

# PUBLIC BUILDING COMMISSION OF CHICAGO



PROFESSIONAL SERVICES AGREEMENT  
CONTRACT NUMBER PS1239

With  
MULLER & MULLER ARCHITECTS

TO PROVIDE  
ARCHITECT OF RECORD SERVICES  
FOR

BOONE CLINTON AREA ELEMENTARY SCHOOL  
CHICAGO, ILLINOIS  
Project Number: CPS-33

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

Erin Lavin Cabonargi  
Executive Director

Richard J. Daley Center, Room 200  
50 West Washington Street  
Chicago, Illinois 60602  
[www.pbcchicago.com](http://www.pbcchicago.com)

**EXECUTION PAGE**

**Architect of Record Services  
Boone Clinton Area Elementary School  
PS1239**

**THIS AGREEMENT** effective as of March 18, 2008, 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 **Muller & Muller Architects**, with offices at 700N. Sangamon Chicago, Illinois 60622, (the "**Architect**"), at Chicago, Illinois.

**Background Information – Recitals:**

**Whereas**, The **Commission** on behalf of the **Chicago Public Schools**(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**");

**BOONE CLINTON AREA ELEMENTARY SCHOOL**

**Whereas**, the Board of the Public Building Commission of Chicago, on **February 13, 2008**, awarded a contract to Architect as Design Architect for Chicago Public Schools – High Schools.

**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.

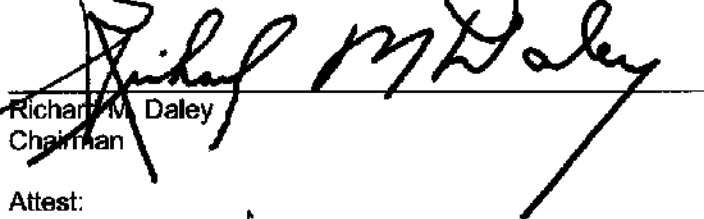
**Whereas**, the Construction Budget for the Project will be established by the Commission after completion of Schematic Design based upon the requirements of the Project and allowances for cost escalation and Project contingencies.

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

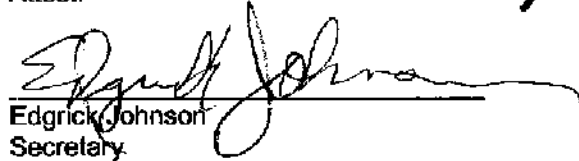
NOW THEREFORE, the parties agree on the terms and conditions that follow:

SIGNED by:

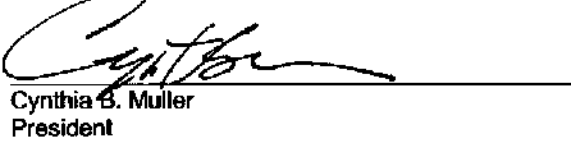
PUBLIC BUILDING COMMISSION OF CHICAGO by:

  
Richard M. Daley  
Chairman

Attest:

  
Edgwick Johnson  
Secretary

ARCHITECT, MULLER & MULLER ARCHITECTS:

  
Cynthia B. Muller  
President

County of: COOK

State of: ILLINOIS

Subscribed and sworn to before me by Cynthia Muller and \_\_\_\_\_ on behalf of  
Architect this 30 day of April, 2008.

  
Notary Public  
My Commission expires: (SEAL OF NOTARY)



OFFICIAL SEAL  
JAMES C. HUBER  
GOVERNOR  
STATE OF MISSISSIPPI

## **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 Architect'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.** Boone Clinton Area 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.** As directed by the Commission's Authorized Representative, the Architect will, without additional compensation, prepare addenda, change orders and/or bulletins required to correct or clarify negligent errors, omissions or ambiguities. 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 omission 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 compensation. 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.

**Section 4.14 Representation and Covenant by Consultant.** Neither the Architect nor any affiliate of the Architect is listed on any of the following lists maintained by the Office Foreign Assets Control of the U.S. Department of the Treasury, the Bureau of Industry and Security of the U.S. Department of Commerce or their successors, or on any other list of persons or entities with which the User Agency or the Commission may not do business under any applicable law, rule, regulation, order or judgment: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List and the Debarred List. For purposes of this subparagraph only, the term "affiliate," when used to indicate a relationship with a specified person or entity, means a person or entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with such specified person or entity, and a person or entity shall be deemed to be controlled by another person or entity, if controlled in any manner whatsoever that results in control in fact by that other person or entity (or that other person or entity and any persons or entities with whom that other person or entity is acting jointly or in concert), whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise.

**Section 4.15 Subcontract Terms and Conditions.** Architect shall include a provision in any and all subcontracts that Architect may enter into for the performance of the Services that states that the subcontractor shall comply with the terms and conditions of this Agreement in its performance of its portion of the Services. In addition, each subcontract for the performance of the Services shall provide that the Commission is a third-party beneficiary to the subcontract, and may enforce any of the subcontract terms

including, but not limited to, those pertaining to standard of performance, indemnity and insurance. Nothing in this Agreement, nor any subcontract to this Agreement, shall state, imply or be construed to state or imply that the Commission or its User Agency are indemnitors or insurers of the Architect or Architect's subcontractors.

#### **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 provisions 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 accuracy 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 Indemnification.** The Architect must indemnify, defend, keep and save harmless the Commission and the User Agency and their respective 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.

No official, employee or agent of the Commission shall be charged personally by Architect, or by any subcontractor or assignee of Architect, with any liability or expenses of defense, or be held personally liable to them under any term or provision of this Agreement, or because of the Commission's execution or attempted execution of the Agreement, or because of any breach of the Agreement.

To the extent permissible by law, Architect waives any limits to the amount of its obligations to indemnify, defend or contribute to any sums due pursuant to Architect's obligations under this Article VIII, including any claim by any employee of Architect that may be subject to the Workers' Compensation Act, 820 ILCS 305/1 et seq., or any other law or judicial decision (such as *Kotecki v. Cyclops Welding Corporation*, 146 Ill. 2d 155 (1991)). The Commission, however, does not waive any limitations it may have on its liability under the Illinois Workers' Compensation Act, the Illinois Local Government and Governmental Employees Tort Immunity Act, the Illinois Pension Code, or any other statute.

