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PUBLIC BUILDING
COMMISSION

PROFESSIONAL SERVICES AGREEMENT

AGREEMENT NO.: PS-308

This agreement, dated as of the 9th day of **September, 1997**, but actually executed on the date witnessed hereinbelow, by and between the **Public Building Commission of Chicago**, a municipal corporation of the State of Illinois, having its principal office at Room 200, Richard J. Daley Center, 66 West Washington Street, Chicago, Illinois 60602, referred to in this agreement as the "**Commission**", and **Construction Cost Systems, Inc.**, a Corporation, with offices at 325 West Huron Street, Suite 408, Chicago, Illinois 60610, referred to in this agreement as the "**Owner's Representative**",

WITNESSETH:

WHEREAS, the Commission, on behalf of the **Chicago Public Library** (referred to in this agreement as the "**User Agency**"), intends to undertake the construction and/or improvement of the following facility in Chicago, Illinois, described on Schedule A to this Agreement:

**Canaryville Branch Library
642 W. 43rd Street
Chicago, Illinois**

hereinafter called the "**Project**",

WHEREAS, the Commission requires certain professional services, described on Schedule B to this agreement (the "**Services**"), in connection with the Project and desires to employ the Owner's Representative, on the terms and conditions set forth in this agreement, to perform such Services; and

WHEREAS, the Owner's Representative desires so to be employed by the Commission and has represented to the Commission that the Owner's Representative has the knowledge, skill, experience and other resources necessary to perform the Services in the manner herein provided; and

WHEREAS, the Owner's Representative has consulted with the Commission, reviewed the Project Documents (defined below) and taken such other actions as the Owner's Representative has deemed necessary or advisable to familiarize itself with the scope and requirements of the Project and the Services;

NOW, THEREFORE, for valuable consideration, the Commission and the Owner's Representative agree as follows:

1. Incorporation of Recitals. The matters recited above are hereby incorporated in and made a part of this agreement.

2. Incorporation of Documents. The documents identified below in this paragraph are hereby incorporated in and made a part of this agreement. By executing this agreement, the Owner's Representative acknowledges and agrees that Owner's Representative is familiar with the contents of each of such documents and will comply fully with all applicable portions thereof in performing the Services.

a. Project Documents. The plans and specifications for the Project (to the extent that plans and specifications for the Project have been prepared) as set forth and described on Schedule C to this agreement (the "Project Documents").

b. Policies Concerning MBE and WBE. The Commission's policies concerning utilization of minority business enterprises ("MBE") and women business enterprises ("WBE"), as the same may be revised from time to time.

3. Engagement and Standards for Performing Services.

a. Engagement. The Commission hereby engages the Owner's Representative, and the Owner's Representative hereby accepts such engagement, to provide the Services described in Schedule B to this agreement, as the same may be amended from time to time by mutual agreement of the Commission and the Owner's Representative.

b. Nondiscrimination. The Owner's Representative agrees that in performing this Agreement it shall not discriminate against any worker, employee or applicant for employment, or any member of the public, because of race, creed, gender, color, national origin or disability, or otherwise commit an unfair labor practice. Attention is called to applicable provisions of the Civil Rights Act of 1964, 88-352, July 2, 1964, 78 Stat. 241 *et. Seq.* the Americans with Disabilities Act of 1990, 42 U.S.C. 12010 *et. Seq.* the Illinois Human Rights Act 775 ILCS 5/1-101 *et. Seq.* and the Public Works Employment Discrimination Act 775 ILCS 10/0.01 through 10/20, inclusive and a Resolution passed by the Board of Commissioners of the Public Building Commission of Chicago on February 11, 1992, concerning participation of Minority Business Enterprises and Women Business Enterprises on contracts awarded by the Commission. The Contractor will furnish such reports and information as requested by the Commission, the Illinois Department of Human Relations or any other administrative or governmental entity overseeing the enforcement or administration of compliance with the above referenced laws and regulations.

c. Employment Procedures; Preferences and Compliances. Salaries of employees of Owner's Representative performing work under this Agreement shall be paid unconditionally and not less often than once a month without deduction or rebate on any account except only such payroll deductions as are mandatory or permitted by the applicable law or regulations. Attention is called to Illinois Compiled Statutes, 1992 relating to Wages and Hours including 820 ILCS 130/0.01 through 130/12 thereof (Prevailing Wage Act), 30 ILCS 570/1 through 570/7 (Employment of Illinois Workers on Public Works Act) and 30 ILCS 560/0.01 through 560/7 (Public Works Preference

Act). The Owner's Representative shall 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, the Commission shall withhold from the Owner's Representative, out of payments due to it, an amount sufficient to pay employees underpaid the difference between the salaries required hereby to be paid and the salaries actually paid such employees for the total number of hours worked. The amounts withheld shall be disbursed by the Commission for and on account of the Owner's Representative to the respective employees to whom they are due.

d. Compliance with Policies Concerning MBE and WBE. Without limiting the generality of the requirements of the policies of the Commission referred to in paragraph 2 above, the Owner's Representative agrees to use best efforts to utilize minority business enterprises for not less than twenty five percent (25%) for MBE and five percent (5%) for WBE of the Services, in accordance with the Resolution passed by the Board of Commissioners of the Commission on February 11, 1992, concerning participation of minority business enterprises and women business enterprises on contracts awarded by the Commission and to furnish to the Commission, such reports and other information concerning compliance with such Resolution as may be requested by the Commission from time to time.

e. Delays. The Owner's Representative agrees that no charges for damages or claims for damages shall be asserted by it against the Commission for any delays or hindrances from any cause whatsoever during the progress of any portion of the Services. Such delays or hindrances, if any, shall be compensated for by an extension of time to complete the Services, for such reasonable period as may be mutually agreed upon between the parties, it being understood, however, that the agreement of the Commission to allow the Owner's Representative to complete the Services or any part of them after the time provided for the completion thereof herein shall in no way operate as a waiver on the part of the Commission of any of its rights hereunder.

f. Records. The Owner's Representative shall maintain accurate and complete records of expenditures, costs and time incurred by the Owner's Representative in connection with the Project and the Services. Such records shall be maintained in accordance with recognized commercial accounting practices. The Commission may examine such records at the Owner's Representative's offices upon reasonable notice during normal business hours. The Owner's Representative shall retain all such records for a period of not less than five calendar years after the termination of this agreement.

