# PUBLIC BUILDING COMMISSION OF CHICAGO

PROFESSIONAL SERVICES AGREEMENT
CONTRACT NUMBER PS1041
TO PROVIDE
ARCHITECT OF RECORD SERVICES
FOR

Langston Hughes Davis Developmental Elementary School
CHICAGO, ILLINOIS

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**Mayor Richard M. Daley**
**Chairman**

Montel M. Gayles
Executive Director

Richard J. Daley Center, Room 200
50 West Washington Street
Chicago, Illinois 60602
www.pbcchicago.com

# EXECUTION PAGE

**PROFESSIONAL SERVICES AGREEMENT NO. PS1041**

**THIS AGREEMENT** effective as of January 9, 2007, but actually executed on the date witnessed, is entered into 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, 50 West Washington Street, Chicago, Illinois 60602, (the **"Commission"**), and Schroeder Murchie Niemiec Gazda-Auskalnis Architects, Ltd. with offices at 936 W. Huron Street, Chicago, Illinois 60622, (the **"Architect"**), at Chicago, Illinois.

**Background Information – Recitals:**

**Whereas, The Commission** on behalf of the **Chicago Board of Education** (referred to in this Agreement as the "**User Agency**"), intends to undertake the construction and/or improvement of the following facility or facilities in Chicago, Illinois described in Schedule A attached to the Agreement (the "**Project**"):

**Langston Hughes Davis Development Elementary School**

**Whereas**, the Commission requires certain professional services described in the Agreement, in connection with the Project and desires to retain the Architect on the terms and conditions set forth in the Agreement to perform such Services. The Architect desires to be so retained by the Commission and has represented to the Commission that the Architect has the knowledge, skill, experience and other resources necessary to perform the Services in the manner provided by the Agreement.

**Whereas**, the Architect has consulted with the Commission and the User Agency, made site inspections, and taken such other actions as the Architect deemed necessary or advisable to make itself fully acquainted with the scope and requirements of the Project and the Services. The Architect represents that it is qualified and competent by education, training and experience to prepare drawings, specifications and construction documents necessary to complete the Project in accordance with standards of reasonable professional skill and diligence.

**Whereas**, the Construction Budget for the Project will be established by the Commission after completion of Schematic Design based upon the requirements of the Project and allowances for cost escalation and Project contingencies.

**Whereas**, the Commission has relied upon the Architect's representations in selecting the Architect.

**NOW THEREFORE**, the parties agree on the terms and conditions that follow:

**SIGNED by:** May 15, 2007

**PUBLIC BUILDING COMMISSION OF CHICAGO by:**

Chairman

Attest:

Secretary

**ARCHITECT**, Schroeder Murchie Niemiec Gazda-Auskalnis Architects, Ltd., by:

President

County of: DuPage

State of: Illinois

Subscribed and sworn to before me by Jack Murchie and _____ on behalf of Architect this 2nd day of May 2007

Notary Public

My Commission expires: (SEAL OF NOTARY)

OFFICIAL SEAL
KATHLEEN SANCHEZ
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES:11/28/10

## Article I. INCORPORATION OF RECITALS

**Section 1.01** The matters recited above, the "Background Information," are incorporated in and made a part of the Agreement.

## Article II. DEFINITIONS AND USAGE

**Section 2.01** Definitions. The following phrases have the following meanings for purposes of the Agreement:

(a) Agreement. This Agreement for Architect-of-Record Services, between the Commission and the Architect, including all attached exhibits, schedules and documents and all such exhibits, schedules and documents incorporated by reference, all component parts and all amendments, modifications, or revisions made in accordance with its terms.

(b) Architect. The company or other entity identified in the Agreement, and such successors or assigns, if any, as may be authorized by the terms and conditions of the Agreement.

(c) AOR's Estimate of Probable Construction Cost. The Architects's professional opinion of the cost to necessary construct the Project and furnish all items required to complete the Project as described in the corresponding design phase Deliverables prepared by the Architect in accordance with the Agreement.

(d) Authorized Commission Representatives. One or more persons designated in writing by the Executive Director for the purposes of assisting the Commission in managing the Project. As specifically directed by the Commission, the Authorized Commission Representative will act on behalf of the Commission

(e) Commission. The Public Building Commission of Chicago, a municipal corporation, acting by and through its Chairman, Secretary, Assistant Secretary, Executive Director, including the Commission's Authorized Representative, as designated by the Executive Director in writing.

(f) Construction Budget. The total funds budgeted by the Commission for constructing the Project and furnishing all items necessitated by the Project which must be shown or described in the Contract Documents to be prepared by the Architect in accordance with this Agreement. The Construction Budget does not include any payments made to the Architect or Commission Consultants or reimbursable expenses pursuant to Schedule D.

(g) Additional Services. Additional services to be provided by the Architect for the Project pursuant to the provisions of Schedule A.

(h) Contract Documents. All of the Contract documents for the construction and improvement of the Project including the Bidding Instructions, Standard Terms and Conditions for Construction Contracts, Technical Specifications, Drawings, Addenda, Bulletins and Modifications to those parts.

(i) Day. Unless otherwise indicated, the word "day" means calendar day. The phrase "business day" refers to Monday through Friday, except for national holidays.

(j) Deliverables. The documents, in any format (electronic or hard copy) requested by the Commission, including technical specifications, designs, drawings, plans, reports, forms, recommendations, analyses, and interpretations, the Architect is required, under this Agreement, to provide to the Commission.

(k) Key Personnel. Those job titles and individuals identified in Schedule F.

(l) Project. The Langston Hughes Davis Developmental Elementary School.

(m) Project Schedule. The Project Schedule will be provided to the Architect in CPM and/or summary bar chart form. The Project Schedule will represent the information in Book 1 of the Contract Documents approved by the Commission for the Project. The Project Schedule will clearly identify major activities within the Project, including each phase of planning, design and construction. The Architect must provide details of their pre-construction activities and will promptly notify the Authorized Commission Representative whenever there is an actual or projected variance to the Project Schedule.

(n) Record Documents. Drawings prepared by the Architect in an electronic editable format approved by the Commission showing significant changes in the work made during construction, based on marked-up prints, drawings, shop drawings and other data furnished by the Project's building contractor.

(o) Services. Collectively, the duties, responsibilities and tasks that are necessary to allow the Architect to provide the Scope of Services required by the Commission under this Agreement.

(p) Subconsultant or Subcontractor. Any person or entity hired or engaged by the Architect to provide any part of the Services required under the terms of this Agreement.

(q) User Agency. The governmental agency or agencies, identified in the Background Information, that requested the Commission to undertake the construction and/or improvement of the Project.

**Section 2.02** Usage and Conventions

(a) Captions and Headings. The captions and headings of the various sections of the Agreement are used solely for reference purposes and do not construe, nor will they be deemed or used to construe, interpret, limit, or extend the meaning or scope of any work, clause, paragraph, or provision of the Agreement.

(b) The term "include," in all its forms, means "include, without limitation" unless stated otherwise.

(c) Terms of one gender imply the other gender(s) unless the context clearly indicates otherwise. Use of the singular includes the plural and vice versa.

## Article III. INCORPORATION OF DOCUMENTS

The following documents are incorporated in and made a part of the Agreement. By executing the Agreement, the Architect acknowledges that Architect is familiar with the contents of each of such documents and will comply fully with all applicable portions of them in performing the Services.

**Section 3.01** 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.

## Article IV. ENGAGEMENT AND STANDARDS FOR PERFORMING SERVICES

**Section 4.01** Engagement. The Commission engages the Architect, and the Architect accepts the engagement, to provide the Services described in this Agreement, as those Services may be amended by an Amendment to the Agreement as provided below in Section 4.13.

**Section 4.02** Key Personnel. The Architect must not reassign or replace Key Personnel without the written consent of the Commission. The Commission may at any time in writing notify Architect that the Commission will no longer accept performance of Services under this Agreement by one or more Key Personnel listed in the Agreement in Schedule F. Upon that notice Architect must immediately suspend the Key Person or Key Persons from performing Services under this Agreement and must replace him or them with a person or persons with comparable professional credentials and experience. Such replacements are subject to approval by the Commission.

**Section 4.03** Adequate Staffing. The Architect must, upon receiving a fully executed copy of this Agreement, assign and maintain for the duration of the Agreement an adequate staff of competent personnel that is fully equipped, licensed as appropriate, available as needed, qualified and assigned exclusively to perform the Services. The Architect must include among its staff the Key Personnel and positions as identified in the Agreement and specified in Schedule F. The level of staffing may be revised from time to time by notice in writing from Architect to the Commission and with prior written consent of the Commission.

**Section 4.04** Nondiscrimination. In performing under this Agreement the Architect 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 Architect 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 Architect will further 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.

**Section 4.05** Employment Procedures; Preferences and Compliance. Salaries of employees of the Architect, performing work under this Agreement, will be paid unconditionally, and not less often than once a month, without deduction or rebate on any account except such payroll deductions as are mandatory or permitted by applicable law or regulations. The Architect certifies that he/she is familiar with, and will comply with, all applicable provisions of 820 ILCS 130/0.01 through 130/12 (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 Architect will 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, any direct or indirect "kick-back" is made, as defined in any of the above mentioned laws and regulations, the Commission may withhold from the Architect, out of payments due to the Architect, an amount sufficient to pay any underpaid employees the difference between the salaries required to be paid under the law and this Agreement 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 Architect to the respective employees to whom they are due, as determined by the Commission in its sole discretion.

**Section 4.06** Compliance with Policies Concerning MBE and WBE. Without limiting the generality of the requirements of the policies of the Commission referred to in Section 3.01 above, the Architect will use every reasonable effort to utilize minority business enterprises for not less than 25% and women business enterprises for not less than 5% of the value of the Services, in accordance with the Resolution passed by the Board of Commissioners of the Commission on October 1, 2004, concerning participation of minority

business enterprises and women business enterprises on contracts, other than construction 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.

**Section 4.07** Records. The Architect must maintain accurate and complete records of expenditures, costs and time incurred by the Architect and by consultants engaged by the Architect in connection with the Project and the Services. Such records will be maintained in accordance with recognized commercial accounting practices. The Commission may examine such records at the Architect's offices upon reasonable notice during normal business hours. The Architect must retain all such records for a period of not less than five calendar years after the termination of the Agreement. However, if there is a disagreement over fees, then five years or until a final resolution of the matter whichever occurs later.

**Section 4.08** Compliance with Laws. In performing its engagement under the Agreement, the Architect must comply with all applicable federal, state and local laws, rules, and regulations.

**Section 4.09** Weekly Meetings. Weekly meetings for the Project and project Team will be scheduled upon the Commission's request for the duration of the Services. The Architect will cause such meetings to be attended by appropriate personnel of the Design Team engaged in performing or knowledgeable of the Services.

**Section 4.10** Defects in Project . The Architect must notify the Commission immediately if the Architect obtains knowledge of an issue or circumstances which could result in a delay in the performance of Services or significant problem in connection with the Project, including construction defects, cost overruns or scheduling delays.

**Section 4.11** Performance Standard.

(a) The Architect represents that the Services performed under the 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 consistent with that degree of skill and care ordinarily exercised by practicing design professionals performing services of a scope, purpose,and magnitude comparable with the Services to be provided under this Agreement. The Architect further promises that it will assign at all times during the term of the Agreement the number of experienced, appropriately trained employees necessary for the Architect to perform the Services in the manner required by the Agreement.

(b) The Architect must ensure that all Services that require the exercise of professional skills or judgment are accomplished by professionals qualified and competent in the applicable discipline and appropriately licensed, if required by law. The Architect must maintain current copies of any such licenses and provide these copies upon request by the Commission. The Architect remains responsible for the professional and technical accuracy of all Services furnished, whether by the Architect or others on its behalf. All deliverables will be prepared in a form and content satisfactory to the Commission and delivered in a timely manner consistent with the requirements of the Agreement.

(c) The Architect must not use any business or individual who is disqualified by the Commission or debarred under any other governmental agency's procedures to provide the Services under the Agreement.

(d) If the Architect fails to comply with the obligations under the standards of the Agreement, the Architect must perform again at its own expense, all Services required to be re-performed as a direct or indirect result of that failure. Any review, approval, acceptance or payment for any of the Services by the Commission does not relieve the Architect of its responsibility to render the Services and deliverables with the professional skill and care and technical accuracy required by

the Agreement. This provision in no way limits the Commission's rights against the Architect either under the Agreement, at law or equity.

(e) Evaluations of the Commission's budget for the Project, the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work prepared by the Architect represent the Architect's judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the Architect nor the Commission has control over the cost of labor, materials or equipment, over the Contractor's methods of determining bid prices, or over competitive bidding, market or negotiating conditions.