#### **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 User Agency, 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 arising 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 compensation, 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 agrees in writing, an extension not to exceed sixty (60) days may be granted by the Executive Director. 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 thirty (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 certiorari* 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 certiorari*. 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 signature(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 Board member, 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**  
**Architect of Record Services**  
**Boone Clinton Area Elementary School**  
**PS1239**

**A. General Requirements**

**I. Completion of Design of the Project**

The Architect serves as the Architect of Record for the Project, providing all Services required to complete the coordinated design of the Project. The Commission retained a Design Architect to develop and modify the prototypes provided by the User Department, and to monitor the Services and Deliverables prepared by the Architect(s) of Record in order to assist the Commission in verifying that the requirements of the Commission and User Department are met. The use of prototypes is integral to a number of the goals of the Commission and the User Department, including the implementation of sustainable design in order to control future operations and maintenance costs.

The Commission has also designated the Authorized Commission Representative to assist the Commission in managing the Project and to have the authority, as specifically directed by the Executive Director, to act on its behalf. The Architect shall cooperate at all times with the Commission, its Authorized Commission Representative, Program Manager and Design Architect in the performance of the Services. Although it is anticipated that the Architect will interface and cooperate with representatives of the User Department during the course of the Project, the Architect will take direction with respect to the Services solely from the Authorized Commission Representative.

As the Architect of Record, the Architect will (i) work with the prototype provided by the Commission to complete the design for the Project, (ii) prepare and stamp the construction documents that will be issued for bids by the Commission, and (iii) assist the Commission in the oversight of the construction of the Project. The Architect is solely and completely responsible for the completion of the design of the Project, resulting in a complete and usable facility. The Architect is liable for any and all errors and omissions that may be found in the construction documents that are issued to bid for the construction of the Project.

The Commission will provide the Architect with the following documents: 1) the concept design package for the Project prepared by the Design Architect (issued with the Request for Qualifications for the Project) ("Concept Package"); 2) the construction documents issued for bid for the Skinner Elementary School (the "Skinner Bid Documents"); 3) the Site Plan for the Project; 4) the Guidelines for Design Consultants' Quality Program; 5) the User Department's New Construction Guidelines; and 6) the User Department's Master Specifications.

The Concept Package is the prototype for the Project. The Skinner Bid Documents provide an example of a completed design based on the prototype, as well as an indication of the modifications to the prototype that were suggested by the architect of record for the Skinner project and approved by the Commission and User Department. Although the modifications may have been approved for the Skinner project, they may not necessarily be appropriate for or pertinent to the Project. **Be advised that any and all material deviations from the Concept Package, Site Plan, New Construction Guidelines and Master Specifications must be requested by the Architect and approved, in writing, by the Authorized Commission Representative prior to being included in any Deliverable for the Project.**

The site is bounded by private property to the north, private property to the south, Whipple Street to the east, and private property to the west. The prototype building design is comprised of a three-story, 105,603 square foot steel frame and masonry structure with brick veneer. The new facility will accommodate 36 classrooms, gymnasium, cafeteria, administrative offices, heating and cooling plant, and other ancillary space and systems. The site development will include all code and ordinance required amenities, including, but not limited to, a 30 space parking lot and improvements to the adjacent public rights of way.

## II. Term of this Agreement

### **Commencement Date of Services: March 18, 2008**

The term of this Agreement will terminate when all Services required have been completed to the reasonable satisfaction of the Commission.

## III. Organization of the Services

The Services are separated into two parts: Phase I - Design/Engineering for Site Preparation and Phase II - Design/Engineering for Vertical (Building) Construction. Phase I and Phase II are, in turn, each divided into 6 further 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.

## IV. Responsibilities of the Architect in Performing the Services

A. The Architect shall use the Commission's project management software, as designated by the Authorized Commission Representative for all communications with the Commission, the Authorized Commission Representative, the Design Architect, and the Commission's Program Manager.

B. The Architect is responsible for compiling all Lessons Learned by the Commission on similar projects prior to and during the design of the Project, and implementing such Lessons Learned in the design of the Project. The Architect shall not be relieved of its obligation to obtain the written approval of the Commission and User Department in the event that the implementation of any Lesson Learned requires a material change to the Concept Package, Guidelines for New Construction or Master Specification,

C. The Architect will identify long lead items in the construction documents so as to enable the contractors to order such items in a manner that maintains the Commission's Project Schedule, attached as Schedule C hereto.

D. The Architect will certify its compliance with the Commission's Design Checklist for each phase of the Services. Such certification shall be a Deliverable for each phase of the Services.

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

F. Read and become completely familiar with and knowledgeable of both the form and substance of the Commission's bid documents, including Book 1, Requirements for Bidders, Book 2, General Conditions, Book 2A, General Conditions User Manual, and Book 3, Technical Specifications.

**G. All phases of this Project are required to be designed in accordance with USGBC standards to achieve a minimum Leadership In Energy and Environmental Design (LEED) rating of Silver, or such other level as the Commission may designate.**

## B. Requirements by Phase

### **I. SCHEMATIC DESIGN**

During the Schematic Design phase, the Architect shall provide the following 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. The site preparation design will include

all work necessary to abate and demolish existing structures on the site, as well as to prepare the site both environmentally and geotechnically in order to implement the building construction and site development scope of work. The site preparation scope of work will also require the design of all utilities, to be brought within 5 feet of the building perimeter. 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 all of Architects subconsultants and such other participants as directed by the Authorized Commission Representative. The purpose of the charrette is to confirm that the Project's target LEED™<sup>1</sup> 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.

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. Conduct and document preliminary reviews with required regulatory agencies, including, but not limited to, Bureau of Fire Prevention, Chicago Department of Transportation, Mayor's Office for People with Disabilities, and Office of Emergency Management and Communications.

L. Conduct and prepare a code analysis package, including, but not limited to, the following components:

1. Occupancy classification
2. Construction type
3. Occupant load by area and floor
4. Travel distances
5. Accessibility
6. Exit types, units and widths
7. Plumbing fixture counts
8. Loading berths and parking requirements

9. Fire resistance requirements

M. At the completion of Schematic Design Services, transmit two copies of the complete, 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.

