

**BOOK 2**  
**STANDARD TERMS AND CONDITIONS**  
**FOR CONSTRUCTION CONTRACTS**  
(with Community Hiring Requirement)

**PUBLIC BUILDING COMMISSION OF CHICAGO**



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The Public Building Commission may revise these terms and conditions from time to time.



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# **PUBLIC BUILDING COMMISSION OF CHICAGO**

## **ARTICLE 1. GENERAL PROVISIONS**

### **Section 1.01 Definitions**

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

1. "Architect" or "Architect/Engineer" means any person or firm employed by the Commission for the purpose of designing the project.
2. "Change Order" is the document signed by the Contractor and the Commission, or, in circumstances stated in Book 2, the Commission alone, which authorized either an adjustment in the Contract sum and / or Contract time or a change in the Work that may not result in such an adjustment.
3. "Commission" means the Public Building Commission of Chicago, a municipal corporation organized under the Public Building Commission Act of the State of Illinois, as amended, or its duly authorized officers or employees.
4. "Commission Representative" means the person assigned by the Executive Director to be the Commission's Representative for the project.
5. "Contract" or "Contract Documents" means all of the following component parts, including exhibits attached thereto and/or incorporated therein by reference, and all amendments, modifications and revisions made from time to time in accordance with the provisions hereof:
  - a. Book 1 – Project Information, Instructions to Bidders, and Execution Documents
  - b. Book 2 – Standard Terms and Conditions for Construction Contracts
  - c. Book 3 -- Technical Specifications and Drawings
6. "Contract Completion Date" is the date determined by the Commission, on which the Project is to reach Substantial Completion. The Contract Completion Date will be determined based on the duration for the Project set by the Contract as adjusted by any Change Orders that extend or reduce the duration of the Project.
7. "Contract Time" is the duration of the Work, from the date Work is required to begin as required by the Notice to Proceed until the scheduled date for Substantial Completion of the Work, including approved time extensions.
8. "Contract Price" means the full amount of compensation to be paid for the Work to be performed by the Contractor as adjusted from time to time.
9. "Contractor" means the partnership, firm, corporation or entity entering into the Contract with the Commission to perform the Work embraced in the Contract Documents.
10. "Day" or "Days" means calendar day(s) unless otherwise specified.
11. "Drawings" are those enumerated in the Schedule of Drawings, and additional drawings and sketches, if any, incorporated into the Contract as the Work progresses.
12. "Environmental Laws" means all applicable Federal, State, and local laws, ordinances, rules, regulations, and executive orders pertaining to environmental matters.
13. "Executive Director" means the person employed by the Commission as its Executive Director or the duly authorized representative thereof.
14. "Field Order" means a written order to the Contractor, signed by the Commission Representative unilaterally directing changes in the Work or the Project CPM Schedule.

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15. "Final Completion and Acceptance of the Work" means the last date on which all of the following events have occurred: the Commission has determined that all Punch List Work and any other remaining Work have been completed in accordance with the Contract Documents; final inspections have been completed and operating systems and equipment testing have been completed; final occupancy certifications have been issued; Contractor's LEED Commissioning responsibilities required by the Contract Documents has been completed; all deliverables have been provided to the Commission; and all contractual requirements for final payment have been completed.
16. "Hazardous Materials" means asbestos and asbestos-containing materials, polychlorinated biphenyls (PCBs), oil or any other petroleum products, natural gas, special nuclear materials, and by-product materials regulated under the Atomic Energy Act (42 U.S.C. Sec. 2014, et seq.), pesticides under the Federal Insecticide, Fungicide and Rodenticide Act (7U.S.C. Sec. 136, et seq.) and any hazardous waste, toxic substance or related material, including any substance defined or treated as "hazardous waste," "special waste," "toxic substance," or a comparable term in any Environmental Law.
17. "Local Government" or "City" means the City of Chicago, Illinois within which the Project is situated.
18. "Notice to Proceed" refers to the written notice issued by the Commission and directed to the Contractor, which defines the established date from which the time for performance commences.
19. "Project" means the collective improvements to be constructed by the Contractor in accordance with the Contract.
20. "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 are not considered Punch List items.
21. "Record Documents" are all documents required under the terms of the Contract to be provided to the Commission by the Contractor, including but not limited to shop drawings, as-built drawings, blue line drawings, parts manuals, operation and maintenance manuals, and Project manuals or specifications.
22. "Schedule" means the Critical Path Method (CPM) schedule submitted by the Contractor establishing time frames for the performance of components of the Work.
23. "Schedule of Values" means the detailed list of the subcontractor value of each construction activity included in the Base Contract Price broken down by labor and materials that is submitted by the Contractor and approved by the Commission, as amended.
24. "Site" means the location(s) shown on the Drawings or described in Division 1 – Section 01010 – Summary of Work of the technical specifications, within which the Work will be performed under the Contract Documents.
25. "Special Waste" means those substances as defined in the Illinois Environmental Protection Act, 415 ILCS 5/3.45, and further defined in Section 809.103 or 35 Illinois Administrative Code, Subtitle G, Ch. 1.
26. "Subcontractor" means any partnership, firm, corporation or entity other than an employee of the Contractor, that contracts with the Contractor to furnish labor, or labor and materials, at the Site. The term also includes subcontractors of any tier, suppliers, fabricators, or manufacturers whether or not in privity with the Contractor.
27. "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.
28. "Substantial Completion of the Work" or "Substantial Completion" means the date on which the Executive Director has determined that: the Project has been essentially completed except for Punch List Work, the User is able to occupy and use the Project for the purpose intended, and the Contractor



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has obtained and delivered to the Commission a "Certificate of Occupancy" issued by the authority that has jurisdiction.

29. "User" or "User Agency" means the entity for which or on whose behalf the Commission has undertaken to cause the Work to be performed.
30. "Work" means the obligations of the Contractor under the Contract Documents. Work includes, unless specifically excepted by the Contract Documents, the furnishing of all materials, labor, equipment, supplies, plant, tools, scaffolding, transportation, superintendence, permits, inspections, occupancy approvals, insurance, taxes, and all other services, facilities and expenses necessary for the full performance and completion of the requirements of the Contract Documents. Work also means that which is furnished, produced, constructed, or built pursuant to the Contract Documents.

### **Section 1.02 Usage and Interpretation**

1. The specifications are separated into titled sections for convenience only and not to dictate or determine the trade or craft involved. Such separations do not operate to make the Commission an arbiter for the division of responsibility between Contractor and Subcontractor, or between Subcontractors. Such separations do not relieve the Contractor from the responsibility for the satisfactory completion of the Work regardless of the trade divisions.
2. The specifications are of abbreviated or "streamlined" type and include incomplete sentences. Omissions of words or phrases such as "the Contractor will," "in conformity therewith," "will be," "as noted on the Drawings," "according to the plans," "a," "an," "the," and "all" are intentional. Omitted words and phrases are supplied by inference in the same manner as they are when a "Note" occurs on Drawings. Words "will be" or "will" will be supplied by inference where colon (:) is used within sentences or phrases.
3. Where "as shown," "as indicated," "as detailed" or words of similar import are used, reference is made to the Drawings or specifications unless otherwise stated. Where "as directed," "as required," "as permitted," "as authorized," "as approved," "as accepted," "as selected," or words of similar import are used, the direction, requirement, permission, authorization, approval, acceptance, or selection by the Commission is intended unless otherwise stated.
4. As used herein, "provide" means "provide complete in place" or "furnish and install."
5. Where requirements of the Contract Documents differ from laws, ordinances, rules, regulations, orders, building codes, or the requirements of authorities having jurisdiction, the more stringent requirements govern. Such requirements will be provided by the Contractor at no increase in the Contract Price.
6. Words in the singular will include the plural whenever applicable or the context so indicates. Words importing the masculine may be applied to females and vice versa.
7. Whenever reference to a law is contained herein, such reference includes any amendment or revision to such law.

### **Section 1.03 Standard Specifications**

Any reference herein to standard specifications of any society, institute, association, or governmental authority (such standard specifications not forming a part of any statute or ordinance nor otherwise specified as to edition or date) is a reference to the standard specifications of such organization that are in effect on the 30th Day prior to the date of the first Advertisement for Bids. If such specifications are revised prior to completion of any part of the Work to which such revision would pertain, the Contractor may, if approved by the Architect and Commission, perform such Work in accordance with the revised specifications.

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### **Section 1.04 Severability**

If any provision of this Contract is inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions because it conflicts with any other provision of this Contract, or of any constitution, statute, ordinance, rule of law, or public policy, or for any other reason, such circumstances will not render the provision in question inoperative or unenforceable in any other case or circumstance, or render other provision or provisions of this Contract invalid, inoperative, or unenforceable to any extent whatever. The invalidity of any phrases, sentences, clauses, or sections contained in this Contract do not affect the remaining portions of this Contract or any part thereof.

### **Section 1.05 Entire Agreement**

The Contract, including all Contract Documents and the exhibits attached to them and incorporated, constitutes the entire agreement between the parties with respect to the subject matter hereof, and no other oral or written understandings, representations, inducements, considerations, promises, or interpretations are implied or impressed upon this Contract that are not expressly addressed herein.

## ARTICLE 2. PROJECT ORGANIZATION

### Section 2.01 The Owner

The owner is:

Public Building Commission of Chicago  
Richard J. Daley Center  
50 West Washington Street, Room 200  
Chicago, Illinois 60602

### Section 2.02 The Executive Director

For purposes of this Contract, the Executive Director, or any successor office to the Executive Director, will represent the Commission in all matters relating to the Contractor's performance of this Work hereunder and will constitute the point of receipt for all deliverables required hereunder, unless expressly specified otherwise herein.

### Section 2.03 The User Agency(ies)

The Contractor will be required to defend and indemnify the User(s) identified in Book 1. The Contractor will not perform changes to the Work directed by the User unless authorized to do so by the Commission through a Field Order.

### Section 2.04 The Commission Representative

1. The Executive Director will assign an employee of the Commission or a Consultant of the Commission to be the Commission's Representative for the Project. The Executive Director will make the assignment in writing and a copy of the letter will be provided to the Contractor.
2. The Commission Representative is responsible for keeping a complete log of communications related to the Project from the issue of the Notice to Proceed. **Therefore, the Contractor must route all communication, notices, and submittals to the Commission Representative in triplicate.** The Commission Representative will also route responses from the Commission and Architect to the Contractor.
3. The Commission Representative has the authority to reject all or any portion of Work that does not conform to the Contract Documents.
4. The Commission Representative will not be responsible for acts or omissions of the Contractor or any Subcontractor.
5. The Commission, at its discretion, may delegate responsibilities to the Commission Representative. Such responsibilities may include, but are not limited to, the following:
  - a. Reviewing and monitoring, on a periodic basis, the Contractor's baseline and updated schedules for compliance with the Contract milestone dates and the master CPM milestone dates.
  - b. Conducting weekly meetings with the Commission, User, Contractor, Architect, and others to review the Project schedule, submittals, scope change, requests for information, outstanding bulletins, pending issues, and field problems.
  - c. Reviewing Contractor's payment applications in accordance with the Commission's policies and procedures and submit to Commission for approval and payment.
  - d. Establishing an on-Site organization line of authority to implement all construction phases of the Project in a coordinated and efficient manner.

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- e. Establishing and implementing procedures for, and maintain coordination among, the Commission, the User, Architect, Contractor, and other agencies having jurisdiction of the Project with respect to all construction aspects of the Project.
- f. Coordinating the procurement and assembly of all required permits, licenses, and certificates with the Contractor and arrange delivery of same to the Commission.
- g. Conducting Site observations of the Contractor to ensure that Work is progressing on schedule and in accordance with the requirements of the Commission and the Contract Documents.
- h. Reviewing the adequacy of the supervision, personnel and equipment and the availability of necessary materials and supplies. Where inadequate, direct that the necessary action be taken to remediate the deficiency.
- i. Receiving and reviewing all shop drawings, materials and all other required submittals prior to transmittal of these documents to the Architect. Requests for approval of subcontractors, delivery schedules, material lists, shop drawings, samples, and the like will be commented upon and submitted to the Commission for concurring approval.
- j. Monitoring the flow of all documents and materials for proper sequence of approvals so as not to delay the progress of the work.
- k. Receiving and reviewing all change order requests from the Contractor.
- l. Conducting a comprehensive final inspection of the Project to verify that the materials furnished and work performed are in accordance with the Contract Documents.
- m. Expediting the assembly and delivery to the Commission of all papers required by the Contract Documents, including but not limited to "as-built" drawings, guarantees, warranties, and operations and maintenance manuals. Reviewing, approving, and submitting such documents to the Commission upon completion of the Project.

### **Section 2.05 The Architect**

- 1. The Architect for the project is the one whose name appears on the plans in the Contract Documents. The Contractor will have no direct contact with the Architect except as authorized by the Commission Representative.
- 2. The Architect will not be responsible for acts or omissions of the Contractor or any Subcontractor.

### **Section 2.06 The Contractor**

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

### **Section 2.07 The Subcontractors**

- 1. Except as otherwise provided in the Contract, all transactions of the Commission will be with the Contractor; Subcontractors shall be recognized only in the capacity of employees or workers.
- 2. Contractor further will implement such measures as may be necessary to ensure that its staff and its Subcontractors are bound by all provisions of the Contract.
- 3. All Subcontractors must be approved by the Executive Director. The Contractor may not make any substitution for a Subcontractor, that has been accepted by the Executive Director, unless the substitution is acceptable to the Executive Director.
- 4. The Contractor is responsible for all Subcontractors' Work.

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- a. There is no privity between Subcontractors and the Commission; and Subcontractors have no rights as third-party beneficiaries under this Contract.
  - b. The Contractor will require the Subcontractors to communicate with the Commission through the Contractor only.
5. Subcontracting: All requests to subcontract must be submitted on the form provided by the Commission.

## ARTICLE 3. CONTRACTOR'S OBLIGATIONS

### Section 3.01 Contractor

1. The Contractor must perform everything required to be performed and provide all of the labor, necessary tools, machinery, materials, schedules and other documents and all facilities for the construction of the Project as described herein and other work necessary to perform and complete in a workmanlike manner, and within the specified time, all of the Work in strict accordance with the Contract Documents. Except as may be expressly provided otherwise in the Contract Documents, Contractor is solely responsible for selecting the means, methods, techniques, sequences, and procedures used in performing the Work.
2. The Contractor must begin the Work on the date specified in the Notice to Proceed. In addition, upon receipt of Notice to Proceed, the Contractor must assign and maintain during the term of the Contract and any extension of it, an adequate staff of competent personnel who are fully equipped, licensed as appropriate, available as needed, and qualified to perform the Work. The Contractor must include among the staff such personnel and positions as may be required by the Contract Documents.
3. The Contractor is solely responsible for properly laying out the Work, and for all lines, elevations and measurements for all of the Work executed under the Contract Documents. The Contractor must verify the figures shown on the Drawings before laying out the Work and will be held responsible for any errors or inaccuracies resulting from the failure to do so. Neither the Architect nor the Commission Representative will be responsible for laying out the Work.
4. If the Commission has determined the Contractor must perform a percentage of the total amount of work with its own organization and forces, that percentage is stated in Book One of the Contract Documents.
5. The Contractor is responsible for the coordination of the various parts of the Work so that no part is left in an unfinished or incomplete condition owing to any disagreement between the various Subcontractors or any of the Subcontractors and the Contractor, as to where the work of one begins and ends with relation to the work of the other.
6. In the event that, in the reasonable opinion of the Commission Representative, the performance of personnel of the Contractor assigned to the Work is at an unacceptable level, or does not comply with **Section 9.01** "Competency of Workers" of the Contract, the Commission Representative may provide a written notice to the Contractor. Upon receipt of the notice, such personnel must cease to be assigned to this Work and must return to the Contractor. The Contractor must then furnish to the Commission Representative the name of a proposed substitute person or persons, in accordance with paragraph 2 of this section for approval by the Commission Representative. Absence of sufficient qualified personnel for the Work constitutes an event of default.
7. The Work is under the charge and care of the Contractor until Final Completion and Acceptance of the Work by the Commission, unless otherwise specified in the Contract Documents. The Contractor assumes all responsibility for injury or damage of the Work by action of elements, fire or any other causes whatsoever, including, injury or damage arising from the execution or non-execution of the Work. The Contractor must rebuild, repair, restore, and make good, at no additional cost to the Commission, all injuries or damages to any portion of its Work before Final Completion and Acceptance of the Work. When equipment or materials are furnished to the Contractor by the Commission for use or inclusion in the Work, the Contractor's responsibility for safeguarding all such equipment and materials must be the same as for equipment and materials furnished by Contractor.
8. The Work will not be considered completed and accepted until the Contractor receives written notice from the Commission confirming the Final Completion and Acceptance of the Work.
9. The Contractor must require each Subcontractor to become familiar with all provisions of the Contract Documents that may affect Subcontractor's work.

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### **Section 3.02 Contract Documents**

1. The Contractor must carefully study and compare all Drawings, specifications, and other instructions; promptly report to the Commission any error or omission discovered; and then proceed with the Work in accordance with instructions from the Commission Representative concerning such error or omission. The Contractor will not be allowed to take advantage for the discovery of any conflict, error or omission, or discrepancy in the Contract Documents after award of the Contract. Any work done after such discovery, unless authorized by the Commission, will be done at the Contractor's expense.
2. The Contract Documents are complementary and intended to include all items required for the proper execution and completion of the Work. Any item of Work mentioned in the specifications and not shown on the Drawings, or shown on the Drawings and not mentioned in the specifications, is to be provided by the Contractor as if shown or mentioned in both.
3. Generally, the specifications describe Work which cannot be readily indicated on the Drawings and indicate types, qualities, and methods of installation of the various materials and equipment required for the Work. It is not intended to mention every item of Work in the specifications which can be adequately shown on the Drawings nor to show on the Drawings all items of Work described or required by the specifications even if they are of such nature that they could have been shown thereon. All materials or labor for Work which is shown on the Drawings or is reasonably inferable there from as being necessary to produce a finished Project will be provided by the Contractor whether or not the Work is expressly covered in the specifications.
4. Materials which are shown on the Drawings and which may not be specifically described in the specifications or Drawings will be furnished by the Contractor, suitable for the intended use, compatible with adjacent materials, and subject to review for conformance with the intent of the Contract Documents. Installation techniques not specified herein will be in accordance with manufacturer's currently published instructions and industry standards.
5. Wherever typical parts or sections of the Work are completely detailed on the Drawings and other parts or sections which are essentially of the same construction are shown in outline only, the complete details will apply to the Work which is shown in outline.
6. Dimensions of Work will not be determined by scale or rule. Figured dimensions must be followed at all times. If figured dimensions are lacking and cannot be calculated from other dimensions on Drawings, the Architect will supply them in response to the Contractor's RFI.
7. The Contract Drawings and specifications are complementary within themselves and between them. Distribution of these documents by the Contractor will be in the form of complete sets. Distribution of partial sets of Contract Drawings and specifications will be solely at the Contractor's own risk and will not be cause for an adjustment to the Contract Sum or Contract Time as a result of incomplete pricing.
8. The Contractor must keep on hand at the Site, for reference, a complete set of documents pertaining to the Project, including, but not limited to, the complete Contract Documents, copies of all drawings and plans furnished by the Architect, all additional and revised drawings and plans furnished by the Commission Representative, all orders issued to the Contractor by the Commission that relate to the Work, and all submittals, including shop drawings, meeting minutes, reports, payment applications, and correspondence relating to the Work.

### **Section 3.03 Site Conditions and Inspection**

1. Surveys, soil borings, geotechnical information, data, plans or other materials generally describing the unimproved land or existing structures at the Site may be provided to the Contractor by the Commission.
2. The Contractor must take field measurements, verify field conditions and carefully compare such field measurements and conditions and any other information known to the Contractor about the Contract Documents before commencing the Work. No allowance will be made to the Contractor for any extra

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labor and/or materials required due to Site conditions or discrepancies that might have been discovered by a thorough and proper inspection of the Site. If that land surveying Work is required under this Contract, Contractor must have such Work performed by a surveyor as described in Section 9.06 "Surveyor."

3. If conditions are encountered at the site that are:
  - a. Subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents, or
  - b. Pre-existing unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, including the presence of unanticipated Hazardous Materials, then the Contractor will take no action to disturb the area until providing written notice to the Commission Representative immediately, and receiving notice from the Commission Representative as to how and when to proceed.
4. If conditions differ materially from those indicated in the Contract Documents and could not have been known to the Contractor at the time the Contract was bid, and such conditions will cause a material increase or decrease in the Contractor's cost of, or time required for, the performance of any part of the Work, an equitable adjustment in the Contract Amount or Contract Time or both, will be made based upon Article 17, "Changes in the Work."
5. The Contractor must follow the requirement of written notice in Section 3.03.3b above and the requirements set out in Article 18. Claims and Disputes, regarding a claim for changed site conditions. The Contractor must also provide written notice of any claim regarding the changed site condition to the Commission Representative within one (1) day after its discovery. The notice of changed site conditions must state the nature of the changed site condition, its location, and the work that is affected by it. The Contractor's failure to provide the written notice to the Commission Representative within one day after discovery of the changed site condition constitutes a waiver of the claim and the right to file a dispute to the Executive Director under Article 18.

### **Section 3.04 Relations of Contractor and Subcontractor**

1. The Contractor must require each Subcontractor to become familiar with all provisions of the Contract Documents that may affect Subcontractor's work.
2. Contractor must supervise and direct the Work completely and efficiently, devoting such attention and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract. Contractor is responsible for providing a finished Project that complies fully with the Contract.
3. All rights and obligations under this Contract are by and between the Commission and the Contractor. Except as may otherwise be provided in the Contract Documents, there is no privity between subcontractors and the Commission. Subcontractors have no rights as third party beneficiaries under this Contract, except as may be provided in the MBE/WBE provisions. The Contractor agrees to implement such measures as may be necessary to ensure that its Subcontractors are bound by all applicable provisions of the Contract. The Contractor agrees to bind every Subcontractor and every Subcontractor agrees to be bound by the terms of the Contract Documents as far as applicable to its Work, including the following provisions of this Article, unless specifically noted to the contrary in a subcontract approved in writing as adequate by the Commission.
  - a. Nothing in this section creates any obligation on the part of the Commission to pay to or to see to the payment of any sums to any Subcontractor. The Contractor is responsible in all aspects and at all times for any and all Subcontractor's work.
4. The Subcontractor agrees:



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- a. To be bound to the Contractor by the terms of the Contract Documents and to assume toward the Contractor all the obligations and responsibilities that the Contractor, by such documents, assumes toward the Commission.
  - b. To submit to the Contractor applications for payment in such reasonable time as to enable the Contractor to apply for payment as herein-specified under Article 16. "Payments."
  - c. To make any claims for extras, for extensions of time to the Contractor in the manner provided in the General Conditions for like claims by the Contractor upon the Commission, except that the time limit for making claims for extra cost is 7 Days.
5. The Contractor agrees:
- a. To be bound to the Subcontractor by all the obligations that the Commission assumes to the Contractor under the Contract Documents and by all the provisions thereof affording remedies and redress to the Contractor from the Commission.
  - b. To pay the Subcontractor, upon the issuance of certificates under the Schedule of Values herein described in Article 16. "Payments," the amount allowed and paid to the Contractor on account of the Subcontractor's Work to the extent of the Subcontractor's interest therein.
  - c. That no claim for services rendered or materials furnished by the Contractor to the Subcontractor will be valid unless written notice thereof is given by the Contractor to the Subcontractor during the first 10 Days of the calendar month following that in which the claim originated.
  - d. To give the Subcontractor an opportunity to be present and to submit evidence in any decision involving its rights.

### **Section 3.05 Contractor's Warranties and Representations**

Contractor warrants and represents that:

1. It has carefully examined and analyzed the provisions and requirements of this Contract; it has inspected the Site to the extent made available by the Commission; from its own analysis it has satisfied itself as to the nature and scope of Work, all conditions, any obstructions, and requirements needed for the preparation of its bid and the performance of its Contract, the general and local conditions, and all other matters which in any way may affect this Contract or its performance; and the time available for such examination, analysis, inspection, and investigation was adequate.
2. This Contract is feasible of performance in accordance with all of its provisions and requirements and that the Contractor can and must perform, or cause to be performed, the Work in strict accordance with the provisions and requirements of this Contract.
3. Except for the contents of this Contract, no representation, statement or promise, oral or written, or of any kind whatsoever, by the Commission, its officials, agents, representatives or employees, has induced the Contractor to submit a bid or has been relied upon by the Contractor, including any reference to (i) the meaning, correctness, suitability or completeness of any provisions or requirements of this Contract; (ii) the nature, existence, or location of materials, structures, obstructions, utilities or conditions, surface or subsurface, which may be encountered at or on the Site; (iii) the nature, quantity, quality or size of any materials, equipment, labor and other facilities needed for the performance of this Contract; (iv) the general conditions which may in any way affect this Contract or its performance; (v) the compensation provisions of the Contract; or (vi) any other matter.
4. The Contractor was given ample opportunity and time to review the Contract Documents prior to submittal of its bid in order that it might request an addendum to the Contract Documents that may entail the inclusion of this Contract or any statement, representation, promise or provision which it desired or on which it wished to place reliance; the Contractor did so review the Contract Documents; and that every such statement, representation, promise, or provision has been included in this

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Contract or else, if omitted, the Contractor expressly relinquishes the benefit of any such omitted statement, representation, promise or provision and is willing to perform this Contract in its entirety without claiming reliance on any such omission or making any other claim on account of such omission.

5. The Commission materially relied upon the Contractor's bid in its selection of the Contractor to perform the Work.
6. Contractor's submittal of its bid establishes that the Contractor, in preparing and submitting its bid on which this Contract is based, has complied with and given full consideration to the following bidding requirements:
  - a. The Contractor did obtain for bidding purposes copies of the complete Contract Documents as identified in the advertisement for bids and all addenda issued by the Commission and has become familiar with the same and all Contract requirements and conditions described therein.
  - b. The Contractor has clarified to its satisfaction and complete understanding and acceptance any doubt as to the true meaning and intent of any part or parts of the specifications and plans or other portions of the Contract Documents.
  - c. The Contractor must have no claim for relief because of alleged mistakes or omissions in its bid and that the Contractor will be held strictly to its bid as presented.
7. The Contractor has the capability and financial resources to perform all of the provisions and requirements of this Contract.
8. The Contractor must perform all of its obligations under this Contract in accordance with all of the Contract's provisions and requirements.

### **Section 3.06 Acceptance of Work**

1. Substantial Completion of the Milestones, Phases and Project
  - a. The Contractor will notify the Commission Representative, in writing, of a date that the work on a milestone, phase, or the Project as a whole will be ready for inspection by the Executive Director to determine whether the Work is Substantially Complete. Notice will be given by the Contractor at least seven (7) days in advance of that date. If the Commission Representative concurs that the work will be ready for inspection and/or testing on the date stated, the Executive Director, Commission Representative, Architect and other parties, selected by the Executive Director, will make such inspection within a reasonable period of time. The scheduling of the inspection will not relieve the Contractor of its responsibilities under the Contract Documents. The Contractor is required to furnish access to all parts of the Project for the inspection.
  - b. For Project Substantial Completion, the Contractor must have obtained and delivered to the Commission, a "Certificate of Occupancy" issued by the authority having jurisdiction. Upon Substantial Completion of the Project, the Commission may take over the project for occupancy and use.
  - c. Upon inspection, the Commission will determine whether Substantial Completion has been achieved and will issue a written notice to the Contractor stating whether the Milestone, Phase or Project is Substantially Complete.
2. Final Completion and Acceptance of the Work
  - a. Punch List Completion
    - (1) The Contractor understands and agrees that time is of the essence in closing out the Work of this Contract. Upon Substantial Completion of the Work, the Punch List will be

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transmitted to the Contractor from the Commission. The Contractor agrees to begin performance of Punch List Work immediately after receipt of the Punch List.

- (2) Failure of the Contractor or its Subcontractors to begin the Punch List Work within 3 business Days after receipt of the Punch List will be construed as failure to prosecute the Work of the Contract.
  - (3) Punch List Work will be continuously prosecuted once begun and completed within 30 Days from the receipt of the Punch List from the Commission Representative or the period stated in Book One. Should the Contractor fail to complete the Punch List within this period of time, the liquidated damages as identified in Book One I.D "Time of Completion of Punch List Work" will again begin to accrue, and will continue until the Commission Representative's written acceptance of Punch List Work.
- b. When the Contractor deems the Work to be complete, the Contractor must notify the Commission Representative in writing that the Work will be ready for an inspection and/or test on a date specified by the Contractor. Such notice is given at least 5 Days in advance of said date. If the Commission concurs that the Work will be ready for inspection or testing on the date given, the Commission will make such inspection within a reasonable period of time. The scheduling of the inspection to determine whether the Work is complete does not relieve the Contractor of its responsibilities under the Contract Documents. The Contractor must cooperate in all respects in the scheduling and performance of the inspection. Upon inspection, the Commission will determine if Final Completion and Acceptance of the Work has been achieved and will issue a written notice to the Contractor confirming the Final Completion and Acceptance of the Work.
  - c. No action of the Commission, the Commission Representative, the Architect, or their respective Executive Directors, board members, officers, employees, or agents is to be construed as accepting Work done or material furnished in the performance of this Contract, which Work or materials are not in accordance with those specified and required by the Contract. The issuance of the final payment is in no way affect the right of the Commission against the Contractor (and the surety or sureties on the Performance and Payment Bond given by the Contractor) to enforce the complete performance of this Contract or to sue for the recovery of damages for failure to do so, nor will it affect the terms of Contractor's guarantee in connection therewith.
3. Payment of Remaining Retainage at Final Completion and Acceptance of the Work

The remaining Retainage will be paid when all Work, including Punch List Work, is complete and the Contractor submits to the Commission Representative a sworn affidavit stating the following:

- a. All payrolls, invoices for materials and equipment, and all other indebtedness connected with the Work for which the Commission might in any way be responsible, have been paid or otherwise satisfied.
- b. All waivers of lien required by the Contract have been provided to the Commission.
- c. As of the date the affidavit is signed, all known claims made by Subcontractors of any tier, and others against the Contractor, the Commission, any agents or representatives of the Commission, pertaining to the Work required under this Contract, were provided, in writing, to the Commission.
- d. All claims made by Subcontractors of any tier, and others against the Contractor or the Commission pertaining to the Work required under this Contract have been resolved.
- e. The warranties and guarantees required by the Contract have been provided to the Commission.
- f. The warranties and guarantees are in full force and effect.
- g. The surety's written consent, signed by its authorized representative, to final payment being made directly to the Contractor is attached to the affidavit.