**Section 4.12** Errors and Omissions. The Commission has a committee that reviews the project for alleged errors and omissions by the Architect. The Committee will, as appropriate, conduct an internal review of the alleged error and omission, provide a written statement of claim regarding the alleged error and ommission to the Architect, allow the Architect to respond in writing, and meet with the Architect to attempt to settle the claim when the Commission concludes an error or omission has occurred. The Architect will attend such meetings without additional compension. Upon notice or discovery, and as directed by the Commission, the Architect will perform, without additional compensation, the required professional services to issue an addenda to the bidding documents, or change orders to the contract documents, to correct or clarify errors, omissions, or ambiguities. The Commission reserves the right to recover, from the Architect, damages incurred by the Commission resulting from errors or omissions in the construction documents prepared by the Architect. The Commission may withhold payments, in whole or in part, for a material breach of the Agreement, including but not limited, to the Architect's failure to perform services or meet the schedule, design errors or omissions and failure to adhere to terms of this Agreement.

If the Commission and the Architect disagree with regard to the Architect's fault or as to whether the Architect is entitled to Additional Services for the work required by the Commission in this paragraph, then the Architect may assert a dispute pursuant to the provisions of this Agreement. However, the Architect must provide Services as directed by the Commission during the pendency of any dispute.

**Section 4.13** Amendments to this Agreement. The Commission may from time to time request changes to the terms and Services of the Agreement. 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 Architect, will be incorporated in a written amendment to the Agreement. The Commission will not be liable for any additional payment absent such written amendment.

**Article V. TERM**

**Section 5.01** Duration. The term of the Agreement begins on the Commencement Date of Services specified in Schedule A, and subject to the provisions in this section, expires upon completion of the Services and acceptance of the Deliverables by the Commission.

**Section 5.02** Termination by the Commission. The Commission has the right, at any time, to terminate this Agreement in whole or in part, with or without cause, by written notice given to the Architect at least 30 days before the effective date of termination. So long as the Architect is not in default under this Agreement at the time of termination, the Commission will pay the Architect, in accordance with the terms of this Agreement, all compensation and reimbursements due to the Architect for periods up to the effective date of termination. The Commission may exercise any right of set off regarding Architect's failure to properly perform Services from payments that are due to Architect.

**Section 5.03** Suspension by the Commission. The Commission also has the right, at any time and from time to time, with or without cause, to suspend the performance of the Architect hereunder with respect to all or any part of the Services, by written notice given to the Architect at least 5 days before the effective date of suspension. During the notice period the Architect must wind down its Services. So long as the Architect is not in default under this Agreement at the time of suspension, the Commission will pay the Architect, in accordance with the terms of this Agreement, all compensation and reimbursements due to the Architect for periods up to the effective date of suspension

(a) During the period the Architect's performance is suspended, the Architect is not entitled to incur fees or bill the Commission, except for Architect's time for participating in substantive meetings concerning the Project (but not for meetings to discuss Architect's invoices or claims). The Architect may bill such time spent during a suspension only if the Architect's participation is requested by the Commission and only for the time of one individual per meeting. Commission will pay for such time at the applicable hourly billing rate set forth in Schedule D. Participation in meetings at the request of the Commission is not considered to be resumption of the Architect's Services.

(b) If the Architect is required to resume its Services under this Agreement, the Commission will notify Architect in writing, giving Architect a reasonable period not to exceed 10 days to remobilize itself. The Architect may bill such time spent on remobilization. The Commission will pay for such remobilization as is reasonable and billed at the hourly rate for one Senior Project Manager or less at the hourly billing rate set forth in Schedule D. The number of days during which the suspension period lasted, including any remobilization time, will be added to the Completion Date of Services as determined in accordance with the provsions of Schedule C, establishing a revised Completion Date of Services, and Architect will re-commence its Services at the point they were suspended and may resume billing in accordance with the terms of the Agreement.

**Section 5.04** Effect of Termination or Suspension . Termination or suspension of this Agreement in whole or in part does not relieve the Architect from liability for its performance of any obligation under this Agreement that was performed or was to have been performed by the Architect on or before the effective date of termination or suspension. In no event will the Commission be liable to the Architect for any loss, cost or damage, including lost profits, which the Architect or any other party may sustain by reason of the Commission terminating or suspending this Agreement as provided in it.

**Section 5.05** *Force Majeure* . Neither of the parties will 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 will 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 Architect under the Agreement for the duration of the force majeure. The Commission will not be obligated to pay for the Services to the extent and for the duration that performance of the Services is delayed or prevented by force majeure, but, provided the Architect is not in default of any obligation of the Architect under the Agreement, the Commission will pay to the Architect, according to the terms of the Agreement, all compensation and reimbursements due to the Architect for periods up to the effective date of suspension. The term "force majeure" means an extraordinary event or effect that the parties could not have anticipated or controlled and that renders performance impossible or impracticable for the duration of the event or effect. Such events or effects include but are not limited to: extraordinary acts of nature, such as tornadoes; or of people, such as acts of terrorism; or of governments, such as imposition of martial law.

## Article VI. COMPENSATION OF ARCHITECT; REIMBURSEMENT FOR EXPENSES

The Commission will compensate the Architect for the Services in the amount and manner set forth on Schedule D.

## Article VII. RIGHTS AND OBLIGATIONS OF COMMISSION

**Section 7.01** General and Specific. In connection with the administration of the Project by the Commission and the performance of the Agreement by the Architect, the Commission has the following rights and obligations, in addition to those provided elsewhere in the Agreement:

(a) Information. The Commission will provide the Architect all information reasonably required concerning the Commission's requirements for the Project and the Services.

(b) Review of Documents. Subject to the provisions of the Agreement, the Commission will make reasonable efforts to examine documents submitted by the Architect and render decisions pertaining to them with reasonable promptness.

(c) Site Data. To the extent the Commission determines to be necessary for the Architect to perform the Services, the Commission may furnish, or may authorize the Architect to obtain from a company or companies approved by the Commission as Reimbursable Expenses:

(i) A certified survey of the site or sites providing, as required, all grades and lines of streets, alleys, pavements and adjoining property, rights-of-way, encroachments, boundaries and contours of the building site.

(ii) A certified title.

(iii) Information concerning locations, dimensions and data pertaining to existing buildings and other improvements

(iv) Title information as to restrictions, easements, zoning and deed restrictions.

(v) Information concerning availability of both public and service and utility lines. See Schedule A for more details.

(vi) If the Architect does procure these or any other services at the request of the Commission, the Architect shall not be liable for the substantive accurary or completeness of such services, nor shall the Architect be vicariously liable for the procured services.

(d) Tests and Reports. To the extent required for the Architect to perform the Services, the Commission may furnish structural, civil, chemical, mechanical, results of test borings and pits for determining soil and subsoil conditions and/or other tests and reports or may authorize the Architect to procure such tests and reports from a consultant or consultants approved in writing by the Commission. See Schedule A for more details. The Commission will pay for such tests and reports, however, the Commission may direct the Architect to procure such professional services as Reimbursable Expenses and submit invoices to the Commission for payment as provided in Schedule D.

**Section 7.02** Audits. The Commission has the right to abstract and audit the books of the Architect and its subcontractors on all subjects relating to the Project and/or the Services.

**Section 7.03** Legal, Auditing and other Services. The Commission will 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 will not include legal or auditing expenses arising out of or relating to any errors or omissions, or claimed errors or omissions, of the Architect.

**Section 7.04** Ownership of Documents. All designs, drawings, documents, data, studies and reports prepared by the Architect or any party engaged by the Architect, pertaining to the Project and/or the Services will be the property of the Commission. Architect shall provide the Commission with opportunity to review all such documents and shall provide copies to the Commission upon written request. The Architect may reuse standard details and specifications on other projects.

(a) The parties intend that, to the extent permitted by law, the drawings, specifications and other design documents to be produced by the Architect and its subcontractors pursuant to this Agreement (the "Work") will 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, the User Agency and their successors and assigns, will be the copyright owner of all aspects, elements and components of them in which copyrights can subsist. To the extent that any of the

foregoing does not qualify as a "work made for hire," the Architect hereby irrevocably grants, conveys, bargains, sells, assigns, transfers and delivers to the Commission, the User Agency and their successors and assigns, all right, title, and interest in and to the copyrights and all U.S. and foreign copyright registrations, copyright applications and copyright renewals for them, and 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.

(b) The Architect 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, the User Agency and their successors and assigns, in perfecting their rights in and to the copyrights relating to the Work.

(c) The Architect represents to the Commission, the User Agency and their successors and assigns, that (1) the Work constitutes a work of authorship; (2) on the date of this Agreement the Architect 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 Architect has the legal right to fully assign any such copyright with respect to the Work; (4) the Architect has not assigned any copyrights nor granted any licenses, exclusive or non-exclusive, to any other party; and (5) the Architect is not a party to any other agreement or subject to any other restrictions with respect to the Work.

(d) In addition, the Architect represents that the plans and designs for the Work will, upon completion of the Services be complete, entire and comprehensive in accordance with the typical practices and performance standard of this Agreement. The Architect will provide the Commission the final plans and specifications for the project in an editable, electronic form. Further, the Architect will not restrict or otherwise interfere with the Commission's and/or the User Agency's future actions in authorizing the use, adaptation, revision, or modification or destruction of the Work provided that the Architect is indemnified by the Commission for any damages resulting from any such future re-use or adaptation of the Work by having the Executive Director and Architect execute an Electronic File Transfer Agreement in the form attached to this Agreement as Exhibit C.

**Article VIII. INDEMNIFICATION**

**Section 8.01** Indemnity by Third Parties. The Commission will 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) under such contracts must indemnify, save and hold harmless the Commission, the User Agency, the Architect and the Architect's Consultants, and each of them, and their respective commissioners, board members, officers, and employees, from all claims, demands, suits, actions, losses, costs 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(s) and consultant(s) under such contracts will purchase and maintain during the life of such contract such insurance as the Commission may require. The amount and insurer for such insurance are subject to approval by the Commission.

**Section 8.02** Indemnification by Architect. The Architect must indemnify, defend, keep and save harmless the Commission and the User Agency and their respecive commissioners, board members, officers, officials and employees, from and against all claims, demands, suits, losses, costs and expenses, including the fees and expenses of attorneys, (including court costs and expert's fees) 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 the Architect's negligent performance or non-performance of the agreement or of any error or omission or negligent or willfully wrongful act of the Architect, or and any person employed by the Architect, or and any Subcontractor retained by the Architect in connection with this Project.

## Article IX. INSURANCE MAINTAINED BY THE ARCHITECT

The Architect will purchase and maintain at all times during the performance of Services, for the benefit of the Commission, the User Agency and the Architect, insurance coverage which will insure the Commission, the User Agency and the Architect against claims and liabilities which could arise out of the performance of such Services, including the insurance coverages set forth in Schedule E to this Agreement.

## Article X. DEFAULT

**Section 10.01** Events of Default. Each of the following occurrences constitutes an Event of Default by the Architect under the Agreement:

(a) Failure or refusal on the part of the Architect to duly observe or perform any obligation or agreement on the part of the Architect contained in the Agreement, which failure or refusal continues for a period of 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 10-day period) after the date on which written notice of it has been given to the Architect by the Commission;

(b) Any representation or warranty of the Architect set forth in this Agreement or otherwise delivered pursuant to the Agreement will have been false in any material respect when so made or furnished;

(c) The Architect 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 will take any action in furtherance of any of the foregoing;

(d) Any proceeding is commenced against the Architect 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 60 days following commencement of the proceeding, or appointment of, without the Architect's consent or acquiescence, any trustee, receiver, liquidator or other custodian of Custodian or of all or any substantial part of the Architect's assets and properties, and such appointment will not have been vacated, stayed, discharged, bonded or otherwise dismissed within 60 days of the appointment.

(e) The Architect's material failure to perform any of its obligations under the Agreement, including any of the following:

(i) Failure due to a reason or circumstance within the Architect's reasonable control to perform the Services with sufficient personnel, and equipment or with sufficient material to ensure the performance of the Services according to Schedule C in this Agreement;

(ii) Failure to properly perform the Services or inability to perform the Services as a result of insolvency, filing for bankruptcy or assignment for the benefit of creditors;

(iii) Failure to promptly re-perform within a reasonable time the Services that were rejected as erroneous or unsatisfactory per the Terms of this Agreement;

(iv) Discontinuance of the Services for reasons within the Architect's reasonable control; or

(v) Failure to comply with a material term of the Agreement, including the provisions concerning insurance and nondiscrimination.

(vi) The Architect shall have a ten day period to cure following written notice for the events of default listed here.

