

**PROFESSIONAL SERVICES AGREEMENT  
FOR CONSTRUCTION MANAGER**

**AGREEMENT NO. PS-797**

**THIS AGREEMENT**, dated as of the **10th** day of **August, 2004**, but actually executed on the date witnessed herein below, by and between the **PUBLIC BUILDING COMMISSION OF CHICAGO**, a municipal corporation of the State of Illinois, having its principal office at Room 200, Richard J. Daley Center, 50 W. Washington, Chicago, Illinois 60602, hereinafter called "**Commission**", and **McClier** with offices located at 401 East Illinois Street, Chicago, Illinois 60611, hereinafter referred to as the "**Construction Manager**".

**WITNESSETH**

**WHEREAS**, the Commission, on behalf of the **Department of General Services and the Office of Emergency Management and Communications** (referred to in this Agreement as the "**User Agency**"), intends to undertake the design and improvement of the following facility in Chicago, Illinois, described in Schedule A to this Agreement:

**Project:  
Construction Management Services**

**City Operations Room  
911 Center Project  
1411 W. Madison Street  
Chicago, Illinois**

hereinafter called the "**Project**"; and

**WHEREAS**, the Commission requires certain professional construction management services, described in Schedule A to this Agreement (the "**Services**"), in connection with the Project and desires to retain the Construction Manager, on the terms and conditions set forth in this Agreement, to perform such Services; and

**WHEREAS**, the Construction Manager desires so to be retained by the Commission and has represented to the Commission that the Construction Manager has the knowledge, skill, experience and other resources necessary to perform the Services in the manner herein provided; and

**WHEREAS**, the Construction Manager has consulted with the Commission, reviewed the Project Documents (defined below) and taken such other actions as the Construction Manager has deemed necessary or advisable to familiarize itself with the scope and requirements of the Project and the Services; and

**WHEREAS**, the Construction Manager has made site inspections, consulted with the Commission and the User Agency, and is fully acquainted with the requirements of the foregoing Project; and

**WHEREAS**, the Construction Budget for the Project as determined by Commission is Three Million Six Hundred And Forty Nine Thousand Eight Hundred and Three Dollars and No Cents (\$3,649,803) and the Construction Manager does hereby confirm to the Commission that such Budget, based upon current area, volume or other unit cost, the requirements of the Program and allowances for cost escalation and Project contingencies, is reasonable for the construction of the Project; and

**WHEREAS**, the Construction Manager represents that it is qualified and competent by education, training and experience to prepare Drawings and Specifications and Construction Documents necessary to complete the construction of the Project in accordance with standards of reasonable professional skill and diligence; and

**WHEREAS**, the parties anticipate that the Construction Manager shall enter into one or more trade contracts or trade agreements with subcontractors in order to complete the development and construction of the Project;

**NOW THEREFORE**, the Commission and the Construction Manager, for the considerations hereinafter set forth, **AGREE** as follows:

1. **Incorporation of Recitals**. The Recitals set forth herein above and the following documents are incorporated into this Agreement.
2. **Definitions**. The following phrases have the same meanings for the purposes of this Agreement:
  - a. Agreement means this professional services Agreement, including all exhibits or documents attached hereto and/or incorporated by reference herein, and all amendments, modifications, or revisions made in accordance with the terms hereof.
  - b. **Architect or Architect/Engineer** means any person or firm utilized by the Construction Manager for the purpose of designing and observing the Work embraced in this Contract.
  - c. **Commission** as herein referred to shall include the Commission's Chairman, Secretary, Assistant Secretary, Executive Director, Director of Construction, Managing Architect, Project Manager, Director of Procurement or designated consultant or consultants, acting on behalf thereof, as designated by the Commission in writing, for the purpose of giving authorizations, instructions, and/or approval pursuant to this Agreement.

- d. **Construction** means, for the purpose of this contract, the purchase and installation of equipment and related modifications to the City Operations Room at the 911 Center necessary for the effective implementation of the Project.
- e. **Construction Manager** means the company or other entity identified in this Agreement, and such successors or assigns, if any, as may be authorized by the terms and conditions of this Agreement.
- f. **Construction Budget** means the total funds budgeted by the Commission for designing and constructing the Project and furnishing all items which shall be shown or described in the Contract Documents to be prepared by the Construction Manager in accordance with this Agreement, but does not include any payments made to the Construction Manager or sub-consultants or reimbursable expenses pursuant to Schedule C, paragraph C.3.
- g. **Contingent Additional Services** means any additional services to be provided by the Construction Manager for the Project pursuant to the provisions of Schedule A of this Agreement.
- h. **Contract Documents** consists of all of the component parts of the Contract between the Commission and the Construction Manager for the construction and improvement of the Project including, without limitation, the terms and conditions, technical specifications, Drawings and Specifications, addenda, bulletins and modifications thereto.
- i. **Control Estimate** means the sum of the following (i) professional fees; (ii) reimbursable expenses; (iii) contingency; (iv) the then estimated Cost of Work based on the Construction Documents approved by the Commission and the User Agency. The Control Estimate is the budget estimate against which the actual costs will be measured.
- j. **Cost of Work** means the sum of all trade contractor costs related to construction of the project.
- k. **Day or Days** means calendar day(s) unless otherwise specified.
- l. **Design Development Documents** means plans, elevations and other drawings and outline specifications which fix and illustrate the size and character of the Project in its essentials, including kinds of material, type of structure, mechanical and electrical systems and such other work as may be required.
- m. **Design Team** means the licensed Architect of Record and its sub-consultants, including but not limited to, structural, civil, mechanical, electrical, plumbing and

fire protection engineers, employed or engaged by the Construction Manager for the Project.

- n. **Drawing and Specifications** means the detailed drawings and technical specifications, prepared by a licensed Architect, which describe the scope of work to be performed.
- o. **Executive Director** means the person employed by the Commission as its Executive Director or the duly authorized representative thereof.
- p. **Federal Government** means the government of the United States of America, including, but not limited to, the U. S. Department of Homeland Security.
- q. **Final Completion and Acceptance of the Work** means the last date on which all of the following events have occurred: the Commission has determined that all Punch List Work and any other remaining Work have been completed in accordance with the Contract Documents; final inspections have been completed and operations systems and equipment testing have been completed; final occupancy certifications have been issued; all deliverables have been provided to the Commission; and all contractual requirements for final payment have been completed.
- r. **Local Government or City** means the City of Chicago, Illinois within which the Project is situated.
- s. **Project** means the improvement of the facility specified on page 1 of this Agreement.
- t. **Punch List or Punch List Work** means minor adjustments, repairs or deficiencies in the Work as determined at the sole discretion of the Commission. Items of incomplete Work that preclude full or beneficial use of any portion of the Work or that preclude the Commission from full operation, maintenance, or security of the facility shall not be considered Punch List items.
- u. **Record Documents** are all documents required under the terms of the Contract to be provided to the Commission by the Construction Manager, including but not limited to shop drawings, as-built drawings, blue line drawings, parts manuals, operation and maintenance manuals, and Project manuals or specifications
- v. **Reimbursable Expenses** as herein referred to includes actual expenditures, as identified in Schedule C, paragraph C.3.1, made by the Construction Manager.
- w. **Services** means collectively, the services, duties and responsibilities that are necessary to allow the Construction Manager to provide the Services required by the

Commission under this Agreement. The required Services are described in Schedule A of this Agreement.

- x. **Special Consultants** means special consulting services requested by the Commission.
- y. **Subcontractor** means any partnership, firm, corporation or entity other than an employee of the Construction Manager, that contracts with the Construction Manager to furnish labor, or labor and materials, at the Site. The term also includes subcontractors of any tier, suppliers, fabricators, trade contractors or manufacturers whether or not in privity with the Construction Manager.
- z. **Submittal** means a schedule, shop drawings, video tape, product data, samples, or other items as may be required by the Contract for review and/or approval prior to prosecution of a portion of the Work.
- aa. **Substantial Completion of the Work or Substantial Completion** means the date on which the Commission has determined that the Contract Documents have been essentially completed except for Punch List Work, when the User is able to occupy and use the Project for the purpose intended, and when the Construction Manager has obtained and delivered to the Commission a "Certificate of Occupancy" issued by the authority that has jurisdiction.
- bb. **Technical Personnel** as herein referred to includes partners, officers and all other personnel of the Construction Manager, including technical typists assigned to the Project, exclusive of general office employees.
- cc. **User Agency or User** means the municipal corporation that requested the Commission to undertake the construction and/or improvement of the Project.

3. Incorporation of Documents. The documents identified below in this paragraph are hereby incorporated in and made a part of this Agreement. By executing this Agreement, the Construction Manager acknowledges and agrees that the Construction Manager is familiar with the contents of each of such documents and will comply fully with all applicable portions thereof in performing the Services. In the case of a conflict between the terms of this agreement and any requirements brought about by federal grant requirements, the federal requirements shall take precedence.

- a. Project Documents. The plans and specifications for the Project, to the extent that plans and specifications for the Project have been prepared, as set forth and described on Schedule B to this Agreement.
- b. Policies Concerning MBE and WBE. The Commission's policies concerning utilization of minority business enterprises ("MBE") and women business enterprises ("WBE"), as the same may be revised from time to time.

- c. Federal Program Management, Financial Guides and Procurement Regulations. In providing services, the Construction Manager shall comply with all grant requirements stipulated by the Department of Justice Office of Criminal Programs regarding the use of grant funds. Denial of Program funding due to the Construction Manager's failure to follow those guides and regulations will result in an offset or back charge of those funds against the Construction Manager.

4. Engagement and Standards for Performing Services.

- a. Engagement. The Commission hereby engages the Construction Manager, and the Construction Manager hereby accepts such engagement, to provide the Services described in Schedule A to this Agreement, as the same may be amended from time to time by mutual agreement of the Commission and the Construction Manager.
- b. Nondiscrimination. The Construction Manager agrees that 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. The 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. The Construction Manager further agrees to 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.
- c. Employment procedures; preferences and compliance. Salaries of employees of the Construction Manager, performing work under this Agreement, shall 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. The 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 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). The Construction Manager shall 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, there is any direct or indirect "kick-back", 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 hereby 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 Construction Manager to the respective employees to whom they are due, as determined by the Commission in its sole discretion.

- d. Compliance with Policies Concerning MBE and WBE. Without limiting the generality of the requirements of the policies of the Commission referred to in paragraph 3(b) above, the Construction Manager agrees to use its best efforts to utilize minority business enterprises for not less than twenty-five percent (25%) and women business enterprises for not less than five percent (5%) of the value of the Services, in accordance with the Resolution passed by the Board of Commissioners of the Commission on February 11, 1992, concerning participation of minority business enterprises and women business enterprises on contracts awarded by the Commission and to furnish to the Commission, such reports and other information concerning compliance with such Resolution as may be requested by the Commission from time to time.
- e. No Damage for Delays. The Construction Manager agrees that no charges for damages or claims for damages due to delays shall be asserted by it against the Commission for any delays or hindrances from any cause whatsoever during the progress of any portion of the Services. Such delays or hindrances, if any, shall be compensated by an extension of time to complete the Services for such reasonable period as may be mutually agreed upon between the parties, it being understood, however, that the agreement of the Commission to allow the Construction Manager to complete the Services or any part of them after the time provided for the completion thereof herein shall in no way operate as a waiver on the part of the Commission of any of its rights hereunder.
- f. Records. The Construction Manager shall maintain accurate and complete records of expenditures, costs and time incurred by the Construction Manager and by consultants engaged by the Construction Manager in connection with the Project and the Services. Such records shall be maintained in accordance with recognized commercial accounting practices. The Commission may examine such records at

the Construction Manager's offices upon reasonable notice during normal business hours. The Construction Manager shall retain all such records for a period of not less than five calendar years after the termination of this Agreement.

