

PUBLIC BUILDING COMMISSION OF CHICAGO



AGREEMENT

CONTRACT NUMBER PS1719A

WITH

NEDERLAND REFRIGERATION, AIR CONDITIONING AND HEATING CORPORATION
dba E CUBE, INC.

TO PROVIDE

COMMISSIONING AUTHORITY SERVICES

FOR

VARIOUS SITES

Mayor Richard M. Daley
Chairman

Erin Lavin Cabonargi
Executive Director

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

| Public Building Commission of Chicago | | |
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| 01 PBC: | 01-A-04-05 | |
| 02 PMO: | | |
| 03 UAP: | | |
| 04 PROJECT No: | 00000 | |
| REC'D | JUN 07 2010 | |
| Authority 01- | | |
| Controls 02- | | |
| Procedure 03- | | |
| Plan/Spec 04- | | |
| Construct 05- | | |
| FFE 06- | | |
| CloseOut 07- | | |

CN - PBC - GSB - PS1719A Con - 20100406

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EXECUTION PAGE
COMMISSIONING AUTHORITY SERVICES – PS1719A
FOR
VARIOUS SITES

THIS AGREEMENT effective as of April 9, 2010, 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 Nederland Refrigeration, Air Conditioning and Heating Corporation dba E Cube, Inc. with offices at 1900 Folsom Street, Suite 109, Boulder, Colorado (the "**Consultant**").

Recitals:

Whereas, the Commission intends to undertake from time to time the acquisition, demolition, renovation, development, construction and/or improvement of buildings, facilities and other improvements ("Project") located in the City of Chicago ("City") at the request of various governmental and public agencies ("User Agency").

WHEREAS, the Commission requires certain professional services as described in Schedule B of the Agreement as modified from time to time by Task Order (the "Services") in connection with the Projects undertaken by the Commission for the use and benefit of a User Agency.

WHEREAS, the Consultant desires to be retained by the Commission to perform the Services and has represented to the Commission that the Consultant is qualified and competent, by education and training, and has the knowledge, skill, experience and other resources necessary to perform the Services required by the Agreement in accordance with terms and conditions of the Agreement.

WHEREAS, in reliance upon the Consultant's representations and Key Personnel as identified in Schedule E, the Commission has selected the Consultant to perform the Services on the terms and conditions set forth in this Agreement as modified from time to time by Task Order.

NOW, THEREFORE, the parties have executed this Agreement on the terms and conditions that follow:

COMMISSIONING AUTHORITY SERVICES - PS1719A
FOR
VARIOUS SITES

PUBLIC BUILDING COMMISSION OF CHICAGO

Richard M. Daley
Richard M. Daley
Chairman

Date: _____

ATTEST:

Edgwick C. Johnson
Edgwick C. Johnson - Secretary

Date: 6/14/2010

Approved as to form and legality

Jaquinta Spung
Neal & Leroy, LLC

Date: 6/3/10

CONSULTANT: NEDERLAND REFRIGERATION, AIR CONDITIONING AND HEATING CORPORATION dba
E CUBE, INC.

Leonard F. Rozek
President

Date: 5/27/10

AFFIX CORPORATE
SEAL, IF ANY, HERE

County of: BOULDER

State of: COLORADO

Subscribed and sworn to before me by Leonard F. Rozek
on behalf of Consultant this 27 day of May, 2010.

Jodann Schweizer
Notary Public

My Commission expires: 7/21/13

(SEAL OF NOTARY)



SCHEDULE A

TERMS AND CONDITIONS

1. **Recitals.** The Recitals set forth on the Execution Page of this Agreement are hereby incorporated herein by reference.

2. **Definitions.** The herein words and phrases have the following meanings for purposes of this Agreement.

a. **Agreement** means this Professional Services Agreement for Specialty Consulting Services, including all schedules, exhibits or documents attached hereto and/or incorporated by reference herein, and all amendments, supplements or Task Orders made in accordance with the terms hereof.

b. **Commission** means the Public Building Commission of Chicago, a municipal corporation organized under the Public Building Commission Act of the State of Illinois, as amended, or its duly authorized officers or employees.

c. **Consultant** means the company or other entity identified in this Agreement, and such successors or assigns, if any, as may be authorized to perform the Services required by the terms and conditions of this Agreement.

d. **CW System** or **CW** means the on-line collaboration workspace and document management system established and maintained by the Commission for electronic submission and receipt of documents and reports.

e. **Deliverables** means the documents, in any format (electronic or hard copy) requested by the Commission, including without limitation drawings, plans, reports, forms, recommendations, and analyses, that the Consultant is required under this Agreement to provide to the Commission.

f. **Executive Director** means the person employed by the Commission as its Executive Director or the duly authorized representative thereof.

g. **Key Personnel** means those job titles and persons as identified in such positions in Schedule E of this Agreement.

h. **Services** means collectively, the duties, responsibilities and tasks that are necessary in order for the Consultant to provide the Scope of Services required by the Commission under Schedule B of this Agreement and the assigned Task Order.

i. **Sub-consultant or Subcontractor** means a partnership, firm, corporation or entity other than the Consultant that furnishes labor, materials and/or equipment to the Consultant related to the performance of the Services and/or improvement of the Project.

j. **Task Order** means a document issued by the Commission to the Consultant pursuant to this Agreement that authorizes in writing Services and/or Deliverables to be provided by the Consultant, together with any applicable exhibits or schedules, a timetable for any Deliverables and the applicable fees.

2. **Incorporation of Documents.** The Resolution passed by the Board of Commissioners of the Commission on October 1, 2009, concerning utilization of minority business enterprises ("MBE") and women business enterprises ("WBE"), as the same may be amended from time to time, is hereby incorporated in and made a part of this Agreement. By executing this Agreement, Consultant acknowledges and agrees that Consultant is familiar with the contents of such Resolution and will comply

fully with all applicable portions thereof in performing the Services.

