

BOOK 1

**DESIGN-BUILD AGREEMENT
BETWEEN**

PUBLIC BUILDING COMMISSION OF CHICAGO

AND

HENRY BROTHERS

**2013 SCHOOL INVESTMENT PROGRAM
PROJECT NUMBER 03
CONTRACT NUMBER PS1965**



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Chairman

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Contracts & Amendments
Design Build Agreement-Executed Contract Docs

03- Project 03 Henry Brothers
Program Wide

DESIGN-BUILD AGREEMENT BETWEEN COMMISSION AND DESIGN-BUILDER

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EXECUTION PAGE

ARTICLE 1 AGREEMENT

This Agreement is made by and between the Public Building Commission of Chicago, a municipal corporation and body politic organized and operating under the Constitution of the State of Illinois ("Commission" or "PBC") and **HENRY BROTHERS** ("Design-Builder") the for services in connection with the Facility Scopes of Work as set forth in Exhibit 2 – Scope and Performance Criteria, with an Effective Date listed on the Execution Page of this Design-Build Agreement for the following facilities:

18110 CHOPIN, 18890 CLEMENTE, 18140 DE DIEGO, 18310 JENNER, 18940 LEWIS, 18760 MORTON, 18480 RYERSON

ARTICLE 2 GENERAL PROVISIONS

2.1 RELATIONSHIP The Commission and the Design-Builder agree to proceed with the Project(s) on the basis of trust, good faith and fair dealing and shall take all actions reasonably necessary to perform this Agreement in an economical and timely manner, including consideration of design modifications and alternative materials or equipment that will permit the Scopes of Work to be constructed within the Guaranteed Maximum Price (GMP) and by the Dates of Substantial Completion and Final Completion for each Scope. The Design-Builder agrees to procure or furnish, as permitted by the laws of Illinois, the design phase services and construction phase services as set forth below.

2.1.1 The Design-Builder represents that it is an independent contractor and that it is familiar with the type of work it is undertaking.

2.2.2 Neither the Design-Builder nor any of its agents or employees shall act on behalf of or in the name of the Commission unless authorized in writing by the Commission's Representative.

2.1.3 The Commission and the Design-Builder shall perform their obligations with integrity, ensuring at a minimum that:

2.1.3.1 Conflicts of interest shall be avoided or disclosed promptly to the other Party; and

2.1.3.2 The Design-Builder and the Commission warrant that they have not and shall not pay nor receive any contingent fees or gratuities to or from the other Party, including their agents, officers and employees, Subcontractors or others for whom they may be liable, to secure preferential treatment.

2.2 ARCHITECT/ENGINEER 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 law of the State of Illinois. The person or entity providing architectural and engineering services shall be referred to as the Architect/Engineer. If the Architect/Engineer is an independent design professional, the

architectural and engineering services shall be procured pursuant to a separate agreement between the Design-Builder and the Architect/Engineer. The Architect/Engineer for the Project is/are: **STR PARTNERS and FOX & FOX ARCHITECTS.**

2.3 EXTENT OF AGREEMENT This Agreement is solely for the benefit of the Parties, represents the entire and integrated agreement between the Parties, and supersedes all prior negotiations, representations or agreements, either written or oral. The Commission and the Design-Builder agree to look solely to each other with respect to the performance of the Agreement. The Agreement and each and every provision are for the exclusive benefit of the Commission and the Design-Builder and not for the benefit of any third party nor any third party beneficiary except to the extent expressly provided in the Agreement.

2.4 DEFINITIONS

2.4.1 The Contract Documents consist of:

- a. Change Orders and written amendments to this Agreement including exhibits and appendices, signed by both the Commission and the Design-Builder;
- b. this Agreement except for the existing Contract Documents set forth in item e. below;
- c. the most current documents approved by the Commission pursuant to Subparagraph 3.1.2
- d. the information provided by the Commission pursuant to Clause 4.1.2.1;
- e. the Contract documents in existence at the time of execution of this Agreement which are set forth in Article 15; and
- f. the Commission's Program provided pursuant to Subparagraph 4.1.1.

