



HOUSING AUTHORITY OF COOK COUNTY

**REQUEST FOR PROPOSAL (RFP) FOR
DESIGN-BUILD SERVICES FOR
EVANSTON TOWER (PHASE I) – RFP # 2019-100-003
ISSUED:**

Housing Authority of Cook County

175 West Jackson Boulevard

Suite 350

Chicago, Illinois 60604

www.thehacc.org

Richard J. Monocchio

Executive Director

FIRM NAME:	
CONTACT NAME:	
CONTACT TELEPHONE:	
CONTACT EMAIL:	
ADDRESS:	
(This page must be included with your submission)	

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SECTION I – INTRODUCTION

INTRODUCTION

The Housing Authority of Cook County (“Authority” or “HACC”) has increased the number of affordable housing for low or very-low income people throughout Cook County by building or renovating hundreds of housing units. The HACC’s professional staff may manage each project through planning, financing, site preparation and remediation, design, construction and furnishing, functioning as a single point of responsibility for “turn-key” development.

A. TWO-PHASE DESIGN-BUILD REQUEST FOR PROPOSAL (RFP) PROCESS

1. Request for Proposals – Phase I & Phase II: This procurement is being solicited using the two-phase RFP for Design-Build Process. As part of the Phase I Qualifications submission, Design-Build proposers shall submit their past performance history and qualifications as prescribed in this RFP for consideration by the HACC. The HACC shall review the Phase I Qualifications submissions and create a short list of the most highly qualified design build entities and notify those entities they have been selected to submit Phase II Technical and Cost proposals for the HACC’s consideration. The HACC shall provide the short-listed proposers with the final Project Scope and Performance Criteria (SPC) that will define the HACC’s project requirements, project objectives, programmatic needs and goals, design criteria, performance criteria, budget parameters and schedule and delivery requirements. The HACC will evaluate the Phase II Technical & Cost using the criteria and relative weights established in the Phase II RFP. SPC will include the building’s final program and space requirements; performance requirements and specifications for the building’s systems; and design guidelines. Phase II Proposers will be expected to provide a design, with enhanced engineering and design documents.

2. Proposers: Firms formally organized as design-build entities or design firms and construction contractors that have associated specifically for this project may submit proposals. For purposes of this RFP, no distinction is made between entities formally organized as design-build entities and project specific design-build associations. Both are referred to as the Design-Build Proposer (or Proposer).

3. Notice: All proposers will be notified of the results of the HACC’s evaluation of Phase I submissions. The names of those Proposers from whom Phase II proposals will be requested will be published on the HACC’s website at www.thehacc.org. For all those proposers who compete in both Phase I and Phase II, the proposal shall be defined as all information that was submitted in response to the requirements of both phases. The HACC is not liable for and will not compensate any proposer for costs incurred in preparation and submission of a responses to this RFP (or for other costs) incurred prior to award of a contract. Furthermore, data and information furnished or referred to in this RFP is for Proposers’ information only. The HACC shall not be responsible for any interpretation or conclusion drawn from said data or information by the Proposer.

4. Prohibitions “The design professional that prepares the scope and performance criteria is prohibited in any design-build entity proposal for the project.” This means any firm providing work product that may help develop the scope and performance criteria for the design-build procurement will be precluded from inclusion on a submitting design-build team. The following firms are precluded from responding to this solicitation as a part of a design-build team:

Camiros LTD

B. REQUIREMENTS

Phase I and Phase II requirements have been developed based on specific criteria.

1. Demonstrated Capacity: All design must be performed under the direct supervision of appropriately licensed professionals registered in the appropriate jurisdiction. Further all design must be performed by firms licensed in the appropriate technical disciplines and shall meet all other licensing requirements specified in this RFP herein.

2. LEED v4 Certification: The HACC requires that this facility be constructed to achieve a minimum LEED v4 certification level of Silver for New Construction.

3. Independent Testing Laboratory: The HACC will appoint a firm to provide Independent Testing Laboratory (ITL) services. The successful design-build entity will be responsible for Quality Control and the HACC's ITL service provider will perform Quality Assurance.

C. AGREEMENT OVERVIEW

1. Agreement for Design-Build Services: The HACC anticipates the Design-Build Entity will enter into an Agreement for Design-Build Services (Exhibit A – Form of Design-Build Agreement) with the HACC in a form substantially similar to the Agreement attached to this RFP. The Agreement will provide for the delivery of design and construction services to complete the Project.

2. Guaranteed Maximum Price ("GMP"): It is anticipated the Design-Builder will propose a Guaranteed Maximum Cost Proposal in its Phase II Proposal. The Design-Builder will be at-risk by guaranteeing a maximum price to be included in the Design-Build Agreement and by guaranteeing substantial completion and project delivery dates to the HACC.

SECTION II KEY INFORMATION

A. KEY INFORMATION RELATED TO THIS PROCUREMENT

1. Respondent Contact with the HACC: The HACC has selected the Contact Person identified below as the ***sole point of contact***. From the date of issuance until selection of the successful Respondent(s), Respondent's communication with the HACC concerning this Procurement must be exclusively with:

Deborah O'Donnell, Procurement Manager
Housing Authority of Cook County
175 west Jackson Boulevard, Suite 350
Chicago, Illinois 60604
dodonnell@thehacc.org

2. Submission Deadline and Procurement Timetable: The following dates are set forth for informational and planning purposes; however, the HACC reserves the right to change the dates.

Issue RFP:	June 3, 2019
Pre-Submission Conference	June 19, 2019 at 10:00 am
Questions Deadline	June 28, 2019 at Noon
Submission Due Date/Time (Phase I)	July 26, 2019 by 2:00 pm
HACC RFP Submission Review and Shortlist	July 29- August 16, 2019
Submission Due Date (Phase II) (<i>tentative</i>)	TBD
HACC RFP Submission Review and Shortlist (<i>tentative</i>)	TBD
Interview Short-listed Firms (<i>tentative</i>)	TBD
Recommendation to HACC Board	TBD

3. Pre-Submission Conference: The HACC will be hosting a Pre-submission Conference to provide an overview of the HACC Design-Build Process and of the RFP submission requirements. Attendance at the Pre-submission Conference is not mandatory and will not preclude your firm from submitting a response to this RFP.

Event Date: June 19, 2019
Event Time: 10:00 am
Event Location: Housing Authority of Cook County
175 West Jackson Boulevard, Suite 350
Chicago, Illinois 60604

4. Submission Instructions: Submission instructions, including number of required copies can be found in Section IV. Submission Requirements of this RFP. Failure to submit in the manner prescribed in this RFP may deem your submission non-responsive.

5. Questions: Please direct all questions, in writing to the attention of Deborah O'Donnell, Procurement Manager via email to: dodonnell@thehacc.org. Questions may be answered at the discretion of the HACC. If answered, they will be answered via an Addenda posted to the HACC's website at: www.thehacc.org

7. Addenda, Proposal, and Acceptance: Any addenda that are issued will be posted only to the above listed website link. Respondent must acknowledge any addenda issued and posted to the HACC website www.thehacc.org. The Authority is not responsible for a Respondent's failure to obtain or download any addenda issued for a RFP.

Proposals must be submitted with original signatures in the spaces provided on FORM I – Proposal

Acknowledgment and Acceptance.

If Respondent is a corporation, the President and Secretary must execute the Proposal. In the event that this Proposal is executed by other than the President, attach hereto a certified copy of that section of the Corporate By-Laws or other authorization by the Corporation that permits the person to execute the offer for said corporation. If Respondent is a partnership, all partners must execute the Proposal, unless one partner has been authorized to sign for the partnership, in which case, evidence of such authority satisfactory to the Authority must be submitted.

Respondent's failure to acknowledge any issued addenda on FORM I – Proposal Acknowledgment and Acceptance or fail to properly execute the document may result in the Authority finding the proposal non-responsive and rejecting the proposal.

8. Confidentiality: Respondent may designate those portions of the proposal, which contain trade secrets or other information the respondent deems as proprietary or privileged (including financial information) as confidential. If a respondent includes data that is not to be disclosed to the public for any purpose or used by the HACC except for evaluation purposes, the respondent must clearly demarcate the bottom of each page containing confidential information as "Confidential."

9. False Statements: Any false statement(s) made by the respondent(s) will void the response and eliminate the respondent(s) from further consideration.

10. Debarment: Any firm debarred by HUD, other Housing Authorities, Sister Agencies, local, state or federal agencies shall have any award issued under this request, revoked.

11. Rejection of Submissions: Submissions that do not comply with the submission requirements of the RFP or that contain omissions, erasures, alterations that are irregular in any way, may be rejected as informal and insufficient. The HACC, however, reserves the right to waive any or all informalities when it considers a waiver to be in its and the public's best interest.

12. Ownership of Submission: The HACC owns all submitted materials. Submissions will not be returned to Respondents. During the evaluation and selection period and after the Selected Respondent(s) sign the Agreement(s), all Submittals remain the property of the HACC. The HACC shall not be responsible for expenses incurred in preparing and submitting the submission. Such costs must not be included in the submission.

13. Improper Practices: The Respondent must not offer any gratuities, favors, or anything of monetary value to any member of the Board of Director of the HACC, official, or employee of the HACC for the purpose of influencing consideration of the Submittal. The Respondent must not collude in any manner or engage in any practices with any other Respondent(s) or potential Respondent(s) that may restrict or eliminate competition or otherwise restrain trade. Violation of this instruction will cause the Respondents' response to this RFP to be rejected by the HACC. Notwithstanding the foregoing, this prohibition is not intended to preclude joint ventures, licenses or subcontracts.

14. Compliance with Laws: The Selected Respondent(s) must comply with all laws, statutes, ordinances and regulations of any and all governmental body, including the HACC and Federal, state, local and city governments. Respondent's attention is directed to the provisions of Article 33E of the Illinois Criminal Code, 720 ILCS 5/33E-1 et seq. (as amended), but Consultants must comply with any other provisions that apply to or in any manner affect any Services performed under the Agreement.

15. Reservations: The commission's approval of a firm pursuant to this RFP does not mean that the Authority approves the firm as qualified to perform a specific project. At the full discretion of the Authority, the Authority holds the following reservations.

The right to:

- request any additional, relevant information determined to be necessary for the proper evaluation of a submission;

- request an interview with the Respondent's team;
- reject a firm's proposal if the Commission determines that the firm is not qualified to perform the project;
- require project-specific MBE/WBE Participation Goals, EEO, Section 3 Goals provisions; and,
- negotiate prices.

16. Right to Cancel: The HACC reserves the right to cancel this procurement process whenever the best interest of the HACC is served, even after award. The HACC shall not be liable for costs incurred by respondent(s) associated with this procurement process.

B. ANTICIPATED CONTRACTUAL OBLIGATIONS

Respondents should take into consideration key HACC contractual obligations (or requirements) in the performance of any work performed for the HACC by a Contractor (or its Subcontractors).

Unless otherwise noted, all Respondents should adhere to the submission requirements following each item listed below. A Submission Checklist is provided further in this document to assist your firm in determining which form is applicable to your firm and required with your submission.

1. Minority Business Enterprise (MBE)/Women Business Enterprise (WBE) Participation: It is the HACC's policy to provide for maximum contracting opportunities for MBE/WBEs on all HACC projects. MBE/WBEs are encouraged to submit as General Contractors. The HACC accepts MBE/WBE certifications from City of Chicago and Cook County only.

MBE/WBE participation requirements will be based on the aggregate value of the agreement for both professional and construction services.

The MBE participation goal for this Project is 30%.

The WBE participation goal for this Project is 6%.

For purposes of this RFP, all Respondents shall complete FORM A – MBE/WBE, EEO, Section 3 Participation of which demonstrates commitment to meeting HACC's MBE/WBE Participation Goals and a copy of MBE/WBE Certification Letter from the City of Chicago and/or Cook County, if applicable.

2. Joint Venture Participation (Only applicable to firms interested in Joint Venture Partnerships): The HACC accepts Joint Venture Partnerships. Joint Ventures of Contractors with appropriate qualifications, financial capacity and combined construction experience and capacity are eligible to be considered for award.

A completed Disclosure Affidavit (FORM C) must be submitted for the joint venture entity; and Respondent must submit a copy of the entity's joint venture agreement which clearly identifies the resources, capabilities and capacity of each joint venture firm available to be allocated to the performance of the Contract.

The HACC also strongly encourages the participation of MBEs and WBEs as joint venture partners. Joint ventures of MBE/WBE contractors and non-MBE/WBE contractors are also invited to submit a Proposal in response to this RFP.

For purposes of this RFP, all Respondents shall provide with their submission, FORM C – Disclosure Affidavit, FORM B – Joint Venture Affidavit, and a copy of the entity's joint venture agreement as described above,. Each Joint Venture partner will also be required to submit all applicable forms requested in this RFP, which includes a Schedule B.

3. Equal Employment Opportunity (EEO) Requirements: Contractors will be required to comply with all laws with respect to the employment of labor and payment of local prevailing wage rates. 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.

For purposes of this RFP, all Respondents shall complete FORM A – MBE/WBE, EEO, Section 3 Participation which demonstrates commitment to meeting HACC's EEO, Section 3 requirements and requests the Respondents to provide evidence of past experience achieving commitments to utilize minority and women journeymen workers, apprentices, and laborers. Additionally, Respondent must provide history of meeting the Section 3 requirements.

4. Section 3 Participation: The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3 shall, to the greatest extent feasible, be directed to low and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

The parties to the contract agree to comply with HUD's regulations in 24 C.F.R. Part 135, which implement Section 3. As evidenced by their execution of the contract, the parties to the contract certify that they are under no contractual or other impediment that would prevent them from complying with Part 135 regulations.

5. Payment and Performance Bond: A payment and performance bond may be required for this Project.

For purposes of this RFP, all Respondents shall provide a letter from Respondent's Surety identifying the Respondent's current Bonding Capacity. The letter must include, at minimum: 1) Your Bonding Capacity (single and aggregate amounts), 2) The current amount of bonding outstanding; and 3) how long the bonding company has been providing bonds. The requirement also applies to the first tier Sub-Contractors.

6. Insurance: Contractors must provide and maintain at Contractor's own expense, the minimum insurance coverage and it must remain in effect for the duration of the Contract.

For purposes of this RFP, all Respondents shall provide a Certificate of Insurance showcasing their current coverage limits. (Refer to EXHIBIT A – Form of Agreement)

7. Safety Program Manual: Respondents should be able to demonstrate the quality of their overall safety program as evidenced by their history of citations, OSHA incident rate and Experience Modification Rate (EMR).

For purposes of this RFP, Respondents shall complete FORM F – Safety and submit a copy of the Table of Contents of the Safety Program Manual.

8. Quality Assurance and Quality Control Plan (QA/QC): Respondents should be able to demonstrate their experience with implementation of QA/QC processes.

For purposes of this RFP, Respondents shall provide a copy of their Quality Assurance and Quality Control Plan.

9. Project Scheduling: The HACC may require Contractors to submit schedules electronically or utilize scheduling software for project management purposes.

For purposes of this RFP, Respondents shall provide a sample of a project schedule.

10. Mandatory Project Specific Contractor Staffing Requirements: The Contractor shall assign a Project Manager and a Superintendent full time to the Project.

11. Prevailing Wage Rates: Not less than the prevailing rate of wages as determined by the Illinois Department of Labor shall be paid to all laborers, workers and mechanics performing work under this contract. Prevailing wage rates in effect at the time of issuance of Contract Documents will be identified in bid documents. One resource for determining the current prevailing wage rate is the internet site www.state.il.us/agency/idol/CM/countym.htm, maintained by the State of Illinois Department of Labor.

SECTION III - PROJECT DESCRIPTION

PROJECT NAME: Fifteen-Story Apartment Building
PROJECT ADDRESS: 1900 Sherman Avenue
PROJECT NUMBER: 2019-100-003

Project Description

The Housing Authority of Cook County (HACC) seeks to select design-build firm to design and build a fifteen story apartment building at its 1900 Sherman Avenue property in Evanston, Illinois. The new building will be located to the south of the existing eleven story Jane R. Perlman Apartments building, which provides housing for low income seniors and disabled persons. The new building may abut the existing building, but will be structurally and functionally independent, except for shared parking and ingress/egress. The below ground of the new building will be dedicated to structured parking and storage.

The new building will provide apartments for residents of mixed incomes, comprised of three groups: people with incomes 80% AMI or less; persons with between 80%- 120% AMI and person with income above 120% AMI. All the units in the building will be age restricted to persons 55 years of age or older.

The current direction for this development program is as follows:

- 120 total units with the composition of units being:
 - 36 market rate units (30%)
 - 60 missing middle units (50%)
 - 24 low-mod units (20%)
- 36 underground parking spaces to allow for generous setbacks
- 15 story building height
- 26' setback along Sherman and 10-29' setback along Emerson

Scope of Services

The Scope of Services provided by the design build firm will include, but not limited to: a) detailed program development and b) schematic design; c) design development; and d) construction of the fifteen story apartment building. HACC has conducted a Feasibility Study of the site, which determined that there is sufficient space on the site to add a second building. The Feasibility Study is attached to this RFP. HACC has also initiated discussions with City of Evanston regarding zoning relief needed for the project, and the City has encouraged HACC to move forward.

Phase 1: Schematic Design. Phase 1 work will consist of preparing schematic floor plans and elevations for the new building, working within the parameters outlined in the Feasibility Study and the program development phase. The floor plate for the new building is largely defined, however the architect shall assess the configuration of units within the floor plate as well as the elevators and staircase connecting the apartment levels, parking levels, and the ground level. Two alternative exterior designs shall be prepared for consideration by HACC and the City of Evanston. HACC would like the exterior design of the building to be distinctive. Schematic floor plans and elevations shall be prepared at a scale of 1" = 1/4', or other scale approved by HACC. The schematic floor plans shall show the units per floor and the configuration of rooms within each unit. The exterior elevations shall include all four elevations and be color rendered, suitable for presentation at public meetings. One 3-D color rendering shall be prepared for each alternative schematic design. The Architect shall also prepare an opinion of probable cost based on the schematic design.

Phase 1 work shall be integrated with HACC's pursuit of zoning approval from the City of Evanston. Work in Phase 1 shall include:

- A. Meetings with HACC to present schematic designs;
- B. Attending up to three project team meetings to prepare for zoning hearings;
- C. Attending up to three public zoning hearings;

The schematic design plans will be made part of the zoning approval documents, which are expected to include amended planned development documents. The architect is advised that the allowable degree of change to the approved plans going from schematic design to design development/contract documents shall be limited to "minor changes" for planned developments as defined by the City of Evanston Zoning Ordinance.

Phase 2: Design Development. Phase 2 work will delineate all features of the building, describing in detail what will get built. This shall include all apartment units, all common areas, accessory use space, site features and modifications, parking structure, and other features of the building and related site improvements. One of the two exterior designs shall be selected during the zoning approval process in Phase 1. The Architect shall develop this exterior design in elevation and two 3-D renderings to show all materials and the overall visual quality of the building's exterior. The Architect shall prepare an opinion of probable cost, based on the design refinement conducted in Phase 2. Design development materials will be prepared such that all aspects of the building will meet the City of Evanston's Building Code in Phase 3, Contract Documents.

Phase 3: Contract Documents. Phase 3 work will describe in detail how the building and its various components will be built in both drawings and written construction specifications. The building components described shall include, but be limited to:

- A. Structural
- B. Electrical
- C. Plumbing
- D. Mechanical
- E. Floor Plans
- F. Carpentry
- G. Exterior Finishes
- H. Interior Finishes and Furnishings
- I. Windows and Doors
- J. Site Improvements

The Architect shall prepare contract documents for three review stages: 1) 50% complete; 2) 75% complete; and 3) 100% complete. HACC shall provide review comments and provide direction on revisions, particularly as relates to cost engineering. The Architect shall provide updated estimates of probable cause at each review stage.

The construction is expected to be high quality materials for the interior and the exterior able to withstand robust use and be easily maintained. Because the building includes living quarters a healthy living environment including indoor air quality, sunlight, views, and systems controls is intended. Mechanical, electrical, and plumbing systems are projected as energy efficient, easy to maintain, and have a long service life. The project anticipates incorporating sustainable elements capable of achieving LEED Silver status.

SECTION IV - PHASE I QUALIFICATIONS

A. PHASE I QUALIFICATIONS SUBMISSION

An Evaluation Committee (EC) will review the Respondent's qualifications in accordance with submission requirements and evaluation criteria set forth in this document. The EC will render a recommendation for final determination and approval from HACC Board of Commissioners.

The HACC reserves the right to seek clarification of information submitted in response to this RFP and/or request additional information during the evaluation process. The HACC reserves the right to accept or reject any or all qualifications and selections when it is determined, at the sole discretion of the HACC.

B. EVALUATION CRITERIA

The HACC shall review and evaluate the submissions of each Respondent in accordance with the criteria listed below. The HACC will rely upon the Contractor to verify that all prospective vendor(s) and subcontractor(s) are appropriately licensed, certified, insured, bonded and meet all other requirements specified by the contract pursuant to procedures and policies of the Authority. The Authority reserves the right to add, delete or modify any requirements at its discretion.

1. Project Examples – (Evaluation Criteria 1** – 2**)

- a. Respondents shall provide descriptions and information on a minimum of 3 projects (but not more than 12). The projects submitted must meet the following requirements: 2 projects must have completed construction costs of \$15M or more (per project), the completed construction value of all projects submitted must be at least \$5M (per project), and all projects submitted must have been completed or substantially complete within the last 10 years. Describe which company of the Proposer's team worked on the project and describe their role. Select projects that best demonstrate the teams experience with one or all of the following:
 - i. (Evaluation Criteria 1**) Experience with projects of similar or greater size.
 - ii. (Evaluation Criteria 2**) Experience with projects of similar type.
- b. Respondents shall provide the following information if applicable for the projects submitted:
 - i. A brief description of the project including: client, delivery method, location, schedule, square footage, construction type, below grade work, foundation and exterior wall systems;
 - ii. A brief description of the design and/or construction services provided on the project specifically addressing the following:
 - a) Design/Construction services
 - b) Site logistics planning
 - c) Foundation systems analysis and selection
 - d) Building systems analysis and selection (structural, mechanical, electrical, plumbing, fire protection, building envelope)
 - e) Value engineering analyses and performed and cost savings recommendations made
 - f) Cost estimating and budget management services provided
 - g) Constructability reviews performed
 - h) Construction scheduling services performed
 - i) Building permit strategies used if project was new construction in the Evanston
 - j) LEED certification results and approach to integrated design (*if applicable*)
 - k) A description of the design and construction services provided on the project and the form any type of contract used (AIA Design Build Agreement, DBIA Design Build Agreement, custom design build agreement, etc.)
 - l) A description of schedule and budget requirements;
 - m) Performance of Timeliness and Completion, original forecast/guaranteed completion date and actual completion date and reason(s) for any variances.
 - n) Original budget/guaranteed maximum cost and actual cost of project at completion and

- reason(s) for any variances.
- o) Number of change orders and aggregate amount of change orders to the project.

For purposes of this RFP, all Respondents shall identify the minimum number of comparable projects that 1) are within the dollar ranges specified above, 2) have been completed within the stipulated timeframe, and 3) provide corresponding narrative incorporating the requirements noted above. Limit response to 2 pages per Project.

2. Consultant Firms – (Evaluation Criterion 3)**

- a. Respondents shall provide description of design consultant firms and any construction subcontractor firms who will be providing design services.

The following consultant/subcontractor information must include (but not be limited to):

- i. Company name/address
- ii. Contact name/title and information
- iii. Proposed Project Role (Design and/or Construction)
- iv. MBE/WBE Status (if applicable)
- v. Number of projects Proposer and subcontractor have teamed on projects and or Design Build projects (if applicable)

For purposes of this RFP, all Respondents shall provide a narrative incorporating the requirements noted above.

3. Past Performance in Design-Build project delivery – (Evaluation Criteria 4)**

- a. Respondents shall provide documentation in the form of a narrative or matrix describing the Proposer's and design consultant firm's past experience with Design-Build Project Delivery. Provide demonstrable experience of firm's capacity and ability to perform all tasks required to successfully deliver this Project.

For purposes of this RFP, all Respondents shall provide a narrative incorporating the requirements noted above. Limit response to 4 pages.

4. Performance with timeliness and completion of projects – (Evaluation Criteria 5)**

- a. Respondent shall documentation in the form of a narrative or matrix describing the Proposer's and design consultant firm's performance with the timeliness and completion of projects.

For purposes of this RFP, all Respondents shall provide a narrative incorporating the requirements noted above. Limit response to 4 pages.

5. Project Approach and Methodology – (Evaluation Criterion 6)**

- a. Respondents shall Include a description of Proposer's planned approach and execution plan for the successful delivery of the Project, which include but are not limited to: the tools, processes, and strategies Proposer will employ as relates to the Planning, Design, Cost Management, Schedule, Construction, Commissioning, and Closeout of this Project.

For purposes of this RFP, all Respondents shall provide a narrative incorporating the requirements noted above. Limit response to 4 pages.

6. MBE, WBE, EEO, City Residency, Community Hiring Participation Goals – (Evaluation Criteria 7)**

- a. Respondents shall provide the following:
- i. Verifiable commitments and percentages of actual MBE/WBE participation achieved on at least

- three (3) representative projects in the last three (3) years. Applicable to any member of the design-build entity (lead entities experience preferred).
- ii. Verifiable percentages of minority, female and Section 3 labor actually employed on three (3) representative projects. Compare these percentages to any employment goals to which the firm was committed.
- iii. Proposer's unequivocal commitment to meet or exceed the MBE, WBE, EEO, Section 3 Hiring Participation Goals for the Project.

For purposes of this RFP, all Respondents shall complete FORM A – MBE/WBE, EEO, Section 3 Participation of which demonstrates commitment to meeting HACC's MBE/WBE Participation Goals, a copy of MBE/WBE Certification Letter from the City of Chicago and/or Cook County, a narrative incorporating the requirements above.

7. Qualifications and Relevant Experience of Key Staff – (Evaluation Criteria 8 and 9**)**

- a. Resumes:** Respondents shall provide the resumes and experience of the following Key Staff (Evaluation Criteria 8**), and their respective commitments (Evaluation Criteria 9**), who will act as Lead for each area (designate if personnel will serve in multiple roles):
 - i. Project Executive
 - ii. Project Manager
 - iii. Project Architect
 - iv. Structural Engineer
 - v. Civil Engineer
 - vi. MEP/FP Engineers
 - vii. Quality Control Manager
 - viii. LEED Consultant or LEED AP
 - ix. Safety Manager
 - x. Landscape Architect
 - xi. Construction Superintendent
 - xii. MEP Coordinator
 - xiii. Utility Coordinator

Firms may include additional resumes for roles and staff not specifically mentioned above and should demonstrate that team members are licensed and/or registered in the applicable discipline and have experience and technical competence in their roles on projects of similar complexity, size and scope.

- b. Organization Chart:** Respondents shall provide proposed Lines of Authority and Organization chart indicating Key Staff Members potential roles and responsibilities on the Project, including commitment to assign Key Staff Members for the duration of the project. (Evaluation Criteria #9**)
- c. Licenses and Certifications:** Respondents must provide copies of valid licenses and appropriate certifications for all persons whose resumes are tendered (as appropriate) and copies of valid business licenses for all firms making up the submitting firm's team.

For purposes of this RFP, all Respondents shall provide a narrative incorporating the requirements noted above. Resumes should be limited to 2 pages.

8. Financial Capacity – (Evaluation Criteria 10)**

Respondents should demonstrate they have the financial resources necessary to successfully deliver projects and pay sub-contractors as necessary.

Respondents shall furnish an audited financial statement including notes, such as, but not limited to, balance sheets and/or profit and loss statements, for the last three (3) years demonstrating that the Respondent has the financial viability and ability to perform the Services. If a joint venture, submit

financial statements for the joint venture name and each joint venture partner. Independent accountant may provide a copy of a complete financial statement. All notes and schedules must be provided. The Respondent shall also submit annual reports and a written disclosure advising of any pending litigation against the Respondent that may have a material effect in Respondent's ability to provide the Services. In the event Respondent does not have an audited financial statement, Respondent may submit a review or compilation prepared by an outside accountant with the notes. The HACC will consider other financial document (ie Tax Returns) in lieu of financial statements and/or review/compilation.

The Authority, reserves the right to request additional information from Contractors.

For purposes of this RFP, all Respondents shall provide documentation as noted above.

9. Client References – (Evaluation Criteria 11)**

Provide, at minimum, three (3) references of the representative projects provided as part of this submission.

For purposes of this RFP, all Respondents shall complete FORM H – References.

10. Responsiveness to the Solicitation – (Evaluation Criteria 12)**

The HACC will review the quality, completeness, and comprehensiveness of response to this RFP and its compliance with each of the submittal requirements.

Respondents are to adhere to the Submission Requirements noted in this RFP.

C. OTHER CRITERIA

1. **General Information:** The following items are prerequisites the Authority requires of Contractors in the performance of any work requested by the Authority. They are not weighted in the Evaluation Criterion; however, submission of these documents is required and will be considered when determining award.

a. Licenses and Certifications

Contractors should possess the licenses and certifications listed below and meet all license requirements in order to perform the type of work solicited by the HACC.

- a. State business license(s)
- b. City of Evanston business license
- c. Contractor license, specific to your capacity
- d. Applicable Certifications

Should a firm's license change during the Procurement or performance of the Services, it is the responsibility of the Respondent to submit proof of change to the Authority.

For purposes of the RFP, all Respondents shall provide copies of all current, applicable licenses and certifications.

b. Affidavits

Contractors should include the following Affidavits with their submission.

- i. Disclosure Affidavit
- ii. Disclosure of Retained Parties
- iii. Affidavit of Non-Collusion

For purposes of this RFP, all Respondents shall complete FORM C – Disclosure Affidavit, FORM D

– Disclosure of Affidavit and FORM E. Affidavit of Non-Collusion.

c. Legal Actions

Eligible Contractors must demonstrate a performance history without an indication of recurring defaults or terminations on projects, failures to complete projects on schedule, litigation history, including judgments and outstanding lawsuits, and violation of laws relevant to the evaluation of this criterion.

For purposes of this RFP, all Respondents shall complete FORM G – Legal Actions demonstrating responding firm's performance history without recurring defaults or terminations on project, lien claims or bond claims.

D. PHASE I QUALIFICATIONS EVALUATION CRITERIA SCORES:

- 1. Evaluation Scoring Chart:** The Commission shall review and evaluate the qualifications of each Proposer in accordance with the following criteria. The relative importance of each evaluation criteria is indicated on the attached Design-Build Weighted Scoring Criteria – Phase I.

PHASE I Qualification – Evaluation Criteria		Possible Points
1	**Successful experience with projects of similar size.	10
2	**Successful experience with projects of similar type.	10
3	**Quality of Proposer's Consultants.	8
4	Past performance in Design-Built Project Delivery.	8
5	**Past performance with timeliness and completion of projects.	12
6	Quality of Proposer's Project Approach and Methodology	10
7	**Demonstration past performance and/or capacity to meet MBE, WBE, EEO, Section 3 Participation goals	15
8	**quality of experience of Proposer's Key Staff Members	15
9	**Proposer's Commitment to assign Key Staff Members for the Duration of the projects.	2
10	**Proposer's Financial Capability	5
11	**Quality and Content of references provided on representative projects.	3
12	Completeness and comprehensiveness of Proposer's response to Phase I Of the RFP	2
Total Qualification Points		100

SECTION V – SUBMISSION REQUIREMENTS

A. SUBMISSION REQUIREMENTS

The intent of the qualifications submission is to describe the capability of the Proposer to perform any resultant contract, as well as describe its understanding of the requirements of the RFP—it should be specific and complete in every detail. The qualifications submission should be prepared economically, providing straightforward, concise delineation of capabilities to satisfactorily perform the described services being. The qualifications submission should therefore be practical, organized, legible, clear, and coherent.

These instructions prescribe the required format for the qualifications submission which describe the approach for the development and presentation of the information. They are designed to ensure the submission of necessary information to provide for a comprehensive evaluation. Carefully review this section prior to commencing preparation. Proposers are cautioned to strictly comply with all instructions contained herein to ensure submission of a complete submittal. Failure to furnish a complete statement of qualifications at the time of submission will affect evaluation and may result in the submittal being unacceptable to the HACC thereby resultant elimination from consideration for further evaluation. The HACC expressly reserves the right to reject or accept submissions at the discretion of the Authority.

1. Number of Submissions

- Submit **1 signed, single-sided, bound ORIGINAL (marked as such)**
- Submit **2 double-sided, unbound paper copies**
- Submit **7 USB Flash Drives, each with a single, searchable PDF file of your submission***
- Submit **1 single-sided, bound copy of Financial Statements**

*Electronic copies must be in a single, searchable pdf document. No Compact Discs.

2. Submission Format

a. Binding

- i. Submissions should be bound on the long side and prepared on standard 8½" x 11" letter size paper. Expensive papers and bindings are discouraged as no materials will be returned to Respondent.
- ii. **HACC staff may have to unbind bound copies in order to duplicate sections of your submission; therefore, submissions with spiral or permanent binding will not be accepted.**
- iii. Submissions must include the return of the entire RFP document.

b. Labeling

- i. All copies (bound and electronic) should be organized, tabbed, and labeled in accordance with the Submission Checklist described in this RFP.
- ii. The front page of each submission must be marked 'ORIGINAL', if original; and 'COPY', if copy.
- iii. The spine of the Original Bound Copy must be labeled with the Firm's name and name of the RFP.
- iv. Attachments must be clearly noted in the Submission. When including attachments, please ensure that, at a minimum, the following information is noted in the header or footer of the attachment.

(Example)
ABC Contractor
Narrative Statement to Evaluation Criteria – Past Performance

Page ____ of ____

- v. USB drives shall be clearly labeled with your firm's name. Electronic PDF file copy must be a single, searchable document and must be labeled as follows:

'SU_YourFirms'Name_DBServicesfor2019100003_RFPresponse_YYYYMMDD'

- vi. Please stamp, legibly handwritten, or type your firm's name at the bottom of each page of your submission.

c. Packaging

- i. The outside of each envelope or package should be **labeled** as follows:

Request for Proposals for Design-Build Services for Evanston Tower 2019

100003

(Name of Respondent)

(Date of Submission Deadline)

Package ____ of ____

- ii. The outside of each envelope or package must be **addressed and returned to**:

Housing Authority of Cook County

175 West Jackson Blvd., Suite 350, Chicago, Illinois 60604

Attention: Deborah O'Donnell Procurement Manager

- iii. Enclosed within your envelope or package must be 1) separately sealed and labeled, containing four (4) USB Flash Drives and 2) a separately sealed and labeled envelope containing three (3) years of financial statements.

SECTION VI – SUBMISSION CHECKLIST

A. SUBMISSION CHECKLIST

1) Front Page of RFP, Cover Letter and Table of Contents (TAB 1):

Front Page of RFP: Complete Front Page of RFP.

Cover Letter: The Cover Letter must include a brief description of your firm's company history, experience, and number of years in business. The letter must include the Respondent's mailing address, e-mail address, fax number and telephone number.

An individual authorized to legally bind the Respondent must sign the cover letter. The person who signs the cover letter will be considered the contact person for all matters pertaining to the Submission unless the Respondent designates another person in writing.

Table of Contents: The Respondent must include a table of contents in its Submission. Submissions must be page-numbered sequentially from front to back.

2) Evaluation Criteria 1** and 2**: Project Examples (TAB 2)

Provide information as requested in Section VI.B.1.a and B.1.b. of this RFP.

3) Evaluation Criteria 3**: Consultant Firms (TAB 3)

Provide information as requested in Section VI.B.2 of this RFP.

4) Evaluation Criteria 4: Past Performance in Design-Build Project Delivery (TAB 4)

Provide information as requested in Section VI.B.3 of this RFP.

5) Evaluation Criteria 5**: Performance with timeliness and completion of projects (TAB 5)

Provide information as requested in Section VI.B.4 of this RFP.

6) Evaluation Criteria 6: Project Approach and Methodology (TAB 6)

Provide information as requested in Section VI.B.5 of this RFP.

7) Evaluation Criteria 7**: MBE, WBE, EEO, Section 3 Participation Goals (TAB 7)

Complete FORM A – MBE/WBE, EEO, Section 3 Participation and provide information as requested in Section VI.B.6 of this RFP.

8) Evaluation Criteria 8** and 9**: Qualifications and Relevant Experience of Key Staff (TAB 8)

Provide information as requested in Section VI.B.7 of this RFP.

9) Evaluation Criteria 10**: Financial Capacity (Separately Sealed Package – Do not include in electronic submission)

Provide all financial capacity support documentation as requested in Section VI.B.8 of this RFP.

10) Evaluation Criteria 11**: Client References (TAB 9)

Provide information as requested in Section VI.B.9 of this RFP.

11) Evaluation Criteria 12: Responsiveness to the Solicitation (TAB 10)

Provide information as requested in Section VI.B.10 of this RFP.

12) Other Criteria: Licenses and Certifications (TAB 11)

Provide information as requested in Section VI.C.1.a of this RFP.

13) Other Criteria: Affidavits (TAB 12)

Provide information as requested in Section VI.C.1.b of this RFP.

14) Other Criteria: Legal Actions (TAB 13)

Complete FORM G – Legal Actions and provide information as requested in Section VI.C.1.b of this RFP.

15) Performance and Payment Bond (Surety Letter) (TAB 14)

Provide a copy of Respondent's Surety Letter as requested in Section II.B.5 of this RFP.

16) Insurance Certificate (TAB 14)

Provide a copy of Respondent's existing Certificate of Insurance as requested in Section II.B.6 of this RFP.

17) Safety Questionnaire (TAB 15)

Complete FORM F – Safety Questionnaire and submit a copy of the Table of Content of your firm's Safety Manual as requested in Section II.B.7 of this RFP.

18) Quality Assurance/Quality Control (TAB 15)

Submit a copy of your firm's QA/QC Plan as requested in Section II.B.8 of this RFP.

19) Project Scheduling (TAB 16)

Provide a sample of your firm's project schedule as requested in Section II.B.9 of this RFP.

20) Joint Venture Participation (TAB 17) – Applicable if submitting as Joint Venturers

Complete FORM B – Joint Venture Affidavit and submit a copy of the entity's joint venture agreement. If Joint Venture is a MBE or WBE, please include City of Chicago or Cook County certification letter.

NOTE: As described in Section II. Key Information, B. Anticipated Contractual Obligations, 2) Joint Venture Partnerships, each Joint Venture Partner will also be required to submit all applicable forms requested in this solicitation.

21) Proposal Acceptance (TAB 18)

Complete FORM I – Proposal Acknowledgement and Acceptance Form

SECTION VI – SUBMISSION CHECKLIST

B. SUBMISSION CHECKLIST REFERENCE TABLE

The tab below has been created to help facilitate the submission process. Submissions are to be organized and labeled in the following order:

TAB 1

Front Page of RFP

Cover Letter

Table of Contents

TAB 2

Evaluation Criteria 1** and 2**. Project Examples

TAB 3

Evaluation Criteria 3**. Consultant Firms

TAB 4

Evaluation Criteria 4. Past Performance in Design-Build Project Delivery

TAB 5

Evaluation Criteria 5**. Past Performance with timeliness and completion of project

TAB 6

Evaluation Criteria 6. Project Approach and Methodology

TAB 7

Evaluation Criteria 7**. MBE, WBE, EEO, Section 3 Participation Goals

TAB 8

Evaluation Criteria 8** and 9**. Qualification and Relevant Experience of Key Staff

TAB 9

Evaluation Criteria 11**. Client References

TAB 10

Evaluation Criteria 12. Responsiveness to the Solicitation

TAB 11

Other Criteria: Licenses and Certifications

TAB 12

Other Criteria: Affidavits (Form C, D and E)

TAB 13

Other Criteria: Legal Actions (Form G)

TAB 14

Payment and Performance Bonds (Surety Letter)

Insurance Certificate

TAB 15

Safety Questionnaire

Quality Assurance/Quality Control

TAB 16

Project Scheduling

TAB 17 (If Applicable)

Joint Venture Participation (Form B)

Joint Venture Agreement

TAB 18

Proposal Acceptance (Form 1)

FINANCIAL CAPACITY – TO BE SUBMITTED IN SEPERATELY SEALED ENVELOPE

FORM A – MBE/WBE, EEO AND SECTION 3 PARTICIPATION

Submitting Firm Name: _____

Instructions:

Please identify and report compliance history for at least three (3) projects completed over the last three (3) years for which is/was performed by your firm (government experience preferred but not required). The experience of any member of the Respondent's Team will be deemed responsive to this requirement (lead partners experience preferred.) Additionally, please complete the "Demonstrate Commitment" section below.

DEMONSTRATE COMMITMENT

The Authority will be hosting outreach sessions, networking event and community hiring intakes where the Respondent is expected to fully participate.

MBE/WBE

Respondent must demonstrate commitment by affirming and acknowledging the HACC's MBE/WBE goals. If Respondent is not able to commit to the MBE/WBE goal stated in the RFP, please submit a narrative requesting and explaining why Respondent believes that the goals cannot be achieved.

SECTION 3 PARTICIPATION

Respondent must demonstrate commitment by affirming and acknowledging the HACC's Section 3 participation goals. (Hiring Section 3 Business Concerns and the Hiring of Section 3 residents). If Respondent is not able to commit to the Section 3 Goals stated in the RFP, please submit a narrative requesting and explaining why Respondent believes that the goals cannot be achieved.

Demonstrated Commitment

FORM A – MBE/WBE, EEO AND SECTION 3 PARTICIPATION

PROJECT ONE	
Client Name:	
Client Contact:	
Client Contact Phone:	
Project Name:	
Project Total:	
Year Completed:	

MBE/WBE PARTICIPATION

Respondent must provide evidence of past experience achieving commitments to utilize minority and women owned business enterprises. Please fill in the boxes below.

MBE GOAL	WBE GOAL	Actual MBE	Actual WBE
%	%	%	%

SECTION 3 PARTICIPATION

Respondent must provide evidence of past experience achieving commitments to utilize Section 3 owned business enterprises and the hiring of Section 3 employees. Please fill in the boxes below.

Section 3 Subcontracting Goal	Section 3 Hiring Goal	Actual Section 3 Subcontracting Goal	Actual Section 3 Hiring Goal
%	%	%	%

FORM A – MBE/WBE, EEO AND SECTION 3 PARTICIPATION

PROJECT TWO	
Client Name:	
Client Contact:	
Client Contact Phone:	
Project Name:	
Project Total:	
Year Completed:	

MBE/WBE PARTICIPATION

Respondent must provide evidence of past experience achieving commitments to utilize minority and women owned business enterprises. Please fill in the boxes below.

MBE GOAL	WBE GOAL	Actual MBE	Actual WBE
%	%	%	%

SECTION 3 PARTICIPATION

Respondent must provide evidence of past experience achieving commitments to utilize Section 3 owned business enterprises and the hiring of Section 3 employees. Please fill in the boxes below.

Section 3 Subcontracting Goal	Section 3 Hiring Goal	Actual Section 3 Subcontracting Goal	Actual Section 3 Hiring Goal
%	%	%	%

FORM A – MBE/WBE, EEO AND SECTION 3 PARTICIPATION

PROJECT THREE	
Client Name:	
Client Contact:	
Client Contact Phone:	
Project Name:	
Project Total:	
Year Completed:	

MBE/WBE PARTICIPATION

Respondent must provide evidence of past experience achieving commitments to utilize minority and women owned business enterprises. Please fill in the boxes below.

MBE GOAL	WBE GOAL	Actual MBE	Actual WBE
%	%	%	%

SECTION 3 PARTICIPATION

Respondent must provide evidence of past experience achieving commitments to utilize Section 3 owned business enterprises and the hiring of Section 3 employees. Please fill in the boxes below.

Section 3 Subcontracting Goal	Section 3 Hiring Goal	Actual Section 3 Subcontracting Goal	Actual Section 3 Hiring Goal
%	%	%	%

FORM B – JOINT VENTURE AFFIDAVIT

Joint Venture Affidavit (1 of 3)

This form is not required if all joint venturers are MBE/Non-MBE or WBE/Non-WBE firms. In such case, however, a written joint venture agreement among the MBE/Non-MBE or WBE/Non-WBE firms should be submitted. Each MBE/WBE joint venture must also attach a copy of their current certification letter.

- A. Name of joint venture _____
- B. Address of joint venture _____

- C. Phone number of joint venture _____
- D. Identify the firms that comprise of the joint venture

-
1. Describe the role(s) of the MBE/WBE firm(s) in the joint venture. (Note that a clearly defined portion of the work must be here be should as under the responsibility of the MBE/WBE firm.)

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

- E. Nature of the joint venture's business

-
- F. Provide a copy of the joint venture agreement.

- G. Ownership: What percentage of the joint venture is claimed to be owned by MBE/WBE? ____%

- H. Specify as to:

1. Profit and loss sharing _____%
2. Capital contributions, including equipment _____%
3. Other applicable ownership interests, including ownership options or other agreements which restrict ownership or control.

FORM B – JOINT VENTURE AFFIDAVIT

Joint Venture Affidavit (2 of 3)

4. Describe any loan agreements between joint venturers and identify the terms thereof.

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

1. Financial decisions

2. Management decisions such as:

a. Estimating

b. Marketing and Sales

c. Hiring and firing of management personnel

d. Other

3. Purchasing of major items or supplies

4. Supervision of field operations

5. Supervision of office personnel

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

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

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

FORM B – JOINT VENTURE AFFIDAVIT

Joint Venture Affidavit (3 of 3)

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

Note: if, after filing this form B and before the completion of the joint venture's work on this Contract, there is any significant change in the information submitted, the joint venture must inform the Housing Authority of Cook County, either directly or through the General Contractor if the joint venture is a subcontractor.

Name of Joint Venturer

Name of Joint Venturer

Signature

Signature

Name

Name

Title

Title

State of _____ County of _____

State of _____ County of _____

On this ____ day of _____ 2019

Before me appeared (Name)

On this ____ day of _____ 2019

Before me appeared (Name)

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

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

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

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

Notary Public

Commission Expires:

(Seal)

Notary Public

Commission Expires:

(Seal)

FORM C – DISCLOSURE AFFIDAVIT

I. HISTORY AND OWNERSHIP OF RESPONDENT FIRM

Any firm proposing to conduct any business transactions with the Housing Authority of Cook County must complete this Disclosure Affidavit. Please note that in the event the Contractor is a joint venture, the joint venture and each of the joint venture partners must submit a completed Disclosure Affidavit.

The undersigned _____, as _____
Name Title

and on the behalf of _____
(Bidder, Respondent or Contractor) having been duly sworn under oath certifies that the follow:

RESPONDENT	
Name of Firm:	
Address:	
City/State/Zip:	
FEIN	
Email:	
Nature of Transaction:	
<ul style="list-style-type: none">○ Sales or purchase of land○ Construction Contract○ Professional Services Agreement○ Other _____	

II. DISCLOSURE OF OWNERSHIP INTERESTS

All Bidders/proposers shall provide the following information with their Bid/Proposal. If the question is not applicable, answer NA. If the answer is none, please answer none.	
<input type="radio"/> Corporation	<input type="radio"/> Limited Liability Company
<input type="radio"/> Partnership	<input type="radio"/> Limited Liability Partnership
<input type="radio"/> Sole Proprietorship	<input type="radio"/> Not-for-profit Corporation
<input type="radio"/> Joint venture	<input type="radio"/> Other _____

FORM C – DISCLOSURE AFFIDAVIT

A. CORPORATIONS AND LLC'S

State of Corporation or Organization		
If outside of Illinois, is your firm authorized to conduct business in the State of Illinois		Yes No
City/State/Zip:		
Telephone:		
Identify the names of all officers and directors of the business entity. (Please attached list if necessary)		
Name	Title	
Identify all shareholders whose ownership percentage exceeds 7.5% of the business entity. (Please attached list if necessary)		
Name	Address	Ownership Interest Percentage
		%
		%
		%
		%
		%
LLC's Only, indicate Management Type and Name:		
Member-managed	Manager-managed	Name:
Is the Corporation or LLC owned partially or completely by one or more other corporation or legal entities?		Yes No
<p>If yes, please provide the above information, as applicable, for each such corporation or entity such that any person with a beneficial ownership interest of 7.5% or more in the corporation contracting with the HACC is disclosed. For example, if Corporation N owns 15% of Corporation A, and Corporation A is contracting with the HACC, then Corporation N must complete a Disclosure Affidavit. If Corporation B is owned by Corporation C and D, each which owns 50% of Corporation B, then both Corporations C & D must complete the Disclosure Affidavits.</p>		

FORM C – DISCLOSURE AFFIDAVIT

B. PARTNERSHIPS

If the bidder/proposer or contractor is a partnership, indicate the name of each partner and the percentage of interest of each therein. Also indicate, if applicable, whether General Partner (GP) or Limited Partner (LP).		
Name	Type	Ownership Interest Percentage
		%
		%
		%
		%
		%

C. SOLE PROPRIETORSHIP

The bidder/proposer or contractor is a sole proprietorship and is not acting in any representative capacity on the behalf of any beneficiary:	
If the answer is no, please complete the following two sections.	Yes No
If the sole proprietorship is held by an agent(s) or a nominee(s), indicate the principals(s) for whom the agent or nominee holds such interest.	
Name of Principals	
If the interest of a spouse or any other party is constructively controlled by another person or legal entity, state the name and address of such person or entity possessing such control and relationship under which control is being or may be exercised.	
Name	Address

FORM C – DISCLOSURE AFFIDAVIT

III. CONTRACTOR CERTIFICATION

A. CONTRACTORS

1. The Contractor or any affiliated entities of the Contractors, or any responsible official thereof, or any other official agent or employee of the Contractor, any such affiliated entity, acting pursuant to the direction or authorization of a responsible thereof has not, during a period of three years prior to date of execution of this certification:
 - a. Bribe or attempted to bribe or been convicted of bribery or attempting to bribe a public officer or employee of Cook County, the State of Illinois, any agency of the federal government or any state or local government in the United States (if an officer or employee, in that officer's or employee's official capacity); or
 - b. Agreed or colluded or been convicted of agreement or collusion among bidders in prospective bidders in restraint of freedom of competition by agreement to bid a fixed price or otherwise; or
 - c. Made an admission of such conduct described in 1(a) or (b) above which is a matter of record but has not been prosecuted for such conduct.
2. The contractor or agent, partner, employee or officer of the Contractor is not barred from contracting with any unit of state or local government as a result of engaging in or being convicted of bid-rigging in violation of Section 3 of Article 33E of the Illinois Criminal Code of 1961, as amended (720 ILCS 5/33E-3), or any similar offense of any state or the United States which contains the same elements as the offense of bid-rigging during a period of five years prior to the date of Submission of this bid, proposal or response.
3. The contractor or agent, partner, employee or officer of the Contractor is not barred from contracting with any unit of state or local government as a result of engaging in or being convicted of bid-rotating in violation of Section 4 of Article 33E of the Illinois Criminal Code of 1961, as amended (720 ILCS 5/33E-4), or any similar offense of any state or the United States which contains the same elements as the offense of bid-rotating.
4. The Contractor certifies to the best of its knowledge and belief, that it and its principals:
 - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any federal, state or local department or agency;
 - b. Have not within a three-year period preceding this bid or proposal been convicted of had a civil judgement rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes; commission of embezzlement, theft, forgery, bribery, falsification or destruction of records; making false statements; or receiving stolen property;
 - c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (5)(b) above; and
 - d. Have not within a three-year period preceding this bid or proposal has one or more public transactions (federal, state, or local) terminated for cause or default.

FORM C – DISCLOSURE AFFIDAVIT

B. SUBCONTRACTORS

1. The contractor has obtained from all subcontractors being used in the performance of this contract or agreement, known by the Contractor at this time, disclosures substantially in the form of Section I, and the certification(s), substantially in the form of Section II, of this Disclosure Affidavit. Based on such disclosures and certifications, and any other information known or obtained by the Contractor, is not aware of any such subcontractor or subcontractor's affiliates entity in or any agent, partner employee or officer of such subcontractor's affiliated entity having engaged in or have been convicted of (a) any conduct described as prohibited in this document; (b) bid-rigging, bid-rotating, or any similar offense of any state or the United State which contains the same elements as bid-rigging or bid-rotating or having made an admission of guilt of the conduct described in Section II which is matter of record but has/have not been prosecuted for such conduct.
2. The Contractor will, prior to using them as subcontractors, obtain from all subcontractors to be used in the performance of this contract or agreement, but not yet known by the Contractor at this time, certifications substantially in the form of this certification. The Contractor shall not, without the prior written permission of the Authority, use any such subcontractors in the performance of this contract if the Contractor, based on such certifications or any other information known or obtained by Contractor became aware if such subcontractor, subcontractor's affiliated entity or any agent, employee or officer of such subcontractor or subcontractor's affiliated entity having engaged in or been convicted of (a) any of the conduct described as prohibited in this document or (b) bid-rigging, bid-rotating, or any similar offense of any state or the United State which contains the same elements as bid-rigging or bid-rotating or having made an admission of guilt of the conduct described in this document which is a matter of record but has/have not been prosecuted for such conduct, The Contractor shall cause such subcontractor is to certify as to all necessary items. In the event any subcontractor is unable to certify to a particular item, such subcontractor shall attach an explanation to the certification.
3. For all subcontractors to be used in the performance of this contract or agreement, the Contractor shall maintain for the duration of the contract all subcontractor's certifications required by this document and the Contractor shall make certification promptly available to the Housing Authority of Cook County upon request.
4. The Contractor will not, without the prior written consent of the Housing Authority of Cook County, use as subcontractors aby individual, firms, partnership, corporation, joint venture or other entity from whom the Contractor is unable to obtain a certification substantially in the form of this certification.
5. The Contractor hereby agrees, if the Housing Authority of Cook County so demands, to terminate its subcontractor with any subcontract if such subcontractor was ineligible at the time that the subcontract was entered into for award of such contract. The Contractor shall insert adequate provision in all subcontracts to allow it to terminate such contracts as required by this certification.

FORM C – DISCLOSURE AFFIDAVIT

C. STATE TAX DELINQUENCIES

1. The contractor is not delinquent in the payment of any tax administered by the Illinois department of Revenue or, if delinquent, the contractor is contesting, in accordance with the procedures established by the appropriate revenue Act, its liability for the tax or amount of tax.
2. Alternatively, the Contractor has entered into an agreement with the Illinois Department of Revenue for the payment of all such taxes that are due and is in compliance with such agreement.
3. If the Contractor is unable to certify to any of the above statements, the Contractor shall explain below. Attached additional pages if necessary.
4. If any subcontractors are to be used in the performance of this contract or agreement, the Contractor shall cause such subcontractors to certify as to paragraph (C)(1) or (C)(2) of this certification. In the event that any of the statements in this certification, such subcontractor shall attached an explanation to this certification.

D. OTHER TAXES/FEES

1. The Contractor is not delinquent in paying any fines, fees, taxes or other charge owed to the County of Cook.
2. If Contractor is unable to certify to the above statement, Contractor shall explain below and attach additional pages if necessary.

E. PUNISHMENT

1. A Contractor who makes a false statement material to Section II (A)(2) of this certification commits a Class 3 felony – 720 ILCS5/33E-11(b).

F. JUDICIAL OR ADMINSTRATIVE PROCEEDINGS

1. The Contractor is not a party to any pending lawsuits against the housing Authority of Cook County nor has the Contractor been sued by the Housing Authority of Cook county in any judicial or administrative proceedings.

FORM C – DISCLOSURE AFFIDAVIT

2. If the Contractor cannot certify to the above, provide the (1) case name, (2) docket number (3) court in which the action is or was pending and (4) a brief description of each such judicial or administrative proceedings. Attached additional sheets if necessary.

G. CERTIFICATION OF ENVIRONMENTAL COMPLIANCE

1. Neither the contractor nor any affiliated entity of the Contractor has, during a period of five years prior to the date of execution of the Affidavit: (1) violated or engaged in any conduct which violated federal, state or local environmental restriction, (2) received notice of any claim, demand or action, including but not limited to citations and warrants, from any federal, state or local agency exercising executive, legislative, judicial, regulatory or administrative restrictions; or (3) been subject to any fine or penalty of any nature for failure to comply with any federal, state or local statute, regulation or environmental restriction.