3. Engagement and Standards for Performing Services.

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

b. **Performance Standard.** The Consultant represents and agrees that the Services performed under this Agreement will proceed with efficiency, promptness and diligence and will be executed in a competent and thorough manner, in accordance with reasonable professional standards in the field consistent with that degree of skill and care ordinarily exercised by practicing consulting professionals performing services of a scope, purpose, and magnitude comparable with the Services to be provided under this Agreement and the assigned Task Order. If in the course of performing the Services, Consultant identifies any condition, situation, issue or problem that may impact the performance of the Services or the Project, Consultant shall promptly provide notice to the Commission.

c. **Consultant's Personnel.** The Consultant agrees that it will assign at all times during the term of the Agreement the number of experienced, appropriately trained employees necessary for the Consultant to perform the Services and the assigned Task Order in the manner required by this Agreement. Consultant must not reassign or replace Key Personnel without the written consent of the Commission. Consultant must ensure that all Services and Deliverables 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. Consultant must maintain current copies of any such licenses and provide such copies, upon request, to the Commission. Consultant remains responsible for the professional and technical accuracy of all Services and Deliverables furnished, whether by the Consultant or others on its behalf. Consultant must at all times use its best efforts on behalf of the Commission to assure timely and satisfactory rendering and completion of the Services. Consultant must perform all Services in accordance with the terms and conditions of this Agreement, to the reasonable satisfaction of the Commission. All Deliverables must be prepared in a format satisfactory to the Commission and delivered in a timely manner consistent with the requirements of this Agreement and the assigned Task Order.

d. **Independent Contractor.** In performing the Services under this Agreement, Consultant shall at all times be an independent contractor, and does not and must not act or represent itself as an agent or employee of the Commission or the User Agency. As an independent contractor, Consultant is solely and wholly responsible for determining the means and methods for performing the Services. The Agreement will not be construed as an agreement of partnership, joint venture, or agency.

e. **Limitations on Sub-Consultants and Subcontractors.** Consultant 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.

f. **Failure to Meet Performance Standard.** If the Consultant fails to comply with its obligations under the standards of the Agreement, the Consultant 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 Consultant 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 Consultant, either under the Agreement, at law or in equity.

g. **Changes to the Services.** The Commission may from time to time, request

changes to the terms of the Agreement, Task Order or the Services of the Consultant to be performed hereunder. Such changes, including any increase or decrease in the amount of compensation and revisions to the duration of the Services or timetable for Deliverables, which are mutually agreed upon by and between the Commission and Consultant, shall be incorporated in a written amendment to this Agreement or the Task Order. The Commission shall not be liable for any changes absent such written amendment.

4. Task Orders.

a. **Task Order Service Requests.** During the term of the Agreement, the Commission may issue one or more requests or solicitations for specific Services to be performed under the Agreement (a "Task Order Service Request" or "TOSR"). Each such Task Order Request will identify the Project, describe the specific Services to be performed, the desired completion date, and any other information or documents to be provided by the Consultant in responding to the Task Order Service Request.

b. **Task Order Proposals.** Consultant must submit to the Commission a written response to the Task Order Service Request by providing the information and documents requested (the "Task Order Proposal"). The Task Order Proposal will propose a schedule, budget, Deliverables, a list of technical personnel who will perform the Services and any other information or documents listed in the Task Order Service Request. The Task Order Proposal must be submitted within the time specified in the Task Order Service Request. Any costs associated with the preparation of such Task Order Proposal are not compensable under the Agreement and the Commission is not liable for any such costs.

c. **Review Process.** The Commission will review the Task Order Proposal and may elect to approve it, reject it, or use it as a basis for further negotiations with Consultant regarding the Task Order and specific Services to be performed and/or Deliverables to be provided. If the Commission and Consultant negotiate changes to the Task Order regarding the specific Services and/or Deliverables to be provided, Consultant must submit a revised Task Order Proposal (based upon such negotiations) to the Commission.

d. **Notice of Approval of Task Orders.** All Task Orders are subject to the written approval of the Commission and no Task Order will become binding upon the Commission until it is approved in writing by the Executive Director. Absent approval of a Task Order and issuance of a Notice to Proceed as provided in the following sub-paragraph, the Commission will not be obligated to pay or have any liability to Consultant for any Services or Deliverables provided by Consultant pursuant to such Task Order.

e. **Notice to Proceed.** After approval of the Consultant's engagement to perform Services under a Task Order (as evidenced by the execution of the Notice of Award by the Executive Director, the Commission shall issue a Notice to Proceed authorizing the Services that are within the scope of such Task Order and attaching or incorporating the applicable Task Order. Upon receipt of an executed Notice to Proceed issued by the Project Manager, Consultant will promptly commence and perform, in accordance with the Task Order, the Services set forth in the Task Order. Consultant shall not commence the applicable Services unless and until the Commission issues the Notice to Proceed.

e. **No Obligation.** Consultant acknowledges and agrees that the Commission is under no obligation to issue any Task Orders, and that it is within the Commission's discretion whether to include Consultant in any solicitation for Task Order Proposals.

5. Duties and Obligations of Consultant.

a. **Nondiscrimination.** The Consultant agrees that in performing this Agreement it shall not discriminate against any worker, employee or applicant for employment, or any member of the

public, because of race, creed, gender, color, national origin or disability, or otherwise commit an unfair labor practice. Attention is called to applicable provisions of the Civil Rights Act of 1964, 88-352, July 2, 1964, 78 Stat. 241 et. Seq. the Americans with Disabilities Act of 1990, 42 U.S.C. 12010 et. Seq., the Age Discrimination Act, 43 U.S.C. Sec. 6101-6106 (1981); Illinois Human Rights Act 775 ILCS 5/1-101 et. Seq. and the Public Works Employment Discrimination Act 775 ILCS 10/0.0 1 through 10/20, the Chicago Human Rights Ordinance, Chapter 2-160, Section 2-160-010 et seq. of the Municipal Code (1990), as amended, and a Resolution passed by the Board of Commissioners of the Public Building Commission of Chicago on October 1, 2009, concerning participation of Minority Business Enterprises and Women Business Enterprises on contracts awarded by the Commission. The Consultant will furnish such reports and information as requested by the Commission or the Illinois Department of Human Relations or any other administrative or governmental entity overseeing the enforcement, administration or compliance with the above referenced laws and regulations.