In case of any inconsistency, conflict or ambiguity among the Contract Documents, the documents shall govern in the order in which they are listed above; further, Book 1 will govern over Book 2 and Book 2A, and Book 2 Shall govern over Book 2A.

2.4.2 The term Day shall mean calendar day, unless otherwise specifically defined.

2.4.3 Design-Builder's Fee means the compensation paid to the Design-Builder for its profit.

2.4.4 Defective Work is any portion of the Work not in conformance with the Contract Documents as more fully described in Article 3.

2.4.5 The term fast-track means accelerated scheduling which involves commencing construction prior to the completion of drawings and specifications and then using means such as bid packages and efficient coordination to compress the overall schedule.

2.4.6 Final Completion occurs on the date when the Design-Builder's obligations under this Agreement are complete and accepted by the Commission and the final payment becomes due and payable.

2.4.7 A Material Supplier is a party or entity retained by the Design-Builder to provide material and equipment for the Work.

2.4.8 Others means other contractors and all persons at the Worksite who are not employed by Design-Builder, its Subcontractors or Material Suppliers.

2.4.9 The term Overhead shall have the meaning set forth in Section 8.2.9 below.

2.4.9.1 The Commission is the person or entity identified as such in this Agreement and includes the Commission's Representative.

2.4.10 The Commission's Program is an initial description of the Commission's objectives, that may include budget and time criteria, space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.

2.4.11 The Project as identified in Article 1, is the building(s), facility(ies) or other improvements for which the Design-Builder is to perform the Work under this Agreement. It may also include improvements to be undertaken by the Commission or Others.

2.4.12 A Subcontractor is a party or entity retained by the Design-Builder as an independent contractor to provide the onsite labor, materials, equipment or services necessary to complete a specific portion of the work. The term Subcontractor does not include the Architect/Engineer or any separate contractor employed by the Commission or any separate contractor's subcontractor.

2.4.13 Substantial Completion of the Work, or of a designated portion of the Work, occurs on the date when the Design-Builder's obligations are sufficiently complete in accordance with the Contract Documents so that the Commission may occupy or utilize the Project, or a designated portion, for the use for which it is intended, in accordance with Section 3.06 of Book 2. The issuance of a 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. This date shall be confirmed by a Certificate of Substantial Completion signed by the Commission and the Design-Builder. The Certificate shall state the respective responsibilities of the Commission and the Design-Builder for security, maintenance, heat, utilities, or damage to the Work, and insurance. The Certificate shall also list the items to be completed or corrected, and establish the time for their completion and correction, within the time frame, if any, established for the Date of Final Completion.

2.4.14 A Sub-subcontractor is a party or entity who has an agreement with a Subcontractor to perform any portion of the Subcontractor's work.

2.4.15 Terrorism means a violent act, or an act that is dangerous to human life, property or infrastructure, that is committed by an individual or individuals and that appears to be part of an effort to coerce a civilian population or to influence the policy or affect the

conduct of any government by coercion. Terrorism includes but is not limited to, any act certified by the United States Secretary of Treasury as an act of terrorism pursuant to the Terrorism Risk Insurance Act, as amended.

2.4.16 The Work is the Design Phase services procured or furnished in accordance with Paragraph 3.1, the GMP Proposal provided in accordance with Paragraph 3.2, the Construction Phase services provided in Paragraph 3.3, additional services that may be provided in accordance with Paragraph 3.10, and other services which are necessary to complete the Project in accordance with and reasonably inferable from the Contract Documents.

2.4.17 Deliverables are any and all documents, including but not limited to plans, specifications, drawings, and reports prepared by the Design-Builder in the performance of the Work.

2.4.18 Worksite means the geographic area at the location(s) mentioned in Article 1 where the Work is to be performed.

2.4.19 User Agency means the unit of local government on the behalf of which the Commission is undertaking the design and construction of the Project.

