BOOK 1

CONSTRUCTION MANAGER AT RISK AGREEMENT BY AND AMONG

THE COUNTY OF COOK

Department of Capital Planning and Policy

AND

[INSERT NAME OF CONSTRUCTION MANAGER]

CONTRACT NO.

ELEVATOR UPGRADES AND MODERNIZATIONS FOR THE COOK COUNTY CRIMINAL COURTS ADMINISTRASTION BUILDING, COOK COUNTY CRIMINAL COURTS BUILDING, AND COOK COUNTY DOMESTIC VIOLENCE COURTHOUSE

2650 California Ave.
555 W. Harrison St.

Honorable Toni Preckwinkle, President of the Cook County Board of Commissioners.

SAMPLE

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AGREEMENT

This Construction Manager at Risk Agreement (this "Agreement") for construction management and related services to **provide Construction Manager at Risk (CMAR) services for the Elevator Upgrade and Modernization projects at the Cook County Administration Building (CCAB), Cook County Criminal Courts Building, and the Cook County Domestic Violence Courthouse** located at **2650 California Ave. and 555 W. Harrison St.** (the "Project"), is made as of this **[INSERT EFFECTIVE DATE]** (the "Effective Date"), by and among the County of Cook, a body politic and corporate (the "Owner"), **[INSERT APPLICABLE USER AGENCY]** a **[INSERT AFFILIATION TO OWNER]** as the "User Agency", and **[INSERT CONSTRUCTION MANAGER]**, as a construction manager at risk, (the "Construction Manager"), pursuant to the authorization by the Cook County Board of Commissioners made as of **[INSERT APPLICABLE DATE]**, a copy of which is available in the Cook County, Illinois (the "County") records. The Owner, the User Agency, and the Construction Manager may individually be referred to as the "Party" or collectively as the "Parties."

ARTICLE 1
GENERAL PROVISIONS

1.1 RELATIONSHIP. The Owner, User Agency and the Construction Manager agree to proceed with the Project 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 Project to be constructed within the Guaranteed Maximum Price (GMP) and by the dates of Substantial Completion and Final Completion. The Construction Manager shall procure or furnish, in compliance with the Laws, the Pre-Construction Phase Services and Construction Phase services as set forth below.

1.1.1 The Construction Manager represents that it is an independent contractor and that it is familiar with the type of work it is undertaking.

1.1.1.1 The Construction Manager and its employees, agents and subcontractors are, for all purposes arising out of the Contract, independent contractors and not employees of the County. It is expressly understood and agreed that neither the Construction Manager nor Construction Manager's employees, agents or subcontractors shall be entitled to any benefit to which County employees may be entitled including, but not limited to, overtime or unemployment compensation, insurance or retirement benefits, workers' compensation or occupational disease benefits or other compensation or leave arrangements.

1.1.1.2 Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship or principal and agent or of partnership or of a joint venturer or any relationship between the parties hereto other than that of independent contractors. Nothing

herein shall be construed to confer upon any third parties the status of third-party beneficiary.

1.1.2 Neither the Construction Manager nor any of its agents or employees shall act on behalf of or in the name of the Owner unless authorized in writing by the Owner's Representative.

1.1.3 The Owner and the Construction Manager shall perform their obligations with integrity, ensuring at a minimum that:

1.1.3.1 Conflicts of interest shall be avoided or disclosed promptly to the other Party, all in accordance with Conflict of Interest and Ethics provisions set forth in Article 21 of the Standard Terms and Conditions for Contract ("Book 2") attached hereto as **Exhibit 14**; and

1.1.3.2 The Construction Manager and the Owner 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 parties for whom they may be liable, to secure preferential treatment.

1.2 EXTENT OF AGREEMENT. This Agreement is solely for the benefit of the Parties, represents the entire and integrated agreement between the Parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral, except as otherwise expressly stated herein. The Owner and the Construction Manager shall 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 Owner, the User Agency, and the Construction Manager and not for the benefit of any third party nor do the parties intend any third-party beneficiary. Accordingly, nothing in this Agreement shall create, or be construed to create, any third party beneficiary rights in any person not the signatory to this Agreement except that the Owner and the User Agency shall be third party beneficiaries of all subcontract agreements for this Project, a provision of which the Construction Manager shall cause to be inserted in all subcontract agreements in the following form: "Subcontractor agrees that the Owner and the User Agency are intended third party beneficiaries of this subcontract agreement. Notwithstanding the Owner's and the User Agency's status as intended third party beneficiaries of this subcontract agreement, the Owner and the User Agency have no duties to the Subcontractor under the subcontract agreement and the Subcontractor has no cause of action or other claim against the Owner or the User Agency arising out of the subcontract agreement or the Construction Manager's failure to perform thereunder."

1.3 Liquidated Damages: The liquidated damages for Work or Phase thereof not completed on the applicable Substantial Completion date are as described in Article 16.4 of this Agreement.

1.4 DEFINITIONS.

1.4.1 **Architect** - References to the Architect mean the Architect of Record for the Project as more particularly defined in Book 2.

1.4.2 The Contract Documents consist of:

1.4.2.1 This Agreement (including all schedules, annexes and exhibits attached hereto, including without limitation the Standard Terms and Conditions for Construction, Book 2; the Technical Specifications, Book 3);

1.4.2.2 Addenda issued prior to the execution of this Agreement;

1.4.2.3 Amendments issued after the execution of this Agreement as a Contract Modification;

1.4.2.4 Drawings and documents setting forth the Owner's Program pursuant to this Agreement; and

1.4.2.5 Change Orders issued after the execution of this Agreement.

In case of any inconsistency, conflict, or ambiguity among the Contract Documents, the documents shall govern in the following order: (i) Change Orders with those of a later date having precedence over those of earlier date; (ii) Addenda, with those of a later date having precedence over those of earlier date; (iii) this Agreement (including its exhibits); provided, however, that the provision granting greater rights or remedies to the Owner, as determined by the Owner; and/or providing for a higher level or quality of service or Work, as determined by the Owner; and/or imposing the greater duty, standard or obligation on the Construction Manager, as determined by the Owner, shall govern and control.

The Contract Documents form the contract for construction of the Work (the "**Contract**"). Accordingly, any reference to the Contract or this Contract shall mean the agreement between the Owner and the Construction Manager as set forth in the foregoing Contract Documents.

1.4.3 The **Construction Manager's Fee** means the compensation paid to the Construction Manager for the performance of the Work as set forth in the GMP Amendment.

1.4.4 **Cook County Resident** means a person domiciled within Cook County. Domicile is an individual's one and only true, fixed, and permanent home and principal establishment.

1.4.5 **Cost of the Work** means the Cost of the Work as defined in Article 17 and as further described in **Exhibit 2**.

1.4.6 **Day** or **Days** means all days included in the calendar (Monday-Sunday inclusive of holidays). A Day contains 24 hours.

1.4.7 **Defective Work** is any portion of the Work not in conformance with the Contract Documents.

1.4.8 **Deliverables** are any and all documents, including but not limited to plans, specifications, drawings, and reports prepared by the Construction Manager in the performance of the Work, and any data, findings or information in any form prepared, assembled or encountered by or provided to Construction Manager under this Agreement.

1.4.9 **Effective Date** means the date of this Agreement.

1.4.10 **Final Completion of the Work** shall have the meaning set forth in Book 2.

1.4.11 A **Material Supplier** or **Supplier** is a party or entity retained by the Construction Manager to provide goods, material and/or equipment for the Work.

1.4.12 **Separate Contractors** means other contractors at the Worksite who are employed by the Owner to work on the Project and not by the Construction Manager, its Subcontractors or Material Suppliers.

1.4.13 **Overhead** shall mean: 1) payroll costs and other compensation of the Construction Manager's employees in the Construction Manager's principal and branch offices who are not providing any services for the Project; 2) general and administrative expenses of the Construction Manager's principal and branch offices including deductibles paid on any insurance policy, charges against the Construction Manager for delinquent payments, and costs related to the correction of Defective Work; and 3) the Construction Manager's capital expenses, including interest on capital used for the Work.

1.4.14 The **Owner** is County of Cook, a body politic and corporate entity identified as such in this Agreement.

1.4.15 The **Owner's Program** is an initial description of the Owner's and the User Agency's objectives that may include budget and time criteria, space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements. The Owner will work with the User Agency to develop the Owner's Program.

1.4.16 Owner's Representative means as defined in Article 14.1

1.4.17 **Phase** is a part of the Work with its own dates of Substantial Completion and Final Completion as set forth in **Exhibit 11**.

1.4.18 The **Project, as identified in Article 1 and the introductory paragraph**, is the building, facility or other improvements for which the Construction Manager is to perform the Work under this Agreement. It may also include improvements to be undertaken by the Owner or Separate Contractors.

1.4.19 **Project Close-out** means the close-out process set forth in Section 2.4 of this Agreement.

1.4.20 **Standard of Care** has the meaning set forth in Section 11.1 of this Agreement.

1.4.21 **Statement of Construction Cost** has the meaning set forth in Section 2.1.9 of this Agreement.

1.4.22 A **Subcontractor** is a party or entity retained by the Construction Manager as an independent contractor to provide the onsite labor or services necessary to complete a specific portion of the Work. The term Subcontractor does not include the Architect/Engineer or any Separate Contractor employed by the Owner or any Separate Contractor's subcontractor.

1.4.23 **Substantial Completion of the Work** shall have the meaning set forth in Book 2 and shall be documented as set forth on the attached **Exhibit 16**.

1.4.24 The **Work** means the construction and services required by Owner and User Agency, and reasonably inferable from, the Contract Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by the Construction Manager to fulfill the Construction Manager's obligations. The Work may constitute the whole or a part of the Project and may be constructed in multiple phases as more particularly set forth in this Agreement. The Construction Manager shall perform the Work together with certain on-site infrastructure, improvements and appurtenances to be constructed and installed in connection therewith, and certain off-site infrastructure, improvements and appurtenances, in order to provide fully functional facilities, including all demolition and construction services, supervision, administration services, coordination of all Subcontractors, tests, inspections, and other items that are necessary and appropriate for the finishing, equipping and functioning of the facilities and structures, together with all additional, collateral and incidental work and services required for completion of the Work. As part of the Work, the Construction Manager shall furnish and assume full responsibility for everything required for the orderly progress and proper execution and completion of the Work in accordance with the requirements of the Contract Documents, whether temporary or permanent and whether or not incorporated into the Work including, but not limited to, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat (including heat for winter conditions and related protective measures), transportation, telephone, water, sanitary facilities, temporary facilities, utilities and all other facilities and incidentals, excavation, backfill, and required site improvement work. With respect to temporary or permanent utilities, the Construction Manager shall contact, coordinate and cooperate with any applicable public or private utility companies in the location and, if necessary, upgrading of such utilities.

1.4.25 **User Agency** is the County agency or entity on the behalf of which the Owner is undertaking the design and construction of the Project.

ARTICLE 2
THE CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager shall be responsible for the construction of the Work consistent with the Owner's Program and as set forth in and as reasonably inferable from the Contract Documents. The Owner's Program may be modified by the Owner during the course of the Work. The Construction manager shall at all times comply in letter and spirit with, and demonstrate good faith efforts to achieve, the affirmative action goals of the Owner and its User Agency, as those goals are set forth herein.

The Construction Manager must perform everything required to be performed and provide all of the labor, necessary tools, machinery, materials, schedules and other documents and all facilities for the construction of the Project as described herein and other work necessary to perform and complete in a workmanlike manner, and within the specified time, all of the Work in strict accordance with the Contract Documents. The Construction Manager is solely responsible for selecting the means, methods, techniques, sequences, safety, security and procedures used in performing the Work.

The Construction Manager must begin the Work on the date specified in the Notice to Proceed. The Owner may elect to issue a separate Notice to Proceed with respect to each Phase of the Project. In addition, upon receipt of Notice to Proceed, the Construction Manager 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 Construction Manager must include among the staff such personnel and positions as may be required by the Contract Documents. The Construction Manager represents that it is duly organized, validly existing and in good standing under the laws of the State of Illinois, is licensed to do business in the State, and has full corporate power and authority to enter into and perform this Agreement. The Construction Manager further represents that execution, delivery and performance of this Agreement by the Construction Manager has been duly authorized by all necessary corporate actions of the Construction Manager and that this Agreement constitutes the legal, valid and binding obligation of the Construction Manager, is fully enforceable against the Construction Manager in accordance with the terms of this Agreement, will not violate any judgment, Law, article of incorporation or by-law and will not cause or constitute a default under any lien, charge, encumbrance or security interest upon any assets of the Construction Manager.

The Construction Manager shall perform the following services:

2.1 PRE-CONSTRUCTION PHASE.

The pre-construction phase ("Pre-Construction Phase") shall commence on the date the Owner issues a Notice to Proceed to the Construction Manager to begin the pre-construction phase.

The Construction Manager shall provide the following Services:

2.1.1 Complete review and constructability analyses of the design and construction documentation as they exist at the Effective Date, such design and construction documentation attached hereto as **Annex 1** and made a part hereof. Upon completion submit review comments to the Owner and its consultants for review and approval. The Construction Manager shall fully coordinate these activities with the Owner and its consultants to ensure the completeness and accuracy of the construction documents. The documents in Annex 1 are attached hereto solely to allow Construction Manager to perform the Pre-Construction Services, and shall be of no further force and effect during the Construction Phase, with the Technical Drawings and Specifications ("Book 3") to be attached to this Agreement as **Exhibit 15** serving as the governing design documents.

2.1.2 Consult with the Owner and the User Agency regarding the goals and requirements of the Project.

2.1.3 Review the requirements of any Governmental Authority with the Architect of Record, the Owner and the User Agency regarding costs and alternatives.

2.1.4 The Construction Manager shall develop and shall prepare and submit in writing for the Owner's review and approval, procedures with regard to procurement, construction, project controls, project management, and safety 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 that the 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 a Project Procedure. In no event shall Project Procedures be interpreted to diminish the Construction Manager's duties or obligations under this Agreement, or to impose additional duties or liabilities not otherwise set forth in this Agreement upon the Owner. Further, the Construction Manager shall complete the pre-construction risk assessment using the form attached hereto as **Exhibit 9** and shall develop mitigation recommendations to minimize any potential risks.

2.1.5 The Project Procedures will incorporate the Owner's online document management system (if available) or such other document management system that the Parties will mutually agree upon to be used for the Project (hereinafter, the "Document Management System"). The Document Management System will be used for the management and coordination of this Project throughout the term of this Agreement.

2.1.6 Schedule and conduct regular meetings with the Architect of Record, the Owner and the User Agency not less often than once each week. The Construction Manager will extend electronic meeting invites to participants of regular meetings via the owner's preferred platform for remote meetings that require remote access. The Construction Manager shall also prepare and distribute minutes of all project meetings within 2 business days.

2.1.7 Prepare detailed value-engineering procedures and submit same to the Owner for review and approval. Upon completion, review the Construction Documents along with any/all value engineering items with the Owner, the User Agency and their respective consultants. Recommend potential value engineering and constructability alternatives. The Construction Manager is required to provide ongoing value engineering services during the course of the Project. The Construction Manager will coordinate these activities with the Owner and its consultants.

2.1.7.1 After a complete review of the Project, evaluate the Contract Documents available at the time of the Construction Manager's commencement of Pre-Construction Services, and obtain an understanding of the intent of the Architect of Record, the Owner and the User Agency, provide value analysis/constructability services and offer cost savings suggestions and best value recommendations to the Owner. All recommendations shall be in writing and must be fully reviewed with the Architect of Record, the Owner and the User Agency and approved by the Owner prior to implementation.

2.1.7.2 Perform value engineering analysis efforts to result in a design that is most effective in first costs as well as long term operational costs relative to issues of energy use and facility maintainability.

2.1.7.3 Prepare detailed cost estimates supporting any/all value engineering analysis. Value engineering analysis efforts shall also take into consideration applicable constructability issues that may decrease the duration of the construction schedule and/or decrease the construction cost. Propose recommendations to the Owner and User Agency on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction cost including estimates of alternative designs or materials, preliminary budgets and possible economies.

2.1.7.4 Promptly notify the Owner, the Architect of Record and the User Agency in writing upon observing any features in the design that appear to be ambiguous, confusing, conflicting or erroneous.

2.1.7.5 Provide value engineering analysis recommendations within 15 Days following the issuance of any interim Construction Documents. At a minimum, each such written report shall contain: (1) a description of the value engineering analysis/constructability issue with background information; (2) a summary of the Construction Manager's in-depth study/research; and (3) written recommendations for addressing the issue.

2.1.7.6 The Construction Manager shall verify that the Contract Documents include requirements and assignment of responsibilities for (i) safety precautions and programs and temporary Project facilities for common use of the Construction Manager, Subcontractors and Separate Contractors and (ii) Project Site coordination and staging and storage areas for common use of the Construction Manager, Subcontractors and Separate Contractors.

2.1.8 Prepare a Schedule for the Project utilizing the critical path method (CPM) in accordance with Article 10 of Book 2.

2.1.9 The Construction Manager shall develop and submit to the Owner a cost estimating model to be used as a tool to monitor, manage and analyze areas of the Project critical to cost control and to assist the Owner and the Architect of Record in evaluating and analyzing the impact of building system alternatives (the "Cost Model"). The Cost Model shall be established utilizing industry standard formats and methods or, if communicated in writing by the Owner, the method or format designated by the Owner. The Construction Manager shall update and refine the Cost Model and shall reconcile the Cost Model information with any cost information provided by the Architect of Record as the Project progresses.

2.1.9.1 The Construction Manager shall prepare and update detailed statements of construction cost of the Project based on the Drawings, Specifications and other design information provided by the Architect of Record ("Statement of Construction Cost"). Each Statement of Construction Cost prepared by the Construction Manager shall be in a CSI trade format, or other suitable format as agreed upon by the Owner, the Architect of Record and the Construction Manager, to allow comparison, and shall be organized by trade categories, allowances, contingencies, the Construction Manager's Fee and other items that comprise the GMP. The Construction Manager shall specifically identify any escalation factors included and the corresponding rationale.

2.1.9.2 In the event that any Statement of Construction Cost (or a reconciled Statement of Construction Cost where appropriate) is greater than the Owner's construction budget due to the Construction Manager's estimating errors, or other reasons within the control of the Construction Manager, the Construction Manager, if requested by the Owner, shall provide continuing Pre-Construction Services as described herein at no additional cost to the Owner until the Construction Manager submits a revised Statement of Construction Cost that does not exceed the Owner's construction budget.

2.1.9.3 The Construction Manager acknowledges that it is expected that the Owner's construction budget will not change throughout the duration of the Project, except to the extent that the Owner makes changes to the scope of the Project on which the Owner's construction budget was

based. If the Owner proposes changes to the scope of the Project, the Construction Manager shall promptly inform the Owner of the cost implications to the Project. If the Owner, without change to the scope of the Project, increases the Owner's construction budget for any reason attributable to the Construction Manager's estimating errors, or other reasons within the control of the Construction Manager, then the Construction Manager's Fee for the Work shall be calculated on the original Owner's construction budget.

2.1.10 Prepare Preliminary GMPs for review by the Owner and the User Agency.

2.1.10.1 An overview of the current budget estimate compared to the Owner's budget.

2.1.10.2 A detailed comparison and reconciliation of the current budget estimate to the previous budget estimate, with an explanation of any variance by component.

2.1.10.3 A summary of all approved cost revisions.

2.1.10.4 A list of Drawings and Specifications, including all Addenda thereto.

2.1.10.5 A list of the clarifications and assumptions made by the Construction Manager that may eventually be incorporated into the GMP to supplement the information contained in the Drawings and Specifications.

2.1.10.6 List of allowances (and the basis for each allowance).

2.1.10.7 Preliminary project schedule which complies with the requirements of this Agreement, including, (1) identification of all known and anticipated impediments to completion of the Project in accordance with the preliminary project schedule, (2) identification of long lead procurement requirements and a plan to ensure that steps necessary to achieve compliance with the preliminary project schedule are timely taken, and (3) recommendations for modifications to the preliminary project schedule.

2.1.10.8 Site Logistics Plan, which plan shall include, without limitation, the Construction Manager's plans and approach to: temporary roads, crane locations and types; crane roads, entrances and exits to the Project Site; temporary signage; Subcontractor's, the Construction Manager's and the Owner's trailers and material lay down areas; worker parking locations; temporary utilities; electrical, gas and water taps and stubs into Project Site; haul roads and temporary fire access roads; temporary toilet location plan; plan to distribute workers and materials to upper floors; scaffold plan to erect exterior walls; and topsoil stockpile areas.

2.1.11 The Construction Manager shall also include Contingencies within the Preliminary GMPs in amounts approved by the Owner, to help reduce the risks assumed by the Construction Manager in development of the GMP for the Project. The Owner and the Construction Manager acknowledge that the contingencies are included to adjust the estimate line items that have yet to be fully designed or developed.

2.1.12 In the event that the proposed Preliminary GMP exceeds the Owner's budget for the Project, the Owner may elect at its discretion to direct the Construction Manager to work in conjunction with the Architect of Record to re-design the Project as a final good faith effort to maintain the Project Program and meet the Owner's budget for the Project as follows:

2.1.12.1 The Construction Manager shall work with the Owner, the Owner's consultants, and the User Agency and provide input for the alteration and the redesign of the Project as necessary to accomplish the required reduction in cost.

2.1.12.2 The Construction Manager shall develop and provide to the Owner a Preliminary GMP in connection with the altered and re-designed Project to accomplish the necessary reductions in costs.

2.1.12.3 The Construction Manager shall analyze the Architect of Record's originally submitted and as altered and re-drafted design documents and make recommendations to the Owner as to ways and methods to reduce the costs of constructing the Project to a sum which does not exceed the Owner's budget for the Project.

2.1.12.4 If the Owner and the User Agency determine in their reasonable discretion that the Construction Manager has not performed the Pre-Construction activities consistent with the Standard of Care, any additional construction work that may be required shall not be an additional service, but shall be performed at no additional cost to the Owner.

Nothing contained herein shall be construed as requiring the Construction Manager to provide design or architectural services.

2.1.13 The Owner has the right to reject or to withhold, in its discretion, approval of any Preliminary GMP as originally submitted or as adjusted. In that event, the Owner shall have the right to terminate this Agreement without penalty by delivering a written notice to Construction Manager setting forth the effective date of such termination.

2.1.14 If the Owner notifies the Construction Manager that the Owner has accepted the Preliminary GMP, then such preliminary GMP shall become the final GMP for the Project effective without further acceptance from the Construction Manager. Following acceptance of the final GMP, the Owner and Construction Manager shall execute the guaranteed maximum price amendment (the "GMP Amendment")

amending this Agreement, a copy of which the Owner shall provide to the Architect of Record. The GMP Amendment shall set forth the agreed upon guaranteed maximum price for the Project with the information and assumptions upon which it is based and shall be in the form attached hereto as Schedule A.

The Construction Manager shall also:

2.1.15 Prepare a bidding strategy including bid packaging and permitting strategy for review and approval by the Owner and the User Agency. At a minimum the bidding strategy shall contain, (a) project scope, (b) cost estimate, (c) schedule, (d) identify long lead items, (e) proposed bidders and procurement methodology, (f) proposed MBE/WBE/ participation, (g) proposed minority and female hiring plans with labor force projections, (h) proposed Cook County Resident participation, and (i) proposed community hiring goals and initiatives.

2.1.16 Prepare and identify strategies that will assist in facilitating construction activities, which can reduce the overall construction duration.

2.1.17 Coordinate and conduct pre-construction conferences with all bidders, as necessary, to review all contract requirements at a location designated by the Owner. Prepare and issue meeting minutes, as required.

2.1.18 The Owner, the Construction Manager and the Architect of Record shall meet during and/or at the end of each phase of the design of the Project to review and discuss the scope of Work and the corresponding Preliminary GMP and reconcile differences, if any, between the respective estimates. The Construction Manager shall then issue a final, reconciled estimate, which includes detailed minutes of any reconciliation meetings, as well as a detailed narrative of the rationale for any remaining differences (the "Reconciled Estimate"). The Construction Manager shall clearly identify and track within each Preliminary GMP items of scope added since the prior Preliminary GMP.

2.1.19 The Construction Manager shall structure an appropriate market strategy to develop, encourage, and administer maximum competition for all major elements of the Work. As part of this effort, the Construction Manager shall: (1) make recommendations regarding the division of the Work in the Drawings and Specifications into optimum bidding packages, and (2) prior to the end of the 50% Construction Documents phase, prepare for the Owner's review, comment and approval a list of bidders qualified to perform each item of Work. Notwithstanding the foregoing, the Owner may designate specific entities from which the Construction Manager shall solicit bids.

2.1.20 The Construction Manager shall conduct early procurement activities, with prior Owner's approval, if applicable. As part of this effort, the Construction Manager shall: (1) implement a bid package and pre-bid conference program to develop maximum bidder interest and to fully define the Work so as to minimize contingencies for unknowns, and (2) together with the Owner and its designated

design professionals, receive and thoroughly analyze all bids. The key parameters establishing the criteria for award will be summarized and submitted, together with the Construction Manager's recommendation, to the Owner and its designated design professionals for approval.

2.1.21 The Construction Manager shall work with the Owner's Separate Contractor Commissioning Agent (if applicable) to develop the commissioning plan to be used throughout the course of the Project.

2.1.22 In accordance with the terms of this Agreement and the Standard of Care set forth herein, the Construction Manager shall perform, or shall cause its Subcontractors to perform, all of those services necessary to facilitate the complete design and documentation of those components of the Work set forth in Annex 2 of this Agreement (the "Design/Assist Services"), if any. In the event the Construction Manager is assigned Design/Assist Services as elements of its scope of Work, the Design/Assist Services shall be governed by the following terms.

2.1.22.1 The Architect of Record will prepare Drawings and associated Specifications and other design information for the components of the Work identified in this Agreement (collectively, the "Design/Assist Work").

2.1.22.2 As part of the Design/Assist Services, the Construction Manager and/or those of its Subcontractors responsible for the Design/Assist Work shall provide shop drawings and other design information to the Architect of Record in sufficient detail and sufficiently coordinated so as to: (i) enable the Architect of Record to complete the Construction Documents for the associated scopes of Work in conformance with the design intent expressed in the design development documents, Basis of Design and in accordance with the Owner's requirements for aesthetics, functionality and quality (the "Design/Assist Submissions").

2.1.22.3 As part of the Design/Assist Services, the Construction Manager shall cooperate with the Architect of Record (and its consultants) and each of the Owner's separate consultants, if any (collectively, the "Owner's Separate Consultants"), and shall coordinate its services on the Project with all such parties. The Construction Manager shall work with the Architect of Record to ensure the integration and incorporation of all the information created as a function of its Design/Assist Services into a complete set of coherent Construction Documents for the entire Project sufficient for the complete construction of the Project. The Construction Manager's duty to coordinate shall include, by way of example, scheduling and holding coordination meetings as necessary between the Architect of Record, Subcontractors and the Owner's Separate Consultants as well as providing copies of the Design/Assist Submissions to the Architect of Record or the Owner's Separate Consultants for review. During the course of the Project, the

Construction Manager also agrees to coordinate and work with the Owner, the Architect and the Owner's Separate Consultants in resolving any inconsistencies between the Design/Assist Submissions and the design prepared by the Architect of Record or the Owner's Separate Consultants.

2.1.22.4 The Owner shall approve or reject the Design/Assist Submissions in accordance with the Construction Manager's responsibility to perform the Design/Assist Services. If the Owner shall reject the Design/Assist Submissions, or portions thereof, the Construction Manager (or its Subcontractors) shall modify the Design/Assist Submissions to the satisfaction of the Architect of Record and Owner, the costs of which shall not increase the Contract Price or the Pre-Construction Services Fee and the Construction Manager (or its Subcontractors) shall bear all such costs.

2.1.22.5 The Construction Manager shall perform the Design/Assist Services in accordance with the preconstruction schedule, which shall include dates for the submission of the Design/Assist Submissions. Failure to perform the Design/Assist Services in accordance with the preconstruction schedule shall constitute a material breach of this Agreement.

2.1.22.6 The Construction Manager shall be responsible to the Owner for the acts, errors and omissions of the Construction Manager's employees, Subcontractors and their agents and employees, and other persons performing any portion of the Construction Manager's obligations under this Agreement, including, without limitation, the Design/Assist Services.

2.1.23 The Construction Manager, in consultation with the Architect, shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues.

2.1.24 Any such other Services as Owner may deem necessary to be completed in connection with the Pre-Construction Phase, including those "Additional Pre-Construction Phase Services" set forth in **Exhibit 8**.

2.2 BIDDING PHASE.

The Construction Manager shall:

2.2.1 Develop bid packages for all materials and work and provide full assignment, coordination and responsibility for the Work. Provide the Owner a checklist of the Construction Manager's bidding and procurement process, from beginning to end, for the Owner's review and approval. The Construction Manager's bidding and

procurement process shall include at a minimum all the items specified in Paragraph 2.1.15.

2.2.2 Provide the Owner with a schedule for procurement of long-lead time items and confirm inclusion of all requirements for special receipt, handling, and installation of materials and equipment to meet the Project schedule. The Construction Manager shall procure and expedite the delivery of such long-lead time items in order to meet the Project schedule.

2.2.3 Where appropriate, develop bidding alternatives on materials, construction techniques, fabrication and installation methods, to take advantage of current conditions in the construction marketplace.

2.2.4 Prepare a Notice of Bid Opportunity for the Owner's approval. Upon the Owner's approval, bid the work in accordance with the requirements of Cook County. The Construction Manager hereby represents that it is familiar with such requirements.

2.2.5 Review and verify all necessary instructions to bidders, proposal forms, contract forms, general conditions and special conditions of the contract supplied by the Owner.

2.2.6 Coordinate the preparation of all bid packages, as required, with all of the Owner's Consultants.

2.2.7 Maintain accurate records of the bid notification process for each package. Provide a copy of these records to the Owner in a timely manner but in no event shall these records be presented to the Owner less than 5 Days prior to the bid opening.

2.2.8 Schedule and administer pre-bid conference(s) and scope review sessions at a location designated by the Owner, outlining the proposed approach to the Project, project logistics, manpower requirements, schedule and sequence of operations; and prepare and distribute minutes of the pre-bid meetings.

2.2.9 Prepare and distribute bid packages, as required, for the Project. Ensure that this activity is fully coordinated with the, its consultants, and the Architect of Record prior to distributing the bid packages.

2.2.10 During the bidding period(s) in conjunction with the Architect of Record, prepare and distribute written addendum, to plan holders and agencies, to address questions raised by potential Subcontractors.

2.2.10.1 The format of the addendum should correspond with the Owner's format.

2.2.10.2 Review addendum material with the Owner, and obtain approval prior to issuing any addendum(s) to sub-contractors.

2.2.11 Schedule and administer bid opening(s) in accordance with the Owner's procurement protocol and in the presence of the Owner's Representative at a location designated by the Owner.

2.2.12 Evaluate base bids, alternate proposals, unit prices, and such other data as may be pertinent, and determine the lowest responsive and responsible bidder.

2.2.13 Conduct and manage scope review sessions with at least three (3) finalist bidders for the bid work upon submittal of bids with the Owner and its consultants to determine lowest responsive and responsible bidder, as required, at a location designated by the Owner. Prepare and distribute written summaries of each scope review session to the Owner.

2.2.14 The Construction Manager's failure to carry out its commitment regarding obtaining three responsive bids may constitute a default of the Contract. If not appropriately cured, it may result in withholding of payments under the Contract, contractual penalties, disqualification and any other remedy as defined in Book 2 Article 19.

2.2.15 Recommend the award of a Subcontract for each portion of the Work to the Owner in writing indicating the value of this subcontract, the number of bids received including a location for the owner's signature, entitled "Recommendation to Award."

2.2.16 After the Owner approves the award of a Subcontract for a specific scope of Work in writing, the Construction Manager shall execute a Subcontract agreement with the successful bidder.

2.3 CONSTRUCTION PHASE.

2.3.1 The construction phase ("Construction Phase") shall commence on the date the Owner issues a Notice to Proceed to the Construction Manager to begin the Construction Phase. Any purchase order for this Agreement required by the Owner's procurement regulation shall relate back to the date of issuance of the Notice to Proceed.

2.3.1.1 The Project Labor Agreement (PLA) **Exhibit 25**, Article 12.3, must be executed by the Construction Manager and other parties required by the PLA and a copy submitted to the Owner prior to the Owner's issuance of the Notice to Proceed.

2.3.2 Throughout the Construction Phase, the Construction Manager shall maintain the following controls:

2.3.2.1 The Construction Manager shall maintain the personnel required under Article 12 of this Agreement and under Article 9 of Book 2, unless such personnel are no longer employed by Contractor.

2.3.2.2 At the direction of the Owner, make appropriate adjustments to the Project GMP via a Change Order if the Owner discovers any inconsistencies or inaccuracies in the information presented by the Construction Manager.

2.3.2.3 It is understood that the designated and approved on-site resident representatives of the Construction Manager will remain on the job and in-charge as long as those persons remain employed by the Construction Manager, or unless the Owner has reason to agree otherwise during the course of the Project.

2.3.2.4 The Construction Manager shall establish an on-site organization and lines of authority in order to carry out the orderly performance of the Work.

2.3.2.5 Establish and maintain an open line of communication with the entire team, including the Owner, its consultants, and the User Agency throughout the project duration. In connection with communications, the Construction Manager shall submit all required project documentation through the Document Management System. Project documentation shall include, without limitation, RFIs, submittals, schedule information, project photographs, financial information, project correspondence and project logs to facilitate communications among the Construction Manager, its subcontractors, the Owner, the Owner's Consultants, and the User Agency. The Construction Manager shall coordinate and provide access requirements with the Owner, its consultants and the User Agency.

2.3.2.6 Upon issuance of the building permit(s), request the issuance of the "Issue for Construction" drawings for each approved bid package with the Architect of Record to ensure completeness and accuracy

2.3.2.7 The Construction Manager shall conduct orientation sessions for its onsite field staff and Subcontractor's staff, as applicable, as to the Project Procedures that were developed during the Pre-Construction Phase. The Owner's representatives may attend such sessions.

2.3.2.8 The Construction Manager will provide for all coordination with the onsite Subcontractors working on the Project and shall Provide site security, as required.

2.3.2.9 The Construction Manager shall require all Subcontractors to submit a daily report, complying with the requirements of Section 11.03 (3) of Book 2 and as otherwise required under the Contract Documents.

2.3.2.10 The Construction Manager shall maintain a detailed daily log of all events, which occur at the Project Site, and which affect, or may be expected to affect, the progress of the Project, all in accordance Section

11.03 (3) of Book 2 and as otherwise required under the Contract Documents. The daily log shall be available to the Owner at all times and shall be turned over to the Owner upon completion of the Work.

2.3.2.11 Review the adequacy of the Subcontractors' supervision, personnel and equipment and the availability of necessary materials and supplies. Where inadequate, direct that the necessary action be taken to remedy the deficiency.

2.3.2.12 Maintain all Project documentation systems at the job site. These systems shall be used to organize and administer document updates and to continuously keep the Subcontractors up-to-date with the latest design documents and construction conditions.

2.3.2.13 Establish and maintain on the site a complete library of all Construction Documents, Addenda, bulletins, scope changes, requests for information, approved shop drawings and material samples.

2.3.3 The Construction Manager shall schedule and conduct progress meetings as conditions on the Project require, but at least weekly. Weekly meetings shall be conducted as set forth in Section 11.03 (8) of Book 2 and as otherwise required under the Contract Documents.

2.3.4 The Construction Manager 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 Construction Manager must verify the figures shown on the Drawings before laying out the Work and will be held responsible for any errors or inaccuracies resulting from the failure to do so. Neither the Architect nor the Owner's Representative will be responsible for laying out the Work.

2.3.5 The Construction Manager is responsible for the coordination of the various parts of the Work so that no part is left in an unfinished or incomplete condition.

2.3.6 The Construction Manager must require each Subcontractor to become familiar with all provisions of the Contract Documents that may affect such Subcontractor's work.

2.3.7 The Construction Manager shall at all times be responsible for the performance of the Work by its Subcontractors. The Construction Manager 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 the Construction Manager, the Construction Manager shall manage the resolution of any such claim or dispute. The Construction Manager 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.

2.3.8 In the event that, in the reasonable opinion of the Owner's Representative, the performance of personnel of the Construction Manager assigned to the Work is at an unacceptable level, or does not comply with Section 9.01, "Competency of Workers", the Owner's Representative may provide a written notice to the Construction Manager. Upon receipt of the notice, such personnel must cease to be assigned to this Work and must return to the Construction Manager. The Construction Manager must then furnish to the Owner's Representative the name of a proposed substitute person or persons for approval by the Owner's Representative. Absence of sufficient qualified personnel for the Work constitutes an event of default.

2.3.9 The Construction Manager shall be responsible for cleaning up the Project Site and adjacent areas as set forth in Section 7.02 of Book 2 and as otherwise required under the Contract Documents.

2.3.10 Unless otherwise directed by the Owner's Representative, the Construction Manager shall hire and be responsible for fully coordinating all material and testing inspections required for the Project with the material testing and inspection consultant (also called Independent Testing Lab or "ITL"), all as set forth in Article 14 of Book 2 and as otherwise required under the Contract Documents.

2.3.11 The Construction Manager shall be responsible for establishing and maintaining complete RFI and submittal logs throughout the duration of the Project. The

2.3.12 Construction Manager shall distribute copies of these logs to the Owner, its consultants, and the User Agency every other week, unless otherwise directed.

2.3.13 Identify and schedule all required pre-installation conferences prior to the commencement of the required construction activities.

2.3.14 Perform comprehensive final inspections of all subcontractor work and elements of the work prior to inspection by the Owner, the User Agency and the Architect of Record of the Project to verify that the materials furnished and Work performed are in accordance with the Contract Documents.

2.3.15 Request inspection for Substantial Completion in accordance with the provisions of Book 2. Manage the issuance of the letter of Substantial Completion in consultation with the Owner, the Architect of Record, and the User Agency.

2.3.16 Develop the Project's Punch-List format, issuance, and completion procedures/requirements with the Owner, its consultants, and the User Agency.

2.3.17 Coordinate the preparation of the Punch List as required by the Architect of Record indicating the items of work remaining to be accomplished. All Punch List Work items must be completed within 45 Days of the issuance of the Certificate of Occupancy or within 45 Days of the date of Substantial Completion whichever occurs first, unless delivery of the material required to complete a specific Punch List item extends beyond the allotted 45 Days, and the Construction Manager has

provided the Owner's Representative notice of the schedule for such delivery. Obtain certificate of Final Completion as prepared by the Architect of Record and/ or the Owner or pursuant to the Contract Documents in consultation with the Owner and the User Agency. Determine the value of any uncorrected and/or deficient work and manage the completion of any such work per the Contract Documents.

2.1 PROJECT CLOSE OUT. The Construction Manager shall:

2.1.1 Prepare/develop specific close-out procedures to ensure an expeditious close-out of the Project. Submit copies of these procedures to the Owner for approval. Upon approval by the Owner, the Construction Manager will be fully responsible for the implementation of these procedures. Project close-out must be accomplished within 90 Days of achieving Substantial Completion.

2.1.2 Develop preliminary and final acceptance procedures/requirements with the Owner, its consultants, and the User Agency.

2.1.3 Prepare/develop specific procedures to efficiently manage the close-out process of the subcontractor activities that are completed prior to the completion of the entire Project to expedite the release of retainage. Identify specific subcontractor

activities that are completed in the early stages of the Construction Phase, and implement the above procedures to ensure an expeditious close-out of these trades.

2.1.4 Facilitate the preparation of record drawings as prepared by the Subcontractor(s) and operations and maintenance manuals of the Project in accordance with the Specifications. The record documents will be subject to the approval of the Owner, the Owner's Consultants, and the User Agency. Submit approved record documents to the Owner and the User Agency upon completion of the Project.

2.1.5 Create and maintain a close-out log to track all close-out items/requirements.

2.1.6 Deliver to the Owner all guarantees, warranties, operating and maintenance manuals required by the Contract Documents after review by the Architect of Record. Provide equipment and systems training sessions for User Agency personnel or other persons as designated by the Owner.

ARTICLE 3
OWNERSHIP OF DOCUMENTS

3.1 OWNERSHIP OF DRAWINGS AND DOCUMENTS. All Deliverables under this Agreement are property of the Owner, including all copyrights inherent in them or their preparation. During performance of the Work, the Construction Manager is responsible for any loss or damage to the Deliverables while in the Construction Manager's or any subcontractor's possession.

Any such lost or damaged Deliverables must be restored at the expense of the Construction

Manager. If not restorable, the Construction Manager must bear the cost of replacement and of any loss suffered by the Owner.

3.1.1 COPYRIGHT. To the extent permitted by Law, the Deliverables to be produced by the Construction Manager at the Owner'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 Owner 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," the Construction Manager hereby irrevocably grants, conveys, bargains, sells, assigns, transfers and delivers to the Owner, 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 Owner 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.

The Construction Manager 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 Owner may reasonably request in order to assist the Owner in perfecting its rights in and to the copyrights relating to the Deliverables, at the sole expense of the Owner. The Construction Manager warrants to the Owner, its successors and assigns, that on the date of transfer the Construction Manager 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. The Construction Manager 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. The Construction Manager warrants and represents that the Deliverables are complete, accurate, and comprehensive, and that the Deliverables constitute a work of original authorship.

3.1.2 USE OF DOCUMENTS IN EVENT OF TERMINATION. In the event of a termination of this Agreement pursuant to Article 22, the Owner shall have the right to use, to reproduce, and to make derivative works of the Deliverables to complete the Project, regardless of whether there has been a transfer of copyright under this Agreement, provided payments required under this Agreement have been made.

3.1.3 OWNER'S USE OF DOCUMENTS AFTER COMPLETION OF PROJECT. After completion of the Project, the Owner may reuse, reproduce or make derivative works from the Deliverables for the purposes of maintaining, renovating,

remodeling or expanding the Project, or as the Owner may otherwise decide in its sole discretion.

The Owner's use of the Deliverables without the Construction Manager's involvement or on other projects is at the Owner' sole risk, except for the Construction Manager's indemnification obligations under the Contract Documents.

3.1.4 THE CONSTRUCTION MANAGER'S USE OF DOCUMENTS. Where the Construction Manager has transferred its copyright interest in the Deliverables under this Agreement, the Construction Manager 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 and only with the Owner's approval.

3.1.5 The Construction Manager shall obtain from its design professional or consultants, Subcontractors and consultants rights and rights of use that correspond to the rights given by the Construction Manager to the Owner in this Agreement, and the Construction Manager shall provide evidence that such rights have been secured.

ARTICLE 4
GUARANTEED MAXIMUM PRICE (GMP)

4.1 GMP PROPOSAL. The GMP shall be the sum of the estimated Cost of the Work as defined in this Agreement and the Construction Manager's Fee as defined in this Agreement. The Construction Manager 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.

4.2 BASIS OF GUARANTEED MAXIMUM PRICE. The Construction Manager shall include with the GMP Proposal a written statement of its basis, which shall include:

4.2.1 a list of the Drawings and Specifications, including all Addenda, which were used in preparation of the GMP Proposal;

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

4.2.3 a list of the assumptions and clarifications made by the Construction Manager in the preparation of the GMP Proposal to supplement the information contained in the Drawings and Specifications;

4.2.4 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;

4.2.5 a schedule of applicable alternate prices;

4.2.6 a schedule of applicable unit prices;

4.2.7 the Construction Manager's Contingency, as provided in Subparagraph 4.3;

4.2.8 a statement of any work to be self-performed by the Construction Manager; and

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

4.3 THE CONSTRUCTION MANAGER'S CONTINGENCY. The GMP will contain, as part of the estimated Cost of the Work, the Construction Manager's contingency, a sum mutually agreed upon and monitored by the Construction Manager and the Owner to cover unforeseen or unanticipated costs, such as costs resulting from concealed and unknown conditions at the Project site, errors and omissions in the Drawings and Specifications, and costs not covered by allowances, which are properly reimbursable as a Cost of the Work but are not the basis for a Change Order (the "Contingency"). The Construction Manager'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 Contingency shall be the Construction Manager's sole source of revenue for Costs of the Work incurred as a result of any condition other than one that justifies the issuance of a Change Order in accordance with the terms of the Contract Documents. By way of illustration, and not limitation, the Construction Manager acknowledges and understands that: (i) the Drawings and Specifications provided to Construction Manager at the time of execution of this Agreement may not be fully complete; (ii) the Contingency shall be the Construction Manager's sole source of revenue for increased costs of the Work associated with the continuing development of the Drawings and Specifications subsequent to the execution of this Agreement; and (iii) any increase in costs as a result of such further development of the Drawings and Specifications shall not be the basis of a Change Order. The Contingency shall not be used for increases in the Cost of the Work caused by the fault or neglect of the Construction Manager, any Subcontractor, sub-subcontractor or any Supplier where such fault or neglect falls outside of the Standard of Care, unless the Construction Manager makes a written request to the Owner for such use and the Owner, in its sole discretion, approves such request. In no case shall the Construction Manager be entitled to use of the Contingency for increases in the Cost of the Work caused by the gross negligence, recklessness or intentional misconduct of the Construction Manager, any Subcontractor, sub-subcontractor or any Supplier. The Construction Manager shall not use the Contingency without Owner's prior written approval, which shall not be unreasonably withheld. In each instance that the Construction Manager proposes to utilize the Contingency, the Construction Manager shall provide the Owner with a written request to do so. Such request must set forth in detail the basis for the request and explain the Construction Manager's entitlement to using same. The Construction Manager shall also provide written notice, no less frequently than monthly, regarding the status (as well as the present amount) of the Contingency, including, without limitation, a separate line item within the Contingency identifying any Buy-Out Savings (as defined in Section 18.2) achieved and incorporated into the Contingency, per the terms of Section 18.2 below. Adjustments in the Contract Price due to Change Orders shall not, in any manner (other than as may be set forth in a particular Change Order), modify the amount of the Contingency. If, at the time of Final Completion, any amounts remain in the Contingency, the Owner shall be entitled to **[70%]** of such amounts and the Construction

Manager shall be entitled to **[30%]** of such amounts. Each application for payment shall set forth the amount allocated to the Contingency. The Construction Manager shall maintain a contingency log, updated on monthly basis.

4.4 COST REPORTING. The Construction Manager shall keep such full and detailed accounts as are necessary for proper financial management under this Agreement. The Construction Manager shall maintain a complete set of all books and records prepared or used by the Construction Manager with respect to the Project. The Construction Manager'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 Owner shall be afforded reasonable access during normal business hours to all the Construction Manager's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda and similar data relating to this Agreement. The Construction Manager shall preserve all such records for the Record Keeping Period (as defined in Book 2).

4.5 SUBCONTRACTOR'S COSTS.

4.5.1 The Owner may designate specific, qualified persons or entities from whom the Construction Manager shall obtain bids, however, the Owner may not prohibit the Construction Manager from obtaining bids from other qualified bidders. Based on the Construction Manager's recommendation, the Owner will approve the Subcontractors selected by the Construction Manager or shall reject such Subcontractor in which case the Construction Manager shall recommend for Owner's approval an alternative Subcontractor. All subcontracts shall be on a lump sum basis with the unit costs specified where appropriate. The Construction Manager shall execute contracts with Subcontractors for all of the materials, labor, equipment and services necessary to perform the Work. The total of all of the Subcontracts shall be the "Subcontractor's Costs."

4.5.2 To the extent that any component of the General Conditions reimbursement is included within the Work to be performed by a Subcontractor, the General Conditions reimbursement shall be appropriately reduced by the amount of said Work.

4.5.3 The Owner, in its sole discretion, may either accept the Subcontractors selected by the Construction Manager or reject such Subcontractors. In the event the Owner rejects one of the Construction Manager's chosen Subcontractors, the Construction Manager shall select an alternative Subcontractor, who shall also be subject to the Owner's acceptance. Notwithstanding anything contained in this Agreement to the contrary, in no event shall the Construction Manager's Fee be increased due to an increase in the Subcontractor's Costs resulting from the Owner's rejection of a Subcontractor.

4.5.4 With the Owner's prior approval, the Construction Manager may bid to self-perform portions of the Work ("Self Performed Work"). In the event that the Construction Manager intends to engage in Self Performed Work, the Construction

Manager shall submit its own sealed competitive bid(s) to the Owner no later than one Day prior to the deadline for the submission of competitive bids and the Construction Manager's bid(s) shall be evaluated on the same terms as all other competitive bids. With respect to Work awarded to the Construction Manager as Self Performed Work, the Construction Manager shall be subject to the terms and conditions of this Agreement and the associated General Conditions as though it were a Subcontractor.

ARTICLE 5
CONSTRUCTION PHASE SERVICES

5.1 The Construction Phase of the Work will commence as set forth in Section 2.3.1 of this Agreement.

5.2 In order to complete the Work, the Construction Manager shall provide all necessary construction supervision, inspection, construction equipment, labor, materials, tools and subcontracted items.

5.3 The Construction Manager shall provide the Owner's field office as set forth in the Technical Specifications.

5.4 The Construction Manager shall give all notices and comply with all Laws.

5.5 The Construction Manager shall obtain all permits necessary for the construction of the Project as set forth in Section 6.01 of Book 2 and as otherwise required under the Contract Documents. The costs of permits are a Cost of the Work.

5.6 The Construction Manager shall provide written reports to the Owner on the progress of the Work as set forth in Section 11.03 of Book 2 and as otherwise required under the Contract Documents.

5.7 The Construction Manager 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 Owner at mutually agreeable intervals, but not less frequently than once a month.

5.8 The Construction Manager shall regularly and properly remove debris and waste materials from the Worksite and adjacent streets, sidewalks, and other areas resulting from the Work as set forth in Section 7.02 of Book 2 and as otherwise required under the Contract Documents. Prior to discontinuing Work in an area, the Construction Manager shall clean the area and remove all rubbish and its construction equipment, tools, machinery, waste and surplus materials. The Construction Manager shall minimize and confine dust and debris resulting from construction activities. At the completion of the Work, the Construction Manager shall remove from the Worksite all construction equipment, tools, surplus materials, waste materials and debris.

5.9 The Construction Manager shall prepare and submit to the Owner such documents as required under Section 15.01 of Book 2.

