

**PROFESSIONAL SERVICES AGREEMENT
ARCHITECT OF RECORD**

AGREEMENT NO. PS-377

THIS AGREEMENT, dated as of the 11th day of April, 2000, but actually executed on the date witnessed hereinbelow, by and between the **PUBLIC BUILDING COMMISSION OF CHICAGO**, a municipal corporation of the State of Illinois, having its principal office at Room 200, Richard J. Daley Center, 66 W. Washington, Chicago, Illinois 60602, hereinafter called "**Commission**", and **Johnson and Lee Ltd. in association with VOA Associates Incorporated**, with offices located at 224 South Michigan Avenue Suite 425, Chicago, Illinois 60604, hereinafter referred to as the "**Architect**".

WITNESSETH

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

**The New Kennedy-King Community College
6300 South Halsted , Chicago, Illinois**

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

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

WHEREAS, the Architect desires so to be employed by the Commission and has represented to the Commission that the Architect has the knowledge, skill, experience and other resources necessary to perform the Services in the manner herein provided; and

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

WHEREAS, the Architect has made site inspections, consulted with the Commission and the User Agency, and is fully acquainted with the requirements of the foregoing Project described in the Program attached hereto; and

WHEREAS, the Construction Budget for the Project as determined by Commission is One Hundred million **Dollars and No Cents, (\$100,000,000.00)** and the Architect does hereby confirm to the Commission that such Budget, based upon current area, volume or other unit cost, the requirements of the Program and allowances for cost escalation and Project contingencies, is reasonable for the construction of the Project; and

WHEREAS, the Architect represents that it is qualified and competent by education, training and experience to prepare drawings, specifications and construction documents necessary to complete the Project in accordance with standards of reasonable professional skill and diligence;

NOW THEREFORE, the Commission and the Architect, for the considerations hereinafter set forth, **AGREE** as follows:

1. Incorporation of Recitals. The Recitals set forth herein above and the following documents are incorporated into this Agreement.

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

a. Project Documents. The plans and specifications for the Project, to the extent that plans and specifications for the Project have been prepared, as set forth and described on Schedule C to this Agreement.

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 Architect, and the Architect hereby accepts such engagement, to provide the Services described in Schedule B to this Agreement, as the same may be amended from time to time by mutual agreement of the Commission and the Architect.

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

agreement of the Commission to allow the Architect 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 Architect shall maintain accurate and complete records of expenditures, costs and time incurred by the Architect and by consultants engaged by the Architect in connection with the Project and the Services. Such records shall be maintained in accordance with recognized commercial accounting practices. The Commission may examine such records at the Architect's offices upon reasonable notice during normal business hours. The Architect 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 Architect 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. The Architect agrees to use its best efforts to expedite performance of the Services and performance of all other obligations of the Architect under this Agreement and any other agreements entered into by the Commission which are managed or administered by the Architect as a result of the Architect's engagement hereunder.
- h. Compliance with Laws. In performing its engagement under this Agreement, the Architect 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 Architect may be scheduled upon the Commission's request, at mutually agreeable times and locations, and the Architect agrees to cause such meetings to be attended by appropriate personnel of the Architect engaged in performing or knowledgeable of the Services. The Commission may schedule such progress meetings at least once weekly with a maximum of six (6) progress meetings per month.
- j. Defects in Project. The Architect shall notify the Commission immediately regarding any significant problems, about which the Architect is aware or should be aware, in connection with the Project including, but not limited to, construction defects, cost overruns or scheduling delays.
- k. Performance Standard. The Architect 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 Architect 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 Architect to perform the Services in the manner required hereunder.

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

4. Term.

- a. Duration. The term of this Agreement shall begin on the Commencement Date of Services specified in Schedule B to this Agreement and, subject to the provisions of subparagraph (b) below, shall expire upon completion of the Services and acceptance thereof by the Commission or, if the Services are of an going nature, on the Completion Date of Services specified in Schedule B. The Commission and the Architect may, from time to time, by mutual agreement, extend the term of this Agreement by amending Schedule B hereto.
- b. Termination or Suspension by the Commission. The Commission shall have the right, at any time, to terminate the term of this Agreement, with or without cause, by written notice given to the Architect 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 Architect hereunder with respect to all or any part of the Services, by written notice given to the Architect at least five (5) days prior to the effective date of suspension. Termination or suspension of this Agreement shall not relieve the Architect from liability for the performance of any obligation of the Architect under this Agreement performed or to have been performed by the Architect on or before the effective date of termination or suspension. Provided the Architect is not in default under this Agreement at the time of termination or suspension, the Commission agrees to pay to the Architect, in accordance with the terms of this Agreement, all compensation and reimbursements due to the Architect for periods up to the effective date of termination or suspension. In no event shall the Commission be liable to the Architect for any loss, cost or damage which the Architect 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 Architect for actual expenses approved by the Commission.
- c. Termination by the Architect. 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 Architect, or if the Commission fails to make any payment or perform any other obligation hereunder, the Architect 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 Architect for periods up to the effective date of termination.

- d. Force Majeure. Neither of the parties shall be liable to the other for any delay or failure in performance hereunder due to a force majeure event. If a force majeure event occurs, the party delayed or unable to perform shall give prompt notice to the other party, and the Commission may, at any time during the continuation of the force majeure event, elect to suspend the performance of the Architect under this Agreement for the duration of the force majeure event. The Commission shall not be obligated to pay for Services to the extent and for the duration that performance thereof is delayed or prevented by the force majeure event, but, provided the Architect is not in default of any obligation of the Architect hereunder, the Commission shall pay to the Architect, according to the terms hereof, all compensation and reimbursements due to the Architect for periods up to the effective date of suspension.
5. Compensation of the Architect and Reimbursement for Expenses. The Commission shall compensate the Architect in the amount and the manner set forth in Schedule D 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 Architect, 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 Architect 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 Architect and render decisions pertaining thereto with reasonable promptness.
- c. Site Data. To the extent the Commission determines to be necessary for the Architect to perform the Services, the Commission may furnish, or may authorize the Architect to obtain from a consultant or consultants approved by the Commission as Reimbursable Expenses: (i) a certified survey of the site or sites; (ii) information concerning locations, dimensions and data pertaining to existing buildings and other improvements; (iii) title information; and (iv) information concerning available service and utility lines. The Architect shall not be liable to the Commission for the substantive content of such tests and reports obtained from a consultant engaged by the Architect and approved by the Commission, provided that the Architect has exercised reasonable diligence in the selection of the consultant.
- d. Tests and Reports. To the extent required for the Architect to perform the Services, the Commission may furnish structural, civil, chemical, mechanical, soil and/or other tests and reports or may authorize the Architect to procure such tests and

reports from a consultant or consultants approved in writing by the Commission as Reimbursable Expenses. The Architect shall not be liable to the Commission for the substantive content of such tests and reports obtained from a consultant engaged by the Architect and approved by the Commission, provided that the Architect has exercised reasonable diligence in the selection of the consultant and provided that the Architect has caused the consultant to purchase and maintain professional liability insurance in accordance with paragraph E.6 of Schedule E protecting the Commission, the User Agency, and the Program Manager from any loss or claim arising out of the consultant's performance.

