

## AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES

This agreement (the "Agreement") is entered into and made effective as of this 15th day of October, 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 **Turner Construction Company**, a New York corporation, with offices at 55 East Monroe Street, Suite 3100, Chicago, Illinois 60603 ("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 July 2, 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. The Schedule for Construction Activities shall be provided as specified in the Standard Terms and Conditions. References in this Agreement to the Project Schedule shall be deemed to refer to the Baseline Schedule or Target Schedule, as appropriate as defined and modified from time to time in accordance with the Standard Terms and Conditions.

(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 for all or any portion

of the Work 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 responsible for such costs as would have been avoided if the Construction Manager had performed such obligations 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 in writing 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 H or such other form the Construction Manager may propose and the Commission may approve. 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 deemed by the Commission to be accepted until Substantial Completion of the Work, as evidenced by the execution of a Certificate of Substantial Completion.

(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 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.

(i) Notwithstanding anything contained herein, the Commission acknowledges that the Construction Manager is in no way providing professional design services which constitute the practice of architecture or engineering.

#### 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) **Initial 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 including Bonds and Insurance Costs, Construction Manager's Contingency and the Design Completion Allowance.

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 other than machinery or equipment rented solely for the performance of the Services under this Agreement, or, subject to the approval of the Commission, portions of rental costs for machinery or equipment used for the performance of the Services and properly allocated to the Services under generally accepted accounting principles.

(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, except as allowed by the Construction Manager's Contingency. 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(d)(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 and the payment procedures provided in Article 5.

(f) 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, but to which Construction Manager shall not be contractually bound. 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 later, the Construction Manager shall submit its proposed Cost of the Work to the Commission for review and approval. The proposed Cost of the Work 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 established by the Construction Manager and the Commission in the Project GMP Amendment for the Construction Manager's use (the "Construction Manager's Contingency") to cover (i) costs incurred for delays on the Project for which the Construction Manager is not otherwise compensated, (ii) other costs which are properly reimbursable as Costs of the Work but are not the basis for a Change Order, and (iii) 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.d(2)(f); provided, however, that any item exceeding \$50,000 in cost shall require the prior written approval of the Authorized Commission Representative prior to the expenditure from the contingency for such item.

(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.

(3) 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 (which includes the Construction Manager's Contingency, Bonds and Insurance and the Design Completion Allowance). 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 fifteen (15) days of the Effective Date 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, followed by Subcontractors becoming prequalified in accordance with Section 4.02(e)(3) and then bid to the prequalified Subcontractors with 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 30% and 8%, 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 30% MBE participation and 8% WBE participation.

(3) Minority, Female, Resident and Community Hiring. The Commission is relying on the Construction Manager's knowledge of the market for minority, female, City of Chicago resident and community resident hiring and employment on construction projects in the greater Chicago area. Construction Manager shall comply with the minority, female, City of Chicago resident and community hiring

and employment goals set forth in the Special Conditions and shall incorporate the provisions and/or commitments into its trade contractor subcontracts to enable the Construction Manager to meet the minority, female, City of Chicago resident and community hiring requirements and commitments of the Special Conditions.

(4) 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 or about August 15, 2009. 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(f)(2) above; provided, however, that the date of Substantial Completion shall be no later than July 1, 2011 in accordance with the attached Exhibit K – Project Summary Schedule. All punch list Work must be completed by August 15, 2011, and the Date of Final Completion shall be no later than 90 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 become the Project Schedule upon approval by the Commission. Construction Manager may propose revisions to the Project Schedule with the submittal of updates to the proposed Cost of the Work as provided in Exhibit A. 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 7 of the Standard Terms and Conditions and an equitable adjustment of the Project GMP as provided in Article 10 of the Standard Terms and Conditions, subject to the limitations of Article 7 of the Standard Terms and Conditions. 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; concealed or unknown conditions; delay authorized by the Commission pending dispute resolution or suspension by the Commission pursuant to Section 5.03 hereof; acts of government, including delays in building permit review and issuance; and those events defined as Force Majeure in Section 7.06 of this Agreement and Article 7 of the Standard Terms and Conditions. The Construction Manager shall submit any requests for equitable extensions of the Project Schedule in accordance with the provisions of Article 10 of the Standard Terms and Conditions and shall submit requests for equitable adjustments to the Project GMP in accordance with the CPCO requirements of Section 10.03 of the Standard Terms and Conditions. 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, all in accordance with Article 7 of the Standard Terms and Conditions.

(f) **Submittals.** Construction Manager shall comply with the requirements of Article 9 of the Standard Terms and Conditions. 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.

(g) **Liquidated Damages at 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 Fee, and thereby to the Project GMP, such modification shall be accomplished through an Amendment to this Agreement pursuant to Section 8.04 hereof, the cost of which Amendment shall include costs for Bonds and Insurance at the rates agreed upon in Exhibit E or specified in this Agreement. 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 10 of the 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 10 of the 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 receipt of 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 Exhibit G. 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 any person employed by the Construction Manager, or any Subcontractor or consultant retained by the Construction Manager in connection with this Project. With regard to any Subcontractor default based on Subcontractors failure to indemnify the Indemnitees pursuant to the indemnification provisions of the Subcontract Agreement, the Construction Manager shall have the same opportunity to cure said default as provided in Section 6.02 hereof prior to the Commission's enforcement of Subcontractor's indemnity against Construction Manager, to the extent allowed by law.

(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. Construction Manager shall provide and maintain a Contractor Controlled Insurance Program ("CCIP") for the Worker's Compensation and Commercial General Liability Coverage for the Construction Manager and Subcontractors for the Project as provided below and further in Exhibit E.

Construction Manager shall provide Workers Compensation and General Liability Insurance for both Turner and the Subcontractors through a Contractor Controlled Insurance Program (CCIP). For that portion of the insurance and any associated business unit costs covered by CCIP, Construction Manager shall be reimbursed at an amount calculated using a percentage of the Guaranteed Maximum Price. Such percentage shall be 3.41% for Workers Compensation and General Liability Insurance. Reimbursement for the CCIP shall be provided monthly, based on the percentage of the GMP completed and with no amounts deducted therefrom as retention or retainage of any kind. Should Construction commence prior to the execution of the Guaranteed Maximum Price, the amount to be paid shall be calculated by using the above percentage multiplied by Construction Manager's current estimate of all other amounts to be paid to Construction Manager; which shall be adjusted similarly with each Payment Application until execution of an amendment to this Agreement that establishes the Guaranteed Maximum Price.

Any amendment or change order increasing or decreasing the Project GMP shall include and Construction Manager shall be reimbursed for additional cost to be incurred through the CCIP or the Commission shall be credited for the reduction in costs to the CCIP in an amount calculated by multiplying 3.41% by the amount of the adjustment to the GMP.

**Section 4.11 – Payment and Performance Bond.** (a) Within five (5) days of the Commission's execution of this Agreement, 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 full



amount of 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.

Any amendment or change order increasing or decreasing the Project GMP shall include and Construction Manager shall be reimbursed for additional cost to be incurred for the Bond or the Commission shall be credited for the reduction in costs for the Bond in an amount calculated by multiplying 1.041% by the amount of the adjustment to the GMP.

(b) Subcontractor Default Insurance ("SDI"). Construction Manager shall provide Subcontractor Default Insurance ("SDI"), for which Construction Manager shall be reimbursed at an amount calculated using the rate of \$11.50 per \$1,000 of Subcontractor amounts enrolled in SDI to be set forth in the Project GMP, which shall be invoiced and payable, without retention or retainage of any kind, at the time the first application for payment is submitted after the Amendment fixing the Project GMP is executed. Should the work proceed before an amendment establishing the Project GMP is executed, SDI will be reimbursed at a rate of \$11.50 per \$1,000 of the amount of subcontracts executed and enrolled in SDI by Construction Manager which shall be invoiced and payable, without retention or retainage of any kind, each month as such subcontracts are executed and costs incurred.

Any amendment or change order increasing or decreasing the Guaranteed Maximum Price shall include and Construction Manager shall be reimbursed for the additional SDI to be incurred or the Commission shall be credited for the reduction in SDI at the rate of \$11.50 per \$1,000 of adjustment to the Subcontract amounts.

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 the Standard Terms and Conditions. Repeated 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, which values shall be modified as Subcontract awards are made, 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 Construction Manager will submit to the Authorized Commission Representative a pencil copy of the application for payment for Work completed through the end of the current month and the monthly progress report required by Article 7 of the Standard

Terms and Conditions. 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 project completion of Work through the end of the current month.

(d) 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 for which payment has been made by the Commission, if any, have been completely fulfilled and discharged. 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. Construction Manager shall submit form of waiver of lien for partial or progress payment to the Commission for approval. The application for partial payment will conform to approvals made by the Commission Representative at the payment review meeting.

(e) 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, 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.

(f) **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(j)) 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(j)) 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.

(g) 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(g)(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(i), below. Unless a written extension is granted by the Commission, the Construction Manager must submit the final payment application and waivers consistent with Section 4.05(b). The Construction Manager's failure to do so within the required time period is an event of default.

(h) 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, but only in the event Construction Manager has failed to correct the non-conforming Work after receiving reasonable notice from the Commission that the Commission will correct the non-conforming Work, and Construction Manager has failed to commence correcting such non-conforming Work promptly upon receipt of such notice from the Commission.

(i) 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 (including bonds, insurance and fees) less prior partial payments, retainage, and payments withheld in accordance with the provisions of Section 5.01(k) "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.

(j) 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(l) or the prompt payment to Subcontractors required by Section 5.01(m).

(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 following written notice from the Commission.
- (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 persistent failure to maintain progress of the Work in accordance with 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.

(l) **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 seven (7) 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 Construction Manager of its responsibilities under the Agreement. The Construction Manager 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.

(m) 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 of receipt of such final payment from the Commission, and 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. 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](http://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(m).

(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.

(n) 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 event 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.

(o) 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.

(p) **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 month 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.

(q) **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.

(r) **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; provided, however that, to the extent permitted by law, the Commission shall not direct that the amount of such claim be deducted or withheld from payments due or to become due to Construction Manager if Construction Manager demonstrates that (i) all documentation required by the Agreement for payment of said amount to Subcontractor, worker or employee or for such materials and equipment furnished and used in or about the Work has been properly submitted to the Commission by Construction Manager, or (ii) Construction Manager has received the approval of the Circuit Court of Cook County to furnish a bond as security for the lien. 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, which reimbursement may include such reasonable de-mobilization costs approved by the Commission. 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, which shall be invoiced at the hourly rates set forth in Exhibit G and for actual reimbursable expenses. The number of days during which the suspension period lasted, including any remobilization time, and such additional times as the parties may mutually agree is required, will be added to the Date of Substantial and 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 it discovers in its role as a construction manager and not as a design professional, to the Authorized Commission Representative. In the event that Construction Manager believes that additional compensation and/or an adjustment to the Project Schedule 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 and/or time extension 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 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) Repeated 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 required by 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, or diligently commence curing, 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, with the exception of the Liquidated Damages set forth in Article 4.05(f)(1), 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 11 of the 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 7 of the Standard Terms and Conditions. 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 11 of the Standard Terms and Conditions.

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 Construction Manager. 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, and Commission shall continue making payment in accordance with the provisions of this Agreement.

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 or other event beyond the Construction Manager’s reasonable control. Notwithstanding the foregoing, Construction Manager may be entitled to an equitable adjustment to the Project Schedule and/or Project GMP, subject to the limitations of Article 7 of the Standard Terms and Conditions, in the event of a Force Majeure event.

## **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 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:      Turner Construction  
55 East Monroe Street, Suite 3100  
Chicago, Illinois 60603  
Attn: Stephen W. Fort

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.

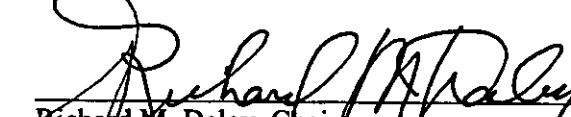
Section 8.13 – Construction Manager's Authority. The Construction Manager represents that its execution of the Agreement is authorized by a resolution of its Board of Directors, if a corporation, or similar governing document if a partnership or a joint venture, and the signature(s) of each person signing on behalf of the Construction Manager have been made with complete and full authority to commit the Construction Manager to all terms and conditions of 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.

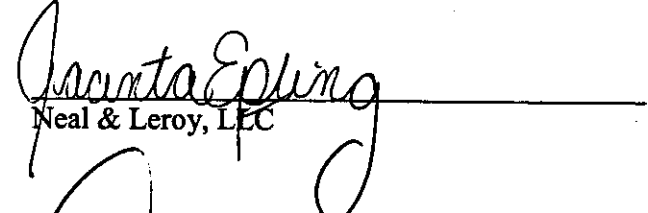
**PUBLIC BUILDING COMMISSION OF CHICAGO**

By:   
Richard M. Daley, Chairperson

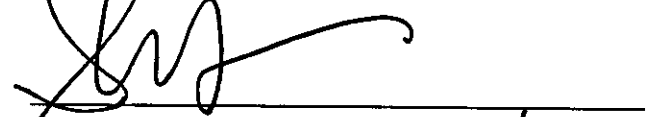
By:   
Executive Director

By:   
Secretary

Approved as to Form and Legality:

By:   
Neal & Leroy, LLC

**CONSTRUCTION MANAGER**

RAB By: 

Print Name: Stephen W. Fort

Its: Vice President, General Manager

## **LIST OF EXHIBITS**

**Exhibit A: Scope of Services**

**Exhibit B: Contract Documents**

**Exhibit C: Compensation/Cost of the Work**

**Exhibit D: Subcontract Terms and Conditions**

**Exhibit E: Insurance and Bonding Requirements**

**Exhibit F: Special Conditions Regarding MBE/WBE Participation**

**Exhibit G: Key Personnel and Construction Manager Billing Rates**

**Exhibit H: Form of Construction Manager's Guarantee**

**Exhibit I: Requirements for Commission Field Office**

**Exhibit J: Standard Terms and Conditions for Construction Management Contracts**

**Exhibit K: Project Summary Schedule**



## **EXHIBIT A**

### **SCOPE OF SERVICES**

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

The Construction Manager shall provide the following Services:

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

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

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

A.1.4 Develop written project procedures and controls, in cooperation with the Commission that incorporate the PBC's online document management system, CW, which, upon approval by the Commission, will be used for the management and coordination of this Project throughout the term of this Agreement.

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

A.1.6 Prepare detailed value-engineering procedures and submit to the Commission for review and approval. Upon completion, review the construction documents along with any/all value engineering items with the Commission and its consultants. Recommend potential value engineering and constructability alternatives. The Construction Manager is required to provide value engineering services during the course of the Project. The value engineering project plan must be performed prior to bidding the work. The Construction Manager will not be required to prepare the value engineering management plan more than once per GMP iteration. The Construction Manager will coordinate these activities with the Commission and its consultants.

A.1.6.1 After a complete review of the Project, evaluate the Contract Documents available at the time of the Construction Manager's commencement of Pre-Construction Services, and obtain an understanding of the intent of the Architect of Record, the Commission and the User Agency, provide value analysis/constructability Services and offer cost savings

suggestions and best value recommendations to the Commission. All recommendations shall be in writing and must be fully reviewed with the Architect of Record, Commission and the User Agency and approved by the Commission prior to implementation.

- A.1.6.2 Perform value analysis efforts to result in a design that is most effective in first costs as well as long term operational costs relative to issues of energy use and facility maintainability. The Architect of Record will assist in performing the life cycle analysis of the alternatives and the Construction Manager will develop the cost analysis to support the effort of the team.
- A.1.6.3 Prepare detailed cost estimates supporting any/all value analysis. Value analysis efforts shall also take into consideration applicable constructability issues that may decrease the duration of the construction schedule and/or decrease the construction cost. Propose recommendations to the Commission and User Agency on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction cost including estimates of alternative designs or materials, preliminary budgets and possible economies.
- A.1.6.4 Promptly notify the Commission, the Architect of Record and the User Agency in writing upon observing any features in the design that appear to be ambiguous, confusing, conflicting or erroneous.
- A.1.6.5 Provide value analysis recommendations within 15 days following the issuance of any interim Construction Documents (e.g., Design Development, 60% CD). At a minimum, each such written report shall contain: (1) a description of the value analysis/constructability issue with background information; (2) a summary of the Construction Manager's in-depth study/research; and, (3) written recommendations for addressing the issue.

A.1.7 Prepare a progress schedule for the project utilizing the Critical Path Method (CPM), in accordance with Article 7 of the Standard Terms and Conditions. The Construction Manager shall utilize Primavera Project Planner P3E/C as a scheduling software package. The Construction Manager's CPM schedule, as a minimum, shall indicate commencement dates of the various phases/stages of Services, including, without limitation the mobilization activities, placing or orders, delivery of materials and equipment, preparation, submittal, and approval of all required submittals, preparation and procurement of material and equipment furnished by any contractors, vendors, and suppliers. Interface all activities performed by others upon which the Construction Managers schedule depends, all work activities and field construction operations, utility agency related work, equipment installation, testing and balancing, and all required

inspections by agencies having jurisdiction for permitting, licensing, and Certificate of Occupancy. The Construction Manager's schedule upon submittal for the Project GMP shall include estimates of craft hours and or crew sizes for each activity.

**A.1.8 Prepare Budget GMPs for review by the Commission and the User Agency.**

- A.1.8.1** An overview of the current budget estimate compared to the Commission's budget.
- A.1.8.2** A detailed comparison and reconciliation of the current budget estimate to the previous budget estimate, with an explanation of any variance by component.
- A.1.8.3** A summary of all approved cost revisions.
- A.1.8.4** A list of Drawings and Specifications, including all addenda thereto.
- A.1.8.5** A list of the clarifications and assumptions made by the Construction Manager in the preparation of the GMP to supplement the information contained in the Drawings and Specifications.

**A.1.9** The Construction Manager shall also include Budget GMP Contingencies in amounts approved by the Commission, to help reduce the risks assumed by the Construction Manager in providing the GMP for the Project. The Commission and the Construction Manager acknowledge that the contingencies are included to adjust the estimates for eventualities that have not been taken into precise account in the establishment of the Budget GMP including.

**A.1.10** In the event that the proposed Project GMP exceeds the Project Construction Budget, the Commission may elect at its discretion to direct the Construction Manager to work in conjunction with the Architect of Record to re-design the Project (as an additional service subject to the limitations of Paragraph A.1.10.4 below) as a final Good Faith effort to maintain the Project Program and meet the Project Construction Budget as follows:

- A.1.10.1** The Construction Manager shall work with the Commission, the Commission's consultants, and the User Agency and provide input to alter and re-draft Construction Documents as necessary to accomplish the required reduction in cost.
- A.1.10.2** The Construction Manager shall develop and provide to the Commission a Project GMP in connection with the re-drafted and altered Construction Documents to accomplish the necessary reductions in costs.

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

A1.10.4 If the Commission determines in its reasonable discretion that the Construction Manager has not performed the Pre-Construction activities consistent with the standard of care required by the Agreement, any services required of the Construction Manager pursuant to the above Paragraphs A.1.10.1 through A1.1.10.3 shall not be an additional service, but shall be performed at no additional cost to the Commission.

A.1.11 The Commission has the right to reject or to withhold, in its discretion, approval of any Project GMP as originally submitted or as adjusted. In that event, the Contract will terminate without penalty according to Section 5.02 of the Agreement within thirty (30) days, or at the end of the Pre-Construction Phase of the work under the Contract, whichever occurs sooner.

The Construction Manager shall also:

A.1.12 Create and maintain a cost control system that compares the Project GMP with the actual cost for activities in progress and estimates for uncompleted tasks and proposed changes.

A.1.13 At the direction of the Commission, make appropriate adjustments to the Project GMP via an amendment to the Agreement if the Commission discovers any inconsistencies or inaccuracies in the information presented.

A.1.14 Prepare a bidding strategy(ies) including bid packaging and permitting strategy for review and approval by the Commission and the User Agency. At a minimum the bidding strategies shall contain, (a) project scope, (b) cost estimate, (c) schedule (d) identify long lead items (e) proposed bidders and procurement methodology, (f) proposed MBE/WBE/ participation, (g) proposed minority and female hiring plans with labor force projections, (h) proposed City of Chicago resident participation and (i) proposed community hiring plan/initiatives.

A.1.15 Establish and maintain an open line of communication with the entire team, including the Commission, its consultants, and the User Agency throughout the project duration.

A.1.15.1 In connection with communications, the 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.

Project documentation shall include, without limitation, RFIs, submittals, schedule information, project photographs, financial information, project correspondence and project logs to facilitate communications among the Construction Manager, its subcontractors, the Commission, the Commission's consultants, and the User Agency. The Construction Manager shall coordinate all access requirements with the Commission.

A.1.16 Prepare and identify strategies that will assist in facilitating construction activities, which can reduce the overall construction duration.

A.1.17 Prepare a detailed cost estimate of the construction documents in accordance with the CSI Master Format.

A.1.18 Provide site security, as required.

A.1.19 Upon issuance of the building permit(s), direct the issuance of the "Issue for Construction" drawings for each approved bid package with the Architect to ensure completeness and accuracy.

A.1.20 Coordinate and conduct pre-construction conferences with all bidders, as necessary, to review all contract requirements at a location designated by the Commission. Prepare and issue meeting minutes, as required.

## **A.2 Bidding Phase**

The Construction Manager shall:

A.2.1 Develop bid packages for all materials and work and provide full assignment, coordination and responsibility for the work. Provide the Commission a checklist of the Construction Manager's bidding and procurement process, from beginning to end, for the Commission's review and approval. The Construction Manager's bidding and procurement process shall include at a minimum all the items specified in Paragraph A.1.14.

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

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

A.2.4 Prepare a Notice of Bid Opportunity for the Commission's approval. Upon the Commission's approval, bid the work in accordance with Section 20 of the Public Building Commission Act, 50 ILCS 20/20.

A.2.5 Maintain accurate records of the bid notification process for each package. Provide a copy of these records to the Commission in a timely manner but in no event shall these records be presented to the Commission less than 5 Days prior to the bid opening.

A.2.6 Schedule and administer pre-bid conference(s), scope review sessions at a location designated by the Commission, outline the proposed approach to the Project, project logistics, manpower requirements, schedule and sequence of operations; and prepare and distribute minutes of the pre-bid meetings.

A.2.7 During the bidding period(s) in conjunction with the Architect of Record, prepare and distribute written addendum, to plan holders and agencies, to address questions raised by potential Subcontractors.

A.2.7.1 The format of the addendum should correspond with the Commission's format.

A.2.7.2 Review addendum material with the Commission, and obtain approval prior to issuing any addendum(s) to sub-contractors.

A.2.8 Schedule and administer Bid Opening(s) in accordance with Commission's Procurement protocol and in the presence of the Commission's Project Manger(s) and Affirmative Action Consultant at a location designated by the Commission.

A.2.9 Evaluate base bids, alternate proposals, unit prices, and such other data as may be pertinent.

A.2.9.1 Determine the lowest responsive and responsible bidder.

A.2.10 Recommend the award of a Subcontract for each scope of work to the Commission in writing.

A.2.11 After the Commission approves the award of a Subcontract for a specific scope of work in writing, the Construction Manager shall execute a Subcontract with the successful bidder.

A.2.12 In accordance with the requirements of A.1.1, ensure that the "Issue for Bid" Contract Documents include all constructability review comments.

A.2.13 Review and verify all necessary Instruction to Bidders, Proposal Forms, Contract Forms, General Conditions and Special Conditions of the contract supplied by the Commission.

A.2.14 Prepare and distribute bid packages, as required, for the project. Ensure that this activity is fully coordinated with the Commission, its consultants, and the Architect prior to distributing the bid packages.

A.2.15 Coordinate the preparation of all bid packages, as required, with the Commission's consultants, including but not limited to Material and Testing & Inspection and Environmental consultants.

A.2.16 Conduct and manage scope review sessions with all bidders upon submittal of bids with the Commission and its consultants to determine lowest responsive responsible bidder, as required, at a location designated by the Commission. Prepare and distribute written summaries of each scope review session to the Commission.

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

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

- A.3.1.1 The Commission's approval of the Project GMP and issuance of applicable Notice to Proceed; or
- A.3.1.2 The Commission's first authorization to the Construction Manager to award a Subcontract for Work, or to issue a purchase order for materials or equipment required for the Project in accordance with the Project Summary Schedule.

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

- A.3.2.1 A project manager as the primary point of contact with the Commission, the User Agency, the Architect of Record members and Subcontractor(s) responsible for the day-to-day on-schedule and on-budget performance of the Work. The project manager shall monitor the Work of Subcontractors and coordinate the Work with the activities and responsibilities of the Commission, the Architect of record and Construction Manager to complete the Project in accordance with the Commission's objectives of cost, time and quality.
- A.3.2.2 The Construction Manager shall maintain a competent and adequate fulltime staff approved by the Commission at the Project site to coordinate and provide adequate direction of the Work, and to monitor progress of the Subcontractors on the Project until final acceptance.

- A.3.2.3 It is understood that the designated and approved on-site resident Construction Manager representatives will remain on the job and in-charge as long as those persons remain employed by the Construction Manager, unless the Commission has reason to agree otherwise during the course of the Project and a contract amendment is issued accordingly by the Commission.
- A.3.2.4 The Construction Manager shall establish an on-site organization and lines of authority in order to carry out the overall plans of the Project Team.
- A.3.2.5 The Construction Manager shall conduct orientation sessions for its onsite field staff and Subcontractor's staff, as applicable, as to the Project Procedures as developed during the Pre-Construction Phase. The Commission representatives may attend such sessions.
- A.3.2.6 The Construction Manager will provide for all coordination with the onsite Subcontractors the necessary on-site services for the construction activities and onsite requirements of the Construction Manager, the Commission and Architect of Record.
- A.3.2.7 The Construction Manager shall require all Subcontractors to submit a Daily Report which is to include, but not be limited to, a summary of work performed, information required, status of change order time and materials (T&M) work, materials received, and safety incidents. Such documents shall be provided to the Commission not less frequently than on a weekly basis.
- A.3.2.8 The Construction Manager shall maintain a detailed daily diary of all events, which occur at the job site or elsewhere, and which affect, or may be expected to affect, project progress. The diary shall record weather data, including minimum and maximum temperatures, precipitation type and amount, sky conditions, and wind velocities. The diary shall also record all visitors, and include a detailed list of all material deliveries to the site. The diary shall be available to the Commission at all times and shall be turned over to the Commission upon completion of the Work.
- A.3.2.9 Review the adequacy of the Subcontractors' supervision, personnel and equipment and the availability of necessary materials and supplies. Where inadequate, direct that the necessary action be taken to remedy the deficiency.
- A.3.2.10 Maintain all Project documentation systems at the job site. These systems shall be used to organize and administer document updates and to continuously keep the Subcontractors up-to-date with the latest design conditions.
- A.3.2.11 Establish and maintain on the site a complete library of all Construction Documents, addenda, bulletins, scope changes, approved shop drawings and material samples.

A.3.3 The Construction Manager shall schedule and conduct progress meetings as conditions on the Project require, but at least weekly. The Commission, the Architect of



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

A.3.4 The Construction Manager shall be responsible for managing the final cleaning requirements for the project. The Construction Manager will bid the costs and assign a subcontractor responsible for all final cleaning.

A.3.5 The Construction Manager shall be responsible for fully coordinating all material and testing inspections required by the project specifications with the material testing and inspection consultant (also called Independent Testing Lab or "ITL") hired by the Commission.

A.3.6 The Construction Manager shall be responsible for establishing and maintaining complete RFI and submittal logs throughout the duration of the project. The CM shall distribute copies of these logs to the Commission, its consultants, and the User Agency as directed.

A.3.7 Identify and schedule all required pre-installation conferences prior to the commencement of the required construction activities.

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

The Construction Manager shall:

A.4.1 Perform comprehensive final inspections of all trade contractor work and elements of the work prior to inspection by the Commission, the User Agency and the Architect of Record of the Project to verify that the materials furnished and Work performed are in accordance with the Contract Documents.

A.4.2 Request inspection for substantial completion in accordance with the Standard Terms and Conditions. Manage the issuance of the letter of Substantial Completion as prepared by the Architect of Record in consultation with the Commission and the User Agency.

A.4.3 Coordinate the preparation of punch list(s) as required by the Architect of Record indicating the items of work remaining to be accomplished. All punch list work items must be completed within the time determined by the Commission pursuant to the Agreement and Standard Terms and Conditions, unless delivery of the material required to complete a specific punch list item extends beyond the time determined by the Commission, and Construction Manager has provided the Authorized Commission

Representative notice of the schedule for such delivery. Obtain certificate of Final Completion as prepared by the Architect of Record pursuant to the Contract Documents in consultation with the Commission and the User Agency.

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

A.4.5 Facilitate the preparation of record (i.e. "as-built") drawings as prepared by the Subcontractor(s) and operations and maintenance manuals of the project in accordance with the specifications. The record documents will be subject to the approval of the Commission, the Commission's Consultants and the User agency. Submit approved record documents to the User Agency upon completion of the Project.

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

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

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

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

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

**EXHIBIT B**

**CONTRACT DOCUMENTS**

Agreement for Construction Management Services

Exhibits to the Agreement for Construction Management Services (Exhibits A through K)

Project Drawings:

Building Construction and Site Development  
Issue for Design Development Review, Dated 08/13/2009  
(Drawing Index Follows)

Project Manual:

Issue for Design Development, Dated 08/13/2009  
(Table of Contents Follows)



PROJECT: 2009.03.00  
ISSUED FOR: Ogden Relocation Elementary School

The following listed documents comprise the project manual for the project listed above. Where numerical sequence of sections is interrupted, such interruptions are intentional.

The complete Project Manual for this project consists of this entire Volume, which must not be separated for any reason. The Architect and Owner disclaim any responsibility for any assumptions made by a contractor or subcontractor who does not receive a complete Project Manual, including all sections listed in the Table of Contents.

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- 15010 General Provisions For Mechanical Work
- 15020 Shop Drawings, Product Data and Samples
- 15050 Basic Mechanical Materials and Methods



15051	Miscellaneous Equipment and Work
15055	Motors
15060	Hangers and Supports
15074	Vibration Controls For HVAC Piping and Equipment
15076	Identification For Plumbing Piping and Equipment
15077	Identification For HVAC Piping and Equipment
15082	Plumbing Insulation
15083	HVAC Insulation
15110	Valves
15124	Expansion Fittings and Loops or HVAC Piping
15127	Meters and Gages For HVAC Piping
15140	Domestic Water Piping
15145	Domestic Water Piping Specialties
15150	Sanitary Waste and Vent Piping
15155	Drainage Piping Specialties
15160	Storm Drainage Piping
15181	Hydronic Piping
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15195	Natural-Gas Piping
15520	Feedwater Equipment
15221	Chemical-Waste Piping
15305	Fire-Suppression Piping
15320	Electric-Drive, Centrifugal Fire Pumps
15441	Domestic Water Pumps
15444	Packaged Booster Pumps
15445	Sewage Pumps
15486	Fuel-Fired Water Heaters
15513	Condensing Boilers
15550	Breechings, Chimneys, and Stacks
15555	Draft Control Devices
15626	Air-Cooled Rotary Screw Water Chillers 130 Tons and Greater
15725	Modular Indoor Air-Handling Units
15761	Air Coils
15766	Propeller Unit Heaters
15769	Radiant Heating Panels
15815	Metal Ducts
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15861	Air Filters
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15990	Testing, Adjusting, and Balancing

**DIVISION 16 – ELECTRICAL SYSTEMS**

16010	Basic Electrical Requirements
16050	Basic Electrical Materials and Methods
16055	Overcurrent Protective Device Coordination and Arc Flash Study
16060	Grounding and Bonding

16075	Electrical Identification
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16190	Hangers and Supports For Electrical Systems
16264	Static Uninterruptible Power Supply
16289	Transient Voltage Suppression
16410	Enclosed Switches and Circuit Breakers
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APPENDIX -- FOR REFERENCE ONLY

100% SITE PREPARATION PACKAGE PLUS ADDENDUM NO. 1

BIDDING REQUIREMENTS

00200	<i>Information Available to Bidders</i>	07/15/09
	Geotechnical Report dated 11/06/08 (CD attached)	
	Environmental Site Analysis, Phase 1 (CD attached)	
	Ground Penetrating Radar Survey (GPR) REVISED	06/19/09
	Traffic Study REVISED	06/30/09
	Earth Retention Memorandum	06/24/09
	Abatement Plans	07/08/09
	Hazardous Material Survey Summary Report	07/07/09
	Groundwater Monitoring Report	02/23/09 thru 04/20/09
00201	Summary of Site Conditions	07/07/09
	Appendices A through E	

CONDITIONS OF CONTRACT (Not Used)

DIVISION 1 - GENERAL REQUIREMENTS

01001	LEED Consultant	06/26/09
01014	Erosion and Sedimentation Control	06/26/09
01100	Summary of Work	06/26/09
01230	<i>Alternates</i>	07/15/09
01352	LEED Requirements	06/26/09
	Appendix A – Materials Credits Documentation Sheet	
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	Appendix C – LEED for Schools Checklist	
01524	Construction Waste Management	06/26/09

DIVISION 2 - SITE CONSTRUCTION

02050	Demolition	06/26/09
02089	<i>Hazardous and Universal Waste Management (by Owner)</i>	07/07/09
02116	<i>Underground Storage Tank Removal (by Owner)</i>	07/07/09
02133	<i>Lead Based Paint Mitigation (by Owner)</i>	07/07/09
02135	<i>Asbestos Abatement for Pre-Demolition (by Owner)</i>	07/07/09
02136	<i>General Dust, Fume and Odor Control (by Owner)</i>	07/07/09
02222	Excavating, Backfilling and Compacting for Utilities	07/15/09
02300	Earthwork	07/16/09
02316	<i>Soil, Fill, CU Structural Soil and Construction and Demolition Debris Removal (by Owner)</i>	07/07/09
02317	<i>Special, Nonhazardous Special and Hazardous Waste Soil Removal and Disposal</i>	07/07/09
02318	<i>Acceptance of Backfill, Top Soil &amp; CU Structural Soil</i>	07/07/09
02911	Landscape Protection, Tree Pruning and Removals Emerald Ash Border Compliance Agreement	06/26/09

DIVISIONS 3 – 16 (NOT USED)

END OF TOC

## EXHIBIT C

### COMPENSATION/COST OF THE WORK

#### C.0 PRE-CONSTRUCTION FEE

As consideration for Construction Manager's performance of the Pre-Construction Services, the Commission shall pay Construction Manager a lump sum fee of \$150,000.00 (one hundred and fifty thousand dollars) ("Preconstruction Fee") which shall be payable in equal monthly installments over the four (4) month pre-construction period as agreed to by the Commission and the Construction Manager. The Preconstruction Fee constitutes the Construction Manager's full fee for Preconstruction Services described in Exhibit A, Section A.1 and A.2. The Construction Management Fee will be allocated and payments made on a monthly basis on a mutually agreed to fee schedule but only as commensurate with the progress of the work.

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

C.1.1 CONSTRUCTION MANAGEMENT FEE. The Construction Manager shall be paid a lump sum fee of 2.0% of the sum of (i) the Cost of the Work (which Cost of the Work shall include Bonds and Insurance, Allowances, Construction Manager's Contingency, Design Completion Allowance and Reimbursable Trade Contractor Costs, all as defined hereinafter), (ii) the Construction Management Fixed General Conditions Reimbursement and (iii) the Construction Management Not-to-Exceed General Conditions Reimbursement (the "Construction Management Fee"). If, however, the Project GMP at the time of completion exceeds the Project GMP fixed by the Project GMP Amendment to the Agreement by more than \$1,000,000.00 (aggregate additive Change Orders appropriately net of Deductive Change Orders) the Construction Manager will be paid the Construction Management Fee plus an additional amount equal to the product of 2.25% times the amount by which the Project GMP at completion as modified by Change Orders exceeds the sum of the Project GMP fixed by the Project GMP Amendment plus \$1,000,000. The Construction Management Fee, in the absence of either a change in scope of the Project by the Commission or the issuance of Commission-originated additive change orders, or both, constitutes the Construction Manager's full fee for Construction Services described in Exhibit A, Section A.3 and A.4. The Construction Management Fee will be allocated and payments made on a monthly basis on a mutually agreed to fee schedule but only as commensurate with the progress of the work.

C.1.2 The Construction Management Fee will not include any Subcontractors costs, vendor costs, consultant costs, or any other construction costs.

## C.2 CONSTRUCTION MANAGER'S FIXED GENERAL CONDITIONS REIMBURSEMENT

Construction Manager's Fixed General Conditions Reimbursement for the period beginning with the start of Construction Activities to the time the Project GMP Amendment is executed, in accordance with the Project Summary Schedule included as Exhibit K, shall be the fixed sum of \$936,225 (nine hundred thirty-six thousand, two hundred and twenty-five dollars), as may be reduced to the extent any Fixed General Conditions Items (as specified below) are made a part of any subcontract or trade contractor agreement.