ARTICLE 3

DESIGN-BUILDER'S RESPONSIBILITIES

The Design-Builder shall be responsible for procuring or furnishing the design and for the construction of the Work consistent with the Commission's Program, as such Program may be modified by the Commission during the course of the Work. The Design-Builder shall exercise reasonable skill and judgment in the performance of its services consistent with the team relationship described in Paragraph 2.1, but does not warrant nor guarantee schedules and estimates other than those that are part of the GMP proposal. The Design-Builder shall at all times comply in letter and spirit with, and demonstrate good faith efforts to achieve, the affirmative action goals of the Commission and its User Agency, as those goals may be set forth in the MBE/WBE Special Conditions for Design Build Contracts, Book 2, Article 23, attached hereto and incorporated by reference herein, and in any other terms and provisions of this Agreement.

3.1 DESIGN PHASE SERVICES. In addition to the Design Phase Services set forth below, the Design-Builder shall provide those design services specified in Exhibit 1 - Design Builder Design Services, attached hereto and incorporated by reference herein.

3.1.2 CONSTRUCTION DOCUMENTS The Design-Builder shall submit for the Commission's written approval Construction Documents based on the approved Scope and Performance Criteria Documents. The Construction Documents shall set forth in detail the requirements for construction of the Work, and shall consist of drawings and specifications based upon codes, laws and regulations enacted at the time of their preparation. When the Design-Builder submits the Construction Documents, the Design-Builder shall identify in writing all material changes and deviations that have taken place from the Scope and Performance Criteria Documents. Construction shall be in accordance with these approved Construction Documents. One set of these documents shall be furnished to the Commission prior to commencement of construction; provided, however, that in the event that the Commission decides, in its sole option and opinion, to fast-track the Work, or any portion thereof, the Design-Builder

shall proceed to perform such fast-track Work regardless of the status of the Construction Documents. The Commission will identify fast-track Work in its Notice-to-Proceed to the Design-Builder. The Design-Builder shall provide a final GMP for each Scope of Work and a final update of the schedule with the Construction Documents for each Scope of Work.

3.1.3 OWNERSHIP OF DOCUMENTS

3.1.3.1 OWNERSHIP OF DRAWINGS AND DOCUMENTS All Deliverables, data, findings or information in any form prepared, assembled or encountered by or provided to Design-Builder under this Agreement are property of the Commission, including all copyrights inherent in them or their preparation. During performance of the Work, Design-Builder is responsible for any loss or damage to the Deliverables, data, findings or information while in Design-Builder's or any Subcontractor's possession. Any such lost or damaged Deliverables, data, findings or information must be restored at the expense of the Design-Builder. If not restorable, Design-Builder must bear the cost of replacement and of any loss suffered by the Commission.

3.1.3.2 COPYRIGHT Design-Builder and the Commission agree that, to the extent permitted by law, the Deliverables to be produced by Design-Builder at the Commission's instance and expense under this Agreement are conclusively considered "works made for hire" within the meaning and purview of Section 101 of the United States Copyright Act, 17 U.S.C. §101 *et seq.*, and that the Commission will be the sole copyright owner of the Deliverables and of all aspects, elements and components of them in which copyright can subsist, and of all rights to apply for copyright registration or prosecute any claim of infringement.

To the extent that any Deliverable does not qualify as a "work made for hire," Design-Builder hereby irrevocably grants, conveys, bargains, sells, assigns, transfers and delivers to the Commission, its successors and assigns, all right, title and interest in and to the copyrights and all U.S. and foreign copyright registrations, copyright applications and copyright renewals for them, and other intangible, intellectual property embodied in or pertaining to the Deliverables prepared for the Commission under this Agreement, and all goodwill relating to them, free and clear of any liens, claims, or other encumbrances, to the fullest extent permitted by law. Design-Builder will, and will cause all of its subconsultants and Subcontractors, employees, agents and other persons within its control to execute all documents and perform all acts that the Commission may reasonably request in order to assist the Commission in perfecting its rights in and to the copyrights relating to the Deliverables, at the sole expense of the Commission. Design-Builder warrants to the Commission, its successors and assigns, that on the date of transfer Design-Builder is the lawful owner of good and marketable title in and to the copyrights for the Deliverables and has the legal rights to fully assign them. Design-Builder further warrants that it has not assigned and will not assign any copyrights and that it has not granted and will not grant any licenses, exclusive or non-exclusive, to any other party, and that it is not a party to any other agreements or subject to any other restrictions with respect to the Deliverables. Design-Builder warrants and represents that the Deliverables are complete, entire and comprehensive, and that the Deliverables constitute a work of original authorship.