- e. Legal, Auditing and other Services. The Commission shall arrange and pay for such legal, auditing, insurance counseling and other services as the Commission, in its sole discretion, may determine to be required for the Project. Such payments shall not include legal or auditing expenses arising out of or relating to any errors or omissions, or claimed errors or omissions, of the Architect.
- f. Designated Representatives. The Commission may designate, at its sole discretion, one or more representatives authorized to act on 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 Architect, and each of them, and their respective commissioners, board members, officers, agents and employees, from all claims, demands, suits, actions, losses, costs and the like, of every nature and description, made or instituted by third parties, arising or alleged to arise out of the work under such contract, and that the contractor(s) and consultant(s) thereunder shall purchase and maintain during the life of such contract such insurance as the Commission may require.
- h. Ownership of Documents. All documents, data, studies and reports prepared by the Architect or any party engaged by the Architect, pertaining to the Project and/or the Services shall be the property of the Commission.
- i. The parties intend and agree that, to the extent permitted by law, the drawings, specifications and other design documents to be produced by the Architect and its sub-consultants 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, the User Agency and their 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," the Architect hereby irrevocably grants, conveys, bargains, sells, assigns, transfers and delivers to the Commission, the User Agency and their successors and assigns, all right, title, and interest in and to the copyrights and all U.S. and foreign copyright registrations, copyright applications and copyright renewals 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. The Architect will execute all documents and, at the expense of the Commission, perform all acts that the Commission may reasonably request in order to assist the Commission, the User Agency and their successors and assigns, in perfecting their rights in and to the copyrights relating to the Work.

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

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

7. Indemnification of Commission. The Architect hereby agrees to indemnify, defend, 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 negligent or willfully wrongful act of the Architect, any person employed by the Architect, or any sub-consultant retained by the Architect in connection with this Project.

8. Insurance to be Maintained by the Architect. The Architect shall purchase and maintain at all times during the performance of Services hereunder, for the benefit of the Commission, the User Agency and the Architect, insurance coverage which will adequately insure the Commission, the User Agency and the Architect against claims and liabilities which could arise out of the performance of such Services, including but not limited to, the insurance coverages set forth in Schedule E to 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 Architect duly to observe or perform any obligation or agreement on the part of the Architect 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 Architect by the Commission;
 - ii. Any representation or warranty of the Architect 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 Architect becomes insolvent or ceases doing business as a going concern, or makes an assignment for the benefit of creditors, or generally fails to pay, or admits in writing its inability to pay, its debts as they become due, or files a voluntary petition in bankruptcy, or is adjudicated a bankrupt or an insolvent, or files a petition seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar arrangement under any present or future statute, law or regulation relating to bankruptcy or insolvency, or files an answer admitting the material allegations of a petition filed against it in any such proceeding, or applies for, consents to or acquiesces in the appointment of a trustee, receiver, liquidator or other custodian of it or of all or any substantial part of its assets or properties, or if it or its principals shall take any action in furtherance of any of the foregoing; or
 - iv. There shall be commenced any proceeding against the Architect seeking reorganization, arrangement, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation relating to bankruptcy which is not vacated, stayed, discharged, bonded or dismissed within sixty (60) days thereof, or there shall be appointed, without the Architect's consent or acquiescence, any trustee, receiver, liquidator or other custodian of Custodian or of all or any substantial part of the Architect's assets and properties, and such appointment 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 Architect, in which event the Commission shall have no further obligations hereunder or liability to the Architect except as to payment for Services actually received and accepted by the Commission through the effective date of termination. 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. **Confidentiality.** All of the reports, information, or data prepared or assembled by the Architect under this Agreement are confidential, and the Architect 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 Architect shall not, without the prior written consent of the Commission, prepare or distribute any news releases, articles, brochures, advertisements or other materials concerning this Agreement, the Project or the Services. . If the Architect is served with a subpoena requiring the production of documents or information which is deemed confidential, the Architect shall immediately notify the Commission in writing and provide a copy of the subpoena to the Commission in sufficient time for the Commission to attempt to quash, or take other action in relation to, the subpoena.

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

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

13. **Definitions.**

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

- b. **Architect** 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.
- c. **Change in Scope of the Project** means a substantial change in the Building Program, whether by alteration, addition, or deletion therefrom, which necessitates a revision in the basic services and compensation of the Architect and is approved in writing by the Commission. A change is "substantial" if the change item has been identified through regular Progress Meeting documentation and if the time exceeds 60 hours per change item. The Architect shall track and keep time records, and if the time exceeds 60 hours per change item, will inform the Commission and the Program Manager in writing.
- d. **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, including the Commission's authorized representative identified in Schedule F, paragraph F.6, 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.
- e. **Construction Budget** means the total funds budgeted by the Commission for constructing the Project and furnishing all items necessitated by the Program which shall be shown or described in the Contract Documents to be prepared by the Architect in accordance with this Agreement, but does not include any payments made to the Architect or sub-consultants or reimbursable expenses pursuant to Schedule D, paragraph D.3.
- f. **Contingent Additional Services** means additional services to be provided by the Architect for the Project pursuant to the provisions of Schedule B of this Agreement.
- g. **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.
- h. **Project** means the construction and/or improvement of the facility or facilities specified on page 1 of this Agreement.
- i. **Program Manager** means the Commission's authorized representative responsible for the coordination and management of all aspects of the construction process including without limitation, demolition, pre-construction, construction and project close out activities.
- j. **Reimbursable Expenses** as herein referred to includes actual expenditures, as identified in Schedule D, paragraph D.3.1, made by the Architect.

- k. **Special Consultants** includes, but is not limited to, cost analysis, kitchen design, masonry, roofing and elevator consultants.
- l. **Sub-consultant** means a firm hired by the Architect to perform professional services related to the construction and/or improvement of the Project.
- m. **Technical Personnel** as herein referred to includes partners, officers and all other personnel of the Architect, including technical typists assigned to the Project, exclusive of general office employees.
- n. **User Agency** means the municipal corporation that requested the Commission to undertake the construction and/or improvement of the Project.