### C.2.1 FIXED GENERAL CONDITIONS REIMBURSEMENT ITEMS.

The Construction Manager's Fixed General Conditions Reimbursement includes compensation for the following work and services:

- .1 Management, Supervisory and Technical Personnel, including, without limitation:
  - .1 Project Executive
  - .2 Senior Project Manager, Project Manager
  - .3 Assistant Project Manager, Project Engineers
  - .4 MEP Coordinator
  - .5 General Field Superintendent, Senior Field Superintendent
  - .6 Field Superintendent, Assistant Superintendent
  - .7 Timekeeper
  - .8 Secretary, Clerical
  - .9 Accountant
- .2 General and administrative expenses for site office, including, without limitation:
  - .1 Project Office/Field Office
  - .2 Storage Trailers/Sheds
  - .3 Office Supplies Furniture & Equipment  
(Copier, Fax, Computers, Printers, Plotters)
- .3 Communication Equipment
  - .1 Telephone service including local calls and site telephone service.
  - .2 Mobile Phone Service
  - .3 Computer charges, including internet service.
- .4 Miscellaneous
  - .1 Parking, mileage and cab fares.
  - .2 Legal Expenses for Agreement (if any)
- .5 A fully functioning site office with provisions for document reproduction, facsimile transmission and telephone services,

postage and express delivery. Construction Manager shall provide temporary facilities for the Commission pursuant to Exhibit I.

- .6 Data processing costs related to the work.

### C.3 CONSTRUCTION MANAGER'S NOT-TO-EXCEED GENERAL CONDITIONS REIMBURSEMENT

Construction Manager's Not-To-Exceed General Conditions Reimbursement for the period beginning with the start of Construction Activities to the time the Project GMP Amendment is executed, in accordance with the Project Summary Schedule included as Exhibit K, shall be an amount equal to the actual costs and expenses incurred by the Construction Manager, subject to a Not-to-Exceed sum of \$394,130 (three hundred ninety-four thousand, one hundred and thirty dollars). Construction Manager's sole and complete compensation for an extension in the Date of Substantial Completion granted by the Commission shall compensation for the actual costs incurred by the Construction Manager due to the extension, subject to the review and approval of the Commission.

In the event that an overage on the Not-To-Exceed General Conditions Reimbursement is not the result of an excusable delay, the Construction Manager's Contingency may be used to pay for such overage, however, if the Construction Manager's Contingency has been exhausted, the Construction Manager shall not be entitled to any increase in the Project GMP or Construction Management Fee due to such overage.

C3.1 The Construction Manager's Not-To-Exceed General Conditions Reimbursement Items shall include the following:

- .1 Building Layout and Elevation Benchmarks
- .2 Street Cleaning/Snow Removal
- .3 Pest Control
- .4 Access Road Maintenance
- .5 Construction Barricade Graphics
  
- .6 Temporary Utilities
  - .1 Temporary Gas Lines
  - .2 Temporary Energy Costs (Stated as an Allowance)
  - .3 Temporary Utility Enclosures
  - .4 Temporary Heat
  - .5 Temporary Water for Drinking
  
- .6 Safety
  - .1 Carpenters for Safety Maintenance
  - .2 Temporary Stair Maintenance
  - .3 Handrails and Toe Board Maintenance
  - .4 Safety Equipment
  - .5 Overhead Protection/Canopies

- .6 First Aid Supplies
- .7 Watchman Services
- .8 Fences and Gates
- .9 General Cleaning and Disposal
  - .1 General Construction Cleaning
  - .2 Dumpster Container service, removal and disposal
  - .3 Floor Trash Buggies
  - .4 Labor for General Cleanup
- .10 Miscellaneous
  - .1 Monthly Construction Progress Photos
  - .2 Postage/Overnight mail/Messenger Service
  - .3 Out of Town Travel Expenses
  - .4 Temporary Toilets
  - .5 Copier Charges
  - .6 Bidding Document CD's and Revisions
  - .7 Long Distance Communications
- .11 Pre-Conditions Site Survey
- .12 Settlement Survey
- .13 Vibration Monitoring
- .14 Indoor Air Quality Monitoring

#### C.4 COST OF THE WORK

C.4.1 Reimbursable Trade Contractor Costs. Reimbursable Trade Contractor Costs shall consist of the following:

- .1 The sum of the lowest responsible responsive subcontract amount and material supply bids obtained in accordance with the competitive bidding process set forth in Section 4.02(e)(3) of the Agreement.
- .2 All subcontracts shall be on a lump sum basis with unit costs specified where the Commission and the Construction Manager have deemed the purchase by unit prices to be appropriate.

C4.2 Allowances. The Commission and the Construction Manager acknowledge that certain portions of the work need not or will not be able to be established by the competitive bidding process prior to establishing the Cost of the Work and the Project GMP. The Construction Manager has, as a part of the Reimbursable Trade Contractor Costs, established a reasonable estimate of the cost based upon available information for such portions of the Work. Such estimates are set forth as "Allowances" on the Schedule of Values used in the Cost of the Work for the Project GMP. The Construction Manager shall obtain trade contractor prices for such

Allowances, when appropriate, through the procurement process set forth in Section 4.02(e)(3). Construction Manager shall be entitled to compensation if the actual cost for the portions of Work reflected in the Allowance line item exceeds the Allowance. The Cost of the Work and Project GMP shall also be decreased by the amount the actual cost for such portions of the Work are less than the Allowance. At such time as the Construction Manager executes subcontracts for any of the scopes of work identified as Allowances, such Allowance line items shall be deemed converted from Allowances to Trade Contractor Costs and shall be treated accordingly.

C4.3 The sum of the Reimbursable Trade Contractor Costs, Allowances (as defined hereinafter), Bonds and Insurance, and the CM Contingency (as defined hereinafter) shall be referred to as the Cost of the Work.

#### C.5 CONSTRUCTION MANAGER'S CONTINGENCY

The Construction Manager's Contingency ("CM Contingency") shall be established at the time of the Project GMP as a percentage of the sum of the Cost of the Work, the Fixed General Conditions and the Not-to-Exceed General Conditions. The CM Contingency may be used to pay Reimbursable Trade Contractor Cost overages and additional costs associated with schedule recovery not the subject of a Change Order. Permissible uses of the CM Contingency also include, without limitation, funding shortfalls between line items in the Project GMP and the trade contracts that are not the result of the Construction Managers acts, errors or omissions (where such acts, errors or omissions are inconsistent with the standard of care set forth in the Agreement), subcontractor defaults, and the Builder's Risk insurance deductible. The CM Contingency may be utilized to fund costs that would otherwise fall within the Fixed General Conditions Reimbursement or the Not-To-Exceed General Conditions Reimbursement to the extent such costs are associated with an event for which the Construction Manager is entitled to access the CM Contingency.

Except as specifically set forth in the Agreement, the CM Contingency shall not be used to fund Work that the parties agree is the proper subject of a Change Order. Payment of funds out of the CM Contingency is conditioned upon the Construction Manager diligently attempting to obtain performance from subcontractors without first using the CM Contingency. If Construction Manager accesses the CM Contingency in connection with an event for which insurance proceeds may be available, the Construction manager shall take all reasonable measures to recover under the insurance coverage and shall reimburse the CM Contingency to the full amount of such recovery up to the amount of the CM Contingency allocation at issue. To the extent the CM Contingency payment resulted from a subcontractor default or other performance deficiency, the Construction Manager shall seek recovery from the responsible subcontractor and shall reimburse the CM Contingency to the full amount of such recovery up to the amount of the CM Contingency allocation at issue.



The Construction Manager shall not be entitled, to any additional overhead, profit or other markup on any CM Contingency expenditure as the parties acknowledge that the Construction Manager's Fee covers such overhead, profit or other markup. The CM Contingency shall be used in accordance with the Agreement and this Exhibit. When accessing the CM Contingency, the Construction Manager shall provide the Commission with contemporaneous written notice, which notice shall include a description and amount of the Cost of the Work to be covered by the CM Contingency, the entities being paid, and the reasons for the use of the CM Contingency. In the event that the Commission determines that the application of the CM Contingency was inconsistent with the terms of the Agreement or this Exhibit, the Construction Manager shall be responsible for returning such sums to the CM Contingency.

#### **C.6 BONDS AND INSURANCE**

The parties shall utilize a subcontractor default insurance (SDI) program administered by the Construction Manager in lieu of individual subcontractor bonds on this Project. Cost of Bonds shall mean the actual costs for the payment and performance bonds required by the Agreement and the cost of subcontractor default insurance. The Costs of the Bonds or Subcontractor Default Insurance (SubGuard) purchased directly by subcontractors or provided through the subcontractor default insurance program shall be treated as Reimbursable Trade Contractor Costs, but only to the extent such subcontractor bonds or subcontractor default insurance costs have been reviewed and approved by the Commission, such review to be exercised in the Commission's reasonable discretion.

Insurance: The parties shall utilize a contractor controlled wrap-up insurance program ("CCIP") for the Construction Manager's workers compensation insurance and commercial general liability insurance and for individual subcontractor workers compensation and commercial general liability insurance in the form and with such limits as prescribed in the "Ogden Replacement Elementary CCIP Insurance Manual" prepared by Turner Construction Company and dated October 1, 2009.

#### **C.7 ITEMS NOT INCLUDED IN THE COST OF THE WORK**

The following items are not included and shall not be included in the Cost of the Work.

- C.7.1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the Project Site, unless identified in Exhibit G.
- C.7.2 Expenses of the Construction Manager's principal office and offices, other than the site office.
- C.7.3 Overhead and general expenses except as may be set forth in the Agreement or this Exhibit.

- C.7.4 The capital expenses of the Construction Manager and the subcontractors including interest on capital employed in furtherance of the Work
- C.7.5 Costs due to the default or negligence of the Construction Manager or anyone directly or indirectly employed by the Construction Manager, including without limitation, costs for the correction of damaged, defective or non-confirming Work, except as allowed by the Construction Manager's Contingency, disposal and replacement of materials and equipment incorrectly ordered or supplied and repairing damage to property not forming a part of the Work.
- C.7.6 Overtime wages or salaries (and fringe benefits related thereto) incurred by the Construction Manager as a result of the Construction Manager's failure to perform the work in a timely manner in accordance with the Construction Schedule except as allowed by the Construction Manager's Contingency;
- C.7.7 Costs that would cause the Project GMP to be exceeded.

**C.10 BUYOUT SAVINGS**

Buyout Savings shall be defined as the difference between the amount identified in the Schedule of Values for the Project GMP and the executed subcontract value. Such Buyout Savings shall be determined following the execution of the final subcontract between the Construction Manager and the subcontractor.

If, after the establishment of the Cost of the Work, the execution of subcontracts between Construction Manager and subcontractors results in Buyout Savings, such Buyout Savings shall be allocated to the CM Contingency.

## 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. Construction Manager shall submit all bid forms and subcontract documents to the Commission (prior to publishing such documents for bid) for the Commission's review and approval, which approval may include modifications to certain provisions contained in this Exhibit D for inclusion in the bid forms and subcontract documents to be used for obtaining subcontractor bids 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 Exhibit D, 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 Exhibit D: Schedule 1 – Consent to Assignment; Schedule 2 – Affidavit of Non-Collusion; Schedule 3 – MBE/WBE Special Conditions; Schedule 4 – Affidavit of Uncompleted Work;; Schedule 7 – Bidder's Statement of Qualifications; Schedule 8 – 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 Schedule 3 "Special Conditions Regarding MBE and WBE Participation."

#### **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 2<sup>nd</sup> 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 2<sup>nd</sup> 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:

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

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:

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

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:

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

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**

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**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 H or such other guarantee form as that may be approved by the Commission. 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 48 hours (or such other time as may be agreed to by the Commission) 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 the Project Manual. 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 the Chicago Board of Education, 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 Indemnities 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 Schedule 3 "MBE/WBE Special Conditions," attached hereto, and residency requirements of Section C below, 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 7.5% 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 the Community Area Map attached as Schedule 1 to Exhibit J to the Agreement, 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 7.5% 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. Consent to Assignment by Commission**

Each Contractor shall execute a consent to the assignment of this contract by the Commission to Turner Construction Company, the Commission's Construction Manager for the Work, the form for which is attached as Schedule 1 hereto.

#### **Q. 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.

## **R. 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.

**SCHEDULE 1 TO EXHIBIT D**  
**ASSIGNMENT OF CONTRACT**

Effective upon the consent of \_\_\_\_\_ (*Original Contractor Name*),

**ASSIGNOR, the Public Building Commission of Chicago**, an Illinois municipal corporation, Richard J. Daley Center, 50 West Washington, Room 200, Chicago, Illinois 60602 ("Assignor") assigns its rights and delegates its duties and obligations under the contract identified below ("Contract") to

**ASSIGNEE, Turner Construction Company**, a \_\_\_\_\_ (*State of Incorporation*) corporation, \_\_\_\_\_ (*Assignee Company Address*) ("Assignee").

Contract Number: \_\_\_\_\_

Job/Project Description and/or #: Construction Management Services for the Ogden Replacement Elementary School

Effective immediately, Assignee accepts Assignor's rights under the Contract and assumes performance of the Contract, including all of Assignor's duties, and obligations under it, which may require Assignee to post a performance and payment bond acceptable to Assignor.

SIGNED as of this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, by:

**ASSIGNOR:**

\_\_\_\_\_  
Public Building Commission of Chicago

By: \_\_\_\_\_  
Erin Lavin Cabonargi

Title: Executive Director  
(Print)

Attest: \_\_\_\_\_  
(Corporate Secretary)

State of Illinois, County of Cook. This instrument was ACKNOWLEDGED before me this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_ by

\_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_,  
and \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_.

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

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**ASSIGNEE:**

\_\_\_\_\_  
Turner Construction Company

By: \_\_\_\_\_  
(Authorized Signature)

Title: \_\_\_\_\_  
(Print)

Name: \_\_\_\_\_  
(Print)

AFFIX CORPORATE SEAL (if requires in state of incorporation) Attest:

\_\_\_\_\_  
(Corporate Secretary)

State of \_\_\_\_\_, County of \_\_\_\_\_.

This instrument was ACKNOWLEDGED before me this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_ by  
\_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_,  
and \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_.

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

**CONSENT TO TRANSFER OF CONTRACT**

\_\_\_\_\_ consents to the transfer of the above Contract from the Assignor, Public Building Commission of Chicago, to the Assignee, Turner Construction Company, and will accept performance from the Assignee. This consent is for the convenience of the Assignor and the Assignee. The Assignor and Assignee may agree to additional terms and conditions between themselves consistent with the terms of this Consent and the above Assignment of Contract.

**CONTRACTOR**

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

Title: \_\_\_\_\_

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

Print Name: \_\_\_\_\_





### Schedule 3

## **SPECIAL CONDITIONS REGARDING MBE/WBE PARTICIPATION Ogden Replacement Elementary School**

### **MBE/WBE Program**

#### **1. Policy Statement**

- a. It is the policy of the Commission to ensure competitive business opportunities for MBE and WBE firms in the performance of Contracts, to prohibit discrimination in the award of or participation in Contracts, and to abolish arbitrary barriers to full participation in Contracts by all persons, regardless of race, sex or ethnicity. Therefore, during the performance of this Contract, the Contractor and Subcontractor must agree that it will not discriminate against any person or business on the basis of race, color, religion, ancestry, age, marital status, physical or mental handicap, unfavorable discharge from military service, parental status, sexual orientation, national origin or sex, in the solicitation or the purchase of goods and services or the subcontracting of work in the performance in this Contract.
- b. The Commission requires the Contractor and Subcontractor also agree to take affirmative action to ensure that MBE and WBE firms have the maximum opportunity to compete for and perform subcontracts with respect to this Contract.
- c. The Commission requires the Contractor and Subcontractor to notify MBE and WBE firms, utilized on this contract, about opportunities on contracts without affirmative action goals.

#### **2. Aspirational Goals**

- a. The aspirational goals for this Project are to award minimum 30% of the dollar value of all construction contracts to certified MBEs and 8% of the dollar value of all construction contracts to qualified WBEs. Each Trade Bid Package will define a specific requirement percentage to achieve the project specific goals.
- b. Further, the Contractor and Subcontractor must agree to use its best efforts to include MBE and WBE firms in any Contract modification work that increases the Contract value by 10% of the initial Contract value or \$50,000, whichever is less. Where the proposed contract modification involves work which can be performed by MBEs and WBEs already performing work on the contract such MBEs and WBEs will participate in such work specified in the contract modification.
- c. Failure to carry out the commitments and policies set forth in this Program constitute a material breach of contract and may result in termination of the Contractor and Subcontractor or such other remedy, as the Commission deems appropriate.

#### **3. Definitions**

- a. For purposes of this Special Condition, the following definitions applies:
  - (1) "Certified Minority Business Enterprise" means a person or entity granted certification by the City of Chicago, County of Cook, Metropolitan Water Reclamation

District, Chicago Minority Business Development Council, Central Management Service of the State of Illinois, METRA, and Women's Business Development Center.

(2) "Certified Women's Business Enterprise" means a person or entity granted certification by the City of Chicago, County of Cook, Metropolitan Water Reclamation District, Chicago Minority Business Development Council, Central Management Service of the State of Illinois, METRA, and Women's Business Development Center.

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

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

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

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

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

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

(9) "Minority" means:

a. Any individual in the following racial or ethnic groups, members of which are rebuttably presumed to be socially disadvantaged:

i. African-Americans or Blacks, which includes persons having origins in any of the Black racial groups of Africa;

ii. Hispanics, which includes persons of Spanish culture with origins in Mexico, South or Central America or the Caribbean Islands, regardless of race; and

b. Individual members of other groups, including but not limited to Asian-Americans, Arab-Americans and Native-Americans, found by the Commission to be socially disadvantaged by having suffered racial or ethnic prejudice or cultural bias within American society, without regard to individual qualities, resulting in decreased opportunities to compete in Chicago area markets or to do business with the Commission.

(10) "Minority-owned business enterprise" or "MBE" means a small local business enterprise which is at least 51% owned by one or more economically disadvantaged minority persons, or in the case of a publicly held corporation at least 51% of all classes of the stock of which is owned by one or more economically disadvantaged minority persons whose management, policies, major decisions and daily business operations are

independently managed and controlled by one or more economically disadvantaged minority persons.

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

(12) "Women-owned business enterprise" or "WBE" means a small local business enterprise which is at least 51% owned by one or more economically disadvantaged women or in the case of a publicly owned business, at least 51% of all classes of the stock of which is owned by one or more economically disadvantaged women, whose management, policies, major decisions and daily business operations are independently managed and controlled by one or more economically disadvantaged women.

#### **4. Determining MBE/WBE Utilization**

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

- a. The total dollar value of the contract awarded to the certified MBE or WBE firm will be credited to such participation. Only minority business participation may be counted toward MBE participation and only women business participation may be counted toward WBE participation.
- b. The total dollar value of a contract with a firm owned and controlled by minority women is counted toward either the MBE or WBE goal, but not both. The Prime Subcontractor employing the firm may choose the goal to which the contract value is applied. Various work done by one and the same Subcontractor will be considered, for the purpose of this principle, as work effectively done under one subcontract only, which subcontractor may be counted toward only one of the goals, not toward both.
- c. A Subcontractor may count toward its MBE or WBE goal the portion of the total dollar value of a contract with an eligible joint venture equal to the percentage of the ownership and control of the MBE or WBE partner in the joint venture. A joint venture seeking to be credited for MBE participation may be formed among certified MBE and WBE firms, or between certified MBE and WBE firms and a non-MBE/WBE firm. A joint venture satisfies the eligibility standards of this Program if the certified MBE or WBE participant of the joint venture:
  - (1) Shares in the ownership, control, management responsibilities, risks and profits of the joint venture; and
  - (2) Is responsible for a clearly defined portion of work to be performed in proportion to the MBE or WBE ownership percentage.
- d. A Subcontractor may count toward its MBE and WBE goals only expenditures to firms that perform a commercially useful function in the work of a contract. A firm is considered to perform a commercially-useful function when it is responsible for execution of a distinct element of the work of a contract and carries out its responsibilities by actually performing, managing, and supervising the work involved. To determine whether a firm is performing a commercially useful function, the Commission will evaluate the amount of work subcontracted, industry practices and other relevant factors.
- e. Consistent with normal industry practices, a MBE or WBE firm may enter into subcontracts. If a MBE or WBE contractor subcontracts a significantly greater portion of the work of a contract than would be expected on the basis of normal industry practices,

the MBE or WBE will be rebuttably presumed not to be performing a commercially-useful function.

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

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

## **5. Submission of Bid Proposals**

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

(1) Evidence of Certification: Affidavit of MBE/WBE. A copy of each proposed MBE and WBE firm's Letter of Certification from the City of Chicago, Department of Procurement Services or any other entity listed in Paragraph 3.a(1) must be submitted.

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

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

(4) Schedule D: Affidavit of Prime Contractor Regarding MBE or WBE Utilization. A completed Schedule D committing to the utilization of each listed MBE or WBE firm. Unless the Bidder has submitted a completed request for a waiver of participation by MBE/WBE firms (See Request for Waiver procedures in Paragraph 7), the Bidder must include the specific dollar amount of participation of each MBE/WBE firm listed on its Schedule D. The total dollar commitment to proposed MBE firms must at least equal the MBE goal, and the total dollar commitment to proposed WBE firms must at least equal the WBE goal. Bidders are responsible for calculating the dollar equivalent of MBE or WBE utilization as percentages of their total base bid.

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

## **6. Evaluation of Compliance Proposals**

a. During the period between bid opening and contract award, the Bidder's MBE/WBE compliance proposal will be evaluated by the Commission. The Bidder

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

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

c. Bidders will not be permitted to modify their MBE/WBE compliance proposal except insofar as directed to do so by the Commission. Therefore, all terms and conditions stipulated for prospective MBE and WBE subcontractors or suppliers should be satisfactorily negotiated prior to the submission to the Commission of the Bidder's MBE/WBE compliance proposal with the bid. If circumstances should arise, however, where a proposed MBE/WBE is no longer available, the process described in Paragraph 12 should be followed.

## **7. Request for Waiver**

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

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

- (1) Attendance at the Pre-bid conference;
- (2) The Bidder's general affirmative action policies regarding the utilization of MBE and WBE firms, plus a description of the methods used to carry out those policies;
- (3) Advertisement in trade association newsletters and minority and woman-oriented and general circulation media for specific sub-bids;
- (4) Timely notification of specific sub-bids to minority and woman contractor assistance agencies and associations;
- (5) Description of direct negotiations with MBE and WBE firms for specific sub-bids, including:
  - i. The name, address and telephone number of MBE and WBE firms contacted;
  - ii. A description of the information provided to MBE and WBE firms regarding the portions of the work to be performed; and
  - iii. The reasons why additional MBE and WBE firms were not obtained in spite of negotiations.
- (6) A statement of the efforts made to select portions of the work proposed to be performed by MBE and WBE firms (such as sub-supplier, transport, engineering,

distribution, or any other roles contributing to production and delivery as specified in the contract) in order to increase the likelihood of achieving sub participation.

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

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

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

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

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

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

#### **8. Failure To Achieve Goals**

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

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

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

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

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

- (5) Making a portion of the work available to MBE or WBE contractors and suppliers and to select those portions of the work or material consistent with the available MBE or WBE subcontractors and suppliers, so as to facilitate meeting the goals.
- (6) Making good faith efforts despite the ability or desire of a Subcontractor to perform the work of a contract with its own organization. A Subcontractor that desires to self-perform the work of a contract must demonstrate good faith efforts unless the goals have been met.
- (7) Selecting portions of the work to be performed by MBEs or WBEs in order to increase the likelihood that the goals will be met. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate MBE or WBE participation even when the Contract might otherwise prefer to perform these items with its own forces.
- (8) Making efforts to assist interested MBEs or WBEs in obtaining bonding lines of credit or insurance as required by the Commission or Construction Manager.
- (9) Making efforts to assist interested MBEs or WBEs in obtaining necessary equipment, supplies, materials or related assistance or services, including participation in a mentor-protégée program; and
- (10) Effectively using the services of the Commission; minority or women community organizations; minority or women Subcontractors' groups; local, state and federal minority or women business assistance offices; and other organizations to provide assistance in the recruitment and placement of MBEs or WBEs.

b. In the event the Public Building Commission Procurement Officer determines that the Subcontractor did not make a good faith effort to achieve the goals, the Subcontractor may file a Dispute to the Executive Director as provided in Article 11 of Exhibit J, Standard Terms and Conditions for Construction Management Contracts.

## **9. Reporting and Record-Keeping Requirements**

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

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

compliance with its MBE and WBE commitments and the status of any MBE or WBE firm performing any portion of the contract.

**10. Disqualification of MBE or WBE**

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

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

**11. Prohibition On Changes To MBE/WBE Commitments**

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

**12. MBE/WBE Substitution Requirements and Procedures**

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

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

(2) The Prime Contractor's notification should include the specific reasons for the proposed substitution. Stated reasons which would be acceptable include any of the following reasons: a) Unavailability after receipt of reasonable notice to proceed; b)



failure of performance; c) financial incapacity; d) refusal by the subcontractor to honor the bid or proposal price or scope; e) mistake of fact or law about the elements of the scope of work of a solicitation where a reasonable price cannot be agreed; f) failure of the subcontractor to meet insurance, licensing or bonding requirements; g) the subcontractor's withdrawal of its bid or proposal; or h) decertification of the subcontractor as MBE or WBE.

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

(3) The Prime Contractor's notification should include the names, address and principal official of any proposed substitute MBE or WBE and the dollar value and scope of work of the proposed subcontract. Attached should be all the same MBE/WBE affidavits, documents and Letters of Intent which are required of the proposed MBE or WBE firms, as enumerated above in Paragraph 5 - Submission of Bid Proposals.

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

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

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

c. No relief of the MBE/WBE requirements will be granted by the Executive Director except in exceptional circumstances. Requests for complete or partial waiver of the MBE/WBE requirements of this contract must be made in writing, stating all details of the request, the circumstances, and any additional relevant information. The request must be accompanied by a record of all efforts taken by the Subcontractor to locate specific firms, solicit MBE and WBE bids, seek assistance from technical assistance agencies, and other good faith efforts undertaken to achieve compliance with the MBE/WBE goals.

### **13. Non-Compliance**

a. The Executive Director has the authority to apply suitable sanctions to the Subcontractor if the Subcontractor is found to be in non-compliance with the MBE and WBE requirements. Failure to comply with the MBE or WBE terms of this contract or

failure to use MBE or WBE firms as stated in the Subcontractor's assurances constitutes a material breach of the contract, and may lead to the suspension or termination of the contract in part or in whole. In some cases, monthly progress payments may be withheld until corrective action is taken.

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

**14. Severability**

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

**Joint Venture Affidavit (1 of 3)**

*This form need not be filled in if all joint venturers are MBE/WBE firms. In such case, however, a written joint venture agreement among the MBE/WBE firms should be submitted. Each MBE/WBE joint venturer must also attach a copy of their current certification letter.*

1. Name of joint venture \_\_\_\_\_

2. Address of joint venture \_\_\_\_\_  
\_\_\_\_\_

3. Phone number of joint venture \_\_\_\_\_

4. Identify the firms that comprise the joint venture  
\_\_\_\_\_  
\_\_\_\_\_

A. Describe the role(s) of the MBE/WBE firm(s) in the joint venture. (Note that a "clearly defined portion of work" must here be shown as under the responsibility of the MBE/WBE firm.)  
\_\_\_\_\_  
\_\_\_\_\_

B. Describe very briefly the experience and business qualifications of each non-MBE/WBE joint venturer.  
\_\_\_\_\_  
\_\_\_\_\_

5. Nature of joint venture's business  
\_\_\_\_\_  
\_\_\_\_\_

6. Provide a copy of the joint venture agreement.

7. Ownership: What percentage of the joint venture is claimed to be owned by MBE/WBE?  
\_\_\_\_\_ %

8. Specify as to:

A. Profit and loss sharing \_\_\_\_\_ %

B. Capital contributions, including equipment \_\_\_\_\_ %

C. Other applicable ownership interests, including ownership options or other agreements which restrict ownership or control.  
\_\_\_\_\_  
\_\_\_\_\_

D. Describe any loan agreements between joint venturers, and identify the terms thereof.  
\_\_\_\_\_  
\_\_\_\_\_

**Joint Venture Affidavit (2 of 3)**

9. Control of and participation in this Contract: Identify by name, race, sex, and "firm" those individuals (and their titles) who are responsible for day-to-day management and policy decision making, including, but not limited to, those with prime responsibility for:

A. Financial decisions

\_\_\_\_\_

B. Management decisions such as:

1) Estimating

\_\_\_\_\_

2) Marketing and Sales

\_\_\_\_\_

3) Hiring and firing of management personnel

\_\_\_\_\_

4) Other

\_\_\_\_\_

C. Purchasing of major items or supplies

\_\_\_\_\_

D. Supervision of field operations

\_\_\_\_\_

E. Supervision of office personnel

\_\_\_\_\_

F. Describe the financial controls of the joint venture, e.g., will a separate cost center be established; which venturer will be responsible for keeping the books; how will the expense therefor be reimbursed; the authority of each joint venturer to commit or obligate the other. Describe the estimated contract cash flow for each joint venturer.

\_\_\_\_\_

\_\_\_\_\_

G. State approximate number of operational personnel, their craft and positions, and whether they will be employees of the majority firm or the joint venture.

\_\_\_\_\_

\_\_\_\_\_

10. Please state any material facts of additional information pertinent to the control and structure of this joint venture.

\_\_\_\_\_

\_\_\_\_\_

**Joint Venture Affidavit (3 of 3)**

THE UNDERSIGNED SWEAR THAT THE FOREGOING STATEMENTS ARE CORRECT AND INCLUDE ALL MATERIAL INFORMATION NECESSARY TO IDENTIFY AND EXPLAIN THE TERMS AND OPERATIONS OF OUR JOINT VENTURE AND THE INTENDED PARTICIPATION BY EACH JOINT VENTURER IN THE UNDERTAKING. FURTHER, THE UNDERSIGNED COVENANT AND AGREE TO PROVIDE TO THE PUBLIC BUILDING COMMISSION OF CHICAGO CURRENT, COMPLETE AND ACCURATE INFORMATION REGARDING ACTUAL JOINT VENTURE WORK AND THE PAYMENT THEREFOR AND ANY PROPOSED CHANGES IN ANY OF THE JOINT VENTURE AGREEMENTS AND TO PERMIT THE AUDIT AND EXAMINATION OF THE BOOKS, RECORDS, AND FILES OF THE JOINT VENTURE, OR THOSE OF EACH JOINT VENTURER RELEVANT TO THE JOINT VENTURE, BY AUTHORIZED REPRESENTATIVES OF THE COMMISSION. ANY MATERIAL MISREPRESENTATION WILL BE GROUNDS FOR TERMINATING ANY CONTRACT WHICH MAY BE AWARDED AND FOR INITIATING ACTION UNDER FEDERAL OR STATE LAWS CONCERNING FALSE STATEMENTS.

Note: If, after filing this Schedule B and before the completion of the joint venture's work on this Contract, there is any significant change in the information submitted, the joint venture must inform the Public Building Commission of Chicago, either directly or through the General contractor if the joint venture is a subcontractor.

\_\_\_\_\_  
Name of Joint Venturer

\_\_\_\_\_  
Name of Joint Venturer

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

State of \_\_\_\_\_ County of \_\_\_\_\_

State of \_\_\_\_\_ County of \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
before me appeared (Name)

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
before me appeared (Name)

\_\_\_\_\_  
to me personally known, who, being duly sworn,  
did execute the foregoing affidavit, and did state  
that he or she was properly authorized by  
(Name of Joint Venture)

\_\_\_\_\_  
to me personally known, who, being duly sworn,  
did execute the foregoing affidavit, and did state  
that he or she was properly authorized by  
(Name of Joint Venture)

\_\_\_\_\_  
to execute the affidavit and did so as his or her  
free act and deed.

\_\_\_\_\_  
to execute the affidavit and did so as his or her  
free act and deed.

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

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

Commission expires:  
(SEAL)

Commission expires:  
(SEAL)

**SCHEDULE C - Letter of Intent from MBE/WBE To Perform As  
Subcontractor, Subconsultant, and/or Material Supplier (1 of 2)**

Name of Project:

\_\_\_\_\_

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

FROM:

\_\_\_\_\_ MBE \_\_\_\_\_ WBE \_\_\_\_\_  
(Name of MBE or WBE)

TO:

\_\_\_\_\_ and Public Building Commission of Chicago  
(Name of General Bidder)

The undersigned intends to perform work in connection with the above-referenced project as  
(check one):

\_\_\_\_\_ a Sole Proprietor

\_\_\_\_\_ a Corporation

\_\_\_\_\_ a Partnership

\_\_\_\_\_ a Joint Venture

The MBE/WBE status of the undersigned is confirmed by the attached Letter of Certification,  
dated \_\_\_\_\_. In addition, in the case where the undersigned is a  
Joint Venture with a non-MBE/WBE firm, a Schedule B, Joint Venture Affidavit, is provided.

The undersigned is prepared to provide the following described services or supply the following  
described goods in connection with the above-named project.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The above-described services or goods are offered for the following price, with terms of payment  
as stipulated in the Contract Documents.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**SCHEDULE C - Letter of Intent from MBE/WBE To Perform As  
Subcontractor, Subconsultant, and/or Material Supplier (2 of 2)**

**PARTIAL PAY ITEMS**

For any of the above items that are partial pay items, specifically describe the work and subcontract dollar amount:

---

---

If more space is needed to fully describe the MBE/WBE firm's proposed scope of work and/or payment schedule, attach additional sheet(s).

**SUB-SUBCONTRACTING LEVELS**

\_\_\_\_\_ % of the dollar value of the MBE/WBE subcontract will be sublet to non-MBE/WBE contractors.

\_\_\_\_\_ % of the dollar value of the MBE/WBE subcontract will be sublet to MBE/WBE contractors.

If MBE/WBE subcontractor will not be sub-subcontracting any of the work described in this Schedule, a zero (0) must be filled in each blank above. If more than 10% percent of the value of the MBE/WBE subcontractor's scope of work will be sublet, a brief explanation and description of the work to be sublet must be provided.

The undersigned will enter into a formal agreement for the above work with the General Bidder, conditioned upon its execution of a contract with the Public Building Commission of Chicago, and will do so within five (5) working days of receipt of a notice of Contract award from the Commission.

By:

\_\_\_\_\_  
Name of MBE/WBE Firm (Print)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name (Print)

\_\_\_\_\_  
Phone

**IF APPLICABLE:**

By:

\_\_\_\_\_  
Joint Venture Partner (Print)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name (Print)

\_\_\_\_\_  
Phone

MBE \_\_\_\_ WBE \_\_\_\_ Non-MBE/WBE \_\_\_\_

**SCHEDULE D - Affidavit of General Contractor Regarding MBE/WBE Participation**  
**(1 of 2)**

Name of Project: \_\_\_\_\_

STATE OF ILLINOIS }  
 } SS  
 COUNTY OF COOK }

In connection with the above-captioned contract, I HEREBY DECLARE AND AFFIRM that I am the

\_\_\_\_\_ Title and duly authorized representative of

\_\_\_\_\_ Name of General Contractor whose address is

in the City of \_\_\_\_\_, State of \_\_\_\_\_ and that I have personally reviewed the material and facts submitted with the attached Schedules of MBE/WBE participation in the above-referenced Contract, including Schedule C and Schedule B (if applicable), and the following is a statement of the extent to which MBE/WBE firms will participate in this Contract if awarded to this firm as the Contractor for the Project.

Name of MBE/WBE Contractor	Type of Work to be Done in Accordance with Schedule C	Dollar Credit Toward MBE/WBE Goals	
		MBE	WBE
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
		\$	\$
<b>Total Net MBE/WBE Credit</b>		\$	\$
<b>Percent of Total Base Bid</b>			%

The General Contractor may count toward its MBE/WBE goal a portion of the total dollar value of a contract with a joint venture equal to the percentage of the ownership and control of the MBE/WBE partner.



**SCHEDULE D - Affidavit of Subcontractor Regarding MBE/WBE Participation  
(2 of 2)**

**SUB-SUBCONTRACTING LEVELS**

\_\_\_\_\_ % of the dollar value of the MBE/WBE subcontract will be sublet to non-MBE/WBE contractors.

\_\_\_\_\_ % of the dollar value of the MBE/WBE subcontract will be sublet to MBE/WBE contractors.

If MBE/WBE subcontractor will not be sub-subcontracting any of the work described in this Schedule, a zero (0) must be filled in each blank above.

If more than 10% of the value of the MBE/WBE subcontractor's scope of work will be sublet, a brief explanation and description of the work to be sublet must be provided.

The undersigned will enter into a formal agreement for the above work with the above-referenced MBE/WBE firms, conditioned upon performance as Contractor of a Contract with the Commission, and will do so within five (5) business days of receipt of a notice of Contract award from the Commission.

By:

\_\_\_\_\_  
Name of Contractor (Print)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name (Print)

\_\_\_\_\_  
Phone

IF APPLICABLE:

By:

\_\_\_\_\_  
Joint Venture Partner (Print)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name (Print)

\_\_\_\_\_  
Phone/FAX

MBE \_\_\_\_ WBE \_\_\_\_ Non-MBE/WBE \_\_\_\_

**SCHEDULE E - Request for Waiver from MBE/WBE Participation**

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

Erin Lavin Cabonargi, Executive Director  
Public Building Commission of Chicago  
Richard J. Daley Center  
50 W. Washington Street, Room 200  
Chicago, IL 60602

Dear Mrs. Cabonargi:

RE: Contract No. \_\_\_\_\_

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

In accordance with Section 23.01.7, the undersigned hereby requests a waiver/partial waiver from the MBE/WBE provisions. The undersigned certifies that it/we has/have been diligent in our attempt to identify potential subcontractors certified as MBE/WBE to perform work in this project, that such efforts have not been successful, and that it/we cannot meet the Minority/Women Business Enterprise contract goal. These efforts are described below and are consistent with the "Request for Waiver" provisions of the MBE/WBE Program as detailed in Section 23.01.7 as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Documentation attached: yes \_\_\_ no \_\_\_

Based on the information provided above, we request consideration of this waiver request.

