

PUBLIC BUILDING COMMISSION OF CHICAGO



PROFESSIONAL CONSULTING SERVICES AGREEMENT CONTRACT NUMBER PS-0581

Kowalenko & Bilotti, Inc.

TO PROVIDE

ENVIRONMENTAL ASSESSMENTS AT VARIOUS
LOCATION

Mayor Richard M. Daley
Chairman

Eileen J. Carey
Executive Director

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Richard J. Daley Center
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PROFESSIONAL SERVICES AGREEMENT

AGREEMENT NO. PS-0581

This agreement, dated as of the 11th day of June, 2002, 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 **Kowalenko & Bilotti, Inc.** a Corporation, with offices at 300 West Washington Street, Suite 1314, Chicago, Illinois 60606 referred to in this Agreement as the "**Consultant**",

WITNESSETH:

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

WHEREAS, the Consultant desires to be so retained 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 conferred 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.
- 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") and including any project specific proposal request and accepted by the Commission pursuant to this agreement.

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.

1. 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.

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.

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IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto as of the 19 day of August, 2002.

**PUBLIC BUILDING COMMISSION
OF CHICAGO**

ATTEST:

By: [Signature]
Title: Secretary

By: [Signature]
Title: Chairman

KOWALENKO & BILOTTI, INC.

By: [Signature]
Title: President/Vice President

**AFFIX CORPORATE
SEAL HERE**

(select one)
By: [Signature]
Title: Secretary/Assistant Secretary
(select one)

ATTEST

Subscribed and Sworn to before me this 12 day of July, 2002.

Victoria Clare Haas
Notary Public

My Commission expires:

(Seal of Notary)



Schedule A
Project Description and Scope of Services

Project Description: Consultant shall provide environmental consulting services to the Commission for various sites. The services will be performed in accordance with the requirements and guidelines of the City of Chicago, Illinois Environmental Protection Agency (IEPA), the Commission, and standard industry practices.

Term: The Agreement shall be effective for a period of one year commencing July 1, 2002 and will end after completion of that term or upon reaching the maximum compensation as stipulated in Schedule B, whichever occurs sooner unless otherwise amended.

Scope of Services:

A- PHASE I ENVIRONMENTAL SITE ASSESSMENT (ESA)

The purpose of the Phase I ESA is to: (1) assist the Commission in identifying, when reasonably possible, past, existing or potential environmental concerns associated with the subject site; (2) determine if additional investigation (i.e., groundwater and/or soil sampling) is warranted to reduce or minimize the Commission's risks; and (3) provide information to assist the Commission in the decision-making process associated with the site acquisition. The Phase I ESA will be conducted according to applicable portions of the latest version of the American Society for Testing and Materials (ASTM) Standard E1527, and the Commission's requirements and guidelines.

The Phase I ESA will consist of, but may not be limited to, the following:

A.1 Describe Present Land Uses:

- A.1.1 Location and size of the site (including photographs of site).
- A.1.2 Legal description.
- A.1.3 Structure and usage of building, including date of construction.
- A.1.4 Adjacent land uses (aerial maps and census records, past and present).
- A.1.5 Geography, geology, hydrology, topography.
- A.1.6 Activities at the site, including waste disposal, cleaning activities, manufacturing processes, loading, storage
- A.1.7 Current owner/ operator's environment compliance / health programs.

A.2 Provide a Site History, including:

- A.2.1 Previous uses of the site and history of adjacent land uses.
- A.2.2 Past owners or operators of the site, who may have generated, treated, stored or disposed of hazardous materials.

A.2.3 Sources of information for historic research include but may not be limited:

- A.2.3.1 Deed and title search
- A.2.3.2 Federal, state, municipal documents, including permits, zoning ordinances, tank registrations
- A.2.3.3 Other governmental records
- A.2.3.4 Business directories
- A.2.3.5 Cartographic sources (Sanborn fire insurance maps, USGS topographic maps, zoning maps, land use maps, and aerial photographs)
- A.2.3.6 Newspaper accounts, court records, technical publications, archival records, company records and brokerage directories
- A.2.3.7 Census records
- A.2.3.8 Interviews with past and present owners and operators, including tenants and, if necessary, employees