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- h. The Contractor agrees that acceptance of final payment will constitute a general release to the Commission, its agents, representatives, officials and employees of all other claims of liability for anything done or furnished or relating to the Work or for any act or neglect of the Commission or its agents, representatives, officials and employees relating to or connected with this Contract.
- i. Record Documents have been provided to the Commission.
- j. All other documents requested by the Commission have been provided.
- k. A final certificate verifying wages and classifications for laborers and mechanics, including apprentices and trainees employed on the Project, in the following form:

The undersigned, Contractor on \_\_\_\_\_ (Contract No. \_\_\_\_\_) certifies that all laborers, mechanics, apprentices and trainees employed by it or by a Subcontractor performing Work under the Contract have been paid wages at rates not less than those required by the Contract provisions, and that the Work performed by each such laborer, mechanic, apprentice or trainee conformed to the classifications set forth in the Contract or training program provisions applicable to the wage rate paid.

Signature and Title of Authorized Officer

\_\_\_\_\_  
Name Title

Contractor: \_\_\_\_\_

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

The payment of the remaining retainage to Contractor will occur upon Final Completion and Acceptance of the Work.

## **ARTICLE 4. SUBCONTRACTING & ASSIGNMENT**

### **Section 4.01 No Assignment of Contract**

The Contract must not be assigned or any part of the same subcontracted without the written consent of the Executive Director. If the Executive Director provides consent, such consent does not relieve the Contractor from any of its obligations or change the terms of the Contract, and Contractor shall remain responsible for satisfactory performance of all work undertaken by the Subcontractor.

### **Section 4.02 No Assignment of Contract Funds**

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

### **Section 4.03 Subcontracts**

1. All Subcontractors are subject to the approval of the Executive Director before they may provide material, labor or services on the Project. The Contractor, upon entering into any agreement with a Subcontractor that has been approved by the Executive Director must furnish the Executive Director with one (1) copy of a written contract evidencing such agreement signed by the Contractor and Subcontractor. Copies of all written Subcontractor agreements must be provided to the Executive Director within fifteen (15) days of the Notice to Proceed. All subcontracts must be in writing, must require each Subcontractor to be bound to by the terms of this Contract, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by this Contract, assumes toward the Commission. All subcontracts must require that any services to be performed will be performed in strict accordance with this Contract and must provide that the Subcontractor is bound by and subject to the requirements of this Contract, whether or not a particular provision specifically mentions Subcontractors, and will provide that the Commission's rights are not thereby prejudiced.
2. The Contractor hereby collaterally assigns any or all subcontracts to the Commission, effective upon the Commission's exercise, in its sole discretion, of its rights to assume such assignment as a remedy for Contractor's default or in the event of early termination. The Contractor must require each of its Subcontractors (including material suppliers) to consent to a collateral assignment to the Commission of its respective subcontract with the Contractor. The Contractor's subcontracts must include language stating, "Contractor has collaterally assigned this subcontract to the Commission, effective upon written assumption of such assignment by the Commission in the event of Contractor's default or early termination of Contractor's contract with the Commission. Subcontractor hereby consents to such assignment and assumption. Subcontractor acknowledges and agrees that, in the event of such an assignment and assumption, the Commission will have no liability to Subcontractor for work performed by Subcontractor prior to the effective date of the assignment and assumption and that Subcontractor shall look solely to Contractor for any compensation or other obligations arising under the subcontract prior to such date."
3. Subcontracts may contain different provisions than are provided herein with respect to payments, schedules, and matters not affecting the quality or timely completion of the Work. The subcontract must preserve the rights of the Commission under this Contract with respect to the Work performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights. Where appropriate, the Contractor must require each Subcontractor to enter into similar subcontracts with its Subcontractors. The Contractor will make available to each Subcontractor, prior to the execution of such subcontract, copies of this Contract to which the Subcontractor will be bound by this paragraph.

**Section 4.04 Commission's Right to Assign**

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

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

#### Section 5.01 Indemnification

1. The Contractor covenants to and must indemnify, and hold harmless the following Indemnities: the Commission, the User, the Architect and its consultants, the Commission Representative and any additional persons named in Book 1, their respective Executive Directors, board members, officers, and employees and representatives, individually and collectively, ("Indemnities") from all claims, demands, actions and the like, of every nature and description, made or instituted, by third parties, arising or alleged to arise out of the Work under this Contract. This indemnity includes any and all expenses incurred in connection with the investigation of any claim or the defense of any lawsuit brought by any third party, including all court costs and actual attorneys' fees incurred by the Indemnities herein. If any injury (including death), loss or damage (or claim or claims therefore) occurs or is alleged to have occurred, the Contractor must give immediate notice thereof to the Commission Representative.
2. The obligations of the Contractor under this Article do not extend to the liability of the Architect, its agents or employees arising out of:
  - a. the preparation or approval of maps, Drawings, opinions, reports, surveys, Change Orders, designs or specifications; or
  - b. the giving or failure to give directions or instructions by the Architect, its agents, or employees provided such giving or failure to give directions or instructions is the primary cause of the injury or damage.

#### Section 5.02 Performance and Payment Bond

1. Before award of the Contract, the Contractor will deliver to the Commission a Performance and Payment Bond in the amount set forth in Book 1. The surety or sureties issuing the bond must be acceptable to the Commission and the bond must be in the form provided by the Commission. The bond must cover the warranty period required by the Contract.
2. In case of neglect, failure, or refusal of Contractor to provide satisfactory sureties when so directed within 7 Days after such notification, the Commission may declare this Contract forfeited, but such forfeiture will not release Contractor or its surety or sureties from any liability which may have accrued prior to the date of such forfeiture.
3. If at any time the surety or sureties, or any one of them, upon such bond become insolvent, or are, in the sole opinion of the Commission, unsatisfactory, or unable to respond to damages in case of liability on such bond, the Commission will notify the Contractor and direct that a bond issued by a satisfactory surety or sureties be provided forthwith.
4. **Surety for Performance Bond.** The Performance Bond required by the Contract must be secured by a Guarantee or surety company listed in the latest issue of U.S. Treasury Circular 570.

#### Section 5.03 Insurance

1. The Contractor must procure and maintain at all times, at Contractor's own expense, through the completion of the warranty period, the types of insurance specified in Book 1 of the Contract Documents, with insurance companies authorized to do business in the State of Illinois and acceptable to the Commission, covering all operations under this Contract, whether performed by the Contractor or by Subcontractors. Upon written request by the Commission, the Contractor must allow the Commission to review and copy any original insurance policies the Contractor is obligated to maintain under this policy.
2. The Contractor waives any and every claim or right of recovery from the Commission for any and all injuries and losses arising under this Contract or in any way related to the Work, including but not

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limited to any claim for loss of or damage to the Work or to the contents thereof, which injury, loss, or damage is covered by valid and collectible insurance policies, to the extent that such injury, loss, or damage is recoverable under said insurance policies. As this waiver will preclude the assignment of any claim by subrogation (or otherwise) to an insurance company (or any other person), the Contractor agrees to give each insurance company which has issued, or in the future may issue, its policies of insurance, written notice of the terms of this waiver, and to have said insurance policies properly endorsed, if necessary, to prevent the invalidation of insurance coverage by reason of said waiver. The Contractor must require each Subcontractor to include similar waivers of subrogation in favor of the Commission.

3. The Contractor must cause contractual liability endorsement to be issued by the insurance companies and attached to the Commercial General Liability policies of each Contractor and/or Subcontractor to include under the coverage therein extended an obligation on the part of the insurers to insure against the Contractor and/or each Subcontractor's contractual liability under this Article. Such coverage will be afforded therein against all claims arising out of the operation of any structural work law or law imposing liability arising out of the use of scaffolds, hoists, cranes, stays, ladders, supports, or other mechanical contrivances.
4. The Commission reserves the right to change, modify or delete insurance requirements set forth in the Contract Documents, including, without limitation, the right to request that the Contractor provide additional types of insurance.



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### ARTICLE 6. PERMITS AND LICENSES

#### Section 6.01 Permits, Licenses, and Regulations

##### 1. Permits

- a. The Contractor is responsible for obtaining all permits, including but not limited to sewer, water, crane, fence, driveway, and building permits, as prescribed by the City of Chicago and public utilities, and any other permits that may be necessary. **The Commission will be responsible for the City of Chicago building permit cost; all other permit fees will be borne by the Contractor.**
- b. The Commission Representative will assist the Contractor in the permit process however, the Contractor is solely responsible for obtaining all required permits in a timely fashion.
- c. The Contractor will utilize the intergovernmental process within the Department of Buildings to procure the building permit.
- d. The nature of the foundation systems required on portions of this Project may be such that submittals, permits, and coordination will be required with the City of Chicago Bureau of Underground. If such systems are required by the Contract, the Contractor, representing its familiarity with these systems and permit processes, is responsible for any and all submittals, fees, coordination, and any other items required to secure approvals required by the authorities having jurisdiction for the installation of these systems.

##### 2. Licenses and Regulations

- a. The Contractor will include in the bid for the Project, obtain, and pay for all licenses and certificates of inspection required or necessary for the execution and completion of the Work.
- b. The Contractor must give all notices and comply with all laws, ordinances, codes, rules and regulations bearing on the conduct of the Work. If the Contractor observes that the Drawings and specifications are at variance therewith, prompt notification in writing must be given to the Commission Representative, and any necessary changes must be made in accordance with Article 17 "Changes in the Work." The Contractor will bear all costs arising from any work performed that is contrary to such laws, ordinances, codes, rules, and regulations.
- c. The Contractor must also comply with the current regulations of the National Board of Fire Underwriters where applicable, and all other codes named in the specifications for the various divisions of the Work.

## **ARTICLE 7. CONTRACTOR'S PRACTICES AT SITE**

### **Section 7.01 Hours of Work**

1. The Contractor will furnish sufficient forces and work such shifts as may be required to ensure completion of the Work under the conditions and within the time stated in the Contract. If the nature of the Work requires that parts of it be performed outside of regular working hours, the cost of such Work including overtime wages for the User's Building Engineer, if applicable, is to be included in the Base Contract Price. Book 3 Division 1 addresses project specific requirements. If the Project falls behind schedule, the Contractor will be required to perform the Work by extra shifts or on overtime basis as may be necessary to complete the Work on time at no cost to the Commission.
2. The Contractor will not be entitled to additional compensation for extra shifts or overtime work for any reason or claim of whatever nature except as otherwise expressly stated in writing by the Commission; and then only to the extent of the direct cost of the premium portion of the time involved and without any charge for mark up, insurance, or taxes, except as might otherwise be required by law.
3. The Site may be occupied during construction. Contractor will cooperate fully with the Commission, Commission Representative, Architect, and the User during construction operations to minimize conflicts and interference and to facilitate occupant usage and operations.
  - a. During occupied hours, the Contractor will limit construction operations to methods and procedures which will not adversely and unduly affect the environment of occupied spaces. The Contractor must provide proper protection and procedures to ensure that noise, dust, odors, air pollution, ambient discomfort, or poor lighting do not endanger or disrupt the activities of the User. The Contractor must follow Federal, State and City safety procedures, and provide for the protection of the building occupants and furniture, fixtures and equipment as required for execution of the work.
4. Whenever the Contractor desires to perform Work outside the hours of 7:00 am through 3:30 P.M., Monday through Friday, the Contractor will request written authorization from the Commission not less than 48 hours in advance.

### **Section 7.02 Cleaning Up**

1. During the Construction, the Contractor will keep the Site and adjacent premises as free from material, debris, and rubbish as is practicable and will remove the same entirely and at once, if in the opinion of the Commission, said material, debris, or rubbish constitutes a nuisance, a safety hazard, or is objectionable in any way to the public. Upon oral and/or written notification of unacceptable Site conditions by the Commission, the Contractor is responsible for immediate remediation within 48 hours of notification. The Contractor's failure to act accordingly will result in completion of remediation work by the Commission at the Contractor's expense.
2. As a condition of Final Completion and Acceptance of the Work, the Contractor must remove from the Site and adjacent premises all machinery, equipment, surplus materials, falsework, excavated and useless materials, rubbish, temporary buildings, barricades, and signs, and must restore the area surrounding the Site to the same general conditions that existed prior to the commencement of the Work.
3. The Contractor will clean off all cement streaks or drippings, paint smears or drippings, rust stains, oil, grease, dirt, and any other foreign materials deposited or accumulated on any portion of the Work or existing work due to Contractor's operations.
4. Contractor is solely responsible for and assumes all liability associated with off-Site disposal of any Hazardous Materials generated as a result of Contractor's construction activities.

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### Section 7.03 Protection of Work and Property; Safety

1. The Contractor will continuously protect the Work and the Commission's property from damage, injury or loss arising in connection with operations under the Contract Documents. The Contractor will make good any such damage, injury or loss. Contractor is responsible for Site security, watchmen, construction fencing, etc. Dogs are not allowed on the Site at any time.
2. Unless otherwise noted, all existing fixtures, furniture, equipment, supplies, or similar items must be carefully removed by the Contractor and legally stored in a nearby area, protected from damage of any kind, prior to construction start in said area. The Contractor will return such items to the originally designated place at the finish of construction. For electronic or utility hook-ups, the Commission will be notified in advance, and allowed sufficient time to disconnect items prior to removal. Hook-ups are to be reconnected by the Commission after replacement of furniture and equipment by the Contractor.
3. Adequate precautions will be taken against fire throughout all the Contractor's and Subcontractors' operations. Flammable material must be kept at an absolute minimum, and, if any, will be properly handled and stored in accordance with all applicable codes and standards. Except as otherwise provided herein, the Contractor must not permit fires to be built or open salamanders to be used in any part of the Work. Except in designated areas, smoking is not permitted on the Site at any time.
4. In occupied or partially occupied buildings, the Contractor must provide all safeguards and protection necessary to protect the User from dust as may be created during any portion of the execution of the Work. The Contractor will provide dust-proof barriers to isolate areas of Work from all occupants of the facility. The Contractor will immediately cease operations if dust, debris, or objectionable odors from the performance of the Work spreads beyond the isolated dust barrier to occupied portions of the Site. Following cleaning of the occupied portions of the Site, re-establishment of the dust barriers, and the dissipation of all objectionable odors, the Contractor may resume operations. Such interruption in operations will not be the cause for a claim for a time extension to the progress of the Work.
5. The Contractor must protect all streets, sidewalks, light poles, hydrants, and concealed or exposed utilities of every description affected by or adjacent to the Work. If such items are damaged by the Contractor or Subcontractors, the Contractor will make all necessary repairs thereto or replacements thereof at no cost to the Commission. Should the Contractor observe an area which may later be interpreted by the Commission or Architect as damaged, it is the Contractor's responsibility to provide photographic evidence of this condition and submit such to the Commission Representative prior to commencement of the Work.
6. If, in the prosecution of the Work, it is necessary to excavate or occupy any street, alley, or public grounds of the City of Chicago, the Contractor agrees to erect and maintain such barriers, and during the night, such lights as will effectively prevent the happening of any accidents or damage to life, limb, or property in consequence of such excavation or occupation of such street, alley, or public grounds. The Contractor is liable for all damage occasioned by the Contractor, its agents, employees, or Subcontractors of any tier in the excavation or occupation of any street, alley, or public grounds, and indemnifies the Commission pursuant to **Section 5.01 "Indemnification."**
7. Whenever the construction period spans the winter season and other times in which cold or inclement weather may be anticipated. All provisions required and necessary to work during inclement or winter conditions so as to complete all work in accordance with the provisions of Section **10.01 "Time Is Of the Essence,"** including, but not limited to, temporary protection and weatherproofing, temporary heat, temporary lighting, and any other measures necessary or prudent, in addition to those delineated in Division 1 – Section 01500 – Temporary Facilities and Services, will be provided by the Contractor as part of the Base Contract Price.
8. The Contractor must remove all snow and ice, and salt sidewalks, as may be required for the proper protection of pedestrians and/or prosecution of the Work pursuant to Section 10-8-180 of the City of Chicago Municipal Code. The Contractor will at all times provide and maintain adequate protection against weather (including, but not limited to rain, winds, storms, snow, sleet, frost, or heat) so as to preserve all Work, materials, equipment, apparatus, and fixtures free from injury or damage.

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9. The Contractor must provide and maintain adequate protection for all properties adjacent to the Site. When required by law or for the safety of the Work, the Contractor will shore up, brace, underpin and protect as necessary, adjacent pavements, foundations, and other portions of existing structures which are in any way affected by the operations under the Contract Documents. The cost of all such operations are included in the Contract Price whether indicated on the Contract Documents or not. The Contractor, before commencement of any part of the Work, must give any notices required to be given to any adjoining landowner or other parties.
10. If, in the opinion of the Commission, the Contractor's Work endangers adjoining property, upon written notice, the Work will be stopped and the method of operation changed in a manner acceptable to the Commission.
11. Hazardous Materials
  - a. If the Contractor encounters on the Site material reasonably believed to be hazardous which has not been identified in the Contract Documents or rendered harmless, the Contractor will immediately stop Work in the area affected and report the condition to the Commission Representative in writing. The Work in the affected area will be resumed in the absence of Hazardous Materials, or when it has been rendered harmless, by written notification from the Commission to the Contractor.
  - b. The Contractor will not be required to perform without consent any Work relating to Hazardous Materials.
  - c. If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from material or substance encountered on the Site by the Contractor, the Contractor will, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Commission and Architect in writing.
  - d. The Contractor will be responsible for obtaining the services of an Independent Licensed Environmental Consultant approved by the Commission to verify the presence or absence of the materials or substance reported by the Contractor and, if such material or substance is found to be present, to verify that it has been rendered harmless.
12. The Contractor will take all necessary precautions to ensure the safety of the public and workers on the Site, and to prevent accidents or injury to any persons on, about, or adjacent to the Site where the Work is being performed.
13. The Contractor will designate a responsible on-Site member of its organization as a safety coordinator whose duties will include prevention of all accidents.
14. The Contractor must comply with all laws, ordinances, codes, rules, and regulations relative to safety and the prevention of accidents, the Manual of Accident Prevention in Construction of the Associated General Contractors of America and the applicable provisions of the American Standard Safety Code for Building Construction, unless prevention of accidents is regulated by a more stringent local code or ordinance. The Contractor will erect and properly maintain at all times, as required by laws and regulations and the conditions and progress of the Work, proper safeguards for the protection of workers and the public and post signs warning against the dangers created by openings, stairways, falling materials, open excavations, and all other hazardous conditions.
15. In accordance with the provisions of Article 8. "Coordination With Others," the Contractor will cooperate with any other contractor that may be performing work on the Site in connection with the compliance with regulations of OSHA and all other federal, state, and municipal laws, rules and regulations relating to Site safety and practice including, as may be relevant, appealing decisions, correcting Work within abatement periods, appealing or requesting extensions on abatement periods when work has been done by other contractors, and furnishing such supporting information or material as may be necessary to fully protect the rights of the Commission, its representatives, and other contractors on pending or prospective violation orders.

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16. In an emergency affecting the safety of life, the Work or adjoining property, the Contractor, without special instructions from the Architect or authorization from the Commission, is permitted to act at its discretion to prevent such threatened loss or injury.

### **Section 7.04 Accidents**

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

## ARTICLE 8. COORDINATION WITH OTHERS

### Section 8.01 Separate Contracts

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

### Section 8.02 Mutual Responsibility of Contractors

1. The Contractor must assume all responsibility for Work not completed or accepted due to the presence and operations of other contractors.
2. The Contractor must assume all liability, financial or otherwise, in connection with this Contract, and must protect and save harmless the Commission from any and all damages or claims that may arise because of inconvenience, delay, or loss experienced due to the presence and operations of other contractors working within the limits of the Work.
3. The Contractor, where separate contractors or their subcontractors are employed on the Site, will not make claims against the Commission for loss or damage or injury caused by any fault or negligence of such other contractor or subcontractor and the Contractor will look to such contractors or subcontractors for recovery from them for any such damage or injury.
4. If any separate contractor or its subcontractor suffers loss or damage through any acts or omission on the part of the Contractor, or any of its subcontractors, the Contractor will reimburse such other contractor or its subcontractor by agreement or arbitration if they will so settle. If such separate contractor or its subcontractor asserts any claim against the Commission on account of any damage or loss alleged to have been so sustained, the Commission will notify the Contractor, and the Contractor will save the Commission harmless against such claims as provided in **Section 5.01 "Indemnification."**
5. When any damage is caused by other contractors to the Work performed by the Contractor, the Contractor must file claims with the other contractors, not against the Commission, and must obtain compensation for damage directly from such other contractors.

## ARTICLE 9. PERSONNEL

### Section 9.01 Competency of Workers

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

### Section 9.02 Administration and Supervision of the Work

1. The Contractor will furnish a competent and adequate staff as necessary for the proper administration, coordination, and supervision of the Work; organize the procurement of all materials and equipment so that they will be available at the time they are needed for the Work; and keep an adequate force of skilled workers on the Site to complete the Work in accordance with all requirements of the Contract Documents and to the entire satisfaction of the Commission.
2. Prior to commencement of the Work, the Contractor will select a Project Manager and submit his/her résumé to the Commission Representative for the approval of the Commission at the time the Performance and Payment Bond and certificate(s) of insurance are submitted, as described in Book 1, Section V. AA. **“Performance and Payment Bond and Insurance”** or sooner if so requested by the Commission. The Project Manager will have full responsibility for the prosecution of the Work with full authority to act in all matters as necessary for the proper coordination, direction, commitment of resources, and technical administration of the Work. The Project Manager will attend meetings at such places and times as will be decided by the Commission or Architect in order to render reports on the progress of the Work. The Project Manager will be committed to this Project on a full-time basis and will be stationed at the Site, unless otherwise agreed to by the Commission in writing. The Contractor will not change Project Manager without the consent of the Commission, unless such staff member proves to be unsatisfactory to the Contractor and ceases to be in its employ.

### Section 9.03 Superintendence

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

### Section 9.04 Scheduler

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

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

### **Section 9.05 Mechanical And Electrical Coordinator**

The Contractor will provide a full-time staff member or members, as necessary, who have the sole responsibility to perform mechanical and electrical coordination, as described in Division 1 – Section 01010 – 3.5 – Mechanical and Electrical Coordinator.

### **Section 9.06 Surveyor**

Whenever required, the Contractor will engage and pay for the services of a surveyor, subject to the approval of the Commission, who is licensed in the State of Illinois, who is not a regular employee of the Contractor, and who has no interest in the Contract.

### **Section 9.07 Wage Rates**

1. Not less than the prevailing rate of wages as determined by the Illinois Department of Labor must be paid to all laborers, mechanics, and other workers performing Work under this Contract.
2. Contractor's attention is called to the generally prevailing hourly rate of wages, as determined by the Illinois Department of Labor, which are bound in Book 1 of these Contract Documents and which are incorporated into the Contract Documents.
3. The wage rates set forth in these Contract Documents were the rates in effect at the time these Contract Documents were issued. In the performance of the Work, however, the Contractor is fully responsible for paying the generally prevailing hourly rate of wages in effect, as determined by the Department of Labor, at the time the Work is performed. One resource for determining the current prevailing wage rate is the Internet site <http://www.state.il.us/agency/idol/rates/rates.HTM> maintained by the State of Illinois Department of Labor. If the Department of Labor revises the prevailing rate of hourly wages to be paid for the Work prior to completion of the Project, the revised rate will apply to the Contract from the effective date of such revision, provided, however that such revision will not entitle the Contractor to any increased compensation under the terms hereof.
4. As a condition of making payment to the Contract, the Commission may request the Contractor to submit an affidavit to the effect that not less than the prevailing hourly wage rate is being paid to laborers, mechanics, and other workers employed on this Contract in accordance with Illinois law.



## ARTICLE 10. SCHEDULE

### Section 10.01 Time Is Of The Essence

Time is of the essence of this Contract. The Contractor agrees that it will commence the performance of the Work on the date set forth in the Notice to Proceed issued by the Commission and that it will complete the Work within the time set forth in Book 1.

### Section 10.02 Contractor's Construction Schedule

#### 1. General

- a. It is understood and agreed by the Contractor that "TIME IS OF THE ESSENCE" of the contract. The Contractor agrees to begin actual Work covered by this Contract in conformity with the provisions set forth herein and to prosecute the same with all due diligence, so as to complete the entire Work under this Contract within the Days stipulated, after the date for commencement of Work as specified in the written Notice to Proceed to the Contractor from the Commission. The Contractor will, when necessary, use overtime, multiple shifts, weekend, and/or holiday work to maintain the approved schedule without additional compensation.
- b. The progress schedule for the Project will use the Critical Path Method (CPM). The Contractor will utilize Primavera Project Planner as a scheduling software package.
- c. The Contractor's CPM schedule will, at a minimum, indicate the dates for the starting and completion of the various stages of the Work, including, without limitation the placing of material orders, delivery of materials and equipment, preparation, submittal, and approval of all required Submittals; preparation and procurement of material and equipment furnished by the Contractor; interface activities performed by others upon which the Contractor's schedule depends; all Work activities and field construction operations including any weather related scheduling, equipment installation, testing, and balancing. The Contractor will provide estimates of craft hours and or crew sizes for each activity.
- d. The Commission approval of the Contractor's CPM schedule is done for the sole purpose of insuring that all CPM scheduling documents prepared by the Contractor conform to the Contract requirements. This approval does not relieve the Contractor of its sole responsibility for the means, methods, procedures, and sequence of the construction process nor does it provide any entitlement to additional funds for Project completion in a period that is less than the Contract duration stated in Book 1 and any time extensions granted by the Commission Representative.

#### 2. CPM Schedule

- a. The Contractor will prepare a detailed Work progress schedule consisting of all Critical Path Method (CPM) diagrams as specified below. The format of the network diagram will utilize the Precedence Diagramming Method (PDM) showing the proposed starting and completion date for the various stages of the Project including any float time and must be prepared such that it can be used to plot actual progress against proposed progress. Unless otherwise expressly approved by the Commission, the Contractor's schedule will be prepared using the Primavera Project Planner as a schedule software package. The Contractor's schedule will be updated and submitted no less than monthly, or more frequently as directed by the Commission or monthly payment will be withheld.
- b. Specifications applicable to Contractor's CPM schedule and network diagram
  - (1) Each separate sheet will include the Project name, Contract number, Contractor's name, Project file, data date, and plot date. If multiple diagrams are prepared, each must, in addition to the above, include a descriptive title of that portion of the Work included therein.
  - (2) The Contractor's schedule will show the order and interdependency of activities, indicating the sequence in which the Work is to be performed as planned by the Contractor. The

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schedule will describe and indicate the critical path. Activities with total float less than 10 Days are defined as near critical.

- (3) The Contractor's schedule will be submitted to the Commission Representative; 6 color copies of the schedule are required, one of which will be reproducible. A copy of the Contractor's schedule will be submitted on a computer diskette acceptable to the Commission in Primavera Format.
- (4) The Contractor's revised and/or updated schedules, including the computer diskette, will be submitted when the Contractor's planned sequence is changed, when Contract changes are made which affect the schedule, or when the Contractor prepares its monthly schedule update.
- (5) Activities shown on the CPM network diagrams will include, as a minimum, field construction operations, submittal and approval of all Submittals, procurement of material and equipment furnished by the Contractor or Commission, interface activities performed by others upon which the Contractor's schedule may depend, and equipment installation and testing.

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

- (1) Each activity will be a unit of Work, which requires an amount of time for its performance.
- (2) Each activity will be a logically separate part of the Work, defined by an observable start and an observable finish.
- (3) To establish the scope of an activity for CPM purposes, the Contractor will form a single activity from the largest grouping of related operations, which permit a continuous and measurable flow of Work.
- (4) The scope of an activity will be small enough to permit a reasonable appraisal of its status or as directed by the Commission.
- (5) Each activity on the Contractor's schedule will be cost and craft hour loaded.
- (6) Activities of other contractors or companies that must be completed prior to the start of the Contractor's Work or portion of Work must be included in the Contractor's schedule as milestones and identified with a designation approved by the Commission.

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

- (1) Activity Number: The Contractor will utilize the Project Specification division and section numbers in assigning activity numbers to the related portions of Work.
- (2) Description of the activity.
- (3) Duration of the activity in Days, unless otherwise noted.
- (4) Cost Loading: The cost estimate/budget to perform the activity.
- (5) Craft Hour Loading: The estimated craft hours to perform the activity.
- (6) Each activity that is not performed by the Contractor will be assigned a responsibility code indicating which subcontractor, supplier, fabricator, etc., is to perform the activity.
- (7) Each activity will be identified with early/late start, early/late finish, and total float.
- (8) Calendar I.D.

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

### 3. Completion Requirements

- a. The Contractor will submit a baseline CPM schedule 15 Days after Notice to Proceed.
- b. Upon receipt of the CPM Schedule, the Commission will review the schedule for conformance with the Contract Documents and degree of detail. The Commission within 14 Days after receipt of the detailed CPM schedule and supporting documents will either (1) approve the schedule, (2) approve the schedule as noted or (3) disapprove the schedule with the reasons set forth. If the CPM either is given a qualified approval or is disapproved, the Contractor must submit a revised CPM schedule within 7 Days.
- c. The baseline CPM Schedule will be a firm schedule for the entire Contract duration.
- d. Failure by the Contractor to provide baseline CPM schedule within the required time period is grounds for the Commission to withhold monthly progress payments.

### 4. Submittal, Acceptance, and Contractor's Responsibility for the Schedule

- a. Prior to submitting the baseline CPM schedule to the Commission Representative, the Contractor will review and verify the procurement lead time for the fabrication and delivery of all construction materials and Project equipment along with the erection and/or installation duration for all the construction activities that make up the critical path of the Project.
- b. The Contractor will coordinate its letting of subcontracts, material purchases, shop drawing submissions, delivery of material and sequence of operations to conform to the baseline CPM schedule and will furnish proof of same as may be required by written notification from the Commission.
- c. Upon receipt of the baseline CPM Schedule the Commission will review the schedule for conformance with the Contract Documents and degree of detail the Commission within 14 Days after receipt of the detailed baseline CPM schedule and supporting documents will approve the schedule or reject it with written comments. If the detailed baseline CPM schedule is rejected, the Contractor must submit a revised baseline CPM schedule within 7 Days after the date of rejection.
- d. If the Contractor fails to provide or update the required CPM scheduling documents as outlined in this section within the time prescribed, the Contractor will be in default of the Contract requirements, and the Executive Director may, in addition to any other remedies available to the Commission, withhold monthly progress payments until the Contractor submits the required information.

