

PUBLIC BUILDING COMMISSION OF CHICAGO



**PROFESSIONAL SERVICES AGREEMENT
CONTRACT NUMBER PS1215**

with

MACTEC Engineering and Consulting, Inc.
8745 W. Higgins Road, Suite 300
Chicago, IL 60631

To Provide

Phase II Environmental Site Assessment

For

South Shore High School
Vicinity of 75th Street and Jeffery Blvd.
Chicago, IL

**Mayor Richard M. Daley
Chairman**

Montel M. Gayles
Executive Director

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

EXECUTION PAGE
Professional Service Agreement PS1215

IN WITNESS WHEREOF, the duly authorized representatives of the parties have executed this Agreement,

SIGNED on: 1 17 08

PUBLIC BUILDING COMMISSION OF CHICAGO

Monica Sawyer
Executive Director

Attest:

Edward Johnson
Secretary

MACTEC Engineering and Consulting, Inc.:

D Bruce Costello
vice President

County of: Cook

State of: Illinois

Subscribed and sworn to before me by D Bruce Costello and _____ on behalf of Vendor this 4th day of January 20 08.

Jo Ann M Gentile
Notary Public

My Commission expires: (SEAL OF NOTARY)

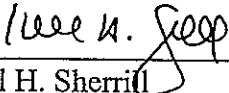




SECRETARY'S CERTIFICATE

I, Kendall H. Sherrill, Secretary of MACTEC Engineering and Consulting, Inc., a Delaware corporation (the "Corporation"), do hereby certify that a resolution duly adopted by the Board of Directors of the Corporation by unanimous written consent dated December 30, 2002, elected D. Bruce Corkle as Vice President of the Corporation, and in that capacity, he has the authority to sign contracts and/or proposals on behalf of the Corporation with respect to work performed, or to be performed, by the Corporation or its operating subsidiaries.

Witness my hand and seal of this Corporation this 16th day of February 2004.



Kendall H. Sherrill
Secretary

(SEAL)



Memorandum

VIA FEDERAL EXPRESS

TO: Lynn Kessen
Chicago Office

DATE: February 16, 2004

FROM: Sarah Smith 
Legal Department

SUBJECT: Secretary's Certificate

Lynn, attached is the requested Secretary's Certificate update as follows:

- (1) MEC, Inc. authorizing D. Bruce Corkle, Vice President, to execute contracts, etc. for the Corporation.

If you need anything further, let me know.

sjs

Attachment

TERMS AND CONDITIONS

1. Definitions. The following phrases have the same meanings for purposes of this Agreement.

a. **Agreement** means this professional services agreement, including all exhibits or documents attached hereto and/or incorporated by reference herein, and all amendments, modifications, or revisions made in accordance with the terms hereof.

b. **Commission** as herein referred to shall include the Commission's Chairman, Secretary, Assistant Secretary, Executive Director, Director of Construction, Managing Architect, Project Manager, or designated consultant or consultants, acting on behalf thereof, as designated by the Commission in writing, for the purpose of giving authorizations, instructions, and/or approval pursuant to this Agreement.

c. **Contract Documents** consists of all of the component parts of the Contract between the Commission and the General Contractor for the construction and improvement of the Project including, without limitation, the general and special conditions, technical specifications, drawings, addenda, bulletins and modifications thereto.

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

e. **Key Personnel** means those job titles and persons as identified in those positions as identified in Consultant's proposal and accepted by the Commission.

f. **Project** means the construction and/or improvement of the facility or facilities specified in this agreement of this Agreement.

g. **Services** means collectively, the services duties and responsibilities that are necessary to allow the Consultant to provide the Services required by the Commission under this agreement.

h. **Sub-consultant** means a firm hired by the Consultant to perform professional services related to the construction and/or improvement of the Project.

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

j. **User Agency** means the municipal corporation that requested the Commission to undertake the construction and/or improvement of the Project.

