, on account of labor or materials, or both, furnished by the undersigned to or on account of the aforesaid work.

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

(SEAL)

_____

ATTEST:

BY _____

_____

Title _____
President or Vice President

_____
Secretary or Assistant Secretary

## PUBLIC BUILDING COMMISSION OF CHICAGO

EXHIBIT L
FINAL RELEASE BY SUPPLIER

STATE OF ILLINOIS }
} SS
COUNTY OF COOK }

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS,
an corporation, has furnished

to

for ( Project and Location)
_____
_____
_____
_____
under purchase orders dated

NOW, THEREFORE, for and in consideration of the final payment of

$_____ due on said purchase orders
by the said
and the release and payment of retained funds, or a part thereof, by or on behalf of the PUBLIC BUILDING COMMISSION OF CHICAGO to the said
_____
_____
and other good and valuable considerations, the receipt is acknowledged, the undersigned releases and discharges the PUBLIC BUILDING COMMISSION OF CHICAGO, its Executive Directors, officers, employees and agents, and each of them, from any and all manner of action, cause and causes of action, suits, debts, sums of money, accounts, controversies, agreements, promises, damages, financial obligations, claims, and demands whatsoever, in law or in equity, and particularly, without limiting the generality of the foregoing, from all financial obligations, claims, and demands arising under said purchase orders and from all financial obligations, claims and demands for any additional and extra work, labor, materials, equipment and supplies prepared for or furnished in connection with the aforesaid work for the said designated project which the undersigned, its successors and assigns, ever had, now has, or hereafter can, will, or may have against the said PUBLIC BUILDING COMMISSION OF CHICAGO, its Executive Directors, officers, employees and agents, and their respective heirs, personal representatives, successors and assigns, for or by reason of any cause, matter, or thing whatsoever at any time prior to the date of these presents.

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

(SEAL)

_____

ATTEST:

BY _____

_____

Title _____
President or Vice President

_____
Secretary or Assistant Secretary

EXHIBIT M
PAYMENT APPLICATION FOR CHANGE ORDER (1 of 4)

**(1 of 4)**

Monthly Estimate No ____________________ Date ____________________
For the Period __________ to __________ Sheet __________ of __________
Contract No ____________________

To:
For Work on Account of:

| ITEM NO | DESCRIPTION | CONTRACT PRICE | CURRENT ESTIMATE | | | TOTAL ESTIMATE TO DATE | | |
|---|---|---|---|---|---|---|---|---|
| | | | % DONE | AMOUNT | | % DONE | AMOUNT | |
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| | **TOTAL THIS SHEET:** | | | | | | | |

## PUBLIC BUILDING COMMISSION OF CHICAGO

### EXHIBIT M
### PAYMENT APPLICATION FORM (2 of 4)
### CHANGE ORDER

Monthly Estimate No ______________________ Date

For the Period __________ to __________ Sheet ________ of ________

Contract No ______________________

To:

For Work on Account of:

| ITEM NO | DESCRIPTION | SUBCONTRACTOR'S NAME | CONTRACT PRICE | CURRENT ESTIMATE | | TOTAL ESTIMATE TO DATE | |
|---|---|---|---|---|---|---|---|
| | | | | % DONE | AMOUNT | % DONE | AMOUNT |
| | | | | | | | |
| | TOTAL NET DEBIT OR CREDIT: | | | | | | |

**PUBLIC BUILDING COMMISSION OF CHICAGO**

**EXHIBIT M**
**STORED MATERIAL (3 of 4)**

Monthly Estimate No _____ Date _____
For the Period _____ to _____ Sheet _____ of _____
Contract No _____

To
For Work on Account of

MATERIAL STORED - PREVIOUS ESTIMATE NO _____ ($ )

| ITEM NO | MATERIAL DELIVERED THIS PERIOD | QUANTITY | UNIT | UNIT PRICE | AMOUNT | | 50% AMOUNT | |
|---|---|---|---|---|---|---|---|---|
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| | TOTAL DELIVERED THIS PERIOD | | | | | | | |

| ITEM NO | MATERIAL USED THIS PERIOD | QUANTITY | UNIT | UNIT PRICE | AMOUNT | | 50% AMOUNT | |
|---|---|---|---|---|---|---|---|---|
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| | TOTAL USED THIS PERIOD | | | | | | | |
| | DEBIT OR CREDIT THIS PERIOD | | | | | | | |