b. **Employment Procedures, Preferences and Compliances.** Salaries of employees of Consultant performing work under this Agreement shall be paid unconditionally and not less often than once a month without deduction or rebate on any account except only such payroll deductions as are mandatory or permitted by the applicable law or regulations. Attention is called to [Illinois Compiled Statutes, 1992 relating to Wages and Hours including 820 ILCS 130/0.01 through 130/12 thereof (Prevailing Wage Act), 30 ILCS 570/1 through 570/7 (Employment of Illinois Workers on Public Works Act) and 30 ILCS 560/0.01 through 560/7 (Public Works Preference Act).] The Consultant shall comply with all applicable "Anti-Kickback" laws and regulations, including the "Anti-Kickback" Act of June 13, 1934 (48 Stat. 948; 62 Stat. 740; 63 Stat. 108; 18 U.S.C. § 874; 40 U.S.C. § 276c) and the Illinois Criminal Code of 1961 720 ILCS 5/33E-1 et. seq. If, in the performance of this Agreement, there is any direct or indirect kickback, the Commission shall withhold from the Consultant, out of payments due to it, an amount sufficient to pay employees underpaid the difference between the salaries required hereby to be paid and the salaries actually paid such employees for the total number of hours worked. The amounts withheld shall be disbursed by the Commission for and on account of the Consultant to the respective employees to whom they are due.

c. **Intentionally omitted.**"

d. **Delays.** The Consultant agrees that no charges for damages or claims for damages shall be asserted by it against the Commission for any delays or hindrances from any cause whatsoever during the progress of any portion of the Services. Such delays or hindrances, if any, shall be compensated for by an extension of time to complete the Services, for such reasonable period as may be mutually agreed upon between the parties, it being understood, however, that the agreement of the Commission to allow the Consultant to complete the Services or any part of them after the time provided for the completion thereof herein shall in no way operate as a waiver on the part of the Commission of any of its rights hereunder.

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

f. **CW System.** The Commission may require the Consultant to use the Commission's electronic document management system in performing the Services and the assigned Task Order. At the direction of the Commission, the Consultant must follow the CW procedures and submit

** TO BE INSERTED IN CONTRACTS FOR SURVEYING, TRAFFIC STUDIES AND COMMISSIONING.

progress reports and other Deliverables through the CW System. The Consultant must attend courses and receive training on the CW System provided by or on behalf of the Commission. Any costs incurred by Consultant as a result of the attendance of Consultant's personnel at CW System courses are not compensable by the Commission.

g. **Time of Essence.** The Consultant acknowledges and agrees that time is of the essence in the performance of this Agreement and that timely completion of the Services is vital to the completion of the Project by the Commission. Consultant agrees to use its best efforts to expedite performance of the Services and the assigned Task Order and performance of all other obligations of the Consultant under this Agreement and any other agreement entered into by the Commission which are managed or administered by the Consultant as a result of the Consultant's engagement hereunder.

h. **Compliance with Laws.** In performing its engagement under this Agreement, the Consultant shall comply with all applicable federal, state and local laws, rules and regulations including but not limited to, those referenced in subparagraphs (a) and (b) above.

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

6. **Term.**

a. The term of this Agreement is three (3) years with three (3) successive one (1)-year renewal options at the sole discretion of the Commission. The term of this Agreement shall begin upon the final execution of this Agreement, and, subject to the provisions of subparagraph (b) below, shall expire three (3) years after the effective date of this Agreement, or any renewal option period if exercised by the Commission.

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

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

7. **Compensation of Consultant; Submission of Invoices through CW.** The total amount of fees and costs to be paid by the Commission during the term of this Agreement, excluding any renewal option periods, shall not exceed the sum of \$500,000.00. The Commission shall compensate the Consultant for the Services in the manner set forth in Schedule D of this Agreement, or as modified by assigned Task Order. The Consultant shall submit all invoices, no more frequently than once every thirty (30) days, in electronic format using the CW System. All submitted invoices shall include a cover page as provided by the Commission and the assigned Task Order number. Failure to submit invoices through CW will result in delayed or non-payment to the Consultant.

8. **Rights and Obligations of Commission.** In connection with the administration of the Project by the Commission and the performance of this Agreement by the Consultant, the Commission shall have the following rights and obligations, in addition to those provided elsewhere in this Agreement:

a. **Information.** The Commission shall provide the Consultant all reasonably requested information concerning the Commission's requirements for the Project and the Services.

b. **Review of Documents.** Subject to the provisions of subparagraph 5(d) above, the Commission agrees to make a reasonable effort to examine documents submitted by the Consultant and render decisions pertaining thereto with reasonable promptness.

c. **Site Data.** To the extent the Commission determines to be necessary for the Consultant to perform the Services and the assigned Task Order, the Commission may furnish to the Consultant information concerning the nature of the Project, existing conditions and other data or reports pertaining to the site and the proposed development thereof.

d. **Tests and Reports.** The Commission may also furnish structural, civil, chemical, mechanical, soil mechanical and/or other tests and reports if determined by the Commission in its sole discretion to be necessary in order for the Consultant to perform the Services and the assigned Task Order.

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

f. **Designated Representatives.** The Commission may designate, at its sole discretion, one or more representatives authorized to act in its behalf.

g. **Ownership of Documents.** All documents, data, studies and reports prepared by the Consultant or any party engaged by the Consultant, pertaining to the Services shall be the property of the Commission, including copyrights.

h. **Audits.** The Commission shall have the right to audit the books and records of the Consultant on all subjects relating to the Services.

9. **Indemnification of Commission.** The Consultant hereby agrees to indemnify, keep and save harmless the Commission and the User Agency and their respective commissioners, board members, officers, agents, officials and employees from and against all claims, demands, suits, losses, costs and expenses, including but not limited to, the fees and expenses of attorneys, that may arise out of or be based on any injury to persons or property that is or is claimed to be the result of an error, omission or act of the Consultant or any person employed by the Consultant to the maximum extent permitted by applicable law.

JRR 5/27/10

10. **Insurance to be Maintained by Consultant.** The Consultant shall purchase and maintain at all times during the performance of Services hereunder, for the benefit of the Commission, the User Agency and the Consultant, insurance coverage as set forth in Schedule D.