14. General.

- a. **Counterparts.** This Agreement may be executed in any number of counterparts, any of which shall be deemed an original.
- b. **Entire Agreement.** This Agreement constitutes the entire understanding and agreement between the parties hereto and supersedes any and all prior or contemporaneous oral or written representations or communications with respect to the subject matter hereof, all of which communications are merged herein. This Agreement shall not be modified, amended or in any way altered except by an instrument in writing signed by both of the parties hereto.
- c. **Governing Law.** This Agreement has been negotiated and executed in the State of Illinois and shall be construed under and in accordance with the internal laws of the State of Illinois.
- d. **No Waiver.** The waiver by either party of any breach of this Agreement shall not constitute a waiver as to any succeeding breach.
- e. **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 Architect 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 Architect 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.
- f. **Non-liability of Public Officials.** No Commission trustee, employee, agent, officer, or official is personally liable to Owner's Representative or its sub-consultants, and Owner's Representative and its sub-consultants are not entitled to, and must not attempt to, charge any of them with liability or expense or hold them personally liable to Owner's Representative or its sub-consultants under this Agreement.

- 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

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto as of the 13 day of March, 2001.

ATTEST:

**PUBLIC BUILDING COMMISSION
OF CHICAGO**

Eileen J. Coy
Title: Secretary

By: [Signature]
Title: Chairman

**Johnson & Lee Ltd. in association with
VOA Associates Incorporated**

ATTEST:

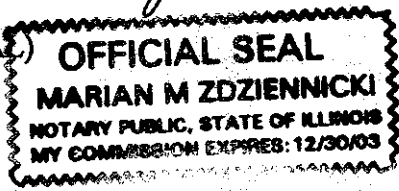
[Signature]
Title: COO for VOA, Inc.

By: [Signature]
Title: President - Johnson & Lee, Ltd.

Subscribed and Sworn to before me this 13th day of February 2001.

Marian M. Zdziennicki
Notary Public

(SEAL)



My Commission expires: 12/30/03

Schedule A

Architect of Record Services

FOR

**THE NEW KENNEDY-KING COMMUNITY COLLEGE
6300 SOUTH HALSTED
CHICAGO, ILLINOIS**

Schedule B

Scope of Services

The Architect shall provide all Services required to design and administer the construction of the Project. The term of this Agreement shall be defined by the following:

Commencement Date of Services	April 11, 2000
Completion Date of Services	September 30, 2005

The Services are separated into phases which shall include, but not be limited to, Programming, Schematic Design, Design Development, Construction Documents, Bidding Phase Services, Construction Phase Services and Project Close Out. The work product of each of the phases shall be approved by the Commission in writing prior to commencement by the Architect of the subsequent phase. It is expressly understood and agreed that references herein to "approved by the Commission" or to "approval by the Commission" shall not be interpreted to absolve the Architect from liability due to errors and omissions.

The Architect shall provide the following Services:

B.1 Programming Services

- B.1.1 Review with the Commission and the User Agency the goals and requirements of the Project.
- B.1.2 Identify for and review with the Commission the requirements of any state, federal, or city agencies having jurisdiction, advise on the cost impacts, if any, and suggest possible alternatives.
- B.1.3 Conduct a Facility Programming & Space Assessment Study by department. Conduct interviews with key department personnel identified by the User Agency to develop the square footage requirements of each department.
- B.1.4 Confirm existing and projected staff and student population counts for both Full Time Equivalent (FTE) and Part Time Equivalent (PTE) positions.
- B.1.5 Develop space standards to be applied to general academic and administrative support areas on a facility wide basis.
- B.1.6 Develop requirements for special programs to include, but not be limited to, Culinary and Performing Arts, Broadcasting, Automotive and Information Technology.
- B.1.7 Create programming options based on the data collected pursuant the Facility Programming & Space Assessment Study and the space standards.
- B.1.8 Tabulate the results of the Facility Programming & Space Assessment Study and create a general building program document, which depicts the spatial and functional requirements of the new facility.

B.1.9 Present the programming options for the facility in writing, for review and approval by the Commission and the User Agency.

B.2 Schematic Design Services

B.2.1 The Architect shall analyze the requirements of the Program, the conditions of the site and the survey, and consult with the Commission and the Commission's designated representative to establish the design, type of construction and the materials to be used. Based upon such analysis, the Architect shall prepare schematic drawings and design studies, general description of the scope of the Project, preliminary estimates of construction costs and analysis of any re-zoning requirements for the Project.

B.2.2 Present schematic design options for the facility for review by the Commission and the User Agency.

B.2.3 Upon direction from the Commission prepare plans, elevations, sections and outline specifications, as required, to describe the architectural, structural, mechanical, plumbing and electrical aspects of the selected design option for pricing by the Commission's designated representative.

B.2.4 As required, review schematic design documents along with value engineering items with the Commission and Commission's designated representative to align project scope with project budget.

B.2.5 At the completion of Schematic Design Phase the Architect will transmit one complete copy of the final documents for such Phase to the Commission and the Commission's designated representative for review and transmittal to the User Agency. In addition, the Architect shall make presentations to the User Agency as requested by the Commission or the Commission's designated representative. Any comments presented by the User Agency must be approved by the Commission prior to incorporating such comments into the Design Development Documents.

B.2.6 The Schematic Design Services shall commence upon notification of approval of the Programming Services by the Commission and User Agency, and shall be completed and documents submitted to the Commission, the Commission's designated representative and the User Agency for approval within 120 days following the approval of services provided pursuant to this Agreement

B.3 Design Development

B.3.1 Following approval by the Commission of the Schematic Design Phase of the Project, including any modifications, as may be authorized by the Commission or the Commission's designated representative, and upon direction of the Commission or the Commission's designated representative, the Architect shall prepare (based upon approved schematic drawings and design studies) plans, elevations and other drawings and outline specifications in order to fix and illustrate the size and character of the Project in its essentials including kinds of materials, type of

structure, mechanical and electrical systems and such other work as may be required (the "Design Development Documents").

- B.3.2 Review the Design Development Documents along with value engineering items with the Commission's designated representative ("Peer Review") and incorporate modifications and revisions resulting from the Peer Review process into the Design Development Documents to align project scope with project budget.
- B.3.3 Review the Commission's Environmental Consultant's scope of work, incorporate design elements resulting from environmental remediation into the Design Development Documents and coordinate the work as appropriate.
- B.3.4 Provide a complete set of Design Development Documents to the Commission's designated representative at the completion of this Phase reflecting all improvements as generally described in the Design Development Documents and as required by the Program for pricing by the Commission's designated representative.
- B.3.5 At the completion of Design Development Phase the Architect will transmit one complete copy of the final documents for such Phase to the Commission and the Commission's designated representative for review and transmittal to the User Agency. In addition, the Architect shall make presentations to the User Agency as requested by the Commission or the Commission's designated representative. Any comments presented by the User Agency must be approved by the Commission prior to incorporating such comments into the Construction Documents.
 - B.3.5.1 In the event that the Commission's designated representative's estimate of the construction cost exceeds the Commission's Construction Budget, as herein above defined, the Architect shall, after review and comment and upon written request of the Commission, and without additional compensation continue to revise, modify or correct any or all of the Project design, drawings and specifications in a manner satisfactory to the Commission until the revised construction estimate conforms to the Construction budget. Such revisions, modifications and corrections in the plans, specifications and drawings shall be submitted to the Commission within a reasonable time (not to exceed 90 days) after notice and direction by the Commission.
 - B.3.5.2 In the event that the Commission requests a change in scope of the project the Architect shall, after review and comment and upon written request of the Commission, and with additional compensation revise, modify or correct any or all of the Project design, drawings and specifications in a manner satisfactory to the Commission.
- B.3.6 The Design Development Documents shall be submitted to the Commission, the Commission's designated representative and the User Agency for approval within 150 days following the date of approval by Commission of the Schematic Design.