### 5. Updating

- a. The Contractor will not make any changes to the original duration, activity relationships, constraints, costs, add or delete activities, or alter the schedule's logic when updating the schedule.
- b. The originally approved baseline CPM schedule will be designated as the "Target Schedule" and will only be changed based on a Change Order that extends the Contract duration. All updates will be plotted against the "Target Schedule."
- c. The Contractor will update the CPM schedule on a monthly basis coincident with the submission of the monthly pay estimate. The updated information will include the original schedule detail and the following additional information:
  - (1) Actual start dates
  - (2) Actual finish dates
  - (3) Activity percent completion

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- (4) Remaining duration of activities in progress
  - (5) Identified or highlighted critical activities
  - d. The Contractor will submit scheduling documents in the same formats and number as indicated in this section.
  - e. The Commission will withhold progress payments if the Contractor does not submit updates as required.
  - f. Upon receipt of the CPM schedule update, the Commission will review the schedule for conformance with the Contract Documents and degree of detail. The Commission, within fourteen 14 Days after receipt of the Updated CPM Schedule and supporting documents, will approve or reject it with written comments. If the Updated CPM Schedule is rejected, the Contractor must submit a Revised Updated CPM Schedule within 7 Days after the date of rejection.
  - g. As part of the normal CPM schedule update, the Contractor will prepare a written narrative report, highlighting the progress during the past update period. The written narrative report will include but not be limited to the following information:
    - (1) Summary of Work accomplished during the past update period
    - (2) Contract Milestone comparison Chart
    - (3) Analysis of Critical Path(s)
    - (4) Analysis of time lost/gained during the update period
    - (5) Identification of problem areas
    - (6) Recommended solutions to current problems
  - h. The Contractor is required to attend a monthly CPM schedule update review meeting with the Commission. The purpose of this meeting is to review past progress, current status, problem areas and future progress. The Contractor's narrative report will be reviewed at this meeting. The Contractor's representatives attending this meeting will have the authority to commit manpower and/or other resources to correct any negative impact to the schedule.
  - i. Any possible means of shortening the schedule at no additional cost must be brought to the attention of the Commission.
  - j. The updated progress schedule will be used as a guide for verifying estimates of Work completed for which payment is requested and must accurately represent the Project's current status.
6. Contractor Changes to the Schedule

The Contractor will comply with the following requirements regarding proposed changes to the approved baseline CPM schedule:

- a. If the Contractor proposes to make any changes in the approved baseline CPM schedule, Contractor will notify the Commission Representative in writing, stating the reasons for the change, identifying each changed activity (including duration and interrelationships between activities) and providing a diskette of the proposed changed schedule.
  - b. The Commission has the authority to approve or disapprove the proposed change in the baseline CPM schedule and will do so in writing within 10 Days after receipt to the Contractor's submission. If the Commission approves the change in the baseline CPM schedule that changed schedule will be designated the new "Target Schedule." All monthly updates will be plotted against the new "Target Schedule."
  - a. If the Commission approves a portion of the change to the baseline CPM schedule, the Contractor will submit a revised CPM schedule incorporating such change(s) within 10 Days after approval along with a written description of the changes(s) to the schedule.
7. Recovery Schedule

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- a. The Contractor must maintain an adequate work force and the necessary materials, supplies and equipment to meet the current approved baseline CPM schedule. If the Contractor, in the judgment of the Commission, is failing to meet approved CPM schedule, including any Contract milestones, the Contractor will submit a recovery schedule.
- b. The recovery schedule will set forth a plan to eliminate the schedule slippage (negative float). The plan must be specific to show the methods to achieve the recovery of time, i.e. increasing manpower, working overtime, weekend work, employing multiple shifts. All costs associated with implementing the recovery schedule will be borne by the Contractor.
- c. Upon receipt of the CPM recovery schedule, the Commission Representative will review the schedule for conformance with the Contract Documents and degree of detail. The Commission will approve the schedule or reject it with written comments within 14 Days of receipt of the recovery schedule and supporting documents. If the detailed CPM recovery schedule is rejected, the Contractor must submit a revised CPM recovery schedule within 7 Days of the date of rejection.
- d. If the Contractor refuses to follow the direction of the Commission, the Commission reserves the right, after serving 7 Days written notice to the Contractor, to procure the materials, equipment and labor to proceed with or to complete the Work or any portion of it and charge the cost to the Contractor. The Commission's rights under this provision are cumulative to rights under any other provisions of the Contract including the Commission's rights to terminate for default or convenience.

### 8. Revised Schedule

- a. The Commission Representative may direct the Contractor to revise the approved CPM schedule. Reasons for such direction may include, but are not limited to, the following: (1) changes in the Work, (2) re-phasing of the Project or any phase, (3) a change in the duration of the Project or phase, and (4) acceleration of the Project or phase.
- b. The Commission Representative will direct the Contractor to provide a revised CPM schedule in writing.
- c. The Contractor will provide the revised CPM schedule with 10 Days of receipt of the Commission's written direction.
- d. The Commission has the authority, in its sole discretion, to approve or reject the revised CPM schedule and will do so in writing within 10 days after receipt of the Contractor's submission. If the Commission Representative approves the revised schedule, such schedule will be designated the new "Target Schedule."

## Section 10.03 Time

1. The Contract duration for Substantial Completion is the period of time, measured in calendar days, allotted in the Contract Documents for the Substantial Completion of the Contractor's Work. The Contractor must achieve Substantial Completion of the project by the contract Substantial Completion date.
2. The date of commencement of the Work will be the date set forth in the Contract or such other date as may be established at the discretion of the Executive Director in the Notice to Proceed.
3. Progress and Completion:
  - a. TIME IS OF THE ESSENCE IN THIS CONTRACT.
  - b. No time extensions will be allowed unless they are contained in a Contract modification, which has been approved and executed by the Commission.

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- c. Without the Executive Director's prior written approval, the Contractor will not suspend any Work that may be subject to damage by climatic conditions.
  - d. Notwithstanding any other terms contained herein, the Contractor will take measures to protect its Work and to minimize the impact of such conditions on the progress of the Work.
4. Liquidated Damages: Liquidated damages will be assessed against the Contractor; in accordance with the Schedule set forth in Book 1 of the Contract Documents, for: 1) late Substantial Completion of the Project, failure to achieve any milestone or phase dates that provide for liquidated damages as set out in Book 1 of the Contract, 2) failure to complete all base contract work as stated in Section 10.06 "Failure to Complete all Base Contract Work," or 3) a failure to complete the punch list as required by Section 10.07, "Completion of Punch List."

### **Section 10.04 No Damages for Delay, Notices of Delay, Events of Delay, Weather Days, Delays Which Do Not Qualify for Time, Procedures for Time Extension Requests, and Liquidated Damages**

#### **1. No Damages for Delays**

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

#### **2. Compensable Delays**

This provision constitutes the sole exception to Section 10.04.01 "No Damages for Delays." In the event that the duration of the project is extended by more than 25% of the duration of the project as bid due to changes or delays to the work caused by the Commission, other than Suspensions under Section 19.07 Suspension of Work, then the Commission will pay for the Contractor's costs listed below provided the delay or change was not caused wholly or partly due to any fault, negligent act, failure to act, error, omission, or breach of a material term of the Contract by the Contractor. The costs that will be paid are: extended field superintendence, labor inefficiency, idle time for equipment (provided that Contractor be proven that it took reasonable steps to mitigate damages regarding the idle equipment, relocation or storage of material (on or off site), winter protection costs and the cost of resequencing the work. Such payment is also contingent on: 1) the delay being caused by the actions of the Commission and not some other cause, and 2) there having been no concurrent delay caused by the Contractor.

#### **3. Notice of Delay**

In the event that Contractor's performance of its Work is delayed by causes beyond the reasonable control of the Contractor, the Project Schedule, including phases and/or milestones, may be extended by the Commission to reflect the extent of such delay. The Contractor must give the Commission Representative written notice within five (5) calendar days of the commencement of such delay. The written notice by the Contractor will comply with the requirements of 10.04.7. Consideration of a time extension for events beyond the reasonable control of the Contractor will only be made if the delay directly impacts critical path activities based on the Project Critical Path Method (CPM)–Schedule, that was approved at the time the delay occurred.

#### **4. Events of Delay**

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Events considered to be beyond the reasonable control of the Contractor are limited to acts of God, acts of the public enemy, fires, floods, earthquakes, epidemics, quarantine restrictions, labor strikes at the job site, freight embargoes, or Weather Days in Section 10.04.5., provided that the listed causes were not foreseeable and did not result from the fault or negligence of the Contractor, and provided further that the Contractor has taken reasonable precautions to prevent further delays owing to such causes.

### 5. Weather Days

- a. a. The Commission has determined the number of days that the Contractor should use in its Schedule as days for weather that may prevent work. The number of Weather Days for the Project are listed in Part One of the Contract Documents in the Time of Completion section of the Bid. The anticipated Weather Days are listed by phase.
- b. For each Weather Day the Contractor encounters that prevents work on critical path activities on workdays in the Contractor's Approved Schedule, the Contractor must provide written notice to the Commission Representative within two days. The notice to the Commission Representative will be entitled Notice of Weather Day and must state: 1) the date the weather occurred; 2) the type of weather (including the NOAA weather data); and 3) the critical path activity of the Approved CPM Schedule that could not be worked on because of the weather.
- c. The Commission Representative will grant or deny the request for each Weather Day based upon the facts stated in the request and the actual weather conditions that day as they affected the Contractor's Scheduled activities. The Commission Representative will notify the Contractor of that final decision in writing. If the Commission Representative denies the request, the Contractor will not be entitled to a Weather Day for the date requested.
- d. The Contractor's failure to follow the requirements of this Section 10.04.5 constitutes a waiver of the right to file a dispute to the Executive Director pursuant to Article 18.
- e. The decision of the Executive Director is final and there shall be no appeal for the Executive Director's rulings on weather delays

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

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

### 7. Procedure For Time Extension Requests

- a. The Contractor expressly consents to both the time requirements and notice content requirements for requesting an extension of time set forth in this Section 10.04.7. The Contractor acknowledges that the notice requirements set forth in this section 10.04.7 shall be strictly enforced and agrees that any failure on the part of the Contractor to provide notice strictly in accordance with the requirements of this Section 10.04.7, shall constitute a waiver of the Contractor's right to seek an extension of time or to file a dispute to the Executive Director under Section 17. The Contractor further understands and agrees that, notwithstanding any case law decision to the contrary, the notice requirements of this Section VIII.B.6 shall not be subject to or diminished by any claim on the part of the Contractor that the Commission or any person acting on behalf of the Commission had actual or constructive knowledge of any request for extension of time, entitlements to an extension of time or any facts or circumstances supporting an extension of time. The Contractor further acknowledges that the time requirements and content requirements of Section 10.04.7 have the purpose, among others, of allowing the Commission Representative and Commission to evaluate the time extension request contemporaneously with the event that has been claimed to cause the delay.

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- b. In order to request a Time Extension, a "Commencement of Delay" notice must be provided in writing to the Commission Representative, no more than five (5) calendar days after the commencement of the delay, otherwise, the claim for the time extension is waived.
- c. If the cause of the delay continues for more than five (5) calendar days after the start of the delay, a "Termination of Delay" notice must be provided in writing, to the Commission Representative along with the Request For Time Extension within ten (10) calendar days after the termination of the delay.
- d. The Contractor must submit its Request For Time Extension in writing to the Commission Representative within ten (10) calendar days after the termination of the delay. The Request For Time Extension must: (1) state the cause of the delay, (2) specifically demonstrate the negative impact of the delay on the critical path of the Contractor's Approved CPM Schedule, and (3) state the number of days requested.
- e. The Commission Representative shall advise the Contractor of its recommendation regarding the Time Extension request, in writing, within ten days of receipt. If the Contractor and Commission Representative agree on the Time Extension to be granted, a Contract Modification will be signed which states the Time Extension to be provided. The Contractor must make a Dispute to the Executive Director, as required by Article 18, regarding any Time Extension request to which the Commission Representative and Contractor do not agree, as limited by Section 10.04.7.g.
- f. The Executive Director may; 1) recommend that the entire Time Extension be granted; 2) recommend that a portion of the Time Extension be granted; or 3) deny the Time Extension. The Executive Director will provide the Contractor a final decision in writing within fifteen (15) days of receipt of the Time Extension request from the Commission Representative, or such additional time as the Executive Director requires, but not to exceed ten (10) additional days.
- g. The Contractor may not Dispute the decision of the Commission Representative unless the Time Extension request exceeds five (5) calendar days or the liquidated damages exceed \$10,000. The decision of the Executive Director is final for each Time Extension request of less than five (5) days, or if the liquidated damages assessed are less than \$10,000.

### 8. Liquidated Damages for Delay

- a. If the Project is delayed as a result of the Contractor's refusal or failure to carry the Work forward expeditiously with adequate forces, equipment, material or other resources, or Contractor otherwise fails to complete the Work according to the approved Target Project CPM Schedule, and if Book 1 provides for liquidated damages then such damages, shall be assessed. Liquidated damages will be assessed for any of the following events when provided in Book 1: (i) every day the Substantial Completion Date is exceeded, (ii) every day that a phase or milestone date (that provides for liquidated damages) is exceeded, (iii) every day for failure to complete Punch List Work as required by Section 10.07 Completion of Punch List, and (iv) every day for failure to complete all base contract work as provided in Section 10.06, Failure To Complete All Base Contract Work. In such events, the Commission will recover liquidated damages by deducting the amount thereof out of any moneys due or that may become due the Contractor, and if said moneys are insufficient to cover said damages, then the Contractor will pay the amount due.
- b. These liquidated damages are for Contractor's delay only, and nothing contained in this Contract limits the right of the Commission to recover from the Contractor any damages, costs and expenses sustained by the Commission due to Contractor's other improper performance hereunder, repudiation of the Contract by the Contractor, Contractor's other failure to perform, or Contractor's other breaches in any other respect, including but not limited to defective workmanship or materials.

### Section 10.05 Substantial Completion of Milestones, Phases and Project

The Contractor will notify the Commission Representative in writing, of a date that the work on a milestone, phase, or the Project as a whole will be ready for inspection for the Commission to determine



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whether the Work is Substantially Complete. Notice will be given by the Contractor at least seven (7) days in advance of that date. If the Commission Representative concurs that the work will be ready for inspection and/or testing on the date stated, the Commission, Commission Representative and other parties, selected by the Commission, will make such inspection within a reasonable period of time. The scheduling of the inspection will not relieve the Contractor of its responsibilities under the Contract Documents. The Contractor is required to furnish access to all parts of the Project for the inspection.

### **Section 10.06 Failure to Complete All Base Contract Work**

In the event that the Contractor does not complete all base Contract Work but the Commission determines that the User Agency must occupy the Project, the cost for liquidated damages will be 50% of the liquidated damages set for failure of the Contractor to achieve Substantial Completion. These liquidated damages will be additive to the liquidated damages for failure to complete Punch List work.

### **Section 10.07 Completion of Punch List**

1. It is also understood and agreed that TIME IS OF THE ESSENCE IN CLOSING OUT THE JOB SITE WORK OF THIS CONTRACT for a milestone, phase or Project completion. The Contractor agrees to begin work immediately after receipt of a formal comprehensive list of minor miscellaneous or finishing work known as "Punch List" work.
2. The period to complete Punch List Work for a milestone or phase will be determined in the sole discretion of the Commission Representative. The period to complete the Punch List Work for the Final Project Completion is thirty (30) calendar days unless otherwise stated in Book 1 of the Contract Documents. The time period for completion of the Punch List Work begins the day after the Punch List is provided to the Contractor. The Commission Representative may extend the period to complete Punch List Work for specific work, which requires the receipt of long lead-time materials. However, all other Punch List Work must be completed as required by Section 10.07.
  - a. Unless otherwise directed by the Commission Representative, failure of the Contractor or its Subcontractors to begin the Punch List Work on the job site prior to the expiration of three (3) Working Days after receipt of the Punch List will be construed as failure to prosecute the work of the Contract.
  - b. It is further understood and agreed that the Punch List Work will be continuously prosecuted once begun. Therefore, any gap of three (3) Working Days during which Punch List Work is not being performed on the job site will also be construed as failure to prosecute the work of the Contract.
  - c. Unless otherwise directed by the Commission Representative, the failure to commence, continue, or complete the Punch List Work will result in the charging of fifty (50) percent the liquidated damages per Work/Calendar Days, stated in Part One for late Substantial Completion of the project.
  - d. If liquidated damages are assessed, they will be added to the previously determined liquidated damages assessed at the time of Substantial Completion or beneficial occupancy of the Contract.

### **Section 10.08 Notice of Labor Disputes**

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

## **ARTICLE 11. MEETINGS**

### **Section 11.01 Pre-Construction Meeting**

Prior to beginning Work, the Commission will conduct a pre-construction meeting as detailed in Book 3 Division 1 – Section 01010 – 3.1 – Pre-Construction Meeting. Representatives of the Contractor and Subcontractors must attend. The purpose of the meeting is to establish lines of authority and communications and to identify duties and responsibilities of the organizations. Discussion will cover specific Contract Drawings, specifications, unusual conditions, schedules of completion, and other features of the Contract. The Commission may conduct additional coordination meetings at its discretion.

### **Section 11.02 Review Meetings**

The Contractor is responsible for conducting and documenting weekly coordination meetings at the Site. The Contractor will arrange for Subcontractors to attend the meetings if expressly requested by the Commission. Prior to each meeting, the Contractor must submit its schedule of activities and interfaces in the format required by the Commission. The meetings may include the following:

1. Review of Work progress since the previous monthly review meeting.
2. Discussion of field observations, problems and decisions.
3. Review of off-Site fabrication problems and other problems affecting the schedule.
4. Review of equipment deliveries.
5. Discussion of corrective measures and procedures to achieve the Contract schedule.
6. Review of submittal schedules and effect on the construction schedule.
7. Review of proposed Contract changes and effect on the construction schedule.
8. Coordination requirements.
9. Clarification and decisions required of the Commission.
10. Review of Contractor's forces on the Work.
11. Review of Project Record Document status and content.

## ARTICLE 12. PROPERTY

### Section 12.01 Ownership of Drawings, Specifications and Models

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

### Section 12.02 Right of Entry

1. The Contractor, and any of its officers, employees, agents, and Subcontractors, are permitted to enter upon any part of the Site owned by the Commission or User in connection with the performance of the Work hereunder, subject to the terms and conditions contained herein and those rules that may be established by the Commission or User. The Contractor must provide advance notice to the Commission Representative of any intended entry. Consent to enter upon all or any part of the Site given by the Commission or User will not create, nor be deemed to imply the creation of, any additional responsibilities on the part of the Commission or User.
2. **Inspections.** The Contractor acknowledges that the Commission has the right of access to the Site at all times and the right to inspect all Work during the Contract period.
3. If User wishes to visit the Site to which the Contractor was given access, it must arrange such visits through the Commission and observe safety guidelines established by the Contractor while on the Site.
4. The Contractor must use, and must cause each of its officers, employees, agents, and Subcontractors to use, the highest degree of care when entering upon property owned by the Commission or User in connection with the Work. In the case of any property owned by the Commission or User, or property owned by and leased from the Commission or User, Contractor must comply, and must cause each of its officers, employees, agents, and Subcontractors to comply, with any and all instructions and requirements for the use of such property, including any licenses for which requirement is being incorporated by reference. Any and all claims, suits, judgments, costs, or expenses, including reasonable attorneys' fees, arising from, by reason of, or in connection with any such entry is treated in accordance with the indemnification provisions contained in this Contract.

### Section 12.03 Damage to Property

If the Contractor causes damage to Commission or User property, the Contractor must, at the sole option of the Commission, either: 1) pay the cost of repair of the damage; or 2) repair or replace any property so damaged. The Commission has the right to a set-off against payments to the Contractor under this Contract for the cost of any such repairs.

### Section 12.04 Use of Completed Portions of the Work

1. After Substantial Completion of the Work in any space(s) in the Project, the Commission will have the right to use and occupy such space(s) in advance of Final Completion and Acceptance of the Work, providing the Commission's occupancy and use of such spaces will not unduly interfere with the Contractor's operations nor delay completion of the Work. Occupancy and use of any space(s) in the building by the Commission or User will not constitute Substantial Completion in the absence of written notification of Substantial Completion of the affected portion of the Work from the Architect.
2. If the Commission desires to exercise the right of partial occupancy prior to Substantial Completion and Final Completion and Acceptance of the Work as provided below, the Contractor will cooperate with the Commission in making available for the Commission's use such services as heating, ventilating, cooling, water, lighting, and telephone for the space(s) to be occupied. If the equipment required to furnish such services is not entirely complete at the time the Commission desires to

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occupy the aforesaid space(s), the Contractor will make effort to complete it as soon as possible to the extent that the necessary equipment can be put into operation and use.

3. During such partial occupancy prior to Final Completion and Acceptance of the Work, arrangements will be made between the Commission and Contractor regarding the operation and cost of the necessary heating, ventilating, cooling, water, lighting and telephone services. The Commission will assume responsibility for the operation of the equipment and utilities required to provide the above services, in part or in total, and arrangements will be made as to the guarantees affecting all Work associated with the areas so occupied.
4. The Commission's occupancy or use of such space(s) in the Project will not constitute the Commission's acceptance of any Work, materials, or equipment which are not in accordance with the requirements of the Contract Documents, nor relieve the Contractor from its obligations or responsibilities under the Contract.
5. In any case, when the Commission takes over space for occupancy or use, the Commission will give the Contractor notice in writing of its take over of the space(s) involved.

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

### **Section 13.01 Standard of Performance**

In addition to performing the Work in full compliance with the Contract Documents, the Contractor will perform, or cause to be performed, all Work required of it under the terms and conditions of this Contract with that degree of skill, care, and diligence normally exercised by qualified and experienced contractors in performing work in projects of a scope and magnitude comparable to the Work.

### **Section 13.02 Labor, materials and Equipment**

1. Unless otherwise specified, all materials and equipment will be new, and of such quality as required to satisfy the Contract Documents. The Contractor will, if required, furnish satisfactory evidence as to kind and quality of all materials and equipment. All labor will be performed by workers skilled in their respective trades, and workmanship will be of good quality so that first class work in accordance with the standards of construction set forth in the Contract Documents will result.
2. Any Work, materials or equipment which does not conform to these requirements or the standards set forth in the Contract Documents may be disapproved and rejected by the Architect or Commission, in which case it will be removed and replaced by the Contractor as provided hereinafter in **Section 13.06** "Correction of Work Before Final Payment."
3. Any employee of the Contractor or a Subcontractor whose work is unsatisfactory or who is considered by the Commission to be unskilled or otherwise objectionable will be dismissed from the Work upon written notice to the Contractor.
4. The Contractor will keep proper inventories, provide adequate protection against the weather, and maintain security measures against theft and vandalism with respect to all stored materials, fixtures, and equipment for items stored on-Site and not yet incorporated into the Work.
5. The Site will not be utilized for the storage of vehicles, materials, equipment, or fixtures not intended for this Project.
6. The Contractor will review any specified construction or installation procedures (including those recommended by any product manufacturer). The Contractor will advise the Architect and Commission Representative in writing 7 Days prior to commencing Work, on items affected:
  - a. if any specified procedure deviates from good construction practice;
  - b. if following any specified procedure will affect any warranties; or
  - c. of any objections which the Contractor may have to any specified procedure.

### **Section 13.03 Source of Materials**

Contractor will notify the Commission Representative in writing as soon as possible after the Contract has been awarded, but not less than 3 weeks prior to the need for inspection and testing of the source (or sources) from which Contractor expects to obtain the various construction materials. The source of supply of each materials used will be approved by the Commission before delivery is commenced. If sources previously approved are found to be unacceptable at any time and fail to produce materials satisfactory to the Commission, the Contractor will furnish materials from other approved sources.

### **Section 13.04 Substitution of Materials, Equipment or Processes**

1. The Contract executed hereunder requires the use of the materials, equipment, or processes specifically named in the Contract Documents except as otherwise provided herein. The word "processes" as used herein includes methods or systems of construction.

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2. For products specified only by references, e.g., ASTM standards and ANSI standards, the Contractor may select any product by any manufacturer that meets the referenced standards and the specifications.
3. Manufacturer and Products
  - a. Materials and equipment of the same general type will be of the same manufacturer throughout the Project to provide uniform appearance, operation, and maintenance.
  - b. Materials and equipment furnished will be of the current production and product of a manufacturer regularly engaged in the manufacture of such products, for which replacement parts are available.
  - c. Materials and equipment must be new, Underwriters' Laboratories-labeled where applicable, and will bear the manufacturer's name, model number, and ratings of equipment.
  - d. Manufacturers of equipment assemblies, which include components made by others, will assume complete responsibility for the final assembled unit.
4. Product Selection and Options
  - a. **Product Specifications.** The products and materials to be provided must meet the performance and technical requirements of the Contract Documents.
  - b. **Manufacturer's Name Listed.** Where the manufacturer's name is listed, the manufacturer will furnish a product that will meet the performance and technical specifications as stated. Listing the manufacturer's name does not relieve the Contractor from providing products that comply with the requirements of the specifications.
  - c. **Manufacturer's Name and Model Number Listed.** Where the manufacturer's name and model number is listed, the manufacturer will furnish that product, modified as required to meet the performance and technical specifications as stated. Listing the model number does not relieve the Contractor from providing a product that complies with the requirements of the specifications. Other products submitted will also have similar features.
  - d. **Performance of Technical Specifications.** Where a product is specified by performance requirements and the manufacturer's name or model number is not specified, the Contractor may propose any manufacturer or product which meets the requirements of the specifications for approval by the Commission Representative.
5. Substitution of Materials
  - a. Except for requests for substitution that were authorized in Book 1, identified in the Contractor's bid, and approved by the Commission Representative in accordance with Book 1 of the Contract Documents, requests for substitution will be considered only in case of product unavailability or other conditions beyond the control of the Contractor.
  - b. Each request for substitution must be submitted separately and must include:
    - (1) Complete data substantiating compliance of proposed substitution with requirements stated in the Contract Documents.
      - (a) Product identification, including manufacturer's name and address.
      - (b) Manufacturer's literature identifying:
        - i) Product description
        - ii) Reference standards
        - iii) Performance and test data

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- (c) Samples, as applicable
    - (d) Name and address of similar projects on which the product has been used, and date of each installation.
  - (2) (Itemized comparison of the proposed substitution with product specified; list significant variations.
  - (3) Data relating to changes in construction schedule.
  - (4) Any effect of substitution on other parts of the Work, any Subcontractors, or any separate contracts.
  - (5) List of changes required in other Work or products.
  - (6) Accurate cost data comparing proposed substitution with product specified, including amount of any net change to Contract price.
  - (7) Designation of required license fees or royalties.
  - (8) Designation of availability of maintenance services, sources of replacement materials.
- c. The Contractor warrants and represents that in making a formal request for substitution that:
- (1) The proposed substitution is equivalent to or superior in all respects to the product specified,
  - (2) The same warranties and guarantees will be provided for the substitute as for the product specified.
  - (3) The Contractor will coordinate the installation of accepted substitutes into the Work and will make such changes as may be required for the Work to be complete in all respects.
- d. If the evidence presented by the Contractor does not provide a sufficient basis for such reasonable certainty that the proposed substitution or deviations will provide a quality or result at least equal to that attainable by the product specified the Commission Representative may reject substitution or deviation without further investigation.
- e. The Commission Representative will judge the design and appearance of proposed substitutes on the basis of their suitability in relation to the overall design of the Project, as well as for their intrinsic merits. The Commission Representative will not approve proposed substitutes as equal to items specified which, in the Commission Representative's opinion, would be unharmonious, or otherwise inconsistent with the character, quality or design of the Project.
- f. Any additional cost, or any loss or damage, arising from the substitution of any material or method for those specified must be borne by the Contractor, including the cost for damages incurred by other contractors notwithstanding approval or acceptance of such substitution by the Commission Representative, unless such substitution was initiated at the written request or direction of the Commission Representative.
- g. The investigation, review and approval of substitute materials requires a minimum of thirty (30) days beyond that required for specified routine items. The Contractor agrees that no request for a delay or disruption will be allowed whether or not the substitution is granted.
- h. Approval by the Commission Representative of a substitution of material must be given pursuant to a Contract modification as required in Article 17, "Changes in the Work."
6. At the discretion of the Commission, manufacturer's nameplates will not be permanently attached to ornamental and miscellaneous metal work, furnishings and equipment, doors, frames, millwork and

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similar factory-fabricated products on which, in the Architect's opinion, the nameplate would be objectionable if visible after installation of the Work. This does not apply to Underwriters' Laboratories labels where required, nor to manufacturers' name and rating plates on mechanical and electrical equipment.

### **Section 13.05 Adjustment of Equipment**

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

### **Section 13.06 Correction of Work Before Final Payment**

1. The Contractor must promptly remove from the Site all materials and equipment, whether incorporated in the Work or not, rejected by the Commission as failing to conform to the Contract Documents. The Contractor will promptly replace and re-execute such Work in accordance with the Contract Documents and without expense to the Commission and will bear the expense of making good all work of other contractors destroyed or damaged by such removal or replacement.
2. If the Contractor does not remove such rejected Work, materials, and equipment within a reasonable time, as determined by written notice of the Commission, the Commission may, at the expense of the Contractor, remove and dispose of as the Commission sees fit. If the Contractor does not pay the cost and expenses of such removal within 10 Days, the Commission may deduct all such costs and expenses from any monies due the Contractor.
2. If the Work deviates from the requirements of the Contract Documents, the Contractor will be responsible for all resulting damages. A claim by the Contractor that performing the Work without deviation from what is required by the Contract Documents would also have caused or resulted in damages will not be available to the Contractor as a defense or a claim to reduce the Contractor's liability. This provision does not limit the other rights of the Commission or Architect or other obligations of the Contractor.
3. When the Architect's additional services are required because of defective Work, neglect, failure, deficiencies, or default by the Contractor, the Architect's compensation for such services may be payable by the Contractor based on the Architect's invoice sent to the Commission. Deficiencies are defined to include, but not limited to, more than 2 reviews of the same submittal of shop drawings and associated data due to incomplete, uncoordinated, or otherwise defective submissions as defined in Division 1 - General Requirements. The invoice, when approved by the Commission, along with other costs, damages, and liabilities incurred by the Commission and the Architect, at the option of the Commission, may be the basis for decreasing the Contract Price by a Change Order to compensate the Commission for the Architect's additional services.