A.3 Regulatory Records Review

- A.3.1 Review databases of hazardous waste and hazardous substances, including RCRA, compliance and notification, USTs, CERCLA/ SARA, MSDS and manifests, HWRIC, determine the nearest NPL and CERCLIS sites and EPCRA filings
- A.3.2 Contact appropriate regulatory agencies regarding permits, licenses, copies of any documents filed or received
- A.3.3 Check the Security and Exchange Commission records to ascertain mandated disclosures of the company's environment liabilities and policies
- A.3.4 Investigate compliance with state and local codes including notices of violation, notices of inquiry or citations
- A.3.5 Investigate environmental liens
- A.3.6 Investigate adjacent property uses (through directories, title searches)
- A.3.7 Review readily obtainable EPA records to identify Resource Conservation Recovery Act (RCRA) notifiers, Comprehensive Environmental Response Compensation and Liability Information System (CERCLIS) sites, National Priority List sites, Landfill and/or Solid Waste Disposal sites. In addition, the Emergency Response Notification System (ERNS) list, Leaking Underground Storage Tank (LUST) list, and the State registered UST list will be reviewed.

A.4 Perform a Site Walk-Thru with Site Manager/ Representative. Review the environmental setting of the site regarding geology, hydrogeology, hydrology, and topography. Consultant will include any areas of the site of ecological interest, such as wetlands. Consultant shall identify and document the following site conditions, or compliance with the following requirements, as applicable. When

necessary and only if requested by the Commission, the Consultant shall manage such compliance.

A.4.1 Visible signs of contamination

- A.4.1.2 Stained or disturbed soils, unusual topographical conditions; stressed vegetation; identify on site map
- A.4.1.3 Pits/ ponds/ lagoons/ piles
- A.4.1.4 Surface waters and drainage
- A.4.1.5 Containment/ materials stored on site
- A.4.1.6 Evidence of any release
- A.4.1.7 Potential migration pathway including soil and groundwater exposure pathways
- A.4.1.8 Railway systems
- A.4.1.9 Dumpster areas
- A.4.1.10 Differential settlement of soil
- A.4.1.11 Debris/ fly dumping

A.4.2 Waste streams

- A.4.2.1 Disposal on-site and off-site
 - A.4.2.1.1 Manifests
 - A.4.2.1.2 Destination

A.4.3 Wastewater

- A.4.3.1 Wastewater pretreatment
- A.4.3.2 NPDES permits
- A.4.3.4 Municipal and MWRD sewer permits
- A.4.3.5 Evidence of compliance with permits/ test results

A.4.4 Solid waste

- A.4.4.1 Liquid, hazardous, non-hazardous, and special
- A.4.4.2 Disposal Service

A.4.5 Air emissions

- A.4.5.1 Permits
- A.4.5.2 Pollution control devices
- A.4.5.3 Evidence of compliance with permits/ test results
- A.4.5.4 Odors, fumes, dust or other visible emissions
- A.4.5.5 Dispersion modeling

A.4.6 Noise and Vibration

- A.4.6.1 Monitoring
- A.4.6.2 Reporting and interpretation

A.4.7 Buildings

- A.4.7.1 Stained or damages floors/ drains
- A.4.7.2 Containers/ drums containing hazardous materials – evidence of improper use, storage, treatment or disposal of hazardous wastes or materials at the site
- A.4.7.3 Asbestos survey – determine if asbestos was in the construction of the facility or added after construction, i.e., in roofing materials, flashing, ceiling or floors tiles, heating or pipe insulation, friability
- A.4.7.4 Ventilation systems
- A.4.7.8 Loading docks
- A.4.7.9 Electrical equipment
- A.4.7.10 Storage areas
- A.4.7.11 Radon
- A.4.7.12 Lead paint
- A.4.7.13 Waste treatment areas

A.4.8 Aboveground and Underground Storage Tank (UST)

- A.4.8.1 Visual inspection to locate tanks or equipment related to the tanks, i.e., information related to size, age contents
- A.4.8.2 Registration with state and local authorities and all other relevant regulatory agencies
- A.4.8.3 Leaking underground storage tanks (LUSTs)
- A.4.8.4 UST removals, testing records, status of any tanks, sewers, sump(s), pipelines(s), septic abandoned in place

A.4.9 PCB Investigation/ Waste Classification

- A.4.9.1 Presence of polychlorinated biphenyls (PCBs) in electrical transformers, ballasts, capacitors, other hydraulic equipment and related utility power equipment/ materials
- A.4.9.2 Determine ownership
- A.4.9.3 Check for leaks
- A.4.9.4 Identify and classify contents
- A.4.9.5 Notification to proper regulatory agencies
- A.4.9.6 Packaging/ containerization for removal/ disposal in accordance with all applicable laws, rules and regulations