- g. Time of Essence. The Construction Manager acknowledges and agrees that time is of the essence in the performance of this Agreement and that timely completion of the Services is vital to the completion of the Project by the Commission. The Construction Manager agrees to use its best efforts to expedite performance of the Services and performance of all other obligations of the Construction Manager under this Agreement and any other agreements entered into by the Commission which are managed or administered by the Construction Manager as a result of the Construction Manager's engagement hereunder.
- h. Compliance with Laws. In performing its engagement under this Agreement, the Construction Manager shall comply with all applicable federal, state and local laws, including but not limited to, those referenced in subparagraphs (b) and (c) above and in the documents referred to in paragraph 3 of this Agreement.
- i. Progress Meetings. Meetings to discuss the progress of the Project and/or to review the performance of the Construction Manager may be scheduled upon the Commission's request, at mutually agreeable times and locations, and the Construction Manager agrees to cause such meetings to be attended by appropriate personnel of the Construction Manager engaged in performing or knowledgeable of the Services.
- j. Defects in Project. The Construction Manager shall notify the Commission immediately regarding any significant problems in connection with the Project including, but not limited to, construction defects, cost overruns or scheduling delays.
- k. Performance Standard. The Construction Manager represents and agrees that the Services performed under this Agreement will proceed with efficiency, promptness and diligence and will be executed in a competent and thorough manner in accordance with reasonable professional standards in the field. The Construction Manager further agrees that it will assign to the Project at all times during the term of this Agreement the number of experienced, appropriately trained employees necessary for the Construction Manager to perform the Services in the manner required hereunder.
- l. Changes (Amendments). The Commission may from time to time, request changes to the terms of the Agreement or in the Scope of Services of the Construction Manager to be performed hereunder. 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, shall be incorporated in a written amendment to this



Agreement. The Commission shall not be liable for any changes absent such written amendment.

- m. Energy Conservation Ordinance. Whenever the services of the Construction Manager require design of new buildings and structures, addition or alteration of existing buildings and structures or portion thereof, Construction Manager must comply with the provisions of the Energy Conservation Ordinance, Chapter 18-13 of the Municipal Code of Chicago as appropriate. The Construction Manager shall also select and/or recommend for installation energy-efficient mechanical, service water-heating, electrical distribution and illumination systems and equipment for the effective use of energy in the faculty as appropriate.

5. Term.

- a. Duration. The term of this Agreement shall begin on the Commencement Date of Services specified in Schedule A to this Agreement and, subject to the provisions of subparagraph (b) below, shall terminate when all Services required by this Agreement have been completed to the satisfaction of the Commission or on the Project Completion Date specified on Schedule A, whichever is the later to occur. The Commission and the Construction Manager may, from time to time, by mutual agreement, extend the term of this Agreement by amending Schedule A hereto.
- b. Termination or Suspension by the Commission. The Commission shall have the right, at any time, to terminate the term of this Agreement, with or without cause, by written notice given to the Construction Manager at least thirty (30) days prior to the effective date of termination. In addition, the Commission shall have 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 Construction Manager at least five (5) days prior to the effective date of suspension. Termination or suspension of this Agreement shall not relieve the Construction Manager from liability for the performance of any obligation of the Construction Manager under this Agreement performed or to have been performed by the Construction Manager on or before the effective date of termination or suspension. Provided the Construction Manager is not in default under this Agreement at the time of termination or suspension, the Commission agrees to pay to 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 or suspension. In no event shall the Commission be liable to the Construction Manager for any loss, cost or damage which the Construction Manager or any other party may sustain by reason of the Commission terminating or suspending this Agreement as provided herein; provided, however, that the Commission may, in its sole discretion, reimburse the Construction Manager for actual expenses approved by the Commission.

- c. Termination by the Construction Manager. If the Project, in whole or substantial part, is stopped for a period longer than thirty (30) days under an order of any court or other governmental authority having jurisdiction of the Project, or as a result of an act of government, such as a declaration of national emergency making materials unavailable, through no act or fault of the Construction Manager, the Construction Manager shall have the right to terminate this Agreement, by written notice given to the Commission at least seven (7) days prior to the effective date of termination, and shall have the right to recover from the Commission all compensation and reimbursements due to the Construction Manager for periods up to the effective date of termination.
  
- d. Force Majeure. Neither of the parties shall be liable to the other for any delay or failure in performance hereunder due to a force majeure event. If a force majeure event occurs, the party delayed or unable to perform shall 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 this Agreement for the duration of the force majeure event. The Commission shall not be obligated to pay for Services to the extent and for the duration that performance thereof is delayed or prevented by the force majeure event, but, provided the Construction Manager is not in default of any obligation of the Construction Manager hereunder, the Commission shall pay to the Construction Manager, according to the terms hereof, all compensation and reimbursements due to the Construction Manager for periods up to the effective date of suspension.

6. Compensation of the Construction Manager and Reimbursement for Expenses. The Commission shall compensate the Construction Manager in the amount and the manner set forth in Schedule C to this Agreement.

7. Rights and Obligations of Commission. In connection with the administration of the Project by the Commission and the performance of this Agreement by the Construction Manager, the Commission shall have the following rights and obligations, in addition to those provided elsewhere in this Agreement:

- a. Information. The Commission shall provide the Construction Manager all reasonably requested information concerning the Commission's requirements for the Project and the Services.
  
- b. Review of Documents. Subject to the provisions of subparagraph 3 (e) above, the Commission agrees to make a reasonable effort to examine documents submitted by the Construction Manager and render decisions pertaining thereto 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 consultant or consultants

approved by the Commission as Reimbursable Expenses: (i) a certified survey of the site or sites; (ii) information concerning locations, dimensions and data pertaining to existing buildings and other improvements; (iii) title information; and (iv) information concerning available service and utility lines. The Construction Manager shall not be liable to the Commission for the substantive content of such tests and reports obtained from a consultant engaged by the Construction Manager and approved by the Commission, provided that the Construction Manager has exercised reasonable diligence in the selection of the consultant.

- d. Tests and Reports. To the extent required for the Construction Manager to perform the Services, the Commission may furnish structural, civil, chemical, mechanical, soil 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 as Reimbursable Expenses. The Construction Manager shall not be liable to the Commission for the substantive content of such tests and reports obtained from a consultant engaged by the Construction Manager and approved by the Commission, provided that the Construction Manager has exercised reasonable diligence in the selection of the consultant and provided that the Construction Manager has caused the consultant to purchase and maintain professional liability insurance in accordance with paragraph A.4 of Schedule D protecting the Commission, the User Agency, and the Construction Manager from any loss or claim arising out of the consultant's performance.
- e. Legal, Auditing and other Services. The Commission shall arrange and pay for such legal, auditing, insurance counseling and other services as the Commission, in its sole discretion, may determine to be required for the Project. Such payments shall not include legal or auditing expenses arising out of or relating to any errors or omissions, or claimed errors or omissions, of the Construction Manager or its subcontractors.
- f. Designated Representatives. The Commission may designate, at its sole discretion, one or more representatives authorized to act on its behalf.
- g. Ownership of Documents. All 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 shall be the property of the Commission.
  - i. The parties intend and agree that, to the extent permitted by law, the drawings, specifications and other design documents to be produced by the Construction Manager and its sub-consultants pursuant to this Agreement (the "Work") shall conclusively be deemed "works made for hire" within the meaning and purview of Section 101 of the United States Copyright Act, 17 U.S.C. § 101 *et seq.*, and that the Commission, the User Agency and their successors and assigns, will be the copyright owner of all aspects, elements and components thereof in which

copyrights can subsist. To the extent that any of the foregoing does not qualify as a "work made for hire," the Construction Manager hereby irrevocably grants, conveys, bargains, sells, assigns, transfers and delivers to the Commission, the User Agency and their successors and assigns, all right, title, and interest in and to the copyrights and all U.S. and foreign copyright registrations, copyright applications and copyright renewals therefor, and all other intangible, intellectual property embodied in or pertaining to the Work contracted for under the Agreement, free and clear of any liens, claims or other encumbrances, to the fullest extent permitted by law. The Construction Manager will execute all documents and, at the expense of the Commission, perform all acts that the Commission may reasonably request in order to assist the Commission, the User Agency and their successors and assigns, in perfecting their rights in and to the copyrights relating to the Work.

- ii. The Construction Manager warrants to the Commission, the User Agency and their successors and assigns, that (1) the Work constitutes a work of authorship; (2) the Construction Manager is or will be the lawful owner of good and marketable title in and to the copyrights for the Work (including the copyrights on designs and plans relating to the Work); (3) the Construction Manager has the legal right to fully assign any such copyright with respect to the Work; (4) the Construction Manager has not assigned any copyrights nor granted any licenses, exclusive or non-exclusive, pertaining to the Project or the Services to any other party; (5) the Construction Manager is not a party to any other agreement or subject to any other restrictions with respect to the Work; and (6) the plans and designs for the Work will, upon completion of the Services by complete, entire and comprehensive. Further, the Construction Manager agrees that it will not restrict or otherwise interfere with the Commission's and/or the User Agency's future actions in authorizing the use, adaptation, revision, or modification or destruction of the Work provided that the Construction Manager is indemnified for any damages resulting from any such future re-use or adaptation of the Work as may be authorized by the Commission.

- h. Audits. The Commission shall have the right to audit the books of the Construction Manager and its sub-consultants on all subjects relating to the Project and/or the Services.

8. Indemnification of Commission. 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, agents, officials and employees, from and against all claims, demands, suits, losses, costs and expenses, including but not limited to, the fees and expenses of attorneys, that may arise out of or be based on any injury to persons or damage to property that is or is claimed to be the result of an error, omission or negligent or willfully wrongful

act of the Construction Manager, any person employed by the Construction Manager, or any sub-consultant retained by the Construction Manager in connection with this Project.

9. Insurance to be Maintained by the Construction Manager. The Construction Manager shall purchase and maintain, and cause its subcontractors and sub-consultants to purchase and maintain, at all times during the performance of Services hereunder, for the benefit of the Commission, the User Agency and the Construction Manager, insurance coverage which will adequately 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 but not limited to, the insurance coverages set forth in Schedule D to this Agreement.

10. Default.

a. Events of Default. Any one or more of the following occurrences shall constitute an Event of Default under this Agreement:

- i. Failure or refusal on the part of the Construction Manager duly to observe or perform any obligation or agreement on the part of the Construction Manager contained in this Agreement, which failure or refusal continues for a period of ten (10) 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 ten (10) day period, after the date on which written notice thereof shall have been give to the Construction Manager by the Commission;
- ii. Any representation or warranty of the Construction Manager set forth herein or otherwise delivered pursuant to this Agreement shall have been false in any material respect when so made or furnished;
- iii. 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 shall take any action in furtherance of any of the foregoing; or
- iv. There shall be commenced any proceeding 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 thereof, or there shall be appointed, without the Construction Manager's consent or acquiescence, any trustee, receiver, liquidator or other custodian of Construction Manager or of all or any substantial part of the Construction Manager's assets and properties, and such appointment shall not have been vacated, stayed, discharged, bonded or otherwise dismissed within sixty (60) days thereof.

- b. Remedies. If an Event of Default shall occur and be continuing, then the Commission may exercise any right, power or remedy permitted to it by law or in equity and shall have, in particular, without limiting the generality of the foregoing, the right to terminate this Agreement upon written notice to the Construction Manager, in which event the Commission shall have 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. No courses of dealing on the part of the Commission or delay or failure on the part of the Commission to exercise any right shall operate as a waiver of such right or otherwise prejudice the Commission's rights, powers or remedies.
- c. Remedies not Exclusive. No right or remedy herein conferred upon or reserved to the Commission is exclusive of any right or remedy herein or by law or equity provided or permitted, but each shall be cumulative of every other right or remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise, and may be enforced concurrently therewith or from time to time.

## 11. Disputes.

- a. General. All disputes arising under, related to or in connection with the terms of this Agreement or its interpretation, whether involving law or fact or both, including without limitation questions concerning allowability of compensation, and all claims for alleged breach of contract, shall be presented in writing to the Executive Director for final determination.
- b. Procedure. Requests for determination of disputes will be made by the Construction Manager in writing specifically referencing this Section, and will include: 1) the issue(s) presented for resolution; 2) a statement of the position of the Construction Manager; 3) the facts underlying the dispute; 4) reference to the applicable provisions of the Agreement by page and section; 5) identify any other parties believed to be necessary to the resolution; and 6) all documentation which describes and relates to the dispute. The Construction Manager will promptly provide the Executive Director with a copy of the request for determination of the dispute. The Executive Director's decision will be reached in accordance with such information or assistance as she or he may deem reasonable, necessary or desirable.

