

BOOK 2

**STANDARD TERMS AND CONDITIONS
FOR DESIGN BUILD CONTRACTS**

CONTRACT NUMBERS PS1963 to PS1979

**2013 SCHOOL INVESTMENT PROGRAM
PROJECT NUMBERS 01 to 17**

PUBLIC BUILDING COMMISSION OF CHICAGO



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ARTICLE 1. GENERAL PROVISIONS

SECTION 1.01 Definitions

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

1. "Architect Engineer" means the person or firm employed by or hired by the Design-Builder for the purpose of designing the project. Architectural and Engineering services shall be procured from licensed independent design professionals retained by the Design-Builder or furnished by licensed employees of the Design-Builder as permitted by the laws of the State of Illinois.
2. "Career and Technical Education" ("CTE") means the Board of Education of Chicago's Department of Career and Technical Education, formerly known as the Board's Department of Education to Careers.
3. "Change Order" is the document signed by the Design-Builder and the Commission, or, in circumstances stated in Book 2, the Commission alone, which authorizes a change in the Work that does not result in an adjustment to the GMP. Changes to the Work that result in a change to the GMP require an amendment to the Contract.
4. "Commission" means the Public Building Commission of Chicago, a municipal corporation organized under the Public Building Commission Act of the State of Illinois, as amended, or its duly authorized officers or employees.
5. "Commission Representative" means the person assigned, in writing, by the Executive Director to be the Commission's Representative for the project.
6. "Commission's Architect" means the architect or design firm retained by the Commission to prepare the Scope and Performance Criteria forming the basis of design for the Architect/Engineer.
7. "Contract" or "Contract Documents" means all of the following component parts, including exhibits attached thereto and/or incorporated therein by reference, and all amendments, modifications and revisions made from time to time in accordance with the provisions hereof, including without limitation, the items provided in Section 2.4.1 of Book 1:
 - a. Book 1 – Design-Build Agreement Between Public Building Commission and Design Builder ("Agreement")
 - b. Book 2 – Standard Terms and Conditions for Design-Build Contracts
 - c. Book 2A - Standard Terms and Conditions Procedures Manual for Design-Build Contracts
8. "Contract Completion Date" is the date on which the Design-Builder must achieve Substantial Completion. The Contract Completion Date will be determined based on the time for completion of the Work stated in Book 1, Section II.B, adjusted by any Change Orders that extend or reduce the time for completion of the Work.
9. "CPS Student" means an individual enrolled in a public school within the purview of the Board of Education of Chicago.
10. "Design-Builder" means the partnership, firm, corporation, joint venture or entity entering into the Contract with the Commission to perform the Work required by the Contract Documents.
11. "Day" or "Days" means calendar day(s) unless otherwise specified.
12. "Drawings" are those drawings and plans provided in the Request for Proposals as part of the Scope and Performance Criteria.