3.1.3.3 USE OF DOCUMENTS IN EVENT OF TERMINATION In the event of a termination of this Agreement pursuant to Article 12, the Commission shall have the right to use, to reproduce, and to made derivative works of the Documents to complete the Project, regardless of whether there has been a transfer of copyright under Subparagraph 3.1.3.2, provided payment has been made pursuant to the Contract Documents. The Commission's use of the Documents without the Design-Builder's involvement is at the Commission's sole risk, except for the Design-Builder's indemnification obligations pursuant to Article 11.

3.1.3.4 COMMISSION'S USE OF DOCUMENTS AFTER COMPLETION OF PROJECT After completion of the Project, the Commission may reuse, reproduce or make derivative works from the Documents solely for the purposes of maintaining, renovating, remodeling or expanding the Project at the Worksite. The Commission's use of the Documents without the Design-Builder's involvement or on other projects is at the Commission' sole risk, except for the Design-Builder's indemnification obligations pursuant to Article 11.

3.1.3.5 DESIGN-BUILDER'S USE OF DOCUMENTS Where the Design-Builder has transferred its copyright interest in the Documents under Subparagraph 3.1.3.2, the Design-Builder may reuse Documents prepared by it pursuant to this Agreement in its practice, but only in their separate constituent parts and not as a whole.

3.1.3.6 The Design-Builder shall obtain from its Architect/Engineer, Subcontractors and consultants rights and rights of use that correspond to the rights given by the Design-Builder to the Commission in this Agreement, and the Design-Builder shall provide evidence that such rights have been secured.

3.2 GUARANTEED MAXIMUM PRICE ("GMP")

3.2.1 GMP PROPOSAL The GMP shall be the sum of the ~~estimated~~ Cost of the Work for each Scope of Work as defined in Article 8 and the Design-Builder's Fee as defined in Article 7. The GMP is subject to modification as provided in Article 9. The Design-Builder does not guarantee any specific line item provided as part of the GMP, but agrees that it will be responsible for paying all costs of completing the Work which exceed the GMP as adjusted in accordance with this Agreement.

The Commission and the Design-Builder may agree that: (i) elements of the Work may be performed by sub-contractors pursuant to lump sum sub-contracts, and (ii) the Cost of the Work may itself become a lump sum. Sub-contracts may only be lump sum with the agreement of the Commission. For each approved lump sum sub-contracts, the Design-Builder agrees that the Work included in each sub-contract shall be completed by the Design-Builder for the lump sum price of that sub-contract, which lump sum may only be increased by approval of the Commission and an amendment to this Agreement. The Cost of the Work may become a lump sum through a revised Exhibit 7 – Compensation/Cost of the Work that shall be initialed by the Executive Director of the Commission and the Design-Builder.

3.2.2 BASIS OF GUARANTEED MAXIMUM PRICE The Design-Builder shall include with the GMP Proposal a written statement of its basis, which shall include:

3.2.2.1 a list of the drawings and specifications, including all addenda, which were used in preparation of the GMP Proposal;

3.2.2.2 a list of allowances and a statement of their basis;

3.2.2.3 a list of the assumptions and clarifications made by the Design-Builder in the preparation of the GMP Proposal to supplement the information contained in the drawings and specifications issued as part of the RFP;

3.2.2.4 the Date of Substantial Completion and the Date of Final Completion upon which the proposed GMP is based, and the Schedule of Work upon which the Date of Substantial Completion or the Date of Final Completion is based;

3.2.2.5 a schedule of applicable alternate prices;

3.2.2.6 a schedule of applicable unit prices;

3.2.2.7 Design-Builder's Lump Sum its General Conditions (i.e., Design-Builder's project staff) and an estimate/budget for its Requirements (i.e., overhead direct costs and expenses).