- c. Effect. The Executive Director's final decision will be rendered in writing no more than forty-five (45) business days after receipt of the request for resolution unless the Executive Director notifies the Construction Manager that additional time for the decision is necessary. The Executive Director's decision will be conclusive, final, and binding on all parties. The Construction Manager must follow the procedures set out in this Section and receive the Executive Director's final decision as a condition precedent to filing a complaint in the Circuit Court of Cook County or any other court.

The Construction Manager will not withhold performance of any Services required by the Commission under this Agreement during the dispute resolution period. The Executive Director's written determination will be complied with pending final resolution of the dispute.

12. Confidentiality. All of the reports, information, or data prepared or assembled by the Construction Manager under this Agreement are confidential, and the Construction Manager agrees that such reports, information or data shall not be made available to any party without the prior written approval of the Commission. In addition, the Construction Manager shall not, without the prior written consent of the Commission, prepare or distribute any news releases, articles, brochures, advertisements or other materials concerning this 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 shall 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.

13. Assignment. 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 agrees, therefore, that neither this Agreement nor any right or obligation hereunder 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 shall be 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 twelve (12) month period. In the event of an assignment by the Construction Manager without the prior written approval of the Commission, the Commission shall have the right to immediately terminate the Agreement without fault or responsibility. The Construction Manager further acknowledges that the Construction Manager has represented to the Commission the availability of certain members of the Construction Manager's staff who will be assigned to Project, and agrees, therefore, that in the event of the unavailability of such members due, the Construction Manager shall so notify the Commission in writing, and shall assign other qualified members of the Construction Manager's staff, as approved by the Commission, to the Project.

14. Relationship of Parties. The relationship of the Construction Manager to the Commission hereunder is that of an independent contractor, and the Construction Manager, except to the extent expressly provided to the contrary on Schedule A hereto, shall have no right or authority to make

contracts or commitments for or on behalf of the Commission, to sign or endorse on behalf of the Commission any instruments of any nature or to enter into any obligation binding upon the Commission. This Agreement shall not be construed as an agreement of partnership, joint venture, or agency.

15. General.

- a. **Construction Manager's Authority.** Execution of this Agreement by the Construction Manager is authorized by a resolution of its Board of Directors, if a corporation, or similar governing document if a partnership or a joint venture, and the signatures(s) of each person signing on behalf of the Construction Manager have been made with complete and full authority to commit the Construction Manager to all terms and conditions of this Agreement, including each and every representation, certification and warranty contained or incorporated by reference in it.
- b. **Counterparts.** This Agreement may be executed in any number of counterparts, any of which shall be deemed an original.
- c. **Entire Agreement.** This Agreement constitutes the entire understanding and agreement between the parties hereto 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 herein. This Agreement shall not be modified, amended or in any way altered except by an instrument in writing signed by both of the parties hereto.
- d. **Governing Law.** This Agreement has been negotiated and executed in the State of Illinois and shall be construed under and in accordance with the internal laws of the State of Illinois.
- e. **No Waiver.** The waiver by either party of any breach of this Agreement shall not constitute a waiver as to any succeeding breach.
- f. **Notices.** All notices required to be given hereunder shall be given in writing and shall be hand delivered or sent by United States certified or registered mail, postage prepaid, addressed to Commission and to the Construction Manager at their respective addresses set forth above. If given as herein provided, such notice shall be 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 hereunder shall be sent by giving notice to the other party in the manner provided in this subparagraph.
- g. **Non-liability of Public Officials.** No Commission board member, employee, agent, officer, or official is personally liable to Construction Manager or its sub-consultants, and Construction Manager and its sub-consultants 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 sub-consultants under this Agreement.

- h. **Severability.** In the event that any provisions of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
- dd. **Successors and Assigns.** Except as otherwise provided herein, this Agreement shall be binding upon and inure to the benefit of each of the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto as of the 29th day of September, 2004.

**PUBLIC BUILDING COMMISSION  
OF CHICAGO**

ATTEST:

By: *Edmund Johnson*  
Title: Secretary

By: *Richard M. Daley*  
Title: Chairman

By: *[Signature]*  
Title: Secretary/Assistant Secretary  
(select one)

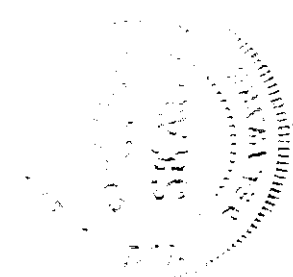
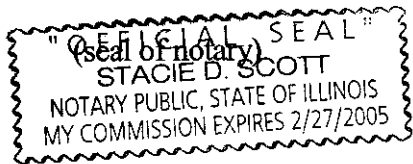
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By: *[Signature]*  
Title: President/Vice President  
(select one)

**AFFIX CORPORATE  
SEAL HERE**

Subscribed and sworn to before me  
this 23 day of September, 2004

*Stacie D. Scott*  
Notary Public



Schedule A

**City of Chicago Office of Emergency Management & Communications  
City Operations Room  
Office of Emergency Management & Communication  
1411 West Madison Street  
Chicago, Illinois**

The term for this Agreement shall be as defined below.

**Commencement Date of Services    August 10, 2004**

**Completion Date of Services        February 3, 2005**

**A. Scope of Services for Design**

The Construction Manager shall engage the services of an Architect of Record to provide all services required to design and administer the construction of the Project. The Agreement shall terminate when all services have been completed to the satisfaction of the Commission or on the Project Completion Date referred below, whichever is the later to occur.

The Design Services are separated into phases as stated in Section A below. The Commission and the User Agency shall approve the work product of each of the phases prior to commencement by the Architect of Record of the subsequent phase. It is expressly understood and agreed that references herein to "approved by the Commission" or to "approval by the Commission" shall not be interpreted to absolve the Architect of Record from liability due to errors and omissions.

The Architect of Record shall provide the following Services:

**A.1    Programming / Schematic Design**

A.1.1 Consult with the Commission and the User Agency regarding the goals and requirements of the project and define the scope of the Project. Project phases will be as follows:

- A.1.1.1 Programming and Schematic
- B.1.1.2 Construction Document
- B.1.1.3 Bidding
- B.1.1.4 Construction
- B.1.1.5 Project Close Out

- A.1.2 Identify for and review with the Commission and the User Agency the requirements of any state, federal, or city agencies having jurisdiction, advise on the cost impacts, if any, and suggest possible alternatives.
- A.1.3 Confirm the programming needs for the project.
- A.1.4 Present the programming options for the project for review by the Commission and the User Agency.
- A.1.5 The Architect of Record shall analyze the requirements of the User Agency, the conditions of the site, and consult with the Commission the User Agency to establish the design, type of construction and the materials to be used. Based upon such analysis, the Architect of Record shall prepare schematic drawings and design studies, general description of the scope of the Project, preliminary estimates of construction costs and analysis of any re-zoning requirements for the Project.
- A.1.6 Present schematic design options for the facility for review by the Commission and the User Agency.
- A.1.7 Upon direction from the Commission prepare plans, elevations, sections and outline specifications, as required, to describe the architectural, structural, mechanical, plumbing and electrical aspects of the selected design option for pricing by the Commission's designated representative.
- A.1.8 As required, review schematic design documents along with value engineering items with the Commission the User Agency to align project scope with project budget.
- A.1.9 At the completion of Schematic Design Phase the Architect of Record will transmit three (3) complete copies of the final documents for such Phase to the Commission for review and transmittal to the User Agency. In addition, the Consultant shall make presentations to the User Agency as requested by the Commission. Any comments presented by the User Agency must be approved by the Commission prior to incorporating such comments into the Construction Documents.
- A.1.10 The Schematic Design Services shall commence on August 10, 2004, and shall be completed and documents submitted to the Commission for approval as soon as possible following the commencement of services provided pursuant to this Agreement.

## **A.2 Construction Documents**

- A.2.1 Following approval by the Commission of the Programming / Schematic Design Phase, the Architect of Record shall prepare and complete, based upon the approved

Documents, all Construction Documents, including, but not limited to, architectural and engineering working drawings, designs, plans, calculations and specifications setting forth in detail all of the elements required for the architectural, structural, mechanical, electrical, plumbing, heating, ventilation, air conditioning, fire protection and service-connected equipment as may be necessary in order to obtain bids for construction of the Project.

A.2.2 The Construction Documents shall include any modifications and revisions resulting from Peer Review and environmental remediation upon approval by and direction of the Commission.

A.2.3 As required, review the Construction Documents along with value engineering items with the Commission the User Agency to align project scope with project budget.

A.2.3.1 In the event that the estimate of the construction cost exceeds the Commission's Construction Budget, as herein above defined, the Architect of Record shall, after review and comment and upon written request of the Commission, and without additional compensation continue to revise, modify or correct any or all of the Project design, drawings and specifications in a manner satisfactory to the Commission until the revised construction estimate conforms to the Construction budget. Such revisions, modifications and corrections in the plans, specifications and drawings shall be submitted to the Commission within a reasonable time (not to exceed 10 days) after notice and direction by the Commission.

A.2.3.2 In the event that the Commission requests, on behalf of the User Agency, a change in scope of the project the Architect of record shall, after review and comment and upon written request of the Commission, and with additional compensation revise, modify or correct any or all of the Project design, drawings and specifications in a manner satisfactory to the Commission.

A.2.4 At the completion of the Construction Document Phase the Architect of Record will transmit three (3) complete copies of the final documents for such Phase to the Commission for transmittal to the User Agency for final review and approval. In addition, the Architect of Record shall make presentations to the User Agency as requested by the Commission. Any comments presented by the User Agency must be approved by the Commission prior to incorporating such comments into the final Bid Documents.

A.2.5 Review the necessary Instructions to Bidders, Proposal Forms, Contract Forms, General Conditions and Special Conditions of the Contract supplied by the Construction Manager.

A.2.6 In conjunction with the Construction Manager, coordinate the preparation of Bid Packages. Inform the Commission is writing that the documents are complete and ready for bid.

A.2.7 Prepare the required documentation for submittal of the project to the Chicago Department of Construction and Permits (DCAP) for the required construction permit(s).

A.2.7.1 Provide assistance in securing all necessary orders, ordinances, permits, licenses, or other approvals, as applicable, required by local, state and federal regulatory agencies to permit construction of the Project. Such assistance shall include conferences with and presentations to appropriate regulatory agencies including without limitation, DCAP, Fire Prevention Bureau of the City of Chicago, Mayor's Office with People with Disabilities (MOPD) and other governmental bodies, as directed by the Commission.

### **A.3 Bidding Phase**

A.3.1 Attend and participate at Pre-Bid Conference Meeting

A.3.2 Prepare addendum(s) as directed by the Construction Manager to address bidders' questions that require clarification.

A.3.3 Consider written requests for product substitutions prior to receipt of bids.

A.3.4 Participate in the review and evaluation of the bids.

A.3.5 If the lowest responsible bid, as determined by the Construction Manager, obtained on any solicitation of bids, is in excess of the Construction Budget, the Construction Manager may either award the construction contract to the lowest responsible bidder, or the Architect of Record shall, upon the request of the Commission and without additional compensation, continue to revise any or all of the Project design, scope, quality, including revised drawings and specifications to the end that the construction cost not be in excess of the Construction Budget.

A.3.6 The Architect of Record shall thereafter assist the Commission, without additional compensation, in the solicitation of new bids on the revised Project design, drawings and specifications. All revisions in design, specifications, deletions and substitutions shall be approved by the Commission. The right of the Commission to require such revision and re-bidding shall not be exhausted by a single revision and re-bidding, but shall be a continuing right until the lowest responsible bid received is within the Construction Budget.