### **Section 13.07 Correction of Work after Final Payment**

The final certificate, final payment, or any provision in the Contract Documents does not relieve the Contractor of responsibility for faulty materials, equipment or workmanship. Unless otherwise specified, the Contractor will remedy any defects due thereto and pay for any damage to other Work resulting therefrom, which appear within the guarantee period. The Commission will give written notice of such defects with reasonable promptness. All questions arising under this Article will be decided by the Commission.

### **Section 13.08 Guarantees and Warranties**

1. The Contractor guarantees all of the Work and each and every part thereof, including, by way of illustration and not in limitation thereof, all workmanship, materials, equipment, supplies, services, and facilities that are furnished, produced, fabricated, installed, constructed, or built pursuant to the Contract Documents for the respective periods of time called for by the respective requirements of the Contract Documents, and, if no period is specified, for a period of 1 year, against defects which, in the



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opinion of the Architect, result from the use of defective or inferior materials, equipment, supplies, services, facilities or workmanship or from Work not in compliance with or not performed in accordance with the Drawings or specifications. The Contractor will provide this guarantee to the Commission in writing using Exhibit R. The guarantee period will run from and after the date of Substantial Completion of the Work required by the Contract Documents, unless the Contract Documents specify a different date for the commencement of the running of the guarantee period. No part of the Work will be held to be accepted until Substantial Completion of the Work (except where other arrangements have been made under **Section 12.04.3 "Use of Completed Portions of the Work"** hereof).

2. The Contractor agrees as part of this guarantee to repair or remove and replace as directed by the Commission and at no cost to the Commission all the Work, materials, equipment, supplies, services, and facilities which prove defective during the applicable guarantee period or which fail to conform to the Contract Documents; to repair, remove and replace, or pay for as directed by the Commission and at no cost to the Commission all damaged portions of the Project and the contents and equipment thereof, resulting from or which are incidental to such defects or failure to conform to the Drawings or specifications. All repairs or removals and replacements must be commenced within 10 Days of written notice from the Commission, and workers and materials sufficient in the opinion of the Commission must be furnished to ensure prompt completion thereof. The written notice from the Commission will have attached to it the opinion of the Architect certifying that the defect has resulted from the furnishing or use of defective or inferior materials, equipment, supplies, services, facilities, or workmanship; or from Work not performed in accordance with the Drawings or specifications. Should the Contractor fail to proceed in accordance with the above, the Commission without further notice to the Contractor may furnish all labor and material necessary for repairs, or removals and replacements, and the Contractor agrees to pay the Commission all such costs incurred.
3. Manufacturer's Warranties
  - a. The Contractor will:
    - (1) ensure that all required Manufacturer's Warranties pass through to the Commission and/or User.
    - (2) Submit all applicable Manufacturer's Warranties to the Commission Representative and ensure that all warranty forms have been completed in the Commission's and/or User's name and registered with the appropriate manufacturers.
  - b. Repairs and replacements made by the Contractor pursuant to this section will include a Manufacturer's Warranty, if standard with the Manufacturer, in addition to the Contractor's Warranty.

## ARTICLE 14. TESTING AND INSPECTION

### Section 14.01 Inspection of Work

1. The Commission, the Architect, and Commission Representative will at all times have access to the Work wherever it is in process. The Contractor must provide proper and safe facilities for access and inspection.
2. The Contractor will also cooperate with other inspecting agencies and provide appropriate access. If the inspection is made by an authority other than the Architect, the Contractor will inform the Architect in writing of the date fixed for such inspection not less than 3 business days prior to such date.
3. If the specifications, the Architect's instructions, laws, ordinances or any public authority require any Work to be specifically tested or approved, the Contractor will give the Commission Representative not less than 3 business days written notice of the Work's readiness for inspection by the Architect. Required certificates of inspection must be secured by the Contractor. Inspections by the Architect will be promptly made, and where practicable, at the source of supply. When such tests and inspections indicate noncompliance of the Work with requirements of the Contract Documents, and the Architect's services are required for additional reviews or inspections of the Work, the Contract Price may be decreased by a Change Order in the amount of the Architect's invoice approved by the Commission as compensation for the Architect's additional services.
4. Any Work covered up without approval, inspection, or consent of the Architect where required by the Contract Documents, will be uncovered for examination if required by the Architect or Commission and will be replaced and/or re-covered all at the Contractor's expense. Examination of Work previously covered up with the approval or consent of the Architect may be ordered by the Architect to be uncovered, and if so ordered, such Work will be uncovered by the Contractor. If such Work is found to be in accordance with the Contract Documents, the Commission will reimburse the Contractor for such uncovering and re-covering. Such reimbursement will be for actual cost incurred plus the percentages allowed by **Sections 16.02.1.a.(4) and 16.02.1.a.(5) "Payment for Changes."** If such Work is found to be not in accordance with the Contract Documents, the Contractor will pay all costs of uncovering, replacement, and re-covering.
5. The Contractor will place its field engineering force at the Architect's disposal for field checking during any inspection period. When layouts of the Work are to be made, the Contractor will notify the Commission Representative in sufficient time that the Architect may be present.
6. Neither the presence nor the absence of the Architect at the Site will relieve the Contractor from responsibility for compliance with the provisions of the Contract Documents, nor from responsibility for the removal and replacement of Work not in accordance therewith.
7. The Architect is not authorized to make any changes or modifications in the Contract Documents, to direct additional Work not required, or to waive the performance by the Contractor of any requirements of the Contract Documents. Any changes to the Contract will be in accordance with the provisions of Article 17. "Changes in the Work."

### Section 14.02 ASTM Standards

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

### Section 14.03 Testing Laboratory Labels

1. All equipment containing electrical wiring must be submitted to the Commission Representative for the Architect's acceptance before installation. Unless otherwise specified, all electrical components

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furnished and installed or assembled by the Contractor under this Contract must be approved and so labeled by one of the following Testing Laboratories:

- a. Underwriters' Laboratories (UL)
  - b. Canadian Standards Association (CSA)
  - c. Electrical Testing Laboratory of New York (ETL)
  - d. Illinois Institute of Technology Research Institute (IITRI)
  - e. American Gas Association (AGA)
  - f. Factory Mutual Research Corporation (FMRC)
  - g. Maintenance and Electrical Testing (MET)
  - h. American Research Lab (ARL)
2. Any electrical unit comprised of a number of components, assembled at the factory, and considered custom made, must bear one of the above labels for the entire unit as well as for each component.
  3. All costs in obtaining a testing laboratory label are paid by the Contractor at no additional cost to the Commission. Any delays in the completion of the Work caused by the manufacturer of equipment in obtaining the required testing laboratory labels and the Commission approval are not grounds for an extension of time beyond the time of completion indicated in the Contract Documents.

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

**Section 15.01 Documents at the Site**

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

**Section 15.02 Contractor's Responsibilities and Submittal Procedures**

1. Shop drawings, product data, video tape and samples are part of the Work under this Contract and they must be provided whenever required to the satisfaction of the Commission at the expense of the Contractor.
2. The Contractor must submit to the Commission Representative such shop drawings, product data, video tape and samples required for the Work involved under this Contract for review by the Architect in accordance with the schedule.
3. The Schedule must include proposed submittal dates. The dates listed in the schedule must allow sufficient time for review and processing by the Architect and re-submittal, if necessary, of the shop drawings or other data before the Work represented by shop drawings and samples is needed by the Contractor to complete its performance under this Contract. No extensions of time will be granted to Contractor because of its failure to have shop drawings, video tape, samples, and product data submitted in time to allow for review, re-submittal, and final review. Contractor must also submit a separate schedule (in table format), in addition to the Schedule, identifying all submittal dates to the Commission Representative for review and approval.
4. The Contractor must prepare and submit proper shop drawings, video tape, samples, and product data in accordance with its contractual obligations. By submitting shop drawings, video tape, product data, and samples, the Contractor represents that it has determined and verified all materials, field measurements, field conditions, and quantities and that it has checked and coordinated the information contained within submittal, including its subcontractors' submittals with the requirements of the Work and of the Contract Documents.
5. All shop drawings, video tape, product data, and samples must be dated and stamped by the Contractor and indicate that the submittal has been reviewed and checked by the Contractor prior to submittal and found to be in conformance with the Contract Documents. All submittals will be transmitted to the Commission Representative. The Contractor must clearly identify each shop drawing, video tape, product data, and sample in accordance with the following for purposes of identification and record:

**SUBMITTAL IDENTIFICATION**

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

**CHECKED AND SUBMITTED IN ACCORDANCE WITH DRAWINGS AND SPECIFICATION.**

Contractor: \_\_\_\_\_  
By: \_\_\_\_\_ Date: \_\_\_\_\_

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6. Shop drawings must be submitted with accurate dimensions. The shop drawings must represent the actual manner in which the Work is manufactured and installed, and the relation of the Work installed to that of other trades, clearances, and all other pertinent data. Dimensions must be expressed in feet and inches. Designs prepared in the metric system may be submitted with metric units, but the equivalent English units must also be shown. All weights and dimensions must be certified prior to submission for review.
7. The Architect's review and acceptance of shop drawings in no way relieves Contractor from responsibility for errors or omissions that may exist in the Work or on the certified shop drawings. Where such errors or omissions are discovered, they must be corrected by the Contractor at no additional cost to the Commission. Contractor must submit all shop drawings, video tape, samples and product data to the Commission Representative for review of the Architect with an accompanying transmittal letter containing the above Submittal identification data and a list of items being submitted. The Contractor must coordinate Submittal into logical groups or sets to facilitate review of several related items.
8. Any Submittal that, in the opinion of the Architect, is not complete and in proper form will be returned to the Contractor without review. The Contractor must not submit duplicates or reproductions of any Contract Documents issued by the Commission as shop drawings.
9. Contractor must provide Submittal in the following quantities unless a greater number is specified elsewhere in the Contract Documents, or is required by the Commission:
  - a. Shop Drawings: Submit 1 reproducible and 6 prints on sheets at a minimum of 30" by 42" in size. (Prints must be collated into sets).
  - b. Product data: Submit 6 copies of product data.
  - c. Samples: Submit 4 samples.
  - d. Video tape: Submit 1 video tape.
10. Prior to submitting shop drawings, product data, video tape, or samples, the Contractor must notify the Commission Representative in writing of any deviations in the Submittal from the requirements of the Contract. If deviations from the Contract requirements are rejected by the Architect or if evaluation of the deviations delays the progress of Work, any delay caused will not be compensable by a time extension.
11. Additional requirements for submittals are stated in Book 3.

### **Section 15.03 Review by the Architect**

1. Submittal will be reviewed by the Architect for compliance with the Contract Documents. In reviewing the Submittal, the Architect will not verify dimensions and field conditions. Any such review does not relieve the Contractor, Subcontractor, manufacturer, fabricator or supplier from responsibility for any deficiency that may exist or from any departures or deviations from the requirements of the Contract Documents, nor does it relieve them from responsibility for (i) errors of any sort in shop drawings, samples and product data, (ii) responsibility for proper fitting of the Work, or (iii) the necessity of furnishing any Work required by the Contract documents which may not be indicated on shop drawings when reviewed. The Contractor is solely responsible for any quantities that may be shown on the shop drawings. The Architect's review of a specific item does not indicate approval of an assembly of which the item is a component.
2. The Contractor must not fabricate products, begin Work, order or have delivered any material, equipment or system that requires a reviewed Submittal until return of the Submittal from the Architect with a stamp authorizing Work and/or delivery and installation to be performed, as described in Paragraph 3 immediately below.
3. The Architect will return Submittal stamped as follows:

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- a. "No Exceptions" means no changes are necessary on the reviewed Submittal. The Contractor may proceed with the Work for that Submittal. Re-submittal is not required.
  - b. "Exceptions as Noted" indicates that the Submittal is accepted subject to the corrections and/or comments noted. The Contractor may proceed with the Work for that Submittal if the Contractor incorporates the Architect's comments, and/or corrections. Re-submittal is not required.
  - c. "Revise and Resubmit" means that the Submittal does not meet all the requirements necessary to proceed with the Work associated with the Submittal. The Contractor must resubmit in accordance with the reviewer's comments and/or corrections. Submittal marked in this manner must not be released for fabrication, delivery, or construction.
  - d. "Rejected" means the submittal does not meet the requirements set out in the Contract Documents. The Contractor must resubmit in accordance with the Contract Documents and any corrections and/or comments made regarding the Submittal by the reviewer. Submittals marked in this manner shall not be released for fabrication, delivery, or construction.
4. If the Submittal requires revision, the Contractor must notify the Commission Representative and all pertinent Subcontractors in writing that the reviewed set has been withdrawn.
  5. Submittals that require revisions must be corrected and resubmitted to the Commission Representative for the review of the Architect to maintain the approved CPM schedule, but in no event more than 3 Days after receipt of the Architect's comments.
  6. Shop Drawings: After review by the Architect, one reproducible stamped by the Architect as described in paragraph 3 above will be returned to the Contractor.
  7. Submission and Review of Samples: If a considerable range of color, graining, texture, or other characteristics may be anticipated in finished products, a sufficient number of samples of the specified materials must be furnished by the Contractor to indicate the full range of such characteristics which will be present in the finished products. Any products delivered or erected without submittal and review of full range Samples will be subject to rejection. Each tag or sticker will have clear space for the stamps of the Contractor and Architect. Notice of the result of the review will be provided to the Contractor with one of the stamps indicated in Paragraph 3 above. Rejected samples will be returned. Accepted samples will be retained by the Commission and become the property of the Commission. Where color samples are required to be submitted, color samples must be submitted on the actual material which will finally be installed in the Work.
  8. Product data: After review by the Architect, 2 sets of product data stamped by the Architect as previously described will be returned to the Contractor.

### Section 15.04 As-Built Drawings

1. As the Work progresses, the Contractor, and the Subcontractor for each trade or division of Work under the direction of the Contractor, must keep a complete and accurate record of the following:
  - a. Changes between the Work as shown on the Contract Drawings and the shop drawings indicating the Work as actually installed.
  - b. The specific location of all infrastructure elements, including piping, valves, ductwork, equipment, driveways, catch basins, sewer lines, waterlines, water mains, and other such elements which were not accurately located or changed location or elevation from that shown on the Contract Drawings.
  - c. Equipment schedules indicating manufacturers' names and model numbers installed.
2. Changes must be neatly and correctly recorded daily on full-size prints of the Contract Drawings updated daily. This record set of Contract Drawings must be kept at the Site for inspection by the

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Commission. Upon completion of the Work, the Contractor will submit a final set of full-size prints to the Commission Representative for the Architect's review and acceptance.

3. At the time as-built drawings are delivered to the Commission, the Contractor and each Subcontractor will certify, in writing, that the as-built drawings are complete and accurate. The Contractor may obtain compact discs or original drawings from the Architect at its own expense for this purpose.

### **Section 15.05 Record Shop Drawings and Product Data**

1. As the Work progresses, the Contractor must keep a complete and accurate record of the changes and deviations from the Work as shown on the shop drawings and product data indicating the Work performed. The Contractor must furnish record shop drawings in a form and quantity acceptable to the Commission. Record shop drawings must be submitted for all items reviewed as shop drawings. Record shop drawings must be provided in editable electronic medium and hard copy as directed by the Commission. Unless otherwise specified, record shop drawings must be submitted on the same size sheets as the Contract Document Drawings and include an index of all items.
2. Unless otherwise specified, Contractor must furnish 10 record copies of product data loose-leaf binders. Loose-leaf binders must be subdivided by submittal numbers and must contain an index of all items unless otherwise specified.

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

1. The Contractor must furnish a complete list of equipment actually installed. The list must include at least the following information: a copy of pertinent nameplate data, name and address of local representative who stocks or furnishes repair or replacement parts, and name, address, and telephone number of the Subcontractor responsible to the Contractor for the equipment under the guarantee. Contractor must guarantee any such equipment with respect to the Commission.
2. The Contractor must submit suitable operating instructions for each major component of equipment and its controls in accordance with the specifications. Proposed instructions must be submitted to the Commission Representative for the Commission's review and acceptance in the amount provided for in the specifications. Upon acceptance, the Contractor must post applicable instructions as directed by the Commission.
3. The Contractor must submit to the Commission Representative maintenance data prepared by the manufacturer of each major component of equipment and its controls in accordance with the specifications. Data must include at least the following information: complete parts list; itemized lists of common purchase items of materials (e.g., bearing, packing, connectors, sealing devices, and other standard items) indicated by their standard trade designation; recommended routine and inspection maintenance, including testing recommendations to evaluate efficiency of performance; lists of special tools and gauges, lubricating instructions, and recommended spare parts; tolerance and clearances required for maintenance; and trouble-shooting guides prepared in a simple format to indicate complaint or problem, probable cause, and remedy. The proposed maintenance data must be submitted to the Commission Representative for the Commission's review and acceptance in the amount provided for in the specifications.
4. The Contractor must submit all applicable manufacturer's warranties as described in Section 12.08 "Guarantees and Warranties."

### **Section 15.07 Record Documents**

At Substantial Completion of the Work, the Contractor must deliver to the Commission and the User, in suitable transfer cases clearly marked "Record Documents," all as-built drawings, record shop drawings, video tape, product data, instructions, parts list, and operations and maintenance manuals arranged in proper order and indexed. At the discretion of the Commission, the Commission may make the submission of all Record Documents a prerequisite to reduction of retention from 5% to 3% under Section 16.06 "Retainage" of the Contract.

## Section 15.08 Project Account Records

### 1. Project data and records

- a. The Contractor and each Subcontractor must keep an accurate record showing the names, occupation, and the actual hourly wages paid to all laborers, workers, and mechanics employed by them in connection with the Work. Such record must be open at all reasonable hours to the inspection of the Commission and to the Director of Labor of the State of Illinois and his/her deputies and agents. The Contractor also must furnish the Commission with certified copies of the payrolls in accordance with Section 16.02 "Payment Applications."
- b. The Contractor and all Subcontractors must furnish the Commission with such information as the Commission may require relating to labor and materials, including all information necessary to determine the cost of the Work, such as the number of workers employed, their pay, the distribution of labor into Work items, equipment time distribution, and any other information which the Commission may require. The Contractor must, on request, furnish the Commission with copies of delivery tickets and invoices covering the expenditures on the Contract.

### 2. Audits

- a. The Contractor must furnish to the Commission Representative such information as may be requested relative to the progress, execution, and cost of the Work. The Contractor must maintain complete records showing actual time devoted and costs incurred. The Contractor must maintain its books, records, documents, and other evidence and adopt accounting procedures and practices sufficient to record properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred for or in connection with the Work for 7 years after final payment. This system of accounting must be in accordance with generally accepted accounting principles and practices, consistently applied throughout.
- b. All books and accounts kept by the Contractor in connection with the Work must be open to inspection and audit by authorized representatives of the Commission. The Contractor must make these records available at reasonable times during the performance of the Work and must retain them in a safe place and make them available for inspection and audit for at least 7 years after final payment. No provision in this Contract granting the Commission right of access to records documents is intended to impair, limit, or affect any right to access to such records and documents which the Commission would have had in the absence of such provisions.
- c. The Contractor must reimburse the Commission for the costs of such audits if the audit demonstrates that the Contractor overstated the amount due on any invoice by at least 2%.

### 3. Confidentiality

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



## ARTICLE 16. PAYMENTS

### Section 16.01 Contract Price

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

### Section 16.02 Payment Applications

It is the duty of the Contractor to effectively manage the payment application process and all related paperwork. The Contractor is responsible to the Commission for securing and delivering all paperwork required by the contract to be submitted with payment applications, including subcontractor, consultant and material supplier trailing lien waivers, certified payrolls, and all other required documents.

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

Contractor will submit payment applications in such a manner so as not to delay payment to any subcontractor, material supplier, consultant or service provider whose billing and lien waiver paperwork is complete, as the result of incomplete billing or lien waiver paperwork of any other subcontractor, material supplier, consultant or service provider whose billing and lien paperwork is incomplete. All required certified payrolls, trailing lien waivers, and other required paperwork must be submitted before or with the payment application. Contractor's payment application will not include any request for payment for work of any subcontractor, material supplier, consultant, or service provider whose certified payrolls, trailing lien waivers, or other payment paperwork is incomplete at the time the payment application is submitted.

#### 1. Schedule of Values

No later than 15 days after the Notice to Proceed, the Contractor will submit to the Commission Representative a Schedule of Values, in triplicate, showing values of the Work to be performed by it and its Subcontractors containing such supporting details or other evidence as to its correctness as the Architect and Commission Representative may require. The Schedule of Values will list the value for each construction activity broken down by materials and labor to be included in the progress schedule. When approved by the Commission Representative, the Schedule of Values will be used as a basis for certificates of payment unless it is found to be in error. Additional requirements for the Schedule of Values as stated in Book 3.

#### 2. Multiple Locations

The Work may consist of multiple locations and therefore separate and independent Payment Applications will be submitted for each location. Retainage, Substantial Completion of the Work and Final Completion and Acceptance of the Work will be evaluated separately for each separate phase or location.

#### 3. Target Date Requirements

The Commission will assign an invoice target date to the Contractor. Not later than 10 days prior to the invoice target date, the Contractor will submit to the Commission Representative, in triplicate, a pencil copy of the application for payment for Work completed through the end of the prior month and the monthly progress report required by Division 1 – Section 01200 – 3.4 – Progress Reports. Not later than 5 days prior to the invoice target date, the pencil copy will be reviewed for approval of value of the Work completed at the payment review meeting with the Architect and Commission Representative. Calculation of the value of Work completed will be made by summarizing the individual values of Work completed as such completion is reported in the monthly progress report reviewed by the Architect for the approval of the Commission. Submission of the monthly progress

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report 5 Days prior to the payment review meeting will be a condition precedent to the approval of the payment application. The pencil copy of the Payment Application will not project completion of Work beyond the date of the review meeting of such with the Architect and Commission Representative.

### 4. Sworn Statements

On or about the invoice target date of each month, the Contractor will submit to the Commission Representative, in triplicate, an application for partial payment including a notarized affidavit stating that all monetary obligations to all Subcontractors for the periods covered by all prior applications for payment, if any, have been completely fulfilled and discharged supported by receipts or receipted vouchers, and lien waivers, evidencing payments for such materials, services, labor, and payments to Subcontractors, together with a waiver of lien covering the amount for which the current payment is being requested and such other evidence of the Contractor's right to payment as the Architect or Commission Representative may direct. The application for partial payment will conform to approvals made by the Commission Representative at the payment review meeting.

### 5. Certified Payrolls

Three copies of certified payrolls for the payment period are to be submitted by the Contractor and all Subcontractors working on the Site to the Commission or its designated representative every week. All payrolls must be identified with Contractor or Subcontractor's name and Contract name and number, and must be sequentially numbered. The payroll will be submitted by the Contractor and Subcontractor until all Work by that Contractor or Subcontractor is completed. If there are periods of no Work by a Contractor or Subcontractor, a payroll labeled "NO WORK" will be submitted. The final payroll will be labeled "FINAL." Certified payrolls are required to assure EEO compliance as well as wage compliance. Race, worker classification, and gender must be clearly marked for each employee on the certified payroll along with all additional information required by the Commission. An employee's address should appear every time his/her name appears on the payroll. The Contractor must submit the certified payrolls and additional information regarding EEO and wage compliance by providing a Payroll Summary Report in the form required by the Commission. The EEO report form required by the City and the U.S. Department of Labor must be submitted by Contractor and each Subcontractor, reflecting fully the periods of Work covered by the partial payment request.

### 6. Payment for Material Stored on-Site

- a. Payments for on-Site stored material will be made only if the Commission specifically approves, at its sole discretion, such payments. If payments are to be made on account of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site, such payments will be conditioned upon submission by the Contractor of bills of sale, waivers of lien, and other such documents and compliance with other such procedures as the Commission requires to establish its title to such materials or equipment or otherwise protect its interest, including applicable insurance and transportation to the Site.
- b. Payment of stored material on the project site will be one hundred percent (100%) of a valid invoice less applicable retainage (as described in Section 16.06 when the Contractor has provided the following documents:
  - (1) A paid invoice from the supplier showing the unit, quantity, description of the material or equipment and costs.
  - (2) A waiver of lien from the supplier for the total amount of the material purchased.
  - (3) Inspection tickets for all the material stored

### 7. Payment for Material Stored off-Site

- a. Payment for material stored off-site, if authorized in Book 3 of the Contract, or when approved in writing by the Executive Director and Commission Representative, will be one hundred percent

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(100%) of a valid invoice less applicable retainage (as described in Section 16.06 when the Contractor has provided documents and complied with the requirements listed below.

- (1) A paid invoice from the supplier showing the unit, quantity, description of the material or equipment and costs.
- (2) A waiver of lien from the supplier for the total amount of the material purchased.
- (3) Inspection tickets for all the material stored.
- (4) The Contractor must furnish the Commission Representative with a certified statement giving the exact location of the materials or equipment, and stating that:
  - a) Such materials are suitably stored and maintained at a bonded, secure and environmentally appropriate location agreed upon and subject to such conditions required or established by the Commission.
  - b) The Contractor has complied with procedures satisfactory to the Executive Director to establish the Commission's title to such materials or otherwise protect the Commission's interest therein, including but not limited to, insurance, storage and transportation to the Project Site for such materials stored off-site, as the Executive Director or Commission Representative may reasonably require.
  - c) The materials, equipment, and associated fabricated components will not be diverted away from the Project.
- (5) The risk of loss will remain with the Contractor. The Contractor must provide the Commission Representative with a certificate of insurance coverage for the stored material upon which payment is requested
- (6) Simultaneously with payment for such material, the Contractor must prepare and execute any and all documents required transfer title to the Commission, including without any limitation, any Uniform Commercial Code Documentation necessary to perfect transfer of title.
- (7) All material and Work covered by payments made will thereupon become the sole property of the Commission.
- (8) The Contractor must pay the Commission's reasonable costs for consultants or attorneys relating to administration of the payment for material stored off site, to verify and review required filings and documents, inspect materials, and travel. Travel costs are to be paid based upon the current Commission Travel Guidelines.

### 8. Documentation Supporting Monthly Payment Applications

- a. For the first Payment Application, the Contractor must provide its own Sworn Statement, as required by Section 16.02.4 and its own partial lien waivers in support of the Payment Application.
- b. For the second Payment Application, the Contractor must provide: its own Sworn Statement, its own partial lien waivers for the current Payment Application and partial lien waivers from all of its first tier Subcontractors for the prior Payment Application.
- c. For the third Payment Application, the Contractor must provide: its own Sworn Statement, its own partial lien waivers for the current month, its First Tier Subcontractors partial lien waivers for the previous month, and partial lien waivers of the second tier Subcontractors for the first Payment Application.
- d. For the fourth and all subsequent Payment Applications, the Contractor must provide the corresponding supporting documentation as indicated in 16.02.8c above. For the final Payment

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Application all lien waivers of the Contractor, its first tier Subcontractors, and all Second Tier Subcontractors must be "final" waivers.

9. Prior to final payment and Final Completion and Acceptance of the Work, the Contractor must file the following papers with the Commission:
  - a. Manufacturers' operating instructions for all equipment.
  - b. Record "as-built drawings" required by Division 1 – Section 01720 – Site Documentation Requirements of the technical specifications.
  - c. A notarized affidavit stating that all monetary obligations to suppliers of material, services, labor and all Subcontractors have been completely fulfilled and discharged.
  - d. Proof that proper training of User occurred.
  - e. Final Lien waivers.
  - f. Final releases from Contractor, Subcontractors, and material suppliers.
10. Unless a written extension is granted by the Commission, the Contractor must submit the final payment application and waivers no later than 4 weeks after the Architect's written acceptance of the Punch List Work. The Contractor's failure to do so within the required time period constitutes an event of default.
11. Additional requirements regarding Payment Applications are stated in Book 3.

### Section 16.03 Payment for Changes

1. When directed in writing by a Field Order signed by the Commission Representative, the Contractor will proceed promptly in accordance with such Field Order. The adjustment of the Contract Price therefore will be determined by one of the following methods:
  - a. Method 1 - Unit Price and/or Lump Sum Adjustment
    - (1) The Contractor must submit promptly to the Commission Representative for approval and acceptance by the Commission a written proposal for changes in the Work. Such proposal will be in a format acceptable to the Commission and based on agreed-upon unit prices, or, in their absence, a detailed cost estimate of labor, all insurance, payroll taxes, itemized material, itemized equipment, and bond of the changed Work. If after receipt of the Contractor's proposal the parties can agree on an equitable lump sum adjustment of the Contract Price, a Change Order will be signed establishing such adjustment.
    - (2) Where the change in the Work involves items for which agreed-upon unit prices have been established and where the net aggregate quantity of such items is in excess of the Contract requirements, payment for such items will be at the established unit prices. When the net aggregate quantity is less than the Contract requirement, the credit will be the established unit price less 10%. Where the established unit price is a unit price bid on estimated quantities, the Commission may, at its option, demand a readjustment of such established unit price in any case where the requirements for the particular unit price item exceeds one hundred 125% of the estimated quantity bid.
    - (3) Where the change in the Work involves items for which agreed-upon unit prices have not been established, the Contractor's proposal will be in a format acceptable to the Commission and based upon the estimated fair cost of the Contractor's labor, material, equipment, insurance and applicable taxes. In submitting such proposal, the Contractor will use its ability and buying power to obtain the best possible prices from suppliers of material and equipment and from Subcontractors consistent with its general responsibility for the performance and completion of the Work. To this end, the Contractor, when

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submitting such a proposal, will be deemed to have represented by the submittal that it has used the lowest prices obtained or obtainable from suppliers of material and equipment and from Subcontractors and that nothing has been added to such prices unless indicated in the proposal or billing. Should the Contractor at any time, without disclosing the fact, add any amount to the bill or proposal of any supplier of material or equipment or to the bill or proposal of any Subcontractor, and should the Commission act on the same or make payment on any Work covered by such proposal or billing, then, and in that event, the Commission will have the right to recover from the Contractor any such amounts as may have been so added and not disclosed. Such recovery may be made by deducting the undisclosed additions from any payments due the Contractor, or by any and all other means available to the Commission.