11. **Default.**

a. **Events of Default.** Any one or more of the following occurrences shall constitute an Event of Default under this Agreement:

i. Failure or refusal on the part of the Consultant duly to observe or perform any obligation or Agreement on the part of the Consultant contained in this Agreement, which failure or refusal continues for a period of ten (10) days (or such longer period as the Commission, in its sole discretion, may determine if such failure is not capable of being cured within such ten (10) day period) after the date on which written notice thereof shall have been give to the Consultant by the Commission;

ii. Failure of Consultant to perform the Services to the standard of performance set forth in this Agreement;

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

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

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

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

c. **Remedies not Exclusive.** No right or remedy herein conferred upon or reserved to the Commission is exclusive of any right or remedy herein or by law or equity provided or permitted, but

each shall be cumulative of every other right or remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise, and may be enforced concurrently therewith or from time to time.

12. Confidentiality. All of the reports, information, or data prepared or assembled by the Consultant under this Agreement are confidential, and the Consultant agrees that such reports, information or data shall not be made available to any party without the prior written approval of the Commission. In addition, the Consultant shall not, without the prior written consent of the Commission, prepare or distribute any news releases, articles, brochures, advertisements or other materials concerning this Agreement, the Project, the Services or any assigned Task Order. Consultant acknowledges that it is entrusted with or has access to valuable and confidential information and records of the Commission and User Agency. Consultant must at all times act in the best interests of the Commission and User Agency consistent with the professional obligations assumed by Consultant in entering into this Agreement. Consultant promises to cooperate with the officials, employees and agents of the Commission and User Agency in furthering the Commission's and User Agency's interests.

13. Assignment. The Consultant acknowledges that the Commission is induced to enter into this Agreement by the personal qualifications of the principals, staff and employees of the Consultant and agrees, therefore, that neither this Agreement nor any right or obligation hereunder may be assigned by the Consultant, in whole or in part, without the prior written approval of the Commission. The Commission expressly reserves the right to assign or otherwise transfer all or any part of its interests hereunder without the consent or approval of the Consultant.

14. Personnel. The Consultant further acknowledges that the Consultant has represented to the Commission the availability of certain members of the Consultant's staff who will be assigned to the Project, and agrees, therefore, that in the event of the unavailability of such members, the Consultant shall so notify the Commission in writing, and, upon the approval of the Executive Director, shall assign other qualified members of the Consultant's staff, to the Project.

15. Relationship of Parties. The relationship of the Consultant to the Commission hereunder is that of an independent contractor, and the Consultant, except to the extent expressly provided to the contrary in this Agreement, shall have no right or authority to make contracts or commitments for or on behalf of the Commission, to sign or endorse on behalf of the Commission any instruments of any nature or to enter into any obligation binding upon the Commission. This Agreement shall not be construed as an Agreement of partnership, joint venture, or agency.

16. Miscellaneous.

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

b. **Entire Agreement.** This Agreement constitutes the entire understanding and Agreement between the parties hereto and supersedes any and all prior or contemporaneous oral or written representations or communications with respect to the subject matter hereof, all of which communications are merged herein. This Agreement shall not be modified, amended or in any way altered except by an instrument in writing signed by both of the parties hereto.

c. **Force Majeure.** Neither of the parties shall be liable to the other for any delay or failure in performance hereunder due to causes which are beyond the control of the party unable to perform. If a force majeure occurs, the party delayed or unable to perform shall give prompt notice to the other party, and the Commission may, at any time during the continuation of the force majeure event, elect to suspend the performance of the Consultant under this Agreement for the duration of the force majeure. The Commission shall not be obligated to pay for Services to the extent and for the duration that performance thereof is delayed or prevented by force majeure, but, provided the Consultant is not in default

of any obligation of the Consultant hereunder, the Commission shall pay to the Consultant, according to the terms hereof, all compensation and reimbursements due to the Consultant for periods up to the effective date of suspension.

d. **Governing Law.** This Agreement has been negotiated and executed in the State of Illinois and shall be construed under and in accordance with the internal laws of the State of Illinois.

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

f. **Notices.** All notices required to be given hereunder shall be given in writing and shall be hand delivered or sent by United States certified or registered mail, postage prepaid, addressed to Commission and to the Consultant at their respective addresses set forth above. If given as herein provided, such notice shall be deemed to have been given on the date of delivery, if delivered by hand, and on the second business day after mailing, if given by mail. The Commission or the Consultant may, from time to time, change the address to which notices hereunder shall be sent by giving notice to the other party in the manner provided in this subparagraph.

g. **Severability.** In the event that any provisions of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

h. **Successors and Assigns.** Except as otherwise provided herein, this Agreement shall be binding upon and inure to the benefit of each of the parties hereto and their respective successors and assigns.

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

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**SCHEDULE B
SCOPE OF WORK
COMMISSIONING AUTHORITY SERVICES – PS1719A
FOR
VARIOUS SITES**

(SCOPE OF WORK FOLLOWS THIS PAGE)

**SCOPE OF WORK
COMMISSIONING AUTHORITY SERVICES – PS1719
FOR
VARIOUS SITES**

I. General Scope of Services-Commissioning Authority Services

The Consultant will enter into Task Order with the PBC. The Task Order will be executed in a Lump Sum, format on a project-by-project basis. The PBC will be pursuing LEED™ certification on all capital building projects, which necessitates commissioning to be executed in compliance with LEED as well as PBC guidelines.

The services to be provided by the Consultant are expected to include pre-design, design, construction, closeout, post-occupancy, warranty and systems evaluation services associated with the Project. The Consultant shall perform Services as necessary to achieve the targeted level of LEED certification in the version of LEED indicated by the PBC, currently Silver or Gold, in accordance with LEED 2009, and Commissioning services required by the PBC that exceed current LEED requirements but fall within standard commissioning scope and practice, per recognized Commissioning methodologies of the Portland Energy Conservation Inc. (PECI), and the American Society of Heating Refrigeration and Air-Conditioning Engineers, Inc. (ASHRAE). The PBC requirements for the Consultant's services will typically exceed those of LEED with respect to minimum systems to be commissioned.

The Consultant must develop a comprehensive understanding of the project relative to the current PBC program, Owner's Project Requirements (OPR), project assumptions, constraints, and budget. The PBC in many cases works from an evolving building prototype. The Consultant will be required to develop an understanding of the prototype and its recent evolution. Consultant may be asked for work product to include efforts specifically to inform and further develop the prototype. During all phases, the Consultant will be expected to participate and communicate with the PBC, the Architect and Engineers, other design consultants, the General Contractor and subcontractors, and the User Agency representatives, as identified by PBC. Format of written communication may be stipulated by the PBC. The Consultant must provide a dedicated commissioning leader and team as required to meet the demands of the project.