3.2.2.8 a statement of Additional Services included, if any,

3.2.2.9 the Design-Builder's Contingency as provided in Subparagraph 3.2.3;

3.2.2.10 a statement of any work to be self-performed by the Design-Builder; and

3.2.2.11 a statement identifying all patented or copyrighted materials, methods or systems selected by the Design-Builder and incorporated in the Work that are likely to require the payment of royalties or license fees.

3.2.3 DESIGN-BUILDER'S CONTINGENCY The GMP will contain, as part of the estimated Cost of the Work, the Design-Builder's Contingency, a sum mutually agreed upon and monitored by the Design-Builder and the Commission to cover costs which are properly reimbursable as a Cost of the Work but are not the basis for a Change Order. The Design-Builder's Contingency shall not exceed three and one-half percent (3.5%) of the Cost of the Work. The Design-Builder's Contingency shall not be used for changes in scope or for any item that would be the basis for an increase in the GMP. The Design-Builder shall provide the Commission with: (i) prompt notice of its intent to use the Design-Builder's Contingency and (ii) an accounting of charges against the Design-Builder's Contingency.

3.2.4 [reserved]

3.2.5 COST REPORTING The Design-Builder shall keep such full and detailed accounts on a per facility basis as are necessary for proper financial management under this Agreement. The Design-Builder shall maintain a complete set of all books and records prepared or used by the Design-Builder with respect to the Project. The Design-Builder's records supporting its performance and billings under this Agreement shall be

current, complete and accurate and maintained according to generally accepted accounting principles for each facility included within the Project. The Commission shall be afforded reasonable access during normal business hours to all the Design-Builder's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda and similar data relating to this Agreement. The Design-Builder shall present all such records for a period of five years after the final payment or longer where required by law.

3.3. CONSTRUCTION PHASE SERVICES

3.3.1 The Construction Phase of each Scope of Work will commence upon the issuance by the Commission of a written notice to proceed with construction (NTP).

3.3.2 The Design-Builder shall procure or provide the Construction Phase Services including, without limitation, all necessary construction supervision, inspection, construction equipment, labor, materials, tools and subcontracted items necessary to complete the Work and the Project in accordance with the terms and conditions of this Contract.

3.3.3 The Design-Builder shall give all notices and comply with all laws and ordinances legally enacted at the date of execution of the Agreement which govern the proper performance of the Work.

3.3.4 The Design-Builder shall obtain the building permits necessary for the construction of the Project.

3.3.5 The Design-Builder shall provide periodic written reports to the Commission on the progress of the Work in such detail as is required by the Commission and as agreed to by the Commission and the Design-Builder.

3.3.6 The Design-Builder shall develop a system of cost reporting for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes in the Work. The reports shall be acceptable in form to the Commission and presented to the Commission at mutually agreeable intervals, but no less frequently than weekly during the performance of the Construction Phase Services.

3.3.7 The Design-Builder shall regularly remove debris and waste materials at each Worksite resulting from the Work. Prior to discontinuing Work in an area, the Design-Builder shall clean the area and remove all rubbish and its construction equipment, tools, machinery, waste and surplus materials. The Design-Builder shall minimize and confine dust and debris resulting from construction activities. At the completion of the Work, the Design-Builder shall remove from the Worksite all construction equipment, tools, surplus materials, waste materials and debris.

3.3.8 The Design-Builder shall prepare and submit to the Commission final marked-up as built drawings and updated electronic data in general documenting how the various elements of the Work including changes were actually constructed or installed, or as defined by the Parties by attachment to the Agreement.