Sincerely,

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name of Firm

## **SCHEDULE 4 - Affidavit Of Uncompleted Work**

### **A. Work Under Contract**

List below all work Bidder has under contract as either a general contractor or a subcontractor, including all pending low bids not yet awarded or rejected. In a joint venture, list only that portion of the work that is the responsibility of the Bidder. The uncompleted dollar value is to be based upon the most recent estimate of the owner or engineer, and must include work subcontracted to others. If no work is contracted, indicate NONE.

	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>Awards Pending</b>	<b>TOTALS</b>
Project						
Contract With						
Estimated Completion Date						
Total Contract Price						
Uncompleted Dollar Value if Firm is the GC						
Uncompleted Dollar Value if Firm is a Subcontractor						
<b>TOTAL VALUE OF ALL WORK</b>						

### **B. Uncompleted Work to be Completed with the Bidder's own Forces**

List below the uncompleted dollar value of work for each contract to be completed with the Bidder's own forces, including all work indicated as awards pending. All work subcontracted to others will be listed on C. of this form. In a joint venture, list only that portion of the work to be done by the Bidder. If no work is contracted, indicate NONE.

	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>Awards Pending</b>	<b>TOTALS</b>
Earthwork						
Demolition						
Sewer and Drain						
Foundation						
Painting						
Struct. Steel (Bldg Const.)						
Ornamental Steel (Bldg Construction)						
Miscellaneous Concrete						



**C. Work Subcontracted to Others**

List below all work, according to each contract on the preceding page, that the Bidder has subcontracted to others. Do NOT include work to be performed by another general contractor in a joint venture. No work may be indicated as subcontracted to others on awards pending. If no work is subcontracted, indicate NONE.

	1	2	3	4	Awards Pending
Subcontractor					
Type of Work					
Subcontract Price					
Amount Uncompleted					
Subcontractor					
Type of Work					
Subcontract Price					
Amount Uncompleted					
Subcontractor					
Type of Work					
Subcontract Price					
Amount Uncompleted					
Subcontractor					
Type of Work					
Subcontract Price					
Amount Uncompleted					
Subcontractor					
Type of Work					
Subcontract Price					
Amount Uncompleted					
Subcontractor					
Type of Work					
Subcontract Price					
Amount Uncompleted					
<b>TOTAL Uncompleted</b>					

**Affidavit of Uncompleted Work (continued)**

I, being duly sworn, do hereby declare that this affidavit is a true and correct statement relating to ALL uncompleted contracts of the undersigned for Federal, State, County, City, and private work including ALL subcontract work, ALL pending low bids not yet awarded or rejected, and ALL estimated completion dates.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name (Type or Print)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Bidder Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City State Zip

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

\_\_\_\_\_  
Notary Public (SEAL)

Commission expires:

**SCHEDULE 7 - Statement Of Bidder's Qualifications**

At the request of the Commission, the Bidder shall also submit additional information regarding the capability of the Bidder to perform the Contract.

Bidder \_\_\_\_\_

Submitted By \_\_\_\_\_

Title \_\_\_\_\_

Permanent Main Office Address \_\_\_\_\_

Local Address \_\_\_\_\_

Local Telephone No. and FAX No. \_\_\_\_\_

How many years operating as contractor for work of this nature? \_\_\_\_\_

List of recently completed contracts of similar dollar value and scope of work.

	<b>Name/Address</b>	<b>Dollar Amount</b>	<b>Year of Contract</b>	<b>Nature of Project</b>
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				

**Statement Of Bidder's Qualifications (continued)**

The undersigned hereby authorizes any person, firm, or corporation to furnish any information requested by the Public Building Commission of Chicago in verification of this Statement of Bidder's Qualifications.

If submitted by a corporation:

- (a) Corporation Name \_\_\_\_\_
- (b) State and City in which incorporated \_\_\_\_\_
- (c) If incorporated in another state, is firm authorized to do business in the State of Illinois?  
Yes \_\_\_\_\_ No \_\_\_\_\_
- (d) Name and address of registered agent in Illinois  
\_\_\_\_\_

(e) Names and titles of officers authorized to sign contracts

Name	Title
_____	_____
_____	_____

If submitted by a partnership:

- (a) Firm Name \_\_\_\_\_
- (b) Official Address \_\_\_\_\_
- (c) Names of all Partners: \_\_\_\_\_

If submitted by an individual:

- (a) Firm Name \_\_\_\_\_
- (b) The Owner \_\_\_\_\_
- (c) Official Address \_\_\_\_\_

\_\_\_\_\_  
Signature of Affiant

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

(SEAL)

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



**SCHEDULE 8 - Disclosure Of Retained Parties**

Pursuant to Resolution No. 5339, as amended by Resolution No. 5371, of the Board of the Public Building Commission of Chicago, the apparent 1<sup>st</sup> low and the apparent 2<sup>nd</sup> low Bidder are required to submit a fully executed Disclosure of Retained Parties within five (5) days of their respective receipt of notice that they are the apparent 1<sup>st</sup> and 2<sup>nd</sup> low bidders.

**A. Definitions and Disclosure Requirements**

1. As used herein, "Contractor" means a person or entity that has any contract or lease with the Public Building Commission of Chicago ("Commission").
2. Commission contracts and/or qualification submittals must be accompanied by a disclosure statement providing certain information about any lobbyists whom the Contractor has retained or expects to retain with respect to the contract or lease. In particular, the Contractor must disclose the name of each such person, his or her business address, the name of the relationship, and the amount of fees paid or estimated to be paid. The Contractor is not required to disclose employees who are paid solely through the Contractor's regular payroll.
3. "Lobbyists" means any person a) who for compensation or on behalf of any person other than himself undertakes to influence any legislative or administrative action, or b) any part of whose duties as an employee of another includes undertaking to influence any legislative or administrative action.

**B. Certification**

Contractor hereby certifies as follows:

1. This Disclosure relates to the following transaction

: \_\_\_\_\_

Description of goods or services to be provided under Contract

\_\_\_\_\_  
\_\_\_\_\_

5.

2. Name of Contractor: \_\_\_\_\_
3. EACH AND EVERY lobbyist retained or anticipated to be retained by the Contractor with respect to or in connection with the contract or lease is listed below. Attach additional pages if necessary.

Check here if no such persons have been retained or are anticipated to be retained:

\_\_\_\_\_

**Retained Parties:**

Name	Business Address	Relationship (Lobbyists, etc.)	Fees (indicate whether paid or estimated)

6. 4. The Contractor understands and agrees as follows:
- a. a. The information provided herein is a material inducement to the Commission execution of the contract or other action with respect to which this Disclosure of Retained Parties form is being executed, and the Commission may rely on the information provided herein. Furthermore, if the Commission determines that any information provided herein is false, incomplete, or inaccurate, the Commission may terminate the contract or other transaction, terminate the Contractor's participation in the contract or other transactions with the Commission.
  - b. b. If the Contractor is uncertain whether a disclosure is required, the Contractor must either ask the Commission whether disclosure is required or make the disclosure.
  - c. c. This Disclosure of Retained Parties form, some or all of the information provided herein, and any attachments may be made available to the public on the Internet, in response to a Freedom of Information Act request, or otherwise. The Contractor waives and releases any possible rights or claims it may have against the Commission in connection with the public release of information contained in the completed Disclosure of Retained Parties form and any attachments.

Under penalty of perjury, I certify that I am authorized to execute this Disclosure of Retained Parties on behalf of the Contractor and that the information disclosed herein is true and complete.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name (Type or Print)

\_\_\_\_\_  
Title

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

20\_\_\_\_\_

(SEAL)

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

Commission expires:

## **CONSTRUCTION MANAGER'S INSURANCE REQUIREMENTS**

The Construction Manager must provide and maintain at Construction Manager's own expense, reimbursable as a part of the Cost of the Work per Exhibit C, the minimum insurance coverage and requirements specified below, insuring all operations related to the Contract. The insurance must remain in effect from: the date of the notice to proceed until Substantial Completion of the project, during completion of Punch List, as well as any time Construction Manager returns to perform additional work regarding warranties or for any other purpose.

Construction Manager shall provide Workers Compensation and General Liability Insurance for both Turner and the Subcontractors through a Contractor Controlled Insurance Program ("CCIP"). For that portion of the insurance and any associated business unit costs covered by CCIP, Construction Manager shall be reimbursed at an amount calculated using a percentage of the Guaranteed Maximum Price.. Such percentage shall be 3.41% for Workers Compensation and General Liability Insurance. Reimbursement for the CCIP shall be provided monthly, based on the percentage of the GMP completed and with no amounts deducted therefrom as retention or retainage of any kind. Should Construction commence prior to the execution of the Guaranteed Maximum Price, the amount to be paid shall be calculated by using the above percentage multiplied by Construction Manager's current estimate of all other amounts to be paid to Construction Manager; which shall be adjusted similarly with each Payment Application until execution of an amendment to this Agreement that establishes the Guaranteed Maximum Price.

Worker's Compensation and Commercial General Liability coverage for Construction Manager and Subcontractors shall be provided pursuant to Construction Manager's CCIP as described in Construction Manager's "Ogden Replacement Elementary School CCIP Insurance Manual" prepared by Turner Construction Company and dated October 1, 2009.

### **A. INSURANCE TO BE PROVIDED**

#### **1) Workers' Compensation and Employers Liability**

Workers' Compensation Insurance, as prescribed by applicable law covering all employees who are to provide a service under this Contract and Employers Liability coverage with limits of not less than \$1,000,000 each accident, illness or disease. Coverage will include a waiver of Kotecki endorsement specifically insuring the Construction Manager's obligations pursuant to the waiver of its Kotecki rights

#### **2) Commercial General Liability (Primary and Umbrella)**

Commercial General Liability Insurance or equivalent with limits of not less than \$10,000,000 per occurrence for bodily injury, personal injury, and property damage liability. Coverage must include the following: All premises and operations, products/completed operations (for minimum of two (2) years following project completion), flood, explosion, collapse, underground, separation of insureds, defense, and contractual liability with no limitation endorsement. The Public Building Commission, Board of Education of the City of Chicago and the City of Chicago are to be named as additional insureds on a primary, non-contributory basis for any liability arising directly or indirectly from the work, including the two (2) years completed operations periods.

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

TRAVELERS BOND NO. 105321067  
FEDERAL BOND NO. 8217-10-99  
F&D/ZURICH BOND NO. 08981536  
LIBERTY BOND NO. 015029265

EXECUTED IN TWO (2) COUNTERPARTS

**PUBLIC BUILDING COMMISSION OF CHICAGO**

Contract No. PS1668

**PERFORMANCE AND PAYMENT BOND**

Contract No. 1668

Bond No.

KNOW ALL MEN BY THESE PRESENTS, that we, Turner Construction Company,  
a corporation organized and existing under the laws of the State of New York with offices in the City of  
Chicago, State of Illinois, as Corporate Principal, and

SEE ATTACHMENT A

a corporation organized and existing under the laws of the State of <sup>SEE</sup> ATTACHMENT A, with offices in the State of  
<sup>SEE</sup> \*ATTACHMENT A \*, as Surety, are held and firmly bound unto the Public Building Commission of Chicago,  
hereinafter called "Commission", in the penal sum of Fifteen Million and No Cents (\$15,000,000.00) for  
the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors,  
administrators, and successors, jointly and severally, firmly by these presents.

The condition of this obligation is such, that whereas the Principal entered into a certain Contract, hereto  
attached, with the Commission, dated August 11, 2009, for the fabrication, delivery, performance and  
installation of

Ogden Replacement Elementary School  
24 W. Walton, Chicago, IL  
Construction Management at Risk Services

in the referenced project area and other miscellaneous work collateral thereto.

NOW, THEREFORE, if the Principal shall well and truly perform and fulfill all the undertakings,  
covenants, terms, conditions, and agreements of said Contract during the original term of said Contract and  
any extension thereof that may be granted by the Commission, with or without notice to the Surety, and  
during the life of any guarantee required under the Contract, and shall also well and truly perform and  
fulfill all the undertakings, covenants, terms, conditions and agreements of any and all authorized  
modifications of said Contract that may be made; and also if the Principal shall promptly pay all persons,  
firms, and corporations supplying labor, materials, facilities, or services in the prosecution of the work  
provided for in the Contract, and any and all duly authorized modifications of said Contract that may be  
made, notice of which modifications being hereby waived; and also, if the Principal shall fully secure and  
protect the said Commission, its legal successor and representative, from all liability in the premises and  
from all loss or expense of any kind, including all costs of court and attorney's fees, made necessary or  
arising from the failure, refusal, or neglect of the aforesaid Principal to comply with all the obligations

**PUBLIC BUILDING COMMISSION OF CHICAGO**  
Contract No. PS1668

assumed by said Principal or any subcontractors in connection with the performance of said Contract and all such modifications thereof; and also, if the Principal shall deliver all Work called for by said Contract of the Principal with the Commission, free and clear of any and all claims, liens and expenses of any kind or nature whatsoever, and in accordance with the terms and provisions of said Contract, and any and all modifications of said Contract; then, this said Bond shall become null and void; otherwise it shall remain in full force and effect.

The Surety does further hereby consent and yield to the jurisdiction of the State Civil Courts of the County of Cook, City of Chicago, and State of Illinois, and does hereby formally waive any plea of jurisdiction on account of the residence elsewhere of the Surety. The Principal and Surety severally and jointly agree that this Bond, and the undertakings contained herein, are also for the benefit of any and all subcontractors and other persons furnishing materials, labor, facilities, or services to the Principal or for the performance by the Principal of said Contract with the Commission as originally executed by said Principal and the Commission or as thereafter modified, and that any such subcontractor or persons furnishing labor, materials, facilities, or services may bring suit on this Bond, or any undertaking herein contained, in the name of the Commission against the said Principal and Surety or either of them.

It is expressly understood and agreed that this Bond, in the penal sum of Fifteen Million Dollars and No Cents (\$15,000,000.00), shall secure the payment of all sums due of and by the Principal under the Contract, and guarantee the faithful performance of the Contract.

No modifications, omissions, or additions, in or to the terms of said Contract, the plans or specifications, or in the manner and mode of payment shall in any manner affect the obligations of the Surety in connection with aforesaid Contract. Notice to the Surety of any and all modifications in said Contract of the Principal with the Commission and of any additions or omissions to or from said Contract are hereby expressly waived by the Surety.

PUBLIC BUILDING COMMISSION OF CHICAGO

Contract No. PS1668

IN WITNESS WHEREOF, the above bounden parties have executed this instrument under their several seals this November 11, 2009, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative pursuant to authority of its governing body.

WITNESS:

Name \_\_\_\_\_

BY \_\_\_\_\_ (Seal)  
Individual Principal

Business Address \_\_\_\_\_

\_\_\_\_\_  
Individual Principal (Seal)

City \_\_\_\_\_ State \_\_\_\_\_

CORPORATE SEAL

ATTEST:

BY Sandra K Wolf  
Assistant Secretary Sandra K. Wolf  
Title \_\_\_\_\_

Turner Construction Company  
Corporate Principal  
BY [Signature]  
President Stephen W. Fort  
Title Vice President & Gen. Manager

55 East Monroe Street, Suite 3100  
Chicago, IL 60603

BY SEE ATTACHMENT A  
SEE ATTACHMENT A  
Business Address & Telephone \_\_\_\_\_

SEE ATTACHMENT A  
Corporate Surety  
SEE ATTACHMENT A  
Title \_\_\_\_\_  
CORPORATE SEAL

FOR CLAIMS (Please Print):

Contact Name: SEE ATTACHMENT B \_\_\_\_\_

Business Address: SEE ATTACHMENT B \_\_\_\_\_

Telephone: SEE ATTACHMENT B \_\_\_\_\_ Fax: SEE ATTACHMENT B \_\_\_\_\_

The rate of premium of this Bond is \$ 10.22 per thousand. \*\*  
Total amount of premium charged is \$ 153,300.00 \*\*

\* The current power of attorney for the persons who sign for any surety company shall be attached to this Bond. Such power of attorney shall be sealed and certified with a "first-hand signature" by an officer of the surety. The Commission will not accept a facsimile signature.

**PUBLIC BUILDING COMMISSION OF CHICAGO**

Contract No. PS1668

**\*\* Must be filled in by the Corporate Surety.**

**BOND APPROVAL**

BY Edgardo John  
Secretary,

Public Building Commission of Chicago

**CERTIFICATE AS TO CORPORATE SEAL**

I, Sandra K. Wolf, certify that I am the Assistant Secretary of Turner Construction Company, corporation named as Principal in the foregoing performance and payment bond, that Stephen W. Fort who signed on behalf of the Principal was then Vice President & General Manager of said corporation; that I know this person's signature, and the signature is genuine; and that the Bond was duly signed, sealed, and attested, for and in behalf of said corporation by authority of its governing body.

Dated this 11th day of November, 2009.

Sandra K Wolf

**CORPORATE SEAL**



**ATTACHMENT A**

Travelers Casualty and Surety Company of America, a Connecticut corporation  
Federal Insurance Company, an Indiana corporation  
Fidelity and Deposit Company of Maryland, a Maryland corporation/  
Zurich American Insurance Company, a New York corporation  
Liberty Mutual Insurance Company, a Massachusetts corporation

Travelers Casualty and Surety Company of America  
Construction Services, One Tower Square, Hartford, CT 06183

By: *Alice McLaughlin*  
Alice McLaughlin, Attorney in Fact  
Bond No. 105321067  
Witness:

By: *Mary R. McKee*  
Mary R. McKee, 300 Tice Blvd. 2<sup>nd</sup> Fl. North, Suite 250, Woodcliff Lake, NJ 07677  
201-644-2510

Federal Insurance Company  
15 Mountain View Road, Warren, NJ 07061

By: *Alice McLaughlin*  
Alice McLaughlin, Attorney in Fact  
Bond No. 8217-10-99  
Witness:

By: *Mary R. McKee*  
Mary R. McKee, 300 Tice Blvd. 2<sup>nd</sup> Fl. North, Suite 250, Woodcliff Lake, NJ 07677  
201-644-2510

Fidelity and Deposit Company of Maryland/Zurich American Insurance Company  
1400 American Lane, Schaumburg, IL 60196

By: *Alice McLaughlin*  
Alice McLaughlin, Attorney in Fact  
Bond No. 08981536  
Witness:

By: *Mary R. McKee*  
Mary R. McKee, 300 Tice Blvd. 2<sup>nd</sup> Fl. North, Suite 250, Woodcliff Lake, NJ 07677  
201-644-2510

Liberty Mutual Insurance Company  
450 Plymouth Road, Suite 400, Plymouth Meeting, PA 19462

By: *Alice McLaughlin*  
Alice McLaughlin, Attorney in Fact  
Bond No. 015029265  
Witness:

By: *Mary R. McKee*  
Mary R. McKee, 300 Tice Blvd. 2<sup>nd</sup> Fl. North, Suite 250, Woodcliff Lake, NJ 07677  
201-644-2510

## **ATTACHMENT B**

Claim notices for TRAVELERS CASUALTY AND SURETY COMPANY must be sent to the following address: Travelers Casualty and Surety Company of America, One Tower Square, Hartford, CT 06183, Attention: Construction Services Claim.

Claim notices for FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY and/or PACIFIC INDEMNITY COMPANY must be sent to the following address: Chubb Group of Insurance Companies, P.O. Box 2191, Chesapeake, Virginia 23327, Attention: Surety Support Team.

Claim notices for the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, ZURICH AMERICAN INSURANCE COMPANY, COLONIAL AMERICAN CASUALTY AND INSURANCE COMPANY and/or AMERICAN GUARANTEE AND LIABILITY INSURANCE COMPANY must be sent to the following address: Zurich Surety Claims, 3910 Keswick Road, Chesapeake Building 4<sup>th</sup> Floor, Baltimore, Maryland 21211, Attention: Surety Claim Department.

Claim notices for LIBERTY MUTUAL INSURANCE COMPANY must be sent to the following address: Liberty Mutual Insurance Company, 450 Plymouth Road, Suite 400, Plymouth Meeting, PA 19462, Attention: Surety Claims Dept.

**CORPORATE ACKNOWLEDGMENT**

Form 152

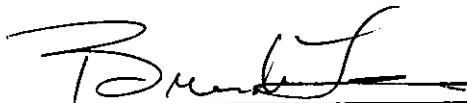
STATE OF Illinois

COUNTY OF DuPage

On this 16th day of November, 2009, before me personally  
came Stephen W. Fort to me known, who, being by me  
duly sworn, did depose and say that she/he resides in Aurora, IL  
that she/he is the Vice President & General Manager of the  
Turner Construction Company

the corporation described in and which executed the above instrument that she/he knows  
the seal of said corporation; that the seal affixed to said instrument is such corporate seal;  
that it was so affixed by order of the Board of Directors of said corporation, and that  
she/he signed her/his name thereto by like order.

(SEAL)



NOTARY



**CORPORATE ACKNOWLEDGMENT**

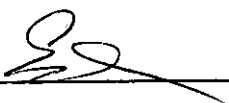
Form 152

STATE OF NEW JERSEY

COUNTY OF BERGEN

On this 11th day of November, 2009, before me personally came ALICE McLAUGHLIN to me known, who, being by me duly sworn, did depose and say that she/he resides in NUTLEY, NEW JERSEY that she/he is the ATTORNEY IN FACT of the TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA the corporation described in and which executed the above instrument that she/he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

(SEAL)



---

**Esther Gabon**  
Notary Public of New Jersey  
My Commission Expires  
February 18, 2014

TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA

HARTFORD, CONNECTICUT 06183

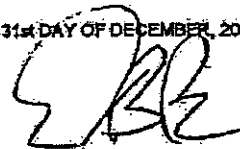
FINANCIAL STATEMENT AS OF DECEMBER 31, 2008

CAPITAL STOCK \$ 6,000,000

ASSETS		LIABILITIES & SURPLUS	
CASH & INVESTED CASH	\$ 148,778,723	UNEARNED PREMIUMS	\$ 346,309,219
BONDS	3,452,920,381	LOSSES	822,955,804
STOCK	7,588,826	LOSS ADJUSTMENT EXPENSES	276,222,162
INVESTMENT INCOME DUE AND ACCRUED	45,668,631	COMMISSIONS	52,187,066
PREMIUM BALANCES	303,562,195	TAXES, LICENSES AND FEES	43,371,400
NET DEFERRED TAX ASSET	40,073,233	OTHER EXPENSES	29,247,064
REINSURANCE RECOVERABLE	12,426,353	FUNDS HELD UNDER REINSURANCE TREATIES	105,982,816
OTHER ASSETS	88,225,439	CURRENT FEDERAL AND FOREIGN INCOME TAXES	104,183,980
		REMITTANCES AND ITEMS NOT ALLOCATED	57,573,235
		AMOUNTS WITHHELD / RETAINED BY COMPANY FOR OTHERS	31,554,808
		RETROACTIVE REINSURANCE RESERVE	11,097,864
		POLICYHOLDER DIVIDENDS	9,605,141
		PROVISION FOR REINSURANCE	5,452,296
		CEDED REINSURANCE NET PREMIUMS PAYABLE	(45,467,530)
		OTHER ACCRUED EXPENSES AND LIABILITIES	11,021,928
		<b>TOTAL LIABILITIES</b>	<b>\$ 2,381,267,253</b>
		CAPITAL STOCK	\$ 6,000,000
		PAID IN SURPLUS	303,297,402
		OTHER SURPLUS	1,425,678,916
		<b>TOTAL SURPLUS TO POLICYHOLDERS</b>	<b>\$ 1,734,976,318</b>
<b>TOTAL ASSETS</b>	<b>\$ 4,096,243,572</b>	<b>TOTAL LIABILITIES &amp; SURPLUS</b>	<b>\$ 4,096,243,572</b>

STATE OF CONNECTICUT )  
 COUNTY OF HARTFORD )SS.  
 CITY OF HARTFORD )

ERIC B. BRUDER, BEING DULY SWORN, SAYS THAT HE IS CHIEF FINANCIAL OFFICER - TRAVELERS BOND & FINANCIAL PRODUCTS, OF TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, AND THAT TO THE BEST OF HIS KNOWLEDGE AND BELIEF, THE FOREGOING IS A TRUE AND CORRECT STATEMENT OF THE FINANCIAL CONDITION OF SAID COMPANY AS OF THE 31<sup>st</sup> DAY OF DECEMBER, 2008.



CHIEF FINANCIAL OFFICER - BOND & FINANCIAL PRODUCTS

  
 NOTARY PUBLIC

SUBSCRIBED AND SWORN TO BEFORE ME THIS  
 17th DAY OF APRIL, 2009



**MARIE C. TETREAULT**  
 Notary Public  
 My Commission Expires June 30, 2011



POWER OF ATTORNEY

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
Seaboard Surety Company
St. Paul Fire and Marine Insurance Company

St. Paul Guardian Insurance Company
St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company

Attorney-In Fact No. 219813

Certificate No. 003085236

KNOW ALL MEN BY THESE PRESENTS: That Seaboard Surety Company is a corporation duly organized under the laws of the State of New York, that St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company and St. Paul Mercury Insurance Company are corporations duly organized under the laws of the State of Minnesota, that Farmington Casualty Company, Travelers Casualty and Surety Company, and Travelers Casualty and Surety Company of America are corporations duly organized under the laws of the State of Connecticut, that United States Fidelity and Guaranty Company is a corporation duly organized under the laws of the State of Maryland, that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc. is a corporation duly organized under the laws of the State of Wisconsin (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint

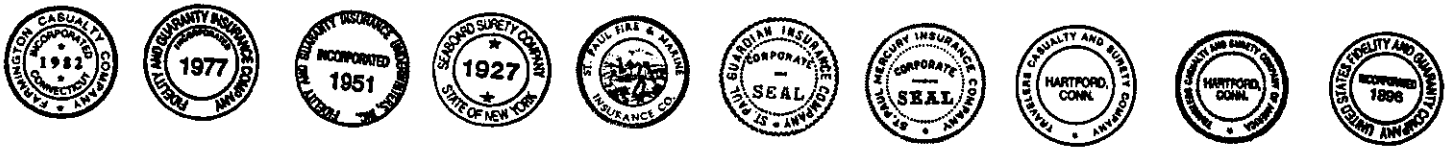
Sandra K. Wolf, Alice McLaughlin, Mary R. McKee, and Sherryanne M. DePirro

of the City of Woodcliff Lake, State of New Jersey, their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 16th day of April, 2008.

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
Seaboard Surety Company
St. Paul Fire and Marine Insurance Company

St. Paul Guardian Insurance Company
St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company



State of Connecticut
City of Hartford ss.

By: [Signature]
George W. Thompson, Senior Vice President

On this the 16th day of April, 2008, before me personally appeared George W. Thompson, who acknowledged himself to be the Senior Vice President of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., Seaboard Surety Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal. My Commission expires the 30th day of June, 2011.



[Signature]
Marie C. Tetreault, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., Seaboard Surety Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, which resolutions are now in full force and effect, reading as follows:

**RESOLVED**, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

**FURTHER RESOLVED**, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

**FURTHER RESOLVED**, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

**FURTHER RESOLVED**, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any power of attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such power of attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, Kori M. Johanson, the undersigned, Assistant Secretary, of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., Seaboard Surety Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 11th day of November, 20 09.



Kori M. Johanson, Assistant Secretary



To verify the authenticity of this Power of Attorney, call 1-800-421-3880 or contact us at [www.travelersbond.com](http://www.travelersbond.com). Please refer to the Attorney-In-Fact number, the above-named individuals and the details of the bond to which the power is attached.

**CORPORATE ACKNOWLEDGMENT**

Form 152

STATE OF NEW JERSEY

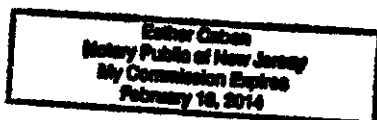
COUNTY OF BERGEN

On this 11th day of November, 2009, before me personally came ALICE McLAUGHLIN to me known, who, being by me duly sworn, did depose and say that she/he resides in NUTLEY, NEW JERSEY that she/he is the ATTORNEY IN FACT of the FEDERAL INSURANCE COMPANY the corporation described in and which executed the above instrument that she/he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

(SEAL)



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# FEDERAL INSURANCE COMPANY

## STATEMENT OF ASSETS, LIABILITIES AND SURPLUS TO POLICYHOLDERS

Statutory Basis

DECEMBER 31, 2008

(in thousands of dollars)

<u>ASSETS</u>	<u>LIABILITIES AND SURPLUS TO POLICYHOLDERS</u>
Cash and Short Term Investments..... \$ 202,707	Outstanding Losses and Loss Expenses ..... \$ 11,792,508
United States Government, State and Municipal Bonds..... 11,216,158	Unearned Premiums..... 3,522,120
Other Bonds..... 3,719,243	Reinsurance Premiums Payable ..... 337,760
Stocks ..... 609,081	Provision for Reinsurance ..... 109,756
Other Invested Assets..... <u>1,771,227</u>	Other Liabilities..... <u>958,636</u>
TOTAL INVESTMENTS..... <u>17,518,416</u>	TOTAL LIABILITIES ..... <u>16,720,780</u>
Investments in Affiliates:	Capital Stock ..... 20,980
Chubb Investment Holdings, Inc..... 2,642,766	Paid-In Surplus..... 3,106,809
Pacific Indemnity Company ..... 1,831,737	Unassigned Funds..... <u>9,008,020</u>
Chubb Insurance Investment Holdings Ltd. ... 1,227,650	 
Executive Risk Indemnity Inc..... 921,728	SURPLUS TO POLICYHOLDERS..... <u>12,135,809</u>
CC Canada Holdings Ltd..... 583,643	 
Great Northern Insurance Company ..... 385,875	TOTAL LIABILITIES AND SURPLUS TO POLICYHOLDERS..... <u>\$ 28,856,589</u>
Chubb European Investment Holdings SLP . 239,173	
Chubb Insurance Company of Australia ... 224,157	
Vigilant Insurance Company..... 152,634	
Other Affiliates ..... 307,470	
Premiums Receivable ..... 1,498,855	
Other Assets ..... <u>1,322,485</u>	
TOTAL ADMITTED ASSETS ..... <u>\$ 28,856,589</u>	

Investments are valued in accordance with requirements of the National Association of Insurance Commissioners.  
Investments valued at \$479,627,974 are deposited with government authorities as required by law.

State, County & City of New York, — ss:

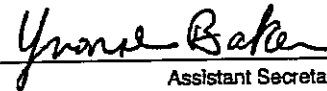
Yvonne Baker, Assistant Secretary \_\_\_\_\_ of the Federal Insurance Company

being duly sworn, deposes and says that the foregoing Statement of Assets, Liabilities and Surplus to Policyholders of said Federal Insurance Company on December 31, 2008 is true and correct and is a true abstract of the Annual Statement of said Company as filed with the Secretary of the Treasury of the United States for the 12 months ending December 31, 2008.

Subscribed and sworn to before me  
this

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

DOROTHY M. BAKER  
Notary Public, State of New York  
No. 31-4904994  
Qualified in New York County  
Commission Expires Sept. 14, 2009

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



**Chubb  
Surety**

**POWER  
OF  
ATTORNEY**

**Federal Insurance Company  
Vigilant Insurance Company  
Pacific Indemnity Company**

**Attr: Surety Department  
15 Mountain View Road  
Warren, NJ 07059**

**Know All by These Presents, That FEDERAL INSURANCE COMPANY, an Indiana corporation, VIGILANT INSURANCE COMPANY, a New York corporation, and PACIFIC INDEMNITY COMPANY, a Wisconsin corporation, do each hereby constitute and appoint Sherryanne M. DePirro, Mary R. McKee, Alice McLaughlin and Sandra K. Wolf of Woodcliff Lake, New Jersey**

each as their true and lawful Attorney-in-Fact to execute under such designation in their names and to affix their corporate seals to and deliver for and on their behalf as surety thereon or otherwise, bonds and undertakings and other writings obligatory in the nature thereof (other than bail bonds) given or executed in the course of business, and any instruments amending or altering the same, and consents to the modification or alteration of any instrument referred to in said bonds or obligations.

In Witness Whereof, said FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY have each executed and attested these presents and affixed their corporate seals on this 18th day of July, 2009.

*Kenneth C. Wendel*  
Kenneth C. Wendel, Assistant Secretary

*David B. Norris, Jr.*  
David B. Norris, Jr., Vice President

STATE OF NEW JERSEY  
County of Somerset ss.

On this 18th day of July, 2009 before me, a Notary Public of New Jersey, personally came Kenneth C. Wendel, to me known to be Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY, the companies which executed the foregoing Power of Attorney, and the said Kenneth C. Wendel, being by me duly sworn, did depose and say that he is Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY and knows the corporate seals thereof, that the seals affixed to the foregoing Power of Attorney are such corporate seals and were thereto affixed by authority of the By-Laws of said Companies; and that he signed said Power of Attorney as Assistant Secretary of said Companies by like authority; and that he is acquainted with David B. Norris, Jr., and knows him to be Vice President of said Companies; and that the signature of David B. Norris, Jr., subscribed to said Power of Attorney is in the genuine handwriting of David B. Norris, Jr., and was thereto subscribed by authority of said By-Laws and in deponent's presence.

Notarial Seal



**WENDIE WALSH**  
Notary Public, State of New Jersey  
No. 0054504  
Commission Expires April 18, 2013

*Wendie Walsh*  
Notary Public

**CERTIFICATION**

Extract from the By-Laws of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY:

"All powers of attorney for and on behalf of the Company may and shall be executed in the name and on behalf of the Company, either by the Chairman or the President or a Vice President or an Assistant Vice President, jointly with the Secretary or an Assistant Secretary, under their respective designations. The signature of such officers may be engraved, printed or lithographed. The signature of each of the following officers: Chairman, President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary and the seal of the Company may be affixed by facsimile to any power of attorney or to any certificate relating thereto appointing Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such power of attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached."

I, Kenneth C. Wendel, Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY (the "Companies") do hereby certify that

- (i) the foregoing extract of the By-Laws of the Companies is true and correct,
- (ii) the Companies are duly licensed and authorized to transact surety business in all 50 of the United States of America and the District of Columbia and are authorized by the U.S. Treasury Department; further, Federal and Vigilant are licensed in Puerto Rico and the U.S. Virgin Islands, and Federal is licensed in American Samoa, Guam, and each of the Provinces of Canada except Prince Edward Island; and
- (iii) the foregoing Power of Attorney is true, correct and in full force and effect.

Given under my hand and seals of said Companies at Warren, NJ this November 11, 2009.



*Kenneth C. Wendel*  
Kenneth C. Wendel, Assistant Secretary

IN THE EVENT YOU WISH TO NOTIFY US OF A CLAIM, VERIFY THE AUTHENTICITY OF THIS BOND OR NOTIFY US OF ANY OTHER MATTER, PLEASE CONTACT US AT ADDRESS LISTED ABOVE, OR BY Telephone (908) 903- 3493 Fax (908) 903- 3656 e-mail: surety@chubb.com

**CORPORATE ACKNOWLEDGMENT**


Form 152

STATE OF NEW JERSEY

COUNTY OF BERGEN

On this 11th day of November, 2009, before me personally came ALICE McLAUGHLIN to me known, who, being by me duly sworn, did depose and say that she/he resides in NUTLEY, NEW JERSEY that she/he is the ATTORNEY IN FACT of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND corporation described in and which executed the above instrument that she/he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

(SEAL)

  
\_\_\_\_\_  
Esther Caban  
Notary Public of New Jersey  
My Commission Expires  
February 18, 2014

# FIDELITY AND DEPOSIT COMPANY

OF MARYLAND

3910 KESWICK ROAD, BALTIMORE, MD 21211-2226

## Statement of Financial Condition

As Of December 31, 2008

### ASSETS

Bonds .....	\$ 148,252,979
Stocks .....	23,313,771
Cash and Short Term Investments .....	7,904,491
Reinsurance Recoverable .....	5,939,089
Other Accounts Receivable .....	38,307,386
<b>TOTAL ADMITTED ASSETS .....</b>	<b>\$ 223,717,718</b>

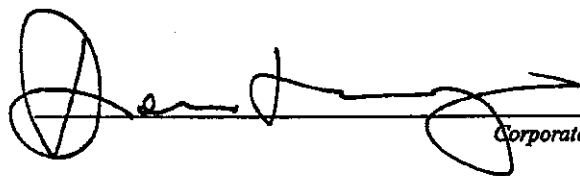
### LIABILITIES, SURPLUS AND OTHER FUNDS

Reserve for Taxes and Expenses .....	\$ 597,566
Ceded Reinsurance Premiums Payable .....	38,399,492
Securities Lending Collateral Liability .....	6,094,921
<b>TOTAL LIABILITIES .....</b>	<b>\$ 45,091,979</b>
Capital Stock, Paid Up .....	\$ 5,000,000
Surplus .....	173,625,739
Surplus as regards Policyholders .....	178,625,738
<b>TOTAL .....</b>	<b>\$ 223,717,718</b>

Securities carried at \$38,306,550 in the above statement are deposited as required by law.