MATERIAL STORED - THIS ESTIMATE _____ _____

**PUBLIC BUILDING COMMISSION OF CHICAGO**

**EXHIBIT M**
**SUMMARY OF ESTIMATE SHEETS (4 of 4)**

Monthly Estimate No _____ Date _____

For the Period _____ to _____ Sheet _____ of _____
Contract No _____
To
For Work on Account of

| | SUMMARY OF ESTIMATE SHEETS DESCRIPTION | (1) TOTAL CONTRACT ESTIMATE | (2) CURRENT ESTIMATE | (3) TOTAL ESTIMATE TO DATE |
|---|---|---|---|---|
| 1 | Sheet No. 1 | | $ | $ |
| 2 | | | | |
| 3 | | | | |
| 4 | | | | |
| 5 | | | | |
| 6 | Total Awarded Contract Amount | | | |
| 7 | Awarded Contract Amounts Completed | | $ | $ |
| 8 | Add: Total Authorized Changes - Sheet No. _____ | | | |
| 9 | Add: Materials Stored - Sheet No. _____ | | | |
| 10 | Total Approved Value & Amounts Earned | $ | $ | $ |
| 11 | Deduct: Current Reserve Adjustment | | $ | |
| 12 | Deduct: Total Reserve To Date (Column 3) | | | $ |
| 13 | Deduct: Current Liquidated Damages (Line 25) | | $ | |
| 14 | Deduct: Total Liquidated Damages (Line 23) | | | $ |
| 15 | Total Paid To Date - including this estimate | | | $ |
| 16 | Deduct: Total Earned To Date (Line 10, Col. 3) | $ | | |
| 17 | Net Amount Open on Contract | | | |
| 18 | NET CURRENT PAYMENT | | $ | |
| | **RESERVE COMPUTATION** | Current Reserve Withheld | Previous Reserve Withheld | Total Reserve Withheld |
| 19 | Percentage Computation - 10% Reserve* | $ | $ | $ |
| 20 | Percentage Computation - 5% Reserve* | $ | $ | $ |
| 21 | Total Reserve Withheld | $ | $ | $ |

*Note: Column 1 is computed at the rate of 10% for all monthly estimates up to 50% of contract.

| | LIQUIDATED DAMAGES COMPUTATION | | |
|---|---|---|---|
| 23 | Total Liquidated Damages to Date | Days | $ |
| 24 | Deduct: Amount Previously Withheld | | $ |
| 25 | CURRENT LIQUIDATED DAMAGES | | $ |
| | Approx. % Contract Completed % | Total Contract Time (Incl. Time Extens) | Days |
| | Starting Date: | Total Time Used | Days |

_____ _____
Verified By: Contract Administrator Name of Contractor
RECOMMENDED FOR APPROVAL: By
_____ Date _____
_____ _____
Project Manager Title

## PUBLIC BUILDING COMMISSION OF CHICAGO

EXHIBIT N
CONTRACTOR'S PAYROLL RECORD FORM RE-48 (Rev. PW 1982)
**(1 of 2)**

**PAYROLL** — Sheet _____ of _____

| Name of __ Contractor & No. __ or __ Subcontractor & No. __ | | Payroll No. |
|---|---|---|
| | Project No. / Location | Tax Week Ending |
| Address | Project Name | Contract No |

| Name, Address and Social Security # of Employee | Ethnic Group | Work Classi-fication | OT or ST | Hours and Days Worked S | M | T | W | Th | F | S | Total Hours | Rate of Pay | Total Earned | Deductions Federal WH Tax | FICA | State WH Tax | Total Deduct. | Net Wages Paid |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
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**Total No. Hours (Straight & Overtime) this Page** _____

Reviewed By: _____ No Work ___ Suspended ___ Completed ___

I, _____,
(Name of Signatory Party)

_____
(Title)

states:

1. That I pay or supervise the payment of the persons employed by _____the
(Contractor or Subcontractor)
_____
(Building or Work)
that during the payroll period commencing on the _____ day of_____ , 20 _____ , all persons employed on said project have been paid the full weekly wages earned, that no rebated have been or will be made either directly or indirectly to or on behalf of said_____ from the full weekly wages
(Contractor or Subcontractor)
earned by any person and that no deductions have been made either directly or indirectly from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part 3 (29 CFR Subtitle A), issued by the Secretary of Labor under the *Copeland Act*, as amended (42 Stat 943, 63 Stat 106, 72 Stat 967, 76 Stat 357, 40 U.S.C. 276c), and described below:
_____
_____
_____

2. That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete, that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract; that the classifications set forth therein for each laborer or mechanic conform with the work he/she performed.

3. That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United States Department of Labor, or if no such recognized agency exists in a State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.

4. That:

(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS
In addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in Section 4(c) below.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH
Each laborer or mechanic listed in the above referenced payroll has been paid, as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in Section 4(c) below.

(c) EXCEPTIONS

| EXCEPTION | EXPLANATION |
|---|---|
| | |
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**REMARKS**

| NAME AND TITLE | SIGNATURE |
|---|---|
| | |

THE WILLFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE CONTRACTOR OR SUBCONTRACTOR TO CIVIL OR CRIMINAL PROSECUTION. SEE SECTION 1001 OF TITLE 18 AND SECTION 231 OF TITLE 31 OF THE UNITED STATES CODE.