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13. "Environmental Law(s)" means all applicable Federal, State, and local laws, ordinances, rules, regulations, and executive orders pertaining to environmental matters.
14. "Executive Director" means the person employed by the Commission as its Executive Director or the duly authorized representative thereof.
15. "Field Order" means a written order to the Design-Builder, signed by the Commission Representative unilaterally directing changes in the Work or the Project CPM Schedule.
16. "Final Completion and Acceptance of the Work" means the last date on which all of the following events have occurred: the Commission has determined that all Punch List Work and any other remaining Work have been completed in accordance with the Contract Documents; final inspections have been completed and operating systems and equipment testing have been completed; final occupancy certifications have been issued; Design-Builder's LEED Commissioning responsibilities required by the Contract Documents have been completed; all deliverables have been provided to the Commission; and all contractual requirements for final payment have been completed.
17. "First-tier Subcontractor" means any Subcontractor that has a contract with the Design-Builder.
18. "Guaranteed Maximum Price" or "GMP" means the sum of the estimated Cost of the Work, as defined in Article 8 of Book 1, the Design-Builder's Contingency, the Commission Contingency and the Design-Builder's Fee as defined in Article 7 of Book 1.
19. "Hazardous Materials" means asbestos and asbestos-containing materials, polychlorinated biphenyls (PCBs), oil or any other petroleum products, natural gas, special nuclear materials, and by-product materials regulated under the Atomic Energy Act (42 U.S.C. Sec. 2014, et seq.), pesticides under the Federal Insecticide, Fungicide and Rodenticide Act (7U.S.C. Sec. 136, et seq.) and any hazardous waste, toxic substance or related material, including any substance defined or treated as "hazardous waste," "special waste," "toxic substance," or a comparable term in any Environmental Law.
20. "Local Government" or "City" means the City of Chicago, Illinois.
21. "Notice to Proceed" refers to the written notice issued by the Executive Director and directed to the Design-Builder, which states the date for the Design-Builder to begin performance of the Work.
22. "Program Safety Manager" means the person assigned, in writing, by the Executive Director to be the Commission's Safety Manager for all Commission projects.
23. "Project" means the collective improvements to Chicago Public School facilities by the Design-Builder in accordance with the Contract as specified in Article 1 of Book 1.
24. "Project Community" means the area designated as the Project Community in Book 2, shown in Exhibit 10 for Book 1, "Project Community Area Map."
25. "Project Community Residents" means persons domiciled within the Project Community as designated by the Commission as stated in Book 2, Section 21.03.
26. "Punch List" is the list of Punch List Work, and "Punch List Work" means minor adjustments, repairs or deficiencies in the Work as determined at the sole discretion of the Commission. Items of incomplete Work that preclude full or beneficial use of any portion of the Work or that preclude the Commission from full operation, maintenance, or security of the facility are not considered Punch List Work.
27. "Record Documents" are all documents required under the terms of the Contract to be provided to the Commission by the Design-Builder, including, but not limited to, shop drawings, as-built drawings, blue line drawings, parts manuals, operation and maintenance manuals, and Project manuals or specifications.

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28. "Request for Information" or "RFI" means the document transmitted by the Design-Builder to the Commission Representative seeking clarification or direction with respect to ambiguity, contradictions, errors or omissions in the Scope and Performance Criteria.
29. "Residents of the Project Community" means persons domiciled within the project area as designated by Exhibit 10.
30. "Schedule" means the critical path method (CPM) schedule submitted by the Design-Builder establishing time frames for the performance of components of the Work.
31. "Schedule of Values" means the detailed list of the value of each construction activity included in the Guaranteed Maximum Price broken down by labor and materials that is submitted by the Design-Builder and approved by the Commission, as amended.
32. "Site" means the location(s) shown on the Drawings or described in Book 2A – Section 01010 – Summary of Work of the Technical Specifications, within which the Work will be performed under the Contract Documents.
33. "Special Waste" means those substances as defined in the Illinois Environmental Protection Act, 415 ILCS 5/3.45, and further defined in Section 809.103 or 35 Illinois Administrative Code, Subtitle G, Ch.1.
34. "Subcontractor" means any partnership, firm, corporation or entity other than an employee of the Design-Builder that furnishes labor and/or materials to the Design-Builder, whether or not the Subcontractor is in privity with the Design-Builder.
35. "Submittal" means a schedule, shop drawings, video tape, product data, samples, or other items as may be required by the Contract for review and/or approval prior to prosecution of a portion of the Work.
36. "Substantial Completion" means the date the Commission Representative has determined that: (i) the Project has been constructed in accordance with the Contract Documents such that it is ready for occupancy, utilization and continuous operation for the uses and purposes intended by the User, without material interference from incomplete or improperly completed Work, and with only Punch List Work remaining to be completed, (ii) the Design-Builder has obtained and delivered to the Commission a "Certificate of Occupancy" issued by the authority that has jurisdiction noting that the Certificate of Occupancy is not a prerequisite for Substantial Completion if the Certificate of Occupancy cannot be obtained due to factors beyond the Design-Builder's control, and (iii) the Executive Director, or his or her designee, has issued written notice to the Design-Builder of its acceptance of substantial completion.
37. "User" or "User Agency" means the entity for which or on whose behalf the Commission has undertaken to cause the Work to be performed.
38. "Work" means the obligations of the Design-Builder under the Contract Documents. Work includes, unless specifically excepted by the Contract Documents, the furnishing of all materials, labor, equipment, supplies, plant, tools, scaffolding, transportation, superintendence, permits, inspections, occupancy approvals, insurance, taxes, design services and all other services, facilities and expenses necessary for the full performance and completion of the requirements of the Contract Documents. Work also means that which is furnished, produced, constructed, or built pursuant to the Contract Documents.