2. Incorporation of Documents. The documents identified below in this paragraph are hereby incorporated in and made a part of this Agreement. By executing this Agreement, Consultant

acknowledges and agrees that Consultant is familiar with the contents of each of such documents and will comply fully with all applicable portions thereof in performing the Services.

a. Project Documents. The plans and specifications for the Project, to the extent that plans and specifications for the Project have been prepared, as set forth and described in this agreement (the "Project Documents").

b. Policies Concerning MBE and WBE. The Commission's policies concerning utilization of minority business enterprises ("MBE") and women business enterprises ("WBE"), as the same may be revised from time to time.

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 from time to time by mutual agreement of the Commission and the Consultant.

b. Nondiscrimination. The Consultant agrees that in performing this Agreement it shall not discriminate against any worker, employee or applicant for employment, or any member of the public, because of race, creed, gender, color, national origin or disability, or otherwise commit an unfair labor practice. Attention is called to applicable provisions of the Civil Rights Act of 1964, 88-352, July 2, 1964, 78 Stat. 241 et. Seq. the Americans with Disabilities Act of 1990, 42 U.S.C. 12010 et. Seq. the Illinois Human Rights Act 775 ILCS 5/1-101 et. Seq. and the Public Works Employment Discrimination Act 775 ILCS 10/0.0 1 through 10/20, inclusive and a Resolution passed by the Board of Commissioners of the Public Building Commission of Chicago on October 1, 2004, concerning participation of Minority Business Enterprises and Women Business Enterprises on contracts awarded by the Commission. The Consultant will furnish such reports and information as requested by the Commission and the Illinois Department of Human Relations or any other administrative or governmental entity overseeing the enforcement, administration or compliance with the above referenced laws and regulations.

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

d. Compliance with Policies Concerning MBE and WBE. Without limiting the generality of the requirements of the policies of the Commission referred to in paragraph 2 above, the Consultant agrees to use best efforts to utilize minority business enterprises for not less than twenty five percent (25%) for MBE and five percent (5%) for WBE of the value of the Services, in accordance with the Resolution passed by the Board of Commissioners of the Commission on October 1, 2004, concerning participation of minority business enterprises and women business enterprises on contracts awarded by the Commission and to furnish to the Commission, such reports and other information concerning compliance with such Resolution as may be requested by the Commission from time to time.

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

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

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

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

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

j. Defects in Project. The Consultant shall notify the Commission immediately in the event the Consultant obtains knowledge of a defect in the Project or circumstances which could result in a Project delay or cost overrun.

k. Performance Standard. The Consultant represents and agrees that the Services performed under this Agreement will proceed with efficiency, promptness and diligence and will be executed in a competent and thorough manner, in accordance with reasonable professional standards in the field. The Consultant further agrees that it will assign to the Project at all times during the term of this Agreement the number of experienced, appropriately trained employees necessary for the Consultant to perform the Services in the manner required hereunder.

l. Changes (Amendments). The Commission may from time to time, request changes to the terms of the Agreement or in the Scope of Services of the Consultant to be performed hereunder. Such changes, including any increase or decrease in the amount of compensation and revisions to the duration of the Services, which are mutually agreed upon by and between the Commission and Consultant, shall be incorporated in a written amendment to this Agreement. The Commission shall not be liable for any changes absent such written amendment.

m. Copyrights. The parties intend and agree that, to the extent permitted by law, the drawings, specifications and other design documents to be produced by Consultant at the Commission's instance and expense pursuant to this Agreement (the "Work") shall conclusively be deemed "works made for hire" within the meaning and purview of Section 101 of the United States Copyright Act, 17 U.S.C. § 101 *et seq.*, and that the Commission, its successors and assigns, will be the copyright owner of all aspects, elements and components thereof in which copyrights can subsist. To the extent that any of the foregoing does not qualify as a "work made for hire", Consultant hereby irrevocably grants, conveys, bargains, sells, assigns, transfers and delivers to the Commission, its successors and assigns, all right, title, and interest in and to the copyrights and all U.S. and foreign copyright registrations, copyright applications and copyright renewals therefor, and all other intangible, intellectual property embodied in or pertaining to the Work contracted for under the Agreement, free and clear of any liens, claims or other encumbrances, to the fullest extent permitted by law. Consultant will execute all documents and, at the expense of the Commission, perform all acts that the Commission may reasonably request in order to assist the Commission in perfecting its rights in and to the copyrights relating to the Work.