If Contractor cannot make this certification contained in the above paragraph, identify any exception, Attach additional pages as necessary.

2. Without the prior written consent of the Housing Authority of Cook County, Contractor will not employ any subcontractors in connection with the contract or proposal to which this Affidavit pertains without obtaining from such subcontractor a certification similar in form and substance to the certification contained in Paragraph A of Section III prior to such subcontractor's performance of any work or services or furnishing goods, supplies or materials of any kind under the proposal or the contract to which this Affidavit pertains.
3. Until completion of the Contractor's performance under this proposal or contract to which this Affidavit pertains, the Contractor will not violate any federal, state, or local statute, regulation or other Environmental Restriction, whether in the performance of such contract or otherwise.

H. INCORPORATION INTO CONTRACT AND COMPLIANCE

The above certification shall become part of any contract awarded to the Contractor set forth on page 1 of this Disclosure Affidavit and are a material inducement to the Housing Authority of Cook County's execution of the contract, contract modification or contract amendment with respect to which this Disclosure Affidavit is being executed and delivered on the behalf of the Contractor. Furthermore, Contractor shall comply with these certifications during the terms and/or performance of the contract.

FORM C – DISCLOSURE AFFIDAVIT

I. VERIFICATION

Under the penalty of perjury, I certify that I am authorized to execute this Disclosure Affidavit on the behalf of the Contractor set forth on Page 1, that I have personal knowledge of all the certifications made herein and that the same are true.

The Contractor must report any change in any of the facts stated in this Affidavit to the Housing Authority of Cook County within 14 days of the effective date of such change by completing a new Disclosure Affidavit. Failure to comply with this requirement is grounds for your firm to be deemed non-qualified to do business with the HACC. Deliver such new Disclosure Affidavit to The Housing Authority of Cook County, Procurement Department, 175 West Jackson Blvd., Suite 350, Chicago, Illinois 60604.

Signature of Authorized Officer

Name of authorized Officer (Print or Type)

Telephone Number

State of _____

County of _____

Signed and sworn to before me on this ____ day of _____, 20____ by

_____(Name) as _____ (Title) of

(Bidder/Proposer/Respondent or Contractor)

Notary Public Signature and Seal

FORM D – DISCLOSURE OF RETAINED PARTIES

Disclosure of Retained Parties

The apparent low Bidder is required to submit a fully executed Disclosure of Retained Parties within five days of the receipt of notice that it is the apparent low bidder.

A. Definition and Disclosure Requirements

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

B. Certification

Contractor hereby certifies as follows:

1. This Disclosure relates to the following transaction: _____
 - a. Description of goods and services to be provided under Contract.

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

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

Retained Parties:

Name	Business Address	Relationship (Lobbyists, etc)	Fees (Paid or Estimated)

FORM D – DISCLOSURE OF RETAINED PARTIES

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

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

The Contractor also certifies to the best of its knowledge and belief that it, its principals and any subcontractors used in the performance of this contract, meet the Authority's requirements and have not violated any Cook County, codes, state, federal and local laws, rules or regulations and have not been subject to any debarment, suspension or other disciplinary action by any government agency. Additionally, if at any time the Contractor becomes aware of such information, it must be immediately disclose it to the Authority.

Signature

Date

Name (Type or Print)

Title

Subscribe and sworn to before me _____

This _____ day of _____, 20____ (Seal)

Notary Public

Commission Expires: _____

FORM E – AFFIDAVIT OF NON-COLLUSION

Affidavit of Non-collusion

STATE OF ILLINOIS }
 }SS
COUNTY OF COOK }

_____, being first duly sworn, deposes and says that:

(1) He/She is

Owner, Partner, Officer or Agent of

The Bidder that has submitted the attached Bid.

- (2) That Bidder is fully informed respecting the preparation and content of the attached Bid and all pertinent circumstances respecting such Bid;
- (3) Such bid is genuine and is not a collusive or sham bid;
- (4) Neither the bidder nor any of its officers, partners, owners agents, representatives, employees or parties in interest, including this affiant has in any way colluded, connived, conspired, or agreed, directly or indirectly, with any other Bidder, firm or person to submit a collusive or sham bid in connection the Contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other Bidder, firm or person to fix the price or prices in the attached bid or in that of any other Bidder, or to fix any overhead, profit or cost element of the bid price of any other Bidder, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the Housing Authority of Cook County or any person interested in the proposed Contract; and
- (5) The price or prices quoted in the attached Bid ate fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees or parties in interest, including this affiant.
- (6) The Bidder is not barred from bidding as a result of having violated Illinois Criminal Code 720 ILCS 5/33E-3(Bid-rigging), 720 ILCS 5/33E-4 (Bid rotating) or the Prevailing Wage Act, 30 ILCS 570/0.01 through 570/7.

Signature

Title

Subscribe and sworn to before me _____

This _____ day of _____, 20____ (Seal)

Notary Public

Commission Expires:_____

FORM F – SAFETY QUESTIONNAIRE

I. SAFETY

Respondent should be able to demonstrate the quality of their overall safety program as evidenced by their history of citations, OSHA incidents rate and Experience Modification Rate (EMR)

SAFETY INFORMATION			
Does your organization have a safety program?		YES	NO
Month and year first implemented:			
Method of review of program.			
Please indicate whether regular work site safety meeting are held and how frequently.			
PLEASE PROVIDE A COPY OF THE TABLE OF CONTENTS FROM YOUR FIRM'S SAFETY/LOSS CONTROL MANUAL.			
Have any citations been issued to your organization during the period of the last three years for workplace safety law violation? <i>If yes, please provide detailed information for each occurrence regarding:</i>		YES	NO
1. The Nature of the violation for which your organization was cited.			
2. Summary of your position of the matter			
3. Official resolution of violation			
Please provide your organization's OSHA reportable incident rate: <i>(If this is greater than 3.0, please attach your OSHA form 300A Summaries for the last three years and a written explanation to the qualification questionnaire. Please attach Narrative statement, if necessary.)</i>			
Please provide a copy of your organization's NCCI current experience modification rate factor (EMRF) rating worksheet.			
PLEASE PROVIDE NCCI RATING FOR THE PAST FOUR YEARS			
YEAR	NCCI RATING	YEAR	NCCI RATING

FORM G – LEGAL ACTIONS

I. LEGAL ACTIONS

If the answer to any of the questions below is YES, you must provide a type-written, brief description, and/or explanation on a separate sheet following this page. Each question must be answered.

Questions	Yes	No
Has your firm or venture been issued a notice of default on any contract awarded, lien claims and/or bond claims to it in the last 3 years?		
Does the firm or venture have any legally filed judgements, claims (liquidated damages, or other), arbitration proceedings or suits pending or outstanding against the firm or venture or its officers?		
If the answer to the preceding question is Yes, please provide the requisite explanation on a separate sheet and enter the dollar amount of the claim or judgement and the contract value of the contract on which the claim was filled _____.		
Within the last 3 years, has any officer or principal of the firm or venture ever been an officer or principal of another organization that failed to complete any contract as a result of termination, litigation, arbitration or similar matter?		
Has any key person with the firm or venture or its predecessor ever been convicted of or charged with any state or federal crime (excluding traffic violations), including but not limited to, embezzlement, theft, forgery, bribery, falsification or destruction of records, receipt of stolen property, criminal anti-trust violations, bid-rigging or bid-rotating?		
Has the firm or venture ever been temporarily or permanently debarred from contract award by any federal, state, or local agency?		
Within the last 3 years, has the firm or venture been investigated or assessed penalties for any statutory or administrative violations (including but not limited to MBE, WBE, EEOC violations)?		
Has the firm or venture ever failed to complete any work awarded to it?		

FORM H – REFERENCES

Instructions:

Firms must provide at least three (3) references for the projects presented as a part of the firm's demonstrated experience and capacity. Please indicate the name of the company for which each reference is tendered in the Reference Firm Name box. Firms may submit more than the minimum number of required references or submit Reference Letters in lieu of completing this form. However, if submitting Reference Letters, the minimum information requested below must be provided in the letter. Please mark 'See Attached Reference Letter' in the space provided. **Current Employees of the Housing Authority of Cook County are prohibited from being included as valid references.**

SUBMITTING FIRM NAME			
REFERENCES			
PROJECT NAME:			
Reference Firm Name:		Phone:	
Reference Name:		Email Address:	
Reference Role on Project:		Mailing Address:	
Submitting Firm's Role on Project:		Reference Letter:	
PROJECT NAME:			
Reference Firm Name:		Phone:	
Reference Name:		Email Address:	
Reference Role on Project:		Mailing Address:	
Submitting Firm's Role on Project:		Reference Letter	
PROJECT NAME:			
Reference Firm Name:		Phone:	
Reference Name:		Email Address:	
Reference Role on Project:		Mailing Address:	
Submitting Firm's Role on Project:		Reference Letter	

A. ACKNOWLEDGEMENT

The Contractor hereby acknowledges receipt of Request for Proposal for Design Build Services for the Evanston Tower Contract Number 2019-100-003, including, but not limited to the Addenda Nos. below (if any)

Addendum No.	Date of Addendum	Addendum No.	Date of Addendum

B. PROPOSAL ACCEPTANCE

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in two (2) original counterparts the day and year first above written.

HOUSING AUTHORITY OF COOK COUNTY

RICHARD J. MONOCCHIO
EXECUTIVE DIRECTOR

CONTRACTING PARTY

CONTRACTOR NAME

ADDRESS

IF A CORPORATION

NAME: _____

TITLE: _____

SIGNATURE: _____

ATTEST BY: _____

SECRETARY

IF A PARTNERSHIP

PARTNER _____

SIGNATURE

ADDRESS

PARTNER _____

SIGNATURE

ADDRESS

PARTNER _____

SIGNATURE

ADDRESS

IF A SOLE PROPRIETORSHIP:

SIGNATURE

ADDRESS

EXHIBIT A – SAMPLE FORM OF DESIGN-BUILD AGREEMENT

BOOK 1
DESIGN-BUILD AGREEMENT BETWEEN
HOUSING AUTHORITY OF COOK COUNTY
AND

DESIGN BUILD SERVICES FOR EVANSTON TOWER

CONTRACT NO. 2018-100-003

Housing Authority of Cook County

Richard J. Monocchio
Executive Director



Housing Authority of Cook County
175 West Jackson Boulevard
Suite 350
Chicago, Illinois 60604
312-542-4725
www.thehacc.org

This document is provided as a DRAFT and is not intended to be considered FINAL.
The Authority explicitly reserves the right to modify this document and provide a revised Sample to Phase II Proposers.

DESIGN-BUILD AGREEMENT BETWEEN AUTHORITY AND DESIGN-BUILDER

TABLE OF ARTICLES

1. AGREEMENT
2. GENERAL PROVISIONS
3. DESIGN-BUILDER'S RESPONSIBILITIES
4. AUTHORITY'S RESPONSIBILITIES
5. SUBCONTRACTS
6. TIME
7. COMPENSATION
8. COST OF THE WORK
9. CHANGES IN THE WORK
10. PAYMENT FOR CONSTRUCTION PHASE SERVICES
11. INDEMNITY, INSURANCE, BONDS, AND WAIVER OF SUBROGATION
12. SUSPENSION AND TERMINATION OF THE AGREEMENT AND AUTHORITY'S RIGHT TO
PERFORM DESIGN-BUILDER'S RESPONSIBILITIES
13. DISPUTE RESOLUTION
14. MISCELLANEOUS PROVISIONS
15. EXISTING CONTRACT DOCUMENTS

Evanston Tower

ARTICLE 1

AGREEMENT

This Agreement is made as of this ____ day of _____ in the year 20__ (the "Effective Date"), by and between the Housing Authority of Cook County , an Illinois municipal corporation created under the provisions of the Illinois Housing Authorities Act, as amended, having its principal office at 175 West Jackson Boulevard, Suite 350, Chicago, Illinois 60604 ("Authority"), and [_____]the ("DESIGN-BUILDER") for services in connection with the project ("Project") commonly known as Evanston Tower located at [_____] , as further described in the Contract Documents. The Authority and Design-Builder are sometimes referred to herein individually as a "Party" and collectively, as the "Parties".

ARTICLE 2

GENERAL PROVISIONS

2.1 RELATIONSHIP The Authority and the Design-Builder agree to proceed with the Project and perform the Work (as defined in Book 2) 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 Work to be constructed within the Guaranteed Maximum Price ("GMP") as determined and approved pursuant to the process described herein and by the Contract Completion Date for the Work, or any particular Milestone or Phase thereof, as set forth in the Schedule. The Design-Builder agrees to procure or furnish, as permitted by the laws of Illinois, the design phase services and construction phase services for the Work 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 Authority unless authorized in writing by the Authority's Representative (as defined in Book 2).

2.1.3 The Authority 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 Authority 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 other 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 [_____].

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 Authority 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 Authority 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 the following items, 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 thereof:

- a. Change Orders and written amendments to this Agreement including exhibits and appendices, signed by both the Authority and the Design-Builder;
- b. this Agreement;
- c. Other documents included in Book 1
- d. Book 2, the Standard Terms and Conditions
- e. the most current documents approved by the Authority, including those in Book 3, Technical Specifications and Drawings and the Construction Documents;
- f. the information provided by the Authority pursuant to Clause 4.1.2.1;
- g. the Contract documents in existence at the time of execution of this Agreement which are set forth in Article 16; and
- h. the Authority'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.

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, in the amount and as determined in Sections 7.3 and 7.4, for salaries and other mandatory or customary compensation of the Design-Builder's employees at its principal and branch offices except employees listed in Subparagraph 8.2.2, general and administrative expenses of the Design-Builder's principal and branch offices other than the field office, and the Design-Builder's capital expenses, including interest on the Design-Builder's capital employed for the Work, and 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 Final Completion and Acceptance of the Work means the last date on which all of the following events have occurred: all Work, including punch-list work, has been completed by the Design-Builder in accordance with the Contract Documents, approved by the Architect/Engineer, and accepted by the Authority; Design-Builder's LEED responsibilities have been completed and approved by the Architect/Engineer; all deliverables, including closeout documentation such as warranties, record documents, as-builts, etc. have been submitted by the Design-Builder and approved by the Architect/Engineer; and all other contractual requirements for final payment have been completed.

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

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

2.4.8 The term "Overhead" shall mean 1) payroll costs and other compensation of Contractor employees in the Contractor's principal and branch offices; 2) general and administrative expenses of the Contractor's principal and branch offices including deductibles paid on any insurance policy, charges against the Contractor for delinquent payments, and costs related to the correction of defective work; and 3) the Contractor's capital expenses, including interest on capital used for the Work.

2.4.9 The "Authority" is the person or entity identified as such in this Agreement and includes the Authority's Representative.

2.4.10 The "Authority's Program" is an initial description of the Authority'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, facility 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 Authority or Others.

2.4.12 A "Subcontractor" is any person 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.

2.4.13 "Substantial Completion" means the stage at which the Work, or designated portion thereof, as determined in the Schedule, is complete in accordance with the Contract Documents, inspected and approved, in writing, by the Architect/Engineer, and accepted by the Authority such that the User can occupy the Project without disruption.

2.4.14 "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.

2.4.15 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. The Work includes any abatement, site remediation, excavation, demolition, backfill, and required site improvement work.

2.4.16 "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.

2.4.17 "Worksite" means the geographic area at the location mentioned in Article 1 where the Work is to be performed.

2.4.18 "User Agency" means the unit of local government on the behalf of which the Authority is undertaking the design and construction of the Project.

2.4.19 "Schedule" or "Schedule of Work" means the schedule, prepared by Design-Builder and approved by Authority pursuant to the Agreement, including Section 3.5 hereof,

2.4.20 Capitalized terms used herein but not defined shall have the meaning given them in Book 2 or Book 3 as the case may be.

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 in accordance with the Contract Documents and consistent with the Authority's Program, as such Program may be modified by the Authority 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 and in accordance with the standard of care hereinafter provided. 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 Authority, 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 .

3.1.1 PRELIMINARY EVALUATION The Design-Builder shall review the Authority's Program to ascertain the requirements of the Project and shall verify such requirements with the Authority. The Design-Builder's review shall also provide to the Authority a preliminary of the Worksite with regard to access, drainage, building placement and other considerations affecting the building, the environment and energy use, as well as information regarding applicable governmental laws, regulations and requirements. The Design-Builder shall also propose alternative architectural, civil, structural, mechanical, electrical and other systems for review by the Authority to determine the most desirable approach on the basis of costs, technology, quality and speed of delivery. Based upon its review and verification of the Authority's Program and other relevant information the Design-Builder shall provide a preliminary evaluation ("Preliminary Evaluation") of the Project's feasibility for the Authority's acceptance. The Design-Builder's Preliminary Evaluation shall specifically identify any deviations from the Authority's Program.

3.1.2 PRELIMINARY SCHEDULE The Design-Builder shall prepare a preliminary schedule of the Work. The Authority shall provide written approval of milestone dates established in the preliminary schedule of the Work. The schedule shall show the activities of the Authority, the Architect/Engineer and the Design-Building necessary to meet the Authority's completion requirements. The schedule shall be updated periodically with the level of detail for each schedule update reflecting the information then available. If an update indicates that a previously approved schedule will not be met, the Design-Builder shall recommend corrective action to the Authority in writing.

3.1.3 PRELIMINARY ESTIMATE When sufficient Project Information has been identified, the Design-Builder shall prepare for the Authority's acceptance a preliminary estimate utilizing area, volume or similar conceptual estimating techniques. The estimate shall be updated periodically with the level of detail for each estimate update reflecting the information then available. If the preliminary estimate or any update exceeds the Authority's budget, the Design-Builder shall make recommendations to the Authority.

- 3.1.4 **SCHEMATIC DESIGN DOCUMENTS** The Design-Builder shall submit for the Authority's written approval Schematic Design Documents (hereinafter defined), based on the agreed upon Preliminary Evaluation. "Schematic Design Documents" shall include drawings, outline specifications and other conceptual documents illustrating the Project's basic elements, scale, and their relationship to the Worksite. One set of these documents shall be furnished to the Authority. When the Design-Builder submits the Schematic Design Documents the Design-Builder shall identify in writing all material changes and deviations that have taken place from the Design-Builder's Preliminary Evaluation, schedule and estimate. The Design-Builder shall update the preliminary schedule and estimate based on the Schematic Design Documents.
- 3.1.5 **PLANNING PERMITS** The Design-Builder shall obtain and the Authority shall pay for all planning permits necessary for the construction of the Project.
- 3.1.6 **DESIGN DEVELOPMENT DOCUMENTS** The Design-Builder shall submit for the Authority's written approval Design Development Documents (hereinafter defined) based on the approved Schematic design Documents. The "Design Development Documents" shall further define the Project and include drawings and outline specifications fixing and describing the Project size and character as to site utilization, and other appropriate elements incorporating the structural, architectural, mechanical and electrical systems. One set of these documents shall be furnished to the Authority. When the Design-Builder submits the Design Development Documents, the Design-Builder shall identify in writing all material changes and deviations that have taken place from the Schematic Design Documents. The Design-Builder shall update the schedule and estimate based on the Design Development.
- 3.1.7 **CONSTRUCTION DOCUMENTS** The Design-Builder shall submit for the Authority's written approval Construction Documents (hereinafter defined) based on the approved Design Development 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 Design Development Documents. Construction shall be in accordance with these approved Construction Documents. One set of these documents shall be furnished to the Authority prior to commencement of construction. If GMP has not been established the Design-Builder shall prepare a further update of the schedule and estimate based on the Construction Documents.
- 3.1.8 **OWNERSHIP OF DOCUMENTS**
- 3.1.8.1 **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 Authority, 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 Authority.

3.1.8.2 COPYRIGHT Design-Builder and the Authority agree that, to the extent permitted by law, the Deliverables to be produced by Design- Builder at the Authority'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 Authority 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 Authority, 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 Authority 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 Authority may reasonably request in order to assist the Authority in perfecting its rights in and to the copyrights relating to the Deliverables, at the sole expense of the Authority. Design-Builder warrants to the Authority, 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.

3.1.8.3 USE OF DOCUMENTS IN EVENT OF TERMINATION In the event of a termination of this Agreement pursuant to Article 12, the Authority 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 3.1.8.2, provided payment has been made pursuant to Paragraph 3.1.8.1.

3.1.8.4 AUTHORITY'S USE OF DOCUMENTS AFTER COMPLETION OF PROJECT After completion of the Project, the Authority 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 Authority's use of the Documents without the Design-Builder's involvement or on other projects is at the Authority' sole risk, except for the Design-Builder's indemnification obligations pursuant to Paragraph 11.6.

3.1.8.5 DESIGN-BUILDER'S USE OF DOCUMENTS Where the Design- Builder has transferred its copyright interest in the Documents under Subparagraph 3.1.8.1, 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.

3.1.8.6 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 Authority in this Agreement, and the Design-Builder shall provide evidence that such rights have been secured.

3.1.9 CONSTRUCTION DOCUMENTS The Design-Builder shall submit for the Authority's written approval Construction Documents for permitting, procurement, and construction 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 Authority prior to commencement of construction. The Design-Builder shall provide a final GMP for the Work and a final update of the schedule with the Construction Documents for each **Scope of Work**.

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.

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 a statement of Additional Services included, if any,

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

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

3.2.2.10 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 (as hereinafter defined). The "Design Builder's Contingency" is a sum mutually agreed upon and monitored by the Design-Builder and the Authority 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 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 Authority with an accounting of charges against the Design-Builder's Contingency.

3.2.4 COST REPORTING The Design-Builder shall keep such full and detailed accounts 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. The Authority 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 the Work will commence upon the issuance by the Authority of a written notice to proceed with construction ("Notice to Proceed" or "NTP").

3.3.2 In order to complete the Work, the Design-Builder shall provide all necessary construction supervision, inspection, construction equipment, labor, materials, tools and subcontracted items.

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 all permits necessary for the construction of the Project. The cost of the building permits are a Cost of the Work.

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

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 presented to the Authority at mutually agreeable intervals

3.3.7 The Design-Builder shall regularly and properly remove debris and waste materials at the 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 Authority:

- final marked-up as built drawings
- updated electronic data 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 construction 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 Authority access to all Work as provided in other Sections of this Agreement, nor shall the Authority'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. The Authority will not be responsible for the means, method, techniques, sequences and procedures of construction, even if the Authority has provided any input.

3.5 SCHEDULE OF THE WORK The Design-Builder shall prepare and submit a schedule Work for the Authority's acceptance and written approval as to milestone dates and activities pursuant to Article 10 of Book 2. The Schedule of Work 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 Authority. 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 Authority 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 a Safety Representative for the Project. The Design-Builder shall submit a Project specific Safety Plan, prepared and approved by its Safety Representative. The Design-Builder's Safety Representative shall conduct regular site visits and participate in tool box meetings to ensure compliance with the Design-Builder's Safety Plan. The Design-Builder will immediately report in writing all accidents and injuries occurring at the Worksite to the Authority. 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 Authority.

3.6.4 The Design-Builder shall provide the Authority 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 Authority and not to the Design-Builder shall be promptly remedied by the Authority; provided, however, that the Authority may direct the Design-Builder to remedy such damage or loss, and the Authority shall pay for such remedy as a Cost of the Work.

3.6.6 If the Authority deems any part of the Work or Worksite unsafe, the Authority, 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 Authority, or both. If the Design-Builder does not adopt corrective measures, the Authority 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 Authority'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 Authority 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 be entitled to immediately stop Work in the affected area. The Design-Builder shall report the condition to the Authority and, if required, the government agency with jurisdiction.

3.7.3 The Design-Builder shall not be required to perform any Work relating to or in the area of Hazardous Material without written mutual agreement.

3.7.4 The Authority 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 Authority. The Design-Builder shall resume Work in the area affected by any Hazardous Material only upon written agreement between the Parties after the Hazardous Material has been removed or rendered harmless and only after approval, if necessary, of the governmental agency or agencies with jurisdiction.

3.7.5 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 or the Date of Substantial Completion or the Date of Final Completion.

3.7.6 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 Authority or Others, shall be maintained at the Project by the Design-Builder and made available to the Authority and Subcontractors.

3.7.7 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 Authority 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.

3.7.8 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 two years 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 Authority, 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 Authority 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 Authority.

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

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 Authority'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 Authority 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 Authority in connection with the performance of this Agreement. The Authority 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 Authority 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 Authority. 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 Authority and its legal counsel with the understanding that the Authority 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 additional services ("Additional Services"), as more particularly described herein upon the request of the Authority. A written amendment to this Agreement between the Authority 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. Additional Services include the following:

- 3.10.1 Development of the Authority'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 Consultations, negotiations, and documentation and supporting the procurement of Project financing.
- 3.10.3 Surveys, site evaluations, legal descriptions and aerial photographs.
- 3.10.4 Appraisals of existing equipment, existing properties, new equipment and developed properties.
- 3.10.5 Soils, subsurface and environmental studies, reports and investigations required for submission to governmental authorities or others having jurisdiction over the Project.
- 3.10.6 Consultations and representations before governmental authorities or others having jurisdiction over the Project other than normal assistance in securing building permits.
- 3.10.7 Investigation or making measured drawings of existing conditions or the reasonably required verification of Authority-provided drawings and information. Artistic renderings, models and mockups of the Project or any part of the Project or the Work.
- 3.10.8 Interior design and related services, including procurement and placement of furniture, furnishings, artwork and decorations.
- 3.10.9 Making revisions to the Design Development or Construction Documents or documents forming the basis of the GMP after they have been approved by the Authority, 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.
- 3.10.10 Design, coordination, management, expediting and other services supporting the procurement of materials to be obtained or work to be performed, by the Authority, 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.
- 3.10.11 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.
- 3.10.12 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 Authority's office and the Worksite.

- 3.10.13 Obtaining service contractors and training maintenance personnel, assisting and consulting in the use of systems and equipment after the initial start-up.
- 3.10.14 Services for tenant or rental spaces not a part of this Agreement.
- 3.10.15 Services requested by the Authority 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.
- 3.10.16 Serving or preparing to serve as an expert witness in connection with any proceeding, legal or otherwise, regarding the Project.
- 3.10.17 Providing services relating to Hazardous Material discovered at the Worksite.
- 3.10.18 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/Cook County 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 Authority 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 elements unless such differences or deviations are: (i) explicitly noted and identified in writing on the Deliverable, and (ii) expressly and unambiguously accepted by the Authority in writing. The Authority's inadvertent approval of a design Deliverable that contains an unapproved difference or deviation from any requirement of this Agreement shall not be construed as a waiver of such requirement.
- 3.11.3 Design-Builder shall, consistent with the Illinois Architecture Practice Act of 1989, 225 ILCS 305 *et seq.*, and other applicable state licensing laws, provide through qualified, licensed design professionals employed by Design-Builder, or procured from qualified independent licensed design professionals, the necessary design services, including architectural, engineering and other design professional services, for the preparation of the required drawings, specifications and other design submittals to permit Design Builder to complete the Work consistent with the Contract Documents. Design- Builder must assure that all services that require the exercise of professional skills or judgment are accomplished by professionals qualified and competent in the applicable discipline and appropriately licensed, if required by law. Design-Builder must provide copies of any such licenses.

3.11.4 Any or all agreements between the Design-Builder and the Architect Engineer shall provide that the Authority is a third party beneficiary of such agreement, and shall provide further that the Authority shall have a direct right and cause of action against the Architect Engineer for any error or omission by the Architect Engineer in the performance of the design services of the Work.

3.11.5 The Design-Builder shall provide information describing the physical characteristics of the site, including surveys, site evaluations, legal descriptions, existing conditions, subsurface and environmental studies, reports and investigations.

3.11.6 The Design-Builder shall be responsible for all inspection and testing services during construction as required by law or as mutually agreed; and

3.12 PROJECT PROCEDURES Design-Builder shall develop in conjunction with the Authority's Representative, and shall prepare and submit in writing for the Authority's review and approval, procedures with regard to procurement, construction, project controls, project management, safety and design for the duration of the Project (collectively, the "Project Procedures"). The Project Procedures are material terms of this Agreement. It is the intent of the Parties and this Agreement that the approved Project Procedures are solely for the purpose of adding additional and explanatory detail to the requirements of this Agreement. In the event of a contradiction or inconsistency, the provisions of the Contract Documents take precedence over an approved Project Procedure. In no event shall approved Project Procedures be interpreted to diminish Design-Builder's duties or obligations under this Agreement, or to impose additional duties or liabilities not otherwise set forth in this Agreement upon the Authority.

3.13 DESIGN-BUILDER'S STAFFING/KEY PERSONNEL

3.13.1 STAFFING Immediately, upon execution of this Agreement, Design-Builder will assign and maintain throughout the term of the Agreement an adequate staff of competent personnel who are fully equipped, licensed as appropriate, available as needed, qualified and assigned to perform the Work.

3.13.2 KEY PERSONNEL Design-Builder's Key Personnel for the Work are listed in Exhibit 4, attached hereto. In the event that any such Key Personnel are unable to continue to perform Work, the Design-Builder will promptly notify the Authority. Any change or substitution with respect to Key Personnel requires the approval of the Authority. In the event that, in the opinion of the Executive Director, the performance of Key Personnel or any of Design-Builder's staff assigned to the Work, is at an unacceptable level, Design-Builder will remove them from the Project upon written notice from the Authority, and will provide a replacement for the Authority's approval within seven Days of receipt of the notice to remove.

3.14 RIGHT OF ENTRY The Design-Builder and any of its officers, employees, agents, subconsultants and subcontractors will be permitted to enter upon any part of the Project Site in connection with the performance of the Work hereunder, subject to the terms and conditions contained herein and those rules established by the Authority. Authority's consent to enter upon all or any part of the Project Site will not create nor be deemed to imply the creation of any additional responsibilities on the part of the Authority. The Design-Builder will use, and will cause each of its officers, employees, agents, subconsultants and

subcontractors to use reasonable care, unless otherwise expressly set forth in this Agreement, when entering upon the Project Site in connection with the Work. The Design- Builder will comply and will cause each of its officers, employees, agents, subconsultants and subcontractors to comply with any and all instructions and requirements for the use of the Project Site, and any express licenses for such use are hereby incorporated by reference. Any and all claims, suits, judgments, costs, or expenses, including reasonable attorneys' fees, arising from or by reason of or in connection with any such entry will be treated in accordance with the applicable terms and conditions of the Agreement, including, without limitation, the indemnification provisions contained in this Agreement. If the Design-Builder, or anyone for whom it is responsible, causes damage to Authority property, or the property of the owner of the Project Site, the Design-Builder must, at the option of the Authority, either 1) pay the cost of repair of the damage or 2) repair or replace the damaged property. The Authority shall have the right of set-off against the payments to the Design-Builder for the cost of repairs.

3.15 DESIGN-BUILDER'S REPRESENTATIVE The Design-Builder shall designate a person who shall be the Design-Builder's authorized representative. The Design-Builder's Representative is _____

3.16 CLOSEOUT The Design-Builder must provide its Closeout Execution Plan similar to its Design, Procurement, and Construction Execution Plan prior to the commencement of work.

3.17 LIVING WAGE REQUIREMENT Design-Builder agrees to pay its eligible employees a minimum wage of not less than \$13.00 per hour for work performed under this Agreement and further agrees to abide by all rules and regulations promulgated by the Executive Order. This applies to all subcontractors of the Design-Builder.

ARTICLE 4

AUTHORITY'S RESPONSIBILITIES

4.1 INFORMATION AND SERVICES PROVIDED BY THE AUTHORITY

4.1.1 The Authority shall provide full information in a timely manner regarding requirements for the Project, including the Authority's Program and other relevant information.

4.1.2 The Authority shall provide:

4.1.2.1 unless otherwise provided in the Contract Documents, necessary approvals, site plan review, rezoning, easements and assessments, fees and charges required for the construction, use, occupancy or renovation of permanent structures, including legal and other required services.

4.1.3 The Design-Builder shall be entitled to rely on the completeness and accuracy of the information and services required by this Paragraph 4.1.

4.2 RESPONSIBILITIES DURING DESIGN PHASE

4.2.1 The Authority shall provide the Authority's Program at the inception of the Design Phase and shall review and timely approve in writing schedules, Design Development Documents and

Construction Documents furnished during the Design Phase as set forth in Paragraph 3.1, and the GMP Proposal as set forth in Paragraph 3.2.

4.3 RESPONSIBILITIES DURING CONSTRUCTION PHASE

4.3.1 The Authority shall review the Schedule of the Work as set forth in Paragraph 3.5 and timely approve the milestone dates set forth pursuant to Article 10 of Book 2.

4.3.2 If the Authority becomes aware of any error, omission or failure to meet the requirements of the Contract Documents or any fault or defect in the Work, the Authority shall give prompt written notice to the Design-Builder. The failure of the Authority to give such notice shall not relieve the Design-Builder of its obligations to fulfill the requirements of the Contract Documents.

4.3.3 The Authority shall communicate with the Design-Builder's Subcontractors, Material Suppliers and the Architect/Engineer only through or in the presence of the Design-Builder. The Authority shall have no contractual obligations to Subcontractors or suppliers.

4.3.4 The Authority shall provide insurance for the Project as provided in Article 11.

4.4 AUTHORITY'S REPRESENTATIVE The Authority's Representatives are _____ for Design and _____ for Construction. The Representatives:

4.4.1 shall be fully acquainted with the Project;

4.4.2 agrees to furnish the information and services required of the Authority pursuant to Paragraph 4.1 so as not to delay the Design-Builder's Work; and

4.4.3 shall have authority to bind the Authority in all matters requiring the Authority's approval, authorization or written notice. If the Authority changes its representatives or the representatives' authority as listed above, the Authority shall notify the Design-Builder in writing in advance.

4.5 TAX EXEMPTION If in accordance with the Authority's direction the Design-Builder claims an exemption for taxes, the Authority shall indemnify and hold the Design-Builder harmless for all liability, penalty, interest, fine, tax assessment, attorneys' fees or other expense or cost incurred by the Design-Builder as a result of any action taken by the Design-Builder in accordance with the Authority's direction.

4.6 ELECTRONIC DOCUMENTS If the Authority requires that the Authority and Design-Builder exchange documents and data in electronic or digital form, prior to any such exchange, the Authority and Design-Builder shall agree on a written protocol governing all such exchanges in a separate agreement, which, at a minimum, shall specify: (1) the definition of documents and data to be accepted in electronic or digital form or to be transmitted electronically or digitally; (2) management and coordination responsibilities; (3) necessary equipment, software and services; (4) acceptable formats, transmission methods and verification procedures; (5) methods for maintaining version control; (6) privacy and security requirements; and (7) storage and retrieval requirements. The Parties shall each bear their own costs for the requirements

identified in the protocol. In the absence of a written protocol, use of documents and data in electronic or digital form shall be at the sole risk of the recipient.

ARTICLE 5

SUBCONTRACTS

Work not performed by the Design-Builder with its own forces shall be performed by Subcontractors or the Architect/Engineer.

5.1 RETAINING SUBCONTRACTORS The Design-Builder shall not retain any subcontractor that has been debarred by Authority or the City of Chicago from doing business with the debarring agency, or any subcontractor to whom the Authority has a reasonable and timely objection. The Design-Builder shall not make any substitute for a subcontractor that has been accepted by the Authority without the written approval of the Authority.

5.2 MANAGEMENT OF SUBCONTRACTORS The Design-Builder shall be responsible for the management of the Subcontractors in the performance of their work. The Authority will communicate with the Design-Builder regarding the Work, except that the Authority shall have the right to communicate directly with the Design-Builder's subcontractors as the Authority deems reasonably necessary to address matters such as MBE and WBE issues, direct payments to subcontractors, lien and surety matters, and other matters where such direct communication may reasonably be required.

5.3 CONTINGENT ASSIGNMENT OF SUBCONTRACT

5.3.1 If this Agreement is terminated, each subcontract agreement shall be assigned by the Design-Builder to the Authority, subject to the prior rights of any surety, provided that:

5.3.1.1 this Agreement is terminated by the Authority pursuant to Article 19 of Book 2; and

5.3.1.2 the Authority accepts such assignment, after termination by notifying Subcontractor and Design-/Builder in writing, and assumes all rights and obligations of the Design-Builder pursuant to each subcontract agreement.

5.3.2 If the Authority accepts such assignment and the Work has been suspended for more than thirty (30) consecutive Days, following termination, if appropriate, the Subcontractor's compensation shall be equitably adjusted as a result of the suspension.

5.4 BINDING OF SUBCONTRACTORS AND MATERIAL SUPPLIERS The Design- Builder agrees to bind every Subcontractor and Material Supplier (and require every Subcontractor to so bind its Subsubcontractors and Material Suppliers) to all the provisions of this Agreement and the Contract Documents.

5.5 DESIGN-BUILDER'S LIABILITY FOR SUBCONTRACTORS The Design-Builder is responsible for all subcontractor Work and for all acts, failures to act, and omissions of its subcontractors. For the purposes of this Agreement, the Design-Builder's acts and omissions include those of its subcontractors to the same extent as if they had been committed by the Design-Builder. Notwithstanding the foregoing, there is no

privity between subcontractors and the Authority. Except as set forth in Book 2, Article 23 "MBE/WBE Special Conditions for Construction Contracts" and Book 2 Article 24 "MBE/WBE Special Conditions for Professional Services Contracts," subcontractors have no rights as third-party beneficiaries under this Agreement. However, all subcontracts of every tier shall state that the Authority is an intended third-party beneficiary of the subcontract.

ARTICLE 6

TIME

6.1 DATE OF COMMENCEMENT The Date of Commencement is the Effective Date of this Agreement as first written in Article 1 unless otherwise set forth below:

The Work shall proceed and be completed in accordance with the Schedule of Work, as such Schedule of Work may be amended from time to time, subject, however, to other provisions of this Agreement.

6.2 SUBSTANTIAL/FINAL COMPLETION Unless the Parties agree otherwise, the Date of Substantial Completion and the date of Final Completion shall be established in the Schedule of Work approved by Authority, subject to adjustments expressly provided for in the Contract Documents. The Authority and the Design-Builder may agree not to establish such dates at the time of execution of this Agreement. If such dates are not established upon the execution of this Agreement, at such time as a GMP is accepted a Date of Substantial Completion or Date of Final Completion of Work shall be established in the Notice to Proceed for each phase of the Work (i.e. the Design Phase and the Construction Phase) or by amendment to this Agreement.

6.2.1 Time limits stated in the Contract Documents are of the essence.

6.2.2 Unless instructed by the Authority in writing, the Design-Builder shall not knowingly commence the Work before the effective date of insurance that is required to be provided by the Design-Builder or the Authority.

6.3 DELAYS IN THE WORK

6.3.1 Delays and time extensions shall be allowed and administered as provided in Article 10 of Book 2.

6.4 DELAY DAMAGES

6.4.1 The Design-Builder understands that if Substantial Completion of the Work, or any milestone or phase thereof, as determined by the Schedule of Work (as may be amended by subsequent Change Order), is not achieved on the date(s) set forth in the Schedule of Work, the Authority will suffer damages. The Design-Builder shall be liable for any and all direct and indirect damages, including, without limitation, loss of use and lost rent, suffered by Authority arising out of or relating to Design-Builder's failure to achieve Substantial Completion of the Work on or before the Substantial Completion Date, and, if applicable, Substantial Completion of any milestone or phase as set forth in the Schedule of Work.

6.5 AUTHORITY'S RIGHT TO OCCUPY PORTIONS OF THE WORK

6.5.1 The Authority may occupy and use the Project, or portions thereof, in advance of Substantial Completion. If the Authority desires to exercise partial occupancy and use prior to Substantial Completion, the Authority shall provide written notice to the Design-Builder, and the Design-Builder shall cooperate with the Authority in making available for the Authority's use such Project services as heating, ventilating, cooling, water, lighting and telephone for space or spaces to be occupied, and if the equipment required to furnish such services is not entirely completed at the time the Authority desires to occupy and use the space or spaces, then the Design-Builder will make every reasonable effort to complete that Work.

6.5.2 In the event of occupancy/turn-over prior to Substantial Completion:

6.5.2.1 Within fourteen (14) days after receiving notice of the planned early occupancy, the Design-Builder will provide written notice to the Authority of the following: (i) the current condition of the space desired for early occupancy; (ii) the anticipated condition of the space at the date of anticipated early occupancy; (iii) a preliminary estimate of any potential additional costs, if any, as a direct or indirect result of the early occupancy; and (iv) a preliminary estimate of any potential impact to the Project Schedule, if any, as a result of the early occupancy.

6.5.2.2 If the early occupancy is necessitated by a delay in Substantial Completion beyond the scheduled date of Substantial Completion and is not the subject of a Change Order, Design-Builder shall be responsible for all additional costs associated with the preparation of the space for the early occupancy.

6.5.2.3 The following conditions will apply to the spaces and/or equipment that is affected by the Authority's early occupancy:

6.5.2.3.1 A punch list will be assembled by the Authority, Design-Builder and its subcontractors, and an inspection of the affected space by the Authority will be accomplished prior to the start of early occupancy.

6.5.2.3.2 Warranties will begin to run only on those portions of systems and materials actively used, and shall not begin to run on those portions of systems and materials not used. Warranties of systems that are common to both the occupied and unoccupied parts of the Project will begin to run at Substantial Completion.

6.5.2.3.3 Risk of loss associated with the finished Work which the Authority occupies early transfers to the Authority at the start of the early occupancy.

6.5.2.3.4 As part of the Change Order for early occupancy, the Parties will agree and set forth in writing the scope and date of early occupancy, and what effect early occupancy will have on Liquidated Damages and insurance coverage.

ARTICLE 7

COMPENSATION

7.1 DESIGN PHASE COMPENSATION

- 7.1.1 To the extent required by applicable law, the costs of services performed directly by the Architect/Engineer is computed separately and is independent from the Design-Builder's compensation for work or services performed directly by the Design-Builder, these costs shall be shown as separate items on applications for payment. If an Architect/Engineer is retained by the Design-Builder, the payments to the Architect/Engineer shall be as detailed in a separate agreement between the Design- Builder and the Architect/Engineer.
- 7.1.2 The Authority shall compensate the Design-Builder for services performed during the Design Phase as described in Paragraph 3.1, including preparation of a GMP Proposal, if applicable, as described in Paragraph 3.1, as follows:
for Design Phase Services: _____
- 7.1.3 Compensation for Design Phase services, as part of the Work, shall include the Design-Builder's Fee as established in Paragraph 7.3, paid in proportion to the services performed, subject to adjustment as provided in Paragraph 7.4.
- 7.1.4 Within fifteen (15) Days after receipt of each monthly application for payment, the Authority shall give written notice to the Design-Builder of the Authority's acceptance or rejection, in whole or in part, of such application for payment. Within thirty (30) Days after accepting such application, the Authority shall pay directly to the Design-Builder the appropriate amount for which application for payment is made, less amounts previously paid by the Authority. If such application is rejected in whole or in part, the Authority shall indicate the reasons for its rejection. If the Authority and the Design-Builder cannot agree on a revised amount then, within fifteen (15) Days after its initial rejection in part of such application, the Authority shall pay directly to the Design-Builder the appropriate amount for those items not rejected by the Authority for which application for payment is made, less amounts previously paid by the Authority. Those items rejected by the Authority shall be due and payable when the reasons for the rejection have been removed.

7.2 CONSTRUCTION PHASE COMPENSATION

- 7.2.1 The Authority shall compensate the Design-Builder for Work performed following the commencement of the Construction Phase on the following basis:
- 7.2.1.1 the Cost of the Work as allowed in Article 8; and
- 7.2.1.2 the Design-Builder's fee paid in proportion to the services performed subject to adjustment as provided in Paragraph 7.4.

7.2.2 The compensation to be paid under this Paragraph 7.2 shall be limited to the Guaranteed Maximum Price ("GMP"), as the GMP may be adjusted under Article 9.

7.2.3 Payment for Construction Phase services shall be as set forth in Article 10. If Design Phase services continue to be provided after construction has commenced, the Design-Builder shall continue to be compensated as provided in Paragraph 7.1, or as mutually agreed.

7.3 DESIGN-BUILDER'S FEE The Design-Builder's Fee shall be as follows, subject to adjustment as provided in Paragraph 7.4: [REDACTED]

7.4 ADJUSTMENT IN THE DESIGN-BUILDER'S FEE Adjustment in the Design-Builder's fee shall be made as follows:

7.4.1 for changes in the Work as provided in Article 9, the Design-Builder's fee shall be adjusted as follows:

7.4.2 for delays in the Work not caused by the Design-Builder, except as provided in Article 10 of Book 2, there will be an equitable adjustment in the Design-Builder's Fee to compensate the Design-Builder for increased expenses; and

7.4.3 if the Design-Builder is placed in charge of managing the replacement of an insured or uninsured loss, the Design-Builder shall be paid an additional fee in the same proportion that the Design-Builder's Fee bears to the estimated Cost of the Work for the replacement, provided that such loss was not due to any error or omission by the Design-Builder, or any party for which the Design-Builder may be liable.

ARTICLE 8

COST OF THE WORK

The Authority agrees to pay the Design-Builder for the Cost of the Work as defined in this Article and as further described in Exhibit 5 Design Builder's Guaranteed Maximum Price Proposal, Exhibit 6 Schedule of Values and Exhibit 7 Compensation/Cost of Work. This payment shall be in addition to the Design-Builder's Fee stipulated in Paragraph 7.3.

8.1 COST ITEMS FOR DESIGN PHASE SERVICES

8.1.1 Compensation for Design Phase services as provided in Paragraph 7.1

8.2 COST ITEMS FOR CONSTRUCTION PHASE SERVICES

8.2.1 Wages paid for labor in the direct employ of the Design-Builder in the performance of the Work.

8.2.2 Salaries of the Design-Builder's employees when stationed at the field office, in whatever capacity employed, employees engaged on the road expediting the production or

transportation of material and equipment, and employees from the principal or branch office performing the functions listed below:

Project management, administrative assistance and project engineering directly associated with the Work.

- 8.2.3 Cost of all employee benefits and taxes including but not limited to Workers' Compensation, unemployment compensation, Social Security, health, welfare, retirement and other fringe benefits as required by law, labor agreements, or paid under the Design-Builder's standard personnel policy, insofar as such costs are paid to employees of the Design-Builder who are included in the Cost of the Work under Subparagraphs 8.2.1 and 8.2.2.
- 8.2.4 Cost of all materials, supplies and equipment incorporated in the Work, including costs of inspection and testing if not provided by the Authority, transportation, storage and handling. Payments made by the Design-Builder to Subcontractors for work performed under this Agreement.
- 8.2.6 Fees and expenses for design services procured or furnished by the Design-Builder except as provided by the Architect/Engineer and compensated in Paragraph 7.1.
- 8.2.7 Cost, including transportation and maintenance of all materials, supplies, equipment, temporary facilities and hand tools not owned by the workers that are used or consumed in the performance of the Work, less salvage value or residual value; and cost less salvage value on such items used, but not consumed that remain the property of the Design-Builder.
- 8.2.8 Rental charges of all necessary machinery and equipment, exclusive of hand tools owned by workers, used at the Worksite, whether rented from the Design-Builder or Others including installation, repair and replacement, dismantling, removal, maintenance, transportation and delivery costs. Rental from unrelated third parties shall be reimbursed at actual cost. Rentals from the Design-Builder or its affiliates, subsidiaries or related parties shall be reimbursed at the prevailing rates in the locality of the Worksite up to eighty-five percent (85%) of the value of the piece of equipment.
- 8.2.9 Cost of the premiums for all insurance and surety bonds which the Design-Builder is required to procure, and approved by the Authority, including any additional premium incurred as a result of any increase in the GMP.
- 8.2.10 Sales, use, gross receipts or other taxes, tariffs or duties related to the Work for which the Design-Builder is liable.
- 8.2.11 Permits, fees, licenses, tests, royalties, damages for infringement of patents or copyrights, including costs of defending related suits for which the Design-Builder is not responsible as set forth in Paragraph 11.2, and deposits lost for causes other than the Design-Builder's negligence.
- 8.2.12 Losses, expenses or damages to the extent not compensated by insurance or otherwise, and the cost of corrective work or redesign during the Construction Phase and for a period of one

year following the Date of Substantial Completion, provided that such corrective work or redesign did not arise from the negligence of the Design-Builder.

8.2.13 All costs associated with establishing, equipping, operating, maintaining and demobilizing the field office.

8.2.14 Reproduction costs, photographs, facsimile transmissions, long-distance telephone calls, data processing services, postage, express delivery charges, data transmission, telephone service, and computer-related costs at the Worksite, to the extent such items are used and consumed in the performance of the Work or are not capable of use after completion of the Work.

8.2.15 All water, power and fuel costs necessary for the Work.

8.2.16 Cost of removal of all non-hazardous substances, debris and waste materials.

8.2.17 Costs incurred due to an emergency affecting the safety of persons or property.

8.2.18 Legal, mediation and arbitration fees and costs, other than those arising from disputes between the Authority and the Design-Builder, reasonably and properly resulting from the Design-Builder's performance of the Work.

8.2.19 All costs directly incurred in the performance of the Work or in connection with the Project, and not included in the Design-Builder's Fee as set forth in Article 7, which are reasonably inferable from the Contract Documents as necessary to produce the intended results.

ARTICLE 9

CHANGES IN THE WORK

Changes in the Work which are within the general scope of this Agreement may be accomplished, without invalidating this Agreement, by Change Order, Field Order, or Owner directive, pursuant to the provisions of Article 17 of Book 2: Changes in the Work.

ARTICLE 10

PAYMENT FOR CONSTRUCTION PHASE SERVICES

10.1 PROGRESS PAYMENTS

Payment applications and procedures shall be as defined in Article 16 of Book 2.

ARTICLE 11

INDEMNITY, INSURANCE, BONDS, AND WAIVER OF SUBROGATION

11.1 Indemnity, Insurance, Bonds and Waiver of Subrogation shall be as provided in Book 2, Article 5, and Book 1 as Exhibit 9 unless otherwise specified herein.

11.2 ROYALTIES, PATENTS AND COPYRIGHTS The Design-Builder shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods or systems selected by the Design-Builder and incorporated in the Work. The Design- Builder shall defend, indemnify and hold the Authority harmless from all suits or claims for infringement of any patent rights or copyrights arising out of any patented or copyrighted materials, methods or systems specified by the Authority.

11.3 LIENS If any of the Design-Builder's subconsultants, subcontractors, employees, officials, agents or other person directly or indirectly acting for, through or under any of them files or maintains a lien or claim pursuant to the Illinois Public Mechanics' Lien Act, 770 ILCS 60/23, against the public funds for the Project, then the Design-Builder agrees to cause such liens and claims to be satisfied, removed or discharged within thirty (30) days from the date of filing thereof; provided, however, that the Authority may extend the thirty (30) day period if the Authority determines that such lien claim cannot be so satisfied, removed or discharged in such period and that the Design-Builder is proceeding diligently to cause such liens or claims to be satisfied, removed or discharged. The Authority will have the right, in addition to all other rights and remedies provided under this Agreement, Book 2 Article 16, or by law, to cause such liens or claims to be satisfied, removed or discharged by any means at the Design-Builder's sole cost, such cost to include reasonable legal fees. The authority shall be able to hold all payments until all liens are satisfied.

The Design-Builder will give, or cause to be given, a copy of these provisions to all subcontractors and will include these provisions in all agreements with subcontractors, and/or give written notice to all subcontractors or other persons having oral or written agreements with such subcontractors.

ARTICLE 12

SUSPENSION AND TERMINATION OF THE AGREEMENT AND AUTHORITY'S RIGHT TO PERFORM DESIGN-BUILDER'S RESPONSIBILITIES

12.1 Suspension and Termination shall be as defined in Article 19 of Book 2.

ARTICLE 13

DISPUTE MITIGATION AND RESOLUTUION

13.1 Claims and Disputes shall be as defined in Article 18 of Book 2.

ARTICLE 14

MISCELLAENOUS PROVISIONS

14.1 GOVERNING LAW This Agreement shall be governed by the law in effect at the location of the Project.

14.2 SEVERABILITY The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision.

14.3 NO WAIVER OF PERFORMANCE The failure of either Party to insist, in any one or more instances, on the performance of any of the terms, covenants, or conditions of this Agreement or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right with respect to further performance.

14.4 TITLES AND GROUPINGS The titles given to the articles of this Agreement are for ease of reference only and shall not be relied upon or cited for any other purpose. The grouping of the articles in this Agreement and of the Authority's specifications under the various headings is solely for the purpose of convenient organization and in no event shall the grouping of provisions, the use of paragraphs or the use of headings be construed to limit or alter the meaning of any provisions

14.5 JOINT DRAFTING The Parties to this Agreement expressly agree that this Agreement was jointly drafted, and that both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms prior to execution. Therefore, this Agreement shall be construed neither against nor in favor of either Party, but shall be construed in a neutral manner.

14.6 RIGHTS AND REMEDIES The Parties' rights, liabilities, responsibilities and remedies with respect to this Agreement, whether in contract, tort, negligence or otherwise, shall be exclusively those expressly set forth in this Agreement.

14.7 FIREARMS AND OTHER WEAPONS The HACC is committed to providing a safe and secure workplace for the benefit of its employees, consultants, contractors and the general public; therefore, threatening behavior by any person on or about the HACC office premises, project sites and any place in which HACC business is conducted is prohibited. Further, possession of firearms, explosives, or other weapons anywhere on HACC property and project sites or while conducting HACC business is prohibited. Employees and contractors must, at a minimum, comply with all federal, state and local laws relating to the possession and use of firearms, including the Illinois Firearm Concealed Carry Act, 430 ILCS 66/1, et. seq.; the Illinois Criminal Code – Article 5, Deadly Weapons, 720 ILCS 5/Art. 24 et. seq. Further, as a condition of employment and/or contract, individuals may not bring weapons onto HACC premises or project sites (including parking lots), even in situations where such conduct would be allowed under the cited laws.

ARTICLE 15

EXISTING CONTRACT DOCUMENTS

The Contract Documents in existence at the time of execution of this Agreement are as follows:

As defined in Subparagraph 2.4.1, the following Exhibits are a part of this Agreement:

Book 2 Standard Terms and Conditions for Design Build Contracts

Exhibit 1 – Design Builder Design Services

Exhibit 2 – Documents and Drawings Issued for Scope and Performance Criteria.

Exhibit 3 – Schematic Design Plans and Specifications prepared by _____ dated _____

Exhibit 4 – Design Builder's Key Personnel

Exhibit 5 – Design Build GMP Form

Exhibit 6 – Construction Schedule of Values

Exhibit 7 – Compensation/Cost of the Work
Exhibit 8 – Design Build Schedule
Exhibit 9 – Insurance and Bonding Requirements
Exhibit 10 – Community Area Map

[EXECUTION PAGE FOLLOWS]

**Execution Page for Design-Build Agreement between the Housing Authority of Cook County and
and with Effective Date of**

This Agreement is executed by the Parties stated below, and made effective by such execution pursuant to its terms.

Housing Authority of Cook County

By: _____
Richard J. Monocchio, Executive Director

(DESIGN BUILDER)

By: _____

Print Name: _____

Title: _____

County of _____
State of Illinois

AFFIX CORPORATE
SEAL, IF ANY, HERE

Subscribed and sworn before me by _____
as _____ of _____ this day _____ of _____, 2019.

Notary Public _____

My Commission Expires: _____

SEAL

BOOK 2
STANDARD TERMS AND CONDITIONS
FOR CONSTRUCTION CONTRACTS

DESIGN BUILD SERVICES FOR EVANSTON TOWER

CONTRACT NO. 2018-100-003

Housing Authority of Cook County

Richard J. Monocchio
Executive Director



Housing Authority of Cook County
175 West Jackson Boulevard
Suite 350
Chicago, Illinois 60604
312-542-4725
www.thehacc.org

This document is provided as a DRAFT and is not intended to be considered FINAL.
The Authority explicitly reserves the right to modify this document and provide a revised Sample to Phase II Proposers.