The Specific Services that the Consultant may be requested to perform, on a Task Order basis, may include, but are not limited to the following.

A. Pre-Design and Design Phase

- (1) Identify a scope and budget for the commissioning process as part of the Task Order Service Request Process.
- (2) Develop Commissioning Plan. Include Design, Construction, Occupancy and Operations Phases.
 - (i) Revise the Plan throughout the course of the project as needed.

- (ii) Provide a draft Commissioning Plan for inclusion in the Contract Documents.
 - (iii) Distribute to the Project Team.
- (3) Review the Owner's Project Requirements Document for clarity and completeness, including language pertaining to all of the systems that are to be commissioned.
 - (i) Review updates to the Owner's Project Requirements. Coordinate the development of this document with the PBC. Request the Owner's Project Requirements if not provided with Design Development Phase.
 - (ii) In some instances, the Consultant may be asked to facilitate the development of the Owner's Project Requirements.
- (4) Review the Basis of Design Document for clarity and completeness. Verify that the Basis of Design Documents meets Owner's Project Requirements and PBC stated program requirements. Basis of Design Documents may take the form of design narrative.
 - (i) Review updates to Basis of Design Documents at design milestones throughout the course of the project.
- (5) Modify PBC-supplied boiler plate (or "Standard") specifications to be included in the contract documents for specified equipment to be commissioned. These specifications shall include all instructions to contractors and subcontractors, detailing the commissioning scope of work to be performed. Coordinate the content of these specifications with the Architect and Mechanical, Electrical, Plumbing design firm.
 - (i) Develop Commissioning Specifications in some instances, where specifically directed by PBC.
- (6) Review Design Documents, including Drawings, Specifications, Narratives, for systems to be commissioned, and as directed by PBC.
 - (i) Perform a minimum of two (2) Commissioning Reviews; at Design Development and at 90% of Construction Document submittal. More than 2 Commissioning Reviews may be required.
 - (ii) Submit comments in writing to PBC, Architect of Record, and as directed by PBC.
 - (iii) Review for incorporation and coordination of commissioning requirements.

- (iv) Review for all systems' compliance with Owner's Project Requirements, Basis of Design Documents, and for adequacy and efficiency.
 - (v) Review strategies, sequence of operations; ease of operation and maintenance; commissionable; adequate Operation and Maintenance documentation and training requirements, aligned with Owner's Project Requirements.
 - (vi) Review Indoor Environmental Quality afforded by HVAC system design is in accordance with Owner's Project Requirements.
 - (vii) For scope changes issued during design, review proposed change and provide comments.
 - (viii) The Building Automation System will integrate with all mechanical equipment. Consultant is to conduct design reviews and construction efforts and provide comments with this in mind.
- (7) Coordinate a control, General Building Management System integration meeting for the Consultant, electrical and mechanical engineers, and PBC to discuss integration issues between equipment, systems and disciplines to ensure that integration issues and responsibilities are clearly described in the specifications. Document meeting.
- (8) Evaluate alternative strategies or technologies intended to improve energy efficiency of the building, to meet LEED certification targets or requirements, and/or to improve ease of maintenance;
- (i) Review mechanical and electrical concepts, design, for enhancements with intent to improve energy efficiency while fully meeting Owner's Project Requirements. Discussion to include, but is not limited to lighting and HVAC systems, and may include envelope / systems interconnections.
 - (ii) Consultant may be requested to participate in meetings/discussion and/or provide written comments. Engineering studies would not be included.
9. Review submittals to assure system controls and inter-functionality are included within the design and construction. Perform this review concurrently with other reviews to be assured within the project schedule.

B. Construction and Post Construction Phase

- (1) Provide a commissioning leader to communicate deficiencies to the PBC, manage the Commissioning process, and provide responses to checklists in a timely manner.
- (2) Back-check to Owner's Project Requirements and Basis of Design Documents to ensure any construction phase changes to commissioned equipment do not compromise the intent of the Owner's Project Requirements and Basis of Design Documents.
- (3) Attend and participate in a pre-bid technical review and a pre-construction meeting where the commissioning process or requirements are reviewed.
- (4) Organize the commissioning process components.
- (5) For scope changes during construction, review and provide comments.
- (6) Coordinate and direct commissioning activities. Do so in a logical, sequential and efficient manner using consistent protocols and forms, clear and regular communications and consultations with all necessary parties, as directed by PBC.
- (7) Organize, conduct and document Commissioning meetings with appropriate parties to implement the Commissioning Plan and resolve problems. Attend selected job-site meetings to coordinate information on construction progress with PBC.
- (8) Conduct site visits to observe installations, and confirm the process adequately evaluates the constructed project in accordance with the construction documents and the Owner's Project Requirements.
- (9) Update project-specific Commissioning Plan. Include Construction, Occupancy and Operations Phases. Distribute to project team.
- (10) Review General Contractor submittals for components of systems to be commissioned, concurrent with the AOR team/design professionals' review. Provide comments.
- (11) Include review of subcontractor coordination drawings.
- (12) Develop Pre-Functional Checklists to verify systems installed per Owner's intent, designer's basis, and manufacturing requirements.
 - (i) Consultant may be tasked to complete Pre-Functional Checklists or to statistically sample completion by others.

- (ii) Sampling plan for Pre Functional Checklist verification is subject to PBC approval.
 - (iii) Document this verification and notify the Owner of any discrepancies through the use of a Deficiency Log.
 - (iv) Provide a log documenting the status of completeness of the Pre Functional Checklists.
- (13) Develop Functional Performance Tests and procedures. Work with General Contractor. Submit to Architect of Record and PBC for review. Provide a log of Functional Performance Tests.
 - (14) Assist in direction of the General Contractor, witness and document the Functional Performance Tests performed by installing contractors, and recommend approval. Coordinate retesting as necessary until satisfactory performance is achieved. Document deficiencies and report progress to the PBC. The Consultant must be capable of providing assistance in troubleshooting system failure.
 - (15) Review HVAC air and water systems Testing, Adjusting and Balancing reports. Provide comments.
 - (16) Maintain a master issues log and a separate testing record. Provide to the PBC, Architect of Record and General Contractor a written progress reports and test results with recommended actions.
 - (17) Identify and assist in resolving any discrepancies or nonconforming work; coordinate with PBC project manager and quality control team in this matter. Document the correction and retesting of non-compliance items.
 - (18) Approve systems startup by reviewing start-up reports and by selected site observation.
 - (19) Develop the Systems Manual.
 - (20) Review the Operation and Maintenance Manual, for Commissioned systems, provided by the General Contractor, for completeness in achieving requirements established in the Contract Documents and Owner's Project Requirements
 - (21) Review; recommend pre-approval proposed training plan; and verify the training provided by the General Contractor, in conjunction with Architect of Record team.
 - (22) Documentation for Commissioning prerequisite and credits to support the PBC in achieving the targeted LEED level.
 - (23) Review current and final as-built and record documents at the job site for completeness and accuracy. Document deficiencies.