### **A.4 Construction Phase**

- A.4.1 Provide all drawings required during construction. Review and approve schedules, samples, shop drawings, product data, as-built drawings, product substitutions and other submissions to assure compliance with the design concept of the Project and fulfillment of the subcontractor(s) obligations as set forth in the Contract Documents, including monitoring of the subcontractor(s) progress against the approved progress schedule.
- A.4.2 In cooperation with the Construction Manager, review and make recommendations to the Commission concerning all bulletins, proposals, revisions in drawings and change orders with respect to the Project. The Architect of Record shall process and prepare all bulletins and recommendations for change orders as directed by the Commission.
- A.4.3 Review subcontractor(s) applications for payment, invoices and other supporting documentation in accordance with the Construction Manager's policies and procedures, and recommend action concerning subcontractors' periodic and final applications for payment. By issuing recommendations to the Construction Manager for payment to subcontractor(s) the Architect of Record shall represent to the Construction Manager that, to the best of its knowledge, information and belief, the quality of the work for which payment is requested is in accordance with the Contract Documents, and the payment amount applied for by the subcontractor is justified. These provisions shall not be construed as conferring any rights hereunder for the benefit of contractors, subcontractors, materialmen, workmen or employees, or any other persons performing portions of the work, nor as enlarging or altering the application or effect of existing lien laws.
- A.4.4 Qualified personnel of the Architect of Record, as approved by the Commission, shall provide adequate and competent observations on the Project site at least twice weekly for the purpose of determining if the work is being performed in accordance with the Contract Documents, and shall advise the Commission accordingly. The Commission may request the Architect of Record to maintain a full-time observer at the Project site. Compensation for a full-time on-site observer shall be established as a not-to-exceed fee in accordance with the billing rates identified in Schedule C, Section A.2. On the basis of on-site observations, the Architect of Record shall keep the Commission advised of the progress and quality of the work and endeavor to guard the Commission against defects and deficiencies in the work of subcontractors and reject any materials or work which fails to conform to the Contract Documents. The on-site representative shall not be removed or replaced prior to full completion of the work without prior written approval of the Commission. The representative shall be removed immediately upon written request of the Commission.
- A.4.5 Issue clarifications for proper execution of the work required by the Contract Documents.

A.4.6 Advise the Commission on the coordination of the work so that the intent of the design is adequately carried out and use reasonable diligence in monitoring the subcontractor's adherence to the approved construction work schedule.

A.4.7 Review the work to establish preliminary acceptance of the project.

#### **A.5 Project Close Out**

A.5.1 Conduct a final inspection of the project with the Construction Manager, Commission and User Agency to verify that the materials furnished and work performed are in accordance with the contract documents.

A.5.2 Coordinate the consolidation and preparation of punch lists compiled by the Construction Manager, Commission and User Agency indicating the items of work remaining to be accomplished.

A.5.3 Coordinate with the Construction Manager to assemble and deliver to the Commission all guarantees, warranties, operating and maintenance manuals required by the contract documents. Make recommendations as to the withholding of payments to the subcontractors. Determine the value of any uncorrected and/or deficient work.

A.5.4 Coordinate with the Construction Manager to expedite the preparation and delivery of "as-built" drawings and operations and maintenance manuals of the project in accordance with the specifications. The "as-built" documents will be subject to the approval of the Commission's and User Agency's designated representative

A.5.5 Upon completion of the construction contract and all "punch list" items in accordance with the Contract Documents, the Architect of record shall issue a Certificate of Final Acceptance and obtain from the subcontractors a sworn statement stating that all debts, liabilities and demands on account of work and materials furnished with respect to the Project have been fully paid, released and discharged and that there is nothing due to subcontractors, mechanics or materialmen. No Certificate shall be issued by the Architect of Record until, to the best of its knowledge, information and belief, all work has been completed in accordance with the Contract Documents.

#### **A.6 Additional Responsibilities and Representations**

A.6.1 The Architect of Record agrees that in performing this Agreement it shall comply with all applicable local, state and federal ordinances, laws and regulations including but not limited to the Illinois Environmental Act (415 ILCS 4/1 et. seq.) and the Americans with Disabilities Act of 1990 (42 U.S.C. 12010 et. seq.), including standards and regulations issued pursuant to these Acts.



## **A.7 Contingent Additional Services**

The Architect of Record shall provide any or all of the following Contingent Additional Services as may be authorized in writing by the Commission at its sole election:

- A.7.1 Furnish consulting services after occupancy of the building in connection with the operation of the building, including various electrical and mechanical systems.
- A.7.2 Provide consultation concerning replacement of any work damaged or destroyed by fire or other cause during construction and furnish additional Basic Services as may be required in connection with the replacement of the work.
- A.7.3 Provide additional Basic Services made necessary by the default of the subcontractors in the performance of the construction contract.
- A.7.4 Furnish required services in connection with additional site demolition beyond that described in the original Program.
- A.7.5 Provide all measured drawings of existing construction as required for the completion of the Project.

## **B. Scope of Services for Construction Management**

The Construction Manager shall perform, or cause to be performed, the following Construction Management Services. The Services shall be performed in the phases listed in Section B.1.1. If the Commission and the Construction Manager agree, the Construction Phase may commence before the Preconstruction Phase is completed, in which case both phases will proceed concurrently. The term for Construction Management Services of this Agreement shall be as follows:

<b>Commencement Date of Services</b>	<b>August 10, 2004</b>
<b>Substantial Completion Date</b>	<b>December 6, 2004</b>
<b>Final Completion and Acceptance Date</b>	<b>January 3, 2005</b>
<b>Completion Date of Services</b>	<b>February 3, 2005</b>

The Construction Manager shall provide the following Services:

### **B.1 General Project Requirements (Pre Construction)**

B.1.1 Consult with the Commission and the User Agency regarding the goals and requirements of the project. Project phases will be as follows:

#### **B.1.1.1 Bidding**

- B.1.1.2 Construction
- B.1.1.3 Project Close Out

- B.1.2 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.
- B.1.3 Recommend potential value engineering alternatives.
- B.1.4 Provide a preliminary evaluation of the Project scope, budget and schedule requirements.
- B.1.5 Schedule and attend regular meetings with the Architect of Record, the Commission and the User Agency. Prepare and distribute minutes of all project meetings within two (2) business days.
- B.1.6 Review the Drawings and Specifications at the completion of Construction Documents to confirm that all assumptions, clarifications and value engineering alternatives agreed to by the User Agency and the Architect of Record have been incorporated. Promptly notify the Commission if the Drawings and Specifications are inconsistent with the agreed upon assumptions, clarifications and value engineering alternatives.
- B.1.7 Provide recommendations to the Commission for constructability that may decrease the duration of the construction schedule and/or decrease the construction cost.
- B.1.8 Provide recommendations to the Commission 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.
- B.1.9 Prepare, and periodically update, a project schedule for review and approval after project requirements have been sufficiently identified.
- B.1.10 Prepare a budget estimate(s) for review by the Commission after the Construction Documents have been completed and approved by the Commission and the User Agency. Include the following in each budget estimate:
  - B.1.10.1 An overview of the current budget estimate compared to the Commission's budget.

- B.1.10.2 A detailed comparison and reconciliation of the current budget estimate to the previous budget estimate, with an explanation of any variance by component.
- B.1.10.3 A summary of all approved cost revisions.
- B.1.10.4 A list of Drawings and Specifications, including all addenda thereto.
- B.1.10.5 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the current budget estimate to supplement the information contained in the Drawings and Specifications.
- B.1.10.6 A statement of the estimated Cost of the Work organized by trade categories or systems, and the Construction Manager fee.
- B.1.10.7 A statement of the actual or estimated date of commencement of the Construction Phase and the estimated date of Substantial Completion, with a schedule of the construction documents issuance dates upon the estimated date of Substantial Completion is based.
- B.1.10.8 A cash flow analysis of the Work based on the latest budget estimate information, including design services and any other costs.
- B.1.10.9 Develop and implement a detailed cost control system that will provide the Commission and the User Agency with timely information as to the anticipated total Cost of the Work.
- B.1.10.10 Prepare and update a 30-60-90 day cash flow analysis for the Work, including professional fees.
- B.1.10.11 Create a cost control system that compares the project budget with the actual cost for activities in progress and estimates for uncompleted tasks and proposed changes.
- B.1.10.12 Review and report the anticipated total Cost of the Work to the Commission in writing monthly.
- B.1.10.13 Make appropriate adjustments to the budget estimate if the Commission discovers any inconsistencies or inaccuracies in the information presented.

B.1.10.14 Provide recommendations to the Commission if any budget estimate submitted to the Commission exceeds the Commission's budget.

B.1.11 If the Drawings and Specifications are not finished at the time the budget estimates are prepared, the Construction Manager shall provide allowances within the current budget estimate for further development of the Drawings and Specifications that are consistent with the Project Documents and reasonably inferable therefrom. Such allowances for further development does not include such things as changes in scope, systems, kinds or quality of materials, finishes or equipment.

B.1.12 Upon the Commission's approval of the Control Estimate prepared at the completion of the Construction Documents, the Project Documents shall consist of (i) this Agreement, (ii) General Conditions, Special Conditions and Project Specifications – Division 1 – Project Requirements) and (iii) modifications issued subsequent to the Commission's approval of the Control Estimate. If anything in the other Project Documents is inconsistent with this Agreement, this Agreement shall govern.

B.1.13 Prepare the required documentation for submittal of the project to the Chicago Department of Construction and Permits (DCAP) for the required construction permit(s).

A.2.7.1 Provide assistance in securing all necessary orders, ordinances, permits, licenses, or other approvals, as applicable, required by local, state and federal regulatory agencies to permit construction of the Project. Such assistance shall include conferences with and presentations to appropriate regulatory agencies including without limitation, DCAP, Fire Prevention Bureau of the City of Chicago, Mayor's Office with People with Disabilities (MOPD) and other governmental bodies, as directed by the Commission.

## **B.2 Bidding Phase**

B.2.1 Review the list of bid packages for all materials and work and provide full assignment, coordination and responsibility for the work.

B.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.

- B.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.
- B.2.4 Prepare a Notice of Bid Opportunity and deliver, via fax and/or Registered Mail, to all subcontractors on the applicable Commission Qualified List for the scope of the work to be bid.
- B.2.5 If a Commission Qualified List does not exist for the scope of work to be bid, then the Construction Manager shall either:
- B.2.5.1 Bid the work in accordance with Section 20 of the Public Building Commission Act, 50 ILCS 20/20; or
- B.2.5.2 Develop a Qualified List of subcontractors in accordance with the Commission's qualification procedures. The scope of work shall be bid in accordance with paragraph B.2.3 after a Qualified List has been established by the Construction Manager.
- B.2.6 Maintain accurate records of the bid notification process for each trade 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 five (5) days prior to the bid opening.
- B.2.7 Provide copies of each notice of bid package and the corresponding Qualified List of subcontractors eligible to bid on the scope of work to the following agencies when the Notice of Bid Opportunity letters are delivered or when the bidding opportunity is publicly advertised pursuant to 50 ILCS 20/20:

Chicago Urban League  
 220 S. State, 11<sup>th</sup> Floor  
 Chicago, Illinois 60604  
 Tel: 312-692-0766 Fax: 312-692-0769

Hispanic American Construction Industry  
 Association  
 901 West Jackson, Suite 205  
 Chicago, Illinois 60607  
 Tel: 312-666-5910 Fax: 312-666-5962

Black Contractors United  
 400 West 76<sup>th</sup> St, Suite 200  
 Chicago, Illinois 60620  
 Tel: 773-483-4000 Fax: 773-483-4150

Latin American Chamber Of Commerce  
 3512 West Fullerton  
 Chicago, Illinois 60647  
 Tel: 773-252-5211 Fax: 773-252-7065

Federation Of Women Contractors  
 5650 S. Archer Avenue  
 Chicago, Illinois 60638  
 Tel: 312-360-1122 Fax: 312-360-0239

Association Of Asian Construction Enterprises  
 333 North Ogden Avenue  
 Chicago, Illinois 60607  
 Tel: 312-563-0746 Fax: 312-666-1785

African American Contractor's Association  
3706 South Indiana  
Chicago, Illinois 60653  
Tel: 312-915-5910 Fax: 312-657-9919

- B.2.8 Schedule and administer pre-bid conferences and respond to questions raised during the bid period, 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.
- B.2.9 Schedule and administer Bid Openings in accordance with Commission's Procurement protocol and in the presence of the Commission's representative.
- B.2.10 Evaluate base bids, alternate proposals, unit prices, and such other data as may be pertinent.
- B.2.10.1 Determine the lowest responsive bidder for a scope of work in accordance with the criteria and requirements of the Subcontract Documents. (Refer to Appendix 1).
- B.2.11 Recommend the award of a subcontract for each scope of work to the Commission in writing.
- B.2.12 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 on behalf of the Commission. The subcontract shall contain all of the Commission's requirements, including, but not limited to, MBE/WBE participation and EEO requirements as indicated in the Subcontract Documents (refer to Appendix 1).