Consultant warrants to the Commission, its successors and assigns, that (1) the Work constitutes a work of authorship; (2) on the date hereof Consultant is the lawful owner of good and marketable title in and to the copyrights for the Work (including the copyrights on designs and plans relating to the Work); (3) the Consultant has the legal right to fully assign any such copyright with respect to the Work; (4) Consultant has not assigned any copyrights nor granted any licenses, exclusive or non-exclusive, to any other party; (5) Consultant is not a party to any other agreement or subject to any other restrictions with respect to the Work; and (6) the plans and designs for the Work will be, upon completion of the Services, complete, entire and comprehensive. Further, Consultant agrees that it will not restrict or otherwise interfere with the Commission's future actions in authorizing the use, adaptation, revision, or modification or destruction of the Work provided that the Consultant is indemnified for any damages resulting from any such future re-use or adaptation of the Work as may be authorized by the Commission.

4. Term.

a. The term of this Agreement shall begin on the Commencement Date specified in this agreements and, subject to the provisions of subparagraph (b) below, shall expire upon completion of the Services and acceptance thereof by the Commission or, if the Services are of an ongoing nature, on the Completion Date specified in such Request for Services. The

Commission and the Consultant may, from time to time, by mutual agreement, extend the term of this Agreement by amending this agreements.

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.

5. Compensation of Consultant; Reimbursement for Expenses. The Commission shall compensate the Consultant for the Services in the manner set forth Schedule D of this agreement. In addition, the Commission shall, upon submission by the Consultant, which the Consultant may do no more frequently than once every 30 days, and approval by the Commission of detailed invoices therefor, reimburse the Consultant for all Reimbursable Expenses. As used in this paragraph, the term "Reimbursable Expenses" shall mean those expenses identified as such in this agreements to this Agreement.

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

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

b. Review of Documents. Subject to the provisions of subparagraph 3 (e)

above, the Commission agrees to make a reasonable effort to examine documents submitted by the Consultant and render decisions pertaining thereto with reasonable promptness.

c. Site Data. To the extent the Commission determines to be necessary for the Consultant to perform the Services, the Commission may furnish, or may authorize the Consultant to obtain from a company or companies approved by the Commission as Reimbursable Expenses: (i) a certified survey of the site or sites; (ii) information concerning locations, dimensions and data pertaining to existing buildings and other improvements; (iii) title information; (iv) information concerning available service and utility lines; and (v) results of test borings and other information concerning subsoil conditions.

d. Tests and Reports. To the extent required for the Consultant to perform the Services, the Commission may furnish structural, civil, chemical, mechanical, soil mechanical and/or other tests and reports; however, the Commission may authorize the Consultant to procure such tests and reports from a company or companies approved by the Commission as Reimbursable Expenses.

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

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

g. Indemnities. The Commission shall require, by appropriate provision in each contract let by the Commission after the date of this Agreement with respect to the Project that the contractor(s) and consultant(s) thereunder shall indemnify, save and hold harmless the Commission, the User Agency and the Consultant, and each of them, and their respective commissioners, board members, officers, agents and employees, from all claims, demands, actions and the like, of every nature and description, made or instituted by third parties, arising or alleged to arise out of the work under such contract, and that the contractor there under shall purchase and maintain during the life of such contract such insurance as the Commission may require.

h. Ownership of Documents. All documents, data, studies and reports prepared by the Consultant or any party engaged by the Consultant, pertaining to the Project and/or the Services shall be the property of the Commission including copyrights as described in Section 3(m) above.

i. Audits. The Commission shall have the right to audit the books of the Consultant on all subjects relating to the Project and/or the Services.

7. 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.