EXHIBIT O
DESIGN-BUILDER PROPOSAL

**PUBLIC BUILDING COMMISSION OF CHICAGO**
Daley Center Plaza, Room 200
Chicago, Illinois 60602

# DESIGN-BUILDER PROPOSAL

**Design-Builder:**

**Bulletin No.:**

**Project Name:**
**PBC Contract No.**
**Architect/Engineer /**
**Consultant:**

Note: Detailed breakdown of costs for each subcontractor and each trade performed by the Design-Builder and documentation supporting any request for time extension must be submitted with this proposal form.

## I. WORK OF SUBCONTRACTORS

| Subcontractor Firm Name | Trade | Value of Work | 6% Markup | Total |
|---|---|---|---|---|
| | | $ | $ | $ |
| | | $ | $ | $ |
| | | $ | $ | $ |
| | | $ | $ | $ |
| | | $ | $ | $ |

(A) Total of Work by Subcontractors $

## II. DESIGN-BUILDERS WORK

| Description of Work | Value of Work | 15% Markup | Total |
|---|---|---|---|
| | $ | $ | $ |
| | $ | $ | $ |
| | $ | $ | $ |
| | $ | $ | $ |
| | $ | $ | $ |
| | $ | $ | $ |

(B) Total of Work by Design-Builder $

## III. PROPOSAL

(C) Total Cost of Work of this Bulletin (A+B) $

(D) Time Extension - Additional days requested _____ days

The Total Cost (Line C) and the Time Extension (Line D) represent all costs and additional time required to complete all aspects of the work included in this Bulletin. No additional costs or time extension related to this Bulletin will be requested by the Design-Builder.

**Prepared and Submitted for Approval by:**

**Design-Builder** **By:** **Date**

EXHIBIT P
CONTRACTOR'S PREVAILING WAGE CERTIFICATION

The undersigned, Contractor on _____ (PBC Contract No. _____) 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:_____

EXHIBIT Q

PROJECT GUARANTEE FORM

I, (name) _____,
(title) _____
of (Contractor) _____, herewith guarantee the (description of the project) _____ against defects in materials and workmanship for a period of _____ year (s) from the date of final acceptance _____ as defined in the Contract Documents and agree to correct any defects within this period at no cost to the Public Building Commission and to pay for any damages to other work resulting from the defects or the repair of the same.

_____

# Request for Subcontractor/Supplier Approval

Public Building Commission of Chicago ▪ Richard J. Daley Center ▪ 50 West Washington, Room 200 ▪ Chicago, Illinois 60602 ▪ Tel: 312-744-3090 ▪ Fax: 312-744-8005

Request No. _____

Project No. _____ Specification No. _____ Contract No. _____

Project Name _____

Total Contract Value $ _____ 75% of Total Contract Value $ _____

| Prime Contractor | Subcontractor/Supplier |
|---|---|
| Federal I.D. # | Federal I.D. # |
| Street or P.O. Box | Street or P.O. Box |
| City State Zip Code | City State Zip Code |
| Telephone Fax # | Telephone Fax # |
| Est. Start Date Est. Completion Date | Est. Start Date Est. Completion Date |

| Item No. | Item Description | Quantity | Unit Price | Total Amount |
|---|---|---|---|---|
| | | | | |

Value of above proposed subcontract _____
Value of all work sublet previously _____
Total value of all work proposed to be sublet to date _____

The subcontract documents will incorporate all requirements of the prime contract, including Equal Employment Opportunity and the minimum wage for labor provisions. The subcontract will in no way hinder the subcontractor from maintaining his progress on any other work on which he is either a subcontractor or principal contractor. This request is made with the understanding that the prime contractor is not under any circumstances relieved of his abilities and obligations, and is responsible for the organization, performance, and quality of work obtained.

*The above named Subcontractor/Supplier meets the Quality Requirements of Specification Section _____ for the following (attach a copy of certification):*

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| ***Qualifications (circle one):*** | *Yes* | *No* | *N/A* | ***Source Quality Control:*** | *Yes* | *No* | *N/A* |
| ***AISC / PCI Certification:*** | *Yes* | *No* | *N/A* | ***Single Source Responsibility:*** | *Yes* | *No* | *N/A* |
| ***Experience:*** | *Yes* | *No* | *N/A* | | | | |

| | | | |
|---|---|---|---|
| The above subcontractor/supplier is a: | MBE | WBE | Non-Minority |
| The above subcontractor/supplier will provide on-site labor: | Yes | No | |
| The subcontract agreement/purchase order is attached: | Yes | No | (If no, must be provided at a later date) |

RECOMMENDED:

Contractor Signature Date

Name and Title (please print or type)

Commission Representative Date

**APPROVED:**

Executive Director

Director of Procurement Date

**EXHIBIT R**