

**PUBLIC BUILDING COMMISSION OF CHICAGO
ADDENDUM NO. 1 to RFQ
STATEMENT OF QUALIFICATIONS FOR CONSTRUCTION MANAGEMENT AT-RISK SERVICES**

**For
ODGEN REPLACEMENT ELEMENTARY SCHOOL
PROJECT #05160**

DATE: Monday, July 13, 2009

NOTICE OF CHANGES IN CONTRACT DOCUMENTS

The following changes are hereby made in the Request for Qualifications:

Change 1 : Project Description, Page 6

Delete the first non-indented Paragraph that reads "Construction Manager will be required to execute an agreement for Construction Management Services under the terms as included in the attached agreement. Only questions or concerns identified in response to this RFQ will be considered during contract negotiation" in its entirety and replace with the following:

Construction Manager shall enter into an Agreement for Construction Management Services in substantially the same form as the sample Agreement for Construction Management Services ("CM Agreement") attached to this Addendum No. 1. The CM Agreement will govern the relationship between the Commission and the Construction Manager. For purposes of clarifying previous language in the RFQ – the PBC is not seeking comments from respondents on the form or content of the CM Agreement at this time. The PBC reserves the right to change or modify the form and terms of the CM Agreement at any time up to execution of the Agreement with the selected Construction Manager.

Change 2 : Evaluation Overview, Item I.C of the Evaluation Process (Page 7)

Add the following new subparagraph I.C.1:

Short Listed respondents will be provided with the full form of the Agreement with all Exhibits and attachments and will be required to provide their proposed Pre-Construction Fee and Construction Fee, which Construction Fee consists of (i) the Construction Management Fee, (ii) Fixed General Conditions Reimbursement, and (iii) Not-To-Exceed General Conditions Reimbursement. Short Listed respondents will provide this information during the interview process.

Questions and Answers:

Q1: Is there going to be a separate RFQ that will solicit the demolition of Ogden Elementary or is that part of the Construction Management At-Risk Services RFQ.

A1: The demolition of the existing Ogden School is going to be performed under a separate Job Order Contract by the PBC. There will not be an RFQ or RFP for demolition. This Demolition and Abatement portion of the Site Prep work is identified as to be performed by the PBC through a Job Order Contract in the Proposed Schedule paragraph on Page 4 of the Project Description.

Mayor Richard M. Daley, Chairman

Erin Lavin Cabonargi, Executive Director

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Q2: Section II. – Evaluation Criteria, under A. Technical Competence and Passed Experience in CM At-Risk Role. The RFQ makes specific reference to experience and performance completed in the last 5 years on three projects completed by the respondent that are comparable based on complexity, size, type and location. It goes on to identify the relevant location bordering between Fullerton Ave, Lake Michigan, 31st Street and Ashland Avenue.

Is the requirement that candidate firms may only submit relevant projects that meet **ALL** of the criteria, or just some of the criteria? Would CM at-risk school projects over \$40 million performed outside the geographic boundaries be considered "relevant experience" under the requirements of the RFQ?

A2: The Evaluation Criteria specified in the RFQ states the basis of the PBC's evaluation of the submissions. In order to be considered relevant experience for Paragraph II.A - the projects selected and submitted by the respondent must (1) be located within the geographic boundaries specified; (2) have a construction cost of over \$40,000,000; (3) be projects on which respondent provided pre-construction and CM At-Risk services (as defined in the RFQ). The three projects identified by the respondent need not specifically be K-12 educational projects. The intent is that these three projects would be general building projects (as opposed to road construction or other type of construction project). The projects would comply with all of the requirements of Paragraph II.A.

Any K-12 experience outside of the geographic boundary defined in Paragraph II.A will be considered under Paragraph II.B.

Q3: Is CM experience outside the Chicago boundaries delineated in the RFQ (Evaluation Criteria A on page 7 of 15) acceptable and will it viewed to be equal as that experience inside of the defined boundary?

A3: Any K-12 or experience outside of the geographic boundary defined in Paragraph II.A will be considered under Paragraph II.B.

Q4: In Section B. 4 - Project Approach and Methodology: during the preconstruction phase, it requests our "proposed approach to budgeting, scheduling and constructability reviews; and our proposed schedule and overall site logistics approach" Are you asking for an actual schedule for this project or just our approach to the scheduling process?

A4: For purposes of responding to this RFQ the PBC is seeking respondents proposed approach to budgeting, scheduling and site logistics for the Ogden School Project based on the information provided in the RFQ.

Q5: In Section C.-M/WBE, there is a statement at the bottom starting with an asterisk saying to identify additional projects - does that mean we can submit additional projects indicating M/WBE performance? Or is it asking only for the identification to be placed on those projects we list in number 2 of that section?

A5: The intent is that respondents identify MBE/WBE and EEO Participation achieved on the three projects submitted as representative of Technical Competence, but additional projects demonstrating MBE/WBE participation and EEO/City Residency compliance may be submitted as illustrative of the respondent's ability to achieve MBE/WBE participation and EEO/City Residency compliance.

Q6: Section D, can we submit additional projects showing our experience with EEO and Chicago Residency participation, or is the identification requested only on those projects that we have already listed in number 2?

Mayor Richard M. Daley, Chairman

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A6: The intent is that respondents identify MBE/WBE and EEO Participation achieved on the three projects submitted as representative of Technical Competence, but additional projects demonstrating MBE/WBE participation and EEO/City Residency compliance may be submitted as illustrative of the respondent's ability to achieve MBE/WBE participation and EEO/City Residency compliance.

Q7: Pg. 10---C. 1. " Provide commitments and percentages of actual M/WBE participation achieved on the three (3) projects submitted as representative of Technical Competence" Question: is it the intent of the PBC that the proposer use the same three projects required in "B Information Required in Qualifications Submittal" or can we use separate examples of projects in which we have provided M/WBE participation?

A7: The intent is that respondents identify MBE/WBE and EEO Participation achieved on the three projects submitted as representative of Technical Competence, but additional projects demonstrating MBE/WBE participation and EEO/City Residency compliance may be submitted as illustrative of the respondent's ability to achieve MBE/WBE participation and EEO/City Residency compliance.

Q8: Pg.11---D. 1. "Provide percentages of minority, female and Chicago resident labor actually employed on the three (3) previous projects submitted as representative of the firm's Technical Competence." Question: is it the intent of the PBC that the proposer use the same three projects required in "B Information Required in Qualifications Submittal" or can we use separate examples of projects in which we have provided minority, female and Chicago resident labor?

A8: The intent is that respondents identify MBE/WBE and EEO Participation achieved on the three projects submitted as representative of Technical Competence, but additional projects demonstrating MBE/WBE participation and EEO/City Residency compliance may be submitted as illustrative of the respondent's ability to achieve MBE/WBE participation and EEO/City Residency compliance.

Q9: Pg.10 ---4 (a) "Proposed method to comply with all applicable laws/statutes, ordinances and procedures regarding public bidding;" Can you please provide copies of the laws/statutes, ordinances and procedures, or a list of these requirements, or a referral to where we can find this information.

A9: The selected CM will be required to comply with competitive bidding requirements for the procurement of trade contracts pursuant to the Public Building Commission Act, 50 ILCS 20/1 *et seq.* ("PBC Act"). Specifically, Sections 19 and 20 of the PBC Act set forth these procurement requirements.

LIST OF ATTACHMENTS

Form of AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES

END OF ADDENDUM NO. 1

Mayor Richard M. Daley, Chairman

Erin Lavin Cabonargi, Executive Director

AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES

This agreement (the "Agreement") is entered into and made effective as of this ____ day of August, 2009 (the "Effective Date"), by and between the Public Building Commission of Chicago, a municipal corporation organized and operating under the Constitution of the State of Illinois and having its principal office at Room 200, Richard J. Daley Center, 50 West Washington Street, Chicago, Illinois 60602 ("Commission"), and _____, a _____ corporation, with offices at _____ ("Construction Manager").

RECITALS

WHEREAS, the Commission, on behalf of the Chicago Board of Education, has undertaken the construction of the Ogden Replacement Elementary School at 24 West Walton Street, Chicago, Illinois, 60610 (the "Project"); and

WHEREAS, the Commission requires certain professional construction management services (the "Services") described in this Agreement for the Project; and

WHEREAS, the Commission issued a Request for Qualifications dated _____, 2009 ("RFQ"), describing the Services required by the Commission and setting forth the terms and conditions for the performance of the Services; and

WHEREAS, Construction Manager responded to the RFQ and represented to the Commission that Construction Manager has the knowledge, skill, experience and other resources necessary to provide the Services required by the Agreement for the Project; and

WHEREAS, the Commission, in reliance upon Construction Manager's representations, desires to retain Construction Manager under the terms and conditions set forth in this Agreement to provide the Services; and

WHEREAS, Construction Manager desires to be retained by the Commission to perform the Services;

NOW, THEREFORE, in exchange for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Commission and Construction Manager (collectively, the "Parties"), the Parties hereby agree as follows:

AGREEMENT

ARTICLE 1 – INCORPORATION OF RECITALS

The recitals set forth above are hereby incorporated in and made a part of this Agreement.

ARTICLE 2 – DEFINITIONS AND USAGE

Section 2.01 – Definitions. The following words or phrases have the meanings ascribed for the purposes of the Agreement:

(a) Agreement. This Agreement for construction management services, including all attached exhibits, schedules, drawings, documents, and all those exhibits, schedules, documents and/or drawings incorporated by reference, all component parts and all amendments, modifications or revisions made in accordance with the terms hereof.

(b) Architect or Architect of Record (AOR). The person or entity retained by the Commission to provide design and engineering services for the Project. The Architect of Record for the Project is Nagle Hartray Danker Kagan McKay Penney Architects, Ltd.

(c) Authorized Commission Representative. One or more individuals designated, in writing, by the Executive Director of the Commission to manage the Project on behalf of the Commission.

(d) Change Order. A Change Order is the document signed by the Construction Manager and a Subcontractor, or in circumstances explicitly set forth below, the Construction Manager alone, which authorizes either an adjustment in a Subcontract Price and/or Subcontract schedule, or a change in the Work that may not result in such an adjustment.

(e) Commission. The Public Building Commission of Chicago, a municipal corporation, acting by and through its Chairman, Secretary, Assistant Secretary, Executive Director and Authorized Commission Representative.

(f) Construction Manager. The person or entity identified above that has been retained by the Commission to perform the Services required by this Agreement.

(g) Contract Documents. All of the documents necessary for the construction of the Project, including, but not limited to, technical specifications, drawings, addenda, bulletins and modifications, which are exhibits to or incorporated by reference within this Agreement.

(h) Day. Day means calendar day unless otherwise specifically defined.

(i) Deliverables. The documents, in any format (electronic or hard copy), that the Construction Manager is required to provide to the Commission under this Agreement, including, without limitation, estimates, budgets, reports, forms, recommendations, analyses and interpretations.

(j) Estimated Cost of Construction. The estimate of the cost for constructing the Project that is prepared by the Architect of Record, Commission or their consultants, validated by the Construction Manager and used by the Commission and the Construction Manager for purposes of establishing a GMP Budget Proposal..

(k) Final Completion. Final Completion occurs on the date when the Construction Manager has performed all of its obligations under the Agreement, and the Services and Work have been accepted by the Commission. Final payment becomes due and payable on the date of Final Completion. The date of Final Completion will be confirmed by a Certificate of Final Completion executed by the Commission and Construction Manager.

(l) Guaranteed Maximum Price (GMP). The Guaranteed Maximum Price is the maximum amount payable to the Construction Manager for the performance of the Services under the terms and conditions of the Agreement. The Guaranteed Maximum Price includes any and all costs of the Services and the Work, and any and all fees due to Construction Manager for the performance of the Services.

(m) Key Personnel. The job titles and individuals identified on Exhibit G of this Agreement.

(n) Project. The construction of Ogden Replacement Elementary School at 24 West Walton Street, Chicago, Illinois 60610.

(o) Project Schedule. The Project Schedule shall include both the Pre-Construction Activities and the Construction Activities. The Project Schedule shall be submitted, reviewed and maintained as provided in Section 4.05 of this Agreement. .

(p) Services. The Services include the duties, responsibilities and tasks that are necessary and appropriate to the provision of construction management services by the Construction Manager to the Commission under the terms and conditions of this Agreement.

(q) Subcontractors. Any person or entity hired or engaged by the Construction Manager pursuant to the terms of this Agreement to provide Services and/or Work required by this Agreement.

(r) Substantial Completion of the Work. Substantial Completion of the Work, or of a designated portion of the Work, occurs when the Work is sufficiently complete in accordance with the Contract Documents so that the Commission may occupy or utilize the Work, or the designated portion thereof, for the use for which it is intended. The issuance of a certificate of occupancy is not prerequisite for Substantial Completion if the certificate of occupancy cannot be obtained due to factors beyond Construction Manager's reasonable control. The date of Substantial Completion shall be confirmed by a Certificate of Substantial Completion executed by the Commission, Architect and Construction Manager.

(s) User Agency. The User Agency is the Chicago Board of Education

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

Section 2.02 – Usage and Conventions.

(a) Captions and Headings. The captions and headings of the various sections of the Agreement are used solely for reference purposes and do not construe, nor will they be deemed or used to construe, interpret, limit or extend the meaning or scope of any work, clause, paragraph or provision of the Agreement.

(b) The term “include,” in all its forms, means “include, without limitation,” unless expressly stated otherwise.

(c) Terms of one gender imply the other gender unless the context clearly indicates otherwise. Use of the singular includes the plural, and vice versa.

ARTICLE 3 – RELATIONSHIP OF THE PARTIES

Section 3.01 – Commission’s Intent. The intent of the Commission in entering into this Agreement is to secure at-risk construction management services from Construction Manager. The Parties hereby acknowledge and agree that the Services are at-risk construction management services in that once the (i) Guaranteed Maximum Price has been negotiated and memorialized via an amendment according to the terms and conditions of this Agreement and (ii) the Notice to Proceed with Construction has been issued by the Commission to the Construction Manager pursuant to the terms of this Agreement, any risk or liability for any cost of the Services or the Work in excess of the Guaranteed Maximum Price shall be the responsibility of the Construction Manager unless and until the Guaranteed Maximum Price has been modified pursuant to the terms of the Agreement.

Section 3.02 – Relationship Throughout the Project. The Commission and Construction Manager agree to proceed with the Project on the basis of mutual trust, good faith and fair dealing.