- (4) For the cost of items of Work not covered by agreed-upon unit prices on additional Work ordered, the Contractor will be allowed 15% for overhead and profit on labor performed by his own forces and material purchases. Subcontractors, likewise, will be permitted an allowance of 15% for overhead and profit on their own work. The Contractor will further be allowed 6% on all of his subcontractor's work. The Subcontractor is not allowed any additional markup if he sublets its work. No overhead and profit will be deducted from the price for changes deleting Work. The Contractor may include in its labor proposal only those workers and foremen directly involved in the Work. All other supervision is included in the 15% overhead and profit allowed. The Contractor will be entitled to payment for labor, union fringe benefits, insurance, unemployment insurance, social security, and taxes paid on labor. No overhead or profit will be allowed on social security, unemployment insurance, or other insurance or premium time. The Contractor's material costs will include invoiced costs, transportation, applicable sales or use taxes, and actual rental costs whatsoever beyond those enumerated.
- (5) The overhead and profit charges referred to above will constitute full reimbursement for all costs of field and office supervision, engineering, field and main office expense, premium on bonds, small tools, and incidental job burdens, general building and excess liability insurance, and transportation.

### b. Method 2 - Cost Plus Fee Adjustment

- (1) Where the change in the Work involves items in whole or in part for which a unit price determination cannot be made under Method 1 and where the parties are unable to determine and agree upon an equitable lump sum adjustment of the Contract Price for such items, a proceed order will be issued and the Contractor will proceed with the Work thereof on a cost plus fee basis. Cost means the Contractor's actual cost of labor, material, equipment, insurance, and applicable taxes, as reviewed by the Architect and Commission Representative for the approval of the Commission. To the Contractor's cost so computed will be added overhead and profit as defined under Method 1 above.
  - (2) The Contractor and Subcontractors must keep and present in such form as the Commission Representative may direct a correct accounting of the costs of all labor, material, equipment, insurance, and applicable taxes, together with supporting vouchers, receipts, and payroll records.
  - (3) Upon completion of the change and determination of the cost plus fee price thereof, a Change Order will be issued establishing the adjustment of the Contract Price.
- 2. The Contractor's agreement to a Change Order constitutes a waiver and release by the Contractor for any claim for additional payment or a time extension associated with the changes as stated in Section 17.05.
  - 3. The Contractor will include any claim for a time extension in the submission of his proposal. Such claim will only be considered upon demonstration by the Contractor that a disruption to Critical Path activities has occurred. Contractor is required to furnish documentation in the form of proposed schedule revisions indicating impact in Critical Path activities and events previously approved by the Commission.

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4. The Contractor will be required to use **Exhibit U** – “Contractors Proposal for Change Order” for any Change Order requests.

### **Section 16.04 Deductions For Uncorrected Work**

If the Commission deems it inexpedient to correct Work damaged or Work not performed in accordance with the Contract Documents, an equitable deduction from the Contract Price will be made therefore.

### **Section 16.05 Certificates for Payment**

1. If the Contractor has complied with the requirements of Section 16.02 “Payment Applications,” the Architect will issue to the Contractor a certificate for such amount as the Architect determines to be properly due as agreed upon during the payment review meeting during the preceding payment period. The amount of each partial payment will be the total sum of completed Work less prior partial payments, retainage, and payments withheld in accordance with the provisions of Section 16.07 “Payments Withheld.”
2. No certificate issued for payment, nor payment to the Contractor, nor partial or entire use of the Work, nor occupancy of the Site by the Commission or the User will be an acceptance of any Work or materials not in accordance with the Contract Documents.
3. The Architect’s certificates for payment are for the benefit of the Commission and will not be relied upon by any other party (including any surety or Subcontractor of the Contractor) in any action against the Commission, the Architect, or anyone acting on behalf of either of them.

### **Section 16.06 Retainage**

1. The Commission will retain ten percent (10%) from the invoice sums approved and due the Contractor up to a total of fifty percent (50%) of the Contract Price including approved Change Orders. The amount so retained (“Retainage”) will be released to Contractor in accordance with section 16.08 below.
2. The Executive Director, at the Executive Director’s sole discretion, may increase the amount of the Retainage withheld if the Executive Director considers the Contractor’s performance or the progress of the Work to be such that the Commission will likely incur damages, including but not limited to liquidated damages, in excess of the amount of Retainage.
3. The Contractor must not withhold retainage from its Subcontractors in excess of the percentage Retainage withheld by the Commission from payments to the Contractor and must release Retainage to the Subcontractors under Section 16.08 or the prompt payment to Subcontractors required by Section 16.09.

### **Section 16.07 Payments Withheld**

1. No payment shall be made to the Contractor until certificates of insurance, bonds, or other evidence of compliance by the Contractor with all the requirements of the Contract for insurance and bonds have been provided to the Commission. Further, no payments on the basis of Work performed by a Subcontractor shall be paid until copies of all bonds required and any certificates of insurance required of the Subcontractors by the Contract have been filed with the Commission.
2. The Commission Representative may decline processing a Payment Application if, in the Executive Director’s opinion, the Payment Application is not adequately supported. If the Contractor and Commission Representative cannot agree on a revised amount, the Commission Representative will process the Payment Application in the amount the Executive Director deems appropriate.
3. The Commission Representative may decline to process any Payment Application or may rescind in whole or in part any approval previously made to such extent as may be necessary in his/her opinion

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because of any failure of the Contractor to perform any obligation under the Contract, including but not limited to:

- a. The Contractor's failure or refusal to provide the Commission Representative the required Project CPM Schedule for the Work or monthly schedule updates and obtain the Commission Representative's approval for either as required by the Contract.
  - b. The Contractor's failure to remedy defective Work.
  - c. The Contractor's failure to make payments properly to Subcontractors, employees, or material suppliers or for labor, materials or equipment, or provide partial lien waivers with Payment Applications.
  - d. The Contractor's failure to maintain progress of the Work as required in the Project CPM Schedule, or failure to carry out the Work in accordance with the Contract as determined by the Commission.
  - e. The Contractor's refusal to follow City, state, federal, or Contract safety and security requirements.
  - f. The Contractor's failure to provide a plan to meet the requirements of the Chicago Residency Ordinance.
  - g. The Contractor's failure to remove equipment, materials, or trailers from the site as directed by the Executive Director.
4. The Commission's rights under Section 16.07 are cumulative to any other rights provided under the Contract.

### **Section 16.08 Release of Retainage**

1. At 75% completion of the Project. When the Commission Representative determines that the Contractor has satisfactorily completed 75% of the Project, based upon invoice sums approved and due the Contractor, Retainage will be reduced to an amount equal to three percent (3%) of the total Contract value, including any approved change orders.
2. At Project Substantial Completion. When the Project is Substantially Completed, the Contractor must notify the Commission Representative, in writing, that the Project will be ready for inspection and/or testing on a definite date. Such notice must be given at least fifteen (15) calendar days in advance of said date. If the Commission Representative concurs that the Project will be ready for inspection and/or testing on the date given, the Executive Director and other parties will make such inspection as is convenient for all parties, but within a reasonable period of time. The scheduling of the inspection to determine whether the Project is Substantially Complete shall not relieve the Contractor of its responsibilities under the Contract Documents. The Contractor is required to furnish access for the inspection. If the Executive Director finds that the Work is acceptable under the Contract Documents and has been fully and satisfactorily performed on a timely basis, Retainage will be reduced to an amount equal to one percent (1%) of the total Contract value, including any approved change orders; provided that the Contractor has furnished: a) MBE / WBE final lien waivers, MBE/WBE conditional final lien waivers, or an affidavit of the MBE/WBE stating the final amount earned; b) complete certified payrolls; c) documentation of the turn over of "as-built" drawings, record shop drawings, and product data; d) spare stock of materials, spare parts, accessories, special tools, O & M manuals, guarantees, warranties; e) and all other items required by the Contract Documents or the Commission Representative.
3. At Project Final Completion. The remaining Retainage will be paid when all remaining Work and punch list Work is complete and the Contractor submits to the Commission Representative a sworn affidavit that states the following:

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- a. All payrolls, bills for materials and equipment, and all other indebtedness connected with the Work for which the Commission might in any way be responsible, have been paid or otherwise satisfied.
  - b. The "Contractor's Sworn Statement and Affidavit" for final release of retainage has been provided to the Commission Representative.
  - c. All claims made by Subcontractors of any tier, suppliers, and others against the Contractor, the Commission, any agents of the Commission, the Executive Director or Commission Representative have been resolved.
  - d. "Final Waiver of Lien and Contractor's Affidavit" forms for all Subcontractors of any tier have been provided to the Commission Representative.
  - e. The Warranties and Guarantees, required by the Contract, have been provided to the Commission Representative.
  - f. All Warranties and Guarantees are in full force and effect.
  - g. The surety's written consent, signed by its authorized representative, for final payment to be made directly to the Contractor, has been provided to the Commission Representative.
  - h. The Contractor agrees that acceptance of final payment will constitute a general release to the Commission, its representatives, officials and employees of all claims of liability for anything done or furnished or relating to the Work of the Contract or for any act or neglect of the Commission or its agents officials and employees relating to or connected with the Contract.
  - i. As-Built documentation including but not limited to As-Built Contract drawings, As-Built Shop Drawings and Operation and Maintenance Manuals have been provided to the Commission Representative.
  - i. All other documents requested by the Commission Representative have been provided.
  - j. The Contractor must remove all of the Contractor's trailers, equipment, leftover materials, and trash from the Project site, staging area(s) or anywhere else on the Project Site. The Contractor must also restore the Contractor's staging area(s) to its pre-construction condition. If the Contractor does not comply with this requirement, the Commission Representative may provide written notice to comply within a period of time determined by the Commission Representative. If the Contractor fails to comply with the written notice, the Commission Representative may have the work done by others, and deduct the charge from the Contractor's Retainage.
4. Notwithstanding the foregoing, the Commission Representative, in his sole discretion, may decline to release all or a portion of Retainage if the Commission Representative considers the Contractor's performance or the progress of the Work to be such that the Commission or User has incurred or will likely incur damages, including but not limited to liquidated damages.

### **Section 16.09 Prompt Payment to Subcontractors**

1. The term "Subcontractor" has the same meaning as in Section 1.01. Contractor must state the requirements of the Prompt Payment provision in all Subcontracts and purchase orders. If Contractor fails to incorporate these provisions in all Subcontracts and purchase orders, the provisions of this Section are deemed to be incorporated in all Subcontracts and purchase orders. Contractor and the Subcontractors have a continuing obligation to make prompt payment to their respective Subcontractors. Compliance with this obligation is a condition of Contractor's participation and that of its Subcontractors on the Project.
2. The Contractor must make payment to its Subcontractors within fourteen (14) days of receipt of payment from the Commission for each monthly Payment Application, but only if the Subcontractor has satisfactorily completed its Work in accordance with the Contract Documents and provided the Contractor with all of the documents and information required of the Contractor by Article 16.



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"Payments". The Contractor may delay or postpone payment for a Payment Application when the Subcontractor's Work or materials do not comply with the requirements of the Contract Documents, and the Contractor is acting in good faith and not in retaliation for a Subcontractor exercising legal or contractual rights.

3. The Contractor must make final payment to its Subcontractors within fourteen (14) days after the Subcontractor has satisfactorily completed all of its Work, including but not limited to, completion of punch list work, providing final lien waivers, and providing all of the documents required by the Contract Documents for payment of Retainage at Final Completion of the Project as provided for in Section 16.08. Retainage must be paid to Subcontractors as required by this section, whether the Project has been determined to have reached Substantial Completion as defined in Section 1.01., or whether the Contractor has received payment from the Commission for Retainage. The Contractor may delay or postpone payment of Retainage if the Subcontractor's Work or materials do not comply with the requirements of the Contract Documents, the Contractor has substantial grounds for and has acted reasonably in making the determination, and the Contractor is acting in good faith and not in retaliation for a Subcontractor exercising legal or contractual rights.
4. Contractor must make payment to Subcontractors so that they receive it within fourteen (14) days of receipt of the check from the Commission. Payment is deemed received by the Subcontractor at the time of hand delivery by the Contractor, or three (3) calendar days after mailing by the Contractor.
5. To the extent feasible, to facilitate the flow of information to Subcontractor, the Commission Representative will post at the Project Field Office, a list of Contractor's Payment Applications, including the Subcontractors identified in them, submitted to the Commission for payment and the date of payments made to the Contractor by the Commission.
6. Contractor must not delay or refuse to timely submit pay requests for a Subcontractor's work or materials. The Commission may construe such delay or refusal as Contractor's failure to act in good faith. "Timely", in this context, means within thirty (30) days after the portion of the Subcontractor's work that the Subcontractor has invoiced is in place in the Project or the materials delivered to the Commission (or off-site if this Contract permits payments for off-site delivery). In addition, Contractor must not delay or postpone payment for an undisputed portion of a Subcontractor's invoice or in connection with claims or disputes involving different Payment Applications on the same Project or different projects.
7. The Executive Director will withhold payment from the Contractor when the Executive Director determines that the Contractor has not complied with this Section 16.09.
8. These provisions do not confer any rights in Subcontractors against the Commission. Nothing in this section is to be construed to limit the rights of and remedies available to the Commission, including but not limited to various rights under the General Conditions.

### **Section 16.10 Payment to Subcontractors**

The Contractor must pay all Subcontractors and suppliers within 14 Days of Contractor's receipt of payment from the Commission for that portion of the Work if the Subcontractor(s) has satisfactorily completed its Work in accordance with the Contract Documents. This is a statutory requirement for the Prompt Payment Act, 30 ILCS 540/1.01 *et. seq.* Certain provisions of this Contract, including Section 16.09 may require payment to Subcontractors and suppliers sooner than 14 days. Under certain circumstances, this Contract, including Section 16.09, may require payment to Subcontractors and suppliers before Contractor receives payment from the Commission.

### **Section 16.11 Pay Estimates and Payments Subject to Review**

1. The Commission shall not be precluded or estopped by any measurement, estimate, or certificate made by Contractor or any Subcontractor either before or after the completion and acceptance of the Work and payment there for, from showing the true amount and character of the Work performed and materials furnished by the Contractor, or from showing that any such measurement, estimate, or certificate is untrue or incorrectly made, or that the Work or materials do not conform in fact to the Contract. The Commission will not be precluded or estopped, notwithstanding any such

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measurement, estimate, or certificate and payment in accordance therewith, from recovering from the Contractor and its sureties such damages as the Commission may sustain by reason of the Contractor's failure to comply with the terms of the Contract.

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### **Section 16.12 Salaries/Payments**

1. Salaries of all employees of the Contractor performing Work will be paid unconditionally and not less often than once a week without deduction or rebate on any account, except only for payroll deductions as are mandatory by law.

If, in the performance of this Contract, there is any under payment of salaries by the Contractor, the Commission may withhold, out of payments due to the Contractor, an amount sufficient to pay to employees underpaid, the difference between the salaries required to be paid hereby and the salaries actually paid such employees for the total number of hours worked.

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

### **Section 16.13 No Waiver of Legal Rights**

The Commission will not be precluded or stopped from showing the true amount and character of the Work performed and materials furnished by the Contractor, or from showing that any measurement, estimate, or certificate is untrue or incorrectly made, or that the Work or materials do not conform in fact to the Contract. The Commission will not be precluded or estopped from recovering from the Contractor and its sureties such damages as the Commission may sustain by reason of Contractor's failure to comply with the terms of the Contract. Neither the acceptance by the Commission, or any representative of the Commission, nor any payment for possession taken by the Commission, will operate as a waiver of any portion of the Contract, or of any power herein reserved or any right to damages herein provided. If the Commission elects to waive any breach of this Contract, that waiver will not be held to be a waiver of any other or subsequent breach.

### **Section 16.14 Liens**

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

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

## **ARTICLE 17. CHANGES IN THE WORK**

### **Section 17.01 Owner's Right to Change Work**

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

### **Section 17.02 Changes in the Work**

1. The Commission may make changes in the Work by making alterations therein, or by making additions thereto, or by making deductions or omissions therefrom, without invalidating the Contract and without releasing or relieving the Contractor from any guarantee given pursuant to the Contract, without affecting the validity of the guarantee or Performance and Payment Bond and without relieving or releasing the surety or sureties of such bond. All such Work will be executed under the conditions of the original Contract. The Contractor will submit to the Commission Representative "as-built" or revised drawings clearly showing the revised Work, all as required by Division 1 – Section 01720 – Site Documentation Requirements.
2. Except in an emergency endangering life or property, no change in the work will be made by the Contractor without receipt of a Field Order signed by the Commission Representative.
3. The Contractor will not perform changes to the Work directed by the User unless authorized to do so by the Commission based upon a Field Order signed by the Commission Representative.

### **Section 17.03 Contractor's Request for Adjustment**

The Contractor, within 14 Days of receipt of the Field Order must submit to the Commission Representative a written request for adjustment to the Contract Price and/or Contract Time for such revised Work. The Contractor's failure to submit such request within the specified time will result in the issuance of a Change Order by the Commission for the adjustment to the Contract Price and/or Contract Time that the Commission deems appropriate for such revised Work.

### **Section 17.04 Change Order**

The final provisions of the Change Order, including the adjustment in the Contract Sum and/or the Contract Time, if any, will be incorporated into a written Change Order signed first by the Contractor then by the Executive Director.

### **Section 17.05 Contractor's Release**

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

### **Section 17.06 Performance of Changed Work**

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

### **Section 17.07 Change Claims and Disputes**

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

## ARTICLE 18. CLAIMS AND DISPUTES

### Section 18.01 Claims

1. This provision of the Contract applies to claims for time and/or money based on: a differing site condition (Section 3.03), changes in the work under Article 17, and all other claims made under the Contract.
2. Any claim made by the Contractor regarding the Project must be made in accordance with the requirements stated below.
  - a. The Contractor expressly consents to both the time requirements and notice content requirements for making a Claim or Dispute under this Section 18.01.2.a. The Contractor acknowledges that the notice requirements set forth in this Section 18.01.2.a will be strictly enforced and agrees that any failure on the part of the Contractor to provide notice strictly in accordance with the requirements of this Section 18.01.2.a will constitute a waiver of the Contractor's right to make a Claim to the Commission Representative or submit a Dispute to the Executive Director. The Contractor further understands and agrees that, notwithstanding any case law decision to the contrary, the notice requirements of this Section 18.01.2.a will not be subject to or diminished by any claim on the part of the Contractor that the Commission Representative or Executive Director or any person acting on behalf of either of them had actual or constructive knowledge of any Claim or Dispute or any facts or circumstances supporting any such Claim or Dispute.
  - b. The Contractor must provide notice, in writing to the Commission Representative of any claim for differing site conditions within one (1) day of discovery as required by Section 3.03.
  - c. The Contractor must provide notice, in writing, to the Commission Representative of any claim that may be made, within five (5) days after starting the work that is affected by the claim. The notice shall be referenced as a "Notice of Claim Related Work" and must state the nature of the claim, the work that is affected by the claim, and the anticipated duration of the work.
  - d. The Contractor must provide notice, in writing, to the Commission Representative of any claim based on: a differing site condition; a change in the Work, directed by the Commission Representative; or any other cause within fifteen (15) days of completion of the changed work.
  - e. The Contractor will designate the document "Claim." The Claim must include:
    - (1) The amount of money and / or time extension sought by the Contractor and the contractual and factual basis for each;
    - (2) A general statement of the basis for the claim;
    - (3) The facts underlying the claim;
    - (4) The Notice of Claim Related Work to the Commission Representative;
    - (5) Reference to the applicable contract Provisions and;
    - (6) All documentation that describes, relates, and supports the claim.
  - f. The Commission Representative will, within thirty (30) days from the date of receipt of the Claim, respond by: requesting a meeting with the Contractor; making a written request for additional information from the Contractor; taking other action to attempt to resolve the Claim; and/or advising the Contractor in writing that it should file a Dispute. Any steps taken by the Commission Representative to resolve the Claim will not exceed sixty (60) days from receipt of the Claim unless the Contractor agrees to an additional amount of time in writing.
  - g. If the Claim cannot be resolved within the time frame stated in Article 18, the Contractor must file its Dispute within thirty (30) days of being advised to do so by the Commission Representative.
  - h. The Dispute will be sent to the Executive Director and copied to the Commission Representative.

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- i. The Contractor's failure to file a Dispute with the Executive Director within thirty (30) days will constitute a waiver of the Claim and Dispute.

### Section 18.02 Disputes

1. **Contractor's Request:** In the event of any disagreement between the Contractor and the Commission Representative which the Contractor and the Commission Representative have attempted, but been unable, to resolve including without limitation changes, time extensions, claims, allowable costs or any other issues of fact or Contract interpretation based upon, relating to, or arising under the Contract, a request for resolution must be submitted to the Executive Director by the Contractor for final determination. However, the default or termination of the Contractor are not matters that may be disputed under this provision of the Contract. The Contractor's failure to submit the dispute within thirty (30) days of receipt of the Commission Representative's response to the Contractor's Claim is a waiver of the dispute. The Executive Director may consider issues of Contract interpretation in connection with decisions to be made in resolving disputes.
2. **Request Requirements:** Requests for resolution of Disputes must be made by the Contractor in writing, specifically referencing this section, and include: 1) the issue(s) presented for resolution; 2) a statement of the respective positions of the Contractor and Commission Representative; 3) the facts underlying the dispute; 4) reference to the applicable provision of the Contract Documents by page and section; 5) the identity of any other parties believed to be necessary to the resolution of the dispute; 6) all documentation which describes and relates to the dispute and 7) if applicable, a statement explaining why the Contractor believes that prior to rendering a final decision, the Executive Director should meet with the Contractor, Commission Representative or any other parties believed to be necessary to the resolution of the dispute. Copies of the request for resolution of the dispute must promptly be provided to the Executive Director and Construction Manager on the same day. In addition, the Contractor's Dispute and any subsequent correspondence that relates to the Dispute, which the Contractor provides to the Executive Director, must be copied to the Commission Representative. The Commission Representative shall have thirty (30) days to respond in writing to the Contractor's submission by supplementing the Contractor's submission or to provide its own submission to the Executive Director and Contractor. However, the Commission Representative may request and the Executive Director may allow an additional period of time to respond. Failure by the Commission Representative to respond shall not be deemed to be an admission of any allegations made in the request for dispute resolution, but may be deemed to constitute a waiver of the opportunity to respond to such allegation(s), if any, at this stage of the dispute. The Executive Director's decision may thereafter be reached in accordance with such other information or assistance as may be deemed reasonable, necessary or desirable by the Executive Director.
3. **Executive Director's Decision:** The Executive Director's final decision shall be rendered in writing no more than thirty-five (35) days after receipt of the response of the Commission Representative was filed or was due unless the Executive Director notifies the Contractor and Commission Representative before the end of the thirty-five (35) day period that an additional period, not to exceed thirty (30) days, is needed for the Executive Director to respond. The Executive Director's decision shall be conclusive, final, and binding on all parties unless a judicial determination is sought in accordance with the provisions set forth below.
4. **Implementation of Decision:** The Executive Director's final decision shall be implemented through a Change Order which shall be made a part of the Contract with or without the signature of the Contractor if the Contractor refuses to sign the Change Order.
5. **Contractor's Remedy:** If either the Contractor or Commission does not agree with the decision of the Executive Director, the sole and exclusive remedy is judicial review by a common law writ of certiorari. Unless such review is sought within thirty-five (35) days of receipt of the Executive Director's decision, all right to seek judicial review is waived.
6. **Contractor's Performance of Work:** The Contractor may not withhold performance of and must prosecute any Work required by the Contract during the dispute resolution period, including judicial resolution. The Contractor must prosecute all of its Work including any disputed Work with the same diligence and effort as if no dispute existed. The Executive Director's written determination must be

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complied with pending final resolution, including judicial resolution of the dispute. Neither the Executive Director's determination, nor the actions of the Contractor or the Commission Representative in connection therewith, nor the continued performance by either party, shall constitute an admission as to any factual and/or legal position in connection with the dispute or a waiver of any rights under the Contract.

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

### **Section 18.03 No Waiver of Legal Rights**

1. Neither the acceptance by the Commission or any representative of the Commission, nor any payment for or acceptance of the whole or any part of the Work, nor any extension of time, nor any possession taken by the Commission will operate as a waiver by the Commission of any portion of the Contract, or of any power herein reserved or any right of the Commission to damages herein provided. A waiver of any breach of the Contract is not held to be a waiver of any other or subsequent breach.
2. Whenever under this Contract, the Commission by a proper authority waives the Contractor's performance in any respect or waives a requirement or condition to either the Commission or the Contractor's performance, the waiver so granted, whether express or implied, only applies to the particular instance and is not deemed a waiver forever or for subsequent instances of performance, requirement, or condition. No such waiver is construed as a modification of this Contract regardless of the number of times the Commission may have waived the performance requirement or condition.



**ARTICLE 19. EVENTS OF DEFAULT AND TERMINATION**

**Section 19.01 Events of Default**

The Contractor's Failure to perform any of its obligations under the Contract, including but not limited to the following, are events of default:

1. failure to begin the Work at the time specified;
2. failure to perform in accordance with the Contract Documents;
3. failure to perform the Work with sufficient workers, equipment, or materials to ensure the completion of the Work or any part of the Work within the time specified by the Contract;
4. persistently or repeatedly refusal or failure (except in cases for which extension of time is provided) to supply adequate skilled workers or proper materials;
5. unauthorized discontinuance of the Work;
6. failure to promptly remove materials, or repair, or replace Work that was rejected as defective or unsuitable;
7. failure to make prompt payment to Subcontractors, or for material, or labor;
8. failure to submit all documents required by the Contract Documents or Commission, including but not limited to timely submission of payment applications;
9. failure to prosecute the Work in a manner acceptable to the Commission or in a manner that does not comply with all laws applicable to the Work.
10. persistently disregarding laws, ordinances, or instructions of the Commission, or Commission Representative; or,
11. failure to comply with any other term of the contract that states an event of default or otherwise engages in a substantial violation of any provision of the Contract Documents.
12. interruption or delay of Work for reasons within the Contractor's control, including, but not limited to, labor interests or disputes;
13. failure to comply with federal, state, or local safety requirements;
14. the Contractor's default on a contract with the PBC, CHA, CTA, or City of Chicago;
15. the Contractor's failure to be licensed as a "General Contractor" as required by Chapter 4-36 of the Chicago Municipal Code, at all times throughout the term of the Contract or Contractor's loss of its general license;
16. disqualification as an MBE or WBE of the Contractor or any joint venture partner, Subcontractor or supplier if its status as an MBE or WBE was a factor in the award of the Contract and such status was misrepresented by Contractor;
17. becomes insolvent or bankrupt, attempt assignment of all or any part of the proceeds of this Contract, make a general assignment for the benefit of creditors, or if a receiver is appointed on account of insolvency any of which negatively impacts Contractor's ability to pay Subcontractors or perform the work.

## Section 19.02 Remedies

In the event of default, the Executive Director, at his or her sole discretion, may send the Contractor notice of the Commission's intent to exercise the remedies below.

1. **Termination.** The Commission may terminate the Contract. Written notification of the default and termination of the Contract will be provided to the Contractor and the surety by the Executive Director. The Executive Director's decision and declaration of termination is final and effective.
2. **Notice to Cure.** The Executive Director may provide the Contractor the opportunity to cure the default. The Contractor must cure the default within 10 Days of receipt of the notice from the Executive Director or such time period stated in the Notice to Cure. If the Executive Director does not receive written notification from the Contractor providing cure to the default within the stated cure period, the Executive Director may at any time terminate the Contract, in which event the termination of the Contract is final and effective.
3. In addition to the foregoing, upon an event of default in Section 19.01, "Events of Default," the Commission may invoke any or all of the following remedies:
  - a. The right of set-off against any payments due or to become due to the Contractor and against any retention.
  - b. The right to take over and complete the Work, or any part thereof, either directly or through others and to hold the Contractor liable for any amounts paid for such work above those amounts the Commission would have paid the Contractor for that same work
  - c. The Commission may use the Contractor's Subcontractors, materials, and equipment to complete the Work. Upon the Commission's notification to the Contractor invoking this remedy, any and all rights the Contractor may have in or under its subcontracts are assigned to the Commission at the Commission's discretion. The sole obligation accepted by the Commission under such Subcontractors is to pay for Work satisfactorily performed after the date of the assignment. If a conditional assignment has not been executed, the Contractor must execute, or cause to be executed, any assignment, agreement, or other document which may be necessary, in the sole opinion of the Executive Director and her Legal Counsel, to evidence or effect compliance with this provision. The Contractor must promptly deliver such documents upon the Commission's request. In case of any subcontract so assigned and accepted by the Commission, the Contractor remains liable to the Subcontractor for any payment already invoiced to and paid by the Commission, and for any claim, suit, or cause of action based on or resulting from any error, omission, negligence, fraud, willful or intentionally tortuous conduct, or any other act or omission, or breach of Contract, by the Contractor, its officers, employees, agents, and other Subcontractors, arising prior to the date of assignment to the Commission, when such claim, suit, or cause of action has not been discharged, disposed of, or otherwise resolved as of that date. The Contractor must notify its Subcontractors of these requirements.
  - d. The right to terminate the Contract as to any or all of the Work yet to be performed.
  - e. The right of specific performance, an injunction, or any other appropriate equitable remedy as may be applicable.
  - f. The right of money damages, including, but not limited to all expert witness or other consultant fees, court costs, and attorney's fees which the Commission may incur in connection with any claim, suit, or action based upon, related to, or arising from, directly or indirectly, an event of default hereunder.
  - g. The right to withhold all or any part of the Contractor's compensation to be awarded by the Commission.
  - h. The right to terminate any or all other contracts that Contractor may have with the Commission

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

### **Section 19.03 Non-exclusivity of Remedies**

The remedies under the terms of this Contract are not intended to be exclusive of any other remedies provided, but each and every remedy is cumulative and is in addition to any other remedies, existing now or hereafter, at law or in equity. No delay or omission to exercise any right or power accruing upon any event of default impairs any such right or power, nor construes it as a waiver of any event of default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient.