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

O. Schematic Design Phase Deliverables include:

1. Certification of Compliance with the Commission's Design Checklist.
2. Site Preparation Schematic Design Documents and Estimate of Probable Construction Cost (broken down by CSI division or other approved format);
3. Building Construction Schematic Design Documents and Estimate of Probable Construction Costs in the format provided in Exhibit X, attached hereto;
4. Sustainable Design Goals and target LEED checklist, including all LEED detail;
5. Stormwater analysis and management proposal;
6. Proposed Public Right of Way Amendment Plan;
7. Issuance of a zoning analysis package;
8. Issuance of a code analysis package;
9. Provide an initial utility coordination and public infrastructure plan;
10. Provide an initial energy simulation model using the DOE2 Modeling Software;
11. Request for Clarification compilation and log; and
12. Issuance of milestone packages (Site Preparation and Building Construction) for review.

P. Immediately upon the Authorized Commission Representative's review and written approval of the Deliverables of the Schematic Design Services phase, such written approval to be conveyed in a Notice to Proceed for the next phase of the Services, begin the next phase on the updated and approved schedule.

## 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. Develop a keyed furniture, fixture and equipment plan and schedule for review and approval. The plan must locate devices requiring any power, data, communication, low voltage

wiring, security and life safety equipment for Commission and User Agency review and approval. The plan will also indicate any equipment requiring water supply, drainage, condensate lines and vents for each device or piece of equipment.

E. Develop a hardware and device location plan for Commission and User Agency review and approval.

F. Develop a signage plan and specifications for Commission and User Agency review and approval.

G. Develop a Submittal and Closeout Matrix based upon contract document requirements. A template for matrix development will be provided by the Authorized Commission Representative.

H. 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.

I. 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 Representative and incorporate modifications and revisions into the Design Development Documents as required to align the AOR's Estimate of Probable Cost with the Construction Budget for the Project.

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

K. 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.

L. 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 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 Authorized Commission Representative, incorporate User Agency comments into the Construction Documents.

M. Conduct and document preliminary reviews with required regulatory agencies, including, but not limited to, Bureau of Fire Prevention, Chicago Department of Transportation, Mayor's Office for People with Disabilities, and Office of Emergency Management and Communications.

N. Conduct and prepare a code analysis package, including, but not limited to, the following components:

1. Occupancy classification

2. Construction type
3. Occupant load by area and floor
4. Travel distances
5. Accessibility
6. Exit types, units and widths
7. Plumbing fixture counts
8. Loading berths and parking requirements
9. Fire resistance requirements

O. Prepare and issue hard copies of the Design Development Drawings, Outline Specifications, and Narratives to various stakeholders designated by the Authorized Commission Representative for the Design Development Milestone Review. Upon receipt of the review comments, the Architect will be required to respond in writing on the review form furnished by the Authorized Commission Representative.

P. 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, as necessary, 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 or an extension to the Project Schedule.

Q. 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, as necessary, in a manner satisfactory to the Commission. If requested by the Authorized 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 Billing Rates established in accordance with the requirements of Schedule D.

R. Design Development Phase Deliverables include:

1. Certification of Compliance with Commission's Design Checklist.
2. Site Preparation Design Development Documents (including specifications) and Estimate of Probable Construction Cost in the format provided in Exhibit X, attached hereto.
3. Building Construction Design Development Documents (including specifications) and Estimate of Probable Construction Costs in the format provided in Exhibit X, attached hereto.
4. Issuance of approved Furniture, Fixture and Equipment Plan and Schedule.
5. Issuance of approved Hardware and Device Location Plan and Schedule.
6. Issuance of Submittal and Closeout Matrix.
7. Updated LEED checklist.
8. Updated Stormwater Analysis and Management Proposal.
9. Proposed Public Right of Way Amendment Plan.

10. Provide an updated energy simulation model.
11. Plan Commission Documentation for rezoning process.
12. Issuance of initial MEP coordination documents.
13. Issuance of compilation of issued Meeting Minutes (Meeting Minutes shall be recorded and furnished by the Authorized Commission Representative).
14. Issuance of code analysis package.
15. Provide a complete utility coordination and public infrastructure plan.
16. Documentation for User Agency Departmental Approvals.
17. Request for Clarification compilation and log
18. Issuance of milestone packages (Site Preparation and Building Construction) for review.
19. Response to milestone review comments.

S. 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.

### **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. 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.

D. Prepare an Inspection and Testing Plan as part of the construction documents. The plan must be in spreadsheet format, following the specification section numbering system. Each inspection, test and required certificate will be identified by specification section number. The Authorized Commission Representative will identify the testing firm(s) that will be used on the Project, and provide a sample Inspection and Testing Plan for use of the Architect. The Inspection and Testing Plan must provide for:

1. Verification of responsibilities for providing inspections, tests and certificates.
2. Scope of services for the testing and inspection services RFQ.
3. A scorecard to monitor the completion of required inspections and tests, and the submittal of required certificates.

E. 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 as necessary 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 or any extension of time for the performance of the Services.

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 as necessary 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 Billing Rates established in accordance with the requirements of Schedule D.

F. At the completion of the each Construction Document milestone (60%, 90% and 100%), transmit hard copies of the phase documents to the Authorized Commission Representative 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 Authorized Commission Representative, incorporate User Agency comments into the subsequent phase of the Construction Documents.

G. Commission's Performance Evaluation 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.

H. Conduct and document preliminary reviews with required regulatory agencies, including, but not limited to, Bureau of Fire Prevention, Chicago Department of Transportation, Mayor's Office for People with Disabilities, and Office of Emergency Management and Communications.

I. Conduct and prepare a code analysis package, including, but not limited to, the following components:

1. Occupancy classification
2. Construction type
3. Occupant load by area and floor
4. Travel distances
5. Accessibility
6. Exit types, units and widths
7. Plumbing fixture counts
8. Loading berths and parking requirements
9. Fire resistance requirements

J. Prepare and issue hard copies of the Design Development Drawings, Outline Specifications, and Narratives to various stakeholders designated by the Authorized Commission Representative for the Design Development Milestone Review. Upon receipt of the review comments, the Architect will be required to respond in writing on the review form furnished by the Authorized Commission Representative.

K. Update the Submittal and Closeout Matrix based upon construction document requirements.

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

1. Certification of Compliance with Commission's Design Checklist.
2. Issue updated Submittal and Closeout Matrix.
3. Site Preparation Construction Documents (including specifications) and Estimate of Probable Construction Cost in the format provided in Exhibit X, attached hereto.
4. Building Construction Documents (including specifications) and Estimate of Probable Construction Costs in the format provided in Exhibit X, attached hereto.
5. Updated LEED checklist.
6. Updated Stormwater Analysis and Management Proposal.
7. Compilation of issued meeting minutes.
8. Issuance of updated zoning analysis package and required rezoning documentation as required.
9. Provide an updated energy simulation model.
10. Issuance of updated code analysis package.
11. Issuance of updated MEP coordination documentation.
12. Request for Clarification compilation and log
13. Issuance of milestone packages (Site Preparation and Building Construction) for review.