A.4.10 Owner/ Operator's spill prevention program and employee safety program

- A.4.11 Method of treatment and disposal of wastes
- A.4.12 Barrels, drums, lab pack chemicals and other containers of chemical waste, including but not limited to the following:
 - A.12.1 Identification and classification of contents
 - A.12.2 Notification to proper regulatory agencies
 - A.12.3 When requested, contact the applicable governmental agency for analysis and legal removal/ disposal
- A.4.13 Neighborhood Hazardous Waste Activity Review: Check with the United States and Illinois Environment Protection Agencies regarding sites within one mile radius of subject property to determine whether hazardous waste activities were conducted on neighboring properties.
- A.4.14 Review Historic Inventory of Solid Waste Disposal Sites (HISWD) for northeastern Illinois to determine the presence of any known landfill sites within one mile radius of the subject property
- A.4.15 Recommendation for Further Action
 - A.4.15.1 Identification and characterization of environmental concerns
 - A.4.15.2 If requested by the PBC, preparation of a statement regarding the nature and extent of problems and an estimate of costs to correct them
 - A.4.15.3 Findings, conclusions and recommendations

B- PHASE II ENVIRONMENTAL SITE ASSESSMENT

The objective of the Phase II Environmental Site Assessment (ESA) is to determine the presence and extent of surface and subsurface soil contamination, and the presence of building hazardous materials, for demolition and renovation projects. The Phase II ESA investigations will include performing surface and subsurface soil investigation, groundwater investigation, underground storage investigation, and asbestos, lead, and universal waste survey. The Phase II ESA will include recommendations regarding the site regulatory conditions, type of remedial work that may be required, and cost estimate to perform the required remediation work. The Phase II ESA will consist of, but may not be limited to, the following:

- B.1 Asbestos/ Lead. If asbestos/Lead Containing Materials are found during the Phase I or are suspected, samples will be collected for lab analysis as follows:
 - B.1.1 Perform an asbestos survey to determine the location and quantity of asbestos-containing materials (ACMs) The survey will include performing a visual inspection of accessible areas to determine the location, friability, and amount of

accessible suspect ACM, and collecting bulk samples from suspect material according to the sampling method described in the AHERA, 40 CFR 763.86. The bulk sampling will include surfacing material, thermal system Insulation and miscellaneous building material. The samples will be analyzed for asbestos content by Polarized Light Microscopy (PLM).

B.1.2 Perform lead-based paint survey if renovation work required disturbing suspect lead-based paint materials. The survey will be performed using an X-ray fluorescence (XRF) spectrum analyzer using selective random sampling strategy for each area. A minimum of three testing points will be sampled per testing combination and the average reading per testing combination will be evaluated by the XRF performance characteristic sheet to determine if the testing combination contains lead. Consultant will collect confirmatory samples for laboratory testing if inconclusive XRF readings are recorded during the survey.

B.2 Sampling and Testing of Underground Storage Tanks

B.2.1 Perform a geophysical survey if suspect USTs are present on the site.

B.2.2 Tank Tightness Methods

B.2.2.1 Hydrostatic

B.2.2.2 Vacuum

B.2.3 Leaking Tanks

B.2.3.1 Soil Sampling (The number of soil borings will be determined based on the size of the site, suspect sources of soil contamination, and the requirements of the IEPA)

B.2.3.2 Priority Pollutants

B.2.3.3 Benzene, Ethylbenzene, Toluene and Xylene Test

B.2.3.4 Polinuclear Aromatic Hydrocarbons (PNAs)

