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PUBLIC BUILDING
COMMISSION

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PUBLIC BUILDING
COMMISSION
AGREEMENT NO. PS-488

PROFESSIONAL SERVICES AGREEMENT

This agreement, dated as of the 1st day of October, 2001, 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 **Holabird & Root, LLP**, a Partnership, with offices at 300 West Adams Street, Chicago, Illinois 60606-5174 referred to in this Agreement as the "**Consultant**",

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 the facility in Chicago, Illinois described in Schedule A to this Agreement (the "**Project**");

**Facility Survey
Sulzer Regional Library, Project No. CPL-34; and**

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

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

WHEREAS, the Consultant has consulted with the Commission, reviewed the Project Documents (defined below) and taken such other actions as the Consultant 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 Consultant agree as follows:

1. Incorporation of Recitals. The matters recited above are hereby incorporated in and made a part of this agreement.
2. Definitions. The following phrases have the same meanings for purposes of this Agreement:
 - a. **Agreement** means this professional services Agreement, including all exhibits or documents attached hereto and/or incorporated by reference herein, and all amendments, modifications, or revisions made in accordance with the terms hereof.

9-223 Perez
Copy to Juan
12-20-01

- b. **Commission** as herein referred to shall include the Commission's Chairman, Secretary, Assistant Secretary, Executive Director, Director of Construction, Managing Architect, Project Manager, or designated consultant or consultants, acting on behalf thereof, as designated by the Commission in writing, for the purpose of giving authorizations, instructions, and/or approval pursuant to this Agreement.
- c. **Contract Documents** consists of all of the component parts of the Contract between the Commission and the General Contractor for the construction and improvement of the Project including, without limitation, the general and special conditions, technical specifications, drawings, addenda, bulletins and modifications thereto.
- d. **Consultant** means the company or other entity identified in this Agreement, and such successors or assigns, if any, as may be authorized by the terms and conditions of this Agreement.
- e. **Key Personnel** means those job titles and persons as identified in those positions as identified in Schedule A of the Agreement or in the Consultant's proposal and accepted by the Commission.
- f. **Project** means the construction and/or improvement of the facility or facilities specified in Schedule A of this Agreement.
- g. **Services** means collectively, the services, duties and responsibilities that are necessary to allow the consultant to provide the Services required by the Commission under this Agreement. The required Services are described in Schedule A of this Agreement.
- h. **Sub-consultant** means a firm hired by the Consultant to perform professional services related to the construction and/or improvement of the Project.
- i. **Technical Personnel** as herein referred to include partners, officers and all other personnel of the Consultant, including technical typists assigned to the Project, exclusive of general office employees.
- j. **User Agency** means the municipal corporation that requested the Commission to undertake the construction and/or improvement of the Project.

3. **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, Consultant acknowledges and agrees that Consultant 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 B 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.

4. Engagement and Standards for Performing Services.

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

b. Nondiscrimination. The Consultant 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 Consultant will furnish such reports and information as requested by the Commission and the Illinois Department of Human Relations or any other administrative or governmental entity overseeing the enforcement, administration or compliance with the above referenced laws and regulations.

c. Employment Procedures, Preferences and Compliances. Salaries of employees of Consultant 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 Consultant 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 Consultant, 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 Consultant 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 Consultant 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 value 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 Consultant 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 Consultant 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 Consultant shall maintain accurate and complete records of expenditures, costs and time incurred by Consultant 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 Consultant's offices upon reasonable notice during normal business hours. Consultant 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 Consultant 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. Consultant agrees to use its best efforts to expedite performance of the Services and performance of all other obligations of the Consultant under this Agreement and any other agreements entered into by the Commission which are managed or administered by the Consultant as a result of the Consultant's engagement hereunder.

h. Compliance with Laws. In performing its engagement under this Agreement, the Consultant 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 Consultant may be scheduled upon the Commission's request, at mutually agreeable times and locations, and the Consultant agrees to cause such meetings to be attended by appropriate personnel of the Consultant engaged in performing or knowledgeable of the Services.