M. 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.

#### **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. Incompatibility 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 reproducible and CAD drawing 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 Commission'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 compromising 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 coordination of individual or multiple services are required with multiple disciplines. Where a significant number of services penetrate a wall, 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 building 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 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 recommends leaving coordination to the construction contractor must be specifically reviewed by the Architect with the Commission's design review team.

G. Attend the Commission's internal Bid Package Review Conference where the Commission and User Department will verify that the construction documents, including the coordination documents, prepared by the Architect are ready to issue for bids.

## **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 respond 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.

G. Attend the Commission's Pre-Bid Conference, Technical Review and review bids as required by the Authorized Commission Representative.

## **VI. CONSTRUCTION PHASE SERVICES**

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

A. Attend and participate in regularly scheduled: (i) weekly Project meetings, and (ii) monthly "pencil draw" meetings for approval of contractor pay requests. Provide no less than twelve hours of field observation of the construction per week in order to monitor 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 final completion of the Project without the 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. 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 5 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 unforeseen conditions in the field, 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 notices of non-conformance of the work to contractors as necessary.

H. 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 description 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 against 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.

I. Maintain RFI and Bulletin logs in a format acceptable to the Authorized Commission Representative.

J. 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. The User Department requires a set of record drawings prepared and coordinated by the Architect. This set of record drawings must be provided in editable, auto-CAD format. The Architect shall, accordingly, oversee the Contractor's efforts to expedite the preparation and delivery of the Contractor's own 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.
- 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 WITHIN THE ARCHITECT'S BASE SCOPE OF SERVICES**

**Architect shall:**

- A. The Architect is solely responsible for the development of the Project specifications. Specifications must comply with the following criteria. On projects where template specifications are furnished by the Commission, the Architect is responsible to amend any template specifications sections which do not adhere to the following criteria.
  - 1. Specifications will follow performance criteria outline format.
  - 2. Specifications will identify acceptable manufacturers.
  - 3. No proprietary specifications will be permitted without written authorization from the Authorized Commission Representative.
  - 4. On projects where template specifications have been provided, the Architect is responsible for the development of any specifications which have not been provided. The Architect is responsible for the verification of all manufacturer names and model numbers as well as the compatibility with other systems and materials specified. Further, the Architect is responsible for verifying that each cited acceptable manufacturer is capable of providing the product as documented in the performance criteria. Deviations from major systems, materials or specialty

items must be approved in writing on projects where template specifications have been provided.

- B. Facilitate and document the value engineering process. Evaluate proposed building systems as to quality, first cost and life cycle cost, impact on LEED certification, constructability, material and product availability. Propose alternate materials and system assemblies as well as the resultant cost savings opportunities.
- C. Develop a furniture, fixture and equipment plan to locate electronic devices, including power, data, communications, security and life safety equipment.
- D. 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.
- E. 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.
- F. 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. An updated model must be provided with each milestone submittal during the design of the Project.
- G. The Architect will be responsible for infrastructure coordination and design integration of any owner-furnished furniture, fixture and equipment (e.g., furniture, communication equipment, sound systems, security/surveillance cameras, photovoltaic panels or geothermal panels, public art).
- H. The Architect will be responsible for assisting the Commission with any documentation and coordination necessary to facilitate amendments to the public right of way.
- I. Administer the Project's LEED compliance and submittal program, including providing all submittals to the USGBC.
- J. The Architect will be responsible for the utility coordination and public infrastructure aspect of the Project including, but not necessarily limited to, the following:
1. Present the Project to the Commission's Utility Roundtable Meeting attended by each public utility and coordinated by the Commission's Deputy Director of Utility Coordination. The Architect will assist the Deputy Director of Utility Coordination as necessary.
  2. Meet with the engineers from Commonwealth Edison to determine if infrastructure relocations will be required. Provide all necessary assistance and coordination for the relocations.
  3. Provide Commonwealth Edison with the electrical service requirements for the new facility. Provide necessary assistance and coordination for the new service. Assist and monitor the transition to permanent power for the facility.
  4. Meet with the engineers from AT&T to determine if infrastructure relocations will be required. Provide the necessary assistance and coordination for the relocation(s).
  5. Provide AT&T with voice and data service requirements for the new facility. Provide the necessary assistance and coordination for the new service.

6. Meet with the engineers from People's Energy to determine if infrastructure relocations will be required. Provide the necessary assistance and coordination for the relocation(s).
  7. Provide People's Energy with gas service requirements for the new facility. Provide the necessary assistance and coordination for the new service.
  8. Meet with the Department of Water Management to review and gain approval for water service and sewer design. Provide the necessary assistance and coordination for the new service.
  9. Meet with the engineers from the City of Chicago Department of Streets and Sanitation, Bureau of Electricity to determine if infrastructure relocations or new street lighting will be required. Provide the necessary assistance and coordination for the relocations and new lighting.
  10. Meet with the Fire Prevention Bureau to determine whether infrastructure relocations or new hydrants will be required. Provide the necessary assistance and coordination for the relocations and the new hydrants.
  11. Meet with the Office of Emergency Management and Communications to determine whether infrastructure relocations or new infrastructure will be required. Provide the necessary assistance and coordination for the relocations and new infrastructure.
  12. Meet with the Chicago Department of Transportation to determine whether infrastructure relocations or new infrastructure will be required. Provide the necessary assistance and coordination for the relocations and new infrastructure.
- K. The Architect shall participate and document all "lessons learned" throughout the design and construction phases of the Project. The intent of this exercise is to conduct a comprehensive design review, thereby documenting ways in which the prototype design may be improved during this and future implementations of the prototype design.
- L. Assist the Commission with warranty inspection at 11 months following Substantial Completion of the Project.

#### **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 accordance with the requirements of Schedule D:

- A. 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.
- B. 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.
- C. 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  
Architect of Record Services  
Boone Clinton Area Elementary School  
PS1239**

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**SCHEDULE C**

**PROJECT SCHEDULE  
Architect of Record Services  
Boone GIlntonArea Elementary School  
PS1239**

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

Schematic Design: Schematic Design documents shall be completed not later than **April 18, 2008**.