SECTION 1.03 Standard Specifications

Any reference herein to standard specifications of any society, institute, association, or governmental authority (such standard specifications not forming a part of any statute or ordinance nor otherwise specified as to edition or date) is a reference to the standard specifications of such organization that are in effect on the 30th Day prior to the date of the first Advertisement of the Request for Proposal.

ARTICLE 1. GENERAL PROVISIONS

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SECTION 1.04 Severability

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

SECTION 1.05 Entire Agreement

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

ARTICLE 2. PROJECT ORGANIZATION

SECTION 2.01 The Owner

The owner is:

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

SECTION 2.02 The Executive Director

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

SECTION 2.03 The User Agency(ies)

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

SECTION 2.04 The Commission Representative(s)

1. The Executive Director will assign an individual or individuals to be the Commission's Representative(s) for the Project. The Executive Director will notify the Design-Builder of the assignment in the Notice To Proceed letter.
2. **The Design-Builder must route all Project communication and notices to the Commission Representative.** The Commission Representative will also route responses from the Commission to the Design-Builder.
3. The Commission Representative has the authority to reject all or any portion of Work that does not conform to the Contract Documents.
4. The Commission Representative will not be responsible for acts or omissions of the Design-Builder or any Subcontractor.
5. The Commission Representative is responsible for the following:
 - a. Reviewing and monitoring, on a periodic basis, the Design-Builder's baseline and updated schedules for compliance with the Contract milestone dates and the master CPM milestone dates.
 - b. Conducting weekly meetings with the Commission, CPS, Design-Builder and others to review the Project schedule, submittals, scope change, requests for information, outstanding bulletins, pending issues, and field problems.
 - c. Reviewing Design-Builder's payment applications in accordance with the Commission's policies and procedures and submitting the payment applications to Commission for approval and payment.
 - d. Establishing an on-Site organization line of authority to implement all construction phases of the Project in a coordinated and efficient manner.
 - e. Establishing and implementing procedures for, and maintain coordination among, the Commission, CPS, Design-Builder, and other agencies having jurisdiction of the Project with respect to all construction aspects of the Project.
 - f. Coordinating the submission, processing, procurement and assembly of all required permits,

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

- g. Conducting Site observations of the Design-Builder and Project to ensure that Work is progressing on schedule and in accordance with the requirements of the Commission and the Contract Documents.
- h. Reviewing the adequacy of the supervision, personnel and equipment and the availability of necessary materials and supplies. Where inadequate, direct that the necessary action be taken to remediate the deficiency.
- i. Receiving and reviewing all shop drawings, materials and all other required Submittals. Requests for approval of subcontractors, delivery schedules, material lists, shop drawings, samples, and the like will be commented upon by the Commission for approval.
- j. Monitoring the flow of all documents and materials for proper sequence of approvals so as not to delay the progress of the work.
- k. Receiving and reviewing all requests for additional compensation and time extensions sought by the Design-Builder.
- l. Conducting a comprehensive final inspection of the Project to verify that the materials furnished and Work performed are in accordance with the Contract Documents.
- m. Expediting the assembly and delivery to the Commission of all papers required by the Contract Documents, including but not limited to "as-built" drawings, guarantees, warranties, and operations and maintenance manuals. Reviewing, approving, and submitting such documents to the Commission upon completion of the Project.

SECTION 2.05 The Commission's Architect

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

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

SECTION 2.06 The Design-Builder

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

SECTION 2.07 The Subcontractors

- 1. Except as may be otherwise provided in the Contract, all transactions of the Commission will be with the Design-Builder.
- 2. The Design-Builder is wholly responsible and liable to the Commission for any and all Work performed by any of its Subcontractors.