(f) Any change in ownership or control of the Architect (as defined in Article XIII) without prior written approval of the Executive Director which approval the Executive Director will not unreasonably withhold.

(g) The Architect's default under any other agreement it presently may have or may enter into with the Commission, the City of Chicago, the Chicago Public Schools or the Chicago Park District. Architect acknowledges that in event of a default under the Agreement the Commission may also declare a default under any such other agreements.

**Section 10.02** If an Event of Default occurs and continues, then the Commission may exercise any right, power or remedy permitted to it by law or in equity and has, in particular, without limiting the generality of the foregoing, the right to terminate the Agreement upon written notice to the Architect, in which event the Commission has no further obligations hereunder or liability to the Architect except as to payment for Services actually received and accepted by the Commission through the effective date of termination, subject to set off of any claims of the Commission against the Architect for failure to properly perform its services. No courses of dealing on the part of the Commission or delay or failure on the part of the Commission to exercise any right will operate as a waiver of such right or otherwise prejudice the Commission's rights, powers or remedies. The Commissioner's decision to terminate the Agreement is not subject to claim or dispute under Article XI.

**Section 10.03** Remedies Not Exclusive . No right or remedy in the Agreement conferred upon or reserved to the Commission is exclusive of any right or remedy provided or permitted under this Agreement or by law or equity, but each is cumulative of every other right or remedy given in the Agreement or now or hereafter existing at law or in equity or by statute or otherwise, and may be enforced concurrently or from time to time.

## Article XI. CLAIMS AND DISPUTES

**Section 11.01** General. All Claims araising under, related to or in connection with the terms of this Agreement or its interpretation, whether involving law or fact or both, including questions concerning allowability of compansation, and all claims for alleged breach of contract will first be presented to the Authorized Commission Representative. The Architect will present all disputes which can not be resolved, by discussion with the Authorized Commission Representative, to the Executive Director for final determination, subject to Section 11.04 below.

**Section 11.02** Claim Procedure. The Architect will make all requests for determination of claims in writing, specifically referencing this Section, and will include: 1) the issue(s) presented for resolution; 2) a statement of the position of the Architect; 3) the facts underlying the dispute; 4) reference to the applicable provisions of the Agreement by page and section; 5) identification of any other parties believed to be necessary to the resolution; and 6) all documentation which describes and relates to the dispute. The Authorized Commission Representative will have 30 business days to respond in writing to the Claim by supplementing the submission or providing its own submission. The Authorized Commission Representative will attempt to negotiate a resolution of the claim by agreement, but if a negotiated resolution is not achieved, the Authorized Commission Representative must provide a written ruling within 60 days of receipt of the Claim. However, if the Architect may agree in writing, to an extension not to exceed sixty (60) days. The Dispute must be filed within thirty (30) days of the receipt of the ruling by the Authorized Commission Representative.

**Section 11.03** Dispute Procedure. In the event that the Authorized Commission Representative and Architect can not resolve the Claim, the Architect may file a Dispute to the Executive Director. The Dispute submission must be in writing and contain the information required in Section 11.02 above and be copied to the Authorized Commission Representative. The Authorized Commission Representative shall file a response within thrity (30) days.

**Section 11.04** Executive Director's Determination. The Executive Director's final decision will be rendered in writing no more than 45 business days after receipt of the response by the Commission Representative was filed or was due unless the Executive Director notifies the Architect that additional time for the decision is necessary. The Architect must follow the procedures set out in this Section to receive the Executive Director's final decision. In the event the Architect disagrees with the Executive Director's final decision, the Architect may file, a common law *writ of certiorai* in the Circuit Court of Cook County which shall be the sole and exclusive judicial remedy of the Architect. However, the Architect must have followed the procedures in this section as a condition precedent to filing a common law *writ of certiorai*. The Architect shall not withhold performance of any Services required by the Commission under this Agreement during the dispute resolution period.

**Section 11.05** Architect Self-Help Prohibited. The Architect must never withhold performance of its Services by, for example, refusing to review and approve appropriately submitted invoices or pay applications, timely to make recommendations on general contractor claims, or promptly to issue other appropriate approvals needed by others where doing so would potentially harm third parties, such as subconsultants, the general contractor, or its subcontractors. Doing so to gain potential leverage in negotiating or settling the Architect's claims against the Commission or User Agency will constitute bad faith on the Architect's part.. This provision is not intended to prohibit the Architect from exercising its well-considered professional judgment, however, in carrying out its duties and responsibilities under the Agreement.

## Article XII. CONFIDENTIALITY

All of the reports, information, or data prepared or assembled by the Architect under the Agreement are confidential, and except as may be necessary to perform its services the Architect must not make such reports, information or data must available to any party without the prior written approval of the Commission. In addition, the Architect must not, without the prior written consent of the Commission, prepare or distribute any news releases, articles, brochures, advertisements or other materials concerning the Agreement, the Project or the Services. If the Architect is served with a subpoena requiring the production of documents or information which is deemed confidential, the Architect will 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.

## Article XIII. ASSIGNMENT

The Architect acknowledges that the Commission is induced to enter into this Agreement by the personal qualifications of the principals, staff and employees of the Architect and, therefore, that neither the Agreement nor any right or obligation in the Agreement may be assigned by the Architect, in whole or in part, without the prior written approval of the Commission. For purposes of this paragraph, if the Architect undergoes a change in control, the change in control is 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 Architect during any 12-month period. In the event of an assignment by the Architect without the prior written approval of the Commission, the Commission will have the right to immediately terminate the Agreement without fault or responsibility. The Architect further acknowledges that the Architect represented to the Commission the availability of certain members of the Architect's staff who will be assigned to Project; therefore, in the event of the unavailability of such members for any reason, the Architect must so notify the Commission in writing, and must assign other qualified members of the Architect's staff, as approved by the Commission, to the Project.

## Article XIV. RELATIONSHIP OF PARTIES

Under the Agreement, the relationship of the Architect to the Commission is that of an independent contractor, and the Architect will 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. The Agreement will not be construed as an agreement of partnership, joint venture, or agency.

## Article XV. GENERAL

**Section 15.01** Architect's Authority. The Architect represents that its execution of the Agreement 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 Architect have been made with complete and full authority to commit the Architect to all terms and conditions of the Agreement, including each and every representation, certification and warranty contained or incorporated by reference in it.

**Section 15.02** Counterparts. The Agreement may be executed in any number of counterparts, any of which will be deemed an original.

**Section 15.03** Entire Agreement. The Agreement constitutes the entire understanding and agreement between the parties to this Agreement 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 in this Agreement. The Agreement must not be modified, amended or in any way altered except by an instrument in writing signed by both of the parties.

**Section 15.04** Governing Law. The Agreement has been negotiated and executed in the State of Illinois and will be construed under and in accordance with the laws of the State of Illinois.

**Section 15.05** No Waiver . The waiver by either party of any breach of the Agreement will not constitute a waiver as to any succeeding breach.

**Section 15.06** Notices. All notices required to be given under this Agreement must be given in writing and must be hand delivered or sent by United States certified or registered mail, postage prepaid, addressed to the Commission or to the Architect at their respective addresses set forth above, as appropriate. If given as provided in this Agreement, such notice is 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 Architect may, from time to time, change the address to which notices will be sent by giving notice to the other party in the manner provided in this subparagraph.

**Section 15.07** Non-liability of Public Officials . No Commission trustee, employee, agent, officer, or official is personally liable to Architect or its subcontractors, and Architect and its subcontractors are not entitled to, and must not attempt to, charge any of them with liability or expense or hold them personally liable to Architect or its subcontractors under this Agreement.

**Section 15.08** Severability. If any provision of the Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such provision will be severed from the Agreement and such invalidity or unenforceability will not affect any other provision of the Agreement, the balance of which will remain in full force and effect; provided, however, that if such provision is deemed invalid or unenforceable as a matter of law, such provision will be deemed to have been modified so as to be valid and enforceable to the maximum extent permitted by law.

**Section 15.09** Successors and Assigns. Except as otherwise provided in the Agreement, the Agreement is binding upon and inures to the benefit of each of the parties to the Agreement and their respective successors and assigns.

**Section 15.10** Non-appropriation of Funds. If funds have not been appropriated in full or in part, the Commission has the right to terminate the Agreement. The Commission will not authorize the Architect to provide services under this Agreement unless sufficient funds are appropriated to pay for the services.

**SCHEDULE A**

**SCOPE OF SERVICES**

Langston Hughes Davis Developmental Elementary School

CHICAGO, ILLINOIS

**SCOPE OF SERVICES**

The Architect will provide all Services required to complete the coordinated design of the Project. The term of this Agreement will terminate when all Services required have been completed to the reasonable satisfaction of the Commission.

**Commencement Date of Services: March 2, 2007**

The Services are separated into two parts: Design/Engineering for Site Preparation and Design/Engineering for Vertical (Building) Construction. Phase I and Phase II are, in turn, each divided into phases: Schematic Design Phase; Design Development Phase; Construction Documents Phase; Bidding Phase; Construction Phase and Close Out Phase. The Deliverables (and any other work product) of each of the phases must be approved by the Authorized Commission Representative in writing before commencement of the subsequent or dependent phase.

**The Architect will perform its Services promptly, with sufficient staffing to achieve the dates in Schedule C, Project Schedule.**

The Authorized Commission Representative will assist the Commission in managing the Project and will have the authority, as specifically directed by the Executive Director, to act on its behalf.

**I. SCHEMATIC DESIGN**

During the Schematic Design phase , the Architect shall provide the folowing Services:

A. Consultation with the Commission, the User Agency and others, as appropriate, regarding the goals and requirements of the Project, including the total Project Budget (comprised of the construction budgets for both Site Preparation and Building Construction scope of work).

B. Analysis of the requirements of the Project, including confirmation of the established conceptual design, the conditions of the site and the survey, and consultation with the Commission to establish the design, and the functionality and financial feasibility of the Project.

C. Upon review of the Commission's Environmental Consultant's findings, develop a proposed Site Preparation scope of work coordinated with the AOR's geotechnical consultant findings and the proposed utility service connections into the new building. This proposed scope of work will be submitted to the Authorized Commission Representative for review and approval.

D. Facilitate and document a sustainable design charrette and follow up sessions with participants as directed by the Authorized Commission Representative. The goal of the charrette is to confirm that the Project's target LEED™[1] rating of Silver is achievable and to develop the appropriate design strategies, for all project phases, to ensure that this rating can be achieved or to make alternative plans if it is determined that the desired rating is not feasible.

[1] Leadership in Energy and Environmental Design

E. Preparation of documents necessary to illustrate any required amendments to the public right of way.

F. As required, prepare Request for Clarification submittals for PBC or User Agency questions.

G. Preparation and presentation of Schematic Design options for the Project for review by the Commission and the User Agency. Preparation of schematic drawings and design studies (including materials) based upon analysis of Project requirements. Preparation of a general description of the scope of the Project, a preliminary estimate of construction costs ("AOR's Estimate of Probable Construction Costs").

H. Preparation of plans, elevations, sections, outline specifications and narratives, as required, to describe the architectural, structural, mechanical, plumbing, fire protection and electrical aspects of the selected design option for preparation of the AOR's Estimate of Probable Construction Cost.

I. In the event the AOR's Estimate of Probable Construction Cost exceeds the Construction Budget at the Schematic Design stage, the Architect will present one or more scope reduction alternatives, as directed by the Authorized Commission Representative, that can be delivered within the Construction Budget.

J. As required, review the Schematic Design documents along with necessary value engineering items, if any, with the Authorized Commission Representative and align the AOR's Estimate of Probable Cost with the Construction Budget for the Project.

K. At the completion of Schematic Design Services, transmit one complete hard copy and editable electronic version of the final milestone documents to the Authorized Commission Representative for review and transmittal to the User Agency. Prepare a written and oral report of the Schematic Design phase for presentation to the User Agency. Presentation to be made as directed in writing by the Authorized Commission Representative.

L. Prepare and issue hard copies of the Schematic Design Drawings, Outline Specifications and Narratives to various stakeholders for the Schematic Design Milestone Review.

M. Immediately upon the Authorized Commission Representative's review and written approval of the Deliverables of the Schematic Design Services phase, begin the next phase on the updated and approved schedule.

N. Schematic Design Phase Deliverables include:

1. Site Preparation Schematic Design Documents and Estimate of Probable Construction Cost (broken down by CSI division or other approved format);

2. Building Construction Schematic Design Documents and Estimate of Probable Construction Costs (broken down by CSI division or other approved format);

3. Sustainable Design Goals and target LEED checklist;

4. Proposed Public Right of Way Amendment Plan;

5. Request for Clarification compilation and log; and

6. Issuance of milestone packages (Site Preparation and Building Construction) for review.

## II. DESIGN DEVELOPMENT

During the Design Development phase, the Architect shall provide the following Services:

A. Consistent with the approved Schematic Design phase Deliverables (including drawings and design studies), Architect will prepare plans, elevations and other drawings and outline specifications necessary to illustrate the size and character of the Project in its essentials including kinds of materials, type of structure, mechanical and electrical systems and such other work as may be required (the "Design Development Documents").