g. Time of Essence. The Owner's Representative acknowledges and agrees that time is of the essence in the performance of this agreement and that timely completion of the Services is vital to the completion of the Project by the Commission. The Owner's Representative agrees to use its best efforts to expedite performance of the Services and performance of all other obligations of the Owner's Representative under this agreement and any other agreements entered into by the Commission which are managed or

administered by the Owner's Representative as a result of the Owner's Representative's engagement hereunder.

h. Compliance with Laws. In performing its engagement under this agreement, the Owner's Representative shall comply with all applicable federal, state and local laws, including but not limited to, those referenced in subparagraphs (b) and (c) above and in the documents referred to in paragraph 2 of this agreement.

i. Progress Meetings. Meetings to discuss the progress of the Project and/or to review the performance of the Owner's Representative may be scheduled upon the Commission's request, at mutually agreeable times and locations, and the the Owner's Representative agrees to cause such meetings to be attended by appropriate personnel of the Owner's Representative engaged in performing or knowledgeable of the Services.

j. Defects in Project. The Owner's Representative shall notify the Commission immediately in the event the Owner's Representative obtains knowledge of a defect in the Project or circumstances which could result in a Project delay or cost overrun.

k. Performance Standard. The Owner's Representative represents and agrees that the Services performed under this agreement will proceed with efficiency, promptness and diligence and will be executed in a competent and thorough manner, in accordance with reasonable professional standards in the field. The Owner's Representative further agrees that it will assign to the Project at all times during the term of this agreement the number of experienced, appropriately trained employees necessary for the Owner's Representative to perform the Services in the manner required hereunder.

4. Term.

a. The term of this agreement shall begin on the Commencement Date specified in Schedule B to this agreement and, subject to the provisions of subparagraph (b) below, shall terminate upon completion of the Services and acceptance thereof by the Commission or, if the Services are of an ongoing nature, on the Completion Date specified in such Schedule B. The Commission and the Owner's Representative may, from time to time, by mutual agreement, extend the term of this agreement by amending Schedule B hereto.

b. The Commission shall have the right, at any time, to terminate the term of this agreement, with or without cause, by written notice given to the Owner's Representative at least thirty (30) days prior to the effective date of termination. In addition, the Commission shall have the right, at any time and from time to time, with or without cause, to suspend the performance of the Owner's Representative hereunder with respect to all or any part of the Services, by written notice given to the Owner's Representative at least five (5) days prior to the effective date of suspension. Termination or suspension of this agreement shall not relieve the Owner's Representative from liability for the performance of any obligation of the Owner's Representative under this agreement performed or to have been performed by the Owner's Representative on or before the

effective date of termination or suspension. Provided the Owner's Representative is not in default under this agreement at the time of termination or suspension, the Commission agrees to pay to the Owner's Representative, in accordance with the terms of this agreement, all compensation and reimbursements due to the Owner's Representative for periods up to the effective date of termination or suspension. In no event shall the Commission be liable to the Owner's Representative for any loss, cost or damage which the Owner's Representative or any other party may sustain by reason of the Commission terminating or suspending this agreement as provided herein; provided, however, that the Commission may, in its sole discretion, reimburse the Owner's Representative for actual expenses approved by the Commission.

c. If the Project, in whole or substantial part, is stopped for a period longer than thirty (30) days under an order of any court or other governmental authority having jurisdiction of the Project, or as a result of an act of government, such as a declaration of national emergency making materials unavailable, through no act or fault of the Owner's Representative, or if the Commission fails to make any payment or perform any other obligation hereunder, the Owner's Representative shall have the right to terminate this agreement, by written notice given to the Commission at least seven (7) days prior to the effective date of termination, and shall have the right to recover from the Commission all compensation and reimbursements due to the Owner's Representative for periods up to the effective date of termination.

5. Compensation of the Owner's Representative; Reimbursement for Expenses. The Commission shall compensate the Owner's Representative for the Services in the manner set forth on Schedule D to this agreement. In addition, the Commission shall, upon submission by the Owner's Representative (which the Owner's Representative may do no more frequently than once every 30 days) and approval by the Commission of detailed invoices therefor, reimburse the Owner's Representative for all Reimbursable Expenses. As used in this paragraph, the term "Reimbursable Expenses" shall mean those expenses identified as such on Schedule D to this agreement.

6. Rights and Obligations of Commission. In connection with the administration of the Project by the Commission and the performance of this agreement by the Owner's Representative, the Commission shall have the following rights and obligations, in addition to those provided elsewhere in this agreement:

a. Information. The Commission shall provide the Owner's Representative all reasonably requested information concerning the Commission's requirements for the Project and the Services.

b. Review of Documents. Subject to the provisions of subparagraph 3 (e) above, the Commission agrees to make a reasonable effort to examine documents submitted by the Owner's Representative and render decisions pertaining thereto with reasonable promptness.

c. Site Data. To the extent the Commission determines to be necessary for the Owner's Representative to perform the Services, the Commission may furnish, or may authorize the Owner's Representative to obtain from a company or companies approved by the Commission as Reimbursable Expenses: (i) a certified survey of the site or sites; (ii) information concerning locations, dimensions and data pertaining to existing buildings and other improvements; (iii) title information; (iv) information concerning available service and utility lines. The Owner's Representative shall not be liable to the Commission for the substantive content of such surveys or information, obtained from a consultant engaged by the Owner's Representative and approved by the Commission, provided that the Owner's Representative has exercised reasonable diligence in the selection of the consultant.

d. Tests and Reports. To the extent required for the Owner's Representative to perform the Services, the Commission may furnish structural, civil, chemical, mechanical, soil and/or other tests and reports; however, the Commission may authorize the Owner's Representative to procure such tests and reports from a company or companies approved by the Commission as Reimbursable Expenses. The Owner's Representative shall not be liable to the Commission for the substantive content of such tests and reports obtained from a consultant engaged by the Owner's Representative and approved by the Commission, provided that the Owner's Representative has exercised reasonable diligence in the selection of the consultant and provided that the Owner's Representative has caused the consultant to purchase and maintain professional liability insurance in accordance with paragraph E.6 of Schedule E protecting the Commission, the User Agency, and the Owner's Representative from any loss or claim arising out of the consultant's performance.

e. Legal, Auditing and other Services. The Commission shall arrange and pay for such legal, auditing, insurance counseling and other services as the Commission, in its sole discretion, may determine to be required for the Project. Such payments shall not include legal or auditing expenses arising out of or relating to any errors or omissions, or claimed errors or omissions, of the Owner's Representative.

f. Designated Representatives. The Commission may designate, at its sole election, one or more representatives authorized to act in its behalf.

g. Indemnities. The Commission shall require, by appropriate provision in each contract let by the Commission after the date of this agreement with respect to the Project that the contractor thereunder shall indemnify, save and hold harmless the Commission, the User and the Owner's Representative, and each of them, and their respective commissioners, board members, officers, agents and employees, from all claims, demands, actions and the like, of every nature and description, made or instituted by third parties, arising or alleged to arise out of the work under such contract, and that the contractor thereunder shall purchase and maintain during the life of such contract such insurance as the Commission may require.

h. Ownership of Documents. All documents, data, studies and reports prepared by the Owner's Representative or any party engaged by the Owner's Representative, pertaining to the Project and/or the Services shall be the property of the Commission. (Refer to Schedule F).

i. Audits. The Commission shall have the right to audit the books of the Owner's Representative on all subjects relating to the Project and/or the Services.