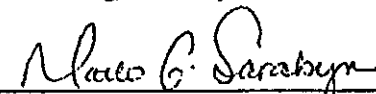
Securities carried on the basis prescribed by the National Association of Insurance Commissioners. On the basis of December 31, 2008 market quotations for all bonds and stocks owned, the Company's total admitted assets would be \$216,398,425 and surplus as regards policyholders \$171,306,445.

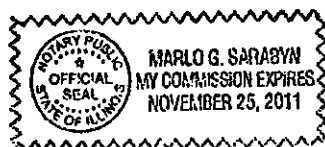
I, DENNIS F. KERRIGAN, Corporate Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the foregoing statement is a correct exhibit of the assets and liabilities of the said Company on the 31st day of December, 2008.

  
Corporate Secretary

State of Illinois }  
City of Schaumburg } SS:

Subscribed and sworn to, before me, a Notary Public of the State of Illinois, in the City of Schaumburg, this 14th day of March, 2009.

  
Notary Public



**Power of Attorney**  
**FIDELITY AND DEPOSIT COMPANY OF MARYLAND**

KNOW ALL MEN BY THESE PRESENTS: That the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a corporation of the State of Maryland, by WILLIAM J. MILLS, Vice President, and GERALD F. HALEY, Assistant Secretary, in pursuance of authority granted by Article VI, Section 2, of the By-Laws of said Company, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof does hereby nominate, constitute and appoint Sandra K. WOLF, Alice MCLAUGHLIN, Mary R. MCKEE and Sherryanne M. DEPIRRO, all of Woodcliff Lake, New Jersey, EACH its true and lawful agent and Attorney-In-Fact to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed, any and all bonds and undertakings, and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Company, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the Company at its office in Baltimore, Md. in their own proper persons. This power of attorney revokes that issued on behalf of Sandra K. WOLF, Alice MCLAUGHLIN, Mary R. MCKEE, Sherryanne DEPIRRO, dated March 28, 2008.

The said Assistant Secretary does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article VI, Section 2, of the By-Laws of said Company, and is now in force.

IN WITNESS WHEREOF, the said Vice-President and Assistant Secretary have hereunto subscribed their names and affixed the Corporate Seal of the said FIDELITY AND DEPOSIT COMPANY OF MARYLAND, this 22nd day of April, A.D. 2008.

ATTEST:

**FIDELITY AND DEPOSIT COMPANY OF MARYLAND**



*Gerald F. Haley*

Gerald F. Haley Assistant Secretary

By:

*William J. Mills*

William J. Mills

Vice President

State of Maryland }  
City of Baltimore } ss:

On this 22nd day of April, A.D. 2008, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, came WILLIAM J. MILLS, Vice President, and GERALD F. HALEY, Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and they each acknowledged the execution of the same, and being by me duly sworn, severally and each for himself depose and saith, that they are the said officers of the Company aforesaid, and that the seal affixed to the preceding instrument is the Corporate Seal of said Company, and that the said Corporate Seal and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.



*Maria D. Adamski*

Maria D. Adamski

Notary Public

My Commission Expires: July 8, 2011

## EXTRACT FROM BY-LAWS OF FIDELITY AND DEPOSIT COMPANY OF MARYLAND

"Article VI, Section 2. The Chairman of the Board, or the President, or any Executive Vice-President, or any of the Senior Vice-Presidents or Vice-Presidents specially authorized so to do by the Board of Directors or by the Executive Committee, shall have power, by and with the concurrence of the Secretary or any one of the Assistant Secretaries, to appoint Resident Vice-Presidents, Assistant Vice-Presidents and Attorneys-in-Fact as the business of the Company may require, or to authorize any person or persons to execute on behalf of the Company any bonds, undertakings, recognizances, stipulations, policies, contracts, agreements, deeds, and releases and assignments of judgements, decrees, mortgages and instruments in the nature of mortgages,...and to affix the seal of the Company thereto."

### CERTIFICATE

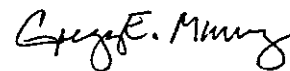
I, the undersigned, Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the foregoing Power of Attorney is still in full force and effect on the date of this certificate; and I do further certify that the Vice-President who executed the said Power of Attorney was one of the additional Vice-Presidents specially authorized by the Board of Directors to appoint any Attorney-in-Fact as provided in Article VI, Section 2, of the By-Laws of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND.

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at a meeting duly called and held on the 10th day of May, 1990.

RESOLVED: "That the facsimile or mechanically reproduced seal of the company and facsimile or mechanically reproduced signature of any Vice-President, Secretary, or Assistant Secretary of the Company, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power of attorney issued by the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed."

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seal of the said Company,

this 11th day of November, 2009.



*Assistant Secretary*

**CORPORATE ACKNOWLEDGMENT**

Form 152

STATE OF NEW JERSEY

COUNTY OF BERGEN

On this 11th day of November, 2009, before me personally came ALICE McLAUGHLIN to me known, who, being by me duly sworn, did depose and say that she/he resides in NUTLEY, NEW JERSEY that she/he is the ATTORNEY IN FACT of the ZURICH AMERICAN INSURANCE COMPANY the corporation described in and which executed the above instrument that she/he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

(SEAL)

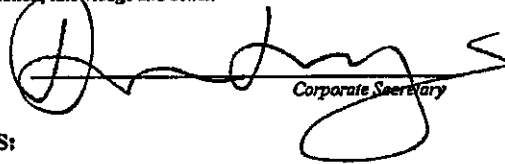


Esther Caben  
Notary Public of New Jersey  
My Commission Expires  
February 18, 2014

**ZURICH AMERICAN INSURANCE COMPANY**  
**COMPARATIVE BALANCE SHEET**  
**ONE LIBERTY PLAZA, 165 BROADWAY, 32nd FLOOR, NEW YORK, NY 10006**  
**As of December 31, 2008 and December 31, 2007**

	12/31/2008	12/31/2007
<b>Assets</b>		
Bonds	\$ 18,080,264,654	\$ 19,087,378,076
Preferred Stock	70,077,341	133,381,994
Common Stock	2,523,871,473	2,809,606,857
Real Estate	25,457,836	28,007,629
Other Invested Assets	1,699,943,998	540,121,817
Short-term Investments	117,588,071	163,510,422
Receivable for securities	8,050,472	-
Cash	66,140,854	1,391,371,897
Employee Trust for Deferred Compensation Plan	92,484,754	90,692,030
Total Cash and Invested Assets	\$ 22,683,879,453	\$ 24,244,070,722
Premiums Receivable	\$ 4,504,508,588	\$ 5,073,765,258
Funds Held with Reinsurers	18,761,471	17,702,845
Reinsurance Recoverable	859,700,252	680,285,692
Accrued Investment Income	149,763,601	159,844,556
Federal Income Tax Recoverable	583,896,990	603,657,275
Due from Affiliates	178,313,325	181,822,075
Other Assets	655,646,493	846,868,830
Total Assets	\$ 29,634,470,173	\$ 31,808,017,253
<b>Liabilities and Policyholders' Surplus</b>		
<b>Liabilities:</b>		
Loss and LAE Reserves	\$ 14,645,410,951	\$ 14,426,948,909
Unearned Premium Reserve	4,602,631,426	5,032,276,309
Funds Held with Reinsurers	248,918,770	252,617,358
Loss In Course of Payment	460,126,217	643,699,182
Commission Reserve	155,353,168	154,237,258
Federal Income Tax Payable	16,936,764	24,209,808
Remittances and Items Unallocated	135,262,884	212,916,937
Payable to parent, subs and affiliates	199,894,895	229,548,310
Provision for Reinsurance	95,167,954	112,368,418
Ceded Reinsurance Premiums Payable	605,799,518	522,715,017
Securities Lending Collateral Liability	102,593,522	1,229,669,401
Other Liabilities	2,126,543,703	2,222,098,055
Total Liabilities	\$ 23,394,639,772	\$ 25,063,304,962
<b>Policyholders' Surplus:</b>		
Common Capital Stock	\$ 5,000,000	\$ 5,000,000
Paid-In and Contributed Surplus	4,394,131,321	4,394,131,141
Surplus Notes	1,883,000,000	1,883,000,000
Special Surplus Retroactive Reinsurance	73,761,000	55,614,000
Cumulative Unrealized Gain	(316,593,413)	128,441,100
Dividends Undeclared	222,129	268,045
Loss Portfolio Transfer Account	-	-
Unassigned Surplus	200,309,364	278,258,005
Total Policyholders' Surplus	\$ 6,239,830,401	\$ 6,744,712,291
Total Liabilities and Policyholders' Surplus	\$ 29,634,470,173	\$ 31,808,017,253

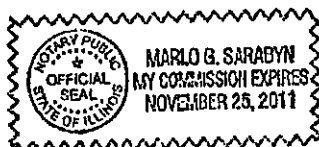
I, Dennis F. Kerrigan, Corporate Secretary of ZURICH AMERICAN INSURANCE COMPANY do hereby certify that the foregoing statement is a correct exhibit of the assets and liabilities of the said Company, on the 31st day of December, 2008, according to the best of my information, knowledge and belief.

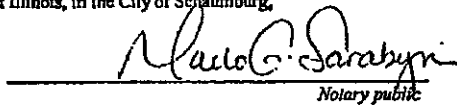
  
 \_\_\_\_\_  
 Corporate Secretary

State of Illinois  
 County of Cook

} SS:

Subscribed and sworn to, before me, a Notary Public of the State of Illinois, in the City of Schaumburg, this 14th day of March, 2009.



  
 \_\_\_\_\_  
 Notary public



**Power of Attorney  
FIDELITY AND DEPOSIT COMPANY OF MARYLAND**

KNOW ALL MEN BY THESE PRESENTS: That the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a corporation of the State of Maryland, by WILLIAM J. MILLS, Vice President, and GERALD F. HALEY, Assistant Secretary, in pursuance of authority granted by Article VI, Section 2, of the By-Laws of said Company, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, does hereby nominate, constitute and appoint Sandra K. WOLF, Alice MCLAUGHLIN, Mary R. MCKEE and Sherryanne M. DEPIRRO, all of Woodcliff Lake, New Jersey, EACH its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed, any and all bonds and undertakings, and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Company, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the Company at its office in Baltimore, Md. in their own proper persons. This power of attorney revokes that issued on behalf of Sandra K. WOLF, Alice MCLAUGHLIN, Mary R. MCKEE, Sherryanne DEPIRRO, dated March 28, 2008.

The said Assistant Secretary does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article VI, Section 2, of the By-Laws of said Company, and is now in force.

IN WITNESS WHEREOF, the said Vice-President and Assistant Secretary have hereunto subscribed their names and affixed the Corporate Seal of the said FIDELITY AND DEPOSIT COMPANY OF MARYLAND, this 22nd day of April, A.D. 2008.

ATTEST:

**FIDELITY AND DEPOSIT COMPANY OF MARYLAND**



*Gerald F. Haley*

*William J. Mills*

Gerald F. Haley    Assistant Secretary

By:

William J. Mills

Vice President

State of Maryland }  
City of Baltimore } ss:

On this 22nd day of April, A.D. 2008, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, came WILLIAM J. MILLS, Vice President, and GERALD F. HALEY, Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and they each acknowledged the execution of the same, and being by me duly sworn, severally and each for himself depose and saith, that they are the said officers of the Company aforesaid, and that the seal affixed to the preceding instrument is the Corporate Seal of said Company, and that the said Corporate Seal and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.



*Maria D. Adamski*

Maria D. Adamski

Notary Public

My Commission Expires: July 8, 2011

**EXTRACT FROM BY-LAWS OF FIDELITY AND DEPOSIT COMPANY OF MARYLAND**

"Article VI, Section 2. The Chairman of the Board, or the President, or any Executive Vice-President, or any of the Senior Vice-Presidents or Vice-Presidents specially authorized so to do by the Board of Directors or by the Executive Committee, shall have power, by and with the concurrence of the Secretary or any one of the Assistant Secretaries, to appoint Resident Vice-Presidents, Assistant Vice-Presidents and Attorneys-in-Fact as the business of the Company may require, or to authorize any person or persons to execute on behalf of the Company any bonds, undertakings, recognizances, stipulations, policies, contracts, agreements, deeds, and releases and assignments of judgements, decrees, mortgages and instruments in the nature of mortgages,...and to affix the seal of the Company thereto."

**CERTIFICATE**

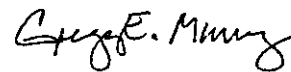
I, the undersigned, Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the foregoing Power of Attorney is still in full force and effect on the date of this certificate; and I do further certify that the Vice-President who executed the said Power of Attorney was one of the additional Vice-Presidents specially authorized by the Board of Directors to appoint any Attorney-in-Fact as provided in Article VI, Section 2, of the By-Laws of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND.

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at a meeting duly called and held on the 10th day of May, 1990.

RESOLVED: "That the facsimile or mechanically reproduced seal of the company and facsimile or mechanically reproduced signature of any Vice-President, Secretary, or Assistant Secretary of the Company, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power of attorney issued by the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed."

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seal of the said Company,

this 11th day of November, 2009.



*Assistant Secretary*

**CORPORATE ACKNOWLEDGMENT**

Form 152

STATE OF NEW JERSEY

COUNTY OF BERGEN

On this 11th day of November, 2009, before me personally came ALICE McLAUGHLIN to me known, who, being by me duly sworn, did depose and say that she/he resides in NUTLEY, NEW JERSEY that she/he is the ATTORNEY IN FACT of the ZURICH AMERICAN INSURANCE COMPANY the corporation described in and which executed the above instrument that she/he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

(SEAL)

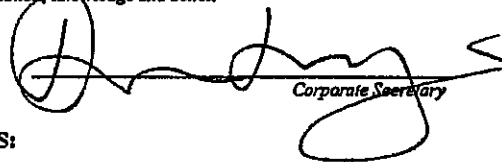


Esther Caban  
Notary Public of New Jersey  
My Commission Expires  
February 18, 2014

**ZURICH AMERICAN INSURANCE COMPANY**  
**COMPARATIVE BALANCE SHEET**  
**ONE LIBERTY PLAZA, 165 BROADWAY, 32nd FLOOR, NEW YORK, NY 10006**  
**As of December 31, 2008 and December 31, 2007**

	12/31/2008	12/31/2007
<b>Assets</b>		
Bonds	\$ 18,080,264,654	\$ 19,087,378,076
Preferred Stock	70,077,341	133,381,994
Common Stock	2,523,871,473	2,809,606,857
Real Estate	25,457,836	28,007,629
Other Invested Assets	1,699,943,998	540,121,817
Short-term Investments	117,588,071	163,510,422
Receivable for securities	8,050,472	-
Cash	66,140,854	1,391,371,897
Employee Trust for Deferred Compensation Plan	92,484,754	90,692,030
Total Cash and Invested Assets	\$ 22,683,879,453	\$ 24,244,070,722
Premiums Receivable	\$ 4,504,508,588	\$ 5,073,765,258
Funds Held with Reinsurers	18,761,471	17,702,845
Reinsurance Recoverable	859,700,252	680,285,692
Accrued Investment Income	149,763,601	159,844,556
Federal Income Tax Recoverable	583,896,990	603,657,275
Due from Affiliates	178,313,325	181,822,075
Other Assets	655,646,493	846,868,830
Total Assets	\$ 29,634,470,173	\$ 31,808,017,253
<b>Liabilities and Policyholders' Surplus</b>		
<b>Liabilities:</b>		
Loss and LAE Reserves	\$ 14,645,410,951	\$ 14,426,948,909
Unearned Premium Reserve	4,602,631,426	5,032,276,309
Funds Held with Reinsurers	248,918,770	252,617,358
Loss In Course of Payment	460,126,217	643,699,182
Commission Reserve	155,353,168	154,237,258
Federal Income Tax Payable	16,936,764	24,209,808
Remittances and Items Unallocated	135,262,884	212,916,937
Payable to parent, subs and affiliates	199,894,895	229,548,310
Provision for Reinsurance	95,167,954	112,368,418
Ceded Reinsurance Premiums Payable	605,799,518	522,715,017
Securities Lending Collateral Liability	102,593,522	1,229,669,401
Other Liabilities	2,126,543,703	2,222,098,055
Total Liabilities	\$ 23,394,639,772	\$ 25,063,304,962
<b>Policyholders' Surplus:</b>		
Common Capital Stock	\$ 5,000,000	\$ 5,000,000
Paid-In and Contributed Surplus	4,394,131,321	4,394,131,141
Surplus Notes	1,883,000,000	1,883,000,000
Special Surplus Retroactive Reinsurance	73,761,000	55,614,000
Cumulative Unrealized Gain	(316,593,413)	128,441,100
Dividends Undeclared	222,129	268,045
Loss Portfolio Transfer Account	-	-
Unassigned Surplus	200,309,364	278,258,005
Total Policyholders' Surplus	\$ 6,239,830,401	\$ 6,744,712,291
Total Liabilities and Policyholders' Surplus	\$ 29,634,470,173	\$ 31,808,017,253

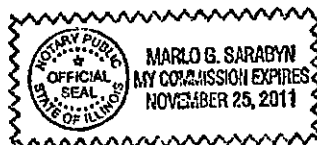
I, Dennis F. Kerrigan, Corporate Secretary of ZURICH AMERICAN INSURANCE COMPANY do hereby certify that the foregoing statement is a correct exhibit of the assets and liabilities of the said Company, on the 31st day of December, 2008, according to the best of my information, knowledge and belief.

  
 \_\_\_\_\_  
 Corporate Secretary

State of Illinois  
 County of Cook

} SS:

Subscribed and sworn to, before me, a Notary Public of the State of Illinois, in the City of Schaumburg, this 14th day of March, 2009.



  
 \_\_\_\_\_  
 Notary public

**ZURICH AMERICAN INSURANCE COMPANY**

**POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS, that the ZURICH AMERICAN INSURANCE COMPANY, a corporation created by and existing under the laws of the State of New York does hereby nominate, constitute and appoint Sandra K. WOLF, Alice MCLAUGHLIN, Mary R. MCKEE and Sherryanne M. DEPIRRO, all of Woodcliff Lake, New Jersey, EACH its true and lawful Attorneys-In-Fact with power and authority hereby conferred to sign, seal, and execute in its behalf, during the period beginning with the date of issuance of this power, : any and all bonds and undertakings, recognizances or other written obligations in the nature thereof, and to the ZURICH AMERICAN INSURANCE COMPANY thereby, and all of the acts of said Attorney[s]-in-Fact pursuant to these presents are hereby ratified and confirmed. This Power of Attorney is made and executed pursuant to and by the authority of the following By-Law duly adopted by the Board of Directors of the Company which By-Law has not been amended or rescinded.

Article VI, Section 5. "...The President or a Vice President in a written instrument attested by a Secretary or an Assistant Secretary may appoint any person Attorney-In-Fact with authority to execute surety bonds on behalf of the Company and other formal underwriting contracts in reference thereto and reinsurance agreements relating to individual policies and bonds of all kinds and attach the corporate seal. Any such officers may revoke the powers granted to any Attorney-In-Fact."

This Power of Attorney is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of the ZURICH AMERICAN INSURANCE COMPANY by unanimous consent in lieu of a special meeting dated December 15, 1998

" RESOLVED, that the signature of the President or a Vice President and the attesting signature of a Secretary or an Assistant Secretary and the seal of the Company may be affixed by facsimile on any Power of Attorney pursuant to Article VI, Section 5 of the By-Laws, and the signature of a Secretary or an Assistant Secretary and the seal of the Company may be affixed by facsimile to any certificate of any such power. Any such power or any certificate thereof with such facsimile signature and seal shall be valid and binding on the Company. Furthermore, such power so executed, sealed and certified by certificate so executed and sealed shall, with respect to any bond or undertaking to which it is attached, shall continue to be valid and binding on the Company."

IN WITNESS WHEREOF, the ZURICH AMERICAN INSURANCE COMPANY has caused these presents to be executed in its name and on its behalf and its Corporate Seal to be hereunto affixed and attested by its officers thereunto duly authorized, this 22nd day of April, A.D. 2008. This power of attorney revokes that issued on behalf of Sandra K. WOLF, Alice MCLAUGHLIN, Mary R. MCKEE, Sherryanne DEPIRRO, dated March 28, 2008.



**ZURICH AMERICAN INSURANCE COMPANY**

*Gerald F. Haley* By: *Frank E. Martin Jr.*

STATE OF MARYLAND }  
CITY OF BALTIMORE }

SS:

*Gerald F. Haley*

Secretary

By:

*Frank E. Martin Jr.*

Vice President

On the 22nd day of April, A.D. 2008, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, came the above named Vice President and Secretary of ZURICH AMERICAN INSURANCE COMPANY, to me personally known to be the individuals and officers described in and who executed the preceding instrument and they each acknowledged the execution of the same and being by me duly sworn, they severally and each for himself deposed and said that they respectively hold the offices in said Corporation as indicated, that the Seal affixed to the preceding instrument is the Corporate Seal of said Corporation, and that the said Corporate Seal, and their respective signature as such officers, were duly affixed and subscribed to the said instrument pursuant to all due corporate authorization.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above.



*Maria D. Alamb*

Notary Public

My Commission Expires: July 8, 2011

This Power of Attorney limits the acts of those named therein to the bonds and undertaking specifically named therein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

**CERTIFICATE**

I, the undersigned, a Secretary of the ZURICH AMERICAN INSURANCE COMPANY, do hereby certify that the foregoing Power of Attorney is still in full force and effect, and further certify that Article VI, Section 5 of the By-Laws of the Company and the Resolution of the Board of Directors set forth in said Power of Attorney are still in force.

IN TESTIMONY WHEREOF I have hereto subscribed my name and affixed the seal of said Company

the 11th day of November, 2009.

*Gregory E. Murray*

Gregory E. Murray

Secretary



**CORPORATE ACKNOWLEDGMENT**

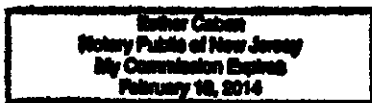
Form 152

STATE OF NEW JERSEY

COUNTY OF BERGEN

On this 11th day of November, 2009, before me personally came ALICE McLAUGHLIN to me known, who, being by me duly sworn, did depose and say that she/he resides in NUTLEY, NEW JERSEY that she/he is the ATTORNEY IN FACT of the LIBERTY MUTUAL INSURANCE COMPANY the corporation described in and which executed the above instrument that she/he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

(SEAL)



ASSETS

	Current Year			Prior Year
	1	2	3	4
	Assets	Nonadmitted Assets	Net Admitted Assets (Cols. 1 - 2)	Net Admitted Assets
1. Bonds (Schedule D)	11,057,668,501		11,057,668,501	15,335,063,671
2. Stocks (Schedule D):				
2.1 Preferred stocks	757,319,706		757,319,706	322,986,839
2.2 Common stocks	7,679,813,320	308,142,000	7,570,471,320	7,377,050,947
3. Mortgage loans on real estate (Schedule B):				
3.1 First liens	548,091,252		548,091,252	429,265,101
3.2 Other than first liens				
4. Real estate (Schedule A):				
4.1 Properties occupied by the company (less \$ 0 encumbrances)	425,989,188		425,989,188	418,561,083
4.2 Properties held for the production of income (less \$ 0 encumbrances)	1,039,982		1,039,982	1,069,862
4.3 Properties held for sale (less \$ 0 encumbrances)				
5. Cash (\$ 175,963,037, Schedule E - Part 1), cash equivalents (\$ 123,338,313, Schedule E - Part 2), and short-term investments (\$ 1,050,308,186, Schedule DA)	1,349,305,516		1,349,305,516	828,119,827
6. Contract loans (including \$ 0 premium notes)				
7. Other invested assets (Schedule BA)	5,132,267,125	923,910	5,131,343,213	4,942,852,171
8. Receivables for securities	2,858,056		2,858,056	13,535,760
9. Aggregate write-ins for invested assets				
10. Subtotal, cash and invested assets (Lines 1 to 9)	27,154,154,622	\$10,065,910	26,844,068,712	29,368,315,281
11. Title plans less \$ 0 charged off (for Title Insurance only)	140,188,757		140,188,757	175,201,336
12. Investment income due and accrued				
13. Premiums and considerations:				
13.1 Uncollected premiums and agents' balances in the course of collection	1,067,061,486	15,182,262	1,071,896,224	628,137,391
13.2 Deferred premiums, agents' balances and installments booked but deferred and not yet due (including \$ 0 earned but unbillable premiums)	1,594,827,150		1,594,827,150	1,538,534,970
13.3 Accrued retrospective premiums	404,104,651	40,410,494	363,694,067	367,689,632
14. Reinsurance:				
14.1 Amounts recoverable from reinsurers	560,300,803		560,300,803	685,885,888
14.2 Funds held by or deposited with reinsured companies	17,294,633		17,294,633	28,022,671
14.3 Other amounts receivable under reinsurance contracts				
15. Amounts receivable relating to uninsured plans				
16.1 Current federal and foreign income tax recoverable and interest thereon	177,817	2,802	175,315	159,994
16.2 Net deferred tax asset	1,408,501,048	622,710,782	846,790,256	1,188,948,060
17. Guaranty funds receivable or on deposit	32,539,326		32,539,326	630,160,137
18. Electronic data processing equipment and software	236,864,447	239,383,444	50,281,004	29,552,458
19. Furniture and equipment, including health care delivery assets (\$ 0)	62,545,678	62,645,678		49,406,628
20. Net adjustment in assets and liabilities due to foreign exchange rates				
21. Receivables from parent, subsidiaries and affiliates	316,899,160	3,740,554	312,158,606	238,268,862
22. Health care (\$ 0) and other amounts receivable				
23. Aggregate write-ins for other than invested assets	767,441,418	52,021,117	715,420,301	550,843,266
24. Total assets excluding Separate Accounts, Segregated Accounts and Protected Cell Accounts (Lines 10 to 23)	33,915,940,898	1,366,152,812	32,549,788,186	34,829,204,572
25. From Separate Accounts, Segregated Accounts and Protected Cell Accounts				
26. Total (Lines 24 and 25)	33,915,940,898	1,366,152,812	32,549,788,186	34,829,204,572

DETAILS OF WRITE-IN LINES				
0901				
0902				
0903				
0998. Summary of remaining write-ins for Line 09 from overflow page				
0999. Totals (Lines 0901 through 0903 plus 0998) (Line 09 above)				
2301. Other assets	236,481,646	40,894,448	165,597,198	140,182,807
2302. Cash remainder value life insurance	348,631,523		348,631,523	204,675,583
2303. Equities and deposits in pools and associations	36,042,093		36,042,093	32,295,326
2398. Summary of remaining write-ins for Line 23 from overflow page	176,286,158	11,136,666	165,149,492	173,749,550
2399. Totals (Lines 2301 through 2303 plus 2398) (Line 23 above)	767,441,418	52,021,117	715,420,301	550,843,266

LIABILITIES, SURPLUS AND OTHER FUNDS

	1	2
	Current Year	Prior Year
1. Losses (Part 2A, Line 33, Column 5)	12,504,575,356	12,504,762,751
2. Reinsurance payable on paid losses and loss adjustment expenses	50,046,425	106,915,231
3. Loss adjustment expenses (Part 2A, Line 35, Column 5)	2,486,478,256	2,572,885,246
4. Commissions payable, contingent commissions and other similar charges	36,063,863	134,988,019
5. Other expenses (excluding taxes, licenses and fees)	390,923,555	414,446,861
6. Taxes, licenses and fees (excluding federal and foreign income taxes)	256,823,744	250,680,878
7.1 Current federal and foreign income taxes (including \$ 0 on realized capital gains (losses))	36,105,135	
7.2 Net deferred tax liability		
8. Borrowed money \$ 490,636 and interest thereon \$ 4,574	505,212	1,616,726
9. Unearned premiums (Part 1A, Line 38, Column 5) (after deducting unearned premiums for ceded reinsurance of \$ 2,178,736,546 and including warranty reserves of \$ 0)	3,326,118,872	3,678,688,483
10. Advance premiums	60,012,654	30,958,300
11. Dividends declared and unpaid:		
11.1 Stockholders		
11.2 Policyholders	1,136,856	12,892,694
12. Ceded reinsurance premiums payable (net of ceding commissions)	650,486,345	651,875,481
13. Funds held by company under reinsurance treaties (Schedule F, Part 3, Column 7)	1,807,274,084	1,678,182,280
14. Amounts withheld or retained by company for account of others	455,703,328	632,437,218
15. Rescindances and loans not allocated		
16. Provision for reinsurance (Schedule F, Part 7)	73,887,601	118,580,694
17. Net adjustments in assets and liabilities due to foreign exchange rates		
18. Drafts outstanding	282,065,747	286,356,848
19. Payable to parent, subsidiaries and affiliates	72,875,812	81,311,436
20. Payable for securities	16,457,872	31,683,885
21. Liability for amounts held under unissued plans		
22. Capital notes \$ 0 and interest thereon \$ 0		
23. Aggregate write-ins for liabilities	478,583,830	678,769,042
24. Total liabilities excluding protected cell liabilities (Lines 1 through 23)	22,215,065,768	23,005,804,818
25. Protected cell liabilities		
26. Total liabilities (Lines 24 and 25)	22,215,065,768	23,005,804,818
27. Aggregate write-ins for special surplus funds	957,821,671	948,675,402
28. Common capital stock	10,000,000	10,000,000
29. Preferred capital stock		
30. Aggregate write-ins for other than special surplus funds	1,250,000	1,250,000
31. Surplus notes	882,674,680	891,366,161
32. Gross paid in and contributed surplus	6,336,272,383	4,348,651,176
33. Unassigned funds (surplus)	2,136,213,474	6,622,257,215
34. Less treasury stock, at cost:		
34.1 0 shares common (value included in Line 28 \$ 0)		
34.2 0 shares preferred (value included in Line 28 \$ 0)		
35. Surplus as regards policyholders (Lines 27 to 33, less 34) (Page 4, Line 36)	10,304,732,419	11,823,269,354
36. Totals (Part 2, Line 26, Col. 3)	32,549,788,186	34,829,074,172

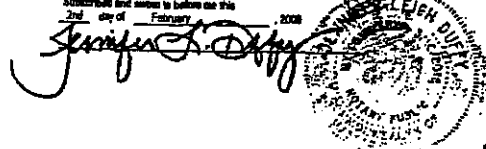
DETAILS OF WRITE-IN LINES		
2301. Other liabilities	424,947,876	228,177,878
2302. Retrospective reinsurance reserves	(1,562,574,742)	(1,731,268,838)
2303. Amounts held under unissued plans	591,897,189	598,100,759
2398. Summary of remaining write-ins for Line 23 from overflow page	187,045,845	257,220,358
2399. Totals (Lines 2301 through 2303 plus 2398) (Line 23 above)	478,583,830	678,769,042
2701. Special surplus from retrospective reinsurance	957,821,671	948,675,402
2702.		
2703.		
2798. Summary of remaining write-ins for Line 27 from overflow page		
2799. Totals (Lines 2701 through 2703 plus 2798) (Line 27 above)	957,821,671	948,675,402
3001. Guaranty funds	1,250,000	1,250,000
3002.		
3003.		
3098. Summary of remaining write-ins for Line 30 from overflow page		
3099. Totals (Lines 3001 through 3003 plus 3098) (Line 30 above)	1,250,000	1,250,000

State of Massachusetts  
County of Suffolk

The officers of this reporting entity being duly sworn, each depose and say that they are the described officers of said reporting entity, and that on the reporting period stated above, all of the herein described assets were the absolute property of the said reporting entity, free and clear from any liens or claims thereon, except as herein stated, and that this statement, together with returns, schedules and explanations hereto contained, prepared or referred to, is a full and true statement of all the assets and liabilities and of the credits and debits of the said reporting entity as of the reporting period stated above, and of its income and deductions therefrom for the period stated, and have been completed in accordance with the NAIC Annual Statement Instructions and Accounting Practices and Procedures manual except in the extent that: (1) state law may differ, or (2) that state rules or regulations require differences in reporting not related to accounting practices and procedures, according to the best of their information, knowledge and belief, respectively. Furthermore, the scope of the attention by the described officers also includes the related corresponding electronic filing with the NAIC, when required, that is an exact copy (except for formatting differences) as to electronic filing of the printed statement. The electronic filing may be requested by various regulators in lieu of or in addition to the printed statement.

Edmund F. Kelly (Signature) Chairman of the Board President & CEO  
 Robert L. Long (Signature) Vice President & Secretary  
 Lawrence Henry Cover Yabik (Signature) Senior Vice President & Treasurer

Subscribed and sworn to before me this 2nd day of February, 2008



a. Is this an original filing? [X] Yes [ ] No  
 b. If not: 1. Scale the amendment number  
 2. Date filed  
 3. Number of pages attached



THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS PRINTED ON RED BACKGROUND.

This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

LIBERTY MUTUAL INSURANCE COMPANY
BOSTON, MASSACHUSETTS
POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS: That Liberty Mutual Insurance Company (the "Company"), a Massachusetts stock insurance company, pursuant to and by authority of the By-law and Authorization hereinafter set forth, does hereby name, constitute and appoint SANDRA K. WOLF, ALICE MCLAUGHLIN, MARY R. MCKEE, SHERRYANNE M. DEPIRRO, ALL OF THE CITY OF WOODCLIFF LAKE, STATE OF NEW JERSEY.....

each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations in the penal sum not exceeding TWO HUNDRED FIFTY MILLION AND 00/100\*\*\*\*\* DOLLARS (\$ 250,000,000.00\*\*\*\*\* ) each, and the execution of such undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents, shall be as binding upon the Company as if they had been duly signed by the president and attested by the secretary of the Company in their own proper persons.

That this power is made and executed pursuant to and by authority of the following By-law and Authorization:

ARTICLE XIII - Execution of Contracts: Section 5. Surety Bonds and Undertakings.

Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

By the following instrument the chairman or the president has authorized the officer or other official named therein to appoint attorneys-in-fact:

Pursuant to Article XIII, Section 5 of the By-Laws, Gamet W. Elliott, Assistant Secretary of Liberty Mutual Insurance Company, is hereby authorized to appoint such attorneys-in-fact as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

That the By-law and the Authorization set forth above are true copies thereof and are now in full force and effect.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Company and the corporate seal of Liberty Mutual Insurance Company has been affixed thereto in Plymouth Meeting, Pennsylvania this 31st day of March 2009.

LIBERTY MUTUAL INSURANCE COMPANY

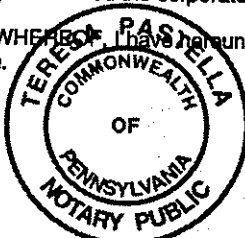
By Gamet W. Elliott, Assistant Secretary



COMMONWEALTH OF PENNSYLVANIA ss
COUNTY OF MONTGOMERY

On this 31st day of March, 2009, before me, a Notary Public, personally came Gamet W. Elliott, to me known, and acknowledged that he is an Assistant Secretary of Liberty Mutual Insurance Company; that he knows the seal of said corporation; and that he executed the above Power of Attorney and affixed the corporate seal of Liberty Mutual Insurance Company thereto with the authority and at the direction of said corporation.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at Plymouth Meeting, Pennsylvania, on the day and year first above written.



COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Teresa Pastella, Notary Public
Plymouth Twp., Montgomery County
My Commission Expires March 28, 2013
Member, Pennsylvania Association of Notaries

By Teresa Pastella, Notary Public

CERTIFICATE

I, the undersigned, Assistant Secretary of Liberty Mutual Insurance Company, do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy, is in full force and effect on the date of this certificate; and I do further certify that the officer or official who executed the said power of attorney is an Assistant Secretary specially authorized by the chairman or the president to appoint attorneys-in-fact as provided in Article XIII, Section 5 of the By-laws of Liberty Mutual Insurance Company.

This certificate and the above power of attorney may be signed by facsimile or mechanically reproduced signatures under and by authority of the following vote of the board of directors of Liberty Mutual Insurance Company at a meeting duly called and held on the 12th day of March, 1980.

VOTED that the facsimile or mechanically reproduced signature of any assistant secretary of the company, wherever appearing upon a certified copy of any power of attorney issued by the company in connection with surety bonds, shall be valid and binding upon the company with the same force and effect as though manually affixed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seal of the said company, this 11th day of November, 2009.



By David M. Carey, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, bank deposit, currency rate, interest rate or residual value guarantees.

To confirm the validity of this Power of Attorney call 1-610-832-8240 between 9:00 am and 4:30 pm EST on any business day.