B.2.3.5 Pesticides

B.2.4 Groundwater Analysis

B.2.4.1 Sampling

B.2.4.2 Establish monitoring wells, generate

B.3 Adjacent Land/ Pollution, suspected contamination

B.3.1 Soil sampling and analysis

B.3.2 Groundwater sampling and analysis

B.3.3 Findings, conclusions and recommendations

B.4 Environmental Drilling, sampling and laboratory testing services

- B.4.1 HAZMAT 40 – Hour OSHA trained drillers and drilling services with capabilities to perform environmental subsurface investigations
 - B.4.2 Supervise ground water monitoring well installation
 - B.4.3 Environmental sampling of groundwater
 - B.4.4 Environmental laboratory testing of soil and groundwater samples including analytical testing at USEPA certified laboratory
 - B.4.5 Provide appropriate materials for the collection, shipping and handling of samples for testing
- B.5 Prepare a report documenting the site investigation and providing recommendations for further action, if requested by the Commission, Consultant shall utilize Risk-Based Corrective Action (RBCA) procedures or other standards as designated by the Commission (i.e., tiered approach to clean-up objectives). The report will include, at a minimum, the following:
- Detailed descriptions of the field work and pertinent observations;
 - Copies of all laboratory reports of the analytical results;
 - Comparisons of the analytical results with applicable IEPA cleanup objectives;
 - Exhibits including a site location plan showing the locations of soil contaminations; USTs, asbestos containing materials and/or lead-based paint;
 - Prepare remediation cost estimate, if requested by the Commission; and
 - Any additional information or recommendations related to the site investigation and results.
- B.6 Cost estimates for remediation activities, if requested by the Commission.

C – CONTINGENT ADDITIONAL SERVICES

Provide any or all of the following Contingent Additional Services as may be authorized in writing by the Commission at its sole election:

C.1 Prepare Remedial Design Plans and Specifications

The remedial design plans and specifications will be prepared as part of the Project demolition, new construction or stand alone Projects. Consultant will coordinate the Project design plans and specifications with various consultants, owner representatives, or construction managers. The following will be performed as part of this task:

- C.1.1 Prepare remediation design plans and technical specifications for each site required remediation work. The design plans and specifications will follow the USEPA, IEPA, OSHA and other local, State, and Federal regulatory agencies guidelines and requirements. The design plans for each site will outline the areas of environmental concern, limits of the remediation work, quantify of the remediation materials, and cross section details as applicable for each area. The

design plan will include information regarding the location and quantity of areas required remediation such as asbestos containing materials, surface and subsurface soil contamination, building hazardous materials, underground storage tank (USTs), and aboveground storage tanks (ASTs).

- C.1.2 Prepare technical specifications outlining requirements for contractors' qualifications, the proper remediation procedures for each area of environmental remediation work, protocol for materials sampling, removal, disposal and replacement of hazardous materials, and requirements for periodic observation and testing during remediation work.
 - C.1.3 Prepare a final cost estimate and Project schedule to complete the remediation work for each site. The cost estimate will provide detailed breakdown of the cost for each area of the environment remediation work.
 - C.1.4 Participate in the bid review process as requested by the Commission or construction manager. Review bids and qualifications of the potential contractors and provide recommendations in selecting a contractor.
 - C.1.5 Attend pre-construction meeting, construction/remediation progress meeting and other meetings as requested by the Commission.
- C.2 Perform Remediation Oversight
- C.2.1 Provide a full-time field engineer(s) to observe and monitor the contractor's work. Consultant's field engineer will monitor and direct the contractor remediation work. Inspector's Daily Reports will be prepared that include type of workers, hours equipment, measurements and calculations to determine actual quantities of equipment, materials, and work performed by the Contractor. The field engineer will collect sufficient number of soil, air and/or asbestos samples in order to meet the IEPA or any other regulatory agencies requirements and guidelines.
 - C.2.2 Utilize the services of Consultant's Project Manager / Professional Engineer to supervise the field environmental engineer(s), attend construction meetings, provide technical consultation throughout the duration of the remediation work.
- C.3 Prepare Regulatory Reports

Consultant will prepare and submit the required IEPA reports for different regulatory programs such as Leaking Underground Storage Tank (LUST), or the Site Remediation Program (SRP) the following is a brief description of some of the reports, which are required for each program:

C.4 Underground Storage Tanks (USTs)

- Report the release incident to the Illinois Emergency Management Agency (IEMA) within (24) hours of confirming the release. The IEMA will issue an incident number which will be used in future correspondence with the OSFM and the IEPA.
- Prepare and submit the Free Product Removal Report if free products are encountered during the tank removal activities.
- Prepare the IEPA 20-day Certification and 45-Day report. The 20-Day Certification should be submitted to the IEPA within 20 days of the IEMA notifications, while the 45-Day Report is required to be submitted within 45 days of the IEMA notifications. The 45-Day Report will include the abatement work completed to date, analytical results, photos, manifests and other information required by the IEPA.
- Prepare a Site Classification Report for the parcels with leaking underground storage tanks (LUST). The classification work would include performing soil borings for pathways investigation, performing one deep soil boring, and performing soil geophysical testing in conformance with the current requirements and guidelines of the IEPA for LUSTs. Based on the results of the site classification investigation, the site will be classified as "No further Action", "Low Priority" or "High Priority" site.