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

k. Performance Standard. The Consultant 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 Consultant 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 Consultant to perform the Services in the manner required hereunder.

l. Changes (Amendments). The Commission may from time to time, request changes to the terms of the Agreement or in the Scope of Services of the Consultant to be performed hereunder. Such changes, including any increase or decrease in the amount of compensation and revisions to the duration of the Services, which are mutually agreed upon by and between the Commission and Consultant, shall be incorporated in a written amendment to this Agreement. The Commission shall not be liable for any changes absent such written amendment.

m. Copyrights. The parties intend and agree that, to the extent permitted by law, the drawings, specifications and other design documents to be produced by Consultant 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", Consultant 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. Consultant 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.

Consultant warrants to the Commission, its successors and assigns, that (1) the Work constitutes a work of authorship; (2) on the date hereof Consultant 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); (3) the Consultant 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) Consultant is not a party to any other agreement or subject to any other restrictions with respect to the Work; and (6) the plans and designs for the Work will be, upon completion of the Services, complete, entire and comprehensive. Further, Consultant 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 Consultant is indemnified for any damages resulting from any such future re-use or adaptation of the Work as may be authorized by the Commission.

n. Energy Conservation Ordinance. Whenever the services of the Architect require design of new buildings and structures, addition or alteration of existing buildings and structures or portion thereof, Architect must comply with the provisions of the Energy Conservation Ordinance, Chapter 18-13 of the Municipal Code of Chicago. The Architect shall also select and/or recommend for installation by contractor energy-efficient mechanical, service

water-heating, electrical distribution and illumination systems and equipment for the effective use of energy in these buildings and structures.

5. Term.

a. The term of this Agreement shall begin on the Commencement Date specified in Schedule A to this Agreement and, subject to the provisions of subparagraph (b) below, shall expire 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 A. The Commission and the Consultant may, from time to time, by mutual agreement, extend the term of this Agreement by amending Schedule A 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 Consultant 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 Consultant hereunder with respect to all or any part of the Services, by written notice given to the Consultant at least five (5) days prior to the effective date of suspension. Termination or suspension of this Agreement shall not relieve the Consultant from liability for the performance of any obligation of the Consultant under this Agreement performed or to have been performed by the Consultant on or before the effective date of termination or suspension. Provided the Consultant is not in default under this Agreement at the time of termination or suspension, the Commission agrees to pay to the Consultant, in accordance with the terms of this Agreement, all compensation and reimbursements due to the Consultant for periods up to the effective date of termination or suspension. In no event shall the Commission be liable to the Consultant for any loss, cost or damage which the Consultant 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 Consultant 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 Consultant, or if the Commission fails to make any payment or perform any other obligation hereunder, the Consultant 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 Consultant for periods up to the effective date of termination.

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

7. Rights and Obligations of Commission. In connection with the administration of the Project by the Commission and the performance of this Agreement by the Consultant, 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 Consultant 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 Consultant and render decisions pertaining thereto with reasonable promptness.

c. Site Data. To the extent the Commission determines to be necessary for the Consultant to perform the Services, the Commission may furnish, or may authorize the Consultant 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; and (v) results of test borings and other information concerning subsoil conditions.

d. Tests and Reports. To the extent required for the Consultant to perform the Services, the Commission may furnish structural, civil, chemical, mechanical, soil mechanical and/or other tests and reports; however, the Commission may authorize the Consultant to procure such tests and reports from a company or companies approved by the Commission as Reimbursable Expenses.

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 Consultant.

f. Designated Representatives. The Commission may designate, at its sole discretion, 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(s) and consultant(s) thereunder shall indemnify, save and hold harmless the Commission, the User Agency and the Consultant, 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 Consultant or any party engaged by the Consultant, pertaining to the Project and/or the Services shall be the property of the Commission including copyrights as described in Section 4(m) above.

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

8. Indemnification of Commission. The Consultant 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 from and against all claims, demands, suits, losses, costs and expenses, including but not limited to, the fees and expenses of attorneys, 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 act of the Consultant or any person employed by the Consultant to the maximum extent permitted by applicable law.

9. Insurance to be Maintained by Consultant. The Consultant shall purchase and maintain at all times during the performance of Services hereunder, for the benefit of the Commission, the User Agency and the Consultant, insurance coverage which will adequately insure the Commission, the User Agency and the Consultant 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 D to this agreement.