B. Subject to the prior written consent of the Authorized Commission Representative, incorporate the Schematic Design Milestone Review comments into the Design Development Documents.

C. Preparation and presentation of documents necessary for User Agency departmental approvals (including, but not limited to food service, athletics, administration, science, music and art)

D. Preparation of documents necessary for the Planned Development process as well as participation in any required meetings to facilitate the rezoning of the Project site.

E. Update the AOR's Estimate of Probable Construction Cost. Review the Design Development Documents along with the necessary cost and/or scope reduction items, if any, with the Authorized Commission Represntative and incorporate modifications and revisions into the Design Development Documents as required to align the AOR's Estmate of Probable Cost with the Construction Budget for the Project.

F. Continued development of the Site Preparation Package inclusive of necessary environmental, geotechnical and site utility service termination, rerouting or connection scope of work.

G. Using a complete set of Design Development Documents, reflecting all improvements described for the Project provide an updated AOR's Estimate of Probable Construction Cost containing:

1. A narrative overview of the updated AOR's Estimate of Probable Construction Cost compared to the Construction Budgets (or the Revised Construction Budgets established during Schematic Design).

2. AOR's Estimate of Probable Construction Cost must include a summary and division breakdown. The summary must include a concise description of the basis for the estimate, including source of pricing information, estimating methods, and descriptions for any mark-ups, factors, and allowances included for items such as escalation, contractor overhead and profit, and market conditions.

3. A detailed comparison and reconciliation of the current and previous AOR's Estimate of Probable Construction Cost with an explanation of any variance by component organized by CSI format or other appropriate format as directed by the Authorized Commission Representative.

4. A summary of all approved Construction Budget revisions.

H. At completion of the Design Development phase, transmit one complete set of the final Design Development Documents, including the updated AOR's Estimate of Probable Construction Cost and details, to the Authorized Commission Representative for review and transmittal to the User Agency. Prepare a written and oral report of the Design Design phase for presentation to the User Agency. Presentation to be made as directed in writing by the Authorized Commission Representative. Subject to the prior written direction of the Authorize Commission Representative, incorporate User Agency comments into the Construction Documents.

I. If the updated AOR's Estimate of Probable Construction Cost exceeds the Construction Budget then, upon written request of the Authorized Commission Representative, Architect must continue to revise, modify or correct any or all of the Project design, drawings and specifications in a manner satisfactory to the Commission until the correspondingly revised AOR's Estimate of Probable Construction Cost conforms to the Construction Budget. Such revisions, modifications and corrections in the plans, specifications and drawings will be submitted to the Authorized Commission Representative within a reasonable time (not to exceed 30 days) after notice and direction by the Authorized Commission Representative. The Services provided in this Section II. I. of Schedule A shall be provided by the Architect without compensation.

J. If the Authorized Commission Representative requests a change in scope of the Project, and after review and comment and upon written request of the Authorized Commission Representative, Architect shall revise or modify any or all of the Project design, drawings and specifications in a manner satisfactory to the Commission. If requested by the Authorize Commission Representative, and subject to the execution of a written Amendment in accordance with Section 4.13 of this Agreement, Architect will be compensated for the Additional Services provided in this Section II. J. of Schedule A on either a negotiated Lump Sum basis or in accordance with the Billling Rates established in Schedule D.

K. Immediately upon the Authorized Commission Representative's review and written approval of the deliverables of the Design Development phase, begin the next phase on the updated and approved schedule.

L. Design Development Phase Deliverables include:

1. Site Preparation Design Development Documents (including specifications) and Estimate of Probable Construction Cost (broken down by CSI division or other approved format)

2. Building Construction Design Development Documents (including specifications) and Estimate of Probable Construction Costs (broken down by CSI division or other approved format)

3. Updated LEED checklist

4. Plan Commission Documentation for rezoning process

5. Documentation for User Agency Departmental Approvals

6. Request for Clarification compilation and log

7. Issuance of milestone packages (Site Preparation and Building Construction) for review.

## III. CONSTRUCTION DOCUMENTS

**During the Construction Documents phase, the Architect shall provide the following Services:**

A. Consistent with the approved Design Development Documents, Architect will prepare all Construction Documents as necessary to obtain bids for the construction of the project. Milestone reviews and estimates will be performed at 60%, 90% and 100% completion on the dates listed in Schedule C Project Schedule, including architectural and engineering working drawings, designs, plans, calculations and specifications setting forth in detail construction industry standard elements required for the architectural, structural, civil, mechanical, electrical, plumbing, heating, ventilation, air conditioning, fire protection, service-connected equipment and site work. At every milestone of completion, provide the Commission with editable electronic drawing files in the most current version of AutoCad as well as multiple hard copies at the direction of the Authorized Commission Representative.

B. Prepare and deliver 60%, 90% and 100% Construction Documents including modifications and revisions in the approved by written direction of the Authorized Commission Representative.

C. Prepare and present an update of the AOR's Estimate of Probable Construction Cost prior to the completion of 60%, 90 % and 100% Construction Document Deliverables. Review the Construction Documents along with value engineering items with the Authorized Commission Representative to align AOR's Estimate of Probable Construction Cost with the Construction Budget.

1. If the AOR's Estimate of Probable Construction Cost exceeds the Construction Budget, then, upon written request of the Authorized Commission Representative, Architect must continue to revise, modify or correct any or all of the Project design, drawings and specifications in a manner satisfactory to the Commission until the correspondingly revised AOR's Estimate of Probable Construction Cost conforms to the Construction Budget. Such revisions, modifications and corrections in the plans, specifications and drawings will be submitted to the Authorized Commission Representative within a reasonable time (not to exceed 30 days) after notice and direction by the Authorized Commission Representative. The Services provided in this Section III. C. 1. of Schedule A shall be provided by the Architect without compensation.

2. If the Authorized Commission Representative requests a change in scope of the Project, after review and comment and upon written request of the Authorized Commission Representative, Architect shall revise or modify any or all of the Project design, drawings and specifications in a manner satisfactory to the Commission. If requested by the Authorize Commission Representative, and subject to the execution of a written Amendment in accordance with Section 4.13 of this Agreement, Architect will be compensated for the Additional Services provided in the Section III. C. 2. of Schedule A on either a negotiated Lump Sum basis or in accordance with the Billling Rates established in Schedule D.

D. At the completion of the each Construction Document milestone (60%, 90% and 100%), transmit hard copies of the phase documents to the Authorized Commission Representatve for review and transmittal to the User Agency. Prepare a written and oral report of the Construction Document phase for presentation to the User Agency. Presentation to be made as directed in writing by the Authorized Commission Representative. Subject to the prior written direction of the Authorize Commission Representative, incorporate User Agency comments into the subsequent phase of the Construction Documents.

E. Immediately upon the Commission's review and written approval of the deliverables of each Construction Documents phase (60%, 90% and 100%, begin the next phase on the updated and approved schedule.

F. Commission's Performance Evaulation of Construction Documents: The Commission will review the Architect's performance in providing Construction Documents after the project has been bid. The Architect will be required to attend a meeting to discuss its performance review.

G. Construction Document Deliverables for each milestone (60%, 90% & 100%) include:

1. Site Preparation Construction Documents (including specifications) and Estimate of Probable Construction Cost (broken down by CSI division or other approved format)

2. Building Construction Construction Documents (including specifications) and Estimate of Probable Construction Costs (broken down by CSI division or other approved format)

3. Updated LEED checklist

4. Request for Clarification compilation and log

5. Issuance of milestone packages (Site Preparation and Building Construction) for review.

## IV. COORDINATION DOCUMENTS

**During the Construction Documents phase, the Architect shall also provide the following Services:**

A. Prior to submission of 90% Construction Documents to the Commission, Architect shall prepare coordination documents to confirm that the various elements of the design team's construction documents are sufficiently coordinated to support an accurate bid process and minimize the potential for change orders during the construction phase of the project. The Architect will resolve any known conflicts prior to issuing the Bid Set of documents. Coordination documents shall address the following, at a minimum:

1. Limited available space for installation or service. Architect shall overlay plans of each design discipline and verify space requirements and conflicts between trades and/or disciplines. Architect shall make revisions to the design drawings to resolve conflicts between various disciplines.

2. Incompatibililty between items provided under different disciplines (such as difference in voltage between equipment specified under Division 15 and electrical power provided under Division 16).

3. Inconsistencies between drawings and specifications (between disciplines and within each discipline).

B. As required to manage discipline coordination, the Architect must prepare multi layered, color coded CAD drawings to manage discipline coordination, resolve conflicts, and present the findings of coordination process to the PBC's design review team. The Architect will provide reproducibles and CAD drawings files of these documents to the PBC.

C. At a minimum the Architect must prepare a combination of elevation and plan detail sections in areas where large services and/or a significant concentration of smaller services share adjacent space. As part of the 60% Design Review, the Architect will propose for the PBC's concurrence, the locations where these coordination details will be prepared. These details will typically be prepared for the following areas:

1. Above ceilings in corridors to confirm that services, fixtures, and other devices can fit between the designed ceiling height and the bottom of any structural members or other obstructions. The horizontal spacing of these items will also be reviewed to confirm that desired locations of lighting fixtures and other devices can be achieved.

2. Slabs where services would logically be installed within the slab on grade or on deck. The Architect will confirm that these services can fit within the slab cross section without comprimising the structural integrity of the slab. Any limitations on embedded services will be noted on the construction documents.

3. Areas and/or rooms where a significant number of services converge. This includes mechanical rooms, MDF rooms, IDF rooms, electrical closets, fire pump rooms, and any other areas or rooms where the cooordination of individual or multiple services are required with multiple disciplines. Where a significant number of services penetrate a walt, floor, ceiling, or roof in close proximity, the Architect will design and detail an appropriate chase with respect to structural elements, code issues, and proper installation of the services.

4. Within mechanical, equipment, and other specialty rooms to confirm that the required equipment, panels, racks, fixtures, ventilation, and other equipment, along with the services entering these rooms will fit within the designed space and layout. Checks will be made for door swings, as well as, equipment accessibility into and within the room.

5. Locations on the site or under the building where major existing or new utilities come in close proximity to each other and/or other new or existing structures. This would include locations where these services enter the builindg or penetrate the foundations.

D. The Architect will prepare documents that confirm that the appropriate power, communication, and other low voltage services are shown running to and from each required device/fixture and back to the appropriate originating or receiving location are included in the design. This coordination may be a represented by a composite device/service schedule that cross references the appropriate interface points.

E. The Architect will prepare documents that confirm that water supply, drainage, condensate lines, and vents for each required device, fixture, and piece of equipment are included in the design.

F. The Architect will be responsible for the overall coordination review. As each coordination document is completed, the Architect will review and resolve significant conflicts. The Architect must resolve all known conflicts prior to issuing the bid documents. Any items where the Architect reccomends leaving coordination to the construction contractor must be specifically reviewed by the Architect with the PBC's design review team.

## V. BIDDING PHASE SERVICES

**During the Bidding phase, the Architect shall provide the following Services:**

A. Assemble and review all Bid Documents required, including, but not limited to all drawings, and technical specifications, Commissioning Agent Design Intent and Commissioning Plan.

B. Attend and document two Pre-Bid Conference Meetings. In addition to the general, open Pre-Bid Meeting, a technical working Pre-Bid Meeting will be for the purpose of making a detailed technical presentation and repond to questions from prospective bidders.

C. Prepare addenda, as directed by the Commission, to address bidder's questions that require clarification. Consider and document all written requests for product substitutions before receipt of bids.

D. Review bids and prepare an evaluation and recommendation for award relative to the Project and Construction Budget. Assist in finalizing the agreement(s) with the contractor(s) to construct the Project.

E. If the lowest responsive responsible bid obtained exceeds the Construction Budget the Commission may either award the construction contract to the lowest responsive responsible bidder, or request that the Architect without additional compensation, make revisions of any or all of the Project including design, scope, quality, drawings, specifications, deletions and substitutions to the end that the construction cost not be in excess of the Construction Budget. All such revisions will be subject to the prior written approval of the Authorized Commission Representative. The right of the Commission to require such revision and re-bidding will not be exhausted by a single revision and re-bidding, but will be a continuing right until the lowest responsible bid received is within the Construction Budget.