C.5 Site Remediation Program Reports

If soil contamination is present on the site and the Commission is planning to obtain a "No Further Remediation" (NFR) letter from the IEPA, Consultant will enroll the site with the IEPA Site Remediation Program (SRP). Consultant will perform the required additional site investigation and will prepare the required IEPA reports to obtain the NFR letter on the behalf of the PBCC. The SRP reports will include Comprehensive Site Investigation Report (CSIR), Remediation Objectives Report (ROR), Remedial Action Plan (RAP), and Remediation Action Completion Report (RACR).

D - ADDITIONAL RESPONSIBILITIES AND REPRESENTATIONS

- D.1 Upon the request of the Commission, Consultant shall provide the Commission with a report of the Project's status, schedule and budget.
- D.2 All of the reports, information, or data reviewed, 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 consent of the Commission.
- D.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 the availability of certain member(s) 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(s) 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.

- D.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**

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Schedule C

Compensation of the Consultant

C.1 Consultant's Fee for Services

C.1.1 The Consultant shall be paid an amount not-to-exceed Three Hundred Thousand Dollars and No Cents (\$300,000.00) depending upon requirements for the performance of the services described in Schedule A of this agreement on a project by project basis. The maximum contract amount shall be inclusive of the Consultant's fees and reimbursable expenses.

C.1.2 The following schedules represent the Consultant's unit prices to perform the services outlined in Schedule A. Consultant shall submit a specific budget for each project upon request of the Commission.

Kowalenko & Bilotti, Inc.'s Professional Services Unit Prices

Description	Billing Rate
Project Director	\$145/hour
Senior Project Manager	\$120/hour
Environmental Scientist/Engineer/Geologist/ Certified Field Staff I	\$66.25 /hour
Environmental Scientist/Engineer/Geologist/ Certified Field Staff II	\$82.50 /hour
Environmental Scientist/Engineer/Geologist/ Certified Field Staff III	\$93.75 /hour
CADD Technician	\$70/hour
Systems Analyst	\$65/hour
Systems Manager	\$75hour
Project Support Staff	\$50/hour

Reimbursable List

Lead Analysis:

Paint/Dust/Air (byFAA)

Settable?Respirable/Nuisance

Billing Rate/sample

in 72 hours \$7.00
in 48 hours 8.00
in 24 hours 9.00
in 12 hours 15.00
4-8 hours 20.00
<4 hours 30.00

Ambient Air/Soil/Waste Water
(by FAA)

in 72 hours 12.00
in 48 hours 14.00
in 24 hours 16.00
in 12 hours 20.00
in 8 hours 25.00

Drinking Water (by ICP/MS)
TCLP (by FAA)

in 72 hours 24.00
in 24 hours 100.00
in 48 hours 80.00
in 72 hours 60.00

Asbestos Analysis:

PLM

in 72 hours 7.00
in 48 hours 8.00
in 24 hours 9.00
in 12 hours 15.00
in 8 hours 20.00
in 4 hours 30.00

PCM

in 72 hours 6.00
In 48 hours 7.00
In 24 hours 8.00
In 12 hours 10.00
In 8 hours 15.00
In 4 hours 30.00

PLM Point Count

in 72 hours 50.00
In 48 hours 75.00
In 24 hours 100.00

TEM Bulk

in 72 hours 30.00
In 48 hours 40.00
In 24 hours 60.00
In 12 hours 100.00
In 8 hours 125.00
In 4 hours 200.00

TEM Air

in 72 hours 65.00
In 48 hours 70.00
In 24 hours 75.00
In 12 hours 125.00
In 8 hours 175.00

TEM Gravimetric

in 72 hours 125.00
In 48 hours 150.00
In 24 hours 200.00

Rapid turn around after 5PM weekdays requires 24 hour notice

Calculation of weekend rates are as follows:

<u>Sample drop off</u>	<u>Time results needed</u>	<u>Invoice Rate</u>
Friday after 17:00	Saturday a.m.	4
Friday after 17:00	Monday a.m.	24
Saturday a.m.	Sunday p.m.	12
Saturday a.m.	Monday a.m.	12
Sunday a.m.	Monday a.m.	4

C.2 Changes to Work

C.2.1 The Commission shall compensate the Consultant 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 Consultant employees shall be the actual base salaries paid to the specific employee performing the services, plus a multiplier not to exceed 2.5 (not to exceed the maximum Commission hourly salary rates, identified in C.2.2). The following items are considered to be a part of the multiplier, and shall not be considered as additional reimbursable expenses:

C.2.1.1 Indirect personnel Expenses

- C.2.1.1 Social Security Tax.
- C.2.1.2 Workmen's Compensation Insurance
- C.2.1.3 Unemployment Insurance.
- C.2.1.4 Health insurance Benefits.
- C.1.2.5 Long Term Disability Insurance.
- C.1.2.6 Other Statutory and Non-Statutory Employee Benefits.
- C.1.2.7 Pensions and Similar Contributions.