5.10 CONSTRUCTION MEANS AND METHODS. The Construction Manager 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 shall be deemed to limit the Construction Manager's obligations to provide the Owner access to all Work as provided in other Sections of this Agreement, nor shall the Owner's observation of the Work be construed to relieve the Construction Manager of its obligation to correct Defective Work if defects are discovered after an observation.

5.11 SCHEDULE OF THE WORK. The Construction Manager shall prepare and submit a Schedule of Work for the Owner's acceptance and written approval as to milestone dates and activities pursuant to Article 10 of Book 2. This schedule shall indicate the dates for the start and completion of the various stages and phases of the Work, including the dates when information and approvals are required from the Owner. 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.

5.12 The Construction Manager shall maintain at the project site Safety Data Sheets (SDS) as required by Law and pertaining to materials or substances used or consumed in the performance of the Work, whether obtained by the Construction Manager, Subcontractors, the Owner or Separate Contractors.

5.13 The Construction Manager shall be responsible for the proper handling of all materials brought to the Worksite by the Construction Manager, Subcontractors and material suppliers.

5.14 The Construction Manager shall be responsible for the performance of the Work as set forth in the Contract Documents.

ARTICLE 6
SAFETY OF PERSONS AND PROPERTY

6.1 SAFETY PRECAUTIONS AND PROGRAMS. The Construction Manager shall have overall responsibility for safety precautions and programs in the performance of the Work.

6.2 The Construction Manager shall seek to avoid injury, loss or damage to persons or property by taking reasonable steps to protect:

6.2.1 its employees and other persons at the Worksite (including streets and sidewalks) and on adjacent area;

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

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.

6.3 THE CONSTRUCTION MANAGER'S SAFETY REPRESENTATIVE. The Construction Manager shall designate a safety representative (the "Safety Representative") for the Project. The Construction Manager shall submit a Project specific safety plan, which shall include a communication plan for emergency situations, (the "Safety Plan"), prepared and approved by its Safety Representative. The Construction Manager's Safety Representative shall conduct regular site visits and participate in tool box meetings to ensure compliance with the Construction Manager's Safety Plan. The Construction Manager will immediately report in writing all accidents and injuries occurring at the Worksite to the Owner. When the Construction Manager is required to file an accident report with a public authority, the Construction Manager shall furnish a copy of the report to the Owner.

6.4 The Construction Manager shall provide the Owner with copies of all notices required of the Construction Manager by Law. The Construction Manager's safety program shall comply with the requirements of all Governmental Authorities.

6.5 The Construction Manager shall comply with the User Agency's policy regarding Interim Life Safety Measures set forth in the attached **Exhibit 30**.

6.6 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 Construction Manager, or anyone for whose acts the Construction Manager may be liable, shall be promptly remedied by the Construction Manager. Damage or loss attributable to the acts or omissions of the Owner and not to the Construction Manager shall be promptly remedied by the Owner; provided, however, that the Owner may direct the Construction Manager to remedy such damage or loss, and the Owner shall pay for such remedy as a Cost of the Work.

6.7 If the Owner deems any part of the Work or Worksite unsafe, the Owner, without assuming responsibility for the Construction Manager's safety responsibilities, may require the Construction Manager to stop performance of the Work or take corrective measures satisfactory to the Owner, or both. If the Construction Manager does not adopt corrective measures, the Owner may perform them and reduce the costs of the corrective measures from the amount owed to the Construction Manager under this Agreement. The Construction Manager shall make no claim for damages, for an increase in the GMP, compensation for Pre-Construction Phase services, the Construction Manager's Fee or the date of Substantial Completion or the date of Final Completion based on the Construction Manager's compliance with the Owner's reasonable request.

6.8 The Construction Manager shall, prior to commencing the Work provide the Owner, for the Owner's approval, a copy of its controlled substance policy (the "Controlled Substance Policy"), which policy shall at a minimum be compliant with the Drug Free Workplace Act (30 ILCS 580/3) and shall be consistent with the Drug and Alcohol-Free Workplace Policy attached hero as **Exhibit 20**. The Controlled Substance Policy shall include: pre-employment screening program, employee notification of prior drug convictions occurring on the Construction Manager's premises or work sites, employee notification of prescription drug use which may restrict normal duties, employer for-cause testing policy,

employer post-accident/incident testing, employer random/no-cause testing, employer drug screening procedures. The Construction Manager shall require all of its Subcontractors and Suppliers to comply with the Controlled Substance Policy.

ARTICLE 7
HAZARDOUS MATERIALS

7.1 The Construction Manager shall not be obligated to commence or continue work until all Hazardous Materials (as defined in Book 2) discovered at the Worksite have been removed, rendered or determined to be harmless by the Owner as certified by an independent testing laboratory approved by the appropriate government agency.

7.2 If after the commencement of the Work, a Hazardous Material is discovered at the Project, the Construction Manager shall be entitled to immediately stop the Work in the affected area. The Construction Manager shall report the condition to the Owner and, if required, the government agency with jurisdiction.

7.3 The Construction Manager shall not be required to perform any Work relating to or in the area of Hazardous Material without written mutual agreement.

7.4 The Owner or Owner's Consultant, shall be responsible for retaining an independent testing laboratory to determine the nature of the material encountered and whether such material is a Hazardous Material requiring corrective measures or remedial action. Such measures shall be the sole responsibility of the Owner. The Construction Manager 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 applicable Governmental Authority.

7.5 If the Construction Manager incurs additional costs or is delayed due to the presence or remediation of Hazardous Material, the Construction Manager shall be entitled to an equitable adjustment in the GMP, the Construction Manager's Fee and/or the dates of Substantial Completion or Final Completion.

7.6 The terms of this Article shall survive the completion of the Work under this Agreement or any termination of this Agreement.

ARTICLE 8
WARRANTIES AND COMPLETION

8.1 The Construction Manager's warranty obligations shall be as set forth in Section 13.10 of Book 2. The Warranty Period set forth in Section 13.10 of Book 2 shall begin to run on the date of Substantial Completion of each applicable Phase of the Project or of the entire Project with respect to the Work that is not Phase-specific.

ARTICLE 9
CONFIDENTIALITY

9.1 Access to Confidential Information**.** In connection with performance under the Contract, Construction Manager may gain access to Owner and/or User Agency Confidential Information, and Owner (and User Agency as part of the Owner) may gain access to Construction Manager Confidential Information.

9.1.1 "Confidential Information" Defined. "Confidential Information" means all information in any form that is identified by the disclosing Party to the receiving Party as confidential or proprietary at the time of the disclosure or that, under the circumstances surrounding the disclosure, should reasonably be considered by the receiving Party as confidential or proprietary, including trade secrets, internal business practices, processes, plans, goals, strategies, software systems, protocols, policies, procedures, finances, products, services and pricing.

9.1 Exclusions from Confidential Information. Excluded from "Confidential Information" is information that:

9.1.2 Is generally available to the public at the time the disclosing Party makes the disclosure;

9.1.3 Was rightfully and legally available on a non-confidential basis to the receiving Party prior to the disclosing Party's disclosure of the information to the receiving Party;

9.1.4 Becomes rightfully and legally available on a non-confidential basis to the receiving Party from a source other than the disclosing Party; *provided*, that the source is not prohibited from transmitting the information to the receiving Party by a contractual, legal or fiduciary obligation; or

9.1.5 Is developed by the receiving Party without use of or reference to the disclosing Party's Confidential Information.

9.2 Construction Manager Confidentiality Obligations.

9.2.1 Protection of Owner Confidential Information. Construction Manager shall use all necessary procedures to protect the confidentiality of Owner Confidential Information.

9.2.2 Restriction on Use and Disclosure of Owner Confidential Information. Construction Manager may not use or disclose any Owner Confidential Information without Owner's specific prior written consent, except as necessary to perform Construction Manager's obligations or exercise Construction Manager's rights under the Contract or as required by Law. Construction Manager may permit use of Owner Confidential Information only by Construction Manager's employees, and disclose Owner Confidential Information only to Construction Manager's subcontractors, agents and other representatives, that:

(i) need to know Owner Confidential Information as necessary to perform Construction Manager's obligations or exercise Construction Manager's rights under the Contract or as required by Law; and (ii) are bound by confidentiality obligations at least as stringent as those in the Contract. In no event may Construction Manager or any of Construction Manager's employees or Construction Manager's subcontractors, agents and other representatives use or disclose for business or personal gain or make other improper use or disclosure of Owner Confidential Information.

9.2.3 Additional Confidentiality Obligations Applicable to Construction Manager. Notwithstanding the Owner Confidential Information use and disclosure permissions granted to Construction Manager by this Section 9.3, Construction Manager may not compile or distribute statistical analyses or reports or engage in data aggregation or data de-identification utilizing data derived from Owner Confidential Information or other information or data obtained from Owner without Owner's specific prior written consent. Construction Manager will furnish a copy of any such statistical analyses or reports or aggregated or de-identified data, for which Owner provides written consent, to Owner without charge to Owner.

9.3 Owner Confidentiality Obligations.

9.3.1 Protection of Construction Manager Confidential Information. Owner will protect the confidentiality of Construction Manager Confidential Information with no less than reasonable care and in at least the same manner and to the same extent as Owner protects its own Confidential Information.

9.3.2 Restriction on Use and Disclosure of Construction Manager Confidential Information. Owner may not use or disclose any Construction Manager Confidential Information without Construction Manager's specific prior written consent, except as necessary to perform Owner's obligations or exercise Owner's rights under the Contract or as required by Law. Owner may permit use of Construction Manager Confidential Information only by their individual employees, and disclose Construction Manager's Confidential Information only to each of its subcontractors, agents and other representatives, that: (i) need to know Construction Manager Confidential Information as necessary to perform Owner's obligations or exercise Owner's rights under the Contract or as required by Law; and (ii) are bound by confidentiality obligations at least as stringent as those in the Contract.

9.3.3 Public Meeting and Public Document Disclosure. Construction Manager acknowledges and agrees that, notwithstanding that Confidential Information includes the existence and content of the Contract, Owner as a public body (and the User Agency as a part of Owner) may discuss information regarding the Contract in public meetings and disclose such information in public documents to the extent permitted by Law.

9.3.4 Freedom of Information Act Compliance. Construction Manager acknowledges and agrees that Owner, as a public body, is required to comply with the Illinois Freedom of Information Act ("FOIA") (5 ILCS 140/1 *et seq*.) and, accordingly, Owner will have the right to determine upon receipt of a FOIA request whether it will or will not withhold information in response to the FOIA request. Construction Manager may reasonably designate, in writing to Owner, Construction Manager information as Construction Manager Confidential Information. If Construction Manager makes such a reasonable designation, Owner will use best efforts to notify Construction Manager of an applicable FOIA request and provide Construction Manager the opportunity to assert that Construction Manager information is exempt from copying and inspection under FOIA §§ 7(1)(b) or (g) (5 ILCS 140/7(1)(b), (g)). Owner may require Construction Manager to submit written justification for asserting the exemption. To the extent Owner and/or User Agency is assessed attorneys' fees or court costs as a result of assisting Construction Manager in asserting an exemption from FOIA disclosure, Construction Manager will indemnify and hold harmless Owner and User Agency from and against such expenses.

9.4 Compelled Confidential Information Disclosure**.** If a receiving Party is required by subpoena or other legal process to disclose the disclosing Party's Confidential Information, the receiving Party will, prior to disclosure, promptly notify the disclosing Party so that the disclosing Party may object to the subpoena or other legal process or obtain a protective order or other appropriate remedy. In the event the disclosing Party's objection or effort to obtain a protective order or other appropriate remedy fails, the receiving Party will furnish only that portion of the disclosing Party's Confidential Information that the receiving Party is legally compelled to furnish. Notwithstanding anything to the contrary contained in this Agreement, Owner will not be deemed in breach of the Contract if Owner honors a properly executed criminal or civil subpoena for Construction Manager Confidential Information.

9.5 Confidential Information Return or Destruction**.** Upon expiration or termination of the Contract and at any other time upon the disclosing Party's request, the receiving Party will promptly return to the disclosing Party or destroy documents and materials, and all copies thereof, constituting or containing any of the disclosing Party's Confidential Information, and certify in writing to the disclosing Party that the disclosing Party's Confidential Information has been returned or destroyed. Construction Manager may retain one copy of its work papers for archival purposes, notwithstanding that the work papers may contain Owner and/or User Agency Confidential Information; *provided*, Construction Manager will protect the Owner and/or User Agency Confidential Information within those work papers in accordance with this Section 9.6 for as long as Construction Manager retains those work papers containing Owner and/or User Agency Confidential Information.

9.6 Publicity**.** Neither Party will use the other's name, logo, trademark, trade name, service mark, or other symbol or designation in connection with any marketing, advertising or publicity, or in any other communications with third parties, without the other Party's prior written consent. Owner may grant or withhold such consent in its sole discretion. Construction Manager may disclose Owner and/or User Agency as a client, but may not publish, issue press releases, or make public presentations regarding its relationship with

Owner and/or User Agency or using or disclosing Owner and/or User Agency Confidential Information without the express written consent of the Owner's Executive Director of Communications, or such other party designated in writing by Owner. Owner may require Construction Manager to submit its proposed publication, press release or presentation to Owner prior to Owner's determination whether to provide consent.

ARTICLE 10
INTENTIONALLY OMITTED

ARTICLE 11
STANDARD OF CARE

11.1 The Construction Manager shall perform all services required by this Agreement with that degree of skill, care, judgment and diligence consistent with the professional standards prevailing in the Chicago metropolitan area for construction manager at risk services on a project of comparable scope, complexity, and cost (the "Standard of Care").

ARTICLE 12
THE CONSTRUCTION MANAGER'S STAFFING/KEY PERSONNEL

12.1 STAFFING. Immediately, upon execution of this Agreement, the Construction Manager 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.

12.2 KEY PERSONNEL. The Construction Manager'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 Construction Manager will promptly notify the Owner. Any change or substitution with respect to Key Personnel requires the approval of the Owner, unless it is the result of the key personnel leaving the Construction Manager's employment. In the event that, in the opinion of the Owner, the performance of Key Personnel or any of the Construction Manager's staff assigned to the Work, is at an unacceptable level, the Construction Manager will remove them from the Project upon written notice from the Owner, and will provide a replacement for the Owner's approval within ten Days of receipt of the notice to remove such person.

12.3 COUNTY REQUEST TO REMOVE KEY PERSONNEL. The County may, at any time, give written notice to the Construction Manager's requesting the removal of any of the Key Personnel or any of Construction Manager other assigned personnel from the Project. Upon receipt of such notice, the Construction Manager will forthwith remove such Key Personnel or other assigned personnel and furnish to the County other acceptable personnel, which personnel will thereafter be subject to the provisions of this Section 12.2 Key Personnel.

In the event of the removal of any Key Personnel or any of the Construction Manager's other assigned personnel for the Project, no former Key Personnel or assigned personnel shall, for a period of one year after the termination of that individual's employment on this Contract, assist or represent any person in any business transaction or project in which the contracting parties are prohibited from participating in pursuant to Section 285.26 Conflicts

of Interest; with respect to any contract where a former Key Personnel or assigned personnel performed contract management duties during their term of employment with Contractor, this prohibition shall be permanent as to that contract, unless the Chief Procurement Officer ("CPO") agrees in writing to waive the prohibition after determining, in the CPO's sole discretion, that there is no conflict. Contractor will require the entities participating in the Contract which employs the Key Personnel or assigned personnel to enter into such employment contracts with the Key Personnel or assigned personnel as are necessary to effectuate this requirement, which shall identify the County as a third-party beneficiary.

12.4 PROJECT LABOR AGREEMENT. Prior to the commencement of the Work, the Construction Manager shall enter into a project labor agreement in the form attached hereto as **Exhibit 25**.

ARTICLE 13
RIGHT OF ENTRY

The Construction Manager 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 Owner. The Owner'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 Owner.

The Construction Manager will use, and will cause each of its officers, employees, agents, subconsultants and Subcontractors to use reasonable care when entering upon the Project Site in connection with the Work. The Construction Manager 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 Construction Manager, or anyone for whom it is responsible, causes damage to Owner's property, the Construction Manager must, at the option of the Owner, either 1) pay the cost of repair of the damage or 2) repair or replace the damaged property. The Owner shall have the right of set off against the payments to the Construction Manager for the cost of repairs. As a condition to the right of entry into the Project Site, the User Agency may require the Constriction Manager's officers, employees, agents, subconsultants and Subcontractors, as applicable, to comply with the User Agency's Security and Badging Process policy set forth in the attached **Exhibit 30**.

13.1 THE CONSTRUCTION MANAGER'S REPRESENTATIVE. The Construction Manager shall designate a person who shall be the Construction Manager's authorized representative. The Construction Manager's Representative is:

[_____]
[_____]

[_____]

[_____]

13.2 LIVING WAGE REQUIREMENT. The Construction Manager shall abide by the Cook County Wage requirements as set forth in **Exhibit 21**.

ARTICLE 14
OWNER'S RESPONSIBILITIES

14.1 INFORMATION AND SERVICES PROVIDED BY THE OWNER

14.1.1 The Owner and the User Agency shall provide information in a timely manner regarding requirements for the Project, include the Owner's Program Overview and other relevant information.

14.1.2 The Owner and the User Agency shall provide:

14.1.2.1 all available information describing the physical characteristics of the site, including surveys, site evaluations, legal descriptions, existing conditions, subsurface and environmental studies, reports and investigations.

14.1.2.2 inspection and testing services during construction as required by Law or as mutually agreed; and

14.1.2.3 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.

14.1.3 The Construction Manager shall be entitled to rely on the completeness and accuracy of the information and services required by this Paragraph to the extent doing so is in accordance with the Standard of Care.

14.2 RESPONSIBILITIES DURING PRE-CONSTRUCTION PHASE

14.2.1 The Owner and the User Agency shall provide the Owner's Program at the inception of the Pre-Construction Phase and shall timely provide schedules, Design Development Documents and Construction Documents furnished during the Pre-Construction Phase as set forth in this Agreement.

14.3 RESPONSIBILITIES DURING CONSTRUCTION PHASE

14.1.1 The Owner shall review the Schedule of the Work as set forth in this Agreement and timely approve the milestone dates set forth pursuant to Article 10 of Book 2.If the Owner 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

Owner shall give prompt written notice to the Construction Manager. The failure of the Owner to give such notice shall not relieve the Construction Manager of its obligations to fulfill the requirements of the Contract Documents.

14.4 OWNER'S REPRESENTATIVE. The Owner's Representative is:

Eric Davis Deputy Director
Capital Planning, Cook County
Phone: 312.603.0355
Email Address: Eric.Davis@cookcountyil.gov

The Owner's Representative:

14.4.1 shall be fully acquainted with the Project;

14.4.2 shall furnish the information and services required of the Owner pursuant to this Agreement so as not to delay the Construction Manager's Work; and

14.4.3 shall have authority to bind the Owner in all matters requiring the Owner's approval, authorization or written notice; provided, however, that any amendment or Change Order increasing the Contract Sum or extending the Contract Time may require the approval of the County Board of Commissioners as more particularly set forth in Section 17.01 of Book 2. If the Owner changes its representative or the representative's authority as listed above, the Owner shall notify the Construction Manager in writing in advance.

14.4.4 The Construction Manager hereby acknowledges that the Owner's Representative may rely on consultants and employees of the Owner in discharging the Owner's Representative's duties and obligations in connection with this Project.

14.5 [NOT USED]

14.6 ELECTRONIC DOCUMENTS. If the Owner requires that the Owner and the Construction Manager exchange documents and data in electronic or digital form, prior to any such exchange, the Owner and the Construction Manager shall agree on a written protocol governing all such exchanges, which protocol, 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 digital exchange platform shall be a well-recognized platform in the construction industry suitable for a Project of this size and complexity and shall be paid for by the Construction Manager. In the absence of a written protocol, use of documents and data in electronic or digital form shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants.

ARTICLE 15
SUBCONTRACTS

Work not performed by the Construction Manager with its own forces shall be performed by Subcontractors.

15.1 RETAINING SUBCONTRACTORS. Prior to retaining any Subcontractor, the Construction Manager shall submit to the Cook County Department of Capital Planning and Policy's Owner's Representative a completed Recommendation to Award form (attached hereto as **Exhibit 28**) related to such proposed Subcontractor for the Owner's review, as further set forth in Section 4.01 of Book 2. The Construction Manager shall not retain any Subcontractor that has been debarred by the Owner or the User Agency from doing business with the Owner, or any subcontractor to whom the Owner or the User Agency has a reasonable and timely objection. The Construction Manager shall not make any substitute for a Subcontractor that has been accepted by the Owner without the written approval of the Owner. Unless otherwise stated in the Contract Documents, the Construction Manager, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. With fourteen (14) days of receipt of the information, the Architect may notify the contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review.

15.2 MANAGEMENT OF SUBCONTRACTORS. The Construction Manager shall be responsible for the management of the Subcontractors in the performance of their work. The Owner will communicate with the Construction Manager regarding the Work, except that the Owner shall have the right to communicate directly with the Construction Manager's Subcontractors as the Owner 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 be necessary to protect the Owner's interests in the Project. Such communication shall not be deemed to create any privity of contract between the Owner and the Subcontractors.

15.3 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

15.3.1 If this Agreement is terminated, each subcontract agreement shall be assigned by the Construction Manager to the Owner, subject to the prior rights of any surety, provided that:

15.3.1.1 this Agreement is terminated by the Owner pursuant to Article 19 of Book 2;

15.3.1.2 the Owner accepts such assignment, after termination by notifying Subcontractor and the Construction Manager in writing and assumes all rights and obligations of the Construction Manager pursuant to each subcontract agreement.

15.3.2 If the Owner 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.

15.4 BINDING OF SUBCONTRACTORS AND MATERIAL SUPPLIERS. The Construction Manager shall bind every Subcontractor and Material Supplier (and require every Subcontractor to so bind its Sub-subcontractors and Material Suppliers) to all the provisions of this Agreement and the Contract Documents applicable to such Subcontractor or Material Supplier.

15.5 THE CONSTRUCTION MANAGER'S LIABILITY FOR SUBCONTRACTORS. The Construction Manager is responsible for all Work performed by Subcontractors and for all acts, failures to act, and omissions of its Subcontractors. For the purposes of this Agreement, the Construction Manager's acts and omissions include those of its Subcontractors to the same extent as if they had been committed by the Construction Manager. Notwithstanding the foregoing, there is no privity between Subcontractors and the Owner.

15.6 EDS FORMS AND COOK COUNTY AFFIDAVIT FOR GREEN CONSTRUCTION ORDINANCE. The Construction Manager hereby represents that the information contained in (a) the Economic Disclosure Statement and Execution Document (the "EDS FORMS") attached hereto as **Exhibit 31**, and (b) the Cook County Affidavit for Green Construction Ordinance attached hereto as **Exhibit 10** is complete and accurate. As part of the bidding process, the Construction Manager shall require Subcontractors and Suppliers to complete the EDS Forms and the Cook County Affidavit for Green Construction Ordinance, and each agreement with a Subcontract or Supplier shall include a representation from the applicable Subcontractor or Supplier regarding the accuracy and completeness of the EDS Forms and the Cook County Affidavit for Green Construction Ordinance completed by such Subcontractor or Supplier during the bidding process. The Owner has the right to withhold its acceptance of a Subcontractor or Supplier in the event the information contained in the EDS Forms and/or in the Cook County Affidavit for Green Construction Ordinance is not acceptable to the Owner.

ARTICLE 16
TIME

16.1 DATE OF COMMENCEMENT. The Work shall commence as set forth in this Agreement and shall proceed in general accordance with the Schedule attached hereto as **Exhibit 11**, as such schedule may be amended from time to time.

16.2 SUBSTANTIAL COMPLETION AND FINAL COMPLETION. Unless the Parties agree otherwise, the date of Substantial Completion and the date of Final Completion shall be established, and subject to adjustments, as provided for in the Contract Documents. 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 and date of Final Completion of Work shall be established in the Notice to Proceed.

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

16.2.2 The Work will not be considered complete and accepted until the Construction Manager receives written notice from the Owner confirming the Final Completion of the Work.

16.2.3 Unless instructed by the Owner in writing, the Construction Manager shall not knowingly commence the Work before the effective date of insurance that is required to be provided by the Construction Manager or the Owner.

16.3 DELAYS IN THE WORK

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

16.4 LIQUIDATED DAMAGES

16.4.1 SUBSTANTIAL COMPLETION. This Agreement provides for the imposition of liquidated damages based on the date of Substantial Completion established for the Work for each Phase of the Project and for the entire Project.

16.4.1.1 The Construction Manager acknowledge and agree that timely completion of the Work and each Phase of the Work is the essence of this Agreement. Specifically, the Construction Manager understands that if Substantial Completion for the particular Phase of the Project and/or for the entire Project, as applicable does not occur on that date set forth in the Contract Documents, as may be amended by subsequent Change Order, the Owner will suffer damages which are difficult to determine and accurately specify. Accordingly, if the Work for the particular Phase of the Project and/or for the entire Project, as applicable is not complete on the applicable Substantial Completion date, the Construction Manager shall pay the Owner as liquidated damages and not as a penalty for each Day that Substantial Completion of the Work for a particular Phase of the Project and/or the entire Project, as applicable extends beyond the applicable date of Substantial Completion the liquidated damages amount set forth on the liquidated damages matrix attached to this Agreement as **Exhibit 19.** The liquidated damages set forth herein pertain only to the Owner's remedy for damages associated with delays to the completion of the Work and Owner hereby retains any and all other rights and remedies the Owner has under the terms of this Agreement and applicable Laws, including, without limitation, the Owner's rights of termination hereunder

ARTICLE 17
COMPENSATION

17.1 PRE-CONSTRUCTION PHASE COMPENSATION

17.1.1 The Owner shall compensate the Construction Manager for services performed during the Pre-Construction Phase as described in this Agreement, including preparation of a GMP Proposal, and any required revisions, if applicable, as set forth in the attached **Exhibit 2**.

17.1.1.1 If the Owner implements Article 2.1.13 to not accept the Preliminary GMP as originally submitted or adjusted, and thus elects to terminate this Agreement by delivering a written notice to Construction Manager, the remaining Pre-Construction fee as of the date of the termination letter is the sole source of revenue to the Construction Manager under this Agreement.

17.1.2 Within fifteen (15) Days after receipt of each monthly application for payment, the Owner shall give written notice to the Construction Manager of the Owner's acceptance or rejection, in whole or in part, of such application for payment. Within forty-five (45) Days after accepting such application, the Owner shall pay directly to the Construction Manager the appropriate amount for which application for payment is made, less amounts previously paid by the Owner. If such application is rejected in whole or in part, the Owner shall indicate the reasons for its rejection. If the Owner and the Construction Manager cannot agree on a revised amount, then, within fifteen (15) Days after its initial rejection in part of such application, the Owner shall pay directly to the Construction Manager the appropriate amount for those items not rejected by the Owner for which application for payment is made, less amounts previously paid by the Owner. Those items rejected by the Owner shall be due and payable when the reasons for the rejection have been removed. The Construction Manager's acceptance of payment shall constitute a waiver of any and all claims against the Owner in connection of the Work for which the payment has been made. The Construction Manager shall not be entitled to any late fees or other penalties.

17.2 CONSTRUCTION PHASE COMPENSATION

17.2.1 The Owner shall compensate the Construction Manager for Work performed following the commencement of the Construction Phase on the following basis:

17.2.1.1 the Cost of the Work as allowed in Article 18; and

17.2.1.2 the Construction Manager's Fee paid in proportion to the services performed subject to adjustment as provided in Paragraph 17.4.

17.2.2 The compensation to be paid under this Paragraph 17 shall be limited to the Guaranteed Maximum Price ("GMP"), as may be revised under the Contract Documents.

17.3 Payment for Construction Phase services shall be as set forth in Article 20. If Pre-Construction Phase services continue to be provided after construction has commenced, the Construction Manager shall continue to be compensated as provided in Paragraph 17.1, or as mutually agreed. CONSTRUCTION MANAGER'S FEE. The Construction Manager's Fee shall be listed in the GMP Cost Form which is delineated in **Exhibit 2**. The Fee shall be payable in installments commensurate with the percentage of Project completion.

17.4 ADJUSTMENT IN THE CONSTRUCTION MANAGER'S FEE. Adjustment in the Construction Manager's Fee shall be made as follows:

17.4.1 for changes in the Work as provided in Article 19, the Construction Manager's Fee shall be adjusted according to Book 2; and

17.4.2 for delays in the Work not caused by the Construction Manager, except as provided in Article 10 of Book 2, there will be an equitable adjustment in the Construction Manager's Fee to compensate the Construction Manager for increased expenses.

17.5 NO FEE ADJUSTMENT FOR BUILDING MATERIAL COST INCREASES. Notwithstanding anything to the contrary set forth in this Agreement, Construction Manager shall not be entitled to charge Construction Manager's Fee on building material costs above and beyond those set forth in the GMP. Such material cost increases, and the terms and process applicable to such increases, is set forth in Section 18.4 below.

ARTICLE 18
COST OF THE WORK

The Owner shall pay the Construction Manager for the Cost of the Work as defined in this Article and as further described in **Exhibit 2**. The payment for the Cost of Work shall not include any payment for the Pre-Construction Services.

18.1 COST ITEMS FOR CONSTRUCTION PHASE SERVICES

18.1.1 Wages paid for labor in the direct employ of the Construction Manager in the performance of the Work.

18.1.2 Salaries of the Construction Manager's employees when stationed at the field office, in whatever capacity employed, and employees from the principal or branch office performing the functions listed below:

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

18.1.3 Cost of 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 Construction Manager's standard personnel policy approved by the

Owner, insofar as such costs are paid to employees of the Construction Manager who are included in the Cost of the Work under Subparagraphs 18.1.1 and 18.1.2.

18.1.4 Cost of materials, supplies and equipment incorporated in the Work. Payments made by the Construction Manager to Subcontractors for work performed under this Agreement. No materials or equipment will be allowed to be purchased through the Construction Manager's affiliates, subsidiaries or other firms directly related to the Construction Manager without the Owner's prior written consent Any such materials or equipment purchased from Construction Manager's affiliates, subsidiaries or other firms directly related to the Construction Manager shall be at the standard market rates and such purchase shall not serve as means for Construction Manager to obtain additional mark-ups and fees.

18.1.5 Cost, including transportation and maintenance of 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 Construction Manager.

18.1.6 Rental charges of necessary machinery and equipment, exclusive of hand tools owned by workers, used at the Worksite, whether rented from the Construction Manager or others including, setup, dismantling, removal, maintenance, transportation and delivery costs. Rental from unrelated third parties shall be reimbursed at actual cost. Rentals from the Construction Manager or its affiliates, subsidiaries or related parties shall be reimbursed at the prevailing rates in the locality of the Worksite up to seventy-five percent (75%) of the value of the piece of equipment as set forth in the latest edition of the AED Green Book.

18.1.7 In connection with such rental charges referenced above, the Construction Manager shall submit, as part of its monthly reporting obligations to the Owner, reports listing all rental equipment currently being rented as of the date the report is generated (each a "Rental Equipment Report"). Such Rental Equipment Reports shall include line item entries for each piece of rental equipment providing: (i) the type of equipment; (ii) the start date of such equipment rental; (ii) the end date of such equipment rental; (iv) the rental interval (i.e. either renting per hour, per day, per week, per month, etc.); (v) the cost to rent the equipment per rental interval (i.e. $200 per day); (vi) the total amount paid for such equipment from the start of the equipment rental through the date of the report; and (vii) such other information as Owner may request in its sole discretion. Construction Manager shall, as part of each Rental Equipment Report, identify for the Owner any potential opportunities to reduce the cost of such rentals (i.e. by renting on a longer-term basis at a lower rental rate; reducing the number of pieces of equipment being rented at any time; returning unused rental equipment; etc.). Cost of the premiums for all insurance and surety bonds which the Construction Manager is required to procure, and approved by the Owner, including any additional premium incurred as a result of any increase in the GMP.

18.1.8 Permits, fees, licenses, tests, royalties, damages for infringement of patents or copyrights, including costs of defending related suits for which the Construction Manager is not responsible as set forth in this Agreement, and deposits lost for causes other than the Construction Manager's negligence.

18.1.9 Costs associated with establishing, equipping, operating, maintaining and demobilizing the field office.

18.1.10 Reproduction costs, photographs, data processing services, data transmission, rentals of computers used exclusively for the Project (but excluding the purchase or rental of software), 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.

18.1.11 Water, power and fuel costs necessary for the Work.

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

18.1.13 Costs incurred due to an emergency affecting the safety of persons or property, to the extent such cost does not result from the Construction Manager's negligence.

18.2 "BUY-OUT" SAVINGS

18.2.1 The Construction Manager shall use its best efforts to reduce the Cost of the Work through the "buy-out" process and shall continuously update and confirm in writing to the Owner the status of the buy-out of the Work; including, without limitation, a specific line item in Construction Manager's monthly reporting to the Owner highlighting any Buy-Out Savings achieved in the month prior. Any reduction in cost as compared to the Schedule of Values that is realized as a result of the buy-out process ("Buy-Out Savings") shall be calculated and reallocated to the Contingency (as set forth in Section 4.3 above).

18.2.2 The Construction Manager shall cooperate with the Owner throughout, and allow the Owner to participate in, the buy-out process to the full extent reasonably requested by the Owner. The buy-out shall be performed on a so-called "open-book" basis with full disclosure of information regarding all: (i) potential Subcontractors, suppliers and others proposed to perform any portion of the Work, (ii) bids and proposals, and (iii) financial matters pertaining to any potential Subcontract, purchase order or other contractual arrangement that the Construction Manager may enter into pertaining to the Work. The Construction Manager shall furnish the Owner with copies of all bids, subcontract agreements, purchase orders, invoices, and other materials and information reasonably requested by the Owner to evaluate and verify the amount, or absence of, any Buy-Out Savings.

18.2.3 For the avoidance of doubt, Buy-Out Savings are the only amounts allocable to the Contingency. In no event shall the Contingency be funded from any decrease in cost arising out of value engineering, a deductive change in Work, or finalization of items covered by an allowance. All such decreases in cost are deemed a reduction

in scope and shall inure entirely to the benefit of the Owner as a reduction in the Guaranteed Maximum Price.

18.3 COSTS NOT TO BE REIMBURSED

18.3.1 The Cost of the Work shall not include the items listed below, which are mentioned by way of example and not by means of limitation:

.1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 18.1.2;

.2 Expenses of the Construction Manager's principal office and offices other than the site office;

.3 Overhead and general expenses, except as may be expressly included in **Exhibit 2**;

.4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;

.5 Except as provided in Section 18.1.10 of this Agreement, costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;

.6 Any cost not specifically and expressly described in Sections 18.1.1 to 18.1.16;

.7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded;

.8 Costs for services incurred during the Preconstruction Phase;

.9 Costs of goods or services furnished by persons or entities affiliated with Construction Manager to the extent such costs exceed the cost that would have been incurred in an arm's length transaction with an unrelated party;

.10 Travel expenses in excess of what are permitted by the County Travel Regulations Policy (**Exhibit 22**); and

.11 Any increase in the Construction Manager's Fee other than as specifically allowed in this Agreement.

18.4 BUILDING MATERIAL COST INCREASES

18.4.1 The GMP includes costs for building materials to be incorporated into the Project. Such costs, as they appear in the GMP, have been calculated based on market prices for such materials as of the date of the final GMP. The Construction Manager agrees that the line item costs contained within the GMP represent the lowest possible prices on all materials at the time of finalizing the GMP.

18.4.2 Owner and Construction Manager acknowledge that the market price(s) for such materials may be subject to sudden price increases outside of the control of either party, and that such sudden price increases may occur during the period of time between execution of this Agreement, and the scheduled purchase date of such materials (referred to herein as a "Building Material Cost Increase").

18.4.3 The Construction Manager agrees as part of Work to diligently monitor the prices of all materials to be incorporated into the Project, and to alert the Owner when Construction Manager observes or anticipates any Building Material Cost Increase.

18.4.4 In the event of a Building Material Cost Increase **less than or equal to** five percent (5%), as measured against the cost for such materials in the GMP, for any building materials contained within the GMP, such increase(s) shall be borne by the Construction Manager and the GMP shall remain unchanged.

18.4.5 In the event of a Building Material Cost Increase **greater than** five percent (5%), as measured against the cost for such materials in the GMP (referred to herein as a "Significant Increase"), for any building materials contained within the GMP, such increase shall not be borne by the Construction Manager. In such instance, the Owner and Construction Manager shall work together via the Mitigation Process (as defined below) to find a solution suitable to the Owner, in Owner's sole and absolute discretion.

18.4.6 In the event of an actual or anticipated Significant Increase, Construction Manager and Owner shall work collaboratively to find a solution suitable to the Owner via the Mitigation Process, which shall include, without limitation: Construction Manager preparing a list of all building materials experiencing, or expected to experience ("Impacted Materials"), a Significant Increase. Such list shall include, at a minimum: (i) the GMP price of the Impacted Materials; (ii) multiple vendors (to the extent available) through which the Impacted Materials may currently be sourced; (iii) the current market price of the Impacted Materials through each of the vendors listed in (ii) above; (iv) any relevant comments from such vendors, or other relevant professionals, with respect to the anticipated duration or impact of such Significant Increase; and (v) any other information Construction Manager believes would assist Owner in the Mitigation Process.

18.4.6.1 Construction Manager taking all reasonable steps to mitigate the impact of such Significant Increase, including, without limitation: (i) providing Owner with proposed substitutions and/or alternative materials, (ii) reprioritizing and/or rearranging Work so as to avoid delays and afford Owner additional time (while keeping the Project on Schedule) to

respond to the Significant Increase (including waiting for it to potentially subside), and (iii) performing additional value engineering analysis.

18.4.7 In the event Owner orders the suspension of any further Work due to any Building Material Cost Increase, such suspension shall be in accordance with the terms set forth in Article 19 of Book 2.

18.4.8 Notwithstanding anything to the contrary contained in this Agreement, if Owner elects to proceed with purchasing building materials impacted by a Significant Increase, such cost increase, for the purposes of calculating the Construction Manager's fee on the Cost of the Work, shall not be considered an increase in the overall Cost of the Work, nor shall the Construction Manager's fee apply to any amounts paid for such building materials (or any related subcontractor fees and/or related shipping fees/costs) above and beyond the cost of such building materials as included in the GMP. For the avoidance of doubt, while such increase(s) to the budgeted cost of such building materials, any related subcontractor fees, and/or related shipping fees/costs shall be processed as a Change Order, with the cost of such increase being borne solely by the Owner, the Construction Manager shall not be entitled to any additional fee on the increased cost of the building materials above and beyond the amount that was originally budgeted for such building materials.

ARTICLE 19
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 pursuant to the provisions of Article 17 of Book 2.

ARTICLE 20
PAYMENT FOR CONSTRUCTION PHASE SERVICES

20.1 PROGRESS PAYMENTS

Payment applications and procedures shall be as defined in Article 16 of Book 2. The Construction Manager shall apply for payments using the Form for the Application and Certification for Payment attached hereto as **Exhibit 13**, and shall provide the lien waivers attached to **Exhibit 13**.

ARTICLE 21
INSURANCE, BONDS, WAIVER OF SUBROGATION, ROYALTIES AND LIENS

21.1 Insurance, Bond and Waiver of Subrogation requirements shall be as provided in **Exhibit 6** unless otherwise specified herein.

21.2 ROYALTIES, PATENTS AND COPYRIGHTS. The Construction Manager 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 Construction Manager and incorporated in

the Work. The Construction Manager shall defend, indemnify and hold the Owner harmless from all suits or claims for infringement of any patent rights, intellectual property rights, or copyrights arising out of any patented or copyrighted materials, methods or systems specified by the Owner.

21.3 LIENS. If any of the Construction Manager'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 Mechanics' Lien Act, 770 ILCS 60/23, against the public funds for the Project, then the Construction Manager shall 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 Owner may extend the thirty (30) Day period if the Owner determines that such lien claim cannot be so satisfied, removed or discharged in such period and that the Construction Manager is proceeding diligently to cause such liens or claims to be satisfied, removed or discharged. The Owner will have the right, in addition to all other rights and remedies provided under this Agreement, or by Law, to cause such liens or claims to be satisfied, removed or discharged by any means at the Construction Manager's sole cost, such cost to include reasonable legal fees.

The Construction Manager 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 22
SUSPENSION AND TERMINATION OF THE AGREEMENT AND OWNER'S RIGHT TO PERFORM THE CONSTRUCTION MANAGER'S RESPONSIBILITIES

22.1 Suspension and termination shall be governed by Article 19 of Book 2.

ARTICLE 23
DISPUTE MITIGATION AND RESOLUTION

23.1 Claims and disputes shall be governed by Article 18 of Book 2.

ARTICLE 24
MISCELLANEOUS PROVISIONS

24.1 GOVERNING LAW AND JURISDICTION

24.1.1 The Contract Documents will be governed by and construed in accordance with the laws of the State of Illinois. The Project is subject to the jurisdictional provisions set forth in this Agreement.

24.1.2 The Construction Manager irrevocably agrees that, subject to the Owner's sole and absolute election to the contrary, any action or proceeding in any way, manner or respect arising out of the Contract, or arising from any dispute or controversy arising in connection with or related to the Contract shall be litigated only in courts

within the Circuit Court of Cook County in the City of Chicago, County of Cook, State of Illinois, and the Construction Manager consents and submits to the jurisdiction thereof. In accordance with these provisions, the Construction Manager waives any right it may have to transfer or change the venue of any litigation brought against it by the Owner pursuant to the Contract.

24.2 SEVERABILITY. If any provision of this Agreement, or the application thereof to any person or circumstance, is to any extent held invalid or unenforceable by a court of competent jurisdiction as provided herein, the remainder of this Agreement, and the application of such provision to persons or circumstances other than those as to which it is specifically held invalid or unenforceable, shall not be affected thereby, and each and every remaining provision of this Agreement will be valid and binding to the fullest extent permitted by applicable law; provided, however, the parties agree to negotiate in good faith and shall reform this Agreement to as closely as possible resemble the original intent and allocation of risks and benefits.

24.3 NO WAIVER OF PERFORMANCE. The failure or 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.

24.4 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 Owner'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.

24.5 JOINT DRAFTING. This Agreement was jointly drafted, and both Parties had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms prior to execution. Therefore, this Agreement shall not be construed against nor in favor of either Party but shall be construed in a neutral manner.

24.6 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.

24.7 RESERVATION OF RIGHTS. Unless otherwise provided in the Contract Documents, the duties and obligations imposed by the Contract Documents and the rights and remedies available hereunder to the Owner, and, in particular but without limitation, the warranties, guarantees and obligations imposed upon the Construction Manager by the Agreement are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to the Owner which are otherwise imposed by or available under Law, by special warranty or guarantee or by other provisions of the Contract Documents, and this provision will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right and remedy to which they apply. All

representations, warranties, and guarantees made in the Contract Documents will survive Final Payment and termination or completion of this Agreement.

24.8 [NOT USED]

24.9 IMMIGRATION AND SECURITY. The Construction Manager agrees at all times to remain in strict compliance with all immigration and security Laws affecting or concerning the Construction Manager's, and its Subcontractors' and Suppliers', laborers and employees, including without limitation, the Immigration Reform and Control Act of 1986 (IRCA) and the Patriot Act. The Construction Manager further agrees to ensure that none of the Construction Manager's, nor its Subcontractors' and Suppliers', laborers or employees pose a threat to the safe working environment at the Project Site, or a threat to the integrity of the Owner and/or the Owner's business and operations. The Construction Manager agrees at all times to provide and maintain procedures, methods and facilities to comply with the terms and conditions of this Paragraph, including, without limitation, the provision of background screening and security checks for employees and laborers performing any work or services at or for the Project Site. Upon request, the Construction Manager shall provide, for the Owner's review and approval, the procedures, methods and facilities used by the Construction Manager in complying with the terms and conditions of this Paragraph and the Owner shall have the right to require, in its discretion, any further and additional procedures, methods and facilities. With respect to IRCA, all employees of the Construction Manager assigned to the Project Site shall have had their identity and eligibility for work within the United States properly verified. Within three (3) Days of receipt of a written request from the Owner, the Construction Manager shall provide copies of the I-9 form or such other documentation as may be appropriate to satisfy the Owner as to the Construction Manager's compliance with IRCA.

24.10 SURVIVAL. The provisions of this Agreement, which by their reasonable terms are intended to survive termination of this Agreement, including, without limitation, all provisions of this Agreement that require the Construction Manager to insure, defend or indemnify the Owner, shall survive completion, expiration or termination of this Agreement.

24.11 SUCCESSORS AND ASSIGNS; ASSIGNMENT. Each party binds itself, its successors, assigns, executors, administrators or other representatives to the other party hereto and to successors, assigns, executors, administrators or other representatives of the other party in connection with all terms and conditions of this Agreement. No assignment by a party hereto of any rights under or interest in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound. In particular, the Construction Manager may not assign its right to recover any moneys that may become due from the Owner without the consent of the Owner and the Owner Chief Procurement Officer (the "Owner CPO") (except to the extent that the effect of this restriction may be limited by applicable Law). Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents. Nothing in this Agreement shall limit the Owner's right to freely assign or delegate any rights or obligations under this Agreement to any entity controlling, controlled by, or under common control with the Owner.

Furthermore, notwithstanding anything to the contrary contained in this Paragraph, each Subcontract agreement for a portion of the Work is assigned by the Construction Manager to the Owner, provided that, (i) the assignment is effective only after termination of the Agreement by the Owner and only for those Subcontract agreements which the Owner accepts by notifying the Subcontractor in writing and (ii) the assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Agreement. Notwithstanding the foregoing, the Parties agree that assignment of this Contract, in whole or in part, or of the Contract funds within an enterprise of which either party is a part or to a successor organization by merger or acquisition does not require the consent of the other, but in the event of such merger or acquisition, the Construction Manager shall provide notice to the Owner and the Owner CPO a least sixty (60) Days prior to the effective date of the merger or acquisition. The Owner and the User Agency shall have the right to terminate the Contract for convenience, if Owner deems such merger or acquisition to have a negative impact on the Contract.

24.12 DATA PROTECTION AND CYBER-SECURITY

24.12.1 The Construction Manager acknowledges that it may have access to certain of the Owner's computer and communications systems and networks in connection with the performance of the Work, and will also be maintaining its own data room and/or website(s) containing Project information that will be accessible to the Construction Manager's personnel and its Subcontractors and Suppliers and their employees. If any data is made available or accessible to the Construction Manager, its employees, agents or contractors, including its Subcontractors and Suppliers pertaining to the Owner's business or financial affairs, or to patient information or other patient data, or any data relating to the Owner's employees, the Construction Manager will not store, copy, analyze, monitor or otherwise use that data except for the performance of the Work. The Construction Manager will comply fully with all applicable Laws relating to personally identifiable information ("PII" or "Customer Data") and data privacy with respect to any such data that the Construction Manager receives or has access to under this Agreement or in connection with the performance of the Work. The Construction Manager will otherwise protect PII and will not use, disclose, or transfer across borders such PII except as necessary to perform under the Agreement or as authorized by the data subject or in accordance with applicable Laws. To the extent that the Construction Manager receives PII related to the performance of the Work, the Construction Manager will protect the privacy and legal rights of the Owner's personnel, patients, customers and contractors.

24.12.2 Without limiting the Construction Manager's obligation of confidentiality as further described herein, the Construction Manager will be responsible for establishing and maintaining an information security program that is designed to: (i) ensure the security and confidentiality of Customer Data; (ii) protect against any anticipated threats or hazards to the security or integrity of the Customer Data; (iii) protect against unauthorized access to or use of the Customer Data; (iv) ensure the proper disposal of Customer Data, as further defined herein; and (v) ensure that all Subcontractors of the Construction Manager comply with all of the foregoing. The

Construction Manager will designate an individual to be responsible for the information security program. Such individual will respond to the Owner's inquiries regarding computer security and to be responsible for notifying the Owner-designated contact(s) if a breach or an incident occurs, as further described herein. The information security program will be audited annually or as often as required by the Owner.

24.12.3 The Construction Manager must conduct formal security awareness training, with a testing component, for all personnel and contractors as soon as reasonably practicable after the time of hiring or prior to being appointed to work on Customer Data and annually recertified thereafter. Documentation of the security awareness training must be retained by the Construction Manager, confirming that this training and subsequent annual recertification process have been completed, and available for review by the Owner.

24.12.4 The Owner will have the right to review the Construction Manager's information security program prior to the commencement of Work and from time to time during the term of this Agreement. During the term of the Agreement, from time to time with prior notice, the Owner, at its own expense, will be entitled to perform, or to have performed, an on-site audit of the Construction Manager's information security program and facilities.

24.12.5 In the event of any actual or apparent theft, unauthorized use or disclosure of any Customer Data, the Construction Manager will immediately commence all reasonable efforts to investigate and correct the causes and remediate the results thereof, and within two (2) business days following discovery of any such event, provide the Owner with notice thereof, and such further information and assistance as may be reasonably requested.

24.12.6 In addition to the insurance requirements set forth in **Exhibit 6**, the Construction Manager shall purchase and maintain throughout the term of this Agreement a technology/professional liability insurance policy, including coverage for network security/data protection liability insurance (also called "cyber liability") covering liabilities for financial loss resulting or arising from acts, errors, or omissions, in connection with the Work described in this Agreement. Such insurance shall cover the following: (i) violation or infringement of any right of privacy, including breach of security and breach of security/privacy laws, rules or regulations globally, now or hereinafter constituted or amended; (ii) data theft, damage, unauthorized disclosure, destruction, or corruption, including without limitation, unauthorized access, unauthorized use, identity theft, theft of personally identifiable information or confidential corporate information in whatever form, transmission of a computer virus or other type of malicious code; and participation in a denial of service attack on third party computer systems; and (iii) loss or denial of service. Further such coverage shall not contain a cyber- terrorism exclusion.

24.13 NOTICE.

24.13.1 All notices, demands, and requests which may or are required to be given by either party to the other shall be in writing and either delivered personally, by reputable courier service, or sent by first class mail, postage prepaid, addressed (or at such other address as the party to receive the notice may from time to time give notice

To Owner's Representative:

[_____]

[_____]

To Construction Manager at Risk

[_____]

[_____]

Notice shall be deemed to have been given, if delivered personally or by courier service, upon delivery or refusal to accept delivery, or, if mailed, upon the third (3rd) business day after mailing. Notice as provided herein does not waive service of summons or process.