B.3.6.1 The Commission may direct the Architect in writing to perform Design Development Services in phases that correspond to the project schedule. The aggregate amount of time shall not exceed the time specified in B.3.6 without prior written approval of the Commission.

B.4 Construction Documents

B.4.1 Following approval by the Commission of the Design Development Phase, the Architect shall prepare and complete, based upon the approved Design Development Documents, all Construction Documents, including, but not limited to, architectural and engineering working drawings, designs, plans, calculations and specifications setting forth in detail all of the elements required for the architectural, structural, civil, mechanical, electrical, plumbing, heating, ventilation, air conditioning, fire protection, service-connected equipment and site work as may be necessary in order to obtain bids for construction of the Project.

B.4.2 The Construction Documents shall include any modifications and revisions resulting from Peer Review and environmental remediation upon approval by and direction of the Commission or the Commission's designated representative.

B.4.3 Upon completion of the Construction Documents submit one complete set to the Commission's designated representative for pricing.

B.4.4 As required, review the Construction Documents along with value engineering items with the Commission and Commission's designated representative to align project scope with project budget.

B.4.4.1 In the event that the Commission's designated representative's estimate of the construction cost exceeds the Commission's Construction Budget, as herein above defined, the Architect shall, after review and comment and upon written request of the Commission, and without additional compensation continue to revise, modify or correct any or all of the Project design, drawings and specifications in a manner satisfactory to the Commission until the revised construction estimate conforms to the Construction budget. Such revisions, modifications and corrections in the plans, specifications and drawings shall be submitted to the Commission within a reasonable time (not to exceed 90 days) after notice and direction by the Commission.

B.4.4.2 In the event that the Commission requests a change in scope of the project the Architect shall, after review and comment and upon written request of the Commission, and with additional compensation revise, modify or correct any or all of the Project design, drawings and specifications in a manner satisfactory to the Commission.

B.4.5 At the completion of the Construction Document Phase the Architect will transmit one complete copy of the final documents for such Phase to the Commission and the Commission's designated representative for review and transmittal to the User

Agency. In addition, the Architect shall make presentations to the User Agency as requested by the Commission or the Commission's designated representative. Any comments presented by the User Agency must be approved by the Commission prior to incorporating such comments into the final Bid Documents.

B.4.6 Review the necessary Instructions to Bidders, Proposal Forms, Contract Forms, General Conditions and Special Conditions of the Contract supplied by the Commission. The Commission's designated representative will prepare project Phasing Plans that shall be included in bid documents.

B.4.7 Coordinate the preparation of Bid Packages.

B.4.8 The Construction Documents shall be submitted to the Commission, the Commission's designated representative and the User Agency for approval within 180 days following the date of approval by Commission of the Design Development Documents.

B.4.8.1 The Commission may direct the Architect in writing to perform Construction Document Services in phases that correspond to the project schedule. The aggregate amount of time shall not exceed the time specified in B.4.8 without prior written approval of the Commission.

B.5 Bidding Phase Services

B.5.1 The Commission may direct the Architect in writing to perform Bidding Phase Services in phases that correspond to the project schedule.

B.5.2 Attend and participate at Pre-Bid Conference Meeting(s)

B.5.3 Prepare addendum(s) as directed by the Commission's designated representative to address bidder's questions that require clarification.

B.5.4 Consider written requests for product substitutions prior to receipt of bids.

B.5.5 Participate in the review and evaluation of the bids and make recommendations to both the Commission and Commission's designated representative for accepting or rejecting the bids.

B.5.6 Assist the Commission in identifying qualified bidders, soliciting bids for the work represented in the contract documents, drawings and specifications, reviewing bids relative to the project budget, and negotiating an agreement with the contractor and/or owners representative to construct the project.

B.5.7 If the lowest responsible bid, as determined by the Commission, obtained on any solicitation of bids, is in excess of the Construction Budget, the Commission may either award the construction contract to the lowest responsible bidder, or the Architect shall, upon the request of the Commission and without additional compensation, continue to revise any or all of the Project design, scope, quality, including revised drawings and specifications to the end that the construction cost not be in excess of the Construction Budget.

B.5.8 The Architect shall thereafter assist the Commission, without additional compensation, in the solicitation of new bids on the revised Project design, drawings and specifications. The Architect shall cooperate with the Commission's designated representative while the Architect is performing such revision, and all revisions in design, specifications, deletions and substitutions shall be approved by the Commission. The right of the Commission to require such revision and re-bidding shall not be exhausted by a single revision and re-bidding, but shall be a continuing right until the lowest responsible bid received is within the Construction Budget.

B.6 Construction Phase Services

B.6.1 Provide all drawings required during construction. Review and approve schedules, samples, shop drawings, product data, record drawings, product substitutions and other submissions to assure compliance with the design concept of the Project and fulfillment of the contractor's obligations as set forth in the Contract Documents, including monitoring of the Contractor's progress against the approved progress schedule.

B.6.2 In cooperation with the Commission's designated representative, review and make recommendations to the Commission concerning all bulletins, proposals, revisions in drawings and change orders with respect to the Project. The Architect shall process and prepare all bulletins and recommendations for change orders as directed by the Commission's designated representative.

B.6.3 Review contractors' applications for payment, invoices and other supporting documentation in accordance with the Commission's policies and procedures, and recommend action concerning contractors' periodic and final applications for payment. By issuing recommendations to the Commission for payment to contractors, the Architect shall represent to the Commission that, to the best of its knowledge, information and belief, the quality of the work for which payment is requested is in accordance with the Contract Documents, and the payment amount applied for by the contractor is justified. These provisions shall not be construed as conferring any rights hereunder for the benefit of contractors, subcontractors, materialmen, workmen or employees, or any other persons performing portions of the work, nor as enlarging or altering the application or effect of existing lien laws.

B.6.4 If requested by the Commission or the Commission's designated representative, make recommendations on any claims between the Commission and any contractor with whom the Commission has a contract relating to the Project and any other matters relating to the execution and progress of the work or the interpretation of the Contract Documents.