C.2.1.2 Telephone Service including Local Calls.

C.2.1.3 General and Administrative Expense including Overhead and Profit.

C.2.1.4 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 Agreement.

C.2.1.5 Computer Charges.

C.2.1.6 Postage and Handling.

C.2.1.7 Parking and Mileage.

C.2.1.8 Other items not specifically identified below as "Reimbursables".

C.2.2 The maximum hourly rate, including the multiplier, the Commission shall pay the Consultant for their employees and Sub-Consultant's employees shall be in accordance with the hourly rate C.1.2.

C.3 Reimbursables

C.3.1 **“Reimbursable Expenses”** as referred to herein, are actual expenditures at cost, incurred by the Consultant, 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.3.2 Costs of these expenses shall be approved by the Commission on a Project by Project basis.

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 Consultant's Project team, or otherwise incidental to the normal execution if the Consultant's work.

C.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 **Method of Compensation**

C.4.1 Consultant shall submit a proposal for each Project identified including consultant's fee and reimbursable expenses. Upon approval of such proposal, the PBC will encumber the dollar amount to cover the fee. Total encumbrances shall not exceed the maximum amount stipulated in Section C.1.1 of Schedule C.

C.5 **Invoices**

C.5.1 The Consultant shall submit original copies of its invoice to the Commission's for approval. Invoices shall reference the approval number for the Project. Invoices must be submitted by Project.

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Schedule D

INSURANCE REQUIREMENTS

The Consultant must provide and maintain at Consultant's own expense, until Agreement completion and during the time period following final completion 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 Insurance, 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 \$500,000 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 per occurrence for bodily injury, personal injury, and property damage liability. Coverages must include the following: All premises and operations, products/completed operations (for a minimum of two (2) years following Project completion), explosion, collapse, underground, 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 Contractor must provide Automobile Liability Insurance with limits of not less than \$1,000,000 per occurrence for bodily injury and property damage. The City of Chicago is to be named as an additional insured on a primary, non-contributory basis.

4) Professional Liability

When any architects, engineers, environmental consultants, managers or other professional consultants perform work in connection with this Agreement, Professional Liability Insurance covering acts, negligence, errors, or omissions with limits of not less than \$2,000,000. Coverage must 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 Contract, Valuable Papers Insurance must be maintained in an amount to insure against any loss whatsoever, and must have limits sufficient to pay for the re-creation and reconstruction of such records.

The following coverage will be required in the event that the Consultant's scope of work includes Phase III ESA.

6) Contractors Pollution Liability

When any work is performed which may cause a pollution exposure, Contractors Pollution Liability must be provided covering bodily injury, property damage and other losses caused by pollution conditions that arise from the Agreement scope of services with limits of not less than \$1,000,000 per occurrence. Coverage must include completed operations, contractual liability, defense, excavation, environmental cleanup, remediation (including UST removal) and disposal. When policies are renewed or replaced, the policy retroactive date must coincide with or [recede, 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. The Public Building Commission is to be named as an additional insured.

B. ADDITIONAL REQUIREMENTS

The Consultant must furnish the Public Building Commission Department of Procurement, 50 W. Washington, Daley Center, Room 200, Chicago, IL 60602, original Certificates of Insurance, or such similar evidence, 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 must submit evidence of insurance on the Public Building Commission upon 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 is not a waiver by the Public Building Commission of any requirements for the Consultant to obtain and maintain the specified coverages. The Consultant must advise all insurers of the Agreement provisions regarding insurance. Non-conforming insurance does 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 must 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 deductibles or self-insured retentions on referenced insurance coverages must be borne by Agreement.

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

The coverages and limits furnished by Consultant in no way limit the Consultant's liabilities and responsibilities specified within the Agreement or by law.

Any insurance or self-insurance programs maintained by the Public Building Commission do not contribute with insurance provided by the Consultant under the Agreement.

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

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

If Consultant or subconsultant desires additional coverages, the party desiring the additional coverages is responsible for the acquisition and cost.

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

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