F. Assist the Commission, without additional compensation, in the solicitation of new bids.

## VI. CONSTRUCTION PHASE SERVICES

**During the Construction phase, the Architect shall provide the following Services:**

A. Attend and participate in regularly scheduled monthly "pencil draw" meetings for approval of contractor pay requests.

B. If necessary during construction, interpret the meaning and intent of the Contract Documents, and with the Authorized Commission Representative's concurrence, transmit such information to the contractor. If requested by the Authorized Commission Representative, make recommendations on any claims between the Commission and any contractor with whom the Commission has a contract relating to the Project and any other matters relating to the execution and progress of the work or the interpretation of the Contract Documents.

C. Unless the Commission specifies in writing a shorter or longer time period, within 10 business days following receipt the Architect must comment upon and submit to the Commission for concurring approval requests for approval of subcontractors, delivery schedules, material lists, shop drawings, samples, and the like. However, the parties acknowledge that the Architect's internal costs and efficiencies during the construction phase are dependent on the Contractor's submittals and inquiries conforming to pre-approved schedules and deadlines. Any time limits for the Architect's review of shop drawings or other submittals is conditioned upon the Contractor's preparing and obtaining the Architect's approval of a master schedule of submittals and subsequently transmitting the submittals to the Architect in accordance with this schedule. Additionally, if after commencement of construction, the Commission requests Architect to review and analyze a requested product or material substitution, the Architect shall undertake such review only as an Additional Service and after obtaining the Commission's approval to do so.

D. Provide and distribute Construction Documents and explanatory sketches required during construction. Review and approve samples, shop drawings, product data, as-built drawings, product substitutions and other submissions for compliance with the design concept of the Project and fulfillment of the contractor's obligations as set forth in the Contract Documents.

E. Implement the Commission's specifications and procedures for processing scope changes, including applications for extensions of time. Receive and review all proposals, revisions in drawings and change orders requested by the contractor, Commission, User Agency, or as required by field other unforeseen conditions and make recommendations regarding practicality, costs, unit prices, time and material changes, effect on completion schedule and risk to the project.

F. Submit recommendations to the Authorized Commission Representative for approval before instituting any changes to the requirements of the Contract Documents. Process and prepare all bulletins, proposals, revisions in drawings and change orders approved by the Commission. Monitor all scope changes during construction to ensure compliance with approved revisions.

~~G.~~ Issue clarifications for proper execution of the work required by the Contract Documents; provided, however, the Architect shall not have control or charge of and will not be responsible for construction means and methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work or for the act or omissions of the contractor, subcontractors or any other persons performing any of the work in accordance with the Contract Documents. Notwithstanding any contrary or potentially ambiguous descripiton of the Architect's Services, it is intended that the Architect shall have no responsibility for jobsite safety on the Project. The Contractor and Subcontractors shall have full and sole authority for all safety programs and precautions in connection with the Work. When the Architect is present at the site, such presence shall be only for the purpose of endeavoring to protect the Commission aganst any deviations or defects in the completed construction Work, and the Architect shall have no authority to take any action whatsoever on the site regarding safety precautions or procedures.

H. Review the work to establish preliminary acceptance of the Project.

## VII. PROJECT CLOSE OUT SERVICES

**During the Project Close Out phase, the Architect shall provide the following Services:**

A. Conduct a comprehensive final inspection of the Project with the Authorized Commission Representative and User Agency to verify that the materials furnished and the work performed are substantially compliant with the contract documents.

B. The AOR is responsible for facilitating a walkthrough on site with the Authorized Board Representative, Commissioning Agent and User Agency to review punchlist items identified in the Contractor prepared initial punchlist. The AOR will consolidate and prepare punch lists indicating the items of work remaining to be accomplished before a Certificate of Final Acceptance will be issued. Prepare certificates of preliminary and final completion in consultation with the Commission and the User Agency.

C. Oversee the Contractor's efforts to assemble and deliver to the Commission all guarantees, warranties, operating and maintenance manuals required by the Contract Documents.

D. Oversee the Contractor's efforts to expedite the preparation and delivery of record ("**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 Commission. Submit approved "as-built" documents to the Commission upon completion of the Project. The Architect shall be entitled to rely on the accuracy and completeness of the marked-up set of drawings kept by the Contractor during the Project.

E. Upon completion of the construction contract and all "punch list" items in accordance with the Contract Documents, issue a Certificate of Final Acceptance. A Certificate must not be issued by the Architect until, to the best of its knowledge, information and belief, all work has been completed in accordance with the Contract Documents.

F. Post Construction Review. The Commission will review Architect's performance in providing services during construction after the project punch list is complete. The Architect will be required to attend a meeting to discuss the performance review.

G. Project Close Out Approval Form. The Architect shall draft and complete the Project Closeout Approval Form for the Project. A sample form is attached to the Scope as Exhibit 1.

## VIII. ADDITIONAL RESPONSIBILITIES AND REPRESENTATIONS

**Architect shall:**

A. Facilitate and document the value engineering process. Evaluate proposed building systems as to quality, first cost and life cycle cost, constructability, material and product availability. Propose alternate materials and system assemblies as well as the resultant cost savings opportunities.

B. Develop a furniture, fixture and equipment plan to locate electronic devices including power, data , communication, security and life safety equipment.

C. Provide assistance in expediting, coordinating and securing all necessary orders, ordinances, permits, licenses, fees, or other approvals, as applicable, that are required by local, state and federal agencies to permit construction of the Project. Such assistance will include conferences with and presentations to appropriate regulatory agencies including the Building Department and Fire Prevention Bureau of the City of Chicago and other governmental bodies. Coordinate all aspects of the Project with any quasi-public agencies or utility companies involved in the Project.

D. Oversee the Contractor's procurement and assembly of all required permits, licenses, and certificates from the contractor and arrange delivery of same to the Commission.

E. Energy Simulation Modeling Using Department of Energy DOE 2 Software. Using the DOE2 Energy Modeling Software, model the energy use of the building and provide both a hard copy and electronic version on a compact disk of the input and the output. The information provided regarding the input and output will become the property of the Public Building Commission.

## IX. ADDITIONAL SERVICES

The following Additional Services may be authorized in writing by the Commission. If requested by the Authorize Commission Representative, and subject to the execution of a written Amendment in accordance with Section 4.13 of this Agreement, Architect will be compensated for the Additional Services on either a negotiated Lump Sum basis or in accordance with the Billing Rates established in Schedule D:

A. Architect's On-site Observation. Architect may be required to assign qualified on-site representatives acceptable to the Commission during such times as construction is in progress for the purpose of periodic on-site observation of the progress and conformance of the permanent features of the work to the requirements of the Contract Documents. The Architect's on-site representative shall not be removed or replaced before full completion of the wirhout prior written approval of the Authorized Commission Representative. The Architect's on-site representative will be removed immediately upon written request of the Authorized Commission Representative.

B. Architect may be required to provide detailed specifications and coordinate the bidding and installation of Fixtures, Furnishings and Equipment (FF&E) not covered in the Project, sculpture, murals and other related features and special equipment not included in the construction contract.

C. Architect may be required to provide consultation concerning replacement of any work damaged or destroyed by fire or other cause during construction and furnish additional services as may be required in connection with the replacement of the work.

D. Architect may be required to provide additional services made necessary by the default of the contractor in the performance of the construction contract.

## SCHEDULE B

## PROJECT DOCUMENTS

**NOT USED**

## SCHEDULE C

## PROJECT SCHEDULE

Langston Hughes Davis Developmental Elementary School

**A. Site Preparation: Schematic Design Phase:**

Schematic Design: Schematic Design documents shall be completed not later than April 23, 2007.

**B. Site Preparation: Construction Documents Phase:**

1. 75% Construction Documents: 75% Construction Documents shall be completed within 37 calendar days after completion of Schematic Design.

2. 100% Construction Documents. 100% Construction Documents shall be completed within 71 calendar days after completion of Schematic Design.

**C. Site Preparation: Construction Phase Services:**

Site Preparation work is anticipated to complete not later than October 15, 2007.

**D. Building: Schematic Design Phase:**

Schematic Design: Schematic Design documents shall be completed not later than April 23, 2007.

**E. Building: Design Development Phase:**

Design Development Documents shall be completed within 60 calendar days after completion of Schematic Design.

**F. Building: Construction Documents Phase:**

1. 60% Construction Documents: 60% Construction Documents shall be completed within 60 calendar days after the date of written approval of the Design Development Phase issued by the Authorized Commission Representative.

2. 90% Construction Documents. 90% Construction Documents shall be completed within 60 calendar days after the date Architect receives final written comments on its 60% Construction Documents Deliverable issued by the Authorized Commission Representative.

3. 100% Construction Documents. 100% Construction Documents shall be completed within 39 calendar days after the date Architect receives final written comments on its 90% Construction Documents Deliverable issued by the Authorized Commission Representative.

**G. Building: Bid and Award Phase:**

The Bid and Award phase of the project, from bid advertisement to bid opening through final contract award, is anticipated to require 49 calendar days to complete.

**H. Building: Construction Phase Services:**

Construction of the Project building is anticipated to require 483 calendar days to complete after issuance of Notice to Proceed to the contractor.

**I. Building: Time of Completion**

Time of completion for the Schematic Design, Design Development 60%, 90%, and 100% Construction Documents, Bid and Award, and Construction Phase Services to be provided shall be as stated above. Any time adjustments to the above phases shall be authorized in writing by the Commission.

**J. The Architect**

The Architect shall perform the requested services based on the terms and conditions stated in this Agreement.

## SCHEDULE D

## COMPENSATION OF THE ARCHITECT

Langston Hughes Davis Developmental Elementary School

CHICAGO, ILLINOIS

### I. ARCHITECT'S FEE

A. The Commission will pay the Architect for the satisfactory performance of the Services a Fixed Fee ("**Fee**") of $1,586,000.00 The fee will be allocated and payments made on a monthly basis as follows:

**Allocation of Fee:**

| | | |
|---|---|---|
| **Site Preparation** | | **$111,000.00** |
| Schematic Design | 15% | |
| Design Development | 20% | |
| Construction Documents | 35% | |
| Bidding Phase Services | 5% | |
| Construction Phase Services | 20% | |
| Project Close-out | 5% | |
| **Design/ Engineering of Building:** | | **$1,475,000.00** |
| Schematic Design | 15% | |
| Design Development | 20% | |
| Construction Documents | 35% | |
| Bidding Phase Services | 5% | |
| Construction Phase Services | 20% | |
| Project Close-out | 5% | |

B. Architect's Fee will include consultant's profit, overhead, general conditions, and all items not specifically identified as Reimbursable Expenses.

### II. BILLING RATES

A. The Commission will compensate the Architect for Additional Services on either a negotiated Lump Sum Fee basis or a Time Card Not-to-Exceed Fee basis as agreed to by the Architect and approved by the Commission in the form of an Amendment issued in accordance with Section 4.13 of this Agreement. In the case of Time Card billings, rates of reimbursement for the Architect's employees (and employees of any Subconsultant perfroming Additional Services) will be the actual base salaries paid to the specific employee performing the services times a 2.5 multiplier.

B. The 2.5 multiplier will fully compensate the Architect for all direct and indirect costs associated with the Additional Services including its costs for:

1. Workmen's Compensation Insurance;
2. Social Security Taxes;
3. Unemployment Insurance;

4. Health Insurance Benefits;
5. Long Term Disability Insurance;
6. Other statutory and non-statutory employee benefits;
7. Pensions and similar contributions;
8. Indirect Administrative expenses;
9. General and Administrative expenses including Overhead;
10. Insurance including General Liability (but, excluding costs for insurance premiums on special consultant(s) and subcontractors) Professional Liability, Valuable Papers, Automobile and other Insurance as required by the Agreement;
11. Computer Charges;
12. Postage and Handling;
13. Parking and Mileage;
14. Any other items not specifically identified below as "**Reimbursable Expenses;**" and
15. Profit.

C. **Premimum on Overtime.** To the extent that the Architect (or any Subconsultant) pays its employees a premium in excess of its hourly rates for overtime spent performing Additional Services, the cost of the premium will be treated as a Direct Cost (see "Project Reimbursable Expense," below), which will not be treated as a labor cost and which will not be subject to the application of the Labor Multiplier. Any such overtime must be in accordance with Architect's (or Subconsultant's) policies, which are subject to prior written approval by the Commission.

## IV. REIMBURSABLES

A. "Reimbursable Expenses" as referred to in this Agreement, are actual expenditures at cost without mark-up or surcharge, incurred by the Architect, and required for the Services. The following will be considered reimbursable expenses:

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 will be provided to each consultant at the conclusion of schematic, design development and construction document phases.
2. Distribution 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.
3. Printing and distribution costs associated with shop drawing and submittal reviews during construction.