### **B.3 Construction Phase**

- B.3.1 The Construction Phase shall commence on the earlier of:
- B.3.1.1 the Commission's approval of the Control Estimate and issuance of Notice to Proceed; or
- B.3.1.2 the Commission's first authorization to the Construction Manager to award a subcontract, or to issue a purchase order for materials or equipment required for the Project.
- B.3.2 Throughout the construction phase, maintain a full-time project manager as the primary point of contact with the Commission, the User Agency, the Architect of Record, and subcontractor(s), responsible for the day-to-day on-schedule and on-budget performance of the construction work.

- B.3.3 Throughout the construction phase, review and monitor, on a weekly basis, the subcontractor(s) baseline and updated schedules for compliance with the individual general contract milestone dates and the Master CPM milestone dates using Primavera. In instances where schedule slippage and/or schedule conflicts are forecast to occur, recommend corrective action to the Commission as to how to remedy the schedule slippage and/or schedule conflicts.
- B.3.4 Throughout the construction phase, monitor the approved Control Estimate. Show actual costs for activities in progress and estimates for uncompleted tasks by way of comparison with the approved control estimate.
- B.3.5 Establish and implement procedures for, and maintain coordination among, the Architect of Record, the Commission, the User Agency, subcontractor(s), and other agencies having jurisdiction of the project with respect to all construction aspects of the project.
- B.3.6 Throughout the construction phase, conduct weekly meetings with the Architect of Record, the Commission, the User Agency, and specialty consultants and subcontractor(s). Review the project schedule, submittals, scope change, requests for information, outstanding bulletins, pending issues and field problems. Prepare meeting minutes and distribute to all parties in attendance within two (2) business days.
- B.3.7 Provide the Commission with a monthly report containing the following:
- B.3.7.1 Executive Summary - include a summary of financial status, highlights of and a schedule summary.
  - B.3.7.2 Status of Construction - summarize project construction activities, including current anticipated start and completion dates by project elements.
  - B.3.7.3 Outstanding Items - include items to be completed by the Construction Manager, the Architect of Record, the Commission, the User Agency and subcontractor(s).
  - B.3.7.4 Purchasing Activity - detail current status of materials procurement based upon information received from the subcontractor(s).
  - B.3.7.5 Budget Status Report - include a summary of anticipated costs and status of scope changes that are approved, pending, and/or anticipated. Develop 30, 60 & 90 day cash flow reports and forecasts for the project. Advise the Commission as to variances between actual and estimated costs.
  - B.3.7.6 Schedules - include construction schedule indicating current

project status (both in CPM and summary bar chart form), updated cash flow and a look-ahead plan for the following period.

- B.3.7.7 Progress Photographs - arrange for production and distribution of progress photographs as required by the Commission. Digital photographs are preferred.
  - B.3.7.8 Anticipated Project Activity - indicate, in narrative form, the activities of the project in the upcoming month, actions to be taken during that period, and any scheduled governing agency reviews/ approvals, etc.
  - B.3.7.9 Other - include such additional or revised information as shall be required by the Commission.
  - B.3.7.10 Submit reports in both written and electronic format and post to the Commission's Portal Web site
- B.3.8 Expedite approvals and coordination issues between federal, state and local agencies to obtain any required permits, licenses and fees.
- B.3.9 Verify the completeness and accuracy of Construction Documents and coordinate the various parts of the Work so that no part shall be left in an unfinished or incomplete condition.
- B.3.10 Provide sufficient forces and work shifts as may be required to ensure completion of the Work in accordance with the Project schedule and Control Estimate. Cooperate fully with the Architect of Record, the Commission and the User Agency during construction operations to minimize conflicts, interference, and to facilitate uninterrupted occupant usage and critical operations.
- B.3.11 Continuously protect the Work and the User Agency's property from damage, injury or loss.
- B.3.12 Implement a safety program to ensure the safety of the workers on the site, and prevent accidents or injury to any persons on, about, or adjacent to the site where the Work is being performed.
- B.3.13 Perform site observations of the subcontractor(s) to ensure that the Work is progressing on schedule.
- B.3.14 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.



- B.3.15 Maintain all Project documentation systems at the job site or at a mutually agreed location. 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.
- B.3.16 Establish and maintain on the site a complete library of all Construction Documents, addenda, bulletins, scope changes, approved shop drawings and material samples.
- B.3.17 Expedite and assist in the clarification of the Construction Documents and provide additional information as required to facilitate subcontractor decisions on-site. In the event that the interpretation of the meaning and intent of the Construction Documents becomes necessary during construction, ascertain the Architect of Record's interpretation and transmit such information to the subcontractor.
- B.3.18 Maintain and coordinate a shop drawing and sample submission system for timely approval by the architect of record.
- B.3.19 Coordinate all Architect of Record directed testing required by the technical sections of the specification and applicable codes and regulations for compliance with the contract documents.
- B.3.20 Review all subcontractor payment applications to verify the accuracy of all such payment applications. After verification, approve and submit payment applications for approval and payment by the Commission.
- B.3.21 Administer all payments to the subcontractors and perform all construction accounting consistent with the cost reporting system.
- B.3.22 Solicit proposals from the subcontractors to perform changes in the scope of work and assist the Commission in evaluating the cost of these changes.
- B.3.22.1 Review all subcontractor change order requests to ensure that such requests are appropriate.
  - B.3.22.2 Integrate all change order costs approved by the Commission into the established cost accounting system.
  - B.3.22.3 Evaluate requests for scope changes required by field conditions and other unforeseen conditions and submit such requests to, and obtain approval from, the Commission and User Agency prior to instituting any changes to the requirements of the Construction Documents.
  - B.3.22.4 Evaluate any construction claims originating from the Work and negotiate or otherwise settle all such construction claims.
  - B.3.22.5 Monitor all changes in the Construction Documents and confirm their approval by the Commission and User Agency.

- B.3.23 Administer the testing, acceptance and turnover of all systems to the Commission, and assist with the move-in process.
- B.3.24 Coordinate with all governmental and regulatory agencies regarding required permits, licenses and certificates schedule all inspections required by those agencies.
- B.3.25 Coordinate, procure and assemble of all required permits, licenses, and certificates from the trade contractors and arrange delivery of same to the Commission.
- B.3.26 Develop and establish a quality inspection control system so that the required standards of construction are achieved.
- B.3.27 Coordinate review of all shop drawings, materials and all other required submittals by the Architect of Record. If requested by the Commission, requests for approval of subcontractors, delivery schedules, material lists, shop drawings, samples, and the like will be commented upon and submitted to the Commission.
- B.3.28 Monitor and facilitate the flow of all documents and materials for proper sequence of approvals so as not to delay the progress of the work.
- B.3.29 Establish and maintain a complete library of all contract documents, addenda, bulletins, scope changes, approved shop drawings and samples .
- B.3.30 Receive and review all change order requests from the subcontractors. Review unit prices, time and material changes and similar items. Submit recommendations to the Commission for approval.
- B.3.31 Review all scope changes proposed by the Commission, the User Agency, and/or design team and make recommendations regarding practicality, costs, effect on completion schedule and risk to the project.
- B.3.32 Monitor requests for change orders required by field conditions and other unforeseen conditions and submit such requests to the Commission for approval prior to instituting any changes to the requirements of the contract documents.
- B.3.33 Monitor all scope changes during construction to ensure compliance with approved revisions.
- B.3.34 Monitor the specifications and the Commission's procedures for processing scope changes, including applications for extensions of time.
- B.3.35 Maintain cost accounting records of the work performed in accordance with the specifications and the Commission's procedures.

## **B.4 Project Close Out**

- B.4.1 Coordinate and attend a comprehensive final inspection by the Commission, the User Agency and the Architect of Record to verify that the materials furnished and work performed are in accordance with the Contract Documents.
- B.4.2 Coordinate certificate of Substantial Completion as prepared by the Architect of Record in consultation with the Commission and the User Agency.
- B.4.3 Coordinate the preparation of punch list(s) by the Architect of Record indicating the items of work remaining to be accomplished. Coordinate the completion of such items within 30 days of the issuance of the certificate of Substantial Completion. Coordinate certificate of Final Completion as prepared by the Architect of Record in consultation with the Commission and the User Agency.
- B.4.4 Coordinate and cause to be delivered to the Commission all guarantees, warranties, operating and maintenance manuals required by the contract documents after review by the Architect of Record. Coordinate equipment and systems training sessions for User Agency personnel. Make recommendations as to the withholding of payments to the trade contractors. Determine the value of any uncorrected and/or deficient work.
- B.4.5 Facilitate the preparation of "as-built" drawings as prepared by the subcontractor(s) and operations and maintenance manuals of the project in accordance with the specifications. The "as-built" documents will be subject to the approval of the Commission and the User agency. Submit approved "as-built" documents to the User Agency upon completion of the project.

## **B.5 Contingent Additional Services**

Provide any or all of the following Contingent Additional Services as may be authorized in writing by the Commission at its sole election:

- B.5.1 Furnish consulting services after occupancy of the building in connection with the operation of the building, including various electrical and mechanical systems.
- B.5.2 Provide consultation concerning replacement of any work damaged or destroyed by fire or other cause during construction and furnish additional Basic Services as may be required in connection with the replacement of the work.
- B.5.3 Provide additional Basic Services made necessary by the default of any subcontractor in the performance of the construction contract.
- B.5.4 Furnish required services in connection with additional site demolition beyond that described in the original Program.

B.5.5 Coordinate effort of the Architect of Record to provide all measured drawings of existing construction as required for the completion of the Project.

## Schedule B

### Project Documents

- 1) **Public Building Commission of Chicago's  
Book 1 Standard Terms and Conditions for Construction Contracts**
- 2) United States Office of Management and Budget, Circular A-110, Revised 11/19/93  
as further amended 9/30/99
- 3) United States Department of Justice, Office of Justice Programs, Office of the  
Comptroller, The Financial Guide, Current Edition 2002
- 4) Homeland Security, Office of Domestic Preparedness, FY 2003 Urban Areas  
Security Initiatives Grant Program
- 5) Subcontract Provisions
- 6) Certifications Regarding Debarment, Suspension and Other Responsibility Matters;  
Drug-Free Workplace Requirements and Lobbying

## Schedule C

### Compensation

#### A.1 Compensation of the Architect of Record

A.1.1 The Architect of Record shall be paid a lump sum fee of \$ 166,200.00. The Fee, in the absence of a change in scope of the Project by the Commission or the issuance of Commission-originated additive change orders, constitutes the Architect's of Record full fee for Basic Services described in Schedule A, Section A. The fee for Basic Services shall be allocated and payments made on a monthly basis as follows:

Programming and Schematic Design	15%
Construction Document Phase	40%
Bidding Phase Services	5%
Construction Phase	30%
Project Close-out Phase	10%

A.1.2 Architect's of Record fee for Basic Services shall include profit, overhead, general conditions, and all items not specifically identified as Reimbursable Expenses.

#### A.2 Billing Rates

A.2.1 The Commission shall compensate the Architect of Record for contract modifications and/or Additional Services based upon a *Lump Sum Fee* or a *Time Card Not to Exceed Fee*, as approved by the Commission in writing. In the case of *Time Card* billings, rates of reimbursement for the Architect of Record's employees shall be the actual base salaries paid to the specific employee performing the services plus a multiplier not to exceed 2.5 (not to exceed the maximum Commission hourly salary rates-listed below).

Position Title	Maximum Hourly Rate with Multiplier
Principal	\$150.00
Senior Project Manager	\$125.00
Project Manager      Senior Architect/Engineer	\$115.00
Project Architect/Engineer      Field/Technical Specialist	\$95.00
Architect/Engineer      Designer	\$80.00
CADD Draftsman      Intern Architect/Engineer	\$70.00
Clerical/Administrative	\$50.00

The following items are considered to be a part of the multiplier, and shall not be considered as additional reimbursable expenses:

A.2.2 Workmen's Compensation Insurance.

A.2.3 Direct Personnel Expenses:

- A.2.3.1 Social Security Tax.
- A.2.3.2 Unemployment Insurance.
- A.2.3.3 Health insurance Benefits.
- A.2.3.4 Long Term Disability Insurance.
- A.2.3.5 Other Statutory and Non-Statutory Employee Benefits.
- A.2.3.6 Pensions and Similar Contributions.