10. 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 Consultant duly to observe or perform any obligation or agreement on the part of the Consultant 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 Consultant by the Commission;

ii. Any representation or warranty of the Consultant 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 Consultant 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 Consultant 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 Consultant's consent or acquiescence, any trustee, receiver, liquidator or other custodian of Custodian or of all or any substantial part of the Consultant'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 Consultant, in which event the Commission shall have no further obligations hereunder or liability to the Consultant 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.

11. Disputes

a. General. All disputes arising under, related to or in connection with the terms of this Agreement or its interpretation, whether involving law or fact or both, including without limitation questions concerning allowability of compensation, and all claims for alleged breach of contract, shall be presented in writing to the Executive Director for final determination.

b. Procedure. Requests for determination of disputes will be made by the Consultant in writing specifically referencing this Section, and will include: 1) the issue(s) presented for resolution; 2) a statement of the respective positions of the Consultant and the Project Manager; 3) the facts underlying the dispute; 4) reference to the applicable provisions of the Agreement by page and section; 5) identify any other parties believed to be necessary to the resolution; and 6) all documentation which describes and relates to the dispute. Consultant will promptly provide the Executive Director with a copy of the request for determination of the dispute. The Project Manager will have thirty (30) business days to respond in writing to the dispute by supplementing the submission or providing its own submission to the Executive Director. Failure by the Project Manager to respond will not be deemed to be an admission of any allegations made in the request for dispute resolution, but will be deemed to constitute a waiver of the opportunity to respond to such allegation(s), if any. The Executive Director's decision may thereafter be reached in accordance with such other information or assistance as she or he may deem reasonable, necessary or desirable.

c. Effect. The Executive Director's final decision will be rendered in writing no more than forty-five (45) business days after receipt of the response by the Project Manager was filed or was due unless the Executive Director notifies the Consultant that additional time for the decision is necessary. The Executive Director's decision will be conclusive, final, and binding on all parties. Consultant must follow the procedures set out in this Section and receive the Executive Director's final decision as a condition precedent to filing a complaint in the Circuit Court of Cook County or any other court.

The Consultant will not withhold performance of any Services required by the Commission under this Agreement during the dispute resolution period. The Executive Director's written determination will be complied with pending final resolution of the dispute.

12. Confidentiality. All of the reports, information, or data prepared or assembled by the Consultant under this Agreement are confidential, and the Consultant agrees that such reports, information or data shall not be made available to any party without the prior written approval of the Commission. In addition, the Consultant 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.

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

14. Relationship of Parties. The relationship of the Consultant to the Commission hereunder is that of an independent contractor, and the Consultant, except to the extent expressly provided to the contrary on Schedule A 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.

15. Miscellaneous.

a. **Consultant's Authority.** Execution of this Agreement by the Consultant is authorized by a resolution of its Board of Directors, if a corporation, or similar governing document if a partnership or a joint venture, and the signatures(s) of each person signing on behalf of the Consultant have been made with complete and full authority to commit the Consultant to all terms and conditions of this Agreement, including each and every representation, certification and warranty contained or incorporated by reference in it.

b. **Counterparts.** This Agreement may be executed in any number of counterparts, any of which shall be deemed an original.

c. **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.

d. **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 Consultant 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 Consultant is not in default of any obligation of the Consultant hereunder, the Commission shall pay to the Consultant, according to the terms hereof, all compensation and reimbursements due to the Consultant for periods up to the effective date of suspension.

e. **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.

f. **No Waiver.** The waiver by either party of any breach of this Agreement shall not constitute a waiver as to any succeeding breach.

g. **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 Consultant 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 Consultant 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.

h. **Reimbursable Expenses** as herein referred to includes actual expenditures, as identified in Schedule C, made by the Consultant.

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. **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.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto as of the 11th day of December, 2001.

ATTEST:

**PUBLIC BUILDING COMMISSION
OF CHICAGO**

Elizabeth Cary

Title: Secretary

By: Bill Mahaly

Title: Chairman

Holabird & Root LLP

By: [Signature]

Title: PARTNER

Subscribed and Sworn to before me this 20th day of Nov., 2001.