- (24) Complete and submit the final Commissioning Report. Complete and submit initial Commissioning report promptly at the end of the construction phase. Submit to the PBC, Architect of Record and General Contractor.
- (25) Schedule and verify deferred, offseason and warranty (10-12 months post occupancy, per PBC direction) functional performance testing by the contractor. Identify and assist in resolving non-compliances, and with documentation for warranty claims.
 - (i) Review with facility staff the current building operation and the condition of outstanding issues related to the original and seasonal commissioning.
 - (ii) Interview facility staff; identify problems or concerns they have with operating the building as originally intended. Make suggestions for improvements and for recording these changes in the Operation and Maintenance Manuals. Identify areas that may come under warranty or under the original construction contract. Assist facility staff in developing reports and documents and requests for services to remedy outstanding problems.

C. Systems and Components to be Commissioned

Energy using systems as required by current version of LEED will always be commissioned. Additional systems and components may be commissioned at PBC's direction. As identified in Project Task Order Service Request.

Consultant may be required to provide personnel with experience in specific systems and technologies, including geothermal and renewable energy such as photovoltaic, solar thermal and wind systems.

Building systems within the commissioning scope of services may include but are not limited to:

1. Air conditioning, refrigeration systems, all components
2. Heating systems
3. Hydronic systems
4. Air handling systems
5. Energy recovery system
6. Heat pumps
7. Pumps and motors associated with the MEP systems to be commissioned
8. HVAC controls. Tie-ins to Building Automation System or General Building Management System
9. Domestic hot water and process water systems
10. Life safety systems
11. Fire protection systems

12. Fire Alarm System
13. Electrical systems
14. Lighting controls
15. Emergency power systems; uninterruptible power supply systems, and automatic transfer switching
16. Security systems
17. Central Building Automation System associated with commissioned equipment
18. Laboratory, clean room, hoods, pressurization, exhaust vent
19. Equipment sound control systems and testing
20. Data and communication
21. Paging systems
22. Irrigation
23. Vertical transport - Elevators
24. Building envelope
25. Process instrumentation and controls
26. Renewable energy systems i.e.: photovoltaic, wind
27. Geothermal / ground source systems
28. Solar thermal water heating systems
29. Radiant systems, including slab

D. Services Which Exceed Typical Commissioning Scope

The PBC may require that the Commissioning Authority provide services beyond those typically required for Commissioning, as delineated in a Task Order Service Request. The Consultant may be required to perform include the following:

- Providing peer/design/constructability review of documents, Plans and Specifications, at each design milestone: Schematic Design; Design Development; 60% Construction Documents submittal, 90% Construction Documents submittal; 100% Construction Documents submittal. (This is in addition to LEED requirements).
- Energy efficiency reviews.
- Developing/ providing a project specific Measurement and Verification Plan, to meet LEED requirements, for integration into the contract documents.
- Implementing Measurement and Verification Plan where required, including post-occupancy visits to project site.
- Participating in a lessons-learned workshop. Assisting in documenting lessons for commissioned systems. The workshop is facilitated by a member of the PBC.

SCHEDULE C

COMPENSATION OF THE CONSULTANT
COMMISSIONING AUTHORITY SERVICES- PS1719A
FOR
VARIOUS SITES

(COMPENSATION OF THE CONSULTANT FOLLOWS THIS PAGE)

**COMPENSATION OF THE CONSULTANT – PS1719
COMMISSIONING AUTHORITY SERVICES
FOR
VARIOUS SITES**

C.1 CONSULTANT'S FEE

- C.1.1 The Commission shall pay the Consultant for the satisfactory performance of the Services, the amount specified in each Task Order on a Lump Sum Basis ("**Fee**").
- C.1.2. Consultant's Fee will include typical overhead including, without limitation, office, rent, administrative salaries, insurance and personnel costs of Consultant and Subconsultant for each staff member such as driving to and from PBC job sites or meetings, cell phone and computer usage, vehicles, travel expenses, mileage, taxicab fares, parking, tolls, insurance, marketing and any other costs incurred.

C.2 METHOD OF PAYMENT

- C.2.1 **Invoices.** The Consultant will submit invoices through CW to the Commission for Services performed, that will be paid as the Consultant satisfactorily completes Services at milestones set by the Commission.

Each invoice must reference the contract number, task order number, project name and 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 Consultant 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 the reasons for such variances.

- C.2.2 **Payment.** Payment will be processed within 30 days after Commission receives an acceptable invoice from the Consultant.

**SCHEDULE D
INSURANCE REQUIREMENTS
COMMISSIONING AUTHORITY SERVICES – PS1719A
FOR
VARIOUS SITES**

In general, unless otherwise specified in the assigned Task Orders, the Consultant must provide and maintain at Consultant's own expense, until expiration or termination of the Agreement and during the time period following expiration if Consultant is required to return and perform any additional work, the minimum insurance coverage and requirements specified below, insuring all operations related to the Agreement.

D.1. INSURANCE TO BE PROVIDED

D.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.

D.1.2. Commercial General Liability (Primary and Umbrella)

Commercial General Liability Insurance or equivalent with limits of not less than \$2,000,000 per occurrence for bodily injury, personal injury, and property damage liability. Coverage must include the following: All premises and operations, products/completed operations, separation of insureds, defense, and contractual liability (with no limitation endorsement). The Public Building Commission, the City of Chicago and the User Agency must be named as additional insureds on a primary, non-contributory basis for any liability arising directly or indirectly from the work.