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ARTICLE 3. DESIGN-BUILDER'S OBLIGATIONS

SECTION 3.01 Design-Builder

1. The Design-Builder must perform everything required to be performed and provide all of the labor, necessary tools, machinery, materials, schedules and other documents and all facilities for the construction of the Project as described herein and other work necessary to perform and complete in a workmanlike manner, and within the specified time, all of the Work in strict accordance with the Contract Documents. Design-Builder is solely responsible for selecting the means, methods, techniques, sequences, and procedures used in performing the Work.
2. The Design-Builder must begin the Work on the date specified in the Notice to Proceed. In addition, upon receipt of Notice to Proceed, the Design-Builder must assign and maintain during the term of the Contract and any extension of it, an adequate staff of competent personnel who are fully equipped, licensed as appropriate, available as needed, and qualified to perform the Work. The Design-Builder must include among the staff such personnel and positions as may be required by the Contract Documents.
3. The Design-Builder is solely responsible for properly laying out the Work, and for all lines, elevations and measurements for all of the Work executed under the Contract Documents. The Design-Builder must verify the figures shown in the Scope and Performance Criteria and reference documents before laying out the Work and will be held responsible for any errors or inaccuracies resulting from the failure to do so. Neither the Commission nor the Commission Representative will be responsible for laying out the Work.
4. The Design-Builder is responsible for the coordination of the various parts of the Work so that no part is left in an unfinished or incomplete condition owing to any disagreement between the various Subcontractors or any of the Subcontractors and the Design-Builder.
5. The Design-Builder must require each Subcontractor to become familiar with all provisions of the Contract Documents that may affect Subcontractor's work.
6. The Design-Builder shall at all times be responsible for the performance of the Work by its Subcontractors. The Design-Builder will manage and coordinate the Work of Subcontractors such that the Work progresses in an efficient, orderly and timely manner. In the event of any claim or dispute between Subcontractors, or any Subcontractor and Design-Builder, Design-Builder shall manage the resolution of any such claim or dispute. The Design-Builder shall at all times deal with its Subcontractors in good faith, and use all reasonable efforts to resolve claims or disputes in a prompt, cost-effective manner.
7. In the event that, in the reasonable opinion of the Commission Representative, the performance of personnel of the Design-Builder assigned to the Work is at an unacceptable level, or does not comply with Section 9.01 "Competency of Workers" of the Contract, the Commission Representative may provide a written notice to the Design-Builder. Upon receipt of the notice, such personnel must cease to be assigned to this Work and must return to the Design-Builder. The Design-Builder must then furnish to the Commission Representative the name of a proposed substitute person or persons, in accordance with paragraph 2 of this section for approval by the Commission Representative. Absence of sufficient qualified personnel for the Work constitutes an event of default.
8. The Work is under the charge and care of the Design-Builder until Final Completion and Acceptance of the Work by the Commission, unless otherwise specified in the Contract Documents. The Design-Builder assumes all responsibility for injury or damage of the Work by action of elements, fire or any other causes whatsoever, including, injury or damage arising from the execution or non-execution of the Work. The Design-Builder must rebuild, repair, restore, and make good, at no additional cost to the Commission, all injuries or damages to any portion of its Work before Final Completion and Acceptance of the Work; provided, however, that the cost of repairs that are not a result of the negligence of the Design-Builder or its Subcontractors is a

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

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

SECTION 3.02 Contract Documents

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

SECTION 3.03 Document Control

1. The PBC has an on-line collaboration and document management system, OCDM (the "System"). Design-Builder shall use the System to: track the Work, manage the Project, and follow the Commission's procedures for electronic submission and receipt of documents as directed by the Commission Representative. The System shall be the mode of conveyance and repository for all Project Record Documents. Design-Builder shall post all Project-related documents, including all Record Documents, on the System. By executing its Contract, Design-Builder agrees to comply with all terms and conditions required by the Commission for the use of the System.
2. Within 5calendar days of the Notice to Proceed, Design-Builder shall designate an employee that will serve as its System Coordinator. Design-Builder's System Coordinator will be the point of contact for the Commission for implementation and support for Design-Builder's use of the System.
3. Employees of Design-Builder, its Subcontractors and Suppliers who will use the System must complete the training provided by the Commission. Each such employee must furnish a valid e-mail address to the Authorized Commission Representative prior to the training.
4. The System requires a broadband connection with the Internet (e.g., at a minimum, T1, cable modem, or DSL) for effective use. Design-Builder must furnish its own hardware and software, including, but not limited to, personal computers, peripheral software, virus protection software and high-speed document scanners. All written communication and document transmittal from Design-Builder to the Commission will occur via the System. In the event that hand signatures and/or stamps are required for a document, unless otherwise directed by the Authorized Commission Representative, the transmittal of such document shall be made simultaneously via the System and hard copy; hard copy shall be transmitted as required by the Contract Documents. Signed and/or stamped documents must then be scanned and uploaded to the System.
5. Design-Builder shall be solely responsible for its use of the System, as well as use of the System by its Subcontractors and Suppliers.