8. 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 E of this agreement

9. Default.

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

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

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

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

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

b. Remedies. If an Event of Default shall occur and be continuing, then the

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

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

10. Disputes.

a. General. All disputes arising under, related to or in connection with the terms of this Agreement or its interpretation, whether involving law or fact or both, including without limitation questions concerning allowability of compensation, and all claims for alleged breach of contract, shall be presented in writing to the Executive Director for final determination.

b. Procedure. Requests for determination of disputes will be made by the Consultant in writing specifically referencing this Section, and will include: 1) the issue(s) presented for resolution; 2) a statement of the respective positions of the Consultant and the Project Manager; 3) the facts underlying the dispute; 4) reference to the applicable provisions of the Agreement by page and section; 5) identify any other parties believed to be necessary to the resolution; and 6) all documentation which describes and relates to the dispute. Consultant will promptly provide the Executive Director with a copy of the request for determination of the dispute. The Project Manager will have thirty (30) business days to respond in writing to the dispute by supplementing the submission or providing its own submission to the Executive Director. Failure by the Project Manager to respond will not be deemed to be an admission of any allegations made in the request for dispute resolution, but will be deemed to constitute a waiver of the opportunity to respond to such allegation(s), if any. The Executive Director's decision may thereafter be reached in accordance with such other information or assistance as she or he may deem reasonable, necessary or desirable.

c. Effect. The Executive Director's final decision will be rendered in writing no more than forty-five (45) business days after receipt of the response by the Project Manager was filed or was due unless the Executive Director notifies the Consultant that additional time for the decision is necessary. The Executive Director's decision will be conclusive, final, and binding on all parties. Consultant must follow the procedures set out in this Section and receive the Executive Director's final decision as a condition precedent to filing a complaint in the Circuit Court of Cook County or any other court.

The Consultant will not withhold performance of any Services required by the Commission under this Agreement during the dispute resolution period. The Executive Director's written determination will be complied with pending final resolution of the dispute.

11. Confidentiality. All of the reports, information, or data prepared or assembled by the Consultant under this Agreement are confidential, and the Consultant agrees that such reports,

information or data shall not be made available to any party without the prior written approval of the Commission. In addition, the Consultant shall not, without the prior written consent of the Commission, prepare or distribute any news releases, articles, brochures, advertisements or other materials concerning this Agreement, the Project or the Services.

12. 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.

13. 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 due, the Consultant shall so notify the Commission in writing, and shall assign other qualified members of the Consultant's staff, as approved by the Commission, to the Project.

14. Relationship of Parties. The relationship of the Consultant to the Commission hereunder is that of an independent contractor, and the Consultant, except to the extent expressly provided to the contrary 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.

15. 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. **Reimbursable Expenses** as herein referred to includes actual expenditures, as identified in this agreements, made by the Consultant.

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

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

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

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SCHEDULE A

**South Shore High School
Vicinity of 75th Street and Jeffery Blvd.
Chicago, IL**

SCOPE OF SERVICE



October 4, 2007 (revised November 7, 2007)

Ms. Suzanne Ekaitis
Public Building Commission of Chicago
Richard J. Daley Center, Room 200
50 West Washington Street
Chicago, IL 60602

Subject: **Proposal for Phase II Environmental Site Assessment
Southshore High School
75th Street & Jeffery Boulevard
Chicago, Illinois 60637**

Dear Ms. Ekaitis:

MACTEC Engineering and Consulting (MACTEC) is pleased to submit this proposal to perform Phase II investigative activities at the New Southshore High School property referenced above. This proposal is based on the scope of work furnished in your e-mail dated September 11, 2007, and subsequent e-mails and discussions with you and Mr. Rene Van Someren.

BACKGROUND INFORMATION

MACTEC performed a Phase I Environmental Site Assessment (Phase I ESA) at the site in November 2006. The subject property encompasses approximately 14.75-acres of land. The eastern portion of the subject property includes Rosenblum Park which contains a small fieldhouse, a mobile unit, and a shed. The fieldhouse was constructed in approximately 1958. The western most portion of the subject property contains the three-story school building which totals approximately 72,241 square feet. The school building (School of the Arts South Shore) was constructed in approximately 1968. Other on-site features include a basketball court, baseball diamond, paved parking areas, shrubs, trees and grass. This proposal addresses **only** the eastern portion of the property, specifically an approximately 5-acre parcel east of the pathway running from about Euclid Avenue on the south to the continuation of Euclid Avenue on the north.