## EXHIBIT E

### INSURANCE AND BONDING REQUIREMENTS

1. The Construction Manager shall furnish proof of its ability to provide the bonds and insurance required by the Contract with its Proposal. With respect to the payment and performance bonds, a letter from the Construction Manager's surety affirming the surety's willingness to provide the Construction Manager's bonds is sufficient. With respect to the insurance, either a letter from the Construction Manager's insurer, or a certificate showing that the Construction Manager currently possesses the required coverage, is sufficient.
2. The insurance requirements for this project are as follows: The Construction Manager must provide and maintain at Construction Manager's own expense, the minimum insurance coverage and requirements specified below, insuring all operations related to the Contract. The insurance must remain in effect from: the date of the notice to proceed until Substantial Completion of the project, during completion of Punch List, as well as any time Construction Manager returns to perform additional work regarding warranties or for any other purpose.
3.
  - a) *Insurance To Be Provided By the Construction Manager*  
The insurance requirements are included in this Exhibit E.
4. Upon approval by the Commission to award the Initial GMP and Project GMP, respectively, which approval shall be designated by a Notice to Proceed from the Commission to the Construction Manager, and within five (5) days after being given notice of approval of each, the successful Construction Manager must execute and deliver to the Commission the Performance and Payment Bond in the form included in the Contract Documents, and evidence of the required insurance coverage.
5. The Performance and Payment Bond shall be in the form provided herein, in the full amount of the Initial GMP and Project GMP, respectively, and shall be security for the faithful performance of the Contract and payment of all persons, firms, or corporations to whom the Construction Manager may become legally indebted for labor, material, facilities or services of any nature, employed or used by it in performing the Work. The current power of attorney for the persons who sign for any surety company shall be attached to such bond. Such power of attorney shall be sealed and certified with a "first hand signature" by an officer of the surety. A facsimile signature will not be accepted by the Commission. The Commission reserves the right to approve the surety company.
6. The failure of the Construction Manager to supply the required Performance and Payment Bond or evidence of the required insurance coverage within five (5) days of notice, or within such extended period as the Commission may grant based upon reasons determined sufficient by the Commission, shall constitute a default and the Commission may either award the Contract to the next lowest responsible Construction Manager or re-advertise for bids. The difference between the amount of its bid and the amount for which a contract for the work is subsequently executed may be charged against the Construction Manager, irrespective of whether the amount thus due exceeds the amount of the bid security. If a more favorable bid is received by re-advertising, the defaulting Construction Manager shall have no claim against the Commission for a refund. Because of the difficulty of ascertaining the damage caused to the Commission, such sum shall be considered liquidated damages and shall not constitute a penalty. The election by the Commission to grant an extension to the period allowed for the Construction Manager to provide an acceptable performance and payment bond and/or evidence of insurance coverage shall not entitle the Construction Manager to an extension of time required to complete the Work.

3) **Automobile Liability (Primary and Umbrella)**

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

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

4) **Contractors Pollution Liability**

Contractor's pollution is required with limits of not less than \$5,000,000 per occurrence for any portion of the services, which may entail exposure to any pollutants, whether in the course of sampling, remedial work or any other activity under this contract. Policy must pay for claims for bodily injury, property damage and other losses caused by pollution conditions that arise from the Contract scope of services, contractors operation, and completed operations. Coverage must be maintained for two (2) years after substantial completion. When policies are renewed or replaced, the policy retroactive date must coincide with or precede, start of work on the Contract. A claims-made policy, which is not renewed or replaced, must have an extended reporting period of two (2) years. The Public Building Commission, Board of Education of the City of Chicago and the City of Chicago are to be named as additional insureds on a primary, non-contributory basis.

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

5) **Builders Risk**

When Construction Manager undertakes any construction, including improvements, betterments, and/or repairs, the Construction Manager must provide All Risk Builders Risk Insurance at replacement cost for materials, supplies, equipment, machinery and fixtures that are or will be part of the permanent facility. Coverage must include but are not limited to the following: right to partial occupancy, collapse, water including overflow, leakage, sewer backup, or seepage, damage to adjoining or existing property, debris removal, scaffolding, false work, fences, and temporary structures, faulty workmanship or materials, and equipment stored off site or in transit. The Public Building Commission, Board of Education of the City of Chicago and the City of Chicago are to be named as additional insureds and loss payees

The Construction Manager is responsible for all loss or damage to Public Building Commission, Board of Education of the City of Chicago and/or City of Chicago property at full replacement cost. The Construction Manager is responsible for all loss or damage to personal property including but not limited to materials, equipment, tools, and supplies owned, rented, or used by Construction Manager.

6) **Railroad Protective Liability**

When any work is to be done adjacent to or on railroad or transit property, Construction Manager must provide, with respect to the operations that Construction Manager or subcontractors perform,

Railroad Protective Liability Insurance in the name of railroad or transit entity. The policy must have limits of not less than the requirement of the operating railroad/transit entity for losses arising out of injuries to or death of all persons, and for damage to or destruction of property, including the loss of use thereof.

7) **Subcontractor Default Insurance ("SDI").**

Construction Manager shall provide Subcontractor Default Insurance ("SDI"), for which Construction Manager shall be reimbursed at an amount calculated using the rate of \$11.50 per \$1,000 of Subcontractor amounts enrolled in SDI to be set forth in the GMP, which shall be invoiced and payable, without retention or retainage of any kind, at the time the first application for payment is submitted after such GMP is executed. Should the work proceed before an amendment establishing the GMP is executed, SDI will be reimbursed at a rate of \$11.50 per \$1,000 of the amount of subcontracts executed and enrolled in SDI by Construction Manager which shall be invoiced and payable, without retention or retainage of any kind, each month as such subcontracts are executed and costs incurred.

Any amendment or change order increasing or decreasing the Guaranteed Maximum Price shall include and Construction Manager shall be reimbursed for the additional SDI to be incurred or the Commission shall be credited for the reduction in SDI at the rate of \$11.50 per \$1,000 of adjustment to the Subcontract amounts.

**B. ADDITIONAL REQUIREMENTS**

Construction Manager must furnish the Public Building Commission Procurement Department, Richard J. Daley Center, Room 200, Chicago, IL 60602, original Certificates of Insurance, or such similar evidence, to be in force on the date of this Contract, and Renewal Certificates of Insurance, or such similar evidence, if any insurance policy has an expiration or renewal date occurring during the term of this Contract. The Construction Manager must submit evidence of insurance to the Public Building Commission prior to Contract award. The receipt of any certificate does not constitute agreement by the Commission that the insurance requirements in the Contract have been fully met or that the insurance policies indicated on the certificate are in compliance with all Contract requirements. The failure of the Commission to obtain certificates or other insurance evidence from Construction Manager is not a waiver by the Commission of any requirements for the Construction Manager to obtain and maintain the specified insurance. The Construction Manager will advise all insurers of the Contract provisions regarding insurance. Non-conforming insurance does not relieve Construction Manager of the obligation to provide insurance as specified in this contract. Nonfulfillment of the insurance conditions may constitute a breach of the Contract, and the Commission retains the right to stop work until proper evidence of insurance is provided, or the Contract may be terminated.

The Commission reserves the right to obtain copies of insurance policies and records from the Construction Manager and/or its subcontractors at any time upon written request.

The insurance must provide for 60 days prior written notice to be given to the Commission in the event coverage is substantially changed, canceled, or non-renewed.

Any deductibles or self-insured retentions on referenced insurance must be borne by Construction Manager.

The Construction Manager waives and agrees to cause all its insurers to waive their rights of subrogation against the Public Building Commission, Board of Education of the City of Chicago and the City of Chicago, their respective Board members, employees, elected officials, officers, or representatives.

The insurance coverage and limits furnished by Construction Manager in no way limit the Construction Manager's liabilities and responsibilities specified within the Contract or by law.

Any insurance or self-insurance programs maintained by the Public Building Commission, Board of Education of the City of Chicago and the City of Chicago do not contribute with insurance provided by the Construction Manager under the Contract.

The required insurance to be carried is not limited by any limitations expressed in the indemnification language in this Contract or any limitation placed on the indemnity in this Contract given as a matter of law.

If Construction Manager is a joint venture or limited liability company, the insurance policies must name the joint venture or limited liability company as a named insured.

The Construction Manager must require all subcontractors to provide the insurance required herein, or Construction Manager may provide the insurance for subcontractors through Construction Manager's CCIP. All subcontractors are subject to the same insurance requirements of Construction Manager unless otherwise specified in this Contract.

If Construction Manager or subcontractor desires additional coverage, the party desiring the additional coverage is responsible for the acquisition and cost

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

## EXHIBIT F

### SPECIAL CONDITIONS REGARDING MBE/WBE PARTICIPATION

#### MBE/WBE Program

##### 1. Policy Statement

- a. It is the policy of the Commission to ensure competitive business opportunities for MBE and WBE firms in the performance of Contracts, to prohibit discrimination in the award of or participation in Contracts, and to abolish arbitrary barriers to full participation in Contracts by all persons, regardless of race, sex or ethnicity. Therefore, during the performance of this Contract, the Construction Manager must agree that it will not discriminate against any person or business on the basis of race, color, religion, ancestry, age, marital status, physical or mental handicap, unfavorable discharge from military service, parental status, sexual orientation, national origin or sex, in the solicitation or the purchase of goods and services or the subcontracting of work in the performance in this Contract.
- b. The Commission requires the Construction Manager also agree to take affirmative action to ensure that MBE and WBE firms have the maximum opportunity to compete for and perform subcontracts with respect to this Contract.
- c. The Commission requires the Construction Manager to notify MBE and WBE firms, utilized on this contract, about opportunities on contracts without affirmative action goals.

##### 2. Aspirational Goals

- a. The aspirational goals for this Project are to award 30% of the dollar value of all construction contracts to certified MBEs and 8% of the dollar value of all construction contracts to qualified WBEs.
- b. Further, the Construction Manager must agree to use its best efforts to include MBE and WBE firms in any Contract modification work that increases the Contract value by 10% of the initial Contract value or \$50,000, whichever is less. Where the proposed contract modification involves work which can be performed by MBEs and WBEs already performing work on the contract such MBEs and WBEs will participate in such work specified in the contract modification.
- c. Failure to carry out the commitments and policies set forth in this Program constitute a material breach of contract and may result in termination of the Construction Manager or such other remedy, as the Commission deems appropriate.

##### 3. Definitions

- a. For purposes of this Special Condition, the following definitions applies:
  - (1) "Certified Minority Business Enterprise" means a person or entity granted certification by the City of Chicago, County of Cook, Metropolitan Water Reclamation District, Chicago Minority Business Development Council, Central Management Service of the State of Illinois, METRA, and Women's Business Development Center.
  - (2) "Certified Women's Business Enterprise" means a person or entity granted certification by the City of Chicago, County of Cook, Metropolitan Water Reclamation

District, Chicago Minority Business Development Council, Central Management Service of the State of Illinois, METRA, and Women's Business Development Center.

- (3) "Construction Contract" means a contract for the construction, repair, alteration, renovation or improvement of any building, facility or other structure.
- (4) "Contract Specific Goals" means the subcontracting goals for MBE and WBE participation established for a particular contract based upon the availability of MBEs and WBEs to perform and anticipated scope of work of the contract and the Commission's progress towards meeting the aspirational goals.
- (5) "Contractor" means any person or business entity that seeks to enter into a Construction Contract with the Commission and includes all partners, affiliates and joint ventures of such person or entity.
- (6) "Executive Director" means the Executive Director of the Commission or his duly designated representative as appointed in writing.
- (7) "Good faith efforts" means actions undertaken by a Construction Manager to achieve a Contract Specific Goal that by their scope, intensity and appropriateness to the objective can reasonably be expected to fulfill the Program's requirements.
- (8) "Joint venture" means an association of two or more persons or entities or any combination of two or more business enterprises and persons numbering two or more, proposing to perform a single for-profit business enterprise, in which each joint venture partner contributes property, capital, efforts, skill and knowledge, and in which the MBE or WBE is responsible for a distinct, clearly-defined portion of the work of the contract and whose share in the capital contribution, control, management, risks and profits of the joint venture is equal to its ownership interest. Joint ventures must have an agreement in writing specifying the terms and conditions of the relationships between the parties and their relationship and responsibilities to the contract.
- (9) "Minority" means:
  - a. Any individual in the following racial or ethnic groups, members of which are rebuttably presumed to be socially disadvantaged:
    - i. African-Americans or Blacks, which includes persons having origins in any of the Black racial groups of Africa;
    - ii. Hispanics, which includes persons of Spanish culture with origins in Mexico, South or Central America or the Caribbean Islands, regardless of race; and
  - b. Individual members of other groups, including but not limited to Asian-Americans, Arab-Americans and Native-Americans, found by the Commission to be socially disadvantaged by having suffered racial or ethnic prejudice or cultural bias within American society, without regard to individual qualities, resulting in decreased opportunities to compete in Chicago area markets or to do business with the Commission.
- (10) "Minority-owned business enterprise" or "MBE" means a small local business enterprise which is at least 51% owned by one or more economically disadvantaged minority persons, or in the case of a publicly held corporation at least 51% of all classes of the stock of which is owned by one or more economically disadvantaged minority persons whose management, policies, major decisions and daily business operations are independently managed and controlled by one or more economically disadvantaged minority persons.
- (11) "Program" means the minority- and women-owned business enterprise construction procurement program established in this special condition.

(12) "Women-owned business enterprise" or "WBE" means a small local business enterprise which is at least 51% owned by one or more economically disadvantaged women or in the case of a publicly owned business, at least 51% of all classes of the stock of which is owned by one or more economically disadvantaged women, whose management, policies, major decisions and daily business operations are independently managed and controlled by one or more economically disadvantaged women.

#### **4. Determining MBE/WBE Utilization**

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

a. The total dollar value of the contract awarded to the certified MBE or WBE firm will be credited to such participation. Only minority business participation may be counted toward MBE participation and only women business participation may be counted toward WBE participation.

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

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

- (1) Shares in the ownership, control, management responsibilities, risks and profits of the joint venture; and
- (2) Is responsible for a clearly defined portion of work to be performed in proportion to the MBE or WBE ownership percentage.

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

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



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

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

**5. Construction Manager's Solicitation of Bid Proposals**

The Construction Manager shall solicit bids for specific elements of work from subcontractors utilizing Commission approved bid forms and documents which shall include the items specified in Exhibit D. For purposes of this Exhibit F, the term "Contractor" shall refer to the subcontractor or trade contractor submitting a bid for the work (also "Bidder"), and the term Construction Manager shall refer to the construction Manager which by agreement with the Public Building Commission is administering the procurement of individual trade contractors for the Work.

a. The schedules and documents provided as attachments to Schedule 3 of Exhibit D constitute the Bidder's MBE/WBE compliance proposal and must be submitted at the time of the bid or proposal or within such extended period as provided in Exhibit D.

(1) Evidence of Certification: Affidavit of MBE/WBE. A copy of each proposed MBE and WBE firm's Letter of Certification from the City of Chicago, Department of Procurement Services or any other entity listed in Paragraph 3.a(1) must be submitted.

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

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

(4) Schedule D: Affidavit of Prime Contractor Regarding MBE or WBE Utilization. A completed Schedule D committing to the utilization of each listed MBE or WBE firm. Unless the Bidder has submitted a completed request for a waiver of participation by MBE/WBE firms (See Request for Waiver procedures in Paragraph 7), the Bidder must include the specific dollar amount of participation of each MBE/WBE firm listed on its Schedule D. The total dollar commitment to proposed MBE firms must at least equal the MBE goal, and the total dollar commitment to proposed WBE firms must at least equal the WBE goal. Bidders are responsible for calculating the dollar equivalent of MBE or WBE utilization as percentages of their total base bid.

b. The submittals must have all blank spaces on the Schedule pages applicable to the contract correctly filled in. Agreements between a Bidder and a MBE/WBE in which the

MBE/WBE promises not to provide subcontracting quotations to other Bidders are prohibited.

#### **6. Evaluation of Compliance Proposals**

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

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

c. Bidders will not be permitted to modify their MBE/WBE compliance proposal except insofar as directed to do so by the Construction Manager. Therefore, all terms and conditions stipulated for prospective MBE and WBE subcontractors or suppliers should be satisfactorily negotiated prior to the submission to the Construction Manager of the Bidder's MBE/WBE compliance proposal with the bid. If circumstances should arise, however, where a proposed MBE/WBE is no longer available, the process described in Paragraph 12 should be followed.

#### **7. Request for Waiver**

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

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

- (1) Attendance at the Pre-bid conference;
- (2) The Bidder's general affirmative action policies regarding the utilization of MBE and WBE firms, plus a description of the methods used to carry out those policies;
- (3) Advertisement in trade association newsletters and minority and woman-oriented and general circulation media for specific sub-bids;
- (4) Timely notification of specific sub-bids to minority and woman contractor assistance agencies and associations;

- (5) Description of direct negotiations with MBE and WBE firms for specific sub-bids, including:
    - i. The name, address and telephone number of MBE and WBE firms contacted;
    - ii. A description of the information provided to MBE and WBE firms regarding the portions of the work to be performed; and
    - iii. The reasons why additional MBE and WBE firms were not obtained in spite of negotiations.
  - (6) A statement of the efforts made to select portions of the work proposed to be performed by MBE and WBE firms (such as sub-supplier, transport, engineering, distribution, or any other roles contributing to production and delivery as specified in the contract) in order to increase the likelihood of achieving sub participation.
  - (7) As to each MBE and WBE contacted which the Bidder considers to be not qualified, a detailed statement of the reasons for the Bidder's conclusion.
  - (8) Efforts made by the Bidder to expand its search for MBE and/or WBE firms beyond usual geographic boundaries.
  - (9) General efforts made to assist MBE and WBE firms to overcome participation barriers.
- c. The Construction Manager, in consultation with the Commission and the Executive Director, after review and evaluation of the request provided by the Bidder, may grant a waiver request upon the determination that:

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

#### **8. Failure To Achieve Goals**

- a. If the Construction Manager cannot achieve contract specific goals and Project specific goals set forth in Paragraph 2 above, as the Project proceeds, it must have documented its good faith efforts to do so. In determining whether the Construction Manager has made such good faith efforts, the performance of bidders on trade contracts and other contractors in meeting the goals may be considered. The Executive Director or his designee shall consider, at a minimum, the Construction Manager's efforts to do the following:
- (1) Soliciting through reasonable and available means the interest of MBEs or WBEs that Provide interested MBEs or WBEs with adequate information about the plans, specifications and requirements of the contract, including addenda, in a timely manner to assist them in responding to the solicitation.
  - (2) Provide interested MBEs or WBEs with adequate information about the plans, specifications and requirements of the contract, including addenda, in a timely manner to assist them in responding to the solicitation.
  - (3) Negotiating in good faith with interested MBEs or WBEs that have submitted bids. Documentation of negotiation must include the names, addresses and telephone numbers of MBEs or WBEs that were solicited; the date of each such solicitation; a

description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why agreements could not be reached with MBEs or WBEs to perform the work. That there may be some additional costs involved in solicitation and using MBEs and WBEs is not a sufficient reason for a contractor's failure to meet the goals, as long as such costs are reasonable.

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

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

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

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

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

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

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

b. In the event the Public Building Commission Procurement Officer determines that the Construction Manager did not make a good faith effort to achieve the goals, the Construction Manager may file a Dispute to the Executive Director as provided in Article 11 of Exhibit J, Standard Terms and Conditions for Construction Management Contracts.

## **9. Reporting and Record-Keeping Requirements**

a. The Contractor, within 5 working days of contract award, must execute a formal subcontract or purchase order in compliance with the terms of the Contractor's bid proposal and MBE/WBE assurances, and submit to the Construction Manager a copy of the MBE and WBE subcontracts or purchase orders, each showing acceptance of the subcontract or purchase order by the MBE and WBE firms. During the performance of the contract, the Contractor will submit partial and final waivers of lien from MBE and WBE subcontractors and suppliers indicating the current payment amount and the cumulative dollar amount of payments made to date. The Contractor will file regular MBE and WBE utilization reports on the form entitled "Status Report of MBE and WBE

(Sub) Contract Payments” at the time of submitting each monthly Payment Estimate, which reflects the current status of cumulative and projected payments to MBE and WBE firms.

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

#### **10. Disqualification of MBE or WBE**

a. The Contract may be terminated by the Executive Director or Construction Manager upon the disqualification of the Contractor as an MBE or WBE if the Contractor’s status as an MBE or WBE was a factor in the award and such status was misrepresented by the Contractor.

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

#### **11. Prohibition On Changes To MBE/WBE Commitments**

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

#### **12. MBE/WBE Substitution Requirements and Procedures**

a. Arbitrary changes by the Contractor of the commitments earlier certified in the Schedule D are prohibited. Further, after once entering into each approved MBE and WBE sub-contract agreement, the Contractor shall thereafter neither terminate the subcontract, nor reduce the scope of the work to be performed by the MBE or WBE, nor decrease the price to the MBE or WBE, without in each instance receiving the prior written approval of the Executive Director and Construction Manager. In some cases, however, it may become necessary to substitute a new MBE or WBE in order to actually fulfill the MBE or WBE requirements. In such cases, the Executive Director and

Construction Manager must be given reasons justifying the release by the Contractor of prior specific MBE or WBE commitments established in the contract, and will need to review the eligibility of the MBE or WBE presented as a substitute. The substitution procedure will be as follows:

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

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

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

(3) The Contractor's notification should include the names, address and principal official of any proposed substitute MBE or WBE and the dollar value and scope of work of the proposed subcontract. Attached should be all the same MBE/WBE affidavits, documents and Letters of Intent which are required of the proposed MBE or WBE firms, as enumerated above in Paragraph 5 - Submission of Bid Proposals.

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

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

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

c. No relief of the MBE/WBE requirements will be granted by the Executive Director except in exceptional circumstances. Requests for complete or partial waiver of the MBE/WBE requirements of this contract must be made in writing, stating all details

of the request, the circumstances, and any additional relevant information. The request must be accompanied by a record of all efforts taken by the Construction Manager to locate specific firms, solicit MBE and WBE bids, seek assistance from technical assistance agencies, and other good faith efforts undertaken to achieve compliance with the MBE/WBE goals.

**13. Non-Compliance**

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

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

**14. Severability**

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

**EXHIBIT G**

**KEY PERSONNEL AND CONSTRUCTION MANAGER BILLING RATES**

<b>Name</b>	<b>Title/Role</b>	
<b>Nick Canellis</b>	<b>Project Executive</b>	
<b>Pete Woeste</b>	<b>Project Manager</b>	
<b>Scott Atchison</b>	<b>Superintendent</b>	
<b>Adam Dell</b>	<b>Project Engineer</b>	
<b>Scott Peterson</b>	<b>Estimator/Preconstruction</b>	
<b>Dan Wilder</b>	<b>MEP Coordinator</b>	

<b>Position/Title</b>	<b>Hourly Billing Rate</b>	
<b>Project Executive</b>	<b>\$129</b>	
<b>Project Manager</b>	<b>\$124</b>	
<b>Superintendent</b>	<b>\$124</b>	
<b>Project Engineer</b>	<b>\$69</b>	
<b>Estimator</b>	<b>\$85</b>	
<b>MEP Coordinator</b>	<b>\$62</b>	
<b>Field Secretary</b>	<b>\$36</b>	
<b>Accounting/Cost</b>	<b>\$78</b>	
<b>Safety Engineer</b>	<b>\$57</b>	
<b>Purchasing Manager</b>	<b>\$100</b>	
<b>Safety Manager</b>	<b>\$103</b>	

<b>Hourly Position</b>	<b>Straight Time</b>	<b>Time and Half</b>	<b>Double Time</b>
<b>Laborer</b>	<b>\$69</b>	<b>\$96</b>	<b>\$123</b>
<b>Laborer Foreman</b>	<b>\$73</b>	<b>\$101</b>	<b>\$128</b>
<b>Carpenter</b>	<b>\$86</b>	<b>\$117</b>	<b>\$148</b>
<b>Carpenter Foreman</b>	<b>\$91</b>	<b>\$125</b>	<b>\$158</b>
<b>Operator</b>	<b>\$87</b>	<b>n/a</b>	<b>\$148</b>



**EXHIBIT H**

**GUARANTEE FORM**

I, (name) \_\_\_\_\_,  
(title) \_\_\_\_\_  
of (Construction Manager) \_\_\_\_\_, herewith  
guarantee the (description of the work) \_\_\_\_\_ against  
defects in materials and workmanship for a period of \_\_\_\_\_ year(s) from (the date  
of final acceptance) \_\_\_\_\_ as defined in the Contract  
Documents and agree to correct any defects within this period at no cost to the Public  
Building Commission and to pay for any damages to other work resulting from the  
defects or the repair of the same.

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

## EXHIBIT I

### REQUIREMENTS FOR COMMISSION FIELD OFFICE

#### 1.1 Commission's Field Office

- A. Furnish, erect and maintain a clean, weather-tight office at the site of the Work for the Duration of the Agreement, through final completion, for the sole and exclusive use of the Commission. No on site Work may commence until the commission's Field Office required by this exhibit is in place, fully functional and approved by the Commission.
- B. Provide the Commission's Field Office entirely separate from, unconnected to and not to be shared with the Construction Manager's Field Office.
- C. Provide the Commission's Field Office not less than 500 square feet in area and with a ceiling height of not less than 7 feet high with a minimum of two private offices and one common area with sufficient space to conduct project meetings. The private office shall be equipped with a minimum of four (4) duplex receptacles equally distributed across (2) power circuits. The trailer shall be equipped with a minimum of 100 amp electrical service. The Commission's Field Office must be painted, heated air-conditioned, lighted, provided with lockable windows with vandalism protection and blinds or shades that operate, and doors with cylinder locks and deadbolt locks. Enclose the air-space beneath the trailer with exterior grade plywood panel siding painted to match office exterior. Provide hinged access doors at utility connection area. Provide stair access with handrails as required.
  1. Provide one (1) restroom with sink and water closet (indoors) with plumbing connections as necessary. Include all costs for water supply and sewerage pump out or connection to existing utilities/metering for the duration of the project.
- D. Provide weekly janitorial service for the Commission's Field Office.
- E. Pay all expenses in connection with the Commission's Field Office, including but not limited to, the installation and connection of telephone/data service, heat, air conditioning, light water sewerage, janitorial services and equipment. Construction Manager shall provide all paper, toner, etc. for printers and copiers. HVAC filters must be replaced every other month.
- F. Furnish the following equipment and furniture:
  1. Four (4) – 60"x30" desks with two drawer pedestal file cabinets and four (4) non-folding chairs with upholstered seat and back.
  2. Five (5) – three (3) drawer legal size lateral file cabinets.
  3. One (1) layout table with a minimum top size of 38" x 60". An adjustable height drafting stool/chair with upholstered seat and back shall be provided for the layout table.
  4. Two (2) – 8' x3' conference tables with 20 folding chairs.
  5. One (1) equipment cabinet with lock and minimum inside dimensions of 44" high x 24" wide x 30" deep. The walls must be steel with a minimum thickness of 3/32" with concealed hinged and enclosed lock to prevent entry by force.

6. Four (4) – two (2) line telephones, each consisting of a base unit with answering machine and two (2) cordless units.
  7. One (1) fax machine – installed on separate line.
  8. One (1) electronic desk type tape printing calculator.
  9. Four (4) wall mounted mail holders.
  10. One (1) floor standing office copier with sorter capable of printing/copying up to 11"x17" in color and a minimum speed of 20 pages per minute (black and white). Provide copier stand that provides for storage of copier supplies and initial spare toner/ink cartridges. Provide maintenance and operating supplies.
  11. One (1) first aid cabinet fully equipped any maintained on a monthly basis.
  12. One (1) five gallon hot and cold water dispenser with cup dispenser and cups.
  13. Central heating and air conditioning appropriate to trailer size and construction.
  14. One (1) – six (6) cubic foot refrigerator with freezer compartment.
  15. One (1) plan rack with twelve (12) 42" capacity hanging clamps.\
  16. One (1) Fire Extinguisher
  17. One (1) digital camera (minimum 6.0 mega-pixel with 2.0 GB memory card) with software and cables . Include rechargeable batteries and batter charge compatible with the type used in camera.
  18. One (1) multi-function color printer (fax, copy, scan, print) of the latest version with toner cartridges, paper, and maintenance service contract for the duration of the project with spare toner cartridges.
    - a. Type to be Canon Image Class 2300N (Dual Tray – 8-12"x11" and 11" x 17" format) with scanning capability (PDF Format) – or better.
    - b. Network multi-function scanner printer to a minimum of four (4) workstation connection points for computers.
  19. Provide networking equipment (3Com model 3C888 and DSL/Cable Modem as a minimum or as required by internet service provider) to network the Commission's computers (four (4) minimum) together via modem or router to provide peer to peer communication and internet access from any computer (including wireless internet access for the trailer). Network all printers, copiers, and multi-function machines to the network/workstations to enable printing and scanning from each workstation.
  20. Provide separate full service telephone lines with local and long distance access for each of the four (4) telephones, one (1) fax machine, and DSL/cable modem.
  21. Provide unlimited internet access (DSL or Cable) with an internet service provider for the duration of the project.
  22. One (1) microwave oven.
  23. One (1) coffee maker with pot.
  24. Ten (10) shelves (1'x5') located per Commission Representatives direction.
- G. The Commission's field office and all furnishings and equipment will remain the property of the Construction Manager upon completion of the Project.

**EXHIBIT J**

**STANDARD TERMS AND CONDITIONS  
FOR CONSTRUCTION MANAGEMENT CONTRACTS  
(with Community Hiring Requirement)**

**CONSTRUCTION MANAGEMENT AT-RISK  
CONTRACT NO. XXXX**

**OGDEN REPLACEMENT ELEMENTARY SCHOOL  
24 W. Walton Street  
NEW CONSTRUCTION  
PROJECT 05160**

**PUBLIC BUILDING COMMISSION OF CHICAGO**



**Mayor Richard M. Daley  
Chairman**

**Erin Lavin Cabonargi  
Executive Director**

Room 200  
Richard J. Daley Center  
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**JULY 2009**

**PUBLIC BUILDING COMMISSION OF CHICAGO**

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**PUBLIC BUILDING COMMISSION OF CHICAGO**

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# PUBLIC BUILDING COMMISSION OF CHICAGO

## ARTICLE 1. PROJECT ORGANIZATION

### SECTION 1.01 The Commission Representative

1. The Executive Director will assign an individual to be the Commission's Representative for the Project. The Executive Director will notify the Construction Manager of the assignment in writing at the time of execution of the Agreement. The Commission Representative may be changed from time to time.
2. **The Construction Manager must route all Project communication and notices, whether intended for the Commission or the Architect, to the Commission Representative.** The Commission Representative will also route responses from the Commission and Architect to the Construction Manager.
3. The Commission Representative has the authority to reject all or any portion of Work that does not conform to the Contract Documents.
4. The Commission Representative will not be responsible for acts or omissions of the Construction Manager or any Subcontractor.
5. The Commission Representative is responsible for the following:
  - a. Reviewing and monitoring, on a periodic basis, the Construction Manager's baseline and updated schedules for compliance with the Contract milestone dates and the master CPM milestone dates.
  - b. Representing the Commission at weekly meetings with the Commission, User, Construction Manager, Architect, and others to review the Project schedule, submittals, scope change, requests for information, outstanding bulletins, pending issues, and field problems.
  - c. Reviewing Construction Manager's payment applications in accordance with the Commission's policies and procedures and submitting the payment applications to Commission for approval and payment.
  - d. Establishing an on-Site organization line of authority to implement all construction phases of the Project in a coordinated and efficient manner.
  - e. Establishing and implementing procedures for, and maintain coordination among, the Commission, the User, Architect, Construction Manager, and other agencies having jurisdiction of the Project with respect to all construction aspects of the Project.
  - f. Coordinating the submission, processing, procurement and assembly of all required permits, licenses, and certificates with the Construction Manager and arrange delivery of same to the Commission.
  - g. Conducting Site observations of the Construction Manager and Project to ensure that Work is progressing on schedule and in accordance with the requirements of the Commission and the Contract Documents.
  - h. Reviewing the adequacy of the supervision, personnel and equipment and the availability of necessary materials and supplies. Where inadequate, direct that the necessary action be taken to remediate the deficiency.
  - i. Receiving and reviewing all shop drawings, materials and all other required Submittals prior to transmittal of these documents to the Architect. Requests for approval of subcontractors,



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delivery schedules, material lists, shop drawings, samples, and the like will be commented upon and submitted to the Commission for concurring approval.

- j. Monitoring the flow of all documents and materials for proper sequence of approvals so as not to delay the progress of the work.
- k. Receiving and reviewing all requests for additional compensation and time extensions sought by the Construction Manager.
- l. Conducting a comprehensive final inspection of the Project to verify that the materials furnished and Work performed are in accordance with the Contract Documents.
- m. Expediting the assembly and delivery to the Commission of all papers required by the Contract Documents, including but not limited to "as-built" drawings, guarantees, warranties, and operations and maintenance manuals. Reviewing, approving, and submitting such documents to the Commission upon completion of the Project.

# PUBLIC BUILDING COMMISSION OF CHICAGO

## ARTICLE 2. CONSTRUCTION MANAGER'S OBLIGATIONS

### SECTION 2.01 Construction Manager

1. The Construction Manager must provide all Services required to be performed and provide, or cause to be provided, all of the labor, necessary tools, machinery, materials, schedules and other documents and all facilities for the construction of the Project as described herein and other work necessary to perform and complete in a workmanlike manner, and within the specified time, all of the Work in strict accordance with the Contract Documents. Construction Manager is solely responsible for selecting the means, methods, techniques, sequences, and procedures used in performing the Work.
2. The Construction Manager is solely responsible for properly laying out the Work, and for all lines, elevations and measurements for all of the Work executed under the Contract Documents. The Construction Manager must verify the figures shown on the Drawings before laying out the Work and will be held responsible for any errors or inaccuracies resulting from the failure to do so. Neither the Architect nor the Commission Representative will be responsible for laying out the Work.
3. The Construction Manager is responsible for the coordination of the various parts of the Work so that no part is left in an unfinished or incomplete condition owing to any disagreement between the various Subcontractors or any of the Subcontractors and the Construction Manager.
4. The Construction Manager must require each Subcontractor to become familiar with all provisions of the Contract Documents that may affect Subcontractor's work.
5. The Construction Manager shall at all times be responsible for the performance of the Work by its Subcontractors. The Construction Manager will manage and coordinate the Work of Subcontractors such that the Work progresses in an efficient, orderly and timely manner. In the event of any claim or dispute between Subcontractors, or any Subcontractor and Construction Manager, Construction Manager shall manage the resolution of any such claim or dispute. The Construction Manager shall at all times deal with its Subcontractors in good faith, and use all reasonable efforts to resolve claims or disputes in a prompt, cost-effective manner.
6. The Work is under the charge and care of the Construction Manager until Final Completion and Acceptance of the Work by the Commission, unless otherwise specified in the Contract Documents. The Construction Manager assumes all responsibility for injury or damage to the Work by action of elements, fire or any other causes whatsoever, including, injury or damage arising from the execution or non-execution of the Work, except for injury or damage caused by other contractors not working for the Construction Manager which the Construction Manager could not have prevented through its exercise of the standard of care provided in this Agreement. The Construction Manager must rebuild, repair, restore, and make good, at no additional cost to the Commission (except for injury or damage caused by other contractors not working for the Construction Manager which the Construction Manager could not have prevented through its exercise of the standard of care provided in this Agreement), all injuries or damages to any portion of its Work before Final Completion and Acceptance of the Work. When equipment or materials are furnished to the Construction Manager by the Commission for use or inclusion in the Work, the Construction Manager's responsibility for safeguarding all such equipment and materials must be the same as for equipment and materials furnished by Construction Manager. Construction Manager shall ensure that Builder's Risk insurance and all other applicable coverages required in Exhibit E to the Agreement remain in place up to the date of Final Completion and Acceptance whereupon the Work is accepted for occupancy by the Commission and User Agency; provided, however, that in the event that the User Agency elects to occupy the Project, in whole or in part, prior to Final Completion and Acceptance of the Work, the Construction Manager and the Commission acknowledge and agree that Contractor's Builders' Risk insurance will not cover damage to the Work in those areas of the Project for which the User Agency has taken beneficial occupancy (the "Occupied Areas"). The parties further acknowledge and agree that Construction Manager shall remain liable for any damage that it or its Subcontractors cause to the Work in the

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Occupied Areas, but the Commission and the User Agency shall look to property insurance furnished by the Commission or User Agency for coverage for damage to the Work in the Occupied Areas caused by the Commission, the User Agency or any third party.

7. The Work will not be considered complete and accepted until the Construction Manager receives written notice from the Commission confirming the Final Completion and Acceptance of the Work.

### SECTION 2.02 Contract Documents

1. During the Pre-Construction Phase, the Construction Manager must carefully review and compare all Drawings, Technical Specifications, and other Contract Documents in compliance with the standard of care set forth in the Agreement. In the event the Construction Manager identifies an error or omission, the Construction Manager will promptly notify the Commission Representative, in writing, and then proceed with the Work in accordance with instructions from the Commission Representative concerning such error or omission. The Construction Manager acknowledges and agrees that any such errors or omissions are to the detriment of the Owner. Construction Manager shall not seek to take advantage of the discovery of any conflict, error or omission, or discrepancy in the Contract Documents after award of the Contract or establishment of the Project GMP, but shall cooperate with the Commission to resolve any such errors or omissions in a prompt and cost-effective manner. In the event such resolution involves a change to the Work, such change will be accomplished pursuant to Article 10 hereof. Any changes to the Work that are not performed pursuant to Article 10 will be done at the Construction Manager's expense.
2. The Contract Documents are complementary and intended to include all items required for the proper execution and completion of the Work. This does not mean that all items required will be found in both the Drawings and Technical Specifications. Generally, the Technical Specifications describe Work which cannot be readily indicated on the Drawings, and indicate types, qualities, and methods of installation of the various materials and equipment required. The Drawings and Technical Specifications are to be read and interpreted as a whole. If there are contradictions or ambiguities between the Contract Documents, the Construction Manager must submit a request for information (RFI) to the Commission Representative. Otherwise, the Construction Manager must perform the Work pursuant to the requirements of all Contract Documents. If, in the determination of the Commission, Construction Manager failed to meet its standard of care during the Pre-Construction Phase, the Commission shall hold the Construction Manager responsible for such costs as would have been avoided if the Construction Manager had performed such obligations pursuant to Article 4 of the Agreement; provided, however, that the Construction Manager may expend the Construction Contingency for such repairs pursuant to Paragraph 4.03(f)(2)(b) of the Agreement.
3. Materials which are shown on the Drawings and which may not be specifically described in the Technical Specifications or Drawings will be furnished by the Construction Manager, suitable for the intended use, compatible with adjacent materials, and subject to review for conformance with the intent of the Contract Documents. If installation techniques are not specified, installation will be in accordance with manufacturer's currently published instructions and industry standards.
4. Dimensions of Work will not be determined by scale or rule. Figured dimensions must be followed at all times. If figured dimensions are lacking and cannot be calculated from other dimensions on Drawings, the Construction Manager must submit an RFI to the Commission Representative for resolution by the Architect.
5. The Construction Manager must keep at the Site, for reference, a complete set of documents pertaining to the Project, including, but not limited to, the complete Contract Documents, copies of all drawings and plans furnished by the Architect, all additional and revised drawings and plans furnished by the Commission Representative, all orders issued to the Construction Manager by the Commission that relate to the Work, and all submittals, including shop drawings, meeting minutes, reports, payment applications, and correspondence relating to the Work, and a set of updated as-built drawings.