B. The following reimbursable expenses require prior written approval by the Authorized Commission Representative:

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.

2. Fees and costs of special consulting services requested by the Commission such as acoustical, theater, food service, masonry, roofing and elevator consultants will 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.

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

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

5. Costs of surveys, geotechnical and environmental technical testing and reports.

C. Except as specifically allowed above, the following expenses ***are not reimbursable***:

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

2. Office and administrative expenses, including telephonic or telecopier system expenses, photocopying and duplicating costs, office or drafting supplies, and delivery services.

## V. METHOD OF PAYMENT

1. Invoices. Once each month, the Architect will submit an invoice to the Authorized Commission Representative for Services performed during the preceding month with the exception of Project Close-out phase services that will be paid in one lump sum after the completion Date of Services.

   Each invoice must be supported with such reasonable detail and data as the Commission may require, including detail and data related to Subconsultant costs. In accordance with the terms of the Agreement, the Architect must maintain complete documentation of all costs incurred for review and audit by the Commission or its designated audit representative(s). Each invoice must be submitted in the format directed by the Commission. Invoices must be accompanied by a progress report in a format acceptable to the Commission. Such progress report must identify any variances from budget or schedule and explain and the reasons for such variances.

   Each monthly invoice must contain billing for all hours and costs expended during the period stated in the invoice. In the event that the Architect does not know some of the hours and costs of its Subconsultants at the time of billing, the Consultant must provide the name of the Subconsultant and the estimated hours and costs that were expended by the Subconsultant as an attachemnt to the monthly invoice. The billing for the Subconsultant must then be made part of the next monthly invoice. Failure to provide the estimated hours for Subconsultants billiing as an attachment to the invoice in the month the services were provided or failure to include the actual Subconsultant's billing in the subsequent month's invoice will consitute a waiver of the billing.

   The Architect also agrees that, subject ot the exception above, it will not submit a subsequent invoice for any monthly period for which it has already submitted an invoice.

   The Architect will have all of its invoices contain the statement below followed by the signature of the individual who has authority to make this representation. **"The billing in this invoice represents all hours and costs expended for professional services during the period stated in this invoice. If any services for this invoice period have not been included, the estimated hours, estimated costs, and the individual(s) or company providing the services is attached. Those services and costs will be included in either the next monthly invoice or subsequent monthly invoice or Schroeder Murchie Niemiec Gazda-Auskalnis Architects, Ltd. acknowledges they are waived. By submitting this invoice Schroeder Murchie Niemiec Gazda-Auskalnis Architects, Ltd. acknowledges that it will not submit an invoice in the future for any hours or costs expended during this billing period or any prior billing period subject to the exception stated above."**

2. Payment will be processed within 30 days after Commission receives an acceptable invoice from the Architect.

3. Invoice Disputes. If the Commission disputes certain items in the Architect's invoices, the amount not disputed will be paid in full. The amount in question must be resolved in accordance with the Claim and Disputes provisions of this Agreement.

## VI. INVOICING

The Architect will submit an original and  copies of its monthly invoice to the Authorized Commission Representative for approval.

**SCHEDULE E**

**INSURANCE REQUIREMENTS**

Langston Hughes Davis Developmental Elementary School

CHICAGO, ILLINOIS

The Architect must provide and maintain at Architect's own expense, until expiration or termination of the agreement and during the time period following expiration if Architect is required to return and perform any additional work, the insurance coverage and requirements specified below, insuring all operations related to the Agreement.

**INSURANCE TO BE PROVIDED:**

**I. Workers' Compensation and Employers Liability**

Workers' Compensation Insurance, as prescribed by applicable law covering all employees who are to provide a service under the Agreement and Employers Liability coverage with limits of not less than $100,000 each accident or illness.

**II. 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. Coverage must include the following: All premises and operations, products/completed operations, separation of insureds, defense, and contractual liability (with no limitation endorsement). The Commission and the Board of Education must be named as additional insureds on a primary, non-contributory basis for any liability arising directly or indirectly from the work.

Subconsultants performing work for Contractor must maintain limits of not less than $1,000,000 per occurrence with the same terms herein.

**III. Automobile Liability (Primary and Umbrella)**

When any motor vehicles (owned, non-owned and hired) are used in connection with work to be performed, the Architect must provide Automobile Liability Insurance, with limits of not less than $1,000,000 per occurrence for bodily injury and property damage. The Commission and the Board of Education must be named as additional insureds on a primary, non-contributory basis.

**IV. Professional Liability**

When any Architect, or Subcontractor, performs work in connection with the Agreement, Professional Liability Insurance will be maintained with limits of not less than $2,000,000 covering acts, errors, or omissions. Coverage must include contractual liability. When policies are renewed or replaced, the policy retroactive date must coincide with, or precede the, start of work on the Agreement. A claims-made policy, which is not renewed or replaced, must have an extended reporting period of 2 years.

Subconsultants performing work for Contractor must maintain limits of not less than $1,000,000 per occurrence with the same terms herein.

**V. Valuable Papers**

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

**VI. Property**

The Architect is responsible for all loss or damage to Commission and/or Board of Education property at full replacement cost only if the loss or damage to such property was caused by the Architect's own negligence. The Architect is responsible for all loss or damage to personal property (including but not limited to materials, equipment, tools and supplies) owned, rented, or used by Architect only if the loss or damage to such property was caused by the Architect's own negligence.

**ADDITIONAL REQUIREMENTS**

A. The Architect must furnish the Public Building Commission Procurement Department, Richard J. 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 Architect must submit evidence of insurance to the Commission before award of Agreement. 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 Architect is not a waiver by the Commission of any requirements for the Architect to obtain and maintain the specified coverages. The Architect will advise all insurers of the Agreement provisions regarding insurance. Non-conforming insurance does not relieve Architect of the obligation to provide insurance as specified in this Agreement. Nonfulfillment of the insurance conditions may constitute a breach 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.

B. The Commission reserves the right to obtain copies of insurance policies and records from the Architect and/or its subcontractors at any time upon written request.

C. The insurance must provide for 30 days prior written notice to be given to the Commission if coverage is substantially changed, canceled, or non-renewed.

D. Any deductibles or self-insured retentions on referenced insurance coverage must be borne by Architect.

E. The Architect agrees that insurers waive their rights of subrogation against the Commission, its employees, elected officials, agents, or representatives and the Board of Education.

F. The insurance coverage and limits furnished by Architect in no way limit the Architect's liabilities and responsibilities specified within the Agreement or by law.

G. Any insurance or self-insurance programs maintained by the Commission and the Board of Education do not contribute with insurance provided by the Architect under the Agreement.

H. 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 the Agreement given as a matter of law.

I. The Architect must require all its subcontractors to provide the insurance required in this Agreement, or Architect may provide the coverage for its subcontractors. All its subcontractors are subject to the same insurance requirements of Architect unless otherwise specified in this Agreement.

Architect may request to be named as an additional insured on the Project general contractor's Commercial General Liability policy provided that the Architect must be responsible for payment of any additional premium demonstrated by the Project's general contractor and the Architect is solely responsible for monitoring Project General Contractor's compliance with Architect's status as additional insured.

J. If Architect or its subcontractors desires additional coverage, the party desiring the additional coverage is responsible for the acquisition and cost.

**RISK MANAGEMENT**

The Commission's Risk Management Department maintains the rights to modify, delete, alter or change these requirements. The Architect shall be entitled to reimbursement of any additional costs resulting therefrom.

## SCHEDULE F

## KEY PERSONNEL

Langston Hughes Davis Development Elementary School
CHICAGO, ILLINOIS

| | |
|---|---|
| **SMNG-A Architects, Ltd. (Architecture & Planning)** | |
| Project Director | Jack Murchie |
| Principal in Charge of Design | Kenneth Schroeder |
| Project Architect | Molly Kinsella |
| Project Designer | Todd Niemiec |
| Project Designer | Eunkyu Choi |
| **LCM Architects (Accessibility)** | |
| Principal Consultant | John Catlin |
| **HJ Kessler Associates (LEED)** | |
| Principal Consultant | Helen Kessler |
| **EDI Engineering (Civil)** | |
| Principal Engineer | Robert Giurato |
| **Site Design Group (Landscape)** | |
| Principal Designer | Robert Sit |
| **Matrix Engineering (Structural)** | |
| Principal Engineer | Gene Mojekwu |
| **HMS Engineering (HVAC & Electrical)** | |
| Principal Engieer | Haneef Shakeel |
| **Dynacept Engineering (Plumbing & Fire Protection)** | |
| Principal Engineer | Donovan Beech |
| **The Concord Group (Cost Estimating)** | |
| Principal Estimator | Eamon Ryan |

## SCHEDULE G

## OTHER CONDITIONS

Langston Hughes Davis Developmental Elementary School

CHICAGO, ILLINOIS

**NONE**

# EXHIBIT A

## DISCLOSURE OF RETAINED PARTIES

Langston Hughes Davis Developmental Elementary School
CHICAGO, ILLINOIS

## DISCLOSURE OF RETAINED PARTIES

**A. Definitions and Disclosure Requirements**

1. As used herein, "Contractor" means a person or entity who has any contract or lease with the Public Building Commission of Chicago ("Commission").

2. Commission contracts and/or qualification submittals must be accompanied by a disclosure statement providing certain information about attorneys, lobbyists, consultants, subcontractors, and other persons whom the Contractor has retained or expects to retain with respect to the contract or lease. In particular, the Contractor must disclose the name of each such person, his or her business address, the name of the relationship, and the amount of fees paid or estimated to be paid. The Contractor is not required to disclose employees who are paid solely through the Contractor's regular payroll.

3. "Lobbyists" means any person (a) who for compensation or on behalf of any person other than himself undertake to influence any legislative or administrative action, or (b) any part of whose duties as an employee of another includes undertaking to influence any legislative or administrative action.

**B. Certification**

Contractor hereby certifies as follows:

1. This Disclosure relates to the following transaction: Professional Services Agreement

   Description or goods or services to be provided under Contract #: PS1044

   AOR services for Langston Hughes Developmental Elementary School

2. Name of Contractor: Schroeder Murchie Niemiec Gazda-Auskalnis Architects, Ltd.

3. **EACH AND EVERY** attorney, lobbyist, accountant, consultant, subcontractor, or other person retained or anticipated to be retained by the Contractor with respect to or in connection with the contract or lease is listed below. Attach additional pages if necessary. **NOTE:** You must include information about certified MBE/WBEs you have retained or anticipate retaining, even if you have already provided that information elsewhere in the contract documents.

Retained Parties: see attached Retained Parties

| Name | Business Address | Relationship (Attorney, Lobbyist, Subcontractor, etc.) | Fees (indicate whether paid or estimated) |
|---|---|---|---|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

Check Here If No Such Persons Have been Retained or Are Anticipated To Be Retained: _____

**Retained Parties:**

| Name | Business Address | Relationship | Fees |
|---|---|---|---|
| LCM Architects | 819 S. Wabash Avenue, #509<br>Chicago, Illinois 60605 | ADA Consultant | $27,300<br>estimated |
| HJKessler (WBE) | 3702 N. Pine Grove, #3A<br>Chicago, Illinois 60613 | LEED Consultant | $36,000<br>estimated |
| Nia Architects (MBE) | 1130 S. Wabash Avenue, #200<br>Chicago, Illinois 60605 | Site Preparation Consultant | $91,000<br>estimated |
| EDI (MBE) | 200 S. Michigan Avenue, #700<br>Chicago, Illinois 60604 | Civil Engineering | $56,500<br>estimated |
| Site Design Group (MBE) | 888 S. Michigan Avenue<br>Chicago, Illinois 60605 | Landscape Architecture | $31,140<br>estimated |
| Matrix Engineering (MBE) | 33 W. Jackson Boulevard<br>Chicago, Illinois 60604 | Structural Engineering | $138,460<br>estimated |
| HMS Engineering (MBE) | 230 S. Wetmore Avenue<br>Lombard, Illinois 60148 | HVAC & Electrical Engineering | $164,000<br>estimated |
| Dynacept Engineering (MBE) | 2250 E. Devon Avenue, #218<br>Des Plaines, Illinois 60018 | Plumbing & Fire Protection Engineering | $96,000<br>estimated |
| The Concord Group | 161 N. Clark Street, #2050<br>Chicago, Illinois 60601 | Cost Estimating | $48,000<br>estimated |

## DISCLOSURE OF RETAINED PARTIES

4. The Contractor understands and agrees as follows:

   a. The information provided herein is a material inducement to the Commission execution of the contract or other action with respect to which this Disclosure of Retained Parties form is being executed, and the Commission may rely on the information provided herein. Furthermore, if the Commission determines that any information provided herein is false, incomplete, or inaccurate, the Commission may terminate the contract or other transaction, or terminate the Contractor's participation in the contract or other transactions with the Commission.

   b. If the Contractor is uncertain whether a disclosure is required under the Contractor must either ask the Commission's Representative or his or her manager whether disclosure is required or make the disclosure.

   c. This Disclosure of Retained Parties form, some or all of the information provided herein, and any attachments may be made available to the public on the Internet, in response to a Freedom of Information Act request, or otherwise. The Contractor waives and releases any possible rights or claims it may have against the Commission in connection with the public release of information contained in the completed Disclosure of Retained Parties form and any attachments.