The following areas of concern were identified at the site:

- MACTEC's historical review revealed that the Chicago Park District site was identified on the regulatory database report with a LUST incident reported in October of 1993.
- MACTEC's historical review of the subject property revealed the former presence of USTs at two onsite gasoline stations and a garage.
- MACTEC's historical review revealed that the subject property was occupied by coal yards including coal and lime storage.
- Railroad tracks historically traversed the subject property. The historical presence of railroad tracks pose a potential source of contamination to the subject property due to possible spills and dumping from freight moving across the tracks

- Gas City/Phillips 66 site at 1932 East 75th Street which is adjacent and has an open LUST incident.

PROPOSED SCOPE OF WORK

Project Management

MACTEC will provide project management related to oversight of the project budget, subcontractor management, scheduling of field work and quality control and will provide status reports of project progress on a regular basis. In addition, MACTEC will work closely with the PBC as project issues arise.

Task 1 Phase II ESA

Prior to commencing work at the Property, MACTEC will prepare a site-specific Health and Safety Plan for use during Phase II activities at the property.

1.1 Electromagnetic Survey

This task will be completed to attempt to locate any possible underground storage tanks within the area of investigation. Ground Penetrating Radar (GPR) will be used to scan the site (up to 24000 square feet). The area to be scanned will be delineated using a one meter interval grid pattern. This grid pattern should allow for objects consistent with an underground storage tank to be scanned. Multiple scans in a North – South and East – West direction will be performed using a 500 MHz antenna looking to an anticipated depth of 8.5 feet. A 250 MHz antenna may be used. Should anomalies consistent with piping be encountered during this scan, the anomaly will be traced to a reasonable distance to determine its association or lack of association with the desired targets. The data may be recorded and strip prints processed in our office for further analysis. Anomalies consistent with the desired targets will be marked on the surface using paint or flags.

Property access must be granted to MACTEC and our subcontractor, Work Smart, Inc., to allow freedom of movement to perform all necessary onsite tasks. The GPR unit is relatively equivalent to a push lawn mower in size and physical shape. The same limitations of terrain and accessibility existing with a lawn mower would apply to the GPR unit. All areas to be scanned must be dry and free of debris, tall vegetation and snow in advance of the technician arriving on site. Any required site preparation is not included in our estimated quote. Likewise, traffic control, permits, scaffolding, etc. are the responsibility of others. MACTEC does not warrant that all potential tanks will be identified by this GPR survey.

1.2 Test Pit Excavation

Following the GPR survey, this task will include one day of trench excavations (i.e. test pitting) to check for and document the location of any potential anomalies which may indicate historic tanks. If USTs are encountered, MACTEC will define the location and sizes of identified tanks and visually observe them in an effort to determine if they are intact or leaking. Care will be exercised to avoid puncturing any tanks that may still have product. Note that, for safety reasons, MACTEC or its contractors will not physically enter any trench during these surveys.

1.3 Soil Boring and Sampling

Five areas require soil boring and sampling:

- Former coal yard operation on the school and park district property.
- Along the northern property boundary to address an open Leaking Underground Storage Tank incident for a non-petroleum release at 1932 East 75th Street (adjacent north property).
- Release from tank identified as a used oil tank at the Chicago Park District site in October of 1993
- Two former on-site gas stations in the northeast and southeast corners of the property and an auto garage (1937 E. 75th).
- Along former Baltimore, Pittsburg and Chicago Railroad Right of Way

For the former coal yard operation and the railroad right of way, MACTEC proposes to place an orthogonal grid over the portion of the property being investigated (approximately 600 by 400 foot). Samples will be obtained from 1 to 3 feet in depth at grid intersections. Samples will be tested for polynuclear aromatic hydrocarbons (PNAs) and Resource Conservation and Recovery Act (RCRA) metals. One sample near the railroad right of way will be analyzed for the Target Compound List.

To address the offsite non-petroleum release, MACTEC proposes to perform two soil borings to 16-feet in depth along the northern property boundary, toward the western side of the current property (park). MACTEC proposes to obtain two soil samples (one from each boring) based on screening results and to analyze these samples for the Site Remediation Program Appendix A List, excluding pesticides and polychlorinated biphenyls.