### **Section 19.04 Commission's Right To Terminate Contract**

1. The Commission may, at its sole discretion, exercise the right to send the Contractor notice under Section 19.02.1 or 19.02.2 "Remedies." Whether to declare the Contractor in default is within the sole discretion of the Executive Director and neither that decision nor the factual basis for it is subject to review or challenge under Article 18 "Claims and Disputes."
2. If termination of the Contract occurs by the Commission under Section 19.02.1 or 19.02.2 "Remedies," the Commission may use the material and equipment, whether owned or leased, which is within the scope of the Work or necessary for completion of the Work paid for by the Commission (whether located on or off the Site) to complete the Work. The Contractor will receive no further payment until the Work is completed. However, if the cost of completion exceeds the unpaid balance of the Contract, the Contractor must pay the difference to the Commission immediately upon demand.
3. If termination occurs, all costs and changes incurred by the Commission, together with the cost of completing the Work, are deducted from any moneys due or which may become due to the Contractor. When the expense incurred by the Commission exceeds the sum which would have been payable under the Contract, the Contractor and the surety are liable and will pay the Commission the amount of such excess.

### **Section 19.05 Court Adjudication of Termination**

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

### **Section 19.06 Termination for Convenience**

1. The Commission reserves the right, for its convenience, to terminate the Work of the Contractor by written notice stating the effective date of such termination. In such case, the Contractor and Subcontractors will (except for services necessary for the orderly termination of the Work): stop all Work; place no further orders or subcontracts for materials, services, equipment, or supplies; assign to the Commission (in the manner and to the extent directed) all of the rights of the Subcontracts relating to the Work; take any action necessary to protect property of the Commission and property in the Contractor's possession in which the Commission has, or may acquire, an interest; and take any other action toward termination of the Work which the Commission may direct. The Commission will pay to the Contractor, subject to the limitations herein set forth, the proportion of the Contract Price that the Work actually performed (including materials delivered to the Site) at the date of termination bears to the entire Work to be performed. No payments will be made for Work not actually performed.
2. After receipt of a notice of termination pursuant to this Section 19.06 "Termination for Convenience," Contractor will submit to the Commission Representative its final invoice in the required form, with supporting documentation. The Commission may require certified payrolls, receipts, and other proof of expenditures. The final invoice must be submitted promptly, but in no event more than 60 Days after the effective date of termination. Failure to submit the final invoice within 60 Days after the effective date of termination constitutes a waiver of the final invoice.

**Section 19.07 Suspension of Work**

1. The Commission has authority to suspend the Work wholly, or in part for such period of time as the Commission may deem necessary due to conditions unfavorable for the satisfactory prosecution of the Work, or to conditions which, in the Commission's opinion, warrant such actions or for such time as is necessary to carry out directions given by the Commission Representative; or to perform any or all provisions of the Contract. The Contractor will not receive compensation for suspension of part of the work. If the Commission suspends the entire project for a period exceeding seven (7) calendar days, the Contractor will be compensated for the following listed costs for each day thereafter. The costs to be paid are limited to: demobilization and remobilization, the Contractor's field supervision costs (based upon the approved staffing plan), and idle equipment costs as provided in Article 17. Changes In The Work. This provision is not applicable if the suspension and/or costs were caused by any act or omission of the Contractor.
2. If it becomes necessary to stop Work for an indefinite period of time, the Contractor must store all materials in such manner that they will not become damaged in any way, take every precaution to prevent damage or deterioration of the Work performed and erect temporary structures where necessary. The Contractor must not suspend work without written consent from the Commission, acting by the Executive Director.

## **ARTICLE 20. ENVIRONMENTAL REQUIREMENTS**

### **Section 20.01 Compliance with Environmental Laws**

1. The Contractor must comply with all Environmental Laws including, without limitation, those listed in the Disclosure Affidavit that must be executed and notarized by the Contractor, and any analogous future local, state, or federal ordinance or statute, rule, and regulation promulgated under or pursuant to the foregoing, and any other present or future law, ordinance, rule, regulation, permit or permit condition, order, or directive which regulates, relates to, imposes liability for, or establishes standards of conduct concerning any Hazardous Materials that may set forth by the Federal government, any state or any political subdivision thereof, or any agency, court, or body of the Federal government, any state or any political subdivision thereof exercising executive, legislative, judicial, regulatory, or administrative functions.
2. If the Contractor is required pursuant to any Environment Laws to file any notice or report of a release or threatened release of Hazardous Materials or Special Wastes on or about any premises used by Contractor to perform the Work required hereunder, the Contractor must provide a copy of such report or notice to the Commission Representative. If a release or threatened release of Hazardous Materials or Special Waste into the environment occurs, or if any claim, demand, action or notice is made against the Contractor regarding the Contractor's failure or alleged failure to comply with any Environmental Law, the Contractor must notify the Commission Representative pursuant to Section 20.06 "Disposal of Materials, Construction Debris, Soil, and Waste" herein below.
3. If the Contractor fails to comply with any Environmental Law, the Commission may terminate this Contract in accordance with the default provisions of this Contract and may adversely affect Contractor's eligibility for future contract awards.

### **Section 20.02 Environmental Permits**

1. The Contractor must show evidence of, and keep current throughout the term of this Contract, all waste hauling, Special Waste hauling, disposal permits and insurance certificates required by Federal, State, City, or other local governmental body or agency pursuant to any Environmental Law.
2. When requested by the Commission Representative, the Contractor must submit copies of all hauling permits required by any Environmental Law. Copies of all permits and insurance certificates that require periodic renewal must be forwarded to the Commission Representative throughout the duration of this Contract. Noncompliance with this requirement may be cause for rejection of the bid and/or termination of this Contract.
3. Environment Records and Reports: The Contractor is required to prepare and maintain proper, accurate and complete records of accounts of all transactions related to the performance of this Contract, including, but not limited to the following:
  - a. Vehicle maintenance records.
  - b. Safety and accident reports.
  - c. IEPA or OSHA manifests.
  - d. Disposal records, including disposal site used, date, truck number and disposal weight.
  - e. Permit documentation and all other documentation and transactions pertaining to all Environmental Laws.

### **Section 20.03 Energy Conservation Ordinance**

Whenever the Contractor is required to build new building(s) or structures; construct additions or make alterations to existing buildings; install systems such as mechanical, service water-heating, electrical distribution, and illumination; or install other equipment, it will be required to comply with Chapter 18-13 of the Municipal Code of Chicago.

## **Section 20.04 Environmental Control**

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

## **Section 20.05 Equipment and Environmental Control during Transport**

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

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

1. The Contractor is responsible for the proper disposal of all materials, construction debris, soil and other waste. Hauling and disposal by a Subcontractor does not relieve the Contractor from responsibility for proper disposal. Disposal of all materials, construction debris, soil, and other wastes must be at a disposal site that is properly licensed and permitted to accept the particular materials, construction debris, soil and other wastes delivered to it in accordance with all Environmental Laws. The Contractor will identify the disposal site(s) or transfer station(s) to which it has contractual access and for which proper, sanitary landfill permits and/or licenses have been obtained.
2. The Contractor must provide the Commission or its designated representative with copies of all load tickets, manifests, bills of lading, scale tickets, and other pertinent documents. When requested by the Commission Representative, the Contractor will provide copies of all permits and/or licenses for the proposed transfer station and/or landfill. If the transfer station and/or landfill proposed for use by the Contractor does not possess the necessary permits and/or licenses to accept the materials, construction debris, soil or other wastes, the Contractor will replace the transfer station and/or landfill submitted as part of their bid proposal at no additional cost to the Commission. If the Contractor disposes of materials, construction debris, soil or other wastes at a site which is not properly permitted, the Contractor will be responsible for all costs associated with the removal of the waste to a properly licensed/permitted landfill or disposal site.
3. The Contractor must notify the Commission Representative within 24 hours of receipt of any environmental complaints, fines, citations, violations, or notices of violation ("Claim") by any governmental body or regulatory agency against the Contractor by any third party relating to the loading, hauling, or disposal of materials, construction debris, soil, or other wastes. The Contractor will provide evidence to the Commission that any such Claim has been addressed to satisfaction of the issuer or initiator of such Claim.
4. The Contractor must notify the Commission Representative of any community meeting, media involvement, or media coverage related to the loading, hauling or disposal of materials, construction debris, soil, and other wastes under this Contract in which the Contractor is asked to participate.
5. The Contractor must verify, in writing, whenever requested by the Commission, that all materials, construction debris, and other waste accepted by the Contractor from the Commission has been disposed of in compliance with all Environmental Laws.
6. The form for identifying the Contractor's debris disposal/hauling site(s) and acknowledging terms and conditions relating thereto which has been executed by the Contractor may be attached to this Contract and incorporated by reference, as appropriate. In addition to the representations and requirements contained in the form, the Contractor understands and agrees that the Contractor, unless otherwise authorized in writing by the Commission, must not continue to use a disposal/hauling

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

### **Section 20.07 Open Dumping Prohibited**

1. The removal of all recyclable materials and garbage, refuse, or other waste material, including but not limited to broken concrete, bricks, rocks, paving asphalt, and incidental debris generated from all construction or demolition activities performed under this Contract, must be transported to a facility that is zoned and permitted to accept such material pursuant to Section 11-4 of the City of Chicago Municipal Code and all applicable local, state, and federal regulations.
2. Bills of Lading, manifests, or other confirmatory receipts signed by a representative of accepting facility for each load of material must be retained by the Contractor and made available to the Commission upon request.

### **Section 20.08 LEEDS Certifications Requirements**

1. The Contractor must perform monitoring, reporting, and assist in submission of all necessary documentation required by the Contract Documents to attain the LEED Certification level in the Technical Specifications "Book 3." These requirements must be performed by a LEED Accredited Professional.



## ARTICLE 21. COMPLIANCE WITH ALL LAWS

### Section 21.01 Contractor Must Comply with All Laws

1. The Contractor must at all times observe and comply, and must cause its Subcontractors to observe and comply, with all applicable Federal, State and local laws, ordinances, codes, rules, regulations, and executive orders, now existing or hereinafter in effect, which may in any manner affect the performance of the Contract. Provision(s) required by law, ordinance, codes, rules, regulations, or executive orders to be inserted in this Contract are deemed inserted, whether or not they appear in this Contract. In no event does the failure to insert such provision(s) prevent the enforcement of such provision(s) of this Contract.
2. In performing the Work, the Contractor must follow the most stringent of the applicable agency and code requirements. The Contractor is fully responsible for ascertaining and complying with all agency and code requirements applicable to the Work.

### Section 21.02 Employment and Payment

1. The Contractor will be required to comply with all laws with respect to the employment of labor and payment of local prevailing wage rates.
2. Non-Discrimination
  - a. It is an unlawful employment practice for a Contractor to fail to hire, to refuse to hire, to discharge, or to discriminate against any individual with respect to compensation or the terms, conditions, or privileges of employment because of such individual's race, color, religion, sex, age, handicap, or national origin; or to limit, segregate, or classify employees or applicants for employment or otherwise; or to adversely affect such individual's status as an employee because of such individual's race, color, religion, sex, age, handicap, or national origin.
  - b. Federal Requirements. Each Contractor will comply with the Civil Rights Act of 1964, 42 U.S.C. Sec. 2000 et seq. (1981), as amended. Each Contractor will further comply with all applicable provisions of the Civil Rights Act of 1964, 28 U.S.C. 1447, 42 U.S.C. 1971, 1975a-1975d, 2000a to 2000h-6 (1992); the Age Discrimination in Employment Act of 1967, 29 U.S.C. 623-634 (1992); the Americans with Disabilities Act of 1990, 29 U.S.C. 706, 42 U.S.C. 12101-12213, 47 U.S.C. 152, 221, 225, 611 (1992); 41 C.F.R. 60 (1992); reprinted in 42 U.S.C. 2000(e) note, as amended by Executive Order No. 11,375 32 Fed. Reg. 14,303 (1967) and by Executive Order No. 12,086, 43 Fed. Reg. 46,501 (1978)/; the Age Discrimination Act, 43 U.S.C. Sec. 6101-6106 (1981); P.L. 101-336; 41 C.F.R. part 60 et seq. (1990).
  - c. State Requirements. Each Contractor must comply with the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq. (1990), as amended, the Discrimination in Public Contracts Act, 775 ILCS 10/0.01 et seq. (1990), as amended, and the Environmental Barriers Act, 410 ILCS 25/1 et seq. The Contractor will furnish such reports and information as requested by the Commission and the Illinois Department of Human Relations.
  - d. City Requirements. Each Contractor must comply with the Chicago Human Rights Ordinance, Chapter 2-160, Section 2-160-010 et seq. of the Municipal Code (1990), as amended. Further, each Contractor will furnish such reports and information as requested by the Chicago Commission of Human Relations.
  - e. Subcontractors. Each Contractor agrees that all of the above provisions will be incorporated in all agreements entered into with any suppliers of materials, providers of services, subcontractors of any tier, and labor organizations which furnish skilled, unskilled, and craft union skilled labor, or which may provide any such materials, labor, or services in connection with this Contract.
3. Employment procedures: Preferences and Compliance

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- a. Salaries of employees of Contractor, performing Work under this agreement, will be paid unconditionally, and not less often than once a month, without deduction or rebate on any account except such payroll deductions as are mandatory or permitted by applicable law or regulations.
  - b. Contractor certifies that it is familiar with, and will comply with, all applicable provisions of 820 ILCS 130/0.01 through 130/12 thereof (Prevailing Wage Act), 30 ILCS 570/1 through 570/7 (Employment of Illinois Workers on Public Works Act) and 30 ILCS 560/0.01 through 560/7 (Public Works Preference Act).
  - c. The Contractor will also comply with all applicable Anti-Kickback laws and regulations, including the Anti-Kickback Act of June 13, 1934 (48 Stat. 948; 62 Stat. 740; 63 Stat. 108; 18 U.S.C. § 874; 40 U.S.C. § 276c) and the Illinois Criminal Code of 1961 720 ILCS 5/33E-1 *et. seq.* If, in the performance of this agreement, there is any direct or indirect kickback as defined in any of the above-mentioned laws and regulations, the Commission may withhold from the Contractor, out of payments due to the Contractor, an amount sufficient to pay any underpaid employees the difference between the salaries required to be paid and the salaries actually paid such employees for the total number of hours worked. The amounts withheld may be disbursed by the Commission for and on account of the Contractor to the respective employees to whom they are due, as determined by the Commission in its sole discretion.
4. The Contractor assumes all liability for the payment of any unemployment benefits payable under any federal or state law to individuals employed by it during the progress of the Work covered by this Contract.
  5. The Contractor agrees that in performing this Contract it will comply with resolutions passed by the Board of Commissioner's of the Public Building Commission of Chicago on February 11, 1992 and August 9, 1994 concerning participation of Minority Business Enterprises, Women Business Enterprises, and residency requirements, respectively, for contracts awarded by the Commission.
  6. A breach of any of the stipulations of this Section may be grounds for termination of the Contract.

### Section 21.03 Chicago Residents As Employees

1. Policy and Terms
  - a. Attention is called to an ordinance passed by the City of Chicago on May 18, 1994, *City of Chicago Residence Preference Ordinance* and the resolution of the Board of Commissioners of the Public Building Commission adopted August 9, 1994.
  - b. The Contractor agrees to ensure that in the aggregated hours of Work to be performed by the Contractor and Site Work subcontractors under this Contract includes at least 50% of the on-Site work is performed by actual residents of the City of Chicago. These minimal percentage levels of Chicagoans as laborers and skilled trade Workers are not to be understood as limiting or determining the fuller utilization of Chicagoans beyond these numerical levels, but are intended instead as minimum requirements unless the Commission grants a waiver based upon demonstration by the Contractor of impracticability or excessive cost of complying with the specified percentages. A waiver or reduction will be considered if the Contractor has unsuccessfully solicited a sufficient number of residents of the City of Chicago to perform the Work and has documented such effort to the satisfaction of the Commission. In addition, a Contractor seeking a waiver or reduction will provide timely notice of the need for qualified residents of the City of Chicago to an appropriate source of referrals, in which the source is entitled to comment on any waiver or reduction application.
  - c. Community Hiring
    - (1) With respect to this major construction contract, it is the policy of the Public Building Commission of Chicago to encourage creation of career opportunities for interested residents of the project community within the construction trades, and to encourage employment of both skilled and unskilled workers from among available residents of the

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project community. The following project community resources are available as employment referral sources in connection with this Contract:

### a) Skill Builders

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

The Contractor should utilize minority and female participants who have gone through the program successfully whenever possible. Information regarding the program and its participants is available from the Public Building Commission at (312) 744-3090. Utilization of such participants may assist the Contractor in meeting its commitment in the minority and female apprentice categories.

- (2) The Contractor also agrees that 5% of the aggregated hours of Work to be performed by the Contractor and Site Work subcontractors under this Contract will be performed by residents of the project community.
- (3) In order to encourage maximum employment of interested and available residents of the project community on this project, the following bonus calculation applies: In calculating the on-Site worker hours performed by actual residents of the City of Chicago, hours worked by residents of the project community will be multiplied by 1.5.
- (4) The Commission is aware that certain subcontract agreements under this Contract may obligate subcontractors to fulfill requirements for employment of City of Chicago residents under this Contract. Should the Contractor receive bonus calculations under the foregoing provisions as a result of residents of the project community employed by any subcontractor obligated to fulfill requirements for employment of City of Chicago residents, then the Contractor must allow a bonus, in the same amount it receives, in favor of each and every such Subcontractor.

## 2. Definitions

- a. "Actual residents of the City of Chicago" means persons domiciled within the City of Chicago. Salaried superintendents are excluded from the coverage of this Section. Domicile is an individual's one and only true, fixed, and permanent home and principal establishment.
- b. "Residents of the project community" means persons domiciled within the City of Chicago and within the Community in which the Project Site is located.

## 3. Compliance and Reporting

- a. The Contractor will provide for the maintenance of adequate employee residency records to document that actual Chicago residents and community residents are employed on the Project. The Contractor (and Subcontractors) will maintain copies of personnel documents supportive of every Chicago employee's record of actual residence.
- b. Weekly Certified Payroll reports (U.S. Department of Labor Form WH-347 or equivalent) submitted to the Commission will identify clearly the actual residence of every employee on each submitted certified payroll. The first time that an employee's name appears on a payroll, the date that the company hired the employee should be written in after the employee's name.
- c. Full access to the Contractor's and Subcontractors' employment records will be granted to the Commission or any duly authorized representative thereof. The Contractor and Subcontractors will maintain all relevant personnel data for a period of at least 3 years after Final Completion and Acceptance of the Work.

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- d. At the direction of the Commission, affidavits and other supporting documentation will be required of the Contractor to verify or clarify an employee's actual address or change of actual address when doubt or lack of clarity has arisen.
4. Non-compliance
    - a. Good faith efforts on the part of the Contractor to provide utilization of actual Chicago residents and community residents will not suffice to replace the actual, verified achievement of the requirement concerning the worker hours performed by actual Chicago residents.
    - b. For the purpose of adjusting the level of retainage, the Commission will review compliance at 50%, 75%, and 90% completion of the Work. If the Commission has determined that the Contractor was not compliant in the fulfillment of the required percentages of aggregated worker hours by actual Chicago residents, or has failed to report in the manner indicated above under "Compliance and Reporting," the Contractor will be damaged in the failure to provide the benefit of demonstrable employment to Chicagoans and community residents to the degree stipulated in this Section. Therefore, in such case of non-compliance it is agreed that 1/20 of 1 %, (0.0005%), of the Adjusted Contract Price be withheld by the Commission in payment for each percentage of shortfall toward the stipulated residency requirement. Failure to report the residency and hours of all employees entirely and correctly will result in the surrender of the entire liquidated damages as if no Chicago residents were employed in either of the categories.
    - c. Liquidated damages, if any, will be calculated when work is 50% completed, 75% completed, and 90% completed upon submission of the Contractor's pay request reflecting percentage of completion, together with all attendant certified payrolls, schedules of values, lien releases, and other required documentation of minority and women business participation. The amount of liquidated damages due to the Commission under this provision will bear compound interest at the rate of 5% per annum, compounded monthly from the date of the Notice to Proceed to the date of approval of a deductive change order for liquidated damages. Should the total amount of liquidated damages due under all provisions of this contract exceed the amount of the Commission's retainage, compound interest on the amount over and above the retainage will continue to accrue until the entire amount of liquidated damages and compound interest is paid to the Commission.
    - d. Failure of the Contractor to meet the 5% minimum community hiring requirement, or failure to pay any balance due the Commission, may result in the Executive Director determining that the Contractor must re-qualify and that the Contractor is no longer a responsible bidder.
  5. Nothing herein provided is to be construed to be a limitation upon the Notice of Requirements for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246) and Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246), or other affirmative action requirements under the regulations promulgated by applicable federal, state or local authorities.

### Section 21.04 Veteran's Preference

1. The Contractor will ensure that the following provision is inserted in all contracts entered into with any subcontractors and labor organizations which furnish skilled, unskilled and craft union skilled labor, or which may provide any material, labor, or services in connection with this Contract.
2. Contractor will comply with the provisions of 330 ILCS 55/0/01 et. seq., which requires that a preference be given to veterans in the employment and appointment to fill positions in the construction, addition, or alteration of all public works. In the employment of labor (except executive, administrative, and supervisory positions) preference will be given to veterans of the Vietnam era and disabled veterans; however, this preference may be given only where the individuals are available and qualified to perform the Work to which the employment relates.

### Section 21.05 Trade Regulations

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

### Section 21.06 Steel Products

To the extent permitted by law, this Contract will be subject to all provisions of the "Steel Products Procurement Act," 30ILCS 565/1 *et seq.* as it may be amended from time to time. Steel products issued or supplied in the performance of this Contract or any subcontract thereto must be manufactured or produced in the United States. For purposes of this Section, "United States" means the United States and any place subject to the jurisdiction thereof and "Steel Products" means products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated, or otherwise similarly processed or processed by a combination of two or more such operations, from steel made in the United States by the open hearth, basic oxygen, electric furnace, Bessemer, or other steel-making process. Knowing violation of this Section may result in the filing and prosecution of a complaint by the Attorney General of the State of Illinois and will subject violators to a fine of the greater of \$5,000 or the payment price received as a result of such violation.

### Section 21.07 Inspector General

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

### Section 21.08 Covenant against Contingent Fees

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

### Section 21.09 Taxes

1. The Contractor will pay for all federal, state, and local taxes on all materials, labor, or services furnished, and all taxes arising out of the operations under this Contract. Such taxes includes, by way of illustration and not in limitation thereof, Retailers' Occupational, Old Age Benefit, Unemployment, customs, duties, and all deductions for income taxes now in force or hereafter enacted prior to Final Completion and Acceptance of the Work. This requirement excludes taxes and assessments on real property comprising the Site and Illinois, County and Municipal Retailers' Occupation and Service Occupation Taxes and Illinois Use, Sales and Service Use Taxes on building materials and fixtures to be incorporated into the Work but does include such taxes on building materials and equipment consumed or used in performing the construction, but not incorporated in it.
2. The Public Building Commission of Chicago, a municipal corporation and political subdivision of the State of Illinois, is exempt from federal Excise Taxes. The State of Illinois Tax Exemption Identification Number is E9978-1506-05.



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### **Section 21.10 Royalties and Patents**

1. All fees for any patent invention, article or arrangement or other appurtenances that may be used upon or in any manner connected with the construction, erection or maintenance of the Work, or any part thereof embraced in the Contract, will be included in the Base Contract Price.
2. The approval of any method of construction, invention, appliance, process, article, device, or material of any kind by the Commission will only be an approval of its adequacy for the Work, and will not be an approval of the use thereof by the Contractor in violation of any patent or other rights of any third person.

### **Section 21.11 Conflict of Interest**

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

### **Section 21.12 Governmental Ethics Ordinance**

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

### **Section 21.13 Disclosure Affidavit**

1. The Contractor is required to file a fully executed Disclosure Affidavit with the Commission no less than annually. Such document must be signed by an authorized officer of the company before a notary and is incorporated by reference into this Contract.
2. Such Disclosure Affidavit certifies, among other things, that the Contractor and each joint venture partner, its agents, employees, officers, and any subcontractors:
  - a. have not engaged in or been convicted of bribery or attempted bribery of a public officer or employee of the City of Chicago, the State of Illinois, the Commission, any agency of the federal government or any state or local government in the United States;
  - b. have not been engaged in or been convicted of bid-rigging or bid-rotation activities as defined in the Disclosure Affidavit;
  - c. are not presently debarred or suspended by any local, state or federal procurement agency;
  - d. do not owe any debts to the State of Illinois, in accordance with 65 ILCS 5/11-42.1-1; and
  - e. do not owe any debts to the City of Chicago in violation of Chapter 2-92-380 of the Municipal Code of Chicago.

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### **Section 21.14 Disclosure of Retained Parties**

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

### **Section 21.15 Non-Collusion, Bribery of a Public Officer or Employee**

1. Each Contractor, in performing under this Contract, will comply with Section 2-92-320 of the Municipal Code of Chicago as follows:
  - a. No person or business entity will be awarded a Contract or subcontract if that person or business entity:
    - (1) Has been convicted of bribery or attempting to bribe a public officer or employee of the City of Chicago, the State of Illinois, or any agency of the federal government or any state or local government in the United States, in that officers or employees official capacity; or
    - (2) Has been convicted of agreement or collusion among bidders or prospective bidders in restraint of freedom of competition by agreement to bid a fixed price, or otherwise; or
    - (3) Has made an admission of guilt of such conduct described in (1) or (2) above which is a matter of record but has not been prosecuted for such conduct.
2. For purposes of this section, where an official, agent or employee of a business entity has committed any offense under this section on behalf of such an entity and pursuant to the direction or authorization of a responsible official thereof, the business entity is chargeable with the conduct. One business entity will be chargeable with the conduct of an affiliated agency.
3. Ineligibility under this section will continue for 3 years following such conviction or admission. The period of ineligibility may be reduced, suspended, or waived by the Commission under certain specific circumstances. Reference is made to Section 2-92-320 of the Municipal Code of Chicago for a definition of affiliated agency, and a detailed description of the conditions that would permit the Commission to reduce, suspend, or waive the period of ineligibility.

### **Section 21.16 Parking Violations**

1. The Commission will set off a portion of the Contract Price or compensation due under the Contract in an amount equal to the amount of the fines and penalties for each outstanding parking violation complaint and/or the amount of any debt owed by the contracting party to the Commission in all contracts undertaken with City of Chicago funds.
2. For purposes of this provision, outstanding parking violation complaint means a parking ticket, notice of parking violation, or parking violation complaint on which neither has payment been made nor an appearance filed in the Circuit Court of Cook County within the time specified on the complaint. Debt means a specified sum of money owed to the Commission for which the period granted for payment has expired.
3. Notwithstanding the provisions of paragraph 1 above, no such debt(s) or outstanding violation complaint(s) will be set off from the Contract Price or compensation due under the Contract if one or more of the following conditions are met:
  - a. The contracting party has entered into an agreement with the Department of Revenue, or other appropriate City department, for the payment of all outstanding parking complaints and/or debts owed to the Commission and the contracting party is in compliance with the agreement; or
  - b. The contracting party is contesting liability for or the amount of the debt in a pending administrative or judicial proceeding; or



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

### Section 21.17 Child Support Ordinance

1. The City of Chicago through passage of the Child Support Arrearage Ordinance, Municipal Code of Chicago Section 2-92-415, seeks to protect the public interest in contracting with entities which demonstrate financial responsibility, integrity, and lawfulness, and finds that it is especially inequitable for contractors or their owners to obtain the benefits of public funds while failing to pay court-ordered child support, which shifts the support of their dependents onto the public treasury.
2. For purposes of this section, "Substantial Owner" means any person who owns or holds a 10% or more age of interest in the Contractor; where the Contractor is an individual or sole proprietorship, Substantial Owner means that individual or sole proprietor.
3. Percentage of interest includes direct, indirect and beneficial interests in the Contractor. Indirect or beneficial interest means that an interest in the Contractor is held by a corporation, joint venture, trust, partnership, association, estate or other legal entity, in which the individual holds an interest, or by agent(s) or nominees(s) on behalf of an individual entity. For example, if Corporation B holds or owns a 20% interest in Contractor, and an individual or entity has a 50% or more percentage of interest in Corporation B, then such individual or entity indirectly has a 10% or more percentage of interest in the Contractor. If Corporation B is held by another entity, then this analysis similarly must be applied to that next entity.
4. In accordance with Section 2-92-415 of the Municipal Code of Chicago, if an Illinois court of competent jurisdiction has issued an order declaring one or more Substantial Owners in arrearage on their child support obligations and: (1) at least one such Substantial Owner has not entered into a court-approved agreement for the payment of all such child support owed, or (2) at least one such Substantial Owner is not in compliance with a court-approved agreement for the payment of all such child support owed or both (1) and (2), then:
5. For those bidders in competitive bid contracts, the Commission will assess an 8% penalty. This penalty will increase their bid price for the purpose of canvassing the bids in order to determine who is to be the lowest responsible bidder. This penalty will apply only for purposes of comparing bid amounts and will not affect the amount of any contract payment.
6. The provisions of this section apply only where not otherwise prohibited by federal, state or local law.

### Section 21.18 Local Business Preference

The following provision applies for Projects funded by the City:

1. Since the cost of doing business is higher for firms located in the City of Chicago due to higher taxes and other operating expenses, and the City of Chicago benefits from the presence of those firms in the City, the Commission applies a Local Business Preference to bids on projects funded by the City of Chicago. To be considered a local business, a firm must:
  - a. be located within the corporate limits of the City of Chicago,
  - b. have the majority of its regular, full-time work force located within the City of Chicago, and
  - c. be subject to City of Chicago taxes.
2. For City-funded projects, a contract in the amount of the total Base Bid will be awarded to the responsible local business submitting the lowest Award Criteria Figure, provided that the Award Criteria Figure does not exceed the lowest Award Criteria Figure submitted by a responsible non-local business by more than 2%.
3. If the Bidder is a joint venture, the joint venture will be considered a local business if:

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- a. all partners to the joint venture are Local Businesses, or
  - b. one of the partners to the joint venture is a Local Business and holds at least a 50% interest in the joint venture.
4. A local business has a 50% interest in the joint venture only if it holds subcontracts equal to 50% or more of the amount of the bid. Joint venture bidders will submit information and documentation (including, but not limited to, the joint venture agreement and subcontracts) with their bids to establish their eligibility for the Local Business Preference.
5. Each Bidder seeking classification as a Local Business must complete and sign the Affidavit of Local Business and will submit documentation to support the assertions in the affidavit. The following documentation must be included with the affidavit:
  - a. a copy of the current City of Chicago Business license issued to the Bidder by the City of Chicago for the Bidder's address within the corporate limits of the city of Chicago.
6. The Commission's determination of a bidder's eligibility for the Local Business Preference will be final.