7. Indemnification of Commission. The Owner's Representative hereby agrees to indemnify, keep and save harmless the Commission and the User Agency and their respective commissioners, board members, officers, agents, officials and employees (collectively, the "Indemnitees"), from and against all claims, demands, suits, losses, costs and expenses, including but not limited to, the fees and expenses of attorneys (collectively, the "Losses"), that may arise out of or be based on any injury to persons or property that is or is claimed to be the result of an error, omission or negligent or wilfully wrongful act of the Owner's Representative or any person employed by the Owner's Representative to the maximum extent permitted by applicable law provided, however, that such indemnity specifically excludes all Losses resulting from the errors and omissions of any Architect of Record, Engineer or Specialty Consultant (collectively, The "Design Consultants") employed by the Commission to implement the Project except to the extent of the Owner's Representative's negligence in the administration and management of the work of such Design Consultants or other design or specialty work that is self-performed by the Owner's Representative.

8. Insurance to be Maintained by the Owner's Representative. The Owner's Representative shall purchase and maintain at all times during the performance of Services hereunder, for the benefit of the Commission and the Owner's Representative, insurance coverage which will adequately insure the Commission and the Owner's Representative against claims and liabilities which could arise out of the performance of such Services, including but not limited to, the insurance coverages set forth on Schedule E to this agreement.

9. Default.

a. Events of Default. Any one or more of the following occurrences shall constitute an Event of Default under this agreement:

i. Failure or refusal on the part of the Owner's Representative duly to observe or perform any obligation or agreement on the part of the Owner's Representative contained in this agreement, which failure or refusal continues for a period of ten (10) days (or such longer period as the Commission, in its sole discretion, may determine if such failure is not capable of being cured within such ten (10) day period) after the date on which written notice thereof shall have been give to the Owner's Representative by the Commission;

ii. Any representation or warranty of the Owner's Representative set forth herein or otherwise delivered pursuant to this agreement shall have been false in any material respect when so made or furnished;

iii. The Owner's Representative becomes insolvent or ceases doing business as a going concern, or makes an assignment for the benefit of creditors, or generally fails to pay, or admits in writing its inability to pay, its debts as they become due, or files a voluntary petition in bankruptcy, or is adjudicated a bankrupt or an insolvent, or files a petition seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar arrangement under any present or future statute, law or regulation relating to bankruptcy or insolvency, or files an answer admitting the material allegations of a petition filed against it in any such proceeding, or applies for, consents to or acquiesces in the appointment of a trustee, receiver, liquidator or other custodian of it or of all or any substantial part of its assets or properties, or if it or its principals shall take any action in furtherance of any of the foregoing; or

iv. There shall be commenced any proceeding against the Owner's Representative seeking reorganization, arrangement, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation relating to bankruptcy which is not vacated, stayed, discharged, bonded or dismissed within sixty (60) days thereof, or there shall be appointed, without the Owner's Representative's consent or acquiescence, any trustee, receiver, liquidator or other custodian of Custodian or of all or any substantial part of the Owner's Representative's assets and properties, and such appointment shall not have been vacated, stayed, discharged, bonded or otherwise dismissed within sixty (60) days thereof.

b. Remedies. If an Event of Default shall occur and be continuing, then the Commission may exercise any right, power or remedy permitted to it by law or in equity and shall have, in particular, without limiting the generality of the foregoing, the right to terminate this agreement upon written notice to the Owner's Representative, in which event the Commission shall have no further obligations hereunder or liability to the Owner's Representative except as to payment for Services actually received and accepted by the Commission through the effective date of termination. No courses of dealing on the part of the Commission or delay or failure on the part of the Commission to exercise any right shall operate as a waiver of such right or otherwise prejudice the Commission's rights, powers or remedies.

c. Remedies not Exclusive. No right or remedy herein conferred upon or reserved to the Commission is exclusive of any right or remedy herein or by law or equity provided or permitted, but each shall be cumulative of every other right or remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise, and may be enforced concurrently therewith or from time to time.

10. Confidentiality. All of the reports, information, or data prepared or assembled by the Owner's Representative under this agreement are confidential, and the Owner's Representative agrees that such reports, information or data shall not be made available to any party without the prior written approval of the Commission. If the Owner's Representative is served with a subpoena requiring the production of documents or information which is deemed confidential, then the Owner's Representative shall immediately notify the Commission in writing and provide a copy of the subpoena to the Commission in sufficient time for the Commission to attempt to quash or take other action in relation to the subpoena. In addition, the Owner's Representative shall not, without the prior written consent of the Commission, prepare or distribute any news releases, articles, brochures, advertisements or other materials concerning this agreement, the Project or the Services.

11. Assignment. The Owner's Representative acknowledges that the Commission is induced to enter into this agreement by the personal qualifications of the principals, staff and employees of the Owner's Representative and agrees, therefore, that neither this agreement nor any right or obligation hereunder may be assigned by the Owner's Representative, in whole or in part, without the prior written approval of the Commission. The Owner's Representative further acknowledges that the Owner's Representative has represented to the Commission the availability of certain members of the Owner's Representative's staff who will be assigned to Project, and agrees, therefore, that in the event of the unavailability of such members due, the Owner's Representative shall so notify the Commission in writing, and shall assign other qualified members of the Owner's Representative's staff, as approved by the Commission, to the Project.

12. Relationship of Parties. The relationship of the Owner's Representative to the Commission hereunder is that of an independent contractor, and the Owner's Representative, except to the extent expressly provided to the contrary on Schedule B hereto, shall have no right or authority to make contracts or commitments for or on behalf of the Commission, to sign or endorse on behalf of the Commission any instruments of any nature or to enter into any obligation binding upon the Commission. This agreement shall not be construed as an agreement of partnership, joint venture, or agency.