Section 3.03 – Relationship During Pre-Construction Activities. Construction Manager acknowledges and agrees that with respect to any and all Services performed prior to the issuance of the Notice to Proceed with Construction (“Pre-Construction Services”), Construction Manager shall at all times be and perform as a fiduciary to the Commission.

The Construction Manager accepts the relationship of trust and confidence established with the Commission through this Agreement, and will provide the Commission with Construction Manager's best skill and judgment in the performance of the Pre-Construction Services. Construction Manager shall cooperate with the Commission and the Architect in furthering the Commission's interests, and use Construction Manager's best efforts to perform the Pre-Construction Services in a thorough, diligent, expeditious and economical manner consistent with the interests of the Commission.

Section 3.03 – Relationship During Construction.

(a) The Commission and Construction Manager shall perform their obligations with integrity, ensuring, at a minimum, that (i) conflicts of interest shall be avoided or disclosed promptly to the other Party; and (ii) the Parties warrant that they have not and shall not pay nor receive any contingent fees or gratuities to or from the other Party, including their agents, officers and employees, subcontractors or others from whom they may be liable, to secure preferential treatment.

(b) Construction Manager shall use its best efforts to furnish construction administration and management services to perform the Work in an expeditious manner consistent with the Contract Documents. The Commission and Construction Manager will endeavor to promote harmony and cooperation among all participants in the Project.

(c) The Construction Manager is and shall remain an independent contractor in the performance of the Work, and neither the Construction Manager nor any of its agents or employees shall act on behalf of or in the name of the Commission, except as provided in this Agreement or as authorized, in writing, by the Authorized Commission Representative.

ARTICLE 4 – CONSTRUCTION MANAGER'S OBLIGATIONS

Section 4.01 – Scope of Work. The Construction Manager shall perform the services set forth in Exhibit A – Scope of Services, along with any and all tasks reasonably related to, necessary for and inferable from the services required by Exhibit A (collectively, the "Services"), all to the reasonable satisfaction of the Commission.

Section 4.02 – Standard of Care.

(a) Pre-Construction Services.

(1) During the preconstruction phase of the Project, the Construction Manager will advise, consult with and assist the Commission with respect to the design, engineering, contracting and administration of the Project ("Preconstruction Services"). The Preconstruction Services are more particularly set forth in Exhibit A, but in general include consulting with the Commission and the Architect regarding site use and improvements, materials, building systems and equipment, construction feasibility, actions that may minimize the adverse effects

of labor and/or material shortages, time requirements for procurement, installation and construction, and issues associated with construction costs, including estimates of alternative designs and materials, preliminary budgets and possible economies.

(2) Construction Manager acknowledges the high degree of trust and confidence which the Commission places in Construction Manager as a fiduciary, and undertakes and accepts such fiduciary engagement for the performance of the Preconstruction Services subject to the terms and conditions of this Agreement. Construction Manager shall provide the Preconstruction Services with skill, diligence, best business judgment and expertise on behalf of, and in the best interests of, the Commission and the Project, and shall perform the Preconstruction Services at all times in compliance with the overall direction of the Commission. Construction Manager shall perform all Preconstruction Services as diligently and expeditiously as is consistent with a level of skill and care of others involved in providing similar services on similar projects, and the orderly progress of the design and preconstruction phases of the Project.

(b) Limitation on Construction Manager's Liability for Design. The Construction Manager will be required to review drawings and specifications prepared by the Architect (the "Design Documents"). The Construction Manager will review the Design Documents for clarity, consistency, constructability and coordination among the trades. The Construction Manager must report to the Commission and the Architect any and all errors and/or omissions, inconsistencies and ambiguities that Construction Manager discovers in the Design Documents. Regardless of any errors, omissions, inconsistencies or ambiguity in the Design Documents, the Commission will hold the Construction Manager solely and completely responsible for any and all errors, omissions, inconsistencies and ambiguity in the Design Documents if (i) the Construction Manager recognized but failed to report such error and/or omission, inconsistency or ambiguity, or (ii) Construction Manager failed to recognize such error and/or omission, inconsistency or ambiguity due to its negligence or breach of the standards set forth in this agreement for the performance of the Construction Manager's Services, including, but not limited to, Construction Manager's input with respect to the construction documents for the Project. Although the Construction Manager is not required to ascertain whether the Design Documents comply with all pertinent laws, statutes, ordinances, codes, rules or regulations, Construction Manager must report to the Commission and the Architect any instance of non-compliance in the Design Documents discovered by or made known to the Construction Manager. The Construction Manager shall have no liability for any errors, omissions or instances of non-compliance in the Design Documents, unless Construction Manager knowingly failed to report an error, omission or instance of non-compliance.

(c) Effect of Commission Approvals. The Commission's approval of any of the Design Documents shall in no way serve to relieve Construction Manager of any of its obligations with respect to such Design Documents under this Agreement.

(d) Limitations of Construction Manager's Budget Review. Evaluations of the Commission's budget for the Project, the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work prepared by the Construction Manager represent the Construction Manager's judgment as a construction management professional familiar with the construction industry. It is recognized, however, that neither the Construction Manager nor the Commission has control over the cost of labor, materials or equipment, over the Subcontractors' methods of determining bid prices, or over competitive bidding, market or negotiating conditions.

(e) Procurement Services.

(1) Standard of Care. As set forth more completely in Exhibit A, the Construction Manager is responsible for the procurement of the trade subcontracts for the performance of Work on the Project. The standard of care for Preconstruction Services shall apply to the performance of any and all procurement Services under this Agreement, regardless of whether or not construction of any portion of the Work has commenced prior to the completion of the procurement of all trade subcontracts.

(2) Form of Subcontract. Construction Manager shall develop and submit a form subcontract for the trade subcontractors to the Commission for the Commission's review and approval. The Commission-approved form of subcontract is hereinafter referred to as the "Subcontract." Exhibit D sets forth certain terms and conditions for the Subcontract that Construction Manager shall cause to be included within each Subcontract let for the performance of Work on the Project.

(3) Procurement Process. The procurement of the Subcontracts must comply with the Public Building Commission Act, 50 ILCS 20/1 *et seq.* (the "PBC Act"). Sections 19 and 20 of the PBC Act, in particular, set forth procurement requirements that the Construction Manager must comply with. The Construction Manager may pre-qualify all first-tier subcontractors under this Agreement. The pre-qualification criteria shall be developed by the Construction Manager and submitted in a timely manner for the review and approval of the Commission. Such pre-qualification criteria must address, inter alia, quality, performance, the time allotted for the performance of Work, capacity, and such other factors as the Commission and Construction Manager deem pertinent.

(f) Construction Phase Services.

(1) Standard of Care. The Commission and Construction Manager acknowledge and agree that in the performance of the Services during the construction phase of the Project, the scope of Construction Manager's fiduciary duties to the Commission is more circumscribed. Specifically, Construction Manager is and will remain a fiduciary to the Commission with respect to any and all Project information provided to or reported by Construction Manager,

including, without limitation, all information pertaining to the procurement of the Subcontracts. The Construction Manager will use its best efforts to furnish construction administration and management services in a timely and economical manner, consistent with a level of skill and care of other first class construction managers involved in providing similar services on projects of similar size, type complexity and location; and to ensure the orderly progress of the construction phase of the Project.

(2) Performance of Work by the Construction Manager. The Construction Manager may perform a portion of the Work only if (i) bidding produces no responsible, responsive bidder for that portion of the Work, the lowest responsive, responsible bidder will not execute a Subcontract for the bid portion of the Work, or the subcontractor defaults and a pre-qualified replacement cannot be obtained in a timely manner, and (ii) the Commission approves of the Construction Manager's performance of the Work. The Construction Manager must disclose the award of any Work to any person or entity that (i) is a parent, subsidiary, affiliate or other entity having common ownership or management with Construction Manager, (ii) any stockholder in or management employee of the Construction Manager owns any interest in excess of ten percent (10%) in the aggregate, or (iii) has the right to control the business or affairs of the Construction Manager.

(g) Guarantees and Warranties.

(1) The Construction Manager 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 Architect or 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 Construction Manager will provide this guarantee to the Commission in writing using Exhibit P of Book 2. 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.

(2) The Construction Manager agrees as part of this guarantee to repair or remove and replace as directed by the Commission and, at no additional 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 additional 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 ten (10) Days of written notice from the Commission, and sufficient labor and materials sufficient must be furnished to ensure prompt completion thereof. Should the Construction Manager fail to proceed in accordance with the above, the Commission, without further notice to the Construction Manager, may furnish all labor and material necessary for repairs, or removals and replacements, and the Construction Manager agrees to pay the Commission all such costs incurred.

(3) **Manufacturer's Warranties.** The Construction Manager will (i) ensure that all required manufacturers' warranties are assignable, and assigned, to the Commission and/or User Agency, and (ii) submit all applicable manufacturers' warranties to the Authorized 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. Repairs and replacements made by the Construction Manager pursuant to this section will include a Manufacturer's Warranty, if standard with the Manufacturer, in addition to the Construction Manager's Warranty.

(h) **Construction Manager's Failure to Meet the Standard of Care.** If the Construction Manager fails to comply with its obligations under the standards of the Agreement, the Construction Manager must perform again at its own expense, all Services required to be re-performed as a direct or indirect result of that failure. In the event that any errors and omissions in the Design Documents are reproduced within the bid documents issued by the Commission and Construction Manager for the performance of Work, the Commission shall not be liable to Construction Manager for any costs or delays that may be caused by such errors and omissions if (i) Construction Manager recognized but failed to report such error or omission, or (ii) Construction Manager failed to recognize such error or omission due to its negligence or breach of the standards set forth in this Agreement. Any review, approval, acceptance or payment for any of the Services by the Commission does not relieve the Construction Manager of its responsibility to render the Services and deliverables with the professional skill and care and technical accuracy required by the Agreement. This provision in no way limits the Commission's rights against the Construction Manager, whether under the Agreement, at law or equity.

Section 4.03 – Guaranteed Maximum Price.

(a) **Basis of Compensation.** The Construction Manager will be compensated for the performance of the Services on both a fixed fee and cost reimbursement basis up to a Guaranteed Maximum Price that will be established by agreement of the Commission and Construction Manager according to the terms set forth herein. There will be three components to the Guaranteed Maximum Price: (1) Construction Manager's fixed, lump sum fee for Preconstruction Services (the "Preconstruction Fee"), (2) the cost of the Work (hereinafter, "Cost of the Work") up to the Guaranteed Maximum Price for

the Work on the Project site and (3) the Construction Manager's fee for construction phase Services (the "Construction Fee") which will consist of a fixed lump sum Construction Management Fee, and Construction Management Fixed General Conditions Reimbursement and Not-To Exceed General Conditions Reimbursement as further defined in Exhibit C – Compensation/Cost of the Work. The sum of these three components constitutes the Guaranteed Maximum Price for the Project (the "Project GMP").

(b) The Process for Establishing the Project GMP. The Board of Commissioners of the Commission has authorized the expenditure of up to \$15,000,000.00 as the initial Guaranteed Maximum Price for the Project (the "Initial GMP"). The purpose of establishing this Initial GMP is to expedite the commencement of the Services, completion of design and the issuance of the first bid package(s) for the Work, e.g., the foundation and earth retention bid package(s), the structural concrete package and/or the mill order for the steel for the Project. The Construction Manager will have established its Preconstruction Fee and Construction Fee pursuant to the terms of Sections 4.03(c) and 4.03(e) below.

(c) Preconstruction Fee. The Preconstruction Fee shall be established as provided in Exhibit C. The Preconstruction Fee shall be Construction Manager's entire compensation for all Preconstruction Services, including, without limitation, all reviews of the Design Documents, all Procurement Services and any and all costs for labor, materials, communications, office supplies and whatever other resources may be necessary for the prompt completion of the Preconstruction Services; provided, however, that costs for the reproduction of bid documents shall be reimbursable costs and shall not be included within the Preconstruction Fee, but shall be paid as Not-To-Exceed Reimbursable costs pursuant to Exhibit C... The Preconstruction Fee shall be payable in equal installments over the term of Preconstruction Services, which schedule shall be agreed upon by the Parties and which shall be made a part of this Agreement.

(d) Costs of the Work.

(1) The Cost of the Work shall include those costs identified as Reimbursable Trade Contractor Costs in Exhibit C - Compensation/Cost of the Work" attached hereto and incorporated by reference herein. The Cost of the Work shall also include any cost not listed or otherwise addressed herein that is approved by the Commission via an Amendment to this Agreement.

(2) The Cost of the Work does not include the following:

(a) Salaries and other compensation of Construction Manager's personnel, except as may be specifically provided in Exhibit C.

(b) Expenses of the Construction Manager's principal office and offices.

(c) Overhead and general expenses.

(d) Construction Manager's capital expenses, including interest on Construction Manager's capital employed for the Work.

(e) Rental costs of machinery and equipment.

(f) Costs due to the fault, negligence or breach of contract by the Construction Manager, Subcontractors or suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Costs of repairs to the Work that are not due to the fault, negligence or breach of contract by the Construction Manager or Subcontractors may be a Cost of the Work, provided that reasonable notice of such costs are provided to the Commission, and that the Commission does not inform the Construction Manager, in writing, that such costs are, in the Commission's determination, due to the fault, negligence or breach of contract by Construction Manager or its Subcontractors.

(g) Any cost not expressly identified as a Reimbursable Trade Contractor Cost in Schedule C or approved as a Cost of the Work by the Commission pursuant to Section 4.03(c)(1) above.

(h) Costs, other than costs included in Change Orders approved by the Commission, that would cause the Project GMP to be exceeded.

(i) Costs of computer services, including, without limitation, job site terminals, for purposes of field payroll preparation and control, and for scheduling, except as may be specifically provided in Exhibit C.

(e) Construction Fee. The Construction Fee shall be Construction Manager's entire compensation for the performance of the Construction Services, and shall include a fixed lump sum Construction Management Fee, and Fixed General Conditions Reimbursements and Not-To Exceed General Conditions Reimbursement as set forth in Exhibit C – Compensation/Cost of the Work Construction Manager's proposed Construction Fee and components thereof, including line item budgets for Fixed and Not-To-Exceed General Conditions as set forth in Exhibit C shall be submitted to the Commission for review and approval and shall be made a part of the Agreement at the time of execution. The Construction Management Fee shall be payable in equal installments over the term established for the performance of the Construction Services. Fixed General Conditions shall be paid commensurate with the percentage completion of the Work. Reimbursable General Conditions shall be paid pursuant to the reimbursement procedures set forth in Exhibit C..