24.14 INTENTIONALLY OMITTED.

24.15 ENTIRE CONTRACT. It is expressly agreed that the provisions set forth in the Contract constitute all the understandings and agreements between the parties. Any prior agreements, promises, negotiations, or representations not expressly set forth in the Contract are of no force and effect.

24.16 INTERPRETATION. Whenever the singular is used herein, the masculine, feminine and all gender shall be deemed to include the others. The headings of articles, paragraphs and sections in the Contract are included for convenience only and shall not be considered by either party in construing the meaning of the Contract. If any provision or clause of the Contract shall be held to be invalid, such provision or clause shall be deleted from the Contract and the Contract shall be construed to give effect to the remaining portions thereof.

The Contract shall be interpreted in according to the order of precedence set forth in Article 1, Section 1.3.1 above.

In the event of a conflict between Book 1 and Book 2 and the Schedules, Exhibits, and Annexes, Book 1 and Book 2 shall govern. In the event of a conflict in an Exhibit, Schedule, or Annex, or between and/or among the Exhibits, Schedules and Annexes, the most stringent requirement will take precedence, except as may be otherwise determined by the Owner in its sole and absolute discretion.

24.17 REPORTING SUSPECTED OR KNOWN FRAUDULENT ACTIVITY (Pursuant to Cook County, Illinois Code of Ordinances Sec. 34-250). Any Person involved in the Cook County Procurement process, including employees, contractors, and those seeking to do business with the Owner, shall report directly and without any undue delay, any suspected or known fraudulent activity in the Owner's procurement process to the Office of the Cook County Inspector General. In addition to any applicable laws protecting whistleblowers, the Owner shall ensure that a report made in good faith will not result in any adverse actions taken by the Board or the Owner against the Person making such a report. The Owner CPO's procedures will include a mechanism to publish this provision to all appropriate Persons.

ARTICLE 25
MBE/WBE, EEO, AND WORKFORCE REQUIREMENTS

25.1 It is the policy of the Owner 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 Agreement, the Construction Manager 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. The Owner requires and the Construction Manager 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. By entering into this Agreement, Construction Manager shall comply with all of the MBE/WBE and other related special terms and conditions set forth in the attached **Exhibit 29**.

ARTICLE 26
EXISTING CONTRACT DOCUMENTS

List of Exhibits and Annexes

As stated in Section 1.3.1, the following exhibits are part of this Agreement, and, together with such documents listed in Section 1.3.1, form the Contract Documents:

Annex 1	Design and Construction Documentation as it exists as of the Effective Date
Annex 2	Design Assist Services

CMAR Exhibit 01 - Scope of Work
CMAR Exhibit 02 - Compensation and Fee Structure
CMAR Exhibit 04 - Key Personnel
CMAR Exhibit 06 - Insurance Requirements
CMAR Exhibit 08 - Additional Preconstruction Phase Services
CMAR Exhibit 09 - Risk Assessment Form

CMAR Exhibit 10 - Cook County Affidavit for Green Constr. Ordinance
CMAR Exhibit 11 - Project Schedule Phasing and Milestones
CMAR Exhibit 12 - Procedures for Contractor Pay Requests
CMAR Exhibit 13 - Form for Application for Payment
CMAR Exhibit 14 - Book 2 Standard Terms and Conditions for Construction Contract
CMAR Exhibit 15 - Book 3 Technical Specifications and Drawings
CMAR Exhibit 16 - Substantial Completion Packet
CMAR Exhibit 17 - Final Acceptance Packet
CMAR Exhibit 18 - Addendum Acknowledgement Form
CMAR Exhibit 19 - Liquidated Damages Matrix
CMAR Exhibit 20 - Drug and Alcohol-free Workplace Policy
CMAR Exhibit 21 - County Ordinances
CMAR Exhibit 23 - Certification of Site Examination for MQF
CMAR Exhibit 24 - Confidentiality Agreement
CMAR Exhibit 25 - Project Labor Agreement (PLA)
CMAR Exhibit 26 - MBE WBE Utilization Plan
CMAR Exhibit 27 - Identification Subcontr.Supplier.Subconsult Fillable Form(ISF)
CMAR Exhibit 28 - Form of Recommendation to Award
CMAR Exhibit 29 - MBE WBE EEO AND WORKFORCE REQUIREMENTS
CMAR Exhibit 31 - Economic Disclosure Statement (EDS)
(Exhibits 3, 5, 7, 22, 30 Not Used)

[Signature page appears on the next page]

IN WITNESS WHEREOF, the parties to this Agreement have executed this Agreement as of the date first set forth above.

CONSTRUCTION MANAGER:

By:_____

Name:_____

Title: _____

OWNER:

COOK COUNTY

By:_____

Name:_____

Title: _____

USER AGENCY:

[NAME OF USER AGENCY]

By:_____

Name:_____

Title: _____

ANNEX 1

PRELIMINARY DESIGN DOCUMENTS FOR USE DURING PRE-CONSTRUCTION PHASE

ANNEX 2

DESIGN ASSIST SERVICES

Exhibit 01
Scope of Work

(Reserved)

(REMAINDER OF THIS PAGE HAS BEEN LEFT BLANK INTENTIONALLY)

Exhibit 2
Compensation and Fee Structure

(Reserved)

(REMAINDER OF THIS PAGE HAS BEEN LEFT BLANK INTENTIONALLY)

Exhibit 3
Site Visit Protocols

(Reserved)

(REMAINDER OF THIS PAGE HAS BEEN LEFT BLANK INTENTIONALLY)

Exhibit 4

Construction Managers Key Personnel for the Work

(Reserved)

(REMAINDER OF THIS PAGE HAS BEEN LEFT BLANK INTENTIONALLY)

Exhibit 5
Instructions for Submitting

(Reserved)

(REMAINDER OF THIS PAGE HAS BEEN LEFT BLANK INTENTIONALLY)

Exhibit 6
Insurance Requirements

(Reserved)
(REMAINDER OF THIS PAGE HAS BEEN LEFT BLANK INTENTIONALLY)

Exhibit 07

Not titled as an Exhibit in the PSA, only in RFQ

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EDITOR NOTE: Place here any other Services as Owner may deem necessary to be completed in connection with the Pre-Construction Phase

<OR>

EDITOR NOTE (if none): Not Applicable for Contract xxxx-xxxxx CMAR for [project name] *[EDIT…]*

Exhibit 8

Additional Preconstruction Phase Services

(Reserved)

(REMAINDER OF THIS PAGE HAS BEEN LEFT BLANK INTENTIONALLY)

Exhibit 9

Pre-Construction Risk Assessment (PCRA)

Exhibit 10

Cook County Affidavit for Green Construction Ordinance

(Reserved)

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Exhibit 10
Green Construction Ordinance Acknowledgement Form

COOK COUNTY

OFFICE OF THE CHIEF PROCUREMENT OFFICER
161 North Clark Street, 23rd
floor
Chicago IL 60602

GREEN CONSTRUCTION ORDINANCE ACKNOWLEDGEMENT FORM

IMPORTANT NOTICE: Proposers shall acknowledge receipt of the Green Construction Ordinance in the space provided below and submit this form with its proposal. Failure to acknowledge receipt of this ordinance and submittal of this form may render the proposal non-responsive.

RFP/RFQ No.: 2661-06010

Project Name: Construction Management at Risk Services for The State's Attorney Office Renovation of 11th, 12th, 13th and 14th Floors, Criminal Courts Administration Building

Signature: _____ Date: _____

Name: _____ Title: _____

Company: _____

Address: _____

Commissioner Suffredin's Cook County Board Legislative Library
for more info visit www.suffredin.org

Print Page
Close Window

Cook County Green Construction Ordinance

Summary
Suffredin's Commentary
Activity Log
Full Text of Legislation
Disclaimer

Date Introduced: 4/15/2009 **Date Passed:** 5/19/2009	**Sponsors:** Maldonado, Murphy, Silvestri, Stroger-Todd	**Co-Sponsors:** Daley, Gorman, Moreno, Sims, Steele-Robert, Suffredin

Summary:

Disel exhaust pollution poses a clear health risk to the people of Cook County. Reduction of these admissions can help prevent health risks to the people of Cook County. Cost-effictive measures exist to reduce the amount of these admissions. The purpose of the ordinance is to minimize the health risks in a practical, cost-effective way.

Full Text of Legislation:

BE IT ORDAINED, by the Cook County Board of Commissioners that Chapter 30 Environment, Article IX Green Construction, Sections 30-950 through 30-955 of the Cook County Code are hereby enacted as follows:

ARTICLE IX. GREEN CONSTRUCTION

Sec. 30-950. Board of Commissioners findings.

(a) Diesel exhaust particle pollution poses a clear and present health risk to the people of Cook County. The United States Environmental Protection Agency has classified diesel exhaust as a likely human carcinogen, and has identified diesel particulate matter and diesel exhaust organic gases as toxic air pollutants. Diesel exhaust is also a prime contributor to airborne fine particle pollution that is linked to premature death and other serious cardiovascular and pulmonary problems such as heart attacks, abnormal heart rhythms, atherosclerosis, stroke, asthma attacks, permanent respiratory damage and retardation of lung growth in children.

(b) Cook County is a US EPA designated non-attainment area for fine particulate matter pollution.

(c) The health impacts from diesel emissions particularly affect children, the elderly, and people with weakened immune systems.

(d) Particularly high concentrations of diesel emissions often occur in heavily traveled transportation corridors, intermodal yards, bus depots, and construction sites; these diesel “hot spots” often are found in densely populated, urban areas, disproportionately impacting ethnic minorities and people of lower economic status.

(e Diesel engine crankcases also are a source of emissions that can seep into the cabin and expose vehicle drivers and passengers to harmful diesel emissions.

(f) Diesel exhaust also contains black carbon emissions, which contribute to global climate change.

(g) Reduction of diesel emissions can help address these human health and environmental problems.

(h) The United States Environmental Protection Agency has enacted requirements over the past few years requiring the substantial reduction of emissions from new diesel engines in both heavy-duty highway vehicles and land-based non-road equipment. However, these regulations do not apply to any of the over 11 million existing diesel engines in the United States, most of which emit substantially more pollution and often remain in service for 10 to 30 years, depending on the type of engine and equipment.

(i) Practical, cost-effective measures to substantially reduce diesel particulate emissions are available today, and can be applied to many existing diesel engines. The same technology that limits diesel pollution from new diesel engines can be retrofitted onto existing engines or applied in new replacement engines to reduce diesel emissions by 85% or better.

(j) Therefore, the purpose of this ordinance is to minimize the public health risks from exposure to diesel particulate emissions as expeditiously as practicable.

Sec. 30-951. Definitions.

CARB means the California Air Resources Board.

County as used in this chapter (with the exception of the use of the words to describe or identify the Government or Board of Commissioners thereof), means all of the territory in the County exclusive of the City of Chicago.

Department means the Cook County Department of Environmental Control.

Fleet means one or more diesel vehicles or mobile or stationary diesel engines owned or operated by the same person or group of related persons.

Heavy duty diesel vehicle means a motor vehicle with a gross vehicle weight rating of at least 8,500 pounds that is powered by a diesel engine.

Level 1 Control means a Verified Diesel Emission Control Device that achieves a particulate matter (PM) emission reduction of 25% or more from uncontrolled engine emission levels.

Level 2 Control means a Verified Diesel Emission Control Device that achieves a particulate matter (PM) emission reduction of 50% or more from uncontrolled engine emission levels.

Level 3 Control means a Verified Diesel Emission Control Device that achieves a particulate matter (PM) emission reduction of 85% or more from uncontrolled engine emission levels, or that reduces emissions to less than or equal to 0.01 grams of PM per brake horsepower-hour. Level 3 Control includes repowering or replacing the existing diesel engine with an engine meeting USEPA's 2007 Heavy-duty Highway Diesel Standards (66 Fed. Reg. 5002), or in the case of a nonroad engine, an engine meeting the USEPA's Tier 4 Nonroad Diesel Standards (69 Fed. Reg. 38958); Level 3 Control also includes new diesel engines meeting said emissions standards.

Motor vehicle means any self-propelled vehicle designed for transporting persons or property on a street or highway, including an on-road diesel vehicle.

Nonroad engine means an internal combustion engine (including the fuel system) that is not used in a motor vehicle or a vehicle used solely for competition, or that is not a stationary source, except that this term shall apply to internal combustion engines used to power generators, compressors or similar equipment used in any construction program or project.

Nonroad vehicle means a vehicle or equipment that is powered by a nonroad engine, fifty horsepower and greater, and that is not a motor vehicle or a vehicle used solely for competition, which shall include, but not be limited to, excavators, backhoes, cranes, compressors, generators, bulldozers and similar equipment; nonroad vehicles do not include locomotives or marine vessels.

Prime Contractor means any person or business entity that enters into a public works contract with Cook County.

Public works contract means a contract, budgeted at $2,000,000 or more, with a County agency for a construction program or project bid by Cook County involving the construction, demolition, restoration, rehabilitation, repair, renovation, or abatement of any building, structure, tunnel, excavation, roadway, park or bridge; a contract with a County agency for the preparation for any construction program or project involving the construction, demolition, restoration, rehabilitation, repair, renovation, or abatement of any building, structure, tunnel, excavation, roadway, park or bridge; or a contract with a County agency for any final work involved in the completion of any construction program or project involving the construction, demolition, restoration, rehabilitation, repair, renovation, or abatement of any building, structure, tunnel, excavation, roadway, park or bridge.

*Stationary generator*s means a non-mobile machine that uses diesel fuel to produce electrical energy.

Subcontractor means any person or business entity that enters into a contract with a Prime Contractor as defined herein to perform work on a public works contract with Cook County.

Ultra low sulfur diesel fuel means diesel fuel that has a sulfur content of no more than fifteen parts per million.

US EPA means the United States Environmental Protection Agency.

Verified diesel emission control device means:

(1) an emission control device or strategy that has been verified to achieve a specified diesel PM reduction by USEPA or CARB; or

(2) replacement or repowering with an engine that is certified to specific PM emissions performance by USEPA or CARB.

Sec. 30-952. Emission reduction.

(a) Immediately after the effective date of this ordinance, any solicitation for a public works contract and any contract entered into as a result of such solicitation shall include a specification that all contractors in the performance of such contract shall use Ultra Low Sulfur Diesel fuel for diesel motor vehicles, non-road vehicles, and stationary generators used in the performance of the contract.

(b) Beginning January 1, 2014, for Prime Contractors, and beginning January 1, 2016 for Subcontractors, any solicitation for a public works contract and any contract entered into as a result of such solicitation shall include a specification that a Prime Contractor and all Subcontractors in the performance of such contract shall not operate any heavy-duty diesel vehicle in the performance of a public works contract unless that vehicle has installed Level 3 Controls

less such controls are properly maintained and operating (as provided by regulations promulgated pursuant to this act). Except that, upon provision by the Prime Contractor or Subcontractors to the agency of appropriate and sufficient documentary evidence:

(a) Subsection (b) shall not apply to any heavy-duty diesel vehicle on the construction site working three days or less over the life of the project.

(b) Subsection (b) shall not apply to any heavy-duty diesel vehicle with respect to which the Department makes a written finding that such vehicle cannot be retrofit with Level 3 Controls, in which case such fleet owner or operator shall install Level 2 Controls that are available and appropriate for such vehicle as determined by the Department. If the Department makes a written finding that any such vehicle cannot be retrofit with Level 2 controls, said vehicle shall be retrofit with Level 1 Controls that are available and appropriate for such vehicle as determined by the Department.

(c) Any heavy-duty diesel vehicle that has operational Level 2 Controls installed prior to the effective date of this act shall have an additional one year to meet the requirements of Subsection (b).

(1) Within two years after the effective date of this ordinance, any solicitation for a public works contract and any contract entered into as a result of such solicitation shall include a specification that all contractors in the performance of such contract shall not operate any diesel non-road vehicle in the performance of a public works contract unless that vehicle has installed Level 2 Controls and unless such controls are properly maintained and operating (as provided by regulations promulgated pursuant to this act). Except that, upon provision by the contractor to the agency of appropriate and sufficient documentary evidence:

- Subsection (c) shall not apply to any diesel non-road vehicle on the construction site working three days or less over the life of the project.
- Subsection (c) shall not apply to any diesel non-road vehicle with respect to which the Department makes a written finding that such vehicle cannot be retrofit with Level 2 Controls, in which case such fleet owner or operator shall install Level 1 Controls that are available and appropriate for such vehicle as determined by the Department.
- Any diesel non-road vehicle that has operational Level 1 Controls installed prior to the effective date of this act shall have an additional one year to meet the requirements of Subsection (c).

(2) Beginning January 1, 2014, for Prime Contractors, and beginning January 1, 2016 for Subcontractors, any solicitation for a public works contract and any contract entered into as a result of such solicitation shall include a specification that a Prime Contractor and all Subcontractors in the performance of such contract shall not operate any diesel non-road vehicle in the performance of a public works contract unless that vehicle has installed Level 3 Controls and unless such controls are properly maintained and operating (as provided by regulations promulgated pursuant to this act). Except that, upon provision by the Prime Contractor or Subcontractors to the agency of appropriate and sufficient documentary evidence:

- Subsection (d) shall not apply to any diesel non-road vehicle on the construction site working three days or less over the life of the project.
- Subsection (d) shall not apply to any diesel non-road vehicle with respect to which the Department makes a written finding that such vehicle cannot be retrofit with Level 3 Controls, in which case such fleet owner or operator shall install Level 2 Controls that are available and appropriate for such vehicle as determined by the Department.
- Any diesel non-road vehicle that has operational Level 2 Controls installed prior to the effective date of this act shall have an additional one year to meet the requirements of Subsection (d).

Sec. 30-953. Costs.

All costs associated with meeting these requirements are incidental to the overall contract. No additional time or monies will be granted to the Prime Contractor for compliance with these requirements and any associated regulations.

Sec. 30-954. Compliance.

- Thirty days before beginning work, the Prime Contractor shall submit to the Department for approval a list of all heavy-duty diesel vehicles, non-road vehicles, and stationary generators to be used on the project. The list shall include the following:
  - Prime Contractor and Subcontractor name and address, plus contact person responsible for the vehicles or equipment.
  - Equipment type, manufacturer, engine model year, engine certification (Tier rating), ECM calibration, horsepower, plate, serial number, and expected fuel usage and/or hours of operation.
  - For the pollution control technology installed: technology type, serial number, make, model, manufacturer, EPA/CARB verification number/level, and installation date.
- If the Prime Contractor subsequently needs to bring on site equipment not on the list, the Prime Contractor shall submit the request in writing for prior approval. Additional equipment shall comply with all contract conditions.

- During periods of inactivity, idling of diesel on-road motor vehicles and non-road vehicles shall be minimized and shall not exceed the time allowed under state and local laws.
- Any public works contract shall provide for enforcement of the contract provisions required by Sections 30-952 and 30-955 and penalties for noncompliance of such provisions.

Sec. 30-955. Enforcement.

(a) Any solicitation for a public works contract subject to the provisions of this section and any contract entered into as a result of such solicitation shall include provisions authorizing independent monitoring and inspection of the Prime Contractor and Subcontractor's compliance with the requirements of this section and requiring that the Prime Contractor and Subcontractor comply with this section. The Prime Contractor shall be liable for a fee of $200 for the review of Prime Contractor and Subcontractor's compliance with the provisions of this section, and the County may withhold and deduct the fee from monies otherwise due the Prime Contractor.

(b) All vehicles and equipment to which these requirements are applicable will be subject to random inspections to ensure full compliance with these requirements. If any equipment is found to be non-compliant, the Prime Contractor, Subcontractor or Supplier must remove or retrofit this equipment or vehicle within 24 hours or be subject to liquidated damages pursuant to subdivision (c) of this section until that piece of equipment or vehicle is removed from Project.

(c) In the event of a violation of any provision of this section, except as provided in subdivision (d) of this section, liquidated damages shall be assessed against the Prime Contractor in the amount of $5,000 for each violation (with each piece of noncomplying equipment and each day of noncompliance being a separate violation, not to exceed a total of $50,000 for any one piece of equipment). Said liquidated damages are not imposed as a penalty but as an estimate of the damages that the County will sustain from delay in completion of the work, as well as resultant damages to public health of its citizens, which damages by their nature are not capable of precise proof. The County may withhold and deduct from monies otherwise due the Prime Contractor the amount of liquidated damages due the County.

(d) No Prime Contractor or Subcontractor shall make a false statement or claim with respect to any matter material to compliance with the provisions of this section to the County. Any Prime Contractor or Subcontractor making such a false statement shall pay the County up to $10,000 for each such statement as liquidated damages pursuant to the provisions of subdivision (c) of this section.

(e) Fees and liquidated damages paid to the County under this section shall be placed in the Cook County Environmental Management Fund.

Sec. 30-956. Regulations.

Within six months of the effective date of this act, the Department shall, after written notice and public hearing, promulgate regulations implementing the provisions of this act.

Disclaimer:

The information contained in this web site is provided as a service to the community, and does not constitute legal advice. We try to provide the information as it is reflected in our records, but we make no claims, promises or guarantees about the accuracy, completeness, or adequacy of the information contained in or linked to this web site. As legal advice must be tailored to the specific circumstances of each case, and laws are constantly changing, nothing provided herein should be used as a substitute for the advice of competent counsel or additional research of Cook County's laws and regulations.

Exhibit 11
Project Schedule Phasing and Milestones

(Reserved)

[Reserved for completed Schedule Phasing and Milestones created during development of the GMP and that has been reviewed and agreed to by both DCPP and the Construction Manager]

((EDITOR NOTE FOR THE MANAGER:

(THIS EXHIBIT IS NOT INTENDED TO PLACE A GANT CHART OR ANY KIND OF BAR CHART HERE; THIS EXHIBIT NEEDS SOME LEVEL OF DETAIL TO SHOW THE DATE OF COMMENCEMENT, THE DATE OF NTP, THE SPECIFIC PHASES (AS IN PHASE 1, PHASE 2) IF THEY EXIST, WITH RESPECTIVE SUBSTANTIAL COMPLETION (SC) DATES IF APPLIES, THE LD's THAT MAY APPLY PER PHASE, AND THE WARRANTY THAT MAY APPLY PER PHASE; CRITICAL DURATIONS; ETC.; DISCUSS WITH TEAM MEMBERS AND OBTAIN PROJECT DIRECTOR APPROVAL; DELETE THESE EDITOR NOTES))

[Reserved for completed Schedule Phasing and Milestones created during development of the GMP and that has been reviewed and agreed to by both DCPP and the Construction Manager]

(REMAINDER OF THIS PAGE HAS BEEN LEFT BLANK INTENTIONALLY)

[Manager to select wording] The Construction Manager understands, acknowledges, and agrees that the Work under the Contract Documents is to be Substantially Completed and delivered to the Owner in [_____] distinct phases (each individually a "Phase" or collectively the "Phases"). Phase I consists of _____; Phase II consists of _____; Phase III consists of _____; and Phase IV consists of _____. The Construction Manager agrees that it shall plan, coordinate and integrate the Work with respect to each Phase, with the Work for the overall Project, so that each such Phase and the overall Project is integrated, completed, and coordinated (both individually and with each other) in accordance with the Contract Document.

[Manager to select wording] The Construction Manager hereby acknowledges and agrees that each Phase shall have its own Substantial Completion date and the entire Project shall have an overall Substantial Completion date.

[Manager to select wording] *Optional wording:* The Pre-Construction phase duration is **[insert days]** calendar days and will commence upon the County's issuance of the NTP for Pre-Construction Services. The Substantial Completion date(s) is _____.

[Manager to select wording] *Optional wording:* The Construction phase duration is **[insert days]** calendar days and will commence upon the County's issuance of the NTP for Construction; The Phases are _____; The Substantial Completion date(s) are ____

Exhibit 12
Contractor Procedures for Payment Requests

1. Contractor shall use DCPP's Tririga Platform for Payment Requests.
2. A draft copy of the schedule of values associated with the AIA G702 / 03 document will be presented to DCPP and or their consultants for review and approval, prior to submission of the Contractor's first pay application.
3. Contractor to submit Pencil Draw copy of pay request no later than the 25th of each month for review by the County and/or their representative(s). The Pencil Draw must include AIA Approved G702 and G703 Documents for the Contractor and all Subcontractors requesting payment, as well as detailed back-up supporting documentation for all General Conditions costs.
4. Contractor will include cost breakdowns by labor and materials as applicable for each subcontractor.
5. Contractor to provide subtotals on the G703 form for the Contractor and each Subcontractor.
6. All payment line items shall be submitted utilizing the CSI code format.
7. Contractor shall indicate all Allowance/Contingency values in the contract "below the line" on the G703 document.
8. Any approved Change Orders to be identified as such on the G703, and the associated values applied under each applicable subcontractor.
9. Comments/questions regarding the pay request will be returned to the Contractor after receipt of the pencil draw for revisions and a meeting to be scheduled immediately to review the comments if necessary.
10. Contractor to submit the revised pay request to the County and/or their representative(s) no later than the last day of the month. This submission should include;
    a. Signed + dated letter of transmittal
    b. Completed, signed, and dated Cook County Pay Application Check list (documents to be issued to client in the order as noted on the checklist)
    c. Completed, signed, and dated Cook County 29A Voucher form
    d. Contractor's Invoice
    e. AIA G702 / 03 Pay Application document, signed and notarized
    f. Notarized letter stating Compliance with Cook County Residence Requirement
    g. Waivers of Lien from the Contractor as well as all Subcontractors seeking payment for the amounts indicated in the request.
    h. Contractor's Certified Payroll (notarized)
    i. Subcontractor's Certified Payroll (notarized)
    j. Updated project progress photos

    Note – All signed documents must be originals, copies will not be accepted.

11. (if Applicable) Architect to review final payment application and if approved, will provide signature on the AIA G703 document.
12. County controller/accountant will review the final pay request and waivers and provide any comments within 2 days of receipt.
13. Contractor to resubmit the revised final pay request the following day to the County.
14. Final approved pay request to be signed by the accountant, the project manager, the Project Director and the Director of DCPP, before it will be sent to the County Comptroller for payment.
15. Payment to the Consultant expected within approximately 30 to 45 days from receipt of the final approved pay request.

Exhibit 13

FORM FOR THE APPLICATION AND CERTIFICATION FOR PAYMENT (INCLUDING FORM OF LIEN WAIVERS)

Exhibit 14

BOOK 2 - STANDARD TERMS AND CONDITIONS FOR CONSTRUCTION CONTRACT

Exhibit 14

BOOK 2

STANDARD TERMS AND CONDITIONS FOR CONSTRUCTION AGREEMENT

CONTRACT NO.

[INSERT NAME OF PROJECT]
[INSERT PROJECT ADDRESS]
CHICAGO, IL 60615

Honorable Toni Preckwinkle, President of the Cook County Board of Commissioners

SAMPLE

SAMPLE

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ARTICLE 27
GENERAL PROVISIONS

27.1 Definitions

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

27.1.1 "Addenda" means the documents containing additions, changes, corrections or modifications to the Contract Documents issued by the Architect during the bidding period or prior to the award of contract. Addenda become part of the Contract Documents.

27.1.2 "Agreement" means Book 1 Construction Agreement and Book 2 Standard Terms and Conditions for Construction Agreement along with its associated Exhibits.

27.1.3 ''Architect," "Architect of Record," or "Architect/Engineer" means any person or firm employed by the Owner for the purpose of designing the Project.

27.1.4 "As-Built" means creating record documents that include all changes, including, without limitation, changes to the Construction Documents issued by Architect, as well as Field Changes made during construction and installation of the Work, that are reflected in the Construction Manager's set of field drawings and specifications to show the full extent of the Work that was performed and the materials installed by the Construction Manager and all of its Subcontractors of every tier.

27.1.5 "Change Order" is the document signed by the Construction Manager and the Owner, which authorized 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.

27.1.6 "Community Residents" means persons domiciled within the Project Community as designated by the Owner as stated in Book 1.

27.1.7 "Contract Price" means the full amount of compensation to be paid for the Cost of the Work to be performed by the Construction Manager.

27.1.8 "Contract Time" means the number of Days allowed between the Notice to Proceed and the date of Substantial Completion of the entire Project or the date stated in the Agreement and construction Schedule for the Substantial Completion and Final Completion of the Work for the entire Project. All time limits stated in the Contract Documents are of the essence.

27.1.9 "Drawings" or "drawings" means the graphic and pictorial portions of the Contract Documents, showing the design, location, and dimensions of the Work, generally including plans, elevations, sections, details schedules and diagrams.

27.1.10 ''Environmental Law(s)" means all applicable federal, state and local land use, zoning, health, chemical use, air quality, water quality, safety, and sanitation Laws relating to the protection of the environment or governing the use, storage, treatment, generation, transportation, processing, handling, production, or disposal of Hazardous Materials.

27.1.11 "Field Changes" means any and all deviations and discrepancies in the Work from that indicated in the Contract Documents, including, without limitation, the quantities, locations, lengths and dimensions of portions of the Work that are shown diagrammatically in the Drawings.

27.1.12 "Field Order" means a written order issued by the Owner to the Construction Manager, signed by the Owner's Representative, unilaterally directing changes in the Work or the Project Schedule.

27.1.13 "Final Completion of the Work'' means the last date on which all of the following events have occurred with respect to the Work for the applicable Phase of the Project or the entire Project:

a) the Owner has determined that all Punch List Work and any other remaining Work have been completed in accordance with the Contract Documents;

b) final inspections have been completed and operating systems and equipment testing have been completed;

c) the applicable Governmental Authorities have issued a final certificate of occupancy and/or any other applicable final approvals, licenses, certifications or other written evidence from the applicable Governmental Authority that the Work for the applicable Phase of the Project or the entire Project has been finally completed to such authority's satisfaction and is ready to be occupied and/or used for its intended purpose;

d) all deliverables, record documents, reviewed and approved by the Architect, have been provided to the Owner; all contractual requirements for final payment have been completed; and

e) all requirements set forth in Section 3.05(2)(b) have been complete.

f) application for Final Payment is submitted with final release of lien.

27.1.14 "Governmental Authorities" means, as applicable, the United States of America, the State of Illinois, the County, the City of Chicago, and any other local, regional, state or federal political subdivision, authority, agency, department, commission, board, bureau, court, judicial or quasi-judicial body, and any legislative or quasi-legislative body, or instrumentality of any of them, which exercises jurisdiction over the Project, the Work, the Project Site, Construction Manager or Owner, including, without limitation, any Governmental Authorities having jurisdiction to review and approve or reject the Contract Documents or the Work based on compliance or non-compliance with applicable Laws.

27.1.15 "Hazardous Materials" means any hazardous, toxic, flammable, or explosive substance, material, or waste materials, which is or becomes regulated by any Governmental Authority. The term "Hazardous Material," shall include, without limitation, any material or substance which is designated as (a) a "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. Sec. 1317); (b) a "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, (42 U.S.C.

Section 6901 *et seq*.); (c) a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, (42 U.S.C. Section 9601 *et seq*.); or (d) a "hazardous" or "toxic" substance in any Law similar to, or in any amendment of, any of the Laws cited in this provision.

27.1.16 Law(s)" means any and all applicable laws, rules, regulations, ordinances, guidelines, directives, codes, and/or orders, judgments or decrees of all Governmental Authorities in force at the time the Agreement is executed and as amended to the extent that such amendment was reasonably foreseeable to the Construction Manager at the time the Agreement was executed. Laws shall specifically include the Chicago Energy Code.

27.1.17 "Notice to Proceed' means the written notice issued by the Owner to the Construction Manager authorizing the Construction Manager to begin the Work.

27.1.18 "Project Community" means the area designated as the Project Community in Book 1, Exhibit 12 "Project Community Area Map."

27.1.19 "Owner" means as defined in Book 1.

27.1.20 "Owner's Representative" means as defined in Article 14.4 of Book 1

27.1.21 "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 Owner and Architect. Items of incomplete Work that preclude full or beneficial use of any portion of the Work or that preclude the Owner from full operation, maintenance, or security of the facility are not considered Punch List Work.

27.1.22 "Record Documents" are all documents required under the terms of the Agreement to be provided to the Owner by the Construction Manager, including, but not limited to, shop drawings, As-Built drawings, parts manuals, operation and maintenance manuals, warranties, guarantees and Project manuals or specifications.

27.1.23 ''Request for Information" or "RFI" means the document transmitted by the Construction Manager to the Architect via the Owner's Representative seeking clarification or direction with respect to ambiguity, contradictions, errors or omissions in the Drawings and Technical Specifications.

27.1.24 "Schedule" means the construction schedule submitted by the Construction Manager establishing time frames for the performance of components of the Work as defined in Article 10.

27.1.25 "Schedule of Values" means the detailed list of the values of each construction activity included in the Contract Price broken down by labor, materials, equipment, supplies and subcontractor's related detailed costs that is submitted by the Construction Manager and approved by the Owner.

27.1.26 "Site" or "Worksite or "Project 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.

27.1.27 "Special Waste" means those substances as defined in the Illinois Environmental Protection Act, and further defined in Illinois Administrative Code, and as otherwise defined in the applicable Environmental Laws.

27.1.28 "Specifications" or "specifications" are that portion of the "Technical Specifications and Drawings" consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services, all as set forth in Book 3.

27.1.29 "Substantial Completion" or "Substantially Complete" means the point in time when all of the following have occurred with respect to the applicable Phase of the Project and/or the entire Project, as the case may be, pursuant to the phasing of the Work set forth in the Agreement:

27.1.29.1 the progress of the Work for the applicable Phase of the Project or the entire Project is fully complete and functional in accordance with the requirements of the Contract Documents such that only items listed in the Punch List remain and the Work for the applicable Phase of the Project or the entire Project is ready to be occupied and/or utilized for its intended purpose;

27.1.29.2 the applicable Governmental Authorities have issued a temporary certificate of occupancy and/or any other temporary (pending final completion) applicable approvals, licenses, certifications or other written evidence from the applicable Governmental Authority that the Work for the applicable Phase of the Project or the entire Project has been completed to such authority's satisfaction and is ready to be occupied and/or used for its intended purpose pending final completion;

27.1.29.3 the Construction Manager's sustainability responsibilities required by the Contract Documents have been completed;

27.1.29.4 the Architect has issued an Owner approved certificate of Substantial Completion for the Work for the applicable Phase of the Project or the entire Project in accordance with the terms of the Contract Documents;

27.1.29.5 with respect to all of the Project's building systems, including, without limitation, any mechanical and HVAC systems, (i) the Work for the applicable Phase of the Project or the entire Project is fully commissioned, balanced, tested and operational in compliance with the Contract Documents and applicable Laws and (ii) all required initial and follow-up orientation and training has been accomplished in accordance with the requirements of the Contract Documents.

27.1.29.6 The Construction Manager has delivered to the Owner all warranty binders and operation and maintenance manuals for the Work for the applicable Phase of the Project or the entire Project.

27.1.30 "Technical Specifications and Drawings" means the detailed requirements for the Work furnished by the Architect and set forth in Book 3.

27.2 Interpretation / Rules

27.2.1 Intent of Contract Documents:

27.2.1.1 The intent of the Contract Documents is to describe the Work that the Construction Manager will undertake to fulfill the requirements of the Agreement. The Construction Manager must perform the Work as provided in or reasonably inferable from the Contract Documents. The Construction Manager must furnish all required materials, equipment, tools, labor, workmanship, temporary light and power, shop drawings, installation drawings, working drawings, and incidentals, unless otherwise provided in the Agreement, and will include the cost of all such items in the Contract Price.

27.2.1.2 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 Construction Manager.

27.2.1.3 "Provide" as used in the Specifications means furnish and install.

27.2.1.4 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 Owner are intended: similarly, the words "approved", "acceptable", "satisfactory", or words of like import, mean "approved by'', "acceptable to", or "satisfactory to" the Owner. 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 reasonable opinion of the Owner.

27.2.1.5 The Work under this Agreement has not been completely segregated into divisions of Work to be performed by any trade or Subcontractor. The Construction Manager shall be responsible for all segregation of Work between the trade or craft jurisdictional limits.

27.2.1.6 Before the Construction Manager physically begins the Work, the Construction Manager must check the Technical Specifications and Drawings. Should any errors, discrepancies or omissions be found in these Technical Specifications and Drawings 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 Construction Manager must promptly but no later than five (5) Days notify the Owner's Representative, in writing.

27.2.1.7 When a word, term, or phrase is used in the Contract Documents, it shall be interpreted or construed first, as defined in the Contract Documents; second, if not defined, according to its generally accepted meaning in the construction industry; and third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage.

27.2.1.8 Defined terms used but not otherwise defined herein shall have the meanings ascribed to such terms in Book 1 or other Contract Documents.

27.3 Standard Specifications

Any reference herein to standard specifications of any society, institute, association, or Governmental Authority (such standard specifications not forming a part of any statute or ordinance nor otherwise specified as to edition or date) is a reference to the standard specifications of such organization that are in effect on the date the Agreement is executed.

ARTICLE 28
PROJECT ORGANIZATION

28.1 The Owner

The Owner is the entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner's Representative shall have the authority set forth in Section 2.04 below and in Section 14.4 of Book 1.

28.2 Intentionally Omitted

28.3 Intentionally Omitted

28.4 The Owner's Representative

28.4.1 The Owner's Representative is the County official designated in Book 1, Section 14.4 of the Agreement. The Owner may also designate a construction management administrator to assist the Owner's Representative in managing and administering the Project. The Construction Manager must route all Project communication and notices, whether intended for the Owner or the Architect, to the Owner's Representative. The Owner's Representative will also route responses from the Owner and Architect to the Construction Manager.

28.4.2 The Owner's Representative has the authority to reject all or any portion of Work that does not conform to the Contract Documents.

28.4.3 The Owner's Representative will not be responsible for acts or omissions of the Construction Manager or any Subcontractor.

28.4.4 The Owner's Representative is responsible for the following:

28.4.4.1 Reviewing and monitoring, on a periodic basis, the Construction Manager's baseline and updated schedules for compliance with the Agreement milestone dates and the master CPM milestone dates.

28.4.4.2 Attendance and participation in weekly meetings with the Owner, User Agency, the Construction Manager, Architect, and Separate Contractors to review the Schedule, submittals, scope change proposals, requests for information, outstanding bulletins, pending issues, and field problems.

28.4.4.3 Reviewing the Construction Manager's payment applications in accordance with the Owner's policies and procedures and submitting the payment applications to Owner for approval and payment.

28.4.4.4 Establishing and implementing procedures for, and maintaining coordination among, the Owner, the User Agency, Architect, the Construction Manager, and other agencies having jurisdiction of the Project with respect to all construction aspects of the Project.

28.4.4.5 Coordinating the submission, processing, procurement and assembly of all required permits, licenses, and certificates with the Construction Manager and arranging delivery of same to the Owner.

28.4.4.6 Conducting Site observations of the Construction Manager and Project to ensure that the Work is progressing on Schedule and in accordance with the requirements of the Owner and the Contract Documents.

28.4.4.7 Reviewing the adequacy of the supervision, personnel, equipment and the availability of necessary materials and supplies. Where inadequate, direct that the necessary action be taken to remediate the deficiency.

28.4.4.8 Receiving and reviewing all shop drawings, materials and all other required submittals parallel to these documents being submitted by the Construction Manager to the Architect. Requests for approval of Subcontractors, shop drawings, samples, and the like will be commented upon and submitted to the Owner for concurring approval.

28.4.4.9 Monitoring the flow of all documents and materials for proper sequence of approvals so as not to delay the progress of the Work.

28.4.4.10 Receiving and reviewing all requests for additional compensation and time extensions sought by the Construction Manager.

28.4.4.11 Conducting a final inspection of the Project to verify that the materials furnished and the Work performed are in accordance with the Contract Documents.

28.4.4.12 Oversight of the assembly and delivery to the Owner 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 Owner upon completion of the Project.

28.4.4.13 Doing such other work as the Owner may delegate to the Owner's Representative.

28.4.5 The Construction Manager hereby acknowledges that the Owner's Representative may delegate any or all of the foregoing functions to other employees of the Owner or to consultants retained by the Owner in connection with the Project.

28.5 The Architect

28.5.1 The Architect for the Project is the one whose name appears on the Drawings in the Contract Documents.

28.5.2 The Architect will not be responsible for acts or omissions of the Construction Manager or any Subcontractor.

28.6 The Construction Manager

28.6.1 The Work is under the charge and care of the Construction Manager until Final Completion of the Work unless otherwise specified in the Contract Documents.

28.6.2 Except as may be otherwise provided in the Agreement, all transactions of the Owner will be with the Construction Manager.

28.6.3 The Construction Manager is wholly responsible, and liable to the Owner, for any and all Work performed by any Subcontractor.

ARTICLE 29
CONTRACT DOCUMENTS AND DOCUMENT CONTROL

29.1 Contract Documents

29.1.1 The Construction Manager must carefully review and compare all Drawings and Technical Specifications and other Contract Documents. In the event the Construction Manager identifies an error or omission, the Construction Manager will promptly notify the Owner's Representative, in writing, and then proceed with the Work in accordance with instructions from the Owner's Representative concerning such error or omission. The Construction Manager shall cooperate with the Owner 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. The Construction Manager shall have a continuing duty to read, examine, review, compare and contrast each of the documents which make up the Contract Documents, shop drawings, and other submittals and shall give written notice to the Owner and the Architect of any conflict, ambiguity, error or omission which the Construction Manager may find with respect to these documents before proceeding with services and any affected Work. The express or implied approval by the Owner or the Architect of any shop drawings or other submittals shall not relieve the Construction Manager of the continuing duties imposed hereby, nor shall any such approval be evidence of the Construction Manager's compliance with the Contract Documents. The Owner has requested the Architect to prepare documents for the Project, including the Drawings and Specifications for the Project, which are accurate, adequate, consistent, coordinated and sufficient for construction.

29.1.2 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 the 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 Construction Manager must submit a request for information (RFI) to the Owner's Representative. In the event such contradictions or ambiguities are not resolved via such RFI process, Construction Manager shall provide the better quality of or the greater quantity of Work, product, or services for the benefit of the Owner.

29.1.3 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 Construction Manager, suitable for the intended use, compatible with adjacent materials, and subject to review 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.

29.1.4 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 Construction Manager must submit an RFI to the Owner's Representative for resolution by the Architect.

29.1.5 The Construction Manager 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 Specifications furnished by the Architect, all additional and revised Drawings and Specifications furnished by the Owner's Representative, all orders issued to the Construction Manager by the Owner that relate to the Work, and all submittals, including shop drawings, meeting minutes, reports, payment applications, correspondence and approved product samples relating to the Work, and a set of updated As-Built drawings.

29.1.6 The Construction Manager 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.

29.2 Document Control System

29.2.1 The Construction Manager shall use the Document Management System to: track the Work, manage the Project, and follow the Owner's procedures for electronic submission and receipt of documents as directed by the Owner's Representative. The Document Management System shall be the mode of conveyance and repository for all Project Record Documents. The Construction Manager shall post all Project-related documents, including all Record Documents, on the Document Management System. By executing the Agreement, the Construction Manager agrees to comply with all terms and conditions required by the Owner for the use of the Document Management System.

29.2.2 Within seven (7) Days of the Notice to Proceed, the Construction Manager shall designate an employee who will serve as its coordinator for the Document Management System. Such coordinator will be the point of contact for the Owner for implementation and support for the Construction Manager's use of the Document Management System.

29.2.3 Employees of the Construction Manager, its Subcontractors and Suppliers who will use the Document Management System must complete the training provided by the Construction Manager.

29.2.4 All written communication and document transmittal from the Construction Manager to the Owner will occur via the Document Management System. In the event that hand signatures and/or stamps are required for a document, unless otherwise directed by the Owner's Representative, the transmittal of such document shall be made simultaneously via the Document Management 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 Document Management System.

29.2.5 The Construction Manager shall be solely responsible for its use of the Document Management System, as well as use of the Document Management System by its Subcontractors and Suppliers.

29.3 Site Conditions and Inspection

29.3.1 Surveys, soil borings, geotechnical information, data, plans or other materials generally describing the unimproved land or existing structures at the Site will be provided to the Construction Manager by the Owner as available.

29.3.2 The Construction Manager must take field measurements, verify field conditions and carefully compare such field measurements and conditions and any other information known to the Construction Manager about the Contract Documents before commencing the Work. No allowance will be made to the Construction Manager 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 Agreement, the Construction Manager must have such Work performed by a surveyor as described in Section 13.14.

29.3.3 If conditions are encountered at the Site that are:

29.3.3.1 Subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents, or

29.3.3.2 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 when the Construction Manager becomes aware of the unusual physical conditions, the Construction Manager will take no action to disturb the area until providing written notice to the Owner's Representative immediately, and receiving notice from the Owner's Representative as to how and when to proceed.

29.3.4 After receipt of the notice from the Construction Manager, the Owner will investigate such conditions, and if conditions differ materially from those indicated in the Contract Documents and could not have been known to the Construction Manager at the time the Construction Manager submitted the GMP Proposal in accordance with the Standard of Care, and such conditions will cause a material increase or decrease in the Construction Manager's cost of,

or time required for, the performance of any part of the Work, an equitable adjustment in the Contract Price or Contract Time or both, will be made based upon Article 17, "Changes in the Work." If the Owner determines that the conditions at the Project Site are not materially different from those indicated in the Contract Documents and that no adjustment Contract Price or Contract Time is justified, the Owner shall notify the Construction Manager in writing, stating the reasons therefor. If the Construction Manager disagrees with Owner's determination, the Construction Manager may submit a claim in accordance with the procedures and requirements set forth in the Contract Documents.

29.3.5 No claim for an increase in the Contract Price and/or the Contract Time by the Construction Manager, or Subcontractor, due to differing site conditions shall be allowed if the Construction Manager, or Subcontractor, knew of its existence before submitting its agreement to perform the Work or if those conditions could have been discovered by any reasonable examinations before the Construction Manager's submission of the GMP Proposal. Further, no increase in the Contract Price and/or the Contract Time by the Construction Manager, or Subcontractor, due to differing site conditions shall be allowed unless the Construction Manager provides a proper and timely claim for an increase in the Contract Price and/or an increase in the Contract Time in accordance with the provisions of the Agreement.

29.3.6 The Construction Manager must follow the requirement of written notice in Section 3.03(3)(b) above and the requirements set out herein in Article 18 regarding a claim for changed site conditions. The Construction Manager must also provide written notice of any claim regarding the changed site condition to the Owner's 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.

29.4 The Construction Manager's Warranties and Representations

29.4.1 The Construction Manager warrants and represents that:

29.4.1.1 The Construction Manager has carefully examined the Project Site, the Contract Documents and the adjacent areas, has taken field measurements and has otherwise suitably investigated the Project to ascertain the nature and location of the Work, and has investigated and satisfied itself as to the general and local conditions which are applicable to the Work such as, without limiting the generality of the foregoing: (i) conditions bearing on transportation, disposal, handling and storage of materials; (ii) the availability of labor, water, power and roads; (iii) normal weather conditions; (iv) observable physical conditions at the Project Site; (v) the structural sufficiency of the areas of the Project Site that the Construction Manager intends to utilize for the staging of materials and the prosecution of the Work; (vi) the surface conditions of the ground and subsurface conditions (based on geotechnical and other subsurface information or data provided by Owner or other subsurface information or data generally available to the Construction Manager regarding the Project Site); (vii) the character of equipment and facilities needed prior to and during the performance of the Work; (viii) the availability of utilities to the Project Site; and (ix) all Laws, zoning and land use restrictions applicable to the Project Site and is satisfied that the Construction Manager can complete the Work with all appurtenant improvements as shown or specified in or reasonably inferable from the Contract Documents and

consistent with the Contract Documents without the need for any change to the Contract Price or the Contract Time.

29.4.1.2 The Construction Manager has examined all land and areas surrounding the Project Site (including, for the purposes hereof, the streets, sidewalks, and buildings adjacent the Project Site) and has ascertained the materials and construction of the buildings and all existing conditions of such buildings. The Construction Manager further agrees that the Construction Manager's prosecution of the Work shall be controlled by such existing conditions and all work and protective measures necessary to keep and leave said premises and buildings in the same condition as they were before commencing the Work shall be done by the Construction Manager without any addition to the Contract Price or change in the Contract Time. Wherever any parts of adjacent premises interfere with or are interfered by the Work to be performed hereunder, the Construction Manager shall make whatever changes are made necessary to complete the contract work thereby without any addition to the Contract Price or change in the Contract Time, Construction Schedule, milestone(s), date of Substantial Completion or date of Final Acceptance.

29.4.1.3 This Agreement is capable of performance in accordance with all of its provisions and requirements and that the Construction Manager can and must perform, or cause to be performed, the Work in strict accordance with the provisions and requirements of this Agreement.

29.4.1.4 Except for the contents of this Agreement, no representation, statement or promise, oral or written, or of any kind whatsoever, by the Owner, its officials, agents, representatives or employees, has induced the Construction Manager to submit the GMP Proposal or has been relied upon by the Construction Manager.

29.4.1.5 The Construction Manager was given ample opportunity and time to review and has reviewed the Contract Documents prior to submittal of the GMP Proposal.

29.4.1.6 The Construction Manager acknowledges and understands that the Owner materially relied upon the Construction Manager's bid in its selection of the Construction Manager to perform the Work, and on the GMP Proposal in its issuance of the Notice to Proceed with the construction phase of the Project.

29.4.1.7 The Construction Manager's submittal of the GMP Proposal establishes that the Construction Manager, in preparing and submitting the GMP Proposal on which this Agreement is based, has complied with and given full consideration to the following requirements:

The Construction Manager did obtain copies of the complete Contract Documents as identified in the Agreement and any addenda issued by the Owner and has become familiar with the same and all Agreement requirements and conditions described therein.

The Construction Manager 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.

The Construction Manager waives any claim for relief because of alleged mistakes or omissions the GMP Proposal and that the Construction Manager will be held strictly to the GMP Proposal as presented.

29.4.2 The Construction Manager has the capability and financial resources to perform all of the provisions and requirements of this Agreement.

29.4.3 The Construction Manager must perform all of its obligations under this Agreement in accordance with all of the Agreement's provisions and requirements.

29.4.4 The Construction Manager and its Subcontractors are financially solvent, able to pay all debts as they mature, and possesses sufficient working capital to complete the Work and perform all obligations hereunder.

29.4.5 The Construction Manager is not party to any legal, administrative, arbitration, investigative or other proceeding or controversy pending, or, to the best of the Construction Manager's knowledge, threatened, which would adversely affect the Construction Manager's ability to perform under the Agreement.

