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OF COUNSEL
ADRIA EAST MOSSING, LLC

June 20, 2011

Joseph M. Ferguson
Inspector General
City of Chicago: Office of the Inspector General
180 North Michigan Avenue
Suite 2000
Chicago, Illinois 60601

Re: Report of the Inspector General of the City of Chicago, dated June 15, 2011

Dear Mr. Ferguson,

Enclosed please find the response of legal counsel for the PBC, Neal and Leroy, LLC to your report issued on June 15th, regarding the review by your office of MBE/WBE participation on PBC projects completed in 2009. Pursuant to my responsibility as the Inspector General (IG) for the PBC, I requested PBC counsel, Neal and Leroy, LLC in cooperation with PBC staff to prepare a detailed response to your allegations that the PBC "grossly overstated" the MBE/WBE utilization in 2009 and that the PBC failed to provide you with all requested documents. I have also undertaken an investigation into these allegations consistent with my responsibilities as the IG. My conclusions are consistent with the response of the PBC legal counsel, Neal and Leroy, LLC. They can be summarized as follows:

1. The method of calculation you apparently used is wrong. You calculated the percentages of MBE/WBE participation in projects using the City of Chicago's rules for such calculation. The PBC is a separate and independent body from the City and the PBC rules and regulations for making these calculations are different in an important respect. The PBC calculations take into account full participation of MBE/WBE's as primes or joint venture partners in a project, for the reasons described in the Special Conditions Regarding Remedial Program for Utilization of Minority Business Enterprise ("MBE"), Women Business Enterprise ("WBE") and Economically Disadvantaged Firms adopted by the Board on October 1, 2004 and attached hereto. The City does not recognize full participation of MBW/WBE as primes or in joint venture partnerships.

2. Additionally, joint venture partners have no lien rights on projects. Therefore, relying on lien waivers alone to calculate participation would inaccurately exclude MBE/WBE participants who act as joint venture partners.
3. Additionally, you came to conclusions on the basis of documents for projects for which financial closeout had not been completed, which means that all waivers of lien had not been collected and final payments had not been made.
4. With regard to what you define as the PBC's failure to provide you with complete documentation, that determination, as was detailed in a number of communications with your office prior to the issuance of your report, was based on advice of legal counsel as is detailed more fully in the attached response of the PBC legal counsel.

Finally, I want to respond to your contention that the PBC must "more diligently" monitor MBE/WBE compliance. Of course I agree with the goal of the PBC doing everything it can to be diligent in the process of monitoring and overseeing the MBE/WBE process so as to prevent fraud. As is detailed in the attached response, the PBC has taken significant steps in the last several years to enhance their ability to provide accurate reporting and to provide oversight on on-going projects both in the field and in the office. This supervision is done on a regular basis periodically during the progress of a job. I intend to work with the staff in these continuing efforts to improve this process even further.

I also want to reiterate what I said to you when we met several months ago. I believe that our goals are similar and that we have a common interest in promoting integrity and effectiveness and preventing fraud and abuse in government. In that regard, in the future, if you have any questions or concerns about any documents you receive from the PBC, I would be happy to assist you in receiving answers to those questions and have the PBC provide any clarification for you at any point during your investigation. For example, in this instance I would have requested that PBC staff provide you with clarification about how the PBC calculates MBE/WBE participation and compliance prior to the issuance of your report. Should you have any additional concerns please feel free to contact me at any time.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "Patti Bobb", with a long horizontal flourish extending to the right.

Patricia C. Bobb

Enclosure

NEAL & LEROY, LLC

203 North LaSalle Street, Suite 2300 | Chicago, Illinois 60601-1243 | telephone 312.641.7144 | facsimile 312.641.5137 | www.nealandleroy.com

Langdon D. Neal
Attorney at Law

June 20, 2011

**VIA ELECTRONIC MAIL AND
HAND-DELIVERY**

Patricia C. Bobb
Law Office of Patricia C. Bobb & Associates
30 North LaSalle Street, Suite 1524
Chicago, Illinois 60602

Re: Report of the Inspector General of the City of Chicago dated June 15, 2011

Dear Ms. Bobb:

Neal and Leroy, LLC, assisted by PBC staff, has examined the Report of the Inspector General's Office: "Review of Minority and Women-Owned Business Enterprise Participation on Public Building Commission Projects Completed in 2009," dated June, 2011 (the "Report"). It is our opinion that the PBC complied with its responsibilities under its enabling legislation, its obligations under law and contract to its client agencies and accurately reported on its 2009 projects regarding compliance consistent with the PBC's policies as set forth in a resolution of the Board of Commissioners of the Public Building Commission approved October 1, 2004.