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6. As used in this Exhibit J, the terms "Agreement" shall mean the 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.

### SECTION 2.03 Site Conditions and Inspection

1. Surveys, soil borings, geotechnical information, data, plans or other materials generally describing the unimproved land or existing structures at the Site may be provided to the Construction Manager by the Commission.
2. The Construction Manager must take field measurements, verify field conditions and carefully compare such field measurements and conditions and any other information known to the Construction Manager about the Contract Documents before commencing the Work or any portion of the Work. No allowance will be made to the Construction Manager for any extra labor and/or materials required due to Site conditions or discrepancies that might have been discovered by a thorough and proper inspection of the Site. If land surveying Work is required under this Contract, Construction Manager must have such Work performed by a surveyor as described in Section 6.06 "Surveyor."
3. If conditions are encountered at the site that are:
  - a. Subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents, or
  - b. Pre-existing unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, including the presence of unanticipated Hazardous Materials, then the Construction Manager will take no action to disturb the area until providing written notice to the Commission Representative immediately, and receiving notice from the Commission Representative as to how and when to proceed.
4. If conditions differ materially from those indicated in the Contract Documents and could not have been known to the Construction Manager through the exercise of its standard of care provided in the Agreement at the time the Project GMP was established or the bid package was awarded, and such conditions will cause a material increase or decrease in the Construction Manager's cost of, or time required for, the performance of any part of the Work, an equitable adjustment in the Contract Price or Contract term or both, will be made based upon Article 10, "Changes in the Work."
5. The Construction Manager must follow the requirement of written notice in Section 2.03.3b above and the requirements set out in Article 11 Claims and Disputes, regarding a claim for changed site conditions. The Construction Manager must also provide written notice of any claim regarding the changed site condition to the Commission Representative within three (3) business days after its discovery. The notice of changed site conditions must state the nature of the changed site condition, its location, and the work that is affected by it. The Construction Manager's failure to provide the written notice to the Commission Representative within three (3) business days after discovery of the changed site condition constitutes a waiver of the claim and the right to file a dispute to the Executive Director under Article 11.

### SECTION 2.04 Construction Manager's Warranties and Representations

Construction Manager warrants and represents that:

1. It has carefully examined and analyzed the provisions and requirements of this Contract; it has inspected the Site to the extent made available by the Commission; from its own analysis it has satisfied itself as to the nature and scope of Work, all conditions, any obstructions, and requirements needed for the preparation of the Project GMP and the performance of its Contract,

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the general and local conditions, and all other matters which in any way may affect this Contract or its performance; and the time available for such examination, analysis, inspection, and investigation was adequate.

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

### SECTION 2.05 Acceptance of Work

1. Substantial Completion of the Milestones, Phases and Project
  - a. The Construction Manager will notify the Commission Representative, in writing, of a date that the work on a milestone, phase, or the Project as a whole will be ready for inspection by the Executive Director, Commission Representative and representatives of the User Agency, to determine whether the Work is Substantially Complete. Notice will be given by the Construction Manager at least seven (7) days in advance of that date. If the Commission Representative concurs that the work will be ready for inspection and/or testing on the date stated, including all testing and balancing, commissioning, operational training and other activities and may be required by the Commission, the Executive Director, Commission Representative, Architect and other parties, selected by the Executive Director, will make such inspection within a reasonable period of time. The scheduling of the inspection will not relieve the Construction Manager of its responsibilities under the Contract Documents. The Construction Manager is required to furnish access to all parts of the Project for the inspection.
  - b. Upon inspection, the Construction Manager will prepare a Certificate of Substantial Completion for execution by the Construction Manager and Architect, which Certificate shall be submitted to the Commission Representative. The Executive Director will determine whether Substantial Completion has been achieved and will issue a written notice to the Construction Manager of its acceptance of the Certificate of Substantial Completion for the pertinent Milestone, Phase or Project.
2. Final Completion and Acceptance of the Work
  - a. Punch List Completion
    - (1) The Construction Manager understands and agrees that time is of the essence in closing out the Work of this Contract. Upon Substantial Completion of the Work, the Punch List will be transmitted to the Construction Manager from the Commission. The Construction Manager agrees to begin performance of Punch List Work immediately after receipt of the Punch List.
    - (2) Failure of the Construction Manager or its Subcontractors to begin the Punch List Work within 3 business Days after receipt of the Punch List will be construed as failure to prosecute the Work of the Contract.
    - (3) Punch List Work will be continuously prosecuted once begun and completed within the

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period set forth in the Punch List by the Commission Representative. The Commission Representative shall establish the period for completion of the Punch List Work after consultation with the Construction Manager. The period established by the Commission Representative will be based on the Commission Representative's reasonable, good faith estimate of the time necessary for the Construction Manager to complete the Punch List Work.

- b. When the Construction Manager deems the Work, including all Punch List Work, to be complete, the Construction Manager must notify the Commission Representative in writing that the Work will be ready for an inspection and/or test on a date specified by the Construction Manager. Such notice is to be given at least 5 Days in advance of said date. If the Commission Representative concurs that the Work will be ready for inspection or testing on the date given, including submission of start-up reports, testing and balancing reports, instructions, warranties, Operations & Maintenance manuals, completion of all Punch List work and other work as may be required by the Commission, the Commission will make such inspection within a reasonable period of time. The scheduling of the inspection to determine whether the Work is complete does not relieve the Construction Manager of its responsibilities under the Contract Documents. The Construction Manager must cooperate in all respects in the scheduling and performance of the inspection. Upon inspection, the Commission will determine if Final Completion and Acceptance of the Work has been achieved and will issue a written notice to the Construction Manager confirming the Final Completion and Acceptance of the Work.
- c. No action of the Commission, the Commission Representative, the Architect, or their respective Executive Directors, board members, officers, employees, or agents is to be construed as accepting Work done or material furnished in the performance of this Contract, which Work or materials are not in accordance with those specified and required by the Contract. The issuance of notice of Final Completion and Acceptance or the final payment does not affect the rights of the Commission against the Construction Manager (and the surety or sureties on the Performance and Payment Bond given by the Construction Manager) to enforce the complete performance of this Contract or to sue for the recovery of damages for failure to do so, nor affect the terms of Construction Manager's guarantee in connection therewith.

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## ARTICLE 3. PERMITS AND LICENSES

### SECTION 3.01 Permits, Licenses, and Regulations

#### 1. Permits

- a. The Construction Manager is responsible for obtaining all permits, including but not limited to sewer, water, crane, fence, driveway, and building permits, as prescribed by the City of Chicago and public utilities, and any other permits that may be necessary. **The Commission shall be responsible for the cost of the City of Chicago building permit; any and all permit review fees or charges will be borne by the Construction Manager and included in the Project GMP.**
- b. The Construction Manager will confer with the Commission Representative prior to applying for the City building permit, and the parties will agree on the process for obtaining the City building permit prior to Construction Manager's application for such permit. The Commission Representative will assist the Construction Manager in the building permit process, but the Construction Manager is solely responsible for obtaining all required permits in a timely fashion, subject to the Project Milestone Schedule per Section 4.05 of the Agreement.
- c. The nature of the foundation systems required on portions of this Project may be such that submittals, permits, and coordination will be required with the City of Chicago Bureau of Underground. If such systems are required by the Contract, the Construction Manager, representing its familiarity with these systems and permit processes, is responsible for any and all submittals, fees, coordination, and any other items required to secure approvals required by the authorities having jurisdiction for the installation of these systems.

#### 2. Licenses and Regulations

- a. The Construction Manager shall include in the Project GMP, all costs necessary to obtain, and pay for all licenses and certificates of inspection required or necessary for the execution and completion of the Work.
- b. The Construction Manager must give all notices and comply with all laws, ordinances, codes, rules and regulations bearing on the conduct of the Work. If the Construction Manager observes that the Drawings and specifications are at variance therewith, prompt notification in writing must be given to the Commission Representative, and any necessary changes must be made in accordance with Article 10 "Changes in the Work." If the Construction Manager fails to provide such notice, or otherwise performs the Work, subject to the Standard of Care provided in the Agreement, contrary to pertinent law, ordinances, codes, rules or regulations, the Construction Manager will bear all costs arising from any Work performed that is contrary to such laws, ordinances, codes, rules, and regulations.
- c. The Construction Manager must also comply with the current regulations of the National Board of Fire Underwriters where applicable, and all other codes named in the specifications for the various divisions of the Work.
- d. Regulations applicable to this Project include, but are not limited to the most current editions of, the following:
  1. City of Chicago Building Codes
  2. NEC
  3. NFPA
  4. Illinois Plumbing Code
  5. Illinois Accessibility Standards
  6. Americans with Disabilities Act Guidelines (ADAG)
  7. ASHRAE/IES, Standard Efficiency Guidelines

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- e. Where requirements of the applicable building codes differ, the Authorized Commission Representative shall determine which requirement shall govern and the Construction Manager shall comply with the governing requirement. If the Construction Manager believes it is entitled to additional compensation or an extension of the Project Schedule it must follow the requirements set out in Article 11 "Claims and Disputes."
- f. Submit copies of all permits, licenses, and similar permissions obtained, and receipts for fees paid, to the Commission Representative.
- g. It shall be the responsibility of the Construction Manager to coordinate, procure and pay for all ties necessary for the completion and operation of the fire alarm system. Construction Manager shall arrange and pay for all fees as required by the City of Chicago Bureau of Electricity.



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### ARTICLE 4. CONSTRUCTION MANAGER'S PRACTICES AT SITE

#### SECTION 4.01 Project Health and Safety

The Construction Manager is responsible for project health and safety as of the date of execution of the Agreement.

##### 1. Worker's Health and Safety

- a. Construction Manager has sole and complete responsibility for implementation of a safety program. The Construction Manager's safety program ("Safety Program") must include the Work of all the Construction Manager's Subcontractors. The Safety Program must be submitted to the Commission Representative before the start of the Work.
- b. The Construction Manager shall designate a safety representative for the project. This person shall be present whenever work is being performed at the site or whenever delivery of materials, products or equipment is being made at the site. The safety representative must have successfully completed the OSHA 30 hour course.
- c. Although the Commission Representative will observe construction and give the Construction Manager opinions and suggestions about safety defects and deficiencies, the Commission Representative's suggestions on safety will in no way relieve the Construction Manager of its responsibility for safety on the project. The Construction Manager has sole responsibility for safety.
- d. The Construction Manager must comply with the requirements of Regulations 29 CFR Part 1926 (originally CFR Part 1518) – Safety and Health Regulations for Construction of the Williams-Steiger Occupation Safety and Health Act of 1970 (Federal, OSHA). Copies may be obtained from the Regional Administrator of the Department of Labor, Federal Office Building, Chicago, Illinois.
- e. The Construction Manager's must also comply with the "Health and Safety Act" of the State of Illinois. The rules pursuant to this Act are on file with the Secretary of State of Illinois and identical in every respect with the standards in effect under the Federal, OSHA, and law, pursuant to orders of the Illinois Industrial Commission. The Federal and State standards require that the Construction Manager provide reasonable protection to the lives, health and safety of all persons employed under the Contract. The State act, rules and the applicable parts thereof will be considered as part of these specifications.
- f. The Construction Manager must comply with all local safety laws including, those set forth in Title 15 of the Municipal Code of Chicago, Ch. 15-4, Art. 5, and Ch. 15-20, Art. 1.
- g. The Construction Manager must take any precautions that may be necessary to render all portions of the Work secure in every respect to decrease the possibility of accidents from any cause. The Construction Manager will furnish and install all necessary facilities to provide safe means of access to all points where Work is being performed and make all necessary provisions to insure the safety of workers and of consultants and inspectors during the performance of the Work.
- h. The Construction Manager must keep on the site of the Work, completely equipped first aid kits readily accessible at all times. The Construction Manager will designate a person on each shift, acceptable to the Commission Representative, to be in charge of first aid and will cause such person to receive proper instructions therein.
- i. Only such materials and equipment as are necessary for the construction of the Work under this Contract, as determined by the Commission Representative, will be placed, stored or allowed to occupy any such space of the site of the Work. If gasoline, flammable oils, or other

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highly combustible materials must be stored at the site, they will be stored in approved safety containers.

### **2. Hazardous Materials**

- a. If the Construction Manager encounters material on the Site reasonably believed to be hazardous which has not been identified in the Contract Documents or rendered harmless, the Construction Manager will immediately stop Work in the Area affected and report the condition to the Commission Representative in writing. The Work in the affected area will be resumed in the absence of Hazardous Materials, or when it has been rendered harmless, by written notification from the Commission Representative to the Construction Manager.
- b. The Construction Manager will not be required to perform, without its consent, any Work in the presence of Hazardous Materials.
- c. If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from material or substance encountered on the Site by the Construction Manager, the Construction Manager, will, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Commission Representative and Architect in writing.

### **3. Coordination With Other Contractors - Safety**

In accordance with the provisions of Article 5. "Coordination With Others," the Construction Manager will cooperate with any other contractor that may be performing work on the Site in connection with the compliance with regulations of OSHA and all other federal, state, and municipal laws, rules and regulations relating to Site safety and practice including, as may be relevant, correcting Work within abatement periods, requesting extensions on abatement periods when work has been done by other contractors, and furnishing such supporting information or material as may be necessary to fully protect the rights of the Commission, its representatives, and other contractors on pending or prospective violation orders.

### **4. Public Health and Safety**

- a. The Construction Manager must prevent the public from gaining access to the Project Site.
- b. The Construction Manager will take all necessary precautions to ensure the safety of the public and to prevent accidents or injury to persons or damage to property adjacent to the Site where the Work is being performed.
- c. The Construction Manager will erect and properly maintain at all times, as required by laws and regulations and the conditions and progress of the Work, proper safeguards for the protection of the public and post signs warning against the dangers created by falling materials, open excavations, and all other hazardous conditions.
- d. The Construction Manager must remove all snow and ice, and salt all sidewalks adjacent to the project site for the proper protection of pedestrians pursuant to Section 10-8-180 of the Chicago Municipal Code.
- e. If, in the prosecution of the Work, it is necessary to excavate or occupy any street, alley, or public grounds of the City of Chicago, the Construction Manager agrees to erect and maintain such barriers, and during the night, such lights as will effectively prevent the happening of any accidents or damage to life, limb, or property in consequence of such excavation or occupation of such street, alley, or public grounds. The Construction Manager is liable for all damage caused by the Construction Manager, its agents, employees, or Subcontractors of any tier in the excavation or occupation of any street, alley, or public grounds, and indemnifies the Commission pursuant to the Agreement.

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

### SECTION 4.02 Accidents

1. If death, serious injury, including any time an ambulance is called to the site, or serious damages are caused, the Construction Manager must notify the Commission Representative immediately via telephone or messenger.
2. The Construction Manager will promptly report in writing to the Commission Representative all accidents whatsoever arising out of, or in connection with, the performance of the Work, whether on or off the Site, which caused death, personal injury, or property damage, giving full details and statements of witnesses. It will be the responsibility of the Construction Manager to submit a written accident report, within 24 hours of the occurrence, containing the following:
  - a. Name of Person or Persons involved and Home Address(es)
  - b. Location of Occurrence
  - c. Time of Day and Date
  - d. Description of Occurrence
  - e. Statements of Witnesses
  - f. Signature of Construction Manager's Superintendent
  - g. Any other documentation of the accident, if any (i.e. a police report, OSHA report, medical documentation, etc.)
3. The Construction Manager must send a copy of the accident report to the Commission Risk Manager, and to the Commission Representative.
4. If any claim is made by anyone against the Construction Manager or any Subcontractor on account of any accident, the Construction Manager will promptly report the facts and full details of the claim in writing to the Commission Representative.

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## ARTICLE 5. COORDINATION WITH OTHERS

### SECTION 5.01 Other Contractors on the Site

1. The Commission reserves the right to let other contracts in connection with the Work. The Construction Manager will afford other contractors reasonable opportunity for the introduction and storage of their materials and for the performance of their work. Construction Manager will coordinate and tie-in, where appropriate, its Work with that of others in an acceptable manner and perform the Work in proper sequence to the work of others. Such work being performed by the Commission's separate contractors will not in any way constitute acceptance or partial acceptance of the Work by the Commission.
2. The Construction Manager must conduct the Work so as not to interfere with or hinder the progress or completion of the work being performed by other contractors within or adjacent to the Site.
3. If any part of the Construction Manager's Work depends, for proper performance or result, upon the work of any other contractor, the Construction Manager will inspect and measure the work of the other Construction Manager and promptly report to the Commission Representative any defects or discrepancies in such work. The Construction Manager's failure to inspect and make such report will constitute an acceptance of the other contractor's work as fit and proper for the proper performance of the Work, except as to latent defects.
4. Wherever work being done by any such contractors or subcontractors is contiguous to Work covered by the Contract Documents, the respective rights of the parties will be established by the Commission Representative to secure the completion of the various portions of the Work in a coordinated manner.
5. All requirements of this Section 5.01 shall be mutual of Other Contractors on the Site toward the Construction Manager.

### SECTION 5.02 Mutual Responsibility of Contractors

1. The Construction Manager is responsible for Work not completed or accepted due to the presence and operations of other contractors.
2. The Construction Manager is liable, financially or otherwise, in connection with this Contract, and must protect and save harmless the Commission from any and all damages or claims that may arise because of inconvenience, delay, or loss experienced due to the presence and operations of other contractors working within the limits of the Work.
3. The Construction Manager, where separate contractors or their subcontractors are employed on the Site, will not make claims against the Commission for loss or damage or injury caused by any fault or negligence of such other contractor or subcontractor. The Construction Manager will look solely to such contractors or subcontractors for recovery for any such damage or injury.
4. If any separate contractor or its subcontractor suffers loss or damage through any acts or omission on the part of the Construction Manager, or any of its subcontractors, the Construction Manager will reimburse such other contractor or subcontractor. If such separate contractor or its subcontractor asserts any claim against the Commission on account of any damage or loss alleged to have been so sustained, the Commission will notify the Construction Manager, and the Construction Manager will save the Commission harmless against such claims as provided in Section 4.09 of the Agreement.
5. Notwithstanding the foregoing paragraphs 1 – 4 of this Section 5.02, in the event that Construction Manager has met its standard of care as set forth in the Agreement, and the Commission is in privity with the other contractor that damaged or delayed, or was damaged or delayed by

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Construction Manager, the Commission will meet its obligations and enforce its rights under the respective contracts in an effort to resolve any claims or disputes between Construction Manager and other contractors.

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## ARTICLE 6. PERSONNEL

### SECTION 6.01 Competency of Workers

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

### SECTION 6.02 Administration and Supervision of the Work

1. The Construction Manager will furnish a competent and adequate staff as necessary for the proper administration, coordination, and supervision of the Work; organize the procurement of all materials and equipment so that they will be available at the time they are needed for the Work; and keep an adequate force of skilled workers on the Site to complete the Work in accordance with all requirements of the Contract Documents. In the event the Executive Director determines, in his or her sole discretion, that additional supervision or administration is required, Construction Manager shall furnish sufficient personnel to perform such supervision or administration, reimbursable through the Construction Manager Contingency or if exhausted at Construction Manager's own expense.
2. Subsequent to notice of contract award, but prior to the Notice to Proceed, the Construction Manager will select a Project Manager and submit his/her résumé to the Commission Representative for the approval of the Commission. The Project Manager will have full responsibility for the prosecution of the Work with full authority to act in all matters as necessary for the proper coordination, direction, commitment of resources, and technical administration of the Work. The Project Manager will attend meetings at such places and times as will be decided by the Commission or Architect in order to render reports on the progress of the Work. The Construction Manager will not change Project Manager without the consent of the Commission, unless such staff member proves to be unsatisfactory to the Construction Manager and ceases to be in its employ.

### SECTION 6.03 Superintendence

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

### SECTION 6.04 Scheduler

1. To assist in the preparation and maintenance of the Schedule, the Construction Manager may

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engage, at its own expense, a consultant who is skilled in the application of network techniques for construction projects and the use of Primavera scheduling software. If the Construction Manager has qualified personnel on staff, the Construction Manager may perform the required scheduling with its own organization.

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

### **SECTION 6.05 Mechanical And Electrical Coordinator**

The Construction Manager will provide a staff member or members, as necessary, who have the sole responsibility to perform mechanical and electrical coordination, as required by the Commission.

### **SECTION 6.06 Surveyor**

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

### **SECTION 6.07 Wage Rates**

1. Not less than the prevailing rate of wages as determined by the Illinois Department of Labor must be paid to all laborers, mechanics, and other workers performing Work under this Contract.
2. Construction Manager's attention is called to the generally prevailing hourly rate of wages, as determined by the Illinois Department of Labor, which are hereby incorporated into the Contract Documents as if fully set forth herein.
3. In the performance of the Work, the Construction Manager is fully responsible for paying the generally prevailing hourly rate of wages in effect, as determined by the Department of Labor, at the time the Work is performed. One resource for determining the current prevailing wage rate is the Internet site <http://www.state.il.us/agency/idol/rates/rates.HTM> maintained by the State of Illinois Department of Labor. If the Department of Labor revises the prevailing rate of hourly wages to be paid for the Work prior to completion of the Project, the revised rate will apply to the Contract from the effective date of such revision, provided, however that such revision will not entitle the Construction Manager to any increased compensation under the terms hereof.

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

### Section 6.08 Chicago Residents As Employees

#### 1. Policy and Terms

- a. Attention is called to an ordinance passed by the City of Chicago on May 18, 1994, *City of Chicago Residence Preference Ordinance* and the resolution of the Board of Commissioners of the Public Building Commission adopted August 9, 1994.
- b. The Construction Manager agrees to ensure that the aggregated hours of Work to be performed by the Construction Manager 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 Construction Manager of impracticability or excessive cost of complying with the specified percentages. A waiver or reduction will be considered if the Construction Manager has unsuccessfully solicited a sufficient number of residents of the City of Chicago to perform the Work and has documented such effort to the satisfaction of the Commission. In addition, a Construction Manager seeking a waiver or reduction 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 Construction Manager also agrees that 7.5% of the aggregated hours of Work to be performed by the Construction Manager 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 on-Site 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



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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 Construction Manager receive bonus calculations under the foregoing provisions as a result of residents of the project community employed by any subcontractor obligated to fulfill requirements for employment of City of Chicago residents, then the Construction Manager must allow a bonus, in the same amount it receives, in favor of each and every such Subcontractor.

### 2. Definitions

- a. "Actual residents of the City of Chicago" 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 the Community Area Map attached as Schedule 1 to this Exhibit J, in which the Project Site is located.

### 3. Compliance and Reporting

- a. The Construction Manager 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 Construction Manager (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 Construction Manager's and Subcontractors' employment records will be granted to the Commission or any duly authorized representative thereof. The Construction Manager and Subcontractors will maintain all relevant personnel data for a period of at least 3 years after Final Completion and Acceptance of the Work.
- d. At the direction of the Commission, affidavits and other supporting documentation will be required of the 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 Construction Manager 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 Commission will review compliance at 50%, 75%, and 90% completion of the Work. If the Commission has determined that the Construction Manager was not compliant in the fulfillment of the required percentages of aggregated worker hours by actual Chicago residents, or has failed to report in the manner indicated above under "Compliance and Reporting," the Commission will 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 Construction Fee (as defined in Section 4.03(a) of the Agreement), as adjusted by any Change Orders, be withheld by the Commission in payment for each percentage of shortfall toward the stipulated residency requirement. Failure to report the residency and hours of all employees entirely and correctly will result in the surrender of the entire liquidated damages as if no Chicago residents were employed in either

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of the categories.

- c. The Executive Director, in his or her sole discretion, shall determine when to withhold such liquidated damages.
  - d. Failure of the Construction Manager to meet the 7.5% minimum community hiring requirement, or failure to pay any balance due the Commission, may result in the Executive Director determining that the Construction Manager must re-qualify and/or that the Construction Manager is no longer a responsible bidder.
  - e. The determination of non-compliance and associated calculations contained in the Section 6.08.4 are solely based upon the trade workforce directly employed by Construction Manager and shall not be attributed to the workforce of any Subcontractor. Non-compliance issues regarding Chicago Residents and Community Hiring as Employees for Subcontractors shall be as defined in Exhibit D of this Contract.
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.

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### ARTICLE 7. SCHEDULE

#### SECTION 7.01 Time Is Of The Essence

TIME IS OF THE ESSENCE IN THIS CONTRACT. The Construction Manager agrees that it will commence the performance of the Work on the date directed by the Commission and that it will complete the Work within the time agreed upon in Project Summary Schedule included in Exhibit K and the amendment to the Agreement fixing the Project GMP.

#### SECTION 7.02 Construction Manager's Construction Schedule

##### 1. General

- a. Construction Manager shall submit a schedule for the Work to the Commission for review and approval in accordance with the requirements of Section 4.05 of the Agreement and Exhibit A. The schedule must be provided in hard copy and editable electronic format. The Construction Manager will, when necessary and when not subject to a Change Order, use overtime, multiple shifts, weekend, and/or holiday work to maintain the approved Schedule without increase to the Project GMP, but reimbursement will be allowed through the Construction Manager Contingency.
- b. The Schedule will use the critical path method (CPM). The Construction Manager will utilize Primavera Project Planner as a scheduling software package.
- c. The Schedule will, at a minimum, indicate the dates for the starting and completion of the various stages of the Work, including, without limitation, pre-construction activities, bidding and preconstruction schedule, bid packaging and phasing plans, the placing of material orders, delivery of materials and equipment, preparation, submittal, and approval of all required Submittals; preparation and procurement of material and equipment furnished by the Construction Manager; interface activities performed by others upon which the Construction Manager's schedule depends; all Work activities and field construction operations including any weather related scheduling, equipment installation, testing, and balancing. The Construction Manager will provide estimates of craft hours and or crew sizes for each activity.
- d. The Commission's approval of the Schedule is done for the sole purpose of insuring that all CPM scheduling documents prepared by the Construction Manager conform to the Contract requirements. This approval does not relieve the Construction Manager of its sole responsibility for the means, methods, procedures, and sequence of the construction process, nor does it provide any entitlement to additional funds.

##### 2. Schedule

- a. The Construction Manager will prepare a detailed Schedule consisting of all CPM diagrams as specified below. The format of the network diagram will utilize the precedence diagramming method (PDM) showing the proposed starting and completion date for the various stages of the Project, including any float time, and must be prepared such that it can be used to plot actual progress against proposed progress. The Schedule will be updated and submitted in both hard copy and editable electronic format no less than monthly, or more frequently as directed by the Commission.
- b. Specifications applicable to the Schedule and network diagram
  - (1) Each separate sheet will include the Project name, Contract number, Construction Manager's name, Project file, data date, and plot date. If multiple diagrams are prepared, each must, in addition to the above, include a descriptive title of that portion of the Work included therein.

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(2) The Schedule will show the order and interdependency of activities, indicating the sequence in which the Work is to be performed as planned by the Construction Manager. The Schedule will describe and indicate the critical path. Activities with total float less than 10 Days are defined as near critical.

(3) The Schedule will be submitted to the Commission Representative; 3 color copies of the Schedule are required in 11x17 format. Construction Manager may be required to provide full size plots of the schedule for the Commission or the project site. A copy of the Schedule will be submitted on a computer diskette acceptable to the Commission in Primavera format.

(4) Revised and/or updated Schedules, including the computer diskette, will be submitted when the Construction Manager's planned sequence is changed, when Contract changes are made which affect the Schedule, or when the Construction Manager prepares its monthly Schedule update.

(5) Activities shown on the CPM network diagrams will include, as a minimum, field construction operations, submittal and approval of all Submittals, procurement of material and equipment furnished by the Construction Manager or Commission, interface activities performed by others upon which the Schedule may depend, and equipment installation and testing.

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

(1) Each activity will be a unit of Work, which requires an amount of time for its performance.

(2) Each activity will be a logically separate part of the Work, defined by an observable start and an observable finish.

(3) To establish the scope of an activity for CPM purposes, the Construction Manager will form a single activity from the largest grouping of related operations, which permit a continuous and measurable flow of Work.

(4) The scope of an activity will be small enough to permit a reasonable appraisal of its status or as directed by the Commission.

(5) Each activity on the Construction Manager's schedule as submitted with the Project GMP will be cost and craft hour loaded. The initial Project Summary Schedule and updates thereto prior to establish the GMP need not be cost and craft hour loaded.

(6) Activities of other contractors or companies that must be completed prior to the start of the Construction Manager's Work or portion of Work must be included in the Construction Manager's schedule as milestones and identified with a designation approved by the Commission.

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

(1) Activity Number: The Construction Manager will utilize the Technical Specification division and section numbers in assigning activity numbers to the related portions of Work.

(2) Description of the activity.

(3) Duration of the activity in Days, unless otherwise noted.

(4) Cost Loading: The cost estimate/budget to perform the construction activity.

(5) Craft Hour Loading: The estimated craft hours to perform the construction activity.

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- (6) Each activity that is not performed by the Construction Manager will be assigned a responsibility code indicating which Subcontractor is to perform the activity.
  - (7) Each activity will be identified with early/late start, early/late finish, and total float.
  - (8) Calendar I.D.
- e. In addition to the above, any activity whose start or finish date has been specified elsewhere in the documents will reflect such specified date in the progress schedule.
3. Completion Requirements
- a. Upon receipt of the Construction Schedule with the Project GMP, the Commission will review the Schedule for conformance with the Contract Documents and degree of detail. Within 14 Days after receipt of the Schedule and supporting documents, the Commission will either (1) approve the Schedule, (2) approve the Schedule as noted or (3) disapprove the Schedule with the reasons set forth. If the Schedule either is given a qualified approval or is disapproved, the Construction Manager must submit a revised Schedule within 7 Days.
  - b. The baseline Construction Schedule must have the same duration for the performance of Work as provided in the Agreement.
  - c. Failure by the Construction Manager to provide the baseline Schedule or monthly updated schedule within the required time period may be deemed an event of default by the Executive Director.
4. Submittal, Acceptance, and Construction Manager's Responsibility for the Schedule
- a. Prior to submitting the baseline Schedule to the Commission Representative, the Construction Manager will review and verify the procurement lead time for the fabrication and delivery of all construction materials and equipment along with the erection and/or installation duration for all the construction activities that make up the critical path of the Project.
  - b. The Construction Manager will coordinate its letting of subcontracts, material purchases, shop drawing submissions, delivery of material, sequence of operations and approval of subcontracts to conform to the baseline Schedule and will furnish proof of same as may be required by written notification from the Commission.
5. Updating
- a. The originally approved baseline Schedule will be designated as the "Target Schedule" and will only be changed by a Change Order that extends the Contract duration. All updates will be plotted against the "Target Schedule."
  - b. The Construction Manager will update the Schedule on a monthly basis coincident with the submission of the monthly pay estimate. The updated information will include the Target Schedule detail and the following additional information:
    - (1) Actual start dates
    - (2) Actual finish dates
    - (3) Activity percent completion
    - (4) Remaining duration of activities in progress
    - (5) Identified or highlighted critical activities
  - c. The Construction Manager will not make any changes to the original duration, activity relationships, constraints, costs, add or delete activities, or alter the Target Schedule's logic when updating the Target Schedule.
  - d. The Construction Manager will submit scheduling documents in the same formats and number

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as indicated in this section.

- e. Upon receipt of the Schedule update, the Commission Representative will review the schedule for conformance with the Contract Documents and degree of detail. The Commission Representative, within 14 Days after receipt of the Schedule update and supporting document, will approve or reject it with written comments. If the Schedule update is rejected, the Construction Manager must submit a revised schedule update within 7 days after the date of rejection.
  - f. As part of the normal Schedule update, the Construction Manager will prepare a written narrative report, highlighting the progress during the past update period. The written narrative report will include but not necessarily be limited to the following information:
    - Summary of Work accomplished during the past update period
    - Contract Milestone comparison Chart
    - Analysis of Critical Path(s)
    - Analysis of time lost/gained during the update period
    - Identification of problem areas
    - Recommended solutions to current problems
  - g. The Construction Manager is required to attend a monthly Schedule update review meeting with the Commission Representative. The purpose of this meeting is to review past progress, current status, problem areas and future progress. The Construction Manager's narrative report will be reviewed at this meeting. The Construction Manager's representatives attending this meeting will have the authority to commit manpower and/or other resources to correct any negative impact to the Schedule.
  - h. Any possible means of shortening the Schedule at no additional cost must be brought to the attention of the Commission.
  - i. The updated Target Schedule will be used as a guide for verifying estimates of Work completed for which payment is requested and must accurately represent the Project's current status.
6. Changes to the Schedule Proposed by Construction Manager
- a. If the Construction Manager proposes to make any changes in the Target Schedule, Construction Manager will notify the Commission Representative in writing, stating the reasons for the change, identifying each changed activity (including duration and interrelationships between activities) and providing a diskette of the proposed changed Schedule.
  - b. The Commission has the authority to approve or disapprove the proposed change in the Target Schedule and will do so in writing within 10 Days after receipt to the Construction Manager's submission. If the Commission approves the change in the Target Schedule that changed schedule will be designated the new "Target Schedule." All subsequent monthly updates will be plotted against the new "Target Schedule."
7. Recovery Schedule
- a. The Construction Manager must maintain an adequate work force and the necessary materials, supplies and equipment to meet the Target Schedule. If the Construction Manager, in the judgment of the Commission, is failing to meet the Target Schedule, including any Contract milestones, the Construction Manager, upon the written request of the Commission Representative, shall submit a recovery schedule.
  - b. The recovery schedule will set forth a plan to eliminate the schedule slippage (negative float). The plan must be specific to show the methods to achieve the recovery of time, i.e. increasing manpower, working overtime, weekend work, employing multiple shifts, re-sequencing of the work. All costs associated with implementing the recovery schedule will be an allowable utilization of the Construction Manager Contingency or if exhausted, will be borne by the

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Construction Manager.

- c. Upon receipt of the recovery schedule, the Commission Representative will review the recovery schedule for conformance with the Contract Documents and degree of detail. The Commission will approve the recovery schedule or reject it with written comments within 14 Days of receipt. If the detailed CPM recovery schedule is rejected, the Construction Manager must submit a revised CPM recovery schedule within 7 Days of the date of rejection.
  - d. If the Construction Manager refuses to follow the direction of the Commission, the Commission reserves the right, after serving 7 Days written notice to the Construction Manager, during which time Construction Manager fails to commence a cure, to procure the materials, equipment and labor to proceed with or to complete the Work or any portion of it and charge the cost to the Construction Manager. The Commission's rights, excluding Liquidated Damages, under this provision are cumulative to rights under any other provisions of the Contract including the Commission's rights to terminate for default or convenience.
8. Schedule Changes Directed by the Commission
- a. The Commission Representative may direct the Construction Manager to revise the Target Schedule. Reasons for such direction may include, but are not limited to, the following: (1) changes in the Work, (2) re-phasing of the Project or any phase, (3) a change in the duration of the Project or phase, and (4) acceleration of the Project or phase.
  - b. The Commission Representative will direct the Construction Manager to provide a revised Target Schedule in writing.
  - c. The Construction Manager will provide the revised Target Schedule with 10 Days of receipt of the Commission's written direction.
  - d. The Commission has the authority, in its sole discretion, to approve or reject the revised Target Schedule and will do so in writing within 10 days after receipt of the Construction Manager's submission. If the Commission Representative approves the revised Target Schedule, the Commission will initiate a Change Order, pursuant to which such revised Target Schedule will be designated the new "Target Schedule." Any revisions to the Project GMP necessitated by such schedule changes shall be incorporated into the Project GMP by amendment or change order as applicable.

### **SECTION 7.03 No Damages for Delay, Notices of Delay, Events of Delay, Delays Which Do Not Qualify for Time Extensions, Procedures for Time Extension Requests**

#### 1. No Damages for Delays

Should the Construction Manager be delayed in the commencement, prosecution or completion of the Work by any act of the Commission, including but not limited to a delay, change, addition, deletion or modification in the Work or any omission, neglect or default of the Commission, or by order of the Executive Director, or the Commission's Representative, or by any cause beyond the Construction Manager's control, none of which are due to any fault, neglect, act or omission on Construction Manager's part, then the Construction Manager shall be entitled solely and exclusively to an extension of time for the performance of the Work. Such extension of time shall release and discharge the Commission, its employees and representatives from any and all claims for damages of whatever character, including but not limited to, disruption, changes in sequence, interference, inefficiency, field or home office costs claimed by the Construction Manager on account of the aforesaid or any other causes of delay.