29.4.6 The Construction Manager is familiar with the review and approval process of any applicable Governmental Authority for the construction of projects of the type described in the Contract Documents and Construction Manager shall take no action that would in any manner cause Owner to be in violation of, or in non-compliance with, any such requirements. The Construction Manager shall not be entitled to an adjustment in the Contract Price or Contract Time for any delays in any such review and approval by a Governmental Authority.

29.5 Acceptance of Work

29.5.1 Substantial Completion of the Work.

29.5.1.1 The Construction Manager will notify the Owner's Representative, in writing, of a date that the Work for the applicable Phase or the entire Project, as applicable will be ready for inspection by the Owner, Owner's Representative, representatives of the User Agency, and applicable Governmental Authorities to determine whether the Work for the applicable Phase or the entire Project, as applicable is Substantially Complete. Notice will be given by the Construction Manager at least thirty (30) Days in advance of that date. If the Owner's Representative concurs that the work will be ready for inspection and/or testing on the date stated, the Owner, the User Agency, the Owner's Representative, Architect, and other parties selected by the Owner, will make such inspection within a reasonable period of time. The scheduling of the inspection will not relieve the Construction Manager of its responsibilities under the Contract Documents. The Construction Manager is required to furnish access to all parts of the Project or the applicable portion thereof that is subject to inspection for the inspection.

29.5.1.2 Upon inspection the Owner and Architect will determine whether Substantial Completion of the Work for the applicable Phase or the entire Project, as applicable has been achieved. The Architect will prepare a Certificate of Substantial Completion of the Work for the applicable Phase or the entire Project, as applicable for execution by the Construction Manager.

29.5.2 Final Completion of the Work

29.5.2.1 Punch List Completion

The Construction Manager understands and agrees THAT TIME IS OF THE ESSENCE in closing out the Work of this Agreement for each applicable Phase and the entire Project. Upon Substantial Completion of the Work for the applicable Phase or the entire Project, as applicable, the Punch List will be transmitted to the Construction Manager from the Owner's Representative.

The Construction Manager agrees to begin performance of Punch List Work immediately after receipt of the Punch List.

Failure of the Construction Manager 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 Agreement.

Punch List Work will be continuously prosecuted once begun and completed no later than forty-five (45) Days after receipt of the Punch List from the Owner's Representative.

29.5.2.2 Final Completion of the Work

When the Construction Manager deems the Work for the applicable Phase or the entire Project, as applicable, including all Punch List Work, to be complete, the Construction Manager shall notify the Owner's Representative in writing that the Work for the applicable Phase or the entire Project, as applicable will be ready for an inspection and/or testing on a date specified by the Construction Manager. Such notice is to be given at least fifteen (15) Days in advance of said date. If the Owner's Representative concurs that the Work for the applicable Phase or the entire Project, as applicable will be ready for inspection on the date given, the Owner will make such inspection within a reasonable period of time. The scheduling of the inspection to determine whether the Work for the applicable Phase or the entire Project, as applicable is complete does not relieve the Construction Manager of its responsibilities under the Contract Documents. The Construction Manager must cooperate in all respects in the scheduling and performance of the inspection. Upon inspection, the Owner will determine if Final Completion of the Work for the applicable Phase or the entire Project, as applicable has been achieved and will issue a written notice to the Construction Manager confirming the Final Completion of the Work for the applicable Phase or the entire Project, as applicable.

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

The Work for the entire Project shall not be deemed Finally Completed until all Phases thereof and such portion of the Work that is not specifically designated in a particular Phase have been Finally Completed in accordance with the Contract Documents.

29.5.2.3 Consequence

Failure by the Construction Manager to provide requisite information, perform the required task(s) and/or within the specified timeframe, may be deemed an event of default.

ARTICLE 30
ENGAGEMENT OF CONSTRUCTION MANAGER, RIGHTS OF ASSIGNMENT AND SUBCONTRACTS

30.1 Engagement of Construction Manager; Subcontracting or Assignment of Agreement or Agreement Funds

Owner has engaged the Construction Manager to perform the Work as set forth in the Contract Documents and the Construction Manager hereby accepts such engagement upon such terms and conditions set forth in the Contract Documents. Construction Manager assumes full and total responsibility and liability for procuring and furnishing the Work, including any Deliverables, including all goods, equipment, and materials to complete the Work described in the Agreement. Construction Manager will:

(i) Act at all times as the single point of reference and contact for Owner and all performance under the Agreement;

(ii) Furnish the Work and all goods, equipment and materials necessary to complete the Work in a manner that complies with all applicable accreditation standards affecting Owner and/or the User Agency;

(iii) Procure and furnish all Deliverables under the Agreement, including all goods, equipment and materials necessary to complete the Work specified in the Agreement, regardless whether any particular goods or services is manufactured or supplied directly by Construction Manager or through a third party;

(iv) Furnish the Work and all goods, equipment and materials necessary to complete the Work inclusive of all activities and tasks necessary and appropriate for performance of the Work or all equipment and materials in accordance with the Agreement, subject to Owner's retention of performance of any activities or tasks for particular Work as specified in the Agreement;

(v) Furnish, install, configure, implement and integrate all goods, equipment and materials necessary to complete the Work, provide efficient business administration and project management with respect to this engagement, and appropriately supervise all work performed as part of this engagement, as necessary and appropriate to complete the installation, configuration, implementation and integration of all goods, equipment and materials necessary to complete the Work in accordance with the Agreement;

Prior to the commencement of the Construction Phase of the Work, the Construction Manager will identify in writing to the Owner's Representative, or such other party designated by the Owner in writing all subcontractors it intends to use in the performance of this Agreement (as further set forth in Section 15.1 of Book 1). The Owner's Representative will have the right to disapprove any identified subcontractor. Identification of subcontractors to the Owner's Representative is in addition to any Construction Manager communications about subcontractors with Owner other than with the Owner's Representative. All Construction Manager's subcontractors performing under this Agreement will be subject to the terms and conditions of this Agreement to the fullest extent applicable. Construction Manager will incorporate into each subcontract all provisions of this Agreement that affect such subcontract. Copies of all subcontracts must be provided by Construction Manager to the Owner's Representative upon

request.
Any subcontracting, assignment or other delegation by Construction Manager in violation of this Section 4.01 or of Section 24.11 of Book 1 will be null and void. The unauthorized subcontracting, assignment or other delegation of this Agreement, in whole or in part, or the unauthorized transfer or assignment of any funds or interest, in whole or in part, which shall be or become due Construction Manager, under this Agreement will have no effect on Owner.

30.2 No Assignment of Agreement

The Agreement shall not be subcontracted or assigned, in whole or in part, except as permitted under Section 24.11 of Book 1.

30.3 No Assignment of Agreement Funds

The Construction Manager shall not transfer or assign any Agreement funds or claims due or to become due except as permitted under Section 24.11 of Book 1.

30.4 Subcontracts

30.4.1 All Subcontractors which provide labor to the Project are subject to the acceptance of the Owner before they may provide material, labor or services on the Project. The Construction Manager, upon entering into any agreement with a Subcontractor that has been accepted by the Owner must furnish the Owner with one (1) copy of a written contract evidencing such agreement signed by the Construction Manager and Subcontractor. All subcontracts must be in writing. Construction Manager shall include a provision in all subcontracts for the Work that incorporates this Agreement by reference, and requires all Subcontractors to comply with the applicable terms and conditions of this Agreement. All subcontracts must require that any Work to be performed will be performed in strict accordance with this Agreement.

30.4.2 All requests for acceptance of Subcontractors or Material Suppliers must be submitted to the Owner for acceptance on the form acceptable to the Owner.

30.4.3 The Construction Manager may not make any substitution for a Subcontractor that has been accepted by the Owner, unless such substitution is acceptable to the Owner in writing. The Construction Manager shall provide the Owner with timely notice of any proposed substitution so as not to impede the progress of the Work.

30.4.4 The Construction Manager 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 Owner, or the Owner's assignee, without further approval or action by such Subcontractor:

30.4.4.1 "**THE CONSTRUCTION MANAGER HAS ASSIGNED THIS SUBCONTRACT TO THE OWNER, EFFECTIVE UPON WRITTEN ASSUMPTION OF SUCH ASSIGNMENT BY THE OWNER IN THE EVENT OF THE CONSTRUCTION MANAGER'S DEFAULT OR EARLY TERMINATION OF CONSTRUCTION MANAGER'S CONTRACT WITH THE OWNER. SUBCONTRACTOR HEREBY CONSENTS TO SUCH ASSIGNMENT AND ASSUMPTION. SUBCONTRACTOR ACKNOWLEDGES AND AGREES THAT, IN THE EVENT OF SUCH AN ASSIGNMENT AND ASSUMPTION, THE OWNER WILL HAVE NO LIABILITY TO SUBCONTRACTOR FOR WORK PERFORMED BY SUBCONTRACTOR PRIOR TO**

THE EFFECTIVE DATE OF THE ASSIGNMENT AND ASSUMPTION FOR WHICH THE CONSTRUCTION MANAGER HAS BEEN PAID BY THE OWNER, AND THAT SUBCONTRACTOR SHALL LOOK SOLELY TO THE CONSTRUCTION MANAGER FOR ANY COMPENSATION OR OTHER OBLIGATIONS ARISING UNDER THE SUBCONTRACT PRIOR TO SUCH DATE."

30.4.5 The Construction Manager hereby assigns any or all subcontracts to the Owner, effective upon the Owner's exercise, in its sole discretion, of its rights to assume such assignment as a remedy for the Construction Manager's default or in the event of early termination.

30.4.6 The subcontract must preserve the rights of the Owner under this Agreement with respect to the Work performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights. Where appropriate, the Construction Manager must require each Subcontractor to enter into similar subcontracts with its sub-subcontractors and material suppliers. The Construction Manager will provide to each Subcontractor, prior to the execution of such subcontract, copies of the provisions of this Agreement to which the Subcontractor will be bound.

30.4.7 There is no privity between Subcontractors and the Owner, nor shall the Owner's acceptance or approval of a particular Subcontractor be construed as creating any contractual relationship between the Owner and such approved/accepted Subcontractor. Except as may otherwise be explicitly provided in the Contract Documents, Subcontractors have no rights as third-party beneficiaries under this Agreement. The Construction Manager will require the Subcontractors to communicate with the Owner through the Construction Manager only.

30.4.8 The Construction Manager shall at all times be responsible for payments to Subcontractors for Work performed by such Subcontractors. Notwithstanding the foregoing, the Owner reserves the right to make direct payments to Subcontractors in the event the Owner, in its sole discretion, deems it to be in the best interests of the Owner to make such direct payments.

30.4.9 The Construction Manager shall require its Subcontractors to agree, in writing, to submit to the Construction Manager applications for payment in such reasonable time as to enable the Construction Manager to apply for payment as herein specified under Article 16, "Payments."

30.4.10 The Construction Manager 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.

30.4.11 The Construction Manager must disclose to the Owner the name and business address of each Subcontractor, attorney, lobbyist, accountant, consultant and any other person or entity whom the Construction Manager has retained or expects to retain in connection with the Work, as well as the nature of the relationship, and the total amount of the fees paid or estimated to be paid. The Construction Manager is required to disclose employees who have been identified as Key Personnel pursuant to Exhibit 4 of Book 1 and who are paid or estimated to be paid through the Construction Manager's regular payroll. "Lobbyist" means any person or entity who undertakes to influence any legislation or administrative action on behalf of any person or entity other than a not-for-profit entity, on an unpaid basis. "Lobbyist" also means any person or

entity any part of whose duties as an employee of another includes undertaking to influence any legislative or administrative action. If the Construction Manager is uncertain whether a disclosure is required under this Section, the Construction Manager must either ask the Owner whether disclosure is required or make the disclosure.

ARTICLE 31
INDEMNIFICATION, AND PERFORMANCE & PAYMENT BOND

31.1 Indemnification

31.1.1 Indemnity

31.1.1.1 The Construction Manager covenants and agrees to protect, defend, indemnify, and hold the Owner, Owner's Representative, Owner's consultants, the User Agency (if any) and their respective directors, commissioners, officers, officials, agents, representatives, and employees, and their respective heirs, successors and assigns, (hereafter "the Indemnified Parties"), free and harmless from and against any and all liabilities, claims, damages, demands, and actions for injuries to persons or damage to property (excluding the Work), in consequence of granting this Agreement or arising out of or being in any way connected with the Construction Manager's performance under this Agreement except for matters shown by final judgment to have been caused by or attributable to the Indemnified Parties' negligence. The indemnification provided herein will be effective to the maximum extent permitted by Law. This indemnity extends to all legal costs, including, without limitation: attorney's fees and experts' fees and expenses at trial and on appeal and litigation expenses, costs, liens, judgments, settlements, penalties, professional fees, or other expenses incurred by the Indemnified Parties, including but not limited to, fines and penalties imposed by public bodies and the reasonable settlement of such claims.

31.1.1.2 To the fullest extent permitted by Law, the Construction Manager shall protect, defend, indemnify, and hold the Indemnified Parties harmless from all liabilities, claims, demands, actions, suits and costs (including, without limitation, reasonable attorneys' fees, expert fees, court costs and expenses), if caused by reason of or as result of the Construction Manager's breach of this Agreement (including any material misstatement contained in any representation made by the Construction Manager, or breach of any warranty made by the Construction Manager) or failure to perform in accordance with the Contract Documents, including, without limitation, any failure to comply with Laws.

31.1.1.3 The Construction Manager shall: (i) to the fullest extent permitted by law, protect, defend, indemnify, and hold the Indemnified Parties harmless from and against any and all liability, loss, suits, claims, actions, causes of action, proceedings, demands, costs, penalties, fines and expenses (including, without limitation, reasonable attorneys' fees, expert fees, court costs and expenses), and clean-up costs, if caused by reason of or as result of the generation, storage, treatment, handling, transportation, disposal or release by the Construction Manager or any entity for whom the Construction Manager is responsible of any Hazardous Materials brought onto the Project Site by the Construction Manager, its Subcontractors, sub-subcontractors or anyone for whom the Construction Manager is legally liable other than to the extent explicitly required by the Contract Documents; and (ii) with reasonable promptness, remove or cause the

removal of such Hazardous Materials from the Project Site or otherwise remediate such condition, in each case in accordance with applicable Laws.

31.1.1.4 To the fullest extent permitted by law, the Construction Manager shall protect, defend, indemnify, and hold the Indemnified Parties harmless from all liabilities, claims, demands, actions, suits and costs (including, without limitation, reasonable attorneys' fees, expert fees, court costs and expenses) if caused by reason of or as result of a notice of lien, claim for lien, lien, or suit to foreclose a lien filed, given, made or maintained by a Subcontractor, sub-subcontractor or Supplier, provided that the Construction Manager has received undisputed payments due to date pursuant to the terms of the Agreement.

31.1.1.5 The Construction Manager shall be solely responsible for the defense of any and all claims, demands, or suits against the Indemnified Parties, including without limitation, claims by an employee, Subcontractors, agents, or servants of the Construction Manager even though the claimant may allege that the Indemnified Parties were in charge of the Work or allege negligence on the part of the Indemnified Parties. The Owner will have the right, at its sole option, to participate in the defense of any such suit, without relieving the Construction Manager of its obligations hereunder. Any settlement will be made only with the prior written consent of the applicable Indemnified Party, if the settlement requires any action on the part of such Indemnified Party.

31.1.1.6 "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 the Construction Manager, its Subcontractors, agents, servants, or employees, of any scaffolding, hoist cranes, stays, ladders, supports, rigging, blocking, or any other kind of items of equipment or materials, whether or not the same be owned, furnished, or loaned by the Indemnified Parties.

31.1.1.7 The Construction Manager will promptly provide, or cause to be provided, to the Owner and the Owner's Representative copies of such notices as the Construction Manager may receive of any claims, actions, or suits as may be given or filed in connection with the Construction Manager'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.

31.1.1.8 The indemnification set forth in this Section 5.01 is not limited by any amount of insurance or performance bond required under this Agreement. Further, the indemnity contained in this Section will survive the expiration or termination of this Agreement.

31.1.1.9 To the extent permissible by Law, the Construction Manager waives any limits to its obligations to defend, indemnify, hold harmless or contribute any sums due pursuant to its obligations set forth hereunder, including any claims by any employee of the Construction Manager that may be subject to the Workers' Compensation Act, 820 ILCS 305/1 et. seq. or any other related law or judicial decisions (such as, Kotecki v. Cyclops Welding Corporation, 146 Ill.2d 155 (1991)). The Owner, however, does not waive any limitations it may have on its liability under the Illinois Workers Compensation Act, the Illinois Pension Code, or any other statute or judicial decision. The indemnities in this Section survive expiration or

termination of the Agreement for matters occurring or arising during the term of the Agreement or as the result of or during the Construction Manager's performance of the Work beyond the term of the Agreement.

31.2 Performance and Payment Bond

31.2.1 Before award of the Agreement, the Construction Manager will deliver to the Owner 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 Owner and the bond must be in the form acceptable to the Owner. The bond must cover the warranty period required by the Agreement.

31.2.2 In case of neglect, failure, or refusal of the Construction Manager to provide satisfactory sureties when so directed within seven (7) Days after such notification, the Owner may declare this Agreement forfeit, but such forfeiture will not release the Construction Manager or its surety or sureties from any liability which may have accrued prior to the date of such forfeiture.

31.2.3 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 Owner, unsatisfactory, or unable to respond to damages in case of liability on such bond, the Owner will notify the Construction Manager and direct that a bond issued by a satisfactory surety or sureties be provided forthwith.

31.2.4 Surety for Bond. The Performance and Payment Bond required by the Agreement must be secured by a guarantee or surety company listed in the latest issue of U.S. Treasury Circular 570.

31.2.5 Subcontractor Bonds. If requested by Owner, the Construction Manager shall furnish and deliver to the Owner bonds with respect to the Work of those Subcontractors and/or trades performing the Work as specifically identified by the Owner (collectively, the "Subcontractor Bonds"). Any such Subcontractor Bonds securing a Subcontractor's performance and/or payment obligations shall be issued on AIA Document A312-2010 Payment Bond and AIA Document A312-2010 Performance Bond forms or other form(s) approved by Owner, and shall name the Construction Manager and Owner as dual obligees thereunder. The Subcontracts shall require that the amount of each Subcontractor Bond shall be equal to one hundred percent (100%) of the subcontract price. The cost of such Subcontractor Bonds shall be included in the Contract Price. The Construction Manager shall expressly require in the relevant Subcontract that it shall be the duty of the Subcontractor to advise the surety or sureties of any Change Orders that result in an increase to the subcontract price and to ensure that the amount of the Subcontractor Bonds required are updated to reflect and cover any such increases throughout the course of the Project. If required by any lender providing financing for the Project, such shall be identified as a dual or co-obligee on each of these Subcontractor Bonds. The Construction Manager shall furnish to Owner proof of any required Subcontractor Bonds prior to the start of the Work of the applicable Subcontractor.

ARTICLE 32
PERMITS AND LICENSES

32.1 Permits, Licenses, and Regulations

32.1.1 Permits

32.1.1.1 The Construction Manager is responsible for obtaining all permits, including but not limited to sewer, water, crane, fence, driveway, foundation and building permits, as prescribed by the applicable Governmental Authorities, and any other permits that may be necessary in connection with the performance of the Work.

32.1.1.2 The Construction Manager will confer with the Owner's Representative prior to applying for the building permit, and the parties will agree on the process for obtaining the building permit prior to the Construction Manager's application for such permit. The Construction Manager is solely responsible for obtaining all required permits in a timely fashion.

32.1.1.3 The nature of the foundation systems may be such that submittals, permits, and coordination will be required with the appropriate Governmental Authorities. If such systems are required by the Contract Documents, the Construction Manager, representing its familiarity with these systems and permit processes, is responsible for any and all submittals, fees, coordination, and any other items required to secure approvals required by the applicable Governmental Authorities having jurisdiction for the installation of these systems.

32.1.2 Licenses and Regulations

32.1.2.1 The Construction Manager will include in the GMP Proposal for the Project, obtain, and pay for all licenses and certificates of inspection required or necessary for the execution and completion of the Work.

32.1.2.2 The Construction Manager must give all notices and comply with all applicable Laws bearing on the conduct of the Work. If the Construction Manager observes that the Drawings and Specifications are at variance therewith, prompt notification in writing must be given to the Owner's Representative, and any necessary changes must be made in accordance with Article 17, "Changes in the Work." If the Construction Manager fails to provide such notice, or otherwise performs the Work contrary to applicable Laws, the Construction Manager will bear all costs arising from any Work performed that is contrary to such Laws.

32.1.2.3 Regulations applicable to this Project include, but are not limited to the most current editions of, the following:

City of Chicago Municipal Code when in Chicago limits

Local, State, and Federal Authorities Having Jurisdiction

National Fire Protection Association Codes and Standards (NFPA)

National Electrical Code (NFPA 70: NE)

Illinois Plumbing Code (77 Illinois Administrative Code 890)

Illinois Accessibility Standards (71 IAC 400)

Americans with Disabilities Act (ADA)

American Society of Heating, Refrigerating and Air-Conditioning Engineers Standards and Guidelines (ASHRAE)

American Society of Mechanical Engineers (ASME)

American Institute of Steel Construction (AISC)

American National Standards Institute (ANSI)

32.1.2.4 Submit copies of all permits, licenses, and similar permissions obtained, and receipts for fees paid, to the Owner's Representative.

32.1.2.5 It shall be the responsibility of the Construction Manager to coordinate, procure and pay for all connections necessary for the completion and operation of the fire alarm system. Construction Manager shall arrange and pay for all fees as required by the appropriate Governmental Authorities.

32.1.2.6 The Construction Manager shall be responsible for the payment of any utility fees (including, without limitation, costs related to engineering and installation) related to any of the public utilities incorporated into, or comprising a part of, the Project.

ARTICLE 33
THE CONSTRUCTION MANAGER'S PRACTICES AT THE SITE

33.1 Hours of Work

33.1.1 The Construction Manager 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 Agreement. If the nature of the Work requires that parts of it be performed outside of regular working hours, the cost of such Work including any overtime wages is to be included in the Contract Price. If the Project falls behind schedule, the Construction Manager will be required to perform the Work by extra shifts or on overtime basis or furnish additional workers as may be necessary to complete the Work on time at no additional cost to the Owner.

33.1.2 The Construction Manager 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 Owner; 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.

33.1.3 Whenever the Construction Manager desires to perform Work outside the hours of [_____ a.m. through _____ p.m., Monday through Friday], the Construction Manager will request written authorization from the Owner not less than one week in advance.

33.2 Cleaning Up

33.2.1 During construction, the Construction Manager will keep the Site and adjacent premises as free from material, debris, and rubbish and will remove the same entirely and at once, if in the opinion of the Owner, said material, debris, or rubbish constitutes a nuisance, a safety hazard, or is objectionable in any way to the Owner. Upon oral and/or written notification of unacceptable site conditions by the Owner, the Construction Manager shall immediately remediate such conditions and complete such remediation within 48 hours of notification. The Construction Manager's failure to act accordingly will result in completion of remediation work by the Owner at the Construction Manager's expense.

33.2.2 As a condition of Final Completion of the Work, the Construction Manager 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.

33.2.3 The Construction Manager 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 the Construction Manager's operations.

33.2.4 The Construction Manager is solely responsible for and assumes all liability associated with off-site disposal of any Hazardous Materials generated as a result of the Construction Manager's construction activities.

33.3 Project Health and Safety

The Construction Manager is responsible for the Project health and safety as of the date stated in the Notice to Proceed.

33.3.1 Worker's Health and Safety

33.3.1.1 The Construction Manager has sole and complete responsibility for implementation of a safety program. The Construction Manager's safety program ("Safety Program'') must include the Work of all the Construction Manager's Subcontractors and suppliers, and shall comply with all applicable safety Laws. The Safety Program must be submitted to the Owner before the start of the Work. The Owner shall have the right to require the Construction Manager to revise the Safety Program. The Construction Manager acknowledges and agrees that revising its Safety Program as required by the Owner does not in any way attenuate, limit, transfer or otherwise affect the Construction Manager's sole and complete responsibility and liability for its Safety Program. Owner reserves the right to require additional changes to the safety program if the Construction Managers ERM rating exceeds 1.0, or if Owner otherwise determines that Construction Manager, or anyone acting on behalf of the Construction Manager, is not complying with the Safety Program or that the Safety Program itself is deficient in any way.

33.3.1.2 The Construction Manager's Safety Representative shall be present whenever the Work is being performed at the Project Site or whenever delivery of materials, products or equipment is being made at the Project Site. The Safety Representative must have

successfully completed all required OSHA training, and such other training courses normally possessed by safety representatives working on projects of this size and complexity**.**

33.3.1.3 Although the Owner's Representative will observe construction and give the Construction Manager opinions and suggestions about safety defects and deficiencies, the Owner's Representative's suggestions on safety will in no way relieve the Construction Manager of its responsibility for safety on the Project. The Construction Manager has sole responsibility for safety.

33.3.1.4 The Construction Manager must comply with the requirements of the OSHA Regulations, 29 CFR Part 1926 (originally CFR Part 1518).

33.3.1.5 The Construction Manager'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. The Federal and State standards require that the Construction Manager provide reasonable protection to the lives, health and safety of all persons employed under the Agreement. The State act, rules and the applicable parts thereof will be considered as part of the Contract Documents.

33.3.1.6 The Construction Manager must comply with all local safety Laws including, those set forth in the applicable Municipal Code of Chicago or the applicable jurisdiction the project is located in.

33.3.1.7 The Construction Manager 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 Construction Manager 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, consultants, inspectors, Owner, end-user groups, and when applicable, the public during the performance of the Work.

33.3.1.8 The Construction Manager must keep on the Project Site completely equipped first aid kits readily accessible at all times. The Construction Manager will designate a person on each shift, acceptable to the Owner's Representative, to be in charge of first aid and will cause such person to receive proper instructions therein.

33.3.1.9 Only such materials and equipment as are necessary for the construction of the Work under this Agreement, as determined by the Owner's Representative, will be placed, stored or allowed to occupy any such space of the Project Site. If gasoline, flammable oils, or other highly combustible materials must be stored at the Site, they will be stored in approved safety containers, and in accordance with all applicable Laws.

33.3.2 Hazardous Materials

33.3.2.1 If the Construction Manager encounters material on the Site reasonably believed to be hazardous which has not been identified in the Contract Documents or rendered harmless, the Construction Manager will immediately stop the Work in the area affected and report the condition to the Owner's 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 Owner's Representative to the Construction Manager.

33.3.2.2 The Construction Manager will not be required to perform, without its consent, any Work in the presence of Hazardous Materials.

33.3.2.3 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 Construction Manager, the Construction Manager, will, upon recognizing the condition, immediately stop the Work in the affected area and report the condition to the Owner's Representative in writing.

33.3.3 Coordination With Separate Contractors - Safety

33.3.3.1 In accordance with the provisions of Book 1, Article 8, "Coordination With Separate Contractors," the Construction Manager will cooperate with Separate Contractors in connection with the compliance with regulations of OSHA and all other applicable Laws relating to Site safety and practice including, as may be relevant, correcting Work within abatement periods, and furnishing such supporting information or material as may be necessary to fully protect the rights of the Owner, its representatives, and Separate Contractors.

33.3.4 Public Health and Safety

33.3.4.1 The Construction Manager must prevent the public from gaining access to the Project Site.

33.3.4.2 The Construction Manager 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.

33.3.4.3 The Construction Manager will erect and properly maintain at all times, as required by applicable Laws 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.

33.3.4.4 If, in the prosecution of the Work, it is necessary to excavate or occupy any street, alley, or public grounds of the City of Chicago or the applicable jurisdiction the project is located in, the Construction Manager 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 Construction Manager is liable for all damage caused by the Construction Manager, its agents, employees, or Subcontractors of any tier in the excavation or occupation of any street, alley, or public grounds, and indemnifies the Owner pursuant to Section 5.01, "Indemnification."

33.3.5 Firearms and Other Weapons

The Owner 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 Owner office premises, the Project Site and any place in which the Owner's business is conducted is prohibited. Further, possession of firearms, explosives, or other weapons anywhere on Owner's property or on the Project Site or while conducting the Owner's business is prohibited. The Construction Manager must, at a minimum, comply with all 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.; and the City of Chicago Firearms and Other Weapons Ordinance, Chicago Municipal Code, Sec. 8-24-005, et. seq. or the applicable jurisdiction the project is located in. Further, as a condition of employment and/or contract, individuals (other than security personnel approved in writing by the Owner) may not bring weapons onto Owner premises or the Project Site (including parking lots), even in situations where such conduct would be allowed under the applicable Laws.

33.3.6 Construction Site Cleanliness

33.3.6.1 The Construction Manager must comply with all requirements of Section 13-32-125 of the Chicago Municipal Code entitled, 'Construction Site Cleanliness" or the applicable jurisdiction the project is located in.

33.3.6.2 The Construction Manager must mow all grass or weeds on the Site as directed by the Owner's Representative.

33.4 Protection of Work and Property

33.4.1 The Construction Manager will continuously protect the Work and the Owner's property from damage, theft, injury or loss arising in connection with operations under the Contract Documents. The Construction Manager will make good any such damage, theft, injury or loss. Construction Manager is responsible for security of the Site, including, but not limited to, watchmen and construction fencing. Dogs and other animals or pets are not allowed on the Site at any time.

33.4.2 The Construction Manager will at all times provide and maintain reasonable protection so as to preserve all Work, materials, equipment, apparatus, and fixtures free from injury or damage, regardless whether such materials, equipment, apparatus or fixtures are stored at the Work site, or offsite in another location suitable to the Owner in Owner's sole discretion.

33.4.3 The construction period may span the winter season and other times in which cold or inclement weather may be anticipated. The Construction Manager must make all provisions required and necessary to work during inclement or winter conditions so as to complete the Work in accordance with the 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 Construction Manager as part of the Contract Price.

33.4.4 Adequate precautions will be taken against fire throughout all of the Construction Manager's operations. Flammable material must be kept at an absolute minimum, and, will be properly handled and stored in accordance with all applicable Laws. Except as otherwise provided

herein, the Construction Manager must not permit fires to be built or open salamanders to be used in any part of the Work. Except in areas designated by the Owner's Representative, smoking is otherwise not permitted on the Site at any time.

33.4.5 The Construction Manager 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 Construction Manager 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 Contract Price. The Construction Manager, before commencement of any part of the Work, must give any notices required to be delivered to any adjoining landowner or other parties.

33.4.6 If, in the opinion of the Owner, the Construction Manager's Work endangers adjoining property, the Work will be stopped when directed in writing by the Owner's Representative, and the method of operation changed in a manner acceptable to the Owner.

33.4.7 The Construction Manager must protect all areas affected by or adjacent to the Work. If such items are damaged by the Construction Manager, the Construction Manager will make all necessary repair thereof or replacements thereof at no cost to the Owner. It is the Construction Manager's responsibility to provide photographic evidence of the condition of the Site as well as adjacent property, and submit such to the Owner's Representative prior to commencement of the Work.

33.5 Accidents

33.5.1 If death, serious injury, including any time 911 is called, or serious damages occur, the Construction Manager must notify the Owner's Representative immediately via telephone.

33.5.2 The Construction Manager will promptly report in writing to the Owner's 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 Construction Manager to submit a written accident report, within twenty-four (24) hours of the occurrence, containing the following:

33.5.2.1 Name of Person or Persons involved and Home Address(es)

33.5.2.2 Location of Occurrence

33.5.2.3 Time of Day and Date

33.5.2.4 Description of Occurrence

33.5.2.5 Statements of Witnesses

33.5.2.6 Signature of the Construction Manager's Superintendent

33.5.2.7 Any other documentation of the accident, if any (i.e. police report, OSHA report, medical documentation, etc.)

33.5.3 The Construction Manager must send a copy of the accident report to the risk manager retained by the Owner and to the Owner's Representative.

33.5.4 The Construction Manager shall provide the Owner's Representative or such other designated party as provided pursuant to Section 4.01 above, with prompt written notification of any occurrence, on Owner premises or otherwise, which pertains in any way to the Agreement and which results in either bodily injury to employees or third parties or property damage. The Construction Manager shall provide the Owner's Representative, or his/her designee, with verbal notice within twenty-four (24) hours of any occurrence, on Owner premises or otherwise, which pertains in any way to the Agreement and which results in either bodily injury to employees or third parties or property damage. Within three (3) business days following any such occurrence, the Construction Manager shall provide Owner's Representative as applicable with prompt written notification (no later than three (3) business days) of any occurrence, on Owner premises or otherwise, which pertains in any way to the Agreement and which results in either bodily injury to employees or third parties or property damage. The report shall include the name of person(s) injured, if any; name of the injured person's employer, if any; the date, time and location of the occurrence; description of the extent of injury and/or damage; the name(s) of witnesses; the names of any providers known to have provided treatment for injuries sustained; and such other information as may be required by the Owner. The Construction Manager shall notify the local police regarding any occurrence requiring an official police record.

33.5.5 The report submitted to the Owner should indicate whether the police were notified and, if so, the number of the police reports. The report shall include the name of person(s) injured, if any; name of the injured person's employer, if any; the date, time and location of the occurrence; description of the extent of injury and/or damage; the name(s) of witnesses; the names of any providers known to have provided treatment for injuries sustained; and such other information as may be required by the Owner. The Construction Manager shall notify the local police regarding any occurrence requiring an official police record. The report submitted to the Owner should indicate whether the police were notified and, if so, the number of the police reports.

33.5.6 If any claim is made by anyone against the Construction Manager or any Subcontractor on account of any accident, the Construction Manager will promptly report the facts and full details of the claim in writing to the Owner's Representative.

33.6 Coordination with Occupants for Access and Security

33.6.1 The area available to the Construction Manager 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.

33.6.2 Access to the Project will be limited to the routes indicated. The Construction Manager must obtain prior written approval from the Owner's Representative for any proposed alternate routes.

33.6.3 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 Owner's Representative.

33.6.4 Security Procedures. The following security procedures must be followed by the Construction Manager:

33.6.4.1 Limit access to the Project to persons involved in the Work.

33.6.4.2 Provide secure storage of materials for which the Owner has made payment and which are stored on Site.

33.6.4.3 Secure completed and partially completed Work prior to occupancy as required to prevent loss.

33.6.4.4 Secure and protect facilities and property of the Owner and User Agency in areas of the Work.

33.6.5 The Owner reserves the right to prohibit any person from entering any Owner facility for any reason. All contractors and subcontractors of the Construction Manager shall be accountable to the Owner's Representative, or his/her designee while on any Owner property and shall abide by all rules and regulations imposed by the Owner and/or User Agency's Policies applicable to the scope of the Agreement including but not limited the policy requiring use of Owner or User Agency's vendor credentialing and financial systems.

33.6.6 The Construction Manager shall confer with the Owner's Representative, or his/her designee, to ascertain full knowledge of all rules and regulations of the Owner facilities relative to the Agreement and shall cause all of its employees, agents and subcontractors to comply therewith. The Construction Manager shall confine the operations of its employees, agents and subcontractors on Owner premises to the performance of the Agreement consistent with limits indicated by applicable Laws and/or direction of the Owner's Representative and shall not encumber the premises with materials or debris. In performing the Agreement, the Construction Manager shall not cause or permit a condition that endangers the safety of others and shall not load or permit any part of a structure to be loaded with a weight that will endanger the safety of the structure or any persons.

33.7 Temporary Facilities and Services

33.7.1 Definitions

33.7.1.1 Temporary Facilities: Construction, fixtures, fittings, and other built items required to accomplish the Work but which are not incorporated into the finished Work.

33.7.1.2 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.

33.7.2 Submittals

33.7.2.1 Reports of inspections, tests, and approvals for the installation and use of construction facilities, which are made or given by Governmental Authorities.

33.7.2.2 Copies of permits required by Governmental Authorities.

33.7.3 Quality Assurance

33.7.3.1 The Construction Manager must comply with requirements of Governmental Authorities, as to type, quantity, location, and use of Temporary Facilities.

33.7.3.2 Comply with requirements of public utilities affected.

33.7.4 Sequencing and Scheduling

33.7.4.1 The Construction Manager must perform all required connections to the existing utility systems without disruption to existing services if any. If disruption of the existing services is required, do not proceed without the approval of the Architect and Owner's Representative, requested not less than fifteen (15) Days in advance.

33.7.4.2 The Construction Manager must maintain required facilities until not needed or until shortly before Substantial Completion; remove facilities before Final Completion of the Work.

33.7.4.3 The Construction Manager must change over to use of permanent facilities, when applicable, as soon as possible, except when use of permanent facilities is not allowed.

33.7.5 Materials

33.7.5.1 General: The Construction Manager must provide materials which are both suitable for the use and durable enough to withstand the use and abuse to be expected.

33.7.5.2 Temporary Heating Units: UL or FM labeled for the fuel used; do not use gasoline-burning, open burning, or solid fuel heaters or salamanders.

Use equipment that is known to be safe and that will not damage Work in progress.

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 manufacturer, whichever is more stringent.

33.7.6 Temporary Utilities, Construction Manager Obligations

33.7.6.1 Temporary Water Service, the Construction Manager Obligations:

Provide water adequate for demand of construction operations.

Piped water service:

Do not use permanent piping system to distribute non-potable water.

Connect to existing water main.

Provide meter and shut-off valve.

Disinfect temporary piping before use.

Take precautions to prevent damage due to leaks and spills.

33.7.6.2 Temporary Power and Light, the Construction Manager Obligations:

Provide electricity adequate for demand of construction operations.

Electrical service:

Obtain temporary service from local utility.

Provide disconnect at connection to service.

Provide service conductors and equipment.

Provide metering equipment.

Provide service to other Temporary Facilities specified.

33.7.7 Protective Facilities, the Construction Manager Obligations

The Construction Manager shall provide protective facilities as set forth in the Specifications.

ARTICLE 34
COORDINATION WITH THE OWNER AND SEPARATE CONTRACTORS

34.1 Owner and Separate Contractors on the Site

The Owner reserves the right to enter into other contracts or to self-perform certain functions in connection with the Work. The Construction Manager will afford the Owner and Separate Contractors reasonable opportunity for the introduction and storage of their materials and for the performance of their work. The Construction Manager will coordinate and tie-in, where appropriate, its Work with that of the Owner and Separate Contractors in an acceptable manner and perform the Work in proper sequence to the work of the Owner and Separate Contractors. Such work being performed by the Owner or Separate Contractors will not in any way constitute acceptance or partial acceptance of the Work by the Owner.

34.1.1 The Construction Manager must conduct the Work so as not to interfere with or hinder the progress or completion of the work being performed by the Owner or Separate Contractors within or adjacent to the Site.

34.1.2 If any part of the Construction Manager's Work depends, for proper performance or result, upon the work of the Owner or any Separate Contractor, the Construction Manager will inspect and measure the work of the Owner or the Separate Contractor, as applicable, and promptly report to the Owner's Representative any defects or discrepancies in such work. The Construction Manager's failure to inspect and make such report will constitute an acceptance of the Owner's work or the Separate Contractor's work as fit and proper for the proper performance of the Work, except as to latent defects.

34.1.3 Wherever work being done by the Owner or any such Separate Contractors or subcontractors is contiguous to the Work covered by the Contract Documents, the respective rights of the parties will be established by the Owner's Representative to secure the completion of the various portions of the Work in a coordinated manner. Further, the Owner's Representative will give Construction Manager advance notice relating to the Owner's work or Owner supplied materials and equipment in connection with the Work.

34.2 Mutual Responsibility of the Construction Manager and Separate Contractors

34.2.1 The Construction Manager is responsible for the Work not completed or accepted due to the presence and operations of Separate Contractors.

34.2.2 The Construction Manager is liable, financially or otherwise, in connection with this Agreement, and must protect and save harmless the Owner from any and all damages or claims that may arise because of inconvenience, delay, or loss experienced due to the presence and operations of Separate Contractors working within the limits of the Work.

34.2.3 The Construction Manager, where Separate Contractors or their subcontractors are employed on the Site, will not make claims against the Owner for loss or damage or injury caused by any fault or negligence of such Separate Contractors or subcontractors. The Construction Manager will look solely to such contractors or subcontractors for recovery for any such damage or injury.

34.2.4 If any Separate Contractor or its subcontractor suffers loss or damage through any acts or omission on the part of the Construction Manager, or any of its Subcontractors, the Construction Manager will reimburse such Separate Contractor or Subcontractor. If such Separate Contractor or its subcontractor asserts any claim against the Owner on account of any damage or loss alleged to have been so sustained, the Owner will notify the Construction Manager, and the Construction Manager will save the Owner harmless against such claims as provided in Section 5.01, "Indemnification."

34.3 Coordination with Separate Contractors

The Construction Manager is to inform the Owner's Representative when coordination of the Construction Manager's Work with the work of Separate Contractors is required and shall notify each party involved, in writing, of the Schedule and nature of activities that require such coordination.

ARTICLE 35
PERSONNEL

35.1 Competency of Workers

The Construction Manager must employ only competent and efficient laborers, mechanics or artisans. Whenever, in the opinion of the Owner 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 Agreement, the Construction Manager must, upon request by the Owner's Representative, remove such worker from the Work and must not use such worker again, except with the written consent of the Owner.

35.2 Administration and Supervision of the Work

35.2.1 The Construction Manager 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 full satisfaction of the Owner. The Construction Manager shall fully comply with all project-specific staffing requirements indicated in Book 1 and in the Contract Documents. In the event the Owner determines, in his or her sole discretion, that additional supervision or administration is required, the Construction Manager shall furnish sufficient personnel to perform such supervision or administration, all at the Construction Manager's own expense.

35.2.2 Subsequent to notice of contract award, but prior to the Notice to Proceed, the Construction Manager will select a project manager ("Project Manager") and submit his/her resume to the Owner's Representative for the approval of the Owner. 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 Owner or Architect in order to render reports on the progress of the Work. The Construction Manager will not change the Project Manager without the consent of the Owner, unless such staff member proves to be unsatisfactory to the Construction Manager and ceases to be in its employ.

35.3 Superintendence

35.3.1 When required by the Owner, the Construction Manager must keep on the Project throughout its duration a competent, experienced and qualified superintendent (the "Superintendent") and any necessary assistants, all of whom must be satisfactory to the Owner. The Superintendent's resume, if not already submitted to and approved by the Owner before the Agreement is signed as part of the RFP process, will be submitted to the Owner's 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 Owner. The Superintendent will be present at the Site when the Construction Manager's personnel and/or Subcontractors are present.

35.3.2 The Superintendent will not be changed without the consent of the Owner, unless the Superintendent proves to be unsatisfactory to the Construction Manager or becomes unavailable due to reasons beyond the control of the Construction Manager. In order to change the Superintendent, the Construction Manager will provide the Owner's Representative written notice and submit for approval the qualifications of the proposed replacement Superintendent at least fifteen (15) Days prior to the intended change.

35.3.3 The Superintendent will represent the Construction Manager 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.

35.4 Scheduler

35.4.1 When required by the Owner, to assist in the preparation and maintenance of the Schedule, the Construction Manager may engage, at its own expense, a consultant who is skilled in the application of network techniques for construction projects and the use of specified scheduling software. If the Construction Manager has qualified personnel on staff, the Construction Manager may perform the required scheduling with its own organization.

35.4.2 Prior to engaging a consultant or using staff personnel, and within five (5) Days after award of Agreement, the Construction Manager will submit to the Owner's Representative:

35.4.2.1 The name and address of the proposed consultant or staff person

35.4.2.2 Sufficient information to show that the proposed consultant or the Construction Manager's staff has the qualifications to meet the Scheduling requirements

35.4.2.3 A list of prior construction projects and three (3) selected representative Schedule samples that the proposed consultant or the Construction Manager's staff has prepared. These three (3) CPM Schedules must be for projects similar in complexity and magnitude to this Project.

35.4.3 The Owner has the right to approve or disapprove employment of the proposed consultant or the performance of the Schedule requirements of the Agreement by the Construction Manager's staff, and the Owner's Representative will notify the Construction Manager of its decision within fifteen (15) Days of receipt of the information. In case of disapproval, the Construction Manager will submit another person with supporting documents within fifteen (15) Days. The Owner also reserves the right to disqualify the consultant or the Construction Manager's staff personnel at any time throughout the Project if the preparation, presentation, reporting, and updating of the Schedule by such consultant or staff personnel do not, in the Owner's opinion, meet the degree of detail described in the Contract Documents. Such approval or disapproval does not release the Construction Manager of any of its obligations under this Agreement.

35.5 Mechanical and Electrical Coordinator

35.5.1 When required by the Owner, the Construction Manager must provide, at its expense, a staff member or members as necessary or a consultant, with the following qualifications who will be responsible for performing mechanical and electrical coordination stated below

("MEP Coordinator"). The Owner has the right to approve or disapprove the MEP Coordinator. The proposed MEP Coordinator shall be experienced in coordination of mechanical and electrical work on projects of similar type and scale, including administration and supervision of mechanical and electrical work. The MEP Coordinator's resume, if not already submitted to and approved by the Owner before the Agreement is signed as part of the RFP process, will be submitted to the Owner's 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 Owner. The Owner's Representative will notify the Construction Manager of its approval or disapproval of the proposed MEP Coordinator within fifteen (15) Days of receipt of the proposed MEP Coordinator's resume. In case of disapproval, the Construction Manager will submit another proposed MEP Coordinator's resume within fifteen (15) Days. Such approval or disapproval does not release the Construction Manager of any of its obligations under this Agreement.

35.5.1.1 The responsibilities of the mechanical and electrical coordinator include but are not limited to those that are listed below (it being the understanding of the parties that the Specifications may contain additional requirements):

Coordinate all HVAC, plumbing, fire protection, electrical and site utility work, and coordinate that Work with the other work on the Site.

Where space is limited, coordinate arrangement of mechanical, electrical and other Work to Fit.

Coordinate cutting and patching activities and sequencing.

Coordinate use of Temporary Facilities.

Prepare coordination drawings where required and where indicated.

Prepare and maintain a separate Schedule of activities which relate to this Work: include:

Submittals & Shop Drawings

Temporary Utilities

Commissioning

Training of Owner's employees

Participate in progress meetings. Report progress, changes required in schedules, and unresolved problems.

Review submittals for compliance with the Contract Documents, Commissioning plan, and for coordination with other Work including, but not limited to:

Check field dimensions, clearances, relationships to available space, and anchors.

Check compatibility with equipment, other Work, electrical characteristics, and operational control requirements.

Check motor voltages and control characteristics.

Coordinate controls, interlocks, wiring of switches, and relays.

Coordinate wiring and control diagrams.

Review the effect of changes on other Work.

Obtain and distribute installation requirements for each item of equipment requiring mechanical or electrical connections; include:

Electrical power characteristics.

Control wiring requirements.

Observe and maintain record of tests and inspections.

Observe Work for compliance with Contract Documents and Commissioning plan, and notify the applicable contractors or Subcontractors in writing of deficiencies in the Work.

Coordinate and observe start-up, demonstration, and functional testing of equipment and systems.

Coordinate maintenance of Record Documents.

Assist the Owner's Representative and Architect with final inspections.

35.6 Sustainability Coordinator

When required by the Owner, the Construction Manager must have, at its expense, a designated sustainability coordinator (the "Sustainability Coordinator") to assist the Construction Manager in fulfilling all sustainability required tasks. The Sustainability Coordinator is subject to the approval of the Owner, and shall be experienced in the sustainability tasks on projects of similar size and complexity in order to be approved by the Owner.

35.7 Wage Rates

35.7.1 The Construction Manager must ensure that all laborers, mechanics, and other workers performing Work under this Agreement are paid wages in compliance with the current Cook County Living Wage ordinance (Cook County Code of Ordinances Sec. 34-160) established by the County's Chief Financial Officer, a copy of which is attached to Book 1 as Exhibit 19, and the Prevailing Wage Act, 820 ILCS 130/0.01 *et seq* (the "Prevailing Wage Act").

35.7.2 As a condition of making payment to the Agreement, the Owner may request the Construction Manager 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 Agreement in accordance with all applicable Laws.

ARTICLE 36
SCHEDULE

36.1 Time Is of The Essence

TIME IS OF THE ESSENCE IN THIS AGREEMENT. The Construction Manager agrees that it will commence the performance of the Work on the date set forth in the Notice to Proceed issued by the Owner and that it will complete the Work and each applicable Phase thereof within the time set forth in Book 1 as **Exhibit 11**.

36.2 The Construction Manager's Construction Schedule

36.2.1 General

36.2.1.1 Upon request by the Owner's Representative, the Owner's Representative shall lead a scheduling meeting with the Construction Manager to review the Baseline Schedule and confirm updating requirements for the Project.

36.2.1.2 The Construction Manager shall provide two (2) Primavera Schedule reports. The Baseline Schedule shall be submitted and approved and shall serve as the Baseline Schedule for the Project. The Baseline Schedule will be updated each month with progress information but may not change the Project duration or milestones. The three (3) week Look-Ahead Schedule will show current planned activities on the Project and shall be submitted weekly and updated each week.

The Construction Manager shall, within forty-five (45) Days of the Notice to Proceed, or earlier as directed by the Owner, submit a Proposed Baseline Schedule for the Work to the Owner 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.(iv). Within ninety (90) Days of the Notice to Proceed, or earlier as directed by the Owner, the Construction Manager shall submit a cost and resource loaded Schedule to the Owner's Representative for review and final approval that meets all the requirements of this Section 10.02 (Baseline Schedule) including 10.02.1.g(4) (Cost Loading). The Owner reserves the right to require a resource-loaded Schedule within the timeframe designated by the Owner. The Proposed Baseline Schedule must be provided in an editable electronic format.

The Schedule will use the critical path method (CPM). The Construction Manager will utilize a specified scheduling software package.

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 placing of material orders; delivery of materials and equipment; submittal and approval of all required submittals; procurement of material and equipment furnished by the Construction Manager; interface activities performed by Separate Contractors upon which the Construction Manager's Schedule depends; all phased activities that would include certificate of occupancy approvals required, Substantial Completion and Final Completion for each Phase of the Work; all Work activities and field construction operations; equipment installation, testing,

and balancing; commissioning activities; and all Project milestones as required in the Agreement. If the work is delayed by Separate Contractors (as determined by the Owner), the Construction Manager shall be entitled to an equitable extension of time to complete the Work and the Project Schedule shall be adjusted to account for these delays. The Schedule shall also account for weather delays in excess of the number of days listed as the "Standard Baseline" for that month due to adverse conditions. The Standard Baseline is defined as the normal number of calendar days for each month during which construction activity exposed to weather conditions is expected to be prevented and suspended by cause of adverse weather. Suspension of construction activity for the number of days each month as listed in the Standard Baseline is included in the Work and is not eligible for extension of Contract Time. Such Standard Baseline, as well as other specific terms and conditions relevant thereto, shall be set forth in the attached Exhibit 2.