A.2.4 Telephone Service including Local Calls.

A.2.5 General and Administrative Expense including Overhead and Profit.

A.2.6 General Liability, (Excluding costs for Insurance Premiums on Special Consultant(s) and Trade Contractors) Professional Liability, Valuable Papers, Auto and other Insurance as mandated by the Contract.

A.2.7 Computer Charges.

A.2.8 Postage and Handling.

A.2.9 Parking and Mileage.

A.2.10 Other items not specifically identified below as "Reimbursables".

### A.3 Reimbursables

A.3.1 **"Reimbursable Expenses"** as they relate to Basic Services, are actual expenditures at cost, incurred by the Architect of Record, and required to provide its services to the Commission. The following shall be considered reimbursable expenses:

A.3.1.1 Plotting, printing and reproduction of drawings specifications, and presentation materials requested by the Commission, or required for scheduled reviews of the progress of the work by the Commission and/or the User Agency, public or city agency meetings and hearings, and as required for professional peer reviews of documents as directed by the Commission. One coordination set shall be provided to each consultant at the conclusion of schematic, design development and construction document phases.

- A.3.1.2 Distribution (by messenger or special shipping) of drawings, specifications, and presentation materials requested by the Commission, or required for scheduled reviewed of the progress of the work by the Commission and/or the User Agency, public or city agency meetings and hearings, and as required for professional peer reviews of documents as directed by the Commission.
  - A.3.1.3 Plotting, printing, reproduction and distribution of drawings and specifications for the purposes of soliciting subcontractor bids, issuing documents for building permit and issuing documents for construction.
  - A.3.1.4 Printing and distribution costs associated with shop drawing and submittal reviews during construction.
- A.3.2 Costs of reimbursable expenses are on a not to exceed basis of \$33,000.00.
- A.3.3 The following reimbursable expenses require prior written approval by the Commission:
- A.3.3.1 Expense of transportation and living of principals and employees traveling in connection with the Project, but not including travel and expense to and from the job site or within a 50-mile radius of downtown Chicago. Travel expenses include coach air fare, hotel and per diem costs, auto rental, fuel and insurance, and must be supported with proper documentation in the form of itemized invoices.
  - A.3.3.2 Fees and costs of special consulting services requested by the Commission shall be paid as a reimbursable expense. Structural, mechanical, electrical, plumbing, fire protection Information Technology/Audio Visual engineering services are included within the Fee indicated in paragraph A.1.
  - A.3.3.3 Costs for rental or purchase of special items or equipment requested by the Commission.
  - A.3.3.4 Fees and costs to secure necessary permits or civil agency approvals, including permit fees and expenditure fees.
  - A.3.3.5 Costs of surveys, geotechnical and environmental technical testing and reports.
- A.3.4 The following are not reimbursable expenses:



A.3.4.1 Plotting, printing and distribution of drawings and specifications for the purposes of coordination between members of the Architect of Record project team, or otherwise incidental to the normal execution of the Architect's work.

A.3.4.2 Office and administrative expenses, including telephonic or telecopier system expenses, photocopying and duplicating costs, except as defined under A.3.1, office or drafting supplies, and delivery services except as defined under A.3.1.

## **B.1 Compensation for Construction Management Services**

B.1.1 The Construction Manager shall be paid a lump sum fee of \$142,000.00. The Fee shall, in the absence of a change in scope of the Project by the Commission or the issuance of Commission-originated additive change orders, constitute the Construction Managers full fee for Basic Services described in Schedule A, Section B. The fee for Construction Manager Services shall be allocated and payments made on a monthly basis as follows:

Pre-Construction Phase	20%
Bidding Phase	20%
Construction Phase	50%
Project Close-out	10%

B.1. Construction Manager's fee for Construction Management Services shall include profit, overhead, general conditions, and all items not specifically identified as Reimbursable Expenses.

B.3.1.1 B.1.2 The Construction Manager's fee for Construction Management Services shall not include any subcontractor costs, vendor costs, consultant costs, or any other construction costs. Such costs or fees, which require approval by the Commission prior to engagement of the subcontractor(s), vendor(s) or consultant(s), shall be billed as a reimbursable expense with no additional mark-up.

## **B.2 Reimbursable Expenses**

The Construction Manager shall be reimbursed for actual costs incurred by the Construction Manager of Professional fees paid to sub-consultants engaged in the interest of the Project by the Construction Manager, with the Commission's prior written approval (hereinafter referred to as "Reimbursable Expenses"). Reimbursable Expenses

as they relate to Construction Management Services include the following: [(i) **Subcontract Costs,**] (ii) Professional Consultant Costs and (iii) other miscellaneous costs as defined below:

**B.2.1 General Conditions.** The Construction Manager shall be paid a lump sum of \$210,000.00. The fee shall be allocated and payments made on a monthly basis based on the work in place for General Conditions, which include the following:

B.2.1.1 Wages of individuals employed by the Construction Manager to perform the work at the site or, with the Commission's approval, at off-site workshops.

B.2.1.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site with the Commission's approval.

B.2.1.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged, at factories, workshops, or on the road, in expediting the production or transportation of materials or equipment required for the Project, but only for that portion of their time required for the Project.

B.2.1.4 Workmen's compensation insurance.

B.2.1.5 Direct Personnel Expenses (DPE):

B.2.1.5.1. Social Security Tax.

B.2.1.5.2. Unemployment insurance.

B.2.1.5.3 Health insurance benefits.

B.2.1.5.4 Long term disability insurance.

B.2.1.5.5 Other statutory and non-statutory employee benefits.

B.2.1.5.6 Pensions and similar contributions.

B.2.1.6 Telephone service including local calls.

B.2.1.7 General and administrative expenses.

B.2.1.8 General liability, excluding costs for insurance premiums on special consultants and trade contractors, professional liability, valuable papers, auto and other insurance as mandated by the Agreement.

B.2.1.9 Computer charges.

B.2.1.10 Postage and handling.

B.2.1.11 Parking and mileage.

**B.2.2 Costs or fees of [subcontractors and] consultants.** With regard to fees of consultants only, exclusive of the Architect of Record, the Construction Manager may be reimbursed for actual cost of the consultant plus an additional 2% mark-up.

B.2.2.1 For approved [subcontractor or] consultant costs, the Construction Manager shall submit an Application for Payment as per Article 15 of Book 1-“Standard Terms and Conditions for Construction Contracts”, as set forth in Appendix 1 and Section 01025 of the Project Specifications, Division 1

B.2.2.2 Increases or decreases in [subcontractor or] consultant costs (change orders) require prior approval by the Commission and the User Agency.

B.2.2.3 Consultants may include Engineering, Cost Estimating, Surveys, Geotechnical, Environmental Technical Testing and Reporting Services, and other Specialty Consultants

**B.2.3 Expense of transportation and living of principals and employees traveling in connection with the Project, but not including travel and expense to and from the job site or within a 50-mile radius of downtown Chicago.** Travel expenses requiring airfare or overnight accommodations require the advance written approval of the travel budget by the Commission. Travel expenses, when specifically requested by the Commission, and supported with proper documentation in the form of itemized invoices, shall be paid as a reimbursable expense:

B.2.3.1 Coach air fare.

B.2.3.2 Hotel per diem costs.

B.2.3.3 Car rental, gas, oil and insurance

**B.2.4 Reproduction of bidding documents (including photographs) used for final review of Schematic Design and Construction Document phases.** Reproduction of additional sets of documents requested by the Commission which are not otherwise a reimbursable expense, when specifically requested by the Commission, and supported with proper documentation in the form of itemized invoices, shall be paid as a reimbursable expense:

B. 2.4.1 Shop drawings

- B. 2.4.2 Plans and specifications
- B. 2.4.3 Presentation materials for public meetings

B.2.5 Costs of the Reimbursable Expenses identified in paragraphs B.2.3 and B.2.4 are on a not to exceed basis of \$45,000.00. Reimbursable Expenses shall not include office and other administrative expenses, including without limitation, telephonic or telecopier system expenses, photocopying and duplication costs, office or drafting supplies, delivery services and similar items.

**B.3 Compensation for Additional Services**

B.3.1 The Commission may order changes in the Work and/or Additional Services without invalidating the Agreement.

B.3.2 The Commission shall compensate the Construction Manager for Additional Construction Management Services based upon a *Lump Sum Fee* or a *Time Card Not to Exceed Fee*, as approved by the Commission in writing. In the case of *Time Card* billings, rates of reimbursement for the Construction Manager's employees shall be the actual base salaries paid to the specific employee performing the services not to exceed the maximum Commission salary rates, which include a multiplier of 2.5.

B.3.2.1 The maximum hourly rate including the multiplier the Commission shall pay the Construction Manager for its employees and consultant's employees shall be as follows:

<u>Position Title</u>	<u>Maximum Hourly Rate with Multiplier</u>
Principal	\$150.00
Senior Project Manager	\$125.00
Project Manager	\$115.00
Assistant Project Manager	\$80.00
Clerical/Administrative	\$50.00

B.3.2.2 The following items are considered to be a part of the multiplier, and shall not be considered reimbursable expenses:

B.3.2.2.1 Workmen's compensation insurance.

B.3.2.2.2 Direct Personnel Expenses (DPE):

B.3.2.2.2.1. Social Security Tax.

- B.3.2.2.2.2 unemployment insurance.
- B.3.2.2.2.3 Health insurance benefits.
- B.3.2.2.2.4 Long term disability insurance.
- B.3.2.2.2.5 Other statutory and non-statutory employee benefits.
- B.3.2.2.2.6 Pensions and similar contributions.
- B.3.2.2.3 Telephone service including local calls.
- B.3.2.2.4 General and administrative expense including overhead and profit.
- B.3.2.2.5 General liability, **[including]** costs for insurance premiums on special consultants and subcontractors, professional liability, valuable papers, auto and other insurance as mandated by the Agreement.
- B.3.2.2.6 Computer charges.
- B.3.2.2.7 Postage and handling.
- B.3.2.2.8 Parking and mileage.

## **C.1 Submission of Invoices for Compensation**

- C.1.1 The Construction Manager shall submit detailed invoices no more frequently than once every 30 days to the Commission for approval. After approval of the invoices by the Commission, payment shall be remitted to the Construction Manager.
- C.1.2 All invoices shall clearly distinguish between amounts billed for Design Services and amounts billed for Construction Management Services and the invoices shall also include an explanation of the services for which the amounts are being billed.

## Schedule D

### Contract Insurance Requirements 911 City Operations Center Contract #PS 797

The Construction Manager must provide and maintain at Construction Manager's own expense, during the term of the contract and during the time period following expiration if Construction Manager is required to return and perform any additional work, the insurance coverages and requirements specified below, insuring all operations related to the Contract.

#### A. INSURANCE TO BE PROVIDED BY CONSTRUCTION MANAGER

##### 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 \$500,000 each accident or illness.

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

Commercial General Liability Insurance or equivalent with limits of not less than \$5,000,000 per occurrence for bodily injury, personal injury, and property damage liability. Coverages must include the following: All premises and operations, products/completed operations, separation of insureds, defense, and contractual liability (with no limitation endorsement). The Public Building Commission and the City of Chicago must be named additional insureds on a primary, non-contributory basis for any liability arising directly or indirectly from the work.

Subcontractors [and consultants] performing work for Construction Manager must maintain limits of not less than \$1,000,000 per occurrence with the same terms herein.

##### 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 \$2,000,000 per occurrence for bodily injury and property damage. The Public Building Commission and the City of Chicago must be named additional insureds on a primary, non-contributory basis.

Subcontractors [and consultants] performing work for Construction Manager must maintain limits of not less than \$1,000,000 per occurrence with the same terms herein.

4) Professional Liability

When any architects, engineers, construction managers or other professional consultants perform work in connection with this Contract, Professional Liability Insurance covering acts, errors, or omissions must be maintained with limits of not less than \$5,000,000. Coverage must include contractual liability. 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.

[Sub-consultants performing work for Construction Manager must maintain professional liability insurance with limits of not less than \$1,000,000 per occurrence with the same terms herein.]

5) Valuable Papers

When any plans, designs, drawings, specifications, data, media, and documents are produced or used under this Contract, Valuable Papers Insurance shall be maintained in an amount to insure against any loss whatsoever, and shall have limits sufficient to pay for the re-creation and reconstruction of such records.