SECTION 3.04 Site Conditions and Inspection

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1. Surveys, soil borings, geotechnical information, data, plans or other materials generally describing the unimproved land or existing structures at the Site may be provided to the Design-Builder by the Commission.
2. The Design-Builder must take field measurements, verify field conditions and carefully compare such field measurements and conditions and any other information known to the Design-Builder about the Contract Documents before commencing the Work. No allowance will be made to the Design-Builder for any extra labor and/or materials required due to Site conditions or discrepancies that might have been discovered by a thorough and proper inspection of the Site. If land surveying Work is required under this Contract, Design-Builder must have such Work performed by a surveyor as described in Section 9.06 "Surveyor."
3. If conditions are encountered at the site that are:
 - (a) Subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents, or
 - (b) Pre-existing unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, including the presence of unanticipated Hazardous Materials, then the Design-Builder will take no action to disturb the area until providing **IMMEDIATE** written notice to the Commission Representative .
4. If conditions differ materially from those indicated in the Contract Documents and could not have been known to the Design-Builder at the time the Contract was bid, and such conditions will cause a material increase or decrease in the Design-Builder's cost of, or time required for, the performance of any part of the Work, payment from the Commission Contingency or an equitable adjustment in the Guaranteed Maximum Price or Contract term or both, will be made based upon Article 17, "Changes in the Work."
5. The Design-Builder must follow the requirement of written notice in Section 3.04.3b above and the requirements set out in Article 18. Claims and Disputes, regarding a claim for changed site conditions. The Design-Builder must also provide written notice of any claim regarding the changed site condition to the Commission Representative within one (1) day after its discovery. The notice of changed site conditions must state the nature of the changed site condition, its location, and the work that is affected by it.

SECTION 3.05 Design-Builder's Warranties and Representations

Design-Builder warrants and represents that:

1. It has carefully examined and analyzed the provisions and requirements of this Contract; it has inspected the Site to the extent made available by the Commission; from its own analysis it has satisfied itself as to the nature and scope of Work, all conditions, any obstructions, and requirements needed for the preparation of its proposal and the performance of its Contract, the general and local conditions, and all other matters which in any way may affect this Contract or its performance; and the time available for such examination, analysis, inspection, and investigation was adequate.
2. This Contract is feasible of performance in accordance with all of its provisions and requirements and that the Design-Builder can and must perform, or cause to be performed, the Work in strict accordance with the provisions and requirements of this Contract.
3. Except for the contents of this Contract, no representation, statement or promise, oral or written, or of any kind whatsoever, by the Commission, its officials, agents, representatives or employees, has induced the Design-Builder to submit a proposal or has been relied upon by the Design-Builder, including any reference to (i) the meaning, correctness, suitability or completeness of any provisions or requirements of this Contract; (ii) the nature, existence, or location of materials, structures, obstructions, utilities or conditions, surface or subsurface, which may be encountered

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at or on the Site; (iii) the nature, quantity, quality or size of any materials, equipment, labor and other facilities needed for the performance of this Contract; (iv) the general conditions which may in any way affect this Contract or its performance; (v) the compensation provisions of the Contract; or (vi) any other matter.