13. Miscellaneous.

a. Commission. The term "Commission", as herein referred to, shall include the Commission's Chairman, Secretary, Assistant Secretary, Executive Director, Director, Managing Architect or Project Administrator, acting on behalf thereof, as designated by the Commission in writing for the purpose of giving authorizations, instructions, and/or approvals pursuant to this agreement.

b. Notices. All notices required to be given hereunder shall be given in writing and shall be hand delivered or sent by United States certified or registered mail, postage prepaid, addressed to Commission and to the Owner's Representative at their respective addresses set forth above. If given as herein provided, such notice shall be deemed to have been given on the date of delivery, if delivered by hand, and on the second

business day after mailing, if given by mail. The Commission or the Owner's Representative may, from time to time, change the address to which notices hereunder shall be sent by giving notice to the other party in the manner provided in this subparagraph.

c. Force Majeure. Neither of the parties shall be liable to the other for any delay or failure in performance hereunder due to causes which are beyond the control of the party unable to perform. If a force majeure occurs, the party delayed or unable to perform shall give prompt notice to the other party, and the Commission may, at any time during the continuation of the force majeure event, elect to suspend the performance of the Owner's Representative under this agreement for the duration of the force majeure. The Commission shall not be obligated to pay for Services to the extent and for the duration that performance thereof is delayed or prevented by force majeure, but, provided the Owner's Representative is not in default of any obligation of the Owner's Representative hereunder, the Commission shall pay to the Owner's Representative, according to the terms hereof, all compensation and reimbursements due to the Owner's Representative for periods up to the effective date of suspension.

d. Ownership of Documents on Termination. In the event of termination of this agreement for any cause, all finished or unfinished documents, including but not limited to, drawings, data, studies and reports prepared by the Owner's Representative under this agreement shall, at the option of the Commission, become the property of the Commission.

e. Successors and Assigns. Except as otherwise provided herein, this agreement shall be binding upon and inure to the benefit of each of the parties hereto and their respective successors and assigns.

f. Governing Law. This agreement has been negotiated and executed in the State of Illinois and shall be construed under and in accordance with the internal laws of the State of Illinois.

g. Entire Agreement. This agreement constitutes the entire understanding and agreement between the parties hereto and supersedes any and all prior or contemporaneous oral or written representations or communications with respect to the subject matter hereof, all of which communications are merged herein. This agreement shall not be modified, amended or in any way altered except by an instrument in writing signed by both of the parties hereto.

h. Nonliability of Public Officials. No Commission trustee, employee, agent, officer, or official is personally liable to the Owner's Representative or its subconsultants, and the Owner's Representative and its subconsultants are not entitled to, and must not attempt to, charge any of them with liability or expense or hold them personally liable to the Owner's Representative or its subconsultants under this Agreement.

i. Severability. In the event that any provisions of this agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

j. No Waiver. The waiver by either party of any breach of this agreement shall not constitute a waiver as to any succeeding breach.

k. Counterparts. This agreement may be executed in any number of counterparts, any of which shall be deemed an original.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto as of the 11th day of April, 20 .

ATTEST:

Eileen J. Carey
Title: Secretary

**PUBLIC BUILDING COMMISSION
OF CHICAGO**

By: Bill Mahaley
Title: Chairman

ATTEST:

[Signature]
Title: Principal

CONSTRUCTION COST SYSTEMS, INC

By: [Signature]
Title: President

Schedule A

Project

**CANARYVILLE BRANCH LIBRARY
CHICAGO, ILLINOIS**

Schedule B

Services

B.1 SCOPE OF SERVICES TO BE PERFORMED BY THE OWNER'S REPRESENTATIVE

The Owner's Representative will perform all services required to manage and administer the construction of the Project as determined by the Commission. Such services shall include, but not be limited to, pre-construction activities, construction activities, and project close-out. The term of this agreement shall be defined by the following:

Commencement Date of Services: January 11, 2000

Completion Date of Services: March 31, 2001

1.0. Design Phase

- 1.1 Review with the Commission the project estimate. Confirm the project estimate.
- 1.2 Consult with the Commission and the User Agency regarding the goals and requirements of the project.
- 1.3 Review the requirements of any federal, state, or local agencies having jurisdiction over various aspects of the project with the Commission regarding costs and alternatives.
- 1.4 Prepare a budget estimate at the completion of the Contract Documents. Upon completion of Design Development, prepare detailed cost estimate indicating quantity takeoffs for every trade.
- 1.5 Prepare a cash flow analysis of the project including services performed by the Design Team.
- 1.6 Recommend potential value engineering alternatives throughout the Design Phase.
- 1.7 Review the progress of preparation of the drawings and advise the Design Team with respect to availability and price of material, avoidance of jurisdictional disputes and feasibility of details.
- 1.8 Develop an overall design schedule and coordinate the schedule with the Commission's desired project completion date.

2.0 Pre-Construction Services

- 2.1. Prepare detailed cost estimates based on information developed by the Design Team during the Design Phase. The estimate shall contain the following:
 - 2.1.1 An overview of the current budget compared to Commission's project estimate.
 - 2.1.2 A Budget Summary and Division Breakdown (User CSI or Unifomat) as directed by the Commission.
 - 2.1.3 A cash flow analysis of the project based on the latest budget information.
- 2.2. Prepare a Computerized CPM schedule using a program compatible with the Commission's scheduling system. The schedule shall clearly identify each phase of the project and indicate early and late start and finish dates, float times and percent completion of each task. Recommend a method for the delivery of the project based on the Commission's goals and requirements.
- 2.3. Participate in value engineering and evaluate proposed foundation, structural, electrical, mechanical, and exterior wall systems as to quality, first cost and life cycle cost, constructibility, union jurisdiction, availability and effects on funding flexibility.
- 2.4. Prepare a monthly report which will include a summary of the project status, schedule and budget and a pending issues log as determined by the Commission .
- 2.5. Consult with the Commission and User Agency regarding issues which impact the constructibility and feasibility of the project.
- 2.6. Identify long lead time items and recommend to the Commission methods of procurement to achieve the project schedule.
- 2.7. Prepare a trade by trade cost estimate.
- 2.8. Prepare a procurement and bid package schedule as directed by the Commission.
- 2.9. Prepare an evaluation and recommendation for each general contractor award as directed by the Commission, and submit in a timely manner to the Commission for approval.
- 2.10. Expedite approvals and coordination issues between federal state and local agencies to obtain any required permits, licenses and fees for the project.
- 2.11. Conduct periodic progress meeting (at least once per month) with the Commission, User Agency and the appropriate Design Team members and

contractors.

