PROFESSIONAL SERVICES AGREEMENT
FOR OWNER'S REPRESENTATIVE

AGREEMENT NO.:PS-566

This Agreement, dated as of the **9th** day of **March, 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, **Tishman/LJE** with offices at **1 South Wacker Dr., Suite 2300, Chicago, Illinois 60606,** referred to in this Agreement as the **"Owner's Representative"**,

W I T N E S S E T H:

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

8th District Police Station
located at 63rd and Central Park

hereinafter called the **"Project"**; and

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

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

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

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

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

2. Definitions.

   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 or Project Manager, acting on behalf thereof, as designated by the Commission in writing for the purpose of giving authorizations, instructions, and/or approvals pursuant to this Agreement.

c. **Construction Budget** means the total funds budgeted by the Commission for constructing the Project and furnishing all items necessitated by the Program which shall be shown or described in the Contract Documents to be prepared by the Architect in accordance with the Architect's agreement with the Commission, but does not include any payments made to the Architect, the Owner's Representative or sub-consultants or reimbursable expenses pursuant to Schedule C, paragraph C.3.

d. **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.

e. **Owner's Representative** means the entity identified in the preamble of this Agreement which has agreed to be employed by the Commission, on the terms and conditions of this Agreement, and to perform the Services set forth herein.

f. **Project** means the construction and/or improvement of the facility or facilities specified on page 1 of this Agreement.

g. **Reimbursable Expenses** as herein referred to includes actual expenditures, as identified in Schedule C, paragraph C.3.1, made by the Owner's Representative.

h. **Services** means collectively, the services duties and responsibilities that are necessary to allow the Owner's Representative to provide the Services required by the Commission under this Agreement. The required Services are described in Schedule A of this Agreement.

i. **Sub-consultant** means a firm hired by the Owner's Representative to perform professional services related to the construction and/or improvement of the Project.

j. **Technical Personnel** as herein referred to includes partners, officers and all other personnel of the Architect, including technical typists assigned to the Project, exclusive of general office employees.

k. **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, Owner's Representative acknowledges and agrees that Owner's Representative is familiar with the contents of each of such documents and will comply fully with all applicable portions thereof in performing the Services.

a. Project Documents. The plans and specifications for the Project (to the extent that plans and specifications for the Project have been prepared) as set forth and described on Schedule 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 Owner's Representative, and the Owner's Representative 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 Owner's Representative.

b. Nondiscrimination. The Owner's Representative agrees that in performing this Agreement the Owner's Representative will not discriminate against any worker, employee, applicant for employment, or any member of the public, because of race, color, creed, national origin, gender, age, or disability, or otherwise commit an unfair labor practice. The Owner's Representative certifies that he/she is familiar with, and will comply with, all applicable provisions of the Civil Rights Act of 1964, 28 U.S.C. § 1447, 42 U.S.C. §§ 1971, 1975a-1975d, 2000a to 2000h-6 (1992); the Age Discrimination in Employment Act of 1967, 29 U.S.C. §§ 623-634 (1992); the Americans with Disabilities Act of 1990, 29 U.S.C. § 706, 42 U.S.C. §§ 12101-12213, 47 U.S.C. §§ 152, 221, 225, 611 (1992); 41 C.F.R. § 60 (1992); 41 C.F.R. § 60 (1992); reprinted in 42 U.S.C. 2000(e) note, as amended by Executive Order No. 11,375 32 Fed. Reg. 14,303 (1967) and by Executive Order No. 12,086, 43 Fed. Reg. 46,501 (1978); the Age Discrimination Act, 43 U.S.C. Sec. 6101-6106 (1981); P.L. 101-336; 41 C.F.R. part 60 *et seq.* (1990); the Illinois Human Rights Act, 775 ILCS 5/1-101 *et seq.* (1990), as amended; the Discrimination in Public Contracts Act, 775 ILCS 10/0.01 *et seq.* (1990), as amended; the Environmental Barriers Act., 410 ILCS 25/1 *et seq;* and the Chicago Human Rights Ordinance, Chapter 2-160, Section 2-160-010 *et seq.* of the Municipal Code (1990), as amended. The Owner's Representative further agrees to furnish such reports and information as may be requested by the Commission, the Illinois Department of Human Relations, or any other administrative or governmental entity overseeing the enforcement or administration of, or compliance with, the above mentioned laws and regulations.