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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" or "Architect/Engineer" means any person or firm employed by the Authority for the purpose of designing the project.
2. "Authority" means the Housing Authority of Cook County, a body corporate and politic created under the provisions of the Housing Authorities Law, as amended, or its duly authorized officers or employees
3. "Authority Representative" means the person assigned, in writing, by the Executive Director to be the Authority's Representative for the project.
4. "Change Order" is the document signed by the Design-Builder and the Authority, or, in circumstances stated in Book 2, the Authority alone, which authorizes either an adjustment in the Contract Price and / or Contract time or a change in the Work that may not result in such an adjustment.
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 – Including the Agreement and all exhibits thereto, 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
 - d. Applicable standard specifications as set forth in Section 1.03 hereof
6. "Contract Price" means the full amount of compensation to be paid for the Work to be performed by the Design-Builder, as evidenced by Authority's acceptance of Design-Builder's bid, or, if applicable, approval of the GMP (as such term may be used in Book 1) for the Work, as adjusted from time to time by Change Order.
7. "Date of Substantial Completion" is the date on which the Design-Builder must achieve Substantial Completion. The Date of Substantial Completion will be determined based on the time for completion of the Work stated in Book 1, Section II.C, and in the Agreement, adjusted by any Change Orders that extend or reduce the time for completion of the Work.
8. "Day" or "Days" means calendar day(s) unless otherwise specified.
9. "Design-Builder" means the partnership, firm, corporation, joint venture or entity entering into the Contract with the Authority to perform the Work required by the Contract Documents.
10. "Drawings" are those enumerated in the Schedule of Drawings, and additional drawings and sketches, if any, incorporated into the Contract by a bulletin issued by the Architect or Change Order as the Work progresses.
11. "Environmental Law(s)" means all applicable Federal, State, and local laws, ordinances, rules, regulations, and executive orders pertaining to environmental matters.
12. "Established Business" means a person or entity granted certification by the City of Chicago or Cook County.
13. "Executive Director" means the person employed by the Authority as its Executive Director or the Executive Director's designee.
14. "Field Order" means a written order to the Design-Builder, signed by the Authority Representative unilaterally directing changes in the Work or the Project CPM Schedule.

15. "Final Completion and Acceptance of the Work" means the last date on which all of the following events have occurred: all Work, including punch-list work, has been completed by the Design-Builder in accordance with the Contract Documents, approved by the Architect/Engineer, and accepted by the Authority; Design-Builder's LEED responsibilities have been completed and approved by the Architect/Engineer; all deliverables, including closeout documentation such as warranties, record documents, as-builts, etc. have been submitted by the Design-Builder and approved by the Architect/Engineer; and all other contractual requirements for final payment have been completed.
16. "First-tier Subcontractor" means any Subcontractor that has a contract with the Design-Builder.
17. "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 (7 U.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.
18. "Local Government" or "City" means the City of Evanston, Illinois.
19. "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.
20. "Participating Established Business" means an established business which is eligible to participate in the minority and women business enterprise program set forth in Section 23.01.8.
21. "Program Safety Manager" means the person assigned, in writing, by the Executive Director to be the Authority's Safety Manager for all Authority projects.
22. "Project" means the collective improvements to be constructed by the Design-Builder in accordance with the Contract.
23. "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 Authority. Items of incomplete Work that precludes full or beneficial use of any portion of the Work or that precludes the Authority from full operation, maintenance, or security of the facility are not considered Punch List Work.
24. "Record Documents" are all documents required under the terms of the Contract to be provided to the Authority 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.
26. "Request for Information" or "RFI" means the document transmitted by the Design-Builder to the Architect via the Authority Representative seeking clarification or direction with respect to ambiguities, contradictions, errors or omissions in the Drawings and Technical Specifications.
27. "Schedule" or "Schedule of Work" or "Design-Build Schedule" means the critical path method (CPM) schedule submitted by the Design-Builder and accepted by Authority, establishing time frames for the performance of components of the Work and the Date of Substantial Completion and Date of Final Completion.
28. "Schedule of Values" means the detailed list of the value of each construction activity included in the Contract Price broken down by labor and materials that is submitted by the Design-Builder and approved by the Authority, as amended.
29. "Site" means the location(s) shown on the Drawings or described in the Technical Specifications, within which the Work will be performed under the Contract Documents.

30. "Special Waste" means those substances as defined in the Illinois Environmental Protection Act, 415 ILCS 5/3.475 and further defined in Section 809.103 of Title 35 of the Illinois Administrative Code, Subtitle G, Ch.1.
32. "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.
33. "Submittal" means a schedule, shop drawing, video tape, product data, sample, or other item as may be required by the Contract for review and/or approval prior to prosecution of a portion of the Work.
34. "Substantial Completion" of the Work occurs on the date when the Work is sufficiently completed in accordance with the Contract Documents, inspected and approved in writing by the Authority's Architect, and accepted by the Authority so that the User may occupy the Project for use without disruption.
35. "Technical Specifications" means the detailed requirements for the Work furnished by the Architect and set forth in Book 3 of the Contract Documents.
36. "User" or "User Agency" means the entity for which or on whose behalf the Authority has undertaken to cause the Work to be performed.
37. "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, 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 Interpretation / Rules

1. Intent of Contract Documents:

- a. The intent of the Contract Documents is to describe the Work that the Design-Builder will undertake to fulfill the requirements of the Contract. The Design-Builder must perform all Work as provided in the Contract Documents as required and necessary to complete the Work in accordance with the Contract Documents. The Design-Builder must furnish all required materials, equipment, tools, labor, temporary light and power, shop drawings, installation drawings, working drawings, and incidentals, unless otherwise provided in the Contract, and will include the cost of all such items in the Cost of the Work] The Cost of the Work includes the items outlined in the Agreement includes all costs relating to, or associated with, the foregoing including, but not limited to, all direct costs, indirect costs, overhead, and profit.
- b. Wherever the imperative form of address is used, such as "perform the excavating," "provide equipment required," "remove obstructions encountered," "furnish and install reinforcing steel bars," it is understood and agreed that such imperative is directed to the Design-Builder.
- c. "Provide" as used in these specifications means furnish and install.
- d. Unless a contrary meaning is specifically noted elsewhere, words "as required," "as directed", "as permitted", and similar words mean that requirements, directions of, and permission of the Authority are intended; similarly the words "approved", "acceptable", "satisfactory", or words of like import, mean "approved by", "acceptable to", or "satisfactory to" the Authority. Words "necessary", "proper", or words of like import as used with respect to extent, conduct, or character of Work specified shall mean that Work must be conducted in a manner, or be of character which is "necessary" or "proper" in the opinion of the Authority.
- e. The Work under this Contract has not been completely segregated into divisions of Work to be performed by any trade or Subcontractor. The Design-Builder shall be responsible for all segregation of Work between the trade or craft jurisdictional limits.

- f. Before the Design-Builder physically begins the Work, the Design-Builder must check the Authority's Technical Specifications and Drawings. Should any errors, discrepancies or omissions be found in these plans and specifications or any discrepancy found between the Contract Documents and the physical conditions at the Site or in any subsequent Drawings that may be provided thereafter, the Design-Builder must notify the Authority Representative, in writing, immediately.

SECTION 1.03 Standard Specifications

1. 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.

SECTION 1.04 Severability

1. 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

1. The Contract, including all Contract Documents and the exhibits attached to them and incorporated, together with any Change Orders hereto, 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:

Housing Authority Of Cook County
175 West Jackson Boulevard, suite 350
Chicago, Illinois 60604

SECTION 2.02 The Executive Director

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

SECTION 2.03 The User Agency (ies)

The User Agency is the entity for which the Authority is constructing the project.

SECTION 2.04 The Authority Representative

1. The Executive Director will assign an individual to be the Authority's Representative 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, whether intended for the Authority or the Architect, to the Authority Representative.** The Authority Representative will also route responses from the Authority and Architect to the Design-Builder.
3. The Authority Representative has the authority to reject all or any portion of Work that does not conform to the Contract Documents.
4. The Authority Representative will not be responsible for acts or omissions of the Design-Builder or any Subcontractor.
5. The Authority Representative is responsible for the following:
 - a. Reviewing and monitoring, on a periodic basis, the Schedule, including 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 Authority, User, Design-Builder, Architect, 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 Authority's policies and procedures and submitting the payment applications to Authority 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 Authority, the User, Architect, 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, licenses, and certificates with the Design-Builder and arrange delivery of same to the Authority.
 - 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 Authority 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 Authority for concurring approval.
- j. Monitoring the flow of all documents and materials for proper sequence of approvals so as not to delay the progress of the work.
- k. Receiving and reviewing all requests for additional compensation and time extensions sought by the 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 Authority 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 Authority upon completion of the Project.

SECTION 2.05 The Architect

The Architect for the Project is _____.

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 Authority will be with the Design-Builder.
2. Design-Builder is wholly responsible, and liable to the Authority, for any and all Work performed by any Subcontractor.

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 design 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 figure 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 Authority 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 Authority 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 Authority 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 Authority Representative the name of a proposed substitute person or persons, in accordance with paragraph 2 of this section for approval by the Authority 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 Authority, 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 Authority, 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 Design-Builder by the Authority 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 Authority confirming the Final Completion and Acceptance of the Work.

SECTION 3.02 Contract Documents

1. Subject to the terms of the Agreement, it being understood that the Design-Builder is responsible for the design of the Project, the Design-Builder must carefully review and compare all Drawings, Technical Specifications, and other Contract Documents. In the event the Design-Builder identifies an error or omission, the Design-Builder will promptly notify the Authority Representative, in writing, and then proceed with the Work in accordance with instructions from the Authority 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 Contract Documents after award of the Contract, but shall cooperate with the Authority 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 Contract Documents are complementary and intended to include all items required for the proper execution and completion of the Work. Generally, the Technical Specifications describe Work which cannot be readily indicated on the Drawings, and indicate types, qualities, and methods of installation of the various materials and equipment required. The Drawings and Technical Specifications are to be read and interpreted as a whole. If there are contradictions or ambiguities between the Contract Documents, the Design-Builder must submit a request for information (RFI) to the Authority Representative.
3. Materials which are shown on the Drawings and which may not be specifically described in the Technical Specifications or Drawings will be furnished by the Design-Builder, suitable for the intended use, compatible with adjacent materials, and subject to review and approval by the Authority for conformance with the intent of the Contract Documents. If installation techniques are not specified, installation will be in accordance with manufacturer's currently published instructions and industry standards.
4. Dimensions of Work will not be determined by scale or rule. Figured dimensions must be followed at all times. If figured dimensions are lacking and cannot be calculated from other dimensions on Drawings, the Design-Builder must submit an RFI to the Authority Representative for resolution by the Architect.
5. 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 furnished by the Architect, all additional and revised drawings and plans furnished by the Authority Representative, all orders issued to the Design-Builder by the Authority 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.
6. The Design-Builder must prepare coordination drawings where limited available space may cause conflicts in the locations of installed products and where required to coordinate installation of products.
 - a. In particular, prepare coordination drawings showing all piping, duct, cable trays, electrical ductbanks, and similar items, but not electrical conduit less than 4" in diameter.

Where space is limited, show plan and cross section dimensions of space available, including structural obstructions and ceilings as applicable. Coordinate shop drawings prepared by separate entities. Show installation sequence when necessary for proper installation.

SECTION 3.03 Document Control System

1. The Design-Builder shall have 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 Authority's procedures for electronic submission and receipt of documents as directed by the Authority 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 Authority for the use of the System.

2. Within fifteen (15) calendar 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 Authority for implementation and support for Design-Builder's use of the System.
3. Employees of Authority, the Design-Builder's Subcontractors and Suppliers who will use the System must complete the training provided by the Design-Builder. Each such employee must furnish a valid e-mail address to the Authorized Authority 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 Authority 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 Authority 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

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 Authority.
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 ("Surveyor") as hereinafter described. The Surveyor (i) is subject to the approval of the Authority; (ii) shall be licensed in the State of Illinois; (iii) must not be an employee of the Design-Builder; and (iv) must not have any interest in the Contract.
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 written notice to the Authority Representative immediately, and receiving notice from the Authority 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 Design-Builder at the time the Contract was bid, or at the time the GMP was established, 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, an equitable adjustment in the Contract 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 3.04.3.b 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 Authority 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

1. Design-Builder warrants and represents that:
 - a. 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 Authority; 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.
 - b. 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.
 - c. Except for the contents of this Contract, no representation, statement or promise, oral or written, or of any kind whatsoever, by the Authority, its officials, agents, representatives or employees, has induced the Design-Builder to submit a bid 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 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.
 - d. The Design-Builder was given ample opportunity and time to review the Contract Documents prior to submittal of its bid.
 - e. The Design-Builder acknowledges and understands that the Authority materially relied upon the Design-Builder's bid in its selection of the Design-Builder to perform the Work.
 - f. Design-Builder's submittal of its bid establishes that the Design-Builder, in preparing and submitting its bid on which this Contract is based, has complied with and given full consideration to the following bidding requirements:
 - i. The Design-Builder did obtain for bidding purposes copies of the complete Contract Documents as identified in the advertisement for bids and all addenda issued by the Authority and has become familiar with the same and all Contract requirements and conditions described therein.
 - ii. 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.
 - iii. The Design-Builder waives any claim for relief because of alleged mistakes or omissions in its bid and that the Design-Builder will be held strictly to its bid as presented.
2. The Design-Builder has the capability and financial resources to perform all of the provisions and requirements of this Contract.
3. 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 Authority Representative, in writing, of the dates on which Work related to a particular Milestone, or Phase (as such terms are used in Book 1, including the Schedule), if applicable, or the Project as a whole will be ready for inspection by the Executive Director (or his or her designee), Authority 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 Authority Representative concurs that the work will be ready for inspection and/or testing on the date stated, the Executive Director (or his or her designee),

Authority 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 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 Executive Director, or his or her designee, will determine whether Substantial Completion has been achieved and will prepare a Certificate of Substantial Completion for execution by the Design-Builder.

2. Final Completion and Acceptance of the Work

a. Punch List Completion

- i. 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 Authority. The Design-Builder agrees to begin performance of Punch List Work immediately after receipt of the Punch List.
- ii. Failure of the Design-Builder or its Subcontractors to begin the Punch List Work within three (3) business Days after receipt of the Punch List will be construed as failure to prosecute the Work of the Contract.
- iii. Punch List Work will be continuously prosecuted once begun and completed within the period set forth in the Punch List by the Authority Representative. The Authority Representative shall establish the period for completion of the Punch List Work after consultation with the Design-Builder. The period established by the Authority Representative will be based on the Authority Representative's reasonable, good faith estimate of the time necessary for the Design-Builder to complete the Punch List Work.

b. Final Completion and Acceptance of the Work

- i. When the Design-Builder deems the Work, including all Punch List Work, to be complete, the Design-Builder must notify the Authority 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 five (5) Days in advance of said date. If the Authority Representative concurs that the Work will be ready for inspection or testing on the date given, , the Authority 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 Authority 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.
- ii. No action of the Authority, the Authority Representative, the Architect, or their respective Executive Directors, board members, officers, employees, or agents is to be construed as accepting Work done or material furnished in the performance of this Contract, which Work or materials are not in accordance with those specified and required by the Contract. The issuance of notice of Final Completion or the final payment does not affect the rights of the Authority 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.

ARTICLE 4. DESIGN-BUILDER'S RIGHTS OF ASSIGNMENT AND SUBCONTRACTS

SECTION 4.01 No Assignment of Contract

1. 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 Design-Builder from any of its obligations under the terms of the Contract, and Design-Builder shall remain responsible for satisfactory performance of all Work undertaken by its Subcontractor(s).

SECTION 4.02 No Assignment of Contract Funds

1. The Design-Builder 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 Design-Builder, without the prior written consent of the Executive Director, is void so far as the Authority is concerned.

SECTION 4.03 Subcontracts

1. All Subcontractors which provide labor to the project are subject to the approval of the Executive Director before they may provide material, labor or services on the Project. The Design-Builder, 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 Design-Builder and Subcontractor. All subcontracts must be in writing. Design-Builder shall include a provision in all subcontracts for the Work that incorporates this Contract by reference, and requires all Subcontractors to comply with the terms and conditions of this Contract. All subcontracts must require that any Work to be performed will be performed in strict accordance with this Contract.
2. All requests to subcontract for companies, which provide jobsite labor for the Project, must be submitted for approval on the form by the Authority in a form to be provided by the Authority.
3. The Design-Builder may not make any substitution for a Subcontractor that has been accepted by the Executive Director, unless such substitution is acceptable to the Executive Director. Design-Builder shall provide the Executive Director with timely notice of any proposed substitution so as not to impede the progress of the Work.
4. The Design-Builder shall, in each of its subcontracts for the Work, include the following provision whereby each Subcontractor agrees to the assignment of its subcontract to the Authority, or the Authority's assignee, without further approval or action by such Subcontractor:
 - a. "Design-Builder has assigned this subcontract to the Authority, effective upon written assumption of such assignment by the Authority in the event of Design-Builder's default or early termination of Design-Builder's contract with the Authority. Subcontractor hereby consents to such assignment and assumption. Subcontractor acknowledges and agrees that, in the event of such an assignment and assumption, the Authority will have no liability to Subcontractor for work performed by Subcontractor prior to the effective date of the assignment and assumption for which the Design-Builder has been paid by the Authority, and that Subcontractor shall look solely to Design-Builder for any compensation or other obligations arising under the subcontract prior to such date."
5. The Design-Builder hereby assigns any or all subcontracts to the Authority, effective upon the Authority's exercise, in its sole discretion, of its rights to assume such assignment as a remedy for Design-Builder's default or in the event of early termination.
6. The subcontract must preserve the rights of the Authority 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 Design-Builder must require each Subcontractor to enter into similar subcontracts with its Subcontractors. The Design-Builder will provide to each Subcontractor, prior to the execution of such subcontract, copies of the provisions of this Contract to which the Subcontractor will be bound.

7. There is no privity between Subcontractors and the Authority. Except as may otherwise be explicitly provided in the Contract Documents, Subcontractors have no rights as third-party beneficiaries under this Contract. The Design-Builder will require the Subcontractors to communicate with the Authority through the Design-Builder only.
8. The Design-Builder shall at all times be responsible for payments to Subcontractors for Work performed by such Subcontractors. Notwithstanding the foregoing, the Authority reserves the right to make direct payments to Subcontractors in the event the Executive Director, in his sole discretion, deems it to be in the best interests of the Authority to make such direct payments.
9. The Design-Builder shall require its Subcontractors to agree, in writing, to submit to the Design-Builder applications for payment in such reasonable time as to enable the Design-Builder to apply for payment as herein-specified under Article 16. "Payments."
10. Design-Builder shall provide Subcontractors an opportunity to be present and to submit evidence in any decision involving a Subcontractor's rights.
11. The Design-Builder shall, in each of its subcontracts for the Work, require the Subcontractors to agree to pursue any claims or disputes that a Subcontractor may have with respect to the Work through the process for resolving claims and disputes set forth in Article 18 hereof.

SECTION 4.04 Authority's Right to Assign

1. The Authority expressly reserves the right to assign or otherwise transfer all or any part of its interests hereunder without the consent or approval of the Design-Builder.

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

SECTION 5.01 Indemnification

1. Indemnity

- a. The Design-Builder agrees to protect, defend, indemnify, and hold the Authority, the User Agency and their respective officers, officials, representatives, and employees (hereafter "the Indemnified Parties"), free and harmless from and against any and all claims, damages, demands, injury or death, in consequence of granting this Contract or arising out of or being in any way connected with the Design-Builder's performance under this Contract except for matters shown by final judgment to have been caused by the Indemnified Parties' negligence. The indemnification provided herein will be effective to the maximum extent permitted by applicable law. This indemnity extends to all legal costs, including, without limitation: attorney fees, costs, liens, judgments, settlements, penalties, professional fees, or other expenses incurred by the Authority, including but not limited to, fines and penalties imposed by public bodies and the reasonable settlement of such claims. This indemnification is not limited by any amount of insurance required under this Contract. Further, the indemnity contained in this section will survive the expiration or termination of this Contract.
- b. The Design-Builder shall be solely responsible for the defense of any and all claims, demands, or suits against the Indemnified Parties, including without limitation, claims by any employees, subcontractors, agents, or servants of Design-Builder even though the claimant may allege that the Indemnified Parties were in charge of the Services or allege negligence on the part of the Indemnified Parties. The Authority will have the right, at its sole option, to participate in the defense of any such suit, without relieving the Design-Builder of its obligations hereunder.
- c. "Injury" or "damage" as these words are used in this section will be construed to include, but shall not be limited to, injury or damage consequent upon the failure of or use or misuse by Design-Builder, its subcontractors, agents, servants, or employees, of any scaffolding, hoist cranes, stays, ladders, supports, rigging, blocking or any and all other kinds of items of equipment, whether or not the same be owned, furnished, or loaned by the Indemnified Parties.
- d. The Design-Builder will promptly provide, or cause to be provided, to the Executive Director and the Authority's General Counsel copies of such notices as Design-Builder may receive of any claims, actions, or suits as may be given or filed in connection with the Design-Builder's performance or the performance of any Subcontractor and for which the Indemnified Parties are entitled to indemnification hereunder and to give the Indemnified Parties authority, information, and assistance for the defense of any claim or action.

SECTION 5.02 Performance and Payment Bond

1. Before award of the Contract, the Design-Builder will deliver to the Authority 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 Authority and the bond must be in the form provided by the Authority. The bond must cover the warranty period required by the Contract.
2. In case of neglect, failure, or refusal of Design-Builder to provide satisfactory sureties when so directed within seven (7) Days after such notification, the Authority may declare this Contract forfeited, but such forfeiture will not release Design-Builder 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 Authority, unsatisfactory, or unable to respond to damages in case of liability on such bond, the Authority will notify the Design-Builder and direct that a bond issued by a satisfactory surety or sureties be provided forthwith.
4. Surety for Bond. The Performance and Payment 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 Design-Builder must procure and maintain at all times, at Design-Builder's own expense the minimum insurance coverages and requirements specified in Book 1.

ARTICLE 6. PERMITS AND LICENSES

SECTION 6.01 Permits, Licenses, and Regulations

1. Permits

- a. The Design-Builder is responsible for obtaining all permits necessary for the construction of the Project, including but not limited to sewer, water, crane, fence, driveway, and building permits, as prescribed by the City of Evanston and public utilities, and any other permits that may be necessary. All permits fees will be borne by the Design-Builder.
- b. The Design-Builder will confer with the Authority Representative prior to applying for the City building permit, and the parties will agree on the process for obtaining the City building permit prior to Design-Builder's application for such permit. The Authority Representative will assist the Design-Builder in the building permit process, but the Design-Builder is solely responsible for obtaining all required permits in a timely fashion.

2. Licenses and Regulations

- a. The Design-Builder will include, in the bid for the Project, a statement that it will obtain, and pay for all licenses and certificates of inspection required or necessary for the execution and completion of the Work.
- b. The Design-Builder must give all notices and comply with all laws, ordinances, codes, rules and regulations bearing on the conduct of the Work. Design-Builder will bear all costs arising from any Work performed that is contrary to such laws, ordinances, codes, rules, and regulations.
- c. The Design-Builder must also comply with the current regulations of the National Board of Fire Underwriters where applicable, and all other codes named in the specifications for the various divisions of the Work.
- d. Regulations applicable to this Project include, but are not limited to, the most current editions of the following:
 - i. City of Evanston Building Codes
 - ii. National Electrical Code (NEC)
 - iii. The National Fire Prevention Association (NFPA)
 - iv. Illinois Plumbing Code
 - v. Illinois Accessibility Standards
 - vi. Americans with Disabilities Act Guidelines (ADAG)
 - vii. ASHRAE/IES, Standard Efficiency Guidelines
- e. Where requirements of the applicable building codes differ, the Authority Representative shall determine which requirement shall govern and the Design-Builder shall comply with the governing requirement. If the Design-Builder believes it is entitled to additional compensation it must follow the requirements set out in Article 18 "Claims and Disputes" of Book 2.
- f. Submit copies of all permits, licenses, and similar permissions obtained, and receipts for fees paid, to the Authority Representative.
- g. It shall be the responsibility of the Design-Builder to coordinate, procure and pay for all ties necessary for the completion and operation of the fire alarm system. Design-Builder shall arrange and pay for all fees as required by the City of Evanston.

ARTICLE 7. DESIGN-BUILDER'S PRACTICES AT SITE

SECTION 7.01 Hours of Work

1. The Design-Builder 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 Contract Price. If the Project falls behind schedule, the Design-Builder 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 additional cost to the Authority.
2. The Design-Builder 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 Authority; 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. Design-Builder will cooperate fully with the Authority, Authority Representative, Architect, and the User during construction operations to minimize conflicts and interference and to facilitate occupant usage and operations.

During occupied hours, the Design-Builder will limit construction operations to methods and procedures which will not adversely and unduly affect the environment of occupied spaces. The Design-Builder 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 Design-Builder 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 Design-Builder desires to perform Work outside the hours of 7:00 am through 3:30 P.M., Monday through Friday, the Design-Builder will request written authorization from the Authority not less than 48 hours in advance.

SECTION 7.02 Cleaning Up

1. During the Construction, the Design-Builder 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 Authority, 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 Authority, the Design-Builder is responsible for immediate remediation within 48 hours of notification. The Design-Builder's failure to act accordingly will result in completion of remediation work by the Authority at the Design-Builder's expense.
2. As a condition of Final Completion and Acceptance of the Work, the Design-Builder 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 Design-Builder 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 facilities or infrastructure due to Design-Builder's operations.
4. Design-Builder is solely responsible for and assumes all liability associated with off-Site disposal of any Hazardous Materials generated as a result of Design-Builder's construction activities.

SECTION 7.03 Project Health and Safety

The Design-Builder is responsible for project health and safety as of the date stated in the Notice to Proceed.

1. Worker's Health and Safety

- a. Design-Builder has sole and complete responsibility for implementation of a safety program. The Design-Builder's safety program ("Safety Program") must include the Work of all the Design-Builder's Subcontractors. The Safety Program must be submitted to the Authority before the start of the Work. The Safety Program shall, at a minimum, set forth and maintain for the Design-Builder and for Subcontractors. As a part of Design-Builder's Safety Program, Design-Builder acknowledges and agrees that the Safety Manual does not in any way attenuate, limit, transfer or otherwise affect Design-Builder's sole and complete responsibility and liability for its Safety Program.
- b. The Design-Builder shall designate a safety representative for the project. This person shall be present whenever work is being performed at the site or whenever delivery of materials, products or equipment is being made at the site. The safety representative must have successfully completed the OSHA 30 hour course.
- c. Although the Authority Representative will observe construction and give the Design-Builder opinions and suggestions about safety defects and deficiencies, the Authority Representative's suggestions on safety will in no way relieve the Design-Builder of its responsibility for safety on the project. The Design-Builder has sole responsibility for safety.
- d. The Design-Builder's must also comply with the "Health and Safety Act" of the State of Illinois. The rules pursuant to this Act are on file with the Secretary of State of Illinois and identical in every respect with the standards in effect under the Federal, OSHA, and law, pursuant to orders of the Illinois Industrial Authority. The Federal and State standards require that the Design-Builder provide reasonable protection to the lives, health and safety of all persons employed under the Contract. The State act, rules and the applicable parts thereof will be considered as part of these specifications.
- e. The Design-Builder must take any precautions that may be necessary to render all portions of the Work secure in every respect to decrease the possibility of accidents from any cause. The Design-Builder will furnish and install all necessary facilities to provide safe means of access to all points where Work is being performed and make all necessary provisions to insure the safety of workers and of consultants and inspectors during the performance of the Work.
- f. The Design-Builder must keep, on the site of the Work, completely equipped first aid kits that are readily accessible at all times. The Design-Builder will designate a person on each shift, acceptable to the Authority Representative, to be in charge of first aid and will cause such person to receive proper instructions therein.
- g. Only such materials and equipment as are necessary for the construction of the Work under this Contract, as determined by the Authority Representative, will be placed, stored or allowed to occupy any such space of the site of the Work. If gasoline, flammable oils, or other highly combustible materials must be stored at the site, they will be stored in approved safety containers.

2. Hazardous Materials

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

3. Coordination With Other Contractors – Safety

- a. In accordance with the provisions of Article 8. "Coordination With Others," the Design-Builder will cooperate with any other Design-Builder that may be performing work on the Site in connection with the compliance with regulations of OSHA and all other federal, state, and municipal laws, rules and regulations relating to Site safety and practice including, as may be relevant, correcting Work within abatement periods, requesting extensions on abatement periods when work has been done by other contractors, and furnishing such supporting information or material as may be necessary to fully protect the rights of the Authority, its representatives, and other contractors on pending or prospective violation orders.

4. Public Health and Safety

- a. The Design-Builder must prevent the public from gaining access to the Project Site.
- b. The Design-Builder will take all necessary precautions to ensure the safety of the public and to prevent accidents or injury to persons or damage to property adjacent to the Site where the Work is being performed.
- c. The Design-Builder will erect and properly maintain at all times, as required by laws and regulations and the conditions and progress of the Work, proper safeguards for the protection of the public and post signs warning against the dangers created by falling materials, open excavations, and all other hazardous conditions.
- d. The Design-Builder must remove all snow and ice, and salt all sidewalks adjacent to the project site for the proper protection of pedestrians.
- e. If, in the prosecution of the Work, it is necessary to excavate or occupy any street, alley, or public grounds of the City of Evanston, the Design-Builder 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 Design-Builder is liable for all damage caused by the Design-Builder, its agents, employees, or Subcontractors of any tier in the excavation or occupation of any street, alley, or public grounds, and indemnifies the Authority pursuant to Section 5.01 "Indemnification."

5. Construction Site Cleanliness

- a. The Design-Builder must comply with all requirements of the municipality where the Project is located. For example, if the Project is located in the City of Chicago, Design-Builder must comply with Section 13-32-125 of the "Chicago Municipal Code" entitled, "Construction site cleanliness."
- b. The Design-Builder must mow all grass or weeds on the site as directed by the Authority Representative.

SECTION 7.04 Protection of Work and Property

1. The Design-Builder will continuously protect the Work and the Authority's property from damage, injury or loss arising in connection with operations under the Contract Documents. The Design-Builder will make good any such damage, injury or loss. Design-Builder is responsible for providing sufficient Site security, including, but not limited to, watchmen and construction fencing. Dogs, including but not limited to watch dogs, are not allowed on the Site at any time.
2. The Design-Builder 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.
3. The construction period may span the winter season and other times in which cold or inclement weather may be anticipated. The Design-Builder must make all provisions required and necessary to work during inclement or winter conditions so as to complete all work in accordance with the approved schedule. The actions necessary include, but are not limited to, temporary protection and weatherproofing, temporary heat, temporary lighting, and any other measures necessary or prudent, in addition to those delineated in Section 7.07, which will be provided by the Design-Builder as part of the Base Contract Price.

4. Adequate precautions will be taken against fire throughout all the Design-Builder's operations. Flammable material must be kept at an absolute minimum, and, will be properly handled and stored in accordance with all applicable codes and standards. Except as otherwise provided herein, the Design-Builder 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.
5. In occupied or partially occupied buildings, the Design-Builder 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 Design-Builder will provide dust-proof barriers to isolate areas of Work from all occupants of 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, when authorized by the Authority Representative, the Design-Builder may resume operations. Any such disruption to the progress of the Work shall not be the basis for a claim by Design-Builder.
6. The Design-Builder 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 Design-Builder 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 costs of all such operations are part of the Base Contract Price. The Design-Builder, before commencement of any part of the Work, must give any notices required to be given to any adjoining landowner or other parties.
7. If, in the opinion of the Authority, the Design-Builder's Work endangers adjoining property, the Work will be stopped when directed in writing by the Authority Representative, and the method of operation changed in a manner acceptable to the Authority.
8. The Design-Builder 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 Design-Builder, the Design-Builder will make all necessary repair thereof or replacements thereof at no cost to the Authority. It is the Design-Builder's responsibility to provide photographic evidence of the condition of the site as well as adjacent property, and submit such to the Authority Representative prior to commencement of the Work

SECTION 7.05 Accidents

1. If death, serious injury, including any time an ambulance is called to the site, or serious damages are caused, the Design-Builder must notify the Authority Representative immediately via telephone or messenger.
2. The Design-Builder will promptly report in writing to the Authority 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 Design-Builder to submit a written accident report, within 24 hours of the occurrence, containing the following:
 - a. Name of Person or Persons involved and their Home Address(es), telephone numbers and other contact information
 - b. Location of Occurrence
 - c. Time of Day and Date
 - d. Description of Occurrence
 - e. Statements of Witnesses, including their home addresses, telephone numbers and other contact information
 - f. Signature of Design-Builder's Superintendent
 - g. Any other documentation of the accident, if any (i.e. police report, OSHA report, medical documentation, etc.)
3. The Design-Builder must send a copy of the accident report to the Authority Risk Manager, and to the Authority Representative.
4. If any claim is made by anyone against the Design-Builder or any Subcontractor on account of any accident, the Design-Builder will promptly report the facts and full details of the claim in writing to the Authority Representative.

SECTION 7.06 Coordination with Occupants for Access and Security

1. The area available to the Design-Builder for the performance of the Work is shown on the drawings. Material and equipment storage and field offices shall be confined to the area indicated on the Drawings.
2. Access to the Project will be limited to the routes indicated. The Design-Builder must obtain prior written approval from the Authority Representative for any proposed alternate routes.
3. If the Authority or User Agency continues to occupy portions of the Project during construction, the Design-Builder must schedule and conduct the Work so as to cause the least interference with the operations of the Authority and User Agency.
4. Occupied areas include all areas in which the Authority or User will conduct regular activities, or which will be accessible to the public, and access to such areas.
5. The Design-Builder will obtain the Authority Representative's approval of the period, hours and areas to be used prior to commencement of Work.
6. The Design-Builder will limit access through occupied areas to those days and times approved by the Authority Representative.
7. Access to and use of existing facilities is permitted only for the performance of the Work and only after approval has been obtained from the Authority Representative.
8. When the following must be interrupted, the Design-Builder will provide alternate facilities acceptable to the Authority Representative or schedule the interruption for a time when occupancy will not be impaired:
 - a. Emergency means of egress, or
 - b. Utilities and building systems which must remain in operation to allow safe and useful occupancy.
9. Security Procedures. The following security procedures must be followed by the Design-Builder:
 - a. Limit access to the Project to persons involved in the Work.
 - b. Provide secure storage of materials for which the Authority has made payment and which are stored on Site.
 - c. Secure completed Work prior to occupancy as required to prevent loss.
 - d. Secure and protect facilities and property of the Authority and User in areas of the Work.

SECTION 7.07 Temporary Facilities and Services

1. DEFINITION:

- a. Temporary Facilities: Construction, fixtures, fittings, and other built items required to accomplish the Work but which are not incorporated into the finished Work.
- b. Temporary Utilities: Temporary sources of electric power, water, natural gas, telephone service, internet and other services as are necessary for execution of the Work, obtained from public utilities, other main distribution systems, or temporary sources constructed for the Project, but not including the fixtures and equipment served, or the permanent utility connections.

2. SUBMITTALS

- a. Reports of inspections, tests, and approvals for the installation and use of construction facilities, which are made or given by public authorities.
- b. Copies of permits required by public authorities.

3. QUALITY ASSURANCE

- a. The Design-Builder must comply with requirements of governing authorities, as to type, quantity, location, and use of temporary facilities.
- b. The Design-Builder must comply with requirements of public utilities affected.

4. PROJECT CONDITIONS

- a. The Design-Builder must obtain easements where required.

5. SEQUENCING AND SCHEDULING

- a. The Design-Builder must perform all required connections to the existing utility systems without disruption to existing services. If disruption of the existing services is required, do not proceed without the approval of the Architect and Authority Representative, requested not less than seven (7) Days, in advance of the time of the expected disruption.
- b. The Design-Builder must maintain required facilities until not needed or until Substantial Completion, and must remove facilities before Final Completion and Acceptance.
- c. The Design-Builder must change over to use of permanent facilities, when applicable, as soon as possible, except when use of permanent facilities is not allowed.

6. MATERIALS

- a. General: The Design-Builder must provide materials which are both suitable for the use and durable enough to withstand the use and abuse to be expected.
- b. Temporary Heating Units: UL or FM labeled for the fuel used; do not use gasoline-burning, open burning, or solid fuel heaters or salamanders.
 - i. Use equipment that is known to be safe and that will not damage Work in progress.
 - ii. Provide trained personnel as required to operate and maintain equipment during working and non-working hours as necessary to maintain the Work at the temperatures specified in the Contract documents, or as specified by the product manufacturers, whichever is more stringent.

7. TEMPORARY UTILITIES

- a. Temporary Water Service, Design-Builder Obligations:
 - i. Provide water adequate for demand of construction operations.
 - ii. Provide piped water service:
 - a. Do not use permanent piping system to distribute nonpotable water.
 - b. Connect to existing water main.
 - c. Provide meter and shut-off valve.
 - d. Disinfect temporary piping before use.
 - e. Take precautions to prevent damage due to leaks and spills.
- b. Temporary Power and Light, Design-Builder Obligations:

- i. Provide electricity adequate for demand of construction operations.
- ii. Provide electrical service:
 - a. Obtain temporary service from local utility.
 - b. Provide disconnect at connection to service.
 - c. Provide service conductors and equipment.
 - d. Provide metering equipment.
 - e. Provide service to other temporary facilities specified.

8. PROTECTIVE FACILITIES

- a. Fire Protection Facilities: The Design-Builder must provide, at a minimum, the temporary facilities required by the authorities having jurisdiction.
 - i. The fire extinguishers that are to be installed in the completed building shall not be used during construction.
 - ii. Put permanent facilities into operation as soon as possible.
- b. Site Fence: 8'-0" high, chain link fence, Design-Builder Obligations.
 - i. Furnish, install and maintain to prevent unauthorized access to Site by people and animals.
 - ii. Locate fence where indicated on Drawings.
 - iii. Provide gates as required for access. Coordinate gate locations with Authority Representative.
 - iv. Do not remove site fence until other security facilities, either temporary or permanent, are in place and in operation.
- c. Temporary Storage Sheds, Design-Builder Obligations:
 - i. Coordinate location with Authority Representative.
 - ii. Provide and maintain weather-tight shed for storage of tools.
 - iii. Paint the exterior.
 - iv. Subject to the approval of the Authority Representative.
- d. Temporary Stairs and Ladders, Design-Builder Obligations:
 - i. Furnish and maintain all necessary temporary stairs, ladders, ramps, chutes, runways, derricks, etc.

9. EMPLOYEE FACILITIES, DESIGN-BUILDER OBLIGATIONS

- a. Temporary Lighting: Provide, at a minimum, the lighting required by law.
- b. Toilet Facilities: Provide temporary toilet facilities.
 - i. Clean and maintain toilet facilities.
 - ii. Provide toilet tissue for each facility.

- iii. Provide well-ventilated and weathertight enclosures.
- iv. Arrange for sewer and water services.

10. TEMPORARY CONSTRUCTION, DESIGN-BUILDER OBLIGATIONS

- a. Cooperate with other Contractors in location of temporary facilities.
- b. Temperature control and ventilation facilities: The Design-Builder shall provide adequate facilities:
 - i. To provide proper conditions for installation.
 - ii. For drying and curing of completed Work.
 - iii. For protection from deterioration due to high or low temperatures and humidity.
 - iv. To provide suitable working conditions.
 - v. Provide heating after building is enclosed, adequate to maintain minimum of 65 degrees F.
- c. Temporary enclosures for heating: When general building heating is required for construction operations before completion of building enclosure, the Design-Builder shall provide temporary construction to close openings in building enclosure.
- d. Temporary enclosures for weather resistance: When building enclosure is not yet complete but interior construction may be damaged by weather, the Design-Builder shall provide temporary enclosures adequate to keep out weather.
- e. Temporary partitions: the Design-Builder shall provide temporary dustproof partitions at juncture of new and existing building in locations required by construction operations that will exclude dust, excessive noise, or other disruption to the User or to the construction schedule, and as indicated on Drawings.
 - i. Minimum of 2-hour fire-rated construction, approved by authorities having jurisdiction.
 - ii. Dustproof partitions: Constructed of framing, gypsum board, plywood, and plastic sheeting, full height, with dustproof access doors. Seal joints with sealant or durable tape.

11. PROJECT CONSTRUCTION SIGN(S), DESIGN-BUILDER OBLIGATIONS

- a. Maintain project construction signs installed by others.

12. TERMINATION AND REMOVAL, DESIGN-BUILDER OBLIGATIONS

- a. Remove temporary facilities when no longer needed, or when use of appropriate permanent facility is approved, but not later than Substantial Completion.
- b. Exception: When longer usage is requested by the Architect or Authority Representative.
- c. Complete any permanent Work that was delayed until removal of temporary facilities.
- d. Permanent facilities used during construction: Clean all such facilities. Replace any parts that are worn in excess of that expected during normal usage.
- e. Dispose of Project sign(s) not claimed by the Authority.

ARTICLE 8.

COORDINATION WITH OTHERS

SECTION 8.01 Other Contractors on the Site

1. The Authority reserves the right to let other contracts in connection with the Work. The Design-Builder will afford other contractors reasonable opportunity for the introduction and storage of their materials and for the performance of their work. Design-Builder 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 Authority's separate contractors will not in any way constitute acceptance or partial acceptance of the Work by the Authority.
2. The Design-Builder 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 Design-Builder's Work depends, for proper performance or result, upon the work of any other Design-Builder, the Design-Builder will inspect and measure the work of the other Design-Builder and promptly report to the Authority Representative any defects or discrepancies in such work. The Design-Builder's failure to inspect and make such report will constitute an acceptance of the other Design-Builder'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 Authority Representative to secure the completion of the various portions of the Work in a coordinated manner.

SECTION 8.02 Mutual Responsibility of Contractors

1. The Design-Builder is responsible for Work not completed or accepted due to the presence and operations of other contractors.
2. The Design-Builder is liable, financially or otherwise, in connection with this Contract, and must protect and save harmless the Authority 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 Design-Builder, where separate contractors or their subcontractors are employed on the Site, will not make claims against the Authority for loss or damage or injury caused by any fault or negligence of such other Design-Builder or subcontractor. The Design-Builder will look solely to such contractors or subcontractors for recovery for any such damage or injury.
4. If any separate Design-Builder or its subcontractor suffers loss or damage through any acts or omission on the part of the Design-Builder, or any of its subcontractors, the Design-Builder will reimburse such other Design-Builder or subcontractor. If such separate Design-Builder or its subcontractor asserts any claim against the Authority on account of any damage or loss alleged to have been so sustained, the Authority will notify the Design-Builder, and the Design-Builder will save the Authority harmless against such claims as provided in Section 5.01 "Indemnification."

SECTION 8.03 Coordination with Others

1. The Design-Builder is to inform the Authority Representative when coordination of the Design-Builder's Work with others is required. The Design-Builder shall notify each party involved, in writing, of the schedule and nature of activities that require such coordination.

ARTICLE 9. PERSONNEL

SECTION 9.01 Competency of Workers

1. The Design-Builder must employ only competent and efficient laborers, mechanics or artisans. Whenever, in the opinion of the Authority 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 Design-Builder must, upon request by the Authority Representative, remove such worker from the Work. The Design-Builder 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 Design-Builder 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 Authority. The Design-Builder shall fully comply with all project specific staffing requirements indicated in Book 1, Section II.B Mandatory Project Specific Design-Builder Staffing Requirements. In the event the Executive Director determines, in his or her sole discretion, that additional supervision or administration is required, Design-Builder shall furnish sufficient personnel to perform such supervision or administration, all at Design-Builder's own expense.
2. Subsequent to notice of contract award, but prior to the Notice to Proceed, the Design-Builder will select a Project Manager and submit his/her résumé to the Authority Representative for the approval of the Authority. 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 Authority or Architect in order to render reports on the progress of the Work. The Design-Builder will not change Project Manager without the consent of the Authority, unless such staff member proves to be unsatisfactory to the Design-Builder and ceases to be in its employ.

SECTION 9.03 Superintendence

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

SECTION 9.04 Scheduler

1. To assist in the preparation and maintenance of the Schedule, the Design-Builder 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 Design-Builder has qualified personnel on staff, the Design-Builder may perform the required scheduling with its own organization.
2. Prior to engaging a consultant or using staff personnel, and within five (5) Days after award of Contract, the Design-Builder will submit to the Authority Representative:

- a. The name and address and contact information of the proposed consultant or staff person.
 - b. Sufficient information to show that the proposed consultant or the Design-Builder'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 Design-Builder's staff has prepared. These 3 CPM Schedules must be for projects similar in complexity and magnitude to this Project.
3. The Authority has the right to approve or disapprove employment of the proposed consultant or the performance of the Schedule requirements of the Contract by the Design-Builder's staff, and the Authority Representative will notify the Design-Builder of its decision within seven (7) Days of receipt of the information. In case of disapproval, the Design-Builder will submit another person with supporting documents to the Authority Representative within seven (7) Days of the disapproval. The Authority also reserves the right to disqualify the consultant or Design-Builder's staff personnel at any time throughout the Project if the preparation, presentation, reporting, and updating of do not, in the Authority's sole opinion, meet the degree of detail described in the Contract Documents. Such approval or disapproval does not release the Design-Builder of any of its obligations under this Contract.

SECTION 9.05 Mechanical and Electrical Coordinator

(1) INTENTIONALLY OMITTED

SECTION 9.06 Sustainability Coordinator

1. The Design-Builder must have a designated Sustainability Coordinator to assist the Design-Builder in fulfilling all Leadership in Energy and Environmental Design (LEED) and/or Sustainability required tasks. The Sustainability Coordinator is subject to the approval of the Authority, and shall be a LEED Accredited Professional (LEED AP) with experience performing LEED tasks on projects of similar size and complexity in order to be approved by the Authority.

SECTION 9.07 Intentionally Omitted.

SECTION 9.08 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. Design-Builder'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 Design-Builder 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 Design-Builder to any increased compensation under the terms hereof.
4. As a condition of making payment to the Contract, the Authority may request the Design-Builder 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

1. TIME IS OF THE ESSENCE IN THIS CONTRACT. The Design-Builder agrees that it will commence the performance of the Work on the date set forth in the Notice to Proceed issued by the Authority and that it will complete the Work on or before the Date of Substantial Completion, and will complete the portion of the Work associated with any interim milestone as required in the Schedule of Work.

SECTION 10.02 Design-Builder's Construction Schedule

1. General
 - a. Within ten (10) days of the Notice to Proceed, the Authority Representative shall lead a scheduling meeting with the Design-Builder to review the schedule and confirm updating requirements for the Project.
 - b. Design-Builder shall provide two schedule reports. The target schedule ("Target Schedule") shall be submitted and approved as provided herein and shall serve as the schedule for the Project. The Target Schedule will be updated each month with progress information and may include changes to activity relationships or logic, but may not change Project duration or milestones. The 3-week Look-Ahead schedule will show current planned activities on the Project. The Target Schedule and 3-week Look-Ahead schedule are Deliverables intended to facilitate communication on the Project and will not amend or supersede the Design-Build Schedule.
 - (1) Design-Builder shall, within thirty (30) days of the Notice to Proceed, submit a Proposed Target Schedule for the Work to the Authority for review and conditional approval that meets all the requirements of this Section 10.02.1 except for the Cost loading requirements of Paragraph 10.02.1.g.(4). Within sixty (60) days of the Notice to Proceed, Design-Builder shall submit a cost and resource loaded schedule to the Authority Representative for review and final approval that meets all the requirements of this Section 10.02.1 (Target Schedule) including 10.02.1.g(4) Cost Loading. The Proposed Target Schedule and the Target Schedule must be provided in hard copy and editable electronic format.
 - (2) The Schedule will use the Critical Path Method (CPM). The Design-Builder will utilize Primavera Project Planner (P3 version 3.1 or P6 version 6.1), as a scheduling software package.
 - (3) The Schedule will, at a minimum, indicate the dates for the starting and completion of the various stages of the Work, including, without limitation, the following: the placing of material orders; delivery of materials and equipment; submittal and approval of all required Submittals; procurement of material and equipment furnished by the Design-Builder; interface activities performed by others upon which the Design-Builder's schedule depends; all Work activities and field construction operations including any weather related scheduling requirements to account for weather delays due to adverse conditions that are less than 25% more severe than the monthly averages for temperature or precipitation for Chicago (as determined by the National Oceanic & Atmospheric Administration); equipment installation, testing, and balancing; commission activities; and all Project Milestones as required in Book 1.
 - (4) The Design-Builder's Schedule will consist of detailed 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 the Target Schedule.
 - (5) Specifications applicable to the Schedule and network diagram.
 - c. Each separate sheet will include the Project name, Contract number, Design-Builder'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.

- d. The Schedule will show the order and interdependency of activities, indicating the sequence in which the Work is to be performed "as planned" by the Design-Builder. The Schedule will clearly describe and indicate the critical path, which shall be defined as the longest path sequence of activities in the Project Schedule Network which requires the longest total amount of time to complete.
- e. The Schedule shall utilize a Work Breakdown Structure (WBS) that consists of at least three levels of detail as described below:

WBS Level	Detail Level	Information Shown
Level 1	Project	Overall project duration and milestone dates.
Level 2	Summary Elements	Elements of the Work organized by CSI Division or trade applicable to the activity
Level 3	Individual Activities	Activities as defined in Section 10.02.1(f) below.

Design-Builder may utilize a more detailed WBS provided it is clearly defined in the Schedule submission.

- f. Two color copies and one electronic copy on CD (editable in the software used to produce the Schedule) of the Schedule will be submitted to the Authority Representative.
- g. The following items define the term "Activities" as it pertains to the Schedule:
 - (1) Each Activity will be a unit of Work, which requires an amount of time for its performance and shall be a component of a Summary Element.
 - (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 Design-Builder 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 Authority, with no activity durations in excess of twenty (20) days, except such non-construction activities as procurement, delivery or submittal activities or other activities as may be approved by the Authority.
 - (5) Each Individual Activity on the Design-Builder's Target Schedule shall be cost and resource loaded.
 - i. Activities performed by others, including but not limited to other contractors, agencies, utilities or companies, that must be completed prior to the start of the Design-Builder's Work or portion of Work must be included in the Design-Builder's schedule as milestones and identified with a designation approved by the Authority.
- h. The following information will be furnished on the network diagram for each activity in the schedule:
 - (1) Activity ID: The Design-Builder will utilize the Technical Specification division and section numbers in assigning activity IDs to the related portions of Work.
 - (2) Description of the activity.
 - (3) Duration of the activity.
 - (4) Cost Loading: The cost estimate/budget to perform the Individual Activity of work. The total cost loading of all Individual Activities shall equal the Total Base Bid/Contract Price.
 - (5) Resource Loading: The estimated total number of hours required to perform the Individual Activity of work.
 - (6) Each activity that is not performed by the Design-Builder will be assigned a responsibility code indicating which Subcontractor is to perform the activity.
 - (7) Each activity will be identified with early/late start, early/late finish, and total float.
 - (8) Calendar I.D.

- i. 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.

2. Schedule Submittal Requirements

- a. The Design-Builder will submit all Schedules in hard copy and editable electronic format as specified in Section 10.02.1(a).
- b. Upon receipt of the Proposed Target Schedule and later the Target Schedule, the Authority will review each Schedule for conformance with the Contract Documents and degree of detail. Within fourteen (14) Days after receipt of the Proposed Target Schedule or Target Schedule and supporting documents, the Authority will either: (1) approve the Schedule; (2) approve the Schedule as noted (AAN); or (3) disapprove the Schedule with the reasons set forth. If the Schedule is approved as noted or is disapproved, the Design-Builder must submit a revised Schedule addressing specific comments within seven (7) days. The Authority's initial approval of the Proposed Target Schedule will be conditioned upon the Design-Builder's timely submittal of the Target Schedule with cost loading. Only the Authority's approval of the Target Schedule will establish an approved Target Schedule for the Project.
- c. The Proposed Target Schedule and Target Schedule must have the same total duration for the performance of Work as stated in Book 1.
- d. Failure by the Design-Builder to provide the Proposed Target Schedule, Target Schedule or monthly updated schedules within the required time period may be deemed an event of default.

3. Submittal, Acceptance, and Design-Builder's Responsibility for the Schedule

- a. Prior to submitting any Schedule to the Authority Representative, the Design-Builder will review and verify the procurement lead time for the fabrication and delivery of all construction materials and equipment along with the erection and/or installation duration for all the construction activities that make up the critical path of the Project.
- b. The Design-Builder will coordinate its letting of subcontracts, material purchases, shop drawing submissions, delivery of material and sequence of operations to conform to the Schedule and will furnish proof of same as may be required by written notification from the Authority.
- c. The Authority's approval of any Schedule is done for the sole purpose of insuring that all CPM scheduling documents prepared by the Design-Builder conform to the Contract requirements. This approval does not relieve the Design-Builder of its sole responsibility for the means, methods, procedures, and sequence of the construction process, nor does it provide any entitlement to additional funds.

4. Updating

a. Target Schedule

- (1) The Design-Builder may make non-material changes to the individual activity durations, activity relationships, constraints, costs, add or delete activities, and alter the Target Schedule's logic ties. The Design-Builder shall not make any material changes or changes that affect Milestones agreed upon in the Target Schedule unless such changes are fully explained in the monthly update schedule narrative and are approved by the Authority. Design-Builder shall not modify the original approved project duration or Date of Substantial Completion except by a Authority-approved Change Order. Design-Builder shall indicate progress on the Target Schedule on a monthly basis by updating the Target Schedule with the following:
 - i. Actual start dates
 - ii. Actual finish dates
 - iii. Activity percent completion
 - iv. Remaining duration of activities in progress
 - v. Identified or highlighted critical activities

- (2) The Progress reported in the monthly update to the Target Schedule shall be applied against the cost loaded Target Schedule to support determination of the earned value available for payment. The Target Schedule must accurately reflect the Project's current status and the cumulative Earned Value of the individual activities. The earned value available for payment may be decreased or increased as deemed necessary by the Authority Representative to accurately reflect actual work in place on the Project.
- b. The Design-Builder will submit monthly updates of the Target Schedule in number, form and format acceptable to the Authority Representative.
- c. As part of the normal monthly Schedule update for the Target Schedule, the Design-Builder will prepare a written narrative report, highlighting the progress during the past update period. The written narrative report will include but not necessarily be limited to the following information:
 - (1) Summary of Work accomplished during the past update period;
 - (2) Contract Milestone Comparison Chart;
 - (3) Analysis of Critical Path;
 - (4) Analysis of time lost/gained during the update period;
 - (5) Identification of problem areas;
 - (6) Recommended solutions to current problems.
- d. Upon receipt of the Target Schedule update, the Authority Representative will review the Schedule update and narrative for conformance with the Contract Documents and degree of detail. The Authority Representative, within seven (7) days after receipt of the Schedule update and supporting documentation, will approve or reject any such schedule update with written comments. If any Schedule update is rejected, the Design-Builder must submit a revised schedule update within five (5) days after the date of rejection.
- e. The Design-Builder is required to attend a monthly Schedule update review meeting with the Authority Representative. The purpose of this meeting is to review past progress, current status, problem areas and future progress. The Design-Builder's narrative report will be reviewed at this meeting. The Design-Builder's representatives attending this meeting will have the authority to commit manpower and/or other resources to correct any negative impact to the Schedule as indicated on the Target Schedule Update.
- f. Three Week Look-Ahead Schedule
 - (1) The Design-Builder shall also provide weekly schedule updates and participate in a weekly schedule review (which may occur as part of the weekly progress meeting) to review the 3-Week Look-Ahead Schedule. The 3-Week Look-Ahead Schedule shall be a time-scaled logic diagram that may be generated directly from the current Target Schedule and provided as an electronic file in its native P3 or P6 format or it may be generated by another method approved by the Authority Representative, provided that the activities, durations and logic correspond directly to the activities, durations and logic in the current Target Schedule. Activities on the 3-week Look Ahead Schedule shall include an activity ID and description (relatable to the Activity ID and description used in the Target Schedule). The timeline for the 3-week Look-Ahead shall be the previous week's actual activities and the forecast activities for the upcoming two (2) weeks. The weekly Schedule Update review shall include a review of the status of any potential delays, change modifications, delays or requested revisions to the schedule.