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### **ARTICLE 22. MISCELLANEOUS**

#### **Section 22.01 Counterparts**

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

#### **Section 22.02 Governing Law**

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

#### **Section 22.03 Consent to Service of Process and Jurisdiction**

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

#### **Section 22.04 No Third Party Beneficiaries**

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

#### **Section 22.05 Notices**

1. Notices, unless expressly provided for otherwise in this Contract, must be in writing and may be delivered personally or by placing in the United States mail, first class and certified, return receipt requested, with postage prepaid and addressed as indicted in Book 2.
2. Notices delivered by mail are deemed effective 3 Days after mailing in accordance with this section. Notices delivered personally are deemed effective upon receipt. The addresses stated herein may be revised without need for modification or amendment of this Contract, provided written notification is given in accordance with this section.

**Section 22.06 Authority**

1. **Commission's Authority.** This Contract is entered into by virtue of the authority conferred on the Commission in accordance with 50 ILCS 20/21.
2. **Contractor's Authority.** Execution of this Contract by the Contractor is authorized and signature(s) of each person signing on behalf of the Contractor have been made with complete and full authority to commit the Contractor to all terms and conditions of this Contract, including each and every representation, certification, and warranty contained herein, attached hereto and collectively incorporated by reference herein, or as may be required by the terms and conditions hereof. If other than a sole proprietorship, Contractor must provide satisfactory evidence that the execution of the Contract is authorized in accordance with the business entity's rules and procedures.

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### ARTICLE 23. MBE/WBE SPECIAL CONDITIONS

#### Section 23.01 MBE/WBE Program

1. Introduction - Remedial Program for Utilization of Minority Business Enterprise ("MBE"), Women Business Enterprise ("WBE") and Economically Disadvantaged Firms
  - a. In February 1992 the Board of Executive Directors (the "Board") of the Public Building Commission of Chicago (the "Commission") adopted a Remedial Program for Utilization of MBE and WBE firms (the "Program") as a means of providing open access to the award of Commission Contracts and to remedy the effects of racial and sexual discrimination which have placed such firms at a competitive disadvantage in the award of Commission Contracts.
  - b. In 2003, District Judge James B. Moran in the case *Builders Association of Greater Chicago v. City of Chicago*, No. 96 C 1122 (N.D. Ill.) held that the evidence introduced at trial demonstrated that past and current discriminatory practices continue to place MBE and WBE firms at a competitive disadvantage in the award of governmental contracts and such practices have and continue to impede the growth and success of MBE and WBE firms.
  - c. The Commission has a compelling interest in preventing public funds from perpetuating the past and current discrimination against MBE and WBE firms, which currently exist in the market.
  - d. The February 1992 Program adopted by the Commission has not been sufficient to ameliorate the effects of racial and gender discrimination in the marketplace.
  - e. The remedies adopted herein by the Commission will not overly burden non-MBE and non-WBE firms in the award of Commission Contracts.
  - f. The Commission will periodically review MBE and WBE participation on contracts awarded by the Commission to insure that the Commission continues to have a compelling interest in remedying discrimination against MBE and WBE firms in the award of Commission Contracts and that the measures adopted herein remain narrowly tailored to accomplish that objective.
2. Policy Statement
  - a. It is the policy of the Commission to ensure competitive business opportunities for MBE and WBE firms in the performance of Contracts, to prohibit discrimination in the award of or participation in Contracts, and to abolish arbitrary barriers to full participation in Contracts by all persons, regardless of race, sex or ethnicity. Therefore, during the performance of this Contract, the Contractor must agree that it will not discriminate against any person or business on the basis of race, color, religion, ancestry, age, marital status, physical or mental handicap, unfavorable discharge from military service, parental status, sexual orientation, national origin or sex, in the solicitation or the purchase of goods and services or the subcontracting of work in the performance in this Contract.
  - b. The Commission requires the Contractor also agree to take affirmative action to ensure that MBE and WBE firms have the maximum opportunity to compete for and perform subcontracts with respect to this Contract.
3. Definitions
  - a. For purposes of this Special Condition, the following definitions applies:
    - (1) "Affiliate" of a person or entity means a person or entity that directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with the person or entity. In determining whether persons or entities are affiliates, the Commission will consider all appropriate factors including common ownership, common management and

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contractual relationships. Affiliates will be considered together in determining whether a firm is a Small Business Enterprise.

- (2) "Broker" means a person or entity that fills orders by purchasing or receiving supplies from a third party supplier rather than out of existing inventory and provides no commercially useful function other than acting as a conduit between a supplier and a customer.
- (3) "Certification" or "Certified" means a person or entity qualified or granted certification as a Minority Business Enterprise (MBE) or Women Business Enterprise (WBE) by the City of Chicago, County of Cook, Chicago Board of Education, Chicago Transit Authority, Metropolitan Water Reclamation District, Chicago Minority Business Development Council, Central Management Service of the State of Illinois, METRA, and Women's Business Development Center.
- (4) "Commercially useful function" means responsibility for the execution of a distinct element of the work of the contract, which is carried out by actually performing, managing and supervising the work involved or fulfilling responsibilities as a joint venturer.
- (5) "Construction Contract" means a contract for the construction, repair, alteration, renovation or improvement of any building, facility or other structure.
- (6) "Contract" means any contract awarded by the Commission which is to be paid from funds belonging to or administered by the Commission regardless of source.
- (7) "Contract Specific Goals" means the subcontracting goals for MBE and WBE participation established for a particular contract based upon the availability of MBEs and WBEs to perform and anticipated scope of work of the contract and the Commission's progress towards meeting the aspirational goals.
- (8) "Contractor" means any person or business entity that seeks to enter into a Construction Contract with the Commission and includes all partners, affiliates and joint ventures of such person or entity.
- (9) "Economically disadvantaged" means an individual whose personal net worth is less than \$750,000, indexed annually for the Chicago Metro Area Consumer Price Index published by the U.S. Department of Labor, Bureau of Labor Standards, beginning January, 1999.
- (10) "Executive Director" means the Executive Director of the Commission or his duly designated representative as appointed in writing.
- (11) "Good faith efforts" means actions undertaken by a Contractor to achieve a Contract Specific Goal that by their scope, intensity and appropriations to the objective can reasonably be expected to fulfill the Program's requirements.
- (12) "Joint venture" means an association of two or more persons or entities or any combination of two or more business enterprises and persons numbering two or more, proposing to perform a single for-profit business enterprise, in which each joint venture partner contributes property, capital, efforts, skill and knowledge, and in which the MBE or WBE is responsible for a distinct, clearly-defined portion of the work of the contract and whose share in the capital contribution, control, management, risks and profits of the joint venture is equal to its ownership interest. Joint ventures must have an agreement in writing specifying the terms and conditions of the relationships between the parties and their relationship and responsibilities to the contract.
- (13) "Local business enterprise" means, for purposes of Certification, a business entity located within the counties of Cook, DuPage, Kane, Lake, McHenry or Will in the State of Illinois (the "Six County Region"), which has the majority of its regular, full time work force located within the Six County Region.
- (14) "Minority" means:

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- (a) Any individual in the following racial or ethnic groups, members of which are rebuttably presumed to be socially disadvantaged:
    - (i) African-Americans or Blacks, which includes persons having origins in any of the Black racial groups of Africa;
    - (ii) Hispanics, which includes persons of Spanish culture with origins in Mexico, South or Central America or the Caribbean Islands, regardless of race; and
  - (b) Individual members of other groups, including but not limited to Asian-Americans, Arab-Americans and Native-Americans, found by the Commission to be socially disadvantaged by having suffered racial or ethnic prejudice or cultural bias within American society, without regard to individual qualities, resulting in decreased opportunities to compete in Chicago area markets or to do business with the Commission.
- (15) "Minority-owned business enterprise" or "MBE" means a small local business enterprise which is at least 51% owned by one or more economically disadvantaged minority persons, or in the case of a publicly held corporation at least 51% of all classes of the stock of which is owned by one or more economically disadvantaged minority persons whose management, policies, major decisions and daily business operations are independently managed and controlled by one or more economically disadvantaged minority persons.
- (16) "Owned" means having all of the customary incidents of ownership, including the right of disposition and sharing in all of the risks, responsibilities and profits commensurate with the degree of ownership.
- (17) "Personal net worth" means the net value of the assets of an individual after total liabilities are deducted. An individual's personal net worth does not include the individual's ownership interest in an applicant or other certified MBE or WBE or the individual's equity in his or her primary place of residence. As to assets held jointly with his or her spouse, an individual's personal net worth includes only that individual's share of such assets. An individual's net worth also includes the present value of the individual's interest in any vested pension plans, Individual Retirement Accounts, 401(K) accounts or other retirement savings or investment programs less the tax and interest penalties that would be imposed if the asset were distributed at the present time.
- (18) "Program" means the minority- and women-owned business enterprise construction procurement program established in this special condition.
- (19) "Small business enterprise" means a small business as defined by the U.S. Small Business Administration pursuant to the business size standards found in 13 C.F.R Part 121 relevant to the scope(s) of work the firm seeks to perform on Commission contracts. A firm is not an eligible small business enterprise in any fiscal year in which its gross receipts, averaged over the firm's previous five fiscal years, exceed the size standards of 13 C.F.R Part 121.
- (20) "Small local business enterprise" means a business that is a small business enterprise and a local business enterprise.
- (21) "Woman" means a person of the female gender, who is presumed to be socially disadvantaged.
- (22) "Women-owned business enterprise" or "WBE" means a small local business enterprise which is at least 51% owned by one or more economically disadvantaged women or in the case of a publicly owned business, at least 51% of all classes of the stock of which is owned by one or more economically disadvantaged women, whose management, policies, major decisions and daily business operations are independently managed and controlled by one or more economically disadvantaged women.

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### 4. Aspirational and Contract Specific Goals

- a. Upon the effective date of these Special Conditions, the bi-annual aspirational goals are to award 24% of the annual dollar value of all Commission Construction Contracts to certified MBEs and 4% of the annual dollar value of all Commission Contracts to qualified WBEs and 25% of the annual dollar value of all other Commission Contracts to certified MBEs and 5% of the annual dollar value of the all other Commission Contracts to certified WBEs.

The Commission establishes subsequent bi-annual aspirational goals for the award of Commission Contracts based on the best available evidence. Quotas are prohibited.

- b. As one method to achieve the aspirational goals, the Executive Director is authorized to establish contract specific goals for MBE and WBE participation for each contract let through competitive bidding. Contract specific goals will be based on normal industry practice, as determined in consultation with other governmental agencies, the scope of work of the contract, the availability of at least three MBEs and three WBEs to perform the functions of those individual contracts, and the Commission's progress to date towards meeting the bi-annual, aspirational goals of Section 4.1. The Executive Director will implement administrative procedures to establish contract-specific goals.
- c. Each Bidder's commitment to utilization of certified MBE and WBE firms is considered as further evidence of the responsibility of the Bidder. Further, the Bidder must agree to use its best efforts to include MBE and WBE firms in any Contract modification work that increases the Contract value of 10% of the initial Contract value or \$50,000, whichever is less.
- d. Failure to carry out the commitments and policies set forth in this Program constitute a material breach of contract and may result in termination of the Contractor or such other remedy, as the Commission deems appropriate.

### 5. Race and Gender-Neutral Measures

- a. The Commission will develop and use race and gender-neutral measures to facilitate the participation of small business enterprises in Commission Contracts. Race and gender-neutral measures will be used to the maximum feasible extent to meet the bi-annual aspirational goals established in Section 4.1. These measures may include, but are not limited to:
  - (1) Arranging solicitation times for the presentations of bids, specifications, and delivery schedules so as to facilitate the participation of interested contractors and subcontractors;
  - (2) Segmenting contracts so as to facilitate the participation of small business enterprises;
  - (3) Providing assistance to businesses in overcoming barriers such as difficulty in obtaining bonding and financing;
  - (4) Providing timely informational programs on contracting procedures, bid preparation and specific contracting opportunities;
  - (5) Holding pre-bid conferences, where appropriate, to explain the projects and to encourage contractors to use small business enterprises as subcontractors;
  - (6) Adopting prompt payment procedures, including requiring by contract that prime contractors pay subcontractors within specified days of receipt of payment from the Commission and where necessary, issuing payments directly to subcontractors in lieu of payments to prime contractors;
  - (7) Reviewing bonding, insurance and retainage requirements so as to eliminate unnecessary barriers to and reduce the burdens of contracting with the Commission;
  - (8) Expediting payments and advancing payments to cover start-up and mobilization costs, where appropriate;



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- (9) Providing information concerning small business loan programs and other programs providing access to capital to small business enterprises;
- (10) Collecting information from all prime contractors on Commission construction contracts detailing the bids received from all subcontractors for Commission construction contracts and the expenditures to subcontractors utilized by prime contractors on Commission construction contracts;
- (11) At the discretion of the Executive Director, letting a representative sample of Commission construction contracts without goals to determine MBE and WBE utilization in the absence of goals;
- (12) Providing a bid preference on construction contracts of 2% for firms bidding on prime contracts whose principal place of business is located in the City of Chicago;
- (13) Limiting the self-performance of prime contractors, where appropriate;
- (14) Creating a target market program for bidding on Commission prime construction contracts by small local business enterprises;
- (15) To the extent practicable, awarding contracts requiring the expenditure of funds not exceeding \$5,000 to small local business enterprises; and
- (16) Referring complaints of discrimination against MBEs or WBEs to appropriate authorities, for investigation and resolution.

### 6. Contract Provision

- a. Each Commission Contract let through competitive bidding with an estimated value in excess of \$5,000 for which contract specific goals have been established will contain the following requirements:
  - (1) Include with the bid specifications for each competitively bid contract a list of certified MBEs and WBEs that are available to perform the work required by the specifications or otherwise make such a list available to potential contractors.
  - (2) A description of this Special Condition and the program including the requirement of an approved compliance plan; the requirements related to achieving the goals and counting MBE or WBE participation towards meeting the goals; if goals are not met, the requirement of documentation of the Contractor's good faith efforts to achieve the goals including the good faith efforts of MBEs and WBEs to achieve the goal for which they do not qualify; and a requirement that the Contractor commit to the expenditure of at least the dollar value of the contract specific goals with one or more MBEs and one or more WBEs or make good faith efforts to do so. This commitment may be met by the contractor's status as a MBE or WBE, a joint venture with one or more MBEs or WBEs (to the extent of the MBE's or WBE's participation in such joint venture), subcontracting a portion of the work to one or more MBEs or WBEs, purchasing materials or services for the work from one or more MBEs or WBEs or by any combination of the foregoing;
  - (3) A requirement that prime contractors on Commission construction contracts notify MBEs and WBEs utilized on those contracts about opportunities on contracts without affirmative action contracting goals;
  - (4) A requirement that where the Contractor cannot achieve the contract specific goals it must document its good faith efforts to do so. In determining whether the contractor has made such good faith efforts, the performance of other contractors in meeting the goals may be considered. The Executive Director or his designee will consider, at a minimum, the Contractor's efforts to do the following:

## PUBLIC BUILDING COMMISSION OF CHICAGO

- (a) Soliciting through reasonable and available means the interest of MBEs or WBEs that have the capability to perform the work of the contract. The contractor must solicit this interest within sufficient time to allow the MBEs or WBEs to respond. The contractor must take appropriate steps to follow up initial solicitations with interested MBEs or WBEs.
  - (b) Provide interested MBEs or WBEs with adequate information about the plans, specifications and requirements of the contract, including addenda, in a timely manner to assist them in responding to the solicitation.
  - (c) Negotiating in good faith with interested MBEs or WBEs that have submitted bids. Documentation of negotiation must include the names, addresses and telephone numbers of MBEs or WBEs that were solicited; the date of each such solicitation; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why agreements could not be reached with MBEs or WBEs to perform the work. That there may be some additional costs involved in solicitation and using MBEs and WBEs is not a sufficient reason for a contractor's failure to meet the goals, as long as such costs are reasonable.
  - (d) Not rejecting MBEs or WBEs as being unqualified without sound reasons based on the thorough investigation of their capabilities. The MBEs' or WBEs' standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations are not legitimate causes for rejecting or not soliciting bids to meet the goals.
  - (e) Making a portion of the work available to MBE or WBE subcontractors and suppliers and to select those portions of the work or material consistent with the available MBE or WBE subcontractors and suppliers, so as to facilitate meeting the goals.
  - (f) Making good faith efforts despite the ability or desire of a Contractor to perform the work of a contract with its own organization. A Contractor that desires to self-perform the work of a contract must demonstrate good faith efforts unless the goals have been met.
  - (g) Selecting portions of the work to be performed by MBEs or WBEs in order to increase the likelihood that the goals will be met. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate MBE or WBE participation even when the Contractor might otherwise prefer to perform these work items with its own forces.
  - (h) Making efforts to assist interested MBEs or WBEs in obtaining bonding lines of credit or insurance as required by the Commission or Contractor.
  - (i) Making efforts to assist interested MBEs or WBEs in obtaining necessary equipment, supplies, materials or related assistance or services, including participation in a mentor-protégée program; and
- (5) Effectively using the services of the Commission; minority or women community organizations; minority or women contractors' groups; local, state and federal minority or women business assistance offices; and other organizations to provide assistance in the recruitment and placement of MBEs or WBEs.
  - (6) Provide a procedure for the Contractor's desire to protest the determination that it did not make good faith efforts.
  - (7) Negotiate with any Contractor whose contract is in excess of \$5,000 in value and is not awarded by competitive bidding a commitment, where practicable, to meet at least the aspirational goals as percentages of the dollar value of the contract.

## PUBLIC BUILDING COMMISSION OF CHICAGO

- (8) Include MBEs and WBEs on solicitation mailing lists and encourage that they be solicited for suitable contracts.
  - (9) Publicize the Program through appropriate means, in order to attract qualified MBEs and WBEs.
- b. To achieve the contract specific goals, the Executive Director will undertake, in addition to the other measures provided herein, the following:
- (1) Including uniform provisions permitting the termination of the contract by the Commission upon the disqualification of the Contractor as a MBE or WBE if the contractor's status as MBE or WBE was a factor in the award of the contract and such status was misrepresented by the Contractor;
  - (2) Including uniform provisions permitting termination of the contract by the Commission upon the disqualification of any MBE or WBE if the subcontractor's or supplier's status as a MBE or WBE was a factor in the award of the contract and the status of the subcontractor or supplier was misrepresented by the contractor. If the contractor is determined not to have been involved in any misrepresentation of the status of the disqualified subcontractor or supplier, the contractor will discharge the disqualified subcontractor or supplier and make good faith efforts to engage a qualified MBE or WBE replacement;
  - (3) Including uniform provisions allowing the Executive Director access to the Contractor's books and records, including without limitation payroll records, tax returns and records and books of account, to determine the Contractor's compliance with its commitment to MBE and WBE participation and the status of any MBE or WBE performing any portion of the contract. This provision will be in addition to, and not a substitute for, any other provision allowing inspection of the Contractor's records by the Commission for any purpose;
  - (4) Reviewing each proposed contract modification request that, increases the contract value by 10% of the initial contract value or \$50,000.00, whichever is less, for opportunities to increase participation of MBEs or WBEs. Where the proposed contract modification involves work which can be performed by MBEs or WBEs already performing work on the contract such MBEs and WBEs will participate in such work specified in the contract modification;
  - (5) Inserting in each contract containing a commitment to MBE and/or WBE participation:
    - (a) A requirement of periodic reporting by the Contractor to the Executive Director on all expenditures made to achieve compliance with the foregoing provisions. Such reports will include the name and business address of each subcontractor and supplier actually involved in the contract, a description of the work performed and/or product or service supplied by each such subcontractor or supplier, the date and amount of each expenditure, and such other information as may assist the Executive Director in determining the Contractor's compliance with the foregoing provisions;
    - (b) A requirement that the Contractor cannot make changes to its contractual MBE and WBE commitments or substitute such MBE or WBE subcontractors without the prior written approval of the Executive Director. Unauthorized changes or substitutions, including performing the work designated for a subcontractor with the contractor's own forces, is a violation of this section and a breach of the contract with the Commission, and may cause termination of the contract for breach, and/or subject the Contractor to contract remedies or other sanctions. The facts supporting the request must not have been known nor reasonably should have been known by the parties prior to entering into the subcontract.
  - (6) Substitutions of the subcontractor will be permitted only on the following bases:
    - (a) Unavailability after receipt of reasonable notice to proceed;
    - (b) Failure of performance;

## PUBLIC BUILDING COMMISSION OF CHICAGO

- (c) Financial incapacity;
- (d) Refusal by the subcontractor to honor the bid or proposal price or scope;
- (e) Mistake of fact or law about the elements of the scope of work of a solicitation where a reasonable price cannot be agreed;
- (f) Failure of the subcontractor to meet insurance, licensing or bonding requirements;
- (g) The subcontractor's withdrawal of its bid or proposal; or
- (h) Decertification of the subcontractor as MBE or WBE.

Where the Contractor has established the basis for the substitution to the satisfaction of the Executive Director, it must make good faith efforts to substitute with a MBE or WBE subcontractor. If the MBE or WBE contract specific goal cannot be reached and good faith efforts have been made, the Contractor may substitute with a non-MBE or non-WBE. If a Contractor plans to hire a subcontractor on any scope of work that was not previously disclosed within the compliance plan the Contractor must obtain the approval of the Executive Director or his designee to modify the compliance plan and must make good faith efforts to ensure that MBEs or WBEs have a fair opportunity to bid on the new scope of work. Such request by the Contractor to modify its compliance plan and substitute with an MBE and/or WBE firm must be accompanied by a revised Schedule D and Schedule C completed by MBE and/or WBE firm(s) that the Contractor has committed to utilizing current letters of certification must be submitted.

### 7 Determining MBE/WBE Utilization

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

- a. The total dollar value of the contract awarded to the certified MBE or WBE firm will be credited to such participation. Only minority business participation may be counted toward MBE participation and only women business participation may be counted toward WBE participation.
- b. The total dollar value of a contract with a firm owned and controlled by minority women is counted toward either the MBE or WBE goal, but not both. The Contractor employing the firm may choose the goal to which the contract value is applied. Various work done by one and the same subcontractor will be considered, for the purpose of this principle, as work effectively done under one subcontract only, which subcontractor may be counted toward only one of the goals, not toward both.
- c. In a firm owned and controlled by both minority males and minority females, if the minority females own and control 51% or more of the business, then the total dollar value of a contract with such firm may be counted toward either MBE participation or WBE participation, but not both. If the minority females, however, own and control less than 51% of the firm, then the firm's participation may be counted only toward MBE utilization.
- d. A Contractor may count toward its MBE or WBE goal the portion of the total dollar value of a contract with an eligible joint venture equal to the percentage of the ownership and control of the MBE or WBE partner in the joint venture. A joint venture seeking to be credited for MBE participation may be formed among certified MBE and WBE firms, or between certified MBE and WBE firms and a non-MBE/WBE firm. A joint venture satisfies the eligibility standards of this Program if the certified MBE or WBE participant of the joint venture:
  - (1) Shares in the ownership, control, management responsibilities, risks and profits of the joint venture; and
  - (2) Is responsible for a clearly defined portion of work to be performed in proportion to the MBE or WBE ownership percentage.

## PUBLIC BUILDING COMMISSION OF CHICAGO

- e. A Contractor may count toward its MBE and WBE goals only expenditures to firms that perform a commercially useful function in the work of a contract. A firm is considered to perform a commercially-useful function when it is responsible for execution of a distinct element of the work of a contract and carries out its responsibilities by actually performing, managing, and supervising the work involved. To determine whether a firm is performing a commercially useful function, the Commission will evaluate the amount of work subcontracted, industry practices and other relevant factors.
  - f. Consistent with normal industry practices, a MBE or WBE firm may enter into subcontracts. If a MBE or WBE contractor subcontracts a significantly greater portion of the work of a contract than would be expected on the basis of normal industry practices, the MBE or WBE will be rebuttably presumed not to be performing a commercially-useful function.
  - g. A Contractor may count toward its goals expenditures to MBE or WBE manufacturers (i.e., suppliers that produce goods from raw materials or substantially alters them before resale).
  - h. A Contractor may count toward its goals expenditures to MBE or WBE suppliers provided that the supplier performs a commercially useful function in the supply process.
8. Submission of Bid Proposals
- a. The following schedules and documents constitute the Bidder's MBE/WBE compliance proposal and must be submitted at the time of the bid or proposal or within such extended period as provided in Section VII hereof:
    - (1) Evidence of Certification: Affidavit of MBE/WBE. A copy of each proposed MBE and WBE firm's Letter of Certification from the City of Chicago, Department of Procurement Services must be submitted.
    - (2) Schedule B: Affidavit of MBE/Non-MBE or WBE/Non-WBE Joint Ventures. Where the Bidder's MBE/WBE compliance proposal includes participation of any MBE or WBE as a joint venture participant, the Bidder must submit a "Schedule B: Affidavit of MBE/Non-MBE or WBE/Non-WBE Joint Venture" with an attached copy of the joint venture agreement proposed among the parties. The Schedule B and the joint venture agreement must clearly evidence that the MBE or WBE participant will be responsible for a clearly defined portion of the work to be performed and that the MBE or WBE firm's responsibilities are in proportion with its ownership percentage. In order to demonstrate the MBE or WBE participant's share in the ownership, control, management responsibilities, risks and profits of the joint venture, the proposed joint venture agreement should include specific details related to:
      - (a) The contributions of capital and equipment;
      - (b) Work items to be performed by the MBE or WBE firm's own forces;
      - (c) Work items to be performed under the supervision of the MBE or WBE participant; and
      - (d) The commitment of management, supervisory and operational personnel employed by the MBE or WBE to be dedicated to the performance of the contract.
    - (3) Schedule C: Letter of Intent to Perform as a Subcontractor, Subconsultant, or Material Supplier, Schedule C, executed by the MBE/WBE firm (or Joint Venture Subcontractor) must be submitted by the Bidder for each MBE/WBE included on the Schedule D. Schedule C must accurately detail the work to be performed by the MBE or WBE firm and the agreed rates and prices to be paid.
    - (4) Schedule D: Affidavit of Prime Contractor Regarding MBE or WBE Utilization. A completed Schedule D committing to the utilization of each listed MBE or WBE firm. Unless the Bidder has submitted a completed request for a waiver of participation by MBE/WBE firms (See Request for Waiver procedures in Section 23.01.10), the Bidder must include the specific dollar amount of participation of each MBE/WBE firm listed on its Schedule D. The total dollar

## PUBLIC BUILDING COMMISSION OF CHICAGO

commitment to proposed MBE firms must at least equal the MBE goal, and the total dollar commitment to proposed WBE firms must at least equal the WBE goal. Bidders are responsible for calculating the dollar equivalent of MBE or WBE utilization as percentages of their total base bid.

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

### 9. Evaluation of Bid Proposals

- a. During the period between bid opening and contract award, the submitted documentation will be evaluated by the Commission. The Bidder agrees to provide, upon request, earnest and prompt cooperation to the Executive Director or his designee in submitting to interviews that may be necessary, in allowing entry to places of business, in providing further documentation, or in soliciting the cooperation of a proposed MBE or WBE firm in providing such assistance. A bid may be treated as non-responsive by reason of the determination that the Bidder's proposal did not contain a sufficient level of Certified MBE or WBE participation, that the Bidder was unresponsive or uncooperative when asked for further information relative to the proposal, or that false statements were made in the Schedules.
- b. If the Commission's review of a Bidder's proposal concludes that the MBE or WBE proposal was deficient, the Commission will promptly notify the Bidder of the apparent deficiency and instruct the Bidder to submit (within 3 business days of such notice given by the Commission) a modification of the MBE or WBE Proposal, in proper format, which remedies the deficiencies cited. Failure to correct all deficiencies cited by the Commission will be cause for rejection of the Bidder's proposal as non-responsive.
- c. Bidders will not be permitted to modify their MBE/WBE compliance proposal except insofar as directed to do so by the Commission. Therefore, all terms and conditions stipulated for prospective MBE and WBE subcontractors or suppliers should be satisfactorily negotiated prior to the submission to the Commission of the Bidder's MBE/WBE compliance proposal with the bid. If circumstances should arise, however, where a proposed MBE/WBE is no longer available, the process described in Section 23.01.62 should be followed.

### 10. Request for Waiver

- a. If a Bidder is unable to identify qualified MBE and WBE firms to perform sufficient work to fulfill the MBE or WBE percentage goals for this Contract, the bid or proposal must include a written request for waiver. A request for waiver must set forth the Bidder's inability to obtain sufficient MBE and WBE firms notwithstanding good faith attempts to achieve such participation.
- b. Examples of such good faith efforts may include, but are not limited to, the following:
  - (1) Attendance at the Pre-bid conference;
  - (2) The Bidder's general affirmative action policies regarding the utilization of MBE and WBE firms, plus a description of the methods used to carry out those policies;
  - (3) Advertisement in trade association newsletters and minority and women-oriented and general circulation media for specific sub-bids;
  - (4) Timely notification of specific sub-bids to minority and women contractor assistance agencies and associations;
  - (5) Description of direct negotiations with MBE and WBE firms for specific sub-bids, including:
    - (a) The name, address and telephone number of MBE and WBE firms contacted;

## PUBLIC BUILDING COMMISSION OF CHICAGO

- (b) A description of the information provided to MBE and WBE firms regarding the portions of the work to be performed; and
  - (c) The reasons why additional MBE and WBE firms were not obtained in spite of negotiations.
- (6) A statement of the efforts made to select portions of the work proposed to be performed by MBE and WBE firms (such as sub-supplier, transport, engineering, distribution, or any other roles contributing to production and delivery as specified in the contract) in order to increase the likelihood of achieving such participation.
  - (7) As to each MBE and WBE contacted, which the Bidder considers to be not, qualified, a detailed statement of the reasons for the Bidder's conclusion.
  - (8) Efforts made by the Bidder to expand its search for MBE and/or WBE firms beyond usual geographic boundaries.
  - (9) General efforts made to assist MBE and WBE firms to overcome participation barriers.
- c. The Executive Director, after review and evaluation of the documents provided by the Bidder, may grant a waiver request upon the determination that:
- (1) Sufficient qualified MBE and/or WBE firms capable of providing the goods or services required by the contract are unavailable despite the good faith efforts of the Bidder;
  - (2) The Bidder is the sole source for work to be performed under the contract; or
  - (3) The price(s) quoted by potential MBE and/or WBE firms for goods or services is above competitive levels to an extent unwarranted by any increased cost of doing business attributable to the present effects of disadvantage or discrimination.