The Construction Manager'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 / Baseline Schedule.

The Schedule will indicate Specifications applicable to the Schedule and network diagram

36.2.1.3 Each separate sheet will include the Project name, contract number, the Construction Manager'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.

36.2.1.4 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 Construction Manager. 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.

36.2.1.5 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(g) below.

The Construction Manager may utilize a more detailed WBS provided it is clearly defined in the Schedule submission.

36.2.1.6 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 Owner's Representative.

36.2.1.7 The following items define the term "Activities" as it pertains to the Schedule:

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.

Each activity will be a logically separate part of the Work, defined by an observable start and an observable finish.

To establish the scope of an activity for CPM purposes, the Construction Manager will form a single activity from the largest grouping of related operations, which permit a continuous and measurable flow of Work.

The scope of an activity will be small enough to permit a reasonable appraisal of its status or as directed by the Owner, 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 Owner.

Each individual activity on the Construction Manager's Target / Baseline Schedule shall be cost and resource loaded.

Activities performed by Others - including, but not limited to Separate Contractors, agencies, utilities or companies, that must be completed prior to the start of the Construction Manager's Work or portion of Work must be included in the Construction Manager's Schedule as milestones and identified with a designation approved by the Owner.

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

Activity ID: The Construction Manager will utilize the Technical Specification division and Section numbers in assigning activity IDs to the related portions of Work.

Description of the activity.

Duration of the activity.

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 Contract Price.

Resource Loading (Including Material Costs, Equipment Costs and Manpower Costs): The estimated total number of hours required to perform the Individual Activity of work.

Each activity that is not performed by the Construction Manager will be assigned a responsibility code indicating which Subcontractor is to perform the activity.

Each activity will be identified with early/late start, early/late finish, and total float.

Calendar I.D.

36.2.1.9 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.

36.2.1.10 Consequence

Failure by the Construction Manager to provide requisite information, perform the required task(s) and/or within the specified timeframe, may be deemed an event of default.

36.2.2 Schedule Submittal Requirements

36.2.2.1 The Construction Manager will submit all Schedules in hard copy and editable electronic format as specified in this Section 10.02

36.2.2.2 The Target / Baseline schedule submission must be inclusive of a baseline schedule narrative that defines the project scope, approach to construction, contract milestones and critical and longest paths.

36.2.2.3 Upon receipt of the Proposed Baseline Schedule and later the Baseline Schedule, the Owner will review each Schedule for conformance with the Contract Documents and degree of detail. Within fourteen (14) Days after receipt of the Proposed Baseline Schedule or Baseline Schedule and supporting documents, the Owner 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 Construction Manager must submit a revised Schedule addressing specific comments within seven (7) Days. The Owner's initial approval of the Proposed Baseline Schedule will be conditioned upon the Construction Manager's timely submittal of the Baseline Schedule with cost loading. Only the Owner's approval of the Baseline Schedule will establish an approved Baseline Schedule for the Project.

36.2.2.4 The Proposed Baseline Schedule and Baseline Schedule must have the same total duration for the performance of Work as stated in Exhibit 3 of Book 1.

36.2.2.5 Failure by the Construction Manager to provide the Proposed Baseline Schedule, the Baseline Schedule, or monthly updated schedules within the required time period may be deemed an event of default.

36.2.3 Submittal, Acceptance, and the Construction Manager's Responsibility for the Schedule

36.2.3.1 Prior to submitting any Schedule to the Owner's Representative, the Construction Manager 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.

36.2.3.2 The Construction Manager will coordinate its engagement 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 Owner.

36.2.3.3 The Owner's approval of any Schedule is done for the sole purpose of insuring that all CPM scheduling documents prepared by the Construction Manager conform to the Agreement requirements. This approval does not relieve the Construction Manager of its sole responsibility for the means, methods, procedures, and sequence of the construction process, nor does it provide any entitlement to additional funds.

36.2.4 Progress Update

36.2.4.1 Target Schedule

The Target Schedule as established by the Baseline Schedule illustrates the current planned prosecution of work. The Target Schedule is utilized to measure variance from that which was planned and what is actualized. The Construction Manager shall report only actualized dates and may not make changes to the durations, relationships, constraints, costs, logic ties, or add or delete activities. The Construction Manager may request material changes to the Baseline Schedule as provided within section 5.a. The Construction Manager shall indicate progress on the Baseline Schedule on a monthly basis by updating the Baseline Schedule with the following:

Actual start dates

Actual finish dates

Activity percent completion

Remaining duration of activities in progress

Identified or highlighted critical activities

The Progress reported in the monthly update to the Target Schedule shall be applied against the cost loaded Target / Baseline 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 Owner's Representative to accurately reflect actual work in place on the Project.

36.2.4.2 The Construction Manager will submit monthly updates of the Target Schedule in number, form and format acceptable to the Owner's Representative.

36.2.4.3 As part of the normal monthly Schedule update for the Target Schedule, the Construction Manager 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:

Summary of Work accomplished during the past update period;

Contract milestone comparison chart;

Analysis of critical path;

Analysis of time lost/gained during the update period;

Identification of problem areas;

Recommended solutions to current problems.

36.2.4.4 Upon receipt of the Target Schedule update, the Owner's Representative will review the Schedule update and narrative for conformance with the Contract Documents and degree of detail. The Owner's 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 Construction Manager must submit a revised Schedule update compliant with 5.a below within seven (7) Days after the date of rejection.

36.2.4.5 The Construction Manager is required to attend a monthly Schedule update review meeting with the Owner's Representative. The purpose of this meeting is to review past progress, current status, problem areas and future progress. The Construction Manager's narrative report will be reviewed at this meeting. The Construction Manager'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.

36.2.4.6 Three Week Look-Ahead Schedule

The Construction Manager 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 shall be generated directly from the current Target Schedule and provided as an electronic file in its native format or it may be generated by another method approved by the Owner's 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.

36.2.5 Changes to the Target Schedule

36.2.5.1 If the Construction Manager proposes to make any changes that affect the milestone dates in the Target Schedule, the Construction Manager will notify the Owner's 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.

36.2.5.2 The Owner 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 Construction Manager's submission. If the Owner 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."

36.2.5.3 If it appears that the Target Schedule no longer represents the actual prosecution and progress of the Work at the individual level, the Owner's Representative may request, and the Construction Manager shall submit within seven (7) Days of the request, a revision to or a revised Target / Baseline Schedule along with a statement agreeing with the proposed change or setting forth the Construction Manager'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 Owner's Representative shall review and approve or disapprove the Construction Manager'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 / Baseline Schedule.

36.2.5.4 The Owner reserves the right to request a proposal from the Construction Manager to accelerate or compress the Schedule in lieu of granting a time extension request in order to maintain the Substantial Completion date or original Project duration (the "Acceleration Proposal"). The Owner shall make any such Acceleration Proposal request in writing within ten (10) Days of receipt of the Construction Manager's time extension request. The acceleration proposal shall be inclusive of an accelerated schedule in the approved software. The Construction Manager shall provide the Acceleration Proposal within ten (10) Days of the Owner's request and the Owner shall have ten (10) Days from the receipt of the Acceleration Proposal to advise the Construction Manager of its recommendation regarding the Acceleration Proposal and time extension request. The Construction Manager's Acceleration Proposal shall include a detailed cost estimate, proposed accelerated schedule and description of its proposed methodology for accelerating the schedule. If the Owner elects to proceed with the Construction Manager's Acceleration Proposal, the Owner shall issue a Field Order incorporating the Acceleration Proposal and a subsequent Change Order to revise the Contract Price pursuant to Article 17.

36.2.6 Recovery Schedule

36.2.6.1 The Construction Manager must maintain an adequate work force and the necessary materials, supplies and equipment to meet the Target Schedule. If the Construction Manager, in the judgment of the Owner, is failing to meet the Target Schedule, including any Agreement milestones, the Construction Manager, upon the written request of the Owner's Representative, shall submit a recovery schedule (the "Recovery Schedule").

36.2.6.2 The Recovery Schedule will set forth a plan to eliminate the Schedule slippage (negative float). The plan must be specific to show the methods to achieve the recovery of time, i.e. increasing manpower, working overtime, weekend work, employing multiple shifts. All costs associated with implementing the Recovery Schedule will be borne by the Construction Manager.

36.2.6.3 Upon receipt of the Recovery Schedule, the Owner's Representative will review the Recovery Schedule for conformance with the Contract Documents and degree of detail. The Owner 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 Construction Manager must submit a revised CPM Recovery Schedule within five (5) Days of the date of rejection.

36.2.6.4 If the Construction Manager refuses to follow the direction of the Owner, the Owner reserves the right, after serving seven (7) Days written notice to the Construction Manager, 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 Construction Manager. The Owner's rights under this provision are cumulative to rights under any other provisions of the Agreement including the Owner's rights to terminate for default or convenience.

36.2.6.5 Consequence

Failure by the Construction Manager to provide requisite information, perform the required task(s) and/or within the specified timeframe, may be deemed an event of default.

36.2.7 Target Schedule Changes Directed by the Owner

36.2.7.1 The Owner's Representative may direct the Construction Manager 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.

36.2.7.2 The Owner's Representative will direct the Construction Manager to provide a revised Target Schedule in writing.

36.2.7.3 The Construction Manager will provide the revised Target Schedule within ten (10) Days of receipt of the Owner's written direction, which revisions to the Target Schedule may be submitted as fragnet portions of the Schedule which, upon approval and incorporation into the Target Schedule will satisfy the Owner's direction to revise the Schedule. The Construction Manager shall also submit a written description of the Schedule changes necessitated by the Owner's request and a detailed explanation of any cost impacts to effectuate the requested Schedule changes.

36.2.7.4 The Owner has the authority, in its sole discretion, to approve or reject the Construction Manager's proposed revised Target Schedule and will do so in writing within seven (7) Days after receipt of the Construction Manager's submission. If the Owner's Representative approves the revised Target Schedule, the Owner 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 Owner required Schedule modifications.

36.3 No Damages for Delay/Non-Compensable Delays; Causes of Compensable Delay; Compensation for Delays; Delays Which Do Not Qualify for Time Extensions; Procedure for Time Extension Requests

36.3.1 No Damages for Delay/Non-compensable Delays

36.3.1.1 No claims for increased costs, charges, expenses or damages of any kind shall be made by Construction Manager against the Owner for any delays or hindrances from any cause whatsoever; provided that Owner, in Owner's discretion, may compensate Construction Manager for any said delays by extending the time for completion of the Work as specified in this Agreement and provided further that this Section shall not preclude the recovery by Construction Manager of costs relating to Compensable Delay as set forth in subsection (2). Denial of additional time will not entitle Construction Manager to additional costs. No payment for increased cost, charge, expense or damage of any kind shall act as a waiver of Owner's right to compensate Construction Manager solely by extending the date for Substantial Completion. Failure of Owner to respond in writing to a written request for additional time within thirty (30) Days shall be deemed a denial of the request.

36.3.2 Causes of Compensable Delay

36.3.2.1 If any of the following listed events results in delays to critical path activities and progress of the work and the Construction Manager has not caused a concurrent delay, such delays shall entitle the Construction Manager to compensation as provided in Section 10.03.3, "Compensation for Delays."

Delays caused by the Owner or the Owner's Representative including but not limited to a delay, change, addition, deletion or modification in the Work or any omission, neglect or default of the Owner, or by order of the Owner, or the Owner's Representative; or by any cause beyond the Construction Manager's control, none of which are due to any fault, neglect act or omission on the Construction Manager's part;

Acts of God, acts of the public enemy, fires, floods, earthquakes, pandemic, epidemics, quarantine restrictions, or freight embargoes, provided that the listed causes were not foreseeable and did not result from the fault or negligence of the Construction Manager, and provided further that the Construction Manager has taken reasonable precautions to prevent further delays owing to such causes;

Acts (including delays in acting or failure to act) of the Governmental Authorities, 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 Construction Manager or any of its Subcontractors;

Adverse weather delay days due to adverse weather conditions (as set forth in Exhibit 2 attached hereto) in excess of the Standard Baseline (as set forth in Exhibit 2 attached hereto); and

Delays resulting from subsurface or otherwise concealed conditions encountered at the Project Site which differ materially from those indicated in the contract documents as described in Section 3.04, "Site Conditions and Inspection."

36.3.3 Compensation for Delays

Payment for delays, 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 Construction Manager proves that it took reasonable steps to mitigate damages regarding the idle equipment), relocation or storage of the material, winter protection costs (if applicable) and the cost of re-sequencing the work. The Construction Manager shall submit documentation satisfactory to the Owner's Representative demonstrating costs incurred as a result of the Compensable Delay as part of its time impact analysis (TIA) pursuant to Section 10.03.4 below. The Construction Manager shall not be entitled to compensation for any cost not expressly provided for in this paragraph.

36.3.4 Delays Which Do Not Qualify For Time Extensions

36.3.4.1 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 Construction Manager, including; but not limited to, the fault or negligence of the Construction Manager or any of its Subcontractors; or (2) for which any remedies are provided for or excluded by any other provision of the Agreement. The Owner's permitting the Construction Manager 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 Owner.

36.3.5 Procedure for Time Extension and Compensable Delay Requests

36.3.5.1 No time extensions or compensation for Compensable Delays will be allowed unless they are set forth in a Change Order which has been approved and executed by the Owner.

36.3.5.2 The Construction Manager expressly consents to both the time requirements and notice content requirements for requesting an extension of time or additional compensation set forth in this Section 10.03.5. The Construction Manager 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 Construction Manager to provide notice strictly in accordance with the requirements of this Section 10.03.5 shall constitute a waiver of the Construction Manager's right to seek an extension of time, additional compensation or to file a dispute to the Owner under Article 18. The Construction Manager further acknowledges that the time requirements and content requirements of this Section 10.03.5 have the purpose, among others, of allowing the Owner's Representative and Owner to evaluate the time extension request contemporaneously with the event that has been claimed to cause the delay.

36.3.5.3 In order to request a Time Extension or compensation, a "Notice of Delay'' or "Commencement of Delay'' notice must be provided in writing to the Owner's Representative, no more than five (5) 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.

36.3.5.4 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) Days after the start of the delay, a "Termination of Delay" notice must be provided in writing, to the Owner's Representative along with the "Request for Time Extension" within ten (10) Days after the termination of the delay.

36.3.5.5 The Construction Manager must submit its "Request for Time Extension" or compensation in writing to the Owner's Representative within ten (10) Days after the termination of the delay. The "Request for Time Extension shall:

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.

Specifically demonstrate the negative impact of the delay on the critical path of the Target Schedule by submitting a complete TIA which shall include a fragnet critical path network that accounts for any float on the Project and illustrates the impact of the alleged delay on the Target Schedule.

36.3.5.6 The Owner's Representative shall advise the Construction Manager of its recommendation regarding the time extension or compensation request, in writing, within ten (10) Days of receipt. If the Construction Manager and Owner's 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.

36.3.5.7 The Owner may: 1) recommend that the entire Time Extension or request for compensation be granted; 2) recommend that a portion of the Time Extension or request for compensation be granted; or 3) deny the Time Extension or request for compensation. The Owner will provide the Construction Manager a final decision in writing within fifteen (15) Days of receipt of the time extension request from the Owner's Representative, or such additional time as the Owner requires, but not to exceed ten (10) additional Days.

36.3.5.8 The Construction Manager must make a Claim to the Owner, as required by Article 18, regarding any time extension compensation request to which the Owner's Representative and Construction Manager do not agree, as limited by this Section 10.03.5.h. The Construction Manager may not dispute the decision of the Owner's Representative unless the time extension request exceeds five (5) Days or the liquidated damages exceed $10,000. The decision of the Owner is final for each time extension request of less than five (5) Days, or if the liquidated damages assessed are less than $10,000.

36.4 Notice of labor Disputes

Whenever the Construction Manager has knowledge that any actual or potential labor disputes is delaying or threatens to delay the timely performance of this Agreement, the Construction Manager must immediately give notice to the Owner's Representative in accordance

with the Notice provision set forth in Book 1, Section 24.13 and must include all available information with respect thereto to the Owner.

ARTICLE 37
MEETINGS AND PROGRESS DOCUMENTATION

37.1 Pre-Construction Meeting

37.1.1 Prior to beginning Work, the Owner will conduct a pre-construction meeting as detailed below. Representatives of the Construction Manager 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. Discussions will cover specific Drawings, Technical Specifications, unusual conditions, schedules of completion, and other features of the Agreement. The Owner may conduct additional coordination meetings at its discretion.

37.1.2 Preconstruction Meeting

37.1.2.1 A Preconstruction meeting will be held at a time and place designated by the Owner's Representative to identify responsibilities of the Construction Manager, Owner, Owner's Representative and the Architect and to explain administrative procedures. The Owner's Representative will set the due date for the Construction Manager's first payment application at the pre-construction meeting.

37.1.2.2 The Construction Manager shall also address the following items at this meeting:

Submittal of preliminary construction schedule

Use of the Site

Delivery and Storage

Safety

Security

Clean Up

Noise / Vibrations and Air Quality

Proposed working hours

Administrative procedures relating to:

Submittals

Submittal of the Construction Manager's Quality Program (CQP)

Progress Meeting Schedules

Requests for Information

Change Orders

Applications for Payment and pencil reviews

Record Documents

Construction close-out

37.1.2.3 Attendees at this meeting shall include:

The Owner

The Architect

The Owner's Representative

The Construction Manager's Superintendent, Project Manager and the MEP Coordinator

MBE and WBE firms working on the Project

The User Agency

Other parties as directed by the Owner

37.2 Review Meetings

37.2.1 Weekly Construction Progress Meetings

37.2.1.1 The Construction Manager must Schedule and conduct weekly progress meetings through Final Acceptance or as directed by the Owner's Representative. Conduct additional progress meetings as directed by the Owner's Representative as required by the progress of the Work.

Hold meetings at the Construction Manager's field office.

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 Owner's Representative of the change a minimum of three business days prior to the normal meeting day or the revised day, whichever is earlier.

37.2.1.2 The following are required to attend:

Project Superintendent, Project Manager and key support staff.

Subcontractors, except those Subcontractors whose presence is not necessary.

Owner's Representative.

37.2.1.3 The Construction Manager shall prepare and distribute agenda prior to meetings; cover the following topics when applicable:

Status of jobsite Safety

Review minutes of previous meeting.

Status of submittals and impending submittals.

Actual progress of activities in relation to the Schedule.

Actual and anticipated delays, their impact on the Schedule, and corrective actions taken or proposed.

Actual and potential problems.

Status of corrective work ordered by the Architect or the Owner's Representative.

Progress expected to be made during the next period.

Status of payments

Any other construction-related issues.

37.2.1.4 The Construction Manager shall record minutes and distribute copies to the participants and to all entities affected by decisions made.

37.2.2 Owner-Architect-Contractor (OAC) Meetings

37.2.2.1 The Owner's Representative is responsible for conducting and documenting OAC meetings at the Site not less often than weekly and as often as required by the Owner in light of the stage of the Project. The Construction Manager will arrange for Subcontractors to attend the meetings when directed by the Owner's Representative. Prior to each meeting, the Owner's Representative in conjunction with input from the Construction Manager must submit its agenda 2-days prior to the meeting. The meetings may include but are not limited to the following:

37.2.2.2 Status update regarding Safety on the project

37.2.2.3 Review of Work progress since the previous meeting.

37.2.2.4 Review of the Three (3) Week Look Ahead Schedule.

37.2.2.5 Review of updated Master Project Schedule

37.2.2.6 Discussion of corrective measures and procedures the Construction Manager will use to achieve the Schedule.

37.2.2.7 Review of proposed contract changes and their potential effect on the Schedule.

37.2.2.8 Discussion of critical submittals that may effect on the Schedule.

37.2.2.9 Discussion of field observations, problems and decisions.

37.2.2.10 Review of RFI Log

37.2.2.11 Clarifications and decisions required of the Owner.

37.2.2.12 Review of updated Project Budget, Pending Change Orders and Claims that may affect the financial status of the project.

37.2.2.13 Status of Construction Manager's payment applications

37.2.2.14 Procurement status and delivery timeframes for User Agency's FF&E, Medical Equipment, Telecommunications, A/V and Security Systems and other vendors.

37.2.2.15 Status of Pre-Commissioning and Commissioning

37.3 Progress Documentation Requirements

37.3.1 The Construction Manager's Construction Schedule ("Target / Baseline Schedule"):

37.3.1.1 Submit sample for review at preconstruction meeting.

37.3.1.2 Submit updated Target / Baseline Schedule at each monthly payment application review meeting and after each major change in the Schedule.

37.3.2 Shop Drawings and Submittals Schedule:

37.3.2.1 Submit shop drawings and submittals Schedule with Target / Baseline Schedule.

37.3.3 Progress Reports:

37.3.3.1 Daily Construction Logs

Submit previous weeks' reports to Architect and Owner's Representative at weekly progress meeting.

Daily Construction Logs: Every day, the Construction Manager must record the following information concerning events at the Site in a format acceptable to the Architect and the Owner's Representative:

Weather conditions; high and low temperatures, precipitation, wind (mph).

The number of persons working at the Site, by trade and firm / company name of contractors.

Names of Subcontractors at the Site.

Visitors to the Site; name & organization.

Modifications to the Agreement received; modifications implemented.

Delays; reasons for delay.

Emergencies and accidents.

Equipment and system start-ups and tests.

Field quality control activities conducted.

Losses of material and property.

Meetings held and significant decisions made.

Orders and requests of representatives of Governmental Authorities.

Unusual events.

Utility service disconnections and connections

37.3.3.2 Monthly Progress Reports:

Submit samples of both the Monthly Progress Report and Invoicing Formats for review and approval by the Owner's Representative at the preconstruction meeting. Failure to submit will result in a delay of processing the Applications for Payment.

The Construction Manager must prepare a narrative report describing the general state of completion of the Work and describing in detail the following:

Actual and anticipated delays, impact on the Schedule, and corrective actions taken or proposed.

Actual and potential problems.

Status of Change Order Work.

Change Order Log.

Outstanding proposed change order requests.

Proposed Change Order Log with related projected costs.

Effect of delays, problems, and changes on the schedules of Separate Contractors.

Target / Baseline Construction Schedule Status of corrective work ordered by the Architect or the Owner's Representative.

37.3.3.3 [Monthly Progress Photographs:

As directed by the Owner's Representative, the Construction Manager must take electronic photographs of existing conditions and work progress.]

37.3.4 Record Documents:

37.3.4.1 Maintain current set at the Site for reference and review by Architect and Owner's Representative.

37.3.5 Photographs: Electronic color prints.

37.3.5.1 Provide thorough photographic documentation of existing conditions and work progress.

37.3.5.2 Label each file with the following, unless otherwise directed by the Owner:

Project name.

Architect's name.

The Construction Manager's name.

Photographer's name.

Photograph date.

Location, position and direction from which photo was taken.

37.3.5.3 At the end of the Project, the Construction Manager must provide a USB flash drive containing the Project photos that include proper labeling (location (floor & column line), room name & room number, at the direction of the Owner's Representative.

37.3.6 Quality Assurance

37.3.6.1 Network Analysis Procedures

Train appropriate Project personnel in proper methods of providing data and of using Schedule information.

Establish procedures for monitoring and updating the Schedule and for reporting progress.

37.3.7 Coordination

37.3.7.1 In preparation of schedules, take into account the time allowed or required for the Architect's administrative procedures.

Allow a minimum of ten (10) Working Days for the Architect's review of submittals.

37.3.7.2 Construction Manager to provide a submittal schedule that identifies the documents that will require the architect's review and approval. This schedule must list the submittals in order and level of priority, plus include the manufacturing and delivery timeframes for each product.

37.3.8 Pre-installation and Pre-Fabrication Conferences

37.3.8.1 The Construction Manager shall call these conferences where required by the individual Specifications sections for the purpose of reviewing product selections, procedures for executing work, and coordination with/or among Subcontractors, or as directed by the Owner's Representative. The place, date, and time of these conferences shall be scheduled by the Construction Manager after coordination with the Owner's Representative. Do not schedule these conferences until the Subcontractor executing the work has made the submittals called for in the Contract Documents and they have been returned to the Construction Manager "Approved" or "Approved as Noted" by the Architect; and when 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 Construction Manager by the Architect. The following parties shall attend these conferences:

The Construction Manager.

The Construction Manager's Mechanical, Electrical, Plumbing and Fire Protection Coordinator.

The Subcontractor executing the work.

Subcontractors affected by the work.

Manufacturer's representatives.

The testing laboratory, when applicable.

The Owner's Representative.

The Owner's Commissioning Agent (when applicable)

37.3.8.2 Date, time, and place of meetings are to be acceptable to the Owner, the Owner's Representative, and the Architect.

37.3.8.3 These conferences shall also address any and all off site mock-ups required by the Specifications.

ARTICLE 38
OWNER PROPERTY

38.1 Ownership of Intellectual Property and Documents

38.1.1 Drawings, Specifications and Models

38.1.1.1 All copies of Drawings and Technical Specifications furnished by the Architect are the property of the Owner. Such copies are not to be used by the Construction Manager on any other work or project. All models are the property of the Owner. During the performance of the Work, the Construction Manager shall be responsible for any loss or damage to documents while in the Construction Manager's possession or the possession of a Subcontractor and any such documents so lost or damaged shall be restored at the expense of the Construction Manager.

38.1.1.2 The Construction Manager shall deliver, or cause to be delivered at any time during the term of this Agreement, all documents, including but not limited to Drawings, models, Specifications, estimates, reports, studies, maps and computations, prepared by or for the Owner, to the Owner's Representative promptly upon reasonable demand therefor or upon termination or completion of the Work. In the event of the failure by the Construction Manager to make such delivery, the Construction Manager shall pay to the Owner damages the Owner may sustain by reason thereof, including consequential damages

38.1.2 Construction Manager Intellectual Property

38.1.2.1 In the course of performing under the Agreement, Construction Manager may incorporate products, software, services or solutions that Construction Manager owns or has properly licensed from third-party manufacturers or suppliers (collectively, "Construction Manager IP") prior to Construction Manager's incorporation into and furnishing of them as part of the Work or Deliverables. Construction Manager will not incorporate any Construction Manager IP into any Service or Deliverable unless Construction Manager has disclosed Construction Manager's intention to do so. As between Owner and Construction Manager, Construction Manager IP is Construction Manager's property.

38.1.3 Patents, Copyrights and Licenses to Construction Manager IP

38.1.3.1 Construction Manager Grant of License Rights and Authorizations to Owner for Work. With respect to Construction Manager IP that Construction Manager furnishes to Owner as part of any Work that is necessary or appropriate for Owner's use, operation, modification, enhancement or maintenance of the Work, Construction Manager grants to Owner a worldwide, non-exclusive, non-transferable, fully paid-up and royalty-free license (or sublicense as applicable to any Construction Manager IP that is a Construction Manager-licensed product, software, service or solution from a third-party manufacturer or supplier) and right, for as long as Construction Manager furnishes the Work, including during any wind-down of the Work, to: (i) use the Construction Manager IP and its documentation in connection with the applicable Work (including the use, operation, modification, enhancement and maintenance of the Work) for Owner's internal business purposes; and (ii) enable Owner to authorize its employees, agents and other representatives to do the same with respect to Construction Manager IP furnished to Owner

as part of the Work. All Construction Manager IP that Construction Manager furnishes to Owner as part of the Work will, to the extent applicable, be the latest commercially-available release and version as of the Effective Date.

38.1.3.2 Construction Manager Grant of License Rights and Authorizations to Owner for Deliverables. With respect to Construction Manager IP that Construction Manager furnishes to Owner as part of the Work or any Deliverable that is necessary or appropriate for Owner's use, operation, modification, enhancement or maintenance of the Deliverables or the Project, Construction Manager grants to Owner a worldwide, non-exclusive, non-transferable, fully paid-up and royalty-free license (or sublicense as applicable to any Construction Manager IP that is a Construction Manager-licensed product, software, service or solution from a third-party manufacturer or supplier) and right, for as long as Owner seeks to use the Construction Manager IP during and after Construction Manager's performance of the Work, to: (i) use the Construction Manager IP and its documentation in connection with the applicable Deliverable (including the use, operation, modification, enhancement and maintenance of the deliverable) for Owner's internal business purposes; and (ii) enable Owner to authorize its employees, agents and other representatives to do the same with respect to Construction Manager IP furnished to Owner as part of the Deliverable. All Construction Manager IP that Construction Manager furnishes to Owner as part of Deliverables or the Work will, to the extent applicable, be the latest commercially-available release and version as of the date such Construction Manager IP is furnished to Owner.

38.1.3.3 Construction Manager-Licensed Third-Party Product, Software, Service or Solution. To the extent any Construction Manager IP that Construction Manager furnishes to Owner as part of Work or Deliverables is licensed from a third-party manufacturer or supplier pursuant to a separate license agreement, Construction Manager will notify Owner of the existence of and provide a copy of each such separate license agreement, in writing or electronically, to the Owner no later than Construction Manager's furnishing of the Work or Deliverables incorporating the Construction Manager IP to which such separate license agreement applies. Notwithstanding the terms of any license agreement issued by a third-party manufacturer or supplier, Construction Manager will ensure that, as between Construction Manager and Owner: (i) all Construction Manager IP licensed from a third-party manufacturer or supplier that Construction Manager furnishes to Owner as part of the Work or Deliverables are warranted in accordance with the warranty requirements of Books 1 and 2, including but not limited to Book 1, Article 8, "Warrantees and Completion"; and (ii) Owner obtains a worldwide, non-exclusive, non-transferable, fully paid-up, and royalty-free license and right to use the Construction Manager IP licensed from a third-party manufacturer or supplier that Construction Manager furnishes to Owner as part of the Work or Deliverables consistent with the requirements of subpart b) i) and ii) of this Section as applicable.

38.1.3.4 Owner Access to Third-Party Licenses. Construction Manager will furnish the Owner with all licenses, license rights and authorizations required for Owner to utilize any Construction Manager IP licensed from a third-party manufacturer or supplier, including firmware or middleware, that Construction Manager furnishes to Owner as part of the Work or Deliverables. Such licenses, license rights and authorizations must be clearly marked with a reference to the number that Owner assigns to the Agreement. Such licenses, licensed rights and authorizations must satisfy the requirements of subpart b) i) and ii) of this Section as applicable and not limit the number of persons who may utilize the Construction Manager IP licensed from a

third-party manufacturer or supplier that Construction Manager furnishes to Owner as part of the Work or Deliverables.

38.1.3.5 Construction Manager's IP Indemnity. Construction Manager will indemnify, defend and hold harmless, at its own expense (including reasonable attorneys', accountants' and consultants' fees), Owner and User Agency and their respective commissioners, directors, officers, employees, agents, and other representatives with respect to any suit or proceeding brought against Owner and/or User Agency based upon a claim that the ownership or use of Construction Manager IP or any part thereof, which Construction Manager furnished to Owner and/or User Agency as part of, or utilized in furnishing, the Work or Deliverables, constitutes infringement of any patent, copyright, license or any other property right. In the event that Owner and/or User Agency's use of any Construction Manager IP or any portion or component thereof is enjoined, Construction Manager will, with all reasonable speed and due diligence, provide to or secure for Owner and/or User Agency, at Construction Manager's election, one of the following: (i) the right to continue use of the Construction Manager IP or any portion or component thereof; (ii) an equivalent product, software, service or solution meeting the specifications of the Agreement; or (iii) modification of the Construction Manager IP or any portion or component thereof so that it becomes non-infringing while performing in a substantially similar manner to the original Construction Manager IP furnished by Construction Manager to Owner and/or User Agency as part of the Work or Deliverables and meeting the specifications of the Agreement.

38.1.4 Joint Ownership of Joint IP and Owner Ownership of Work Product

38.1.4.1 Work Product Defined. "Work Product" means those Deliverables, whether computer programs (as source code, object code or any other form), designs, specifications, inventions, discoveries, improvements, techniques, compilations, drawings, maps, manuals, protocols, plans, processes, analyses, and other creations, documentation or materials (and all intermediate and partial versions thereof) and whether patented or patentable, subject to copyright or otherwise protectable by Law, that Construction Manager or any Construction Manager's employee, agent or subcontractor creates, develops, invents or conceives for or on behalf of Owner in connection with Construction Manager's performance or fulfillment of its obligations and responsibilities under the Agreement. In the event that the Parties cannot agree whether a specific item is a deliverable that is or is not Work Product, the Parties will comply with the terms of the Dispute Resolution process in set forth in Article 18 below.

38.1.4.2 Joint Ownership of Joint IP. Any, which is customized to Owner or created in collaboration with Owner, will belong to and be the property of both Parties (collectively, "Joint IP"). Each Party will have the right to use such item of Joint IP during and after the term of the Agreement; provided, any Joint IP that Construction Manager uses does not use or disclose any of Owner's Confidential Information, and any Joint IP Owner uses does not use or disclose and of Construction Manager's Confidential Information. Confidential Information is defined in Article 9 of Book 1.

38.1.4.3 Owner's Ownership of Work Product. Except as specified as Joint IP or as specified as Construction Manager IP specifically so designated, Construction Manager assigns to Owner, and Owner will retain, all right, title and interest in and to all Work Product,

including all United States and foreign patents, copyrights, trade secrets, trademarks, and any other intellectual property or proprietary rights pertaining to Work Product. All Work Product will be Owner's sole and complete property, whether as "works made for hire" (as such term is used in 17 U.S.C. § 201) or otherwise. Owner will have the right, at its own expense, to obtain and hold all United States and foreign patents, copyrights, trade secrets, trademarks, and any other intellectual property or proprietary rights in or to Work Product. Construction Manager will ensure that Construction Manager's employees, agents and subcontractors, involved in furnishing Deliverables, promptly execute any document and take any other action as may be necessary or reasonably requested by Owner to accomplish or evidence the foregoing Owner ownership of Work Product in any jurisdiction, without further consideration and free from any claim, lien or retention of rights. Upon Owner's request upon expiration or termination of the Agreement, Construction Manager will promptly and fully disclose and deliver to Owner all Work Product in tangible form and, as applicable, in both source code and object code form, with all available user manuals and other documentation pertaining to Work Product.

38.1.5 Owner's Ownership of Data Deliverables

38.1.5.1 Data Deliverables. All studies, reports and other documentation that Construction Manager or any Construction Manager employee, agent or subcontractor creates or develops for Owner or that Owner creates or develops from reporting services made available to Owner, which are derived from, based on or incorporate data (including any of Owner's Confidential Information or PHI(as defined in Book 1, Section 24.17)) resulting from the performance of the Agreement, are data Deliverables (collectively, "Data Deliverables") and will be Owner's property, even if not qualifying as Work Product. Owner will be afforded full access Data Deliverables at all times, upon reasonable notice. Except as expressly provided otherwise by the Agreement, Construction Manager will be in breach of the Agreement if Construction Manager reproduces, uses or discloses any Data Deliverables, regardless whether such reproduction, use or disclosure is for Construction Manager's own or for any third party's purpose.

38.1.5.2 Data Deliverables Damage. During the performance of the Agreement, Construction Manager is responsible for any loss or damage to Data Deliverables while in Construction Manager's possession or under Construction Manager's control. Any such loss or damage to Data Deliverables will be restored or otherwise remedied at Construction Manager's expense.

38.1.6 Owner Intellectual Property. Owner reserves all rights, including ownership, title, intellectual property rights and all other rights and interest, in and to any computer program (in object or source code format or any other form), know-how, inventions, processes, databases, documentation, training materials, designs, reports, manuals, documents, specifications, hardware, software and equipment, and any other intellectual property and any tangible embodiments of any of these, which Owner makes available to Construction Manager pursuant to the Agreement (collectively, "Owner IP"). No Owner IP may be removed from Owner's premises without Owner's prior written consent. Construction Manager will return any Owner IP obtained from Owner upon the earlier of: (a) Owner's request; or (b) expiration or termination of the Agreement. Construction Manager will, at Construction Manager's risk and expense, maintain Owner IP in good condition while in Construction Manager's custody or under Construction Manager's control.

38.1.7 Ownership of Confidential Information and Protected Health Information

38.1.7.1 Owner's Ownership. As between Owner and Construction Manager, all of Owner's Confidential Information is and remains the sole property of Owner during and after the term of the Agreement. Construction Manager does not have and will not obtain any rights in any of Owner's Confidential Information, except to use and disclose Owner's Confidential Information as permitted by the Agreement.

38.1.7.2 Construction Manager's Ownership. As between Owner and Construction Manager, all Construction Manager's Confidential Information is and remains the sole property of Construction Manager during and after the term of the Agreement. Owner does not have and will not obtain any rights in any Construction Manager's Confidential Information, except to use and disclose Construction Manager's Confidential Information as permitted by the Agreement.

38.2 Damage to Property

38.2.1 If the Construction Manager causes damage to Owner's or User Agency's property, the Construction Manager must, at the sole option of the Owner, either: 1) pay the cost of repair of the damage; or 2) repair or replace any property so damaged at no cost to the Owner. The Owner has the right to a set-off against payments to the Construction Manager under this Agreement for the cost of any such repairs.

38.2.2 The Construction Manager 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 Construction Manager must rebuild, repair, restore, and make good, at no additional cost to the Owner, all injuries or damages to any portion of its Work before Final Completion of the Work. When equipment or materials are furnished to the Construction Manager by the Owner for use or inclusion in the Work, the Construction Manager's responsibility for safeguarding all such equipment and materials must be the same as for equipment and materials furnished by the Construction Manager.

ARTICLE 39
QUALITY OF WORKMANSHIP, MATERIALS, AND EQUIPMENT

39.1 The Construction Manager's Quality Program

39.1.1 Scope of the Construction Manager's Quality Program (CQP)

39.1.1.1 Quality is the responsibility of the Construction Manager. This responsibility includes development and implementation of a Construction Manager's Quality Program for quality management and construction activities. The CQP must satisfy the requirements of the Contract Documents. The Construction Manager must develop and implement an appropriate quality program to achieve a level of quality consistent with the Agreement requirements.

39.1.1.2 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

Construction Manager. The Construction Manager's implementation of and compliance with its CQP are subject to monitoring and audits by the Owner. The Construction Manager must address the Owner's concerns and audit findings. The Owner will pursue its remedies under the Agreement for Construction Manager's failure to appropriately resolve such concerns and findings.

39.1.2 The Construction Manager's Quality Program must comply with the following:

39.1.2.1 The Construction Manager 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 Agreement. The Construction Manager must communicate, implement, and follow the CQP at all levels of its organization.

39.1.2.2 The CQP 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 Construction Manager. The CQP must be an internally approved document, signed by the Construction Manager's management representative, and must contain a revision number and effective date. The CQP must also include a written statement, signed by the Construction Manager's Quality Representative, that the program satisfies the requirements of the Agreement.

39.1.2.3 Organization of the quality functions and activities for the Project must be supported by the management structure of the Construction Manager. The choice and level of application of the quality program must be appropriate for the Project.

39.1.2.4 Responsibility for achievement of quality must be acknowledged by all management, construction and support personnel of the Construction Manager. Subcontractors (including Suppliers), testing laboratories, and consultants employed by the Construction Manager must also conform to the commitments specified in the Agreement and the CQP.

39.1.2.5 The CQP must meet all of the additional requirements set forth in Section 13.05 below, as well as any such other items as Owner may deem necessary in Owner's sole discretion, including, without limitation, those Additional Quality Program Elements and Requirements set forth in **Exhibit 1** attached hereto.

39.1.3 Submittal of the Construction Manager's Quality Program

Within fourteen (14) Days after the Notice to Proceed, if not already submitted to and approved by the Owner before the Agreement is signed as part of the RFP process, the Construction Manager must provide its internally approved CQP to the Owner's Representative for review and acceptance. If the Construction Manager fails to submit its CQP within the required time, or if the CQP is not accepted, the Owner may suspend the Work until the Construction Manager furnishes an acceptable CQP. The Construction Manager shall not receive a time extension for the period of any such suspension.

39.1.4 Acceptance of the Construction Manager's Quality Program

The Owner's Representative is responsible for reviewing and accepting the CQP. This acceptance is conditional based on satisfactory performance throughout the duration of the

Project. As the Work progresses, the Construction Manager may be required to revise the CQP to maintain a quality of construction consistent with the Agreement. Should this revision of the CQP be required, the revised CQP will again be subject to acceptance by the Owner's Representative.

39.1.5 Proposed Changes to the Construction Manager's Quality Program

The Construction Manager must notify the Owner's 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 13.01.4 above.

39.2 Labor, Materials and Equipment

39.2.1 Unless otherwise specified, all materials and equipment will be new, and of such quality as required to comply with the Contract Documents. The Construction Manager 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.

39.2.2 Except as may be expressly stated in the Agreement, only new, originally manufactured equipment, and goods will be provided and no refurbished, rebuilt, restored or renovated equipment, or goods shall be acceptable. In addition, experimental materials are not acceptable. Material, equipment, and goods not produced by regular production methods and/or which have not been offered for sale to the public through accepted industry trade channels for a reasonable period of time prior to the commencement of the Agreement will be considered experimental.

39.2.3 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 Owner, in which case it will be removed and replaced by the Construction Manager as provided hereinafter in Section 13.08, "Correction of Work Before Final Payment" or Section 13.09, "Correction of Work After Final Payment."

39.2.4 The Construction Manager 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.

39.2.5 The Site will not be utilized for the storage of vehicles, materials, equipment, or fixtures not intended for this Project.

39.2.6 The Construction Manager will review any specified construction or installation procedures (including those recommended by any product manufacturer). The Construction Manager will advise the Architect and the Owner's Representative in writing seven (7) Days prior to commencing Work, on items affected:

39.2.6.1 if any specified procedure deviates from good construction practice;

39.2.6.2 if following any specified procedure will affect any warranties; or

39.2.6.3 if there are any objections which the Construction Manager may have to any specified procedure.

39.3 Source of Materials

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

39.4 Delivery

Delivery of any material, equipment, or goods being shipped to the Project Site shall be shipped F.O.B., DESTINATION, FREIGHT PREPAID AND ALLOWED, unless otherwise agreed to in writing by the Owner. The Construction Manager shall make all necessary arrangements for receipt of such material, equipment, or goods. Unless expressly provided in the Agreement, truck deliveries will be accepted before 3:00 P.M. on weekdays only. No deliveries will be accepted on Saturdays, Sundays or County Holidays. The Owner is not responsible for delivery delays due to waiting times for loading and unloading at dock locations. The Owner reserves the right to add new delivery locations or delete previously listed delivery locations as required during the Agreement period. The only restriction regarding the Owner's right to add new delivery locations shall be that any new or additional location shall be within the geographical boundaries of the County.

39.5 The Construction Manager's Quality Program Elements and Requirements

The Construction Manager Quality Program (CQP), to be provided by the Construction Manager, must include the items listed below. The Construction Manager must submit its Construction Manager Quality Plan to the Owner's Representative for review.

Management Responsibility (Responsibility, Accountability, Authority, Organizational, and Technical Interfaces) General quality control activities.

39.5.1.1 The CQP must declare and document the commitment to quality by the Construction Manager's executive management.

39.5.1.2 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, initialing solutions, and verifying implementation of solutions to quality. It must include the resumes of key personnel for Owner review.

39.5.1.3 The Construction Manager 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 Construction Manager. 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.

39.5.1.4 The Construction Manager must maintain a staff of sufficient size and composition under the direction of the QR to perform all Construction Manager quality control and activities in order to ensure compliance with the Contract Documents whether the Work is performed by the Construction Manager's own staff or by Subcontractors. Personnel responsible for quality must be suitably trained and qualified for the quality activities they are assigned. The Construction Manager'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 Agreement.

39.5.1.5 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 should not be the same individual.

39.5.1.6 The Construction Manager'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 Construction Manager's quality policy. The Construction Manager should document these reviews.

39.5.2 Documented Quality System.

39.5.2.1 The Construction Manager 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.

39.5.2.2 As a minimum, the documented quality system must include written policies and procedures for the following:

A management-level commitment to quality and a statement of corporate quality policy;

A detailed description of how the corporate policy is implemented and documented, and by whom; and

Procedures and forms to document performance of quality-related activities and the results of those activities.

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.

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 Construction Manager will use the following format for documenting procedures:

Purpose: Reason why the procedure is being initiated.

Scope: Boundaries of the procedure; i.e., to whom or to what the procedure applies.

References: Documents referred to for standards to be followed in relation to the procedure as well as for information and background.

Definitions: Explanation of words or terms used in the procedure that are not self-explanatory.

Procedure: The sequence of required actions to be performed and the person responsible for performing those actions.

Attachments: Documents and/or related materials that are needed for the procedural process such as transmittal letters, forms, and flow charts.

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

39.5.2.3 The documented quality system must:

Use a uniform procedure numbering system.

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.

Establish systems for the control of procedures.

Ensure that procedures contain qualitative and quantitative acceptance criteria when applicable.

Establish requirements to prepare, approve, and distribute procedures prior to their need or initial use.

Provide a mechanism for a quick change or issuance of a procedure under specific emergency-related conditions or circumstances.

Identify procedures that are controlled documents.

Require a periodic review of procedures to ensure current usability and compatibility with interfacing procedures.

39.5.2.4 The Construction Manager should plan and define construction activities to achieve quality objectives. The plan should 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 should be keyed to the Schedule and provide written records of the results. As a minimum, these controls should include the following three phases:

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:

Review of the Agreement requirements.

Inspection of the construction technical schemes and determination of the construction techniques for special works.

Verification that all materials and/or equipment have been tested, submitted, and approved.

Verification that provisions have been made to verify that the required quality control testing was performed.

Examination of the Project Site to ascertain that all preliminary work has been completed.

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.

Initial Phase - At the beginning of each definable feature of work. It should include the following:

Check of preliminary work

Verification of full compliance with the Agreement requirements

Establishment of level of workmanship

Resolution of all differences

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

39.5.3 Design Control.

39.5.3.1 The CQP shall include the Design/Assist Services, if any, set forth in Book 1 as part of the Construction Manager's Pre-Construction Services.

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

39.5.4.1 The Construction Manager should develop, implement, and maintain documented procedures for scheduling and managing the Construction Manager's and Subcontractor's submittals and for document control. The procedures should define the responsibility and authority for preparing, reviewing, approving, issuing, recording, revising, and distributing documents for activities affecting the quality of the Work.

39.5.4.2 The Construction Manager should 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.

39.5.4.3 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.

39.5.4.4 The Construction Manager's document control system must include methods for elimination of obsolete documents from the Project Site. Any superseded documents retained for the record must be clearly identified as such.

39.5.4.5 The Construction Manager must maintain a master list of controlled documents enumerating the current revision of each document.

39.5.4.6 The following are examples of the types of documents requiring control:

Requests for Information (RFI) and responses

Drawings

Specifications

Inspection procedures

Test procedures

Special work instructions

Operational procedures

Quality program and procedures

39.5.5 Subcontractor Evaluation and Procurement Control.

39.5.5.1 Subcontractor services must comply with all quality requirements specified for the Construction Manager. Subcontractors and Suppliers may adopt and implement the Construction Manager's CQP or use approved in-house quality programs appropriate to their work and meeting all applicable Laws. The Construction Manager should review any Subcontractor's or Supplier's quality program used to control work on the Project to verify its compliance with these requirements.

39.5.5.2 The Construction Manager should ensure that services are procured only from sources capable of meeting the requirements of the Agreement and procurement documents. Subcontractors and Suppliers under consideration should be evaluated on the basis of the following:

Technical competence as evidenced by professional qualifications and experience of the firm and committed personnel

Past performance on related or similar projects

Familiarity with Project guidelines and other applicable codes and standards

Current commitments of the key personnel

Safety

Financial ability to perform their portion of the Work.

39.5.5.3 The Construction Manager must ensure that contract or procurement documents for Subcontractor services clearly specify the quality expectations of the Owner, including relevant standards, drawings, specifications, process requirements, inspection

instructions, and approval criteria for materials, processes, and product. As appropriate, the Construction Manager should define the means and methods for handling, storage, packaging, and delivery of materials and equipment. The Construction Manager's purchasing documents should be reviewed and approved by a member of the Construction Manager's management team for adequacy of specified quality requirements prior to release.

39.5.5.4 The Construction Manager must document all Subcontractor and Supplier evaluation and procurement control activities.

39.5.5.5 As appropriate, the Construction Manager's contract with its Subcontractors and Suppliers should include provisions for source inspection by a member of the Construction Manager's management team. Source inspection plans should include mandatory hold points where the Construction Manager could verify compliance with the Agreement requirements.

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

39.5.6.1 The Construction Manager must develop, implement, and maintain documented procedures for handling, storage, and control of materials and equipment. These should address the following, as appropriate:

Measures to ensure that inappropriate storage, handling, lifting, and rigging methods do not degrade or compromise the quality of an item.

Methods for cleaning, preserving, and storing material and equipment.

Verification and control certificates of compliance and conformance and other supporting documentation.

39.5.6.2 The Construction Manager 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.

39.5.6.3 The Construction Manager 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 of the Contract Documents. The Construction Manager should ensure that items can be identified by how they are marked or where they are located.

39.5.6.4 The Construction Manager must implement methods of handling and storage to prevent damage to, and loss of, materials and equipment. If appropriate, contract and procurement documents should require measures to ensure proper handling and storage of material and equipment by the Construction Manager's Subcontractors and Suppliers.

39.5.7 Control of Special Processes.

39.5.7.1 The Construction Manager 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 should include the following:

The Construction Manager should use qualified and certified personnel to perform special processes. Their certifications should be current and appropriate for the special process they are performing.

Special processes should be qualified, or meet the requisites for prequalification. The material and equipment used to perform the special process should be qualified, properly controlled, and maintained.

The Construction Manager, Subcontractors, or fabrications inspectors of special processes should be properly qualified and certified, and their certifications should be current.

Work involving special processes should be identified, planned, and performed in the proper sequence under controlled conditions according to the referenced standards.

Work involving special processes should be performed using documented procedures or work instructions.

39.5.7.2 The Construction Manager must document the control of special processes according to the referenced standards, and keep records of the control measures.