c. Employment Procedures; Preferences and Compliances. Salaries of employees of Owner's Representative performing work under this Agreement shall be paid unconditionally and not less often than once a month without deduction or rebate on any account except only such payroll deductions as are mandatory or permitted by the applicable law or regulations. The Owner's Representative certifies that he/she is familiar with, and will comply with, all applicable provisions of 820 ILCS 130/0.01 through 130/12 thereof (Prevailing Wage Act), 30 ILCS 570/1 through 570/7 (Employment of Illinois Workers on Public Works Act) and 30 ILCS 560/0.01 through 560/7 (Public Works Preference Act). The Owner's Representative shall also comply with all applicable "Anti-Kickback" laws and regulations, including the "Anti-Kickback" Act of 1986, 41 U.S.C. §§ 51-58

(1992); 18 U.S.C. § 874 (1992); 40 U.S.C. § 276c (1986) 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 "kick-back", as defined in any of the above mentioned laws and regulations, the Commission may withhold from the Owner's Representative, out of payments due to the Owner's Representative, an amount sufficient to pay any underpaid employees 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 may be disbursed by the Commission for and on account of the Owner's Representative to the respective employees to whom they are due, as determined by the Commission in its sole discretion.

d. Compliance with Policies Concerning MBE and WBE. Without limiting the generality of the requirements of the policies of the Commission referred to in paragraph 2 above, the Owner's Representative agrees to use best efforts to utilize minority business enterprises for not less than twenty five percent (25%) for MBE and five percent (5%) for WBE of the 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. No Damage for Delays. The Owner's Representative agrees that no charges for damages or claims for damages due to delays shall be asserted by it against the Commission for any delays or hindrances from any cause whatsoever during the progress of any portion of the Services. Such delays or hindrances, if any, shall be compensated for by an extension of time to complete the Services, for such reasonable period as may be mutually agreed upon between the parties, it being understood, however, that the agreement of the Commission to allow the Owner's Representative to complete the Services or any part of them after the time provided for the completion thereof herein shall in no way operate as a waiver on the part of the Commission of any of its rights hereunder.

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

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

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

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

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

j. Defects in Project. The Owner's Representative shall notify the Commission immediately regarding any significant problems in connection with the Project including, but not limited to, construction defects, cost overruns or scheduling delays.

k. Performance Standard. Owner's Representative represents and agrees that the Services performed under this Agreement will proceed with efficiency, promptness and diligence and will be executed in a competent and thorough manner, in accordance with reasonable professional standards of skill and diligence in the field. Owner's Representative further agrees that it will assign to the Project at all times during the term of this Agreement the number of experienced, appropriately trained employees necessary for Owner's Representative 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 Owner's Representative 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 Owner's Representative, shall be incorporated in a written amendment to this Agreement. The Commission shall not be liable for any changes absent such written amendment.

m. Energy Conservation Ordinance. Whenever the services of the Owner's Representative require design of new buildings and structures, addition or alteration of existing buildings and structures or portion thereof, Owner's Representative must comply with the provisions of the Energy Conservation Ordinance, Chapter 18-13 of the Municipal Code of Chicago. The Owner's Representative 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. Duration. The term of this Agreement shall begin on the Commencement Date of Services 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 Owner's Representative may, from time to time, by mutual agreement, extend the term of this Agreement by amending Schedule A hereto.

b. Termination or Suspension by the Commission. 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 Owner's Representative at least thirty (30) days prior to the effective date of termination. In addition, the Commission shall have the right, at any time and from time to time, with or without cause, to suspend the performance of Owner's Representative hereunder with respect to all or any part of the Services, by written notice given to Owner's Representative at least five (5) days prior to the effective date of suspension. Termination or suspension of this Agreement shall not relieve the Owner's Representative from liability for the performance of any obligation of Owner's Representative under this Agreement performed or to have been performed by Owner's Representative on or before the effective date of termination or suspension. Provided Owner's Representative is not in default under this Agreement at the time of termination or suspension, the Commission agrees to pay to Owner's Representative, in accordance with the terms of this Agreement, all compensation and reimbursements due to Owner's Representative for periods up to the effective date of termination or suspension. In no event shall the Commission be liable to Owner's Representative for any loss, cost or damage which Owner's Representative or any other party may sustain by reason of the Commission terminating or suspending this Agreement as provided herein; provided, however, that the Commission may, in its sole discretion, reimburse Owner's Representative for actual expenses approved by the Commission.