Under penalty of perjury. I certify that I am authorized to execute this Disclosure of Retained Parties on behalf of the Contractor and that the information disclosed herein is true and complete.

Signature

05.01.2007
Date

Jack Murchie
Name (Type or Print)

President
Title

Subscribed and sworn to before me

this 2 day of May 2007

Notary Public

OFFICIAL SEAL
KATHLEEN SANCHEZ
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES:11/28/10

## EXHIBIT B

## DISCLOSURE AFFIDAVIT

Langston Hughes Davis Developmental Elementary School
CHICAGO, ILLINOIS

Date: 05.01.2007

**DISCLOSURE AFFIDAVIT**

Name: Schroeder Murchie Niemiec Gazda-Auskalnis Architects, Ltd.

Address: 936 W. Huron Street

Telephone No.: 312.829.3355

Federal Employer I.D. #.: 36-34-11-903 Social Security #: _____

Nature of Transaction:

[ ] Sale or purchase of land
[ ] Construction Contract
[X] Professional Services Agreement
[ ] Other

Instructions: FOR USE WITH ANY OF THE ABOVE TRANSACTIONS. Any firm proposing one of the above transactions with the Public Building Commission of Chicago must complete this Disclosure Affidavit. Please note that in the event the Contractor is a joint venture, the joint venture and each of the joint venture partners must submit a completed Disclosure Affidavit.

The undersigned Jack Murchie, as President
(Name) (Title)
and on behalf of Contractor
("Bidder/ Proposer" or "Contractor") having been duly sworn under oath certifies that:

## I. DISCLOSURE OF OWNERSHIP INTERESTS

Pursuant to Resolution No. 5371 of the Board of Commissioners of the Public Building Commission of Chicago, all bidders/proposers shall provide the following information with their bid/proposal. If the question is not applicable, answer "NA". If the answer is none, please answer "none".

Bidder/Proposer/Contractor is a:

| | |
|---|---|
| [X] Corporation | [ ] LLC |
| [ ] Partnership | [ ] LLP |
| [ ] Joint Venture | [ ] Not-for-Profit Corporation |
| [ ] Sole Proprietorship | [ ] Other |

**SECTION 1.**
**FOR PROFIT CORPORATION OR LIMITED LIABILITY COMPANY (LLC)**

a. State of Incorporation or organization Illinois

b. Authorized to do business in the State of Illinois: Yes [X] No [ ]

c. Names of all officers of corporation or LLC (or attach list):

| Name (Print or Type) | Title (Print or Type) |
|---|---|
| Jack Murchie | President |
| Ken Schroeder | Secretary |
| Todd Niemiec | |

Names of all directors of corporation (or attach list):

| Name (Print or Type) | Title (Print or Type) |
|---|---|
| Marta Gazda-Auskalnis | |
| | |
| | |

d. If the corporation has fewer than 100 shareholders indicate here or attach a list of names and addresses of all shareholders and the percentage interest of each.

| Name (Print or Type) | Address | Ownership Interest |
|---|---|---|
| Jack Murchie | 910 N. Lake Shore Dr. Chicago IL | 25 % |
| Ken Schroeder | 1734 N. Cleveland, Chicago IL | 25 % |
| Todd Niemiec | 204 W. Saint James St. Arlington Hts. IL | 25 % |
| Marta Gazda-Auskalnis | 1034 Hayes Ave. Oak Park IL | 25 % |

e. If the corporation has 100 or more shareholders, indicate here or attach a list of names and addresses of all shareholders owning shares equal to or in excess of seven and one-half percent (7.5%) of the proportionate ownership of the corporation and indicate the percentage interest of each.

| Name (Print or Type) | Address | Ownership Interest |
|---|---|---|
| | | % |
| | | % |
| | | % |

f. For LLC's, state whether member-managed or identify managing member:

_____.

g. For LLC's identify each member:

| Name (Print or Type) | Address | Ownership Interest |
|---|---|---|
| _____ | _____ | _____% |
| _____ | _____ | _____% |
| _____ | _____ | _____% |

h. Is the corporation or LLC owned partially or completely by one or more other corporations or legal entities?

Yes [ ] No [ ]

If "yes" provide the above information, as applicable, for each such corporation or entity.

**SECTION 2. PARTNERSHIPS**

a. If the bidder/proposer or Contractor is a partnership, indicate the name of each partner and the percentage of interest of each therein. Also indicate, if applicable, whether general partner (GP) or limited partner (LP)

| Name of Partners (Print or Type) | Percentage Interest |
|---|---|
| _____ | _____% |
| _____ | _____% |
| _____ | _____% |

**SECTION 3. SOLE PROPRIETORSHIP**

a. The bidder/proposer or Contractor is a sole proprietorship and is not acting in any representative capacity on behalf of any beneficiary: Yes [ ] No [ ]
If NO, complete items b. and c. of this Section 3.

b. If the sole proprietorship is held by an agent(s) or a nominee(s), indicate the principal(s) for whom the agent or nominee holds such interest.

Name(s) of Principal(s). (Print or Type)

_____

_____

_____

c. If the interest of a spouse or any other party is constructively controlled by another person or legal entity, state the name and address of such person or entity possessing such control and the relationship under which such control is being or may exercised.

| Name(s) | Address(es) |
|---|---|
| | |
| | |
| | |

**SECTION 4. LAND TRUSTS, BUSINESS TRUSTS, ESTATES & OTHER ENTITIES**

If the bidder/proposer or Contractor is a land trust, business trust, estate or other similar commercial or legal entity, identify any representative, person or entity holding legal title as well as each beneficiary in whose behalf title is held including the name, address and percentage of interest of each beneficiary.

| Name(s) | Address(es) |
|---|---|
| | |
| | |
| | |

**SECTION 5. NOT-FOR-PROFIT CORPORATIONS**

a. State of incorporation _____

b. Name of all officers and directors of corporation (or attach list):

| Name (Print or Type) | Title (Print or Type) | Name (Print or Type) | Title (Print or Type) |
|---|---|---|---|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

NOTE: The Public Building Commission of Chicago may require additional information from any entity or individual to achieve full disclosure relevant to the transaction. Further, any material change in the information required above must be provided by supplementing this statement at any time up to the time the Public Building Commission of Chicago takes action on the contract or other action requested of the Public Building Commission.

## II. CONTRACTOR CERTIFICATION

### A. CONTRACTOR

1. The Contractor, or any subcontractor to be used in the performance of this contract, or any affiliated entities of the Contractor or any such subcontractor, or any responsible official thereof, or any other official, agent or employee of the Contractor, any such subcontractor or any such affiliated entity, acting pursuant to the direction or authorization of a responsible official thereof has not, during a period of three years prior to the date of execution of this certification or if a subcontractor or subcontractor's affiliated entity during a period of three years prior to the date of award of the subcontract:

   a. Bribed or attempted to bribe, or been convicted of bribery or attempting to bribe a public officer or employee of the City of Chicago, the State of Illinois, any agency of the federal government or any state or local government in the United States (if an officer or employee, in that officer's or employee's official capacity); or

   b. Agreed or colluded, or been convicted of agreement or collusion among bidders or prospective bidders in restraint of freedom of competition by agreement to bid a fixed price or otherwise; or

   c. Made an admission of such conduct described in 1(a) or (b) above which is a matter of record but has not been prosecuted for such conduct.

2. The Contractor or agent, partner, employee or officer of the Contractor is not barred from contracting with any unit of state or local government as a result of engaging in or being convicted of bid-rigging[2] in violation of Section 3 of Article 33E of the Illinois Criminal Code of 1961, as amended (720 ILCS 5/33E-3), or any similar offense of any state or the United States which contains the same elements as the offense of bid-rigging during a period of five years prior to the date of submittal of this bid, proposal or response.[3]

3. The Contractor or any agent, partner, employee, or officer of the Contractor is not barred from contracting with any unit of state or local government as a result of engaging in or being convicted of bid-rotating[4] in violation of Section 4 of Article 33E of the Illinois Criminal Code of 1961, as amended (720 ILCS 5/33E-4), or any similar offense of any state or the United States which contains the same elements as the offense of bid-rotating.

4. The Contractor understands and will abide by all provisions of Chapter 2-56 of the Municipal Code entitled "Office of the Inspector General" and all provisions of the Public Building Commission Code of Ethics Resolution No.5339, as amended by Resolution No. 5371.

5. The Contractor certifies to the best of its knowledge and belief, that it and its principals:

   a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal, state or local department or agency.

   b. Have not within a three-year period preceding this bid or proposal been convicted of or had a civil judgement rendered against them for: commission of fraud or a

criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes; commission of embezzlement, theft, forgery, bribery, falsification or destruction of records; making false statements; or receiving stolen property;

c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (5)(b) above; and

d. Have not within a three-year period preceding this bid or proposal had one or more public transactions (federal, state or local) terminated for cause or default.

## B. SUBCONTRACTOR

1. The Contractor has obtained from all subcontractors being used in the performance of this contract or agreement, known by the Contractor at this time, certifications substantially in the form of Section 1 of this Disclosure Affidavit. Based on such certification(s) and any other information known or obtained by the Contractor, is not aware of any such subcontractor or subcontractor's affiliated entity or any agent, partner, employee or officer of such subcontractor or subcontractor's affiliated entity having engaged in or been convicted of (a) any of the conduct describe in Section II(A) (1)(a) or (b) of this certification; (b) bid-rigging, bid-rotating, or any similar offense of any state or the United States which contains the same elements as bid-rigging or bid-rotating, or having made an admission of guilt of the conduct described in Section II(A)(1)(a) or (b) which is matter of record but has/have not been prosecuted for such conduct.

2. The Contractor will, prior to using them as subcontractors, obtain from all subcontractors to be used in the performance of this contract or agreement, but not yet known by the Contractor at this time, certifications substantially in the form of this certification. The Contractor shall not, without the prior written permission of the Commission, use any of such subcontractors in the performance of this contract if the Contractor, based on such certifications or any other information known or obtained by Contractor, became aware of such subcontractor, subcontractor's affiliated entity or any agent, employee or officer of such subcontractor or subcontractor's affiliated entity having engaged in or been convicted of (a) any of the conduct describe in Section II(A)(1)(a) or (b) of this certification or (b) bid-rigging, bid-rotating or any similar offenses of any state or the United States which contains the same elements as bid-rigging or bid-rotating or having made an admission of guilt of the conduct described in Section II(A)(1)(a) or (b) which is a matter of record but has/have not been prosecuted for such conduct. The Contractor shall cause such subcontractors to certify as to Section II(A)(5). In the event any subcontractor is unable to certify to Section II(A)(5), such subcontractor shall attach an explanation to the certification.

3. For all subcontractors to be used in the performance of this contract or agreement, the Contractor shall maintain for the duration of the contract all subcontractors' certifications required by Section II(B)(1) and (2) above, and Contractor shall make such certifications promptly available to the Public Building Commission of Chicago upon request.

4. The Contractor will not, without the prior written consent of the Public Building Commission of Chicago, use as subcontractors any individual, firm, partnership, corporation, joint venture or other entity from whom the Contractor is unable to obtain a certification substantially in the form of this certification.

5. The Contractor hereby agrees, if the Public Building Commission of Chicago so demands, to terminate its subcontractor with any subcontract if such subcontractor was ineligible at the time that the subcontract was entered into for award of such subcontract. The Contractor shall insert adequate provisions in all subcontracts to allow it to terminate such subcontract as required by this certification.

## C. STATE TAX DELINQUENCIES

1. The Contractor is not delinquent in the payment of any tax administered by the Illinois Department of Revenue or, if delinquent, the Contractor is contesting, in accordance with the procedures established by the appropriate Revenue Act, its liability for the tax or amount of the tax.

2. Alternatively, the Contractor has entered into an agreement with the Illinois Department of Revenue for the payment of all such taxes that are due and is in compliance with such agreement.

3. If the Contractor is unable to certify to any of the above statements [(Section II (C)], the Contractor shall explain below. Attach additional pages if necessary.