To address the used oil tank, MACTEC proposes to seek further information on the former tank location from the Park District and place two borings in the area of the former tank. Borings will be drilled to 16 feet in depth and one soil sample from each boring will be selected based on screening results. Samples will be analyzed for benzene, toluene, ethylbenzene and xylene (BTEX) and PNAs, per scope of work furnished by PBC. One sample will be analyzed for the LUST priority pollutant list, based on the tank's listing as a used oil tank.

To address the former two former on-site gas stations in the northeast and southeast corners of the property and an auto garage in the northeast, MACTEC to perform four soil borings in each corner to a depth of 16 feet. One soil sample from each boring will be selected based on screening results for analytical testing. Samples will be analyzed for BTEX, PNAs and lead. At least one sample from each location will be analyzed for the LUST priority pollutant list (3 samples).

1.4 Reports

Copies of all proposed draft scopes-of-work and draft environmental reports will be provided to PBC, Chicago Park District (Lee Ann Tomas), and the Manager of Environmental Services at Chicago Public Schools for review and comment. We anticipate that reports for this task will include a Phase II ESA with electromagnetic results, test pit findings and soil boring sample results.

ASSUMPTIONS

This Scope of Work has been prepared based on the following assumptions:

- MACTEC will pre-mark (using marking paint or pin flags) all soil sampling locations prior to commencement of sampling activities. Even though JULIE will be notified, they will mark underground utilities only at offsite, public right-of-way locations. Therefore, MACTEC anticipates performing the electromagnetic survey prior to any soil boring locations.

- PBC will be responsible for providing access to sample locations.
- Field activities will be completed in accordance with current Federal, State and Local requirements.
- Soil sampling operations are based on typical soil conditions for the site area. MACTEC will take reasonable precautions to prevent damage to structures. In the event any underground structures, poles, cables, conduit, catch basins, manholes, rock, sludge, water, running sand, sewers, drain tiles, etc. are encountered, removed or destroyed during the normal performance of this contract, additional expenses may be incurred.
- Equipment and personnel stand-by charges will be applied during unanticipated project delays beyond the control of MACTEC and/or its subcontractors. It is assumed that decisions regarding scope modifications will be made in a timely manner by PBC, if required.
- MACTEC's Health and Safety Plan assumes investigation activities can be performed in Level D personal protective equipment (PPE). If an upgrade of protection from Level D PPE to Level C PPE is required, additional charges will apply to the particular field activity impacted by this upgrade.
- Disposal costs are not included in this proposal for drumming or disposal of any investigation derived wastes such as soil and/or water.

SCHEDULE

MACTEC will commence field activities within one week of receipt of written authorization to proceed dependent on subcontractor availability.

COMPENSATION

Based on our understanding of the project requirements, the estimated costs to perform the scope of work are presented below.

<u>TASKS</u>	<u>ESTIMATED COST</u>
Project Management	
Labor	\$ 655
Task 1 Phase II	
Labor	\$ 7,630
Other Direct Costs	\$ 17,220
PROJECT TOTAL	\$25,505

MBE/WBE PARTICIPATION

Laboratory services will be subcontracted to STAT Analysis Corporation, which is certified as a MBE. R.W. Collins, which is a certified WBE, will perform the test trenching. Environmental Analysis Inc., a WBE, will be assisting with the asbestos survey and abatement activities.

TERMS AND CONDITIONS

MACTEC will perform the services described herein in accordance with an agreed upon contract with the Public Building Commission. The following terms and conditions have been incorporated into this proposal with the agreement of the PBC (CLIENT).

CLIENT agrees that the Deliverables are intended for the exclusive use and benefit of, and may be relied upon only by, CLIENT and will not be used at any Site or for any other Project not expressly provided for in an Order. CLIENT does not require MACTEC's permission for regulatory submittal of the Deliverables or, subject to all terms and conditions contained in this Agreement, reliance on the Deliverables provided to CLIENT's design team, of which MACTEC is a member, solely for the design of the Project for which the Deliverables were intended.

Site Operations. If sampling or intrusive services are part of the Services, the Proposal or opinion of costs does not include the costs associated with surveying the Site to determine accurate horizontal and vertical locations of any tests, borings or well installation locations.