(e) Establishment of the Budget GMP Cost of the Work and Project GMP.

(1) Budget GMP. Within fifteen (15) days of receipt of the Notice of Award of this Agreement or by September 15, 2009, whichever comes later, Construction Manager shall furnish the Commission with its initial budget for the GMP for the Project (the "Budget GMP"), which Budget GMP shall be based on the Design Development Issue of the Design Documents. The Budget GMP is subject to the review and approval of the Commission, must be satisfactory in form and substance to the Commission, and shall be adjusted from time to time in accordance with the progress of the Design Documents.

(2) Cost of the Work.

(a) Within fifteen (15) days of the Commission's approval of the 90% Construction Document Issue of the Design Documents for the Work (the "90% Construction Documents"), or January 1, 2010, whichever comes first, the Construction Manager shall submit its proposed Cost of the Work GMP to the Commission for review and approval. The proposed Cost of the Work GMP shall include a written statement of the basis of the proposed Cost of the Work, including (i) a list of the Design Documents, including all addenda thereto, and the conditions of the Subcontracts and bid packages which were used in the preparation of the Cost of the Work proposal, (ii) a list of allowances and a statement of their basis, (iii) a list of the clarifications and assumptions made by the Construction Manager in the preparation of the proposal, (iv) the proposed Cost of the Work, including a statement of the estimated costs organized by trade categories, allowances, contingency and other items and fees that comprise the Cost of the Work, and (v) the date of substantial completion of the Work upon which the proposed Cost of the Work is based.

(b) The Cost of the Work shall include a contingency of __%, a sum established by the Construction Manager and the Commission for the Construction Manager's use to cover (i) costs incurred to repair defective, damaged or non-conforming Work which are not otherwise payable as Costs of the Work pursuant to Section 4.03.c(2)(f), (ii) costs incurred for delays on the Project for which the Construction Manager is not otherwise compensated, and other costs which are properly reimbursable as Costs of the Work but are not the basis for a Change Order.

(c) As it is the intent of the parties is to establish the Project GMP based on 90% Construction Documents, the Cost of the Work for the Project GMP shall also include an allowance for further development and definition of the Design Documents which development and definition shall be consistent with the 90% Construction Documents and reasonably inferable from the 90% Construction Documents (the "Design Completion Allowance"). The Design Completion Allowance shall be agreed upon by the Commission and the Construction Manager at the time the Project GMP is proposed based on the condition of the 90% Construction Documents and any work previously awarded. Such further development of the Design Documents for which the Design Completion Allowance shall be used shall not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if incorporated into the Design Documents between the 90% Construction Documents Issue and the 100% Construction Documents Issue or Issue for Construction shall be incorporated by an Amendment to this Agreement and, if necessary, a Change Order to a Subcontract.

(d) The Commission's approval of the proposed Cost of the Work will be memorialized in an Amendment to this Agreement issued in accordance with Section 8.04 hereof.

(4) Project GMP. The Commission's approval of the Cost of the Work will also establish the Project GMP, which shall be the total of the Preconstruction Fee, the Construction Fee, and the Cost of the Work. The Amendment which memorializes the Cost of the Work shall also state the Project GMP for the Project.

Section 4.04 – Subcontracts and Subcontractors.

(a) Procurement Plan. Within thirty (30) days of its receipt of the Notice of Award of this Agreement, Construction Manager shall submit a Procurement Plan to the Commission for the Commission's review and approval. The proposed Procurement Plan must include: 1) Construction Manager's proposed breakdown of the Work into bid packages, with a clear statement of the scope of Work for each proposed bid package; 2) Construction Manager's proposed schedule for the issuance of the bid packages and receipt of bids, which must be wholly coordinated and integrated with the schedules for the meetings of the Commission's Board of Commissioners, completion of the Preconstruction Services, the Architect's services, and the performance of the Work through substantial completion and final completion; 3) Construction Manager's plan with respect to the MBE and WBE goals for each trade bid package, as more fully set forth in Section 4.04(c) below; 4) Construction Manager's proposed terms and conditions for the Subcontracts; 5) Construction Manager's proposed process for the pre-qualification of contractors for the proposed bid packages; and 6) Construction Manager's proposed procedures for public bid openings and otherwise complying with the procurement requirements of the Public Building Commission Act, 50 ILCS 20/1 *et seq.* (the "Act").

(b) Subcontracts. The terms and conditions of the Subcontracts that will be utilized by the Construction Manager in contracting for the performance of the Work required by this Agreement are subject to the review and approval of the Commission. The Subcontracts shall include the terms and conditions required by the Commission as set forth in Exhibit D, attached hereto and incorporated by reference herein. Subcontracts are to be awarded pursuant to the Act. The Construction Manager shall not prequalify, and therefore shall not award Subcontracts to, any vendor that has been debarred by the City of Chicago, or has otherwise been deemed ineligible to contract with the Commission. The award of each Subcontract will be made by the Board of the Commission. The Construction Manager must, accordingly, ensure that the bid packages are advertised, the lowest responsive and responsible bidder for each bid package identified, and the matter placed on the agendas of the Commission's Administrative and Operations Committee and Board such that the Subcontracts may be approved by the Board prior to the date that, per the Project Schedule, a Notice to Proceed is to be issued for the pertinent bid package.

(c) MBE/WBE Compliance.

(1) Aspirational Goals for the Project. Unless otherwise expressly provided for in this Section 4.04(c), Construction Manager shall comply with Exhibit F - Special Conditions Regarding Minority Business Enterprise and Women Business Enterprise Participation ("Special Conditions"). For example, in the event Construction Manager subcontracts with an MBE or WBE firm for the performance of a portion of the Preconstruction Services, Construction Manager shall complete and submit Schedule C(s) and D and report the participation by that subcontractor as required by the Special Conditions. The goals for MBE participation and WBE participation for this Project are 24% and 4%, respectively. For the purposes of this Agreement, the Contract Amount that the goals pertain to is the Project GMP.

(2) Aspirational Goals for Subcontracts. The Commission is relying upon Construction Manager's knowledge of the marketplace for construction in the greater Chicago area, and Construction Manager's knowledge of the capacity of certified MBE and WBE subcontractors within that marketplace. Construction Manager will establish aspirational goals for MBE and WBE participation on each Subcontract that are based upon the capacity for such participation that exists within the particular market for the scope of Work of the Subcontract in question, and that enable the Construction Manager to achieve its Project aspirational goals of 24% MBE participation and 4% WBE participation.

(3) Reporting on Compliance. Construction Manager shall provide monthly reports on its compliance with the Project goals, and the compliance by each Subcontractor with its Subcontract goals, as required by the Special Conditions.

(d) Contingent Assignment of Subcontracts. In the event that this Agreement is terminated pursuant to the terms of Section(s) 5.02 hereof, Construction Manager shall assign each Subcontract to the Commission, subject to the prior rights of any surety. The Commission may accept or reject any such assignment. The Commission's acceptance or rejection of the assignment of a Subcontract shall be in writing.

Section 4.05 – Time of Performance.

(a) Commencement of the Services. The Construction Manager shall commence performance of the Preconstruction Services on the Effective Date of this Agreement. Performance of the Construction Services, and the performance of any Work by any Subcontractor shall commence upon the date set forth in a Notice to Proceed on Construction Services or Bid Package issued by the Commission to the Construction Manager.

(b) Substantial Completion and Final Completion. Unless otherwise agreed upon by the Parties, the Date of Substantial Completion and the Date of Final Completion shall be established by the Amendment to this Agreement that also establishes the Cost of the Work and Project GMP, as required by Section 4.03(e)(2) above: provided, however,

that the date of Substantial Completion shall be no later than July 1, 2011. The Date of Final Completion shall be no later than 30 days after the Date of Substantial Completion. All commissioning requirements shall be met prior to Substantial Completion in accordance with the Standard Terms and Conditions.

(c) Schedule of the Work. Construction Manager shall submit its initial proposed Schedule of the Work with its proposed Budget GMP. The proposed initial Schedule of the Work shall be the Project Schedule upon approval by the Commission. Construction Manager may propose revisions to the Project Schedule with the submittal of its proposed Cost of the Work. The Commission will provide Construction Manager with written notice of its approval or rejection of any such proposed revisions, and Construction Manager shall then promptly submit the Project Schedule including any such approved revisions.

(d) Delays. If the Construction Manager is delayed at any time in the commencement or progress of the Work by any cause beyond the reasonable control of Construction Manager, the Construction Manager will be entitled to an equitable extension of the Date of Substantial Completion as provided in Article 17 of Book 2.. Examples of causes beyond the reasonable control of the Construction Manager include, but are not limited to: acts or omissions of the Commission or the Architect; changes in the Work or the sequencing of the Work ordered by the Commission; labor disputes not involving the Construction Manager; fire; encountering Hazardous Materials; adverse weather conditions which, measured on a monthly basis, are more than 25% more severe than the monthly averages for temperature or precipitation for the Chicago area as determined by the National Weather Service; concealed or unknown conditions; delay authorized by the Commission pending dispute resolution, or suspension by the Commission pursuant to Section 5.03 hereof. The Construction Manager shall submit any requests for equitable extensions of the Project Schedule or requests for equitable adjustments to the GMP(s) in accordance with the provisions of Section 4.06 below. Construction Manager shall provide the Commission prompt written notice of any delay after Construction Manager first recognizes such delay.

(e) Monitoring Progress and Costs. Construction Manager shall furnish monthly reports to the Commission showing the progress of the Work and Cost of the Work. The format, including the information to be included, of any and all such reports is subject to the review and approval of the Commission. At a minimum, such reports shall show variances between actual costs and the GMP, actual progress as compared to the Project Schedule, and include estimates of future costs and recovery programs if actual progress indicates that the Dates of Substantial Completion or Final Completion may not be met. Construction Manager shall submit all required project documentation through the Commission's web based document controls system – Citadon Collaborative Workspace ("CW"). Construction Manager shall familiarize itself with the business processes and document control protocols administered through CW and avail itself of all necessary training provided by the Commission to administer the project fully through CW, and shall require any or all of its trade contractors to do the same.

(f) Liquidated Damages.

(1) Substantial Completion. The Construction Manager understands that if the Date of Substantial Completion established pursuant to this Agreement is not attained, the Commission will suffer damages which are difficult to determine and accurately specify. The Construction Manager agrees that if the Date of Substantial Completion is not attained, the Construction Manager shall pay the Commission Five Thousand Dollars (\$5,000.00) as liquidated damages and not as a penalty for each Day that Substantial Completion extends beyond the Date of Substantial Completion. The liquidated damages provided herein shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties and all other damages of whatsoever nature incurred by the Commission which are occasioned by any delay in achieving the Date of Substantial Completion.

Section 4.06 – Changes to the Work.

(a) Change Orders. Change Orders pertain solely to changes in the Work, and any changes made to Subcontracts in accordance with those changes to the Work. All Change Orders are subject to the review and approval of the Commission. In the event that a Change Order requires any modification to the Project Schedule, or to the Cost of the Work or Construction Manager's Construction Fee, and thereby to the Project GMP, such modification shall be accomplished through an Amendment to this Agreement pursuant to Section 8.05 hereof. The Construction Manager shall develop and implement policies and procedures with respect to the issuance of Change Orders to Subcontractors, which policies and procedures shall be subject to the review and approval of the Commission.

(b) Field Orders. The Commission may issue a written Field Order in the Work prior to reaching agreement with the Construction Manager regarding any adjustment to the Cost of the Work, Project Schedule, or Project GMP (or any component thereof). The Construction Manager shall negotiate expeditiously and in good faith with the Subcontractor that is to perform the Field Order for any adjustments to the Subcontract price or Subcontract schedule. Construction Manager shall proceed with the work pursuant to Article 17 of Book 2: Standard Terms and Conditions.

(c) Claims. Construction Manager shall develop and implement policies and procedures for the resolution of claims made by Subcontractors, and such policies and procedures are subject to the review and approval of the Commission. Construction Manager shall provide prompt notice to the Commission of any claim upon the Construction Manager's first recognition of the conditions giving rise to the claim, and maintain a log of such claims which shall be reported monthly to the Commission. The Commission expects and requires the Construction Manager to address claims promptly, diligently and fairly, acting at all times within the best interests of the Project. In the event that the disposition of a claim requires an adjustment to the Project Schedule or Project GMP (or any component thereof), Construction Manager and the Commission

shall, promptly and in good faith, negotiate and execute an Amendment to this Agreement and, if necessary, a Change Order pursuant to Article 17 of Book 2: Standard Terms and Conditions.

Section 4.07 – Construction Manager’s Personnel.

(a) Key Personnel. Construction Manager must not reassign or replace Key Personnel without the written consent of the Commission. The Commission may at any time in writing notify Construction Manager that the Commission will no longer accept performance of Services under this Agreement by one or more Key Personnel listed in the Agreement in Exhibit G. Upon that notice Construction Manager must immediately suspend the Key Person or Key Persons from performing Services under this Agreement and must replace him or them with a person or persons with comparable professional credentials and experience. Such replacements are subject to approval by the Commission.

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

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

(d) Employment Procedures; Preferences and Compliance. Salaries of employees of the Construction Manager performing Services under this Agreement 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. Construction Manager certifies that he/she is familiar with, and will comply with, all applicable provisions of 820 ILCS 130/0.01 through 130/12 (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). Construction Manager will also comply with all applicable "Anti-Kickback" laws and regulations, including the "Anti-Kickback" Act of 1986, 41 U.S.C. §§ 51-58 (1992); 18 U.S.C. § 874 (1992); 40 U.S.C. § 276c (1986) and the Illinois Criminal Code of 1961 720 ILCS 5/33E-1 *et seq.* If, in the performance of this Agreement, any direct or indirect "kick-back" is made, as defined in any of the above mentioned laws and regulations, the Commission may withhold from the Construction Manager, out of payments due to the Construction Manager, an amount sufficient to pay any underpaid employees the difference between the salaries required to be paid under the law and this Agreement and the salaries actually paid such employees for the total number of hours worked. The amounts withheld may be disbursed by the Commission for and on account of the Construction Manager to the respective employees to whom they are due, as determined by the Commission in its sole discretion.

Section 4.08 – Records. Construction Manager must maintain accurate and complete records of any and all costs by the Construction Manager, its consultants and Subcontractors in connection with the Project, the Services and the Work. Such records will be maintained in accordance with recognized commercial accounting practices. The Commission may examine such records at the Construction Manager's offices or field office upon reasonable notice during normal business hours. Construction Manager must retain all such records in accordance with the requirements of the Local Records Act, 50 ILCS 205/1 *et seq.*, but in no event for any period of less than five (5) years from the Date of Final Completion.