B.6.5 Qualified personnel of the Architect, as approved by the Commission's designated representative, shall provide adequate and competent observations on the Project site on an average of thirty (30) hours per week for the purpose of determining if the work is being performed in accordance with the Contract Documents, and shall advise the Commission accordingly. The Commission may request the Architect to maintain a full-time observer at the Project site. Compensation for a full-time on-site observer shall be established as a not-to-exceed fee in accordance with the

billing rates identified in Schedule D, paragraph D.2. On the basis of on-site observations, the Architect shall keep the Commission and the Commission's designated representative advised of the progress and quality of the work and endeavor to guard the Commission against defects and deficiencies in the work of contractors and reject any materials or work which fails to conform to the Contract Documents. On-site representative shall not be removed or replaced prior to full completion of the work without prior written approval of the Commission. The representative shall be removed immediately upon written request of the Commission.

- B.6.6 Issue clarifications for proper execution of the work required by the Contract Documents; provided, however, the Architect shall not have control or charge of and shall not be responsible for construction means and methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work or for the act or omissions of the contractor, subcontractors or any other persons performing any of the work in accordance with the Contract Documents.
- B.6.7 Advise the Commission on the coordination of the work so that the intent of the design is adequately carried out and use reasonable diligence in monitoring the contractor's adherence to the approved construction work schedule.
- B.6.8 Review the work to establish preliminary acceptance of the project.

B.7 Project Close Out

- B.7.1 Conduct a final inspection of the project with the Commission, User Agency and the Commission's designated representative to verify that the materials furnished and work performed are in accordance with the contract documents.
- B.7.2 Coordinate the consolidation and preparation of punch lists compiled by the Architect, Commission, User Agency, and Commission's designated representative indicating the items of work remaining to be accomplished.
- B.7.3 Coordinate with the General Contractor and the Commission's designated representative for assembly and delivery to the Commission all guarantees, warranties, operating and maintenance manuals required by the contract documents. Make recommendations as to the withholding of payments to the general contractor. Determine the value of any uncorrected and/or deficient work.
- B.7.4 Coordinate with the General Contractor to expedite the preparation and delivery of record drawings and operations and maintenance manuals of the project in accordance with the specifications. The "as-built" documents will be subject to the approval of the Commission's designated representative.
- B.7.5 The completion date for this project will be no later than September 30, 2005. Services required of the Architect and its sub-consultants after October 1, 2005 shall be considered additional services and compensated according to Section D.2.1.

B.7.6 Upon completion of the construction contract and all "punch list" items in accordance with the Contract Documents, the Architect shall issue a Certificate of Final Acceptance and obtain from the general contractor a sworn statement stating that all debts, liabilities and demands on account of work and materials furnished with respect to the Project have been fully paid, released and discharged and that there is nothing due to subcontractors, mechanics or materialmen. No Certificate shall be issued by the Architect until, to the best of its knowledge, information and belief, all work has been completed in accordance with the Contract Documents.

B.8 Additional Responsibilities and Representations

B.8.1 Prepare the minutes of all conferences which it attends and shall promptly forward typed or reproduced copies of such minutes within five (5) days to all parties in attendance and other such parties as are designated by the Commission.

B.8.2 The Architect agrees that in performing this Agreement it shall comply with all applicable local, state and federal ordinances, laws and regulations including but not limited to the Illinois Environmental Act (415 ILCS 4/1 et. seq.) and the Americans with Disabilities Act of 1990 (42 U.S.C. 12010 et. seq.), including standards and regulations issued pursuant to these Acts. In those instances where compliance with the above-mentioned statutes do not require accessibility for persons with physical disabilities, the following minimum accessibility standards shall apply to any public facility for which aggregate construction and rehabilitation costs of \$500,000 or more will have been incurred during any 30-month period:

B.8.2.1 Access to the first floor, preferably through the main entrance; and

B.8.2.2 Accessible first-floor toilet facilities.

B.8.3 Provide assistance in securing all necessary orders, ordinances, re-zoning, street and alley vacations, permits, licenses, or other approvals, as applicable, required by local, state and federal regulatory agencies to permit construction of the Project. Such assistance shall include conferences with and presentations to appropriate regulatory agencies including without limitation, the Building Department and Fire Prevention Bureau of the City of Chicago and other governmental bodies.

B.9 Contingent Additional Services

Provide any or all of the following Contingent Additional Services as may be authorized in writing by the Commission at its sole election:

B.9.1 Select and coordinate the bidding and installation of Fixtures, Furnishings and Equipment (FF&E) not covered in the Program, sculpture, murals and other related features and special equipment not included in the construction contract.

B.9.2 Furnish consulting services after occupancy of the building in connection with the operation of the building, including various electrical and mechanical systems.

- B.9.3 Provide consultation concerning replacement of any work damaged or destroyed by fire or other cause during construction and furnish additional Basic Services as may be required in connection with the replacement of the work.
- B.9.4 Provide additional Basic Services made necessary by the default of the contractor in the performance of the construction contract.
- B.9.5 Furnish required services in connection with additional site demolition beyond that described in the original Program.
- B.9.6 Provide all measured drawings of existing construction as required for the completion of the Project.

Schedule C

Project Documents

Intentionally omitted.

Schedule D

Compensation of the Architect

D.1 Architect Fee: The Commission shall pay the architect for its services as described in Schedule B, paragraphs B.2 through B.8 a Fixed Fee ("Fee") of Eight Million Dollars and No Cents (\$8,000,000.00). The Fee shall, in the absence of a change in scope of the Project by the Commission or the issuance of Commission-originated additive change orders constitutes the Architect's full fee for Basic Services.

D.1.1 The fee shall be allocated and payments made on a monthly basis as follows:

Schematic Design	20%
Design Development	20%
Construction Documents	23%
Bidding Phase Services	5%
Construction Phase	30%
Project Close-out	2%

D.1.2 The Commission shall pay the architect for programming services as described in Schedule B, paragraph B.1, a Fixed Fee ("Fee") of Two hundred twenty-five thousand and no cents (\$225,000.00). The fee shall be allocated and payments made on a monthly basis as follows:

Facility Programming & Space Assessment Study	30%
Development of Space Standards & Requirements for Special Programs	35%
Create Programming Options	20%
Create & Present a General Building Program Document	15%

D.1.3 Architect's fee shall include profit, overhead, general conditions, and all items not specifically identified as Reimbursable Expenses.

D.2 Billing Rates

D.2.1 The Commission shall compensate the Architect for contract modifications and/or additional services resulting from a Change in Scope of the Project based upon a *Lump Sum Fee* or a *Time Card Not to Exceed Fee*, as approved by the

Commission in writing. In the case of *Time Card* billings, rates of reimbursement for the Architect's employees shall be the actual base salaries paid to the specific employee performing the services (not to exceed the maximum Commission hourly salary rates—listed below), plus a multiplier not to exceed 2.5.