CLIENT will establish test or boring locations. If surveying is required, those Services will be secured by CLIENT. Field tests or boring locations described in the Deliverables or shown on sketches are based on specific information furnished by others or estimates made in the field by MACTEC's personnel. Such depths, dimensions or elevations are approximations. CLIENT recognizes that the Services may unavoidably alter the existing Site conditions and affect the environment in the area being studied. Unless expressly stated otherwise, the Services do not include the costs of restoration of damage which is reasonably necessary to perform the Services. MACTEC shall not be responsible for any damage or loss due to undisclosed or unknown surface or subsurface conditions on a Site. CLIENT will defend, indemnify and hold harmless the Indemnitees from and against all Liabilities and Claims related to, or arising from, any undisclosed or unknown surface or subsurface conditions, except to the extent such Liabilities and/or Claims were caused solely by the negligence of MACTEC.


If CLIENT requests MACTEC to containerize Wastes, CLIENT will provide a secure storage location at or near the Site to prevent tampering with the Wastes. Non-hazardous Wastes will be disposed of by MACTEC for an additional charge at an appropriately licensed facility. If the Samples or Wastes contain Contaminants, MACTEC, at CLIENT's direction and expense, will either (i) return the Samples or Wastes to, or leave them with, CLIENT for appropriate disposal or (ii) using a manifest signed by CLIENT as generator and arranger, transport the Samples or Wastes to an approved facility selected by CLIENT for final disposal, using a transporter selected by CLIENT. In so doing, MACTEC will be acting solely as an independent contractor for CLIENT and will at no time assume title, constructive or express, to any such Samples or Wastes.

Ms. Suzanne Ekaitis
Public Building Commission of Chicago
October 4, 2007 (revised November 7, 2007)
Page 6 of 6

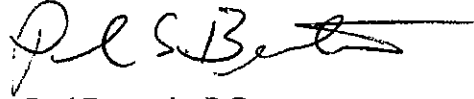
MACTEC appreciates the opportunity to provide this proposal of our services for your consideration. If you have any questions concerning these services or require adjustments to our approach or schedule, please feel free to contact us at (773) 693-6030.

Sincerely,

MACTEC ENGINEERING AND CONSULTING, INC.



Mary E. Jank, P.G.
Sr. Principal Geologist



Paul Bernstein, P.G.
Sr. Principal Project Manager



SCHEDULE B & C

**South Shore High School
Vicinity of 75th Street and Jeffery Blvd.
Chicago, IL**

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SCHEDULE D

**South Shore High School
Vicinity of 75th Street and Jeffery Blvd.
Chicago, IL**

COMPENSATION

October 4, 2007 (revised November 7, 2007)

Ms. Suzanne Ekaitis
Public Building Commission of Chicago
Richard J. Daley Center, Room 200
50 West Washington Street
Chicago, IL 60602

Subject: **Proposal for Phase II Environmental Site Assessment
Southshore High School
75th Street & Jeffery Boulevard
Chicago, Illinois 60637**

Dear Ms. Ekaitis:

MACTEC Engineering and Consulting (MACTEC) is pleased to submit this proposal to perform Phase II investigative activities at the New Southshore High School property referenced above. This proposal is based on the scope of work furnished in your e-mail dated September 11, 2007, and subsequent e-mails and discussions with you and Mr. Rene Van Someren.

BACKGROUND INFORMATION

MACTEC performed a Phase I Environmental Site Assessment (Phase I ESA) at the site in November 2006. The subject property encompasses approximately 14.75-acres of land. The eastern portion of the subject property includes Rosenblum Park which contains a small fieldhouse, a mobile unit, and a shed. The fieldhouse was constructed in approximately 1958. The western most portion of the subject property contains the three-story school building which totals approximately 72,241 square feet. The school building (School of the Arts South Shore) was constructed in approximately 1968. Other on-site features include a basketball court, baseball diamond, paved parking areas, shrubs, trees and grass. This proposal addresses **only** the eastern portion of the property, specifically an approximately 5-acre parcel east of the pathway running from about Euclid Avenue on the south to the continuation of Euclid Avenue on the north.