#### 2. Compensable Delays

This provision constitutes the sole exception to Section 7.03.1 "No Damages for Delays." In the event that the time for performance of the Work (as evidenced by a change order extending the

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Date of Substantial Completion) is extended by more than sixty (60) days as agreed due to changes or delays to the work caused by the Commission or cause beyond the Construction Manager's reasonable control (as defined in Section 4.05 of the Agreement), then the Commission will pay for the Construction Manager's costs listed below, provided the delay or change was not caused wholly or partly due to any fault, negligent act, failure to act, error, omission, or breach of a material term of the Contract by the Construction Manager. The costs that will be paid are: extended field staff time for prosecution of the Work, labor inefficiency, wage rate escalation (for only that portion of time escalated wage rates have taken effect pursuant to recognized collective bargaining agreements), idle time for equipment (provided that Construction Manager proves that it took reasonable steps to mitigate damages regarding the idle equipment, relocation or storage of material (on or off site), winter protection costs and the cost of re-sequencing the work. Such payment is also contingent on: 1) the delay being caused by the actions of the Commission or a cause beyond the reasonable control of the Construction Manager as defined in Paragraph 4.05(b) of the Agreement or by an event defined as Force Majeure in Section 7.06 of the Agreement or Section 7.03.4 below and not some other cause, and 2) there having been no concurrent delay caused by the Construction Manager.

### 3. Notice of Delay

In the event that Construction Manager's performance of its Work is delayed by causes beyond the reasonable control of the Construction Manager, the Target Schedule, including phases and/or milestones, may be extended by the Commission to reflect the extent of such delay. The Construction Manager must give the Commission Representative written notice within five (5) business days of the commencement of such delay. The written notice by the Construction Manager will comply with the requirements of 7.03.6. Consideration of a time extension for events beyond the reasonable control of the Construction Manager will only be made if the delay directly impacts critical path activities based on the Target Schedule in effect at the commencement of the delay.

### 4. Force Majeure

Events considered to be beyond the reasonable control of the Construction Manager are limited to acts of God, acts of the public enemy, fires, floods, earthquakes, epidemics, quarantine restrictions, labor strikes at the job site, or freight embargoes, provided that the listed causes were not foreseeable and did not result from the fault or negligence of the Construction Manager, and provided further that the Construction Manager has taken reasonable precautions to prevent further delays owing to such causes. Notwithstanding the foregoing, or any other provisions herein, Construction Manager will take all reasonable measures to protect its Work and to minimize the impact of climatic conditions on the progress of the Work.

### 5. Delays Which Do Not Qualify For Time Extensions

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

### 6. Procedure For Time Extension Requests

- a. No time extensions will be allowed unless they are set forth in a Change Order which has been approved and executed by the Commission.
- b. The Construction Manager expressly consents to both the time requirements and notice content requirements for requesting an extension of time set forth in this Section 7.03.6. The Construction Manager acknowledges that the notice requirements set forth in this section 7.03.6 shall be strictly enforced and agrees that any failure on the part of the Construction



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Manager to provide notice strictly in accordance with the requirements of this Section 7.03.6 shall constitute a waiver of the Construction Manager's right to seek an extension of time or to file a dispute to the Executive Director under Article 11. The Construction Manager further understands and agrees that, notwithstanding any case law decision to the contrary, the notice requirements of this Section 7.03.6 shall not be subject to or diminished by any claim on the part of the Construction Manager that the Commission or any person acting on behalf of the Commission had actual or constructive knowledge of any request for extension of time, entitlements to an extension of time or any facts or circumstances supporting an extension of time. The Construction Manager further acknowledges that the time requirements and content requirements of Section 7.03.6 have the purpose, among others, of allowing the Commission Representative and Commission to evaluate the time extension request contemporaneously with the event that has been claimed to cause the delay.

- c. In order to request a Time Extension, a "Commencement of Delay" notice must be provided in writing to the Commission Representative, no more than five (5) business days after the commencement of the delay, otherwise the claim for the time extension is waived.
- d. If the cause of the delay continues for more than five (5) calendar days after the start of the delay, a "Termination of Delay" notice must be provided in writing, to the Commission Representative along with the Request For Time Extension within ten (10) calendar days after the termination of the delay.
- e. The Construction Manager must submit its Request For Time Extension in writing to the Commission Representative within ten (10) calendar days after the termination of the delay. The Request For Time Extension must: (1) state the cause of the delay, (2) specifically demonstrate the negative impact of the delay on the critical path of the Target Schedule, and (3) state the number of days requested.
- f. The Commission Representative shall advise the Construction Manager of its recommendation regarding the Time Extension request, in writing, within ten days of receipt. If the Construction Manager and Commission Representative agree on the Time Extension to be granted, a Change Order will be signed which states the Time Extension to be provided. The Construction Manager must make a Dispute to the Executive Director, as required by Article 11, regarding any Time Extension request to which the Commission Representative and Construction Manager do not agree, as limited by Section 7.03.6.h.
- g. The Executive Director may: 1) recommend that the entire Time Extension be granted; 2) recommend that a portion of the Time Extension be granted; or 3) deny the Time Extension. The Executive Director will provide the Construction Manager a final decision in writing within fifteen (15) days of receipt of the Time Extension request from the Commission Representative, or such additional time as the Executive Director requires, but not to exceed ten (10) additional days.

### Section 7.04 Liquidated Damages

If Construction Manager fails to complete the Work according to the Date of Substantial Completion identified in the Target Schedule, and if the Agreement provides for liquidated damages, then such liquidated damages, shall be assessed. The Commission will recover liquidated damages by deducting the amount thereof out of any moneys due or that may become due the Construction Manager, and if said moneys are insufficient to cover said damages, then the Construction Manager will pay the amount due.

**These liquidated damages are for Construction Manager's delay only, and nothing contained in this Contract limits the right of the Commission to recover from the Construction Manager any damages, costs and expenses sustained by the Commission due to Construction Manager's other improper performance hereunder, repudiation of the Contract by the Construction Manager, Construction Manager's other failure to perform, or Construction Manager's other breaches in any other respect, including but not limited to defective workmanship or materials.**

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### Section 7.05 Completion of Punch List

1. It is also understood and agreed that TIME IS OF THE ESSENCE IN CLOSING OUT THE WORK. The Construction Manager agrees to begin performance immediately after receipt of notice of the Punch List Work.
2. The period to complete Punch List Work will be determined in the sole discretion of the Commission Representative. The time period for completion of the Punch List Work begins the day after the Punch List is provided to the Construction Manager. The Commission Representative may extend the period to complete Punch List Work for specific Work which requires the receipt of long lead-time materials. However, all other Punch List Work must be completed as required by this Section 7.05.
  - a. Unless otherwise directed by the Commission Representative, failure of the Construction Manager or its Subcontractors to begin the Punch List Work prior to the expiration of three (3) Days after receipt of the Punch List will be construed as failure to prosecute the Work of the Contract.
  - b. It is further understood and agreed that the Punch List Work will be continuously prosecuted once begun. Therefore, any gap of three (3) Days during which Punch List Work is not being performed on the job site will also be construed as failure to prosecute the Work of the Contract.

### Section 7.06 Notice of Labor Disputes

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

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### **ARTICLE 8. QUALITY OF WORKMANSHIP, MATERIALS, AND EQUIPMENT**

#### **Section 8.01 Standard of Performance**

In addition to performing the Work in full compliance with the Contract Documents, the Construction Manager 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.

#### **Section 8.02 Construction Manager's Quality Program**

1. Scope of Construction Manager's Quality Program (CQP)
  - a. Quality is the responsibility of the Construction Manager. This responsibility includes development and implementation of a Construction Manager's Quality Program for quality management and construction activities. The CQP must satisfy the requirements of the Contract Documents. The Construction Manager must develop and implement an appropriate quality program to achieve a level of quality consistent with the Contract requirements.
  - b. Throughout the course of the work, the CQP will be subject to continual monitoring to assess the effectiveness of the quality processes employed by the Construction Manager. The Construction Manager's implementation of and compliance with its CQP are subject to monitoring and audit by the Commission. The Contactor must address the Commission's concerns and audit findings. The Commission will pursue its remedies under the Contract for Construction Manager's failure to appropriately resolve such concerns and findings.
2. Construction Manager's Quality Program
  - a. The Construction Manager must establish, implement, and maintain an effective quality program to manage, control, and document the work and assure that the Work conforms to the requirements of the Contract. The Construction Manager must communicate, implement, and follow the CQP at all levels of its organization.
  - b. The CQP must describe the policies, plans, procedures, and organization necessary to exercise control and ensure quality. It must cover materials, equipment, workmanship, fabrication, and operations furnished both onsite and offsite by the Contactor. The CQP must be an internally approved document, signed by the Construction Manager's management representative, and must contain a revision number and effective date. The CQP must also include a written statement, signed by the Construction Manager's Quality Representative, that the program satisfies the requirements of the Contract.
  - c. Organization of the quality functions and activities for the Project must be supported by the management structure of the Construction Manager. The choice and level of application of the quality program must be appropriate for the Project.
  - d. Responsibility for achievement of quality must be acknowledged by all management, construction and support personnel of the Construction Manager. Subcontractors (including suppliers), testing laboratories, and consultants employed by the Construction Manager must also conform to the commitments specified in the Contract and the CQP.
3. Submittal of Construction Manager's Quality Program
  - a. Within fourteen (14) days after the execution of the Agreement, the Construction Manager must provide its internally approved CQP to the Commission Representative for review and acceptance. If the Construction Manager fails to submit its CQP within the required time, or if the CQP is not accepted, the Commission may suspend the Work until the Construction Manager furnishes an acceptable CQP. The Construction Manager shall not receive a time

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extension for the period of any such suspension.

4. **Acceptance of the Construction Manager's Quality Program**
  - a. The Commission Representative is responsible for reviewing and accepting the CQP. This acceptance is conditional based on satisfactory performance throughout the course of the work. As work progresses, the Construction Manager may be required to revise the CQP to maintain a quality of construction consistent with the Contract. Should this revision of the CQP be required, the revised CQP will again be subject to acceptance by the Commission Representative.
  
5. **Proposed Changes to the Construction Manager's Quality Program**
  - a. The Construction Manager must notify the Commission Representative, in writing, of any proposed change to the CQP. Any changes to the accepted CQP will be subject to the same acceptance process stated in Section 8.02.4.a. above.

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### ARTICLE 9. SHOP DRAWINGS, PRODUCT DATA, RECORDS, AND SAMPLES

#### Section 9.01 Documents at the Site

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

#### Section 9.02 Construction Manager's Responsibilities and Submittal Procedures

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

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# PUBLIC BUILDING COMMISSION OF CHICAGO

## SUBMITTAL IDENTIFICATION

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

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

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

6. Shop drawings must be submitted with accurate dimensions. The shop drawings must represent the actual manner in which the Work is manufactured and installed, and the relation of the Work installed to that of other trades, clearances, and all other pertinent data. Dimensions must be expressed in feet and inches. Designs prepared in the metric system may be submitted with metric units, but the equivalent English units must also be shown. All weights and dimensions must be certified prior to submission for review.
7. The Architect's review and acceptance of shop drawings does not relieve Construction Manager from its standard of care for the performance of the Work. Construction Manager must submit all shop drawings, video tape, samples and product data to the Commission Representative for review by the Architect with an accompanying transmittal letter containing the above Submittal identification data and a list of items being submitted. The Construction Manager must coordinate Submittals into logical groups or sets to facilitate review of related items.
8. Any Submittal that, in the opinion of the Architect, is not complete and in proper form will be returned to the Construction Manager without review. The Construction Manager must not submit duplicates or reproductions of any Contract Documents issued by the Commission as shop drawings.
9. Construction Manager must provide each Submittal in the following quantities unless another number or method is specified elsewhere in the Contract Documents, or is required by the Commission:
  - a. Shop Drawings: Submit 1 reproducible and six (6) prints on sheets at a minimum of 30" by 42" in size. (Prints must be collated into sets).
  - b. Product data: Submit 6 copies of product data.
  - c. Samples: Submit 4 samples.
  - d. Video tape: Submit 1 video tape.
10. Prior to submitting shop drawings, product data, video tape, or samples, the Construction Manager must notify the Commission Representative in writing of any deviations in the Submittal from the requirements of the Contract. If deviations from the Contract requirements are rejected by the Architect or if evaluation of the deviations delays the progress of Work, Construction Manager will not receive a time extension for any delay caused by the deviations in the submittal.
11. Additional requirements for submittals are stated in the Technical Specifications.

## PUBLIC BUILDING COMMISSION OF CHICAGO

### Section 9.03 Review by the Architect

1. Submittals will be reviewed by the Architect for compliance with the Contract Documents. In reviewing the Submittal, the Architect will not verify dimensions and field conditions. Any such review does not relieve the Construction Manager, Subcontractor, manufacturer, fabricator or supplier from responsibility for any deficiency that may exist, or from any departures or deviations from the requirements of the Contract Documents, nor does it relieve them from responsibility for (i) errors of any sort in shop drawings, samples and product data, (ii) responsibility for proper fitting of the Work, or (iii) the necessity of furnishing any Work required by the Contract documents which may not be indicated on shop drawings when reviewed. The Construction Manager is solely responsible for any quantities that may be shown on the shop drawings. The Architect's review of a specific item does not indicate approval of an assembly of which the item is a component.
2. The Construction Manager must not fabricate products, begin Work, order or have delivered any material, equipment or system that requires a reviewed Submittal until return of the Submittal from the Architect with a stamp authorizing Work and/or delivery and installation to be performed, as described in Paragraph 3 immediately below.
3. The Architect will return Submittal stamped as follows:
  - a. "No Exceptions" means no changes are necessary on the reviewed Submittal. The Construction Manager may proceed with the Work for that Submittal. Re-submittal is not required.
  - b. "Exceptions as Noted" indicates that the Submittal is accepted subject to the corrections and/or comments noted. The Construction Manager may proceed with the Work for that Submittal if the Construction Manager incorporates the Architect's comments, and/or corrections. Re-submittal is not required.
  - c. "Revise and Resubmit" means that the Submittal does not meet all the requirements necessary to proceed with the Work associated with the Submittal. The Construction Manager must resubmit in accordance with the reviewer's comments and/or corrections. Submittal marked in this manner must not be released for fabrication, delivery, or construction.
  - d. "Rejected" means the submittal does not meet the requirements set out in the Contract Documents. The Construction Manager must resubmit in accordance with the Contract Documents and any corrections and/or comments made regarding the Submittal by the reviewer. Submittals marked in this manner shall not be released for fabrication, delivery, or construction.
4. If the Submittal requires revision, the Construction Manager must notify the Commission Representative and all pertinent Subcontractors in writing that the reviewed set has been withdrawn.
5. Submittals that require revisions must be corrected and resubmitted to the Commission Representative for the review of the Architect to maintain the approved CPM schedule, but in no event more than 5 Days after receipt of the Architect's comments.
6. Shop Drawings: After review by the Architect, one reproducible stamped by the Architect as described in paragraph 3 above will be returned to the Construction Manager.
7. Submission and Review of Samples: If a considerable range of color, graining, texture, or other characteristics may be anticipated in finished products, a sufficient number of samples of the specified materials must be furnished by the Construction Manager to indicate the full range of such characteristics which will be present in the finished products. Any products delivered or erected without submittal and review of full range Samples will be subject to rejection. Each tag or sticker will have clear space for the stamps of the Construction Manager and Architect. Notice of the result of the review will be provided to the Construction Manager with one of the stamps indicated in Paragraph 3 above. Rejected samples will be returned. Accepted samples will be retained by the Commission and become the property of the Commission. Where color samples are required to be submitted,

## **PUBLIC BUILDING COMMISSION OF CHICAGO**

color samples must be submitted on the actual material which will finally be installed in the Work.

8. Product data: After review by the Architect, two (2) sets of product data stamped by the Architect as previously described will be returned to the Construction Manager.

### **Section 9.04 As-Built Drawings**

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

### **Section 9.05 Record Shop Drawings and Product Data**

1. As the Work progresses, the Construction Manager must keep a complete and accurate record of the changes and deviations from the Work as shown on the shop drawings and product data indicating the Work performed. The Construction Manager must furnish record shop drawings in a form and quantity acceptable to the Commission. Record shop drawings must be submitted for all items reviewed as shop drawings. Record shop drawings must be provided in an editable electronic medium and hard copy as directed by the Commission. Unless otherwise specified, record shop drawings must be submitted on the same size sheets as the Contract Document Drawings and include an index of all items.
2. Unless otherwise specified, Construction Manager must furnish 7 record copies of product data loose-leaf binders. Loose-leaf binders must be subdivided by submittal numbers and must contain an index of all items unless otherwise specified.

### **Section 9.06 Instructions, Parts List, Operation and Maintenance Manuals, and Warranties**

1. The Construction Manager must furnish a complete list of equipment actually installed. The list must include at least the following information: a copy of pertinent nameplate data, name and address of local representative who stocks or furnishes repair or replacement parts, and name, address, and telephone number of the Subcontractor responsible to the Construction Manager for the equipment under the guarantee.
2. The Construction Manager must submit operating instructions for each major component of equipment and its controls in accordance with the specifications. Proposed instructions must be



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submitted to the Commission Representative for the Commission's review and acceptance in the amount provided for in the specifications. Upon acceptance, the Construction Manager must post applicable instructions as required by the specifications or as otherwise directed by the Commission.

3. The Construction Manager must submit to the Commission Representative any and all maintenance data prepared by the manufacturer of each major component of equipment and its controls in accordance with the specifications. Data must include at least the following information: complete parts list; itemized lists of common purchase items of materials (e.g., bearing, packing, connectors, sealing devices, and other standard items) indicated by their standard trade designation; recommended routine and inspection maintenance, including testing recommendations to evaluate efficiency of performance; lists of special tools and gauges, lubricating instructions, and recommended spare parts; tolerance and clearances required for maintenance; and troubleshooting guides prepared in a simple format to indicate complaint or problem, probable cause, and remedy. The proposed maintenance data must be submitted to the Commission Representative for the Commission's review and acceptance in the quantity provided for in the specifications.
4. The Construction Manager must submit all applicable manufacturer's warranties as described in Paragraph 4.02(g) of the Agreement "Guarantees and Warranties."

### Section 9.07 Record Documents

Upon Substantial Completion of the Work, the Construction Manager must deliver to the Commission and the User Agency, in suitable transfer cases clearly marked "Record Documents," all as-built drawings, record shop drawings, video tape, product data, instructions, parts list, and operations and maintenance manuals arranged in proper order and indexed. The submission of all Record Documents is a prerequisite to reduction of retention from 3% to 1% under Paragraph 5.01(k) of the Agreement, "Release of Retainage."

### Section 9.08 Project Account Records

1. Project data and records
  - a. The Construction Manager and each Subcontractor must keep an accurate record showing the names, occupation, and the actual hourly wages paid to all laborers, workers, and mechanics employed by them in connection with the Work. Such record must be open at all reasonable hours to the inspection of the Commission and to the Director of Labor of the State of Illinois and his/her deputies and agents. The Construction Manager also must furnish the Commission with certified copies of its payrolls in accordance with Article 5 of the Agreement.
  - b. The Construction Manager and all Subcontractors must furnish the Commission with such information as the Commission may require relating to labor and materials, including all information necessary to determine the cost of the Work, such as the number of workers employed, their pay, the distribution of labor into Work items, equipment time distribution, and any other information which the Commission may require. The Construction Manager must, on request, furnish the Commission with copies of delivery tickets and invoices covering the expenditures on the Contract.
2. Audits
  - a. The Construction Manager must furnish to the Commission Representative such information as may be requested relative to the progress, execution, and cost of the Work. The Construction Manager must maintain complete records showing actual time devoted and costs incurred. The Construction Manager must maintain its books, records, documents, and other evidence and adopt accounting procedures and practices sufficient to record properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred for or in connection with the Work for 7 years after final payment. This system of accounting must be in accordance with generally accepted accounting principles and practices, consistently applied

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throughout.

- b. All books and accounts kept by the Construction Manager in connection with the Work, whether in hard copy, digital or other electronic form, must be open to inspection and audit by authorized representatives of the Commission. The Construction Manager must make these records available at reasonable times during the performance of the Work and must retain them in a safe place and make them available for inspection and audit for at least 7 years after final payment. No provision in this Contract granting the Commission right of access to records documents is intended to impair, limit, or affect any right to access to such records and documents which the Commission would have had in the absence of such provisions.
- c. The Construction Manager must reimburse the Commission for the costs of such audits if the audit demonstrates that the Construction Manager overstated the amount due on any invoice by 2% or more. This is in addition to the Construction Manager's obligation to reimburse the Commission for any overstated amount that might have been paid to Construction Manager.

### 3. Confidentiality

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

# PUBLIC BUILDING COMMISSION OF CHICAGO

## ARTICLE 10. CHANGES IN THE WORK

### Section 10.01 Owner's Right to Change Work

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

### Section 10.02 Owner Directed Changes in the Work

1. The Commission may make changes in the Work by making alterations therein, or by making additions thereto, or by making deductions or omissions therefrom, without invalidating the Contract and without releasing or relieving the Construction Manager from any guarantee given pursuant to the Contract, without affecting the validity of the guarantee or Performance and Payment Bond and without relieving or releasing the surety or sureties of such bond. All such Work will be executed under the conditions of the original Contract. The Construction Manager will submit to the Commission Representative "as-built" or revised drawings clearly showing the revised Work..
2. Except in an emergency endangering life or property, no change in the Work will be made by the Construction Manager without receipt of a Field Order signed by the Commission Representative.
3. The Construction Manager will not perform changes to the Work directed by the User unless authorized to do so by the Commission based upon a Field Order signed by the Commission Representative.

### Section 10.03 Changes to the Work Initiated by Construction Manager

1. In the event that Construction Manager identifies an error or omission in the Contract Documents as described in Section 2.02 hereof, or encounters a differing site condition as set forth in Section 2.03 hereof, the Construction Manager shall submit a Request For Information (RFI) to the Commission Representative. If, upon receipt of a response from the Architect, via the Commission Representative, to the RFI, the Construction Manager believes that there has been a change to the Work, or if the Construction Manager believes that a delay has occurred pursuant to Section 4.05(d) of the Agreement, the Construction Manager will submit a Construction Manager Proposed Change Order (CPCO) to the Commission Representative. The CPCO will state: the issue presented; any change to the Work that, in the opinion of the Construction Manager the issue requires; Construction Manager's proposed resolution of the issue; and the cost of the Work.

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

In the event that a CPCO is denied, the Construction Manager may file a claim pursuant to Article 11, "Claims and Disputes."

2. The Construction Manager, within 14 Days of receipt of a Field Order, must submit to the Commission Representative a CPCO for the revisions to the Work directed by the Field Order. The Construction Manager's failure to submit such request within the specified time will result in the issuance of a Change Order by the Commission for the adjustment to the Contract Price and/or time for the performance of the Work, if any, that the Commission deems appropriate for the Field Order. This Section 10.03.2 does not

## **PUBLIC BUILDING COMMISSION OF CHICAGO**

pertain to Field Orders issued pursuant to Section 10.03.1 above.

### **Section 10.04 Change Orders Finalize the Terms of Field Orders**

The final terms and provisions of a Field Order, including any adjustment in the Contract Sum and/or the time for the performance of the Work, will be memorialized in a written Change Order signed first by the Construction Manager then by the Executive Director.

### **Section 10.05 Construction Manager's Release**

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

### **Section 10.06 Performance of Changed Work**

The Construction Manager will promptly proceed with any changes in the Work or Target Schedule as directed by a Field Order in accordance with Section 10.01 "Owner's Right to Change Work." The Construction Manager's refusal or failure to proceed promptly as directed with the changed Work or changes in the Target Schedule constitutes an event of default under the Contract. No change to the Work by the Construction Manager as directed by the Commission will invalidate the Contract or release the Construction Manager's surety.

### **Section 10.07 Change Claims and Disputes**

If the Construction Manager and Commission Representative are unable to agree on the price and/or time extension in connection with a Field Order, the procedures set forth in Article 11 "Claims and Disputes" will govern.

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### ARTICLE 11. CLAIMS AND DISPUTES

#### Section 11.01 Claims

1. This provision of the Contract applies to claims for time and/or money based on: a differing site condition (Section 2.03), changes in the work under Article 10, including CPCOs that have been denied pursuant to Section 10.03, and all other claims made under the Contract.
2. Any claim made by the Construction Manager regarding the Project must be made in accordance with the requirements stated below.
  - a. The Construction Manager expressly consents to both the time requirements and notice content requirements for making a Claim or Dispute under this Section 11.01.2. The Construction Manager acknowledges that the notice requirements set forth in this Section 11.01.2. will be strictly enforced and agrees that any failure on the part of the Construction Manager to provide notice strictly in accordance with the requirements of this Section 11.01.2. will constitute a waiver of the Construction Manager's right to make a Claim to the Commission Representative or submit a Dispute to the Executive Director. The Construction Manager further understands and agrees that, notwithstanding any case law decision to the contrary, the notice requirements of this Section 11.01.2. will not be subject to or diminished by any claim on the part of the Construction Manager that the Commission Representative or Executive Director or any person acting on behalf of either of them had actual or constructive knowledge of any Claim or Dispute or any facts or circumstances supporting any such Claim or Dispute.
  - b. The Construction Manager must provide notice, in writing, to the Commission Representative of any claim for differing site conditions within three (3) business days of discovery as required by Section 2.03.
  - c. The Construction Manager must provide notice, in writing, to the Commission Representative of any claim that may be made, within five (5) days after starting the work that is affected by the claim. The notice shall be referenced as a "Notice of Claim Related Work" and must state the nature of the claim, the work that is affected by the claim, and the anticipated duration of the Work.
  - d. The Construction Manager must provide notice, in writing, to the Commission Representative of any claim based on: a differing site condition; a change in the Work directed by the Commission Representative; or any other cause within fifteen (15) days of completion of the changed Work.
  - e. The Construction Manager will designate the document "Claim." The Claim must include:
    - (1) The amount of money and/or time extension sought by the Construction Manager, and the contractual and factual basis for each;
    - (2) A general statement of the basis for the claim;
    - (3) The facts underlying the claim;
    - (4) The Notice of Claim Related Work to the Commission Representative;
    - (5) Reference to the applicable Contract provisions and;
    - (6) All documentation that describes, relates to, and/or supports the claim.
  - f. The Commission Representative will, within thirty (30) days of receipt of the Claim, respond by: requesting a meeting with the Construction Manager; making a written request for additional information from the Construction Manager; taking other action to attempt to resolve the Claim; and/or advising the Construction Manager, in writing of the Commission Representative's position regarding the relief sought in the Claim. If the Commission Representative's written response is that the Claim is denied, the letter will also advise the Construction Manager of its right to file a Dispute to the Executive Director. Any steps taken by the Commission Representative to resolve the Claim will not exceed sixty (60) days from receipt of the Claim, unless the Construction Manager agrees to an additional amount of time in writing.

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- g. If the Claim cannot be resolved within the time frame stated in Section 11.01.2.f., the Construction Manager must file its Dispute within thirty (30) days of receipt of the written denial of the Claim by the Commission Representative.
- h. The Dispute will be sent to the Executive Director and copied to the Commission Representative.
- i. The Construction Manager's failure to file a Dispute with the Executive Director within thirty (30) days will constitute a waiver of the Claim and Dispute.

### Section 11.02 Disputes

1. **Construction Manager's Request:** In the event of any disagreement between the Construction Manager and the Commission Representative which the Construction Manager and the Commission Representative have attempted, but been unable, to resolve, including, without limitation, changes, time extensions, claims, allowable costs or any other issues of fact or Contract interpretation based upon, relating to, or arising under the Contract, a request for resolution must be submitted to the Executive Director by the Construction Manager for final determination. The default or termination of the Construction Manager are not matters that may be disputed under this Section 11.02 Disputes. The Construction Manager's failure to submit the Dispute within thirty (30) days of receipt of the Commission Representative's response to the Construction Manager's Claim is a waiver of the Dispute. The Executive Director may consider issues of Contract interpretation in connection with decisions to be made in resolving Disputes.
2. **Request Requirements:** Requests for resolution of Disputes must be made by the Construction Manager in writing, specifically referencing this section, and include: 1) the issue(s) presented for resolution; 2) a statement of the respective positions of the Construction Manager and Commission Representative; 3) the facts underlying the Dispute; 4) reference to the applicable provision of the Contract Documents by page and section; 5) the identity of any other parties believed to be necessary to the resolution of the Dispute; 6) all documentation which describes and relates to the Dispute and 7) if applicable, a statement explaining why the Construction Manager believes that prior to rendering a final decision, the Executive Director should meet with the Construction Manager, Commission Representative or any other parties believed to be necessary to the resolution of the Dispute. Copies of the request for resolution of the Dispute must promptly be provided to the Executive Director and Commission Representative on the same day. In addition, the Construction Manager's Dispute and any subsequent correspondence that relates to the Dispute which the Construction Manager provides to the Executive Director, must be copied to the Commission Representative. The Commission Representative shall have thirty (30) days to respond in writing to the Construction Manager's submission by supplementing the Construction Manager's submission or to provide its own submission to the Executive Director and Construction Manager. However, the Commission Representative may request, and the Executive Director may allow an additional period of time to respond. Failure by the Commission Representative to respond shall not be deemed to be an admission of any allegations made in the request for dispute resolution, but may be deemed to constitute a waiver of the opportunity to respond to such allegation(s), if any, at this stage of the Dispute. The Executive Director's decision may thereafter be reached in accordance with such other information or assistance as may be deemed reasonable, necessary or desirable by the Executive Director.
3. **Executive Director's Decision:** The Executive Director's final decision shall be rendered in writing no more than thirty-five (35) days after receipt of the response of the Commission Representative was filed or was due, unless the Executive Director notifies the Construction Manager and Commission Representative before the end of the thirty-five (35) day period that an additional period, not to exceed thirty (30) days, is needed for the Executive Director to respond. The Executive Director's decision shall be conclusive, final, and binding on all parties unless a judicial determination is sought in accordance with the provisions set forth below.
4. **Implementation of Decision:** In the event that the Executive Director's final decision requires a

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change to the Contract, the Executive Director's final decision shall be implemented through a Change Order which shall be made a part of the Contract, with or without the signature of the Construction Manager (if the Construction Manager refuses to sign the Change Order).

5. **Construction Manager's Remedy:** If either the Construction Manager or Commission does not agree with the decision of the Executive Director, the sole and exclusive remedy is judicial review by a common law writ of certiorari. Unless such review is sought within thirty-five (35) days of receipt of the Executive Director's decision, all right to seek judicial review is waived.
6. **Construction Manager's Performance of Work:** The Construction Manager may not withhold performance of and must prosecute any Work required by the Contract during the dispute resolution period, including judicial resolution, and Commission shall continue to make payments to the Construction Manager for such Work pursuant to the terms of the Agreement. The Construction Manager must prosecute all of its Work, including any disputed Work, with the same diligence and effort as if no dispute existed. The Executive Director's written determination must be complied with pending final resolution, including judicial resolution of the Dispute. Neither the Executive Director's determination, nor the actions of the Construction Manager or the Commission Representative in connection therewith, nor the continued performance by either party, shall constitute an admission as to any factual and/or legal position in connection with the dispute or a waiver of any rights under the Contract.
7. **Administrative Appeal of Dispute:** The Construction Manager must follow the procedures set out in this Article 11, "Claims and Disputes", and receive the Executive Director's final decision as a condition precedent to filing a judicial review of the decision by common law writ of certiorari.

### **Section 11.03 No Waiver of Legal Rights**

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

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### ARTICLE 12. LEED CERTIFICATION REQUIREMENTS

#### Section 12.01 LEED Certification Requirements

1. The Construction Manager must assist the PBC 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 the Technical Specifications. The Construction Manager 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 the Technical Specifications, so that the Commission can achieve the LEED rating identified in the Technical Specifications.
2. The Construction Manager must have a LEED Accredited Professional (LEED AP) assist the Construction Manager 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 Construction Manager 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 Construction Manager must make all LEED submittals that are required of the Construction Manager or its subcontractors to the Commission Representative. The format and number of submittals must be approved by the Commission.
5. The Construction Manager must take the actions listed below, regarding LEED, within the time periods specified.
  - a. Construction Manager LEED AP qualifications must be submitted with thirty (30) calendar days of execution of the Agreement.
  - b. Erosion and Sedimentation Control Plan must be submitted no later than fifteen (15) days prior to the start of Construction Manager's Work at the Site. The Construction Manager must implement the approved Plan prior to start of work on the Project site. The Construction Manager 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 no later than fifteen (15) days prior to the start of Construction Manager's Work at the Site. 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 no later than fifteen (15) days prior to the start of Construction Manager's Work at the Site.
  - e. Volatile Organic Compounds Plan must be submitted no later than fifteen (15) days prior to the start of Construction Manager's Work at the Site.
  - f. Construction Indoor Air Quality Plan must be submitted no later than fifteen (15) days prior to the start of Construction Manager's Work at the Site.