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

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

6. Compensation of Owner's Representative and Reimbursement for Expenses. The Commission shall compensate the Owner's Representative in the amount and the manner set forth in 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 Owner's Representative, the Commission shall have the following rights and obligations, in addition to those provided elsewhere in this Agreement:

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

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

   c. Site Data. To the extent the Commission determines to be necessary for Owner's Representative to perform the Services, the Commission may furnish, or may authorize Owner's Representative to obtain from a consultant or consultants 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; and (iv) information concerning available service and utility lines. The Owner's Representative shall not be liable to the Commission for the substantive content of such tests and reports obtained from a consultant engaged by the Owner's Representative and approved by the Commission, provided that the Owner's Representative has exercised reasonable diligence in the selection of the consultant.

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

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

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 or consultant thereunder shall indemnify, save and hold harmless the Commission, the User Agency and the Owner's Representative, 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 from the work performed pursuant to such contract, and that the contractor or consultant 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 Owner's Representative or any party engaged by Owner's Representative, pertaining to the Project and/or the Services shall be the property of the Commission.

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

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

9. Insurance to be Maintained by Owner's Representative. The Owner's Representative shall purchase and maintain at all times during the performance of Services hereunder, for the benefit of the Commission, the User Agency and the Owner's Representative, insurance coverage which will adequately insure the Commission, the User Agency and the Owner's Representative against claims and liabilities which could arise out of the performance of such Services, including but not limited to, the insurance coverages set forth in 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 Owner's Representative duly to observe or perform any obligation or agreement on the part of the Owner's Representative contained in this Agreement, which failure or refusal continues for a period of ten (10) days, or such longer period as the Commission, in its sole discretion, may determine if such failure is not capable of being cured within such ten (10) day period, after the date on which written notice thereof shall have been give to the Owner's Representative by the Commission;

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

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

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

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

failure on the part of the Commission to exercise any right shall operate as a waiver of such right or otherwise prejudice the Commission's rights, powers or remedies.

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

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 Owner's Representative 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 Owner's Representative 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. Owner's Representative 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 Owner's Representative that additional time for the decision is necessary. The Executive Director's decision will be conclusive, final, and binding on all parties. Owner's Representative 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 Owner's Representative 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 Owner's Representative under this Agreement are confidential, and the Owner's Representative agrees that such reports, information or data shall not be made available to any party without the prior written approval of the Commission. In addition, Owner's Representative shall not, without the prior written consent of the Commission, prepare or distribute any news releases, articles, brochures, advertisements or other materials concerning this Agreement, the Project or the Services. If the Owner's Representative is served with a subpoena requiring the production of documents or information which is deemed confidential, the Owner's Representative shall immediately notify the Commission in writing and provide a copy of the subpoena to the Commission in sufficient time for the Commission to attempt to quash, or take other action in relation to, the subpoena.

13. Assignment. Owner's Representative acknowledges that the Commission is induced to enter into this Agreement by the personal qualifications of the principals, staff and employees of Owner's Representative and agrees, therefore, that neither this Agreement nor any right or obligation hereunder may be assigned by Owner's Representative, in whole or in part, without the prior written approval of the Commission. For purposes of this paragraph, if the Owner's Representative undergoes a change in control, the change in control shall be deemed an assignment of the Agreement; a change in control is defined as a transfer of more than 50% of the equity ownership of the Owner's Representative during any twelve (12) month period. In the event of an assignment by the Owner's Representative without the prior written approval of the Commission, the Commission shall have the right to immediately terminate the Agreement without fault or responsibility. Owner's Representative further acknowledges that Owner's Representative has represented to the Commission the availability of certain members of Owner's Representative's staff who will be assigned to Project, and agrees, therefore, that in the event of the unavailability of such members due, the Owner's Representative shall so notify the Commission in writing, and shall assign other qualified members of Owner's Representative's staff, as approved by the Commission, to the Project. The Commission expressly reserves the right to assign or otherwise transfer all or any part of its interests hereunder without the consent or approval of the Consultant.