If excavation is to be performed, the contractor must include the following additional coverage: All premises and operations, products/completed operations (for minimum of two (2) years following project completion), explosion, collapse, underground, separation of insureds, defense, and contractual liability with no limitation endorsement.

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

D.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 Consultant must provide Automobile Liability Insurance, with limits of not less than \$1,000,000 per occurrence for bodily injury and property damage. The Public Building Commission, the City of Chicago and the User Agency must be named as additional insureds on a primary, non-contributory basis.

D.1.4. Professional Liability

When any professional Consultant performs work in connection with the Agreement, Professional Liability Insurance will be maintained with limits of not less than \$2,000,000 covering acts, errors, or omissions. 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 Consultant must maintain limits of not less than \$1,000,000 per occurrence with the same terms herein

D.1.5 Property

The Consultant is responsible for all loss or damage to Commission, the City of Chicago and the User Agency property at full replacement or repair cost. The Consultant 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 Consultant.

D.1.6 Valuable Papers

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

D.1.7 Contractors Pollution Liability

Contractors Pollution coverage is required with limits of not less than \$2,000,000 per occurrence for any portion of the services, which may entail, exposure to any pollutants, whether in the course of sampling, remedial work or any other activity under this contract. Coverage must include bodily injury, property damage and other losses caused by pollution conditions that arise from the Contract scope of services, 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 Contract. A claims-made policy, which is not renewed or replaced, must have an extended reporting period of two (2) years. The Public Building Commission, the City of Chicago and the User Agency are to be named as additional insureds on a primary, non-contributory basis.

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

D.1.8 Railroad Protective Liability

When any work is to be done adjacent to or on railroad or transit property, Contractor must provide, with respect to the operations that Contractor 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.

D.2. ADDITIONAL REQUIREMENTS

The consultant 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 coverage has an expiration or renewal date occurring during the term of this Agreement. The Consultant 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 Consultant is not a waiver by the Commission of any requirements for the Consultant to obtain and maintain the specified coverage. The Consultant will advise all insurers of the Agreement provisions regarding insurance. Non-conforming insurance does not relieve Consultant 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 Consultant

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 any policies are canceled, substantially changed, or non-renewed.

Any deductibles or self-insured retentions on referenced insurance must be borne by Consultant. The Consultant hereby waives and agrees to require their insurers to waive their rights of subrogation against the Commission, the City of Chicago and the User Agency their respective Board members, employees, elected and appointed officials, and representatives

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

Any insurance or self-insurance programs maintained by the Commission, City of Chicago and the User Agency do not contribute with insurance provided by the Consultant under the Agreement.

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

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

If Consultant or its subcontractors desire 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.

The Commission's Risk Management Department maintains the rights to modify, delete, alter or change these requirements. Insurance requirements may be altered, including, but not limited to naming other entities or persons as additional insureds, based upon the issuance of specific task orders.

SCHEDULE E

**KEY PERSONNEL
COMMISSIONING AUTHORITY SERVICES — PS1719A
FOR
VARIOUS SITES**

Personnel Experience Summary

As mentioned earlier, our staff consists of a diverse group of professionals, each from various backgrounds. As experienced commissioning providers, each team member has extensive knowledge of a variety of building industry areas (including each other's). Below is a brief summary of the relevant experience of the staff proposed for this project. A bold X indicates the team member's primary areas of focus. Please refer to the individual resumes listed in this section for a detailed description of each team member's background.

| Team Member | Jack Wolpert | Len Rozek | Tom Vannatta | Mandeep Singh | Jim Radzienda | Bruce Marye | Mike Romito | Fred Bores |
|--|--------------|-----------|--------------|---------------|---------------|-------------|-------------|------------|
| Traditional TAB | X | X | X | X | | X | X | |
| O&M | X | X | X | X | X | X | X | X |
| Energy-Efficient Design and Optimization | X | X | X | X | X | X | X | X |
| Building Simulation | X | X | X | X | X | X | X | |
| Life Cycle Costing | X | X | X | X | X | X | | X |
| Sustainable Design | X | X | X | X | X | X | X | X |
| Construction Management | X | X | X | X | X | | | |
| Mechanical System Design | X | X | X | X | X | X | X | |
| Architectural Design | X | X | X | X | | | | |
| Electrical Systems Design, Installation, O&M | X | X | X | X | X | X | X | X |
| Controls System Design, Installation, O&M | X | X | X | X | X | X | X | |

**SCHEDULE F-1
DISCLOSURE OF RETAINED PARTIES
COMMISSIONING AUTHORITY SERVICES – PS1719A
FOR
VARIOUS SITES**

DISCLOSURE OF RETAINED PARTIES

A. Definitions and Disclosure Requirements

1. As used herein, "Consultant" means a person or entity who has any contract with the Public Building Commission of Chicago ("Commission").
2. Commission bids, contracts, and/or qualification submittals must be accompanied by a disclosure statement providing certain information about lobbyists whom the Consultant has retained or expects to retain with respect to the contract. In particular, the Consultant 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 Consultant is not required to disclose employees who are paid solely through the Consultant'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

Consultant hereby certifies as follows:

1. This Disclosure relates to the following transaction: Master Agreement
 Description or goods or services to be provided under Contract: Commissioning

2. Name of Consultant: E-Cube, Inc.

3. **EACH AND EVERY** lobbyist retained or anticipated to be retained by the Consultant with respect to or in connection with the contract 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:

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

Leonard R. Rozek
Signature

5/27/10
Date

LEONARD R. ROZEK
Name (Type or Print)

PRESIDENT
Title

Subscribed and sworn to before me

this 27 day of May 2010

Jodann Schweizer
Notary Public



**SCHEDULE F-2
DISCLOSURE AFFIDAVIT
COMMISSIONING AUTHORITY SERVICES – PS1719A
FOR
VARIOUS SITES**

A

ATTACHMENT A
GENERAL INFORMATION ABOUT THE RESPONDENT - FORM A
REQUEST FOR QUALIFICATIONS
COMMISSIONING AUTHORITY SERVICES - PS1719
FOR
VARIOUS PROJECT SITES

Respondent/Company Name: E Cube, Inc.