**B. INSURANCE TO BE PROVIDED FOR CONSTRUCTION**

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 \$500,000 each accident or illness.

2) Commercial General Liability (Primary and Umbrella)

Commercial General Liability Insurance or equivalent with limits of not less than \$5,000,000 per occurrence for bodily injury, personal injury, and property damage liability. Coverages must include the following: All premises and operations, products/completed operations (for a minimum of two (2) years following project completion), explosion, collapse, underground, separation of insureds, defense, and contractual liability (with no limitation endorsement). The Public Building Commission and the City of Chicago must be named as additional insureds on a primary, non-contributory basis for any liability arising directly or indirectly from the work.

Subcontractors performing work for the Subcontractor must maintain limits of not less than \$1,000,000 with the same terms herein.

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 Subcontractor must provide Automobile Liability Insurance with limits of not less than \$2,000,000 per occurrence for bodily injury and property damage. The Public Building Commission and the City of Chicago must be named as additional insureds on a primary, non-contributory basis.

Subcontractors performing work for the Subcontractor must maintain limits of not less than \$1,000,000 with the same terms herein.

4) Builders Risk

When Subcontractor undertakes any construction, including improvements, betterments, and/or repairs, the Subcontractor 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 project. Coverages must include but are not limited to the following: right to partial occupancy, material stored off-site and in-transit, collapse, water including overflow, leakage, sewer backup, or seepage, debris removal, faulty workmanship or materials, testing, and mechanical-electrical breakdown. The Public Building Commission and the City of Chicago must be named as additional insureds and loss payees

The Subcontractor is responsible for all loss or damage to PBC or City property at full replacement cost.

The Subcontractor 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 Subcontractor.

5). Contractors Pollution Liability

When any work is performed which may cause a pollution exposure, Subcontractors Pollution Liability must be provided covering bodily injury, property damage and other losses caused by pollution conditions that arise from the Contract scope of services with limits of not less than \$1,000,000 per occurrence. Coverage must include completed operations, contractual liability, environmental cleanup, remediation and disposal. 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 and the City of Chicago must be named as additional insureds.

### C. 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 the coverages have 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 coverages. The Construction Manager shall advise all insurers of the Contract provisions regarding insurance. Non-conforming insurance does not relieve Contractor of the obligation to provide insurance as specified herein. Nonfulfillment of the insurance conditions may constitute a violation 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 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 coverages must be borne by Construction Manager.

The Construction Manager agrees that insurers waive their rights of subrogation against the Public Building Commission and the City of Chicago.

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

Any insurance or self-insurance programs maintained by the Commission 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 the Construction Manager is a joint venture, the insurance policies must name the joint venture as a named insured.

The Construction Manager must require all subcontractors to provide the insurance required herein, or Construction Manager may provide the coverages for subcontractors. 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 right to modify, delete, alter or change these requirements.

**Schedule E**

**Commission's Additional Rights and Responsibilities**

**Intentionally Deleted**

## SUBCONTRACT PROVISIONS

1. **SUBCONTRACT PROVISIONS:** All subcontracts shall include provisions that implement the following requirements:

- **CONTRACT TERMINATION:**

All contracts exceeding \$10,000 shall contain suitable provisions for termination by the implementing agency including the manner by which termination will be effected and the basis for settlement. Such provisions shall include conditions under which the contract can be terminated for default, as well as conditions where the contract can be terminated because of circumstances beyond the implementing agency's or contractor's control.

- **CONTRACT VIOLATIONS:**

Contracts shall contain provisions or conditions that will allow for administrative, contractual or other remedies in instances where contractors violate or breach contract terms. Such provisions shall provide for such sanctions and penalties as may be appropriate.

- **PROVISIONS REQUIRED BY LAW:**

Any provisions required by law must be included.

2. **CONTRACTS ENTERED INTO BY STATE AGENCIES IN THE CAPACITY OF IMPLEMENTING AGENCIES:**

- In addition to the provisions listed above, implementing agencies that are state agencies must adhere to applicable Illinois CMS contract standards for contract format and content. State agencies not subject to specific contract standards of the Illinois Procurement Code (30 ILCS 500) must include all certifications and provisions required of Illinois' state agency contracts.

3. **CONSTRUCTION CONTRACTS:** All construction and repair contracts shall include the following:

- All contracts for remodeling, renovation or construction shall include all applicable local, state and federal provisions required for such contracts.
- A provision for compliance with the Copeland "Anti-Kick Back" Act (18 USC 874) as supplemented in Department of Labor Regulations (29 CFR Part 3). The implementing agency shall report all suspected violations of these provisions to the Authority and the Office of Justice Programs.
- All contracts exceeding \$2,000 for construction and exceeding \$2,500 for other contracts that involve the employment of mechanics and laborers shall include a provision for compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5).
- When required by federal grant program legislation, all construction contracts exceeding \$2,000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5).
- In all contracts for construction or facility improvement awarded exceeding \$100,000, grantees shall observe the bonding requirements provided in OMB Circular A-102.
- All construction contracts exceeding \$10,000 shall include provisions for compliance with Executive Order No. 11246, titled "Equal Employment Opportunity," as amended by Executive Order 11375, as supplemented in Department of Labor Regulations (41 CFR Part 60).
- All contracts for construction or facility improvements over \$100,000 shall require a bid guarantee equal to 5% of the bid price, a performance bond on part of the CONTRACTOR for 100% of the contract price, and a payment bond of part of the CONTRACTOR for 100% of the contract price.
- All construction contracts shall include provisions for compliance with Executive Order 13202, as amended by Executive Order 13208 - Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects.

4. **ADDITIONAL SUBCONTRACT PROVISIONS:** All subcontracts must also include the provisions on the following pages in the body of the subcontract, or, if allowed under the implementing agency's internal procedures, they may be included as an addendum to the subcontract.

## ADDENDUM TO AGREEMENT

The Public Building Commission of Chicago, hereafter referred to as the "implementing agency" and McCluer, hereafter referred to as the "CONTRACTOR", agree to adhere to and comply with the following terms and conditions, as an addendum to, and in the performance of, the agreement to which these provisions are attached.

- **RECORD RETENTION:**

CONTRACTOR agrees to retain financial and program records for a minimum of 3 years after the expiration date of this agreement, or 3 years after closure of CONTRACTOR's most recent audit report, whichever is later. CONTRACTOR shall maintain, for this 3-year period, adequate books, records, and supporting documents to verify the amounts, recipients, and uses of all disbursements of funds passing in conjunction with this agreement; the agreement and all books, records, and supporting documents related to the agreement shall be available for review and audit by the Auditor General, federal awarding agency personnel, the Authority, or any person duly authorized by the Authority; and CONTRACTOR agrees to cooperate fully with any audit conducted by the Auditor General, the federal awarding agency, the Authority or any person duly authorized by the Authority, and to provide full access to all relevant materials. Failure to maintain the books, records, and supporting documents required by this Section shall establish a presumption in favor of the State for the recovery of any funds paid by the State under the agreement for which adequate books, records, and supporting documentation are not available to support their purported disbursement.

Records shall be maintained beyond the 3-year period if any litigation, claim, audit, fiscal review, negotiation, or other action involving the records has been started before the expiration of the above three-year period; in such cases, these records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular three-year period, whichever is later.

- **CERTIFICATION:**

CONTRACTOR certifies that it has not been barred from contracting with a unit of state or local government as a result of a violation of Section 33E-3 or 33E-4 of the Criminal Code of 1961.

- **EQUIPMENT CONDITIONS:**

CONTRACTOR certifies that any equipment purchased using funds from this agreement shall be year 2000 compliant and shall be able to process all time/date data after December 31, 1999.

- **ELIGIBILITY FOR EMPLOYMENT IN THE UNITED STATES:**

CONTRACTOR shall complete and keep on file, as appropriate, the Immigration and Naturalization Service Employment Eligibility Form (I-9). This form shall be used by CONTRACTOR to verify that persons employed by CONTRACTOR are eligible to work in the United States.

- **NONDISCRIMINATION:**

CONTRACTOR certifies that no person shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in connection with any activity funded under this agreement on the basis of race, color, age, religion, national origin, disability, or sex. CONTRACTOR assures compliance with the following laws, and all associated rules and regulations: Non-Discrimination requirements of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. 3789(d); Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; the Department of Justice Non-Discrimination Regulations, 28 CFR Part 42, subparts C, D, E, and G; the Department of Justice regulations on disability discrimination, 28 CFR Part 35 and Part 39; the Illinois Human Rights Act, 775 ILCS 5; the Public Works Employment Discrimination Act, 775 ILCS 10; the Illinois Environmental Barriers Act, 410 ILCS 25. All applicable provisions, rules and regulations of these Acts are made a part of this agreement by reference as though set forth fully herein.

In the event that a federal or State court or administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, age, religion, national origin, disability, or sex against CONTRACTOR, or any subgrantee or contractor of CONTRACTOR, CONTRACTOR will forward a copy of the finding to the implementing agency and the Authority. The Authority will forward a copy of the finding to the Office for Civil Rights, Office of Justice Programs.

CONTRACTOR certifies that it shall not pay any dues or fees on behalf of its employees or agents or subsidize or otherwise reimburse them for payment of their dues or fees to any club which unlawfully discriminates, and that it shall comply with all provisions of the Discriminatory Club Act (775 ILCS 25).

- **CONFIDENTIALITY OF INFORMATION:**

CONTRACTOR agrees not to use or reveal any research or statistical information furnished under this program by any person and identifiable to any specific private person for any purpose other than the purpose for which such information was obtained in accordance with applicable federal legislation, regulations and guidelines. Such information shall be immune from legal process and shall not, without the consent of the person furnishing the information, be admitted as evidence or used for any purpose in any action, suit or other judicial, legislative or administrative proceeding.

- **PROCUREMENT REQUIREMENTS/CONFLICT OF INTEREST:**

All procurement transactions shall be conducted by CONTRACTOR in a manner to provide, to the maximum extent practical, open and free competition. CONTRACTOR must use procurement procedures that minimally adhere to standards established by the Illinois Procurement Code (30 ILCS 500) and all applicable executive orders and federal guidelines. No employee, officer or agent of CONTRACTOR shall participate in the selection, or in the award or administration of a contract supported by federal funds if a conflict of interest, real or apparent, would be involved.

- **APPLICABLE LAW:**

CONTRACTOR shall operate in conformance with the following State and federal laws and guidelines, currently in effect and hereafter amended, when applicable: federal legislation, regulations and guidelines regarding the applicable federal grant program; the Office of Justice Programs' Financial Guide; Office of Management and Budget Circulars A-21, A-87, A-102, A-110, A-122, and A-133; the Illinois Grant Funds

Recovery Act (30 ILCS 705); Illinois Procurement Code (30 ILCS 500); the State Comptroller Act (15 ILCS 405); the U.S. Department of Justice Regulations Governing Criminal History Record Information Systems (28 CFR Part 20.1 et seq.); the U.S. Department of Justice Regulations Governing Confidentiality of Identifiable Research and Statistical Information (28 CFR Part 22.1 et seq.); the U.S. Department of Justice Regulations Governing Governmentwide Debarment and Suspension (28 CFR Part 67.100 et seq.) and the rules of the Authority (20 Ill. Adm. Code 1520 et seq.).