3.4 CONSTRUCTION MEANS AND METHODS Design-Builder is solely responsible for the means, methods, techniques, sequences and procedures of the Construction Phase Services within the parameters set forth by this Agreement. Nothing in this Section 3.4 shall be deemed to limit the Design-Builder's obligations to provide the Commission access to all Work as provided in other Sections of this Agreement, nor shall the Commission's observation of the Work be construed to relieve the Design-Builder of its obligation to correct defective Work if defects are discovered after an observation.

3.5 SCHEDULE OF THE WORK The Design-Builder shall prepare and submit a Schedule of Work for the Commission's acceptance and written approval as to milestone dates and activities pursuant to Article 10 of Book 2. This schedule shall indicate the dates for the start and completion of the various stages of the Work, including the dates when information and approvals are required from the Commission. The Schedule shall be revised as required by the conditions of the Work and as agreed upon by the Parties and as otherwise provided in Article 10 of Book 2.

3.6 SAFETY OF PERSONS AND PROPERTY

3.6.1 SAFETY PRECAUTIONS AND PROGRAMS The Design-Builder shall have overall responsibility for safety precautions and programs in the performance of the Work. While the provisions of this Paragraph establish the responsibility for safety between the Commission and the Design Builder, they do not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with the provisions of applicable laws and regulations.

3.6.2 The Design-Builder shall seek to avoid injury, loss or damage to persons or property by taking reasonable steps to protect:

3.6.2.1 its employees and other persons at the Worksite;

3.6.2.2 materials, supplies and equipment stored at the Worksite for use in performance of the Work; and

3.6.2.3 the Project and all property located at the Worksite and adjacent to work areas, whether or not said property or structures are part of the Project or involved in the Work.

3.6.3 DESIGN-BUILDER'S SAFETY REPRESENTATIVE The Design-Builder shall designate an individual at the Worksite in the employ of the Design-Builder who shall act as the Design-Builder's designated safety representative with a duty to prevent accidents. The Design-Builder will report immediately in writing all accidents and injuries occurring at the Worksite to the Commission. When the Design-Builder is required to file an accident report with a public authority, the Design-Builder shall furnish a copy of the report to the Commission.

3.6.4 The Design-Builder shall provide the Commission with copies of all notices required of the Design-Builder by law or regulation. The Design-Builder's safety program shall comply with the requirements of all governmental authorities having jurisdiction over the Work.

3.6.5 Damage or loss not insured under property insurance which may arise from the performance of the Work, to the extent of the negligence attributed to such acts or omissions of the Design-Builder, or anyone for whose acts the Design-Builder may be liable, or any third party, shall be promptly remedied by the Design-Builder. Damage or loss attributable to the acts or omissions of the Commission and not to the Design-Builder shall be promptly remedied by the Commission; provided, however, that the Commission may direct the Design-Builder to remedy such damage or loss, and the Commission shall pay for such remedy as a Cost of the Work.

3.6.6 If the Commission deems any part of the Work or Worksite unsafe, the Commission, without assuming responsibility for the Design-Builder's safety program, may require the Design-Builder to stop performance of the Work or take corrective measures satisfactory to the Commission, or both. If the Design-Builder does not adopt corrective measures, the Commission may perform them and reduce by the costs of the corrective measures the amount of the GMP, or in the absence of a GMP, the Cost of the Work as provided in Article 8. The Design-Builder agrees to make no claim for damages, for an increase in the GMP, compensation for Design Phase services, the Design-Builder's Fee or the Date of Substantial Completion or the Date of Final Completion based on the Design-Builder's compliance with the Commission's reasonable request.

3.7 HAZARDOUS MATERIALS

3.7.1 A Hazardous Material is any substance or material identified as hazardous under any federal, state or local law or regulation, or any other substance or material which may be considered hazardous or otherwise subject to statutory or regulatory requirements governing handling, disposal or clean-up. The Design-Builder shall not be obligated to commence or continue work until all Hazardous Material discovered at the Worksite has been removed, rendered or determined to be harmless by the Commission as certified by an independent testing laboratory approved by the appropriate government agency.