The Report contains several errors of law and fact. The Report concludes, *inter alia*: "Consequently, the IGO believes the PBC disregarded its responsibilities under the Municipal Code and its own policies by denying the IGO's document request." The IGO erred in concluding that the PBC improperly withheld documents from the IGO. The PBC complied with the IGO's requests to the fullest of its ability. When the PBC performs projects on behalf of its client agencies, it assumes a custodial responsibility with respect to the property of the client agency, including the project documents. The Commission will only release its clients' property when required by law or at the clients' direction or permission.

Pursuant to its enabling legislation (cited below) and its by-laws, the Commission acts through resolutions of its Board. With respect to the documents requested by the IGO, the Board adopted a resolution at its February 13, 2007 meeting authorizing the execution and delivery of the "Intergovernmental Agreement between the Board of Education of the City of Chicago and the Public Building Commission of Chicago Regarding the Modern

Schools Across Chicago Program and Other Projects.” The Board of Education had previously entered into the “Intergovernmental Agreement between the City of Chicago and the Board of Education of the City of Chicago Regarding Phase I of the Modern Schools Across Chicago Program.” The parties to these intergovernmental agreements might have entered into a single joint agreement to authorize a direct reporting relationship between the Commission and the City, but chose not to. The intent of this choice was clear: the Board of Education, not the PBC, was responsible to the City of Chicago for any issues associated with the Modern Schools Program pertaining to the City that were not otherwise expressly delegated to the PBC and the contractors procured by the PBC, e.g., securing building permits.

The IGO made its initial request for the documents that became the subject of the Report on July 11, 2010. The PBC complied with this request on August 11, 2010 in a manner consistent with our advice to produce the documents that the IGO was authorized by law to request. At that time the PBC produced a substantial number of documents per your request. Those documents pertained to projects performed pursuant to intergovernmental agreements between the City and the PBC. Your office renewed its request for documents from projects that the PBC performed pursuant to intergovernmental agreements with other units of government.

The PBC’s response continued to be that it had complied with the request of the IGO. The IGO asserted then, as it does in the Report, that its authority extends to any project funded with City funds. The last such assertion prior to the issuance of the Report occurred on October 18, 2010. The PBC’s reply of October 21, 2010 furnished the IGO with the two bases upon which the PBC might both comply with the IGO’s request and the PBC’s resolutions and contractual obligations, i.e., furnish a Freedom of Information Act request, or obtain the permission of the Board of Education for the PBC to release the requested documents. The IGO elected not to pursue either course. According to the PBC, nothing further was heard on this matter until the release of the Report on June 15, 2011. The PBC continues to disagree with the IGO’s interpretation of the limitations of the scope of the IGO’s authority. We suggest that an open and frank conversation take place between the IGO and the PBC to resolve any legal impediments to insure an open and cooperative relationship going forward.

The second erroneous conclusion drawn by the IGO was that the PBC “grossly overstated” the level of MBE participation in its projects. The PBC acted in compliance with what the IGO acknowledges are the PBC’s own rules and regulations (*see* Page 8 of the Report). As the IGO also acknowledges, these rules and regulations differ from those of the City (which is but one indication that the PBC is not “predominantly a creature of the City of Chicago”). Much of the discrepancy between the level of participation acknowledged by the PBC and that acknowledged by the IGO stems from the IGO’s failure to fully credit the participation of the MBE general contractor on the Norwood Park Senior Center project and the participation of the MBE general contractor joint ventures in the Westinghouse High School project and the Dr. Jorge Prieto Math and Science Academy project.

There are several apparent reasons for this failure. One is that the IGO applied the City's rules, rather than the PBC's, to the PBC's projects. The second reason lies in the IGO's reliance upon waivers of lien to substantiate the levels of participation that they identified. As part of the prime contractor, the MBE joint venture had no lien rights, and therefore was not required to, and did not, submit waivers of lien. In addition, the IGO came to conclusions on the basis of documents for projects for which financial close-out had not been achieved which means, among other things, that all waivers of lien had not been completely collected. The IGO is obviously free to differ with the Board of Commissioner's opinions regarding rules and regulations. If the IGO's purpose is to have the Board consider a change in those rules and regulations, the IGO is free to request that the Executive Director or any of the Commissioners bring a proposed change before the Board for consideration. Suggestions for improvements to the Commission's policies and practices are always welcome.

The fact remains that the PBC accurately reported on its 2009 projects regarding compliance with the PBC's own policies as set forth in a resolution of the Board dated October 1, 2004, a copy of which is attached. The PBC's policy with respect to counting MBE/WBE participation differs from that of the City, and is intended to encourage participation by MBEs and WBEs at the prime contracting level by recognizing the full value of their participation at that level. Participation at the prime contractor level provides an opportunity for small businesses to gain the experience and capacity necessary to grow to the point where they may act independently as prime contractors, and graduate from the program.