14. Relationship of Parties. The relationship of Owner's Representative to the Commission hereunder is that of an independent contractor, and Owner's Representative, 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. General

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

b. 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.

c. 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.

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

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

f. 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 Owner's Representative at their respective addresses set forth above. If given as herein provided, such notice shall be deemed to have been given on the date of delivery, if delivered by hand, and on the second business day after mailing, if given by mail. The Commission or the Owner's Representative may, from time to time, change the address to which notices hereunder shall be sent by giving notice to the other party in the manner provided in this subparagraph.

g. Owner's Representative's. Execution of this Agreement by the Owner's Representative 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 Owner's Representative have been made with complete and full authority to commit the Owner's Representative to all terms and conditions of this Agreement, including each and every representation, certification and warranty contained or incorporated by reference in it.

h. 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.

i. 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 26th day of June, 2002.

PUBLIC BUILDING COMMISSION OF CHICAGO

ATTEST:

By: _____

Title: Secretary

By: _____

Title: Chairman

Tishman/LJE

By: _____

Title: President

Subscribed and sworn to before me
this 13 day of June, 2002.

_____
Notary Public

(seal)

OFFICIAL SEAL
BEN J KUCKERTZ
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES:03/26/05

Schedule A

Project Description: 8th District Police Station

Scope of Services

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

Commencement Date of Services	**June 1, 2002**
Completion Date of Services	**August 1, 2004**

The Owner's Representative shall perform the following Services:

A.1 Pre-Construction Phase

A.1.1. Secure the services of the any necessary Specialty Consultants with the approval of the Commission.

A.1.2 Consult with the Commission and the User Agency regarding the goals and requirements of the project.

A.1.3 Review the requirements of any federal, state, or local agencies having jurisdiction over various aspects of the project with the Commission regarding costs and alternatives.

A.1.4 Prepare budget estimates at the completion of Programming, Schematic Design, Design Development and Contract Documents. Upon completion of Design Development, prepare detailed cost estimate indicating quantity takeoffs for every trade. This estimate will become the control estimate through the design process.

A.1.5 Prepare a cash flow analysis of the project including services performed by the Design Team.

A.1.6 Recommend potential value engineering alternatives throughout the Design Phase.

A.1.7 Review the progress of preparation of the drawings and advise the Design Team with respect to availability and price of material, avoidance of jurisdictional disputes and feasibility of details.

A.1.8 Develop an overall design schedule and coordinate the schedule with the Commission's desired project completion date.

A.1.9 Review the Commission's project budget and report to the Commission the status of project cost at milestones approved by the Commission. Milestones shall be at a minimum 30%, 60% and 90% completion of the design documents.

A.1.10 Prepare detailed cost estimates based on information developed by the Design Team during the Design Phase. The estimate shall contain the following:

A.1.10.1 An overview of the current budget compared to Commission's project estimate.

A.1.10.2 A Budget Summary and Division Breakdown (User CSI or Uniformat) as directed by the Commission.

A.1.10.3 A detailed comparison and reconciliation of the current budget to the previous budget, with an explanation of any variance by component.

A.1.10.4 A summary of all approved budget revisions.

A.1.10.5 A cash flow analysis of the project based on the latest budget information.

A.1.11 Prepare a Computerized CPM schedule using a program compatible with the Commission's scheduling system. The schedule shall clearly identify each phase of the project and indicate early and late start and finish dates, float times and percent completion of each task. Recommend a method for the delivery of the project based on the Commission's goals and requirements.

A.1.12 Participate in value engineering and evaluate proposed foundation, structural, electrical, and mechanical systems as to quality, first cost and life cycle cost, constructibility, union jurisdiction, availability and effects on funding flexibility.