### 11. Reporting and Record-Keeping Requirements

- a. The Contractor, within 5 working days of contract award, must execute a formal subcontract or purchase order in compliance with the terms of the Contractor's bid proposal and MBE/WBE assurances, and submit to the Commission a copy of the MBE and WBE subcontracts or purchase orders, each showing acceptance of the subcontract or purchase order by the MBE and WBE firms. During the performance of the contract, the Contractor will submit partial and final waivers of lien from MBE and WBE subcontractors and suppliers indicating the current payment amount and the cumulative dollar amount of payments made to date. The Contractor will file regular MBE and WBE utilization reports on the form entitled "Status Report of MBE and WBE (Sub) Contract Payments" at the time of submitting each monthly payment voucher ("Summary of Estimate"), which reflects the current status of cumulative and projected payments to MBE and WBE firms.
- b. The Contractor must maintain records of all relevant data with respect to the utilization of MBE and WBE firms, including without limitation payroll records, tax returns and records, and books of account in such detail as the Commission requires, and retain such records for a period of at least 3 years after final acceptance of the work. Full access to such records will be granted to the Commission and/or its designees, on 5 business days' notice in order for the Commission to determine the Contractor's compliance with its MBE and WBE commitments and the status of any MBE or WBE firm performing any portion of the contract.

### 12. Non-Compliance and Liquidated Damages

- a. The Executive Director has the authority to apply suitable sanctions to the Contractor if the Contractor is found to be in non-compliance with the MBE and WBE requirements. Failure to comply with the MBE or WBE terms of this contract or failure to use MBE and WBE firms as stated in the Contractor's assurances constitutes a material breach of the contract, and may lead to the suspension or termination of the contract in part or in whole, disqualification from entering

## **PUBLIC BUILDING COMMISSION OF CHICAGO**

into future contracting arrangements with the Commission, and criminal liability. In some cases, monthly progress payments may be withheld until corrective action is taken.

- b. When the contract is completed, if the Executive Direct has determined that the Contractor did not comply in the fulfillment of the required MBE and/or WBE goals, and a grant of relief of the requirements was not obtained, the Contractor will be damaged in the failure to provide the benefit of participation to minority or women business to the degree set forth in this Special Condition. Therefore, in case of such non-compliance, the Commission will deduct as liquidated damages 1% (or fraction thereof) deficiency toward the MBE goal or WBE goal.

### **13. Review and Sunset**

These Special Conditions will be reviewed no later than 5 years from their adoption and will expire on October 31, 2009 unless the Commission find that its remedial purposes have not been fully achieved and there is a compelling interest in continuing narrowly tailored remedies to redress discrimination against MBEs or WBEs so that the Commission will not function as a passive participant in a discriminatory marketplace.

### **14. Severability**

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



## **PUBLIC BUILDING COMMISSION OF CHICAGO**

### **ARTICLE 24. PROJECT FORMS**

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

- Exhibit A Contractor's Sworn Statement and Affidavit for Partial Payment
- Exhibit B Contractor's Waiver of Lien for Partial Payment
- Exhibit C Subcontractor's Sworn Statement and Affidavit for Partial Payment
- Exhibit D Subcontractor's Waiver of Lien for Partial Payment
- Exhibit E Supplier's Waiver of Lien for Partial Payment
- Exhibit F Contractor's Sworn Statement and Affidavit for Final Payment
- Exhibit G Contractor's Final Release and Waiver of Lien
- Exhibit H Release by Contractor
- Exhibit I Subcontractor's Sworn Statement and Affidavit for Final Payment
- Exhibit J Subcontractor's Final Release and Waiver of Lien
- Exhibit K Release by Subcontractor
- Exhibit L Supplier's Final Release and Waiver of Lien
- Exhibit M Release by Supplier
- Exhibit N Payment Request Form
- Exhibit O Contractor's Payroll Record
- Exhibit P Contractor's Recapitulation of Minority and Female Worker Hours and Percentages
- Exhibit Q Status Report of MBE/WBE (Sub) Contract Payments
- Exhibit R Guarantee Form
- Exhibit S Contractor's Proposal

**Section 24.01 EXHIBIT A**  
**CONTRACTOR'S SWORN STATEMENT AND AFFIDAVIT FOR PARTIAL**  
**PAYMENT**

STATE OF ILLINOIS                }  
COUNTY OF COOK                 } SS

for (designate Project and Location)

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

[illegible]



**PUBLIC BUILDING COMMISSION OF CHICAGO**

**EXHIBIT A**

**CONTRACTOR'S SWORN STATEMENT AND AFFIDAVIT FOR PARTIAL PAYMENT (3 of 3)**

<b>AMOUNT OF ORIGINAL CONTRACT</b>	\$	<b>TOTAL AMOUNT REQUESTED</b>	\$
<b>EXTRAS TO CONTRACT</b>	\$	<b>LESS % RETAINED</b>	\$
<b>TOTAL CONTRACT AND EXTRAS</b>	\$	<b>NET AMOUNT EARNED</b>	\$
<b>CREDITS TO CONTRACT</b>	\$	<b>AMOUNT OF PREVIOUS PAYMENTS</b>	\$
<b>ADJUSTED CONTRACT PRICE</b>	\$	<b>AMOUNT DUE THIS PAYMENT</b>	\$
	\$	<b>BALANCE TO COMPLETE</b>	\$

These provisions should not be construed as conferring any rights hereunder for the benefit of Subcontractors, suppliers, workers or employees, nor as enlarging or altering the application or effect of existing lien laws.

Contractor certifies

- that to the best of its knowledge, information and belief, the work is in accordance with the Contract Documents;
- that suppliers of materials, services, labor and all Subcontractors (including all significant sublevels thereof) are being currently paid,
- that the amount of the payments applied for are justified.
- That the Waivers of Lien are submitted herewith by affiant for affiant and each of the aforesaid persons, are true, correct, and genuine;
- that each and every Waiver of Lien was delivered unconditionally;
- that there is no claim either legal or equitable to defeat the validity of any of said Waivers of Lien;
- that said Waivers of Lien include such Waivers of Lien from all Subcontractors, suppliers of material or other agents acting on behalf of affiant in connection with the Work or arising out of the Work; and
- that so far as affiant has knowledge or information, the said Waivers of Lien include all the labor and material for which a claim could be made and for which a lien could be filed;
- that neither the partial payment nor any part thereof has been assigned;
- that said Contractor herein expressly affirms that should it at any time appear that any illegal or excess payments have been made to said Contractor by or on behalf of the PUBLIC BUILDING COMMISSION OF CHICAGO, the said Contractor will repay on demand to the PUBLIC BUILDING COMMISSION OF CHICAGO the amount or amounts so paid; and
- that if any lien remains unsatisfied after all payments are made, the Contractor will refund to the PUBLIC BUILDING COMMISSION OF CHICAGO all moneys that the latter may be compelled to pay in discharging such a lien including all costs and a reasonable attorney's fee.

\_\_\_\_\_  
(To be signed by the President or a Vice President)

\_\_\_\_\_  
(Typed name of above signature)

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

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

**Section 24.02 EXHIBIT B**  
**CONTRACTOR'S WAIVER OF LIEN FOR PARTIAL PAYMENT**

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**Section 24.03 EXHIBIT C**  
**SUBCONTRACTOR'S SWORN STATEMENT AND AFFIDAVIT FOR PARTIAL**  
**PAYMENT**  
**(1 of 3)**

- that the following statements are made for the purpose of inducing the PUBLIC BUILDING COMMISSION OF CHICAGO to make a partial payment under that certain prime contract known as Contract No \_\_\_\_\_ with \_\_\_\_\_ as Contractor dated the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_;
- that the work for which payment is requested under said subcontract has been partially completed, free and clear of any and all claims, liens, charges, and expenses of any kind or nature whatsoever and in full compliance with said subcontract and with the contract documents of said prime Contract No. \_\_\_\_\_, and the requirements of said Owner under them;
- that for the purposes of said subcontract the following persons have been contracted with, and have furnished or prepared materials, equipment, supplies, and services for, and have done labor on said improvement;
- that the respective amounts set forth opposite their names is the amount of money now due to each of them respectively;
- that this statement is a full, true, and complete statement of all such persons and of the full amount now due and the amount heretofore paid to each of them for such labor, materials, equipment, supplies, and services furnished or prepared by each of them to or on account of said work, as stated:

[illegible]

**PUBLIC BUILDING COMMISSION OF CHICAGO**






**PUBLIC BUILDING COMMISSION OF CHICAGO**

**EXHIBIT C**

**SUBCONTRACTOR'S SWORN STATEMENT AND AFFIDAVIT FOR PARTIAL PAYMENT (3 of 3)**

These provisions should not be construed as conferring any rights hereunder for the benefit of subcontractors, suppliers, workmen or employees, nor as enlarging or altering the application or effect of existing lien laws.

Subcontractor certifies

- that to the best of its knowledge, information and belief, the work is in accordance with the Contract Documents;
- that suppliers of materials, services, labor and all subcontractors (including all significant sublevels thereof) are being currently paid;
- that the amount of the payments applied for are justified.
- that the Waivers of Lien submitted herewith by affiant and each of the aforesaid persons, are true, correct, and genuine;
- that each and every Waiver of Lien was delivered unconditionally;
- that there is no claim either legal or equitable to defeat the validity of any of said Waivers of Lien;
- that said Waivers of Lien include such Waivers of Lien from all subcontractors, suppliers of material or other agents acting on behalf of affiant in connection with the work or arising out of the work; and
- that so far as affiant has knowledge or information, the said Waivers of Lien include all the labor and material for which a claim could be made and for which a lien could be filed.

\_\_\_\_\_  
(To be signed by the President or a Vice President)

\_\_\_\_\_  
(Typed name of above signature)

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

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

My Commission expires:

**Section 24.04 EXHIBIT D**  
**SUBCONTRACTOR'S WAIVER OF LIEN FOR PARTIAL PAYMENT**

JANUARY 2007

**Section 24.05 EXHIBIT E**  
**SUPPLIER'S WAIVER OF LIEN FOR PARTIAL PAYMENT**

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**Section 24.06 EXHIBIT F**  
**CONTRACTOR'S SWORN STATEMENT AND AFFIDAVIT FOR FINAL**  
**PAYMENT**

STATE OF ILLINOIS                }  
COUNTY OF COOK                 } SS

for (designate Project and Location)

[illegible]



**PUBLIC BUILDING COMMISSION OF CHICAGO**

**EXHIBIT F**

**CONTRACTOR'S SWORN STATEMENT AND AFFIDAVIT FOR FINAL PAYMENT (3 of 3)**

<b>AMOUNT OF ORIGINAL CONTRACT</b>	\$	<b>FINAL ADJUSTED CONTRACT PRICE</b>	\$
<b>EXTRAS TO CONTRACT</b>	\$	<b>LESS</b>	\$
<b>TOTAL CONTRACT AND EXTRAS</b>	\$	<b>NET AMOUNT EARNED</b>	\$
<b>CREDITS TO CONTRACT</b>	\$	<b>AMOUNT OF PREVIOUS PAYMENTS</b>	\$
<b>FINAL ADJUSTED CONTRACT PRICE</b>	\$	<b>AMOUNT DUE THIS PAYMENT</b>	\$

Contractor certifies that to the best of its knowledge, information and belief, the work is in accordance with the Contract Documents; that suppliers of materials, services, labor and all Subcontractors (including all significant sublevels thereof) have been paid in full. These provisions should not be construed as conferring any rights hereunder for the benefit of Subcontractors, suppliers, workmen or employees, nor as enlarging or altering the application or effect of existing lien laws.

That the Final Waivers of Lien and Releases submitted herewith by affiant for affiant and each of the aforesaid persons, are true, correct, and genuine; that each and every Final Waiver of Lien and Release was delivered unconditionally; that there is no claim either legal or equitable to defeat the validity of any of said Final Waivers of Lien and said Releases; that said Final Waivers of Lien and said Releases include such Final Waivers of Lien and such Releases from all subcontractors, suppliers of material or other agents acting on behalf of affiant in connection with the work or arising out of the work; and that so far as affiant has knowledge or information, the said Final Waivers of Lien and said Releases include all the labor and material for which a claim could be made and for which a lien could be filed.

That neither the final payment nor any part thereof has been assigned.

That said Contractor herein expressly affirms that should it at any time appear that any illegal or excess payments have been made to said Contractor by or on behalf of the PUBLIC BUILDING COMMISSION OF CHICAGO, whether included in a partial payment or in the final payment, the said Contractor will repay on demand to the PUBLIC BUILDING COMMISSION OF CHICAGO the amount or amounts so paid; and if any lien remains unsatisfied after all payments are made, the Contractor will refund to the PUBLIC BUILDING COMMISSION OF CHICAGO all moneys that the latter may be compelled to pay in discharging such a lien including all costs and a reasonable attorney's fee.

\_\_\_\_\_  
(To be signed by the President or a Vice President)

\_\_\_\_\_  
(Typed name of above signature)

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

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

**Section 24.07 EXHIBIT G**  
**CONTRACTOR'S FINAL RELEASE AND WAIVER OF LIEN**

113

**Section 24.08 EXHIBIT H**  
**RELEASE BY CONTRACTOR**

JANUARY 2007



**Section 24.09 EXHIBIT I**  
**SUBCONTRACTOR'S SWORN STATEMENT AND AFFIDAVIT FOR FINAL**  
**PAYMENT**

STATE OF ILLINOIS                }  
COUNTY OF COOK                 } SS

for the

---

Contractor, dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

that the whole of said Work under said Subcontract has been completed, free and clear of any and all claims, liens, charges, and expenses of any kind or nature whatsoever, and in full compliance with said Subcontract and with the Contract Documents of Contract No. \_\_\_\_\_, and the requirements of the Owner under them.

That for the purposes of said subcontract the following persons have been contracted with and have furnished or prepared materials, equipment, supplies, and services for, and having done labor on said improvement. That the respective amounts set forth opposite their names are the full amounts of money due and to become due to each of them, and that the full amounts of all of said monetary obligations have been completely fulfilled and discharged. That this statement is a full, true, and complete statement of all such persons and of the full amount due and to become due and amount paid to each of them for such labor, materials, equipment, supplies, and services furnished or prepared by each of them to or on account of said work, as stated:

[illegible]



**PUBLIC BUILDING COMMISSION OF CHICAGO**

## EXHIBIT I

## SUBCONTRACTOR'S SWORN STATEMENT AND AFFIDAVIT FOR FINAL PAYMENT (2 of 3)

[illegible]

**PUBLIC BUILDING COMMISSION OF CHICAGO**

**EXHIBIT I**

**SUBCONTRACTOR'S SWORN STATEMENT AND AFFIDAVIT FOR FINAL PAYMENT (3 of 3)**

Subcontractor certifies that to the best of its knowledge, information and belief, the work is in accordance with the Contract Documents; that suppliers of materials, services, labor and all subcontractors (including all significant sublevels thereof) have been paid in full. These provisions should not be construed as conferring any rights hereunder for the benefit of Subcontractors, suppliers, workers or employees, nor as enlarging or altering the application or effect of existing lien laws.

The Final Waivers of Lien and Releases submitted herewith by affiant for affiant and each of the aforesaid persons, are true, correct, and genuine; that each and every Final Waiver of Lien and Release was delivered unconditionally; that there is no claim either legal or equitable to defeat the validity of any of the Final Waivers of Lien and said Releases; that the Final Waivers of Lien and Releases include such Final Waivers of Lien and such Releases from all subcontractors, suppliers of material or other agents acting on behalf of affiant in connection with the Work or arising out of the Work; and that so far as affiant has knowledge or information, the said Final Waivers of Lien and said Releases include all the labor and material for which a claim could be made and for which a lien could be filed.

\_\_\_\_\_  
(To be signed by the President or a Vice President)

\_\_\_\_\_  
(Typed name of above signature)

Subscribed and sworn to before me this \_\_\_\_\_ day of  
\_\_\_\_\_ 120 \_\_\_\_\_

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

**Section 24.10 EXHIBIT J**  
**SUBCONTRACTOR'S FINAL RELEASE AND WAIVER OF LIEN**

119

**Section 24.11 EXHIBIT K  
RELEASE BY SUBCONTRACTOR**

JANUARY 2007

**Section 24.12 EXHIBIT L**  
**SUPPLIER'S FINAL RELEASE AND WAIVER OF LIEN**

121

## Section 24.13 EXHIBIT M

### RELEASE BY SUPPLIER

JANUARY 2007





**Section 24.14 EXHIBIT N**  
**PAYMENT REQUEST FORM**  
**(1 of 4)**

Monthly Estimate No \_\_\_\_\_  
For the Period \_\_\_\_\_ to \_\_\_\_\_  
Contract No \_\_\_\_\_

Date \_\_\_\_\_  
Sheet \_\_\_\_\_ of \_\_\_\_\_

To:  
For Work on Account of:

[illegible]

**EXHIBIT N**  
**PAYMENT REQUEST FORM (2 of 4)**  
**CHANGE ORDER**

Date

Sheet \_\_\_\_\_ of

Contract No \_\_\_\_\_

To:

For Work on Account of:

[illegible]

**PUBLIC BUILDING COMMISSION OF CHICAGO**

**EXHIBIT N  
STORED MATERIAL (3 of 4)**

Monthly Estimate No \_\_\_\_\_  
For the Period \_\_\_\_\_ to \_\_\_\_\_  
Contract No \_\_\_\_\_

Date \_\_\_\_\_  
Sheet \_\_\_\_\_ of \_\_\_\_\_

To \_\_\_\_\_  
For Work on Account of \_\_\_\_\_

MATERIAL STORED - PREVIOUS ESTIMATE NO \_\_\_\_\_ (\$ \_\_\_\_\_ )

ITEM NO	MATERIAL DELIVERED THIS PERIOD	QUANTITY	UNIT	UNIT PRICE	AMOUNT	50% AMOUNT
TOTAL DELIVERED THIS PERIOD						

ITEM NO	MATERIAL USED THIS PERIOD	QUANTITY	UNIT	UNIT PRICE	AMOUNT	50% AMOUNT
TOTAL USED THIS PERIOD						
DEBIT OR CREDIT THIS PERIOD						

MATERIAL STORED - THIS ESTIMATE \_\_\_\_\_

**PUBLIC BUILDING COMMISSION OF CHICAGO**

**EXHIBIT N  
SUMMARY OF ESTIMATE SHEETS (4 of 4)**

Monthly Estimate No \_\_\_\_\_

Date \_\_\_\_\_

For the Period \_\_\_\_\_ to \_\_\_\_\_

Sheet \_\_\_\_\_ of \_\_\_\_\_

Contract No \_\_\_\_\_

To \_\_\_\_\_

For Work on Account of \_\_\_\_\_

SUMMARY OF ESTIMATE SHEETS		(1)	(2)	(3)
DESCRIPTION		TOTAL CONTRACT ESTIMATE	CURRENT ESTIMATE	TOTAL ESTIMATE TO DATE
1	Sheet No. 1		\$	\$
2				
3				
4				
5				
6	Total Awarded Contract Amount			
7	Awarded Contract Amounts Completed		\$	\$
8	Add: Total Authorized Changes - Sheet No. _____			
9	Add: Materials Stored - Sheet No. _____			
10	Total Approved Value & Amounts Earned	\$	\$	\$
11	Deduct: Current Reserve Adjustment		\$	
12	Deduct: Total Reserve To Date (Column 3)			\$
13	Deduct: Current Liquidated Damages (Line 25)		\$	
14	Deduct: Total Liquidated Damages (Line 23)			\$
15	Total Paid To Date - including this estimate			\$
16	Deduct: Total Earned To Date (Line 10, Col. 3)	\$		
17	Net Amount Open on Contract			
18	NET CURRENT PAYMENT		\$	
	<b>RESERVE COMPUTATION</b>	Current Reserve Withheld	Previous Reserve Withheld	Total Reserve Withheld
19	Percentage Computation - 10% Reserve*	\$	\$	\$
20	Percentage Computation - 5% Reserve*	\$	\$	\$
21	Total Reserve Withheld	\$	\$	\$

\*Note: Column 1 is computed at the rate of 10% for all monthly estimates up to 50% of contract.

LIQUIDATED DAMAGES COMPUTATION			
23	Total Liquidated Damages to Date	Days	\$
24	Deduct: Amount Previously Withheld		\$
25	CURRENT LIQUIDATED DAMAGES		\$
	Approx. % Contract Completed %	Total Contract Time (Incl. Time Extens)	Days
	Starting Date:	Total Time Used	Days

Verified By: Architect's Contract Administrator  
RECOMMENDED FOR APPROVAL: \_\_\_\_\_  
Date \_\_\_\_\_

Name of Contractor  
By \_\_\_\_\_

Architect's Project Manager \_\_\_\_\_ Title \_\_\_\_\_

**PUBLIC BUILDING COMMISSION OF CHICAGO**

**Section 24.15 EXHIBIT O  
CONTRACTOR'S PAYROLL RECORD FORM RE-48 (Rev. PW 1982)  
(1 of 2)**

<b>PAYROLL</b>																			Sheet ____ of ____		
Name of __ Contractor & No. __ or __ Subcontractor & No. __												Project No.				Location				Payroll No.	
																				Tax Week Ending	
Address												Project Name				Contract No					
Name, Address and Social Security # of Employee	Ethnic Group	Work Classi- fication	OT or ST	Hours and Days Worked								Rate of Pay	Total Earned	Deductions				Net Wages Paid			
				S	M	T	W	Th	F	S	Total Hours			Federal WH Tax	FICA	State WH Tax	Total Deduct.				
			S																		
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<b>Total No. Hours (Straight &amp; Overtime) this Page</b>																					

Reviewed By: \_\_\_\_\_ No Work \_\_\_\_ Suspended \_\_\_\_ Completed \_\_\_\_

**PUBLIC BUILDING COMMISSION OF CHICAGO**

**EXHIBIT O (2 OF 2)**

I, \_\_\_\_\_  
(Name of Signatory Party)

(Title)

```
states:
```

1. That I pay or supervise the payment of the persons employed by \_\_\_\_\_  
e  
(Contractor or Subcontractor)

(Building or Work)

that during the payroll period commencing on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, all persons employed on said project have been paid the full weekly wages earned, that no rebated have been or will be made either directly or indirectly to or on behalf of said \_\_\_\_\_ from the full weekly wages

(Contractor or Subcontractor)

earned by any person and that no deductions have been made either directly or indirectly from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part 3 (29 CFR Subtitle A), issued by the Secretary of Labor under the *Copeland Act*, as amended (42 Stat 943, 63 Stat 106, 72 Stat 967, 76 Stat 357, 40 U.S.C. 276c), and described below:

2. That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete, that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract; that the classifications set forth therein for each laborer or mechanic conform with the work he/she performed.
3. That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United States Department of Labor, or if no such recognized agency exists in a State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.

4. That:

- (a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS

In addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in Section 4(c) below.

- (b) WHERE FRINGE BENEFITS ARE PAID IN CASH

Each laborer or mechanic listed in the above referenced payroll has been paid, as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in Section 4(c) below.

- ### (c) EXCEPTIONS

EXCEPTION	EXPLANATION
REMARKS	

<b>NAME AND TITLE</b>	<b>SIGNATURE</b>
THE WILLFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE CONTRACTOR OR SUBCONTRACTOR TO CIVIL OR CRIMINAL PROSECUTION. SEE SECTION 1001 OF TITLE 18 AND SECTION 231 OF TITLE 31 OF THE UNITED STATES CODE.	

**PUBLIC BUILDING COMMISSION OF CHICAGO**

**Section 24.16 EXHIBIT P**  
**CONTRACTOR'S RECAPITULATION OF MINORITY AND FEMALE WORKER HOURS AND PERCENTAGES**  
 (1 of 2)

CONTRACT NO. \_\_\_\_\_

CONTRACTOR \_\_\_\_\_

REQUEST NO. \_\_\_\_\_

JOB \_\_\_\_\_

SITE \_\_\_\_\_

DATE \_\_\_\_\_  
 \_\_\_\_\_ %

COMPLETE

	MALE JOURNEY WORKERS			MALE APPRENTICES			MALE LABORERS		
	Commitment	%		Commitment	%		Commitment	%	
	WHITE	MINORITY	% MINORITY	WHITE	MINORITY	% MINORITY	WHITE	MINORITY	% MINORITY
TOTAL MONTH									
TOTAL TO DATE									

	FEMALE JOURNEY WORKERS		FEMALE APPRENTICES		FEMALE LABORERS	
	Commitment	%	Commitment	%	Commitment	%
	FEMALE	% FEMALE	FEMALE	% FEMALE	FEMALE	% FEMALE
TOTAL MONTH						
TOTAL TO DATE						

**CITY RESIDENCY REQUIREMENTS:**

	ALL JOURNEY WORKERS AND APPRENTICES		ALL LABORERS	
	Requirement 50%		Requirement 50%	
	CITY RESIDENCY	PERCENT	CITY RESIDENCY	PERCENT
TOTAL MONTH				
TOTAL TO DATE				

	ALL JOURNEY WORKERS	ALL APPRENTICES	ALL LABORERS
TOTAL MONTH			
TOTAL TO DATE			



**PUBLIC BUILDING COMMISSION OF CHICAGO**

**CONTRACTOR'S SIGNATURE**

**PUBLIC BUILDING COMMISSION OF CHICAGO**

**EXHIBIT P (2 of 2)**

**CONTRACTOR'S MONTHLY BREAKDOWN OF MALE WORKER HOURS BY ETHNIC GROUP**

ETHNIC GROUP	MALE JOURNEY WORKERS		MALE APPRENTICES		MALE LABORERS	
	CITY	NON CITY	CITY	NON CITY	CITY	NON CITY
<b>WHITE</b>						
<b>BLACK (AFRICAN AMERICAN)</b>						
<b>HISPANIC</b>						
<b>ASIAN/PACIFIC</b>						
<b>NATIVE AMERICAN</b>						
<b>OTHER</b>						
<b>TOTAL</b>						

**CONTRACTOR'S MONTHLY BREAKDOWN OF FEMALE WORKER HOURS BY ETHNIC GROUP**

ETHNIC GROUP	FEMALE JOURNEY WORKERS		FEMALE APPRENTICES		FEMALE LABORERS	
	CITY	NON CITY	CITY	NON CITY	CITY	NON CITY
<b>WHITE</b>						
<b>BLACK (AFRICAN AMERICAN)</b>						
<b>HISPANIC</b>						
<b>ASIAN/PACIFIC</b>						
<b>NATIVE AMERICAN</b>						
<b>OTHER</b>						
<b>TOTAL</b>						

**Section 24.17 EXHIBIT Q**  
**STATUS REPORT OF MBE/WBE (SUB) CONTRACT PAYMENTS**  
**(1 of 2)**

MBE/WBE Name	Contract For	Amount of Contract	Total Previous Requests	Amount This Request	Balance to Complete
TOTALS					

**PUBLIC BUILDING COMMISSION OF CHICAGO**

**EXHIBIT Q  
STATUS REPORT OF MBE/WBE (SUB) CONTRACT PAYMENTS (2 of 2)**

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THE FOREGOING DOCUMENT ARE TRUE AND CORRECT, AND THAT I AM AUTHORIZED, ON BEHALF OF THE ABOVE FIRM, TO MAKE THIS AFFIDAVIT.

\_\_\_\_\_  
(Affiant)

\_\_\_\_\_  
(Date)

On this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_,  
\_\_\_\_\_ ,

before me, \_\_\_\_\_, the undersigned officer, personally appeared \_\_\_\_\_, known to me to be the person described in the foregoing Affidavit and acknowledged that he (she) executed the same in the capacity therein stated and for the purposes therein contained.

In witness thereof, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public  
Commission Expires

(Seal)

**PUBLIC BUILDING COMMISSION OF CHICAGO**

**Section 24.18 EXHIBIT R  
GUARANTEE FORM**

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

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

PUBLIC BUILDING COMMISSION OF CHICAGO

Section 24.19 EXHIBIT S  
CONTRACTOR PROPOSAL

PUBLIC BUILDING COMMISSION OF CHICAGO

Daley Center Plaza, Room 200  
Chicago, Illinois 60602

CONTRACTOR PROPOSAL

Contractor:

Bulletin No.:

Project Name:

PBC Contract No.

Architect /

Consultant:

Note: Detailed breakdown of costs for each subcontractor and each trade performed by the General Contractor and documentation supporting any request for time extension must be submitted with this proposal form.

I. WORK OF SUBCONTRACTORS

<u>Subcontractor Firm Name</u>	<u>Trade</u>	<u>Value of Work</u>	<u>6% Markup</u>	<u>Total</u>
		\$	\$	\$
		\$	\$	\$
		\$	\$	\$
		\$	\$	\$
		\$	\$	\$
(A) Total of Work by Subcontractors				\$

II. GENERAL CONTRACTORS WORK

<u>Description of Work</u>	<u>Value of Work</u>	<u>15% Markup</u>	<u>Total</u>
	\$	\$	\$
	\$	\$	\$
	\$	\$	\$
	\$	\$	\$
	\$	\$	\$
	\$	\$	\$
	\$	\$	\$
(B) Total of Work by General Contractor			\$

III. PROPOSAL

(C) Total Cost of Work of this Bulletin (A+B)	\$
(D) Time Extension - Additional days requested	_____ days

The Total Cost (Line C) and the Time Extension (Line D) represent all costs and additional time required to complete all aspects of the work included in this Bulletin. No additional costs or time extension related to this Bulletin will be requested by the Contractor.

Prepared and Submitted for Approval by:

Contractor

By:

Date

**PUBLIC BUILDING COMMISSION OF CHICAGO**