3.0 Construction Phase

- 3.1. Prepare a monthly report containing the following:
 - 3.1.1. Executive Summary - include a summary of financial status, highlights of major events and a schedule summary.
 - 3.1.2. Status of Construction - summarize project construction activities, including current anticipated start and completion dates by project elements.
 - 3.1.3. Outstanding Items - include items to be completed by the Owner's Representative, the design team members, the Commission, User and general contractor.
 - 3.1.4. Purchasing Activity - detail current status of materials procurement based upon information received from the general contractor.
 - 3.1.5. Budget Status Report - include a summary of anticipated costs and status of scope changes that are approved, pending, and/or anticipated.
 - 3.1.6. Schedules - include construction schedule indicating current project status (both in CPM and summary bar chart form), updated cash flow and a look-ahead plan for the following period.
 - 3.1.7. Progress Photographs - arrange for production and distribution of progress photographs as required by the Commission.
 - 3.1.8. Anticipated Project Activity - indicate, in narrative form, the activities of the project in the upcoming month, actions to be taken during that period, and any scheduled governing agency reviews/ approvals, etc.
 - 3.1.9. Other - include such additional or revised information as shall be required by the Commission.
- 3.2. Conduct weekly meetings with the Commission, User Agency, design team, specialty consultants and general contractor. Review the project schedule, submittals, scope change, requests for information, pending issues and field problems.
- 3.3. Expedite approvals and coordination issues between federal, state and local agencies to obtain any required permits, licenses and fees.
- 3.4. Review and approve all payment applications and submit payment requests for approval and payment by the Commission.

- 3.5. Maintain a project manager as the primary point of contact with the Commission, User Agency, design team members and general contractor.
- 3.6. Establish an on site organization line of authority to implement all construction phases of the project in a coordinated and efficient manner.
- 3.7. Establish and implement procedures for, and maintain coordination among, the Commission, the User, design team, general contractor, and other agencies having jurisdiction of the project with respect to all construction aspects of the project.
- 3.8. Coordinate the procurement and assembly of all required permits, licenses, and certificates from the general contractor and arrange delivery of same to the Commission.
- 3.9. Coordinate all aspects of the work with any quasi-public agencies or utility companies involved in the project.
- 3.10. Conduct a minimum of two site observations per week of the general contractor to ensure that work on the project is progressing on schedule and in accordance with the requirements of the Commission and the contract documents. Prepare written reports of site observations and a status report when requested.
- 3.11. In the event that the interpretation of the meaning and intent of the contract documents becomes necessary during construction, ascertain the architect's interpretation and transmit such information to the general contractor and to the Commission.
- 3.12. Review the adequacy of the supervision, personnel and equipment and the availability of necessary materials and supplies. Where inadequate, direct that the necessary action be taken to remediate the deficiency.
- 3.13. Develop and establish a quality inspection control system for the purpose of verifying that the required standards of construction are achieved.
- 3.14. Manage the review of all testing required by the technical sections of the specifications and applicable codes and regulations for compliance with the contract documents.
- 3.15. Manage the review of compliance with the contract documents, shop drawings, materials and all other required submittals. Requests for approval of subcontractors, delivery schedules, material lists, shop drawings, samples, and the like will be commented upon and submitted to the Commission for concurring approval.

- 3.16. Manage the review of all shop drawings, composite shop and coordination drawings, brochures, material samples and other items required by the contract documents.
- 3.17. Monitor and implement the flow of all documents and materials for proper sequence of approvals so as not to delay the progress of the work.
- 3.18. Establish and maintain on the site a complete library of all contract documents, addenda, bulletins, scope changes, approved shop drawings and material samples.
- 3.19. Receive and review all scope change requests from the general contractor. Review unit prices, time and material changes and similar items. Submit recommendations to the Commission for approval.
- 3.20. Review all scope changes proposed by the Commission, the User Agency, and/or design team and make recommendations regarding practicality, costs, effect on completion schedule and risk to the project.
- 3.21. Monitor requests for scope changes required by field conditions and other unforeseen conditions and submit such requests to the Commission for approval prior to instituting any changes to the requirements of the contract documents.
- 3.22. Monitor all scope changes during construction to ensure compliance with approved revisions.
- 3.23. Implement the specifications and the Commission's procedures for processing scope changes, including applications for extensions of time.
- 3.24. Maintain cost accounting records of the work performed in accordance with the specifications and the Commission's procedures.

4.0. Project Close Out

- 4.1. Conduct a comprehensive final inspection of the project to verify that the materials furnished and work performed are in accordance with the contract documents.
- 4.2. Coordinate the preparation of punchlists indicating the items of work remaining to be accomplished. Coordinate the completion of such items in an expeditious manner. Prepare certificates of preliminary and final completion in consultation with the Commission and the User.
- 4.3. Coordinate the assembly and delivery to the Commission all guarantees, warranties, operating and maintenance manuals required by the contract documents. Coordinate equipment and systems training sessions for User Agency personnel. Make recommendations as to the withholding of payments to the

general contractor. Determine the value of any uncorrected and/or deficient work.

- 4.4. Expedite the preparation of "as-built" drawings and operations and maintenance manuals of the project in accordance with the specifications. The "as-built" documents will be subject to the approval of the Owner's Representative. Submit approved "as-built" documents to the Commission upon completion of the project.
- 4.5. Review, consolidate and implement all pertinent RFI's corrections and scope or User Agency changes that are to be incorporated into the construction documents and specifications by the architect of record. The Owner's Representative shall review and verify that the necessary changes have been incorporated into the documents.

Schedule C

Project Documents

Intentionally omitted.

Schedule D

Compensation of the Owner's Representative

D.1. Owner's Representative's Fee:

- D.1.1. The Commission, in full payment to the Owner's Representative for its services to this Project, shall pay the Owner's Representative the sum of \$68,000.00 for services identified in Schedule B of this agreement.
- D.1.2. The fee shall be payable monthly as the services are performed by the Owner's Representative.
- D.1.3. Owner's Representative's fee shall include consultant's profit, overhead, and general conditions, and all items not specifically identified as Reimbursable Expenses.