Section 4.09 – Indemnification of the Commission and User Agency.

(a) Indemnification. The Construction Manager hereby agrees to indemnify, defend, keep and save harmless the Commission and the User Agency and their respective commissioners, board members, officers, officials and employees, from and against all claims, demands, suits, losses, costs and expenses, including the fees and expenses of attorneys, (including court costs and expert's fees) that may arise out of or be based on any injury to persons or property that is, or is claimed to be, the result of the Construction Manager's negligent performance or non-performance of the agreement or of any error or omission or negligent or willfully wrongful act of the Construction Manager, or and any person employed by the Construction Manager, or and any Subcontractor or consultant retained by the Construction Manager in connection with this Project.

(b) No Personal Liability of Public Officials or Employees. No official, employee or agent of the Commission or User Agency shall be charged personally by the

Construction Manager, or by any Subcontractor or assignee of the Construction Manager, with any liability or expenses of defense, or be held personally liable to them under any term or provision of this Agreement, or because of the Commission's execution or attempted execution of the Agreement, or because of any breach of the Agreement.

(c) **No Limitation of Liability.** To the extent permissible by law, Construction Manager waives any limits to the amount of its obligations to indemnify, defend or contribute to any sums due pursuant to Construction Manager's obligations under this Section 4.09, including, but not limited to, any claim by any employee of Construction Manager 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 limitations it may have on its liability under the Illinois Workers' Compensation Act, the Illinois Local Government and Governmental Employees Tort Immunity Act, the Illinois Pension Code, or any other statute.

Section 4.10 – Insurance Maintained by Construction Manager. The Construction Manager will purchase and maintain at all times during the performance of Services, for the benefit of the Commission, the User Agency and the Construction Manager, insurance coverage which will insure the Commission, the User Agency and the Construction Manager against claims and liabilities which could arise out of the performance of such Services, including the insurance coverage set forth in Exhibit E to this Agreement.

Section 4.11 – Payment and Performance Bond. Within five (5) days of the Commission's approval of the Budget GMP for the Project, Construction Manager shall furnish to the Commission a payment and performance bond (the "Bond") in substantially the same form as specimen form of bond furnished in Exhibit E to this Agreement. The Bond shall be issued by a surety that is (i) admitted in the State of Illinois and (ii) is approved by the Commission. The penal sum of the Bond shall be 30% of the Budget GMP or the Initial GMP (as specified in Paragraph 4.03(b)). A Bond in the penal sum of 100% of the Project GMP shall be furnished to the Commission with the Amendment fixing the Project GMP that has been executed by the Construction Manager. Any increase in the Project GMP that exceeds 10% in the aggregate shall require a rider to the Bond increasing penal sums accordingly. The Construction Manager shall keep its surety advised of any changes that may impact the Project GMP and/or Project Schedule. Construction Manager shall require that its surety waives any requirement to be notified of any alteration or extension of time within the scope of the original Agreement.

Section 4.12 – Representation and Covenant by Construction Manager. Neither the Construction Manager nor any affiliate of the Construction Manager is listed on any of the following lists maintained by the Office 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 on any other list of persons or entities with which the User Agency or 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 this 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 5 – RIGHTS AND OBLIGATIONS OF THE COMMISSION

Section 5.01 – Payment for Services.

(a) **Payment Applications.** The Commission will promptly pay the Construction Manager for Services performed in accordance with the terms and conditions of this Agreement. It is the duty of the Construction Manager to effectively manage the payment application process and all related paperwork. The Construction Manager is responsible to the Commission for securing and delivering all paperwork required by the Agreement to be submitted with payment applications, including Subcontractor, consultant and material supplier lien waivers, certified payrolls, and all other required documents as further specified in Book 2: Standard Terms and Conditions. Failure of the Construction Manager to promptly submit its payment applications to the Commission, in proper and complete form, will constitute a material breach of this Agreement, and constitute cause for termination. No payment application will include payment for Work for which the Construction Manager has not been billed by the applicable Subcontractor, material supplier, service provider or consultant. Construction Manager 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. All required certified payrolls, trailing lien waivers, and other required paperwork must be submitted with the payment application. Construction Manager’s payment application will not include any request for payment for work of any Subcontractor, material supplier, consultant, or service provider whose certified payrolls, trailing lien waivers, or other payment paperwork is incomplete at the time the payment application is submitted.

(b) **Schedule of Values.** No later than fifteen (15) Days after the Notice to Proceed for the Project GMP, the Construction Manager will submit to the Authorized Commission Representative a Schedule of Values, showing values of the Work to be performed by trade contractors and agreed upon Construction Fee containing such supporting details or other evidence as to its correctness as the Architect and Authorized 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 progress schedule. When approved by the Authorized Commission Representative, the Schedule of Values will be used as a basis for certificates of payment unless it is found to be in error.

(c) Invoice Target Date. The Commission will assign an invoice target date to the Construction Manager. Not later than ten (10) Days prior to the invoice target date, the Contractor will submit to the Authorized Commission Representative, a pencil copy of the application for payment for Work completed through the end of the prior month and the monthly progress report required by Book 2 – Section 01200 – 3.4 – Progress Reports. Not later than five (5) Days prior to the invoice target date, the pencil copy will be reviewed for approval of value of the Work completed at the payment review meeting with the Architect and Authorized Commission Representative. Calculation of the value of Work completed will be made by summarizing the individual values of Work completed as such completion is reported in the monthly progress report reviewed by the Architect for the approval of the Commission. Submission of the monthly progress report five (5) Days prior to the payment review meeting will be a condition precedent to the approval of the payment application. The pencil copy of the Payment Application will not project completion of Work beyond the date of the review meeting of such pencil copy with the Architect and Authorized Commission Representative.

(c) Sworn Statement. On the invoice target date of each month, the Construction Manager will submit to the Authorized Commission Representative, in triplicate, an application for partial payment including a notarized affidavit stating that all monetary obligations to all Subcontractors for the periods covered by all prior applications for payment, if any, have been completely fulfilled and discharged. The form for the sworn statement and affidavit for partial payment is included in Book 2: Standard Terms and Conditions. The affidavit must be supported by receipts or receipted vouchers, and lien waivers, evidencing payments for such materials, services, labor, and payments to Subcontractors, together with a waiver of lien covering the amount for which the current payment is being requested and such other evidence of the Contractor's right to payment as the Commission Representative may direct. A sample of the waiver of lien for partial or progress payment is included in Book 2: Standard Terms and Conditions. The application for partial payment will conform to approvals made by the Commission Representative at the payment review meeting.

(d) Certified Payrolls. Three copies of certified payrolls for the payment period are to be submitted by the Construction Manager and all Subcontractors working on the Site to the Commission or its designated representative every week. 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, Construction Manager 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, hereto, and submit its certified payrolls electronically, as a replacement for the three hard copy submittals. All payrolls must be identified with Construction Manager or Subcontractor's name and Agreement name and number, and must be sequentially numbered. The payroll will be submitted by the Construction Manager and Subcontractor until all Work by the Construction Manager or Subcontractor is completed. If there are periods of no Work by Construction Manager 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 Construction Manager must submit the certified payrolls and additional information regarding EEO and wage compliance by providing a Payroll Summary Report in the form required by the Commission. The EEO report form required by the City and the U.S. Department of Labor must be submitted by Construction Manager and each Subcontractor, reflecting fully the periods of Work covered by the partial payment request.

(e) Payments for Materials Stored On-Site and Off-Site

(1) On-Site Materials. 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 on account of 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 Construction Manager of bills of sale, waivers of lien, and other such documents and compliance with other such procedures as the Commission requires to establish its title to such materials or equipment or otherwise protect its interest, including applicable insurance and transportation to the Site. Payment of stored material on the project site will be one hundred percent (100%) of a valid invoice less applicable retainage (as described in Section 5.01(f)) when the Construction Manager has provided the following documents:

- (i) A paid invoice from the supplier showing the unit, quantity, description of the material or equipment and costs.
- (ii) A waiver of lien from the supplier for the total amount of the material purchased.
- (iii) Inspection tickets for all the material stored.

(2) Payment for Material Stored off-Site. Payment for material stored off-site, if authorized 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 5.01(f)) when the Construction Manager has provided documents and complied with the requirements listed below:

- (i) A paid invoice from the supplier showing the unit, quantity, description of the material or equipment and costs.
- (ii) A waiver of lien from the supplier for the total amount of the material purchased.
- (iii) Inspection tickets for all the material stored.

(3) The Construction Manager must furnish the Commission Representative

with a certified statement giving the exact location of the materials or equipment, and stating that:

- (i) 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.
- (ii) The Construction Manager 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 Authorized Commission Representative may reasonably require.
- (iii) The materials, equipment, and associated fabricated components will not be diverted away from the Project.

(4) The risk of loss will remain with the Construction Manager. The Construction Manager must provide the Authorized Commission Representative with a certificate of insurance coverage for the stored material upon which payment is requested. Simultaneously with payment for such material, the Construction Manager must prepare and execute any and all documents required transfer title to the Commission, including without any limitation, any Uniform Commercial Code Documentation necessary to perfect transfer of title. All material and Work covered by payments made will thereupon become the sole property of the Commission. The Construction Manager 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.

(f) Documentation Supporting Monthly Payment Applications

- (1) For the first Payment Application, the Construction Manager must provide its own Sworn Statement and its own partial lien waivers in support of the Payment Application.
- (2) For the second Payment Application, the Construction Manager must provide: its own Sworn Statement, its own partial lien waivers for the current Payment Application and partial lien waivers from all of its first tier Subcontractors for the prior Payment Application.
- (3) For the third Payment Application, the Construction Manager must provide: its own Sworn Statement, its own partial lien waivers for the current month, its First Tier Subcontractors partial lien waivers for the previous month, and partial lien waivers of the second tier Subcontractors for the first Payment

Application.

(4) For the fourth and all subsequent Payment Applications, the Construction Manager must provide the corresponding supporting documentation as indicated in 5.01(f)(3) above. For the final Payment Application all lien waivers of the Construction Manager, its first tier Subcontractors, and all Second Tier Subcontractors must be “final” waivers.

(5) Prior to final payment and Final Completion and Acceptance of the Work, the Construction Manager must comply with the requirements of Section 5.01(h), below. Unless a written extension is granted by the Commission, the Construction Manager must submit the final payment application and waivers no later than 4 weeks after the Architect’s written acceptance of the Punch List Work. The Construction Manager’s failure to do so within the required time period is an event of default.

(g) 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 Project GMP rather than require Construction Manager to repair or replace such damaged or non-conforming Work.

(h) Certificates for Payment. If the Construction Manager has complied with the requirements of Section 5.01(a), “Payment Applications,” the Authorized Commission Representative will issue to the Construction Manager a certificate for such amount as the Authorized 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 5.01(i) “Payments Withheld.” No certificate issued for payment, nor payment to the Construction Manager, nor partial or entire use of the Work, nor occupancy of the Site by the Commission or the User Agency will be an acceptance of any Work or materials not in accordance with the Contract Documents. 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 Construction Manager) in any action against the Commission, the Architect, or anyone acting on behalf of either of them.

(i) Retainage. The Commission will retain ten percent (10%) from the invoice sums approved and due the Construction Manager up to a total of fifty percent (50%) of the Project GMP, including approved Change Orders. The amount so retained (“Retainage”) will be released to the Construction Manager in accordance with section 5.01(k) below. The Executive Director, at the Executive Director’s sole discretion, may increase the amount of the Retainage withheld if the Executive Director considers the Construction Manager’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. The Construction Manager must not withhold retainage from its

Subcontractors in excess of the percentage Retainage withheld by the Commission from payments to the Construction Manager, and must release Retainage to the Subcontractors under Section 5.01(k) or the prompt payment to Subcontractors required by Section 5.01(l).

(j) **Payments Withheld.** No payment shall be made to the Construction Manager until certificates of insurance, the Bond, or other evidence of compliance by the Construction Manager with all the requirements of the Agreement for insurance and bonds have been provided to the Commission. Further, no payments on the basis of Work performed by a Subcontractor shall be paid until copies of all bonds required and any certificates of insurance required of the Subcontractors by the Agreement have been filed with the Commission. The Authorized Commission Representative may decline processing a Payment Application if, in the Executive Director's opinion, the Payment Application is not adequately supported. If the Construction Manager and Authorized Commission Representative cannot agree on a revised amount, the Authorized Commission Representative will process the Payment Application in the amount the Executive Director deems appropriate. The Authorized Commission Representative may decline to process any Payment Application or may rescind in whole or in part any approval previously made to such extent as may be necessary in his/her opinion because of any failure of the Construction Manager to perform any obligation under the Agreement, including but not limited to:

- (1) The Construction Manager's failure or refusal to provide the Authorized Commission Representative the required Project Schedule for the Work or monthly schedule updates and obtain the Authorized Commission Representative's approval for either as required by the Agreement.
- (2) The Construction Manager's failure to remedy defective Work.
- (3) The Construction Manager's failure to make payments due to Subcontractors, employees, or material suppliers or for labor, materials or equipment, or provide partial lien waivers with Payment Applications.
- (4) The Construction Manager's failure to maintain progress of the Work as required in the Project Schedule, or failure to carry out the Work in accordance with the Agreement as determined by the Commission.
- (5) The Construction Manager's refusal to follow City, state, federal, or Contract safety and security requirements.
- (6) The Construction Manager's failure to provide a plan to meet the requirements of the Chicago Residency Ordinance.

The Commission's rights under this Section 5.01(j) are cumulative to any other rights provided under the Agreement.

(k) Release of Retainage.

(1) At 75% Completion of the Project. When the Authorized Commission Representative determines that the Construction Manager has satisfactorily completed 75% of the Project, based upon invoice sums approved and due the Construction Manager, Retainage may be reduced to an amount equal to three percent (3%) of the Project GMP, including any approved Change Orders and Amendments.