A.1.13 Prepare a monthly report which will include a summary of the project status, schedule and budget and a pending issues log as determined by the Commission .

A.1.14 Consult with the Commission and User Agency regarding issues which impact the constructibility and feasibility of the project.

A.1.15 Identify long lead time items and recommend to the Commission methods of procurement to achieve the project schedule.

A.1.16 Prepare a trade by trade cost estimate.

A.1.17 Prepare a procurement and bid package schedule as directed by the Commission.

A.1.18 Prepare an evaluation and recommendation for each general contractor award as directed by the Commission, and submit in a timely manner to the Commission for approval.

A.1.19 Expedite approvals and coordination issues between federal state and local agencies to obtain any required permits, licenses and fees for the project.

A.1.20 Conduct periodic progress meeting (at least once per week) with the Commission, User Agency and the appropriate Design Team members and contractors. Prepare meeting minutes and distribute to all parties in attendance within five (5) business

days.

A.1.21 Assemble and review all bid documents required for each bid package. Review and amend the Commission's bid documents and contract documents so that they are coordinated with the construction documents prepared by the Design Team and the commission's Master CPM milestone dates.

A.1.22 Issue Notice of Bid Opportunity letters to all contractors on the applicable Commission pre-qualified list of qualified contractors eligible to bid on the work..

A.1.23 Attend pre-bid meetings for all bid packages.

A.2 Construction Phase

A.2.1 Review and monitor, on a periodic basis, the general contractor's baseline and updated schedules for compliance with the individual general contract milestone dates and the Master CPM milestone dates using Primavera Project Planner. In instances where schedule slippage and/or schedule conflicts are forecast to occur, make recommendations to the Commission as to how to remedy the schedule slippage and/or schedule conflicts.

A.2.2 Conduct weekly meetings with the Commission, User Agency, Design Team, specialty consultants and general contractor. Review the project schedule, submittals, scope change, requests for information, outstanding bulletins, pending issues and field problems. Prepare meeting minutes and distribute to all parties in attendance within five (5) business days.

A.2.3 Expedite approvals and coordination issues between federal, state and local agencies to obtain any required permits, licenses and fees.

A.2.4 Review and approve all payment applications and submit payment requests for approval and payment by the Commission.

A.2.5 Maintain a full-time project manager as the primary point of contact with the Commission, User Agency, Design Team members and general contractor.

A.2.6 Establish an on site organization line of authority to implement all construction phases of the project in a coordinated and efficient manner.

A.2.7 Establish and implement procedures for, and maintain coordination among, the Commission, the User, Design Team, general contractor, and other agencies having jurisdiction of the project with respect to all construction aspects of the project.

A.2.8 Coordinate the procurement and assembly of all required permits, licenses, and certificates from the general contractor and arrange delivery of same to the Commission.

A.2.9 Coordinate all aspects of the work with any quasi-public agencies or utility companies involved in the project.

A.2.10 Conduct site observations of the general contractor to ensure that work on the project is progressing on schedule and in accordance with the requirements of the Commission and the contract documents.

A.2.11 In the event that the interpretation of the meaning and intent of the contract documents becomes necessary during construction, ascertain the architect's interpretation and transmit such information to the general contractor and to the Commission.

A.2.12 Review the adequacy of the supervision, personnel and equipment and the availability of necessary materials and supplies. Where inadequate, direct that the necessary action be taken to remediate the deficiency.

A.2.13 Develop and establish a quality inspection control system so that the required standards of construction are achieved.

A.2.14 Review all testing required by the technical sections of the specifications and applicable codes and regulations for compliance with the contract documents.

A.2.15 Receive and review all shop drawings, materials and all other required submittals prior to transmittal of these documents to the Commission's Architect of Record. Requests for approval of subcontractors, delivery schedules, material lists, shop drawings, samples, and the like will be commented upon and submitted to the Commission for concurring approval.

A.2.16 Monitor and implement the flow of all documents and materials for proper sequence of approvals so as not to delay the progress of the work.

A.2.17 Establish and maintain on the site a complete library of all contract documents, addenda, bulletins, scope changes, approved shop drawings and material samples.