D.2. Changes to Work

D.2.1. The Commission shall compensate the Owner's Representative for Contract Modifications and/or Additional Services based upon a *Lump Sum Fee* or a *Time Card Not to Exceed Fee*, as approved by the Commission in writing. In the case of *Time Card* billings, rates of reimbursement for the Owner's Representative employees shall be the actual base salaries paid to the specific employee performing the services (not to exceed the maximum Commission hourly salary rates, identified in D.2.2.), plus a multiplier not to exceed 2.5. The following items are considered to be a part of the multiplier, and shall not be considered as additional reimbursable expenses:

- A. Workmen's Compensation Insurance.
- B. Direct personnel Expenses:
 - a. Social Security Tax.
 - b. Unemployment Insurance.
 - c. Health insurance Benefits.
 - d. Long Term Disability Insurance.
 - e. Other Statutory and Non-Statutory Employee Benefits.
 - f. Pensions and Similar Contributions.
- C. Telephone Service including Local Calls.
- D. General and Administrative Expense including Overhead and Profit.
- E. General Liability, (Excluding costs for Insurance Premiums on Special Consultants and Trade Contractors) Professional Liability, Valuable Papers, Auto and other Insurance as mandated by the Contract.
- F. Computer Charges.

- G. Postage and Handling.
- H. Parking and Mileage.
- I. Other items not specifically identified below as “Reimbursables”.

D.2.2. The maximum hourly rate, including the multiplier, the Commission shall pay the Owner’s Representative for their employees and Sub-Consultant's employees shall be as follows:

<u>Position Title</u>	<u>Maximum Hourly Rate with Multiplier</u>
Principal	\$150.00
Senior Project Manager	\$125.00
Project Manager	\$115.00
Assistant Project Manager	\$80.00
Clerical/Administrative	\$50.00

D.3. Reimbursable Expenses

D.3.1. “Reimbursable Expenses” as herein referred to include expenditures made by the Owner’s Representative, with the Commission’s prior approval, for the following incidental expenses incurred in the interest of the Project. Consultant shall be reimbursed for actual expenditures at cost to the Owner’s Representative and an additional 2% mark-up. The following shall be considered reimbursable expenses:

D.3.1.1. Owner’s Representative shall be reimbursed for the cost of sub-consultant fees, when specifically requested by the Commission. Sub-consultants may include Surveys, Geotechnical, Environmental Testing and Reporting services, and other Specialty Consultants.

D.3.1.2. Plotting, printing, reproduction and distribution of drawings and specifications for the purposes of review by the Commission, soliciting contractor bids, issuing documents for building permit and issuing the General Contractor's Contract Documents.

D.3.1.3. Expense of transportation and living of principals and employees traveling in connection with the Project, but not including travel and expense to and from the job site or within a 50-mile radius of downtown Chicago. Travel expenses include coach air fare, hotel and per diem costs, auto rental, fuel and insurance, and must be supported with proper documentation in the form of itemized invoices.

D.3.1.4. Costs for rental or purchase of special items or equipment requested by the Commission.

D.3.2. The following are not Reimbursable Expenses:

D.3.2.1 Plotting, printing, and distribution of drawings and specifications for the purposes of coordination between members of the Owner's Representative's project team, or otherwise incidental to the normal execution of the Owner's Representative's work.

D.3.2.2 Office and administrative expenses, including telephonic or telecopier system expenses, photocopying and duplicating costs (except as defined under D.3.1.), office or drafting supplies, delivery services (except as defined under D.3.1).

D.3.3. The following are not reimbursable expenses:

- a. Cellular/radio service
- b. Travel expenses other than referred to in D.3.2
- c. Construction cost estimate of project bid documents

Schedule E

Indemnification and Insurance

- E.1. The Owner's Representative shall purchase and maintain insurance protecting the Owner's Representative from all liabilities that may be imposed under the *Workers' Compensation Act and the Workers' Occupational Disease Act of the State of Illinois*. If the Owner's Representative engages any subcontractors to perform any of the Services for the Project, the Owner's Representative shall require all subcontractors to provide similar insurance for all their employees. The limit of liability under Coverage "B", Employer's Liability of the Standard Form of the Workers' Compensation and Employers Liability policy shall be as follows:

Bodily Injury by Accident	\$1,000,000 Each Accident
Bodily Injury by Disease	\$1,000,000 Policy Limit
Bodily Injury by Disease	\$1,000,000 Each Employee

- E.2. The Owner's Representative shall purchase and maintain during the life of the Agreement, Commercial General Liability Insurance to protect it from claims for bodily injury, including death, at any time resulting therefrom, or damage to property which may arise out of or in consequence of the activities or performance of the Services under the Agreement, whether such activities by the Owner's Representative or by any of its subcontractors, or by anyone directly or indirectly employed or otherwise contracted by any of them. The Owner's Representative shall require all subcontractors engaged by the Owner's Representative for this Project to purchase and maintain during the life of the Agreement, Commercial General Liability Insurance. The Commercial General Liability Insurance shall include the following:

- E.2.1. Indemnification of the Commission, the User Agency and their respective commissioners, board members, officers, agents, officials, and employees from and against all claims, demands, suits, losses, costs and expenses, including but not limited to, the fees and expenses of attorneys.
- E.2.2. Coverage for claims due to explosion, collapse, or damage to underground utilities or property.
- E.2.3. Personal Injury coverage with the Employee Exclusion deleted, Broad Form Property Damage coverage, Independent Contractors coverage, and Products/Completed Operations coverage. The policy shall also provide continuous Products/Completed Operations coverage for two years after Final Acceptance of the completed work by the Commission and a Severability of Interests clause for all Additional Insureds, with no cross liability suits exclusion.

E.2.4. Limits of liability:

E.2.4.1 For contracts awarded with a base contract price less than \$1,000,000.00, the limits shall be as follows:

General Aggregate	\$2,000,000
Products/Completed Operations Aggregate	\$2,000,000
Personal/Advertising Injury Limit	\$1,000,000
Each Occurrence	\$1,000,000
Fire Legal Liability	\$50,000
Medical Payments	\$5,000

E.2.4.2 For contracts awarded with a base contract price of \$1,000,000.00 or greater, the Owner's Representative shall be required to carry Excess/Umbrella Liability limits of:

General Aggregate	\$5,000,000
Products/Completed Operations Aggregate	\$5,000,000
Each Occurrence	

Owner's Representative expressly understands and agrees that any insurance coverages and limits furnished by the Owner's Representative shall in no way limit the Owner's Representative's liabilities and responsibilities specified within the Agreement or by law.