3.7.2. If after the commencement of the Work, Hazardous Material is discovered at the Project, the Design-Builder shall (i) stop Work in the affected area (ii) report the condition to the Commission and the government agency with jurisdiction, as required, immediately, and (iii) proceed to remediate the Hazardous Material in accordance with this Agreement and the law.

3.7.3 The Design-Builder shall be responsible for retaining an independent testing laboratory to determine the nature of the material encountered and whether it is a Hazardous Material requiring corrective measures or remedial action. Such measures shall be the sole responsibility of the Design-Builder. The Design-Builder shall resume Work in the area affected by any Hazardous Material only after the Hazardous Material has been removed or rendered harmless and only after approval, if necessary, of the governmental agency or agencies with jurisdiction.

3.7.4 If the Design-Builder incurs additional costs or is delayed due to the presence or remediation of Hazardous Material, the Design-Builder shall be entitled to an equitable adjustment in the GMP, compensation for Design Phase services, the Design-Builder's Fee.

3.7.5 Material Safety Data (MSD) sheets as required by law and pertaining to materials or substances used or consumed in the performance of the Work, whether obtained by the Design-Builder, Subcontractors, the Commission or Others, shall be maintained at the Project by the Design-Builder and made available to the Commission and Subcontractors.

3.7.6 During the Design-Builder's performance of the Work, the Design-Builder shall be responsible for the proper handling of all materials brought to the Worksite by the Design-Builder. Upon issuance of the Certificate of Substantial Completion, the Commission shall be responsible under this Paragraph for materials and substances brought to the site by the Design-Builder if such materials or substances are required by the Contract Documents.

3.7.7 The terms of this Paragraph 3.7 shall survive the completion of the Work under this Agreement or any termination of this Agreement.

3.8 WARRANTIES AND COMPLETION

3.8.1 The Design-Builder warrants that all materials and equipment furnished under the Construction Phase of this Agreement will be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. Warranties shall commence on the Date of Substantial Completion of the Work. The Design-Builder agrees to correct all construction performed under this Agreement which is defective in workmanship or materials within a period of one year from the Date of Substantial Completion or for such longer periods of time as may be set forth with respect to specific warranties required by the Contract Documents.

3.8.2 To the extent products, equipment, systems or materials incorporated in the Work are specified and purchased by the Commission, they shall be covered exclusively by the warranty of the manufacturer. There are no warranties which extend beyond the description on the face of any such warranty. The Design-Builder shall assist the Commission in pursuing warranty claims. **ALL OTHER WARRANTIES EXPRESSED OR IMPLIED INCLUDING THE WARRANTY OF MERCHANTABILITY AND THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY DISCLAIMED.**

3.8.3 The Design-Builder shall secure any and all required certificates of inspection, testing or approval and deliver them to the Commission.

3.8.4 The Design-Builder shall collect all written warranties and equipment manuals and deliver them to the Commission in a format directed by the Commission.

3.8.5 The Design-Builder shall direct the commissioning checkout of utilities and start-up operations, and adjusting and balancing of systems and equipment for readiness.

3.9 CONFIDENTIALITY The Design-Builder shall treat as confidential and not disclose to third persons, except Subcontractors, Sub-subcontractors and the Architect/Engineer as is necessary for the performance of the Work, or use for its own benefit any of the Commission's developments, confidential information, know-how, discoveries, production methods and the like that may be disclosed to the Design-Builder or which the Design-Builder may acquire in

connection with the Work. The Commission shall treat as confidential information all of the Design-Builder's estimating systems and historical and parameter cost data that may be disclosed to the Commission in connection with the performance of this Agreement. The Commission and the Design-Builder shall each specify those items to be treated as confidential and shall mark them as "Confidential." Notwithstanding the foregoing, the Parties acknowledge and agree that the Commission is a unit of local government, and as such is subject to Freedom of Information Act, 5 ILCS 140/1 *et seq.*

Design-Builder will not issue any publicity, news releases or grant press interviews, and, except as may be required by law during or after the performance of this Agreement, disseminate any information regarding its Work or the Project to which the Work pertains without the prior written consent of the Commission.