The following areas of concern were identified at the site:

- MACTEC's historical review revealed that the Chicago Park District site was identified on the regulatory database report with a LUST incident reported in October of 1993.
- MACTEC's historical review of the subject property revealed the former presence of USTs at two onsite gasoline stations and a garage.
- MACTEC's historical review revealed that the subject property was occupied by coal yards including coal and lime storage.
- Railroad tracks historically traversed the subject property. The historical presence of railroad tracks pose a potential source of contamination to the subject property due to possible spills and dumping from freight moving across the tracks

- Gas City/Phillips 66 site at 1932 East 75th Street which is adjacent and has an open LUST incident.

PROPOSED SCOPE OF WORK

Project Management

MACTEC will provide project management related to oversight of the project budget, subcontractor management, scheduling of field work and quality control and will provide status reports of project progress on a regular basis. In addition, MACTEC will work closely with the PBC as project issues arise.

Task 1 Phase II ESA

Prior to commencing work at the Property, MACTEC will prepare a site-specific Health and Safety Plan for use during Phase II activities at the property.

1.1 Electromagnetic Survey

This task will be completed to attempt to locate any possible underground storage tanks within the area of investigation. Ground Penetrating Radar (GPR) will be used to scan the site (up to 24000 square feet). The area to be scanned will be delineated using a one meter interval grid pattern. This grid pattern should allow for objects consistent with an underground storage tank to be scanned. Multiple scans in a North – South and East – West direction will be performed using a 500 MHz antenna looking to an anticipated depth of 8.5 feet. A 250 MHz antenna may be used. Should anomalies consistent with piping be encountered during this scan, the anomaly will be traced to a reasonable distance to determine its association or lack of association with the desired targets. The data may be recorded and strip prints processed in our office for further analysis. Anomalies consistent with the desired targets will be marked on the surface using paint or flags.

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If CLIENT requests MACTEC to containerize Wastes, CLIENT will provide a secure storage location at or near the Site to prevent tampering with the Wastes. Non-hazardous Wastes will be disposed of by MACTEC for an additional charge at an appropriately licensed facility. If the Samples or Wastes contain Contaminants, MACTEC, at CLIENT's direction and expense, will either (i) return the Samples or Wastes to, or leave them with, CLIENT for appropriate disposal or (ii) using a manifest signed by CLIENT as generator and arranger, transport the Samples or Wastes to an approved facility selected by CLIENT for final disposal, using a transporter selected by CLIENT. In so doing, MACTEC will be acting solely as an independent contractor for CLIENT and will at no time assume title, constructive or express, to any such Samples or Wastes.

Ms. Suzanne Ekaitis
Public Building Commission of Chicago
October 4, 2007 (revised November 7, 2007)
Page 6 of 6

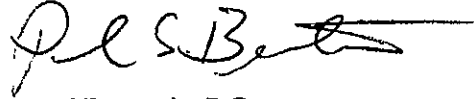
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Sincerely,

MACTEC ENGINEERING AND CONSULTING, INC.



Mary E. Jank, P.G.
Sr. Principal Geologist



Paul Bernstein, P.G.
Sr. Principal Project Manager

SCHEDULE E

**South Shore High School
Vicinity of 75th Street and Jeffery Blvd.
Chicago, IL**

INSURANCE REQUIREMENTS

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.

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 \$1,000,000 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 and Board of Education must be named as additional insureds on a primary, non-contributory basis for any liability arising directly or indirectly from the work.

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 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 and Board of Education must be named as additional insureds on a primary, non-contributory basis.

E.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 \$1,000,000 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.

E.1.5 Property

The Consultant is responsible for all loss or damage to Commission and/or Board of Education 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.

E.1.6 Valuable Papers

When any plans, designs, drawings, specifications, data, media, and 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.

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 Contract scope of services with limits of not less than \$1,000,000 per occurrence. Coverage must include completed operations, contractual liability, defense, excavation, environmental cleanup, remediation 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 and the Board of Education are to be named as additional insureds on a primary, non-contributory basis.

E.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.

E.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 changes, 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 and Board of Education, their respective Board members, employees, elected and appointed officials, and representatives. The Professional Liability policy will be excluded from this requirement.

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 and the Board of Education 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.