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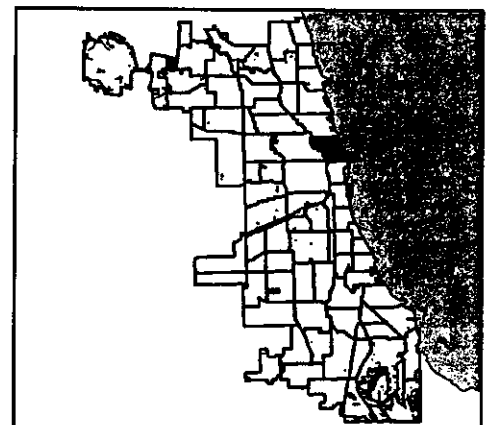
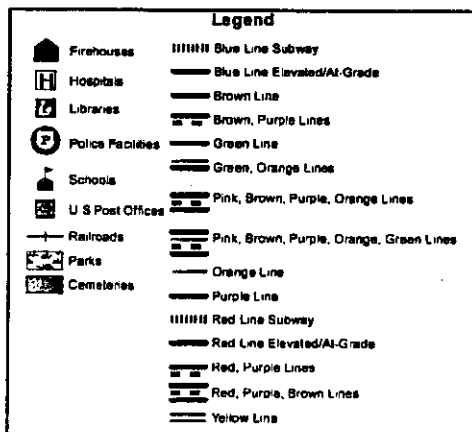
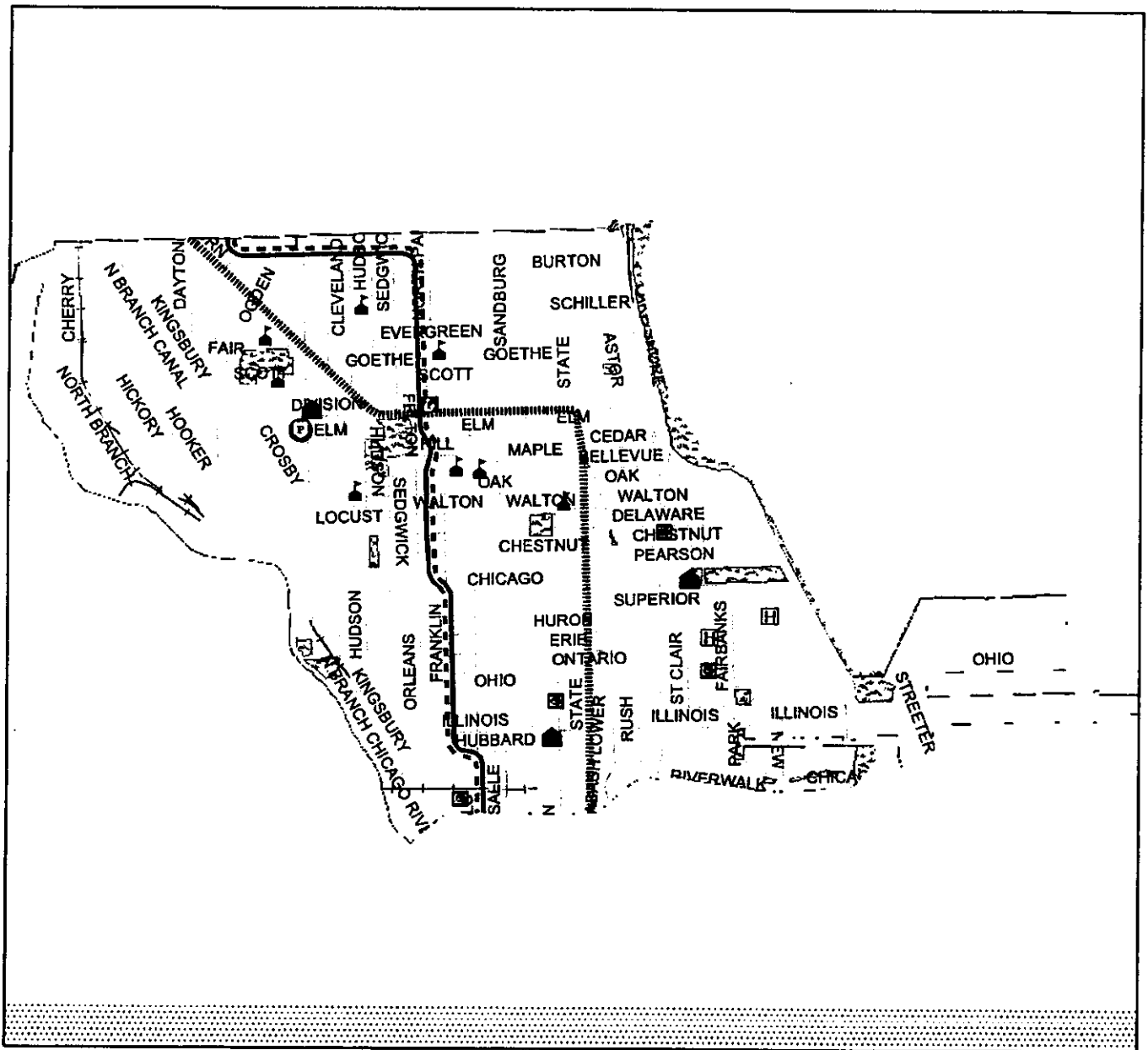
**SCHEDULE 1 to EXHIBIT J**

**Community Area Map**



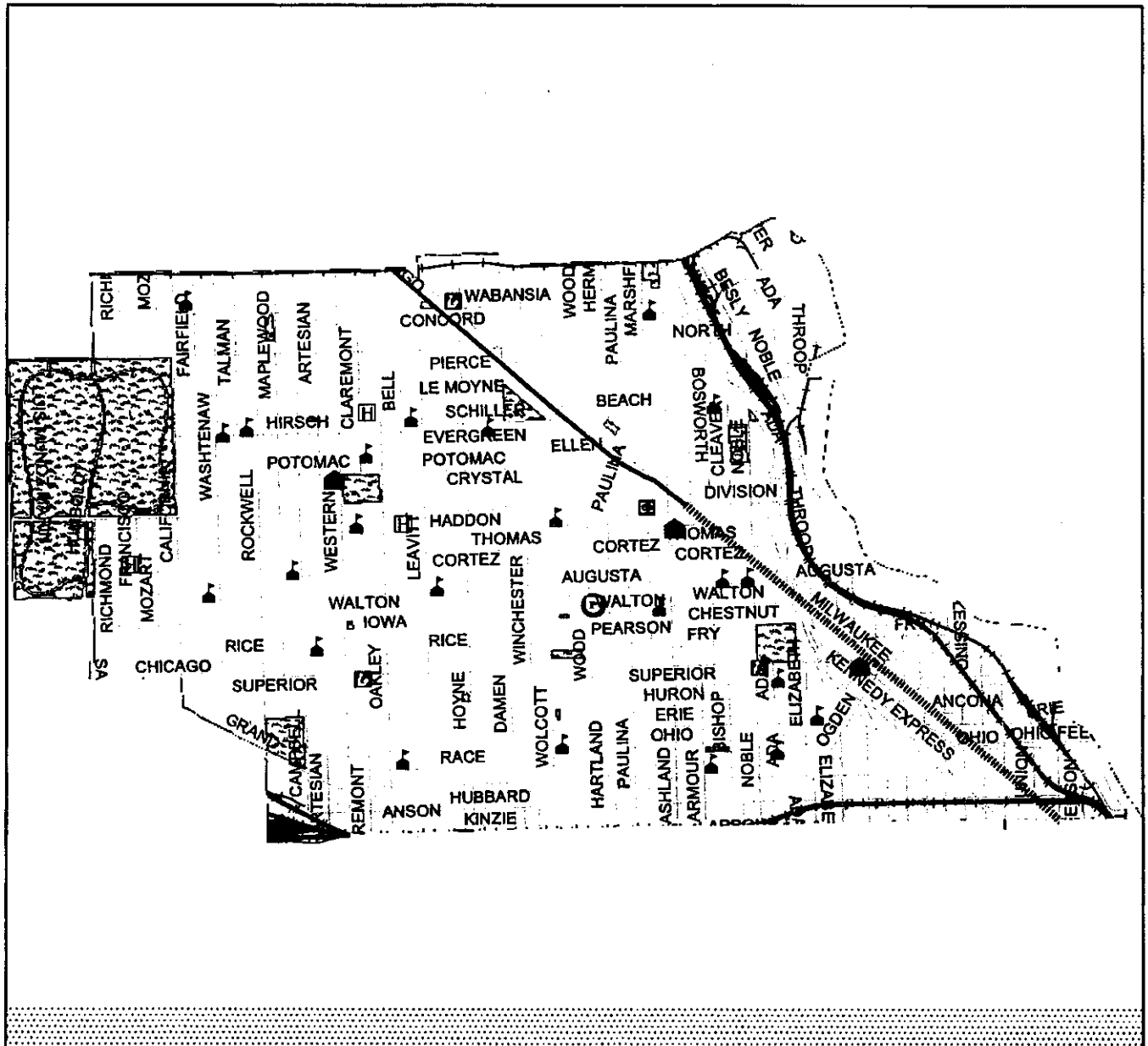


# NEAR NORTH SIDE



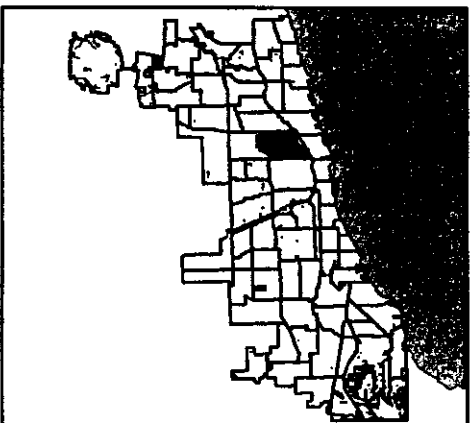


# WEST TOWN



**Legend**

	Firehouses		Blue Line Subway
	Hospitals		Blue Line Elevated/At-Grade
	Libraries		Brown Line
	Police Facilities		Green, Purple Lines
	Schools		Green Line
	U.S. Post Offices		Green, Orange Lines
	Railroads		Pink, Brown, Purple, Orange Lines
	Parks		Pink, Brown, Purple, Orange, Green Lines
	Cemeteries		Orange Line
			Purple Line
			Red Line Subway
			Red Line Elevated/At-Grade
			Red, Purple Lines
			Red, Purple, Brown Lines
			Yellow Line



**EXHIBIT K**

**PROJECT SUMMARY SCHEDULE**

**See attached project summary schedule:**

**Turner Construction Company, Ogden Replacement Elementary School  
Run Date 25 September 2009.**





# ACORD™ CERTIFICATE OF LIABILITY INSURANCE

1CD67R4A

DATE (MM/DD/YYYY)  
11/24/2009

**PRODUCER**  
Turner Surety and Insurance Brokerage, Inc.  
300 Tice Boulevard - Suite 250  
Woodcliff Lake, NJ 07677  
(201) 644-2500

**THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.**

**INSURED**  
Turner Corporation  
Turner Construction Company  
901 Main Street - Suite 4900  
Dallas, TX 75202

INSURERS AFFORDING COVERAGE	NAIC #
INSURER A: Illinois National Insurance Co.	
INSURER B: Liberty Mutual Insurance Company	
INSURER C: Liberty Mutual Fire Insurance Company	
INSURER D: Liberty Insurance Corporation	
INSURER E:	

## COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
B	<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC	TB1-625-092815-049: Ea. Occ, Dam to Rent Prem, Pers & Adv Inj: \$250k. TL1-621-092815-089: Ea. Occ, Pers & Adv Inj, Dam to Prem: \$1.75k. Total Aggs at right.	11/01/2009	11/01/2010	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 2,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 5,000,000 PRODUCTS - COMP/OP AGG \$ 12,500,000
C	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS  <b>GARAGE LIABILITY</b> <input type="checkbox"/> ANY AUTO	AS2-625-092815-019	11/01/2009	11/01/2010	COMBINED SINGLE LIMIT (Ea accident) \$ 2,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$
A	<b>EXCESS/UMBRELLA LIABILITY</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE  DEDUCTIBLE \$ RETENTION \$	BE 27471531	11/01/2009	11/01/2010	EACH OCCURRENCE \$ 25,000,000 AGGREGATE \$ 25,000,000 \$ \$ \$
D	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below OTHER	WC7-625-092815-039 Employers Liab./Stop-Gap OH, ND, WA, WV, WY	11/01/2009	11/01/2010	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 2,000,000 E.L. DISEASE - EA EMPLOYEE \$ 2,000,000 E.L. DISEASE - POLICY LIMIT \$ 2,000,000

### DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

LOCATION: OGDEN RELOCATION ELEMENTARY SCHOOL, 24 WEST WALTON STREET, CHICAGO, IL 60610  
 JOB #1632400  
 ADDITIONAL INSURED: CHICAGO TRANSIT AUTHORITY; THE PUBLIC BUILDING COMMISSION OF CHICAGO; BOARD OF EDUCATION OF THE CITY OF CHICAGO; CITY OF CHICAGO  
 COVERAGE IS PRIMARY AND NON-CONTRIBUTORY  
 WAIVER OF SUBROGATION APPLIES  
 OFFSITE COVERAGE APPLIES TO WORKERS' COMPENSATION AND GENERAL LIABILITY ONLY

### CERTIFICATE HOLDER

CHICAGO TRANSIT AUTHORITY  
 RISK MANAGEMENT  
 P.O. BOX 7564  
 CHICAGO, IL 60680-7564

### CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 60 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

*Sandra K. Wolf*



# ADDITIONAL INFORMATION

ISSUE DATE

11/24/2009

**PRODUCER**

Turner Surety and Insurance Brokerage, Inc.  
300 Tice Boulevard - Suite 250  
Woodcliff Lake, NJ 07677  
(201)644-2500

**CERTIFICATE HOLDER**

PUBLIC BUILDING COMMISSION PROCUREMENT DEPT.  
RICHARD J. DALEY CENTER  
50 WEST WASHINGTON ST. - ROOM 200  
CHICAGO, IL 60602

**INSURED**

Turner Corporation  
Turner Construction Company  
901 Main Street - Suite 4900  
Dallas, TX 75202

**EXCESS LIMITS OF LIABILITY:****ACE AMERICAN INSURANCE COMPANY**

POLICY #XCP G24902389

EFFECTIVE: NOVEMBER 1, 2009 to NOVEMBER 1, 2010

\$25,000,000 PER OCCURRENCE/\$25,000,000 AGGREGATE

EXCESS OF \$25,000,000 PER OCCURRENCE/\$25,000,000 AGGREGATE

**LEXINGTON INSURANCE COMPANY**

POLICY #2214083

EFFECTIVE: NOVEMBER 1, 2009 to NOVEMBER 1, 2010

\$25,000,000 PER OCCURRENCE/\$25,000,000 AGGREGATE

EXCESS OF \$50,000,000 PER OCCURRENCE/\$50,000,000 AGGREGATE

**CHUBB (FEDERAL INSURANCE COMPANY)**

POLICY #79659352

EFFECTIVE NOVEMBER 1, 2009 to NOVEMBER 1, 2010

\$25,000,000 PER OCCURRENCE/ \$25,000,000 AGGREGATE

EXCESS OF \$75,000,000 PER OCCURRENCE/\$75,000,000 AGGREGATE

**ALLIED WORLD ASSURANCE COMPANY LIMITED**

POLICY #C001429/008

EFFECTIVE NOVEMBER 1, 2009 to NOVEMBER 1, 2010

\$50,000,000 PER OCCURRENCE/\$50,000,000 AGGREGATE

EXCESS OF \$100,000,000 PER OCCURRENCE/\$100,000,000 AGGREGATE

**ENDURANCE SPECIALTY INSURANCE LIMITED**

POLICY #P009018002

EFFECTIVE NOVEMBER 1, 2009 to NOVEMBER 1, 2010

\$50,000,000 PER OCCURRENCE/\$50,000,000 AGGREGATE

EXCESS OF \$150,000,000 PER OCCURRENCE/ \$150,000,000 AGGREGATE

001P

# ACORD™ CERTIFICATE OF LIABILITY INSURANCE

J74USKL6

DATE (MM/DD/YYYY)  
11/24/2009

**PRODUCER**  
Turner Surety and Insurance Brokerage, Inc.  
300 Tice Boulevard - Suite 250  
Woodcliff Lake, NJ 07677  
(201)644-2500

**THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.**

**INSURED**  
Turner Corporation  
Turner Construction Company  
901 Main Street - Suite 4900  
Dallas, TX 75202

INSURERS AFFORDING COVERAGE	NAIC #
INSURER A:	
INSURER B:	
INSURER C:	
INSURER D:	
INSURER E:	

**COVERAGES**

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR/ADD'L LTR	INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
		<b>GENERAL LIABILITY</b> <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC				EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$
		<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
		<b>GARAGE LIABILITY</b> <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$
		<b>EXCESS/UMBRELLA LIABILITY</b> <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE  <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$	SEE ADDENDUM			EACH OCCURRENCE \$ AGGREGATE \$ \$ \$
		<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				<input type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
		<b>OTHER</b>				

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS**  
 WORK PERFORMED UNDER THE TURNER CONSTRUCTION CONTRACTOR CONTROLLED INSURANCE PROGRAM: OGDEN RELOCATION ELEMENTARY SCHOOL, 24 WEST WALTON STREET, CHICAGO, IL 60610  
 JOB #1632400  
 ADDITIONAL INSURED: CHICAGO TRANSIT AUTHORITY; THE PUBLIC BUILDING COMMISSION OF CHICAGO; BOARD OF EDUCATION OF THE CITY OF CHICAGO; CITY OF CHICAGO  
 COVERAGE IS PRIMARY AND NON-CONTRIBUTORY  
 (continued next page)

**CERTIFICATE HOLDER**

PUBLIC BUILDING COMMISSION PROCUREMENT DEPT.  
 RICHARD J. DALEY CENTER  
 50 WEST WASHINGTON ST. - ROOM 200  
 CHICAGO, IL 60602

**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 60 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

*Sandra L. Wolf*

# ADDITIONAL INFORMATION

ISSUE DATE

11/24/2009

**PRODUCER**

Turner Surety and Insurance Brokerage, Inc.  
300 Tice Boulevard - Suite 250  
Woodcliff Lake, NJ 07677  
(201)644-2500

**CERTIFICATE HOLDER**

PUBLIC BUILDING COMMISSION PROCUREMENT DEPT.  
RICHARD J. DALEY CENTER  
50 WEST WASHINGTON ST. - ROOM 200  
CHICAGO, IL 60602

**INSURED**

Turner Corporation  
Turner Construction Company  
901 Main Street - Suite 4900  
Dallas, TX 75202

(continued from previous page)

WAIVER OF SUBROGATION APPLIES

**EXCESS LIMITS OF LIABILITY:**

ILLINOIS NATIONAL INSURANCE COMPANY  
POLICY #27471532  
EFFECTIVE: 11/1/09 - 4/1/12  
\$25,000,000 PER OCCURRENCE/\$25,000,000 AGGREGATE

ACE AMERICAN INSURANCE COMPANY  
POLICY #XCP G24902377  
EFFECTIVE: 11/1/09 - 4/1/12  
\$25,000,000 PER OCCURRENCE/\$25,000,000 AGGREGATE  
EXCESS OF \$25,000,000 PER OCCURRENCE/\$25,000,000 AGGREGATE

LEXINGTON INSURANCE COMPANY  
POLICY #2214084  
EFFECTIVE: 11/1/09 - 4/1/12  
\$25,000,000 PER OCCURRENCE/ \$25,000,000 AGGREGATE  
EXCESS OF \$50,000,000 PER OCCURRENCE/ \$50,000,000 AGGREGATE

CHUBB (FEDERAL INSURANCE COMPANY)  
POLICY #93631119  
EFFECTIVE: 11/1/09 - 4/1/12  
\$25,000,000 PER OCCURRENCE/\$25,000,000 AGGREGATE  
EXCESS OF \$75,000,000 PER OCCURRENCE/\$75,000,000 AGGREGATE

ALLIED WORLD ASSURANCE COMPANY (AWAC)  
POLICY #C000063/009  
EFFECTIVE: 11/1/09 - 4/1/12  
\$50,000,000 PER OCCURRENCE/\$50,000,000 AGGREGATE  
EXCESS OF \$100,000 PER OCCURRENCE/\$100,000,000 AGGREGATE

ENDURANCE SPECIALTY INSURANCE LIMITED  
POLICY #P009017002  
EFFECTIVE: 11/1/09 - 4/1/12  
\$50,000,000 PER OCCURRENCE/ \$50,000,000 AGGREGATE  
EXCESS OF \$150,000,000 PER OCCURRENCE/ \$150,000,000 AGGREGATE

# ACORD™ CERTIFICATE OF LIABILITY INSURANCE

E6YRJYJK

DATE (MM/DD/YYYY)  
11/23/2009

**PRODUCER**

Turner Surety and Insurance Brokerage, Inc.  
300 Tice Boulevard - Suite 250  
Woodcliff Lake, NJ 07677  
(201)644-2500

*16608*

**THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.**

**INSURED**

Turner Corporation  
Turner Construction Company  
901 Main Street - Suite 4900  
Dallas, TX 75202

**INSURERS AFFORDING COVERAGE**

**NAIC #**

INSURER A: Zurich American Insurance Co  
INSURER B:  
INSURER C:  
INSURER D:  
INSURER E:

**COVERAGES**

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR/ADD'L LTR INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
	<b>GENERAL LIABILITY</b> <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC				EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	<b>GARAGE LIABILITY</b> <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$
	<b>EXCESS/UMBRELLA LIABILITY</b> <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE  <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				<input type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	<b>OTHER CONTRACTORS POLLUTION Liability</b>	CPL 5396518 06	12/31/2008	12/31/2009	Limit 5,000,000 Aggregate limit 5,000,000 Deductible

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS**

LOCATION: OGDEN RELOCATION ELEMENTARY SCHOOL, 24 WEST WALTON STREET, CHICAGO, IL 60610  
JOB #1632400

ADDITIONAL INSURED: CHICAGO TRANSIT AUTHORITY; THE PUBLIC BUILDING COMMISSION OF CHICAGO; BOARD OF EDUCATION OF THE CITY OF CHICAGO; CITY OF CHICAGO  
COVERAGE IS PRIMARY AND NON-CONTRIBUTORY

*original 11/23/09*

**CERTIFICATE HOLDER**

PUBLIC BUILDING COMMISSION PROCUREMENT DEPT.  
RICHARD J. DALEY CENTER  
50 WEST WASHINGTON ST. - ROOM 200  
CHICAGO, IL 60602

**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

*Sandra K. Wolf*

# ACORD CERTIFICATE OF LIABILITY INSURANCE

BGI86NI4

DATE (MM/DD/YYYY)  
11/04/2009

**PRODUCER**

Turner Surety and Insurance Brokerage, Inc.  
300 Tice Boulevard - Suite 250  
Woodcliff Lake, NJ 07677  
(201)644-2500

**THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.**

**INSURED**

Turner Corporation  
Turner Construction Company  
901 Main Street - Suite 4900  
Dallas, TX 75202

**INSURERS AFFORDING COVERAGE**

NAIC #

INSURER A: Zurich American Insurance Co  
INSURER B:  
INSURER C:  
INSURER D:  
INSURER E:

**COVERAGES**

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
	<b>GENERAL LIABILITY</b> <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC				EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	<b>GARAGE LIABILITY</b> <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$
	<b>EXCESS/UMBRELLA LIABILITY</b> <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE  DEDUCTIBLE RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$ \$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				<input type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	<b>OTHER CONTRACTORS PROTECTIVE</b> Professional Indemnity and Liability Insurance	EOC 9259318 02	03/31/2009	03/31/2010	Limit 5,000,000 Aggregate limit 5,000,000 Deductible

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

FOR EVIDENCE PURPOSES ONLY

**CERTIFICATE HOLDER**

**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

EVIDENCE ONLY

AUTHORIZED REPRESENTATIVE

*Sandra K. Wolf*



# ZURICH

TSIB00258

**Zurich American Insurance Company**  
(A stock company herein called the Company)  
1400 American Lane; Schaumburg, Illinois 60196-1056

## CERTIFICATE OF INSURANCE

**CERTIFICATE PERIOD** 11/16/09 to 09/12/11 **CERTIFICATE NUMBER** CRT 4378187-00

This Certificate follows the terms and conditions of ZURICH AMERICAN INSURANCE COMPANY Policy MBR 4550345-07

This certificate neither affirmatively nor negatively amends, extends or alters the coverage, limits, terms or conditions of the Master policy unless expressly stated herein.

<b>NAMED INSURED</b> (include address)	TURNER CONSTRUCTION COMPANY 50 Tice Blvd., 3 <sup>rd</sup> Floor Woodcliff Lake, NJ 07677	<b>Premium</b> \$20,524	<b>Annual rate/</b> \$100	<b>Term rate/</b> \$100	<b>Term Total</b>
		Builders Risk	.0751	.1368	\$20,524
<b>ADDITIONAL INSURED</b> (include address)	To the extent required by any contract or subcontract for the K-12 Ogden Schools Early Packages project (Job ID # 1632400), and then only as their respective interests may appear, all owners, all contractors and subcontractors of every tier, and tenants at the project location, are recognized as Additional Named Insureds hereunder. As respects architects, engineers, manufacturers and suppliers, their interest is limited to their site activities only.	Delay In Completion	.0000	.0000	N/A
		Coastal Windstorm	.0000	.0000	Incl in base
		Earthquake	.0000	.0000	Incl in base
		Flood	.0000	.0000	Incl in base
		Damage To Existing Property			
		Mold	.0000	.0000	N/A
		Certified/Non-Certified Terrorism	.0000	.0000	Incl in Base
		State Surcharge	0	0	N/A
<b>LOSS PAYEE</b> (include address)	Public Building Commission of Chicago City of Chicago Board of Education of the City of Chicago				
<b>MORTGAGEE</b> (include address)					
<b>PROJECT LOCATION</b> (include address)	7A-1632400-K-12 OGDEN SCHOOLS EARLY PACKAGES 24 West Walton Street Chicago, IL 60610				
<b>PROJECT DESCRIPTION</b> (Structural type, size, material type, occupancy, etc.) (If renovation or rehab, be specific)	110,000sf Replacement elementary school - this ICC is for the initial \$15 million of project volume only per the contract. Construction Type: New Construction Scope of Work: Schools Term (Days):665 Project Value: \$15,000,000				
<b>COVERAGE</b>	<b>Contractor's Wrap Around</b>				
(Place X in all applicable coverage blocks)					

**STANDARD COVERAGE TERMS**

(Coverage shall only apply under this Certificate to those individual Limits, Sub-limits and Aggregate Limits for which a value is entered below, but in no event these Sub-limits and Aggregate Limits shall exceed the limit of liability.)

<b>LIMIT OF LIABILITY</b>	\$	15,000,000	Any One OCCURRENCE During The Certificate Period
<b>SUB-LIMITS OF LIABILITY</b> (Sublimits per OCCURRENCE except Delay In Completion as Certificate Aggregate)	\$	15,000,000	Physical Damage to the <b>INSURED PROJECT</b>
	\$	N/A	Delay In Completion (see coverage terms below for specific sublimits)
	\$	5,000,000	Physical Damage To Property In Transit - Any One Conveyance
	\$	5,000,000	Physical Damage To Property In Offsite Storage - Any One Location
	\$	100,000	Architects and Engineers Fees
	\$	1,250,000	Or 20% of the amount of insureds physical loss or damage to property insured, whichever is less - Expediting Expense and Contractor's Extra Expense, combined
	\$	N/A	Mold Per Occurrence/ \$500,000 Per Project Aggregate
	\$	500,000	Physical Damage To Plans, Blueprints, Drawings, Renderings, Specifications Or Other Contract Documents And Models At The Insured Project
	\$	20,000,000	Ordinance of Law / Demolition & Increased Cost of Construction
	\$	1000000	Damage To Existing Property
	\$	25.0%	Of the amount of insured physical loss or damage to Covered Property, whichever is less - Debris Removal Coverage
	\$	25,000	Emergency Property Protection Expense - in the Certificate Term
	\$	100,000	Fire Department Service Charges
	\$	5,000	Fire Protective Equipment Refills
	\$	250,000	Claims Preparation Costs
\$	250,000	Pollution/Contaminant Clean up	
\$	250,000	Maximum any one item -Trees, Plants, and Shrubs	
<b>ANNUAL AGGREGATES</b> (Aggregate limits apply to each annual period within this Certificate beginning on the Certificate inception date)	\$	15,000,000	By The Peril Of <b>EARTHQUAKE</b>
	\$	15,000,000	By The Peril Of <b>NAMED STORM</b>
	\$	15,000,000	By The Peril Of <b>FLOOD</b>
<b>DEDUCTIBLES</b> (Deductibles apply per OCCURRENCE) (When % is entered, the % is applied against the total insured physical damage values at risk at the time and place of loss subject to the dollar minimum)	\$	10,000	Physical Damage, Except
	\$	10,000	
	\$	10,000	% <b>NAMED STORM</b>
	\$	10,000	% <b>FLOOD</b>
	\$	50,000	% <b>WATER DAMAGE</b>
	\$	n/a	<b>HOT TESTING</b>
	30	Calendar Day Deductible Period - Delay In Completion - Standard Coverage	
	30	Calendar Day Deductible Period - Delay In Completion - Optional Coverage	

**DELAY IN COMPLETION COVERAGE TERMS**

(Coverage for Delay In Completion shall only apply under this Certificate when this section is completed in its entirety.)  
\*This section only needs to be completed for limits in excess of \$500,000.

<b>NAMED INSURED &amp; BUSINESS ADDRESS</b>			
<b>ANTICIPATED DATE OF COMPLETION</b>	<b>PERIOD OF INDEMNITY</b>		Calendar Days
Subject to individual Certificate Aggregate sublimits shown below, the total Certificate Aggregate sublimit for which the Company shall be liable is			\$
<b>CERTIFICATE AGGREGATE SUB-LIMITS OF LIABILITY</b>	Loss Of Gross Earnings	\$	
	Loss Of Rental Income	\$	
	Soft Costs / Additional Expense	\$	
When a Certificate Aggregate Sub-limit is entered for Soft Costs / Additional Expense above, coverage shall be further limited to the individual Certificate Aggregate Sub-limits entered to the right		Interim Interest Expense	\$
		Realty Taxes / Ground Rents	\$
		Advertising Expense	\$
		Commission Expense	\$
		Architect / Engineer Fees	\$
		Project Administration Expense	\$

CERTIFICATE NUMBER: CRT 4378187-00

**HOT TESTING PERIOD TERMS**

(If an X is entered in the coverage block on page one the following must be provided)

HOT TESTING PERIOD: \_\_\_\_\_ Days

**OTHER COVERAGE TERMS / CONDITIONS**

(Identify other terms and conditions below that apply to this Certificate)


**COVERAGE INFORMATION**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED HEREIN HAVE BEEN ISSUED TO THE INSURED NAMED HEREIN FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THE CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES LISTED HEREIN IS SUBJECT TO ALL TERMS, CONDITIONS AND EXCLUSIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

**CANCELLATION**

THE COMPANY MAY ONLY CANCEL THIS POLICY IN THE EVENT OF NON PAYMENT OF THE PREMIUM DUE BY MAILING WRITTEN NOTICE STATING WHEN, NOT LESS THAN TEN (10) DAYS THEREAFTER SUCH CANCELLATION SHALL BE EFFECTIVE, TO THE NAMED INSURED AT THE ADDRESS SHOWN IN THE POLICY.

Turner Surety & Insurance Brokerage. By:



Issued By: JP 11/19/2009





**ZURICH**

## **IMPORTANT DISCLOSURE NOTICE**

We are making the following informational disclosures in compliance with The Terrorism Risk Insurance Act of 2002. No action is required on your part.

### **Disclosure of Terrorism Premium**

The premium charge for risk of loss resulting from acts of terrorism (as defined in the Act) under the policy(ies) This amount is included in the base premium for this policy.

### **Disclosure of Availability of Coverage for Terrorism Losses**

As required by the Terrorism Risk Insurance Act of 2002, the member companies of Zurich North America make available coverage for losses resulting from acts of terrorism (as defined in the Act) with terms, amounts, and limitations that do not differ materially as those for losses arising from events other than acts of terrorism.

### **Disclosure of Federal Share of Insurance Company's Terrorism Losses**

The Terrorism Risk Insurance Act of 2002 establishes a mechanism by which the United States government will share in insurance company losses resulting from acts of terrorism (as defined in the Act) after an insurance company has paid losses in excess of an annual aggregate deductible. For 2002, the insurance company deductible is 1% of direct earned premium in the prior year; for 2003, 7% of direct earned premium in the prior year; for 2004, 10% of direct earned premium in the prior year; and for 2005, 15% of direct earned premium in the prior year. The federal share of an insurance company's losses above its deductible is 90%. In the event the United States government participates in losses, the United States government may direct insurance companies to collect a terrorism surcharge from policyholders. The Act does not currently provide for insurance industry or United States government participation in terrorism losses that exceed \$100 billion in any one calendar year.

### **Definition of Act of Terrorism**

The Terrorism Risk Insurance Act defines "act of terrorism" as any act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General of the United States:

1. to be an act of terrorism;
2. to be a violent act or an act that is dangerous to human life, property or infrastructure;
3. to have resulted in damage within the United States, or outside of the United States in the case of an air carrier (as defined in section 40102 of title 49, United States Code) or a United States flag vessel (or a vessel based principally in the United States, on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States), or the premises of a United States mission; and
4. to have been committed by an individual or individuals acting on behalf of any foreign person or foreign interest as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

But, no act shall be certified by the Secretary as an act of terrorism if the act is committed as part of the course of a war declared by Congress (except for workers' compensation) or property and casualty insurance losses resulting from the act, in the aggregate, do not exceed \$5,000,000.

**These disclosures are informational only and do not modify the policy or affect your rights under the policy.**

**RE: Insurance requirements for Turner Construction PS1668**

Cogtella, Carrie

Sent: Friday, November 20, 2009 12:23 PM

To: PublicBuildingCommission@cityofchicago.org

Cc: Rusche, Todd; Meeks, Janice; Shannon, Margarita; marsha\_rmis@sbcglobal.net

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The attached Rail Road Protective certificate of insurance, issued to the CTA, provide limits of liability of \$2MM/\$6MM. We checked with the Risk Manager of CTA and the limits on the attached certificate meet their requirements.

Marsha Lee Brown  
on behalf of  
Caroline Cogtella, Risk Manager  
Public Building Commission  
50 West Washington Street  
Chicago, IL 60602  
312-744-9434 telephone  
312-744-8005 fax

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From: PublicBuildingCommission@cityofchicago.org  
[PublicBuildingCommission@cityofchicago.org]  
Sent: Thursday, November 19, 2009 2:56 PM  
To: Cogtella, Carrie  
Cc: Rusche, Todd; Meeks, Janice; Shannon, Margarita  
Subject: Insurance requirements for Turner Construction PS1668

Carrie, please review the attached certificate for builders risk. The other insurance policies will be available tomorrow.

Number of Images: 2  
Attachment File Type: PDF

Device Name: WorkCentre 7132  
Device Location:

CTA - Tanika Press (Risk Management)  
(312) 681-2901  
RRP Limits \$2/6 MM.

**FW: Ogden Insurance and Bond**

Cogtella, Carrie

**Sent:** Tuesday, November 24, 2009 3:31 PM  
**To:** Rusche, Todd  
**Cc:** Castillo, Rusty; Shannon, Margarita; marsha\_rmis@sbcglobal.net  
**Attachments:** K-12 Ogden Schools Early P~1.pdf (96 KB)

*Corrected one*

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**Todd, I am approving the BR, however, reminder, our insurance requirements state we are not responsible for any deductibles**

Caroline Cogtella, Risk Manager  
Public Building Commission  
50 West Washington Street  
Chicago, IL 60602  
312-744-9434 telephone  
312-744-8005 fax

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**From:** Blair, Rick A - (CHI) [RBlair@tcco.com]  
**Sent:** Tuesday, November 24, 2009 3:28 PM  
**To:** Cogtella, Carrie; Rusche, Todd  
**Subject:** FW: Ogden Insurance and Bond

Carrie / Todd,

Please see the attached BRI cert for Ogden with updated loss payees.

If there are any questions let me know.

I believe this gets us completely up to date and in proper compliance with the insurance requirements.

Thanks  
Rick

Rail Road  
Protective

**Certificate of Insurance**

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON YOU THE CERTIFICATE HOLDER. THIS CERTIFICATE IS NOT AN INSURANCE POLICY AND DOES NOT AMEND, EXTEND, OR ALTER THE COVERAGE AFFORDED BY THE POLICIES LISTED BELOW. POLICY LIMITS ARE NO LESS THAN THOSE LISTED, ALTHOUGH POLICIES MAY INCLUDE ADDITIONAL SUBLIMIT/LIMITS NOT LISTED BELOW.

This is to Certify that

CTA - Chicago Transit Authority

567 West Lake Street

Chicago

IL 60661-1498

NAME AND  
ADDRESS  
OF INSURED



**Liberty  
Mutual.**

is, at the issue date of this certificate, insured by the Company under the policy(ies) listed below. The insurance afforded by the listed policy(ies) is subject to all their terms, exclusions and Conditions and is not altered by any requirement, term or condition of any contract or other document with respect to which this certificate may be issued.

TYPE OF POLICY	EXP DATE <input type="checkbox"/> CONTINUOUS <input type="checkbox"/> EXTENDED <input checked="" type="checkbox"/> POLICY TERM	POLICY NUMBER	LIMIT OF LIABILITY	
			WORKERS COMPENSATION	EMPLOYERS LIABILITY
			COVERAGE AFFORDED UNDER WC LAW OF THE FOLLOWING STATES:	Bodily Injury by Accident <small>Each Accident</small> Bodily Injury By Disease <small>Policy Limit</small> Bodily Injury By Disease <small>Each Person</small>
<b>GENERAL LIABILITY</b>			<b>BODILY INJURY</b>	<b>PROPERTY DAMAGE</b>
<input type="checkbox"/> Comprehensive Form <input type="checkbox"/> Schedule <input type="checkbox"/> Products/Completed Operations <input type="checkbox"/> Independent Contractors / Contractors protective <input type="checkbox"/> Contractual Liability <input type="checkbox"/> Owners' & Contractors' protective liability policy <input checked="" type="checkbox"/> Railroad Protection Pol.	6/30/2011	TE2-621-093906-029 Eff. Date: 10/27/2009	\$ Each Occurrence \$ Aggregate	\$ Each Occurrence \$ Aggregate
			Combined Single Limit Bodily Injury and Property Damage \$ \$2,000,000 Each Occurrence \$ \$6,000,000 Aggregate	
<b>AUTOMOBILE LIABILITY</b>				Each Accident—Single Limit B.I. And P.D. Combined Each Person Each Accident or Occurrence Each Accident or Occurrence
<b>ADDITIONAL INSURED:</b>				
Location(s) of Operations & Job # (if applicable) Ogden Replacement Elementary School 24 E. Walton Street Chicago, IL 60610		Description of Operations: See Addendum Attached		

\* If the certificate expiration date is continuous or extended term, you will be notified if coverage is terminated or reduced before the certificate expiration date.

NOTICE OF CANCELLATION: (NOT APPLICABLE UNLESS A NUMBER OF DAYS IS ENTERED BELOW.) BEFORE THE STATED EXPIRATION DATE THE COMPANY WILL NOT CANCEL OR REDUCE THE INSURANCE AFFORDED UNDER THE ABOVE POLICIES UNTIL AT LEAST 30 DAYS.

Liberty Mutual  
Insurance Group

CTA - Chicago Transit Authority

PO Box 7556  
Chicago

IL 60680-7556

*Michael Socha*

Michael Socha

New York / 0202  
114 West 47th St.  
New York

AUTHORIZED REPRESENTATIVE

NY 10036

212-391-7500

10/28/2009

OFFICE

PHONE

DATE ISSUED

This certificate is executed by LIBERTY MUTUAL INSURANCE GROUP as respects such insurance as is afforded by Those Companies NM 772A R6

# CERTIFICATE - ADDENDUM

## NAMED INSURED

CTA - Chicago Transit Authority

567 West Lake Street

Chicago

IL 60661-1498

## CERTIFICATE HOLDER

CTA - Chicago Transit Authority

10/28/2009

PO Box 7556  
Chicago

IL 60680-7556

## Description of Operations:

The Project site is located between N. State Street and N. Dearborn Street and W. Walton Street and W. Oak Street in Chicago. The building is approximately 156,000 gross square feet. One sub grade level of approximately 45,000 SF will be used for parking, storage and building maintenance. The first level at grade will be the main entry with Principal's office, 6 Pre-K class rooms, dock and service areas including the Kitchen. The second level will include 12 classrooms, a computer and science lab, art room and a 2 story Gymnasium with raised platform stage along with mechanical rooms. The 3rd floor has another 12 classrooms, the library, music room, staff lounge and mechanical rooms. The Roof plan has a 3 access points including an elevator override along with an outdoor playground and vegetative roofs. The building cladding is masonry, aluminum and glass panels. Construction will start in November 2009 with substantial completion scheduled for June 30th, 2011, with academic classes starting September 6th, 2011.

Work effecting CTA: Caissons, Earth Retention, Concrete foundations walls, brick and CMU exterior walls.