Position Title	Maximum Hourly Rate with Multiplier	
Principal	\$150.00	
Senior Project Manager	\$125.00	
Project Manager	Senior Architect/Engineer	\$115.00
Project Architect/Engineer	Field/Technical Specialist	\$95.00
Architect/Engineer	Designer	\$80.00
CADD Draftsman	Intern Architect/Engineer	\$70.00
Clerical/Administrative		\$50.00

The following items are considered to be a part of the multiplier, and shall not be considered as additional reimbursable expenses:

- D.2.2 Workmen's Compensation Insurance.
- D.2.3 Direct Personnel Expenses:
 - D.2.3.1 Social Security Tax.
 - D.2.3.2 Unemployment Insurance.
 - D.2.3.3 Health insurance Benefits.
 - D.2.3.4 Long Term Disability Insurance.
 - D.2.3.5 Other Statutory and Non-Statutory Employee Benefits.
 - D.2.3.6 Pensions and Similar Contributions.
- D.2.4 Telephone Service including Local Calls.
- D.2.5 General and Administrative Expense including Overhead and Profit.
- D.2.6 General Liability, (Excluding costs for Insurance Premiums on Special Consultant(s) and Trade Contractors) Professional Liability, Valuable Papers, Auto and other Insurance as mandated by the Contract.
- D.2.7 Computer Charges.
- D.2.8 Postage and Handling.
- D.2.9 Parking and Mileage.
- D.2.10 Other items not specifically identified below as "Reimbursables".

D.3 Reimbursables

D.3.1 **"Reimbursable Expenses"** as referred to herein, are actual expenditures at cost, incurred by the Architect, and required to provide their services to the Commission. The following shall be considered reimbursable expenses:

D.3.1.1 Plotting, printing and reproduction of drawings specifications, and presentation materials requested by the Commission, or required for scheduled reviews of the progress of the work by the Commission and/or the User Agency, public or city agency meetings and hearings, and as required for professional peer reviews of documents as directed by the Commission. One coordination set shall be provided to each consultant at the conclusion of schematic, design development and construction document phases.

D.3.1.2 Distribution (by messenger or special shipping) of drawings, specifications, and presentation materials requested by the Commission, or required for scheduled reviewed of the progress of the work by the Commission and/or the User Agency, public or city agency meetings and hearings, and as required for professional peer reviews of documents as directed by the Commission.

D.3.1.3 Plotting, printing, reproduction and distribution of drawings and specifications for the purposes of soliciting contractor bids, issuing documents for building permit and issuing documents for construction.

D.3.1.4 Printing and distribution costs associated with shop drawing and submittal reviews during construction.

D.3.2 With regard to the Reimbursable Expenses identified in paragraphs D.3.1.1 through D.3.1.4, costs of these expenses are on a not to exceed basis of \$ 200,000.00.

D.3.3 The following reimbursable expenses require prior written approval by the Commission:

D.3.3.1 Expense of transportation and living of principals and employees traveling in connection with the Project, but not including travel and expense to and from the job site or within a 50-mile radius of downtown Chicago. Travel expenses include coach air fare, hotel and per diem costs, auto rental, fuel and insurance, and must be supported with proper documentation in the form of itemized invoices.

D.3.3.2 Fees and costs of special consulting services requested by the Commission such as, masonry, roofing and elevator consultants shall be paid as a reimbursable expense. Civil, structural, mechanical, electrical, plumbing, acoustical, theater, food service and fire protection engineering services are included within the Fixed Fee indicated in paragraph D.1.

- D.3.3.3 Costs for rental or purchase of special items or equipment requested by the Commission.
- D.3.3.4 Fees and costs to secure necessary permits or civil agency approvals, including permit fees.
- D.3.3.5 Costs of surveys, geotechnical and environmental technical testing and reports.

D.3.4 The following are not reimbursable expenses:

- D.3.4.1 Plotting, printing and distribution of drawings and specifications for the purposes of coordination between members of the Architect's project team, or otherwise incidental to the normal execution of the Architect's work.
- D.3.4.2 Office and administrative expenses, including telephonic or telecopier system expenses, photocopying and duplicating costs, except as defined under D.3.1, office or drafting supplies, and delivery services except as defined under D.3.1.

D.4 The Architect shall submit original copies of its monthly invoice to the Commission's designated representative for approval. Submittal of approved invoices to the Commission is the responsibility of the Commission's designated representative.

Schedule E

Indemnification and Insurance

E.1 The Architect shall purchase and maintain during the life of the Agreement insurance protecting the Architect from all liabilities that may be imposed under the *Workers' Compensation Act and the Workers' Occupational Disease Act of the State of Illinois*. If the Architect engages any sub-consultants to perform any of the Services for the Project, the Architect shall require all sub-consultants to provide similar insurance for sub-consultant's employees. The limit of liability under Coverage "B", Employer's Liability of the Standard Form of the Workers' Compensation and Employers Liability policy shall be as follows:

Bodily Injury by Accident	\$1,000,000 per Accident
Bodily Injury by Disease	\$1,000,000 Policy Limit
Bodily Injury by Disease	\$1,000,000 per Employee

E.2 The Architect shall purchase and maintain during the life of the Agreement, Commercial General Liability Insurance to protect it from claims for bodily injury, including death, at any time resulting therefrom, or damage to property which may arise out of or in consequence of the activities or performance of the services under the Agreement, whether such activities by the Architect or by any of its subconsultants, or by anyone directly or indirectly employed or otherwise contracted by any of them. The Architect shall require all sub-consultants engaged by the Architect for this Project to purchase and maintain during the life of the Agreement, Commercial General Liability Insurance. The Commercial General Liability Insurance shall include the following:

E.2.1 Indemnification of the Commission, 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.

E.2.2 Coverage for claims due to explosion, collapse, or damage to underground utilities or property.

E.2.3 Personal Injury coverage with the Employee Exclusion deleted, Broad Form Property Damage coverage, Independent Contractors coverage, and Products/Completed Operations coverage. The policy shall also include continuous Products/Completed Operations coverage for two years after Final Acceptance by the Commission and Severability of Interests clause for all Additional Insureds, with no cross liability suits exclusion.