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

1. 75% Construction Documents: 75% Construction Documents shall be completed not later than **May 23, 2008**.

2. 100% Construction Documents: 100% Construction Documents shall be completed not later than **July 11, 2008**.

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

Site Preparation work is anticipated to complete not later than **November 14, 2008**.

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

Schematic Design: Schematic Design documents shall be completed not later than **April 18, 2008**.

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

Design Development Documents shall be completed not later than **June 30, 2008**.

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

1. 60% Construction Documents: 60% Construction Documents shall be completed not later than **August 22, 2008**.

2. 90% Construction Documents: 90% Construction Documents shall be completed not later than **October 10, 2008**.

3. 100% Construction Documents: 100% Construction Documents shall be completed not later than **November 19, 2008**.

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

Issue for Bid Set: Issue for Bid Construction Documents shall be completed not later than **December 19, 2008**.

The Bid and Award phase of the project, from bid advertisement to bid opening through final contract award, is anticipated to require **56** calendar days to complete.

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

Construction of the Project building is anticipated to require **450** 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**

**Architect of Record Services  
Boone Clinton Area Elementary School  
PS1239**

**I. ARCHITECT'S FEE**

A. The Commission shall pay the Architect for the satisfactory performance of the Services a Fixed Fee ("Fee") of **\$1,769,217.80**. The Fee will be allocated and payments made on a monthly on percent complete basis as follows:

**Allocation of Fee:**

**Site Preparation** **\$143,800.00**

Schematic Design	15%	<b>\$21,570.00</b>
Design Development	20%	<b>\$28,760.00</b>
Construction Documents	35%	<b>\$50,330.00</b>
Bidding Phase Services	5%	<b>\$7,190.00</b>
Construction Phase Services	20%	<b>\$28,760.00</b>
Project Close-out	5%	<b>\$7,190.00</b>

**Design/ Engineering of Building:** **\$1,625,417.80**

Schematic Design	15%	<b>\$243,812.67</b>
Design Development	20%	<b>\$325,083.56</b>
Construction Documents	35%	<b>\$568,896.23</b>
Bidding Phase Services	5%	<b>\$81,270.89</b>
Construction Phase Services	20%	<b>\$325,083.56</b>
Project Close-out	5%	<b>\$81,270.89</b>

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

**II. BILLING RATES AND COMPENSATION FOR ADDITIONAL SERVICES**

A. The Commission shall 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 performing Additional Services) will be the actual base salaries paid to the specific employee performing the services times a 2.5 multiplier.

The 2.5 multiplier will fully compensate the Architect for all direct and indirect costs associated with the Additional Services. Indirect costs included in the multiplier shall constitute full and complete compensation to the Architect for labor burden costs (including Workers' Compensation insurance, FICA, SUTA, health benefits, long term disability benefits, pensions and similar contribution and other statutory and non-statutory employee benefits), indirect administrative expenses, general and

administrative expenses, overhead, additional premium costs for insurance (including but not limited to general liability, professional liability, valuable papers and automobile, but excluding additional insurance premium costs for specialty subconsultants and Subcontractors), computer and related charges, postage and handling charges, parking and mileage charges, telephone service (including local calling charges), profit, and all items not specifically identified below as "Reimbursable Expenses."

#### **IV. REIMBURSABLE EXPENSES**

- 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. Reimbursable Expenses must be supported with proper documentation in the form of itemized invoices which include a notation stating the Project-related purpose of the expenditure.

The following will be considered Reimbursable Expenses:

1. Plotting, printing, reproduction and distribution 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.
2. Printing and distribution costs associated with shop drawing and submittal reviews during construction.

The following are NOT Reimbursable Expenses:

1. Plotting, printing and distribution of drawings and specifications for the purpose of coordination between members of the Architect's team, or otherwise incidental to the Architect's Services are not Reimbursable Expenses.
2. Office and administrative expenses, including telephone system expenses, photocopying, duplicating costs, postage, office & drafting supplies, fax and delivery services (except as noted above in A. 1. and A. 2. are not Reimbursable Expenses.

- B. The following shall be Reimbursable Expenses provided that the Architect has obtained the 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.
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.
6. Other direct costs of the Project may be approved as a Reimbursable Expense by Commission's Authorized Representative provided that written approval is obtained in advance of incurring the expense and provided that the expense is to be reimbursed on a Lump Sum basis.

- C. Reimbursable Expenses shall not exceed **\$200,000.00** except as approved by the Commission in the form of an Amendment issued in accordance with Section 4.13 of this Agreement

**V. METHOD OF PAYMENT**

1. Invoices. Once each month, the Architect will submit an invoice to the Commission 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.

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 one original of its monthly invoice to the Authorized Commission Representative for approval.

**SCHEDULE E  
INSURANCE REQUIREMENTS**

**Architect of Record Services  
Boone Clinton Area Elementary School  
PS1239**

The Architect of Record (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.

**E.1. INSURANCE TO BE PROVIDED:**

**E.1.1. 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 \$500,000 each accident, illness, or disease.

**E.1.2. Commercial General Liability (Primary and Umbrella)**

Commercial General Liability Insurance or equivalent with limits of not less than \$5,000,000 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, Board of Education of the City of Chicago and City of Chicago must be named as additional insureds on a primary, non-contributory basis for any liability arising directly or indirectly from the work.

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

**E.1.3. Automobile Liability (Primary and Umbrella)**

When any motor vehicles (owned, non-owned and hired) are used in connection with work to be performed, the Architect must provide Automobile Liability Insurance, with limits of not less than \$2,000,000 per occurrence for bodily injury and property damage. The Commission, Board of Education City of Chicago and City of Chicago must be named as additional insureds on a primary, non-contributory basis.

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

**E.1.4. Professional Liability**

When Architect performs work in connection with the Agreement, Professional Liability Insurance must be maintained with limits of not less than \$5,000,000 covering acts, errors, or omissions. 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 two (2) years.

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

**E.1.5. Property**

The Architect is responsible for all loss or damage to Commission, Board and/or City property at full replacement cost. 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

#### **E.1.6. 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.

#### **E.1.7 Contractors Pollution Liability**

When any work is performed which may cause a pollution exposure, Contractors Pollution Liability must be provided covering bodily injury, property damage and other losses caused by pollution conditions that arise from the Agreement scope of services with limits of not less than \$2,000,000 per occurrence. Coverage must include completed operations, contractual liability, defense, excavation, environmental cleanup, remediation and disposal. When policies are renewed or replaced, the policy retroactive date must coincide with or precede, start of work on the Agreement. A claims-made policy, which is not renewed or replaced, must have an extended reporting period of two (2) years. The Public Building Commission, Board of Education of the City of Chicago and City of Chicago are to be named as additional insureds on a primary, non-contributory basis.