(2) At Project Substantial Completion. When the Project is Substantially Completed, the Construction Manager must notify the Authorized 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 fifteen (15) calendar days in advance of said date. If the Authorized 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 Contractor of its responsibilities under the Agreement. The Contractor is required to furnish access for the inspection. If the Executive Director finds that the Work is acceptable under the Agreement and has been fully and satisfactorily performed on a timely basis, Retainage may be reduced to an amount equal to one percent (1%) of the Project GMP, including any approved Change Orders and Amendments, provided that the Construction Manager has furnished: a) MBE / WBE final lien waivers, MBE/WBE conditional final lien waivers, or an affidavit of the MBE/WBE stating the final amount earned; b) complete certified payrolls; c) documentation of the turn over of "as-built" drawings, record shop drawings, and product data; d) spare stock of materials, spare parts, accessories, special tools, O & M manuals, guarantees, warranties; e) and all other items required by the Contract Documents or the Authorized 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 Construction Manager submits to the Authorized 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 "Construction Manager's Sworn Statement and Affidavit" for final release of retainage has been provided to the Authorized Commission Representative.

c. All claims made by Subcontractors of any tier, suppliers, and others against the Construction Manager, the Commission, any agents of

the Commission, the Executive Director or Authorized Commission Representative have been resolved.

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

e. All warranties and guarantees required by the Agreement have been provided to the Authorized Commission Representative.

f. All warranties and guarantees are in full force and effect.

g. Construction Manager 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 Construction Manager, has been provided to the Authorized Commission Representative.

i. The Construction Manager 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 and Services required by the Agreement or for any act or neglect of the Commission or its agents, officials and employees relating to or connected with the Agreement.

j. As-built documentation including but not limited to as-built drawings, as-built shop drawings and operation and maintenance manuals have been provided to the Authorized Commission Representative.

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

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

Retainage.

(4) Notwithstanding the foregoing, the Authorized Commission Representative, in his sole discretion, may decline to release all or a portion of Retainage if the Authorized Commission Representative considers the Construction Manager'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.

(l) Prompt Payment to Subcontractors.

(1) The term "Subcontractor" has the same meaning as in Section 2.01. Construction Manager must state the requirements of the Prompt Payment provision in all Subcontracts and purchase orders. If Construction Manager 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. Construction Manager and the Subcontractors have a continuing obligation to make prompt payment to their respective Subcontractors. Compliance with this obligation is a condition of Construction Manager's participation and that of its Subcontractors on the Project.

(2) The Construction Manager must make payment to its Subcontractors within fourteen (14) days of receipt of payment from the Commission for each monthly Payment Application, but only if the Subcontractor has satisfactorily completed its Work in accordance with the Contract Documents and provided the Construction Manager with all of the documents and information required of the Construction Manager by this Section 5.01, "Payments". The Construction Manager 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 Construction Manager is acting in good faith and not in retaliation for a Subcontractor exercising legal or contractual rights.

(3) The Construction Manager 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 5.01(k). 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 2.01., or whether the Construction Manager has received payment from the Commission for Retainage. The Construction Manager 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 Construction Manager has substantial grounds for and has acted reasonably in making the determination, and the Construction Manager is acting in good faith and not in retaliation for a Subcontractor exercising legal or

contractual rights.

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

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

(6) Construction Manager 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 Construction Manager'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 payments for off-site delivery are permitted). In addition, Construction Manager 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.

(7) The Executive Director may withhold payment from the Construction Manager when the Executive Director determines that the Construction Manager has not complied with this Section 5.01(l).

(8) 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 Agreement.

(m) Subcontractor Claims. The Construction Manager must pay all lawful claims made against it by its Subcontractors and all lawful claims made against Construction Manager by other third persons arising out of, in connection with, or because of its performance of this Agreement. The Construction Manager 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 Construction Manager directly to the respective parties to which such sums are due and owed.

(n) Pay Estimates and Payments Subject to Review. The Commission shall not be precluded or estopped by any measurement, estimate, or certificate made by

Construction Manager 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 Construction Manager, 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 Agreement. The Commission will not be precluded or estopped, notwithstanding any such measurement, estimate, or certificate and payment in accordance therewith, from recovering from the Construction Manager and its sureties such damages as the Commission may sustain by reason of the Construction Manager's failure to comply with the terms of the Agreement.

(o) Salaries/Wages. Salaries of all employees of the Construction Manager performing Services or Work will be paid unconditionally and not less often than once a week without deduction or rebate on any account, except for payroll deductions as may be required by law. If there is any underpayment of salaries by the Construction Manager, the Commission may withhold, out of payments due to the Construction Manager, an amount sufficient to pay to employees the difference between the salaries required to be paid and the salaries actually paid such employees for the total number of hours worked.

(p) 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 Agreement, or of any power herein reserved, or any right to damages herein provided. If the Commission elects to waive any breach of this Agreement, 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 Construction Manager, or from showing that any measurement, estimate, or certificate is untrue or incorrectly made, or that the Work or materials do not conform to the Contract Documents. The Commission will not be precluded or estopped from recovering from the Construction Manager and/or its sureties such damages as the Commission may sustain by reason of Construction Manager's failure to comply with the terms of the Agreement.

(q) Liens. Whenever the Commission receives notice in writing of a lien or claim of money due from the Construction Manager to any Subcontractor, worker, or employee for Work performed or for materials or equipment furnished and used in or about the Work, the Commission may direct that the amount of such claim be deducted from payments due or to become due the Construction Manager and withheld by the Commission until such claim has been paid or otherwise discharged. This provision 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 Construction Manager and its Subcontractors, workers, or employees, or to withhold any money for their protection, unless the Commission elects to do so. This provision 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 Construction Manager delivers to the

Commission complete release of all liens, financial obligations or claims from the Construction Manager, Subcontractors, and other agents acting on its behalf in connection with the Work, arising out of the Work, and an affidavit that so far as it has knowledge or information, the releases include all the labor and material for which a claim could be made or a lien could be filed. If any lien remains unsatisfied after all payments have been made, the Construction Manager 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.

Section 5.02 – Termination by the Commission. The Commission has the right, at any time, to terminate this Agreement in whole or in part, with or without cause, by written notice given to the Construction Manager at least thirty (30) days before the effective date of termination. So long as the Construction Manager is not in default under this Agreement at the time of termination, the Commission will pay the Construction Manager, in accordance with the terms of this Agreement, all compensation and reimbursements due to the Construction Manager for periods up to the effective date of termination. The Commission may exercise any right of set off regarding Construction Manager's failure to properly perform Services from payments that are due to Construction Manager.

Section 5.03 – Suspension by the Commission.

(a) The Commission has the right, at any time and from time to time, with or without cause, to suspend the performance of the Construction Manager hereunder with respect to all or any part of the Services, by written notice given to the Architect at least five (5) days before the effective date of suspension. During the notice period the Construction Manager must wind down its Services. So long as the Construction Manager is not in default under this Agreement at the time of suspension, the Commission will pay the Construction Manager, in accordance with the terms of this Agreement, all compensation and reimbursements due to the Construction Manager for periods up to the effective date of suspension

(b) During the period the Construction Manager's performance is suspended, the Construction Manager is not entitled to incur costs or fees, or bill the Commission, except for Construction Manager's time for participating in substantive meetings concerning the Project (but not for meetings to discuss Construction Manager's invoices or claims). The Construction Manager may invoice for such time spent during a suspension only if the Construction Manager's participation is requested by the Commission and only for the time of one individual per meeting. The Commission will pay for such time at the applicable hourly billing rate set forth in Exhibit G. Participation in meetings at the request of the Commission is not considered to be a resumption of the Construction Manager's Services.

(c) If the Construction Manager is required to resume its Services under this Agreement, the Commission will notify Construction Manager in writing, giving Construction Manager a reasonable period (not to exceed 10 Days) to remobilize. The Construction Manager may invoice the Commission for its time spent on remobilization.

The Commission will pay for such remobilization as is reasonable and billed at the hourly rate for one Senior Project Manager or less at the hourly billing rate set forth in Exhibit G. The number of days during which the suspension period lasted, including any remobilization time, will be added to the Date of Final Completion, and Construction Manager will re-commence its Services at the point they were suspended and may resume billing in accordance with the terms of the Agreement.

(d) Termination or suspension of this Agreement in whole or in part does not relieve the Construction Manager from liability for its performance of any obligation under this Agreement that was performed or was to have been performed by the Construction Manager on or before the effective date of termination or suspension. In no event will the Commission be liable to the Construction Manager for any loss, cost or damage, including lost profits, which the Construction Manager or any other party may sustain by reason of the Commission terminating or suspending this Agreement as provided for in this Article 5.

Section 5.04 – Project Information. In connection with the administration of the Project by the Commission and the performance of the Agreement by the Construction Manager, the Commission has the following rights and obligations, in addition to those provided elsewhere in the Agreement:

(a) Information. The Commission will provide the Construction Manager all information reasonably required concerning the Commission's requirements for the Project and the Services.

(b) Review of Documents. Subject to the provisions of the Agreement, the Commission will make reasonable efforts to examine documents submitted by the Construction Manager and render decisions pertaining to them with reasonable promptness.

(c) Site Data. To the extent the Commission determines to be necessary for the Construction Manager to perform the Services, the Commission may furnish, or may authorize the Construction Manager to obtain from a company or companies approved by the Commission as Reimbursable Expenses:

(1) A certified survey of the site or sites providing, as required, all grades and lines of streets, alleys, pavements and adjoining property, rights-of-way, encroachments, boundaries and contours of the building site.

(2) A certified title.

(3) Information concerning locations, dimensions and data pertaining to existing buildings and other improvements

(4) Title information as to restrictions, easements, zoning and deed restrictions.

(5) Information concerning availability of both public and service and utility lines.

(6) If the Construction Manager does procure these or any other services at the request of the Commission, the Construction Manager shall not be liable for the substantive accuracy or completeness of such services. Construction Manager shall name the Commission as a third-party beneficiary to any contract for the provision of the services described in this Section 5.03(c), and shall include a provision in such contracts indemnifying the Commission and User Agency with respect to any damages incurred by the Commission or User Agency due to the negligent performance or breach by any consultant providing services under this Section 5.03(c).

(d) Tests and Reports. To the extent required for the Construction Manager to perform the Services, the Commission may furnish structural, civil, chemical, mechanical, results of test borings and pits for determining soil and subsoil conditions and/or other tests and reports or may authorize the Construction Manager to procure such tests and reports from a consultant or consultants approved in writing by the Commission. The Commission will pay for such tests and reports as a Cost of the Work, however, the Commission may direct the Construction Manager to procure such professional services as Reimbursable Expenses and submit invoices to the Commission for payment as provided in Exhibit C.

(e) Limitation on Commission's Obligations and Liability with Respect to Commission-Provided Information ("CPI"). Construction Manager may rely upon the CPI provided by the Commission as described in this Section 5.03, provided, however, that the Commission expects the Construction Manager to review such CPI in detail and verify such CPI to the extent it may be reasonable and prudent for the Construction Manager to do so for the proper performance of the Services under this Agreement. The Commission makes no warranties and representations with respect to the accuracy of the information provided. Construction Manager must promptly report any errors, omissions, inconsistencies or ambiguities in the CPI to the Authorized Commission Representative. In the event that Architect believes that additional compensation is due to the Construction Manager from the Commission because of errors, omissions, inconsistencies or ambiguities in the CPI, the Commission will consider a request for additional compensation if, and only if, Construction Manager furnishes reasonable and appropriate evidence that Construction Manager has met its obligation to review and verify the CPI.

Section 5.05 – Ownership of the Project Documents. All designs, drawings, documents, data, studies and reports prepared by the Construction Manager or any party engaged by the Construction Manager, pertaining to the Project and/or the Services, are and shall remain the property of the Commission. Construction Manager shall provide the Commission with the opportunity to review all such documents and shall provide copies to the Commission upon written request.

Section 5.06 – Audits. The Commission has the right to abstract and audit the books of the Construction Manager and its consultants and Subcontractors on all subjects relating to the Project and/or the Services.

ARTICLE 6 – EVENTS OF DEFAULT AND TERMINATION

Section 6.01 – Events of Default. Each of the following occurrences constitutes an Event of Default by the Construction Manager under the Agreement:

(a) Failure or refusal on the part of the Construction Manager to duly observe or perform any obligation or agreement on the part of the Construction Manager contained in the Agreement, which failure or refusal continues for a period of 3 Days (or such longer period as the Commission, in its sole discretion, may determine if such failure is not capable of being cured within such 3-Day period) after the date on which written notice of it has been given to the Construction Manager by the Commission.

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

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

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

(e) The Construction Manager's material failure to perform any of its obligations under the Agreement, including any of the following:

(1) Failure due to a reason or circumstance within the Construction Manager's reasonable control to perform the Services with sufficient personnel, and

equipment or with sufficient material to ensure the performance of the Services according to Schedule _ in this Agreement.

- (2) Failure to properly perform the Services or inability to perform the Services as a result of insolvency, filing for bankruptcy or assignment for the benefit of creditors.
- (3) Failure to promptly re-perform within a reasonable time the Services that were rejected as erroneous or unsatisfactory per the terms of this Agreement.
- (4) Discontinuance of the Services for reasons within the Construction Manager's reasonable control.
- (5) Failure to comply with a material term of the Agreement, including the provisions concerning insurance and nondiscrimination.
- (6) Any change in ownership or control of the Construction Manager without prior written approval of the Executive Director, which approval the Executive Director will not unreasonably withhold.
- (7) The Construction Manager's default under any other agreement it presently may have or may enter into with the Commission, the User Agency, the City of Chicago, the Chicago Public Schools or the Chicago Park District. Construction Manager acknowledges that in event of a default under the Agreement, the municipal corporations listed above may also declare a default under any such other agreements.

Section 6.02 – Construction Manager’s Opportunity to Cure. The Construction Manager shall have a ten (10) Day period to cure following written notice for the events of default listed here. Notwithstanding the foregoing, if the Commission, in its Executive Director’s sole and exclusive discretion, determines that an Event of Default by Construction Manager poses a threat to the health, safety or welfare of persons or property, the Commission may undertake such remedies as it deems reasonable and prudent under the circumstances, all at Construction Manager’s cost.

Section 6.03 – Commission’s Remedies. If an Event of Default occurs and continues, then the Commission may exercise any right, power or remedy permitted to it by law or in equity and has, in particular, without limiting the generality of the foregoing, the right to terminate the Agreement upon written notice to the Construction Manager, in which event the Commission has no further obligations hereunder or liability to the Construction Manager except as to payment for Services actually received and accepted by the Commission through the effective date of termination, subject to set off of any claims of the Commission against the Construction Manager for failure to properly perform its services. No course of dealing on the part of the Commission or delay or failure on the part of the Commission to exercise any right will operate as a waiver of such right or otherwise prejudice the Commission's rights, powers or remedies. The Commission’s decision to terminate the Agreement is not subject to claim or dispute under the terms of this Agreement.