E.2.4 Limits of liability

E.2.4.1 For contracts awarded with a base contract price less than \$1,000,000.00, the limits shall be as follows:

General Aggregate	\$2,000,000
Products/Completed Operations Aggregate	\$2,000,000
Personal/Advertising Injury Limit	\$1,000,000
Each Occurrence	\$1,000,000
Fire Legal Liability	\$50,000
Medical Payments	\$5,000

E.2.4.2 For contracts awarded with a base contract price of \$1,000,000.00 or greater, the Architect shall be required to carry Excess/Umbrella Liability limits of:

General Aggregate	\$5,000.00
Products/Completed Operations Aggregate	\$5,000.00
Each Occurrence	\$5,000.00

The Architect expressly understands and agrees that any insurance coverages and limits furnished by the Architect shall in no way limit the Architect's liabilities and responsibilities specified within the Agreement or by law.

NOTE: All limits may be a single policy or in combination with an Umbrella Liability policy or Excess Liability policy, which policy shall follow the form of the underlying primary policy.

NOTE: Commercial General Liability shall be written on an OCCURRENCE BASIS. The CLAIMS MADE form is not acceptable to the Public Building Commission under this Agreement.

NOTE: The Certificate of Insurance must show that specified limits of liability will apply specifically to this Public Building Commission Project ONLY by use of a Specific Endorsement to the policy or by the attachment Insurance Services Office (ISO) Endorsement CG 2503 11/85.

E.3 (Special Endorsement) The Commission, the User Agency, their respective commissioners, board members, officers, agents, designated representatives and employees, individually and collectively, shall be named as Additional Insureds under the Architect's Commercial General Liability Policies. The insurance afforded to the Additional Insureds shall be primary over any other valid or collectible insurance that the Additional Insureds may have with respect to loss under this policy. Other insurance of any Additional Insured applicable to loss is excess over this endorsement, and the amount of the Company's liability under this policy shall not be reduced by the existence of such

other insurance, provided, however, that this paragraph does not apply to loss caused solely by the negligence of such Additional Insureds.

The Architect hereby waives all of its rights of subrogation against the Additional Insureds.

- E.4** The Architect shall purchase and maintain during the life of the Agreement, Business Automobile Liability insurance to include all owned, non-owned, hired or rented vehicles with limits of liability as follows:

Combined Single Limit Bodily	\$1,000,000
Injury and Property Damage Liability	

- E.5** The Architect shall purchase and maintain during the life of the Agreement Valuable Papers insurance in an amount not less than \$40,000 to insure against any loss whatsoever which could damage valuable Project documents including but not limited to design development documents, working drawings, specifications, records, papers, maps, statistics, survey notes, data preserved by electronic or computerized means, if applicable, relevant to this Agreement. This insurance shall have limits sufficient to pay for the recreations, re-establishment, or restoration of these valuable papers.

- E.6** The Architect shall purchase and maintain during the life of the Agreement Professional Liability insurance covering the Architect against all sums which the Architect may become obligated to pay by reason of the liability imposed upon the Architect by law for damage resulting from any claim made against the Architect arising out of the performance of this Agreement in the capacity as the Architect and caused by any error, omission or act of the Architect, or of any person or sub-consultant employed by the Architect, or any others for whose actions the Architect is legally liable.

The Limit of Liability is as follows:

\$	2,000,000	Each Occurrence
\$	2,000,000	General Aggregate
\$	25,000	Self-Retained Limit

Limits must be project specific, dedicated to work performed under this contract only, unless otherwise approved by the Commission, for both the Architect and/or any person or sub-consultant employed by the Architect or any others for whose actions the Architect is legally liable and which shall be maintained for a period of not less than four years following completion of this Agreement.

- E.7** Prior to the commencement of the Services, Certificates of Insurance evidencing Workers' Compensation and Employers' Liability, Commercial General Liability insurance, Business Automobile insurance, Umbrella or Excess Liability insurance, and Professional Liability signed by the Insurance Company(s), and certifying to the name and address of the Architect so insured, the description of the Services covered by such policies, the inception and expiration dates of the policies, the specific coverages to be provided (i.e. contractual, broad form property damage, etc.) shall be submitted to and approved by the Commission, Such Certificates of Insurance shall state that policies will

not be cancelled, non-renewed, or materially changed without thirty (30) days prior notice in writing to the Commission. In the event the insurance is cancelled, non-renewed, or materially changed before completion of the Services, the Commission reserves its rights under the Agreement, to order the job shut down until the Architect obtains the required insurance in the amounts stated herein, or the Commission may obtain the coverages required and shall then deduct the appropriate premium cost from the monies due to the Architect. Such Certificates of Insurance shall also evidence a waiver of subrogation against the Additional Insureds.

E.8 All such insurance shall be placed in companies with a minimum AM Best rating of A VIII, unless otherwise approved by the Commission, authorized under the insurance laws of the State of Illinois to do business in the State of Illinois.

E.9. Indemnification:

The following persons are hereby incorporated as indemnitees, including their respective Commissioners, Board Members, Officers, Agents and Employees, individually and collectively:

**Public Building Commission of Chicago
City Colleges of Chicago**

Schedule F

Commission's Additional Rights and Responsibilities

F.1. The Commission shall provide the Architect all reasonably requested information concerning the Commission's requirements for the Project.

F.2. The Commission shall examine documents submitted by the Architect and render decisions pertaining thereto with reasonable promptness to avoid delay in the progress of the Architect's work.

F.3. The Commission shall furnish, or direct the Architect to obtain from a company or companies approved by the Commission as Reimbursable Expenses: a certified survey of the site providing, as required, all grades and lines of streets, alleys, pavements and adjoining property, rights-of-way, encroachments, boundaries and contours of the building site; locations, dimensions and data pertaining to existing buildings and other improvements; title information as to restrictions, easements, zoning and deed restrictions; information as to available service and utility lines, both public and private; and results of test borings and pits, as required, for determining subsoil conditions.

F.4. The Commission shall pay for tests and reports by Special Consultants as defined in paragraph D.3.3.2; however, the Commission may direct the Architect to procure such professional services as Reimbursable Expenses and submit invoices therefor to the Commission for payment as provided in Schedule D.

F.5. The Commission shall arrange and pay for such necessary legal, auditing, and insurance counseling services as may be approved in writing by the Commission 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 the Architect.

F.6. The Commission will appoint a Program Manager as the Commission's designated representative for the Project. The Commission will notify the Architect in writing as to the identity of the firm that is appointed Program Manager for the Project.

F.7. The Commission's designated representative shall assist the Commission in managing the Project and shall have the authority, as specifically directed by the Commission, to act on its behalf.

F.8. No extras or credits to contractors shall be authorized by anyone other than the Commission.

F.9. The Commission shall determine the kinds and amounts of insurance and bonds to be carried or furnished by the contractor during construction and the sufficiency of evidence that such coverages are in force.

F.10. The Commission shall require, by appropriate provision in each general construction contract let by it, that the contractor shall indemnify, defend, save and hold harmless the Commission, the User Agency and the Architect, their respective Commissioners, Board Members, officers, agents, designated representatives 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 the contract, and the contractor shall purchase and maintain during the life of the contract such Comprehensive Public Liability and Property Damage insurance as shall protect the Commission, the User Agency, the Architect and contractor from all such claims, demands, actions and the like. Such insurance shall be in such amount and with such insurer as shall be approved by the Commission.