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

#### **E.1.8 Railroad Protective Liability**

When any work is to be done adjacent to or on railroad or transit property, Architect must provide or cause to be provided, with respect to the operations that Architect or subcontractors perform, Railroad Protective Liability Insurance in the name of railroad or transit entity. The policy must have limits of not less than the requirement of the operating railroad/transit entity for losses arising out of injuries to or death of all persons, and for damage to or destruction of property, including the loss of use thereof.

### **ADDITIONAL REQUIREMENTS**

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 any insurance policy has 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 insurance. 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.

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.

The insurance must provide for 60 days prior written notice to be given to the Commission if coverage is substantially changed, canceled, or non-renewed.

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

The Architect agrees that insurers waive their rights of subrogation against the Commission, Board of Education of the City of Chicago and the City of Chicago, their respective Board members, employees, elected officials, or representatives.

If Architect is a joint venture or limited liability company, the insurance policies must name the joint venture or limited liability company as a named insured.

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.

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

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

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 subcontractors are subject to the same insurance requirements of Architect unless otherwise specified in this Agreement.

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

The Commission's Risk Management Department maintains the rights to modify, delete, alter or change these requirements.

**SCHEDULE F**

**KEY PERSONNEL**

**Architect of Record Services  
Boone Clinton Area Elementary School  
PS1239**

**Architect of Record:**

**Muller & Muller, Ltd. (WBE):** Architecture/Interiors/LEED/Management

- Jay Muller, AIA, - Project Principal
- Terry Sullivan, AIA, LEED AP – Senior Project Manager and LEED Coordinator
- Mindy Viamontes – Project Manager/ Project Architect

**Civil/ Structural Engineer of Record:**

**Graef, Anhalt & Schloemer, Inc.:** Civil and Structural Engineering

- Peter Johnston, P.E. - Project Principal
- Mark Youngquist, P.E. - Project Manager and Lead Site Designer
- Paul Gorski, S.E., P.E. - Structural Design Engineer

**MEP/FP Engineer of Record:**

**Primera Engineers, Ltd. (MBE):** MEP/Life Safety Engineering

- Ken Panucci , PE, CEM -Project Director
- Andy Bienkowski – Senior Mechanical Designer
- Josh Greenfield, PE, LEED AP – Mechanical Engineer, LEED Design
- Ben Rubach, LEED AP – Plumbing Engineer
- Jason DeRosa, EIT – Electrical Engineer

**Landscape Architect of Record:**

**Daniel Weinbach & Partners, Ltd.:** Landscape Architecture

- Wendy Schulenberg, ASLA - Principal
- Bill Ferguson - Senior Landscape Architect

**Construction Cost Consultant:**

**Vistara Construction:** Cost Estimating

- Ramesh Nair – Senior Project Estimator
- Shivangi Patel – Project Engineer

**SCHEDULE G**

**OTHER CONDITIONS**

**Architect of Record Services  
Boone Clinton Area Elementary School  
PS1239**

**NONE**

**EXHIBIT A**

**DISCLOSURE OF RETAINED PARTIES**

**Architect of Record Services  
Boone Clinton Area Elementary School  
PS1239**

**A. Definitions and Disclosure Requirements**

1. As used herein, "Contractor/Consultant/Architect" means a person or entity who has any contract or lease with the Public Building Commission of Chicago ("Commission").
2. Commission bids, leases, contracts, and/or qualification submittals must be accompanied by a disclosure statement providing certain information about lobbyists whom the Contractor/Consultant/Architect 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/Consultant/Architect 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/Consultant/Architect hereby certifies as follows:

1. This Disclosure relates to the following transaction: Professional Services Agreement Contract PS1239  
Description of goods or services to be provided under Contract: Project Number CPS-33  
Architect of Record Services for Boone Clinton Area Elementary School
2. Name of Contractor: Muller & Muller, Ltd.
3. EACH AND EVERY lobbyist retained or anticipated to be retained by the Contractor/Consultant/Architect with respect to or in connection with the contract or lease is listed below. Attach additional pages if necessary.

**Retained Parties:**


Name	Business Address	Relationship (Attorney, Lobbyist, etc.)	Fees (Indicate whether paid or estimated)

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

4. The Contractor/Consultant/Architect 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, terminate the Contractor/Consultant/Architect's participation in the contract or other transactions with the Commission.
- b. If the Contractor/Consultant/Architect is uncertain whether a disclosure is required, the Contractor/Consultant/Architect 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/Consultant/Architect 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/Consultant/Architect and that the information disclosed herein is true and complete.

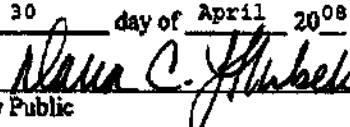
  
\_\_\_\_\_  
Signature

April 30, 2008  
\_\_\_\_\_  
Date

Cynthia Muller  
\_\_\_\_\_  
Name (Type or Print)

President  
\_\_\_\_\_  
Title

Subscribed and sworn to before me

this 30 day of April 2008  
  
\_\_\_\_\_  
Notary Public



OFFICIAL SEAL  
DANA C. RUBEN  
MAY 19 1994  
U.S. DEPARTMENT OF JUSTICE

**EXHIBIT B**

**DISCLOSURE AFFIDAVIT**

**Architect of Record Services  
Boone Clinton Area Elementary School  
PS1239**

**DISCLOSURE AFFIDAVIT**

Name: Muller & Muller, Ltd

Address: 700 North Sangamon Chicago, IL 60622

Telephone No.: 312-432-4180

Federal Employer I.D. #: 36-3652558 Social Security #: \_\_\_\_\_

Nature of Transaction:

- Sale or purchase of land
- Construction Contract
- 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 Cynthia Muller, as President  
(Name) (Title)  
and on behalf of Muller & Muller, Ltd.  
("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:  Corporation  LLC  
 Partnership  LLP  
 Joint Venture  Not-for-Profit Corporation

Article XVI.  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 [] No []

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

Name (Print or Type)	Title (Print or Type)	Name (Print or Type)	Title (Print or Type)
<u>Cynthia Muller</u>	<u>President-Treasurer-Secretary</u>	<u>(100% Owner and Director)</u>	
_____	_____	_____	_____
_____	_____	_____	_____

d. 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
<u>Cynthia Muller</u>	<u>700 North Sangamon Chicago IL 60622</u>	<u>100 %</u>
_____	_____	_____ %
_____	_____	_____ %

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

NA

f. 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 such that any person with a beneficial ownership interest of 7.5% or more in the corporation contracting in the PBC is disclosed. For example, if Corporation B owns 15% of Corporation A, and Corporation A is contracting with the PBC, then Corporation B must complete a Disclosure Affidavit. If Corporation B is owned by Corporations C and D, each of which owns 50% of Corporation B, then both Corporations C and D must complete Disclosure Affidavits.