NOTE: All limits may be a single policy or in combination with an Umbrella Liability policy or Excess Liability policy, which policy shall follow the form of the underlying primary policy.

NOTE: Commercial General Liability shall be written on an OCCURRENCE BASIS. The CLAIMS MADE form is not acceptable to the Public Building Commission under this Agreement.

NOTE: The Certificate of Insurance must show that specified limits of liability will apply specifically to this Public Building Commission project ONLY by use of a Specific Endorsement to the policy or by the attachment of Endorsement CG 2503 11/85.

E.3. (Special Endorsement) The Commission, its representatives, User, their respective commissioners, board members, officers, agents, and employees, individually and collectively, shall be named as Additional Insureds under the Owner's Representative's Liability Policies. The insurance afforded to the Additional Insureds shall be primary over any other valid or collectible insurance that the

Additional Insureds may have with respect to loss under this policy. Other insurance of any Additional Insured applicable to loss is excess over this endorsement, and the amount of the Company's liability under this policy shall not be reduced by the existence of such other insurance, provided, however, that this paragraph does not apply to loss caused solely by the negligence of such Additional Insureds.

Owner's Representative hereby waives all of its rights of subrogation against the Additional Insureds.

- E.4. The Owner's Representative shall purchase and maintain during the life of the Agreement, Business Automobile Liability insurance to include all owned, non-owned, hired or rented vehicles with limits of liability as follows:

Combined Single Limit Bodily Injury and Property Damage Liability	\$1,000,000
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- E.5. Valuable Papers insurance in an amount not less than \$40,000 to insure against any loss whatsoever which could damage valuable Project documents including but not limited to design development documents, working drawings, specifications, records, papers, maps, statistics, survey notes, data preserved by electronic or computerized means, if applicable, relevant to this Agreement. This insurance shall have limits sufficient to pay for the recreations, re-establishment, or restoration of these valuable papers.

- E.6. Professional Liability insurance covering the Owner's Representative against all sums which the Owner's Representative may become obligated to pay by reason of the liability imposed upon the Owner's Representative by law for damage resulting from any claim made against the Owner's Representative arising out of the performance of this Agreement in the capacity as Owner's Representative and caused by any error, omission or act of the Owner's Representative, or of any person or Owner's Representative employed by the Owner's Representative or any others for whose actions the Owner's Representative is legally liable, except to the extent that the Owner's Representative shall cause any Design Consultant, as hereinabove defined, to purchase and maintain professional liability insurance protecting the Commission and the Owner's Representative from any claim or loss arising out of the performance of the Design Consultant's Agreement by such Design Consultant.

The Limit of Liability is as follows:
\$2,000,000 Each Occurrence
\$2,000,000 General Aggregate
\$ 25,000 Self-Retained Limit

Limits must be project specific, dedicated to Services performed under this Agreement only, unless otherwise approved by the Commission, for both

the Owner's Representative and/or any person or Owner's Representative employed by the Owner's Representative or any others for whose actions the Owner's Representative is legally liable and which shall be maintained for a period of not less than four years following completion of this Agreement.

E.7. Prior to the commencement of the Services, Certificates of Insurance evidencing Workers' Compensation and Employers' Liability, Commercial General Liability insurance, Business Automobile insurance, Umbrella or Excess Liability insurance, and Professional Liability signed by the Insurance Company(s), and certifying to the name and address of the Owner's Representative so insured, the description of the Services covered by such policies, the inception and expiration dates of the policies, the specific coverages to be provided (i.e. contractual, broad form property damage, etc.) shall be submitted and approved by the Commission. Such Certificates of Insurance shall state that policies will not be cancelled, non-renewed, or materially changed without thirty (30) days prior notice in writing to the Commission. In the event the insurance is cancelled, non-renewed, or materially changed before completion of the Services, the Commission reserves its rights under the Agreement to order the job shut down until the Owner's Representative obtains the required insurance in the amounts stated herein, or the Commission may obtain the coverages required and shall then deduct the appropriate premium cost from the monies due to the Owner's Representative. Such Certificates of Insurance shall also evidence a waiver of subrogation against the Additional Insureds.

E.8. All such insurance shall be placed in companies with a minimum AM Best rating of A VIII, unless otherwise approved by the Commission, authorized under the insurance laws of the State of Illinois to do business in the State of Illinois.

E.9. **Indemnification:**

The following entities are hereby incorporated as indemnities, including their respective Commissioners, Board Members, Officers, Agents and Employees, individually and collectively:

**Public Building Commission of Chicago
Chicago Public Library**

Schedule F

Copyright Provisions

The parties intend and agree that, to the extent permitted by law, the drawings, specifications and other design documents to be produced by Owner's Representative at the Commission's instance and expense pursuant to this Agreement (the "Work") shall conclusively be deemed "works made for hire" within the meaning and purview of Section 101 of the United States Copyright Act, 17 U.S.C. § 101 *et seq.*, and that the Commission, its successors and assigns, will be the copyright owner of all aspects, elements and components thereof in which copyrights can subsist. To the extent that any of the foregoing does not qualify as a "work made for hire", Owner's Representative hereby irrevocably grants, conveys, bargains, sells, assigns, transfers and delivers to the Commission, its successors and assigns, all right, title, and interest in and to the copyrights and all U.S. and foreign copyright registrations, copyright applications and copyright renewals therefor, and all other intangible, intellectual property embodied in or pertaining to the Work contracted for under the Agreement, free and clear of any liens, claims or other encumbrances, to the fullest extent permitted by law. Owner's Representative will execute all documents and, at the expense of the Commission, perform all acts that the Commission may reasonably request in order to assist the Commission in perfecting its rights in and to the copyrights relating to the Work.

Owner's Representative warrants to the Commission, its successors and assigns, that (1) the Work constitutes a work of authorship; (2) on the date hereof Owner's Representative is the lawful owner of good and marketable title in and to the copyrights for the Work (including the copyrights on designs and plans relating to the Work); and (3) the Owner's Representative has the legal right to fully assign any such copyright with respect to the Work; (4) Consultant has not assigned any copyrights nor granted any licenses, exclusive or non-exclusive, to any other party; (5) Owner's Representative is not a party to any other agreement or subject to any other restrictions with respect to the Work; (6) the plans and designs for the Work are complete, entire and comprehensive. Further, Owner's Representative agrees that it will not restrict or otherwise interfere with the Commission's future actions in authorizing the use, adaptation, revision, or modification or destruction of the Work provided that the Owner's Representative is indemnified for any damages resulting from any such future re-use or adaptation of the Work as may be authorized by the Commission.