_____

_____

_____

If the letters "NA", the word "None" or no response appears on the lines above, it will be conclusively presumed that the Undersigned certified to the above statements.

4. If any subcontractors are to be used in the performance of this contract or agreement, the Contractor shall cause such subcontractors to certify as to paragraph (C)(1) or (C)(2) of this certification. In the event that any subcontractor is unable to certify to any of the statements in this certification, such subcontractor shall attach an explanation to this certification.

## D. OTHER TAXES/FEES

1. The Contractor is not delinquent in paying any fine, fee, tax or other charge owed to the City of Chicago.

2. If Contractor is unable to certify to the above statement, Contractor shall explain below and attach additional sheets if necessary.

_____

_____

If the letters "NA", the word "None" or no response appears on the lines above, it will be conclusively presumed that the Undersigned certified to the above statements.

## E. ANTI-COLLUSION

The Contractor, its agents, officers or employees have not directly or indirectly entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free

competitive bidding in connection with this proposal or contract. Failure to attest to this section as part of a bid will make the bid non-responsive and not eligible for award consideration.

**F. PUNISHMENT**

A Contractor who makes a false statement material to Section II(A)(2) of this certification commits a Class 3 felony. 720 ILCS 5/33E-11(b).

**G. JUDICIAL OR ADMINISTRATIVE PROCEEDINGS**

1. The Contractor is not a party to any pending lawsuits against the City of Chicago or the Public Building Commission of Chicago nor has Contractor been sued by the City of Chicago or the Public Building Commission of Chicago in any judicial or administrative proceeding.

2. If the Contractor cannot certify to the above, provide the (1) case name; (2) docket number; (3) court in which the action is or was pending; and (4) a brief description of each such judicial or administrative proceeding. Attach additional sheets if necessary.

_____

_____

_____

If the letters "NA", the word "None" or no response appears on the lines above, it will be conclusively presumed that the Undersigned certified to the above statements.

**III. CERTIFICATION OF ENVIRONMENTAL COMPLIANCE**

A. Neither the Contractor nor any affiliated entity of the Contractor has, during a period of five years prior to the date of execution of this Affidavit: (1) violated or engaged in any conduct which violated federal, state or local Environmental Restriction[5], (2) received notice of any claim, demand or action, including but not limited to citations and warrants, from any federal, state or local agency exercising executive, legislative, judicial, regulatory or administrative functions relating to a violation or alleged violation of any federal, state or local statute, regulation or other Environmental Restriction; or (3) been subject to any fine or penalty of any nature for failure to comply with any federal, state or local statute, regulation or other Environmental Restriction.

If the Contractor cannot make the certification contained in Paragraph A of Section III, identify any exceptions:

_____

_____

(Attach additional pages of explanation to this Disclosure Affidavit, if necessary.)

If the letters "NA", the word "None" or no response appears on the lines above, it will be conclusively presumed that the Undersigned certified to the above statements.

B. Without the prior written consent of the Public Building Commission of Chicago, Contractor will not employ any subcontractor in connection with the contract or proposal to which this Affidavit pertains without obtaining from such subcontractor a certification similar in form and substance to the certification contained in Paragraph A of this Section III prior to such

subcontractor's performance of any work or services or furnishing any goods, supplies or materials of any kind under the proposal or the contract to which this Affidavit pertains.

C. Until completion of the Contract's performance under the proposal or contract to which this Affidavit pertains, the Contractor will not violate any federal, state or local statute, regulation or other Environmental Restriction, whether in the performance of such contract or otherwise.

## IV. CERTIFICATION OF COURT-ORDERED CHILD SUPPORT COMPLIANCE

For purpose of this Section IV, "SUBSTANTIAL OWNER" means any person who owns or holds a ten percent (10%) or more percentage of interest in the Contractor. If the Contractor is an individual or sole proprietorship, substantial owner means that individual or sole proprietorship. Percentage of interest includes direct, indirect and beneficial interests in the Contractor. Indirect or beneficial interest means that an interest in the Contractor is held by a corporation, joint venture, trust, partnership, association, state or other legal entity in which the individual holds an interest or by agent(s) or nominee(s) on behalf of an individual or entity. For example, if Corporation B holds or owns a twenty percent (20%) interest in Contractor, and an individual or entity has a fifty percent (50%) or more percentage of interest in Corporation B, then such individual or entity indirectly has a ten (10%) or percentage of interest in the Contractor. In this case, the response to this Section IV, must cover such individual(s) or entity. If Corporation B is held by another entity, then this analysis similarly must be applied to that next entity.

If Contractor's response in this Section IV is 1 or 2, then all of the Contractor's Substantial Owners must remain in compliance with any such child support obligations (1) throughout the term of the contract and any extensions thereof; or (2) until the performance of the contract is completed, as applicable. Failure of Contractor's Substantial Owners to remain in compliance with their child support obligations in the manner set froth in either 1 or 2 constitutes an event of default.

**Check one:**

1. _____ No Substantial Owner has been declared in arrearage on his or her child support obligations by the Circuit Court of Cook County or by another Illinois court of competent jurisdiction.

2. _____ The Circuit Court of Cook County or another Illinois court of competent jurisdiction has issued an order declaring one or more Substantial Owners in arrearage on their child support obligations. All such Substantial Owners, however, have entered into court-approved agreements for the payment of all such child support owed, and all such Substantial Owners are in compliance with such agreements.

3. _____ The Circuit Court of Cook County or another Illinois court of competent jurisdiction has issued an order declaring one or more Substantial Owners in arrearage on their child support obligations and: (1) at least one such Substantial Owner has not entered into a court-approved agreement for the payment of all such child support for the payment of all such child support owed; or both (1) and (2).

4. _____ There are no Substantial Owners.

## V. INCORPORATION INTO CONTRACT AND COMPLIANCE

The above certification shall become part of any contract awarded to the Contractor set forth on page 1 of this Disclosure Affidavit and are a material inducement to the Public Building

Commission of Chicago's execution of the contract, contract modification or contract amendment with respect to which this Disclosure Affidavit is being executed and delivered on behalf of the Contractor. Furthermore, Contractor shall comply with these certifications during the term and/or performance of the contract.

## VI. VERIFICATION

Under penalty or perjury, I certify that I am authorized to execute this Disclosure Affidavit on behalf of the Contractor set forth on page 1, that I have personal knowledge of all the certifications made herein and that the same are true.

The Contractor must report any change in any of the facts stated in this Affidavit to the Public Building Commission of Chicago within 14 days of the effective date of such change by completing and submitting a new Disclosure Affidavit. Failure to comply with this requirement is grounds for your firm to be deemed non-qualified to do business with the PBCC. Deliver any such new Disclosure Affidavit to: Public Building Commission of Chicago, Director of Procurement, 50 W. Washington, Room 200, Chicago, IL 60602.

[signature]
Signature of Authorized Officer

Jack Murchie
Name of Authorized Officer (Print or Type)

President
Title

312.829.3355 X222
Telephone Number

State of Illinois

County of Du Page

Signed and sworn to before me on this 2 day of May, 2007 by

Jack Murchie (Name) as President (Title) of

Schroeder Murchie, Niemiec, Gazda-Aurkalnis, Architects Ltd (Bidder/Proposer or Contractor)

[signature]
Notary Public Signature and Seal

OFFICIAL SEAL
KATHLEEN SANCHEZ
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES:11/28/10

## Notes 1-5 Disclosure Affidavit

1. Business entities are affiliated if, directly or indirectly, one controls or has the power to control the other, or if a third person controls or has the power to control both entities. Indicia of control include without limitation: interlocking management or ownership; identity of interests among family members; shared facilities and equipment; common use of employees; or organization of another business entity using substantially the same management, ownership or principals as the first entity.

2. For purposes of Section II (A) (2) of this certification, a person commits the offense of and engages in bid-rigging when he knowingly agrees with any person who is, or but for such agreement should be, a competitor of such person concerning any bid submitted or not submitted by such person or another to a unit of state or local government when with the intent that the bid submitted or not submitted will result in the award of a contract to such person or another and he either (1) provides such person or receives from another information concerning the price or other material term or terms of the bid which would otherwise not be disclosed to a competitor in an independent non-collusive submission of bids or (2) submits a bid that is of such a price or other material term or terms that he does not intend the bid to be accepted. see 720 ILCS 5/33-E-3.

3. No corporation shall be barred from contracting with any unit of state or local government as a result of a conviction, under either Section 33E-3 or Section 33E-4 of Article 33 of the State of Illinois Criminal Code of 1961, as amended, of any employee or agent of such corporation if the employee so convicted is no longer employed by the corporation and: (1) it has been finally adjudicated not guilty or (2) it demonstrates to the governmental entity with which it seeks to contract and that entity finds that the commission of the offense was neither authorized, requested, commanded, nor performed by a director, officer or a high managerial agent on behalf of the corporation as provided in paragraph (2) of subsection (a) of Section 5-4 of the State of Illinois Criminal Code.

4. For purposes of Section II(A) of this certification, a person commits the offense of and engages in bid rotating when, pursuant to any collusive scheme or agreement with another, he engages in a pattern over time (which, for the purposes hereof, shall include at least three contract bids within a period of ten years, the most recent of which occurs after January 1, 1989) of submitting sealed bids to units of state or local government with the intent that the award of such bids rotates, or is distributed among, persons or business entities which submit bids on a substantial number of the same contracts. See 720 ILCS 5/33E-4.

5. "Environmental Restriction" means any statute, ordinance, rule, regulation, permit, permit condition, order or directive relating to or imposing liability or standards of conduct concerning the release or threatened release of hazardous materials, special wastes or other contaminants into the environment, and to the generation, use, storage, transportation, or disposal of construction debris, bulk waste, refuse, garbage, solid wastes, hazardous materials, special wastes or other contaminants including but not limited to (1) Section 7-28-440 or 11-4-1500 or Article XIV of Chapter 11-4 or Chapter 7-28 or 11-4 of the Municipal Code of Chicago; (2) Comprehensive Environment Response and Compensation and Liability Act (42 U.S.C. § 9601 *et seq.*) the Hazardous Material Transportation Act (49 U.S.C. § 1801 *et seq.*); (4) the Resource Conversation and Recovery Act of 1976 (42 U.S.C. § 7401 *et seq.*); (5) the Clean Water Act (33 U.S.C. § 1251 *et seq.*); (6) the Clean Air Act (42 U.S.C. § 7401 *et seq.*); (7) the Toxic Substances Control Act of 1976 (15 U.S.C. § 2601 *et seq.*); (8) the Safe Drinking Water Act (42 U.S.C. § 300f); (9) the Occupational Health and Safety Act of 1970 (29 U.S.C. § 651 *et seq.*); (10) the Emergency Planning and Community Right to Know Act (42 U.S.C. § 11001 *et seq.*); and (10) the Illinois Environmental Protection Act (415 ILCS 5/1 through 5/56.6).

## EXHIBIT C

### ELECTRONIC FILE TRANSFER AGREEMENT

Langston Hughes Davis Developmental Elementary School
CHICAGO, ILLINOIS

**ELECTRONIC FILE TRANSFER AGREEMENT**
Between the Architect and the Owner

| | |
|---|---|
| Owner: | Public Building Commission of Chicago (PBC) |
| **RE:** | **ELECTRONIC MEDIA** |
| PROJECT NAME AND NO.: | **[PROJECT NAME]**<br>**[PROJECT #]** |
| DESCRIPTION OF DATA: | This Agreement shall apply to all Electronic Drawings which are listed and otherwise identified in an attached cover letter(s) to the PBC |

TERMS OF AGREEMENT:

1. The PBC acknowledges that it has requested Architect to provide certain designs as electronic drawing file data in disk format and that the information contained on these disks is provided for its sole use and convenience. The PBC, at its own discretion, may choose to reassign this data to a third party, to whom all terms of this agreement shall also apply, by obtaining the third party's signature on the line below and sending a signed copy to Architect.
2. The undersigned further acknowledges that the true record of the design is the most recent printed copy of the design by Architect, and that errors and other changes may subsequently be introduced to the electronic format without the fault or knowledge of, and beyond the control of Architect.
3. Accordingly the PBC agrees to indemnify Architect from all costs and expenses including reasonable attorney's fees, pertaining to any claims which may arise out of any modification to the design contained on the electronic drawing file data as compared to the last sealed hard copy printed by Architect.
4. This Data is an instrument of professional service prepared by Architect. Unless otherwise provided for in the Agreement, the reuse of this data, including designs and information included therein shall be at the sole risk of the user.

Architect:

_____
Architect Authorized Signature [date]

**Acknowledged and Accepted for:**

_____
Signature of PBC Executive Director [date]

**Acknowledged and Accepted by Third Party:**

_____
Signature of Third Party [date]