5. Changes to the Target Schedule

- a. If the Design-Builder proposes to make any changes to Milestone Dates in the Target Schedule, Design-Builder will notify the Authority Representative in writing, stating the reasons for the change, identifying each changed activity (including duration and interrelationships between activities) and providing a fragnet of the proposed schedule change in editable electronic format. However, such revisions or revised schedule shall not change or modify the Project Duration set forth in the Target Schedule or Book 1.
- b. The Authority has the authority to approve or disapprove the proposed change in the Target Schedule Milestones and will do so in writing within seven (7) days after receipt of the Design-Builder's submission. If the Authority approves the

changes to the Milestones in the Target Schedule the changed schedule will be designated the new "Target Schedule." All subsequent monthly updates will be plotted against the new "Target Schedule."

- c. If it appears that the Target Schedule no longer represents the actual prosecution and progress of the Work at the Individual Level, the Authority Representative may request, and the Design-Builder shall submit within seven (7) days of the request, a revision to or revised Target Schedule along with a statement agreeing with the proposed change or setting forth Design-Builder's justification for not incorporating said revision. However, such revisions or revised schedule shall not change or modify the Project Duration set forth in the Target Schedule or Book 1. The Authority Representative shall review and approve or disapprove Design-Builder's revision or revised Target Schedule within seven (7) days of receipt. Upon approval, the revision to the Target Schedule or revised Target Schedule shall be designated the new Target Schedule.
- d. The Authority reserves the right to request a proposal from the Design-Builder to accelerate or compress the schedule in lieu of granting a Time Extension request in order to maintain the Date of Substantial Completion or original project duration (Acceleration Proposal). The Authority shall make any such Acceleration Proposal request in writing within ten (10) days of receipt of the Design-Builder's Time Extension Request. Design-Builder shall provide the Acceleration Proposal within ten (10) days of the Authority's request and the Authority shall have ten (10) days from the receipt of the Acceleration Proposal to advise Design-Builder of its recommendation regarding the Acceleration Proposal and Time Extension Request. Design-Builder's Acceleration Proposal shall include a detailed cost estimate and description of its proposed methodology for accelerating the schedule. If the Authority elects to proceed with the Design-Builder's Acceleration Proposal, the Authority shall issue a Field Order incorporating the Acceleration Proposal and a subsequent Change Order to revise the Contract Price pursuant to Article 17.

6. Recovery Schedule

- a. The Design-Builder must maintain an adequate work force and the necessary materials, supplies and equipment to meet the Target Schedule. If the Design-Builder, in the judgment of the Authority, is failing to meet the Target Schedule, including any Contract milestones, the Design-Builder, upon the written request of the Authority Representative, shall submit a recovery schedule.
- b. The recovery schedule will set forth a plan to eliminate the schedule slippage (negative float). The plan must be specific to show the methods to achieve the recovery of time, i.e. increasing manpower, working overtime, weekend work, employing multiple shifts, etc. All costs associated with implementing the recovery schedule will be borne by the Design-Builder.
- c. Upon receipt of the recovery schedule, the Authority Representative will review the recovery schedule for conformance with the Contract Documents and degree of detail. The Authority will approve the recovery schedule or reject it with written comments within seven (7) Days of receipt. If the detailed CPM recovery schedule is rejected, the Design-Builder must submit a revised CPM recovery schedule within five (5) Days of the date of rejection.
- d. If the Design-Builder refuses to follow the direction of the Authority, the Authority reserves the right, after serving seven (7) Days written notice to the Design-Builder, 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 Design-Builder. The Authority's rights under this provision are cumulative to rights under any other provisions of the Contract including the Authority's rights to terminate for default or convenience.

7. Target Schedule Changes Directed by the Authority

- a. The Authority Representative may direct the Design-Builder to revise the Target Schedule. Reasons for such direction may include, but are not limited to, the following: (1) changes in the Work; (2) re-phasing of the Project or any phase; (3) a change in the duration of the Project or phase; or (4) acceleration of the Project or phase.
- b. The Authority Representative will direct the Design-Builder to provide a revised Target Schedule in writing.

- c. The Design-Builder will provide the revised Target Schedule within ten (10) Days of receipt of the Authority's written direction, which revisions to the Target Schedule may be submitted as fragment portions of the Schedule which, upon approval and incorporation into the Target Schedule will satisfy the Authority's direction to revise the Schedule. Design-Builder shall also submit a written description of the schedule changes necessitated by the Authority's request and a detailed explanation of any cost impacts to effectuate the requested Schedule changes.
- d. The Authority has the authority, in its sole discretion, to approve or reject the Design-Builder's proposed revised Target Schedule and will do so in writing within seven (7) Days after receipt of the Design-Builder's submission. If the Authority Representative approves the revised Target Schedule, the Authority will initiate a Change Order, pursuant to which such revised Target Schedule will be designated the new Target Schedule and adjustment to the Contract Price (if any) to adjust the Project Schedule to achieve the Authority required schedule modifications.

SECTION 10.03 Non-Compensable Delays; Causes of Compensable Delay; Compensation for Delays; Delays Which Do Not Qualify for Time Extensions; Procedure For Time Extension Requests

1. Non-compensable Delays

- a. For a cumulative period of 25% of the as-bid duration of the Construction Phase of the Project in calendar Days (the "Non-Compensable Delay Period"), the Design-Builder will not be compensated for the following delays: Adverse weather delay Days due to adverse weather conditions that when measured monthly are less than 25% more severe than the monthly averages for temperature or precipitation for Evanston (as determined by the National Oceanic & Atmospheric Administration); a delay in the commencement, prosecution or completion of the Work by any act of the Authority, including but not limited to a delay, change, addition, deletion or modification in the Work or any omission, neglect or default of the Authority, or by order of the Executive Director, or the Authority Representative; or by any cause beyond the Design-Builder's control, none of which are due to any fault, neglect act or omission on Design-Builder's part. However, the Design-Builder will be entitled to a Change Order providing a time extension for such delays. The Design-Builder agrees that the Change Order providing the time extension shall release the Authority, 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 for delays described above which cumulate to the number of Days in the Non-Compensable Delay Period.

2. Causes of Compensable Delay

- a. If any of the following listed events results in delays to critical path activities and progress of the work which cumulatively have exceeded the Non-Compensable Delay Period and the Design-Builder has not caused a concurrent delay, such delays shall entitle the Design-Builder to compensation as provided in Section 10.03.3 Compensable Delays.
 - (1) Delays caused by the Authority or the Authority Representative, as described in Section 10.03.1 above;
 - (2) Acts of God, acts of the public enemy, fires, floods, earthquakes, epidemics, quarantine restrictions, labor strikes at the job site, or freight embargoes, provided that the listed causes were not foreseeable and did not result from the fault or negligence of the Design-Builder, and provided further that the Design-Builder has taken reasonable precautions to prevent further delays owing to such causes;
 - (3) Acts (including delays in acting or failure to act) of the State, City or other governmental or regulatory authority, including, without limitation, restraining orders or injunctions requiring that the Work be stopped, delays in permit issuance or occupancy inspection, that are not the result of any fault or negligence of the Design-Builder or any of its Subcontractors;
 - (4) Adverse weather delay Days due to adverse weather conditions that when measured monthly are more than 25% more severe than the monthly averages for temperature or precipitation for Evanston (as determined by the National Oceanic & Atmospheric Administration), provided that actual adverse weather delays prevent work on critical path activities for more than 4 hours of a scheduled work day or cause a decrease in the field labor workforce hours on critical path activities of more than 70% on a scheduled work day; and

- (5) Delays resulting from subsurface or otherwise concealed conditions encountered at the Project Site which would entitle Design-Builder to compensation under Section 3.04 hereof.

3. Compensation for Delays

- a. Payment for delays exceeding the Non-Compensable Delay Period, from the causes listed in Section 10.03.2 Causes of Compensable Delays, will be made for: extended field staff time for the prosecution of the work, labor inefficiency, idle time for equipment (provided that Design-Builder proves that it took reasonable steps to mitigate damages regarding the idle equipment), relocation or storage of the material (on the site), winter protection costs (if applicable) and the cost of re-sequencing the work. The Design-Builder shall submit documentation satisfactory to the Authority Representative demonstrating costs incurred as a result of the Compensable Delay as part of its Time Extension Analysis pursuant to Section 10.03.5 below. Design-Builder shall be entitled to compensation only for those compensable delay days beyond the Non-Compensable Delay Period per Section 10.03.01 and not for the Days in the Non-Compensable Delay Period established pursuant to this Section 10.03. The Design-Builder shall not be entitled to compensation for any cost not expressly provided for in this paragraph.

4. Delays Which Do Not Qualify For Time Extensions

- a. 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 Design-Builder, including, but not limited to, the fault or negligence of the Design-Builder or any of 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 Design-Builder 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 Authority.

5. Procedure for Time Extension Requests

- a. No time extensions will be allowed unless they are set forth in a Change Order which has been approved and executed by the Authority.
- b. The Design-Builder expressly consents to both the time requirements and notice content requirements for requesting an extension of time set forth in this Section 10.03.5. The Design-Builder acknowledges that the notice requirements set forth in this section 10.03.5 shall be strictly enforced and agrees that any failure on the part of the Design-Builder to provide notice strictly in accordance with the requirements of this Section 10.03.5 shall constitute a waiver of the Design-Builder's right to seek an extension of time or to file a dispute to the Executive Director under Article 18. The Design-Builder further acknowledges that the time requirements and content requirements of Section 10.03.5 have the purpose, among others, of allowing the Authority Representative and Authority to evaluate the time extension request contemporaneously with the event that has been claimed to cause the delay.
- c. In order to request a Time Extension, a "Notice of Delay" or "Commencement of Delay" notice must be provided in writing to the Authority Representative, no more than five (5) calendar Days after the commencement of the delay, otherwise the claim for the time extension is waived. A "Notice of Delay" shall be provided for a delay event that commenced and terminated within the five (5) Day notice period. The Notice of Delay shall indicate the date of commencement of the delay and the date on which the delay terminated and shall include a brief description of the delaying event.
- d. A "Commencement of Delay" notice shall be provided for an event of delay that continues beyond the five (5) Day period for providing notice. 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 Authority Representative along with the "Request for Time Extension" within ten (10) calendar Days after the termination of the delay.
- e. The Design-Builder must submit its "Request for Time Extension" in writing to the Authority Representative within ten (10) calendar Days after the termination of the delay. The "Request for Time Extension" shall:
 - (1) State the cause of the delay, identifying the type of Excusable Delay; state the facts giving rise to the delay; and state the number of Days requested.

- (2) Specifically demonstrate the negative impact of the delay on the critical path of the Target Schedule by submitting a complete Time Impact Analysis (TIA) which shall include a fragmentary critical path network (Fragnet) that accounts for any float on the project and illustrates the impact of the alleged delay on the Target Schedule.
- f. The Authority Representative shall advise the Design-Builder of its recommendation regarding the Time Extension request, in writing, within ten (10) Days of receipt. If the Design-Builder and Authority Representative agree on the Time Extension to be granted, a Change Order will be processed and approved stating the Time Extension to be provided and any change to the Contract Price.
- g. The Executive Director may: 1) recommend that the entire Time Extension be granted; 2) recommend that a portion of the Time Extension be granted; or 3) deny the Time Extension. The Executive Director will provide the Design-Builder a final decision in writing within fifteen (15) Days of receipt of the Time Extension request from the Authority Representative, or such additional time as the Executive Director requires, but not to exceed ten (10) additional Days.
- h. The Design-Builder must make a Dispute to the Executive Director, as required by Article 18, regarding any Time Extension request to which the Authority Representative and Design-Builder do not agree, as limited by this Section 10.03.5.h. The Design-Builder may not dispute the decision of the Authority Representative unless the Time Extension request exceeds five (5) calendar Days or the liquidated damages, if applicable pursuant to Book 1, 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.

Section 10.04 Delay Damages

If Design-Builder has not achieved Substantial Completion of the Work on or before the Date of Substantial Completion, or Substantial Completion of any phase or milestone, in each case as set forth in the Schedule, as the same may be adjusted only in accordance with the express terms of the Contract Documents, then Design-Builder shall be liable to Authority for all direct and indirect damages arising from or related to Design-Builder's failure achieve Substantial Completion of the Work on or before the Date of Substantial Completion, including, without limitation, loss of use and lost rent.

Section 10.05 Completion of Punch List

1. It is also understood and agreed that TIME IS OF THE ESSENCE IN CLOSING OUT THE WORK. The Design-Builder agrees to begin performance immediately after receipt of notice of the Punch List Work.
2. The period to complete Punch List Work will be determined in the sole discretion of the Authority Representative. The time period for completion of the Punch List Work begins the Day after the Punch List is provided to the Design-Builder. The Authority Representative may extend the period to complete Punch List Work for specific Work which requires the receipt of long lead-time materials. However, all other Punch List Work must be completed as required by this Section 10.05.
 - a. Unless otherwise directed by the Authority Representative, failure of the Design-Builder or its Subcontractors to begin the Punch List Work prior to the expiration of three (3) Days after receipt of the Punch List will be construed as failure to prosecute the Work of the Contract.
 - b. It is further understood and agreed that the Punch List Work will be continuously prosecuted once begun. Therefore, any gap of three (3) Days during which Punch List Work is not being performed on the job site will also be construed as failure to prosecute the Work of the Contract.

Section 10.06 Notice of Labor Disputes

1. Whenever the Design-Builder has knowledge that any actual or potential labor disputes is delaying or threatens to delay the timely performance of this Contract, the Design-Builder must immediately give notice to the Authority Representative in accordance with the Notice provision of Section 22.05 and must include all available information with respect thereto to the Authority.

ARTICLE 11. MEETINGS AND PROGRESS DOCUMENTATION

Section 11.01 Pre-Construction Meeting

1. Prior to beginning Work, the Authority will conduct a pre-construction meeting as detailed below. Representatives of the Design-Builder 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 Drawings, Technical Specifications, unusual conditions, schedules of completion, and other features of the Contract. The Authority may conduct additional coordination meetings at its discretion.
2. Preconstruction Meeting
 - a. A Preconstruction Meeting will be held at a time and place designated by the Authority Representative to identify responsibilities of the Design-Builder, Authority, Authority Representative and the Architect and to explain administrative procedures. The Authority Representative will set the due date for the Design-Builder's first payment application at the pre-construction meeting.
 - b. The Design-Builder shall also address the following items at this meeting:
 - (1) Submittal of preliminary construction schedule
 - (2) Use of the Site
 - (3) Delivery and Storage
 - (4) Safety
 - (5) Security
 - (6) Clean Up
 - (7) Administrative procedures relating to:
 - i. Submittals
 - ii. Progress Meeting Schedules
 - iii. Change Orders
 - iv. Applications for Payment
 - v. Record Documents
 - c. Attendees at this meeting shall include:
 - (1) The Authority
 - (2) The Architect
 - (3) The Authority Representative
 - (4) The Design-Builder's Superintendent, project manager and mechanical-electrical coordinator
 - (5) MBE and WBE firms listed in Book 1 (if applicable)
 - (6) Other parties as directed by the Authority (i.e.. Consultants, subcontractors, agency representatives, etc.)

Section 11.02 Review Meetings

1. The Design-Builder is responsible for conducting and documenting weekly coordination meetings at the Site. The Design-Builder will arrange for Subcontractors to attend the meetings if expressly requested by the Authority Representative. Prior to each meeting, the Design-Builder must submit its schedule of activities and interfaces in the format required by the Authority. The meetings may include the following:
 - a. Review of Work progress since the previous monthly review meeting.
 - b. Discussion of field observations, problems and decisions.
 - c. Review of off-Site fabrication problems and other problems affecting the schedule.
 - d. Review of equipment deliveries.
 - e. Discussion of corrective measures and procedures Design-Builder will use to achieve the Contract schedule.
 - f. Review of submittal schedules and effect on the construction schedule.
 - g. Review of proposed Contract changes and effect on the construction schedule.
 - h. Coordination requirements.

- i. Clarifications and decisions required of the Authority.
- j. Review of Design-Builder's forces on the Work.
- k. Review of Project Record Document status and content.
- l. Review of the three (3) week look ahead schedule.
- m. Review of Leadership in Energy and Environmental Design and sustainability issues.
- n. Review of Utility Coordination
- o. Review RFI Submittals and Nonconformance logs
- p. Pre-Commissioning and Commissioning
- q. Construction coordination among disciplines

Section 11.03 Progress Documentation Requirements

1. Design-Builder's Construction Schedule:
 - a. Submit sample for review at preconstruction meeting.
 - b. Submit updated Target Schedule at each monthly payment application review meeting and after each major change in the schedule.
2. Shop Drawings and Submittals Schedule:
 - a. Submit shop drawings and submittals schedule with Target Schedule.
3. Progress Reports:
 - a. Daily Construction Logs
 - (1) Submit previous week's reports to Architect and Authority Representative at weekly progress meeting.
 - (2) Daily Construction Logs: Every Day, the Design-Builder must record the following information concerning events at the Site in a format acceptable to the Architect and the Authority Representative:
 - i. Weather conditions; high and low temperatures.
 - ii. Approximate number of persons working at the Site, by trade or Design-Builder.
 - iii. Visitors to the Site.
 - iv. Modifications to the Contract received; modifications implemented.
 - v. Delays; reasons for delay.
 - vi. Emergencies and accidents.
 - vii. Equipment and system start-ups and tests.
 - viii. Field quality control activities conducted.
 - ix. Losses of material and property.
 - x. Meetings held and significant decisions made.
 - xi. Names of subcontractors at Site.
 - xii. Orders and requests of representatives of governing authorities.
 - xiii. Unusual events.
 - xiv. Utility service disconnections and connections
 - b. Monthly Progress Reports:
 - (1) Submit sample for review at preconstruction meeting.
 - (2) Failure to submit will result in delay to processing of Application for Payment.
 - (3) The Design-Builder must prepare a narrative report describing the general state of completion of the Work and describing in detail the following:
 - i. Actual and anticipated delays, impact on the schedule, and corrective actions taken or proposed.
 - ii. Actual and potential problems.
 - iii. Status of Change Order Work.

- iv. Effect of delays, problems, and changes on the schedules of other prime contractors.
 - v. Outstanding change proposal requests.
 - vi. Status of corrective work ordered by the Architect.
 - c. Monthly Progress Photographs:
 - (1) Include in Monthly Progress Report, and submit at each monthly payment application review meeting.
4. Record Documents:
- a. Maintain current set at Site for reference and review by Architect and Authority Representative.
5. Photographs: Full color prints.
- a. Size 8" x 10", full bleed (borderless).
 - b. Print on commercial-grade paper.
 - c. Glossy finish.
 - d. Provide three (3) prints of each view.
 - e. Provide thorough photographic documentation of existing conditions.
 - f. Submit negatives with prints.
 - g. Identify each print on back with:
 - a. Project name.
 - b. Architect's name.
 - c. Design-Builder's name.
 - d. Photographer's name and address.
 - e. Photograph date.
 - f. Position and direction from which photo was taken.
 - h. Identify each print on front in margin with Project name and date taken.
 - i. Mount on 8 1/2" x 11" stock punched for 3-ring binder.
 - j. Also provide compact disc with electronic media of photos in JPEG and RAW.
6. QUALITY ASSURANCE
- a. Network Analysis Procedures
 - (1) Train appropriate Project personnel in proper methods of providing data and of using schedule information.
 - (2) Establish procedures for monitoring and updating the schedule and for reporting progress.
7. COORDINATION
- a. In preparation of schedules, take into account the time allowed or required for the Architect's administrative procedures.
 - (1) Allow a minimum of fifteen (15) calendar Days for the Architects review of submittals.
8. WEEKLY PROGRESS MEETINGS
- a. The Design-Builder must schedule and conduct weekly progress meetings during construction period. Conduct additional progress meetings as directed by the Authority Representative as required by the progress of the Work.
 - (1) Hold meetings at the Design-Builder's field office.
 - (2) As often as practical, hold meetings on the same Day of the week at the same time of Day. When it is necessary to change the Day or time of the meeting, notify the Authority Representative of the change a minimum of three (3) business days prior to the normal meeting Day or the revised Day, whichever is earlier.

- b. The following are required to attend:
 - (1) Project superintendent, project manager and key support staff.
 - (2) Major Subcontractors.
 - (3) Authority Representative.
- c. The Authority Representative may prepare and distribute agenda prior to meetings, covering the following topics when applicable:
 - (1) Review minutes of previous meeting.
 - (2) Status of submittals and impending submittals.
 - (3) Actual progress of activities in relation to the schedule.
 - (4) Actual and anticipated delays, their impact on the schedule, and corrective actions taken or proposed.
 - (5) Actual and potential problems.
 - (6) Status of corrective work ordered by the Architect.
 - (7) Progress expected to be made during the next period.
- d. The Architect or Authority Representative may record minutes and distribute copies to the participants and to all entities affected by decisions made.

9. PREINSTALLATION AND PREFABRICATION CONFERENCES

- a. The Design-Builder shall call these conferences where required by the individual Specification sections for the purpose of reviewing product selections, procedures for executing work, and coordination with or among Subcontractors. The place, date, and time of these conferences shall be scheduled by the Design-Builder after coordination with the Authority Representative. Do not schedule these conferences until after the Subcontractor executing the work has made the submittals called for in the Contract Documents and they have been returned to the Design-Builder "Approved" or "Approved as Noted" by the Architect; and until after the Subcontractor executing the work has made the quality control submittals called for in the Contract Documents and their receipt has been acknowledged to the Design-Builder by the Architect. The following parties shall attend these conferences:
 - (1) The Design-Builder.
 - (2) The Design-Builder's Mechanical, Electrical, Plumbing and Fire Protection coordinator.
 - (3) The Subcontractor executing the work.
 - (4) Subcontractors affected by the work.
 - (5) Manufacturer's representatives.
 - (6) The testing laboratory, when applicable.
 - (7) The Authority Representative.
 - (8) The Authority's Commissioning Agent (when applicable)
- b. Date, time, and place of meetings are to be acceptable to the Authority, the Authority Representative, and the Architect.

ARTICLE 12. AUTHORITY PROPERTY

Section 12.01 Ownership of Drawings, Specifications and Models

1. All copies of Drawings and Technical Specifications are the property of the Authority. Such copies are not to be used on any other work or project and, with the exception of the signed Contract set, are to be returned to the Authority with a copy of the transmittal letter to the Authority Representative at the completion of the Work. All models are the property of the Authority, and are to be returned to the Authority with a copy of the transmittal letter to the Authority Representative at the completion of the Work. During the performance of its Work, the Design-Builder shall be responsible for any loss or damage to documents or models while in the Design-Builder's possession or the possession of a Subcontractor and any such documents so lost or damaged shall be restored at the expense of the Design-Builder
2. The Design-Builder shall deliver, or cause to be delivered at any time during the term of this Contract, all documents, including but not limited to drawings, models, specifications, estimates, reports, studies, maps and computations, prepared by or for the Authority, to the Authority Representative promptly upon reasonable demand therefore or upon termination or completion of the Work hereunder. In the event of the failure by the Design-Builder to make such delivery, the Design-Builder shall pay to the Authority damages the Authority may sustain by reason thereof, including consequential damages.

Section 12.02 Confidentiality

1. All of the reports information, or data, prepared or assembled by or provided to the Design-Builder under this Contract are confidential and the Design-Builder agrees that, except as specifically authorized herein or as may be required by law, it shall not make available said reports, information, or data, to any other individual or organization, without the prior approval of the Authority. In addition, the Design-Builder must not, without the prior written consent of the Authority, prepare or distribute any news releases, articles, brochures, advertisements or other materials concerning the Project or Design-Builder's work.

Section 12.03 Right of Entry

1. The Design-Builder, and any of its officers, employees, agents, and Subcontractors, are permitted to enter upon any part of the Site owned by the Authority or User Agency in connection with the performance of the Work hereunder, subject to the terms and conditions contained herein and those rules that may be established by the Authority or User Agency. The Design-Builder must provide advance notice to the Authority Representative of Design-Builder's initial entry onto the Site. Consent to enter upon all or any part of the Site given by the Authority or User Agency will not create, nor be deemed to imply the creation of, any additional responsibilities on the part of the Authority or User Agency.
2. Inspections. The Design-Builder acknowledges that the Authority has the right of access to the Site at all times and the right to inspect all Work during the term of the Contract.
3. The Design-Builder 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 Authority or User Agency in connection with the Work. In the case of any property owned by the Authority or User Agency, or property owned by and leased from the Authority or User Agency, Design-Builder 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. 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 12.04 Damage to Property

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

Section 12.05 Use of Completed Portions of the Work

1. After Substantial Completion of the Work in any space(s) in the Project, the Authority will have the right to use and occupy such space(s) in advance of Final Completion and Acceptance of the Work, provided that the Authority's occupancy and use of such spaces will not unduly interfere with the Design-Builder's operations nor delay completion of the Work. Occupancy and use of any space(s) in the building by the Authority or User Agency will not constitute Substantial Completion in the absence of written notification of Substantial Completion of the affected portion of the Work from the Architect.
2. If the Authority desires to exercise the right of partial occupancy prior to Substantial Completion and Final Completion and Acceptance of the Work as provided below, the Design-Builder will cooperate with the Authority in making available for the Authority'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 Authority desires to occupy the aforesaid space(s), the Design-Builder will make all reasonable efforts to complete it as soon as possible. The cost of utilities to partially or temporarily occupied Work pursuant to this Section 12.05 is a cost of the Work, unless the Authority notifies Design-Builder otherwise prior to use of such utilities.
3. The Authority's occupancy or use of such space(s) in the Project will not constitute the Authority's acceptance of any Work, materials, or equipment which are not in accordance with the requirements of the Contract Documents, nor relieve the Design-Builder from its obligations or responsibilities under the Contract.
4. In any case, when the Authority occupies or begins to use any portion of the Work pursuant to this Section 12.05, the Authority will give the Design-Builder notice in writing of its occupancy and/or use of the space(s) involved.

ARTICLE 13. QUALITY OF WORKMANSHIP, MATERIALS, AND EQUIPMENT

Section 13.01 Standard of Performance

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

Section 13.02 Design-Builder's Quality Program

1. Scope of Design-Builder's Quality Program (CQP)
 - a. Quality is the responsibility of the Design-Builder. This responsibility includes development and implementation of a Design-Builder's Quality Program for quality management and construction activities. The CQP must satisfy the requirements of the Contract Documents. The Design-Builder must develop and implement an appropriate quality program to achieve a level of quality consistent with the Contract requirements.
 - b. Throughout the course of the work, the CQP will be subject to continual monitoring to assess the effectiveness of the quality processes employed by the Design-Builder. The Design-Builder's implementation of and compliance with its CQP are subject to monitoring and audit by the Authority. The Contactor must address the Authority's concerns and audit findings. The Authority will pursue its remedies under the Contract for Design-Builder's failure to appropriately resolve such concerns and findings.
2. Design-Builder's Quality Program
 - a. The Design-Builder must establish, implement, and maintain an effective quality program to manage, control, and document the work and assure that the Work conforms to the requirements of the Contract. The Design-Builder must communicate, implement, and follow the CQP at all levels of its organization.
 - b. The CQP must comply with the requirements of Section 13.11 below and must describe the policies, plans, procedures, and organization necessary to exercise control and ensure quality. It must cover materials, equipment, workmanship, fabrication, and operations furnished both onsite and offsite by the Contactor. The CQP must be an internally approved document, signed by the Design-Builder's management representative, and must contain a revision number and effective date. The CQP must also include a written statement, signed by the Design-Builder's Quality Representative, that the program satisfies the requirements of the Contract. The CQP and any revisions thereto will be subject to acceptance by the Authority Representative.
 - c. Organization of the quality functions and activities for the Project must be supported by the management structure of the Design-Builder. The choice and level of application of the quality program must be appropriate for the Project.
 - d. Responsibility for achievement of quality must be acknowledged by all management, construction and support personnel of the Design-Builder. Subcontractors (including suppliers), testing laboratories, and consultants employed by the Design-Builder must also conform to the commitments specified in the Contract and the CQP.
3. Submittal of Design-Builder's Quality Program
 - a. Within fourteen (14) Days after the Notice to Proceed, the Design-Builder must provide its internally approved CQP to the Authority Representative for review and acceptance. If the Design-Builder fails to submit its CQP within the required time, or if the CQP is not accepted, the Authority may suspend the Work until the Design-Builder furnishes an acceptable CQP. The Design-Builder shall not receive a time extension for the period of any such suspension.
4. Acceptance of the Design-Builder's Quality Program

- a. The Authority Representative is responsible for reviewing and accepting the CQP. This acceptance is conditional based on satisfactory performance throughout the course of the work. As work progresses, the Design-Builder may be required to revise the CQP to maintain a quality of construction consistent with the Contract. Should this revision of the CQP be required, the revised CQP will again be subject to acceptance by the Authority Representative.

5. Proposed Changes to the Design-Builder's Quality Program

- a. The Design-Builder must notify the Authority Representative, in writing, of any proposed change to the CQP. Any changes to the accepted CQP will be subject to the same acceptance process stated in Section 13.02.4.a. above.

Section 13.03 Labor, Materials and Equipment

1. Unless otherwise specified, all materials and equipment will be new, and of such quality as required to comply with the Contract Documents. The Design-Builder will, when required, furnish satisfactory evidence as to kind and quality of all materials and equipment. All labor will be performed by workers skilled in their respective trades, and workmanship will be of good quality so that first class work in accordance with the standards of construction set forth in the Contract Documents will result.
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 Authority, in which case it will be removed and replaced by the Design-Builder as provided hereinafter in **Section 13.08**, "Correction of Work Before Final Payment" or **Section 13.09** "Correction of Work After Final Payment."
3. The Design-Builder 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.
4. The Site will not be utilized for the storage of vehicles, materials, equipment, or fixtures not intended for this Project.
5. The Design-Builder will review any specified construction or installation procedures (including those recommended by any product manufacturer). The Design-Builder will advise the Architect and Authority Representative in writing seven (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. if there are any objections which the Design-Builder may have to any specified procedure.

Section 13.04 Source of Materials

1. Design-Builder will notify the Authority 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 Design-Builder expects to obtain the various construction materials. The source of supply of each materials used will be approved by the Authority before delivery is commenced. If sources previously approved are found to be unacceptable at any time and fail to produce materials satisfactory to the Authority, the Design-Builder will furnish materials from other approved sources.

Section 13.05 Products

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.
2. Manufacturer and Products. The term "product" as used herein refers to items to be purchased for incorporating into the Work, whether purchased for the Project or taken from previously purchased stock. The term "product" includes the terms "material," "equipment," "system" and words of similar intent.

- a. Products of the same general type will be from the same manufacturer throughout the Project to provide uniform appearance, operation, and maintenance.
- b. Products furnished will be of current production and product of a manufacturer regularly engaged in the manufacture of such products, for which replacement parts are available.
- c. Products must be new, Testing Laboratory-labeled, by a laboratory listed in Section 14.04, where applicable, and will bear the manufacturer's name, model number, and ratings of equipment. "New" means products that have not previously been incorporated into another project or facility, except that products consisting of recycled content materials are allowed, unless explicitly stated otherwise. Products salvaged or recycled from other projects are not considered new products.
- d. Manufacturers of equipment assemblies, which include components made by others, will assume complete responsibility and warranty for the final assembled unit.

3. 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. Provide products complete with accessories, trim, finish, fasteners, and other items needed for a complete installation and indicated use and effect. If available, and unless custom products or non-standard options are specified, provide standard products of types that have been produced and used successfully in similar situations on other projects. The Authority reserves the right to limit selection to products with warranties that do not conflict with the requirements of the Contract Documents. Where products are accompanied by the term "as selected," the Authorized Authority Representative will provide the selection. Where products are accompanied by the term "match sample," the sample to be matched is that provided by the Authorized Authority Representative. Where products are specified by name and accompanied by the term "or equal," or "or approved equal," or "or approved," the product proposed by Design-Builder must be approved by the substitution process set forth in Section 13.06 below.
- b. **Named Products:** Items identified by manufacturer's product name, including make or model number or other designation, shown or listed in manufacturer's published product literature, that is current as of the date of the Contract Documents.
- c. **Comparable Product:** Product that is demonstrated and approved through the substitution process set forth below to have the indicated qualities related to the type, function, dimension, in-service performance, physical properties, appearance and other characteristics that equal or exceed those of the listed product.
- d. **Basis-of-Design Products:** Where a specific manufacturer's product is named and accompanied by the words "basis of design," including make or model number or other designation, to establish the significant qualities related to type, function, dimension, in-service performance, physical properties, appearance and other characteristics for purposes of evaluating comparable products of other named manufacturers.
- e. **Product Selection Procedures:**
 - (1) **Products:** Where specification paragraphs or subparagraphs titled "Products" provide a list of names of both products and manufacturers, Design-Builder must provide one of the products listed that complies with the requirements of the specification.
 - (2) **Manufacturers:** Where specification paragraphs or subparagraphs titled "Manufacturers" provide a list of manufacturers' names, Design-Builder must provide a product by one of the manufacturers listed that complies with the requirements of the specification.
 - (3) **Available Products:** Where specification paragraphs or subparagraphs titled "Available Products" provide a list of names of both products and manufacturers, Design-Builder must provide one of the products listed that complies with the requirements of the specification.

- (4) Available Manufacturers: Where specification paragraphs or subparagraphs titled "Available Manufacturers" provide a list of manufacturers' names, Design-Builder must provide a product by one of the manufacturers listed that complies with the requirements of the specification.
- (5) Product Options: Where specification paragraphs or subparagraphs titled "Product Options" indicate that size, profiles, and dimensional requirements on drawings are based on a specific product or system, provide either the specific product or system indicated, or a comparable product or system by one of the other named manufacturers. As stated in Subparagraph 3.c above, products must be approved by the substitution process set forth in Section 13.06 below in order to be deemed "comparable."
- (6) Basis-of-Design Products: Where specification paragraphs or subparagraphs titled "Basis-of-Design Products" are included, and provide or refer to a list of manufacturers' names, provide either the specified product or a comparable product by one of the other named manufacturers. Drawings and specifications indicate sizes, profiles, dimensions and other characteristics that are based on the product named. As stated in Subparagraph 3.c above, products must be approved by the substitution process set forth in Section 13.06 below in order to be deemed "comparable."

Section 13.06 Substitution of Products or Materials

1. The Authorized Authority Representative will receive and consider the Design-Builder's request for substitution if, and only if, all of the following conditions are met. If Design-Builder fails to meet these conditions, the Authorized Authority Representative will return the request without action, other than to record non-compliance with these requirements.
 - a. The reason for proposing the substitution is one of the following:
 - (1) There is no condition. The specified product or method of construction is no longer available.
 - (2) There is no condition under which the specified product or method of construction can be installed as shown on the Contract Documents.
 - (3) The specified product or method of construction cannot be provided within the time limits of the Contract
 - b. Extensive revisions to the Contract Documents are not required.
 - c. Proposed substitutions are in keeping with the general intent of the Contract Documents.
 - d. The request is timely, fully documented and properly submitted.
2. Changes in products, materials, equipment, systems and methods of construction required by the Contract Documents and proposed by the Design-Builder after award of the Contract are considered to be requests for substitutions and will be addressed in the manner set forth below. Requests for substitution will be considered only in case of product unavailability or other conditions beyond the control of the Design-Builder. The following are not considered to be requests for substitutions and are not subject to the provisions of this Section:
 - a. changes requested during the bidding period and accepted by the Authority by addendum prior to the award of the contract;
 - b. revisions to the Contract Documents requested by the Authority or the Authority's Architect and issued to the Design-Builder via a design bulletin;
 - c. specified options of products and construction methods included in the Contract Documents.
3. Each request for substitution must be submitted separately and must include:

- a. Three copies of the request, using the form included in the Article 15 of Book 2.
 - b. Design-Builder must identify the product or fabrication or installation method to be replaced in each request, including the related Specification Section and/or Drawing numbers.
 - c. Design-Builder must provide complete documentation showing compliance with the requirements for substitutions, and the following information, as appropriate:
 - (1) Coordination information, including a list of changes or modifications needed to other parts of the Work and to construction performed by other contractors that will be necessary to accommodate the proposed substitution.
 - (2) A detailed comparison of significant qualities of the proposed substitution with those of the Work specified. Significant qualities may include elements such as performance, weight, size, durability and visual effect.
 - (3) Product data, including Drawings and descriptions of products and fabrication and installation procedures.
 - (4) Samples, where applicable or requested by the Authorized Authority Representative.
 - (5) A statement indicating the substitution's effect on the Design-Builder's Construction Schedule compared to the schedule without approval of the substitution. The proposed substitution will not extend the Term of the Contract.
 - (6) Cost information, including a proposal of the net change in the Contract Price, if any, submitted in the format required for Change Order requests and the designation of any required license fees or royalties.
 - (7) Design-Builder's certification that the proposed substitution conforms to the requirements of the Contract Documents in every respect and is appropriate for the applications indicated.
 - (8) Design-Builder must designate the availability of maintenance services and source of replacement materials for any proposed substitution.
 - (9) The Design-Builder's waiver of rights to additional payment or time that may become necessary because of the failure of the substitution to perform in accordance with the Contract Documents.
4. The Design-Builder warrants and represents that in making a formal request for substitution that:
 - a. The proposed substitution is equivalent to or superior in all respects to the product specified,
 - b. At a minimum, the same warranties and guarantees will be provided for the substitute as for the product specified.
 - c. The Design-Builder 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.
 5. If the evidence presented by the Design-Builder does not provide 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 Authority Representative may reject the proposed substitution or deviation without further investigation.
 6. The Authority 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 Authority Representative may withhold approval of proposed substitutes as equal to items specified which, in the Authority Representative's opinion, would be inconsistent with the character, quality or design of the Project.
 7. 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 Design-Builder, including the cost for damages incurred by other contractors, notwithstanding approval or acceptance of such substitution by the Authority Representative, unless such substitution was initiated at the written request or direction of the Authority Representative.

8. The Authority reserves the right to request additional information from the Design-Builder for any request for substitution within seven (7) Days of the submittal of Design-Builder's request. The Authority Representative will notify the Design-Builder of acceptance or rejection of the substitution within fourteen (14) Days of receipt of the request, or seven (7) Days of receipt of additional information, whichever is later. If the Authority Representative fails to respond within the time frame stated herein, Design-Builder must use the product specified rather than the proposed substitute product.
9. Approval by the Authority Representative of a substitution of material must be given pursuant to a Contract modification as required in Article 17, "Changes in the Work."
10. The Design-Builder's submittal, and the Authority's acceptance, of Shop Drawings, Product Data or Samples for construction activities not complying with the Contract Documents does not constitute an acceptable or valid request for substitution, nor do they constitute approval of a substitution.
11. Manufacturer's nameplates will not be permanently attached to ornamental and miscellaneous metal work, furnishings and equipment, doors, frames, millwork and similar factory-fabricated products on which, in the Authority's opinion, the nameplate would be objectionable if visible after installation of the Work, without the prior written consent of the Authority Representative. This does not apply to Underwriters' Laboratories labels where required, nor to manufacturers' name and rating plates on mechanical and electrical equipment.

Section 13.07 Adjustment of Equipment

1. Before the Work is turned over to the Authority, the Design-Builder 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 13.08 Correction of Work Before Final Payment

1. When Work is rejected by the Authority as failing to conform to the Contract Documents, the Design-Builder must promptly remove such Work, including all related materials and equipment, whether incorporated in the Work or not, from the Site. The Design-Builder will promptly replace and re-execute such Work in accordance with the Contract Documents and without expense to the Authority. Design-Builder will also bear the expense of making good all work of other contractors destroyed or damaged by such removal or replacement.
2. If the Design-Builder does not remove such rejected Work, materials, and equipment within a reasonable time, as determined by written notice of the Authority, the Authority may, at the expense of the Design-Builder, remove and dispose of such rejected Work as the Authority sees fit. If the Design-Builder does not pay the cost and expenses of such removal within ten (10) Days, the Authority may deduct all such costs and expenses from any monies due the Design-Builder.
3. If the Work deviates from the requirements of the Contract Documents, the Design-Builder will be responsible for all resulting damages. A claim by the Design-Builder 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 Design-Builder as a defense or a claim to reduce the Design-Builder's liability. This provision does not limit the other rights of the Authority or Architect or other obligations of the Design-Builder.

Section 13.09 Correction of Work after Final Payment

1. The final certificate of occupancy, final acceptance of the Project, final payment, or any provision in the Contract Documents does not relieve the Design-Builder of responsibility for faulty materials, equipment or workmanship. Unless otherwise specified, the Design-Builder will remedy any defects and pay for any damage to other Work resulting therefrom. The Authority will give timely written notice of such defects.

Section 13.10 Guarantees and Warranties

1. Design-Builder's Guarantee

- a. Unless stated otherwise in the Technical Specifications, the Design-Builder guarantees all of the Work and each and every part thereof, including, by way of illustration and not limitation, all workmanship, materials, equipment, supplies, services, and facilities that are furnished, produced, fabricated, installed, constructed, or built pursuant to the Contract Documents for the respective periods of time called for by the respective requirements of the Contract Documents, and, if no period is specified, the Guarantee will be for a period of ten (10) years, against defects which 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 Technical Specifications. The guarantee period will run from and after the date of Substantial Completion of the Work, 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).
- b. The Design-Builder agrees as part of this guarantee to repair or remove and replace as directed by the Authority and, at no cost to the Authority, 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. The Design-Builder agrees to repair, remove and replace, or pay for as directed by the Authority, at no cost to the Authority, all damaged portions of the Project and the contents and equipment thereof, resulting from or which are incidental to such defects or failure to conform to the Contract Documents. All repairs, removals and replacements must be commenced within ten (10) Days of written notice from the Authority, and sufficient labor and materials sufficient must be furnished to ensure prompt completion thereof. Should the Design-Builder fail to proceed in accordance with the above, the Authority, without further notice to the Design-Builder, may furnish all labor and material necessary for repairs, or removals and replacements, and the Design-Builder agrees to pay the Authority all such costs incurred.

2. Manufacturer's Warranties

- a. The Design-Builder will:
 - (1) Ensure that all required Manufacturer's Warranties are assignable, and assigned, to the Authority or User Agency.
 - (2) Submit all applicable Manufacturer's Warranties to the Authority Representative and ensure that all warranty forms have been completed in the Authority's or User Agency's name and registered with the appropriate manufacturers.
- b. Repairs and replacements made by the Design-Builder pursuant to this section will include a Manufacturer's Warranty, if standard with the Manufacturer, in addition to the Design-Builder's Warranty.

Section 13.11 Design-Builder's Quality Program Elements and Requirements

1. The Design-Builder Quality Program (CQP), to be provided by Design-Builder, must include the items listed below. Design-Builder must submit its Design-Builder Quality Plan to the Authority Representative for review.
2. Management Responsibility (Responsibility, Accountability, Authority, Organizational, and Technical Interfaces) General quality control activities.
 - a. The CQP must declare and document the commitment to quality by the Design-Builder's executive management.
 - b. The CQP must contain an organization chart illustrating lines of authority and the interrelationship of those responsible for executive management, project management, and quality functions. It must describe the quality organization in detail and identify personnel responsible for: initiating action to prevent quality problems, identifying and recording quality problems, initiating solutions, and verifying implementation of solutions to quality. It must include the resumes of key personnel for Authority review.
 - c. The Design-Builder must assign a Quality Representative (QR) to this project who will implement and administer the CQP and have the authority to act in all quality matters for the Design-Builder. The QR must be qualified for the position by education, training, and experience. Qualification must be demonstrated by a description of education,

training, and previous quality assignments, with related duties and responsibilities, for a period sufficient to establish the appointee's quality management experience.

- d. The Design-Builder must maintain a staff of sufficient size and composition under the direction of the QR to perform all Design-Builder quality control and activities in order to ensure contract compliance whether the work is performed by the Design-Builder's own staff or by Subcontractors. Personnel responsible for quality must be suitably trained and qualified for the quality activities they are assigned. The Design-Builder's quality control organization may vary as the project progresses; however, at all times it must be compatible with the level of effort and capability required by the Contract.
- e. Personnel responsible for quality verification must have the necessary authority and independence to perform their roles effectively; they must be independent of those having direct responsibility for the work being performed. This can be accomplished if those ensuring or controlling quality report on a higher level than those having direct responsibility for the work. The QR and those individuals responsible for cost, construction, schedule, or production shall not be the same individual.
- f. The Design-Builder's management must conduct periodic reviews of the CQP to assess the suitability and effectiveness of the CQP in satisfying the requirements stated in the Design-Builder's quality policy. The Design-Builder should document these reviews.

3. Documented Quality System.

- a. The Design-Builder must develop, implement, and maintain a documented quality system to ensure that project quality objectives are satisfied. The structure of the documented quality system must identify those construction activities that must be performed to achieve constructed facilities capable of performing designed functions.
- b. As a minimum, the documented quality system must include written policies and procedures for the following:
 - (1) A management-level commitment to quality and a statement of corporate quality policy;
 - (2) A detailed description of how the corporate policy is implemented and documented, and by whom; and
 - (3) Procedures and forms to document performance of quality-related activities and the results of those activities.
- a. The documented quality system must document the policies and procedures necessary to achieve satisfactory construction. Written policies and procedures must address pertinent areas within the construction activity to assure implement, maintain, and improve quality. Procedures must also be developed, implemented, and maintained for control of processes including inspection, testing, nondestructive examination, disposition of nonconforming product, corrective action, maintenance of quality records, quality audits, and training.
- b. The documented quality system must establish the controls and responsibilities for the development, review, verification, approval, validation, and revision of documented procedures. Documented procedures are those that result in generating records substantiating the performance and outcome of quality-related activities. They follow a specified format and show current revision level, approval or effective date, and approval signature. The Design-Builder will use the following format for documenting procedures:
 - (1) Purpose: Reason why the procedure is being initiated.
 - (2) Scope: Boundaries of the procedure; i.e., to whom or to what the procedure applies.
 - (3) References: Documents referred to for standards to be followed in relation to the procedure as well as for information and background.
 - (4) Definitions: Explanation of words or terms used in the procedure that are not self-explanatory.
 - (5) Procedure: The sequence of required actions to be performed and the person responsible for performing those actions.
 - (6) Attachments: Documents and/or related materials that are needed for the procedure.
 - (7) Process: such as transmittal letters, forms, and flow charts.

(8) Provisions: Items of information, instructions, or special conditions applicable to the procedure.

c. The documented quality system must:

- (1) Use a uniform procedure numbering system.
- (2) Establish quality record capture statements within each applicable procedure that identify the quality records generated by the procedure. Procedures must contain formats for the quality records needed to ensure that the procedures are followed and documentation requirements are understood.
- (3) Establish systems for the control of procedures.
- (4) Ensure that procedures contain qualitative and quantitative acceptance criteria when applicable.
- (5) Establish requirements to prepare, approve, and distribute procedures prior to their need or initial use.
- (6) Provide a mechanism for a quick change or issuance of a procedure under specific emergency-related conditions or circumstances.
- (7) Identify procedures that are controlled documents.
- (8) Require a periodic review of procedures to ensure current usability and compatibility with interfacing procedures.

d. The Design-Builder shall plan and define construction activities to achieve quality objectives. The plan shall address construction sequences so that activities are performed in the appropriate order to promote quality. Documented system controls should be implemented to cover all construction operations, including both onsite and offsite manufacturing and fabrication. These controls shall be keyed to the Schedule and provide written records of the results. As a minimum, these controls shall include the following three phases:

(1) Preparation Phase: Prior to beginning construction on any definable feature of work. (A definable feature of work is a task that is separate and distinct from other tasks and has separate control requirements.) The plan must include the following:

- i. Review of the contract requirements
- ii. Verification that all materials and/or equipment have been tested, submitted, and approved
- iii. Verification that provisions have been made to verify that the required quality control testing was performed.
- iv. Examination of work areas to ascertain that all preliminary work has been completed
- v. Physical examination of materials, equipment, and sample work to ensure conformance to approved shop drawings or submitted data and that all materials and equipment are on hand

(2) Initial Phase - At the beginning of each definable feature of work. It shall include the following:

- i. Check of preliminary work
- ii. Verification of full compliance with Contractual requirements
- iii. Establishment of level of workmanship
- iv. Resolution of all differences
- v.

(3) Follow-up Phase - Periodic checks performed to ensure continuing compliance with Contract requirements until the completion of the particular feature of work.

4. Design Control.

a. Design activities are not normally within the Design-Builder's work scope. This element must be considered, however, if any design activity is contemplated. If no design activity is contemplated, the CQP should include a statement of non-applicability of this element.

5. Document Control. Document control includes management of submittals and control of all documents and document changes.

- a. The Design-Builder shall develop, implement, and maintain documented procedures for scheduling and managing Design-Builder and Subcontractor submittals and for document control. The procedures shall define the responsibility and authority for preparing, reviewing, approving, issuing, recording, revising, and distributing documents for activities affecting the quality of the Work.
- b. The Design-Builder shall establish a document control system that ensures that the latest approved documents, drawings, and specifications are available prior to the start of the Work and that the Work is performed in accordance with the latest approved documents.
- c. Changes to documents must be processed in writing and records must reflect all changes as generated. Changes to documents and data must be reviewed by the same authorized personnel who reviewed and approved the original documents unless the control procedures specifically allow otherwise. Changes must be distributed promptly to all locations.
- d. The Design-Builder's document control system must include methods for elimination of obsolete documents from each work location. Any superseded documents retained for the record must be clearly identified as such.
- e. The Design-Builder must maintain a master list of controlled documents enumerating the current revision of each document.
- f. The following are examples of the types of documents requiring control:
 - (1) Requests for Information (RFI) and responses
 - (2) Drawings
 - (3) Specifications
 - (4) Inspection procedures
 - (5) Test procedures
 - (6) Special work instructions
 - (7) Operational procedures
 - (8) Quality program and procedures

6. Subcontractor Evaluation and Procurement Control.

- a. Subcontractor services must comply with all quality requirements specified for the Design-Builder. Subcontractors and suppliers may adopt and implement the Design-Builder's CQP or use approved in-house quality programs appropriate to their work and meeting all applicable codes, standards, specifications, and guidelines. The Design-Builder shall review any Subcontractor or supplier quality program used to control work on the project to verify its compliance with these requirements.
- b. The Design-Builder shall ensure that services are procured only from sources capable of meeting the requirements of the Contract and procurement documents. Subcontractors and suppliers under consideration shall be evaluated on the basis of the following:
 - (1) Technical competence as evidenced by professional qualifications and experience of the firm and committed personnel
 - (2) Past performance on related or similar projects
 - (3) Familiarity with Project guidelines and other applicable codes and standards
 - (4) Current commitments of the and key personnel
 - (5) Safety and criticality of the project and activity
- c. The Design-Builder must ensure that contract or procurement documents for Subcontractor services clearly specify the quality expectations of the HACC/PMO, including relevant standards, drawings, specifications, process requirements, inspection instructions, and approval criteria for materials, processes, and product. As appropriate, the Design-Builder shall define the means and methods for handling, storage, packaging, and delivery of product. The Design-Builder's purchasing documents shall be reviewed and approved by a Design-Builder designated authority for adequacy of specified quality requirements prior to release.

- d. The Design-Builder must document all Subcontractor and supplier evaluation and procurement control activities.
- e. As appropriate, the Design-Builder's contract with its Subcontractors and suppliers shall include provisions for source inspection by the Design-Builder, Authority, or other authorized representatives of those quality characteristics which cannot be verified during subsequent processing. Source inspection plans shall include mandatory hold points where the Design-Builder could verify compliance with the Contract requirements.

7. Handling, Storage, and Control of Materials and Equipment.

- a. The Design-Builder must develop, implement, and maintain documented procedures for handling, storage, and control of materials and equipment. These shall address the following, as appropriate:
 - (1) Measures to ensure that inappropriate storage, handling, lifting, and rigging methods do not degrade or compromise the quality of an item.
 - (2) Methods for cleaning, preserving, and storing material and equipment.
 - (3) Verification and control certificates of compliance and conformance and other supporting documentation.
- b. The Design-Builder must develop, implement, and maintain documented procedures to control product identification and traceability to prevent the use of incorrect or defective items; and to ensure that only correct and acceptable items are used or installed.
- c. The Design-Builder must segregate or otherwise identify items that fail to possess identification, or items for which record traceability has been lost, or items which do not conform to requirements to prevent use or installation. The Design-Builder shall ensure that items can be identified by how they are marked or where they are located.
- d. The Design-Builder must implement methods of handling and storage to prevent damage to, and loss of, materials and equipment. If appropriate, contract and procurement documents shall require measures to ensure proper handling and storage of material and equipment by Design-Builder's Subcontractors and suppliers.

8. Control of Special Processes.

- a. The Design-Builder must develop, implement, and maintain documented procedures for controlling special processes. Special processes are those that require: qualification of personnel performing the process, qualification of the process itself, and control of the process and equipment used to perform the process. Special processes include welding, nondestructive testing, and heat treating. Control of special processes shall include the following:
 - (1) The Design-Builder shall use qualified and certified personnel to perform special processes. Their certifications shall be current and appropriate for the special process they are performing.
 - (2) Special processes shall be qualified, or meet the requisites for prequalification. The material and equipment used to perform the special process shall be qualified, properly controlled, and maintained.
 - (3) The Contractors, Subcontractors, or Fabrications inspectors of special processes shall be properly qualified and certified, and their certifications should be current.
 - (4) Work involving special processes shall be identified, planned, and performed in the proper sequence under controlled conditions according to the referenced standards.
 - (5) Work involving special processes shall be performed using documented procedures or work instructions.
- b. The Design-Builder must document the control of special processes according to the referenced standards, and keep records of the control measures.
- c. The Design-Builder must ensure that requirements for process control and procedures for special processes are included in its contract and procurement documents if appropriate to the direction of its Subcontractors and suppliers.

9. Corrective Action.

- a. The Design-Builder must investigate the cause of non-conformances and take appropriate corrective action to prevent recurrences. The identification, cause, and corrective action planned and taken should be documented. Corrective action taken with respect to nonconforming Work should be proactive so as to eliminate potential problems, which have not yet occurred.
- b. The Design-Builder must develop, implement, and maintain documented corrective action procedures for the following:
 - (1) Analyzing processes to detect and eliminate potential causes of nonconformance.
 - (2) Initiating preventive actions to deal with problems to a level corresponding to the risks encountered.
 - (3) Ensuring implementation and effectiveness of corrective actions.
 - (4) Implementing and recording changes in procedures resulting from corrective actions.
- c. The Design-Builder must ensure that applicable requirements for corrective action by its Subcontractors and suppliers are included in its contract and procurement documents.

10. Documentation by Quality Records.

- a. The CQP must contain provisions for identification of types of quality records to be maintained and for their retrievability and retention. The Design-Builder shall maintain quality records in accordance with applicable procedures as evidence that all of its activities and those of its Subcontractors comply with the requirements of the CQP.
- b. The Design-Builder must develop, implement, and maintain documented procedures control of quality records. Responsibility for production, collection, indexing, filing, storage, maintenance, and disposition of quality records should be established.
- c. Quality records must be legible and shall specify the type of activities involved. Records shall be kept in a suitable environment to prevent deterioration, damage, and unauthorized access. Retention times and final disposition shall be established and recorded.
- d. Subcontractor and supplier quality records must be included in the Design-Builder's quality records maintenance plan where pertinent.
- e. Quality records requiring control shall include, but should not be limited to, the following:
 - i. Qualification records for personnel, processes, and equipment
 - ii. Nonconformance and corrective action reports
 - iii. Documentation of audit and surveillance activities
 - iv. Material and equipment certificates of conformance or compliance or both; certified material test reports
 - v. Drawings, procedures, and the CQP
 - vi. Certification and training records
 - vii. Subcontractor and supplier evaluations
 - viii. Subcontractor documentation

11. Design-Builder Surveillance/Internal Audit.

- a. The Design-Builder must develop, implement, and maintain documented procedures for the control of audit and surveillance activities. Audits, surveillances, and follow-up actions must be scheduled and conducted by qualified quality personnel. All audit and surveillance activities must be documented.
- b. The Design-Builder must establish and maintain a system of internal audits to verify and assess its compliance with the requirements of the CQP.
- c. The Design-Builder must establish and maintain a system of surveillance or external audits to verify and assess compliance by its Subcontractors and suppliers with the CQP or other approved quality program.