Elizabeth Brandt
Notary Public

My Commission expires:



Schedule A

Project Description and Scope of Services

Project Description: The Sulzer Regional Library, 4455 North Lincoln Avenue, was designed in the early 1980's and was opened in 1985. Since its opening, the building has experienced numerous and repeated water infiltration problems. Water penetration has been reported to have occurred through the skylights roofing systems, through the exterior wall and window systems, the water infiltration has caused extensive damage to the building's interior and its contents. They also have created inconveniences and hardship for the staff and users of the facility. Repeated attempts to correct the water infiltration problems were made throughout the life of the building but the results have not been long lasting. The most recent attempts included the installation of a second skylight system and a different roofing system over the original.

The Consultant will perform certain Services for the Commission as described below. The term of this Agreement shall be defined by the following and shall terminate when all Services have been completed by the Consultant:

Commencement Date of Service

October 1, 2001

A. Basic Services:

- A.1 The Consultant shall provide comprehensive review and study of existing facilities, including review of all relevant documents, thorough site examination and evaluation of all existing building systems and construction details including, but not limited to, the following:
 - A.1.1 Roofing and skylight systems.
 - A.1.2 Gutters and downspouts systems.
 - A.1.3 Building structural systems.
 - A.1.4 Building insulation details.
 - A.1.5 Exterior masonry wall systems and setbacks.
 - A.1.6 Exterior windows and window wall system.
 - A.1.7 Flashing details.
 - A.1.8 Joint details where dissimilar building materials interface.
 - A.1.9 Subgrade foundation wall and waterproofing systems.

- A.2 The Consultant shall provide a report of findings to include recommendations of scopes of all corrective actions that may be required to achieve 100% water tightness of the building's roof, exterior wall and other building systems, that will require only minimal routine building maintenance. The service life of the building after the recommended corrective actions have been implemented shall be for periods of 15 years, 30 years, and 50 years or for appropriate periods as determined and as agreed to by the Consultant and the Commission. The recommendations may include, but not be limited to, the removal of existing roof

and exterior wall systems and the replacement of same with new design and construction details and the waterproofing of subgrade structures.

- A.3 Prepare an estimate of probable cost for each recommended scope of corrective actions for each period of expected service life (i.e., 15 years, 30 years and 50 years or other periods as determined and as agreed to by the Consultant and the Commission).
- A.4 Attend periodic meetings with representatives and staff of the Commission and User Agency, as necessary to report progress of the work.
- A.5 Make presentation of findings and recommendations to the Commission and User Agency as directed.
- A.6 The Consultant shall provide a preliminary draft of the report by November 30, 2001.

B. Additional Responsibilities and Representations:

- B.1 In carrying out its Services Consultant shall prepare, assist in the preparation of, provide or review deliverables, including but not limited to various written studies, plans, analyses, reports, regulations, cost estimates, scope of corrective actions and underlying data, and other documents and information necessary for the satisfactory performance of the Services herein ("Deliverables").

The Commission reserves the right to reject any and all Deliverables, which in the sole opinion of the Executive Director or her designated representative, do not adequately represent the intended level of completion or standards of performance, do not include relevant or accurate information or data, or do not include all documents specified or reasonably necessary for the purpose for which the Agreement was made with the Consultant or for which the Commission intends to use the deliverables.

- B.2 All of the reports, information, or data prepared or assembled by the Consultant under this Agreement are confidential and the Consultant agrees that said reports, information or data shall not be made available to any individual or organization without the prior written approval of the Commission.
- B.3 The Consultant acknowledges that the Commission is induced to enter into this Agreement by the personal qualifications of the members, staff and employees of the Consultant and agrees, therefore, that neither this Agreement nor any right or obligation hereunder may be assigned by the Consultant, in whole or in part, without the prior written approval of the Commission. The Consultant acknowledges that it has represented to the Commission by a separate letter the availability of Timothy Artman, Frank Castelli and Jeffrey Volz of the Consultant's staff who will be assigned to Project, and agrees, therefore, that in the event of the unavailability of such staff

member due to causes beyond the Consultant's control, Commission shall be so notified in writing and other members of Consultant's staff, as approved by the Commission, shall be assigned to the Project.

- B.4 The Consultant is an independent contractor and in providing its services under this Agreement shall not be deemed to be the agent of the Commission. The Consultant warrants and represents that it has full and complete legal authority to enter into and fully perform this Agreement, and that it has the right to grant the rights herein granted to the Commission.

**Schedule B
Project Documents**

Intentionally left blank.