39.5.7.3 The Construction Manager 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.

39.5.8 Corrective Action.

39.5.8.1 The Construction Manager 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.

39.5.8.2 The Construction Manager must develop, implement, and maintain documented corrective action procedures for the following:

Analyzing processes to detect and eliminate potential causes of nonconformance.

Initiating preventive actions to deal with problems to a level corresponding to the risks encountered.

Ensuring implementation and effectiveness of corrective actions.

Implementing and recording changes in procedures resulting from corrective actions.

39.5.8.3 The Construction Manager must ensure that applicable requirements for corrective action by its Subcontractors and Suppliers are included in its contract and procurement documents.

39.5.9 Documentation by Quality Records.

39.5.9.1 The CQP must contain provisions for identification of types of quality records to be maintained and for their retrievability and retention. The Construction Manager should 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.

39.5.9.2 The Construction Manager 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.

39.5.9.3 Quality records must be legible and should specify the type of activities involved. Records should be kept in a suitable environment to prevent deterioration, damage, and unauthorized access. Retention times and final disposition should be established and recorded.

39.5.9.4 Subcontractor and Supplier quality records must be included in the Construction Manager's quality records maintenance plan where pertinent.

39.5.9.5 Quality records requiring control should include, but should not be limited to, the following:

Qualification records for personnel, processes, and equipment

Nonconformance and corrective action reports

Documentation of audit and surveillance activities

Material and equipment certificates of conformance or compliance or both; certified material test reports

Drawings, procedures, and the CQP

Certification and training records

Subcontractor and Supplier evaluations

Subcontractor documentation

39.5.10 The Construction Manager Surveillance/Internal Audit.

39.5.10.1 The Construction Manager must develop, implement, and maintain documented procedures for the control of audit and surveillance activities. Audits, surveillance, and follow-up actions must be scheduled and conducted by qualified quality personnel. All audit and surveillance activities must be documented.

39.5.10.2 The Construction Manager must establish and maintain a system of internal audits to verify and assess its compliance with the requirements of the CQP.

39.5.10.3 The Construction Manager 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.

39.5.10.4 Results of audits and surveillance 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.

39.5.10.5 The Construction Manager must ensure that requirements for surveillance and internal audit by Subcontractors and Suppliers are included in its contract and procurement documents for the same.

39.5.11 Certification and Training.

39.5.11.1 The Construction Manager 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 requirements of the Project. The Construction Manager 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.

39.5.11.2 The Construction Manager must develop, implement, and maintain documented procedures to establish the requirement for conducting training, including training on the CQP and related procedures. Training must be conducted by knowledgeable instructors.

39.5.11.3 The Construction Manager must establish and maintain records of certification and training.

39.5.11.4 The Construction Manager must ensure that requirements for certification and training for its Subcontractors' and Suppliers' personnel are included in its subcontract and procurement documents.

39.5.12 Reports to be provided by the Construction Manager: Provide certified copies of reports.

39.5.12.1 Unless otherwise indicated, submit for review by the Architect and the Owner's Representative.

39.5.12.2 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.

39.5.12.3 Reports shall be prepared by the entity performing the quality control activity.

39.5.12.4 Include the following information in all types of reports:

Date of report.

Project name and contract number.

Description of the quality control activity.

Name, address, and telephone number of entity performing activity.

Date the quality control activity was performed.

Specification section(s) involved.

Basis for evaluation (best method, etc.)

Results or conclusions, including evaluations and interpretations.

Title, name, and signature of person performing activity.

39.5.13 Certificates to be provided by the Construction Manager: Submit for review, unless otherwise indicated.

39.5.13.1 Certificates shall be signed by the product manufacturer, unless otherwise specified or not applicable.

39.5.13.2 Include the following information:

Date of certificate.

Project name and contract number.

Description of the product or system certified.

Specification section(s) involved.

When actual materials to be used are to be certified, include lot identification markings, destination of shipment, and quantity in shipment.

Title, name, and signature of person authorized to make certification.

39.5.14 Qualification Statements to be submitted by the Construction Manager: Submit for review, unless otherwise indicated.

39.5.15 Manufacturers' Instructions to be submitted by the Construction Manager: Submit for review, unless otherwise indicated; identify conflicts with Contract Documents.

39.6 Substitution of Products or Materials

39.6.1 The Owner's Representative will receive and consider the Construction Manager's request for substitution after the Construction Manager's submission of the GMP Proposal if, and only if, all of the following conditions are met. If the Construction Manager fails to meet any of these conditions, the Owner's Representative will return the request without action, other than to record non-compliance with these requirements.

39.6.1.1 The reason for proposing the substitution is one of the following:

The specified product or method of construction is no longer available.

There is no condition under which the specified product or method of construction can be installed as shown on the Contract Documents.

There is no condition under which the specified product or method of construction can be provided within the time limits of the Agreement.

39.6.1.2 Extensive revisions to the Contract Documents are not required.

39.6.1.3 Proposed substitutions are in keeping with the general intent of the Contract Documents.

39.6.1.4 The request is timely, fully documented and properly submitted.

39.6.2 Changes in products, materials, equipment, systems and methods of construction required by the Contract Documents and proposed by the Construction Manager after the Construction Manager's submission of the GMP Proposal 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 Construction Manager. The following are not considered to be requests for substitutions and are not subject to the provisions of this Section:

39.6.2.1 changes requested and accepted by the Owner before the Construction Manager's submission of the GMP Proposal;

39.6.2.2 revisions to the Contract Documents requested by the Owner or the Owner's Architect and issued to the Construction Manager via a design bulletin.

39.6.2.3 specified options of products and construction methods included in the Contract Documents.

39.6.3 Each request for substitution must be submitted separately and must include:

39.6.3.1 Three (3) copies of the request, using the form referenced in the Article 15 hereof.

39.6.3.2 The Construction Manager must identify the product or fabrication or installation method to be replaced in each request, including the related specification section and/or drawing numbers.

39.6.3.3 The Construction Manager must provide complete documentation showing compliance with the requirements for substitutions, and the following information, as appropriate:

Coordination information, including a list of changes or modifications needed to other parts of the Work and to construction performed by Separate Contractors that will be necessary to accommodate the proposed substitution.

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.

Product data, including drawings and descriptions of products and fabrication and installation procedures.

Samples, where applicable or requested by the Owner's Representative.

A statement indicating the substitution's effect on the Construction Manager's Construction schedule compared to the Schedule without approval of the substitution. The proposed substitution will not extend the Contract Time.

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.

The Construction Manager's certification that the proposed substitution conforms to the requirements of the Contract Documents in every respect and is appropriate for the applications indicated.

The Construction Manager must designate the availability of maintenance services and source of replacement materials for any proposed substitution.

The Construction Manager'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.

39.6.4 The Construction Manager warrants and represents that in making a formal request for substitution that:

39.6.4.1 The proposed substitution is equivalent to or superior in all respects to the product specified,

39.6.4.2 At a minimum, the same warranties and guarantees will be provided for the substitute as for the product specified.

39.6.4.3 The Construction Manager 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.

39.6.5 If the evidence presented by the Construction Manager 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 Owner's Representative may reject the proposed substitution or deviation without further investigation.

39.6.6 The Owner's 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 Owner's Representative will not approve proposed substitutes as equal to items specified which, in the Owner's Representative's opinion, would be inconsistent with the character, quality or design of the Project.

39.6.7 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 Construction Manager, including the cost for damages incurred by Separate Contractors, notwithstanding approval or acceptance of such substitution by the Owner's Representative, unless such substitution was requested by the Owner.

39.6.8 The Owner reserves the right to request additional information from the Construction Manager for any request for substitution within fifteen (15) Days of the submittal of the Construction Manager's request. The Owner's Representative will notify the Construction Manager of acceptance or rejection of the substitution within fifteen (15) Days of receipt of the request, or seven (7) Days of receipt of additional information, whichever is later. If the Owner's Representative fails to respond within the time frame stated herein, the Construction Manager must use the product specified.

39.6.9 Approval by the Owner's Representative of a substitution of material must be given pursuant to an Agreement modification as required in Article 17, "Changes in the Work."

39.6.10 The Construction Manager's submittal, and the Owner'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.

39.6.11 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 Owner's opinion, the nameplate would be objectionable if visible after installation of the Work, without the prior written consent of the Owner's Representative. This does not apply to Underwriters' Laboratories labels where required, nor to manufacturers' name and rating plates on mechanical and electrical equipment.

39.7 Adjustment of Equipment

Before the Work is turned over to the Owner, the Construction Manager 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. The Construction Manager shall also work with the Owner's Commissioning Agent to allow such agent to work on all commissioning related activities for the Work.

39.8 Correction of Work Before Final Payment

39.8.1 The Owner and Architect have the right to reject the Work that does not conform to the Contract Documents. When Work is rejected by the Owner as failing to conform to the Contract Documents, the Construction Manager must promptly remove such Work, including all related materials and equipment, whether incorporated in the Work or not, from the Site. The Construction Manager will promptly replace and re-execute such Work in accordance with the Contract Documents and without expense to the Owner. The Construction Manager will also bear the expense of making good all work of Separate Contractors destroyed or damaged by such removal or replacement.

39.8.2 If the Construction Manager does not remove such rejected Work, materials, and equipment within a reasonable time, which shall be no less than ten (10) calendar days, as determined by written notice of the Owner, the Owner may, at the expense of the Construction Manager, remove and dispose of such rejected Work as the Owner sees fit. If the Construction Manager does not pay the cost and expenses of such removal within 10 Days, the Owner may deduct all such costs and expenses from any monies due the Construction Manager.

39.8.3 If the Work deviates from the requirements of the Contract Documents, the Construction Manager will be responsible for all resulting damages. A claim by the Construction Manager 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 Construction Manager as a defense or a claim to reduce the Construction Manager's liability. This provision does not limit the other rights of the Owner or Architect or other obligations of the Construction Manager.

39.9 Correction of Work after Final Payment

The final certificate of occupancy, final acceptance of the Project or applicable Phase thereof, final payment, or any provision in the Contract Documents does not relieve the Construction Manager of responsibility for faulty materials, equipment or workmanship. Unless otherwise specified in the Agreement, the Construction Manager will remedy any defects and pay for any damage to other Work resulting therefrom. The Owner will give timely written notice of such defects.

39.10 Guarantees and Warranties

39.10.1 The Construction Manager's Warranty and Guarantee

39.10.1.1 Unless stated otherwise in the Technical Specifications and Drawings, the Construction Manager warrants and guarantees (the "Warranty") 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 a period of one (1) year (the "Warranty Period"), 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 Contract Documents. The Construction Manager will provide this Warranty to the Owner in writing using a form approved by Owner. The Warranty Period will run from and after the date of Substantial Completion of the Work for each applicable Phase of the Project or of the entire Project with respect to the Work that is not Phase specific. No part of the Work [for the applicable Phase or the entire Project, as the case may be] will be held to be accepted until Substantial Completion of such Work.

39.10.1.2 The Construction Manager agrees as part of this Warranty to repair or remove and replace as directed by the Owner and, at no cost to the Owner, all Defective Work, during the applicable Warranty Period. Such repaired or replaced Work (as applicable) shall be warranted for a period of one (1) year from the date the repair or replacement work (as applicable) is accepted by the Owner. The Construction Manager agrees to repair, remove and replace, or pay for as directed by the Owner, at no cost to the Owner, 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 Owner, and sufficient labor and materials must be furnished to ensure prompt completion thereof. Should the Construction Manager fail to proceed in accordance with the above, the Owner, without further notice to the Construction Manager, may furnish all labor and material necessary for repairs, or removals and replacements, and the Construction Manager agrees to pay the Owner all such costs incurred.

39.10.2 Manufacturer's Warranties

39.10.2.1 The Construction Manager will:

Ensure that all required Manufacturer's Warranties are assignable, and assigned, to the Owner.

Submit all applicable Manufacturer's Warranties to the Owner's Representative and ensure that all warranty forms have been completed in the Owner's and/or User Agency's name and registered with the appropriate manufacturers.

39.10.2.2 Repairs and replacements made by the Construction Manager pursuant to this Section will include a standard Manufacturer's Warranty, and any specific Extended Warranties that were purchased in addition to the standard Manufacturer's Warranty. These are in addition to the Construction Manager's Warranty.

39.11 Sequencing and Installation Standards

The Construction Manager must coordinate quality control activities to avoid delay and to make it unnecessary to uncover Work for testing or inspection.

39.12 Interface and Project Coordination

39.12.1 Drawing Coordination, the Construction Manager's Obligations:

39.12.1.1 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.

39.12.1.2 Determine exact locations by the dimensions of the actual equipment and final locations of masonry for the facade 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.

39.12.1.3 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.

39.12.1.4 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 cost to the Owner.

39.13 Construction Industry Standards

39.13.1 Publication Dates: The Construction Manager must comply with the standard in effect as of the date of the Agreement is executed, unless another edition is indicated in the Specifications.

39.13.2 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 Construction Manager must refer requirements that are different, but apparently equal, and uncertainties to the Architect for a decision before proceeding.

39.13.2.1 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. The Construction Manager must refer uncertainties to the Architect for a decision before proceeding.

39.13.3 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.

39.13.3.1 Where copies of standards are needed for performance of a required construction activity, the Construction Manager shall obtain copies directly from the publication source.

39.13.4 Installer: An "Installer" is the Construction Manager or an entity engaged by the Construction Manager, 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.

39.13.4.1 The term "experienced", when used with the term "Installer", means having a minimum of five (5) 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 the requirements of the applicable Governmental Authority. Comply with additional qualifications where called for in the individual Specification sections.

39.13.4.2 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.

39.13.4.3 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 Construction Manager has no choice or option. Nevertheless, the ultimate responsibility for fulfilling Agreement requirements remains with the Construction Manager.

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.

39.13.5 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.

39.14 Quality Execution

39.14.1 General

39.14.1.1 The Construction Manager must provide Work of the specified quality; where quality level is not indicated, provide Work of quality customary in similar types of Work.

Where codes, Laws, or regulations require Work of higher quality or performance, provide Work complying with such codes, Laws, and regulations.

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.

Actual quality may exceed the specified quality; verify that such differences are acceptable to the Owner.

39.14.1.2 The Construction Manager must control products, Suppliers, manufacturers, Site conditions, Installers, and workmanship in such a manner as to produce Work of the specified quality.

39.14.1.3 The Construction Manager must comply with manufacturers' instructions and recommendations.

Keep a record of instructions and recommendations which supplement or conflict with the manufacturer's written instructions.

When manufacturers' instructions and recommendations conflict with the Contract Documents, obtain clarification from the Architect before proceeding.

39.14.1.4 The Construction Manager must use Installers who are capable of producing Work of the specified quality.

39.14.1.5 The Construction Manager must perform all quality control activities specified unless indicated to be performed by other entities.

39.14.2 Grades, Lines, and Levels

39.14.2.1 The Construction Manager must establish, maintain, and be responsible for grades, lines, levels, and benchmarks.

39.14.2.2 The Construction Manager 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 Contract Price or the Contract Time. The Architect will not assume the responsibilities for laying out the Work.

39.14.2.3 The Construction Manager 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.

39.14.2.4 Before ordering materials or doing work which is dependent for proper size or installation upon coordination with building conditions the Construction Manager must verify dimensions by taking measurements and be responsible for their correctness.

39.14.2.5 The Construction Manager must resolve differences between the actual dimensions and those indicated on the Drawings.

39.14.2.6 Report to the Architect and Owner's 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.

39.14.3 Surveyor

39.14.3.1 When required by the Owner, the Construction Manager must engage and pay for the services of a licensed surveyor, subject to the approval of the Owner, who is not a regular employee of the Construction Manager and who has no interest in the Agreement.

39.14.3.2 Locating the Work

Verification: The Construction Manager must have the surveyor verify that the following elements of the work have been furnished and installed in accordance with the Contract Documents:

Caissons: Verify locations, elevations, and dimensions.

Foundation Walls: Verify locations, elevations, dimensions, and angles.

Anchor Bolts and Setting Plates: Verify locations, elevations, and dimensions.

Roof Structure: Verify plumbness.

Exterior Walls: Verify locations and plumbness.

Bottom of excavation; top of compacted fill.

39.14.3.3 Certification: The Construction Manager must submit certification to the Owner 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 Construction Manager shall not proceed with the work until surveyor's certification has been submitted and verified for correct location of the work.

39.14.4 Settlement Monitoring

39.14.4.1 Readings: Unless otherwise specified, the Construction Manager 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 Specifications. Additional monitoring points may be established as the Construction Manager 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.

39.14.4.2 Reports: The Construction Manager must record settlement readings and submit them in the form of a report to the Owner's Representative and the Architect once a week.

39.14.5 Protection and Repair

39.14.5.1 When Work is uncovered during quality control activities, the Construction Manager must provide protection from damage.

39.14.5.2 The Construction Manager must correct Work damaged by quality control activities; where repair is indicated as an unacceptable method, replace the Work.

ARTICLE 40
TESTING AND INSPECTION

40.1 Inspection of Work

40.1.1 The Owner, the Architect, the Owner's Representative, and all consultants of the Owner retained to do testing, commissioning or inspection, and will at all times have access to the Work wherever and whenever it is in process. The Construction Manager must provide proper and safe facilities for access and inspection.

40.1.2 [The Construction Manager will cooperate with inspecting agencies and provide appropriate access. If the inspection is made by an entity other than the Architect or Owner, the Construction Manager will inform the Architect and Owner's Representative in writing of the date fixed for such inspection.]

40.1.3 If the Specifications, the Architect's instructions, Laws, or any Governmental Authority require any Work to be specifically tested or approved, the Construction Manager will give the Owner's Representative no less than thirty (30) Days' written notice of the Work's readiness for inspection by the Architect. Required certificates of inspection must be secured by the Construction Manager. Inspections by the Architect will be promptly made, and where practicable, at the source of supply. **Additional testing requirements are set forth in Division 1 of the Technical Specifications set forth in Exhibit 15 (Book 3).**

40.1.4 Any Work covered up without approval, inspection, or consent of the Architect or Owner's Representative when such approval, inspection or consent is required by the Contract Documents, will be uncovered for examination as required by the Architect or Owner, and will be replaced and/or re-covered, all at the Construction Manager'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 when so ordered, such Work will be uncovered by the Construction Manager. If such Work is found to be in accordance with the Contract Documents, the Owner will reimburse the Construction Manager for such uncovering and re-covering. Such reimbursement will be for actual cost incurred plus the percentages allowed by Section 16.03, "Payment for Changes." If such Work is found to be not in accordance with the Contract Documents, the Construction Manager will pay all costs of uncovering, replacement, and re-covering, as well as any corrections or repairs made to the Work.

40.1.5 The Construction Manager will place its field engineering force at the Owner's Representative's disposal for field checking during any inspection period. When layouts of the Work are to be made, the Construction Manager will notify the Owner's Representative in sufficient time that the Architect may be present.

40.1.6 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 Construction Manager 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."

40.1.7 The Owner shall have a right to inspect and approve any Agreement goods, equipment, supplies or services used in carrying out this Agreement and shall approve the quality and standards of all materials or completed work furnished under this Agreement. Agreement goods, equipment, supplies or services not complying herewith may be rejected by the Owner's Representative and/or the User Agency and shall be replaced and/or re-performed by the Construction Manager at no cost to the Owner. Any Agreement goods, equipment or supplies rejected shall be removed within a reasonable time from the premises of the Owner at the entire expense of the Construction Manager, after notice has been given by the Owner to the Construction Manager that such Agreement goods, equipment or supplies have been rejected. Whenever necessary and/or applicable in connection with Owner facilities projects, the Work must meet all requirements applicable thereto.

40.2 [Not used.]

40.3 [Not used.]

ARTICLE 41
SHOP DRAWINGS, PRODUCT DATA, RECORDS, AND SAMPLES

41.1 The Construction Manager's Responsibilities and Submittal Procedures

41.1.1 See Division 1 of the Technical Specifications set forth in Exhibit 18 (Book 3) for Shop Drawing, Product Data and Sample Requirements.

41.2 Review by the Architect

41.2.1 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 Construction Manager, 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 Construction Manager 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. Final determination of the responsibilities contained within this Section will be made by the Owner.

41.2.2 The Construction Manager 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 Division 1 of the Technical Specifications set forth in Exhibit 18 (Book 3).

41.3 Project Accounting Records

41.3.1 Project data and records

41.3.1.1 The Construction Manager 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 Owner and to the Director of Labor of the State of Illinois and his/her deputies and agents. The Construction Manager also must furnish the Owner with certified copies of its payrolls in accordance with Section 16.02, "Payment Applications."

41.3.1.2 The Construction Manager and all Subcontractors must furnish the Owner with such information as the Owner 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 Owner may require. The Construction Manager must, on request, furnish the Owner with copies of delivery tickets and invoices covering the expenditures on the Agreement.

41.3.2 Audits

41.3.2.1 Upon reasonable notice and during normal business hours, the Construction Manager agrees that the County Auditor or any of its duly authorized representatives shall, until expiration of the Record Keeping Period set forth in Section 15.03(2)(b.) below, have access and the right to examine any books, documents, papers, canceled checks, bank statements, purveyor's and other invoices, and records of the Construction Manager related to the Agreement, or Construction Manager's compliance with any term, condition or provision thereof. The Construction Manager shall be responsible for establishing and maintaining records sufficient to document the costs associated with performance under the terms of the Agreement.

The Construction Manager further agrees that it shall include in all of its subcontracts hereunder a provision to the effect that the subcontractor agrees that the County Auditor or any of its duly authorized representatives shall, until the expiration of Record Keeping Period, have access and the right to examine any books, documents, papers, canceled checks, bank statements, purveyor's and other invoices and records of such subcontractor involving transactions relating to the subcontract, or to such subcontractor's compliance with any term, condition or provision thereunder or under the Agreement.

In the event the Construction Manager receives payment under the Agreement, reimbursement for which is later disallowed by the Owner, the Construction Manager shall promptly refund the disallowed amount to the Owner on request, or at the Owner's option, the Owner may credit the amount disallowed from the next payment due or to become due to the Construction Manager under any contract with the Owner.

41.3.2.2 The Construction Manager must furnish to the Owner's Representative such information as may be requested relative to the progress, execution, and cost of the Work. Beginning at Agreement award, the Construction Manager must maintain complete records showing actual time devoted and costs incurred. The Construction Manager 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 ten (10) years after termination or final payment on the Project by the Owner, or until litigation initiated during said period has been completed, whichever is longer, or for such longer period as otherwise required by Law (the "Record Keeping Period"). This system of accounting must be in accordance with generally accepted accounting principles and practices, consistently applied.

41.3.2.3 All books and accounts kept by the Construction Manager 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 Owner or other independent third parties. The Construction Manager 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 the Record Keeping Period. No provision in this Agreement granting the Owner right of access to records documents is intended to impair, limit, or affect any right to access to such records and documents which the Owner would have had in the absence of such provisions.

41.3.2.4 The Construction Manager must reimburse the Owner for the costs of such audits if the audit demonstrates that the Construction Manager overstated the amount due on any invoice by two percent (2%) or more. This is in addition to the Construction Manager's obligation to reimburse the Owner for any overstated amount that might have been paid to Construction Manager. The Owner has a right to offset any overstated amount from the next payment due or to become due to the Construction Manager.

41.3.2.5 The Construction Manager shall include a clause in the subcontracts, requiring Subcontractors to preserve and make accessible to Owner under the same terms required of the Construction Manager, all documents specified in this Section for the Record Keeping Period.

ARTICLE 42
PAYMENTS

42.1 Intentionally Omitted

42.2 Payment Applications

42.2.1 It is the duty of the Construction Manager to effectively manage the payment application process and all related paperwork. The Construction Manager is responsible to the Owner for securing and delivering all paperwork required by the Agreement to be submitted for payment, including Subcontractor, consultant and Material Supplier lien waivers, certified payrolls, and all other required documents.

42.2.2 The Owner will require the Construction Manager to utilize the Document Management System for the submission of the Construction Manager's monthly payment

applications, including supporting Subcontractor documentation. The Construction Manager shall be responsible for implementation and use of the Document Management 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 Document Management System, training of the Construction Manager's personnel on the Document Management System and the applicable the Construction Manager's payment application business process.

42.2.3 Failure of the Construction Manager to promptly submit its payment applications to the Owner, in proper and complete form, will constitute a material breach of this Agreement, and constitute cause for termination. No payment application will include payment for Work for which the Construction Manager has not been billed by the applicable Subcontractor, Material Supplier, service provider or consultant.

42.2.4 The Construction Manager 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.

42.2.5 Schedule of Values

42.2.5.1 No later than fourteen (14) Days after the Notice to Proceed, the Construction Manager will submit to the Owner's 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 Owner's Representative may require. The Schedule of Values will list the value for each construction activity broken down by materials and labor. When approved by the Owner's 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 Construction Manager's Sworn Statement and Affidavit and include the following:

Project Name, contract number, Architect's Name, Owner's Name, the Construction Manager's Name and Address, and Date of Submittal

42.2.5.2 The Schedule of Values must break costs down into the line items which will be used on the Construction Manager Payment Applications and the Construction Manager shall:

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

Divide major subcontracts into individual cost items

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.

Show the following as separate line items:

Material testing

Operations and maintenance data

Project Record Documents

Bond and insurance premiums

Permit costs

Overhead and profit

Include the following information for each line item:

Item name

Applicable specification section

Dollar value, rounded to the nearest whole dollar (with the total equal to the Contract Price)

Proportion of the Contract Price represented by this item, to the nearest one-hundredth percent (with the total adjusted to one hundred percent (100%)

Provide the following supporting data for each line item:

Subcontractor's name

Manufacturer or fabricator's name

42.2.5.3 The Owner's Representative shall review the Schedule of Values. Should the Owner's Representative notify the Construction Manager that the Schedule of Values is not satisfactory; the Construction Manager shall revise and resubmit the Schedule of Values until it is approved.

42.2.5.4 After approval of the Schedule of Values, the Construction Manager may request revisions to the Schedule of Values. It is within the sole discretion of the Owner's Representative whether to approve the revisions requested.

42.2.6 Target Date Requirements

42.2.6.1 The Owner will assign an invoice target date to the Construction Manager at the Pre-Construction Meeting. Not later than five (5) Days prior to the invoice target date, the Construction Manager will submit to the Owner's 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 herein. The Construction Manager shall follow the directions provided by the Owner regarding submission of the Construction Manager's monthly payment applications. When submitting the Construction Manager's monthly payment applications through the

Document Management System, the Construction Manager may submit its monthly payment applications and supporting documentation electronically pursuant to appropriate protocols developed by the Owner and the Construction Manager for the submission of the Construction Manager's monthly payment application. Not later than three (3) 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 Owner's 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 Owner. 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.

42.2.7 Payment Application Procedures

42.2.7.1 On the invoice target date of each month, the Construction Manager will submit to the Owner's Representative, an application for partial payment including a notarized affidavit stating that it has complied with the requirements of this Section. The Application for Payment shall be submitted using such forms and in the order as directed by the Owner's Representative and shall conform to the following requirements, without limitation: the submission shall be one (1) original hard copy to the Owner's Representative and at the same time submission electronically through the Document Management System; the form for the Application and Certification for Payment is attached as an exhibit to Book 1; the Construction Manager must also provide a Construction Manager's Sworn Statement and Affidavit for Partial Payment, in a form attached as an exhibit to Book 1; the affidavit must be supported by receipts or receipted vouchers, and lien waivers, evidencing payments for such materials, services, labor, and payments to 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 Construction Manager's right to payment as the Owner's Representative may direct. A sample of the Construction Manager's Waiver of Lien for Partial (or Progress) Payment is attached as an exhibit to Book 1. The application for partial payment will conform to approvals made by the Owner's Representative at the payment review meeting.

42.2.7.2 Contract amounts are to include only those Change Orders that have been approved by the Owner as of the close of the current payment period. Payment Applications will be returned for revision if unapproved Change Orders are billed.

42.2.7.3 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.

42.2.7.4 All amounts reported on the MBE/WBE documents must conform 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.

42.2.7.5 Within forty-five (45) Days after accepting the Application for Payment, the Owner shall pay directly to the Construction Manager the appropriate, undisputed

amount for which Application for Payment is made. The Construction Manager shall not be entitled to any late fees or other penalties.

42.2.7.6 The Construction Manager hereby acknowledges that the Owner's expenditures must align with the Owner's fiscal year, which begins on December 1 and ends on November 30. Further, the Construction Manager hereby acknowledges that the last day to issue an Application for Payment in the fiscal year is November 30th, and that all active Applications for Payment from the prior fiscal year will be cancelled on January 15th. The cutoff date for the Owner's Department of Capital Planning and Policy to enter invoices against an active Application for Payment from the prior fiscal year is December 31st for services rendered up until and through November 30th. The Construction Manager is to provide all Applications for Payment from the prior fiscal year by the third Monday in the month of December to the Owner's Representative. Accordingly, the Construction Manager will work with the Owner's Representative to ensure that all Applications for Payment at the end of the fiscal year are received in time for the payment to be rendered as of December 31 for services rendered up to and through November 30.

42.2.7.7 All invoices submitted by the Construction Manager shall be in accordance with the cost provisions contained in the Agreement and shall contain a detailed description of the Deliverables, including the quantity of the Deliverables, for which payment is requested. All invoices for services shall include itemized entries indicating the date or time period in which the services were provided, the amount of time spent performing the services, and a detailed description of the services provided during the period of the invoice. All contracts for services that are procured as "sole source" must also contain a provision requiring the Construction Manager to submit itemized records indicating the dates that services were provided, a detailed description of the work performed on each such date, and the amount of time spent performing work on each such date. All invoices shall reflect the amounts invoiced by and the amounts paid to the Construction Manager as of the date of the invoice. Invoices for new charges shall not include "past due" amounts, if any, which amounts must be set forth on a separate invoice. Construction Manager shall not be entitled to invoice the Owner for any late fees or other penalties.

42.2.8 Certified Payrolls

42.2.8.1 Certified payrolls for the Payment period are to be submitted by the Construction Manager and all Subcontractors working on the Site to the Owner every week. The Owner may elect to utilize a web-based method for electronic submittal of certified payrolls. In the event that the Owner elects to utilize electronic submittal, the Construction Manager shall follow the directions provided by the Owner and submit its certified payrolls electronically, as a replacement for the three hard copy submittals. All payrolls must be identified with the Construction Manager or Subcontractor's name and contract name and number, and must be sequentially numbered. The payroll will be submitted by the Construction Manager and Subcontractor until all Work by that the Construction Manager or Subcontractor is completed. If there are periods of no Work by the Construction Manager 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 Owner. An employee's address should appear every time his/her name appears on the payroll. The Construction Manager 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 Owner. The payroll summary report form required by the Owner and the U.S. Department of Labor must be submitted by the Construction Manager and each Subcontractor, reflecting fully the periods of Work covered by the partial payment request.

42.2.8.2 The Construction Manager, Subcontractor, and Supplier shall be required to submit certified payrolls and labor compliance documentation electronically at the discretion of and using the Document Management System.

42.2.8.3 Use of the Document Management System shall include additional data entry of weekly payroll information including: employee identification, labor classification, total hours worked and hours worked on the Project, wage and benefit rates paid, and other related information in the manner specified by the Owner.

42.2.8.4 This requirement will be ‘‘flowed down” to Subcontractor and Material Supplier required to provide labor compliance documentation.

42.2.9 Payment for Material Stored On-Site

42.2.9.1 Payments for on-site stored material will be made only if the Owner 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 Construction Manager of bills of sale, waivers of lien, and other such documents and compliance with other such procedures as the Owner requires to establish its title to such materials or equipment or otherwise protect its interest, including applicable insurance and transportation to the Site.

42.2.9.2 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 Construction Manager has provided the following documents:

A paid invoice from the Supplier showing the unit, quantity, description of the material or equipment and costs

A final waiver of lien from the Supplier for the total amount of the material purchased

Inspection tickets for all the material stored

42.2.10 Payment for Material Stored Off-Site

42.2.10.1 Payments for off-site stored material will be made only if the Owner specifically approves, at its sole discretion, such payments. If payments are to be made for materials and equipment stored off site, such payments will be conditioned upon submission by the Construction Manager of bills of sale, waivers of lien, and other such documents and compliance with other such procedures as the Owner requires to establish its title to such materials or equipment or otherwise protect its interest, including applicable insurance and transportation to the Site.

42.2.10.2 Payment for material stored off-site when approved in writing by the Owner and Owner's Representative, will be one hundred percent (100%) of a valid invoice less applicable retainage (as described in Section 16.06) when the Construction Manager has provided documents and complied with the requirements listed below.

A paid invoice from the Supplier showing the unit, quantity, description of the material or equipment and costs

A final waiver of lien from the Supplier for the total amount of the material purchased

Inspection tickets for all the material stored

The Construction Manager must furnish the Owner's Representative with a certified statement giving the exact location of the materials or equipment, and stating that:

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 Owner.

The Construction Manager has complied with procedures satisfactory to the Owner to establish the Owner's title to such materials or otherwise protect the Owner's interest therein, including but not limited to, insurance, storage and transportation to the Project Site for such materials stored off-site, as the Owner or Owner's Representative may reasonably require.

The materials, equipment, and associated fabricated components will not be diverted away from the Project.

The risk of loss will remain with the Construction Manager. The Construction Manager must provide the Owner's Representative with a certificate of insurance coverage for the stored material for which payment is requested.

Simultaneously with payment for such material, the Construction Manager must prepare and execute any and all documents required to transfer title to the Owner, including, without any limitation, any Uniform Commercial Code Documentation necessary to perfect transfer of title.

All material and Work covered by payments made will thereupon become the sole property of the Owner.

The Construction Manager must pay the Owner'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 Owner travel guidelines.

42.2.11 Documentation Supporting Monthly Payment Applications

42.2.11.1 For the first Payment Application, the Construction Manager must provide its own Construction Manager's Sworn Statement and Affidavit for Partial Payments (Construction Manager's Sworn Statement), as required by Section 16.02 and its Construction Manager's Waiver of Lien for Partial Payment (Construction Manager's Waiver of Lien) in support of the Payment Application.

The following documents are due prior to the first Application for Payment:

Schedule of Values

List of Subcontractors, including addresses

The construction Schedule

Submittal schedule

Unit price schedule (if applicable)

Names of the Construction Manager's principal staff assigned to the Project

Names of the Construction Manager's representatives authorized to sign invoices and waivers

Copies of building permit and other authorizations from Governmental Authorities

Logistics and Mobilization Plan

Any portion of the Contingency used.

42.2.11.2 For the second Payment Application, and all subsequent Payment Applications, except the final one, the Construction Manager must provide:

The Construction Manager's own Sworn Statement

The Construction Manager's own Waiver of Lien for the current Payment Application

Signed and notarized AIA Form G702

From all:

1) Subcontractors providing labor or materials to the Project

2) Minority Business Enterprises or Women Business Enterprises providing labor or materials to the Project

Signed and notarized AIA Form G703

From all:

1) Subcontractors providing labor or materials to the Project

2) Minority Business Enterprises or Women Business Enterprises providing labor or materials to the Project

Final Release and Waiver of Lien for all Subcontractors who have completed Work

Final Release and Waiver of Lien for Material Suppliers stored off-site, if applicable

Final Release and Waiver of Lien from every entity who may be legally entitled to file a mechanic's, materialmen's, or other lien

Any applicable Change Orders

Any portion of the Contingency used in the previous month.

42.2.11.3 For the Final Payment Application, the Construction Manager must provide:

The Construction Manager's own Sworn Statement

Affidavit for Final Payment

The Construction Manager's Final Release and Waiver of Lien

Final Release and Waiver of Lien for all Subcontractors who have completed Work

Final Release and Waiver of Lien for Material Suppliers stored off-site, if applicable

Final Release and Waiver of Lien from every entity who may be legally entitled to file a mechanic's, materialmen's, or other lien

Any applicable Change Orders

42.2.11.4 Prior to final payment, the Construction Manager must comply with the requirements of Section 16.08, below.

42.2.12 Construction Manager must submit the final payment application and waivers no later than thirty (30) after the Final Acceptance of the Project. The Construction Manager's failure to do so within the required time period is an event of default.

42.2.13 The Construction Manager acknowledges its duty to ensure the accuracy of all invoices submitted to the Owner for payment. By submitting the invoices, the Construction Manager certifies that all itemized entries set forth in the invoices are true and correct. The Construction Manager acknowledges that by submitting the invoices, it certifies that it has delivered the Deliverables, i.e., the goods, supplies, services or equipment set forth in the Agreement to the Owner, or that it has properly performed the Work set forth in the Agreement. The invoice must also reflect the dates and amount of time expended in the provision of Work under the Agreement. The Construction Manager acknowledges that any inaccurate statements or negligent or intentional misrepresentations in the invoices shall result in the Owner exercising all remedies available to it in law and equity including, but not limited to, a delay in payment or non-payment to the Construction Manager, and reporting the matter to the County Office of the Independent Inspector General.

42.3 Payment for Changes

The Construction Manager shall be paid for Changed Work approved in accordance with Article 17 via the procedure(s) described in Section 16.02, "Payment Applications."

42.4 Deductions for Uncorrected Work

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

42.5 Certificates for Payment and Direct Deposit of Funds

42.5.1 If the Construction Manager has complied with the requirements of Section 16.02, the Owner's Representative will issue to the Construction Manager a certificate for such amount as the Owner's 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."

42.5.2 No certificate issued for payment, nor payment to the Construction Manager, nor partial or entire use of the Work, nor occupancy of the Site by the Owner or the User Agency will be an acceptance of any Work or materials not in accordance with the Contract Documents.

42.5.3 Any certificates for payment are for the benefit of the Owner and will not be relied upon by any other party (including any surety or Subcontractor of the Construction Manager) in any action against the Owner, the Architect, or anyone acting on behalf of either of them.

42.5.4 The Construction Manager may make a written request to the Owner's Representative for payments hereunder to be made by direct electronic deposit to the Construction

Manager's bank account. The Construction Manager will also have to follow the administrative procedures required by the Owner in order to receive payment by electronic deposit.

42.6 Retainage

42.6.1 The Owner will retain ten percent (10%) from the invoice sums approved and due the Construction Manager until the entire Project is fifty percent (50%) complete, including approved Change Orders. The amount so retained ("Retainage") will be released to the Construction Manager in accordance with Section 16.08 below.

42.6.2 The Owner, at the Owner's sole discretion, may increase the amount of the Retainage withheld if the Owner considers the Construction Manager's performance or the progress of the Work to be such that the Owner will likely incur damages, including but not limited to liquidated damages, in excess of the amount of Retainage.

42.6.3 The Construction Manager must not withhold retainage from its Subcontractors in excess of the percentage retainage withheld by the Owner from payments to the Construction Manager and must release retainage to the Subcontractors as required under Section 16.08, "Release of Retainage" or Section 16.09, "Prompt Payment to Subcontractors."

42.7 Payments Withheld

42.7.1 No payment shall be made to the Construction Manager until certificates of insurance, bonds, or other evidence of compliance by the Construction Manager with all the requirements of the Agreement for insurance and bonds have been provided to the Owner.

42.7.2 The Owner's Representative may decline processing a Payment Application if, in the Owner'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.a (''Target Schedule") concurrent with each Payment Application shall be considered a failure to adequately support a Payment Application. Any Payment Application not supported by an updated Target Schedule shall result in the Construction Manager's waiver of any right to assert by CPCO, 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, as determined by the Owner's Representative. If the Construction Manager and Owner's Representative cannot agree on a revised amount to process an inadequately supported Payment Application, the Owner's Representative will process the Payment Application in the amount the Owner deems appropriate.

42.7.3 The Owner's Representative shall have the right to withhold or refuse to make payment (or any portion of a payment) and, if necessary, may demand the return of a portion of, or the entire amount previously paid to the Construction Manager due to: (i) the quality of a portion or all of the Construction Manager's Work not being in accordance with the requirements of the Contract Documents; (ii) the quantity of the Construction Manager's Work not being as represented in the Construction Manager's payment request, or otherwise; (iii) the Construction Manager's rate of progress being such that, in the Owner's opinion, Substantial Completion or Final Acceptance, or both, may be inexcusably delayed; (iv) the Construction Manager's failure to use contract funds previously paid the Construction Manager by the Owner to pay Construction Manager's project-related obligations including, but not limited to, Subcontractors, Material

Suppliers; (v) claims made, or likely to be made, against the Owner or its property; (vi) loss caused by the Construction Manager; or (vii) the Construction Manager's failure or refusal to perform any of its obligations under the Contract Documents.

42.7.4 In accordance with Section 34-177 of the Cook County Procurement Code, the Owner shall have a right to set off and subtract from any invoice(s) or Contract Price, a sum equal to any fines and penalties, including interest, for any tax or fee delinquency and any debt or obligation owed by the Construction Manager to the Owner.

42.7.5 The Owner's rights under this Section 16.07 are cumulative to any other rights provided under the Agreement.

42.8 Release of Retainage

42.8.1 Up to fifty percent (50%) completion of the Work. Through 50% of satisfactory completion of the Work for the entire Project by the Construction Manager, as determined by the Owner's Representative, based upon invoice sums approved and due the Construction Manager, Retainage will be an amount equal to ten percent (10%) of the Contract Price (including any approved Change Orders).

42.8.2 From fifty-one to one hundred percent (51%-100%) completion of the Work. From 51% through 100% of satisfactory completion of the Work for the entire Project by the Construction Manager, as determined by the Owner's Representative, based upon invoice sums approved and due the Construction Manager, retainage will be an amount equal to five percent (5%) of the Contract Price (including any approved Change Orders).

42.8.3 At Project Substantial Completion. Construction Manager may request, in writing, that Owner approve the early release of certain amounts of retainage to enable the Construction Manager to make final payment(s) to its Subcontractors. Owner's decision whether to grant such request and release any retainage amounts early shall be in the Owner's sole and absolute discretion.

42.8.4 At Project Final Acceptance. The remaining Retainage will be paid when all remaining Work for the entire Project and Punch List Work is complete and the Construction Manager submits to the Owner's Representative:

42.8.4.1 a sworn affidavit that states the following: All payrolls, bills for materials and equipment, and all other indebtedness connected with the Work for which the Owner might in any way be responsible, have been paid or otherwise satisfied.

42.8.4.2 The "Construction Manager's Sworn Statement and Affidavit" for final release of retainage has been provided to the Owner's Representative.

42.8.4.3 All claims made by Subcontractors of any tier, Suppliers, and Separate Contractors against the Construction Manager, the Owner, any agents of the Owner, the Owner or Owner's Representative have been resolved.

42.8.4.4 "Final Waiver of Lien and Construction Manager's Affidavit" forms for all Subcontractors of any tier have been provided to the Owner's Representative.

42.8.4.5 The Warranties and Guarantees, required by the Agreement, have been provided to the Owner's Representative.

42.8.4.6 All Warranties and Guarantees are in full force and effect.

42.8.4.7 The Construction Manager has provided manufacturers' operating instructions for all equipment, and furnished proof that appropriate training of User Agency personnel has been completed.

42.8.4.8 The surety's written consent, signed by its authorized representative, for final payment to be made directly to the Construction Manager, has been provided to the Owner's Representative.

42.8.4.9 The Construction Manager agrees that acceptance of final payment will constitute a general release to the Owner, its representatives, officials and employees of all claims of liability for anything done or furnished or relating to the Work of the Agreement or for any act or neglect of the Owner or its agents, officials, and employees relating to or connected with the Agreement.

42.8.4.10 As-Built documentation including but not limited to As-Built Drawings, As-Built shop drawings and Operation and Maintenance Manuals have been provided to the Owner's Representative.

42.8.4.11 All other documents requested by the Owner's Representative have been provided.

42.8.4.12 The Construction Manager has removed all of the Construction Manager's equipment, leftover materials, and trash from the Project Site, staging area(s) or anywhere else on the Project Site. The Construction Manager also restored the Construction Manager's staging area(s) to its pre-construction condition. If the Construction Manager does not comply with this requirement, the Owner's Representative may provide written notice to comply within a period of time determined by the Owner's Representative. If the Construction Manager fails to comply with the written notice, the Owner's Representative may have the work done by Separate Contractors, and deduct the charge from the Construction Manager's Retainage.

42.8.4.13 The Construction Manager furnishes the Owner with a certificate in the form to be approved by the Owner verifying wages and classifications for laborers and mechanics, including apprentices and trainees employed on the Project. Such form of certificate shall contain the following language:

> The undersigned, the Construction Manager on _____ (Owner) contract number _____, certifies that all laborers, mechanics, apprentices and trainees employed by it or by a Subcontractor performing Work under the Agreement have been paid wages at rates not less than those required by the Agreement provisions, and that the Work performed by each such laborer,

mechanic, apprentice or trainee conformed to the classifications set forth in the Agreement or training program provisions applicable to the wage rate paid.

Signature and Title of Authorized Officer

Name_____ Title_____

Contractor:_____ Project:_____

42.8.5 Notwithstanding the foregoing, the Owner's Representative, in his/her sole discretion, may decline to release all or a portion of Retainage if the Owner's Representative considers the Construction Manager's performance or the progress of the Work to be such that the Owner or User Agency has incurred or will likely incur damages greater than the Retainage, including but not limited to liquidated damages.

42.9 Prompt Payment to Subcontractors

42.9.1 The Construction Manager must state the requirements of the Prompt Payment provision in all subcontracts and purchase orders. If the Construction Manager 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. The Construction Manager and the Subcontractors have a continuing obligation to make prompt payment to their respective Subcontractors. Compliance with this obligation is a condition of the Construction Manager's participation and that of its Subcontractors on the Project.

42.9.2 The Illinois Prompt Payment Act, 30 ILCS 540/1.01 et. seq. requires prompt payment to subcontractors and suppliers, by the General Construction Manager for work that has been satisfactorily completed.

42.9.3 The Construction Manager must make payment to its Subcontractors within fourteen (14) Days of receipt of payment from the Owner for each monthly Payment Application, but only if the Subcontractor has satisfactorily completed its Work in accordance with the Contract Documents and provided the Construction Manager with all of the documents and information required of the Construction Manager by Article 16, ''Payments." The Construction Manager 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 Construction Manager is acting in good faith and not in retaliation for a Subcontractor exercising legal or contractual rights.

42.9.4 The Construction Manager 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 Acceptance 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, or whether the Construction Manager has received payment from

the Owner for Retainage. The Construction Manager may request that the Owner release the portion of the Retainage held by the Owner that the Construction Manager owes Subcontractors. The Construction Manager 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 Construction Manager has substantial grounds for and has acted reasonably in making the determination, and the Construction Manager is acting in good faith and not in retaliation for a Subcontractor exercising legal or contractual rights.

42.9.5 The Construction Manager must make payment to Subcontractor so that they receive it within fourteen (14) Days of the Construction Manager's receipt of payment from the Owner. Payment is deemed received by the Subcontractor at the time of hand delivery by the Construction Manager or three (3) Days after mailing by the Construction Manager.

42.9.6 When the Construction Manager receives any payment from the Owner for any supplies, equipment, goods, or services, it has provided to the Owner pursuant to its Agreement, the Construction Manager must make payment to its Subcontractors within fifteen (15) days after receipt of payment from the Owner, provided that such Subcontractor has satisfactorily provided the supplies, equipment, goods or services in accordance with the Agreement and provided the Construction Manager with all of the documents and information required of the Construction Manager. The Construction Manager may delay or postpone payment to a Subcontractor when the Subcontractor's supplies, equipment, goods, or services do not comply with the requirements of the Agreement, the Construction Manager is acting in good faith, and not in retaliation for a Subcontractor exercising legal or contractual rights.

42.9.7 In the event payment or part of a payment is withheld by the Owner as the result of liens or lien cases, the Construction Manager must still make full payment to Subcontractor or Material Suppliers on that payment application who have satisfactorily completed the work on the payment application.

42.9.8 To the extent feasible, to facilitate the flow of information to Subcontractors, the Owner's Representative may post at the Project Field Office and on the Owner website, a list of Construction Manager's Payment Applications, including the Subcontractors identified in them, submitted to the Owner for payment and the date of payments made to the Construction Manager by the Owner.

42.9.9 Construction Manager must not delay or refuse to timely submit pay requests for a Subcontractor's work or materials. The Owner may construe such delay or refusal as Construction Manager'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 Owner (or off-site if this Contact permits payments for off-site delivery). In addition, Construction Manager 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.

42.9.10 The Owner may withhold payment from the Construction Manager when the Owner determines that the Construction Manager has not complied with this Section 16.09.

42.9.11 These provisions do not confer any rights in Subcontractor against the Owner. Nothing in this Section is to be construed to limit the rights of and remedies available to the Owner, including but not limited to various rights under the Contract Documents and under applicable Laws.

42.10 Subcontractor Claims

The Construction Manager must pay all lawful claims made against it by its Subcontractors and all lawful claims made against the Construction Manager by other third persons arising out of, in connection with, or because of its performance of this Agreement. The Construction Manager further will cause all of its Subcontractors to pay all lawful claims made against them. In the event such lawful claims are not satisfied, the Owner is hereby empowered to disburse such sums for and on account of the Construction Manager directly to the respective parties to which such sums are due and owed.

42.11 Pay Applications and Payments Subject to Review

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

42.12 No Waiver of Legal Rights

Neither the acceptance by the Owner nor any payment by the Owner will operate as a waiver of any portion of the Agreement, or of any power herein reserved, or any right to damages herein provided. If the Owner elects to waive any breach of this Agreement, that waiver will not be held to be a waiver of any other or subsequent breach.

42.13 Liens

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

42.13.2 The final payment will not become due until the Construction Manager delivers to the Owner complete release of all liens, financial obligations or claims from the Construction Manager, Subcontractor, 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 Construction Manager must refund to the Owner all monies that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

42.14 Price Reduction

If at any time after the contract award, the Construction Manager makes a general price reduction in the price of any equipment, goods, or materials, the equivalent price reduction based on similar quantities and/or considerations shall apply to the Agreement. For purposes of this Section 16.14, a general price reduction shall include reductions in the effective price charged by the Construction Manager due to rebates, financial incentives, discounts, value points or other benefits with respect to the purchase. Such price reductions shall be effective at the same time and in the same manner as reductions the Construction Manager makes in the price of equipment, goods or materials to its prospective customers generally.

42.15 Construction Manager Credits

To the extent the Construction Manager gives credits toward future purchases of goods or services, financial incentives, discounts, value points or other benefits based on the purchase of the materials or services provided for under the Agreement, such credits belong to the Owner (and not the User Agency), unless otherwise specifically set forth in writing by the Owner. The Construction Manager shall reflect any such credits on its invoices and in the amounts it invoices the Owner.