- d. Results of audits and surveillances must be presented to the personnel having responsibility in the area being audited. Responsible management personnel must take timely corrective action on the deficiencies found by internal audits.
- e. The Design-Builder must ensure that requirements for surveillance and internal audit by Subcontractors and suppliers are included in its Contract and procurement documents for the same.

12. Certification And Training.

- a. The Design-Builder must provide training, qualification, and certification programs in accordance with recognized guidelines for personnel affecting and assuring quality. Personnel must have demonstrated competence in the specific area and have adequate understanding of the project requirements. The Design-Builder must periodically review credentials of active personnel to assure that suitable education, experience, and technical qualifications are maintained. Indoctrination and training must be implemented as necessary to assure that proficiency is achieved and maintained for personnel with project responsibility.
- b. The Design-Builder must develop, implement, and maintain documented procedures to establish the requirements for conducting training, including training on the CQP and related procedures. Training must be conducted by knowledgeable instructors.
- c. The Design-Builder must establish and maintain records of certification and training.
- d. The Design-Builder must ensure that requirements for certification and training for its Subcontractors' and suppliers' personnel are included in its subcontract and procurement documents.

13. Reports to be provided by Design-Builder: Provide certified copies of reports.

- a. Unless otherwise indicated, submit for review by the Architect.
- b. Submit reports within ten (10) business days after execution of quality control activity, but not later than the date of the payment application for the Work to which the quality control activity relates.
- c. Reports shall be prepared by the entity performing the quality control activity.
- d. Include the following information in all types of reports:
 - (1) Date of report.
 - (2) Project name and Contract number.
 - (3) Description of the quality control activity.
 - (4) Name, address, and telephone number of entity performing activity.
 - (5) Date quality control activity was performed.
 - (6) Specification section(s) involved.
 - (7) Basis for evaluation (test method, etc.)
 - (8) Results or conclusions, including evaluations and interpretations.
 - (9) Title, name, and signature of person performing activity.

14. Certificates to be provided by Design-Builder: Submit for review, unless otherwise indicated.

- a. Certificates shall be signed by the product manufacturer, unless otherwise specified or not applicable.
- b. Include the following information:
 - (1) Date of certificate.
 - (2) Project name and Contract number.
 - (3) Description of the product or system certified.
 - (4) Specification section(s) involved.
 - (5) When actual materials to be used are to be certified, include lot identification markings, destination of shipment, and quantity in shipment.
 - (6) Title, name, and signature of person authorized to make certification.

15. Qualification Statements to be submitted by Design-Builder: Submit for review, unless otherwise indicated.
16. Manufacturers' Instructions to be submitted by Design-Builder: Submit for review, unless otherwise indicated; identify conflicts with Contract Documents.

Section 13.12 Sequencing and Installation Standards

1. The Design-Builder must coordinate quality control activities to avoid delay and to make it unnecessary to uncover Work for testing or inspection.

Section 13.13 Installation Standards

1. INSTALLATION STANDARDS

- a. Compliance: Install manufactured items in accordance with the manufacturer's written instructions.
- b. Inconsistencies: The Design-Builder must refer inconsistencies between the manufacturer's instructions and the drawings and specifications to the Architect for resolution.
- c. The Design-Builder must require the Installer of each major component to inspect both the substrate and conditions under which Work is to be performed. The Design-Builder must not proceed until unsatisfactory conditions have been corrected in a manner acceptable to the manufacturer and the installer.
- d. The Design-Builder must inspect materials or equipment immediately upon delivery and again prior to installation to be certain the items are not damaged or defective.
- e. The Design-Builder must provide attachment and connection devices and use methods necessary for securing Work true to line and level. The Design-Builder must allow for expansion and building movement.
- f. The Design-Builder must provide uniform joint widths in exposed Work. The Design-Builder must arrange joints in exposed Work to obtain the best visual effect as determined by the Architect. All anchorage devices and materials shall be fully concealed in the Work unless otherwise approved by the Architect.
- g. The Design-Builder must recheck measurements and dimensions before starting each installation.
- h. The Design-Builder must install each component during favorable weather conditions and Project status that shall ensure the best possible results. The Design-Builder must insulate each part of the completed construction from incompatible material as necessary to prevent deterioration.
- i. The Design-Builder must coordinate temporary enclosures with required inspections and tests to minimize the necessity of uncovering completed construction for that purpose.
- j. The Design-Builder must, where mounting heights are not indicated, install individual components at standard mounting heights recognized within the industry for the particular application indicated.
- k. Job Mock-Up: Where indicated in the Technical Specifications, prior to installation of the work, construct sample mock-up at the site, where directed, using materials shown or specified for final Work, and indicating the proposed range of color, texture and workmanship to be expected in the completed Work. Obtain Architect's acceptance. Do not alter, move or destroy mock-up until Work is completed.

2. COLORS

- a. The Design-Builder, its subcontractors, and materials suppliers shall cooperate in furnishing required samples to aid in color selections. Where custom colors are selected by the Architect, furnish accurate reproductions of these colors on materials of same type to be used in the Work, for review. Colors and materials shall match the Architect's samples.

- b. If the colors of factory-finished products or equipment are not specified, then the Architect is to select from the manufacturer's standard range of colors for non-public areas and may select custom colors for public areas, unless specified otherwise.
- c. Discrepancies between the colors and materials scheduled and other requirements of the Contract Documents shall be referred to the Architect for resolution. The Design-Builder shall furnish these materials in accordance with the Architect's determination at no additional cost to the Owner.

3. METAL THICKNESS

- a. Reference to gauge or thickness of metal products shall be the base metal gauge or thickness, excluding thickness of coating, such as paint coatings, zinc (galvanized) coatings, and plating.

4. INSTALLATION AND START-UP

- a. When product manufacturer's warranty is contingent upon installation or start-up technical assistance service by the manufacturer's Authorized Representative, Design-Builder must advise the Owner and the Architect in writing not less than fourteen (14) days prior to date of commencement of that portion of the Work.

Section 13.14 Delivery, Handling and Storage

1. Transportation and Handling:

a. Delivery, Design-Builder's Obligations:

- (1) Shop Assembly: Preassembled products in shop to greatest extent possible to minimize field splicing and assembly. Disassemble product into units only as necessary for shipping and handling limitation. Clearly mark units for ease of assembly and coordinated installation.
- (2) Openings: Prior to shipping, provide temporary caps or plugs to close openings of products to prevent entry of foreign material or damage to openings.
- (3) Fluids: Drain products of fluids prior to shipping, except as otherwise required by manufacturer. Ship fluids in separate containers.
- (4) Containers: Deliver products to Project site in original, new, and unopened packages or containers bearing manufacturer's name, content identification, and additional data required by respective specification sections.
- (5) Built-In Items: Promptly deliver products to be built into supporting construction. Furnish final setting drawings, diagrams, templates, and instructions for installation of built-in items.

b. Handling:

- (1) Methods: Handle products and place products in positions in a manner to prevent overstress, deformation, defacement, or other damage.
- (2) Lifting Aids:
 - i. Furnish products with lifting aids, including, but not limited to, lifting irons, eye bolts, lifting lugs, and like items as applicable. Wherever possible, lifting aids shall be of threaded connection type.
 - ii. Do not remove lifting aids from products, except for interference with installation or operation. Under no circumstances shall lifting lugs welded to code stamp or like certified products be removed.
 - iii. Tag and deliver removed lifting aids to the Owner. Tag shall identify products to which lifting aids are associated.

2. Storage and Protection, Design-Builder's Obligations:

a. Storage Space:

- (1) Arrangement: Place products to provide easy access for review, so identification marks are easily visible, and to provide space necessary for future handling.

- (2) Relocation: If it becomes necessary during progress of the Work to move product storage facility, move such facility at no charge in the Contract Sum.
- b. Off-Site Storage: In the event that it is necessary to store products off-site, first obtain acceptance of the Owner. The Design-Builder shall be responsible for insurance, warehousing, transportation, handling, and similar items associated with products stored off-site.
- c. Protection:
 - (1) Do not place products in direct contact with ground or where products can become splattered with mud, dirt, water, debris, or other similar material, or where products cannot be picked-up for future handling without damage.
 - (2) Store products subject to damage by weather in weathertight enclosure. Maintain temperature and humidity within ranges required or recommended by manufacturer's instructions.
 - (3) Prevent moisture from condensing on surfaces within space of protected or covered products.

Section 13.15 Interface and Project Coordination

1. Work Priority, Design-Builder's Obligations:

- a. Fit piping, ductwork, conduit, and lights into structure as Project conditions may demand. Final decisions as to right-of-way and run of pipe, ducts, conduit, lights, etc., shall be made by the Architect.
- b. Close cooperation between the trades shall be required. Work installed without regard for other work shall be removed, if necessary, as determined by the Authority and at the installing Design-Builder's expense.
- c. In general, priority shall arranged be as follows:
 - (1) Light fixtures.
 - (2) Piping that must be drainable, such as plumbing wastes, vents, short drain lines, steam and condensate, and refrigeration.
 - (3) Sheet metal ductwork.
 - (4) Heating hot water and chilled water lines.
 - (5) Gas lines.
 - (6) Water and fire sprinkler lines.
 - (7) Electrical conduit.
 - (8) Control air lines and conduit.
- d. Review the relationship of work to that of other work before installing same. In particular, review the following:
 - (1) Ceiling heights of room before installing ducts and pipes.
 - (2) Ceiling outlets versus lights and speakers.
 - (3) Fin tube radiation or floor air outlets versus wall electrical outlets.
 - (4) Fixture heights and locations.
 - (5) Floor drain locations.
 - (6) Drain piping grades and elevations.
 - (7) Roof drain and plumbing vent locations.
 - (8) Roofing, waterproofing, and flashings relative to facade and colonnade masonry work.
- e. Roughing-in and connection prints shall be furnished for equipment not-in-contract (NIC) by those providing the equipment.
- f. Piping, ductwork, and conduit shall be above ceilings and in wall cavities unless otherwise indicated.
- g. Where pipes, ducts, and conduit are shown to be routed below existing ceilings less than 9 feet (2743 mm) high, they shall be held as high as possible, and along walls, beams, etc., to provide maximum clearance possible.

- h. The Design-Builder shall be responsible for the pumping and draining of trenches and pits necessary for the installation of work. No piping, ductwork, conduit, or equipment shall be installed in a trench or pit until water has been pumped out and the trench is continuously maintained dry. Provide pumps, piping, and wiring required to drain trench or pit.
- 2. Coordination With Other Trades, Design-Builder's Obligations:
 - a. Examine other divisions of the Contract Documents for related work.
 - b. Examine the Contract Documents to determine the material and equipment which shall be provided by other divisions.
 - c. Cooperate to provide continuity and progress of the Work. Furnish to other divisions, information required for the execution of the Work.
 - d. Furnish other divisions advance information on locations and sizes of frames, boxes, sleeves, and openings needed for the Work, and also furnish information and shop drawings necessary to permit trades affected to install their work properly and without delay.
 - e. Where there is evidence that work of a division shall interfere with the work of another division, all divisions shall be required to assist in working out space conditions to make satisfactory adjustments and shall be prepared to submit and revise coordinated shop drawings.
- 3. Drawing Coordination, Design-Builder's Obligations:
 - a. Location of items required by the drawings or specifications not definitely fixed by dimensions are approximate only and exact locations necessary to secure the best conditions and results shall be determined at the site and shall be as indicated on the shop drawings, and shall be subject to review by the Architect.
 - b. Determine exact locations by the dimensions of the actual equipment and final locations of masonry for the façade and colonnade. Submit revised shop drawings for review by the Architect for any revised layout before equipment is installed. Review the drawings for dimensions, locations of partitions and equipment, locations and sizes of structural supports, foundations, swing of doors, and other detail information required for a correct installation of the work.
 - c. Work not shown on the Drawings, but mentioned in the Specifications, or vice versa, or any incidental accessories necessary to make the Work complete and ready for operation, shall be furnished and installed.
 - d. Items not shown on the drawings or specified herein, but reasonably incidental to the installation, as required by applicable codes, as practiced by the trade, or which is stipulated by the manufacturer of equipment being installed or connected, shall be furnished and installed without additional expense.

Section 13.16 Construction Industry Standards

- 1. Publication Dates: The Design-Builder must comply with the standard in effect as of the date of the Contract Documents, unless another edition is indicated in the Specifications.
- 2. Conflicting Requirements: Where compliance with two or more standards is specified, the standards may establish different or conflicting requirements for minimum quantities or quality levels. The Design-Builder must refer requirements that are different, but apparently equal, and uncertainties to the Architect for a decision before proceeding.
 - a. The quantity or quality level shown or specified shall be the minimum provided or performed. The actual installation may comply exactly with the minimum quantity or quality specified, or it may exceed the minimum within reasonable limits. In complying with these requirements, indicated numeric values are minimum or maximum, as appropriate for the context of the requirements. Refer uncertainties to the Architect for a decision before proceeding
- 3. Copies of Standards: Each entity engaged in construction on the Project is required to be familiar with industry standards applicable to that entity's construction activity. Copies of applicable standards are not bound with the Contract Documents.
 - a. Where copies of standards are needed for performance of a required construction activity, the Design-Builder shall obtain copies directly from the publication source.

4. Installer: An "Installer" is the Design-Builder or an entity engaged by the Design-Builder, either as an employee or, Subcontractor for performance of a particular construction activity, including, but not limited to, installation, erection, application, and similar operations. Installers are required to be experienced in the operations they are engaged to perform.
 - a. The term "experienced", when used with the term "Installer", means having a minimum of five years of experience installing similar products on projects similar in size and scope to this Project, being familiar with the special requirements indicated, and having complied with requirements of the authority having jurisdiction. Comply with additional qualifications where called for in the individual Specification sections.
 - b. Use of titles such as "carpentry" is not intended to imply that certain construction activities shall be performed by accredited or unionized individuals of a corresponding generic name, such as "carpenter". It also does not imply that requirements specified apply exclusively to tradespersons of the corresponding generic name.
 - c. Certain sections of the Specifications require that specific construction activities shall be performed by specialists who are recognized experts in the operations to be performed. The specialists shall be engaged for those activities, and assignments are requirements over which the Design-Builder has no choice or option. Nevertheless, the ultimate responsibility for fulfilling Contract requirements remains with the Design-Builder.
 - (1) This requirement shall not be interpreted to conflict with enforcement of building codes and similar regulations governing the Work. It is also not intended to interfere with local trade union jurisdictional settlements and similar conventions.
5. Testing Laboratories: A "testing laboratory" is an independent entity engaged to perform specific inspections or tests, either at the Project Site or elsewhere, and to report on and, if required, to interpret results of those inspections or tests.

Section 13.17 Quality Execution

1. GENERAL

- a. The Design-Builder must provide Work of the specified quality; where quality level is not indicated, provide Work of quality customary in similar types of Work.
 - (1) Where codes, laws, or regulations require Work of higher quality or performance, provide Work complying with such codes, laws, and regulations.
 - (2) Where two (2) or more quality provisions of the Contract Documents conflict, or; where requirements are different but apparently equal, and where it is uncertain which requirement should be used, obtain clarification from the Architect before proceeding.
 - (3) Actual quality may exceed the specified quality; verify that such differences are acceptable to the Authority.
- b. The Design-Builder must control products, suppliers, manufacturers, Site conditions, installers, and workmanship in such a manner as to produce Work of the specified quality.
- c. The Design-Builder must comply with manufacturers' instructions and recommendations.
 - (1) Keep a record of instructions and recommendations which supplement or conflict with the manufacturer's written instructions.
 - (2) When manufacturers' instructions and recommendations conflict with the Contract Documents, obtain clarification from the Architect before proceeding.
- d. The Design-Builder must use installers who are capable of producing Work of the specified quality.
- e. The Design-Builder must perform all quality control activities specified unless indicated to be performed by other entities.

2. GRADES, LINES, AND LEVELS

- a. The Design-Builder must establish, maintain, and be responsible for grades, lines, levels, and benchmarks.

- b. The Design-Builder must verify grades, lines, levels, and dimensions indicated on the Drawings before laying out the Work, failure to make said verification shall not be grounds for a claim for an increase in the Base Contract Price or the Contract Time. The Architect will not assume the responsibilities for laying out the Work.
- c. The Design-Builder must establish benchmarks and axis lines at each floor showing exact floor elevations and other lines and dimensional reference points as required for the information and guidance of trades.
- d. Before ordering materials or doing work which is dependent for proper size or installation upon coordination with building conditions the Design-Builder must verify dimensions by taking measurements and be responsible for their correctness.
- e. The Design-Builder must resolve differences between the actual dimensions and those indicated on the drawings.
- f. Report to the Architect and Authority Representative any discrepancy between the Drawings or the Specifications and the existing conditions. Do not proceed in areas of discrepancy until such discrepancies have been fully resolved.

3. SURVEYOR

- a. The Design-Builder must engage and pay for the services of a licensed surveyor, subject to the approval of the Authority, who is not a regular employee of the Design-Builder and who has no interest in the Contract.
- b. Locating the Work
 - (1) Verification: The Design-Builder must have the surveyor verify that the following elements of the work have been furnished and installed in accordance with the Contract Documents:
 - i. Caissons: Verify locations, elevations, and dimensions.
 - ii. Foundation Walls: Verify locations, elevations, dimensions, and angles.
 - iii. Roof Structure: Verify plumbness.
 - iv. Exterior Walls: Verify locations and plumbness.
 - v. Bottom of excavation; top of compacted fill.
 - c. Certification: The Design-Builder must submit certification to the Authority with a copy to the Architect, in the form of original drawings signed by the surveyor, stating that the work has been accurately located relative to the property lines. Except at his own risk, the Design-Builder shall not proceed with the work until surveyor's certification has been submitted and verified for correct location of the work.

4. SETTLEMENT MONITORING

- a. Readings: Unless otherwise specified, Design-Builder must have the surveyor described above take readings of the work and adjacent property at a minimum number of points as indicated in the Technical Specification. Additional monitoring points may be established as the Design-Builder determines to be necessary. Provide a proposed program, in writing, for settlement monitoring prior to the start of excavation or foundation work. Have readings taken weekly until the work is substantially complete.
- b. Reports: The Design-Builder must record settlement readings and submit them in the form of a report to the Authority Representative and the Architect once a week.

5. PROTECTION AND REPAIR

- a. When Work is uncovered during quality control activities, the Design-Builder must provide protection from damage.
- b. The Design-Builder must correct Work damaged by quality control activities; where repair is indicated as an unacceptable method, replace the Work.

ARTICLE 14. TESTING AND INSPECTION

Section 14.01 Inspection of Work

1. The Authority, the Architect, the Authority Representative, and all consultants of the Authority retained to do testing, commissioning or inspection, will at all times have access to the Work wherever and whenever it is in process. The Design-Builder must provide proper and safe facilities for access and inspection.
2. The Design-Builder will cooperate with inspecting agencies and provide appropriate access. If the inspection is made by an authority other than the Architect or Authority, the Design-Builder will inform the Architect and Authority Representative in writing of the date fixed for such inspection no less than three (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 Design-Builder will give the Authority Representative no less than three (3) business days written notice of the Work's readiness for inspection by the Architect. Required certificates of inspection must be secured by the Design-Builder. Inspections by the Architect will be promptly made, and where practicable, at the source of supply.
4. Any Work covered up without approval, inspection, or consent of the Architect when such approval, inspection or consent is required by the Contract Documents, will be uncovered for examination as required by the Architect or Authority, and will be replaced and/or re-covered, all at the Design-Builder'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 Design-Builder. If such Work is found to be in accordance with the Contract Documents, the Authority will reimburse the Design-Builder for such uncovering and re-covering. Such reimbursement will be for actual cost incurred plus the percentages allowed by Sections 16.03.1.a.(4) and 16.03.1.a.(5) "Payment for Changes." If such Work is found to be not in accordance with the Contract Documents, the Design-Builder will pay all costs of uncovering, replacement, and re-covering, as well as any corrections or repairs made to the Work.
5. The Design-Builder will place its field engineering force at the Authority Representative's disposal for field checking during any inspection period. When layouts of the Work are to be made, the Design-Builder will notify the Authority Representative in sufficient time that the Architect may be present.
6. The Architect is not authorized to make any changes or modifications in the Contract Documents, to direct the performance of additional Work, or to waive the performance by the Design-Builder of any requirements of the Contract Documents. Any changes to the Work will be in accordance with the provisions of Article 17. "Changes in the Work."

Section 14.02 ASTM Standards

1. 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. Design-Builder must provide the name and qualifications of any such standardizing agency to the Authority 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 Authority Representative for the Architect's acceptance before installation. Unless otherwise specified, all electrical components furnished and installed or assembled by the Design-Builder 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 Design-Builder at no additional cost to the Authority. Any delays in the completion of the Work caused by the manufacturer of equipment in obtaining the required testing laboratory labels and the Authority approval are not grounds for an extension of time beyond the time of completion indicated in the Contract Documents.

Section 14.04 Testing Laboratory Responsibilities

1. AUTHORITY'S INDEPENDENT TESTING LABORATORY

- a. The Authority shall retain the services of an independent certified testing laboratory (ITL) for material and laboratory testing designated in the Contract Documents as being performed by the owner's ITL. for the Authority's purposes.

2. RESPONSIBILITY – DESIGN-BUILDER'S ITL

- a. The Design-Builder shall retain the services of an ITL for all other testing listed in the Contract Documents, and must cooperate with Authority Representative, and Architect to ensure timely Site observation, sampling and laboratory investigation so as to not delay the Work.
- b. The Design-Builder must advise the Authority Representative and Architect of testing procedures and with all special conditions encountered at the Site.
- c. The Design-Builder must perform specified inspections, sampling, and testing of materials and construction methods in accordance with specified or recognized industry standards and ascertain compliance with contract requirements.
- d. The Design-Builder must promptly notify Authority Representative and Architect of irregularities or deficiencies of Work which are observed during performance of inspection and testing services.
- e. The Design-Builder must promptly submit three (3) copies of reports of inspections and tests to the Authority Representative and the Architect including:
 - (1) Date of test or inspection and date of report issuance.
 - (2) Project name and project number, project location.
 - (3) Name and signature of inspector.
 - (4) Identification of product and specification section.
 - (5) Type of inspection or test.
 - (6) Observations regarding compliance with Contract Documents.
 - (7) Implications of all irregularities or deficiencies identified by testing or inspection on quality of construction materials and assemblies.
 - (8) Additional services directed by Authority Representative or Architect.
 - (9) Log of all testing reports in 3-ring binder with Table of Contents.
- f. Additional Design-Builder Responsibility
 - (1) Cooperate with Authority's Independent Laboratory personnel, provide access to Work and to manufacturer's operations.
 - (2) Provide labor and facilities necessary to provide access and to facilitate inspections and tests to Work requiring testing; obtain, handle, and store samples at Site; provide facilities for the exclusive storage and curing of test samples.
 - (3) Notify Authority's Independent Laboratory sufficiently in advance of operations to allow for scheduling of personnel and tests.
 - (4) Correct or replace Work which is defective or which fails to conform to the Contract Documents. Corrective work shall be performed promptly so as not to delay the Project schedule or the work of others. Corrective work shall include all Work associated with patching of all surfaces and areas disturbed by testing operations.
 - (5) Pay all costs of retesting when test results indicate non-compliance with Contract requirements.

- g. Design-Builder, Subcontractor, Manufacturer, and Independent Agency Testing
 - (1) Design-Builder shall coordinate schedule and manage all testing and inspection of equipment, systems, and installations required by the Contract and by code and local governing authority to ensure timely access and documentation.
 - (2) Provide advance notice of all tests and inspections to Architect, Authority Representative, and local governing authorities to permit attendance when required.
 - (3) Design-Builder shall witness and shall also certify all inspections and tests that are performed.
- h. Testing and Inspection Required
 - (1) Material and equipment testing and inspection for the Contract is indicated in the appropriate sections of the Specifications

ARTICLE 15.

SHOP DRAWINGS, PRODUCT DATA, RECORDS, AND SAMPLES

Section 15.01 Documents at the Site

1. The Design-Builder must keep one complete set of the Contract Documents, including all Drawings, specifications, and submittals, at the Site, in good order and available to the Authority, Architect and the Authority Representative. The Drawings, specifications and submittals must be kept up to date by replacing obsolete sheets with revised sheets as they are issued.
2. Site Documentation Requirements
 - a. The Design-Builder must at Site, maintain one (1) current, updated copy of the following documents:
 - (1) Issued for construction drawings, including separate 3-ring binder for supplemental details.
 - (2) Specifications.
 - (3) Written interpretations and supplemental instructions.
 - (4) Addenda.
 - (5) Reviewed, approved shop drawings, samples, and product data.
 - (6) Certifications.
 - (7) Field test records.
 - (8) All permits for construction
 - (9) Correspondence file(s).
 - (10) A full set of updated "as-built" drawings
 - b. The Design-Builder must store documents in field office apart from documents used for field construction.
 - c. The Design-Builder must provide files and racks for document storage.
 - d. The Design-Builder must file documents in format in accordance with division numbering indicated in Specifications table of contents.
 - e. The Design-Builder must maintain documents in clean, dry legible conditions.
 - f. The Design-Builder must not use the documents in the field.
 - g. The Design-Builder must provide access to documents at all times for inspection by Architect and Authority Representative.
 - h. The Design-Builder must keep Record Documents current. Make documents available for inspection at all times and as part of monthly progress/payment meeting.
 - i. The Design-Builder must not permanently conceal any Work until specified information has been recorded.
 - j.
 - k. Legibly mark reproducible drawings to record manufacturer, trade name, catalog number, and supplier of each product and item of equipment actually installed.
 - l. The Design-Builder must at completion of Contract, deliver record "as-built" drawings to the Architect for review.
 - m. The Design-Builder must accompany submittal with transmittal letter containing date, Project name, Contract number, location, title, and name of each record document.
 - n. Design-Builder shall sign all Project Record Documents to certify that all documents submitted have been reviewed for accuracy and completeness.

Section 15.02 Design-Builder'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 Authority at the expense of the Design-Builder.

- a. Definitions
 - 1) Shop Drawings include:
 - i. Drawings, diagrams, schedules, and other data specially prepared for the work on this Project by the Design-Builder, Subcontractor, sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.
 - ii. Shop or plant inspection and test reports, when made on specific materials, products, or systems to be used in the Work.
 - 2) Product Data: Illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Design-Builder to illustrate materials or equipment for some portion of the Work. The data shall be supported by sufficient descriptive material, such as catalog cuts, diagrams, and other data published by the manufacturer, as well as by evidence of compliance with performance standards, to demonstrate conformance to the Specification requirements. Catalog numbers alone are not acceptable. The data shall include, but shall not be limited to, the name and address of the nearest service and maintenance organization that regularly stocks repair parts. Partial lists shall not be reviewed, unless otherwise noted. Review of materials and equipment is tentative, subject to submission of complete shop drawings indicating compliance with the Contract Documents.
 - 3) Samples: Physical samples which illustrate materials, equipment, or workmanship and establish the visual standards by which the work shall be judged. Samples will be reviewed for color and appearance only. Compliance with all other requirements will be the exclusive responsibility of the Design-Builder.
 - 4) Design Data: Calculations compiled by an engineer or other licensed professional registered in the State where the Project is located, for the Design-Builder to document the performance characteristics of a building system or building component.
 - 5) Test Reports and Concrete Mix Designs: Reports of test procedures carried out by an approved licensed testing laboratory, manufacturer, supplier, or distributor to verify that materials and equipment used in the work comply with the Contract Documents.
 - 6) Informational Submittals: Submittals identified in the Contract Documents are to be submitted for information only.
2. The Design-Builder must submit to the Authority 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 including all submittals as described in individual technical specification sections. Design-Builder must submit the following as informational submittals:
 - a. Certificates
 - b. Coordination Drawings
 - c. Reports.
 - d. Qualifications Statements for Manufacturers/installers
 - e. Submittals for which procedures are not defined elsewhere
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 Design-Builder to complete its performance under this Contract. No extensions of time will be granted to Design-Builder 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. Design-Builder must also submit a separate schedule (in table format), in addition to the Target Schedule, identifying all submittal dates to the Authority Representative for review and approval.
4. The Design-Builder 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 Design-Builder represents that it has determined and verified all materials, field measurements, field conditions, and quantities and that it has checked and coordinated the information contained within each submittal, including its subcontractors' submittals, with the requirements of the Work and of the Contract Documents.

5. All shop drawings, video tape, product data, and samples must be dated and stamped by the Design-Builder and indicate that the submittal has been reviewed and checked by the Design-Builder prior to submittal and found to be in conformance with the Contract Documents. All submittals will be transmitted to the Authority Representative. The Design-Builder 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: _____
Name of Architect: _____
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.

Design-Builder: _____
By: _____ Date: _____

6. Shop drawings must be submitted with accurate dimensions. The shop drawings must represent the actual manner in which the Work is manufactured and installed, and the relation of the Work installed to that of other trades, clearances, and all other pertinent data. Dimensions must be expressed in feet and inches. Designs prepared in the metric system may be submitted with metric units, but the equivalent English units must also be shown. All weights and dimensions must be certified prior to submission for review.
7. The Architect's review and acceptance of shop drawings does not relieve Design-Builder from its standard of care for the performance of the Work. Design-Builder must submit all shop drawings, video tape, samples and product data to the Authority Representative for review by the Architect with an accompanying transmittal letter containing the above Submittal identification data and a list of items being submitted. The Design-Builder must coordinate Submittals into logical groups or sets to facilitate review of related items.
8. Any Submittal that, in the opinion of the Architect, is not complete and in proper form will be returned to the Design-Builder without review. The Design-Builder must not submit duplicates or reproductions of any Contract Documents issued by the Authority as shop drawings.
9. Design-Builder must provide each Submittal in the following quantities unless a greater or lesser number is specified elsewhere in the Contract Documents, or is agreed to or required by the Authority:
- a. Shop Drawings: Submit 1 reproducible and six (6) prints on sheets at a minimum of 30" by 42" in size. (Prints must be collated into sets).
- (1) Shop Drawing Content: The Design-Builder must include the following information:
- i. Dimensions, at accurate scale.
 - ii. All field measurements that have been taken, at accurate scale.
 - iii. Names of specific products and materials used.
 - iv. Details, identified by contract document sheet and detail numbers.
 - v. Show compliance with the specific standards referenced.
 - vi. Wiring Diagrams: Accompany shop drawings with specific wiring diagrams and instructions on equipment controls or devices which are to be furnished. The diagrams and instructions shall not be of a general nature, but shall be modified to be specific to this Project. Include identical diagrams and instructions for the installation of the equipment and identical diagrams in the operation and maintenance manuals. Wiring diagrams shall indicate interconnection between pieces of electrical equipment.
 - vii. Coordination requirements; show relationship to adjacent or critical work.
 - viii. Name of preparing firm.

(2) Shop Drawing Preparation:

- i. Reproductions of Contract Documents are not acceptable as shop drawings.
- ii. Copies of standard printed documents are not acceptable as shop drawings.
- iii. Identify as indicated for all submittals.
- iv. Space for Architect's action marking shall be adjacent to the title block.

b. Product data: Submit 6 copies of product data.

(1) The Design-Builder must submit all product data submittals for each system or unit of Work as one (1) submittal.

(2) When product data submittals are prepared specifically for this Project (in the absence of standard printed information) the Design-Builder must submit such information as shop drawings and not as product data submittals.

(3) Content Requirements for Design-Builder:

- i. Submit manufacturer's standard printed data sheets.
- ii. Identify the particular product being submitted; submit only pertinent pages.
- iii. Show compliance with properties specified.
- iv. Identify which options and accessories are applicable.
- v. Include recommendations for application and use.
- vi. Show compliance with the specific standards referenced.
- vii. Show compliance with specified testing agency listings; show the limitations of their labels or seals, if any.
- viii. Identify dimensions which have been verified by field measurement.
- ix. Show special coordination requirements for the product.
- x. Cross out information which is not applicable to the Work.
- xi. Supplement product data to provide additional information which is applicable to the Work.
- xii. Show dimensions and clearances required.
- xiii. Submittal data shall include, but shall not be limited to, the following:
 - a) A list of qualification, departure, or deviation from the requirements of the Contract Documents.
 - b) Shipping and operating weights, including, but not limited to, the support points and weight per point.
 - c) Installation data consisting of dimensions, setting details, vibration isolation, number of components or sub-assemblies, erection instructions, and anchoring methods and locations.
 - d) Performance data consisting of specific design capabilities at the specified design conditions.
 - e) Detailed piping, wiring, and instrumentation diagrams.
 - f) Warranty period (months), start-up service (worker days), and time period (worker days) for instructing the Authority's personnel in operation and maintenance.
 - g) Manufacturer and model number of motor along with electrical and mechanical control accessories furnished with the equipment.

c. Samples: Submit 4 samples.

(1) Provide samples that are the same as proposed product.

(2) Where selection is required, provide full set of all options.

(3) Where products are to match a sample prepared by other entities, prepare sample to match.

(4) Submit full-size, fully fabricated samples cured and finished as specified and physically identical with the material or product proposed. Samples include, but shall not be limited to, partial sections of manufactured or fabricated components, cuts or containers of materials, color range sets, and swatches showing color, texture, and pattern.

- i. Mount, display, or package samples in the manner specified to facilitate review of qualities indicated. Prepare samples to match the Architect's sample. Include the following:
 - a) Generic description of the sample.
 - b) Sample source
 - c) Product name or name of manufacturer.
 - d) Compliance with recognized and specified standards.
- ii. Submit samples for review of kind, color, pattern, and texture for a comparison of characteristics between the final submittal and the actual component as delivered and installed. Where a perceivable range is accepted

- by the Architect, members installed that are abutting or within six inches of each other in the final construction shall not vary by more than ½ the accepted range.
- iii. Refer to other Specification sections for requirements for samples that illustrate workmanship, fabrication techniques, details of assembly, connections, operation, and similar construction characteristics.
 - iv. Refer to other sections for samples to be returned to the Design-Builder for incorporation in the Work. Such samples shall be undamaged at time of use. On the transmittal, indicate special requests regarding disposition of sample submittals.
- (5) Where samples are for selection of color, pattern, texture, or similar characteristics from a range of standard choices, submit a full set of choices for the material or product.
- (6) Preparation, Requirements for Design-Builder:
- i. Attach a description to each sample.
 - ii. Attach name of manufacturer or source to each sample.
 - iii. Where compliance with specified properties is required, attach documentation showing compliance.
 - iv. Where there are limitations in availability, delivery, other similar characteristics, attach description of such limitations.
 - v. Where samples are specified to be returned for installation in the Work, indicate such requirement on transmittal form.
 - vi. Where selection is required, the first submittal may be a single set of all options; after return of submittal with selection indicated, submit standard number of sets of selected item.
- (7) Keep final sample set(s) at the Site, available for use during progress of the Work.
- d. Video tape: Submit 1 video tape.
 - e. Unless otherwise requested on the transmittal, copies in excess of the number requested will not be returned.
 - f. Authority Representative, Architect and Design-Builder shall establish the number of copies of various submittals to be returned and other protocols for review of submittals.
10. Prior to submitting shop drawings, product data, video tape, or samples, the Design-Builder must notify the Authority 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, Design-Builder will not receive a time extension for any delay caused by the deviations in the submittal.
11. The Design-Builder must coordinate submittals and activities that must be performed in sequence, so that the Architect has enough information to properly review the submittals.
12. The Design-Builder must provide complete submittals for each separate and definable system or subsystem and shall include the items necessary to define and explain the system or subsystem, including, but not limited to, its performance and installation. Such items shall consist of product data, materials lists, shop drawings, samples, design data, test reports, and certificates as required by the Specifications. Combine the submittal items for each system or subsystem and submit them together as a single submittal. Similarly, where the work of multiple trades or Subcontractors must be coordinated or the work is otherwise related, the Design-Builder must submit all related submittals together to allow for simultaneous review.
13. The Design-Builder must coordinate submittals of different types for the same product or system so that the Architect has enough information to properly review each submittal.
14. Design-Builder shall prepare a schedule of all required submittals and submit to the Authority Representative within fifteen (15) days of Notice to Proceed date and before any materials, equipment, or fixtures are purchased. An updated schedule that identifies the submittals for the next thirty (30) days shall be issued at each monthly progress and payment review meeting.

- a. Include all submittals required by the Contract Documents.
 - b. Organize the schedule by the applicable Contract Document section number.
 - c. Indicate the submittal date scheduled for each required submittal.
 - d. Indicate the type of each submittal (i.e., schedule, shop drawing, product data, samples, etc.)
 - e. Indicate which submittals required by separate provisions of the Contract Documents are to be submitted and
 - f. reviewed simultaneously because they describe related work.
15. The Design-Builder must transmit each submittal at or before the time indicated on the approved schedule of submittals.
 16. The Design-Builder must deliver each submittal requiring approval in time to allow for adequate review and processing time, including resubmittals if necessary. Schedule shall allow for one resubmittal for each item submitted. Failure of the Design-Builder in this respect will not be considered as grounds for an extension of the time for performance of the Contract.
 17. The Design-Builder must deliver each informational submittal prior to start of the Work involved, unless the submittals is of a type which cannot be prepared until after commencement of the Work. In such a case, submit promptly.
 18. If a submittal must be processed within a certain time in order to maintain the progress of the Work, the Design-Builder must state so clearly on the submittal.
 19. The Design-Builder must allow a minimum of fifteen (15) calendar days for the first processing of each submittal. Allow more time when submittals must be coordinated with later submittals.
 20. The Design-Builder must allow a minimum of seven (7) calendar days for processing of resubmittals.
 21. If a submittal must be delayed for coordination with other submittals not yet submitted, the Architect may at its option either return the submittal with no action or notify the Design-Builder of the other submittals which must be received before the submittal can be reviewed.
 22. Submittals will be accepted from the Design-Builder only. Submittals received from other entities will be returned without review or action.
 23. Submittals received without a transmittal form will be returned without review or action.
 24. The Design-Builder must fill out a separate transmittal form for each submittal and include other relevant information and Requests for Additional Information relevant to submittal.

Section 15.03 Review by the Architect

1. Submittals will be reviewed by the Architect for compliance with the Contract Documents. In reviewing the Submittal, the Architect will not verify dimensions and field conditions. Any such review does not relieve the Design-Builder, 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 Design-Builder 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 Design-Builder must not fabricate products, begin Work, order or have delivered any material, equipment or system that requires a reviewed Submittal until return of the Submittal from the Architect with a stamp authorizing Work and/or delivery and installation to be performed, as described in Paragraph 3 immediately below.
3. The Architect will return Submittal stamped as follows:
 - a. "No Exceptions" means no changes are necessary on the reviewed Submittal. The Design-Builder 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 Design-Builder may proceed with the Work for that Submittal if the Design-Builder 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 Design-Builder 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 Design-Builder 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.
 - e. "Retain for Records" means the submittals are being retained for informational purposes only or were submitted to comply with an administrative requirement of the contract.
- 4. If the Submittal requires revision, the Design-Builder must notify the Authority 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 Authority Representative for the review of the Architect to maintain the approved CPM schedule, but in no event more than five (5) Days after receipt of the Architect's comments.
 - 6. Shop Drawings: After review by the Architect, one reproducible stamped by the Architect as described in paragraph 3 above will be returned to the Design-Builder.
 - 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 Design-Builder 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 Design-Builder and Architect. Notice of the result of the review will be provided to the Design-Builder with one of the stamps indicated in Paragraph 3 above. Rejected samples will be returned. Accepted samples will be retained by the Authority and become the property of the Authority. 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.
 - a. Product data: After review by the Architect, two (2) sets of product data stamped by the Architect as previously described will be returned to the Design-Builder.
 - b. Distribution, Requirements for Design-Builder:
 - (1) Distribute returned submittals to all Subcontractors involved in Work covered by the submittal.
 - (2) Make extra copies for operation and maintenance data submittals, as required.
 - (3) Make one (1) copy for Record Documents.
 - (4) Record distribution on transmittal form with copy to Architect.
 - (5) Submit three (3) opaque copies of all transparency submittals to Architect as part of the distribution, if required by Authority and Architect.
 - c. Upload electronically all project documents and submittals to Authority's on-line collaboration and document management system as directed by the Authority Representative.
 - d. Proposing Substitution. In the event the Design-Builder is proposing a substitution, Design-Builder must submit the completed "Form for Proposing Substitution" found at the end of this Article.

Section 15.04 As-Built Drawings

- 1. As the Work progresses, the Design-Builder, and the Subcontractor for each trade or division of Work under the direction of the Design-Builder, must keep a complete and accurate record of the following:

- a. Changes between the Work as shown on the Contract Drawings and the shop drawings indicating the Work as actually installed.
 - b. The specific location of all infrastructure elements, including piping, valves, ductwork, equipment, driveways, catch basins, sewer lines, waterlines, water mains, and other such elements which were not accurately located or changed location or elevation from that shown on the Contract Drawings.
 - c. Equipment schedules indicating manufacturers' names and model numbers installed.
2. Changes must be neatly and correctly recorded daily on full-size prints of the Contract Drawings. This record set of Contract Drawings must be kept at the Site for inspection by the Authority.
 3. Upon completion of the Work, the Design-Builder will submit a final set of full-size prints to the Authority Representative for the Architect's review and acceptance.
 4. At the time as-built drawings are delivered to the Authority, the Design-Builder and each Subcontractor will certify, in writing, that the as-built drawings are complete and accurate. The Design-Builder may obtain compact discs or original drawings from the Architect at Design-Builder's own expense for this purpose.

Section 15.05 Record Shop Drawings and Product Data

- a. As the Work progresses, the Design-Builder 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 Design-Builder must furnish record shop drawings in a form and quantity acceptable to the Authority. Record shop drawings must be submitted for all items reviewed as shop drawings. Record shop drawings must be provided in an editable electronic medium and hard copy as directed by the Authority. 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.
- b. Unless otherwise specified, Design-Builder must furnish 7 record copies of product data loose-leaf binders. Loose-leaf binders must be subdivided by submittal numbers and must contain an index of all items unless otherwise specified.

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

1. The Design-Builder 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 Design-Builder for the equipment under the guarantee.
2. The Design-Builder must submit operating instructions for each major component of equipment and its controls in accordance with the specifications. Proposed instructions must be submitted to the Authority Representative for the Authority's review and acceptance in the amount provided for in the specifications. Upon acceptance, the Design-Builder must post applicable instructions as required by the specifications or as otherwise directed by the Authority.
3. The Design-Builder must submit to the Authority Representative any and all maintenance data prepared by the manufacturer of each major component of equipment and its controls in accordance with the specifications. Data must include at least the following information: complete parts list; itemized lists of common purchase items of materials (e.g., bearing, packing, connectors, sealing devices, and other standard items) indicated by their standard trade designation; recommended routine and inspection maintenance, including testing recommendations to evaluate efficiency of performance; lists of special tools and gauges, lubricating instructions, and recommended spare parts; tolerance and clearances required for maintenance; and 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 Authority Representative for the Authority's review and acceptance in the quantity provided for in the specifications.
 - a. Operations and Maintenance Manual

(1) Manual to Include:

- i. List of all manufacturer's standard product and equipment data of same type and content furnished to manufacturer's own service personnel.
- ii. Summary list of operating and maintenance data submittals as required by Specifications for inclusion in Final Completion and Acceptance documentation.

b. SUBMITTAL REQUIREMENTS

- (1) Assemble operating and maintenance data, properly assembled by each of the respective manufacturers, subcontractors, and suppliers.
- (2) Submit one (1) hard copy at Substantial Completion. Obtain approval of Authority Representative prior to Final submittal.
- (3) Submit four (4) original hard copies of each item as part of the Record Documents submittal at Final
- (4) Completion and Acceptance bound in a separate manual to Architect for review and transmittal to Authority.
- (5) Submit four (4) copies of the information in electronic format on C.D. ROM at Final Completion.

c. MANUAL CONTENT

(1) The Design-Builder must include Table of Contents that identifies the following:

- i. Design-Builder name, address, and telephone number.
- ii. List of each product specified to be included.
- iii. List to accompany each product that includes the name, address, and telephone number of the following:
 - a) Subcontractor.
 - b) Maintenance Design-Builder (where appropriate).
 - c) Local distributor or supplier for parts or replacement.

d. MANUAL FOR MATERIALS AND FINISHES

(1) Product data shall include the following:

- I. Catalog number, size, composition, and finish selection for each product.
- II. Manufacturer's recommendations for types of cleaning agents, methods, and maintenance schedule.
- III. Instructions for inspection, maintenance, repair, safety and emergencies.
- IV. Material Safety Data sheets for materials, as directed by Authority Representative.
- V. Manufacturer's statement of compliance with EPA and OSHA, Guidelines for VOC content limits for each material.
- VI. Clear identification of all specific product or parts installed.
- VII. Clear identification of data applicable to specific installation(s).
- VIII. Delete references to inappropriate products, parts, options, and installation.
- IX. Supplemental coordination drawings that clearly illustrate relationship of component parts of equipment and systems, as well as, control, flow, and wiring diagrams.
- X. Copy of each warranty, bond, and service contract issued.
- XI. Information for re-ordering product.
- XII. Procedures to be followed in the event of equipment failure.

e. SUBMITTALS REQUIRED

- (1) Items requiring operating and maintenance data are indicated in the appropriate sections of the Specifications.

4. The Design-Builder must submit all applicable manufacturer's warranties as described in Section 13.10 "Guarantees and Warranties" and as provided below.

a. Warranty Manual Contents

- (1) List of all extended warranties (beyond one (1) year) for all materials, equipment, and labor to be provided by the Design-Builder as part of the Work.

b. SUBMITTAL REQUIREMENTS

- (1) Assemble warranties, properly executed by each of the respective manufacturers, Subcontractors, and suppliers.
- (2) Submit three (3) original signed copies of each item as part of the Record Document submittal at Final Completion and Acceptance bound in a separate manual to Architect for review and transmittal to Authority.
- (3) Manual shall include a typed table of contents that identifies the following:
 - i. Product or work item.
 - ii. Design-Builder's name (including principal's name), address, and telephone number.
 - iii. Manufacturer and distributor's names (including principal's name), address, and telephone number.
 - iv. Commencement date of warranty.
 - v. Duration of warranty.
 - vi. Procedure for Authority's or User's personnel to follow in the event of product or equipment failure.

c. FORM OF SUBMITTALS

- (1) Prepare a single packet in 8 1/2" x 11" format. Sheets larger than this format shall be folded.
- (2) Identify packet with typed title, "Warranties", Project name, location, date, Contract number and Design-Builder's name.
- (3) Submit the information in electronic format on CD ROM.

d. SUBMITTALS REQUIRED

- (1) Items or assemblies for which warranties are required are indicated in the appropriate sections of the Specifications.

Section 15.07 Record Documents

1. At Substantial Completion of the Work, the Design-Builder must deliver to the Authority and the User Agency, in suitable transfer cases clearly marked "Record Documents," all as-built drawings, record shop drawings, video tape, product data, instructions, parts list, and operations and maintenance manuals arranged in proper order and indexed. The submission of all Record Documents is a prerequisite to reduction of retention from 3% to 1% under Section 16.08, "Release of Retainage."
2. Project Record Documents Requirements
 - a. Project Record Documents: Submit after Substantial Completion, but prior to Final Completion and Acceptance.
 - (1) Record Drawings: Submit in form of reverse matte-finish mylar transparencies for Architect's review.
 - i. Submit original reproducible marked in red ink to indicate as-built condition.
 - ii. Submit three (3) additional opaque print copy sets.
 - iii. Sets shall include all Drawings, whether changed or not.
 - iv. After Architect's review, submit.
 - (2) Other Record Documents: Submit originals or good quality photocopies.
3. MAINTENANCE OF PROJECT RECORD DOCUMENTS
 - a. Do not use Record Drawings of any type for construction purposes.
 - b. Maintain complete set of current hard copy Record Drawings in a secure location at the Site while providing for access by the Design-Builder, the Authority Representative and the Architect during normal working hours. Store Record Drawings in a fire-resistive room or container outside of normal working hours.
 - c. Record information immediately after it is obtained on the record document transparencies for incorporation on the final Record Drawings as soon as possible.
 - d. Assign a person or persons responsible for maintaining Record Drawings.

- e. Record the following types of information on all applicable Record Drawings:
 - (1) Dimensional changes.
 - (2) New and revised details.
 - (3) Depths of foundations.
 - (4) Locations and depths of underground utilities.
 - (5) Actual routings of piping and conduits.
 - (6) Revisions to electrical circuits.
 - (7) Actual equipment locations.
 - (8) Sizes and routings of ducts.
 - (9) Locations of utilities concealed in construction.
 - (10) Particulars on concealed products which will not be easy to identify later.
 - (11) Changes made by modifications to the Contract; note identification numbers if applicable.
 - (12) New information which may be useful to the Authority or User, but which was not shown in either the Contract Documents or submittals.

4. RECORD DRAWINGS

- a. Maintain a complete set of opaque prints of the Drawings, marked to show changes, at the Design-Builder's Site trailer.
- b. Where the actual Work differs from that shown on the Drawings, update this set to show the actual Work.
 - (1) Identify location of concealed items before they are covered by other Work.
 - (2) Update either Record Drawings or shop drawings, whichever are best suited to show the change.
 - (3) Where changes are marked on record shop drawings, include cross-reference on the applicable Record Drawing.
- c. When the Design-Builder is required by a provision of a Change Order to prepare a new drawing, rather than to revise existing drawings, obtain instructions from the Architect as to the drawing scale, media, format, and information required.
- d. Review completed Record Drawing set with the Architect.
- e. Upon authorization by the Architect, prepare a full set of transparencies of final Record Drawings with all record changes marked. The Design-Builder may, at its option and expense, arrange for the Architect to prepare the final Record Drawings.
- f. The Architect will furnish original Drawings to the printer being used by the Architect for project reproduction. The Design-Builder will arrange for reproduction and payment for the record transparencies directly with the printing company.
- g. If available, the Architect will furnish electronic copy of the original Drawings to the Design-Builder upon request. The Design-Builder will reimburse the Architect at actual cost. These computerized Drawing files shall be used solely for the purpose of maintaining Record Documents for submission as part of the final completion documentation.
- h. Where Record Drawings are also required as part of operation and maintenance data submittals, make copies from the original record Drawings.

5. RECORD SPECIFICATIONS

- a. Maintain a complete copy of the Specifications, marked to show changes.
- b. Where the actual Work differs from that shown in the Specifications, mark the record copy to show the actual Work.
 - (1) Include a copy of each addendum and modification to the Contract.
 - (2) In addition to the types of information required on all Record Documents, record the following types of information:

- i. Production options taken, when the Specification allows more than one (1).
- ii. Product substitutions.
- iii. Proprietary name and model number of actual products furnished, for each product, material, and item of equipment specified.
- iv. Name of the supplier and installer, for each product for which neither a product data submittal nor a maintenance data submittal was specified.

6. RECORD SUBMITTALS

- a. The Design-Builder must maintain a complete set of all submittals made during construction, marked to show changes.
 - (1) Maintain submittals in cardboard file boxes, labeled to show contents, with dividers by each CSI division. Submittals with each CSI division shall be in order by specification section.
 - (2) Sort submittals by applicable Specification section and file in order of submittal identification number.
- b. Record Shop Drawings: Record the types of information specified for all Record Documents.
 - (1) Mark changes on record shop drawings only when Record Drawing would not be capable of showing the change clearly or completely.
 - (2) Mark changes in manner specified for Record Drawings.

7. TRANSMITTAL TO AUTHORITY

- a. The Design-Builder must collect, organize, label, and package ready for reference.
 - (1) Provide cardboard file boxes for submittals.
 - (2) Provide cardboard drawing tubes with end caps for transparencies.
 - (3) Bind print sets with durable paper covers.
 - (4) Label each document (and each sheet of drawings) with " - This document has been prepared using information furnished by _____ " (insert the Design-Builder's name), and the date of preparation.
- b. The Design-Builder must submit to the Architect for transmittal to the Authority, unless otherwise indicated.

Section 15.08 Project Account Records

1. Project data and records

- a. The Design-Builder 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 Authority and to the Director of Labor of the State of Illinois and his/her deputies and agents. The Design-Builder also must furnish the Authority with certified copies of its payrolls in accordance with Section 16.02 "Payment Applications."
- b. The Design-Builder and all Subcontractors must furnish the Authority with such information as the Authority 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 Authority may require. The Design-Builder must, on request, furnish the Authority with copies of delivery tickets and invoices covering the expenditures on the Contract.

2. Audits

- a. The Design-Builder must furnish to the Authority Representative such information as may be requested relative to the progress, execution, and cost of the Work. The Design-Builder must maintain complete records showing actual time devoted and costs incurred. The Design-Builder 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 Design-Builder in connection with the Work, whether in hard copy, digital or other electronic form, must be open to inspection and audit by authorized representatives of the Authority. The Design-Builder 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 Authority right of access to records documents is intended to impair, limit, or affect any right to access to such records and documents which the Authority would have had in the absence of such provisions.
- c. The Design-Builder must reimburse the Authority for the costs of such audits if the audit demonstrates that the Design-Builder overstated the amount due on any invoice by 2% or more. This is in addition to the Design-Builder's obligation to reimburse the Authority for any overstated amount that might have been paid to Design-Builder.

3. Confidentiality

- a. All of the reports, information, or data prepared or assembled by or provided to the Design-Builder under this Contract are confidential and the Design-Builder 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 Authority. This requirement will survive expiration or termination of this Contract.

HOUSING AUTHORITY OF COOK COUNTY

PROJECT NAME

TO: [INSERT ARCHITECT OF RECORD]

[ADDRESS]

[CHICAGO, IL ZIP CODE]

CC: [OWNER'S REPRESENTATIVE]

INSTALLER: _____ PHONE: _____

Name of Subcontractor

ADDRESS: _____

1. Specification Section: _____ Paragraph: _____

2. Reason for Substitution:

3. Proposed Substitute:

A. Name and Model No.

B. Manufacturer:

Address: _____

Phone Number and Person to Contact:

C. Attach applicable performance and test data.

D. Numbers of applicable reference standards: _____

E. Attach a color chart, if applicable.

F. Attach installation instructions.

4. **Manufacturer's Reputation:** Attach evidence of manufacturer qualifications and reputation for prompt delivery and efficiency in servicing products, as applicable.

5. Comparison: Attach an itemized comparison of the proposed substitution with product specified, including test performance data.

6. Changes in Work: Attach data relating to changes required in other work to permit use of proposed substitution and changes required in construction schedule.

7. Previous Installation: Attach list of not less than 5 similar projects on which proposed substitution was used. List projects in the Chicago area. List name and address of project, date of installation, and name, address, and phone number of Architect.

8. Cost Data: Attach accurate cost data on proposed substitution in comparison with product specified.

9. In making request for substitution, Design-Builder represents that:
- a. It has examined the Drawings and Specifications and has determined that, to the best of its knowledge, the proposed substitution is appropriate for the use intended in the Drawings and Specifications, and will perform as well as or better than the specified product.
 - b. It will provide the same warranties for substitution as for product specified.
 - c. It will coordinate installation of accepted substitution into Work, making such changes as may be required for Work to be complete in all respects.
 - d. It waives all claims for additional costs related to substitutions that consequently become apparent.
 - e. Cost data is complete and includes all related costs under its Contract.