**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)
NA	
_____	_____
_____	_____
_____	_____

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

a. State of incorporation NA

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 affiliated entities of the Contractor, or any responsible official thereof, or any other official, agent or employee of the Contractor, 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:
  - 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<sup>2</sup> 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.<sup>3</sup>
  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<sup>4</sup> 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. SUBCONTRACTORS**

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, disclosures substantially in the form of Section 1, and certifications substantially in the form of Section 2, of this Disclosure Affidavit. Based on such disclosures and 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.

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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/FEEES**

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.

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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. 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).

**(a) F. 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.

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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<sup>2</sup>, (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:

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(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. 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.

**V. 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 of Authorized Officer

Cynthia Muller

\_\_\_\_\_  
Name of Authorized Officer (Print or Type)

President

\_\_\_\_\_  
Title

312-432-4180

\_\_\_\_\_  
Telephone Number

State of Illinois

County of Cook

Signed and sworn to before me on this 30 day of April, 2008 by

Cynthia Muller (Name) as President (Title) of

Muller & Muller, Ltd. (Bidder/Proposer or Contractor)

  
\_\_\_\_\_  
Notary Public Signature and Seal



OFFICIAL SEAL  
JANA O. RUBEN  
APPROVED FOR THE BOARD OF  
SUPERVISORS

## 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.*); (3) the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 7401 *et seq.*); (4) the Clean Water Act (33 U.S.C. § 1251 *et seq.*); (5) the Clean Air Act (42 U.S.C. § 7401 *et seq.*); (6) the Toxic Substances Control Act of 1976 (15 U.S.C. § 2601 *et seq.*); (7) the Safe Drinking Water Act (42 U.S.C. § 300f); (8) the Occupational Health and Safety Act of 1970 (29 U.S.C. § 651 *et seq.*); (9) 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**

**Architect of Record Services  
Boone Clinton Area Elementary School  
PS1239**

**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]** Boone Clinton Area Elementary School  
**[PROJECT #]** CPS-33

**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]

**Request for Taxpayer  
 Identification Number and Certification**

Give form to the  
 requester. Do not  
 send to the IRS.

Print or type  
 See Specific Instructions on page 2.

Name (as shown on your income tax return)  
**Muller & Muller, Ltd**

Business name, if different from above

Check appropriate box:  Individual/sole proprietor  Corporation  Partnership  
 Limited liability company. Enter the tax classification (D=disregarded entity, C=corporation, P=partnership) ▶ .....  Exempt payee  
 Other (see instructions) ▶

Address (number, street, and apt. or suite no.)  
**700 North Sangamon**

City, state, and ZIP code  
**Chicago, IL 60622**

Requester's name and address (optional)

List account number(s) here (optional)

**Part I Taxpayer Identification Number (TIN)**

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

**Note.** If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number

OR

Employer identification number  
**36 : 3652558**

**Part II Certification**

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
- I am a U.S. citizen or other U.S. person (defined below).

**Certification instructions.** You must cross out Item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, Item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. See the instructions on page 4.

Sign Here Signature of U.S. person  Date ▶ **April 30, 2008**

**General Instructions**

Section references are to the Internal Revenue Code unless otherwise noted.

**Purpose of Form**

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued).
- Certify that you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

**Note.** If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

**Definition of a U.S. person.** For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien.
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States.
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

**Special rules for partnerships.** Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity.

- The U.S. grantor or other owner of a grantor trust and not the trust, and
- The U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

**Foreign person.** If you are a foreign person, do not use Form W-9. Instead, use the appropriate Form W-8 (see Publication 515, *Withholding of Tax on Nonresident Aliens and Foreign Entities*).

**Nonresident alien who becomes a resident alien.** Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items:

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

**Example.** Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity not subject to backup withholding, give the requester the appropriate completed Form W-8.

**What is backup withholding?** Persons making certain payments to you must under certain conditions withhold and pay to the IRS 28% of such payments. This is called "backup withholding." Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

**Payments you receive will be subject to backup withholding if:**

1. You do not furnish your TIN to the requester.
2. You do not certify your TIN when required (see the Part II instructions on page 3 for details).
3. The IRS tells the requester that you furnished an incorrect TIN.

4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or

5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1993 only).

Certain payees and payments are exempt from backup withholding. See the instructions below and the separate instructions for the Requester of Form W-9.

Also see *Special rules for partnerships* on page 1.

## Penalties

**Failure to furnish TIN.** If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

**Civil penalty for false information with respect to withholding.** If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

**Criminal penalty for falsifying information.** Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

**Misuse of TINs.** If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

## Specific Instructions

### Name

If you are an individual, you must generally enter the name shown on your income tax return. However, if you have changed your last name, for instance, due to marriage without informing the Social Security Administration of the name change, enter your first name, the last name shown on your social security card, and your new last name.

If the account is in joint names, list first, and then circle, the name of the person or entity whose number you entered in Part I of the form.

**Sole proprietor.** Enter your individual name as shown on your income tax return on the "Name" line. You may enter your business, trade, or "doing business as (DBA)" name on the "Business name" line.

**Limited liability company (LLC).** Check the "Limited liability company" box only and enter the appropriate code for the tax classification ("D" for disregarded entity, "C" for corporation, "P" for partnership) in the space provided.

For a single-member LLC (including a foreign LLC with a domestic owner) that is disregarded as an entity separate from its owner under Regulations section 301.7701-3, enter the owner's name on the "Name" line. Enter the LLC's name on the "Business name" line.

For an LLC classified as a partnership or a corporation, enter the LLC's name on the "Name" line and any business, trade, or DBA name on the "Business name" line.

**Other entities.** Enter your business name as shown on required federal tax documents on the "Name" line. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on the "Business name" line.