Section 6.04 – Remedies Not Exclusive. No right or remedy in the Agreement conferred upon or reserved to the Commission is exclusive of any right or remedy provided or permitted under this Agreement or by law or equity, but each is cumulative of every other right or remedy given in the Agreement or now or hereafter existing at law or in equity or by statute or otherwise, and may be enforced concurrently or from time to time.

ARTICLE 7 – CLAIMS AND DISPUTES

Section 7.01 – General. All claims arising under, related to or in connection with the terms of this Agreement or its interpretation, whether involving law or fact or both, including questions concerning compensation, questions concerning the disposition of claims between the Construction Manager and Subcontractors that the Commission has objected to, and all claims for alleged breach of contract (collectively, “Claims”) must be made pursuant to Article 18 of Book 2: Standard Terms and Conditions and must first be presented to the Authorized Commission Representative. Construction Manager must strictly comply with the notice requirement of Article 18 of Book 2. The Construction Manager will present all disputes which cannot be resolved by discussion with the Authorized Commission Representative to the Executive Director for final determination, subject to Section 7.04 below and Article 18 of Book 2.

Section 7.02 – Claims Procedure. The Construction Manager will make all requests for determination of Claims in writing, specifically referencing this Section, and will include: 1) the issue(s) presented for resolution; 2) a statement of its position by the Construction Manager; 3) the facts underlying the dispute; 4) reference to the applicable provisions of the Agreement by page and section; 5) identification of any other parties believed to be

necessary to the resolution; and 6) all documentation which describes and relates to the dispute. The Authorized Commission Representative will have fifteen (15) Days to respond in writing to the Claim by supplementing the submission or providing its own submission. The Authorized Commission Representative will attempt to negotiate a resolution of the Claim by agreement, but if a negotiated resolution is not achieved, the Authorized Commission Representative must provide a written ruling within thirty (30) days of receipt of the Claim. However, if the Construction Manager agrees in writing, an extension not to exceed sixty (60) days may be granted by the Executive Director.

Section 7.03 – Dispute Procedure. In the event that the Authorized Commission Representative and Construction Manager cannot resolve the Claim, the Construction Manager may file a Dispute to the Executive Director. The Dispute submission must be in writing and contain the information required in Section 7.02 above and be copied to the Authorized Commission Representative. The Authorized Commission Representative shall file a response within fifteen (15) days.

Section 7.04 – Executive Director's Determination. The Executive Director's final decision will be rendered in writing no more than fifteen (15) Days after receipt of the response by the Commission Representative was filed or was due unless the Executive Director notifies the Construction Manager that additional time for the decision is necessary. The Construction Manager must follow the procedures set out in this Article 7 to receive the Executive Director's final decision. In the event the Construction Manager disagrees with the Executive Director's final decision, the Construction Manager may file, a common law writ of certiorari in the Circuit Court of Cook County which shall be the sole and exclusive judicial remedy of the Architect. Construction Manager must have followed the procedures in this Article 7 as a condition precedent to filing a common law writ of certiorari. The Construction Manager shall not withhold performance of any Services required by the Commission under this Agreement during the dispute resolution period.

Section 7.05 – Construction Manager's Self-Help Prohibited. The Construction Manager must never withhold performance of its Services by, for example, refusing to review and approve appropriately submitted invoices or pay applications, to make recommendations on Subcontractor claims, or promptly to issue other appropriate approvals needed by others where doing so would potentially harm third parties, such as its Subcontractors. Doing so to gain potential leverage in negotiating or settling the Construction Manager's claims against the Commission or User Agency will constitute bad faith on the Construction Manager's part. This provision is not intended to prohibit the Construction Manager from exercising its well-considered professional judgment, however, in carrying out its duties and responsibilities under the Agreement.

Section 7.06 – Force Majeure. Neither of the parties will be liable to the other for any delay or failure in performance hereunder due to causes which are beyond the control of the party unable to perform. If a force majeure occurs, the party delayed or unable to perform will give prompt notice to the other party, and the Commission may, at any time during the continuation of the force majeure event, elect to suspend the performance of the Construction Manager under the Agreement for the duration of the force majeure.

The term “force majeure” means an extraordinary event or effect that the parties could not have anticipated or controlled and that renders performance impossible or impracticable for the duration of the event or effect. Such events or effects include but are not limited to: extraordinary acts of nature, such as tornadoes; or of people, such as acts of terrorism; or of governments, such as imposition of martial law.

ARTICLE 8 – ADDITIONAL TERMS AND CONDITIONS

Section 8.01 – Confidentiality.

(a) Generally. All of the reports, information, or data prepared or assembled by the Construction Manager under the Agreement are confidential, and except as may be necessary to perform its services the Construction Manager must not make such reports, information or data must available to any party without the prior written approval of the Commission. In addition, the Construction Manager must not, without the prior written consent of the Commission, prepare or distribute any news releases, articles, brochures, advertisements or other materials concerning the Agreement, the Project or the Services. If the Construction Manager is served with a subpoena requiring the production of documents or information which is deemed confidential, the Construction Manager will immediately notify the Commission in writing and provide a copy of the subpoena to the Commission in sufficient time for the Commission to attempt to quash, or take other action in relation to, the subpoena.

(b) Bid Documents. Construction Manager acknowledges and understands that the Services required by the Commission pursuant to this Agreement include the review of and advising on issuance of documents that the Commission, through the Construction Manager will use to solicit bids for the construction of the Ogden Replacement Elementary School. It is of the utmost importance to the Commission that any and all information pertinent to such bids not be divulged to any third parties prior to the opening of any trade contract bids or any bid package pricing for the Project. Accordingly, Construction Manager and its Subcontractors, Subconsultants and trade contractors, of any tier, are expressly prohibited from divulging any information that might materially impact a bid for the Project to any person or individual that is not a party to this Agreement. Construction Manager acknowledges and agrees that its obligations to the Commission with respect to information pertinent to bidding on the Project are those of a fiduciary, and that the Commission will hold Construction Manager to the standard of care of a fiduciary in this respect.

Section 8.02 – Assignment of the Agreement. The Construction Manager acknowledges that the Commission is induced to enter into this Agreement by the personal qualifications of the principals, staff and employees of the Construction Manager and, therefore, that neither the Agreement nor any right or obligation in the Agreement may be assigned by the Construction Manager, in whole or in part, without the prior written approval of the Commission. For purposes of this paragraph, if the Construction Manager undergoes a change in control, the change in control is deemed an assignment of the Agreement; a change in control is defined as a transfer of more than 50% of the equity ownership of the Construction Manager during any 12-month period. In the event

of an assignment by the Construction Manager without the prior written approval of the Commission, the Commission will have the right to immediately terminate the Agreement without fault or responsibility. The Construction Manager further acknowledges that the Construction Manager represented to the Commission the availability of certain members of the Construction Manager's staff who will be assigned to Project; therefore, in the event of the unavailability of such members for any reason, the Construction Manager must notify the Commission in writing, and must assign other qualified members of the Construction Manager's staff, as approved by the Commission, to the Project.

Section 8.03 – Successors and Assigns. Except as otherwise provided in Section 8.02 above or elsewhere in this Agreement, the Agreement is binding upon and inures to the benefit of each of the parties to the Agreement and their respective successors and assigns.

Section 8.04 – Amendments to this Agreement. The Commission may from time to time request changes to the terms and Services of the Agreement. Such changes, including any increase or decrease in the amount of compensation and revisions to the duration of the Services, which are mutually agreed upon by and between the Commission and Construction Manager, will be incorporated in a written amendment to the Agreement (“Amendment”). The Commission will not be liable for any additional payment absent such written Amendment.

Section 8.05 – Non-liability of Public Officials. No Commission Board member, Board of Education member, User Agency or City of Chicago employee, agent, officer, or official is personally liable to Construction Manager or its Subcontractors, and Construction Manager and its Subcontractors are not entitled to, and must not attempt to, charge any of them with liability or expense or hold them personally liable to Construction Manager or its Subcontractors under this Agreement.

Section 8.06 – Compliance with All Laws. In performing the Services required by this Agreement, the Construction Manager must comply with all applicable federal, state and local laws, rules, and regulations.

Section 8.07 – Governing Law. The Agreement has been negotiated and executed in the State of Illinois and will be construed under and in accordance with the laws of the State of Illinois.

Section 8.08 – Notices. All notices required to be given under this Agreement must be given in writing and must be hand delivered or sent by United States certified or registered mail, postage prepaid, addressed to the Commission or to the Construction Manager at their respective addresses set forth below, as appropriate. If given as provided in this Agreement, such notice is deemed to have been given on the date of delivery, if delivered by hand, and on the second business day after mailing, if given by mail. The Commission or the Construction Manager may, from time to time, change the address to which notices will be sent by giving notice to the other party in the manner provided in this subparagraph.

To the Commission: Public Building Commission of Chicago
Richard J. Daley Center
50 West Washington
Room 200
Chicago, Illinois 60602
Attention: Executive Director

Copy to: Neal & Leroy, LLC
203 North LaSalle Street
Suite 2300
Chicago, Illinois 60601

To the Construction Manager: Name
 Address

Section 8.09 – Entire Agreement. The Agreement constitutes the entire understanding and agreement between the Parties to this Agreement and supersedes any and all prior or contemporaneous oral or written representations or communications with respect to the subject matter hereof, all of which communications are merged in this Agreement. The Agreement must not be modified, amended or in any way altered except by an instrument in writing signed by both of the Parties.

Section 8.10 – Severability. If any provision of the Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such provision will be severed from the Agreement and such invalidity or unenforceability will not affect any other provision of the Agreement, the balance of which will remain in full force and effect; provided, however, that if such provision is deemed invalid or unenforceable as a matter of law, such provision will be deemed to have been modified so as to be valid and enforceable to the maximum extent permitted by law.

Section 8.11 – Non-Appropriation of Funds. If funds have not been appropriated in full or in part, the Commission has the right to terminate the Agreement. The Commission will not authorize the Construction Manager to provide Services under this Agreement unless sufficient funds are appropriated to pay for the Services.

Section 8.12 – No Waiver. The waiver by either party of any breach of the Agreement will not constitute a waiver as to any succeeding breach.

Section 8.13 – Construction Manager’s Authority. The Construction Manager represents that its execution of the Agreement is authorized by a resolution of its Board of Directors, if a corporation, or similar governing document if a partnership or a joint venture, and the signatures(s) of each person signing on behalf of the Construction Manager have been made with complete and full authority to commit the Construction Manager to all terms and conditions of the Agreement, including each and every representation, certification and warranty contained or incorporated by reference in it.

Section 8.14 – Counterparts. The Agreement may be executed in any number of counterparts, any of which will be deemed an original.

[EXECUTION PAGE FOLLOWS]

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

PUBLIC BUILDING COMMISSION OF CHICAGO

By: _____
Executive Director

Approved as to Form and Legality:

By: _____
Neal & Leroy, LLC

CONSTRUCTION MANAGER

By: _____

Print Name: _____

Its: _____

EXHIBIT A

SCOPE OF SERVICES

EXHIBIT B

CONTRACT DOCUMENTS

EXHIBIT C

COMPENSATION/COST OF THE WORK

EXHIBIT D

REQUIRED SUBCONTRACT PROVISIONS

Construction Manager must include each of the provisions listed below in any and all Subcontracts issued for the performance of Work on the Project.

1. Required for Bid Documents. The provisions in this Section 1 must be included in the invitations for bid for Work on the Project. For the purposes of this Schedule E, Construction Manager means the Construction Manager identified in the Agreement with the Commission, and Contractor refers to a Subcontractor to the Construction Manager. The forms referenced are attached as exhibits to this Schedule E: Exhibit 1 – Affidavit of Non-Collusion; Exhibit 2 – MBE/WBE Special Conditions; Exhibit 3 – Affidavit of Uncompleted Work; Exhibit 4 – Bidder's Financial Statement; Exhibit 5 – Disclosure Affidavit; Exhibit 6 – Bidder's Statement of Qualifications; Exhibit 7 – Disclosure of Retained Parties.

A. Affidavit of Non-Collusion

Each Bidder shall fully execute an affidavit, in the form provided, to the effect that the Bidder has not colluded with any other person, firm, or corporation in regard to any bid submitted. Such affidavit shall be attached to the bid.

B. MBE and WBE Commitments

The goals for MBE and WBE participation for this Contract are ___% and ___%, respectively. Each Bidder shall submit with its Bid affidavits and supporting documents describing the extent to which Minority Business Enterprise ("MBE") and Women Business Enterprise ("WBE") firms will participate in the Contract in accordance with Exhibit ___, "Special Conditions Regarding MBE and WBE Participation." Please be advised that the goals set forth in this Section ___ supersede and replace any goals that may be stated in Exhibit ___.

C. Affidavit of Uncompleted Work

The Bidder is required to submit a fully executed Affidavit of Uncompleted Work, which declares, among other things, the value and estimated completion date of all uncompleted contracts to be completed with Bidder's own forces and to be subcontracted to others. Such affidavit shall be attached to the bid on the form provided.

D. Bidder's Financial Statement

Each Bidder shall have on file in the office of the Construction Manager at the time of bid opening a financial statement dated not earlier than the end of said Bidder's last fiscal year period. This will be kept on file by the Construction Manager as a representative statement for a period of one year only. If a Bidder does not have such statement on file, it must submit a copy with its bid. Failure to have a current financial statement on file at the Construction Manager at time of bid opening may be cause for the rejection of the Contractor's Bid.

E. Disclosure Affidavit

Each Bidder shall have on file in the office of the Construction Manager at the time of bid opening a fully executed Disclosure Affidavit. If a Bidder does not have such statement on file, it must submit a copy with its bid.

F. Statement of Bidder's Qualifications

Each Bidder shall have on file in the office of the Construction Manager at the time of bid opening a fully executed Statement of Bidder's Qualifications or a Qualification Submittal in response to a Request for Qualifications (RFQ). Construction Manager reserves the right to request additional information regarding the capability of the Bidder to perform the Contract.

G. Disclosure of Retained Parties

The apparent low Bidder and the apparent 2nd low bidder shall submit a fully-executed Disclosure of Retained Parties pursuant to the instructions on the document within five (5) days of receipt of notice to provide such Disclosure.