Name of Manufacturer

Signature of Manufacturer's Representative

DATE

Name of Installer

Signature of Installer's Representative

DATE

Name of General Design-Builder

Signature of G.C.'s Representative

DATE

ARTICLE 16. PAYMENTS

Section 16.01 Contract Price

1. The Contract Price is the total dollar amount of the bid accepted by the Authority, including all Change Orders, and includes all labor, equipment, materials, permits, licenses, fees, and taxes necessary to perform the Work.

Section 16.02 Payment Applications

1. It is the duty of the Design-Builder to effectively manage the payment application process and all related paperwork. The Design-Builder is responsible to the Authority for securing and delivering all paperwork required by the Contract to be submitted for payment, including Subcontractor, consultant and material supplier lien waivers, certified payrolls, and all other required documents.
2. The Authority will require the Design-Builder to utilize the Authority's on-line collaboration and document management system (the "System") for the submission of Design-Builder's monthly payment applications, including supporting Subcontractor documentation. Design-Builder shall be responsible for implementation and use of the System for purposes of submitting its payment applications, including, without limitation, providing appropriate computer, network and information management systems and equipment for its personnel to access the System, training of Design-Builder's personnel on the System and the applicable Design-Builder Payment Application business process.
3. Failure of the Design-Builder to promptly submit its payment applications to the Authority, 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 Design-Builder has not been billed by the applicable subcontractor, material supplier, service provider or consultant.
4. Design-Builder 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.
5. Schedule of Values
 1. No later than fifteen (15) Days after the Notice to Proceed, the Design-Builder will submit to the Authority Representative a Schedule of Values 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 Authority 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 Schedule. When approved by the Authority Representative, the Schedule of Values will be used as a basis for certificates of payment unless it is found to be in error. The Schedule of Values should be in a format compatible with the Design-Builder's Sworn Statement and Affidavit which shall be in customary form used in AIA documents and include the following:
 - (1) Project Name, Contract Number, Architect's Name, Authority's Name, Design-Builder's Name and Address, and Date of Submittal.
 - (2) The Schedule of Values must break costs down into the line items which will be used on the Design-Builder Payment Applications and the Design-Builder shall:
 - (3) Coordinate line items in the Schedule of Values with portions of the Contract Documents which identify units or subdivisions of Work: provide cross referencing if necessary to clarify
 - (4) Divide major subcontracts into individual cost items.
 - (5) Where applications for payment are likely to include products purchased or fabricated but not yet installed, provide individual line items for material cost, installation cost, and other applicable phases of completion.
 - (6) Show the following as separate line items:
 - i. Material testing.
 - ii. Operations and maintenance data.
 - iii. Project Record Documents.
 - iv. Bond and insurance premiums.

- v. Permit costs.
 - vi. Overhead and profit.
- (7) Include the following information for each line item:
- i. Item name.
 - ii. Applicable specification section.
 - iii. Dollar value, rounded to the nearest whole dollar (with the total equal to the Base Contract Price).
 - iv. Proportion of the Base Contract Price represented by this item, to the nearest one-hundredth percent (with the total adjusted to 100 percent).
- (8) Provide the following supporting data for each line item:
- i. Subcontractor's name.
 - ii. Manufacturer or fabricator's name.
2. The Authority Representative shall review the Schedule of Values. Should the Authority Representative notify the Design-Builder that the Schedule of Values is not satisfactory; the Design-Builder shall revise and resubmit the Schedule of Values until it is approved.
3. After approval of the Schedule of Values, the Design-Builder may request revisions to the Schedule of Values. It is within the sole discretion of the Authority Representative whether to approve the revisions requested.
6. Multiple Locations
- a. The Work may be performed at multiple locations. Separate, 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.
7. Target Date Requirements
- a. The Authority will assign an invoice target date to the Design-Builder at the Pre-Construction Meeting. Not later than ten (10) Days prior to the invoice target date, the Design-Builder will submit to the Authority Representative 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 Book 2. Design-Builder shall follow the directions provided by the Authority regarding submission of Design-Builder's monthly payment applications. When submitting Design-Builder's monthly payment applications through CW, Design-Builder may submit its monthly payment applications and supporting documentation electronically pursuant to appropriate protocols developed by the Authority and Design-Builder for the submission of Design-Builder's monthly payment application. Not later than five (5) Days prior to the invoice target date, the pencil copy will be reviewed for approval of value of the Work completed at the payment review meeting with the Architect and Authority 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 Authority. Submission of the monthly progress report five (5) Days prior to the payment review meeting will be a condition precedent to the approval of the payment application. The pencil copy of the Payment Application will not project completion of Work beyond the date of the review meeting of such pencil copy with the Architect and Authority Representative.
8. Payment Application Procedures
- a. On the invoice target date of each month, the Design-Builder will submit to the Authority Representative, an application for partial payment including a notarized affidavit stating that it has complied with the requirements of Section 16.02.8. The Application for Payment shall be submitted using such forms and in the order as directed by the Authority representative and shall conform to the following requirements, without limitation. The submission shall be one (1) original hard copy to the Authority Representative and at the same time submission electronically through the Authority's designated web based system. The form for the Application and Certification for Payment shall be the customary AIA form then in use. The Design-Builder must also provide a Design-Builder's Sworn Statement and Affidavit For Partial Payment shall be the customary AIA form then in use. The affidavit must be supported by receipts or receipted vouchers, and lien waivers, evidencing payments for such materials, services, labor, and payments to First-tier Subcontractors and all Minority owned business enterprises or Women owned business enterprises who are

providing labor or material to the Project, together with a waiver of lien covering the amount for which the current payment is being requested and such other evidence of the Design-Builder's right to payment as the Authority Representative may direct. A sample of the Design-Builder's waiver of lien for partial or progress payment shall be the customary AIA form then in use and the Subcontractor's waiver of lien for partial payment shall be the customary AIA form then in use. The application for partial payment will conform to approvals made by the Authority Representative at the payment review meeting. Article 25, Project Forms, contains the various forms used for payment applications.

- b. The Contract Price include only those Change Orders that have been approved by Authority's Board of Authorities as of the close of the current payment period. Payment Applications will be returned for revision if unapproved Change Orders are billed.
- c. All Change Orders must be allocated to the affected line items on the sworn statement. Payment Applications will be returned for revision if the total Change Order is added as a new line item on the sworn statement.
- d. All amounts reported on the MBE/WBE documents must agree with the corresponding line items on the sworn statement. Submit MBE/WBE participation summary with each application for payment which identifies participation as a percentage of subcontracts.

9. Certified Payrolls

- a. Three copies of certified payrolls for the payment period are to be submitted by the Design-Builder and all Subcontractors working on the Site to the Authority every week. The Authority may elect to utilize a Web-based method for electronic submittal of certified payrolls. In the event that the Authority elects to utilize electronic submittal, Design-Builder shall follow the directions provided by the Authority and submit its certified payrolls electronically, as a replacement for the three hard copy submittals. All payrolls must be identified with Design-Builder or Subcontractor's name and Contract name and number, and must be sequentially numbered. The payroll will be submitted by the Design-Builder and Subcontractor until all Work by that Design-Builder or Subcontractor is completed. If there are periods of no Work by Design-Builder or a Subcontractor, a payroll labeled "NO WORK" will be submitted. The final payroll will be labeled "FINAL." Certified payrolls are required to assure EEO compliance as well as wage compliance. Race, worker classification, and gender must be clearly marked for each employee on the certified payroll along with all additional information required by the Authority. An employee's address should appear every time his/her name appears on the payroll. The Design-Builder 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 Authority. The EEO report form required by the City and the U.S. Department of Labor must be submitted by Design-Builder and each Subcontractor, reflecting fully the periods of Work covered by the partial payment request.
- b. Each Design-Builder and every lower-tier subcontractor and supplier shall be required to submit certified payrolls and labor compliance documentation electronically at the discretion of and in the manner specified by the Authority.
- c. Each Design-Builder and subcontractor will be given a Log On identification and password to access the Authority's web based reporting system for electronic submittal.
- d. Use of the system shall include additional data entry of weekly payroll information including: employee identification, labor classification, total hours worked and hours worked on this project, wage and benefit rates paid, etc. in the manner specified by the Authority.
- e. This requirement will be "flowed down" to every lower-tier subcontractor and material supplier required to provide labor compliance documentation.

10. Payment for Material Stored on-Site

- a. Payments for on-Site stored material will be made only if the Authority specifically approves, at its sole discretion, such payments. If payments are to be made for 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 Design-Builder of bills of sale, waivers of lien, and other such documents and compliance with other such procedures as the Authority 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 Site will be one hundred percent (100%) of a valid invoice less applicable retainage (as described in Section 16.06) when the Design-Builder 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 final waiver of lien from the supplier for the total amount of the material purchased.
 - (3) Inspection tickets for all the material stored

11. 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 Authority Representative, will be one hundred percent (100%) of a valid invoice less applicable retainage (as described in Section 16.06) when the Design-Builder 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 final waiver of lien from the supplier for the total amount of the material purchased.
 - (3) Inspection tickets for all the material stored.
 - (4) The Design-Builder must furnish the Authority Representative with a certified statement giving the exact location of the materials or equipment, and stating that:
 - i. Such materials are suitably stored and maintained at a bonded, secure and environmentally appropriate location agreed upon and subject to such conditions required or established by the Authority.
 - ii. The Design-Builder has complied with procedures satisfactory to the Executive Director to establish the Authority's title to such materials or otherwise protect the Authority's interest therein, including but not limited to, insurance, storage and transportation to the Project Site for such materials stored offsite, as the Executive Director or Authority Representative may reasonably require.
 - iii. The materials, equipment, and associated fabricated components will not be diverted away from the Project.
 - (5) The risk of loss will remain with the Design-Builder. The Design-Builder must provide the Authority Representative with a certificate of insurance coverage for the stored material for which payment is requested.
 - (6) Simultaneously with payment for such material, the Design-Builder must prepare and execute any and all documents required to transfer title to the Authority, 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 Authority.
 - (8) The Design-Builder must pay the Authority'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 Authority Travel Guidelines.

12. Documentation Supporting Monthly Payment Applications

- a. For the first Payment Application, the Design-Builder must provide its own Design-Builder's Sworn Statement and Affidavit for Partial Payments (Design-Builder's Sworn Statement), as required by Section 16.02.4 and its Design-Builder's Waiver of Lien for Partial Payment (Design-Builder's Waiver of Lien) in support of the Payment Application. The Application And Certification For Payment shall be the customary AIA form then in use.
 - (1) The following documents are due prior to the first Application for Payment:
 - i. Schedule of Values.
 - ii. List of Subcontractors, including addresses.
 - iii. Design-Builder's construction schedule.
 - iv. Submittal schedule.
 - v. Quality control activities schedule.
 - vi. Unit price schedule (if applicable).
 - vii. Names of the Design-Builder's principal staff assigned to the Project.
 - viii. Names of the Design-Builder's representatives authorized to sign invoices and waivers.

- ix. Copies of building permit and other authorizations from governing authorities.
 - x. First progress report.
 - xi. Minutes of the preconstruction meeting.
 - xii. All submittals specified to occur prior to the first application for payment.
- b. For the second Payment Application, and all subsequent Payment Applications, except the final one, the Design-Builder must provide: its own Design-Builder's Sworn Statement, its own Design-Builder's Waiver of Lien for the current Payment Application and Waiver of Lien To Date and Design-Builder's Affidavit from all of its First-tier Subcontractors and all Minority owned business enterprises or Women owned business enterprises who are providing labor or material to the Project for the prior period Payment Application ("Trailing Waivers"). The Waiver of Lien to Date and Design-Builder's Affidavit shall be the customary AIA forms then in use. Trailing Waivers for Subcontractors are to be submitted directly to the Finance Department of the Authority, and are due no later than thirty (30) Days after payment has been made to the Design-Builder for the payment application covered by the waiver. In all cases, Subcontractor's "Waivers of Lien to Date and Design-Builder's Affidavits" must bear original signatures and original notary seals and are to be provided in the order of appearance on the related sworn statement. In addition, the Design-Builder must provide Supplier's Waiver of Lien for Final Payment (Supplier's Partial Waiver) for its material suppliers from the prior Payment Application. The \[Supplier's Waiver of Lien for Partial Payment shall be the customary AIA form then in use.
 - c. For the Final Payment Application, the Design-Builder must provide the Design-Builder's Sworn Statement and Affidavit for Final Payment] and the Design-Builder's Final Release and Waiver of Lien\, which shall be acceptable to the Authority. In addition, the Design-Builder must provide Final Waiver of Lien and Design-Builder's Affidavits for all its Subcontractors, and provide the Supplier Final Release and Waiver of Lien for all Suppliers that have not previously furnished a Final Release and Waiver of Lien and from every entity who may be legally entitled to file a mechanic, materialmen's or other lien.
 - d. Prior to final payment, the Design-Builder must comply with the requirements of Section 16.08, below.
13. Unless a written extension is granted by the Authority, the Design-Builder 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 Design-Builder's failure to do so within the required time period is an event of default.

Section 16.03 Payment for Changes

- 1. The Design-Builder shall designate a single individual authorized to receive Field Orders and Change Orders who will be responsible for informing others of changes to the Work. When directed in writing by a Field Order signed by the Authority Representative, the Design-Builder will proceed promptly in accordance with such Field Order. Any adjustment to the Contract Price that may be required by a Field Order will be determined by one of the following methods:
 - a. Method 1 - Unit Price and/or Lump Sum Adjustment
- 2. The Design-Builder must submit promptly to the Authority Representative for approval and acceptance by the Authority a written proposal for changes in the Work. Such proposal will be in a format acceptable to the Authority and based on Contract 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 Design-Builder'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.
- 3. Where the change in the Work involves items for which Contract 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 Authority 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.
- 4. Where the change in the Work involves items for which agreed-upon unit prices have not been established, the Design-Builder's proposal will be in a format acceptable to the Authority and based upon the estimated fair cost of the Design-

Builder's labor, material, equipment, insurance and any applicable taxes. In submitting such proposal, the Design-Builder 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 Design-Builder, when 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 Design-Builder 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 Authority act on the same or make payment on any Work covered by such proposal or billing, then, and in that event, the Authority will have the right to recover from the Design-Builder 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 Design-Builder, or by any and all other means available to the Authority.

5. For the cost of items of Work not covered by agreed-upon unit prices on additional Work ordered, the Design-Builder 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 Design-Builder will further be allowed 6% on all of his subcontractor's work. The Subcontractor is not allowed any additional markup if the work is further subcontracted. The Design-Builder 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 Design-Builder 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 Design-Builder's material costs will include invoiced costs, transportation, applicable sales or use taxes, and actual rental costs.
6. 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.

a. 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 Field Order will be issued and the Design-Builder will proceed with the Work on a cost plus fee basis. Cost means the Design-Builder's actual cost of labor, material, equipment, insurance, and applicable taxes, as reviewed by the Architect and Authority Representative for the approval of the Authority. To the Design-Builder's cost so computed will be added overhead and profit as defined under Method 1 above, which shall be Design-Builder's fee for such change to the Work.
 - (2) The Design-Builder and Subcontractors must keep and present in such form as the Authority 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 to the Work, and final determination of the cost plus fee price for such change, a Change Order will be issued, if needed, to appropriately adjust the Contract Price.
7. The Design-Builder's agreement to a Change Order constitutes a waiver and release by the Design-Builder for any claim for additional payment or a time extension associated with the changes as stated in Section 17.05.
 8. The Design-Builder will include any claim for a time extension in the submission of his proposal. Such claim will only be considered upon demonstration by the Design-Builder that a disruption to Critical Path activities has occurred. Design-Builder is required to furnish documentation in the form of proposed schedule revisions indicating impact in Critical Path activities and events previously approved by the Authority.
 9. The Design-Builder will be required to use "Contractors Proposal for Change Order" supplied by the Authority for any Change Order requests and all Change Order Requests shall conform to the following:
 - a. The Design-Builder shall provide sufficient information for evaluation of proposed changes within fourteen (14) Days following receipt of a Field Order. The Design-Builder shall immediately advise the Authority in writing if any requested Bulletin cannot be priced and submitted to the Architect within fourteen (14) Days of receipt. The Authority

Representative will determine if additional time is warranted, and will so notify the Design-Builder of its determination. In no case shall the Design-Builder be allowed more than twenty one (21) Days for pricing of a Bulletin. The Design-Builder shall not be entitled to a time extension should its proposal not be received by the Architect prior to the required time. Such information shall include:

- (1) The amount of change in the Contract Price, if any.
- (2) The amount of change in the Contract time, if any, with explanation.
- (3) Cost breakdown, using Schedule of Values line items, separated into material and labor costs, additions and deletions, and with overhead and profit handled in the same manner as specified for the Schedule of Values.
- (4) The period of time within which the proposed changes in Base Contract Price or time will be held. At a minimum, the pricing shall be held until the next Authority meeting. Should said proposal be received by the Architect or Authority Representative beyond the cut-off date established by them for the upcoming Authority meeting, then the Design-Builder shall maintain its proposed price and schedule impact until the next Authority meeting.
- (5) Quantities and unit costs of products, labor, and equipment.
- (6) Taxes, insurance, and bonds.
- (7) Impact on MBE/WBE, Section 3 Hiring compliance
- (8) Overhead and profit.

b. The Design-Builder may propose changes pursuant to Section 17.03.

- (1) Do not use change order form.
- (2) Provide the information required for Change Proposal Requests.
- (3) Describe reasons for change.

Section 16.04 Deductions For Uncorrected Work

1. The Authority reserves the right to, in its sole discretion, deduct the cost of damaged or non-conforming Work from the Contract Price rather than require Design-Builder to repair or replace such damaged or non-conforming Work.

Section 16.05 Certificates for Payment and Direct Deposit of Funds

1. If the Design-Builder has complied with the requirements of Section 16.02, "Payment Applications," the Authority Representative will issue to the Design-Builder a certificate for such amount as the Authority Representative determines to be properly due as agreed upon during the payment review meeting during the preceding payment period. The amount of each partial payment will be the total sum of completed Work 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 Design-Builder, nor partial or entire use of the Work, nor occupancy of the Site by the Authority or the User will be an acceptance of any Work or materials not in accordance with the Contract Documents.
3. Any certificates for payment are for the benefit of the Authority and will not be relied upon by any other party (including any surety or Subcontractor of the Design-Builder) in any action against the Authority, the Architect, or anyone acting on behalf of either of them.
4. The Design-Builder may make a written request to the Authority Representative for payment of Payment Applications by direct electronic deposit to the Design-Builder's bank account. The Design-Builder will also have to follow the administrative procedures required by the Authority in order to receive payment by electronic deposit.

Section 16.06 Retainage

1. The Authority will retain ten percent (10%) from the invoice sums approved and due the Design-Builder up to a total of fifty percent (50%) of the Contract Price, including approved Change Orders. The amount so retained ("Retainage") which is five percent (5%) of the contract including approved Change Orders, will be released to Design-Builder 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 Design-Builder's performance or the progress of the Work to be such that the Authority will likely incur damages, including but not limited to liquidated damages, in excess of the amount of Retainage.
3. The Design-Builder must not withhold Retainage from its Subcontractors in excess of the percentage Retainage withheld by the Authority from payments to the Design-Builder 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 Design-Builder until certificates of insurance, bonds, or other evidence of compliance by the Design-Builder with all the requirements of the Contract for insurance and bonds have been provided to the Authority.
2. The Authority Representative may decline processing a Payment Application if, in the Executive Director's opinion, the Payment Application is not adequately supported. Failure to submit a monthly schedule update that complies with the Requirements of 10.02.4 ("Target Schedule Update") concurrent with each Payment Application shall be considered a failure to adequately support a Payment Application. Any Payment Application not supported by a Target Schedule Update shall result in the Design-Builder's waiver of any right to assert by CPCO (as defined in Section 17.03), claim or otherwise, a time extension (compensable or non-compensable) arising out of work performed or events that occurred during the period covered by the Payment Application. If the Design-Builder and Authority Representative cannot agree on a revised amount to process an inadequately supported Payment Application for, the Authority Representative will process the Payment Application in the amount the Executive Director deems appropriate.
3. The Authority'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 Authority Representative determines that the Design-Builder has satisfactorily completed 75% of the Project, based upon invoice sums approved and due the Design-Builder, Retainage will be reduced to an amount equal to three percent (3%) of the Contract Price including approved Change Orders. When the Project is Substantially Complete, the Design-Builder must notify the Authority Representative, in writing, that the Project will be ready for inspection and/or testing on a definite date. Such notice must be given at least seven (7) calendar Days in advance of said date. If the Authority 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 Design-Builder of its responsibilities under the Contract Documents. The Design-Builder 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 Price, including any approved Change Orders; provided that the Design-Builder has furnished: a) lien waivers as required by all Subcontractors and suppliers under this Section 16; b) MBE / WBE final lien waivers, MBE/WBE conditional final lien waivers, or an affidavit of the MBE/WBE stating the final amount earned; c) complete certified payrolls; d) documentation of the turnover of "as-built" drawings, record shop drawings, and product data; e) spare stock of materials, spare parts, accessories, special tools, O & M manuals, guarantees, warranties; and f) and all other items required by the Contract Documents or the Authority Representative.
2. At Project Final Completion. The remaining Retainage will be paid when all remaining Work and punch list Work is complete and the Design-Builder submits to the Authority Representative a sworn affidavit that states the following:
 - a. All payrolls, bills for materials and equipment, and all other indebtedness connected with the Work for which the Authority might in any way be responsible, have been paid or otherwise satisfied.
 - b. The "Design-Builder's Sworn Statement and Affidavit" for final release of retainage has been provided to the Authority Representative.

- c. All claims made by Subcontractors of any tier, suppliers, and others against the Design-Builder, the Authority, any agents of the Authority, the Executive Director or Authority Representative have been resolved.
- d. "Final Waiver of Lien and Design-Builder's Affidavit" forms for all Subcontractors of any tier have been provided to the Authority Representative.
- e. The Warranties and Guarantees, required by the Contract, have been provided to the Authority Representative. All Warranties and Guarantees are in full force and effect.
- f. Design-Builder has provided manufacturers' operating instructions for all equipment, and furnished proof that appropriate training of User Agency personnel has been completed.
- g. The surety's written consent, signed by its authorized representative, for final payment to be made directly to the Design-Builder, has been provided to the Authority Representative.
- h. The Design-Builder agrees that acceptance of final payment will constitute a general release to the Authority, 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 Authority 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 Authority Representative.
- j. All other documents requested by the Authority Representative have been provided.
- k. The Design-Builder must remove all of the Design-Builder's trailers, equipment, leftover materials, and trash from the Project site, staging area(s) or anywhere else on the Project Site. The Design-Builder must also restore the Design-Builder's staging area(s) to its pre-construction condition. If the Design-Builder does not comply with this requirement, the Authority Representative may provide written notice to comply within a period of time determined by the Authority Representative. If the Design-Builder fails to comply with the written notice, the Authority Representative may have the work done by others, and deduct the charge from the Design-Builder's Retainage.
- l. The Design-Builder furnishes the Authority with a certificate in the following form verifying wages and classifications for laborers and mechanics, including apprentices and trainees employed on the Project:

The undersigned, Design-Builder on _____, (Authority's 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
Design-Builder: _____
Project: _____

3. Notwithstanding the foregoing, the Authority Representative, in his sole discretion, may decline to release all or a portion of Retainage if the Authority Representative considers the Design-Builder's performance or the progress of the Work to be

such that the Authority or User Agency has incurred or will likely incur damages greater than the Retainage, including but not limited to liquidated damages.

Section 16.09 Prompt Payment to Subcontractors

1. The term "Subcontractor" is defined in Section 1.01. Design-Builder must state the requirements of the Prompt Payment provision in all Subcontracts and purchase orders. If Design-Builder 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. Design-Builder and the Subcontractors have a continuing obligation to make prompt payment to their respective Subcontractors. Compliance with this obligation is a condition of Design-Builder's participation and that of its Subcontractors on the Project.
2. The Illinois Prompt Payment Act, 30 ILCS 540/1.01 *et. seq.* requires prompt payment to subcontractors and suppliers, by the General Design-Builder for work that has been satisfactorily completed.
3. The Design-Builder must make payment to its Subcontractors within fourteen (14) Days of receipt of payment from the Authority for each monthly Payment Application, but only if the Subcontractor has satisfactorily completed its Work in accordance with the Contract Documents and provided the Design-Builder with all of the documents and information required of the Design-Builder by Article 16. "Payments". The Design-Builder 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 Design-Builder is acting in good faith and not in retaliation for a Subcontractor exercising legal or contractual rights.
4. The Design-Builder 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 Design-Builder has received payment from the Authority for Retainage. The Design-Builder may request that the Authority release the portion of the Retainage held by the Authority that the Design-Builder owes to the Subcontractor. The Design-Builder 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 Design-Builder has substantial grounds for and has acted reasonably in making the determination, and the Design-Builder is acting in good faith and not in retaliation for a Subcontractor exercising legal or contractual rights.
5. Design-Builder must make payment to Subcontractors so that they receive it within fourteen (14) Days of Design-Builder's receipt of payment from the Authority. Payment is deemed received by the Subcontractor at the time of hand delivery by the Design-Builder, or three (3) calendar Days after mailing by the Design-Builder.
6. In the event payment or part of a payment is withheld by the Authority as the result of liens or lien cases, the Design-Builder must still make full payment to subcontractors or material suppliers on that payment application who have satisfactorily completed the work on the payment application.
7. To the extent feasible, to facilitate the flow of information to Subcontractor, the Authority Representative will post at the Project Field Office and on the HACC website (www.thehacc.org), a list of Design-Builder's Payment Applications, including the Subcontractors identified in them, submitted to the Authority for payment and the date of payments made to the Design-Builder by the Authority.
8. Design-Builder must not delay or refuse to timely submit pay requests for a Subcontractor's work or materials. The Authority may construe such delay or refusal as Design-Builder'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 Authority (or off-site if this Contract permits payments for off-site delivery). In addition, Design-Builder 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.

9. The Executive Director may withhold payment from the Design-Builder when the Executive Director determines that the Design-Builder has not complied with this Section 16.09.
10. These provisions do not confer any rights in Subcontractors against the Authority. Nothing in this section is to be construed to limit the rights of and remedies available to the Authority, including but not limited to various rights under the General Conditions.

Section 16.10 Subcontractor Claims

1. The Design-Builder must pay all lawful claims made against it by its Subcontractors and all lawful claims made against Design-Builder by other third persons arising out of, in connection with, or because of its performance of this Contract. The Design-Builder 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 Authority is hereby empowered to disburse such sums for and on account of the Design-Builder directly to the respective parties to which such sums are due and owed.

Section 16.11 Pay Applications and Payments Subject to Review

1. The Authority shall not be precluded or estopped by any measurement, estimate, or certificate made by Design- Builder or any Subcontractor either before or after the completion and acceptance of the Work and payment therefore, from showing the true amount and character of the Work performed and materials furnished by the Design-Builder, 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 Authority will not be precluded or estopped, notwithstanding any such measurement, estimate, or certificate and payment in accordance therewith, from recovering from the Design-Builder and its sureties such damages as the Authority may sustain by reason of the Design-Builder's failure to comply with the terms of the Contract.

Section 16.12 No Waiver of Legal Rights

1. Neither the acceptance by the Authority nor any payment by the Authority 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 Authority elects to waive any breach of this Contract, that waiver will not be held to be a waiver of any other or subsequent breach.
2. The Authority will not be precluded or estopped from showing the true amount and character of the Work performed and materials furnished by Design-Builder, or from showing that any measurement, estimate, or certificate is untrue or incorrectly made, or that the Work or materials do not conform to the Contract. The Authority will not be precluded or estopped from recovering from the Design-Builder and/or its sureties such damages as the Authority may sustain by reason of Design-Builder's failure to comply with the terms of the Contract.

Section 16.13 Liens

1. Whenever the Authority receives notice in writing of a lien or claim of money due from the Design-Builder to any Subcontractor, worker, or employee for Work performed or for materials or equipment furnished and used in or about the Work, the Authority may direct that the amount of such claim be deducted from payments due or to become due the Design-Builder and withheld by the Authority until such claim has been paid or otherwise discharged. This provision is to be construed as being solely for the benefit of the Authority, and will not require the Authority to determine or adjust any claims or disputes between the Design-Builder and its Subcontractors, workers, or employees, or to withhold any money for their protection, unless the Authority 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.
2. The final payment will not become due until the Design-Builder delivers to the Authority complete release of all liens, financial obligations or claims from the Design-Builder, 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 Design-Builder must refund to the Authority all moneys that the Authority 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

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

Section 17.02 Owner Directed Changes in the Work

1. The Authority 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 Design-Builder 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 Design-Builder will submit to the Authority Representative "as-built" or revised drawings clearly showing the revised Work, all as required by Article 15.
2. Except in an emergency endangering life or property, no change in the Work will be made by the Design-Builder without receipt of a Field Order signed by the Authority Representative.
3. The Design-Builder will not perform changes to the Work directed by the User unless authorized to do so by the Authority based upon a Field Order signed by the Authority Representative.

Section 17.03 Changes to the Work Initiated by Design-Builder

1. In the event that Design-Builder identifies an error or omission in the Contract Documents as described in Section 3.02.1 hereof, or encounters a differing site condition as set forth in Section 3.04.4 hereof, the Design-Builder shall submit a Request For Information (RFI) to the Authority Representative. If, upon receipt of a response from the Architect, via the Authority Representative, to the RFI, the Design-Builder believes that there has been a change to the Work, the Design-Builder will submit a Design-Builder Proposed Change Order ("CPCO") to the Authority Representative. The CPCO will state: the issue presented; any change to the Work that, in the opinion of the Design-Builder the issue requires; Design-Builder's proposed resolution of the issue; and the cost of the Work.
2. The Authority Representative will respond promptly to the CPCO. The response will take one of two forms: i) the Authority Representative concurs with the Design-Builder, and issues a Field Order that incorporates the terms stated in the CPCO or a Field Order with other terms; ii) the Authority Representative denies the CPCO, and issues a response notifying the Design-Builder that there is no change to the Work, and directing the Design-Builder to perform the Work pursuant to the answer to the RFI.
3. In the event that a CPCO is denied, the Design-Builder may file a claim pursuant to Article 18, "Claims and Disputes."
4. The Design-Builder, within fourteen (14) Days of receipt of a Field Order, may submit to the Authority Representative a CPCO for the revisions to the Work directed by the Field Order. The Design-Builder's failure to submit such request within the specified time will result in the issuance of a Change Order by the Authority for the adjustment to the Contract Price and/or time for the performance of the Work, if any, that the Authority deems appropriate for the Field Order. This Section 17.03.2 does not pertain to Field Orders issued pursuant to Section 17.03.1 above.

Section 17.04 Change Orders Finalize the Terms of Field Orders

1. The final terms and provisions of a Field Order, including any adjustment in the Contract Price and/or the time for the performance of the Work, will be memorialized in a written Change Order signed first by the Design-Builder then by the Executive Director.

Section 17.05 Design-Builder's Release

1. Any and all Change Orders are a full release of the Authority from any liability for any additional compensation or extension of time arising or resulting from the circumstances that gave rise to, and the Work performed pursuant to, a Change Order. By acceptance of a Change Order, the Design-Builder 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 Design-Builder must sign will state: "By executing this Change Order, Design- Builder 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

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

Section 17.07 Change Claims and Disputes

1. If the Design-Builder and Authority Representative are unable to agree on the price and/or time extension in connection with a Field Order, 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, including CPCOs that have been denied pursuant to Section 17.03, and all other claims made under the Contract (individually a "Claim" and collectively, "Claims"), both while the Contract is in effect and after the expiration or termination thereof.
2. Any claim made by the Design-Builder regarding the Project must be made in accordance with the requirements stated below.
 - (1) The Design-Builder expressly consents to both the time requirements and notice content requirements for making a Claim or Dispute (as defined in Section 18.02) under this Section 18.01.2. The Design-Builder acknowledges that the notice requirements set forth in this Section 18.01.2. will be strictly enforced and agrees that any failure on the part of the Design-Builder to provide notice strictly in accordance with the requirements of this Section 18.01.2. will constitute a waiver of the Design-Builder's right to make a Claim to the Authority Representative or submit a Dispute to the Executive Director. The Design-Builder further understands and agrees that, notwithstanding any case law decision to the contrary, the notice requirements of this Section 18.01.2. will not be subject to or diminished by any claim on the part of the Design-Builder that the Authority 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.
 - (2) The Design-Builder must provide notice, in writing, to the Authority Representative of any claim for differing site conditions within one (1) Day of discovery as required by Section 3.03.
 - (3) The Design-Builder must provide notice, in writing, to the Authority 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.
 - (4) The Design-Builder must provide notice, in writing, to the Authority Representative of any claim based on: a differing site condition; a change in the Work directed by the Authority Representative; or any other cause within fifteen (15) Days of completion of the changed Work.
 - (5) The Design-Builder will designate the document "Claim." The Claim must include:
 - i. The amount of money and/or time extension sought by the Design-Builder, and the contractual and factual basis for each;
 - ii. A general statement of the basis for the claim;
 - iii. The facts underlying the claim;
 - iv. The Notice of Claim Related Work to the Authority Representative;
 - v. Reference to the applicable Contract provisions and;
 - vi. All documentation that describes, relates to, and/or supports the claim.
 - (6) The Authority Representative will, within thirty (30) Days of receipt of the Claim, respond by: requesting a meeting with the Design-Builder; making a written request for additional information from the Design-Builder; taking other action to attempt to resolve the Claim; and/or advising the Design-Builder, in writing of the Authority Representative's position regarding the relief sought in the Claim. If the Authority Representative's written response is that the Claim is denied, the letter will also advise the Design-Builder of its right to file a Dispute to the Executive Director. Any steps taken by the Authority Representative to resolve the Claim will not exceed sixty (60) Days from receipt of the Claim, unless the Design-Builder agrees to an additional amount of time in writing.
 - (7) If the Claim is denied by the Authority Representative, the Design-Builder must file its Dispute within thirty (30) Days of receipt of the written denial of the Claim.

Section 18.02 Disputes

1. **Design-Builder's Request:** In the event of any disagreement between the Design-Builder and the Authority Representative which the Design-Builder and the Authority 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 (each, individually a "Dispute" and collectively, "Disputes"), a request for resolution of the Dispute must be submitted to the Executive Director by the Design-Builder for final determination. The Design-Builder may not file a Dispute until there has been a denial of the Claim, which was the basis for the Dispute, by the Authority Representative. The default or termination of the Design-Builder shall not constitute Disputes under this provision of the Contract. The Design-Builder's failure to submit the Dispute within thirty (30) Days of receipt of the Authority Representative's response to the Design-Builder'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 Design-Builder in writing, specifically referencing this section, and include: 1) the issue(s) presented for resolution; 2) a statement of the respective positions of the Design-Builder and Authority 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 Design-Builder believes that prior to rendering a final decision, the Executive Director should meet with the Design-Builder, Authority 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 Authority Representative on the same day. In addition, the Design-Builder's Dispute and any subsequent correspondence that relates to the Dispute which the Design-Builder provides to the Executive Director, must be copied to the Authority Representative. The Authority Representative shall have thirty (30) Days to respond in writing to the Design-Builder's submission by supplementing the Design-Builder's submission or to provide its own submission to the Executive Director and Design-Builder. However, the Authority Representative may request, and the Executive Director may allow an additional period of time to respond. Failure by the Authority 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 Authority Representative was filed or was due, unless the Executive Director notifies the Design-Builder and Authority Representative before the end of the thirty-five (35) Day period that an additional period, not to exceed thirty (30) Days, is needed for the Executive Director to respond. The Executive Director's decision shall be conclusive, final, and binding on all parties unless a judicial determination is sought in accordance with the provisions set forth below.
4. **Implementation of Decision:** In the event that the Executive Director's final decision requires a change to the Contract, the Executive Director's final decision shall be implemented through a Change Order which shall be made a part of the Contract, with or without the signature of the Design-Builder (if the Design-Builder refuses to sign the Change Order).
5. **Design-Builder's Remedy:** If either the Design-Builder or Authority 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. **Design-Builder's Performance of Work:** The Design-Builder may not withhold performance of and must prosecute any Work required by the Contract during the dispute resolution period, including judicial resolution. The Design-Builder must prosecute all of its Work, including any portion of the Work that is the subject of a Dispute, with the same diligence and effort as if no Dispute existed. The Executive Director's written determination must be complied with pending final resolution, including judicial resolution of the Dispute. Neither the Executive Director's determination, nor the actions of the Design-Builder or the Authority 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 Design-Builder 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 Authority or any representative of the Authority, 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 Authority will operate as a waiver by the Authority of any portion of the Contract, or of any power herein reserved or any right of the Authority 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 Authority by a proper authority waives the Design-Builder's performance in any respect or waives a requirement or condition to either the Authority or the Design-Builder'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 Authority may have waived the performance requirement or condition.

ARTICLE 19. EVENTS OF DEFAULT AND TERMINATION

Section 19.01 Events of Default

1. The Design-Builder'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 the Work 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) persistent or repeated 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, whether for material or labor;
 - (8) failure to submit all documents required by the Contract Documents or Authority, including but not limited to timely submission of payment applications;
 - (9) failure to prosecute the Work in a manner acceptable to the Authority or in a manner that does not comply with all laws applicable to the Work.
 - (10) persistently disregarding laws, ordinances, or instructions of the Authority, or Authority Representative; or,
 - (11) failure to comply with any other term of the Contract that states such failure is an event of default, or a material violation of any provision of the Contract Documents.
 - (12) interruption or delay of Work for reasons within the Design-Builder's control, including, but not limited to, labor interests or disputes;
 - (13) failure to comply with federal, state, or local safety requirements;
 - (14) the Design-Builder's default on a contract with Cook County, any other Public Housing Authority ;
 - (15) the Design-Builder's failure to be licensed as a "General Contractor" as required by Evanston Municipal Code, and the State of Illinois at all times throughout the term of the Contract or Design-Builder's loss of its general license;
 - (16) disqualification as an MBE or WBE of the Design-Builder 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 Design-Builder;
 - (17) Design-Builder becomes insolvent or bankrupt, attempts assignment of all or any part of the proceeds of this Contract, makes a general assignment for the benefit of creditors, or if a receiver is appointed on account of insolvency any of which negatively impacts Design-Builder's ability to pay Subcontractors or perform the work.

Section 19.02 Remedies

1. In the event of a default by Design-Builder, the Authority, in its sole discretion, may send the Design-Builder notice of the Authority's intent to exercise any or all of the remedies below.
 - a. **Termination.** The Authority may terminate the Contract. Written notification of the default and termination of the Contract will be provided to the Design-Builder and the surety by the Executive Director. The Executive Director's decision and declaration of termination is final and effective.
 - b. **Notice to Cure.** The Executive Director may provide the Design-Builder the opportunity to cure the default. The Design-Builder must cure the default within ten (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 acknowledgement from the Design-Builder that it will cure the default within the stated cure period or if the Design-Builder does not act to cure the default, the Executive Director may terminate the Contract, in which event the termination of the Contract is final and effective.
 - c. In addition to the foregoing, upon an event of default in Section 19.01, "Events of Default," the Authority may invoke any or all of the following remedies:

- (1) The right of set-off against any payments due or to become due to the Design-Builder and against any Retainage.
- (2) The right to take over and complete the Work, or any part thereof, either directly or through others, and to hold the Design-Builder liable for any amounts paid for such Work above those amounts the Authority would have paid the Design-Builder for that same Work
- (3) The Authority may use the Design-Builder's Subcontractors, materials, and equipment to complete the Work. Upon the Authority's notification to the Design-Builder invoking this remedy, any and all rights the Design-Builder may have in or under its subcontracts are assigned to the Authority, based on the assignment required by Section 4.03.2. The Design-Builder must promptly deliver such documents upon the Authority's request. In case of any subcontract so assigned and accepted by the Authority, the Design-Builder remains liable to the Subcontractor for any payment already invoiced to and paid by the Authority, and for any claim, suit, or cause of action based on or resulting from any error, omission, negligence, fraud, willful or intentionally tortious conduct, or any other act or omission, or breach of Contract, by the Design-Builder, its officers, employees, agents, and other Subcontractors, arising prior to the date of assignment to the Authority, when such claim, suit, or cause of action has not been discharged, disposed of, or otherwise resolved as of that date. The Design-Builder must notify its Subcontractors of these requirements.
- (4) The right to terminate the Contract as to any or all of the Work yet to be performed.
- (5) The right of specific performance, an injunction, or any other appropriate equitable remedy as may be applicable.
- (6) 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 Authority 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.
- (7) The right to withhold all or any part of the Design-Builder's compensation yet to be paid by the Authority.
- (8) The right to terminate any or all other contracts that Design-Builder may have with the Authority.
- (9) The right to deem the Design-Builder non-responsible in future contracts to be awarded by the Authority.

Section 19.03 Non-exclusivity of Remedies

1. The remedies under the terms of this Contract are not intended to be exclusive of any other remedies, 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 do they waive any event of default or acquiesce thereto, and every such right and power may be exercised by the Authority from time to time and as often as may be deemed appropriate.

Section 19.04 Authority's Right To Terminate Contract

1. The Authority may, at its sole discretion, exercise the right to send the Design-Builder notice under Section 19.02.1 "Authority's Right To Terminate Contract," or 19.02.2 "Notice to Cure." Whether to declare the Design-Builder 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 Authority under Section 19.02.1 or 19.02.2, the Authority 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 and paid for by the Authority (whether located on or off the Site) to complete the Work. The Design-Builder will receive no further payment until the Work is completed. However, if the cost of completion exceeds the unpaid balance of the Contract, the Design-Builder must pay the difference to the Authority immediately upon demand.
3. If termination occurs, all costs and changes incurred by the Authority, together with the cost of completing the Work, are deducted from any moneys due or which may become due to the Design-Builder. When the expense incurred by the Authority exceeds the sum which would have been payable under the Contract, the Design-Builder and the surety are liable and will pay the Authority the amount of such excess.

Section 19.05 Court Adjudication of Termination

1. If the Contract is terminated by the Authority 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 Authority reserves the right, for its convenience, to terminate the Work of the Design-Builder by written notice stating the effective date of such termination. In such case, the Design-Builder 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 Authority (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 Authority and property in the Design-Builder's possession in which the Authority has, or may acquire, an interest; and take any other action toward termination of the Work which the Authority may direct.
2. Design-Builder's compensation for all work provided prior to the effective date of the termination and costs of stopping the work shall be paid based on the Termination for Convenience provision of the Federal Acquisition Rules and all interpretations of those rules and all cases decided regarding the rules.
3. After receipt of a notice of termination pursuant to this Section 19.06 "Termination for Convenience," Design-Builder will submit to the Authority Representative its final invoice in the required form, with supporting documentation. The Authority may require certified payrolls, receipts, and other proof of expenditures. The final invoice must be submitted promptly, but in no event more than sixty (60) Days after the effective date of termination.

Section 19.07 Suspension of Work

1. The Authority has authority to suspend the Work, wholly or in part, for such period of time as the Authority may deem necessary due to conditions unfavorable for the satisfactory prosecution of the Work, or conditions which, in the Authority's opinion, warrant such actions; or for such time as is necessary to carry out directions given by the Authority Representative; or to perform any or all provisions of the Contract. The Design-Builder will not receive compensation for suspension of part of the work. If the Authority suspends the entire project for a period exceeding seven (7) calendar Days, the Design-Builder will be compensated for the following listed costs for each Day thereafter. The costs to be paid are limited to: demobilization and remobilization, the Design-Builder's field supervision costs (based upon the approved staffing plan), and idle equipment costs as provided in Article 17, "Changes In The Work." The cost reimbursement portion of this provision is not applicable if the suspension and/or costs were caused by any act or omission of the Design-Builder.
2. If it becomes necessary to stop Work for an indefinite period of time, the Design-Builder 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 Design-Builder must not suspend work without written consent from the Authority.

ARTICLE 20. ENVIRONMENTAL REQUIREMENTS

Section 20.01 Compliance with Environmental Laws

1. The Design-Builder must comply with all environmental laws including, without limitation, those listed in the Disclosure Affidavit that must be executed and notarized by the Design-Builder, and any analogous future local, state, or federal ordinance or statute, rule, or regulation promulgated under or pursuant to the foregoing, and any other present or future law, ordinance, rule, regulation, permit or permit condition, order, or directive which regulates, relates to, imposes liability for, or establishes standards of conduct concerning any Hazardous Materials that may be set forth by the Federal government, any state or any political subdivision thereof, or any agency, court, or body of the Federal government, any state or any political subdivision thereof, exercising executive, legislative, judicial, regulatory, or administrative functions (collectively, "Environmental Laws").
2. If the Design-Builder 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 Design-Builder to perform the Work required hereunder, the Design-Builder must provide a copy of such report or notice to the Authority 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 Design-Builder regarding the Design-Builder's failure or alleged failure to comply with any Environmental Law, the Design-Builder must notify the Authority Representative pursuant to Section 20.06 "Disposal of Materials, Construction Debris, Soil, and Waste" herein below.
3. If the Design-Builder fails to comply with any Environmental Law, the Authority may terminate this Contract in accordance with the default provisions of this Contract, which may adversely affect Design-Builder's eligibility for future contract awards.

Section 20.02 Environmental Permits and Recordkeeping

1. The Design-Builder must show evidence of, and keep current throughout the term of this Contract, all waste hauling, Special Waste hauling, licenses 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 Authority Representative, the Design-Builder must submit copies of all hauling and disposal site permits required by any Environmental Law. Copies of all permits and insurance certificates that require periodic renewal must be forwarded to the Authority 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. Environmental Records and Reports: The Design-Builder 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. Training Certificates
 - b. Health and Safety Plans
 - c. Waste Characterization Analytical and Signed Generator Waste Profiles
 - d. Disposal and Recycling Facility Approvals
 - e. Imported Backfill Material Analytical
 - f. OSHA compliance air monitoring records
 - g. Certificate of Tank Destruction from a Steel Reclamation Facility
 - h. Storm Water Discharge Approval and MWRDGC Discharge Authorization
 - i. Soil Management Plan
 - j. IDPH/EPA Notifications
 - k. Notice to Building Occupants
 - l. OSHA Exposure Assessment
 - m. Certifications for all HEPA vacuums, negative air pressure equipment, and other local exhaust ventilation equipment
 - n. Material Safety Data Sheets (MSDS) for chemicals used on site
 - o. Copies of all regulatory notices
 - p. Laboratory and Analyst Credentials for Design-Builder Samples
 - q. Disposal Records, including Disposal Site , Date, Truck Numbers, Truck Content, and Disposal Weight.

- r. Permit Documentation and all other Documentation and Transactions Pertaining to all Environmental Laws.

Section 20.03 Energy Conservation Ordinance

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

Section 20.04 Environmental Control

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

Section 20.05 Equipment and Environmental Control During Transport

1. The Design-Builder 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 Design-Builder'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 Design-Builder 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 Design-Builder 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 Design-Builder 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. Disposal sites and transfer stations must be free of violations in order for materials to be disposed of from a Authority site. All of Design-Builder's personnel shall be trained in the proper handling of the materials that are on site.
2. The Design-Builder must provide the Authority or its designated representative with copies of all load tickets, manifests, bills of lading, scale tickets, and other pertinent documents. When requested by the Authority Representative, the Design-Builder 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 Design-Builder have existing violations and do not possess the necessary permits and/or licenses to accept the materials, construction debris, soil or other wastes, the Design-Builder will replace the transfer station and/or landfill submitted as part of their bid proposal at no additional cost to the Authority. If the Design-Builder disposes of materials, construction debris, soil or other wastes at a site which is not properly permitted, the Design-Builder will be responsible for all costs associated with the removal of the waste to a properly licensed/permitted landfill or disposal site.
3. The Design-Builder must notify the Authority 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 Design-Builder by any third party relating to the loading, hauling, or disposal of materials, construction debris, soil, or other wastes. The Design-Builder will provide evidence to the Authority that any such Claim has been addressed to satisfaction of the issuer or initiator of such Claim.
4. The Design-Builder must notify the Authority 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 Design-Builder is asked to participate.

5. The Design-Builder must verify, in writing, whenever requested by the Authority, that all materials, construction debris, and other waste accepted by the Design-Builder from the Authority has been disposed of in compliance with all Environmental Laws.
6. The form for identifying the Design-Builder's debris disposal/hauling site(s) and acknowledging terms and conditions relating thereto which has been executed by the Design-Builder may be attached to this Contract and incorporated by reference, as appropriate. In addition to the representations and requirements contained in the form, the Design-Builder understands and agrees that the Design-Builder, unless otherwise authorized in writing by the Authority, must not continue to use a disposal/hauling site identified in the form that (i) has been cited as being in violation of any Environmental Law, regulation, or any City ordinance; or (ii) does not have a necessary permit. If only one site was identified in the form, the Design-Builder must arrange for a substitute disposal/hauling site that meets the requirements specified in the form and provide a revised form to the Authority. The Design-Builder further understands and agrees that any such substitution is at no additional cost to the Authority, 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 open and active, licensed, 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 Design-Builder and made available to the Authority upon request.

Section 20.08 LEED Certification Requirements and/or Sustainability Goals

1. The Design-Builder must assist the Authority to achieve the LEED Certification level and or Sustainability goals established for this Project. For LEED projects, the LEED Scorecard (Registered Project Checklist) identifying the LEED version and level, as well as prerequisites and credits to be achieved, is found in Book 3. The Design-Builder must implement construction of the Project and provide documentation, in accordance with the requirements of the LEED version promulgated by the US Green Building Council indicated in Book 3, so that the Authority can achieve the LEED rating and or Sustainability goals identified in Book 3.
2. Regarding commissioning of the Project systems, the Design-Builder must provide the appropriate labor to operate, adjust, and observe the systems, as directed by the Commissioning Authority to ensure that all the commissioning requirements and LEED requirements for commissioning of the heating ventilation and air conditioning systems and the electrical systems and other systems to be commissioned as identified in the Technical Specifications are met.
3. The Design-Builder must make all required LEED submittals to the Authority Representative. The format and number of submittals must be approved by the Authority.
4. The Design-Builder must take the actions listed below, regarding LEED, within the time periods specified.
 - a. Design-Builder LEED AP qualifications must be submitted with fifteen (15) calendar Days of the Notice to Proceed (NTP).
 - b. Erosion and Sedimentation Control Plan must be submitted within fifteen (15) Days of the NTP. The Design-Builder must implement the approved Plan prior to start of work on the Project site. The Design-Builder may be required to incorporate or maintain an existing Plan from a previous phase of the work.
 - c. Construction Waste Management Plan must be submitted within fifteen (15) Days of NTP. The Construction Waste Management Coordinator must be identified and the approved plan be completed prior to the start of construction.
 - d. Materials and Resources Plan must be submitted at the same time as the Schedule of Values.
 - e. Volatile Organic Compounds Plan must be submitted at the same time as the Schedule of Values.
 - f. Construction Indoor Air Quality Plans must be submitted within thirty (30) Days of NTP.

5. Other requirements of the Contract Documents regarding LEED and Sustainability goals are found in various provisions in Book 3.

ARTICLE 21. COMPLIANCE WITH ALL LAWS

Section 21.01 Design-Builder Must Comply with All Laws

1. The Design-Builder 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 Design-Builder must follow the most stringent of the applicable agency and code requirements. The Design-Builder is fully responsible for ascertaining and complying with all agency and code requirements applicable to the Work.

Section 21.02 Equal Employment Opportunity

1. The Design-Builder 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 Design-Builder 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 Design-Builder will comply with the Civil Rights Act of 1964, 42 U.S.C. Sec. 2000 et seq. (1981), as amended. Each Design-Builder 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 Design-Builder 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 Design-Builder will furnish such reports and information as requested by the Authority and the Illinois Department of Human Relations.
 - d. Subcontractors. Each Design-Builder agrees that all of the above provisions will be incorporated in all agreements entered into with any suppliers of materials, providers of services, subcontractors of any tier, and labor organizations which furnish skilled, unskilled, and craft union skilled labor, or which may provide any such materials, labor, or services in connection with this Contract.
3. Employment procedures: Preferences and Compliance
 - a. Salaries of employees of Design-Builder, 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. Design-Builder 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 Design-Builder 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 Authority may withhold from the Design-Builder, out of payments due to the Design-Builder, 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 Authority for and on account of the Design-Builder to the respective employees to whom they are due, as determined by the Authority in its sole discretion.
4. The Design-Builder 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 Design-Builder agrees that in performing this Contract it will comply with: the Minority Business Enterprise/Women Business Enterprise Special Conditions of Article 23 MBE/WBE Special Conditions and Section 3 Sub-contracting and hiring .
6. A breach of any of the requirements of this Section 21.02 may be grounds for termination of the Contract.

Section 21.03 Trade Regulations

1. 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 Design-Builder will make all necessary arrangements to reconcile any such conflict without delay, damage or cost to the Authority and without recourse to the Authority, Architect, or the Authority 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 Authority.

Section 21.04 Steel Products

1. To the extent permitted by law, this Contract will be subject to all provisions of the "Steel Products Procurement Act," 30 ILCS 565/1 *et seq.* as it may be amended from time to time.

Section 21.05 Covenant against Contingent Fees

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

Section 21.06 Taxes

1. The Design-Builder will pay for all federal, state, and local taxes on all materials, labor, or services furnished, and all taxes arising out of the operations under this Contract. Such taxes include, by way of illustration and not in limitation thereof, Retailers' Occupational, Old Age Benefit, Unemployment, customs, duties, and all deductions for income taxes now in force or hereafter enacted prior to Final Completion and Acceptance of the Work. This requirement excludes taxes and assessments on real property comprising the Site and Illinois, County and Municipal Retailers' Occupation and Service Occupation Taxes and Illinois Use, Sales and Service Use Taxes on building materials and fixtures to be incorporated into the Work but does include such taxes on building materials and equipment consumed or used in performing the construction, but not incorporated in it.

Section 21.07 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 Authority will only be an approval of its adequacy for the Work, and will not be an approval of the use thereof by the Design-Builder in violation of any patent or other rights of any third person.

Section 21.08 Conflict of Interest

1. No member of the governing body of the Authority and no other officer, employee, or agent of the Authority 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 Design-Builder 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 Design-Builder further covenants that in the performance of this Contract, no person having any such interest will be employed. Each Design-Builder agrees that if the Authority determines that any of a Design-Builder's work for others conflicts with the Work, that the Design-Builder will terminate such other services immediately upon request of the Authority.

Section 21.09 Disclosure Affidavit

1. The Design-Builder is required to file a fully executed Disclosure Affidavit with the Authority 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 Design-Builder 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 Cook County, City of Chicago, the State of Illinois, the Authority, 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; and
 - d. do not owe any debts to the State of Illinois, in accordance with 65 ILCS 5/11-42.1-1.

Section 21.10 Disclosure of Retained Parties

1. The Design-Builder is required to submit a fully executed Disclosure of Retained Parties within five (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 21.11 Non-Collusion, Bribery of a Public Officer or Employee

1. Each Design-Builder will comply with the following:
 - a. No person or business entity will be awarded a Contract or subcontract if that person or business entity:
 - b. Has been convicted of bribery or attempting to bribe a public officer or employee of the Authority, Cook County, City of Chicago, the State of Illinois, or any agency of the federal government or any state or local government in the United States, in that officers or employees official capacity; or
 - c. Has been convicted of agreement or collusion among bidders or prospective bidders in restraint of freedom of competition by agreement to bid a fixed price, or otherwise; or
 - d. Has made an admission of guilt of such conduct described in (1) or (2) above which is a matter of record but has not been prosecuted for such conduct.

2. For purposes of this section, where an official, agent or employee of a business entity has committed any offense under this section on behalf of such an entity and pursuant to the direction or authorization of a responsible official thereof, the business entity is chargeable with the conduct. One business entity will be chargeable with the conduct of an affiliated agency.
3. Ineligibility under this section will continue for 3 years following such conviction or admission. The period of ineligibility may be reduced, suspended, or waived by the Authority under certain specific circumstances.