**Note.** You are requested to check the appropriate box for your status (individual/sole proprietor, corporation, etc.).

### Exempt Payee

If you are exempt from backup withholding, enter your name as described above and check the appropriate box for your status, then check the "Exempt payee" box in the line following the business name, sign and date the form.

Generally, individuals (including sole proprietors) are not exempt from backup withholding. Corporations are exempt from backup withholding for certain payments, such as interest and dividends.

**Note.** If you are exempt from backup withholding, you should still complete this form to avoid possible erroneous backup withholding.

The following payees are exempt from backup withholding:

1. An organization exempt from tax under section 501(c)(3), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2).
2. The United States or any of its agencies or instrumentalities.
3. A state, the District of Columbia, a possession of the United States, or any of their political subdivisions or instrumentalities.
4. A foreign government or any of its political subdivisions, agencies, or instrumentalities, or
5. An international organization or any of its agencies or instrumentalities.

Other payees that may be exempt from backup withholding include:

6. A corporation.
7. A foreign central bank of issue.
8. A dealer in securities or commodities required to register in the United States, the District of Columbia, or a possession of the United States.
9. A futures commission merchant registered with the Commodity Futures Trading Commission.
10. A real estate investment trust.
11. An entity registered at all times during the tax year under the Investment Company Act of 1940.
12. A common trust fund operated by a bank under section 584(a).
13. A financial institution.
14. A middleman known in the investment community as a nominee or custodian, or
15. A trust exempt from tax under section 664 or described in section 4947.

The chart below shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 15.

IF the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt payees except for 9
Broker transactions	Exempt payees 1 through 13. Also, a person registered under the Investment Advisers Act of 1940 who regularly acts as a broker
Barter exchange transactions and patronage dividends	Exempt payees 1 through 5
Payments over \$600 required to be reported and direct sales over \$5,000 <sup>1</sup>	Generally, exempt payees 1 through 7

<sup>1</sup>See Form 1099-MISC, Miscellaneous Income, and its instructions. However, the following payments made to a corporation (including gross proceeds paid to an attorney under section 6045(b), even if the attorney is a corporation) and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, and payments for services paid by a federal executive agency.

## Part I. Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN. However, the IRS prefers that you use your SSN.

If you are a single-member LLC that is disregarded as an entity separate from its owner (see *Limited liability company (LLC)* on page 2), enter the owner's SSN (or EIN, if the owner has one). Do not enter the disregarded entity's EIN. If the LLC is classified as a corporation or partnership, enter the entity's EIN.

**Note.** See the chart on page 4 for further clarification of name and TIN combinations.

**How to get a TIN.** If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local Social Security Administration office or get this form online at [www.ssa.gov](http://www.ssa.gov). You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at [www.irs.gov/businesses](http://www.irs.gov/businesses) and clicking on Employer Identification Number (EIN) under Starting a Business. You can get Forms W-7 and SS-4 from the IRS by visiting [www.irs.gov](http://www.irs.gov) or by calling 1-800-TAX-FORM (1-800-829-3876).

If you are asked to complete Form W-9 but do not have a TIN, write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

**Note.** Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

**Caution:** A disregarded domestic entity that has a foreign owner must use the appropriate Form W-8.

## Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if items 1, 4, and 5 below indicate otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). Exempt payees, see *Exempt Payee* on page 2.

**Signature requirements.** Complete the certification as indicated in 1 through 5 below.

1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983. You must give your correct TIN, but you do not have to sign the certification.

2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983. You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

**3. Real estate transactions.** You must sign the certification. You may cross out item 2 of the certification.

**4. Other payments.** You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

**5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions.** You must give your correct TIN, but you do not have to sign the certification.

### What Name and Number To Give the Requester

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account)	The actual owner of the account or, if combined funds, the first individual on the account
3. Custodian account of a minor (Uniform Gift to Minors Act)	The minor <sup>2</sup>
4. a. The usual revocable savings trust (grantor is also trustee)	The grantor-trustee
b. So-called trust account that is not a legal or valid trust under state law	The actual owner
5. Sole proprietorship or disregarded entity owned by an individual	The owner <sup>3</sup>
For this type of account:	Give name and EIN of:
6. Disregarded entity not owned by an individual	The owner
7. A valid trust, estate, or pension trust	Legal entity <sup>4</sup>
8. Corporate or LLC electing corporate status on Form 9632	The corporation
9. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
10. Partnership or multi-member LLC	The partnership
11. A broker or registered nominee	The broker or nominee
12. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity

<sup>1</sup> List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

<sup>2</sup> Circle the minor's name and furnish the minor's SSN.

<sup>3</sup> You must show your individual name and you may also enter your business or "DBA" name on the second name line. You may use either your SSN or EIN if you have one, but the IRS encourages you to use your SSN.

<sup>4</sup> List first and circle the name of the trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see Special rules for partnerships on page 1.

**Note.** If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

### Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons who must file information returns with the IRS to report interest, dividends, and certain other income paid to you, mortgage interest you paid, the acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA, or Archer MSA or HSA. The IRS uses the numbers for identification purposes and to help verify the accuracy of your tax return. The IRS may also provide this information to the Department of Justice for civil and criminal litigation, and to cities, states, the District of Columbia, and U.S. possessions to carry out their tax laws. We may also disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal nontax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism.

You must provide your TIN whether or not you are required to file a tax return. Payers must generally withhold 28% of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to a payer. Certain penalties may also apply.

### Secure Your Tax Records from Identity Theft

Identity theft occurs when someone uses your personal information such as your name, social security number (SSN), or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:

- Protect your SSN.
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax preparer.

Call the IRS at 1-800-829-1040 if you think your identity has been used inappropriately for tax purposes.

Victims of identity theft who are experiencing economic harm or a system problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.

Protect yourself from suspicious emails or phishing schemes. Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to [phishing@irs.gov](mailto:phishing@irs.gov). You may also report misuse of the IRS name, logo, or other IRS personal property to the Treasury Inspector General for Tax Administration at 1-800-366-4484. You can forward suspicious emails to the Federal Trade Commission at: [spam@uce.gov](mailto:spam@uce.gov) or contact them at [www.consumer.gov/idtheft](http://www.consumer.gov/idtheft) or 1-877-IDTHEFT(438-4338).

Visit the IRS website at [www.irs.gov](http://www.irs.gov) to learn more about identity theft and how to reduce your risk.