Address: 118 South Clinton, Suite 650, Chicago, IL 60661

Federal Employer I.D. #: 84-0772800 Social Security #: _____

Telephone No.: (312) 441-9610

Contact Name: Leonard R. Rozek

Contact E-Mail: lrozek@ecube.com

I. DISCLOSURE OF OWNERSHIP INTERESTS

This statement is attached to and is a part of the submittal submitted by:

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

- Bidder/Proposer/Contractor is a:
- | | |
|---|---|
| <input checked="" type="checkbox"/> Corporation | <input type="checkbox"/> LLC |
| <input type="checkbox"/> Partnership | <input type="checkbox"/> LLP |
| <input type="checkbox"/> Joint Venture | <input type="checkbox"/> Not-for-Profit Corporation |
| <input type="checkbox"/> Sole Proprietorship | <input type="checkbox"/> Other |

Important Note: If a joint venture, attach a copy of joint venture agreement to this form. Joint ventures must submit a list of projects underway or completed as a joint venture on **Attachment B – Relevant Experience**.

How many years has the firm or venture been in business under its present name? 20

Under what other names, if any, has the firm or venture operated? Nederland Refrigeration, Air Conditioning, and Heating, Inc.

How many years has your firm been performing the services covered by this RFQ? 18

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

a. State of Incorporation or organization Colorado

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

c. Names of all officers of corporation or LLC

Names of all directors of corporation

| (or attach list): | | (or attach list): | |
|----------------------|--------------------------|--|-----------------------|
| Name (Print or Type) | Title (Print or Type) | Name (Print or Type) | Title (Print or Type) |
| <u>Jack Wolpert</u> | <u>CEO</u> | <u>Jack Wolpert</u> | <u>Chariman</u> |
| <u>Leonard Rozek</u> | <u>President</u> | <u>KEN SAMMAUS</u> <u>Leonard Rozek</u> | <u>Sec./Tres.</u> |
| <u>Tom Vannatta</u> | <u>VP of Engineering</u> | <u>FRED BORRS</u> <u>Tom Vannatta</u> | <u>Board member</u> |

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

| Name (Print or Type) | Address | Ownership Interest |
|----------------------|--|-----------------------------|
| <u>Jack Wolpert</u> | <u>1900 Folsom, S te 109, B oulder, CO</u> | <u>85</u> 92.5 % |
| <u>Leonard Rozek</u> | <u>1900 Folsom, S te 109, B oulder, CO</u> | <u>10</u> 5 % |
| <u>Jerry Deall</u> | <u>1900 Folsom, S te 109, B oulder, CO</u> | <u>5</u> 2.5 % |

JRR 5/27/10

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

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

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

g. For LLC's identify each member:

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

h. Is the corporation or LLC owned partially or completely by one or more other corporations or legal entities?
Yes No

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

SECTION 2. PARTNERSHIPS

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

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

SECTION 3. SOLE PROPRIETORSHIP

- a. The bidder/proposer or Contractor is a sole proprietorship and is not acting in any representative capacity on behalf of any beneficiary: Yes [] No []
If NO, complete items b. and c. of this Section 3.
- b. If the sole proprietorship is held by an agent(s) or a nominee(s), indicate the principal(s) for whom the agent or nominee holds such interest.

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

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

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

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

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

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

SECTION 5. NOT-FOR-PROFIT CORPORATIONS

a. State of incorporation _____

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

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

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

II. MBE/WBE INFORMATION

Is Company a certified minority or woman business enterprise? Yes ___ No X
 If yes, check one: MBE ___ WBE _____

Certified by: _____
 (Governmental Body or Agency)

Date of Certification _____

III. LICENSING

Is your firm licensed to do business in the City of Chicago, Cook County, Illinois?
 Yes X No _____

List categories in which the firm or venture is licensed to do business and indicate registration or license numbers, if applicable. Please indicate which government entity issued the license.

| Category | Registered License (or license number) | Organization issuing License | Intend to Perform? Yes/No |
|-----------------|---|---------------------------------|------------------------------|
| <u>Business</u> | <u>N/A</u> | | |
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |

IV. INSURANCE

Attach a sample Certificate of Insurance which demonstrates the ability to obtain the coverages specified in ATTACHMENT E - INSURANCE REQUIREMENTS.

COMMITMENT TO COMPLY WITH THE INDEMNIFICATION PROVISIONS IN THE AGREEMENT AND ALL OTHER REQUIREMENTS.

I/We Leonard R.R ozek an authorized representative of the Respondent agree to comply with indemnification provisions and all other requirements.

Signed by: *Leonard R.R ozek*

Title: President

V. ANTI-COLLUSION

The Respondent, its agents, officers, or employees have not directly or indirectly entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with this submittal or contract. Failure to attest to this section as part of the bid will make the bid non-responsive and not eligible for award consideration.

I declare that this Statement of General Information about Respondent has been examined by me and to the best of my knowledge and belief is a true, correct, and complete statement of the business organization.

Leonard R.R ozek
Signature of Authorized Officer

Leonard R.R ozek
Name of Authorized Officer (Print or Type)

President
Title

(303) 443-2610
Telephone Number

State of Colorado

County of Boulder

Signed and sworn to before me on this _____ day of _____, 20____ by

_____ (Name) as _____ (Title) of

_____ (Bidder/Proposer or Contractor)

**SCHEDULE G
W-9
COMMISSIONING AUTHORITY SERVICES – PS1719A
FOR
VARIOUS SITES**

(COMMISSIONS W9 FORM FOLLOWS THIS PAGE)

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) Nederland Refrigeration | |
| | Business name, if different from above ECube Inc | |
| | Check appropriate box: <input type="checkbox"/> Individual/Sole proprietor <input checked="" type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Limited liability company. Enter the tax classification (D=disregarded entity, C=corporation, P=partnership) ▶ <input type="checkbox"/> Exempt payee <input type="checkbox"/> Other (see instructions) ▶ | |
| | Address (number, street, and apt. or suite no.) 1900 Folsom #109 | |
| City, state, and ZIP code Boulder CO 80302 | | 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.

| |
|------------------------|
| Social security number |
| : : : |

or

| |
|--------------------------------|
| Employer identification number |
| 84-0772800 |

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

Part II Certification

Under penalties of perjury, I certify that:

1. 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
2. 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
3. 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 ▶ <i>Leonard Prozek</i> | Date ▶ 5/27/10 |
|------------------|--|-----------------------|

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:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued).
2. Certify that you are not subject to backup withholding, or
3. 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,