H. Submission of Bid

1. Two (2) copies of all bid documents with original signatures shall be enclosed in two (2) envelopes each (outer and inner), both of which shall be sealed and clearly labeled with "BID DOCUMENTS," the Contract number, name of Bidder, and date and time of opening.
2. Bids received prior to the advertised hour of opening will be securely kept by the Construction Manager.
3. Written modifications of bids will be considered only if received prior to the time stated for receipt of Proposals. Such modifications must be submitted in a sealed envelope and marked in the same manner as a bid. IN ADDITION, the envelope must state "BID MODIFICATIONS TO SEALED PROPOSAL" on the lower left-hand corner of the envelope in which the bid modification is enclosed, so that the modification will be recognized to prevent its being opened prior to scheduled public opening of bids. Telephonic or oral modifications will not be considered. Bidders are cautioned that modifications which are not explicit and which are in any sense subject to misinterpretation shall make the bid so modified or amended subject to rejection.

I. Withdrawal Of Bids Before Bid Opening

Any Bidder may withdraw its bid by letter, facsimile, e-mail request, or by personally securing, with proper identification, the submitted bid proposal at any time prior to the time fixed for opening of bids. A telephonic request to withdraw a bid will not be considered.

J. Opening Of Bids

At the time and place fixed for the opening of bids, the Construction Manager will cause to be opened and publicly read aloud every bid received within the time set for receiving bids irrespective of any irregularities therein. Bidders and other persons properly interested may be present in person or by representative.

K. Evaluation of Bids

1. The Construction Manager reserves the right to check all calculations and to correct all extensions in case of error in order to determine the correct amount of the Total Base Bid and/or the total amount of any other schedule required.
2. If a discrepancy occurs in an amount written both in words and in figures, the amount written in words will prevail.
3. Along with reviewing the calculations of each bid, the Construction Manager will evaluate each Bidder's responsiveness to all Bid requirements and responsibility.
4. The Construction Manager requires that the apparent low bidder and the apparent 2nd low bidder submit a breakdown of their bids by CSI Division or other appropriate basis and to attend a pre-award meeting to review their bids in detail.

L. Award Of Contract; Rejection Of Bids

1. The Contract will be awarded to the responsible Bidder submitting the lowest Award Criteria Figure, as defined herein, complying with all conditions set forth in the Contract Documents.
2. The Bidder to whom the award is made will be notified at the earliest possible date.
3. Upon award of Contract, the Construction Manager, on behalf of the Commission, will process the Contract for final execution.

The Construction Manager reserves the right to reject any and all bids and to waive any informality in bids received whenever it determines such rejection or waiver is in its interest.

M. Basis of Award (Award Criteria)

To promote the intended goal of economic opportunity and maximize the use of minority personnel on this project, the Construction Manager, on behalf of the Public Building Commission of Chicago, has established the Award Criteria formula for the purpose of canvassing bids and awarding contracts for Work. A contract in the amount of the total Base Bid or Base Contract Price will be awarded to the responsible bidder with the lowest Award Criteria Figure. Construction Manager reserves the right to check all calculations for accuracy. The fulfillment of the Award Criteria does not abrogate the responsibilities of the Contractor to comply with federal and state requirements under the Equal Employment Act and the Illinois Human Rights Act.

1. Instructions

The Bidder shall complete the Award Criteria Formula and transfer the final Award Criteria Figure - Line 15 to the space provided on the itemized bid sheet. Failure to complete the formula may be cause for rejection of the Bidder's proposal. The successful bidder will be held responsible for adhering to the figures submitted in Lines 1, 2, 4, 6, 8, 10 and 12 during construction of the project.

Lines 2, 4 and 6 in the formula shall not be greater than fifty percent (50%) in each category for the sole purpose of determining award of the contract. Similarly, lines 8, 10 and 12 shall not be

greater than ten (10%) percent in each category for the purpose of award criteria only. The fifty percent (50%) and ten percent (10%) goals are not intended to restrict the total number of minority and female employees to be used on the project, but only to establish limiting figures for use in the formula. Journeyworker includes journeyworkers from the major trades listed herein, and the teamsters. Watchmen and custodial workers are not creditable in the formula.

2. Award Criteria Formula

Line 1.	Base Bid, in figures	_____
Line 2.	Percentage of the Journeyworkers hours that the Contractor proposes to be worked by minority Journeyworkers during construction of the project. (Maximum figure 0.50)	_____
Line 3.	Multiply Line 2 by Line 1 by 0.04	_____
Line 4.	Percentage of total Apprentice hours that the Contractor proposes to be worked by minority Apprentices during construction of the project. (Maximum figure 0.50)	_____
Line 5.	Multiply Line 4 by Line 1 by 0.03	_____
Line 6.	Percentage of the total Laborer hours that the Contractor proposes to be worked by minority Laborers during construction of the project. (Maximum figure 0.50)	_____
Line 7.	Multiply Line 6 by Line 1 by 0.01	_____
Line 8.	Percentage of total Journeyworker hours that the Contractor proposes to be worked by female Journeyworkers during the construction of the project. (Maximum figure 0.10)	_____
Line 9.	Multiply Line 8 by Line 1 by 0.04	_____
Line 10.	Percentage of total Apprentice hours that the Contractor proposes to be worked by female Apprentices during construction of the project. (Maximum figure 0.10)	_____
Line 11.	Multiply Line 10 by Line 1 by 0.03	_____
Line 12.	Percentage of the total Laborer hours that the Contractor proposes to be worked by female Laborers during construction of the project. (Maximum figure 0.10)	_____
Line 13.	Multiply Line 12 by Line 1 by 0.01	_____
Line 14.	Summation of Lines 3, 5, 7, 9, 11, and 13	_____

Line 15. Subtract Line 14 from Line 1 (= "Award Criteria Figure") _____

Award Criteria Figure (Insert Line 15 of Award Criteria Formula): \$ _____

3. Community Hiring Bonuses

In order to encourage maximum employment of interested and available residents of the project community on this project, the following bonus calculations shall apply:

- a) In calculating the hours worked by minority and women journeyworkers, apprentices, and laborers under the Award Criteria set out in Part III.A. "Basis of Award (Award Criteria)," all hours worked by minority and women journeyworkers, existing apprentices, and laborers who are residents of the project community shall be multiplied by 1.5.
- b) In calculating the hours worked by minority and women apprentices under the Award Criteria set out in Part III "Proposal Support Documents," all hours worked in new apprenticeships by minority and women apprentices who are residents of the project community shall be multiplied by 2.0.

Definitions

"Actual residents of the City of Chicago" shall mean persons domiciled within the City of Chicago. The domicile is an individual's one and only true, fixed, and permanent home and principal establishment.

"Residents of the project community" shall mean persons domiciled within the Ward in which the Site is located.

"New Apprenticeship" shall mean an apprenticeship begun for a person who has not held an apprenticeship card within ninety (90) days prior to beginning the project.

4. Liquidated Damages

The Contractor hereby consents and agrees that, in the event that it fails to comply with each of the minimum commitments submitted with this Proposal on Lines 2, 4, 6, 8, 10, and 12 of the Award Criteria Formula, covering minority and female Journeyworkers, apprentices, and laborers respectively, the following shall apply.

If the total hours in any category for which a percentage is assigned in Lines 2, 4, 6, 8, 10, or 12 of the Award Criteria equals zero at the completion of the work, then a net deficiency of the entire percentage assigned will be deemed to exist. For any net deficiency in each category, the following amounts shall be deducted as liquidated damages from monies due the Contractor and the Contract Sum modified accordingly:

- a) For each full one (1%) percent deficiency of minority Journeyworkers not utilized – four cents per each hundred dollars of the base bid calculated as follows:

$$\frac{\text{Line 1 x 04}}{100}$$

Each one (1%) percent deficiency toward the goal for female Journeyworkers (Line 8) shall be calculated in the same way.

- b) For each full one (1%) percent deficiency of minority apprentices not utilized – three cents per hundred dollars of the base bid calculated as follows:

$$\frac{\text{Line 1 x 03}}{100}$$

Each one (1%) percent deficiency toward the goal for female apprentices (Line 10) shall be calculated in the same way.

- c) For each one (1%) percent deficiency of minority laborers not utilized – one cent per each hundred dollars of the base bid calculated as follows:

$$\frac{\text{Line 1 x 01}}{100}$$

Each one (1%) percent deficiency toward the goal for female laborers (Line 12) shall be calculated in the same way.

- d) Liquidated damages, if any, will be calculated for the first pay requests reflecting fifty percent (50%) completion, seventy-five percent (75%) completion, and ninety percent (90%) completion, respectively, based upon the Contractor's pay request together with all attendant certified payrolls and other required documentation of minority and women employment. The accrued liquidated damages and interest will be added to the retention provided elsewhere in this contract. The amount of liquidated damages due to the Commission under this provision will bear compound interest at the rate of 5% per annum, compounded monthly from the date of the Notice to Proceed to the date of approval of a deductive change order for liquidated damages. Should the total amount of liquidated damages due under all provisions of this contract exceed the amount of the Commission's retainage, compound interest on the amount over and above the retainage will continue to accrue until the entire amount of liquidated damages and compound interest is paid to the Commission.
- e) The Commission is aware that certain subcontract agreements under this contract may require subcontractors to contribute to payment of liquidated damages assessed under this provision. Should enforcement of subcontract liquidated damages provisions result in an aggregate total of subcontractor liquidated damages greater than the liquidated damages assessed hereunder against Contractor, then Contractor must pay the excess pro rata as a bonus to each subcontractor exceeding its subcontract commitments for minority or women employment, or both.

5. Reporting

In accordance with this commitment, the Contractor must submit both the Contractor's Payroll Record Form and the Contractor's Recapitulation of Minority and Female Worker Hours and Percentages Form on a monthly basis. All Subcontractors shall be listed on the Contractor's

Recapitulation Form whether active or not. For the purpose of this report, the following group categories will be used:

- a) The classification "White" includes person of Indo-European descent.
- b) The classification "Black" or "African-American" includes persons having origins in any of the black racial groups of Africa.
- c) The classification "Hispanic" includes persons whose origins are from Mexico, Puerto Rico, Cuba, Central or South America, the Caribbean Islands or other Spanish culture or origin, regardless of race.
- d) The classification "Native American" includes persons who are Native Americans by virtue of tribal association.
- e) The classification "Asian-Pacific" includes persons whose origins are from East Asia, Southeast Asia, the Pacific Islands or the Indian sub-continent.
- f) The classification "Other" includes qualified individuals with disabilities who meet legitimate skill, experience, education or other requirements of employment positions held or sought and who perform the essential function with or without reasonable accommodation and other groups or other individuals found by the Public Building Commission of Chicago to be socially and economically disadvantaged and to have suffered actual racial or ethnic discrimination and decreased opportunities to compete in Chicago area markets.

6. Major Trades

Asbestos Workers	Operating Engineers
Boiler Makers	Painters
Bricklayers	Pile Driver Mechanics
Carpenters	Pipe Fitters/Steam Fitters
Cement Masons	Plasterers
Electricians	Plumbers
Elevator Construction	Roofers
Glaziers	Sheet Metal Workers
Mechanists	Sprinkler Fitters
Machinery Movers	Technical Engineers
Ornamental Iron Workers	Tuck Pointers
Lathers	Steel Fabricators

For approval of other trades for consideration in the Award Criteria Formula, written approval should be requested from the Commission.

7. Trade Participation - For Information Only

The following information must be supplied by the Contractor for the purposes of evaluating figures supplied in the Award Criteria Formula. It is understood that these figures are estimates only and are not to be considered as limiting in any manner actual participation on the project.

Anticipated levels of minority participation, to be expressed as percentages, must be supplied for each trade, whether attributable to the Contractor's work force or any Subcontractor which will be active on this project.

TRADE PARTICIPATION	PERCENT OF MINORITY
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

2. Standard of Performance. Construction Manager will require that its Subcontractors, at the minimum, meet the standard of performance set forth below.

Standard of Performance

In addition to performing the Work in full compliance with the Contract Documents, the Contractor 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 contractors in performing work in projects of a scope and magnitude comparable to the Project. Unless otherwise specified, all materials and equipment will be new, and of such quality as required to comply with the Contract Documents. The Contractor 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.

3. Permits, Licenses and Regulations. Subcontracts must contain the following provisions regarding permits, licenses and regulations.

A. Permits

1. The Contractor 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 Contractor.

2. The Contractor will confer with the Construction Manager prior to applying for the City building permit, and the parties will agree on the process for obtaining the City building permit prior to Contractor's application for such permit. The Construction Manager Representative will assist the Contractor in the building permit process, but the Contractor is

solely responsible for obtaining all required permits in a timely fashion.

3. 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 Contractor, 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.

B. Licenses and Regulations

1. The Contractor will include in the bid for the Project, obtain, and pay for all licenses and certificates of inspection required or necessary for the execution and completion of the Work.

2. The Contractor must give all notices and comply with all laws, ordinances, codes, rules and regulations bearing on the conduct of the Work. If the Contractor observes that the Drawings and specifications are at variance therewith, prompt notification in writing must be given to the Construction Manager. If the Contractor fails to provide such notice, or otherwise performs the Work contrary to pertinent law, ordinances, codes, rules or regulations, the Contractor will bear all costs arising from any Work performed that is contrary to such laws, ordinances, codes, rules, and regulations.

3. The Contractor 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.

4. Regulations applicable to this Project include, but are not limited to, the following:

- a. City of Chicago Building Codes (latest edition)
- b. NEC 1990
- c. NFPA 2006
- d. Illinois Plumbing Code
- e. Illinois Accessibility Standards
- f. Americans with Disabilities Act Guidelines (ADAG)
- g. ASHRAE/IES, Standard Efficiency Guidelines

5. Where requirements of the applicable building codes differ, the more stringent requirement shall govern. Where requirements conflict, the Construction Manager shall determine which requirement shall govern and the Contractor shall comply with the governing requirement.

6. Submit copies of all permits, licenses, and similar permissions obtained, and receipts for fees paid, to the Construction Manager.

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

4. Warranties. Construction Manager will require that its Subcontractors, at the minimum, furnish the warranty set forth below for their Work on the Project.

Warranties

1. The Contractor 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 1 year, against defects which, in the opinion of the Architect, result from the use of defective or inferior materials, equipment, supplies, services, facilities or workmanship or from Work not in compliance with or not performed in accordance with the Drawings or specifications. The Contractor will provide this guarantee to the Construction Manager in writing using Exhibit __. 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.
2. The Contractor agrees as part of this guarantee to repair or remove and replace, as directed by the Construction Manager, 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 Construction Manager, 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 __ Days of written notice from the Construction Manager, and sufficient labor and materials sufficient must be furnished to ensure prompt completion thereof. Should the Contractor fail to proceed in accordance with the above, the Construction Manager, without further notice to the Contractor, may furnish all labor and material necessary for repairs, or removals and replacements, and the Contractor agrees to pay the Commission all such costs incurred.
3. **Manufacturer's Warranties**

The Contractor will ensure that all required Manufacturer's Warranties are assignable, and assigned, to the Commission and/or User Agency, and 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.