Schedule C

Compensation of the Consultant

C.1. Consultant's Fee:

- C.1.1. The Commission shall pay the Consultant the Not-To-Exceed Fee ("Fee") of \$50,000.00, for the Services described in Schedule A to this Agreement.
- C.1.2. For those Services satisfactorily performed by Consultant in accordance with the terms and conditions of the this Agreement, the Commission will compensate the Consultant based on the hourly rate(s) quoted by the Consultant below, plus reimbursable expenses, as provided below:

<u>Position Title</u>	<u>Maximum hourly rate</u>
Partner	\$140.00 per hour
Associate Partner	\$135.00 per hour

Architecture & Engineering

Director	\$125.00 per hour
Project Manager	\$110.00 per hour
Architects/Engineer Level 3	\$100.00 per hour
Architects/Engineer Level 2	\$ 90.00 per hour
Architect/Engineer Level 1	\$ 80.00 per hour

Interiors & Graphics

Director	\$110.00 per hour
Interiors/Graphics Level 3	\$ 90.00 per hour
Interiors/Graphics Level 2	\$ 80.00 per hour
Interiors/Graphics Level 1	\$ 70.00 per hour

Staff

Technical Level 2	\$ 75.00 per hour
Intern	\$ 60.00 per hour
Technical Level 1	\$ 50.00 per hour
Clerical	\$ 45.00 per hour

C.1.3. The hourly rates quoted by the Consultant represent fully loaded rates which include consultant's profit, overhead, and general conditions and all items not specifically identified as Reimbursable Expenses.

C.2. Changes to Work

C.2.1. The Commission shall compensate Consultant for approved Contract Modifications and/or Additional Services based upon the hourly rates quoted above in this Schedule C.

C.3 Reimbursables

C.3.1 **"Reimbursable Expenses"** as referred to herein, are actual expenditures at cost, incurred by the Architect, and required to provide their services to the Commission. The following shall be considered reimbursable expenses:

C.3.1.1 Plotting, printing and reproduction of drawings specifications, and presentation materials requested by the Commission, or required for scheduled reviews of the progress of the work by the Commission and/or the User Agency, public or city agency meetings and hearings, and as required for professional peer reviews of documents as directed by the Commission. One coordination set shall be provided to each consultant at the conclusion of schematic, design development and construction document phases.

C.3.1.2 Distribution (by messenger or special shipping) of drawings, specifications, and presentation materials requested by the Commission, or required for scheduled reviewed of the progress of the work by the Commission and/or the User Agency, public or city agency meetings and hearings, and as required for professional peer reviews of documents as directed by the Commission.

C.3.1.3 Plotting, printing, reproduction and distribution of drawings and specifications for the purposes of soliciting contractor bids, issuing documents for building permit and issuing documents for construction.

C.3.1.4 Printing and distribution costs associated with shop drawing and submittal reviews during construction.

C.3.1.5 Cost of Contractor to provide labor, materials and equipment to perform demolition, cutting and patching and repair work as required to reveal concealed conditions in connection with the Services as described in Schedule A.

C.3.2 Costs of these expenses are on a not to exceed basis of \$30,000.00.

C.3.3 The following reimbursable expenses require prior written approval by the Commission:

C.3.3.1 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.

C.3.3.2 Fees and costs of special consulting services requested by the Commission such as acoustical, theater, food service, masonry, roofing and elevator consultants shall be paid as a reimbursable expense. Civil, structural, mechanical, electrical, plumbing and fire protection engineering services are included within the Fixed Fee indicated in paragraph C.1.

C.3.3.3 Costs for rental or purchase of special items or equipment requested by the Commission.

C.3.3.4 Fees and costs to secure necessary permits or civil agency approvals, including permit fees and expenditure fees.

C.3.3.5 Costs of surveys, geotechnical and environmental technical testing and reports.

C.3.4 The following are not reimbursable expenses:

C.3.4.1 Plotting, printing and distribution of drawings and specifications for the purposes of coordination between members of the Architect's project team, or otherwise incidental to the normal execution of the Architect's work.

D.3.4.2 Office and administrative expenses, including telephonic or telecopier system expenses, photocopying and duplicating costs, except as defined under C.3.1, office or drafting supplies, and delivery services except as defined under C.3.1.

C.4 Invoices

C.4.1 Consultant will submit detailed invoices every month based upon Services completed. After approval of the invoices by the Commission, payment shall be remitted to the Consultant.