42.16 Prepaid Fees

In the event the Agreement is terminated by either party, for cause or otherwise, and the Owner has prepaid for any goods, Work, or Deliverables, the Construction Manager shall refund to the Owner, on a prorated basis to the effective date of termination, all amounts prepaid and not actually provided as of the effective date of the termination. The refund shall be made within fourteen (14) days of the effective date of termination.

ARTICLE 43
CHANGES IN THE WORK

43.1 Approval of Certain Modifications

The parties may from time to time during the term of the Agreement make modifications and amendments to the Agreement, but only as provided in this Section. Such modifications and amendments shall only be made by agreement in writing.
The Owner's Chief Procurement Officer ("Owner CPO") may agree in writing to amend the Agreement, provided that if such amendment individually (or cumulatively along with any other amendments that may have previously been agreed to by the Owner CPO) increases the amount payable to the Construction Manager by One Hundred Fifty Thousand ($150,000) Dollars or more, such amendment shall require the approval of the County Board of Commissioners.

Similarly, any amendments which would extend the term of the Agreement by one (1) year or longer shall require the approval of the County Board of Commissioners.
Subject to the foregoing, Owner CPO may, by written order, make changes with respect to the dates of delivery and places of performance of the Agreement. The Construction Manager is hereby notified that, except for modifications and amendments which are made in accordance with this Article 17, no County department or employee thereof has authority to make any modification or amendment to the Agreement.

43.2 Owner's Right to Change Work

43.2.1 The Owner reserves the right to order, in writing, changes in the Work or the Schedule without prior notice to the Construction Manager's surety. The Construction Manager is obligated to perform the changed Work included in the written notice from the Owner in a timely manner. The Construction Manager must begin the changed Work upon receipt of a Field Order signed by the Owner's Representative unilaterally directing changes in the Work or Schedule. If the Construction Manager does not have authorization from the Owner pursuant to this Article 17, then the Construction Manager may not be compensated for any changed Work as determined by the Owner.

43.2.2 The Construction Manager may propose changes pursuant to Section 17.04.

43.3 Owner Directed Changes in the Work

43.3.1 The Owner 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 Agreement and without releasing or relieving the Construction Manager from any guarantee or warranty given pursuant to the Agreement, without affecting the validity of the guarantee, warranty, 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 Agreement. The Construction Manager will submit to the Owner's Representative "As-Built" or revised Drawings clearly showing the revised Work, all as required by Article 15.

43.3.2 Except in an emergency, no change in the Work will be made by the Construction Manager without receipt of a Field Order signed by the Owner's Representative.

43.3.3 The Construction Manager will not perform changes to the Work directed by the User Agency unless authorized to do so by the Owner based upon a Field Order signed by the Owner's Representative.

43.3.4 The Construction Manager shall be required to use a form approved by the Owner for any Change Order requests and in its response to a Field Order. In responding to a Field Order from the Owner, the Construction Manager shall provide sufficient information for evaluation of proposed changes within fourteen (14) Days following receipt of a Field Order. The Construction Manager shall advise the Owner in writing if any requested proposal cannot be priced and submitted to the Owner within seven (7) Days of receipt of the Field Order. The Owner's Representative will determine if the additional time is warranted and will so notify the Construction Manager of its determination. All responses to Field Orders and Change Order requests shall contain the following:

The amount of change in the Contract Price, if any.

The amount of change in the Contract Time, if any. The Construction Manager shall include any request for a time extension in the submission of its proposal. Such request will only be considered upon demonstration by the Construction Manager that a disruption to the critical path activities has occurred or will be caused by the Field Order. The Construction Manager is required to furnish documentation in the form of proposed Schedule revisions indicating impact in critical path activities and events previously approved by the Owner.

Cost breakdown, using the 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.

The period of time within which the proposed changes in Contract Price or Contract Time will be held. At a minimum, the pricing shall be held for sixty (60) Days.

Quantities and unit costs of products, labor, and equipment.

Taxes, insurance and bonds.

Overhead and profit.

The Construction Manager may not be entitled to a time extension should its proposal not be received timely.

43.3.5 The Construction Manager's failure to submit requests within the specified time may result in the issuance of a Change Order by the Owner for the adjustment of the Contract Price and/or time for the performance of the Work, if any, that the Owner deems appropriate for the Field Order.

43.4 Changes to the Work Initiated by the Construction Manager

43.4.1 In the event that the Construction Manager identifies an error or omission in the Contract Documents as described in Section 3.01.1 hereof, or encounters a differing site condition as set forth in Section 3.03 hereof, the Construction Manager shall submit a Request for Information (RFI) to the Owner. If, upon receipt of a response from the Architect, via the Owner's Representative, to the RFI, the Construction Manager believes that there has been a change to the Work, the Construction Manager will submit a Construction Manager Proposed Change Order (the "CPCO") to the Owner's Representative. The CPCO will state: the issue presented; any change to the Work that, in the commercially reasonable opinion of the Construction Manager the issue requires; the Construction Manager's proposed resolution of the issue; and the additional cost to (and time to perform) the Work resulting from such issue.

43.4.2 The Owner's Representative will respond promptly to the CPCO. The response will take one of two forms: (i) the Owner's Representative concurs with the Construction Manager, and issues a Field Order that incorporates the terms stated in the CPCO or a Field Order with other terms; (ii) the Owner's Representative denies the CPCO, and issues a response notifying the

Construction Manager that there is no change to the Work, and directing the Construction Manager to perform the Work pursuant to the answer to the RFI.

43.4.3 In the event that a CPCO is denied, the Construction Manager may file a claim pursuant to Article 18, "Claims and Disputes."

43.4.4 If the response results in the issuance of a Field Order, the Construction Manager shall provide a response as identified in Section 17.04.4. The Construction Manager's failure to submit such response within the specified time will be deemed to be Contractor's acceptance of the terms set forth in the Field Order.

43.5 Change Orders Finalize the Terms of Field Orders

43.5.1 The final terms and provisions of a Field Order, including any adjustment in the Contract Price and/or Contract Time for the performance of the Work, will be memorialized in a written Change Order.

43.5.2 Any adjustment to the Contract Price that may be required by a Field Order will be determined by one of the following methods.

43.5.2.1 Method 1 - Unit Price and/or Lump Sum Adjustment

If after receipt of the Construction Manager'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.

Where the change in the Work involves items for which unit prices have been established and where the net aggregate quantity of such items is in excess of the Agreement requirements, payment for such items will be at the established unit prices. When the net aggregate quantity is less than the Agreement 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 Owner 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.

Where the change in the Work involves items for which agreed-upon unit prices have not been established, the Construction Manager's proposal will be in a format acceptable to the Owner and based upon the estimated fair and commercially reasonable cost of the Construction Manager's labor, material, equipment, insurance and any applicable taxes. In submitting such proposal, the Construction Manager 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 Construction Manager, 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 Construction Manager 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 Owner act on the same or make payment on any Work covered by such proposal or billing, then, and in that event, the Owner will have the right to recover from the Construction Manager 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 Construction Manager, or by any and all other means available to the Owner.

For the cost of items of Work not covered by agreed-upon unit prices on additional Work ordered, the Construction Manager will be allowed 10% for overhead and profit on such additional Work whether performed by its own forces or by Subcontractors. The Construction Manager may include in its labor proposal only those workers and foremen directly involved in the Work. All other supervision is included in the 10% overhead and profit allowed. The Construction Manager 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 Construction Manager's material costs will include invoiced costs, transportation, applicable sales or use taxes, and actual rental costs.

43.5.3 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 ability insurance, and transportation.

43.5.3.1 Method 2 - Cost Plus Fee Adjustment

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 Construction Manager will proceed with the Work on a cost plus fee basis. Cost means the Construction Manager's actual cost of labor, material, equipment, insurance, and applicable taxes, as reviewed by the Architect and Owner's Representative for the approval of the Owner. To the Construction Manager's cost so computed will be added overhead and profit as defined under Method 1 above, which shall be Construction Manager's fee for such change to the Work.

The Construction Manager and Subcontractors must keep and present in such form as the Owner's 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.

43.6 The Construction Manager's Release

Any and all Change Orders operate to release the Owner 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 Construction Manager 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 Construction Manager must sign will state: "By executing this Change Order, the Construction Manager 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 including but not limited to: direct, indirect, overhead, home or field office costs; profits; damages; disruptions and impact."

43.7 Performance of Changed Work

The Construction Manager will promptly proceed with any changes in the Work or Target Schedule as directed by a Field Order in accordance with Section 17.02, ‘‘Owner’s Right to Change Work.” The Construction Manager’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 Agreement. No change to the Work by the Construction Manager as directed by the Owner will invalidate the Agreement or release the Construction Manager’s surety.

43.8 Change Claims and Disputes

If the Construction Manager and Owner’s 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.

43.9 Use of Contingency

Should any Costs of the Work be incurred as a result of any condition other than one that justifies the issuance of a Change Order, the Construction Manager’s sole source of revenue shall be the Contingency, subject to the terms and conditions set forth in Section 4.3 of Book 1.

ARTICLE 44
CLAIMS AND DISPUTES SECTION

44.1 Claims

44.1.1 This provision of the Agreement 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 17.04, and all other claims made under the Agreement.

44.1.2 Any claim made by the Construction Manager regarding the Project must be made in accordance with the requirements stated below.

44.1.2.1 The Construction Manager expressly consents to both the time requirements and notice content requirements for making a claim or dispute under this Section 18.01.2. The Construction Manager 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 Construction Manager to provide notice strictly in accordance with the requirements of this Section 18.01.2. will constitute a waiver of the Construction Manager’s right to make a claim to the Owner’s Representative or submit a dispute to the Owner. The Construction Manager 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 Construction Manager that the Owner’s Representative or Owner 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.

44.1.2.2 The Construction Manager must provide notice, in writing, to the Owner's Representative of any claim for differing site conditions within one (1) Day of discovery as required by Section 3.03.

44.1.2.3 The Construction Manager must provide notice, in writing, to the Owner's 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.

44.1.2.4 The Construction Manager must provide notice, in writing, to the Owner's Representative of any claim based on: a differing site condition; a change in the Work directed by the Owner's Representative; or any other cause within fifteen (15) Days of completion of the changed Work.

44.1.2.5 The Construction Manager will designate the document "Claim." The Claim must include:

The amount of money and/or time extension sought by the Construction Manager, and the contractual and factual basis for each;

A general statement of the basis for the claim;

The facts underlying the claim;

The Notice of Claim Related Work to the Owner's Representative;

Reference to the applicable Agreement provisions and;

All documentation that describes, relates to, and/or supports the claim.

44.1.2.6 The Owner's Representative will, within thirty (30) Days of receipt of the claim, respond by: requesting a meeting with the Construction Manager; making a written request for additional information from the Construction Manager; taking other action to attempt to resolve the claim; and/or advising the Construction Manager, in writing, of the Owner's Representative's position regarding the relief sought in the claim. If the Owner's Representative's written response is that the claim is denied, the letter will also advise the Construction Manager of its right to file a dispute to the Owner. Any steps taken by the Owner's Representative to resolve the claim will not exceed sixty (60) Days from receipt of the claim, unless the Construction Manager agrees to an additional amount of time in writing.

44.1.2.7 If the claim is denied by the Owner's Representative, the Construction Manager must file its dispute within thirty (30) Days of receipt of the written denial of the claim.

44.2 Disputes

44.2.1 Construction Manager's Request: In the event of any disagreement between the Construction Manager and the Owner's Representative which the Construction Manager and the Owner's Representative have attempted, but been unable to resolve, including, without limitation, changes, time extensions, claims, allowable costs or any other issues of fact or Agreement interpretation based upon, relating to, or arising under the Agreement, a request for resolution of the dispute must be submitted to the Owner by the Construction Manager for final determination. The Construction Manager may not file a dispute until there has been a denial of the claim, which was the basis for the dispute, by the Owner's Representative. The default or termination of the Construction Manager are not matters that may be disputed under this provision of the Agreement. The Construction Manager's failure to submit the dispute within thirty (30) Days of receipt of the Owner's Representative's response to the Construction Manager's claim is a waiver of the dispute. The Owner may consider issues of Agreement interpretation in connection with decisions to be made in resolving disputes.

44.2.2 Request Requirements: Requests for resolution of disputes must be made by the Construction Manager in writing, specifically referencing this Section, and include: 1) the issue(s) presented for resolution; 2) a statement of the respective positions of the Construction Manager and Owner's 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 Construction Manager believes that prior to rendering a final decision, the Owner should meet with the Construction Manager, Owner's 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 Owner and Owner's Representative on the same day. In addition, the Construction Manager's dispute and any subsequent correspondence that relates to the dispute, which the Construction Manager provides to the Owner, must be copied to the Owner's Representative. The Owner's Representative shall have thirty (30) Days to respond in writing to the Construction Manager's submission by supplementing the Construction Manager's submission or to provide its own submission to the Owner and Construction Manager. However, the Owner's Representative may request, and the Owner may allow an additional period of time to respond. Failure by the Owner's 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 Owner's decision may thereafter be reached in accordance with such other information or assistance as may be deemed reasonable, necessary or desirable by the Owner.

44.2.3 Owner's Decision: The Owner's final decision shall be rendered in writing no more than thirty-five (35) Days after receipt of the response of the Owner's Representative was filed or was due, unless the Owner notifies the Construction Manager and Owner's 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 Owner to respond. The Owner'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.

44.2.4 Implementation of Decision: In the event that the Owner's final decision requires a change to the Agreement, the Owner's final decision shall be implemented through a Change Order.

44.2.5 The Construction Manager's Remedy: If either the Construction Manager or Owner does not agree with the decision of the Owner, 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 Owner's decision, all right of the Construction Manager to seek judicial review is waived.

44.2.6 The Construction Manager's Performance of Work: The Construction Manager may not withhold performance of and must prosecute any Work required by the Agreement during the dispute resolution period, including judicial resolution. The Construction Manager must prosecute all of its Work, including any disputed Work, with the same diligence and effort as if no dispute existed. The Owner's written determination must be complied with pending final resolution, including judicial resolution of the dispute. Neither the Owner's determination, nor the actions of the Construction Manager or the Owner's 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 Agreement.

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

44.2.8 Any dispute arising under the Agreement between the Owner and Construction Manager shall be decided by the Owner's Representative. The complaining party shall submit a written statement detailing the dispute and specifying the specific relevant Agreement provision(s) to the Owner's Representative. Upon request of the Owner's Representative, the party complained against shall respond to the complaint in writing within five days of such request. The Owner's Representative will prepare a written decision and mail or otherwise furnish a copy thereof to the Construction Manager. The decision of the Owner's Representative will be final and binding. Dispute resolution as provided herein shall be a condition precedent to any other action at law or in equity. However, unless a notice is issued by the Owner's Representative indicating that additional time is required to review a dispute, the parties may exercise their contractual remedies, if any, if no decision is made within sixty (60) days following notification to the Owner's Representative of a dispute. No inference shall be drawn from the absence of a decision by the Owner's Representative.

Notwithstanding a dispute, Construction Manager shall continue to discharge all its obligations, duties and responsibilities set forth in the Agreement during any dispute resolution proceeding unless otherwise agreed to by the Owner in writing.

44.3 No Waiver of Legal Rights

44.3.1 Neither the acceptance by the Owner or any representative of the Owner, 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 Owner will operate as a waiver by the Owner of any portion of the

Agreement, or of any power herein reserved or any right of the Owner to damages herein provided. A waiver of any breach of the Agreement is not held to be a waiver of any other or subsequent breach.

44.3.2 Whenever under this Agreement, the Owner by a proper authority waives the Construction Manager's performance in any respect or waives a requirement or condition to either the Owner or the Construction Manager'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 Agreement regardless of the number of times the Owner may have waived the performance requirement or condition.

44.3.3 No term or provision of the Agreement shall be deemed waived and no breach consented to unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. The waiver of any such provision shall be strictly limited to the identified provision.

ARTICLE 45
EVENTS OF DEFAULT AND TERMINATION

45.1 Events of Default

45.1.1 The Construction Manager's failure to perform any of its obligations under the Agreement, including but not limited to the following, are events of default:

45.1.1.1 failure to begin the Work at the time specified;

45.1.1.2 failure to perform the Work in accordance with the Contract Documents;

45.1.1.3 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 Agreement;

45.1.1.4 refusal or failure (except in cases for which extension of time is provided) to supply adequate skilled workers or proper materials;

45.1.1.5 unauthorized discontinuance of the Work;

45.1.1.6 failure to promptly remove materials, or repair, or replace Work that was rejected as Defective Work;

45.1.1.7 failure to make prompt payment to Subcontractors, whether for material or labor;

45.1.1.8 failure to submit all documents required by the Contract Documents or Owner, including but not limited to timely submission of payment applications;

45.1.1.9 failure to prosecute the Work in a manner acceptable to the Owner or prosecuting the work in a manner that does not comply with all Laws applicable to the Work;

45.1.1.10 disregarding Laws, or instructions of the Owner, or Owner's Representative;

45.1.1.11 failure to comply with any other term of the Agreement or otherwise engages in a material violation of any provision of the Contract Documents;

45.1.1.12 interruption or delay of Work for reasons within the Construction Manager's control, including, but not limited to, labor interests or disputes;

45.1.1.13 failure to comply with any Laws;

45.1.1.14 the Construction Manager's default on a contract with the Owner or the User Agency;

45.1.1.15 the Construction Manager's failure to be licensed as required under applicable Law, at all times throughout the term of the Agreement or Construction Manager's loss of its general license;

45.1.1.16 disqualification as an MBE or WBE of the Construction Manager or any joint venture partner, Subcontractor or Supplier if its status as an MBE or WBE was a factor in the award of the Agreement and such status was misrepresented by the Construction Manager;

45.1.1.17 The Construction Manager becomes insolvent or bankrupt, attempts assignment of all or any part of the proceeds of this Agreement, makes a general assignment for the benefit of creditors, or if a receiver is appointed on account of insolvency any of which negatively impacts the Construction Manager's ability to pay Subcontractors or perform the work.

45.2 Remedies

45.2.1 In the event of a default by the Construction Manager, the Owner, in its sole discretion, may send the Construction Manager notice of the Owner's intent to exercise any or all of the remedies below.

45.2.1.1 Termination. The Owner may terminate the Agreement. Written notification of the default and termination of the Agreement will be provided to the Construction Manager and the surety by the Owner. The Owner's decision and declaration of termination is final and effective.

45.2.1.2 Notice to Cure. The Owner may provide the Construction Manager the opportunity to cure the default. The Construction Manager must cure the default within ten (10) Days of receipt of the notice from the Owner or such time period stated in the Notice to Cure. If the Owner does not receive written acknowledgement from the Construction Manager that it will cure the default within the stated cure period or if the Construction Manager does not act to cure the default, the Owner may terminate the Contact, in which event the termination of the Agreement is final and effective.

45.2.1.3 In addition to the foregoing, upon an event of default in Section 19.01, "Events of Default," the Owner may invoke any or all of the following remedies:

The right of set-off against any payments due or to become due to the Construction Manager and against any Retainage.

The right to take over and complete the Work, or any part thereof, either directly or through Separate Contractors, and to hold the Construction Manager liable for any amounts paid for such Work above those amounts the Owner would have paid the Construction Manager for that same Work.

The Owner may use the Construction Manager's Subcontractors, materials, and equipment to complete the Work. Upon the Owner's notification to the Construction Manager invoking this remedy, any and all rights the Construction Manager may have in or under its subcontracts are assigned to the Owner as set forth in the Agreement. The Construction Manager must promptly deliver all assignment documents upon the Owner's request. In case of any subcontract so assigned and accepted by the Owner, the Construction Manager remains liable to the Subcontractor for any payment already invoiced to and paid by the Owner, 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 Construction Manager, its officers, employees, agents, and other Subcontractors, arising prior to the date of assignment to the Owner, when such claim, suit, or cause of action has not been discharged, disposed of, or otherwise resolved as of that date. The Construction Manager must notify its Subcontractors of these requirements.

The right to terminate the Agreement as to any or all of the Work yet to be performed.

The right of specific performance, an injunction, or any other appropriate equitable remedy as may be applicable.

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 Owner 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, including money damages arising out of Construction Manager's failure to comply with the HIPAA Business Associate Addendum to the CHS General Conditions.

The right to withhold all or any part of the Construction Manager's compensation yet to be paid by the Owner.

The right to terminate any or all other contracts that the Construction Manager may have with the Owner.

The right to deem the Construction Manager non-responsible in future contracts to be awarded by the Owner.

45.3 Non-exclusivity of Remedies

The remedies under the terms of this Agreement 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 Owner from time to time and as often as may be deemed appropriate.

45.4 Owner's Right to Terminate the Agreement

45.4.1 The Owner may, at its sole discretion, exercise the right to send the Construction Manager notice under Sections 19.02.1.a, "Termination," or 19.02.1.b, "Notice to Cure." Whether to declare the Construction Manager in default is within the sole discretion of the Owner and neither that decision nor the factual basis for it is subject to review or challenge under Article 18, "Claims and Disputes."

45.4.2 If termination of the Agreement occurs by the Owner under Section 19.02.1, the Owner 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 Owner (whether located on or off the Site) to complete the Work. The Construction Manager will receive no further payment until the Work is completed. However, if the cost of completion exceeds the unpaid balance of the Agreement, the Construction Manager must pay the difference to the Owner immediately upon demand.

45.4.3 If termination occurs, all costs and changes incurred by the Owner, together with the cost of completing the Work, are deducted from any monies due or which may become due to the Construction Manager. When the expense incurred by the Owner exceeds the sum which would have been payable under the Agreement, the Construction Manager and the surety are liable and will pay the Owner the amount of such excess.

45.5 Court Adjudication of Termination

If the Agreement is terminated by the Owner 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 executed under the applicable provisions of Section 19.06, "Termination for Convenience."

45.6 Termination for Convenience

45.6.1 The Owner reserves the right, for its convenience, to terminate the Work [for specific Phase(s) or the entire Project] by written notice stating the effective date of such termination. In such case, the Construction Manager and Subcontractors will (except for services necessary for the orderly termination of the applicable Work): incur no further obligations in connection with such Work , stop all terminated Work; place no further orders or subcontracts for materials, services, equipment, or supplies with respect to the terminated Work; assign to the Owner (in the manner and to the extent directed) all of the rights of the Subcontracts relating to the terminated Work; take any action necessary to protect the property of the Owner and property in the Construction Manager's possession in which the Owner has, or may acquire, an interest; and take any other action toward termination of the applicable Work which the Owner may direct. In case of such termination for the Owner's convenience, Owner shall pay to the Construction Manager, as the Construction Manager's sole and exclusive remedy for such termination, the

amount which would have been due if a progress payment was to be made with respect to the Application for Payment with the last Work date being the date of termination plus reasonable costs of settling and paying claims arising out of the termination of Subcontracts or orders, provided the Construction Manager fulfills all requirements hereunder for the making of final payment by the Owner. The Construction Manager shall not be entitled to any lost profits or consequential damages with respect to the terminated Work. As a condition of payment of the costs set forth herein, the Construction Manager shall submit a termination claim in writing to the Owner's Representative specifying the amounts due because of the termination for convenience together with costs, pricing or other data required by the Owner's Representative to support its claim.

45.6.2 In addition to Owner's rights to terminate for convenience set forth above, the Owner may, without cause and for convenience, terminate performance of any part of the Work under the Agreement or any Subcontract. The Owner shall give written notice of such termination to the Construction Manager specifying the part of the Work or Subcontract to be terminated and when such termination becomes effective. The Construction Manager shall continue to prosecute the part of the Work not terminated. If a part of the Work or any Subcontract is so terminated, the Owner shall incur no liability to the Construction Manager by reason of such termination, except that the Construction Manager shall be entitled to payment for Work properly executed in accordance with the Contract Documents prior to the effective date of termination (the basis for such payment shall be as provided in the Contract Documents) and the unpaid Construction Manager's Fee attributable to such properly executed Work. In case of such termination, the Owner will issue a Field Order or authorize a Change Order in making any required adjustment to the Contract Time or Contract Price. For the part of the Work terminated, the applicable provisions of the Contract Documents shall continue in full force and effect as to all Work performed prior to the effective date of termination. For the remainder of the Work, the Contract Documents shall remain in full force and effect. As a condition of payment of the costs set forth herein, the Construction Manager shall submit a termination claim in writing to the Owner's Representative specifying the amounts due because of the termination for convenience together with costs, pricing or other data required by the Owner's Representative to support its claim.

45.6.3 After receipt of a notice of termination pursuant to this Section 19.06, ''Termination for Convenience," the Construction Manager will submit to the Owner's Representative its final invoice in the required form, with supporting documentation. The Owner 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.

45.6.4 If no funds or insufficient funds are appropriated and budgeted in any fiscal period of the Owner for payments to be made under this Agreement, then the Owner will notify the Construction Manager in writing of that occurrence, and this Agreement will terminate on the earlier of the last day of the fiscal period for which sufficient appropriation was made or whenever the funds appropriated for payment under this Agreement are exhausted. Payments for Work completed to the date of notification will be made to Construction Manager. No payments will be made or due to Construction Manager and under this Agreement beyond those amounts appropriated and budgeted by the Owner to fund payments under this Agreement.

45.7 Suspension of Work

45.7.1 The Owner shall have the right at any time to direct the Construction Manager, in writing, to suspend Construction Manager's performance, or any designated part thereof, for any reason whatsoever, or without reason, for such period of time as Owner may determine. If any such suspension is directed by the Owner, the Construction Manager shall immediately comply with such directive. The Construction Manager shall continue to perform Work on other portions of the Project if and to the extent directed by Owner. If the Work, or any part of the Work, is suspended, the Construction Manager will make every reasonable attempt to mitigate all of its costs and an adjustment will be made in the Contract Price and Contract Time to the extent such adjustment is otherwise provided for in the Agreement. However, no increase in Contract Price will be made to the extent that performance of the Work is or would have been suspended by another cause that the Construction Manager has or had control over.

45.7.2 In the event the Owner directs a suspension of performance under this Section in excess of fifteen (15) Days, through no fault of the Construction Manager, and the suspension materially increases costs to complete the Work (or component of the Work), the Owner shall pay the Construction Manager, as full compensation therefor, the Construction Manager's reasonable costs, but not in excess to that actually incurred and paid, as a result of (i) demobilization and remobilization, including such costs paid to Subcontractors; (ii) preserving and protecting Work in place; (iii) storage of materials or equipment purchased for the Project, including insurance thereon; (iv) performing in a later, or during a longer, time frame than that contemplated by the Agreement; and (v) the Construction Manager's reassignment of supervisory personnel, such costs to be limited to the actual wages and benefits for such supervisory personnel for a period not to exceed two weeks or $10,000, whichever shall be less.

45.7.3 In the event the Owner directs a suspension of performance under this Section due to the Construction Manager's failure or refusal to perform the Work as required by the Contract Documents, the Construction Manager shall provide assurances adequate to the Owner that the cause of such suspension has been eliminated or corrected, within seven (7) Days of the date of receipt of such direction to suspend performance. If the Construction Manager fails to provide such adequate assurances in a form acceptable to Owner, Owner shall have the right, but not the obligation to carry out the Work with its own forces or with forces of another contractor, and Construction Manager shall be fully responsible and liable for any additional costs of performing such Work incurred by the Owner. The rights set forth in this Section are in addition to, and without prejudice to, any other rights or remedies the Owner may have against the Construction Manager.

45.7.4 If it becomes necessary to stop Work for an indefinite period of time, the Construction Manager 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 Construction Manager must not suspend work without written consent from the Owner.

ARTICLE 46
ENVIRONMENTAL REQUIREMENTS

46.1 Compliance with Environmental Laws

46.1.1 The Construction Manager must comply with all Environmental Laws including, without limitation, those listed in the Disclosure Affidavit that must be executed and notarized by the Construction Manager, and any analogous future Laws promulgated under or pursuant to the foregoing, and any other present or future Law which regulates, relates to, imposes liability for, or establishes standards of conduct concerning any Hazardous Materials that may be set forth by the Governmental Authorities.

46.1.2 If the Construction Manager 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 the Construction Manager to perform the Work, the Construction Manager must first provide a copy of such report or notice to the Owner's Representative before filing same. If a release or threatened release of Hazardous Materials or Special Waste into the environment occurs, or any claim, demand, action or notice is made against the Construction Manager regarding the Construction Manager's failure or alleged failure to comply with any Environmental Law, the Construction Manager must notify the Owner's Representative pursuant to Section 20.06, "Disposal of Materials, Construction Debris, Soil, and Waste" herein below.

46.1.3 If the Construction Manager fails to comply with any Environmental Law, the Owner may terminate this Agreement in accordance with the default provisions of this Agreement, which may adversely affect Construction Manager's eligibility for future contract awards.

46.2 Environmental Permits and Recordkeeping

46.2.1 The Construction Manager must show evidence of, and keep current throughout the term of this Agreement, all waste hauling, Special Waste hauling, licenses, permits and insurance certificates required by any applicable Governmental Authority pursuant to any Environmental Law.

46.2.2 When requested by the Owner's Representative, the Construction Manager 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 Owner's Representative throughout the duration of this Agreement. Noncompliance with this requirement may be cause termination of this Agreement.

46.2.3 Environmental Records and Reports: The Construction Manager is required to prepare and maintain proper, accurate and complete records of accounts of all transactions related to the performance of this Agreement, including, but not limited to the following:

46.2.3.1 Training Certificates

46.2.3.2 Health and Safety Plans

46.2.3.3 Waste Characterization Analytical and Signed Generator Waste Profiles

46.2.3.4 Disposal and Recycling Facility Approvals

46.2.3.5 Imported Backfill Material Analytical Results

46.2.3.6 OSHA Compliance Air-monitoring records

46.2.3.7 Certificate of Tank Destruction from a Steel Reclamation Facility

46.2.3.8 Storm Water Discharge Approval and MWRDGC Discharge Authorization

46.2.3.9 Soil Management Plan

46.2.3.10 IDPH/EPA Notifications

46.2.3.11 Owner's Authorization

46.2.3.12 OSHA Exposure Assessment

46.2.3.13 Certifications for all HEPA vacuums, negative air pressure equipment, and other local exhaust ventilation equipment

46.2.3.14 Material Safety Data Sheets {MSDS} for chemicals used on site

46.2.3.15 Copies of all regulatory notices

46.2.3.16 Laboratory and Analyst Credentials for Construction Manager Samples

46.2.3.17 Disposal Records, including Disposal Site Name and Address, Transporter's Names, Date, Truck Numbers, Truck Content, and Disposal Weight

46.2.3.18 Permit Documentation and all other documentation and transactions pertaining to all Environmental Laws

46.3 Energy Conservation Ordinance

Whenever the Construction Manager 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 applicable Environmental Laws.

46.4 Environmental Control

In performing the Work, the Construction Manager must comply with all applicable Laws with respect to the elimination of excessive noise and pollution of air, water, and soil due to construction and other operations. The Construction Manager must reduce the noise of heavy construction equipment, control the dust, smoke, and fumes from construction equipment and other operations on the Site, and reduce the dirt and noise created by heavy truck operations over streets adjacent to the Site, all in accordance with applicable Laws. The Construction Manager shall not discharge any Hazardous Materials into waterways and sewers.

46.5 Equipment and Environmental Control during Transport

The Construction Manager 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 and dust during the hauling operation. The Construction Manager's equipment must fully comply with all applicable Laws pertaining to size, load, weight, safety, and any Environmental Law.

46.6 Disposal of Materials, Construction Debris, Soil, and Waste

46.6.1 The Construction Manager 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 Construction Manager 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 Construction Manager 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 the Project Site. All of the Construction Manager's personnel shall be trained in the proper handling of the materials that are on site.

46.6.2 The Construction Manager must provide the Owner or its designated representative with copies of all load tickets, manifests, bills of lading, scale tickets, and other pertinent documents. When requested by the Owner's Representative, the Construction Manager 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 Construction Manager have existing violations and do not possess the necessary permits and/or licenses to accept the materials, construction debris, soil or other wastes, the Construction Manager will replace the transfer station and/or landfill submitted as part of the GMP Proposal at no additional cost to the Owner. If the Construction Manager disposes of materials, construction debris, soil or other wastes at a site which is not properly permitted, the Construction Manager will be responsible for all costs associated with the removal of the waste to a properly licensed/permitted landfill or disposal site.

46.6.3 The Construction Manager must notify the Owner's Representative within four (4) hours of receipt of any environmental complaints, fines, citations, violations, or notices of violation ("Environmental Claim") by any Governmental Authority against the Construction Manager by any third party relating to the loading, hauling, or disposal of materials, construction debris, soil,

or other wastes. The Construction Manager will provide evidence to the Owner that any such Environmental Claim has been addressed to satisfaction of the issuer or initiator of such Environmental Claim.

46.6.4 The Construction Manager must notify the Owner's 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 Agreement in which the Construction Manager is asked to participate.

46.6.5 The Construction Manager must verify, in writing, whenever requested by the Owner, that all materials, construction debris, and other waste accepted by the Construction Manager from the Owner has been disposed of in compliance with all Environmental Laws.

46.6.6 The form for identifying the Construction Manager's debris disposal hauling site(s) and acknowledging terms and conditions relating thereto, if required by the Owner, will be prepared by the Construction Manager for the Owner's approval. In addition to the representations and requirements contained in such form, the Construction Manager understands and agrees that the Construction Manager, unless otherwise authorized in writing by the Owner, 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 other local ordinance; or (ii) does not have a necessary permit. If only one site was identified in the form, the Construction Manager must arrange for a substitute disposal hauling site that meets the requirements specified in the form and provide a revised form to the Owner. The Construction Manager further understands and agrees that any such substitution is at no additional cost of the Owner, regardless of the reason necessitating such substitution.

46.7 Open Dumping Prohibited

46.7.1 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 Agreement, 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 Laws.

46.7.2 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 Construction Manager and made available to the Owner upon request.

46.8 Sustainability Goals

46.8.1 The Construction Manager must assist the Owner to achieve the sustainability goals established for this Project. The Construction Manager must implement construction of the Project and provide all required documentation so that the Owner can achieve the sustainability goals identified in the Contract Documents.

46.8.2 Regarding commissioning of the Project systems, the Construction Manager must provide the appropriate labor to operate, adjust, and observe the systems, as directed by the applicable Governmental Authority to ensure that all the commissioning requirements and

sustainability 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.

46.8.3 The Construction Manager must make all required sustainability submittals to the Owner's Representative. The format and number of submittals must be approved by the Owner.

46.8.4 The Construction Manager must take the actions listed below, regarding sustainability requirements, within the time periods specified.

46.8.4.1 Construction Manager sustainability qualifications must be submitted with fifteen (15) Days of the Notice to Proceed (NTP).

46.8.4.2 Erosion and Sedimentation Control Plan must be submitted within fifteen (15) Days of the NTP. The Construction Manager must implement the approved Plan prior to start of work on the Project Site. The Construction Manager may be required to incorporate or maintain an existing Plan from a previous phase of the work.

46.8.4.3 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.

46.8.4.4 Materials and Resources Plan must be submitted at the same time as the Schedule of Values.

46.8.4.5 Volatile Organic Compounds Plan must be submitted at the same time as the Schedule of Values.

46.8.4.6 Construction Indoor Air Quality Plans must be submitted within fifteen (15) Days of NTP or as otherwise directed by the Owner's Representative.

46.8.5 Other requirements of the Contract Documents regarding sustainability goals are found in various provisions in Book 3.

ARTICLE 47
COMPLIANCE WITH ALL LAWS

47.1 The Construction Manager Must Comply with All Laws

47.1.1 The Construction Manager must at all times observe and comply, and must cause its Subcontractors to observe and comply, with all applicable Laws now existing or hereinafter in effect, which may in any manner affect the performance of the Agreement. Provision(s) required by applicable Laws to be inserted in this Agreement are deemed inserted, whether or not they appear in this Agreement. In no event does the failure to insert such provision(s) prevent the enforcement of such provision(s) of this Agreement.

47.1.2 Construction Manager is responsible for assuring compliance with this Article 21 by Construction Manager's employees, agents and subcontractors.

47.1.2.1 Construction Manager's Compliance. Construction Manager and its subcontractors performing the Work will observe and comply with any accreditation standards applicable to Construction Manager in its regular business and with the Laws that may in any manner affect the performance of the Work, including those County Ordinances applicable to the Work or included in the Economic Disclosure Statements.

47.1.2.2 Training. Construction Manager will ensure that Construction Manager's employees, agents and subcontractors, and subcontractors' employees and agents, complete training as necessary and appropriate to carry out their assigned work in connection with the furnishing of the Work or Deliverables. Training will include completion of corporate compliance training, including fraud, waste, abuse, and financial misconduct training, privacy and security training, [CMS compliance requirements,] and Owner's Code of Ethics training upon hire and at least annually thereafter. Owner reserves the right to require Construction Manager to complete additional trainings utilizing compliance training materials or training sessions that Owner supplies.

47.1.3 In performing the Work, the Construction Manager must follow the most stringent of the applicable Laws. The Construction Manager is fully responsible for ascertaining and complying with all applicable Laws.

47.1.4 Construction Manager will furnish the Work and Deliverables in accordance with any and all applicable Laws, including, without limitation, all applicable privacy Laws affecting Owner and/or the User Agency.

47.2 [Not used.]

47.3 [Not used.]

47.4 Equal Employment Opportunity

47.4.1 The Construction Manager will be required to comply with all Laws with respect to the employment of labor and payment of local prevailing wage rates.

47.4.2 Non-Discrimination

47.4.2.1 It is an unlawful employment practice for a Construction Manager 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.

47.4.2.2 Federal Requirements. The Construction Manager will comply with the CMI Rights Act of 1964, 42, U.S.C. Sec. 2000 *et seq*. (1981), as amended. The Construction Manager 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).

47.4.2.3 State Requirements. The Construction Manager 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 Construction Manager will furnish such reports and information as requested by the Owner and the Illinois Department of Human Relations.

47.4.2.4 Cook County Human Rights Ordinance (adopted March 16, 1993); Cook County Code, Chapter 42, Section 42-30, Et. Seq. No person who is a party to a contract with the Owner will engage in unlawful discrimination or sexual harassment against any individual in the terms or conditions of employment, credit, public accommodations, housing, or provision of County facilities, services or programs. The Construction Manager hereby certifies its compliance with these policies and its agreement to abide by such policies as a part of its contractual obligations.

47.4.2.5 Subcontractors. The Construction Manager agrees that all of the above provisions will be incorporated in all agreements entered into with any Material Supplier, 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 Agreement.

47.4.3 Employment procedures: Preferences and Compliance

47.4.3.1 Salaries of employees of the Construction Manager, 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 Laws.

47.4.3.2 The Construction Manager certifies that it is familiar with, and will comply with, all applicable provisions of the Prevailing Wage Act, the Employment of Illinois Workers on Public Works Act (including, without limitation, 30 ILCS 570/1 through 570/7) and the Public Works Preference Act (including, without limitation, 30 ILCS 560/0.01 through 560/7).

47.4.3.3 The Construction Manager 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 Owner may withhold from the Construction Manager, out of payments due to the Construction Manager, an amount sufficient to pay any underpaid employees the difference between the salaries required 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 Owner for and on account of the Construction Manager

to the respective employees to whom they are due, as determined by the Owner in its sole discretion.

47.4.4 The Construction Manager 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 Agreement.

47.4.5 The Construction Manager agrees that in performing this Agreement it will comply with: the Minority Business Enterprise/Women Business Enterprise Special Conditions set forth in Book 1 and the residency requirements of Section 21.05 below.

47.4.6 A breach of any of the requirements of this Section 21.04 may be grounds for termination of the Agreement.

47.5 County Residents and Project Community Residents As Employees

47.5.1 Policy and Terms

47.5.1.1 Attention is called to an ordinance passed by the County on _____ and the resolutions of the Board of Commissioners of [_____] adopted _____ (the "Residents' Ordinance"). Pursuant to such resolutions, it is the policy of the Owner that at least _____ of the Project labor shall be performed by the County Residents (as defined in the Residents' Ordinance) and at least 7.5% of the Project labor shall be performed by Project Community Residents (as defined in the Residents' Ordinance).

47.5.1.2 The Construction Manager agrees to ensure that the aggregated hours of the Work to be performed under this Agreement will be performed such that at least 50% of the aggregated hours of the Work is performed by the County Residents and 7.5% of the aggregated hours of Work is performed by Project Community Residents. These minimal percentage levels of the County Residents and Project Community Residents as laborers and skilled trade Workers are not to be understood as limiting or determining the fuller utilization of the County Residents and Project Community Residents beyond these numerical levels, but are intended instead as minimum requirements unless the Owner grants a waiver based upon demonstration by the Construction Manager of impracticability or excessive cost of complying with the specified percentages. A waiver or reduction will be considered when the Construction Manager has unsuccessfully solicited a sufficient number of the County Residents and Project Community Residents to perform the Work and has documented such effort to the satisfaction of the Owner. In addition, a Construction Manager seeking a waiver or reduction will provide timely notice of the need for qualified County Residents and Project Community Residents to an appropriate source of referrals, in which the source is entitled to comment on any waiver or reduction application.

47.5.1.3 Community Hiring Requirements

With respect to this construction Agreement, it is the policy of the Owner to encourage creation of career opportunities for interested Project Community Residents within the construction trades, and to encourage employment of both skilled and unskilled workers from among available Project Community Residents.

Unless otherwise stated in Book 1, at least 7.5% of the Project labor must be performed by Project Community Residents. The aggregate hours of Work to be performed by the Construction Manager and Subcontractors under this Agreement may be complied with through residents who are trade or non-trade workers. These positions may include, without limitation, trade workers, field engineers, superintendent, project manager, security, data entry clerks, traffic monitoring personnel and site administrative support staff. In order to comply with the Community Hiring requirement, the Construction Manager must hold a minimum of two (2) application intake sessions in the designated Project Community as depicted in Book 1 and compile an applicant database. Please note the database format will be provided to the Construction Manager by the Owner. The two intake sessions dates will be coordinated with the Construction Manager and set by the Owner. The Owner shall coordinate the logistics for the Intake Sessions. The Construction Manager shall compile the data from each applicant which includes (i) first name, (ii) last name; (iii) address (iv), etc. in an electronic database format (Microsoft Excel or Google Spreadsheet) compatible with cloud storage (e.g. GoogleDocs, Microsoft SkyDrive, Dropbox, Box.com, and the like). The Construction Manager shall have representatives at all Intake Sessions. The Construction Manager shall make available to the sub-contractors and the Owner the electronic database and application packets. The Owner shall promote and market the Intake Session dates with local government officials, elected representatives, and business associations. The Construction Manager shall also make reasonable efforts to market the Intake Sessions in the Community Hiring Areas via local advertising venues (e.g., union affiliations, local newspapers, neighborhood associations, block clubs, not- for-profit organizations, places of worship, and the like). The Construction Manager shall provide, on-site signage announcing the Intake Sessions. Signage must be a minimum 36" X 36" in dimension and must include, at a minimum, the date, time and location of the sessions. Signage must be located in an area visible to the general public, must be made of material able to withstand varying weather conditions, and must be properly secured to fence or other immovable property fixture (or object), or in an area deemed appropriate by the Owner. The Construction Manager shall be responsible for removal of the sign after the Intake Sessions have concluded.

In order to encourage maximum employment of interested and available Project Community Residents on this Project, the following bonus calculation applies: In calculating the on-Site worker hours performed by the actual County Residents, hours worked by Project Community Residents will be multiplied by 1.5 for the purpose of determining the award criteria calculation in the bid.

The Owner is aware that certain subcontract agreements under this Agreement may obligate Subcontractors to fulfill requirements for employment of the County Residents under this Agreement. Should the Construction Manager receive bonus calculations under the foregoing provisions as a result of Project Community Residents employed by any Subcontractors obligated to fulfill requirements for employment of the County Residents, then the Construction Manager must allow a bonus, in the same amount it receives, in favor of each and every such Subcontractor.

47.5.2 Compliance and Reporting

47.5.2.1 The Construction Manager will provide for the maintenance of adequate employee (including student interns if applicable) residency records to document that actual County Residents and Project Community Residents are employed on the Project. The Construction Manager (and Subcontractors) will maintain copies of personnel documents supportive of every County Resident's and Project Community Residents' record of actual residence.

47.5.2.2 Weekly Certified Payroll reports (U.S. Department of Labor Form WH-347 or equivalent) submitted to the Owner will identify clearly the actual residence of every employee (including student interns if applicable) on each submitted certified payroll. The first time that an employee's name appears on a payroll, the date that the company hired the employee should be written in after the employee's name.

47.5.2.3 Full access to the Construction Manager's and Subcontractors' employment records will be granted to the Owner or any duly authorized representative thereof. The Construction Manager and Subcontractors will maintain all relevant personnel data for a period of at least seven (7) years after Final Payment.

47.5.2.4 At the direction of the Owner, affidavits and other supporting documentation will be required of the Construction Manager to verify or clarify an employee's actual address or change of actual address when doubt or lack of clarity has arisen.

47.5.3 Non-compliance

47.5.3.1 Good faith efforts on the part of the Construction Manager to provide utilization of the County Residents and Project Community Residents may be considered to replace the actual, verified achievement of the requirement concerning the worker hours performed by the actual County Residents and Project Community Residents.

47.5.3.2 For the purpose of adjusting the level of Retainage, the Owner will review compliance at fifty percent (50%) and then at one hundred percent (100%) completion of the Work or as otherwise directed by the Owner's Representative. If the Owner has determined that the Construction Manager was not compliant in the fulfillment of the required percentages of aggregated worker hours by the actual County Residents or Project Community Residents, or has failed to report in the manner indicated above under "Compliance and Reporting," the Owner will be damaged in the failure to provide the benefit of demonstrable employment to the County Residents and Project Community Residents to the degree stipulated in this Section. Therefore, in such case of non-compliance it is agreed that 1/20 of one percent, (0.0005), of the Contract Price, as adjusted by any Change Orders will be withheld by the Owner in payment for each percentage of shortfall toward each stipulated requirement for the County Residents and Project Community Residents. Failure to report the residency and hours of all employees entirely and correctly will result in the surrender of the entire liquidated damages set forth in this Section 21.05 as if no County Residents or Project Community Residents were employed in either of the categories.

47.5.3.3 The Owner, in his sole discretion, shall determine when to withhold such liquidated damages.

47.5.4 Nothing herein provided is to be construed to be a limitation upon the Notice of Requirements for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246) and Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246), or other affirmative action requirements under the regulations promulgated by applicable federal, state, or local authorities.

47.6 Veteran's Preference

47.6.1 The Construction Manager will ensure that the following provision is inserted in all contracts entered into with any Subcontractors and labor organizations which furnish skilled, unskilled and craft union skilled labor, or which may provide any material, labor, or services in connection with this Agreement.

47.6.2 The Construction Manager will comply with the provisions of 330 ILCS 55/0/01 et. seq., which requires that a preference be given to veterans in the employment and appointment to fill positions in the construction, addition, or alteration of all public works. In the employment of labor (except executive, administrative, and supervisory positions) preference will be given to veterans of hostilities and disabled veterans; however, this preference may be given only where the individuals are available and qualified to perform the Work to which the employment relates.

47.7 Trade Regulations

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 Construction Manager will make all necessary arrangements to reconcile any such conflict without delay, damage or cost to the Owner and without recourse to the Owner, Architect, or the Owner's 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 Agreement 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 Owner.

47.8 Steel Products

To the extent permitted by law, this Agreement 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.

47.9 Intentionally Omitted

47.10 Covenant against Contingent Fees

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

47.11 Taxes

47.11.1 The Owner is a municipal corporation and political subdivision of the State of Illinois and is exempt from certain taxes, including, without limitation, federal excise taxes, Illinois Retailers' Occupation Tax, Use Tax and Municipal Retailers' Occupation Tax. Owner

shall provide to Contractor any applicable exemption certificates evidencing same, in which case Contractor shall not charge any such taxes to Owner. The Contract Price, as well as any other price or prices quoted in connection with this Agreement shall include all other federal and/or state, direct and/or indirect taxes which apply to the Agreement.

47.12 Royalties and Patents

47.12.1 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 Agreement, will be included in the Contract Price.

47.12.2 The approval of any method of construction, invention, appliance, process, article, device, or material of any kind by the Owner will only be an approval of its adequacy for the Work, and will not be an approval of the use thereof by the Construction Manager in violation of any patent or other rights of any third person.

47.13 Conflict of Interest

47.13.1 The Construction Manager covenants that it, and to the best of its knowledge its Subconsultants, presently have no economic or financial interest and will not acquire any economic or financial interest, direct or indirect, in any project which would conflict in any manner or degree with the performance of its services hereunder. The Construction Manager further covenants that it, and to the best of its knowledge its Subconsultants in the performance of this Agreement no person having any such economic or financial interest will be employed. The Construction Manager agrees to inform the County on a timely basis of all of the Construction Manager 's economic or financial interests, if any, which are or which the Construction Manager reasonably believes may be incompatible with any interest of the County. The Construction Manager and its Subconsultants will not use for personal gain or make other improper use of privileged information which is acquired in connection with its services under this Agreement. In this connection, the term "privileged information" includes, but is not limited to, Design Development Documents, unpublished information relating to technological and scientific development, medical, personnel or security records of individuals, anticipated material requirements or pricing actions, and knowledge of selection of contractors and Subconsultants in advance of official announcement. No officer, agent or employee of the County is employed by Construction Manager or has a economic or financial interest

47.13.2 directly or indirectly in this Agreement or the compensation to be paid under this Agreement except as may be permitted in writing by the County’s Ethics Ordinance. No payment, gratuity or offer of employment will be made in connection with this Agreement by or on behalf of any Subconsultants to the Construction Manager or anyone associated with them, as an inducement for the award of a subcontract or order. No member of the governing body of the County or other unit of government and no other officer, employee or agent of the County or other unit of government who exercises any functions or responsibilities in connection with the Services to which this Agreement pertains is permitted to have any economic or financial interest, direct or indirect, in this Agreement. No member of or delegate to the Congress of the United States or the Illinois General Assembly and no Commissioner of the Cook County Board or County employee

is allowed to be admitted to any share or part of this Agreement or to any financial benefit to arise from it.