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

5. Environmental Compliance. Construction Manager shall require that Subcontractors comply with the environmental provisions and regulations set forth below.

A. Compliance with Environmental Laws

1. The Contractor must comply with all environmental laws including, without limitation, those listed in the Disclosure Affidavit that must be executed and notarized by the Contractor, 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 Contractor 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 Contractor to perform the Work required hereunder, the Contractor 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 Contractor regarding the Contractor's failure or alleged failure to comply with any Environmental Law, the Contractor must notify the Commission Representative pursuant to Section F, "Disposal of Materials, Construction Debris, Soil, and Waste," herein below.
3. If the Contractor fails to comply with any Environmental Law, Construction Manager may terminate this Contract in accordance with the default provisions of this Contract, which may adversely affect Contractor's eligibility for future contract awards.

B. Environmental Permits

1. The Contractor 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 Construction Manager, the Contractor 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 Construction Manager throughout the duration of this Contract. Noncompliance with this requirement may be cause for rejection of the bid and/or termination of this Contract.
3. Environmental Records and Reports: The Contractor 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.

C. Energy Conservation Ordinance

Whenever the Contractor 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.

D. Environmental Controls

In performing the Work, the Contractor 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 is prohibited.

E. Equipment and Environmental Control during Transport

The Contractor 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 Contractor'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.

F. Disposal of Materials, Construction Debris, Soil, and Waste

1. The Contractor 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 Contractor 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 Contractor 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 Contractor's personnel shall be trained in the proper handling of the materials that are found.
2. The Contractor must provide the Construction Manager with copies of all load tickets, manifests, bills of lading, scale tickets, and other pertinent documents. When requested by the Construction Manager, the Contractor 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 Contractor does not possess the necessary permits and/or licenses to accept the materials, construction debris, soil or other wastes, the Contractor will replace the transfer station and/or landfill submitted as part of their bid proposal at no additional cost to the Construction Manager. If the Contractor disposes of materials, construction debris, soil or other wastes at a site which is not properly permitted, the Contractor will be responsible for all costs associated with the removal of the waste to a properly licensed/permitted landfill or disposal site.

3. The Contractor must notify the Construction Manager 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 Contractor by any third party relating to the loading, hauling, or disposal of materials, construction debris, soil, or other wastes. The Contractor will provide evidence to the Construction Manager that any such Claim has been addressed to satisfaction of the issuer or initiator of such Claim.
4. The Contractor must notify the Construction Manager 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 Contractor is asked to participate.
5. The Contractor must verify, in writing, whenever requested by the Construction Manager, that all materials, construction debris, and other waste accepted by the Contractor from the Construction Manager has been disposed of in compliance with all Environmental Laws.
6. The form for identifying the Contractor’s debris disposal/hauling site(s) and acknowledging terms and conditions relating thereto which has been executed by the Contractor may be attached to this Contract and incorporated by reference, as appropriate. In addition to the representations and requirements contained in the form, the Contractor understands and agrees that the Contractor, unless otherwise authorized in writing by the Construction Manager, 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 Contractor must arrange for a substitute disposal/hauling site that meets the requirements specified in the form and provide a revised form to the Construction Manager. The Contractor further understands and agrees that any such substitution is at no additional cost to the Construction Manager, regardless of the reason necessitating such substitution.

G. 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 Contractor and made available to the Construction Manager upon request.

H. LEED Certification Requirements

1. The Contractor must assist the Construction Manager, on behalf of the Commission, to achieve the LEED Certification level required for this project. The LEED Scorecard (Registered Project Checklist) identifying the LEED version and level, as well as prerequisites and credits to be achieved, is found in Book 3, Division 1. The Contractor 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

indicated in Book 3, Division 1, so that the Commission can achieve the LEED rating identified in Book 3, Division 1.

2. The Contractor must have a LEED Accredited Professional (LEED AP) assist the Contractor 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 Contractor 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 Contractor must make all required LEED submittals to the Construction Manager Representative. The format and number of submittals must be approved by the Construction Manager.
5. The Contractor must take the actions listed below, regarding LEED, within the time periods specified.
 - a. Contractor 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 Contractor must implement the approved Plan prior to start of work on the Project site. The Contractor 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.
6. Other requirements of the Contract Documents regarding LEED are found in _____.

7. Indemnity and Insurance. Construction Manager shall cause its Subcontractors, and the Subcontractors' subcontractors and suppliers of any tier, to indemnify Construction Manager, the Commission and the User Agency as set forth below.

A. Indemnification

1. The Contractor covenants to and must indemnify, defend and hold harmless the following indemnitees: the Commission, the User Agency, the Architect and its consultants, the

Commission Representative and any additional persons named in Book 1, 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 Indemnitees 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 Contractor must give immediate notice thereof to the Commission Representative.

To the extent permissible by law, Contractor 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 Contractor 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 Contractor 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 Contractor 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 Contractor of its obligations hereunder.

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

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

B. Insurance

1. The Contractor must procure and maintain at all times, at Contractor’s own expense, through the completion of the warranty period, the types of insurance specified in 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 Contractor or by Subcontractors. Upon written request by the Commission, the Contractor must allow the Commission to review and copy any original insurance policies the Contractor is obligated to maintain under this policy.

2. The Contractor waives any and every claim or right of recovery from the Commission for any and all injuries and losses arising under this Contract or in any way related to the Work,

including but not limited to any claim for loss of or damage to the Work or to the contents thereof, which injury, loss, or damage is covered by valid and collectible insurance policies, to the extent that such injury, loss, or damage is recoverable under said insurance policies. As this waiver will preclude the assignment of any claim by subrogation (or otherwise) to an insurance company (or any other person), the Contractor 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 Contractor must require each Subcontractor to include similar waivers of subrogation in favor of the Commission.

3. The Contractor must cause contractual liability endorsement to be issued by the insurance companies and attached to the Commercial General Liability policies of each Contractor and/or Subcontractor to include under the coverage therein extended an obligation on the part of the insurers to insure against the Contractor 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.

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 Contractor provide additional types of insurance.

8. Commission Property. Construction Manager will include the following provisions regarding the Commission's property in its Subcontracts:

A. Ownership of Drawings, Specifications and Models

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

B. Right of Entry

1. The Contractor, 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 Construction Manager, Commission or User Agency. The Contractor must provide advance notice to the Construction Manager of Contractor'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 Contractor acknowledges that the Commission, the User Agency, the Architect and the Construction Manager have 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 Contractor 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, Contractor 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.

C. 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 Contractor'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 notification of Substantial Completion of the affected portion of the Work from the Architect.

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 Contractor 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 Contractor 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 __ is a cost of the Work, unless the Construction Manager notifies Contractor 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 Contractor 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 __, the Commission will give the Contractor notice in writing of its occupancy and/or use of the space(s) involved.

9. No Assignment of Contract. Construction shall include the following provision prohibiting the assignment of the Subcontract in all Subcontracts:

No Assignment of Contract

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

10. Compliance with All Laws. Construction Manager shall require that Subcontractors comply with the following:

A. Contractor Must Comply with All Laws

1. The Contractor 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 Contractor must follow the most stringent of the applicable agency and code requirements. The Contractor is fully responsible for ascertaining and complying with all agency and code requirements applicable to the Work.

B. Equal Employment Opportunity

1. The Contractor 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 Contractor 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 Contractor will comply with the Civil Rights Act of 1964, 42, U.S.C. Sec. 2000 et seq. (1981), as amended. Each Contractor 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 Contractor 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 Contractor will furnish such reports and information as requested by the Commission and the Illinois Department of Human Relations.

- d. City Requirements. Each Contractor 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 Contractor will furnish such reports and information as requested by the Chicago Commission of Human Relations.
 - e. Subcontractors. Each Contractor 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 Contractor, 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. Contractor 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 Contractor 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 Contractor, out of payments due to the Contractor, 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 Contractor to the respective employees to whom they are due, as determined by the Commission in its sole discretion.
4. The Contractor 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 Contractor agrees that in performing this Contract it will comply with: the Minority Business Enterprise/Women Business Enterprise Special Conditions of Exhibit __, "MBE/WBE Special Conditions," and residency requirements of Section __ Chicago Residents As Employees.
6. A breach of any of the requirements of this Section __ may be grounds for termination of the Contract.

C. Chicago Residents As Employees

- 1. Policy and Terms

- a. Attention is called to an ordinance passed by the City of Chicago on May 18, 1994, City of Chicago Residence Preference Ordinance and the resolution of the Board of Commissioners of the Public Building Commission adopted August 9, 1994.
- b. The Contractor agrees to ensure that the aggregated hours of Work to be performed by the Contractor and 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. These minimal percentage levels of Chicagoans as laborers and skilled trade Workers are not to be understood as limiting or determining the fuller utilization of Chicagoans beyond these numerical levels, but are intended instead as minimum requirements unless the Commission grants a waiver based upon demonstration by the Contractor of impracticability or excessive cost of complying with the specified percentages. A waiver or reduction will be considered if the Contractor has unsuccessfully solicited a sufficient number of residents of the City of Chicago to perform the Work and has documented such effort to the satisfaction of the Commission. In addition, a Contractor seeking a waiver or reduction will provide timely notice of the need for qualified residents of the City of Chicago to an appropriate source of referrals, in which the source is entitled to comment on any waiver or reduction application.
- c. 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:
 - a) Skill Builders

The goal of Skill Builders is to increase the number of Chicago residents in building and construction trades. The program provides pre-apprenticeship training and support to students from entry into the Skill Builders program until employment on a job site.

The Contractor should utilize minority and female participants who have gone through the program successfully whenever possible. Information regarding the program and its participants is available from the Public Building Commission at (312) 744-3090. Utilization of such participants may assist the Contractor in meeting its commitment in the minority and female apprentice categories.
 - (2) The Contractor also agrees that 5% of the aggregated hours of Work to be performed by the Contractor and subcontractors under this Contract will be performed by “residents of the project community.”
 - (3) In order to encourage maximum employment of interested and available residents of the project community on this project, the following bonus calculation applies: In calculating the worker hours performed by actual residents of the City of Chicago, hours worked by residents of the project

community will be multiplied by 1.5 for the purpose of determining the award criteria calculation in the bid.

- (4) The Commission is aware that certain subcontract agreements under this Contract may obligate subcontractors to fulfill requirements for employment of City of Chicago residents under this Contract. Should the Contractor receive bonus calculations under the foregoing provisions as a result of residents of the project community employed by any subcontractor obligated to fulfill requirements for employment of City of Chicago residents, then the Contractor must allow a bonus, in the same amount it receives, in favor of each and every such Subcontractor.

2. Definitions

- a. "Actual residents of the City of Chicago" 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. "Residents of the project community" means persons domiciled within the City of Chicago and within the "Community," as defined in Book 1, in which the Project Site is located.

3. Compliance and Reporting

- a. The Contractor 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 Contractor (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 Contractor's and Subcontractors' employment records will be granted to the Construction Manager, the Commission or any duly authorized representative thereof. The Contractor 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 Construction Manager, affidavits and other supporting documentation will be required of the Contractor 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 Contractor 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.

- b. For the purpose of adjusting the level of Retainage, the Construction Manager will review compliance at 50%, 75%, and 90% completion of the Work. If the Commission has determined that the Contractor was not compliant in the fulfillment of the required percentages of aggregated worker hours by actual Chicago residents, or has failed to report in the manner indicated above under "Compliance and Reporting," the Commission will 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 Contract Price, as adjusted by any Change Orders, be withheld by the Construction Manager in payment for each percentage of shortfall toward the stipulated residency requirement. Failure to report the residency and hours of all employees entirely and correctly will result in the surrender of the entire liquidated damages as if no Chicago residents were employed in either of the categories.
 - c. Construction Manager, in its sole discretion, shall determine when to withhold such liquidated damages.
 - d. Failure of the Contractor to meet the 5% minimum community hiring requirement, or failure to pay any balance due the Construction Manager, may result in the Executive Director determining that the Contractor must re-qualify and that the Contractor is no longer a responsible bidder.
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.

D. Veteran's Preference

The Contractor 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."

E. 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 Contractor will make all necessary arrangements to reconcile any such conflict without delay, damage or cost to the Construction Manager and without recourse to the Commission, Architect, or the Commission Representative. In case the progress of the Work is affected by any undue delay in furnishing or installing any items of material or equipment required under the Contract because of a conflict involving any such agreement or regulation, the Architect may require that other material or equipment of equal kind and quality be provided at no additional cost to the Construction Manager or the Commission.

F. 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.

G. Inspector General

1. It is the duty of any bidder, proposer, Contractor, all subcontractors and all officers, directors, agents, partners and employees of any such entities on City-funded contracts to cooperate with the Inspector General of the City in any investigation or hearing undertaken pursuant to Chapter 2-56 of the Chicago Municipal Code. Each Contractor understands and will abide by all provisions of Chapter 2-56 of the Municipal Code of Chicago.

2. All Contractors will inform their respective subcontractors of this provision and require compliance herewith.

H. Covenant against Contingent Fees

The Contractor 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 Contract Price the amount of such commission, percentage, brokerage, or contingent fees. This warranty does not apply to any commission payable by the Contractor upon contracts or sales secured or made through bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business.

I. Taxes

1. The Contractor 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.

J. 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 Base Contract Price.
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 Contractor in violation of any patent or other rights of any third person.

K. 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 Contractor 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 Contractor further covenants that in the performance of this Contract, no person having any such interest will be employed. Each Contractor agrees that if the Commission determines that any of a Contractor's work for others conflicts with the Work, that the Contractor will terminate such other services immediately upon request of the Commission.

L. Governmental Ethics Ordinance

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

M. Disclosure Affidavit

1. The Contractor 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 Contractor 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.

N. Disclosure of Retained Parties

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

O. Non-Collusion, Bribery of a Public Officer or Employee

1. Each Contractor, 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.

P. Parking Violations

1. The Construction Manager 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 Construction Manager 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.

Q. 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 age of interest in the Contractor; where the Contractor 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 Contractor. Indirect or beneficial interest means that an interest in the Contractor 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 Contractor, 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 Contractor. 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.

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

EXHIBIT E

INSURANCE AND BONDING REQUIREMENTS

EXHIBIT F

KEY PERSONNEL AND CONSTRUCTION MANAGER BILLING RATES