4. The Design-Builder was given ample opportunity and time to review the Scope and Performance Criteria prior to submittal of its proposal.
5. The Design-Builder acknowledges and understands that the Commission materially relied upon the Design-Builder's proposal in its selection of the Design-Builder to perform the Work.
6. Design-Builder's submittal of its proposal establishes that the Design-Builder, in preparing and submitting its proposal on which this Contract is based, has complied with and given full consideration to the following proposal requirements:
 - a. The Design-Builder did obtain for proposal purposes copies of the complete Scope and Performance Criteria as identified in the Request for Proposal and all addenda issued by the Commission and has become familiar with the same and all Contract requirements and conditions described therein.
 - b. The Design-Builder has clarified to its satisfaction and complete understanding and acceptance any doubt as to the true meaning and intent of any part or parts of the specifications and plans or other portions of the Contract Documents.
 - c. The Design-Builder waives any claim for relief because of alleged mistakes or omissions in its proposal and that the Design-Builder will be held strictly to its GMP as agreed.
7. The Design-Builder has the capability and financial resources to perform all of the provisions and requirements of this Contract.
8. The Design-Builder must perform all of its obligations under this Contract in accordance with all of the Contract's provisions and requirements.

SECTION 3.06 Acceptance of Work

1. Substantial Completion of the Milestones, Phases and Project
 - a. The Design-Builder will notify the Commission Representative, in writing, of a date that the work on a milestone, phase, or the Project as a whole will be ready for inspection by the Executive Director, Commission Representative and Representatives of the User Agency, to determine whether the Work is Substantially Complete. Notice will be given by the Design-Builder at least seven (7) days in advance of that date. If the Commission Representative concurs that the work will be ready for inspection and/or testing on the date stated, including all those items listed in Section 01025.3.5.c of Book 2A, the Executive Director, Commission Representative and other parties, selected by the Executive Director (which may include the architect retained by the Commission to prepare the Scope and Performance Criteria), will make such inspection within a reasonable period of time. The scheduling of the inspection will not relieve the Design-Builder of its responsibilities under the Contract Documents. The Design-Builder is required to furnish access to all parts of the Project for the inspection.
 - b. Upon inspection, the Commission will direct the preparation of a Certificate of Substantial Completion for execution by the Design-Builder. The Certificate shall then be submitted to the Commission Representative. The Executive Director, or his or her designee, will determine whether Substantial Completion has been achieved and will issue a written notice to the Design-Builder of its acceptance of the Certificate of Substantial Completion for the pertinent Milestone, Phase or Project.
2. Final Completion and Acceptance of the Work

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a. Punch List Completion

(1) The Design-Builder understands and agrees that time is of the essence in closing out the Work of this Contract. Upon Substantial Completion of the Work, the Punch List will be transmitted to the Design-Builder from the Commission. The Design-Builder agrees to begin performance of Punch List Work immediately after receipt of the Punch List.

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

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

b. When the Design-Builder deems the Work, including all Punch List Work, to be complete, the Design-Builder must notify the Commission Representative in writing that the Work will be ready for an inspection and/or test on a date specified by the Design-Builder. Such notice is to be given at least 5 Days in advance of said date. If the Commission Representative concurs that the Work will be ready for inspection or testing on the date given, including those items listed in Section 01025.3.6.a and 01025.3.6.b of Book 2A, the Commission will make such inspection within a reasonable period of time. The scheduling of the inspection to determine whether the Work is complete does not relieve the Design-Builder of its responsibilities under the Contract Documents. The Design-Builder must cooperate in all respects in the scheduling and performance of the inspection. Upon inspection, the Commission will determine if Final Completion and Acceptance of the Work has been achieved and will issue a written notice to the Design-Builder confirming the Final Completion and Acceptance of the Work.

c. No action of the Commission, the Commission Representative, the Commission's Architect, or their respective Executive Directors, board members, officers, employees, or agents is to be construed as accepting Work done or material furnished in the performance of this Contract, which Work or materials are not in accordance with those specified and required by the Contract. The issuance of notice of Final Completion or the final payment does not affect the rights of the Commission against the Design-Builder (and the surety or sureties on the Performance and Payment Bond given by the Design-Builder) to enforce the complete performance of this Contract or to sue for the recovery of damages for failure to do so, nor affect the terms of Design-Builder's guarantee in connection therewith.