The IGO also erroneously concludes that the Mayor of the City of Chicago, rather than the Board of Commissioners, exerts full control over the PBC. The IGO states in its cover letter to the Report:

“Because the City of Chicago adopted the original resolution to create the PBC, by state law, the Mayor of Chicago appoints a majority, (six members), of the members of the PBC board. Additionally the Chicago Public Schools (CPS) and the Chicago Park District (Park District), whose leadership also is determined by the Mayor, each appoint one board member. Finally, Cook County, the Forest Preserve District of Cook County Forest Preserve, and the Metropolitan Water Reclamation District of Greater Chicago each appoint one board member. As a result, the PBC is predominantly a creature of the City of Chicago operating under the auspices of the Mayor.”

The IGO continues in a similar vein at the conclusion of its report: “Because the Mayor controls a majority of the appointments to the PBC's board, it is believed that the Mayor exerts full control over the PBC, much as the Mayor similarly is assumed to exert full control over the other sister agencies (CPS, CTA, CHA, etc.).” These assertions and belief are not supported by fact or law.

The PBC is governed by the Public Building Commission Act, 50 ILCS 20/1 *et seq.* (the "Act"). Section 14 of the Act states: "A Public Building Commission is a municipal corporation and constitutes a body both corporate and politic separate and apart from any other municipal corporation or any other public or governmental agency." The members of the PBC's Board are appointed by the chief executives of its founding agencies, but those appointments are, per Section 5 of the Act, "made with the advice and consent of the governing body whose presiding officer makes the appointment." Section 8 of the Act states that the "government, control and management of the Public Building Commission shall be vested in the Board of Commissioners ...," not its chairman. The members of the Board elect their chairman. Section 8 of the Act also states:

"The Board of Commissioners shall have full power to pass all necessary ordinances, resolutions, rules and regulations for the proper management and conduct of the business of the Board of Commissioners and of the Public Building Commission and for carrying into effect the object for which such Public Building Commission is created."

The IGO did not err in its finding on one issue specific to the Western Boulevard Vehicle Maintenance Facility project, i.e., its finding that the PBC miscounted the participation of a first-tier subcontractor for "vehicle service piping and HVAC work," when the bulk of that work was subcontracted to non-minority firms. Had the IGO inquired regarding that error, however, we would have recommended that the PBC inform the IGO that subsequent to the award of the pertinent contract in 2007, the PBC has taken specific measures to preclude further mistakes of this nature. One practice that the PBC does share with the City is the review of subcontractors identified by the general contractors so that firms that have been debarred by our client agencies do not participate in PBC projects. That review process for MBE and WBE subcontractors now includes an examination of the proposed scope of work with categories of work in which the firm is certified as an MBE or WBE. Had that review taken place in 2007, the firm in question, which is certified for carpentry and dry wall work, would not have received credit for vehicle service piping and HVAC work.

The PBC has undertaken a number of other measures over the past several years to enhance its ability to preclude any abuse of its MBE/WBE program. Contractor pay requests and certified payrolls are now entered electronically by the contractors into the PBC's control systems. These systems track payments to subcontractors, and notify subcontractors listed on a pay request when the PBC issues the check to the prime contractor for that pay request. Subcontractors are encouraged to contact the PBC directly if they are not then paid promptly by the prime within 14 days pursuant to contract requirements. As noted earlier, the PBC's Board of Commissioners has instituted its own Inspector General, and given the Inspector General a mission that is substantially similar to that of the IGO. The Commission has engaged a fraud hotline that expects to be in effect July 2011. The fraud hotline will allow instances of alleged fraud to be promptly and anonymously reported to your office.

In our opinion, everyone involved with the PBC takes their responsibility "to make possible the construction, acquisition or enlargement of public improvements, buildings and facilities at convenient locations within the county seats and municipalities, for use by governmental agencies in the furnishing of essential governmental, health, safety and welfare services to its citizens" very seriously. We believe that each individual makes a concerted effort each and every day to ensure that the opportunities and benefits afforded by the Commission's work are shared with all of the residents of the City and Cook County. In our opinion, the staff is always looking to improve, and as stated previously, we believe the PBC welcomes, as do we, suggestions towards that end. Hopefully, the PBC and the IGO will engage in a constructive dialogue for that purpose.

Sincerely,

Neal & Leroy, LLC

By: 

One of its Attorneys

cc: The Honorable Rahm Emanuel, Chairman
Board of Commissioners
Erin Lavin Cabonargi

Enclosure