Schedule D

CONTRACT INSURANCE REQUIREMENTS

The Consultant shall provide and maintain at Consultant's own expense, during the term of the Agreement and during the time period following expiration if Consultant is required to return and perform any additional work, the insurance coverages and requirements specified below, insuring all operations related to the Agreement.

A. INSURANCE TO BE PROVIDED

1) Workers Compensation and Employers Liability

Workers Compensation as prescribed by applicable law covering all employees who are to provide a service under this Agreement and Employers Liability coverage with limits of not less than \$1,000,000.00 each accident or illness.

2) Commercial General Liability (Primary and Umbrella)

Commercial General Liability Insurance or equivalent with limits of not less than \$2,000,000.00 (\$5,000,000.00 for contracts awarded with a base contract price of \$1,000,000.00 or greater) per occurrence for bodily injury, personal injury, and property damage liability. Coverages shall include the following: All premises and operations, products/completed operations, separation of insureds, defense, and contractual liability (with no limitation endorsement). The Public Building Commission is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly from the work.

3) Automobile Liability (Primary and Umbrella)

When any motor vehicles (owned, non-owned and hired) are used in connection with work to be performed, the Consultant shall provide Automobile Liability Insurance with limits of not less than \$1,000,000.00 per occurrence for bodily injury and property damage. The Public Building Commission is to be named as an additional insured on a primary, non-contributory basis.

4) Professional Liability

When any architects, engineers, construction managers or other professional consultants perform work in connection with this Agreement, Professional Liability Insurance covering acts, errors, or omissions shall be maintained with limits of not less than \$2,000,000.00. Coverage shall include contractual liability. When policies are renewed or replaced, the policy retroactive date must coincide with, or precede, start of work on the Agreement. A claims-made policy which is not renewed or replaced must have an extended reporting period of two (2) years.

5) Valuable Papers

When any plans, designs, drawings, specifications and documents are produced or used under this Agreement, Valuable Papers Insurance shall be maintained in an amount to insure against any loss whatsoever, and shall have limits sufficient to pay for the re-creation and reconstruction of such records.

B. ADDITIONAL REQUIREMENTS

The Consultant will furnish the Public Building Commission original Certificates of Insurance evidencing the required coverage to be in force on the date of this Agreement, and Renewal Certificates of Insurance, or such similar evidence, if the coverages have an expiration or renewal date occurring during the term of this Agreement. The Consultant shall submit evidence of insurance on the Public Building Commission Insurance Certificate Form (copy attached) or equivalent prior to Agreement award. The receipt of any certificate does not constitute agreement by the Public Building Commission that the insurance requirements in the Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all Agreement requirements. The failure of the Public Building Commission to obtain certificates or other insurance evidence from Consultant shall not be deemed to be a waiver by the Public Building Commission. The Consultant shall advise all insurers of the Agreement provisions regarding insurance. Non-conforming insurance shall not relieve Consultant of the obligation to provide insurance as specified herein. Nonfulfillment of the insurance conditions may constitute a violation of the Agreement, and the Public Building Commission retains the right to stop work until proper evidence of insurance is provided, or the Agreement may be terminated.

The insurance shall provide for 60 days prior written notice to be given to the Public Building Commission in the event coverage is substantially changed, canceled, or non-renewed.

Any and all deductibles or self insured retentions on referenced insurance coverages shall be borne by Consultant.

The Consultant agrees that insurers shall waive their rights of subrogation against the Public Building Commission, its employees, elected officials, agents, or representatives.

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

The Consultant expressly understands and agrees that any insurance or self insurance programs maintained by the Public Building Commission shall not contribute with insurance provided by the Consultant under the Agreement.

The required insurance shall not be limited by any limitations expressed in the indemnification language herein or any limitation placed on the indemnity therein given as a matter of law.

The Consultant shall require all subcontractors to provide the insurance required herein or Consultant may provide the coverages for subcontractors. All subcontractors shall be subject to the same insurance requirements of Consultant unless otherwise specified herein.

If Consultant or subcontractor desire additional coverages, the Consultant and each subcontractor shall be responsible for the acquisition and cost of such additional protection.

The Public Building Commission maintains the right to modify, delete, alter or change these requirements.