ARTICLE 22. MISCELLANEOUS

Section 22.01 Counterparts

1. This Contract may be 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

1. This Contract is governed in accordance with the State of Illinois without regard to choice of law principles. The Design-Builder 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 Design-Builder agrees that service of process on the Design-Builder may be made, at the option of the Authority, 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 Design-Builder, or by personal delivery on any officer, director, or managing or general agent of the Design-Builder.

Section 22.03 Consent to Service of Process and Jurisdiction

1. All judicial proceedings brought against the Design-Builder 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 Design-Builder 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 Design-Builder 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 Design-Builder to the Authority 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 Design-Builder. The Design-Builder 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 Authority to bring proceedings against the Design-Builder in the courts of any other jurisdiction.

Section 22.04 No Third Party Beneficiaries

1. 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 any other third party.

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 indicated in Book 2.
2. Notices delivered by mail are deemed effective three (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. Authority's Authority. This Contract is entered into by virtue of the authority conferred on the Authority in accordance with 50 ILCS 20/21.
2. Design-Builder's Authority. Execution of this Contract by the Design-Builder is authorized and signature(s) of each person signing on behalf of the Design-Builder have been made with complete and full authority to commit the Design-Builder 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, Design-Builder must provide satisfactory evidence that the execution of the Contract is authorized in accordance with the business entity's rules and procedures.

ARTICLE 23. MBE/WBE SPECIAL CONDITIONS

Section 23.01 MBE/WBE Program

1. Policy Statement

- a. It is the policy of the Authority 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 Design-Builder 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 Authority requires the Design-Builder also agree to take affirmative action to ensure that MBE and WBE firms have the maximum opportunity to compete for and perform subcontracts with respect to this Contract.
- c. The Authority requires the Design-Builder to notify MBE and WBE firms, utilized on this contract, about opportunities on contracts without affirmative action goals.

2. Aspirational 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 Authority Construction Contracts to MBEs and 4% of the annual dollar value of all Authority Construction Contracts to WBEs.
- b. The specific goals of this agreement are 34% MBE and 6%WBE participation of the total contract value.
- c. Further, the Design-Builder must agree to use its best efforts to include MBE and WBE firms in any Contract modification work that increases the Contract value by 10% of the initial Contract value or \$50,000, whichever is less. Where the proposed contract modification involves work which can be performed by MBEs and WBEs already performing work on the contract such MBEs and WBEs will participate in such work specified in the contract modification.
- 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 Design-Builder or such other remedy, as the Authority deems appropriate.

3. Definitions

- a. For purposes of this Special Condition, the following definitions applies:
 - (1) "Certified Minority Business Enterprise" means a person or entity granted certification by the City of Chicago or County of Cook.
 - (2) "Certified Women's Business Enterprise" means a person or entity granted certification by the City of Chicago or County of Cook.
 - (3) "Construction Contract" means a contract for the construction, repair, alteration, renovation or improvement of any building, facility or other structure.
 - (4) "Contract Specific Goals" means the subcontracting goals for MBE and WBE participation established for a particular contract based upon the availability of MBEs and WBEs to perform and anticipated scope of work of the contract and the Authority's progress towards meeting the aspirational goals.

- (5) "Design-Builder" means any person or business entity that seeks to enter into a Construction Contract with the Authority and includes all partners, affiliates and joint ventures of such person or entity.
- (6) "Established Business" means a person or entity granted certification by the City of Chicago or Cook County.
- (7) "Executive Director" means the Executive Director of the Authority or his duly designated representative as appointed in writing.
- (8) "Good faith efforts" means actions undertaken by a Design-Builder to achieve a Contract Specific Goal that by their scope, intensity and appropriateness to the objective can reasonably be expected to fulfill the Program's requirements.
- (9) "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.
- (10) "Program" means the minority- and women-owned business enterprise construction procurement program established in this special condition.

4. Determining MBE/WBE Utilization

- a. The methodology for determining MBE and WBE utilization will be determined for purposes of analysis with respect to this contract as follows:
- b. 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.
- c. 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 Design-Builder 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.
- d. A Design-Builder 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.
- e. A Design-Builder 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 Authority 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 Design-Builder 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 reputably presumed not to be performing a commercially-useful function.

- g. If the MBE or WBE is a manufacturer:
 - (1) 100% of expenditures to a MBE or WBE manufacturer for items needed for the Contract shall be counted toward the MBE or WBE goals. A manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies articles, or equipment required under the Contract and of the general character described by the specifications.
- h. If the MBE or WBE is a distributor or supplier:
 - (1) 60% of expenditures for materials and supplies purchased from a MBE or WBE that is certified as a regular dealer or supplier shall be counted toward MBE or WBE goals.
 - (2) A Design-Builder may count toward its goals expenditures to MBE or WBE suppliers provided that the supplier performs a commercially useful function in the supply process. Expenditures to suppliers will only be counted if the supplies are sold to the Design-Builder that installs those supplies in the Work.
- i. If the MBE or WBE is a broker:
 - (1) 100% of expenditures paid to brokers will be counted toward the MBE or WBE goals.

5. Submission of Bid Proposals

- a. The following schedules and documents constitute the Bidder's MBE/WBE compliance proposal and must be submitted at the time of the bid or proposal or within such extended period as provided in Article 23.
 - (1) Evidence of Certification: Affidavit of MBE/WBE. A copy of each proposed MBE and WBE firm's Letter of Certification from the City of Chicago, Department of Procurement Services or any other entity listed in Section 23.01.3.a (1) or 23.01.3.a (2) must be submitted.
 - (2) Schedule B: Affidavit of MBE/Non-MBE or WBE/Non-WBE Joint Ventures. Where the Bidder's MBE/WBE compliance proposal includes participation of any MBE or WBE as a joint venture participant, the Bidder must submit a "Schedule B: Affidavit of MBE/Non-MBE or WBE/Non-WBE Joint Venture" with an attached copy of the joint venture agreement proposed among the parties. The Schedule B and the joint venture agreement must clearly evidence that the MBE or WBE participant will be responsible for a clearly defined portion of the work to be performed and that the MBE or WBE firm's responsibilities are in proportion with its ownership percentage.
 - (3) Schedule C: Letter of Intent to Perform as a Subcontractor, Subconsultant, or Material Supplier, Schedule C, executed by the MBE/WBE firm (or Joint Venture Subcontractor) must be submitted by the Bidder for each MBE/WBE included on the Schedule D. Schedule C must accurately detail the work to be performed by the MBE or WBE firm and the agreed rates and prices to be paid.
 - (4) Schedule D: Affidavit of Prime Design-Builder 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 23.01.7), the Bidder must include the specific dollar amount of participation of each MBE/WBE firm listed on its Schedule D. The total dollar commitment to proposed MBE firms must at least equal the MBE goal, and the total dollar commitment to proposed WBE firms must at least equal the WBE goal. Bidders are responsible for calculating the dollar equivalent of MBE or WBE utilization as percentages of their total base bid.
- b. The submittals must have all blank spaces on the Schedule pages applicable to the contract correctly filled in. Agreements between a Bidder and a MBE/WBE in which the MBE/WBE promises not to provide subcontracting quotations to other Bidders are prohibited.

6. Evaluation of Compliance Proposals

- a. During the period between bid opening and contract award, the Bidder's MBE/WBE compliance proposal will be evaluated by the Authority. 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 Authority's review of a Bidder's proposal concludes that the MBE or WBE proposal was deficient, the Authority 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 Authority) a modification of the MBE or WBE Proposal, in proper format, which remedies the deficiencies cited. Failure to correct all deficiencies cited by the Authority 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 Authority. Therefore, all terms and conditions stipulated for prospective MBE and WBE subcontractors or suppliers should be satisfactorily negotiated prior to the submission to the Authority 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 23.01.13 should be followed.
- d. If the Compliance Proposal includes participation by material suppliers, the Authority will request copies of the offers from such suppliers. The offers must be furnished to the Authority within three (3) business days of the bidder's receipt of the request for such offers from the Authority. The Authority may make such request by electronic mail. The offers must specify: (i) the particular materials, equipment and/or supplies that will be furnished; (ii) the supplier's price for each of the items; (iii) the total price of the items to be furnished by the supplier, (iv) the supplier's source for the items (e.g., manufacturer, wholesaler) and (v) the subcontractor that the supplies will be purchased by.

7. Request for Waiver

- a. If a Bidder is unable to identify qualified MBE and WBE firms to perform sufficient work to fulfill the MBE or WBE percentage goals for this Contract, the bid or proposal must include a written request for waiver. A request for waiver must be sent to the Executive Director and must set forth the Bidder's inability to obtain sufficient MBE and WBE firms notwithstanding good faith attempts to achieve such participation.
- b. Good Faith efforts to achieve participation include but are not limited to:
 - a. Attendance at the Pre-bid conference;
 - b. Solicit certified MBE and WBE firms. Soliciting through reasonable and available means at least 50% of MBE and WBE firms certified in the anticipated scope(s) of work.
 - c. 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;
 - d. Advertise the contract opportunity in trade association newsletters, other media, and/or venues oriented toward and minority and woman-oriented;
 - e. Timely notification (at least seven (7) Days in advance of the bid due date) of specific sub-bid opportunities must be made to MBE and WBE firms and corresponding assistance agencies/ associations;
 - f. Provide interested MBE and WBE firms with adequate information regarding the plans, specifications, and contract requirements in a timely manner;
 - g. Make efforts to assist interested MBE and WBE firms in obtaining bonding, lines of credit, or insurance;

- h. Make efforts to assist interested MBE and WBE firms in obtaining necessary equipment, supplies, materials, or related assistance/services;
- i. Effectively use the services of the Authority; minority or women community organizations/assistance groups, and other organizations to provide assistance in the recruitment and placement of MBE and WBE firms.
- j. Negotiate in good faith with interested MBE/WBE firms and provide a description of direct negotiations with MBE and WBE firms for specific sub-bids, including:
 - i. The name, address and telephone number of MBE and WBE firms contacted;
 - ii. A description of the information provided to MBE and WBE firms regarding the portions of the work to be performed; and
 - iii. The reasons why additional MBE and WBE firms were not obtained in spite of negotiations.
- k. A statement of the efforts made to select portions of the work proposed to be performed by MBE and WBE firms (such as sub-supplier, transport, engineering, distribution, or any other roles contributing to production and delivery as specified in the contract) in order to increase the likelihood of achieving sub participation;
- l. Decision to reject MBE and WBE firms deemed unqualified must be sound and based on a thorough investigation of firms capabilities. 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;
- m. Efforts made by the Bidder to expand its search for MBE and/or WBE firms beyond usual geographic boundaries.
- n. Must take appropriate, documented steps to follow up initial solicitations with interested MBE and WBE firms.
- o. General efforts made to assist MBE and WBE firms to overcome participation barriers
 - a. The Executive Director, after review and evaluation of the request provided by the Bidder, may grant a waiver request upon the determination that:
 - i. 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;
 - ii. The price(s) quoted by potential MBE and/or WBE firms for goods or services is above competitive levels to an extent unwarranted by any increased cost of doing business attributable to the present effects of disadvantage or discrimination.

8. Established Business participation in the MBE and WBE procurement program

- a. A local business entity which meets all the requirements to be certified as an MBE or WBE under this article except that it has become an established business may participate in the minority- and women-owned business enterprise program as follows:
 - 1) For a one-year period after the business entity has become an established business, only 75 percent of such business's participation in the Contract shall account for the MBE or WBE, as applicable, participation requirement set forth in Section 23.01.4;
 - 2) For a one-year period starting on the one-year anniversary of the date the business entity became an established business, only 50 percent of such business's participation in the Contract shall account for the MBE or WBE, as applicable, participation requirement set forth in Section 23.01.4.

- 3) For a one-year period starting on the two-year anniversary of the date the business entity became an established business, only 25 percent of such business's participation in the Contract shall account for the MBE or WBE, as applicable, participation requirement set forth in Section 23.01.4.
- b. An Establish Business entity shall not be eligible to participate in the minority- and women-owned business enterprise procurement program starting on the three-year anniversary of the date the business entity became an established business.

9. Failure To Achieve Goals

- a. If the Design-Builder cannot achieve the contract specific goals, as the Project proceeds, it must have documented its good faith efforts to do so. In determining whether the Design-Builder has made such good faith efforts, the performance of other contractors in meeting the goals may be considered. The Executive Director or his designee shall consider, at a minimum, the Design-Builder's efforts to do the following:
 - a. Soliciting through reasonable and available means the interest of MBEs or WBEs that Provide interested MBEs or WBEs with adequate information about the plans, specifications and requirements of the contract, including addenda, in a timely manner to assist them in responding to the solicitation.
 - 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 Design-Builder'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 cases 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 Design-Builder to perform the work of a contract with its own organization. A Design-Builder 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 Contract might otherwise prefer to perform these 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 Authority or Design-Builder.
 - 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
 - j. Effectively using the services of the Authority; 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.

10. In the event the Public Building Authority Procurement Officer determines that the Design-Builder did not make a good faith effort to achieve the goals, the Design-Builder may file a Dispute to the Executive Director as provided in Section 18.02. Disputes Book 2.
11. Reporting and Record-Keeping Requirements
 - a. The Design-Builder, within five (5) working days of contract award, must execute a formal subcontract or purchase order in compliance with the terms of the Design-Builder's bid proposal and MBE/WBE assurances, and submit to the Authority 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 Design-Builder will submit 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 Design-Builder will file regular MBE and WBE utilization reports on the form entitled "Status Report of MBE and WBE (Sub) Contract Payments" at the time of submitting each monthly Payment Estimate, which reflects the current status of cumulative and projected payments to MBE and WBE firms.
 - b. The Design-Builder 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 Authority 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 Authority and/or its designees, on five (5) business days' notice in order for the Authority to determine the Design-Builder's compliance with its MBE and WBE commitments and the status of any MBE or WBE firm performing any portion of the contract.
12. Disqualification of MBE or WBE
 - a. The Contract may be terminated by the Executive Director upon the disqualification of the Design-Builder as an MBE or WBE if the Design-Builder's status as an MBE or WBE was a factor in the award and such status was misrepresented by the Design-Builder.
 - b. The Contract may be terminated by the Executive Director upon the disqualification of any MBE or WBE if the Subcontractor's or supplier's status as an MBE or WBE was a factor in the award of the contract and the status of the subcontractor or supplier was misrepresented by the Design-Builder. If the Design-Builder is determined not to have been involved in any misrepresentation of the status of the disqualified subcontractor or supplier, the Design-Builder shall make good faith efforts to engage a qualified MBE or WBE replacement.
13. Prohibition On Changes To MBE/WBE Commitments
 - a. The Design-Builder must not make changes to its contractual MBE and WBE commitments or substitute such MBE or WBE subcontractors without the prior written approval of the Executive Director. Unauthorized changes or substitutions, including performing the work designated for a subcontractor with the Design-Builder's own forces, is a violation of this section and a breach of the contract with the Authority, and may cause termination of the contract for breach, and/or subject the Design-Builder 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.
14. MBE/WBE Substitution Requirements and Procedures
 - a. Arbitrary changes by the Design-Builder of the commitments earlier certified in the **Schedule D** are prohibited. Further, after once entering into each approved MBE and WBE sub-contract agreement, the Design-Builder shall thereafter neither terminate the subcontract, nor reduce the scope of the work to be performed by the MBE or WBE, nor decrease the price to the MBE or WBE, without in each instance receiving the prior written approval of the Executive Director. In some cases, however, it may become necessary to substitute a new MBE or WBE in order to actually fulfill the MBE or WBE requirements. In such cases, the Executive Director must be given reasons justifying the release by the Design-Builder of prior specific MBE or WBE commitments established in the contract, and will need to review the eligibility of the MBE or WBE presented as a substitute. The substitution procedure will be as follows:

- (1) The Design-Builder must notify the Executive Director immediately in writing of an apparent necessity to reduce or terminate a MBE or WBE subcontract and to propose a substitute firm for some phase of work, if needed in order to sustain the fulfillment of the MBE/WBE contract requirements.
- (2) The Design-Builder's notification should include the specific reasons for the proposed substitution. Stated reasons which would be acceptable include any of the following reasons: a) Unavailability after receipt of reasonable notice to proceed; b) failure of performance; c) financial incapacity; d) refusal by the subcontractor to honor the bid or proposal price or scope; e) mistake of fact or law about the elements of the scope of work of a solicitation where a reasonable price cannot be agreed; f) failure of the subcontractor to meet insurance, licensing or bonding requirements; g) the subcontractor's withdrawal of its bid or proposal; or h) decertification of the subcontractor as MBE or WBE.
- (3) The Design-Builder's position must be fully explained and supported with adequate documentation. Stated reasons which will not be acceptable include: replacement firm has been recruited to perform the same work under terms more advantageous to the Design-Builder; issues about performance by the committed MBE or WBE were disputed (unless every reasonable effort has already been taken to have the issues resolved or mediated satisfactorily); an MBE or WBE has requested reasonable price escalation which may be justified due to unforeseen circumstances.
- (4) The Design-Builder's notification should include the names, address and principal official of any proposed substitute MBE or WBE and the dollar value and scope of work of the proposed subcontract. Attached should be all the same MBE/WBE affidavits, documents and Letters of Intent which are required of the proposed MBE or WBE firms, as enumerated above in Section 20.5. Submission of Bid Proposals.
- (5) The Executive Director will evaluate the submitted documentation, and respond within fifteen (15) working days to the request for approval of a substitution. The response may be in the form of requesting more information, or requesting an interview to clarify or mediate the problem. In the case of an expressed emergency need to receive the necessary decision for the sake of job progress, the Executive Director will instead respond as soon as practicable.
- (6) Actual substitution of a replacement MBE or WBE to fulfill contract requirements must not be made before the Executive Director's approval is given of the acceptability of the substitute MBE or WBE. This subcontract must be executed within five (5) working days, and a copy of the MBE WBE subcontract with signatures of both parties to the agreement should be submitted immediately to the Executive Director.
 - i. The Executive Director will not approve extra payment for escalated costs incurred by the Design-Builder when a substitution of subcontractors becomes necessary for the Design-Builder in order to comply with MBE/WBE contract requirements.
 - ii. No relief of the MBE/WBE requirements will be granted by the Executive Director except in exceptional circumstances. Requests for complete or partial waiver of the MBE/WBE requirements of this contract must be made in writing, stating all details of the request, the circumstances, and any additional relevant information. The request must be accompanied by a record of all efforts taken by the Design-Builder to locate specific firms, solicit MBE and WBE bids, seek assistance from technical assistance agencies, and other good faith efforts undertaken to achieve compliance with the MBE/WBE goals.

15. Non-Compliance

- a. The Executive Director has the authority to apply suitable sanctions to the Design-Builder if the Design-Builder is found to be in non-compliance with the MBE and WBE requirements. Failure to comply with the MBE or WBE terms of this contract or failure to use MBE or WBE firms as stated in the Design-Builder's assurances constitutes a material breach of the contract, and may lead to the suspension or termination of the contract in part or in whole. In some cases, monthly progress payments may be withheld until corrective action is taken.
- b. When the contract is completed, if the Executive Director has determined that the Design-Builder 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 Authority will be damaged in the failure to provide the benefit of participation to minority or women business to the degree set forth in this Special Condition. In that case, the Authority may disqualify the Design-Builder from entering into future contracts with the Authority.

16. Severability

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

EXHIBIT B – INSURANCE REQUIREMENTS

The insurance requirements identified below are the minimum requirements that will be required for work issued on contracts resulting from this RFP. The actual requirements for each project will likely be higher and will be determined based on the scope and the requirements of the User Agency. As noted in this RFP, Respondent is to submit a certificate of insurance evidencing their current insurance program.

The Contractor must provide and maintain at Contractor's own expense, the minimum insurance coverage and requirements specified below, insuring all operations related to the Contract. The insurance must remain in effect from the date of the Notice to Proceed until Substantial Completion of the project, during completion of Punch List, as well as any time Contractor returns to perform additional work regarding warranties or for any other purpose, unless otherwise noted below or agreed by the housing Authority of Cook County.

A. INSURANCE TO BE PROVIDED

1. Workers' Compensation and Employers Liability (Primary and Umbrella)

Workers' Compensation Insurance as prescribed by applicable law covering all employees who are to provide a service under this Contract and Employers Liability coverage with limits of not less than \$1,000,000 each accident, illness or disease. Coverage will include a waiver of subrogation as required below.

2. Commercial General Liability (Primary and Umbrella)

Commercial General Liability Insurance or equivalent with limits of not less than \$2,000,000 per occurrence for bodily injury, personal injury, and property damage liability. Coverage must include the following: All premises and operations, products/completed operations to be maintained for minimum of two (2) years following project completion, explosion, collapse, underground hazards, defense and contractual liability. Contractor and all subcontractors of every tier **will specifically name** the Housing Authority of Cook County and others as may be required by the Housing Authority of Cook County, as Additional Insured using the latest version of the ISO CG2010 and CG2037. Additional Insured status will be on a primary, non-contributory basis for any liability arising directly or indirectly from the work, including the two year completed operations periods. Coverage will include a waiver of subrogation as required below.

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

3. Automobile Liability (Primary and Umbrella)

When any motor vehicles (owned, non-owned and hired) are used in connection with work to be performed, the Contractor must provide Automobile Liability Insurance, with limits of not less than \$1,000,000 per occurrence for bodily injury and property damage. The Housing Authority of Cook County, the User Agency and others as may be required by the Housing Authority of Cook County are to be named as Additional Insured on a primary, non-contributory basis.

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

4. Contractors Pollution Liability

Contractors Pollution coverage is required with limits of not less than \$1,000,000 per occurrence for any portion of the services, which may entail, exposure to any pollutants, whether in the course of sampling, remedial work or any other activity under this contract. The contractor pollution liability policy will provide coverage for sums that the insured become legally obligated to pay as loss as a result of claims for bodily injury, property damage and/or clean-up costs caused by any pollution

incident arising out of the Work including remediation operations, transportation of pollutants, owned and non-owned disposal sites and any and all other activities of Contractor and its subcontractors. Pollution incidents will include, but not be limited to, the discharge, dispersal, release or escape of any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, medical waste, waste materials, lead, asbestos, silica, hydrocarbons and microbial matter, including fungi, bacterial or viral matter which reproduces through release of spores or the splitting of cells or other means, including but not limited to, mold, mildew and viruses, whether or not such microbial matter is living.

The policy will be maintained for a period of three years after final completion and include completed operations coverage. The policy will include the Housing Authority of Cook County, and others as may be required by the Housing Authority of Cook County, as Additional Insured. These entities must be specifically named and endorsed on the policy. Additional Insured coverage must be on a primary and non-contributory basis for ongoing and completed operations. Coverage will include a waiver of subrogation as required below.

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

5. Professional Liability

When Contractor performs professional work in connection with the Agreement, Professional Liability Insurance must be maintained with limits of not less than \$1,000,000 covering acts, errors, or omissions. The policy will include coverage for wrongful acts, including but not limited to errors, acts or omissions, in the rendering or failure to render professional services resulting in a pollution incident. When policies are renewed or replaced, the policy retroactive date must coincide with, or precede the, start of work on the Agreement. Coverage must be maintained for two years after substantial completion. A claims-made policy, which is not renewed or replaced, must have an extended reporting period of two (2) years.

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

6. Builders Risk

Contractor must provide All Risk Builders Risk or Installation Floater Insurance on a replacement cost basis including but not limited to all labor, materials, supplies, equipment, machinery and fixtures that are or will be permanent part of the facility, inclusive of prior site work. Coverage must be on an All Risk or Cause of Loss, Special Form basis including, but not limited to, the following: right to partial or complete occupancy, collapse; water damage including overflow, leakage, sewer backup, or seepage; resulting damage from faulty or defective workmanship or materials; resulting damage from error or omission in design, plans or specifications; debris removal; Ordinance and Law and include damage to, false work, fences, temporary structures and equipment stored off site or in transit. The policy will allow for partial or complete occupancy and include damage to existing property at the site with a sublimit of \$1,000,000.

The Housing Authority of Cook County will be Named Insureds on the policy. Coverage must be for the full completed value of the work and must remain in place until at least Substantial Completion and **may only be cancelled with the written permission** of the Housing Authority of Cook County, even if the Project has been put to its intended use.

The Contractor is responsible for all loss or damage to personal property including but not limited to materials, equipment, tools, scaffolding and supplies owned, rented, or used by Contractor.

7. Railroad Protective Liability

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

Protective Liability insurance in the name of railroad or transit entity. The policy must have limits of not less than the requirement of the operating railroad/transit entity, and in no event less than \$2,000,000 per occurrence and \$6,000,000 aggregate, for losses arising out of injuries to or death of all persons, and for damage to or destruction of property, including the loss of use thereof. If no Railroad Protective Liability insurance is required by the nearby railroads, Contractor shall submit written confirmation from each railroad.

Contractors and subcontractors are required to endorse their liability policies with form CG 24 17 to eliminate the exclusion for work within fifty (50) feet of the rail right-of-way. Contractors and subcontractors must provide copies of this endorsement with the certificate of insurance required below.

B. ADDITIONAL REQUIREMENTS

Contractor must furnish the Housing Authority of Cook County Procurement Department, 175 West Jackson Blvd., Suite 350, Chicago, IL 60604, original Certificates of Insurance, or such similar evidence, to be in force on the date of this Contract, and Renewal Certificates of Insurance, or such similar evidence, if any insurance policy has an expiration or renewal date occurring during the term of this Contract. The Contractor must submit evidence of insurance to the Housing Authority of Cook County prior to Contract award. The receipt of any certificate does not constitute agreement by the Authority that the insurance requirements in the Contract have been fully met or that the insurance policies indicated on the certificate are in compliance with all Contract requirements. The failure of the Authority to obtain certificates or other insurance evidence from Contractor is not a waiver by the Authority of any requirements for the Contractor to obtain and maintain the specified insurance. The Contractor will advise all insurers of the Contract provisions regarding insurance. Non-conforming insurance does not relieve Contractor of the obligation to provide insurance as specified in this contract. Non-fulfillment of the insurance conditions may constitute a breach of the Contract, and the Authority retains the right to stop work until proper evidence of insurance is provided, or the Contract may be terminated.

The insurance must provide for 30 days prior written notice to be given to the Authority in the event coverage is substantially changed, canceled, or non-renewed.

The Housing Authority of Cook County reserves the right to obtain copies of insurance policies and records.

Any deductibles or self-insured retentions on referenced insurance must be borne by Contractor. All self-insurance, retentions and/or deductibles must conform to these requirements.

The Contractor waives and agrees to cause all their insurers to waive their rights of subrogation against the Housing Authority of Cook County and any other entity as required by the Housing Authority of Cook County, their respective Board members, employees, elected officials, officers, or representatives. The Contractor must require each Subcontractor to include similar waivers of subrogation in favor of the Authority and any other entity as required by the Housing Authority of Cook County.

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

Any insurance or self-insurance programs maintained by the Housing Authority of Cook County and any other entity as required by the Housing Authority of Cook County, will not contribute with insurance provided by the Contractor under the Contract.

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

If contractor is a joint venture or limited liability company, the insurance policies must name the joint

venture or limited liability company as a Named Insured.

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

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

Contractor must submit the following at the time of award:

1. Standard ACORD form Certificate of Insurance issued to the Housing Authority of Cook County as Certificate Holder including:
 - a. All required entities as Additional Insured
 - b. Evidence of waivers of subrogation
 - c. Evidence of primary and non-contributory status
2. All required endorsements including the CG2010 and CG2037

The Housing Authority of Cook County maintains the rights to modify, delete, alter or change these requirements.

EXHIBIT C – SECTION 3 REQUIREMENT

SECTION 3 – ECONOMIC OPPORTUNITIES FOR RECIPIENTS OF HUD ASSISTANCE

Please read and complete the bottom portion of this page for inclusion with your submission.

SECTION 3 CLAUSE

- A. The work to be performed under this Contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- B. The parties to this Contract agree to comply with HUD regulations in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this Contract, the parties to this Contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- C. The Contractor agrees to send to each labor organization or representative of workers with which the Contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or worker's representative of the Contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicant for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the Services shall begin.
- D. The Contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the Subcontractor is in violation of the regulations in 24 CFR part 135. The Subcontractor will not subcontract with any Subcontractor where the Contractor has notice or knowledge that the Subcontractor has been found in violation of the regulations in 24 CFR Part 135.
- E. The Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the Contractor is selected but before the Contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, where not filled to circumvent the Contractor's obligations under 24 CFR part 135.
- F. Noncompliance with HUD regulations in 24 CFR Part 135 may result in sanctions, termination of this Contract for default, and debarment or suspension from future HUD assisted Contracts.
- G. With respect to Services performed in connection with Section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the Services to be performed under this Contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of Contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this Contract that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

Further information may be found on the U.S. Department of Housing and Urban Development's website at www.hud.gov and in the Code of Federal Regulations (24 CFR Part 135).

Section 3 Utilization Form must be completed at the time of Award.

Name/Title

Date

Signature

Housing Authority of Cook County (HACC)
Department of Procurement
SECTION 3 UTILIZATION PLAN
(To Be Completed By Prime Contractor)

PRIME/GENERAL CONTRACTOR'S NAME: _____

RFP/IFB/RFQ/CONTRACT or PO NUMBER: _____ DATE FORM COMPLETED: _____

PROJECT TITLE: _____

CONTACT NAME/TITLE: _____

E-MAIL ADDRESS: _____

PLEASE READ CAREFULLY AND SIGN THE ACKNOWLEDGMENT ON PAGE 4

PRIOR TO COMPLETING AND SUBMITTING THIS SECTION 3 UTILIZATION PLAN

Overview:

The contractor hereby agrees to comply with all the provisions of Section 3 as set forth in 24 CFR 135 and the HACC's Section 3 Policy. The Contractor hereby submits Utilization Plan to identify employment, subcontracting, and other opportunities for Cook County Housing residents and low income Cook County area residents during the term of the contract between the Contractor and HACC. Any changes to this Utilization Plan must be approved by the Contract Compliance Specialist, via an amended Utilization Plan and Section 3 Change Form, when requested.

Type of Contract	Contract Amount	Section 3 Requirements		
		Hiring	Contracting	Other Economic Opportunities
Construction	All Contract Values	30% Of all new hires	10% Of the total contract value subcontracted	See instructions
Other Contracts (Including Professional Services)	All Contract Values	30% Of all new hires	3% Of the total contract value subcontracted	See instructions

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Instructions:

Part I: Hiring

- Per 24 CFR 135.30, Section 3 requires at least 30% of the contractor's new hires be Section 3 residents.
- The prime contractor is **required** to fill out the **Table I.b Hiring Chart-ENTIRE WORKFORCE for both Prime and all Subcontractors** in **Part I: Hiring**. This chart includes Section 3 hires, **AS WELL AS** all other non-section 3 hires for the scope of work.
- **Table I.a SAMPLE Hiring Chart Entire Workforce for both Prime and all Subcontractors** is provided to you as a sample.
- **Table I.b Hiring Chart Entire Workforce for both Prime and all Subcontractors** will require you to indicate the total workforce that you and your subcontractors already have in place and those you need to hire. You will need to list their (1) Job Titles, (2) Total Employees Needed at each Job Title, (3) Total Number of Employees Currently Employed at each Job Title, (4) Total New Hires Needed for each Job Title, (5) Total Section 3 Hires for each Job Title, (6) Total Columns (1) through (5) individually, and (7) Total New Section 3 Hires Required and (8) Percentage of New Hires that are Section 3.
- By filling out the hiring chart, the Contractor affirms that the jobs identified for Section 3 residents shall be for meaningful employment.
- A Prime Contractor may satisfy the CHA Resident Hiring Requirements through the hiring of Section 3 residents through his/her subcontractors.
- The Hiring Chart must be completed in its entirety, including a response for each column, in addition to proper calculations in each field where totals are required.
- If any proposed Section 3 positions cannot be filled, a Section 3 Change Form is required under the Section 3 Policy.

Part II: Contracting

- Per 24 CFR 135.30, Section 3 requires Construction contracts to subcontract at least 10% of the work to Section 3 Business Concerns and 3% of the work for all Other Contracts.
- The definition of 'Section 3 Business Concern' under HUD Regulations is:
 - (1) 51 percent or more owned by section 3 residents; or
 - (2) Whose permanent, full-time employees include persons, at least 30 percent of whom are currently section 3 residents, or within three years of the date of first employment with the business concern were section 3 residents; or
 - (3) That provides evidence of a commitment to subcontract in excess of 25 percent of the dollar award of all subcontracts to be awarded to business concerns that meet the qualifications set forth in paragraphs (1) or (2) in this definition of "section 3 business concern."
- Section 3 subcontracting refers to **direct participation** (only subcontracts for work that is included in the scope of the project).
- Contractors shall direct their efforts to award Section 3 covered contracts, to the greatest extent feasible, to Section 3 Business Concerns in the order of priority provided in 24 CFR 135.36.

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- The Prime Contractor is required to fill out the contracting information in Table II: Contracting Commitments, Table II.a: Section 3 Business Concern Contracts, Table II.b.: Contracting Shortfall (if necessary), and/or Table II.c: Outreach Efforts (if necessary) of Part II.
- **Table II: Contracting Commitments** requires you to indicate the Total Dollar Value being subcontracted to Section 3 Business Concerns and the percentage of the total contract value, to which the total of all Section 3 Business Concern subcontracts is equivalent.
- **Table II.a. Section 3 Business Concern Contracts** requires you to identify each Section 3 Business Concern that will hold a subcontract under this Contract. The Company's Name, Contract Value, and Scope of Work to be Performed must be identified in order for the plan to be considered complete. A corresponding Schedule C must be submitted with the Schedule B.
- **Table II.b. Contracting Shortfall or Table II.c. Outreach Efforts** must be completed when the Prime Contractor is unable to meet the full minimum subcontracting requirements under 24 CFR 135.
 - o When there is no plan or need to subcontract, please outline the reason(s) why in Table II.b. Contracting Shortfall
 - o If the prime contractor is unable to contract to a Section 3 Business Concern, all outreach efforts must be documented in Table II.c. Outreach Efforts You must document all of the companies that have been contacted for subcontracting opportunities. If there are limited companies available who perform the necessary duties under this scope of work, please indicate in the 'reasons for not subcontracting'.
 - o This is required before Other Economic Opportunities are proposed.

Part III: Other Economic Opportunities

- In the event that a Prime Contractor has demonstrated no plan or need to hire and/or subcontract or is unable to meet the hiring and/or subcontracting requirements in Part I and Part II, the Prime Contractor is required to provide other economic opportunities by completing the **Table III: Other Economic Opportunities Plan(s)**.
- **PLEASE NOTE THAT THE INABILITY TO MEET THE HIRING AND/OR SUBCONTRACTING REQUIREMENT MUST BE DOCUMENTED COMPLETELY IN PART I: HIRING AND PART II: CONTRACTING BEFORE COMPLETING PART III: OTHER ECONOMIC OPPORTUNITIES.**
- Other Economic Opportunities could include indirect subcontracting with a Section 3 Business Concern (subcontracting for work not included in the scope of work), training programs, mentorship program participation, or other economic opportunities directed towards section 3 residents and businesses. Any Other Economic Opportunities must be proposed on pages 10 through 12 in Part III: OTHER ECONOMIC OPPORTUNITIES.
- If the other forms of Other Economic Opportunities are not feasible, the Prime Contract may propose a contribution to the Section 3 Fund. Guidance on how to contribute to the Section 3 Fund is outlined below:
 - o **Hiring Requirements Contribution:** If a Prime Contractor chooses to contribute to the Section 3 Fund as its Other Economic Opportunity, because they cannot meet the full hiring requirements (30% of new hires), and cannot provide other economic opportunities outlined

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above, then the contractor must pay 5% of the total dollar amount of the contract for building, trade work or 1.5% for all other contracts will be paid to the Section 3 fund

- o **Contracting Requirements Contribution:** If a Prime Contractor chooses to contribute to the Section 3 Fund as its Other Economic Opportunity, because they cannot meet the full Section 3 Business Concern subcontracting requirements, and cannot provide other economic opportunities outlined above, the difference between 10% of the covered contract (building, trade work) or 3% (non-construction) and the actual amount provided to Section 3 Business Concerns must be paid to the Section 3 Fund.
 - o A Prime Contractor may also pay the entire 10% of the covered contract (building, trade work) or 3% (non-construction) if they have documented the infeasibility of offering any Other Economic Opportunities.
 - Charts have been provided for each category accepted under Other Economic Opportunities. You must outline the actual proposed opportunity, how you will measure the success of this opportunity, and the anticipated results. You will only need to complete the tables that apply to your Section 3 Plan.
 - Please reference the Section 3 Policy for more details.
- This page (page 4) must be signed by a Principal of the Contractor. The last page (page 12) must be signed and notarized. This document is subject to change, by the HACC, at any time.

Prime Contractor Acknowledgement of Section 3 Requirements:

Signature of Principal of Contractor

Date

Print Name

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Part 1: Hiring

SAMPLE HIRING CHART

Table 1.a: SAMPLE Hiring Chart – ENTIRE WORKFORCE for Both Prime and all Subcontractors

(1)	(2)	(3)	(4)	(5)
Job Titles	Total Number of Employees Needed for each Job Title	Total number of Employees Currently Employed at each Job Title	Total New Hires Needed for each Job Title	Total Section 3 Hires for each Job Title
<i>List the Job Titles that are needed to complete your scope of work – Including the entire workforce for the Prime and any Subcontractors. This includes all Section 3 and non-Section 3 job titles.</i>	<i>List how many employees are needed to complete the Scope of Work for each job title.</i>	<i>List how many employees are currently employed at this position.</i>	<i>List how many of these positions are currently opened.</i>	<i>List the number of Section 3 hires you will commit to for each position.</i>
Painters	10	8	2	0
Laborers	20	19	1	1
Carpenters	15	15	0	0
Bricklayers	4	4	0	0
Sprinkler fitter	3	3	0	0
Marble Mason	1	1	0	0
Electrician	6	5	1	0
Power Equipment Operator	2	2	0	0
Iron Worker	5	5	0	0
Cement Mason	2	2	0	0
Plumber	4	4	0	0
Roofer	10	10	0	0
Administrative Assistant	2	1	1	1
Superintendent	1	1	0	0
Payroll Coordinator	1	0	1	1
(6) Totals:	86	80	6	3

(7) Total New Section 3 Hires Required: (Total of column (4) X 0.3) round up to the nearest whole number)	2
(8) Percentage of New Hires that are Section 3: (Total of column (5) ÷ Total of column (4)) X 100 = % of New Hires	50 %

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In this Section below, complete the hiring chart in accordance with the instructions on page 2. Please reference the sample Hiring Chart.

Table 1.b: Hiring Chart – ENTIRE WORKFORCE for Both Prime and all Subcontractors

(1)	(2)	(3)	(4)	(5)
Job Titles	Total Number of Employees Needed for each Job Title	Total number of Employees Currently Employed at each Job Title	Total New Hires Needed for each Job Title	Total Section 3 Hires for each Job Title
<i>List the Job Titles that are needed to complete your scope of work – Including the entire workforce for the Prime and any Subcontractors. This includes all Section 3 and non-Section 3 job titles.</i>	<i>List how many employees are needed to complete the Scope of Work for each job title.</i>	<i>List how many employees are currently employed at this position.</i>	<i>List how many of these positions are currently opened.</i>	<i>List the number of Section 3 hires you will commit to for each position.</i>
(6) Totals:				

(7) Total New Section 3 Hires Required: (Total of column (4) X 0.3) round up to the nearest whole number)	
(8) Percentage of New Hires that are Section 3: (Total of column (5) ÷ Total of column (4)) X 100 = % of New Hires	%

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Part II: CONTRACTING

Table II: Contracting Commitments

In the section below, outline the total dollar value and percentage of the total contract value that will be subcontracted with Section 3 Business Concerns.

Total Dollar Value of Section 3 Business Concern Contracts:	\$
Total Percentage of Section 3 Business Concern Contracts:	%

Table II.a.-Section 3 Business Concern Contracts: In the table on the next page, outline the Section 3 Business Concerns that will be working on this contract. (Note: Each subcontractor listed below must submit a corresponding Schedule C)

CONTRACTS TO SECTION 3 BUSINESS CONCERNS
<p>Company Name: _____</p> <p>Address: _____</p> <p>Contact Person: _____ Telephone: _____</p> <p>E-mail Address: _____</p> <p>Original Contract Dollar Value: _____</p> <p>Amended Contract Dollar Value: _____</p> <p><i>NOTE: Amended dollar value only used when changes are made and approved by compliance during a contract.</i></p> <p>Work to be Performed/Material Supplied: _____</p> <p>Anticipated Performance Timeframe: _____</p> <p style="text-align: center;">(When will the contractor be onsite performing the work and for how long)</p>
<p>Company Name: _____</p> <p>Address: _____</p> <p>Contact Person: _____ Telephone: _____</p> <p>E-mail Address: _____</p> <p>Original Contract Dollar Value: _____</p> <p>Amended Contract Dollar Value: _____</p> <p><i>NOTE: Amended dollar value only used when changes are made and approved by compliance during a contract.</i></p> <p>Work to be Performed/Material Supplied: _____</p> <p>Anticipated Performance Timeframe: _____</p> <p style="text-align: center;">(When will the contractor be onsite performing the work and for how long)</p>

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CONTRACTS TO SECTION 3 BUSINESS CONCERNS (continued)

Company Name: _____

Address: _____

Contact Person: _____ Telephone: _____

E-mail Address: _____

Original Contract Dollar Value: _____

Amended Contract Dollar Value: _____

NOTE: Amended dollar value only used when changes are made and approved by compliance during a contract.

Work to be Performed/Material Supplied: _____

Anticipated Performance Timeframe: _____
(When will the contractor be onsite performing the work and for how long)

Company Name: _____

Address: _____

Contact Person: _____ Telephone: _____

E-mail Address: _____

Original Contract Dollar Value: _____

Amended Contract Dollar Value: _____

NOTE: Amended dollar value only used when changes are made and approved by compliance during a contract.

Work to be Performed/Material Supplied: _____

Anticipated Performance Timeframe _____
(When will the contractor be onsite performing the work and for how long)

Company Name: _____

Address: _____

Contact Person: _____ Telephone: _____

E-mail Address: _____

Original Contract Dollar Value: _____

Amended Contract Dollar Value: _____

NOTE: Amended dollar value only used when changes are made and approved by compliance during a contract.

Work to be Performed/Material Supplied: _____

Anticipated Performance Timeframe _____
(When will the contractor be onsite performing the work and for how long)

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Table II.b: Contracting Shortfall

If the Prime Contractor cannot meet the minimum contracting requirements, outlined on pages 2 through 4, provide the reasoning below. You must include the scope of work and why you cannot meet the requirements. For additional space, please attach a document on your company's letterhead.

--	--

Table II.c: Outreach Efforts

If the Prime Contractor is unable to find subcontractors, after exhausting all good faith efforts, to perform under this scope of work, list the Companies that were contacted for subcontracting opportunities for this contract.

Outreach Efforts	
Business Name:	
Primary Contact:	
Phone Number:	
E-Mail Address:	
Reason for Not Subcontracting:	
Business Name:	
Primary Contact:	
Phone Number:	
E-Mail Address:	
Reason for Not Subcontracting:	

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Part III: OTHER ECONOMIC OPPORTUNITIES

Table III: Other Economic Opportunities Plan(s)

THIS SECTION MUST BE COMPLETED IF YOUR PLAN DOES NOT MEET THE MINIMUM HIRING (30% OF NEW HIRES) AND/OR CONTRACTING (10%/3%) REQUIREMENTS.

In the space provided below, please outline your plan to provide other economic opportunities to a Section 3 or low-income person (if more space is needed, please provide an attachment to this Schedule B). Examples of plans may include internship programs, mentorship programs, and teaming agreements. Please note that any indirect subcontracting should also be described in the section below. Refer to the instruction page for more information.

Indirect Participation (subcontracting to a section 3 business for work outside the scope)
Company Name: _____ Original Contract Dollar Value: _____ Work to be Performed/Materials Supplied: _____
Company Name: _____ Original Contract Dollar Value: _____ Work to be Performed/Materials Supplied: _____

Mentorship Program Participation	
Describe in detail the work that will be performed by the Section 3 Resident or Business Concern	
Quantifiable Goal	
Anticipated Results	

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Training Program	
Describe in details the work that will be performed by the Section 3 Resident or Business Concern	
Quantifiable Goal	
Anticipated Goal	

Internship Program	
Describe in details the work that will be performed by the Section 3 Resident or Business Concern	
Quantifiable Goal	
Anticipated Goal	

Other Results Oriented Economic Opportunities	
<small>Note: Any part-time hires can be represented here.</small>	
Describe in details the work that will be performed by the Section 3 Resident or Business Concern	
Quantifiable Goal	
Anticipated Goal	

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Please select which type of contribution is being paid into the Section 3 Fund, according to your Schedule B-Section 3 Utilization Plan. If a contribution is being made for Hiring and Contracting, you should indicate that in the chart below.

Section 3 Fund			
Note: Please refer to page three (3) Part III: Other economic Opportunities for more details on contributions.			
Hiring	<input type="checkbox"/>	5% of the total contract value (Construction)	
	<input type="checkbox"/>	1.5% of the total contract value (Professional Services)	
Contracting	<input type="checkbox"/>	Contributing the difference between the actual subcontracting amount and the minimum subcontracting requirement. Not to Exceed \$500,000	<input type="checkbox"/> 10% of total contract value (Construction) <input type="checkbox"/> 3% of total contract value (Other Contracts including Professional Services)

Contribution to Section 3 Fund	
(This is the total of all hiring and Contracting contributions identified in the Section 3 Fund chart above.)	
Dollar Value of Contribution	\$ _____

How will I contribute the funds?	<input type="checkbox"/>	HACC can deduct portions from each of my invoices.	<input type="checkbox"/>	I will submit one check to cover the full contribution amount
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By signing below, the Contractor hereby agrees to comply with the Section 3 requirements indicated above. To the extent that the completion of this form is contingent upon future information, for example price negotiations, request for specific services, etc., the undersigned hereby affirms and agrees to fully adhere to the HACC Section 3 Policy. Furthermore, the undersigned acknowledges and affirms responsibility for completion and submission of this form at the time the bid or proposal is due.

 NAME OF PRIME CONTRACTOR (Print or Type)

 NAME OF AUTHORIZED OFFICER

 NAME OF NOTARY (Print or Type)

STATE OF COUNTY OF _____ ON THIS _____ DAY OF _____ 20

____ BEFORE ME APPEARED (NAME) _____ TO ME PERSONALLY KNOWN WHO, BEING DULY SWORN, DID EXECUTE THE FOREGOING AFFIDAVIT, AND DID STATE THAT HE OR SHE WAS PROPERLY AUTHORIZED BY THE PRIME CONTRACTOR TO EXECUTE THIS AFFIDAVIT AND DID SO AS HIS OR HER FREE ACT AND DEED.

NOTARY PUBLIC: _____ (SEAL): COMMISSION EXPIRES: _____

INTERNAL HACC APPROVAL _____
 _____ COMPLIANCE MANAGER'S SIGNATURE _____ DATE _____

**U.S. Department of Housing and
Urban Development**
Office of Public and Indian Housing

**Instructions to Bidders for Contracts
Public and Indian Housing Programs**

Instructions to Bidders for Contracts

Public and Indian Housing Programs

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1. Bid Preparation and Submission

(a) Bidders are expected to examine the specifications, drawings, all instructions, and, if applicable, the construction site (see also the contract clause entitled **Site Investigation and Conditions Affecting the Work** of the *General Conditions of the Contract for Construction*). Failure to do so will be at the bidders' risk.

(b) All bids must be submitted on the forms provided by the Public Housing Agency/Indian Housing Authority (PHA/IHA). Bidders shall furnish all the information required by the solicitation. Bids must be signed and the bidder's name typed or printed on the bid sheet and each continuation sheet which requires the entry of information by the bidder. Erasures or other changes must be initialed by the person signing the bid. Bids signed by an agent shall be accompanied by evidence of that agent's authority. (Bidders should retain a copy of their bid for their records.)

(c) Bidders must submit as part of their bid a completed form HUD-5369-A, "Representations, Certifications, and Other Statements of Bidders."

(d) All bid documents shall be sealed in an envelope which shall be clearly marked with the words "Bid Documents," the Invitation for Bids (IFB) number, any project or other identifying number, the bidder's name, and the date and time for receipt of bids.

(e) If this solicitation requires bidding on all items, failure to do so will disqualify the bid. If bidding on all items is not required, bidders should insert the words "No Bid" in the space provided for any item on which no price is submitted.

(f) Unless expressly authorized elsewhere in this solicitation, alternate bids will not be considered.

(g) Unless expressly authorized elsewhere in this solicitation, bids submitted by telegraph or facsimile (fax) machines will not be considered.

(h) If the proposed contract is for a Mutual Help project (as described in 24 CFR Part 905, Subpart E) that involves Mutual Help contributions of work, material, or equipment, supplemental information regarding the bid advertisement is provided as an attachment to this solicitation.

2. Explanations and Interpretations to Prospective Bidders

(a) Any prospective bidder desiring an explanation or interpretation of the solicitation, specifications, drawings, etc., must request it at least 7 days before the scheduled time for bid opening. Requests may be oral or written. Oral requests must be confirmed in writing. The only oral clarifications that will be provided will be those clearly related to solicitation procedures, i.e., not substantive technical information. No other oral explanation or interpretation will be provided. Any information given a prospective bidder concerning this solicitation will be furnished promptly to all other prospective bidders as a written amendment to the solicitation, if that information is necessary in submitting bids, or if the lack of it would be prejudicial to other prospective bidders.

(b) Any information obtained by, or provided to, a bidder other than by formal amendment to the solicitation shall not constitute a change to the solicitation.

3. Amendments to Invitations for Bids

(a) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.

(b) Bidders shall acknowledge receipt of any amendment to this solicitation (1) by signing and returning the amendment, (2) by identifying the amendment number and date on the bid form, or (3) by letter, telegram, or facsimile, if those methods are authorized in the solicitation. The PHA/IHA must receive acknowledgement by the time and at the place specified for receipt of bids. Bids which fail to acknowledge the bidder's receipt of any amendment will result in the rejection of the bid if the amendment(s) contained information which substantively changed the PHA's/IHA's requirements.

(c) Amendments will be on file in the offices of the PHA/IHA and the Architect at least 7 days before bid opening.

4. Responsibility of Prospective Contractor

(a) The PHA/IHA will award contracts only to responsible prospective contractors who have the ability to perform successfully under the terms and conditions of the proposed contract. In determining the responsibility of a bidder, the PHA/IHA will consider such matters as the bidder's:

- (1) Integrity;
- (2) Compliance with public policy;
- (3) Record of past performance; and
- (4) Financial and technical resources (including construction and technical equipment).

(b) Before a bid is considered for award, the bidder may be requested by the PHA/IHA to submit a statement or other documentation regarding any of the items in paragraph (a) above. Failure by the bidder to provide such additional information shall render the bidder nonresponsible and ineligible for award.

5. Late Submissions, Modifications, and Withdrawal of Bids

(a) Any bid received at the place designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it:

(1) Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th);

(2) Was sent by mail, or if authorized by the solicitation, was sent by telegram or via facsimile, and it is determined by the PHA/IHA that the late receipt was due solely to mishandling by the PHA/IHA after receipt at the PHA/IHA; or

(3) Was sent by U.S. Postal Service Express Mail Next Day Service - Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term "working days" excludes weekends and observed holidays.

(b) Any modification or withdrawal of a bid is subject to the same conditions as in paragraph (a) of this provision.

(c) The only acceptable evidence to establish the date of mailing of a late bid, modification, or withdrawal sent either by registered or certified mail is the U.S. or Canadian Postal Service postmark both on the envelope or wrapper and on the original receipt from the U.S. or Canadian Postal Service. Both postmarks must show a legible date or the bid, modification, or withdrawal shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, bidders should request the postal clerk to place a hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.

(d) The only acceptable evidence to establish the time of receipt at the PHA/IHA is the time/date stamp of PHA/IHA on the proposal wrapper or other documentary evidence of receipt maintained by the PHA/IHA.

(e) The only acceptable evidence to establish the date of mailing of a late bid, modification, or withdrawal sent by Express Mail Next Day Service-Post Office to Addressee is the date entered by the post office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined in paragraph (c) of this provision, excluding postmarks of the Canadian Postal Service. Therefore, bidders should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and Failure by a bidder to acknowledge receipt of the envelope or wrapper.

(f) Notwithstanding paragraph (a) of this provision, a late modification of an otherwise successful bid that makes its terms more favorable to the PHA/IHA will be considered at any time it is received and may be accepted.

(g) Bids may be withdrawn by written notice, or if authorized by this solicitation, by telegram (including mailgram) or facsimile machine transmission received at any time before the exact time set for opening of bids; provided that written confirmation of telegraphic or facsimile withdrawals over the signature of the bidder is mailed and postmarked prior to the specified bid opening time. A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for opening of bids, the identity of the person requesting withdrawal is established and the person signs a receipt for the bid.

6. Bid Opening

All bids received by the date and time of receipt specified in the solicitation will be publicly opened and read. The time and place of opening will be as specified in the solicitation. Bidders and other interested persons may be present.

7. Service of Protest

(a) Definitions. As used in this provision:

"Interested party" means an actual or prospective bidder whose direct economic interest would be affected by the award of the contract.

"Protest" means a written objection by an interested party to this solicitation or to a proposed or actual award of a contract pursuant to this solicitation.

(b) Protests shall be served on the Contracting Officer by obtaining written and dated acknowledgement from —

[Contracting Officer designate the official or location where a protest may be served on the Contracting Officer]

(c) All protests shall be resolved in accordance with the PHA's/IHA's protest policy and procedures, copies of which are maintained at the PHA/IHA.

8. Contract Award

(a) The PHA/IHA will evaluate bids in response to this solicitation without discussions and will award a contract to the responsible bidder whose bid, conforming to the solicitation, will be most advantageous to the PHA/IHA considering only price and any price-related factors specified in the solicitation.

(b) If the apparent low bid received in response to this solicitation exceeds the PHA's/IHA's available funding for the proposed contract work, the PHA/IHA may either accept separately priced items (see 8(e) below) or use the following procedure to determine contract award. The PHA/IHA shall apply in turn to each bid (proceeding in order from the apparent low bid to the high bid) each of the separately priced bid deductible items, if any, in their priority order set forth in this solicitation. If upon the application of the first deductible item to all initial bids, a new low bid is within the PHA's/IHA's available funding, then award shall be made to that bidder. If no bid is within the available funding amount, then the PHA/IHA shall apply the second deductible item. The PHA/IHA shall continue this process until an evaluated low bid, if any, is within the PHA's/IHA's available funding. If upon the application of all deductibles, no bid is within the PHA's/IHA's available funding, or if the solicitation does not request separately priced deductibles, the PHA/IHA shall follow its written policy and procedures in making any award under this solicitation.

(c) In the case of tie low bids, award shall be made in accordance with the PHA's/IHA's written policy and procedures.

(d) The PHA/IHA may reject any and all bids, accept other than the lowest bid (e.g., the apparent low bid is unreasonably low), and waive informalities or minor irregularities in bids received, in accordance with the PHA's/IHA's written policy and procedures.

(e) Unless precluded elsewhere in the solicitation, the PHA/IHA may accept any item or combination of items bid.

(f) The PHA/IHA may reject any bid as nonresponsive if it is materially unbalanced as to the prices for the various items of work to be performed. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated for other work.

(g) A written award shall be furnished to the successful bidder within the period for acceptance specified in the bid and shall result in a binding contract without further action by either party.

9. Bid Guarantee (applicable to construction and equipment contracts exceeding \$25,000)

All bids must be accompanied by a negotiable bid guarantee which shall not be less than five percent (5%) of the amount of the bid. The bid guarantee may be a certified check, bank draft, U.S. Government Bonds at par value, or a bid bond secured by a surety company acceptable to the U.S. Government and authorized to do business in the state where the work is to be performed. In the case where the work under the contract will be performed on an Indian reservation area, the bid guarantee may also be an irrevocable Letter of Credit (see provision 10, Assurance of Completion, below). Certified checks and bank drafts must be made payable to the order of the PHA/IHA. The bid guarantee shall insure the execution of the contract and the furnishing of a method of assurance of completion by the successful bidder as required by the solicitation. Failure to submit a bid guarantee with the bid shall result in the rejection of the bid. Bid guarantees submitted by unsuccessful bidders will be returned as soon as practicable after bid opening.