Schedule G

Year 2000 Provisions

YEAR 2000 PROVISIONS - FOR PROVIDERS OF INFORMATION TECHNOLOGY AND SERVICES AND PRODUCTS WITH EMBEDDED INFORMATION TECHNOLOGY

G.1 To the extent the Owner's Representative is providing Information Technology to the Public Building Commission of Chicago ("PBC"), whether to be provided on a custom basis or on a standardized or commercially available basis, the Owner's Representative warrants that it is Year 2000 Compliant ("Y2K Compliant"). Information Technology ("IT") encompasses IT Products, IT Services, or both, as defined below.

IT Products means, individually and collectively, every item of computer, networking or communications hardware, firmware, software, and peripherals including, without limitation, those items of hardware, firmware, software, and peripherals contained in, installed on, or provided in conjunction with goods otherwise being furnished under this Agreement.

IT Services means services designed, performed, delivered or developed that are to be rendered or that are operations to be conducted by the Owner's Representative under this Agreement including, without limitation, data services, and design, modification, servicing and maintenance services relating to IT Products.

G.2 "Y2K Compliant" means that the Information Technology fully complies with and satisfies the following warranties and requirements ("Y2K Warranties"):

G.2.1 correctly and accurately, and without interruption, processes date/time data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and leap year calculations, regardless of the use of current calendar dates;

G.2.2 performs and functions accurately, consistently and without interruption before, during, and after January 1, 2000, without any changes in operation associated with or arising from the advent of the new century and the millennium;

- G.2.3 responds to two digit date input in a way that resolves any ambiguity as to century in a disclosed, defined, consistent and pre-determined manner; and
 - G.2.4 stores and provides output of, and interacts with any applicable third party systems regarding, date information in ways that are unambiguous and correct as to century, and that can and will be properly and accurately interpreted by those third party systems with which it interoperates; and
 - G.2.5 recognizes the Year 2000 ("Y2K") as a leap year.
- G.3** Additionally, to the extent the Information Technology that the Owner's Representative is designing or supplying under the Agreement is used or intended to be used in combination with Information Technology already in place and supplied by others, including without limitation any database or other information systems, the Owner's Representative's Y2K Warranties apply, but only to the extent the date and time data that the Owner's Representative or the Owner's Representative's Information Technology receives from the third party Information Technology is accurate. If the Owner's Representative becomes aware that the data received from third party Information Technology is not Y2K Compliant, the Architect must promptly advise the PBC of that fact, in writing.
- G.4** If the Agreement requires that specific listed items of Information Technology must perform as a system, then the Y2K Warranties apply to those listed items as a system.
- G.5** The duration of the Y2K Warranties and the remedies available to the PBC for breach of any of them are generally as described under the terms of any general warranty provisions of the Agreement, except as follows:
- G.5.1 The Y2K Warranties must not expire earlier than January 1, 2001 or the expiration date of the general warranties, whichever period is longer;
 - G.5.2 Notwithstanding any provision to the contrary in the general warranty provision(s), or in the absence of any such general warranty provision(s), the remedies available to the PBC for breach of any of the foregoing Y2K Warranties include, as the PBC may request and elect, repair or replacement of any listed item of Information Technology supplied under the Agreement and the provision by the Owner's Representative at its sole cost and expense, of any item of material, labor or services that must be supplied to make the listed items of Information Technology work or work together as a system (including without limitation labor for removal and installation, shipping and freight, retraining, etc.);
 - G.5.3 Nothing in the Y2K Warranties and remedies set forth herein limits any rights or remedies the PBC may otherwise have under the Agreement;

- G.5.4 If the Owner's Representative develops and makes available to its customers or the market any Y2K bug fix, upgrade, revision, patch relating to the Y2K Compliance of any covered Information Technology, the Owner's Representative will provide it (a "Y2K Fix") to the PBC without additional cost or expense;
- G.5.5 Each Y2K Fix supplied to the PBC must be effective without causing any loss of existing functionality of the PBC's Information Technology, and without adversely affecting its interoperability with any third party systems; and
- G.5.6 The Owner's Representative must, upon notice of a breach of any Y2K Warranty, perform any repair or replacement to be performed under this Rider on the Owner's Representative's highest priority basis (i.e., before performing similar services for any other current or former client or customer of the Owner's Representative.)

YEAR 2000 PROVISIONS
OWNER'S REPRESENTATIVE'S OWN OPERATIONS, SUPPLIERS AND SUB-CONSULTANTS

- G.6** Regardless of whether the Owner's Representative provides Information Technology to the PBC, to the extent that the Owner's Representative relies on or uses Information Technology in its own general business operations, the Owner's Representative warrants it has exercised due care to ensure that all Information Technology used by the Owner's Representative in its business operations is Y2K Compliant in the manner described in paragraph G.1 and G.2 above. Further, the Owner's Representative warrants that it has exercised due care in ascertaining that the Owner's Representative's own suppliers and subcontractors are Y2K Compliant as to Information Technology used in their own operations. Owner's Representative warrants that any failure by the Owner's Representative to be Y2K Compliant in accordance with these provisions will not adversely affect the Owner's Representative's ability to perform all required services or provide or deliver any goods, whether or not of a type involving Information Technology, under any Contracts or agreements with the PBC. If the Owner's Representative is unable to perform under the Contract as a result, directly or indirectly, of a failure of its Information Technology or of any of its subcontractors or suppliers to be Y2K Compliant, The Owner's Representative's nonperformance will not be considered a matter excused by *force majeure* for any purpose under the Contract or this Rider, nor will it be considered to be an event beyond the Owner's Representative's reasonable control, nor will the Owner's Representative otherwise be excused from performance under the Contract as a result of any Y2K related problem.

- G.6.1 For purposes of this warranty, "Due care" means reasonable inquiry to verify Y2K compliance as defined in paragraph G.2 and reliance upon component and system manufacturer's warranties indicating Y2K compliance as defined in paragraph G.2.
- G.6.2 The Owner's Representative promises to pursue, on behalf and for the benefit of the Commission, all Y2K warranties made to the Owner's Representative by component and systems manufacturers.
- G.7** The Owner's Representative's will cooperate with and provide adequate assurance to the PBC of its continuing exercise of due care in maintaining Y2K Compliance; its failure at any time to do so will constitute an event of default under the Contract.