A.2.18 Receive and review all change order requests from the general contractor. Review unit prices, time and material changes and similar items. Submit recommendations to the Commission for approval.

A.2.19 Review all scope changes proposed by the Commission, the User Agency, and/or design team and make recommendations regarding practicality, costs, effect on completion schedule and risk to the project.

A.2.20 Monitor requests for change orders required by field conditions and other unforeseen conditions and submit such requests to the Commission for approval prior to instituting any changes to the requirements of the contract documents.

A.2.21 Monitor all scope changes during construction to ensure compliance with approved revisions.

A.2.22 Implement the specifications and the Commission's procedures for processing scope changes, including applications for extensions of time.

A.2.23 Maintain cost accounting records of the work performed in accordance with the

specifications and the Commission's procedures.

A.2.24 Prepare a monthly report containing the following:

A.2.24.1 Executive Summary - include a summary of financial status, highlights of major events and a schedule summary.

A.2.24.2 Status of Construction - summarize project construction activities, including current anticipated start and completion dates by project elements.

A.2.24.3 Outstanding Items - include items to be completed by the Owner's Representative, the design team members, the Commission, User and general contractor.

A.2.24.4 Purchasing Activity - detail current status of materials procurement based upon information received from the general contractor.

A.2.24.5 Budget Status Report - include a summary of anticipated costs and status of scope changes that are approved, pending, and/or anticipated.

A.2.24.6 Schedules - include construction schedule indicating current project status (both in CPM and summary bar chart form), updated cash flow and a look-ahead plan for the following period.

A.2.24.7 Progress Photographs - arrange for production and distribution of progress photographs as required by the Commission.

A.2.24.8 Anticipated Project Activity - indicate, in narrative form, the activities of the project in the upcoming month, actions to be taken during that period, and any scheduled governing agency reviews/ approvals, etc.

A.2.24.9 Other - include such additional or revised information as shall be required by the Commission.

A.3 Project Close Out

A.3.1 Conduct a comprehensive final inspection of the project to verify that the materials furnished and work performed are in accordance with the contract documents.

A.3.2 Coordinate the preparation of punchlists indicating the items of work remaining to be accomplished. Coordinate the completion of such items in an expeditious manner. Prepare certificates of preliminary and final completion in consultation with the Commission and the User.

A.3.3 Assemble and deliver to the Commission all guarantees, warranties, operating and maintenance manuals required by the contract documents. Coordinate equipment and systems training sessions for User Agency personnel. Make recommendations as to the withholding of payments to the general contractor. Determine the value of any uncorrected and/or deficient work.

A.3.4 Expedite the preparation of "as-built" drawings and operations and maintenance manuals of the project in accordance with the specifications. The "as-built" documents will be subject to the approval of the Owner's Representative. Submit approved "as-built" documents to the Commission upon completion of the project.

Schedule B

Project Documents

Intentionally left blank.

Schedule C

Compensation of Owner's Representative

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

C.1.1. The Commission, in full payment to the Owner's Representative shall pay the Owner's Representative the Lump Sum Fee ("Fee") of $300,000.00 for the Services described in Schedule A to this Agreement. The Fee shall be structured as follows:

C.1.2. Payments for the above described basic services shall be made at the completion of each phase of each stipulated sum and be equal to the following percentages of the total compensation:

Pre-Construction Phase	15%	$45,000.00
Construction Phase	70%	$210,000.00
Close Out Phase	15%	$45,000.00

C.1.3. Owner's Representative's fee shall include consultant's profit, overhead, and general conditions, and all items not specifically identified as Reimbursable Expenses.