10. Assurance of Completion

(a) Unless otherwise provided in State law, the successful bidder shall furnish an assurance of completion prior to the execution of any contract under this solicitation. This assurance may be [Contracting Officer check applicable items] —

[] (1) a performance and payment bond in a penal sum of 100 percent of the contract price; or, as may be required or permitted by State law;

[] (2) separate performance and payment bonds, each for 50 percent or more of the contract price;

[] (3) a 20 percent cash escrow;

[] (4) a 25 percent irrevocable letter of credit; or,

[] (5) an irrevocable letter of credit for 10 percent of the total contract price with a monitoring and disbursements agreement with the IHA (applicable only to contracts awarded by an IHA under the Indian Housing Program).

(b) Bonds must be obtained from guarantee or surety companies acceptable to the U.S. Government and authorized to do business in the state where the work is to be performed. Individual sureties will not be considered. U.S. Treasury Circular Number 570, published annually in the Federal Register, lists companies approved to act as sureties on bonds securing Government contracts, the maximum underwriting limits on each contract bonded, and the States in which the company is licensed to do business. Use of companies listed in this circular is mandatory. Copies of the circular may be downloaded on the U.S. Department of Treasury website <http://www.fms.treas.gov/c570/index.html>, or ordered for a minimum fee by contacting the Government Printing Office at (202) 512-2168.

(c) Each bond shall clearly state the rate of premium and the total amount of premium charged. The current power of attorney for the person who signs for the surety company must be attached to the bond. The effective date of the power of attorney shall not precede the date of the bond. The effective date of the bond shall be on or after the execution date of the contract.

(d) Failure by the successful bidder to obtain the required assurance of completion within the time specified, or within such extended period as the PHA/IHA may grant based upon reasons determined adequate by the PHA/IHA, shall render the bidder ineligible for award. The PHA/IHA may then either award the contract to the next lowest responsible bidder or solicit new bids. The PHA/IHA may retain the ineligible bidder's bid guarantee.

11. Preconstruction Conference (applicable to construction contracts)

After award of a contract under this solicitation and prior to the start of work, the successful bidder will be required to attend a preconstruction conference with representatives of the PHA/IHA and its architect/engineer, and other interested parties convened by the PHA/IHA. The conference will serve to acquaint the participants with the general plan of the construction operation and all other requirements of the contract (e.g., Equal Employment Opportunity, Labor Standards). The PHA/IHA will provide the successful bidder with the date, time, and place of the conference.

12. Indian Preference Requirements (applicable only if this solicitation is for a contract to be performed on a project for an Indian Housing Authority)

(a) HUD has determined that the contract awarded under this solicitation is subject to the requirements of section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)). Section 7(b) requires that any contract or subcontract entered into for the benefit of Indians shall require that, to the greatest extent feasible

(1) Preferences and opportunities for training and employment (other than core crew positions; see paragraph (h) below) in connection with the administration of such contracts or subcontracts be given to qualified "Indians." The Act defines "Indians" to mean persons who are members of an Indian tribe and defines "Indian tribe" to mean any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; and,

(2) Preference in the award of contracts or subcontracts in connection with the administration of contracts be given to Indian organizations and to Indian-owned economic enterprises, as defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452). That Act defines "economic enterprise" to mean any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit, except that the Indian ownership must constitute not less than 51 percent of the enterprise; "Indian organization" to mean the governing body of any Indian tribe or entity established or recognized by such governing body; "Indian" to mean any person who is a member of any tribe, band, group, pueblo, or community which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs and any "Native" as defined in the Alaska Native Claims Settlement Act; and Indian "tribe" to mean any Indian tribe, band, group, pueblo, or community including Native villages and Native groups (including

corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs.

(b) (1) The successful Contractor under this solicitation shall comply with the requirements of this provision in awarding all subcontracts under the contract and in providing training and employment opportunities.

(2) A finding by the IHA that the contractor, either (i) awarded a subcontract without using the procedure required by the IHA, (ii) falsely represented that subcontracts would be awarded to Indian enterprises or organizations; or, (iii) failed to comply with the contractor's employment and training preference bid statement shall be grounds for termination of the contract or for the assessment of penalties or other remedies.

(c) If specified elsewhere in this solicitation, the IHA may restrict the solicitation to qualified Indian-owned enterprises and Indian organizations. If two or more (or a greater number as specified elsewhere in the solicitation) qualified Indian-owned enterprises or organizations submit responsive bids, award shall be made to the qualified enterprise or organization with the lowest responsive bid. If fewer than the minimum required number of qualified Indian-owned enterprises or organizations submit responsive bids, the IHA shall reject all bids and readvertise the solicitation in accordance with paragraph (d) below.

(d) If the IHA prefers not to restrict the solicitation as described in paragraph (c) above, or if after having restricted a solicitation an insufficient number of qualified Indian enterprises or organizations submit bids, the IHA may advertise for bids from non-Indian as well as Indian-owned enterprises and Indian organizations. Award shall be made to the qualified Indian enterprise or organization with the lowest responsive bid if that bid is -

(1) Within the maximum HUD-approved budget amount established for the specific project or activity for which bids are being solicited; and

(2) No more than the percentage specified in 24 CFR 905.175(c) higher than the total bid price of the lowest responsive bid from any qualified bidder. If no responsive bid by a qualified Indian-owned economic enterprise or organization is within the stated range of the total bid price of the lowest responsive bid from any qualified enterprise, award shall be made to the bidder with the lowest bid.

(e) Bidders seeking to qualify for preference in contracting or subcontracting shall submit proof of Indian ownership with their bids. Proof of Indian ownership shall include but not be limited to:

(1) Certification by a tribe or other evidence that the bidder is an Indian. The IHA shall accept the certification of a tribe that an individual is a member.

(2) Evidence such as stock ownership, structure, management, control, financing and salary or profit sharing arrangements of the enterprise.

(f) (1) All bidders must submit with their bids a statement describing how they will provide Indian preference in the award of subcontracts. The specific requirements of that statement and the factors to be used by the IHA in determining the statement's adequacy are included as an attachment to this solicitation. Any bid that fails to include the required statement shall be rejected as nonresponsive. The IHA may require that comparable statements be provided by subcontractors to the successful Contractor, and may require the Contractor to reject any bid or proposal by a subcontractor that fails to include the statement.

(2) Bidders and prospective subcontractors shall submit a certification (supported by credible evidence) to the IHA in any instance where the bidder or subcontractor believes it is infeasible to provide Indian preference in subcontracting. The acceptance or rejection by the IHA of the certification shall be final. Rejection shall disqualify the bid from further consideration.

(g) All bidders must submit with their bids a statement detailing their employment and training opportunities and their plans to provide preference to Indians in implementing the contract; and the number or percentage of Indians anticipated to be employed and trained. Comparable statements from all proposed subcontractors must be submitted. The criteria to be used by the IHA in determining the statement(s)'s adequacy are included as an attachment to this solicitation. Any bid that fails to include the required statement(s), or that includes a statement that does not meet minimum standards required by the IHA shall be rejected as nonresponsive.

(h) Core crew employees. A core crew employee is an individual who is a bona fide employee of the contractor at the time the bid is submitted; or an individual who was not employed by the bidder at the time the bid was submitted, but who is regularly employed by the bidder in a supervisory or other key skilled position when work is available. Bidders shall submit with their bids a list of all core crew employees.

(i) Preference in contracting, subcontracting, employment, and training shall apply not only on-site, on the reservation, or within the IHA's jurisdiction, but also to contracts with firms that operate outside these areas (e.g., employment in modular or manufactured housing construction facilities).

(j) Bidders should contact the IHA to determine if any additional local preference requirements are applicable to this solicitation.

(k) The IHA [] does [] does not [Contracting Officer check applicable box] maintain lists of Indian-owned economic enterprises and Indian organizations by specialty (e.g., plumbing, electrical, foundations), which are available to bidders to assist them in meeting their responsibility to provide preference in connection with the administration of contracts and subcontracts.

**U.S. Department of Housing
and Urban Development**
Office of Public and Indian Housing

**Representations, Certifications,
and Other Statements of Bidders**
Public and Indian Housing Programs

Representations, Certifications, and Other Statements of Bidders

Public and Indian Housing Programs

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1. Certificate of Independent Price Determination

(a) The bidder certifies that--

(1) The prices in this bid have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other bidder or competitor relating to (i) those prices, (ii) the intention to submit a bid, or (iii) the methods or factors used to calculate the prices offered;

(2) The prices in this bid have not been and will not be knowingly disclosed by the bidder, directly or indirectly, to any other bidder or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a competitive proposal solicitation) unless otherwise required by law; and

(3) No attempt has been made or will be made by the bidder to induce any other concern to submit or not to submit a bid for the purpose of restricting competition.

(b) Each signature on the bid is considered to be a certification by the signatory that the signatory--

(1) Is the person in the bidder's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above; or

(2) (i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above.

[insert full name of person(s) in the bidder's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the bidder's organization];

(ii) As an authorized agent, does certify that the principals named in subdivision (b)(2)(i) above have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above; and

(iii) As an agent, has not personally participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above.

(c) If the bidder deletes or modifies subparagraph (a)2 above, the bidder must furnish with its bid a signed statement setting forth in detail the circumstances of the disclosure.

[] [Contracting Officer check if following paragraph is applicable]

(d) Non-collusive affidavit. (applicable to contracts for construction and equipment exceeding \$50,000)

(1) Each bidder shall execute, in the form provided by the PHA/IHA, an affidavit to the effect that he/she has not colluded with any other person, firm or corporation in regard to any bid submitted in response to this solicitation. If the successful bidder did not submit the affidavit with his/her bid, he/she must submit it within three (3) working days of bid opening. Failure to submit the affidavit by that date may render the bid nonresponsive. No contract award will be made without a properly executed affidavit.

(2) A fully executed "Non-collusive Affidavit" [] is, [] is not included with the bid.

2. Contingent Fee Representation and Agreement

(a) Definitions. As used in this provision:

"Bona fide employee" means a person, employed by a bidder and subject to the bidder's supervision and control as to time, place, and manner of performance, who neither exerts, nor proposes to exert improper influence to solicit or obtain contracts nor holds out as being able to obtain any contract(s) through improper influence.

"Improper influence" means any influence that induces or tends to induce a PHA/IHA employee or officer to give consideration or to act regarding a PHA/IHA contract on any basis other than the merits of the matter.

(b) The bidder represents and certifies as part of its bid that, except for full-time bona fide employees working solely for the bidder, the bidder:

(1) [] has, [] has not employed or retained any person or company to solicit or obtain this contract; and

(2) [] has, [] has not paid or agreed to pay to any person or company employed or retained to solicit or obtain this contract any commission, percentage, brokerage, or other fee contingent upon or resulting from the award of this contract.

(c) If the answer to either (a)(1) or (a)(2) above is affirmative, the bidder shall make an immediate and full written disclosure to the PHA/IHA Contracting Officer.

(d) Any misrepresentation by the bidder shall give the PHA/IHA the right to (1) terminate the contract; (2) at its discretion, deduct from contract payments the amount of any commission, percentage, brokerage, or other contingent fee; or (3) take other remedy pursuant to the contract.

3. Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (applicable to contracts exceeding \$100,000)

(a) The definitions and prohibitions contained in Section 1352 of title 31, United States Code, are hereby incorporated by reference in paragraph (b) of this certification.

(b) The bidder, by signing its bid, hereby certifies to the best of his or her knowledge and belief as of December 23, 1989 that:

(1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of a contract resulting from this solicitation;

(2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the bidder shall complete and submit, with its bid, OMB standard form LLL, "Disclosure of Lobbying Activities;" and

(3) He or she will include the language of this certification in all subcontracts at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.

(c) Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

(d) Indian tribes (except those chartered by States) and Indian organizations as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) are exempt from the requirements of this provision.

4. Organizational Conflicts of Interest Certification

The bidder certifies that to the best of its knowledge and belief and except as otherwise disclosed, he or she does not have any organizational conflict of interest which is defined as a situation in which the nature of work to be performed under this proposed contract and the bidder's organizational, financial, contractual, or other interests may, without some restriction on future activities:

- (a) Result in an unfair competitive advantage to the bidder; or,
(b) Impair the bidder's objectivity in performing the contract work.
[] In the absence of any actual or apparent conflict, I hereby certify that to the best of my knowledge and belief, no actual or apparent conflict of interest exists with regard to my possible performance of this procurement.

5. Bidder's Certification of Eligibility

(a) By the submission of this bid, the bidder certifies that to the best of its knowledge and belief, neither it, nor any person or firm which has an interest in the bidder's firm, nor any of the bidder's subcontractors, is ineligible to:

(1) Be awarded contracts by any agency of the United States Government, HUD, or the State in which this contract is to be performed; or,

(2) Participate in HUD programs pursuant to 24 CFR Part 24.

(b) The certification in paragraph (a) above is a material representation of fact upon which reliance was placed when making award. If it is later determined that the bidder knowingly rendered an erroneous certification, the contract may be terminated for default, and the bidder may be debarred or suspended from participation in HUD programs and other Federal contract programs.

6. Minimum Bid Acceptance Period

(a) "Acceptance period," as used in this provision, means the number of calendar days available to the PHA/IHA for awarding a contract from the date specified in this solicitation for receipt of bids.

(b) This provision supersedes any language pertaining to the acceptance period that may appear elsewhere in this solicitation.

(c) The PHA/IHA requires a minimum acceptance period of [Contracting Officer insert time period] calendar days.

(d) In the space provided immediately below, bidders may specify a longer acceptance period than the PHA's/IHA's minimum requirement. The bidder allows the following acceptance period: calendar days.

(e) A bid allowing less than the PHA's/IHA's minimum acceptance period will be rejected.

(f) The bidder agrees to execute all that it has undertaken to do, in compliance with its bid, if that bid is accepted in writing within (1) the acceptance period stated in paragraph (c) above or (2) any longer acceptance period stated in paragraph (d) above.

7. Small, Minority, Women-Owned Business Concern Representation

The bidder represents and certifies as part of its bid/ offer that it --

(a) [] is, [] is not a small business concern. "Small business concern," as used in this provision, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding, and qualified as a small business under the criteria and size standards in 13 CFR 121.

(b) [] is, [] is not a women-owned business enterprise. "Women-owned business enterprise," as used in this provision, means a business that is at least 51 percent owned by a woman or women who are U.S. citizens and who also control and operate the business.

(c) [] is, [] is not a minority business enterprise. "Minority business enterprise," as used in this provision, means a business which is at least 51 percent owned or controlled by one or more minority group members or, in the case of a publicly owned business, at least 51 percent of its voting stock is owned by one or more minority group members, and whose management and daily operations are controlled by one or more such individuals. For the purpose of this definition, minority group members are:

(Check the block applicable to you)

- | | |
|------------------------|------------------------------|
| [] Black Americans | [] Asian Pacific Americans |
| [] Hispanic Americans | [] Asian Indian Americans |
| [] Native Americans | [] Hasidic Jewish Americans |

8. Indian-Owned Economic Enterprise and Indian Organization Representation (applicable only if this solicitation is for a contract to be performed on a project for an Indian Housing Authority)

The bidder represents and certifies that it:

(a) [] is, [] is not an Indian-owned economic enterprise. "Economic enterprise," as used in this provision, means any commercial, industrial, or business activity established or organized for the purpose of profit, which is at least 51 percent Indian owned. "Indian," as used in this provision, means any person who is a member of any tribe, band, group, pueblo, or community which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs and any "Native" as defined in the Alaska Native Claims Settlement Act.

(b) [] is, [] is not an Indian organization. "Indian organization," as used in this provision, means the governing body of any Indian tribe or entity established or recognized by such governing body. Indian "tribe" means any Indian tribe, band, group, pueblo, or

community including Native villages and Native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs.

9. Certification of Eligibility Under the Davis-Bacon Act (applicable to construction contracts exceeding \$2,000)

(a) By the submission of this bid, the bidder certifies that neither it nor any person or firm who has an interest in the bidder's firm is a person or firm ineligible to be awarded contracts by the United States Government by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(b) No part of the contract resulting from this solicitation shall be subcontracted to any person or firm ineligible to be awarded contracts by the United States Government by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(c) The penalty for making false statements is prescribed in the U. S. Criminal Code, 18 U.S.C. 1001.

10. Certification of Nonsegregated Facilities (applicable to contracts exceeding \$10,000)

(a) The bidder's attention is called to the clause entitled **Equal Employment Opportunity** of the General Conditions of the Contract for Construction.

(b) "Segregated facilities," as used in this provision, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin because of habit, local custom, or otherwise.

(c) By the submission of this bid, the bidder certifies that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The bidder agrees that a breach of this certification is a violation of the Equal Employment Opportunity clause in the contract.

(d) The bidder further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) prior to entering into subcontracts which exceed \$10,000 and are not exempt from the requirements of the Equal Employment Opportunity clause, it will:

(1) Obtain identical certifications from the proposed subcontractors;

(2) Retain the certifications in its files; and

(3) Forward the following notice to the proposed subcontractors (except if the proposed subcontractors have submitted identical certifications for specific time periods):

Notice to Prospective Subcontractors of Requirement for Certifications of Nonsegregated Facilities

A Certification of Nonsegregated Facilities must be submitted before the award of a subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal Employment Opportunity clause of the prime contract. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually).

Note: The penalty for making false statements in bids is prescribed in 18 U.S.C. 1001.

11. Clean Air and Water Certification (applicable to contracts exceeding \$100,000)

The bidder certifies that:

(a) Any facility to be used in the performance of this contract [] is, [] is not listed on the Environmental Protection Agency List of Violating Facilities:

(b) The bidder will immediately notify the PHA/IHA Contracting Officer, before award, of the receipt of any communication from the Administrator, or a designee, of the Environmental Protection Agency, indicating that any facility that the bidder proposes to use for the performance of the contract is under consideration to be listed on the EPA List of Violating Facilities; and,

(c) The bidder will include a certification substantially the same as this certification, including this paragraph (c), in every nonexempt subcontract.

12. Previous Participation Certificate (applicable to construction and equipment contracts exceeding \$50,000)

(a) The bidder shall complete and submit with his/her bid the Form HUD-2530, "Previous Participation Certificate." If the successful bidder does not submit the certificate with his/her bid, he/she must submit it within three (3) working days of bid opening. Failure to submit the certificate by that date may render the bid nonresponsive. No contract award will be made without a properly executed certificate.

(b) A fully executed "Previous Participation Certificate" [] is, [] is not included with the bid.

13. Bidder's Signature

The bidder hereby certifies that the information contained in these certifications and representations is accurate, complete, and current.

(Signature and Date)

(Typed or Printed Name)

(Title)

(Company Name)

(Company Address)

Instructions to Offerors Non-Construction

U.S. Department of Housing
and Urban Development
Office of Public and Indian Housing



- 03291 -

1. Preparation of Offers

(a) Offerors are expected to examine the statement of work, the proposed contract terms and conditions, and all instructions. Failure to do so will be at the offeror's risk.

(b) Each offeror shall furnish the information required by the solicitation. The offeror shall sign the offer and print or type its name on the cover sheet and each continuation sheet on which it makes an entry. Erasures or other changes must be initialed by the person signing the offer. Offers signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the HA.

(c) Offers for services other than those specified will not be considered.

2. Submission of Offers

(a) Offers and modifications thereof shall be submitted in sealed envelopes or packages (1) addressed to the office specified in the solicitation, and (2) showing the time specified for receipt, the solicitation number, and the name and address of the offeror.

(b) Telegraphic offers will not be considered unless authorized by the solicitation; however, offers may be modified by written or telegraphic notice.

(c) Facsimile offers, modifications or withdrawals will not be considered unless authorized by the solicitation.

3. Amendments to Solicitations

(a) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.

(b) Offerors shall acknowledge receipt of any amendments to this solicitation by

- (1) signing and returning the amendment;
- (2) identifying the amendment number and date in the space provided for this purpose on the form for submitting an offer,
- (3) letter or telegram, or
- (4) facsimile, if facsimile offers are authorized in the solicitation. The HA/HUD must receive the acknowledgment by the time specified for receipt of offers.

4. Explanation to Prospective Offerors

Any prospective offeror desiring an explanation or interpretation of the solicitation, statement of work, etc., must request it in writing soon enough to allow a reply to reach all prospective offerors before the submission of their offers. Oral explanations or instructions given before the award of the contract will not be binding. Any information given to a prospective offeror concerning a solicitation will be furnished promptly to all other prospective offerors as an amendment of the solicitation, if that information is necessary in submitting offers or if the lack of it would be prejudicial to any other prospective offerors.

5. Responsibility of Prospective Contractor

(a) The HA shall award a contract only to a responsible prospective contractor who is able to perform successfully under the terms and conditions of the proposed contract. To be determined responsible, a prospective contractor must -

- (1) Have adequate financial resources to perform the contract, or the ability to obtain them;

- (2) Have a satisfactory performance record;
- (3) Have a satisfactory record of integrity and business ethics;
- (4) Have a satisfactory record of compliance with public policy (e.g., Equal Employment Opportunity); and
- (5) Not have been suspended, debarred, or otherwise determined to be ineligible for award of contracts by the Department of Housing and Urban Development or any other agency of the U.S. Government. Current lists of ineligible contractors are available for inspection at the HA/HUD.

(b) Before an offer is considered for award, the offeror may be requested by the HA to submit a statement or other documentation regarding any of the foregoing requirements. Failure by the offeror to provide such additional information may render the offeror ineligible for award.

6. Late Submissions, Modifications, and Withdrawal of Offers

(a) Any offer received at the place designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it -

- (1) Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th);
- (2) Was sent by mail, or if authorized by the solicitation, was sent by telegram or via facsimile, and it is determined by the HA/ HUD that the late receipt was due solely to mishandling by the HA/ HUD after receipt at the HA;
- (3) Was sent by U.S. Postal Service Express Mail Next Day Service - Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term "working days" excludes weekends and U.S. Federal holidays; or
- (4) Is the only offer received.

(b) Any modification of an offer, except a modification resulting from the HA's request for "best and final" offer (if this solicitation is a request for proposals), is subject to the same conditions as in subparagraphs (a)(1), (2), and (3) of this provision.

(c) A modification resulting from the HA's request for "best and final" offer received after the time and date specified in the request will not be considered unless received before award and the late receipt is due solely to mishandling by the HA after receipt at the HA.

(d) The only acceptable evidence to establish the date of mailing of a late offer, modification, or withdrawal sent either by registered or certified mail is the U.S. or Canadian Postal Service postmark both on the envelope or wrapper and on the original receipt from the U.S. or Canadian Postal Service. Both postmarks must show a legible date and the offer, modification, or withdrawal shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, offerors should request the postal clerk to place a hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.

(e) The only acceptable evidence to establish the time of receipt at the HA is the time/date stamp of HA on the offer wrapper or other documentary evidence of receipt maintained by the HA.

(f) The only acceptable evidence to establish the date of mailing of a late offer, modification, or withdrawal sent by Express Mail Next Day Service-Post Office to Addressee is the date entered by the post office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined in paragraph (c) of this provision, excluding postmarks of the Canadian Postal Service. Therefore, offerors should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and the envelope or wrapper.

(g) Notwithstanding paragraph (a) of this provision, a late modification of an otherwise successful offer that makes its terms more favorable to the HA will be considered at any time it is received and may be accepted.

(h) If this solicitation is a request for proposals, proposals may be withdrawn by written notice, or if authorized by this solicitation, by telegram (including mailgram) or facsimile machine transmission received at any time before award. Proposals may be withdrawn in person by a offeror or its authorized representative if the identity of the person requesting withdrawal is established and the person signs a receipt for the offer before award. If this solicitation is an invitation for bids, bids may be withdrawn at any time prior to bid opening.

7. Contract Award

(a) The HA will award a contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the HA, cost or price and other factors, specified elsewhere in this solicitation, considered.

(b) The HA may

- (1) reject any or all offers if such action is in the HA's interest,
- (2) accept other than the lowest offer,
- (3) waive informalities and minor irregularities in offers received, and (4) award more than one contract for all or part of the requirements stated.

(c) If this solicitation is a request for proposals, the HA may award a contract on the basis of initial offers received, without discussions. Therefore, each initial offer should contain the offeror's best terms from a cost or price and technical standpoint.

(d) A written award or acceptance of offer mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer shall result in a binding contract without further action by either party. If this solicitation is a request for proposals, before the offer's specified expiration time, the HA may accept an offer, whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award. Negotiations conducted after receipt of an offer do not constitute a rejection or counteroffer by the HA.

(e) Neither financial data submitted with an offer, nor representations concerning facilities or financing, will form a part of the resulting contract.

8. Service of Protest

Any protest against the award of a contract pursuant to this solicitation shall be served on the HA by obtaining written and dated acknowledgment of receipt from the HA at the address shown on the cover of this solicitation. The determination of the HA with regard to such protest or to proceed to award notwithstanding such protest shall be final unless appealed by the protestor.

9. Offer Submission

Offers shall be submitted as follows and shall be enclosed in a sealed envelope and addressed to the office specified in the solicitation. The proposal shall show **the hour and date specified in the solicitation for receipt, the solicitation number, and the name and address of the offeror, on the face of the envelope.**

It is very important that the offer be properly identified on the face of the envelope as set forth above in order to insure that the date and time of receipt is stamped on the face of the offer envelope. Receiving procedures are: date and time stamp those envelopes identified as proposals and deliver them immediately to the appropriate contracting official, and only date stamp those envelopes which do not contain identification of the contents and deliver them to the appropriate procuring activity only through the routine mail delivery procedure.

[Describe bid or proposal preparation instructions here:]

Certifications and Representations of Offerors Non-Construction Contract

U.S. Department of Housing
and Urban Development
Office of Public and Indian Housing

OMB Approval No: 2577-0180 (exp. 7/30/96)

Public reporting burden for this collection of information is estimated to average 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

This form includes clauses required by OMB's common rule on bidding/offering procedures, implemented by HUD in 24 CFR 85.36, and those requirements set forth in Executive Order 11625 for small, minority, women-owned businesses, and certifications for independent price determination, and conflict of interest. The form is required for nonconstruction contracts awarded by Housing Agencies (HAs). The form is used by bidders/offerors to certify to the HA's Contracting Officer for contract compliance. If the form were not used, HAs would be unable to enforce their contracts. Responses to the collection of information are required to obtain a benefit or to retain a benefit. The information requested does not lend itself to confidentiality.

1. Contingent Fee Representation and Agreement

(a) The bidder/offeror represents and certifies as part of its bid/offer that, except for full-time bona fide employees working solely for the bidder/offeror, the bidder/offeror:

(1) ☐ has, ☐ has not employed or retained any person or company to solicit or obtain this contract; and

(2) ☐ has, ☐ has not paid or agreed to pay to any person or company employed or retained to solicit or obtain this contract any commission, percentage, brokerage, or other fee contingent upon or resulting from the award of this contract.

(b) If the answer to either (a)(1) or (a) (2) above is affirmative, the bidder/offeror shall make an immediate and full written disclosure to the PHA Contracting Officer.

(c) Any misrepresentation by the bidder/offeror shall give the PHA the right to (1) terminate the resultant contract; (2) at its discretion, to deduct from contract payments the amount of any commission, percentage, brokerage, or other contingent fee; or (3) take other remedy pursuant to the contract.

2. Small, Minority, Women-Owned Business Concern Representation

The bidder/offeror represents and certifies as part of its bid/offer that it:

(a) ☐ is, ☐ is not a small business concern. "Small business concern," as used in this provision, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding, and qualified as a small business under the criteria and size standards in 13 CFR 121.

(b) ☐ is, ☐ is not a women-owned small business concern. "Women-owned," as used in this provision, means a small business that is at least 51 percent owned by a woman or women who are U.S. citizens and who also control and operate the business.

(c) ☐ is, ☐ is not a minority enterprise which, pursuant to Executive Order 11625, is defined as a business which is at least 51 percent owned by one or more minority group members or, in the case of a publicly owned business, at least 51 percent of its voting stock is owned by one or more minority group members, and whose management and daily operations are controlled by one or more such individuals.

For the purpose of this definition, minority group members are:

(Check the block applicable to you)

- | | |
|---|---|
| <input type="checkbox"/> Black Americans | <input type="checkbox"/> Asian Pacific Americans |
| <input type="checkbox"/> Hispanic Americans | <input type="checkbox"/> Asian Indian Americans |
| <input type="checkbox"/> Native Americans | <input type="checkbox"/> Hasidic Jewish Americans |

3. Certificate of Independent Price Determination

(a) The bidder/offeror certifies that—

(1) The prices in this bid/offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other bidder/offeror or competitor relating to (i) those prices, (ii) the intention to submit a bid/offer, or (iii) the methods or factors used to calculate the prices offered;

(2) The prices in this bid/offer have not been and will not be knowingly disclosed by the bidder/offeror, directly or indirectly, to any other bidder/offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and

(3) No attempt has been made or will be made by the bidder/offeror to induce any other concern to submit or not to submit a bid/offer for the purpose of restricting competition.

(b) Each signature on the bid/offer is considered to be a certification by the signatory that the signatory:

(1) Is the person in the bidder/offeror's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above; or

(2) (i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above (insert full name of person(s) in the bidder/offeror's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the bidder/offeror's organization);

(ii) As an authorized agent, does certify that the principals named in subdivision (b)(2)(i) above have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above; and

(iii) As an agent, has not personally participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above.

- (c) If the bidder/offeror deletes or modifies subparagraph (a)2 above, the bidder/offeror must furnish with its bid/offer a signed statement setting forth in detail the circumstances of the disclosure.

4. Organizational Conflicts of Interest Certification

- (a) The Contractor warrants that to the best of its knowledge and belief and except as otherwise disclosed, it does not have any organizational conflict of interest which is defined as a situation in which the nature of work under a proposed contract and a prospective contractor's organizational, financial, contractual or other interest are such that:

- (i) Award of the contract may result in an unfair competitive advantage;
- (ii) The Contractor's objectivity in performing the contract work may be impaired; or
- (iii) That the Contractor has disclosed all relevant information and requested the HA to make a determination with respect to this Contract.

- (b) The Contractor agrees that if after award he or she discovers an organizational conflict of interest with respect to this contract, he or she shall make an immediate and full disclosure in writing to the HA which shall include a description of the action which the Contractor has taken or intends to eliminate or neutralize the conflict. The HA may, however, terminate the Contract for the convenience of HA if it would be in the best interest of HA.

- (c) In the event the Contractor was aware of an organizational conflict of interest before the award of this Contract and intentionally did not disclose the conflict to the HA, the HA may terminate the Contract for default.

- (d) The Contractor shall require a disclosure or representation from subcontractors and consultants who may be in a position to influence the advice or assistance rendered to the HA and shall include any necessary provisions to eliminate or neutralize conflicts of interest in consultant agreements or subcontracts involving performance or work under this Contract.

5. Authorized Negotiators (RFPs only)

The offeror represents that the following persons are authorized to negotiate on its behalf with the PHA in connection with this request for proposals: (list names, titles, and telephone numbers of the authorized negotiators):

6. Conflict of Interest

In the absence of any actual or apparent conflict, the offeror, by submission of a proposal, hereby warrants that to the best of its knowledge and belief, no actual or apparent conflict of interest exists with regard to my possible performance of this procurement, as described in the clause in this solicitation titled "Organizational Conflict of Interest."

7. Offeror's Signature

The offeror hereby certifies that the information contained in these certifications and representations is accurate, complete, and current.

Signature & Date:

Typed or Printed Name:

Title:

General Conditions for Non-Construction Contracts

Section I – (With or without Maintenance Work)

U.S. Department of Housing and Urban Development

Office of Public and Indian Housing

Office of Labor Relations

OMB Approval No. 2577-0157 (exp. 3/31/2020)

Public Reporting Burden for this collection of information is estimated to average 0.08 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600; and to the Office of Management and Budget, Paperwork Reduction Project (2577-0157), Washington, D.C. 20503. Do not send this completed form to either of these addressees.

Applicability. This form HUD-5370-C has 2 Sections. These Sections must be inserted into non-construction contracts as described below:

- 1) **Non-construction contracts** (*without* maintenance) **greater than \$105,000 - use Section I;**
- 2) **Maintenance contracts** (including nonroutine maintenance as defined at 24 CFR 968.105) **greater than \$2,000 but not more than \$150,000 - use Section II; and**
- 3) **Maintenance contracts** (including nonroutine maintenance), **greater than \$150,000 – use Sections I and II.**

Section I - Clauses for All Non-Construction Contracts greater than \$150,000

1. Definitions

The following definitions are applicable to this contract:

- (a) "Authority or Housing Authority (HA)" means the Housing Authority.
- (b) "Contract" means the contract entered into between the Authority and the Contractor. It includes the contract form, the Certifications and Representations, these contract clauses, and the scope of work. It includes all formal changes to any of those documents by addendum, Change Order, or other modification.
- (c) "Contractor" means the person or other entity entering into the contract with the Authority to perform all of the work required under the contract.
- (d) "Day" means calendar days, unless otherwise stated.
- (e) "HUD" means the Secretary of Housing and Urban development, his delegates, successors, and assigns, and the officers and employees of the United States Department of Housing and Urban Development acting for and on behalf of the Secretary.

2. Changes

- (a) The HA may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in the services to be performed or supplies to be delivered.
- (b) If any such change causes an increase or decrease in the hourly rate, the not-to-exceed amount of the contract, or the time required for performance of any part of the work under this contract, whether or not changed by the order, or otherwise affects the conditions of this contract, the HA shall make an equitable adjustment in the not-to-exceed amount, the hourly rate, the delivery schedule, or other affected terms, and shall modify the contract accordingly.
- (c) The Contractor must assert its right to an equitable adjustment under this clause within 30 days from the date of receipt of the written order. However, if the HA decides that the facts justify it, the HA may receive and act upon a

proposal submitted before final payment of the contract.

- (d) Failure to agree to any adjustment shall be a dispute under clause Disputes, herein. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.
- (e) No services for which an additional cost or fee will be charged by the Contractor shall be furnished without the prior written consent of the HA.

3. Termination for Convenience and Default

- (a) The HA may terminate this contract in whole, or from time to time in part, for the HA's convenience or the failure of the Contractor to fulfill the contract obligations (default). The HA shall terminate by delivering to the Contractor a written Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall: (i) immediately discontinue all services affected (unless the notice directs otherwise); and (ii) deliver to the HA all information, reports, papers, and other materials accumulated or generated in performing this contract, whether completed or in process.
- (b) If the termination is for the convenience of the HA, the HA shall be liable only for payment for services rendered before the effective date of the termination.
- (c) If the termination is due to the failure of the Contractor to fulfill its obligations under the contract (default), the HA may (i) require the Contractor to deliver to it, in the manner and to the extent directed by the HA, any work as described in subparagraph (a)(ii) above, and compensation be determined in accordance with the Changes clause, paragraph 2, above; (ii) take over the work and prosecute the same to completion by contract or otherwise, and the Contractor shall be liable for any additional cost incurred by the HA; (iii) withhold any payments to the Contractor, for the purpose of off-set or partial payment, as the case may be, of amounts owed to the HA by the Contractor.
- (d) If, after termination for failure to fulfill contract obligations (default), it is determined that the Contractor had not failed, the termination shall be deemed to have been effected for the convenience of the HA, and the Contractor shall be entitled to payment as described in paragraph (b) above.
- (e) Any disputes with regard to this clause are expressly made subject to the terms of clause titled Disputes herein.

4. Examination and Retention of Contractor's Records

- (a) The HA, HUD, or Comptroller General of the United States, or any of their duly authorized representatives shall, until 3 years after final payment under this contract, have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this contract for the purpose of making audit, examination, excerpts, and transcriptions.

- (b) The Contractor agrees to include in first-tier subcontracts under this contract a clause substantially the same as paragraph (a) above. "Subcontract," as used in this clause, excludes purchase orders not exceeding \$10,000.
- (c) The periods of access and examination in paragraphs (a) and (b) above for records relating to:
 - (i) appeals under the clause titled Disputes;
 - (ii) litigation or settlement of claims arising from the performance of this contract; or,
 - (iii) costs and expenses of this contract to which the HA, HUD, or Comptroller General or any of their duly authorized representatives has taken exception shall continue until disposition of such appeals, litigation, claims, or exceptions.

5. Rights in Data (Ownership and Proprietary Interest)

The HA shall have exclusive ownership of, all proprietary interest in, and the right to full and exclusive possession of all information, materials and documents discovered or produced by Contractor pursuant to the terms of this Contract, including but not limited to reports, memoranda or letters concerning the research and reporting tasks of this Contract.

6. Energy Efficiency

The contractor shall comply with all mandatory standards and policies relating to energy efficiency which are contained in the energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub.L. 94-163) for the State in which the work under this contract is performed.

7. Disputes

- (a) All disputes arising under or relating to this contract, except for disputes arising under clauses contained in Section III, Labor Standards Provisions, including any claims for damages for the alleged breach thereof which are not disposed of by agreement, shall be resolved under this clause.
- (b) All claims by the Contractor shall be made in writing and submitted to the HA. A claim by the HA against the Contractor shall be subject to a written decision by the HA.
- (c) The HA shall, with reasonable promptness, but in no event in no more than 60 days, render a decision concerning any claim hereunder. Unless the Contractor, within 30 days after receipt of the HA's decision, shall notify the HA in writing that it takes exception to such decision, the decision shall be final and conclusive.
- (d) Provided the Contractor has (i) given the notice within the time stated in paragraph (c) above, and (ii) excepted its claim relating to such decision from the final release, and (iii) brought suit against the HA not later than one year after receipt of final payment, or if final payment has not been made, not later than one year after the Contractor has had a reasonable time to respond to a written request by the HA that it submit a final voucher and release, whichever is earlier, then the HA's decision shall not be final or conclusive, but the dispute shall be determined on the merits by a court of competent jurisdiction.
- (e) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the HA.

8. Contract Termination; Debarment

A breach of these Contract clauses may be grounds for termination of the Contract and for debarment or denial of participation in HUD programs as a Contractor and a subcontractor as provided in 24 CFR Part 24.

9. Assignment of Contract

The Contractor shall not assign or transfer any interest in this contract; except that claims for monies due or to become due from the HA under the contract may be assigned to a bank, trust company, or other financial institution. If the Contractor is a partnership, this contract shall inure to the benefit of the surviving or remaining member(s) of such partnership approved by the HA.

10. Certificate and Release

Prior to final payment under this contract, or prior to settlement upon termination of this contract, and as a condition precedent thereto, the Contractor shall execute and deliver to the HA a certificate and release, in a form acceptable to the HA, of all claims against the HA by the Contractor under and by virtue of this contract, other than such claims, if any, as may be specifically excepted by the Contractor in stated amounts set forth therein.

11. Organizational Conflicts of Interest

- (a) The Contractor warrants that to the best of its knowledge and belief and except as otherwise disclosed, it does not have any organizational conflict of interest which is defined as a situation in which the nature of work under this contract and a contractor's organizational, financial, contractual or other interests are such that:
 - (i) Award of the contract may result in an unfair competitive advantage; or
 - (ii) The Contractor's objectivity in performing the contract work may be impaired.
- (b) The Contractor agrees that if after award it discovers an organizational conflict of interest with respect to this contract or any task/delivery order under the contract, he or she shall make an immediate and full disclosure in writing to the Contracting Officer which shall include a description of the action which the Contractor has taken or intends to take to eliminate or neutralize the conflict. The HA may, however, terminate the contract or task/delivery order for the convenience of the HA if it would be in the best interest of the HA.
- (c) In the event the Contractor was aware of an organizational conflict of interest before the award of this contract and intentionally did not disclose the conflict to the Contracting Officer, the HA may terminate the contract for default.
- (d) The terms of this clause shall be included in all subcontracts and consulting agreements wherein the work to be performed is similar to the service provided by the prime Contractor. The Contractor shall include in such subcontracts and consulting agreements any necessary provisions to eliminate or neutralize conflicts of interest.

12. Inspection and Acceptance

- (a) The HA has the right to review, require correction, if necessary, and accept the work products produced by the Contractor. Such review(s) shall be carried out within 30 days so as to not impede the work of the Contractor. Any

product of work shall be deemed accepted as submitted if the HA does not issue written comments and/or required corrections within 30 days from the date of receipt of such product from the Contractor.

- (b) The Contractor shall make any required corrections promptly at no additional charge and return a revised copy of the product to the HA within 7 days of notification or a later date if extended by the HA.
- (c) Failure by the Contractor to proceed with reasonable promptness to make necessary corrections shall be a default. If the Contractor's submission of corrected work remains unacceptable, the HA may terminate this contract (or the task order involved) or reduce the contract price or cost to reflect the reduced value of services received.

13. Interest of Members of Congress

No member of or delegate to the Congress of the United States of America or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit to arise there from, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

14. Interest of Members, Officers, or Employees and Former Members, Officers, or Employees

No member, officer, or employee of the HA, no member of the governing body of the locality in which the project is situated, no member of the governing body in which the HA was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the project, shall, during his or her tenure, or for one year thereafter, have any interest, direct or indirect, in this contract or the proceeds thereof.

15. Limitation on Payments to Influence Certain Federal Transactions

(a) Definitions. As used in this clause:

"Agency", as defined in 5 U.S.C. 552(f), includes Federal executive departments and agencies as well as independent regulatory commissions and Government corporations, as defined in 31 U.S.C. 9101(1).

"Covered Federal Action" means any of the following Federal actions:

- (i) The awarding of any Federal contract;
- (ii) The making of any Federal grant;
- (iii) The making of any Federal loan;
- (iv) The entering into of any cooperative agreement; and,
- (v) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

Covered Federal action does not include receiving from an agency a commitment providing for the United States to insure or guarantee a loan.

"Indian tribe" and "tribal organization" have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B). Alaskan Natives are included under the definitions of Indian tribes in that Act.

"Influencing or attempting to influence" means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

"Local government" means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

"Officer or employee of an agency" includes the following individuals who are employed by an agency:

- (i) An individual who is appointed to a position in the Government under title 5, U.S.C., including a position under a temporary appointment;
- (ii) A member of the uniformed services as defined in section 202, title 18, U.S.C.;
- (iii) A special Government employee as defined in section 202, title 18, U.S.C.; and,
- (iv) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, appendix 2.

"Person" means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Recipient" includes all contractors, subcontractors at any tier, and subgrantees at any tier of the recipient of funds received in connection with a Federal contract, grant, loan, or cooperative agreement. The term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Regularly employed means, with respect to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement, an officer or employee who is employed by such person for at least 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract, grant, loan, or cooperative agreement. An officer or employee who is employed by such person for less than 130 working days within one year immediately preceding the date of submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

"State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-State, regional, or interstate entity having governmental duties and powers.

(b) Prohibition.

- (i) Section 1352 of title 31, U.S.C. provides in part that no appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (ii) The prohibition does not apply as follows:

(1) Agency and legislative liaison by Own Employees.

(a) The prohibition on the use of appropriated funds, in paragraph (i) of this section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract, grant, loan, or cooperative agreement, if the payment is for agency and legislative activities not directly related to a covered Federal action.

(b) For purposes of paragraph (b)(i)(1)(a) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.

(c) The following agency and legislative liaison activities are permitted at any time only where they are not related to a specific solicitation for any covered Federal action:

(1) Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and,

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(d) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action:

(1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95-507 and other subsequent amendments.

(e) Only those activities expressly authorized by subdivision (b)(ii)(1)(a) of this clause are permitted under this clause.

(2) Professional and technical services.

(a) The prohibition on the use of appropriated funds, in subparagraph (b)(i) of this clause, does not apply in the case of-

(i) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

(ii) Any reasonable payment to a person, other than an officer or employee of a

person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(b) For purposes of subdivision (b)(ii)(2)(a) of clause, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline.

(c) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(d) Only those services expressly authorized by subdivisions (b)(ii)(2)(a)(i) and (ii) of this section are permitted under this clause.

(iii) Selling activities by independent sales representatives.

(c) The prohibition on the use of appropriated funds, in subparagraph (b)(i) of this clause, does not apply to the following selling activities before an agency by independent sales representatives, provided such activities are prior to formal solicitation by an agency and are specifically limited to the merits of the matter:

(i) Discussing with an agency (including individual demonstration) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and

(ii) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(d) Agreement. In accepting any contract, grant, cooperative agreement, or loan resulting from this solicitation, the person submitting the offer agrees not to make any payment prohibited by this clause.

(e) Penalties. Any person who makes an expenditure prohibited under paragraph (b) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

(f) Cost Allowability. Nothing in this clause is to be interpreted to make allowable or reasonable any costs which would be unallowable or unreasonable in accordance with Part 31 of the Federal Acquisition Regulation (FAR), or OMB Circulars dealing with cost allowability for recipients of assistance agreements. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any of the provisions of FAR Part 31 or the relevant OMB Circulars.

16. Equal Employment Opportunity

During the performance of this contract, the Contractor agrees as follows:

- (a) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.
- (b) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to (1) employment; (2) upgrading; (3) demotion; (4) transfer; (5) recruitment or recruitment advertising; (6) layoff or termination; (7) rates of pay or other forms of compensation; and (8) selection for training, including apprenticeship.
- (c) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.
- (d) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (e) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.
- (f) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
- (g) The Contractor shall furnish all information and reports required by Executive Order 11246, as amended and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto. The Contractor shall permit access to its books, records, and accounts by the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (h) In the event of a determination that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts, or federally assisted construction contracts under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.
- (i) The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor. The Contractor shall take such action with respect to any subcontractor or purchase order as the Secretary of Housing and Urban Development or the Secretary of Labor may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided that if the

Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

17. Dissemination or Disclosure of Information

No information or material shall be disseminated or disclosed to the general public, the news media, or any person or organization without prior express written approval by the HA.

18. Contractor's Status

It is understood that the Contractor is an independent contractor and is not to be considered an employee of the HA, or assume any right, privilege or duties of an employee, and shall save harmless the HA and its employees from claims suits, actions and costs of every description resulting from the Contractor's activities on behalf of the HA in connection with this Agreement.

19. Other Contractors

HA may undertake or award other contracts for additional work at or near the site(s) of the work under this contract. The contractor shall fully cooperate with the other contractors and with HA and HUD employees and shall carefully adapt scheduling and performing the work under this contract to accommodate the additional work, heeding any direction that may be provided by the Contracting Officer. The contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or HA employee.

20. Liens

The Contractor is prohibited from placing a lien on HA's property. This prohibition shall apply to all subcontractors.

21. Training and Employment Opportunities for Residents in the Project Area (Section 3, HUD Act of 1968; 24 CFR 135)

- (a) The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- (b) The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.
- (c) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of

apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

- (d) The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.
- (e) The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.
- (f) Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

22. Procurement of Recovered Materials

- (a) In accordance with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Contractor shall procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition. The Contractor shall procure items designated in the EPA guidelines that contain the highest percentage of recovered materials practicable unless the Contractor determines that such items: (1) are not reasonably available in a reasonable period of time; (2) fail to meet reasonable performance standards, which shall be determined on the basis of the guidelines of the National Institute of Standards and Technology, if applicable to the item; or (3) are only available at an unreasonable price.
- (b) Paragraph (a) of this clause shall apply to items purchased under this contract where: (1) the Contractor purchases in excess of \$10,000 of the item under this contract; or (2) during the preceding Federal fiscal year, the Contractor: (i) purchased any amount of the items for use under a contract that was funded with Federal appropriations and was with a Federal agency or a State agency or agency of a political subdivision of a State; and (ii) purchased a total of in excess of \$10,000 of the item both under and outside that contract.

General Conditions for Non-Construction Contracts

Section II – (With Maintenance Work)

U.S. Department of Housing and Urban Development

Office of Public and Indian Housing

Office of Labor Relations

OMB Approval No. 2577-0157 (exp. 3/31/2020)

Public Reporting Burden for this collection of information is estimated to average 0.08 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600; and to the Office of Management and Budget, Paperwork Reduction Project (2577-0157), Washington, D.C. 20503. Do not send this completed form to either of these addressees.

Applicability. This form HUD-5370C has 2 Sections. These Sections must be inserted into non-construction contracts as described below:

- 1) Non-construction contracts (*without* maintenance) greater than \$100,000 - use Section I;
- 2) Maintenance contracts (including nonroutine maintenance as defined at 24 CFR 905.200) greater than \$2,000 but not more than \$100,000 - use Section II; and
- 3) Maintenance contracts (including nonroutine maintenance), greater than \$100,000 – use Sections I and II.

Section II – Labor Standard Provisions for all Maintenance Contracts greater than \$2,000

1. Minimum Wages

- (a) All maintenance laborers and mechanics employed under this Contract in the operation of the project(s) shall be paid unconditionally and not less often than semi-monthly, and without subsequent deduction (except as otherwise provided by law or regulations), the full amount of wages due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Housing and Urban Development which is attached hereto and made a part hereof. Such laborers and mechanics shall be paid the appropriate wage rate on the wage determination for the classification of work actually performed, without regard to skill. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination, including any additional classifications and wage rates approved by HUD under subparagraph 1(b), shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.
- (b) (i) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate only when the following criteria have been met:
 - (1) The work to be performed by the classification required is not performed by a classification in the wage determination;
 - (2) The classification is utilized in the area by the industry; and
 - (3) The proposed wage rate bears a reasonable relationship to the wage rates contained in the wage determination.
- (ii) The wage rate determined pursuant to this paragraph shall be paid to all workers performing work

in the classification under this Contract from the first day on which work is performed in the classification.

2. Withholding of funds

The Contracting Officer, upon his/her own action or upon request of HUD, shall withhold or cause to be withheld from the Contractor under this Contract or any other contract subject to HUD-determined wage rates, with the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics employed by the Contractor or any subcontractor the full amount of wages required by this clause. In the event of failure to pay any laborer or mechanic employed under this Contract all or part of the wages required under this Contract, the Contracting Officer or HUD may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment or advance until such violations have ceased. The Public Housing Agency or HUD may, after written notice to the Contractor, disburse such amounts withheld for and on account of the Contractor or subcontractor to the respective employees to whom they are due.

3. Records

- (a) The Contractor and each subcontractor shall make and maintain for three (3) years from the completion of the work records containing the following for each laborer and mechanic:
 - (i) Name, address and Social Security Number;
 - (ii) Correct work classification or classifications;
 - (iii) Hourly rate or rates of monetary wages paid;
 - (iv) Rate or rates of any fringe benefits provided;
 - (v) Number of daily and weekly hours worked;
 - (vi) Gross wages earned;
 - (vii) Any deductions made; and
 - (viii) Actual wages paid.
- (b) The Contractor and each subcontractor shall make the records required under paragraph 3(a) available for inspection, copying, or transcription by authorized representatives of HUD or the HA and shall permit such representatives to interview employees during working hours on the job. If the Contractor or any subcontractor fails to make the required records available, HUD or its designee may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance or guarantee of funds.

4. Apprentices and Trainees

- (a) Apprentices and trainees will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in:
 - (i) A bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration (ETA), Office of

Apprenticeship Training, Employer and Labor Services (OATELS), or with a state apprenticeship agency recognized by OATELS, or if a person is employed in his/her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by OATELS or a state apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice; A

- (ii) A trainee program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, ETA; or
- (iii) A training/trainee program that has received prior approval by HUD.

- (b) Each apprentice or trainee must be paid at not less than the rate specified in the registered or approved program for the apprentice's/trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices and trainees shall be paid fringe benefits in accordance with the provisions of the registered or approved program. If the program does not specify fringe benefits, apprentices/trainees must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification.
- (c) The allowable ratio of apprentices or trainees to journeyman on the job site in any craft classification shall not be greater than the ratio permitted to the employer as to the entire work force under the approved program.
- (d) Any worker employed at an apprentice or trainee wage rate who is not registered in an approved program, and any apprentice or trainee performing work on the job site in excess of the ratio permitted under the approved program, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.
- (e) In the event OATELS, a state apprenticeship agency recognized by OATELS or ETA, or HUD, withdraws approval of an apprenticeship or trainee program, the employer will no longer be permitted to utilize apprentices/trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

5. Disputes concerning labor standards

- (a) Disputes arising out of the labor standards provisions contained in Section II of this form HUD-5370-C, other than those in Paragraph 6, shall be subject to the following procedures. Disputes within the meaning of this paragraph include disputes between the Contractor (or any of its subcontractors) and the HA, or HUD, or the employees or their representatives, concerning payment of prevailing wage rates or proper classification. The procedures in this section may be initiated upon HUD's own motion, upon referral of the HA, or upon request of the Contractor or subcontractor(s).
 - (i) A Contractor and/or subcontractor or other interested party desiring reconsideration of findings of violation by the HA or HUD relating to the payment of straight-time prevailing wages or classification of work shall request such reconsideration by letter postmarked within 30 calendar days of the date of notice of findings issued by the HA or HUD. The request shall set

forth those findings that are in dispute and the reasons, including any affirmative defenses, with respect to the violations. The request shall be directed to the appropriate HA or HUD official in accordance with instructions contained in the notice of findings or, if the notice does not specify to whom a request should be made, to the Regional Labor Relations Officer (HUD). The HA or HUD official shall, within 60 days (unless otherwise indicated in the notice of findings) after receipt of a timely request for reconsideration, issue a written decision on the findings of violation. The written decision on reconsideration shall contain instructions that any appeal of the decision shall be addressed to the Regional Labor Relations Officer by letter postmarked within 30 calendar days after the date of the decision. In the event that the Regional Labor Relations Officer was the deciding official on reconsideration, the appeal shall be directed to the Director, Office of Labor Relations (HUD). Any appeal must set forth the aspects of the decision that are in dispute and the reasons, including any affirmative defenses, with respect to the violations. The Regional Labor Relations Officer shall, within 60 days (unless otherwise indicated in the decision on reconsideration) after receipt of a timely appeal, issue a written decision on the findings. A decision of the Regional Labor Relations Officer may be appealed to the Director, Office of Labor Relations, by letter postmarked within 30 days of the Regional Labor Relations Officer's decision. Any appeal to the Director must set forth the aspects of the prior decision(s) that are in dispute and the reasons. The decision of the Director, Office of Labor Relations, shall be final.

- (b) Disputes arising out of the labor standards provisions of paragraph 6 shall not be subject to paragraph 5(a) of this form HUD-5370C. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor set forth in 29 CFR Parts 5, 6 and 7. Disputes within the meaning of this paragraph 5(b) include disputes between the Contractor (or any of its subcontractors) and the HA, HUD, the U.S. Department of Labor, or the employees or their representatives.

6. Contract Work Hours and Safety Standards Act

The provisions of this paragraph 6 are applicable only where the amount of the prime contract exceeds \$100,000. As used in this paragraph, the terms "laborers" and "mechanics" includes watchmen and guards.

- (a) **Overtime requirements.** No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.
- (b) **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the provisions set forth in paragraph 6(a), the Contractor and any

subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to the District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the provisions set forth in paragraph (a) of this clause, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in paragraph (a) of this clause.

(c) **Withholding for unpaid wages and liquidated damages.**

HUD or its designee shall upon its own action or upon written request of an authorized representative of the U.S. Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such Contract or any federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (b) of this clause.

7. Subcontracts

The Contractor or subcontractor shall insert in any subcontracts all the provisions contained in this Section II and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the provisions contained in these clauses.

8. Non-Federal Prevailing Wage Rates

Any prevailing wage rate (including basic hourly rate and any fringe benefits), determined under state law to be prevailing, with respect to any employee in any trade or position employed under the Contract, is inapplicable to the contract and shall not be enforced against the Contractor or any subcontractor, with respect to employees engaged under the contract whenever such non-Federal prevailing wage rate, exclusive of any fringe benefits, exceeds the applicable wage rate determined by the Secretary of HUD to be prevailing in the locality with respect to such trade or position.