47.13.3 Additional Ineligible Parties - If a Respondent, subcontractor to Respondent or Respondent which has an entity with an Affiliated Relationship is awarded an Agreement under the RFQ for Program Management Services, (including at Risk Services), they will then become an Ineligible Party for consideration of award of any Agreements for any current or future Construction Management Services, (including at Risk Services) or Architectural/Engineering Services which would fall under the management role of this Respondent. The Construction Manager covenants that it, and to the best of its knowledge its Subcontractors, presently have no economic or financial interest and will not acquire any economic or financial interest, direct or indirect, in the Project which would conflict in any manner or degree with the performance of its Work. The Construction Manager further covenants that it, and to the best of its knowledge its Subcontractors in the performance of this Agreement, will not employ any person having any such economic or financial interest in the Project. The Construction Manager agrees to inform the Owner on a timely basis of all of the Construction Manager's economic or financial interests, if any, which are or which the Construction Manager reasonably believes may be incompatible with any interest of the Owner. The Construction Manager and its Subcontractors will not use for personal gain or make other improper use of privileged information which is acquired in connection with the Work. In this connection, the term "privileged information" includes, but is not limited to, Construction Documents, unpublished information relating to technological and scientific development, medical, personnel or security records of individuals, anticipated material requirements or pricing actions, and knowledge of selection of contractors and Subcontractors in advance of official announcement. No officer, agent or employee of the Owner is employed by the Construction Manager or has an economic or financial interest directly or indirectly in this Agreement or the compensation to be paid hereunder except as may be permitted in writing by the County's Ethics Ordinance. No payment, gratuity or offer of employment will be made in connection with this Agreement by or on behalf of any Subcontractor of the Construction Manager or anyone associated with them, as an inducement for the award of a subcontract or order. No member of the governing body of the Owner or other unit of government and no other officer, employee or agent of the Owner or other unit of government who exercises any functions or responsibilities in connection with the Work is permitted to have any economic or financial interest, direct or indirect, in this Agreement. No member of or delegate to the Congress of the United States or the Illinois General Assembly and no Commissioner of the County Board or County employee is allowed to be admitted to any share or part of this Agreement or to any financial benefit to arise from it.

47.13.4 The Contractor agrees to inform the Owner on a timely basis of all the Construction Manager's interests, if any, which are or which the Construction Manager reasonably believes may be incompatible with any interest of the Owner. In the event a significant conflict of interest is identified during the engagement, the parties shall endeavor to reach a mutually agreeable plan regarding a resolution of the conflict to avoid an adverse consequence to the Owner, or shall modify or terminate the scope of Work affected thereby. The Construction Manager shall take notice of and comply with the Cook County Lobbyist Registration Ordinance (No. 93-0-22, 6-22-93). Neither the Construction Manager nor any of its employees, agents or subcontractors shall use for business or personal gain, or make other improper use of, Confidential Information which is acquired in connection with the Agreement.

47.14 County Ethics Ordinance

The Construction Manager has read and agrees to comply with all provisions of the Code of Ethics Resolution passed by the Owner.

47.15 Disclosure Affidavit

47.15.1 The Construction Manager is required to file a fully executed Disclosure Affidavit with the Owner 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 Agreement.

47.15.2 Such Disclosure Affidavit certifies, among other things, that the Construction Manager and each joint venture partner, its agents, employees, officers, and any Subcontractors:

47.15.2.1 Have not engaged in or been convicted of bribery or attempted bribery of a public officer or employee of the County, the State of Illinois, the User Agency, any agency of the federal government or any state or local government in the United States;

47.15.2.2 Have not been engaged in or been convicted of bid-rigging or bid-rotation activities as defined in the Disclosure Affidavit;

47.15.2.3 Are not presently debarred or suspended by any local, state or federal procurement agency;

47.15.2.4 Do not owe any debts to the State of Illinois, in accordance with 65 ILCS 5/11-42.1-1; and,

47.15.2.5 Do not owe any debts to the County.

47.16 Corporate Compliance Program

Owner has adopted a Corporate Compliance Program and is committed to complying with all applicable Laws. Construction Manager must, accordingly, comply with all Laws with respect to furnishing the Work and Deliverables. Owner provides Construction Manager with the Owner Code of Ethics: (available at https://www.cookcountyil.gov/agency/board-ethics). Construction Manager will fully comply with the Owner's Code of Ethics with respect to the Work and Deliverables furnished to Owner. Construction Manager will cooperate fully with any review, audit, or investigation conducted by the Owner CPO or designee, including the timely return of requested documentation, and must bring to the attention of the Owner CPO or designee any alleged improper practices or potential violations of Owner policies, procedures or Code of Ethics or CMS Requirements that Construction Manager may discover in association with the performance of the Work so that the Owner CPO may take appropriate action. Any false statement substantiated by Owner, which is made by Construction Manager in connection with any aspect of the procurement process or in the performance of Construction Manager's obligations to Owner will be considered a material breach of the Agreement and may result in termination of the Agreement and any other remedy provided for in the Owner's Procurement Policy, at law or in equity, or under the Contract Documents.

47.17 Disclosure of Retained Parties

The Construction Manager is required to submit a fully executed Disclosure of Retained Parties within five (5) Days after bid opening, or sooner as required by the Owner. Such documents must be signed by an authorized officer of the company before a notary and are incorporated by reference into this Agreement.

47.18 Non-Collusion, Bribery of a Public Officer or Employee

47.18.1 The Construction Manager, in performing under this Agreement, will comply with Section 2-92-320 of the Municipal Code of Chicago as follows:

47.18.1.1 No person or business entity will be awarded an agreement or subcontract if that person or business entity: (i) has been convicted of bribery or attempting to bribe a public officer or employee of the City of Chicago, the County, the State of Illinois, or any agency of the federal government or any state or local government in the United States, in that officer's or employee's official capacity; or (ii) 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 (iii) has made an admission of guilt of such conduct described in (i) or (ii) above which is a matter of record but has not been prosecuted for such conduct.

47.18.2 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.

47.18.3 Ineligibility under this Section will continue for three (3) years following such conviction or admission.

47.19 Cooperation with Inspector General

Persons or businesses seeking County contracts are required to abide by all of the applicable provisions of the Office of the Independent Inspector General Ordinance (Section 2-281 *et seq*. of the Cook County Code of Ordinances). Failure to cooperate as required may result in monetary and/or other penalties. Contractors, subcontractors, licensees, grantees or persons or businesses who have a County contract, grant, license, or certification of eligibility for County contracts shall abide by all of the applicable provisions of the Office of the Independent Inspector General Ordinance. Failure to cooperate as required may result in monetary and/or other penalties.

EXHIBIT 1

ADDITIONAL QUALITY PROGRAM ELEMENTS AND REQUIREMENTS

EXHIBIT 2

STANDARD BASELINE, ADVERSE WEATHER, AND WEATHER DELAYS

Standard Baseline is as follows:

EXAMPLE:

MONTH	J	F	M	A	M	J	J	A	S	O	N	D
DAYS	4	3	2	1	1	2	3	1	2	2	3	4

ADVERSE WEATHER AND WEATHER DELAY DAYS

A. Adverse weather is defined as the occurrence of one or more of the following conditions within a twenty-four (24)-hour day that prevent construction activity exposed to weather conditions or access to the site:

1 Precipitation (rain, snow or ice) in excess of one-tenth (0.10") liquid measure.
2 Temperatures that do not rise above that required for the day's construction activity, if such temperature requirement is specified or accepted as standard industry practice.
3 Sustained wind in excess of twenty-five (25) miles per hour.

B. Adverse Weather may include, if appropriate, "dry-out" or "mud"-days:

1 Resulting from precipitation days that occur beyond the standard baseline;
2 only if there is a hindrance to site access or site work and Construction Manager has taken all reasonable accommodations to avoid such hindrance; and
3 at a rate no greater than 1 make-up day for each day or consecutive days of precipitation beyond the standard baseline that total 1.0 inch or more, liquid measure, unless specifically recommended otherwise by the A/E.

C. Construction Manager shall take into account that certain construction activities are more affected by adverse weather and seasonal conditions than other activities, and that "dry-out" or "mud" days are not eligible to be counted as Weather Delay Day until the standard baseline is exceeded. Hence, Construction Manager should allow for an appropriate number of additional days associated with the Standard Baseline days in which such applicable construction activities are expected to be prevented or suspended.

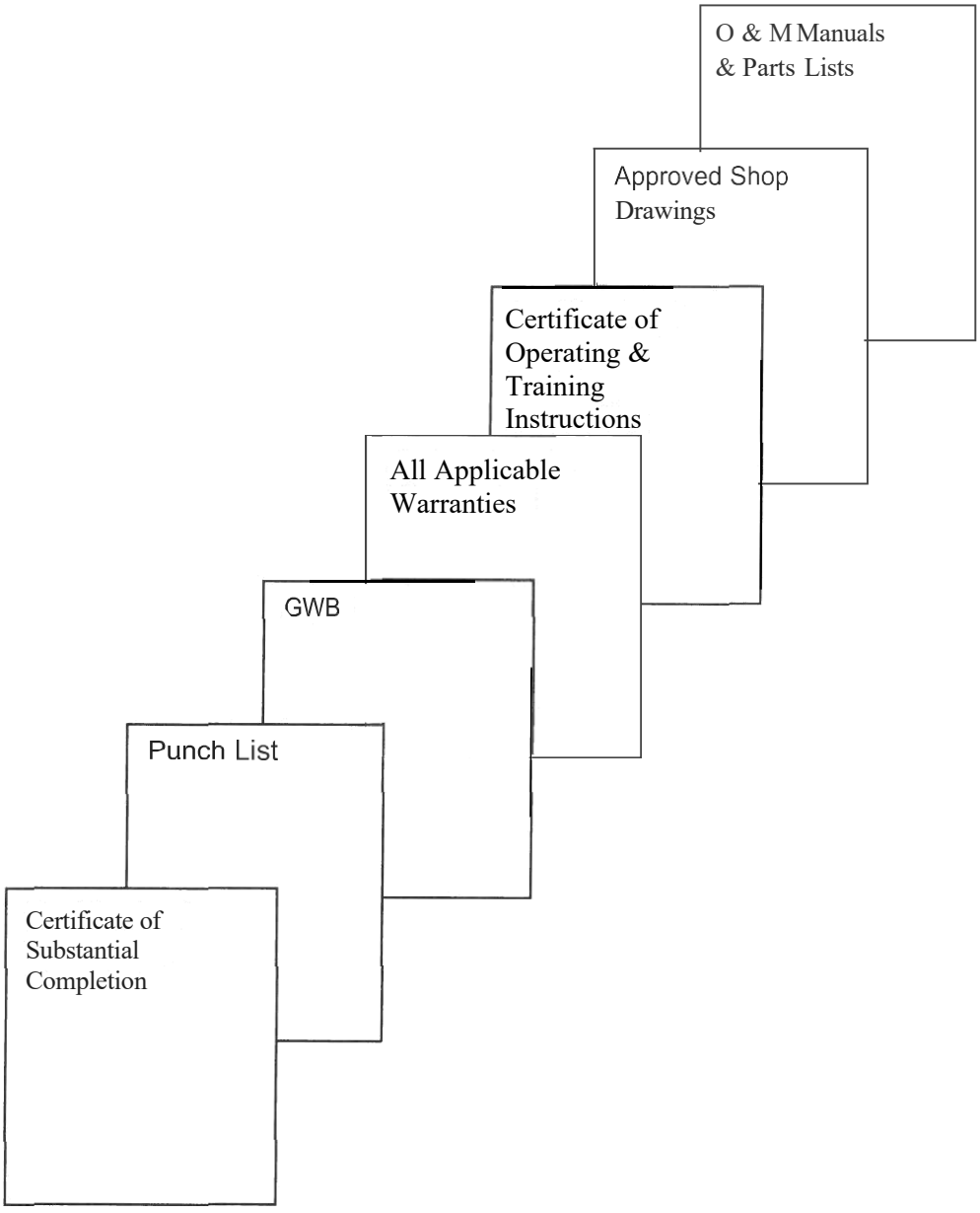
Exhibit 15

Book 3 – Technical Specifications and Drawings

(Includes Cook County Division One)

[Reserved for completed Technical Specifications and Drawings that have been reviewed and approved the Construction Manager]

Exhibit 16
Substantial Completion Packet



Legend:
GWB: Guaranties, Warranties, Bonds Form

Date Issued: _____

Cook County Government
Department of Capital Planning & Policy

Contractor's Request for Substantial Completion

Date: _____

☐ Contractor ☐ DFM

Project No.: _____ Project Name: _____

PO No./Contract No.: _____

Project Address: _____

Architect of Record: _____

Work or Designated Portion shall Include: _____

_____

Work, or designated portion, performed under this Contract has been thoroughly inspected and is considered to be Substantially Complete in accordance with Contract Documents, so County can occupy or utilize Work or designated portion thereof for its intended use.

☐ Certificates of inspection indicates compliance with requirements of governing authorities, are attached hereto.

☐ Certificates of Occupancy have been obtained from governing authorities are attached hereto.

☐ A preliminary list of items to be completed or corrected, prepared by Contractor is attached, hereto. Failure to include any items on such list does not alter responsibility of Contractor to complete all Work in accordance with Contract Documents.

CONTRACTOR (Vendor) or DFM: _____

By: _____

Date: _____

☐ County agrees to inspect conduct a walkthrough inspection of the work or designated portion of the Project

☐ County does not agree to inspect conduct a walkthrough of the work or designated portion of the Project

Document Control Date: 2024.11.22

Date Issued: _____

Cook County Government
Department of Capital Planning & Policy

Certificate of Substantial Completion

PROJECT

Project No.: _____ Project Name: _____

Project Address: _____

CONTRACT INFORMATION

Contract No.: _____ Vendor Name: _____

DESIGNER

Designer of Record: _____

USER AGENCY

County User Agency: _____

User Agency Representative: _____

The Work as listed below has been inspected by all required parties and to the best of the Designer of Record's knowledge, information and belief, is Substantially Complete. By designating this portion of the Work Substantially Complete, the Work has progressed to a completion level in accordance with the Contract Documents sufficient to allow the County to occupy or utilize the Work for its intended use. The date of Substantial Completion of the Project or portion designated below is the date established by this Certificate. *(List the Work, or portion of the Work, that is substantially complete.)*

[summary of scope of work that is substantially complete]

DATE OF SUBSTANTIAL COMPLETION: _____

☐ County agreed to conduct a walkthrough inspection of the work or designated portion of the Project

WALKTHROUGH OCCURRED ON THIS DATE: _____

WARRANTIES

The date of Substantial Completion of the Project or the Work as designated above is the date of commencement of applicable warranties required by the Contract Documents, except as stated below: *(Identify warranties that do not commence on the date of Substantial Completion, if any, and indicate their date of commencement.)*

[exceptions to warranties]

WORK TO BE COMPLETED OR CORRECTED

A Final Punch List of Work items, which include the preliminary list submitted by the Contractor's SC Request, and the Owner's Consultant list with input from the using agency representative, as agreed upon by the parties, to be completed or corrected has been attached to this Certificate of Substantial Completion as follows: *(Identify the list of Work to be completed or correct.)*

{see attached punchlist if applicable]

The failure to include any items on the designated list of Work items above does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Unless otherwise agreed to in writing, the date of commencement of warranties for the items as noted in the Contract Documents. The Contractor will complete or correct the Work on the list or Work items attached hereto within ( ) days from the above date of Substantial Completion

Cost estimate of Work to be complete or corrected: _____

The responsibility for security, maintenance, heat, utilities, damage to the Work, insurance, and other items identified below shall fall of the County or Contractor as noted below: *(note: County's and Contractor's legal and insurance counsel should review insurance requirements and coverage.)*

additional insurance requirements beyond SC

The County and Contractor hereby accept the responsibility assigned to them in this Certificate of Substantial Completion.

Construction Manager PM	Date	DCPP Project Director Dept. of Capital Planning & Policy	Date	Contractor or DFM	Date
Designer of Record (if Applicable)	Date	User Agency (if Applicable)	Date	Director or Deputy Director Dept. of Capital Planning & Policy	Date

Document Control Date: 2024.11.22

Cook County
DEPARTMENT OF CAPITAL PLANNING & POLICY

GWB
Guarantees, Warranties, Bonds

Attach to Certificate of Subtantial/Final Completion
Guranties, Warranties and Bonds commencing with the acceptance of this certificate of Substantial Completion:

	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O
	REAL PROPERTY INSTALLED EQUIPMENT														
	BLDG NO.						CONTRACTOR:								
	PROJECT NO.						DATE:								
	CONTRACT NO.						CONTACT NAME:					PHONE NO:			
	DESCRIPTION	QTY	MFG	MODEL/TYPE	SIZE	SERIAL NO.	UNIT COST	EXACT LOCATION OF EQUIP.	WARRANTY INFORMATION				EQUIP LABELED	REMARKS	
									Factory Start Date	Warranty Years	Contractor Start Date	Warranty Years	YES / NO		
1															
2															
3															
4															
5															
6															
7															
8															
9															
10															
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25															
26															
27															

IMPORTANT NOTICE DISCLOSURE OF THIS INFORMATION IS MANDATORY IN ACCORDANCE WITH THE STANDARD DOCUMENTS FOR CONSTRUCTION. FAILURE TO COMPLETE THIS WILL PREVENT PAYMENT FOR WORK COMPLETED AND/OR BE A MATERIAL BREACH OF CONTRACT.

E-MAIL THIS FORM: This form may be submitted to DCPP electronically for review. Attach a completed form to an e-mail addressed to the DCPP Project Director.

NOTE- Form may be submitted electronically only for review purposes. To meet contractual requirements, form submitted to DCPP must be attached to a signed Certificate of Substantial Completion or Final Acceptance.

DCPP Rev. 04/24/19

Cook County

DEPARTMENT OF CAPITAL PLANNING & POLICY

PUNCH LIST

Project No.:_____-_____

Date of Inspection_____Page_____of_____

FOR DCPP USE ONLY

Name: _____

Project No: _____

Contract No.: _____

C.F. Locale: _____

Attachment to Certificate of Substantial Completion

CONTRACTOR:

PROJECT:

Contract No.:

Contract Work:

The following is a list of items to be completed or corrected by the contractor. The failure to include any item on this list does not relieve the contractor of his responsibility to complete all work in accordance with the contract documents.

Item No.:	Location	Item Name/Description of Completion or Correction

Reviewed by:

Contractor

Prepared by:

Architect-Engineer

Construction Manager

DCPP Rev. 04/24/19

Cook County
DEPARTMENT OF CAPITAL PLANNING AND POLICY

CERTIFICATE OF OPERATING AND TRAINING INSTRUCTION

FOR DCPP USE ONLY
Name:
Project No:
Contract No.:
C.F. Locale:

PROJECT NO.:

Date:

CONTRACTOR: (Name, Address)

PROJECT: (Name, Description)

USING AGENCY:

CONTRACT WORK:
CONTRACT NO.:

The Contractor/Supplier on the above date did instruct the Using Agency on the operation of the following named equipment as per the relevant sections of the project specifications:

1.
2.
3.
4.
5.
6.

Attendees

	Signature	Representing	Phone No.
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			
11.			
12.			

This Certification Sheet must accompany the Substantial Completion package. The A/E or A/E representative must participate in this training.

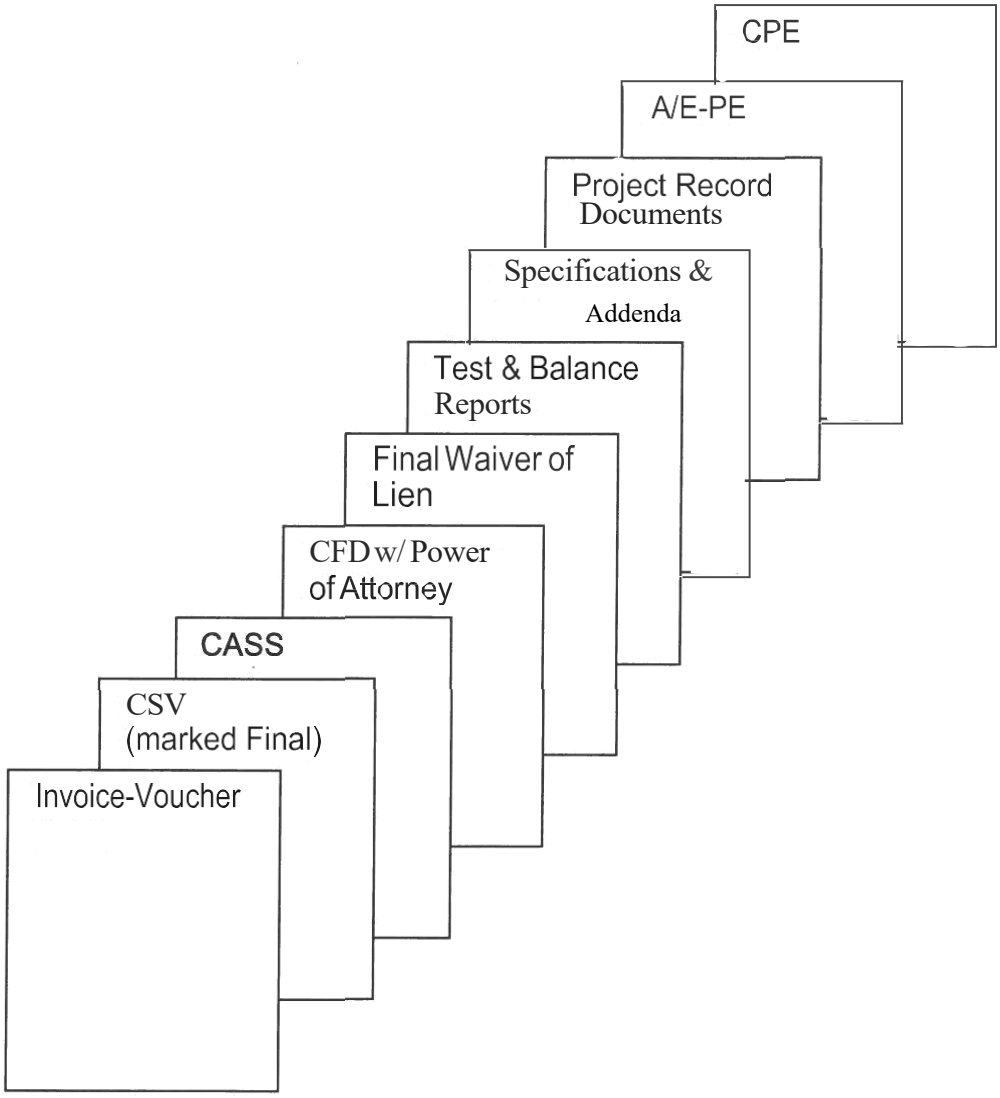
E-Mail THIS FORM: This form may be submitted to DCPP electronically. Attach a completed form to an e-mail addressed to the DCPP Project Director.

NOTE- Form may be submitted electronically only for review purposes. To meet contractual requirements, form submitted to DCPP must have original signatures from all attendees.

DCPP Rev. 04/24/19

Exhibit 17

Final Completion & Acceptance Packet



Legend:
CPE: Contractors Performance Evaluation
A/E PE: Architect Engineer Performance Evaluation
CASS: Contractors Affidavit and Sworn Statement
CSV: Contractor Schedule of Values
CFD: Contractors Final Declaration

No.: 3.00
Issue Date : 12.08.23

Cook County Government
Department of Capital Planning & Policy
Contractor's Notice of Completion

Date: _____

☐ Contractor ☐ DFM

Project No.: _____ Project Name: _____

PO No./Contract No.: _____

Project Address: _____

Architect of Record: _____

Work or Designated Portion shall Include: _____

_____

This is to certify that I am an authorized official of, and have been properly authorized by said firm of corporation to certify the following:

I know of my own personal knowledge, and do hereby certify on behalf of Contractor, that Work has been reviewed and thoroughly inspected for compliance with Contract Documents, that Work has been completed, in accordance with Contract Documents and Contract is fully performed, that all equipment and systems have been tested and are operative satisfactorily, that all Contract closeout requirements have been completed satisfactorily and submitted, know of no substantial reason that insurance will not be renewable to cover period required by Contract Documents, and Work is ready for final inspection and acceptance.

Attached are the following documents, which are required prior to final payment:

- ☐ Application for Final Payment
- ☐ Contractor's Final Release or Waiver of Lien
- ☐ Transmittal indicating County has received Project Record Documents
- ☐ Transmittal indicating County has received Project Closeout Documents
- ☐ The List(s) of items which were to be completed and corrected, with each item noted and signed off as complete and verified by County designated representatives as complete.
- ☐
- ☐
- ☐
- ☐

I hereby ackknowledge that by receipt of final payment by Contractor, a Subcontractor or material supplier do(es) hereby waive and release any and all claims for all change order requests, requests from compensation, unilateral change orders, allowance change orders, or any other claim that the Contractor may have arising out of the Project, whether known or unknown, anticipated, or unanticipated or suspected to exist as of the date of this request for Final Acceptance.

Contractor: _____ By: _____

Title: _____ Date: _____

Subscribed and sworn to me this _____ Day of _____ _____

NOTARY PUBLIC: _____

My Commission expires: _____

No.: 2.00
Issue Date : 12.08.23

Cook County Government
Department of Capital Planning & Policy

Final Acceptance Notice

Date: _____

☐ Contractor ☐ DFM

Project No.: _____ Project Name: _____

PO No./Contract No.: _____

Project Address: _____

Architect of Record: _____

Work or Designated Portion shall Include: _____

_____

This is to certify that DCPP on behalf of Cook County, as properly authorized officials certify that to the best known knowledge, do hereby certify on behalf of Cook County, that the Work has been reviewed and thoroughly inspected for compliance with Contract Documents, that the Work has been completed, in accordance with Contract Documents and Contract is fully performed, that all equipment and systems have been tested and are operative satisfactorily, that all Contract closeout requirements have been completed satisfactorily and submitted per the Contract, know of no substantial reason that insurance will not be renewable to cover period required by Contract Documents, and therefore, approve final acceptance of project from Contractor.

☐ Acknowledge Contractor's Notice of Completion dated _____

☐ Acknowledge substantial Completion Certificate dated _____

_____
Construction Manager Date

_____
Director or Deputy Director of User Agency Date

_____
Project Director Date

_____
Director or Deputy Director Date
Department of Capital Planning and Policy

Exhibit 18
Addendum Acknowledgement Form

(Reserved)

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Exhibit 19

Liquidated Damages

***[Editor Note:** Insert daily liquidated damages amount for each Phase of the Project and for the overall Project]*

47.19.1 Liquidated Damages [EDIT Case by Case Basis; use Excel Template…]

Contractor agrees that if, subject to any Excusable Delays (Section 3 of the Special Conditions of the Agreement, above), Substantial Completion is not completed by the Project Completion Deadline, Owner will incur substantial damages in connection with the Project which are extremely difficult and impractical to ascertain or compute at the time of execution of this Agreement. In the event Project Completion is not achieved by the Project Completion Deadline, then as liquidated damages for such delay (''Contractor Liquidated Damages") Contractor shall, until such time as Project Completion is achieved shall at Contractor's sole cost and expense, pay the Owner **TEN THOUSAND FOUR HUNDRED DOLLARS ($10,400)(US) per day** **[EDIT…]**, from and including the first day immediately following the Project Completion Deadline through and including the day in which Project Completion is achieved (the "Liquidated Damages Periods"). Contractor Liquidated Damages shall be the Owner's sole and exclusive remedy against Contractor for any failure to achieve Substantial Completion by the Project Completion Deadline. The Contractor Liquidated Damages are not in the nature of a penalty but represent the most accurate and reasonable estimate of the damages that the Owner will suffer as a result of any delay in achieving Project Completion. Any sums so collected from Contractor (or offset against sums payable to Contractor under the Construction Contract) shall be paid to the Owner. Any extension of the Contract Time (as defined in the Construction Contract) or other extension of time given or granted to Contractor pursuant to the Construction Contract shall result in a commensurate extension of the Project Completion Deadline.

Exhibit 20

DRUG AND ALCOHOL-FREE WORKPLACE POLICY

Exhibit 21

Cook County Ordinance Sec. 24-160

(Reserved)

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Exhibit 22

COOK COUNTY TRAVEL REQUIREMENTS POLICY

Exhibit 23

Certification of Site Examination for MQF

(Reserved)

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Certification of Site Examination for MQF

Respondent _____

The Respondent to this RFQ has carefully inspected / viewed each site, submitted any Questions and clarifications in writing and received responses from the County. The Respondent is satisfied that it can provide an informed Submission based on its inspection / viewing s, all information received in the RFQ, and County responses.

The following named individual(s) have inspected the properties on behalf of the Respondent:

NAME	Firm	DATE(S) of Inspection/viewing
NAME	Firm	DATE(S) of Inspection/viewing
NAME	Firm	DATE(S) of Inspection/viewing
NAME	Firm	DATE(S) of Inspection/viewing
NAME	Firm	DATE(S) of Inspection/viewing

The Undersigned warrants that the above is a true and accurate statement.

SIGNATURE OF RESPONDENT_____DATE _____

SIGNATURE OF OCPO BUYER_____DATE _____

Exhibit 24

Confidentiality Agreement

(Reserved)

(REMAINDER OF THIS PAGE HAS BEEN LEFT BLANK INTENTIONALLY)

CONFIDENTIALITY AND OWNERSHIP OF DOCUMENTS AGREEMENT

The Cook County Office of the Chief Procurement Office ("OCPO") had issued Solicitation # 2661-06010 for the Construction Management at Risk Services for [INSERT PORTFOLIO NAME and ABREVIATION] (the "Project") at the [INSERT PORTFOLIO NAME and (ABREVIATION) ("XXX").

This Confidentiality and Ownership of Documents Agreement (this "Agreement") by and between the Cook County Bureau of Asset Management, Department of Capital Planning ("DCPP") and the [INSERT PORTFOLIO NAME and ABREVIATION] ("XXX"), on behalf of Cook County (the "County"), and the Plan Holder (as defined below), (collectively the "Parties"), relating to the Solicitation shall be deemed effective on the date of execution by the Plan Holder.

RECITALS

WHEREAS, OCPO has issued a Solicitation for the Pre-Construction Phase Services for [INSERT PORTFOLIO NAME] (the "Project") at the (INSERT ABREVIATION); and

WHEREAS, DCPP manages capital construction project for all County buildings including the Project at ("INSERT ABREVIATION"); and

WHEREAS, the New Building at the Medical Examiner's Office is critical to ensuring the safety of the staff and the safe condition of the SAO'; and

WHEREAS, the integrity of operation at [INSERT PORTFOLIO NAME]is critical to ensuring the safety of the staff and the safe condition of the employees, visitors and the public; and

WHEREAS, the Project is an integral part of the [INSERT PORTFOLIO NAME] at ["INSERT ABREVIATION"]; and

WHEREAS, the County will need to disclose Confidential Information (as defined below) to the Plan Holder (as defined below); and

WHEREAS, the County wishes to share the Confidential Information without the risk of disclosure; and

WHEREAS, this Agreement sets forth the agreement and understating between the County and Plan Holder with respect to the disclosure of Confidential Information.

TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the matters recited above and the mutual promises made herein, the County and the Plan Holder agree as follows:

1. Plan Holder. The Plan Holder is a natural person and all legal entities, including but not limited to a firm, corporation or business, which obtains the Confidential Information furnished by the County. Any person who obtains the Confidential Information on behalf of a legal entity agrees that he/she is an authorized representative of that legal entity

2. Confidential Information Furnished by County. The Parties agree that all documents, including but not limited to, specifications, drawings, data, studies, plans, reports, material, badges, work product, and product furnished by the County to the Plan Holder, concerning this Solicitation and/or [INSERT PORTFOLIO NAME] operations, shall be deemed Confidential Information.

3. Confidential Information Created by Plan Holder. The Parties agree that all documents, including but not limited to, specifications, drawings, data, studies, reports, work product, product created the Plan Holder, concerning this Solicitation and/or [INSERT PORTFOLIO NAME] operations, including, but not limited to documents and blueprints, shall be deemed Confidential Information.

4. Ownership of Documents. The Parties agree that all Confidential Information is the property of the County, whether it has been furnished by the County to the Plan Holder or whether it was created by the Plan Holder for the Solicitation. Confidential Information is to be used solely in connection with this Solicitation and not to be used on other work.

5. Disposal of Confidential Information. All Confidential Information is to be disposed of upon the Bid Opening Date.

6. Disclosure of Confidential Information. The Plan Holder acknowledges and agrees that information regarding this Solicitation is confidential and shall not be disclosed, directly, indirectly or by implication, or be used by the Plan Holder in any way, whether during the term of this Solicitation or at any time thereafter without the prior written approval of the County. The Plan Holder shall comply with the applicable privacy laws and regulations affecting County and will not disclose any of the County's Confidential Information, as defined in Section 3, to any third party, except as necessary to submit a Design Proposal. Plan Holder shall not have the right to compile and distribute statistical analyses and reports utilizing data derived from information.

7. Breach of Agreement. It shall be a breach of this Agreement for the Consultant to fail to comply with the terms of this Agreement, including to reproduce or use, any documents, data, studies, report, work product or product obtained from the County for any purpose other than the Projects.

8. Legally Required Disclosures. In the event that the Plan Holder or any of its Representatives are requested or required (by deposition, interrogatories, requests for information or documents in legal proceedings, subpoena, civil investigative demand or other similar process) by any court or governmental agency or authority or other supervisory body, or by application of law, including the Illinois Freedom of Information Act (5 ILCS 140), regulation or legal or regulatory process to disclose any of the Furnishing Party's Confidential Information, such Plan Holder shall provide DCPP with prompt written notice of any such request or requirement and Plan Holder and its Representatives will cooperate with the County in obtaining a protective order or other appropriate remedy reasonably limiting disclosure to appropriate parties relating to the applicable proceeding.

9. Media Inquiries. Plan Holder shall not respond to any media inquiries, including but not limited to questions or requests from radio, television, newspaper, and internet media outlets regarding the Project, the County and any developments of the County without first obtaining the written consent of the County.

10. Confidential Discussions. All communications between the Parties concerning the Solicitation shall be deemed confidential and take place only at a work session convened specifically for such purpose.

11. Term. The term of this Agreement shall commence on the Effective Date upon the Plan Holder's execution of the Agreement and end only if the County notifies the Plan Holder in writing of its decision to terminate the Agreement.

12. Remedies. The Plan Holder agrees that the obligations hereunder are necessary and reasonable to protect the County, [INSERT PORTFOLIO NAME] employees, visitors, the public and their business. The Plan Holder also expressly agrees that monetary damages would not be a sufficient remedy for any violation of the terms of this Agreement and, accordingly, each party shall be entitled to seek equitable relief, including, but not limited to, specific performance and injunctive relief as remedies for any violation. Such remedies shall not be deemed to be exclusive remedies for a violation of the terms of this Agreement, but shall be in addition to all other remedies available to the parties at law or equity.

13. Governing Law. This Contract shall be governed by and construed under the laws of the State of Illinois. The Consultant irrevocably agrees that, subject to the County's sole and absolute election, any action or proceeding in any way, manner or respect arising out of the Contract, or arising from any dispute or controversy arising in connection with or related to the Contract, shall be litigated only in the courts having status within the City of Chicago, the County of Cook, the State of Illinois, and the Consultant consents and submits to the jurisdiction of any local, state or federal court located within such City, County and State. The Consultant waives any right it may have to transfer or change the venue of any litigation brought against it by the County in accordance with these provisions.

14. Waiver. No term or provision of this Agreement shall be deemed waived and no breach consented to unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. The waiver of any such provision shall not be a waiver of the provision itself nor a waiver or consent to any subsequent breach. The headings of articles, paragraphs and sections in this Agreement are included for convenience only and shall not be considered by either party in construing the meaning of this Agreement.

15. Severability. If for any reason any provision of this Agreement shall be declared void or invalid, such declaration shall not affect the validity of the remainder of this Agreement which shall remain in full force and effect as if executed with the void or invalid provision eliminated.

16. Entire Agreement. It is expressly agreed that the provisions set forth in these Contract Documents constitute all the understandings and agreements between the parties. Any prior agreements, promises, negotiations, or representations not expressly set forth in the Contract Documents are of no force and effect.

17. Counterparts. This Agreement may be executed in multiple counterparts with separate signature pages, each such counterpart shall be considered an original, but all of which together shall constitute one and the same instrument. To facilitate the execution of this Agreement, the parties may execute and exchange by facsimile or by pdf counterparts of the signature pages, and such execution shall be deemed an original by the Parties.

[Signature Page Follows]

IN WITNESS WHEREOF, the Plan Holder signs, dates and executes this Agreement as of

Date received RFP Solicitation:

_____

Name of the Company:

_____

Address:

_____

Telephone:

_____

Person receiving the solicitation:

_____

Person's signature:

_____

Person's Title:

_____

Person's Telephone:

_____

Person's Email:

_____

Exhibit 25
Project Labor Agreement

[PROJECT NAME]

PROJECT LABOR AGREEMENT

This Project Labor Agreement ("Agreement") is entered into by and among [CONTRACTOR NAME] ("General Contractor") for and on behalf of General Contractor and any contractor's or' subcontractors of whatsoever tier ("Subcontractors") engaged to perform Construction Work on the Project (as those terms are defined below), and by each of the undersigned labor organizations affiliated with the Chicago and Cook County Building & Construction Trades Council, AFL-CIO Building and Construction Trades Department ("Union" or "Unions").

WHEREAS, the owner of real property located at [PROPERTY ADDRESS] in Chicago Cook County, Illinois ("Site") for which it has entered into a construction contract with General Contractor for the construction of [PROJECT NAME] ("Project"). General Contractor is responsible for the construction of the Project pursuant to said contract, and because of the size, scope, cost and duration of the Project, the parties to this Agreement have determined that it is in then' best interest to have the Project completed in the most timely, productive, economical and orderly manner possible, and without labor disruptions of any kind that might interfere with, or delay the Project.

WHEREAS, the parties have determined that it is desirable to eliminate the potential for friction and disruption of the Project by using their best efforts and ensuring that all Construction Work is performed by the Unions that are signatory hereto and which have traditionally performed and have trade and geographic jurisdiction over such work. Experience has proven the value of such cooperation, and that such mutual undertakings should be maintained, and if possible, strengthened, and that the ultimate beneficiaries remain General Contractor' and owner; and,

WHEREAS, General Contractor acknowledges that it and the owner of the Project both have a serious and ongoing concern regarding labor relations associated with the Project and through its completion irrespective of the existence of a collective bargaining relationship with any of the signatory Unions.

NOW THEREFORE, in order to further these goals and objectives and to maintain the spirit of harmony, labor-management cooperation, and stability, the parties agree as follows:

1. During the Term of this Agreement, General Contractor shall not contract or subcontract, nor permit any other person, firm, company, or' entity to contract or subcontract, any construction, de-construction, demolition, rehabilitation or renovation work("Construction Work") for the Project covered under this Agreement or within the trade jurisdiction of the signatory Unions, to be performed at the Site of construction or off site solely for installation at the Site provided such a provision is in the collective bargaining agreement (see Appendix "A" for "Description of Work", including all tenant improvements), unless such work is performed only by a person, him or company signatory, or willing to become signatory, to the current applicable area-wide collective bargaining agreement(s) with the Union(s) or the appropriate trade/craft union(s) or subordinate body or affiliate of the Chicago & Cook County Building & Construction Trades Council ("Council"). Copies of all such current collective bargaining agreements constitute Appendix B of this Agreement, attached hereto and made an integral part hereof, and as may be modified from time to time during the Term of this Agreement. Said provisions of this Agreement shall be included in all Requests for Bids and/or Proposals

and shall be explicitly included in all contracts or subcontracts of whatsoever tier by General Contractor and all Subcontractors.

2. With respect to a Subcontractor who is a successful bidder, but is not signatory to the applicable collective bargaining agreement, the collective bargaining agreement(s) executed by said bidder shall be the relevant area-wide agreement(s) regulating or governing wages, hours and other terms and conditions of employment.

3. During the Term of this Agreement, General Contractor and Subcontractor's shall engage in no lockout at the Site.

4. During the Term of this Agreement, no Union signatory hereto, or any of its members, officers, stewards, agents, representatives, or employees shall instigate, authorize, support, sanction, maintain, or participate in any strike, walkout, work stoppage, work slowdown, work curtailment, cessation or interruption of production, or in any picketing of the Site for any reason whatsoever, including but not limited to the expiration of any of the collective bargaining agreements referred to in Appendix B. In the event of an economic strike or other job action upon the termination of an existing collective bargaining agreement, in no event shall any adverse job action be directed against the Project Site. Rather', all provisions of the subsequently negotiated collective bargaining agreement shall be retroactive for all employees working at the Project Site, provided such a provision for retroactivity is contained in the newly negotiated collective bargaining agreement.

5. Each Union signatory hereto agrees that it will use its best efforts to prevent any of the acts forbidden in Paragraph 4, and that in the event any such act takes place or is engaged in by any employee or' group of employees, each Union signatory hereto further agrees that it will use its best efforts (including its full disciplinary power under its Constitution and/or By-Laws) to cause an immediate cessation thereof.

6. General Contractor and any Subcontractor signatory oi otherwise bound, stipulated, or required to abide by and to any provisions of this Agreement shall have the right to discharge or discipline any employee who violates the provisions of this Agreement. Such discharge or discipline by General Contractor or a Subcontractor shall be subject to the Grievance/Arbitration procedure of the applicable collective bargaining agreement only as to the fact of such employee's violation of this Agreement. If such fact is established, the penalty imposed shall not be disturbed. Work at the Project Site shall continue without disruption or hindrance of any kind during any Grievance/Arbitration procedure.

7. The parties expressly authorize a court of competent jurisdiction to order appropriate injunctive relief to rest1'ain any violation of this Agreement, and any form of self-help remedy is expressly forbidden. Nothing in the foregoing shall restrict any party to otherwise judicially enforce any provision of its collective bargaining agreement between any labor' organization and a contractor with whom it has a collective bargaining relationship.

8. This Agreement shall expire upon the completion of the Project ("Term").

9. In the event a dispute shall arise between General Contractor or a Subcontractor and any signatory Union and/or fringe benefit fund established under any of the appropriate collective bargaining agreements as to the obligation and/or payment of fringe benefit contributions and/of wages provided under the collective bargaining agreement, upon prope1 notice to the owner, General Contractor and the relevant Subcontractor by the applicable Union or fringe benefit hind, an amount sufficient to satisfy the amount claimed shall be withheld from the Subcontractor's regularly scheduled periodic payment from the owner or General Contractor, or their agents, until such time as said claim is resolved.

10. In the event of a jurisdictional dispute by and between any Unions signatory hereto, such Unions shall take all steps necessary to promptly resolve the dispute. In the event of a dispute relating to trade or work jurisdiction, all parties, including employers and Subcontractor's, agree that a final and binding resolution of the dispute shall be resolved as follows:

    a.) Representatives of the affected Unions shall meet on the job site or mutually agreed location within forty-eight (48) hours after receiving notice in an effort to resolve the dispute. (In the event there is a dispute between local unions affiliated with the same International Union, the decision of the General President, or his/her designee, as the internal jurisdictional authority of that International Union, shall constitute a final and binding decision and determination as to the jurisdiction of work.)

    b.) If no settlement agreement is reached during the proceedings contemplated by Paragraph "a" above, the matter shall be immediately referred to the Joint Conference Board, established by the Standard Agreement between the Construction Employers' Association and the Chicago & Cook County Building & Construction Trades Council, which may be amended from time to time, fo1 final and binding resolution of said dispute. Said Standard Agreement is attached hereto as Appendix C and specifically incorporated into this Agreement.

11. This Agreement shall be incorporated into and become part of the collective bargaining agreements between the Unions signatory hereto and General Contractor and Subcontractors. In the event of any inconsistency between this Agreement and any collective bargaining agreement, the terms of this Agreement shall supersede and prevail except for all work performed under the NTD Articles of Agreement, the National Stack/Chimney Agreement, the National Cooling Tower Agreement, all instrument calibration work and loop checking shall be performed under the terms of the UA/IBEW Joint National Agreement for' instrument and Control Systems Technicians, and the National Agreement of the International Union of Elevator Constructor's with the exception of the content and subject matter of Articles V, VI and VH of the AFL-CIO's Building & Construction Trades Department model Project Labor Agreement.

12. The parties agree that in the implementation and administration of this Agreement, it is vitally necessary to maintain effective and immediate communication so as to minimize the potential of labor relations disputes arising out of this Agreement. To that end, each pai4y hereto agrees to designate, in writing, a representative to whom problems can be directed which may arise during the Term of this Agreement. Within forty-eight (48) hours after notice of the existence of any problem, representatives of each party shall meet to discuss and, where possible, resolve such problems. The representative of the signatory

Unions shall be Ralph Affrunti, or his designee, President of the Chicago & Cook County Building & Construction Trades Council. The representative of Genera1 Contractor shall be Cornelius Griggs, President General Contractor shall further identify a representative of the owner who shall also be available for such meetings and as a point of contact under this Agreement.

13. If any provision, section, subsection or other portion of this Agreement shall be determined by any court of competent jurisdiction to be invalid, illegal, or unenforceable in whole or in part, and such determination shall become final, such provision or portion shall be deemed to be severed or limited, but only to the extent required to render the remaining provisions and portions of this Agreement enforceable. This Agreement, as thus amended, shall be enforced so as to give effect to the intention of the parties insofar as that is possible. In addition, the parties hereby expressly empower a court of competent jurisdiction to modify any term or provision of this Agreement to the extent necessary to comply with existing law and to enforce this Agreement as modified.

14. General Contractor, on behalf of itself and all Subcontractors, agrees that the applicable substance abuse policy (i.e., drug, alcohol, etc.) applicable to the employees working on the Project shall be that as contained, or otherwise provided for, in the applicable area-wide collective bargaining agreements attached as Appendix B to this Agreement. Nothing in the foregoing shall limit General Contractor and/or a Subcontractor from instituting its own substance abuse policy governing other employees performing work on the Project not otherwise covered under this Agreement. In the event there is no substance abuse policy in the applicable collective bargaining agreement, the policy adopted by General Contractor and/or a Subcontractor may apply.

15. The parties agree that, in addition to the wages and fringe benefits contained in the attached collective bargaining agreements, General Contractor, on behalf of all Subcontractors who become signatory to the Agreement, shall pay a one-time total amount of Five Thousand Dollars ($5,000.00) to the Chicago & Cook County Construction Industry Labor-Management Cooperation Committee Trust ("The Trust"). In addition to the statutory purposes set forth in the Labor-Management Cooperation Committee Act of 1978 (29 U.S.C. Section 175a) and the Congressional Statement of Purposes set forth in Section 6(b) of Public Law 95-524, the activities of the Trust shall include the dispute resolution mechanics as provided herein. Payment shall be made within three days of the execution of this Agreement.

    Complimentary with the purposes of the Trust, the parties recognized desire to facilitate the entry into the building and construction trades of veterans who are interested in careers in the building and construction industry. The parties agree that the Council and Unions shall utilize the services of the Center for Military Recruitment, Assessment and Veterans Employment (hereinafter referred to as the "Center") and the Center's "Helmets to Hardhats" program to service as a resource for preliminary orientation, assessment of construction aptitude, referral to apprenticeship programs or hiring halls, counseling and mentoring, support network, employment opportunities and other needs as identified by the parties. The parties also agree that the Council and Unions shall coordinate with the Center to create and maintain an integrated database of veterans interested in working on

the Project and of apprenticeship and employment opportunities for the Project. To the extent permitted by law, the Council and Unions will give appropriate credit to such veterans for bona fide, provable past experiences, in the building and construction industry.

16. The parties agree that the administration of this Agreement is an integral element of the achievement of the goals and the objectives of the Agreement. They further agree that effective and immediate communication between and among the parties is vitally necessary to minimize the potential for disputes and their escalation. To that end, the Council and General Contractor shall meet no less that quarterly to review and discuss the status of the Project, and any problems or' disputes that have arisen which could potentially result in a grievance.

17. The Council requires that a Pre-Job Conference be conducted with General Contractor, all Subcontractors, and all applicable Unions prior to the commencement of Construction Work on the Project.
18. Authorized representatives of the Council and Unions shall have access to the Project, provided that they first notify Genera1 Contractor of their arrival, that they do not interfere with the work of the employees, and provided further that such representatives fully comply with the visitor and security rales established for the Project by General Contractor.

19. In addition to the provisions of Paragraph 10(b) for minimizing the potential for disputes the Council agrees to work with all parties to provide and maintain harmonious labor relations during the Term of the Agreement. The parties agree and accept that the Council does not have the legal ability or authority to bind its affiliates, nor does it have the authority to modify the terms and conditions of any collective bargaining agreement.

20. This document with each of the attachments, including Appendices A through D, constitutes the entire agreement of the parties and may not be modified or changed except by the subsequent written agreement of the parties.

21. All parties represent that they have full legal authority to enter into this Agreement.

The undersigned, as the General Contractor' and Labor Organization, agree to all of the terms and conditions contained in this Agreement.

Dated this the [DAY] day of [MONTH], in Chicago, Cook County, Illinois.

[PROJECT NAME]
Name of Project Labor Agreement

On behalf of General Contractor: [CONTRACTOR FIRM NAME]
Name of General Contractor

Its Duly Authorized Officer / Representative (Signature)

Print Name

On behalf of Labor Organization: [LABOR ORGANIZATION NAME]
Name of Labor Organization

Its Duly Authorized Officer/Representative (Signature)

Print Name

APPENDIX A

DESCRIPTION OF WORK

(Please include approximate construction value for this Project.)

The [PROJECT NAME] Project has a project budget of XXX Million Dollars and no cents;

[INSERT SHORT DESCRIPTION]

APPENDIX B

AREA-WIDE COLLECTIVE BARGAINING AGREEMENT(S)

(Please note: the General Contractor and Labor Organization are to include the Area-Wide Collective Bargaining Agreement for the affiliated Labor Organizations during the execution of this agreement)

APPENDIX C

STANDARD AGREEMENT

APPENDIX D

PROPOSED MODIFICATIONS

Exhibit 26
MBE WBE Utilization Plan

(Reserved)

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Exhibit 27

Identification Subcontr Supplier Subconsult Fillable form (ISF)

(Reserved)

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Exhibit 28

Form of Recommendation to Award

(Reserved)

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Exhibit 29

MBE/WBE, EEO, and Workforce Requirements

(Reserved)

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Exhibit 31
Economic Disclosure Statement

(Reserved)

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