C.2. Changes to Work

C.2.1. The Commission shall compensate the Owner's Representative for Contract Modifications and/or Additional Services based upon a *Lump Sum Fee* or a *Time Card Not to Exceed Fee*, as approved by the Commission in writing. In the case of *Time Card* billings, rates of reimbursement for the Owner's Representative employees shall be the actual base salaries paid to the specific employee performing the services, 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.2.1.1.1 Social Security Tax.
C.2.1.1.2 Workmen's Compensation Insurance.
C.2.1.1.3 Unemployment Insurance.
C.2.1.1.4 Health insurance Benefits.
C.1.2.1.5 Long Term Disability Insurance.
C.1.2.1.6 Other Statutory and Non-Statutory Employee Benefits.
C.1.2.1.7 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 Owner's Representative for their employees and Sub-Consultant's employees shall be as follows:

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

C.3. Reimbursable Expenses

C.3.1 "Reimbursable Expenses" as herein referred to include expenditures made by the Owner's Representative, with the Commission's prior approval, for the following incidental expenses incurred in the interest of the Project. Owner's Representative shall be reimbursed for actual expenditures at cost to the Owner's Representative. With regard to fees of consultants only, the Owner's Representative may be reimbursed for actual cost of the consultant plus an additional 2% mark-up. The following shall be considered Reimbursable Expenses:

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

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

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

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

C.3.2 Costs of the Reimbursable Expenses identified in paragraphs C.3.1.2, C.3.1.3, and C.3.1.4 are on a not to exceed basis of $20,000.00.

C.3.3 The following are <u>not</u> Reimbursable Expenses:

C.3.3.1 Plotting, printing, and distribution of drawings and specifications for the purposes of coordination between members of the Owner's Representative's project team, or otherwise incidental to the normal execution of the Owner's Representative's work.

C.3.3.2 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.

Schedule D

INSURANCE REQUIREMENTS

The Owner's Representative must provide and maintain at Owner's Representative own expense, until the term of the agreement and during the time period following expiration if Owner's Representative 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 $100,000 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 separation of insureds, defense, and contractual liability (with no limitation endorsement). The 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 Owner's Representative must provide Automobile Liability Insurance with limits of not less than $1,000,000.00 per occurrence for bodily injury and property damage. The 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 must be maintained 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.

6) Valuable Papers

When any plans, designs, drawings, specifications and documents are produced or used under this Agreement, 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.

B. ADDITIONAL REQUIREMENTS

The Owner's Representative must furnish the Commission, 50 W. Washington, Daley Center, Room 200, Chicago, Illinois 60602, with 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 Owner's Representative must submit evidence of insurance to the Commission upon to Agreement award. The receipt of any certificate does not constitute agreement by the 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 Commission to obtain certificates or other insurance evidence from Owner's Representative is not a waiver by the Commission of any requirements for the Owner's Representative to obtain and maintain the specified coverages. The Owner's Representative must advise all insurers of the Agreement provisions regarding insurance. Non-conforming insurance does not relieve Owner's Representative of the obligation to provide insurance as specified herein. Nonfulfillment of the insurance conditions may constitute a violation of the Agreement, and the 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 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 Owner's Representative.

The Owner's Representative agrees that insurers waive their rights of subrogation against the Commission, its employees, elected officials, agents, or representatives.

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

Any insurance or self-insurance programs maintained by the Commission do not contribute with insurance provided by the 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 Owner's Representative must require all subconsultants to provide the insurance required herein, or Owner's Representative may provide the coverages for subconsultants. All

subconsultants are subject to the same insurance requirements of Owner's Representative unless otherwise specified in this Agreement.

If Owner's Representative or subconsultant desire additional coverages, the party desiring the additional coverages is responsible for the acquisition and cost.

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

PUBLIC BUILDING COMMISSION OF CHICAGO

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John E. Wilson, Ltd.
Certified Public Accountants

Assistant Secretary
TIMOTHY J. MITCHELL

April 11, 2002

PS-566

Ms. Elaine Lockwood- Bean
Tishman/ LJE
1 South Wacker Drive, Suite 2300
Chicago, IL 60606

Re: Professional Services Agreement for
Owner's Representative for
the 8th District Police Station

Dear Ms. Lookwood-Bean:

On April 9, 2002, the Board of Commissioners of the Public Building Commission of Chicago appointed the joint venture of Tishman/LJE as Owner's Representative for the project of reference.

The Public Building Commission of Chicago will be forwarding the professional service agreement for the project to you shortly. If you have any questions or require additional information, feel free to contact Lourdes Nur, Director of Procurement, at 312-744-9292.

Sincerely,

E. Lockwood Carey

Eileen J. Carey
Executive Director

cc: Louis Jones
Louis Jones Enterprises