If Design-Builder is presented with a request for documents by any administrative agency, or with a *subpoena duces tecum* regarding any records, data or documents which may be in Design-Builder's possession by reason of this Agreement, Design-Builder shall immediately give notice to the Commission and its legal counsel with the understanding that the Commission will have the opportunity to contest such process by any means available to it before the records or documents are released to a court or other third party. Design-Builder is not, however, obligated to withhold the delivery beyond the time ordered by the court or administrative agency unless the *subpoena* or request is quashed, or the time to produce is otherwise extended.

3.10 ADDITIONAL SERVICES The Design-Builder shall provide or procure the following Additional Services upon the request of the Commission. A written amendment to this Agreement between the Commission and the Design-Builder shall define the extent of such Additional services before they are performed by the Design-Builder. If a GMP has been established for the Work or any portion of the Work, such Additional services shall be considered a change in the Work.

3.10.1 Development of the Commission's Program, establishing the Project budget, investigating sources of financing, general business planning and other information and documentation as may be required to establish the feasibility of the Project.

3.10.2 Surveys, site evaluations, legal descriptions and aerial photographs.

3.10.3 Appraisals of existing equipment, existing properties, new equipment and developed properties.

3.10.4 Soils, subsurface and environmental studies, reports and investigations required for submission to governmental authorities or others having jurisdiction over the Project.

3.10.5 Consultations and representations before governmental authorities or others having jurisdiction over the Project other than normal assistance in securing building permits.

3.10.6 Investigation or making measured drawings of existing conditions or the reasonably required verification of Commission-provided drawings and information.

3.10.7 Artistic renderings, models and mockups of the Project or any part of the Project or the Work.

3.10.8 Making revisions to the, Design Development or Construction Documents or documents forming the basis of the GMP after they have been approved by the Commission, and which are due to causes beyond the control of the Design-Builder. Causes beyond the control of the Design-Builder do not include acts or omissions on the part of Subcontractors, Material Suppliers, Sub-subcontractors or the Architect/Engineer.

3.10.9 Design, coordination, management, expediting and other services supporting the procurement of materials to be obtained or work to be performed, by the Commission, including not limited to telephone systems, computer wiring networks, sound systems, alarms, security systems and other specialty systems which are not a part of the Work.

3.10.10 Estimates, proposals, appraisals, consultations, negotiations and services in connection with the repair or replacement of an insured loss, provided such repair or replacement did not result from the negligence of the Design-Builder.

3.10.11 Out-of-town travel by the Architect/Engineer in connection with the Work, except between the Architect/Engineer's office, the Design-Builder's office, the Commission's office and the Worksite.

3.10.12 Obtaining service contractors and training maintenance personnel, assisting and consulting in the use of systems and equipment after the initial start-up.

3.10.13 Services for tenant or rental spaces not a part of this Agreement.

3.10.14 Services requested by the Commission or required by the Work which are not specified in the Contract Documents and which are not normally part of generally accepted design and construction practice.

3.10.15 Serving or preparing to serve as an expert witness in connection with any proceeding, legal or otherwise, regarding the Project.

3.10.16 Providing services relating to Hazardous Material discovered at the Worksite.

3.10.17 Other services as agreed to by the Parties.

3.11 STANDARD OF CARE

3.11.1 Design-Builder shall perform all services required by this Agreement with that degree of skill, care and diligence consistent with the professional standards prevailing in the Chicago metropolitan area for services of comparable scope and magnitude.

3.11.2 Design-Builder is and remains responsible for the professional and technical accuracy of all services or Deliverables furnished, whether by Design-Builder, the Architect Engineer, or others on its or their behalf. All Deliverables must be prepared in a form and content satisfactory to the Commission and delivered in a timely manner consistent with the requirements of this Agreement. Subsequent editions of design Deliverables, including drawings and specifications, shall supersede earlier editions, provided that any items that have changed on the design Deliverables are explicitly noted. Subsequent design Deliverables shall represent further development of the design Deliverables and shall not change or omit previously approved features or