F.11 The Commission reserves the right to audit the books of the Architect on all financial subjects relating to this Agreement with the Commission.

Schedule G

Year 2000 Provisions

YEAR 2000 PROVISIONS - FOR PROVIDERS OF INFORMATION TECHNOLOGY AND SERVICES AND PRODUCTS WITH EMBEDDED INFORMATION TECHNOLOGY

G.1 To the extent the Architect is providing Information Technology to the, Commission, whether to be provided on a custom basis or on a standardized or commercially available basis, the Architect warrants that it is Year 2000 Compliant ("Y2K Compliant"). Information Technology ("IT") encompasses IT Products, IT Services, or both, as defined below.

IT Products means, individually and collectively, every item of computer, networking or communications hardware, firmware, software, and peripherals including, without limitation, those items of hardware, firmware, software, and peripherals contained in, installed on, or provided in conjunction with goods otherwise being furnished under this Agreement.

IT Services means services designed, performed, delivered or developed that are to be rendered or that are operations to be conducted by the Architect under this Agreement including, without limitation, data services, and design, modification, servicing and maintenance services relating to IT Products.

G.2 "Y2K Compliant" means that the Information Technology fully complies with and satisfies the following warranties and requirements ("Y2K Warranties"):

G.2.1 correctly and accurately, and without interruption, processes date/time data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and leap year calculations, regardless of the use of current calendar dates;

G.2.2 performs and functions accurately, consistently and without interruption before, during, and after January 1, 2000, without any changes in operation associated with or arising from the advent of the new century and the millennium;

G.2.3 responds to two digit date input in a way that resolves any ambiguity as to century in a disclosed, defined, consistent and pre-determined manner; and

G.2.4 stores and provides output of, and interacts with any applicable third party systems regarding, date information in ways that are unambiguous and correct as to century, and that can and will be properly and accurately interpreted by those third party systems with which it inter-operates; and

G.2.5 recognizes the Year 2000 ("Y2K") as a leap year.

- G.3** Additionally, to the extent the Information Technology that the Architect is designing or supplying under the Agreement is used or intended to be used in combination with Information Technology already in place and supplied by others, including without limitation any database or other information systems, the Architect's Y2K Warranties apply, but only to the extent the date and time data that the Architect or the Architect's Information Technology receives from the third party Information Technology is accurate. If the Architect becomes aware that the data received from third party Information Technology is not Y2K Compliant, the Architect must promptly advise the Commission of that fact, in writing.
- G.4** If the Agreement requires that specific listed items of Information Technology must perform as a system, then the Y2K Warranties apply to those listed items as a system.
- G.5** The duration of the Y2K Warranties and the remedies available to the Commission for breach of any of them are generally as described under the terms of any general warranty provisions of the Agreement, except as follows:
- G.5.1** The Y2K Warranties must not expire earlier than January 1, 2001 or the expiration date of the general warranties, whichever period is longer;
- G.5.2** Notwithstanding any provision to the contrary in the general warranty provision(s), or in the absence of any such general warranty provision(s), the remedies available to the Commission for breach of any of the foregoing Y2K Warranties include, as the Commission may request and elect, repair or replacement of any listed item of Information Technology supplied under the Agreement and the provision by the Architect at its sole cost and expense, of any item of material, labor or services that must be supplied to make the listed items of Information Technology work or work together as a system (including without limitation labor for removal and installation, shipping and freight, retraining, etc.);
- G.5.3** Nothing in the Y2K Warranties and remedies set forth herein limits any rights or remedies the Commission may otherwise have under the Agreement;
- G.5.4** If the Architect develops and makes available to its customers or the market any Y2K bug fix, upgrade, revision, patch relating to the Y2K Compliance of any covered Information Technology, the Architect will provide it (a "Y2K Fix") to the Commission without additional cost or expense;
- G.5.5** Each Y2K Fix supplied to the Commission must be effective without causing any loss of existing functionality of the Commission's Information Technology, and without adversely affecting its interoperability with any third party systems; and
- G.5.6** The Architect must, upon notice of a breach of any Y2K Warranty, perform any repair or replacement to be performed under this Rider on the Architect's highest priority basis (i.e., before performing similar services for any other current or former client or customer of the Architect.)

YEAR 2000 PROVISIONS

ARCHITECT'S OWN OPERATIONS, SUPPLIERS AND SUB-CONSULTANTS

- G.6** Regardless of whether the Architect provides Information Technology to the Commission, to the extent that the Architect relies on or uses Information Technology in its own general business operations, the Architect warrants that all Information Technology used by the Architect in its business operations is Y2K Compliant in the manner described in paragraphs G.1 and G.2 A above. Further, the Architect has ascertained that the Architect's own suppliers and subcontractors are Y2K Compliant as to Information Technology used in their own operations. The Architect warrants that any failure by the Architect to be Y2K Compliant in accordance with these provisions will not adversely affect the Architect's ability to perform all required services or provide or deliver any goods, whether or not of a type involving Information Technology, under any Agreements with the Commission. If the Architect is unable to perform under the Agreement as a result, directly or indirectly, of a failure of its Information Technology or of any of its subcontractors or suppliers to be Y2K Compliant, The Architect's nonperformance will not be considered a matter excused by a *force majeure event* for any purpose under the Agreement or this Rider, nor will it be considered to be an event beyond the Architect's reasonable control, nor will the Architect otherwise be excused from performance under the Agreement as a result of any Y2K related problem.
- G.7** The Architect will cooperate with and provide adequate assurance to the Commission of its continuing Y2K Compliance; its failure at any time to do so will constitute an event of default under the Agreement.



Richard J. Daley Center
50 W. Washington Street
Room 200
Chicago, Illinois 60602
(312) 744-3090
Fax: (312) 744-8005
www.pbccchicago.com

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May 17, 2002

Michael C. Brown
Gilbane Building Company
8550 W. Bryn Mawr Ave., Suite 500
Chicago, IL 60631
VIA U.S. MAIL

Re: **Professional Services Agreement for Program Manager Services
for the development of Kennedy-King College Project**

Dear Mr. Brown:

On May 14, 2002, the Board of Commissioners of the Public Building Commission of Chicago appointed Gilbane Building Company a Joint Venture as Program Manager for the development of Kennedy-King College Project.

The Public Building Commission of Chicago will be forwarding the professional service agreement for the project to you shortly. If you have any questions or require additional information, please feel free to contact Miguel F. Fernandez, Contract Negotiator, of our office at 312-744-7861.

Sincerely,

Kevin Gujral
Interim Executive Director