CONTRACTOR shall comply with all applicable laws, regulations, and guidelines of the State of Illinois, the Federal Government and the Authority in the performance of this agreement, currently in effect and hereafter amended, including but not limited to: the provisions of 28 CFR applicable to grants and cooperative agreements including Part 18, Administrative Review Procedures; Part 20, Criminal Justice Information Systems; Part 22, Confidentiality of Identifiable Research and Statistical Information; Part 23, Criminal Intelligence Systems Operating Policies; Part 30, Intergovernmental Review of Department of Justice Programs and Activities; Part 42, Non-Discrimination/Equal Employment Opportunity Policies and Procedures; Part 61, Procedures for Implementing the National Environmental Policy Act; Part 63, Floodplain Management and Wetland Protection Procedures; and Part 67, Governmentwide Debarment and Suspension (Nonprocurement); provisions of 48 CFR regarding federal acquisition principles, including Part 31, Contract Cost Principles and Procedures; Section 8136 of the Department of Defense Appropriations Act of 1988 (P.L. 100-463, effective October 1, 1988); National Environmental Policy Act of 1969, 42 U.S.C. pars. 4321 et seq.; National Historic Preservation Act of 1966, 16 U.S.C. pars. 470 et seq.; Flood Disaster Protection Act of 1973, 42 U.S.C. pars 4001 et seq.; Clean Air Act of 1970, 42 U.S.C. pars. 7401 et seq.; Clean Water Act, 33 U.S.C. pars. 1368 et seq.; Executive Order 11738; and EPA regulations (40 CFR Part 15); Federal Water Pollution Control Act of 1948, as amended, 33 U.S.C. pars. 1251 et seq.; Safe Drinking Water Act of 1974, 42 U.S.C. pars. 300f et seq.; Endangered Species Act of 1973, 16 U.S.C. pars. 1531 et seq.; Wild and Scenic Rivers Act of 1968, as amended, 16 U.S.C. pars. 1271 et seq.; Historical and Archeological Data Preservation Act of 1960, as amended, 16 U.S.C. pars. 469 et seq.; Coastal Zone Management Act of 1972, 16 U.S.C. pars. 1451 et seq.; Coastal Barrier Resources of 1982, 16 U.S.C. pars. 3501 et seq.; Indian Self Determination Act, 25 U.S.C. par. 450f; Intergovernmental Cooperation Act of 1968, 42 U.S.C. 4201 et seq.; Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. pars. 4601 et seq.; Hatch Political Activity Act of 1940, as amended, 5 U.S.C. pars. 1501 et seq.; Animal Welfare Act of 1970, 7 U.S.C. pars. 2131 et seq.; Demonstration Cities and Metropolitan Development Act of 1966, 42 U.S.C. pars. 3301 et seq.; Federal Fair Labor Standards Act of 1938, as amended, 29 U.S.C. pars. 201 et seq.; and E.O. 11246 "Equal Employment Opportunity," as amended by E.O. 11375, and supplemented by regulations at 41 CFR Part 60.

Failure of CONTRACTOR to comply with applicable laws, regulations, and guidelines may result in the suspension or termination of this agreement, or pursuit of other remedies that may be legally available.

• **CERTIFICATIONS REGARDING DEBARMENT AND A DRUG-FREE WORKPLACE:**

As required by the Authority, CONTRACTOR shall complete and submit the federal Certification Regarding A Drug-Free Workplace and shall certify that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

• **CERTIFICATION REGARDING LOBBYING:**

Federal funds are prohibited from being used for influencing or attempting to influence persons in connection with covered federal transactions, which include the awarding, making, entering into, extension, continuation, renewal, amendment, or modification, of federal grants or contracts. If receiving more than \$100,000 pursuant to this agreement, CONTRACTOR agrees to provide a Certification Regarding Lobbying to the Authority and, if applicable, a Disclosure of Lobbying Activities form. If a subcontractor will receive more than \$100,000 in



federal funds pursuant to this agreement, CONTRACTOR will provide to the Authority a Certification Regarding Lobbying and, if applicable, a Disclosure of Lobbying Activities form signed by the subcontractor. CONTRACTOR must provide these certifications and disclosures as required by the Authority.

- **STATEMENTS, PRESS RELEASES, ETC.:**

When issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with federal money, the CONTRACTOR shall clearly state (1) the percentage of the total cost of the program or project which will be financed with federal money, and (2) the dollar amount of federal funds for the project or program.

- **COPYRIGHTS, PATENTS:**

If this agreement results in a copyright, the Illinois Criminal Justice Information Authority and the federal awarding agency, reserve a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for government purposes, the work or the copyright to any work developed under this agreement and any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.

If this agreement results in the production of patentable items, patent rights, processes, or inventions, the CONTRACTOR shall immediately notify the implementing agency, and the implementing agency shall notify the Authority. The Authority will provide the implementing agency and CONTRACTOR with further instruction on whether protection on the item will be sought and how the rights in the item will be allocated and administered in order to protect the public interest, in accordance with federal guidelines.

- **PUBLICATIONS:**

CONTRACTOR shall submit to the implementing agency, and the implementing agency shall submit to the Illinois Criminal Justice Information Authority for review, a draft of any publication that will be issued by CONTRACTOR describing or resulting from programs or projects funded in whole or in part with federal or matching funds, no later than 60 days prior to its printing.

Any such publication shall contain the following statement:

"This project was supported by Grant # \_\_\_\_\_ (contact the implementing agency for the proper grant number), awarded by the \_\_\_\_\_ (contact the implementing agency for the proper federal awarding agency name), Office of Justice Programs, U.S. Department of Justice, through the Illinois Criminal Justice Information Authority. Points of view or opinions contained within this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice, or the Illinois Criminal Justice Information Authority."

These publication requirements pertain to any written, visual or sound publication, but are inapplicable to press releases, newsletters and issue analyses. Exceptions to these requirements may be granted upon prior Authority approval,

- **INSPECTION AND AUDIT:**

If required by revised Office of Management and Budget Circular A-133 "Audits of States, Local

Governments, and Non-Profit Organizations," CONTRACTOR agrees to provide for an independent audit of its activities in accordance with A-133. Such audits shall be made annually, unless A-133 allows CONTRACTOR to undergo biennial audits. All audits shall be conducted in accordance with Government Auditing Standards, Standards for Audit of Governmental Organizations, Programs, Activities and Functions; the Guidelines for Financial and Compliance Audits of Federally Assisted Programs; any compliance supplements approved by the Office of Management and Budget; and generally accepted auditing standards established by the American Institute of Certified Public Accountants. Copies of all audits must be submitted to the Authority within 30 days of completion.

Known or suspected violations of any law encountered during audits, including fraud, theft, embezzlement, forgery, or other serious irregularities, must be immediately communicated to the Authority and appropriate federal, State, and local law enforcement officials.

CONTRACTOR agrees to develop and maintain a record-keeping system to document all agreement related activities and expenditures. These records will act as the original source material for compilation of data and records required by the Authority and all other program activity.

The Authority shall have access for purposes of monitoring, audit and examination to all relevant books, documents, papers, and records of CONTRACTOR, and to relevant books, documents, papers and records of subcontractors.

#### ACCEPTANCE OF ADDENDUM

**The implementing agency and CONTRACTOR agree to adhere to and comply with the above terms and conditions, as an addendum to, and in the performance of, the agreement to which these provisions are attached.**

\_\_\_\_\_  
Authorized representative of the implementing agency

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Authorized representative of the CONTRACTOR

  
\_\_\_\_\_  
Date

## CERTIFICATIONS REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; DRUG-FREE WORKPLACE REQUIREMENTS AND LOBBYING

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature on this form provides for compliance with certification requirements under 15 CFR Part 26, "Governmentwide Debarment and Suspension (Nonprocurement)" and "Governmentwide Requirements for Drug-Free Workplace" and 15 CFR Part 28, "New Restrictions on Lobbying." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Commerce determines to award the covered transaction, grant or cooperative agreement.

### 1. DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS

As requested by Executive Order 12549, Debarment and Suspension, and implemented at 15 CFR Part 26, for prospective participants in primary covered transactions, as defined at 15 CFR Part 26, Sections 26.105 and 26.110 -

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

### 2. DRUG-FREE WORKPLACE REQUIREMENTS Alternate I. Grantees Other Than Individuals

As required by the Drug-Free Workplace Act of 1988, and implemented at 15 CFR Part 26, Subpart F, for grantees, as defined at 15 CFR Part 26, Sections 26.605 and 26.610 -

A. The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's

workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about--

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that as a condition of employment under the grant, the employee will --

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to the Director, Office of Federal Assistance, Office of Federal Assistance and Management Support, HCHB Room 6054, U.S. Department of Commerce, Washington, DC 20230. Notice shall include the identification numbers(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d) (2), with respect to any employee who is so convicted--

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee shall insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance: (Street address, city, county, state, ZIP code):

Cook County

1411 W. Madison

Chicago, IL 60607

Check  if there are workplaces on file that are not identified here.

#### Alternate II. Grantees Who Are Individuals

As required by the Drug-Free Workplace Act of 1988, and implemented at 15 CFR 26, Subpart F, for grantees, as defined at 15 CFR Part 26, Sections 26.605 and 26.610 -

(A) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity within the grant;

(B) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to the Director, Office of Federal Assistance, Office of Federal Assistance and Management Support, HCHB Room 6054, U.S. Department of Commerce, Washington, DC 20230. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

#### 3. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 15 CFR Part 28, for persons entering into a grant, cooperative agreement or contract over \$100,000, or loan or loan guarantee over \$150,000, as defined at 15 CFR Part 28, Sections 28.105 and 28.110, the applicant certifies that to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or

employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

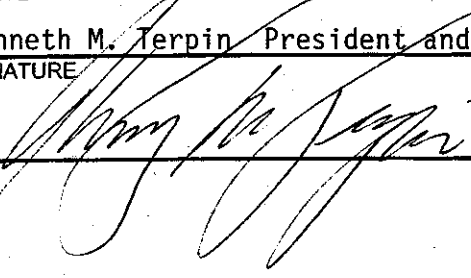
#### Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form -LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above applicable certification(s).

NAME OF APPLICANT	AWARD NUMBER AND/OR PROJECT NAME
McCluer	PS 797
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
Kenneth M. Terpin President and COO	10/06/2004
SIGNATURE	DATE
	10/6/04



PUBLIC BUILDING COMMISSION OF CHICAGO  
Richard J. Daley Center  
50 West Washington  
Room 200  
Chicago, Illinois 60602  
(312)744-3090  
Fax (312)744-8005  
www.pbcchicago.com

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Assistant Treasurer  
JOHN E. WILSON  
John E. Wilson, Ltd.  
Certified Public Accountants

Secretary  
EDGRICK C. JOHNSON

Assistant Secretary  
TIMOTHY J. MITCHELL

September 17, 2004

August Mitchell, Project Director  
McClier  
401 East Illinois Street  
Chicago, Illinois 60611

Re: Professional Services Agreement for Construction  
Management Services for City Operations Room, 911  
Center Project  
PBC Contract No. PS 797

Dear Mr. Mitchell:

Pursuant to the resolution duly adopted by the Public Building Commission of Chicago on August 10, 2004, your firm was awarded contract PS-797 in an amount not to exceed \$308,200.00.

Enclosed, in duplicate, is the completed contract form. Each copy is to be executed by a president or vice president of your corporation and attested to and sealed by the secretary or an assistant secretary of the corporation. Other documents requiring execution by your firm include **Subcontract Provisions and Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug Free Workplace Requirements and Lobbying, and the Disclosure of Retained Parties** form.

Both copies of the Agreement and those documents are to be returned to the Public Building Commission to the attention of Edward Gronkowski at the address provided above. Upon execution of the contract by the Mayor, one copy will be returned to you.

PBC has included a single set of **Book 1 Standard Terms and Conditions for Construction Contracts, the United States Office of Management and Budget, Circular A-110, United States of Justice Programs, Office of the Comptroller, The Financial Guide, and Homeland Security, Office of Domestic Preparedness, FY 2003 Urban Areas Security Initiatives Grant Program**. These documents are included in the Agreement by reference and are listed in **Schedule B**. You may retain the foregoing documents for your records and need not return them with the executed Agreement.

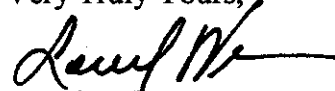
Mr. August Mitchell  
September 17, 2004  
Page two

Also enclosed please find two original copies of the performance and payment bond for the contract and project that are to be executed by your surety and returned to PBC.

At this time, the Commission directs you to produce the certificates of insurance which confirm that you have the required policies and limits of coverage in place. These certificates must confirm that your coverage meets the minimum insurance requirements stated in **Section D** of the contract. Please ensure that the period of coverage is current and that the Public Building Commission receives notice of any new or replacement policies issued during the contract term. The certificates as well as any questions may also be directed to Edward Gronkowski. You may contact him at telephone number (312) 744-9695.

On behalf of the Public Building Commission, I wish to thank you for your interest working with us and look forward to a prosperous relationship.

Very Truly Yours,



Lourdes Nur  
Director of Procurement

cc: J. Gallagher