

**GUARANTEED MAXIMUM PRICE ("GMP") AMENDMENT
CONSTRUCTION MANAGER AT RISK SERVICES AGREEMENT
RICHARD EDWARDS ELEMENTARY SCHOOL ANNEX
CONTRACT NUMBER PS2036**

This GMP Amendment to Agreement Number PS2036 is entered into effective July 14, 2015 by and between the **Public Building Commission of Chicago**, a municipal corporation organized and operating under the Constitution of the State of Illinois and having its principal office at Room 200, Richard J. Daley Center, 50 West Washington Street, Chicago, Illinois 60602 ("Commission"), and **Berglund Construction Company** ("Berglund"), an Illinois corporation, with offices at 8410 South Chicago Avenue, Chicago, Illinois 60617 ("Construction Manager") and hereby amends the Agreement for Construction Management Services "the "Agreement") dated November 12, 2014, between the Commission and the Construction Manager as further set forth herein.

RECITALS

WHEREAS, the Commission, on behalf of the Chicago Board of Education, has undertaken the design and construction of an Annex to the Richard Edwards Elementary School, located at 4815 South Karlov, Chicago, Illinois (the "Project"); and

WHEREAS, the Commission, on behalf of the Chicago Board of Education, has also undertaken to complete certain restoration and structural repairs to the Richard Edwards Elementary School (the "Renovation Project"); and

WHEREAS, the Commission requires certain construction management services (the "Services") described in this Agreement for the Project; and

WHEREAS, at its regular meeting on November 12, 2014 Board of Commissioners of the Public Building Commission of Chicago ("PBC Board") approved the appointment of Berglund Construction Company to be the Construction Manager for the Project; and

WHEREAS, at its regular meeting on April 9, 2015, the PBC Board approved a partial undertaking in an amount of \$10,250,000.00 to establish an Initial Guaranteed Maximum Price of \$7,639,197.00 with Berglund for the Project; and

WHEREAS, the Commission and Construction Manager desire to amend the Agreement and establish the Project GMP as provided for in Paragraph 4.03(f)(3) of the Agreement; and

WHEREAS, the Commission and the Construction Manager desire to amend the Agreement to establish an Initial GMP for the Renovation Project to facilitate the structural repairs required at the Richard Edwards Elementary School; and

WHEREAS, the Board of Commissioners of the Commission approved the Project GMP amendment (including funding for an Initial GMP for the Renovation Project) by Board action at its regular meeting on July 14, 2015; and

NOW, THEREFORE, in exchange for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Commission and Construction Manager (collectively, the "Parties"), the Parties hereby agree to amend the Agreement and establish the Project GMP and an Initial GMP for the Renovation Project as follows:

AMENDMENT

ARTICLE 1 - INCORPORATION OF RECITALS

The recitals set forth above are hereby incorporated in and made a part of the Agreement.

ARTICLE 2 – PROJECT GMP AND COST OF THE WORK

Pursuant to Sections 4.03 (f)(3) and 8.04 of the Agreement, the Guaranteed Maximum Price for the Project ("Project GMP") is \$17,728,857.00 and the Cost of the Work for the Project, as proposed by the Construction Manager and approved by the Commission is \$15,946,013. The Project GMP and the Cost of the Work are further defined in in the **Exhibit C(1) - Project GMP** attached hereto, incorporated and made a part of this Amendment.

ARTICLE 3 – INITIAL GMP FOR RENOVATION PROJECT

Pursuant to Section 8.04 of the Agreement, the Commission and the Construction Manager hereby agree to establish an Initial GMP of \$655,391.00 for the Renovation Project.

The \$655,391.00 Initial GMP for the Renovation Project is further defined in in the **Renovation Project Initial GMP Exhibit C(2)** attached hereto, incorporated and made a part of this Amendment.

ARTICLE 4 - MODIFICATIONS TO THE AGREEMENT

The Parties hereby agree to replace the following portions of the Agreement and amend as indicated below:

I. Section 4.03 – Guaranteed Maximum Price

DELETE Paragraph (e), Section 4.03 of Article 4 of the Agreement and **REPLACE** with the following:

(e) *Construction Fee*. The Construction Fee shall be Construction Manager's entire compensation for the performance of Construction Services and shall include: (1) a fixed lump sum Construction Management Fee; (2) a fixed lump sum for General Conditions; and (3) a not-to-exceed budget for the reimbursement of General Requirements as set forth in **EXHIBIT C – COMPENSATION/COST OF THE WORK**; the **Exhibit C(1) - Project GMP** and the **Exhibit C(2) - Renovation Project Initial GMP**.

II. Exhibit C – Compensation and Cost of the Work

A. C.0 PRE-CONSTRUCTION FEE

DELETE C.0 in its entirety and **REPLACE** with the following:

As consideration for the Construction Manager's performance of Pre-Construction Services for the Project, the Commission shall pay Construction Manager a lump sum fee of \$159,308.00 ("Project Preconstruction Fee"). The Project Preconstruction Fee constitutes the Construction Manager's fee for Preconstruction Services required for the Project as described in Exhibit A, Section A.1 and A.2.

As consideration for the Construction Manager's performance of Pre-Construction Services for the Renovation Project, the Commission shall pay Construction Manager a lump sum fee of \$51,920.00 ("Renovation Project Preconstruction Fee"). The Renovation Project Preconstruction Fee constitutes the Construction Manager's fee for Preconstruction Services required for the Renovation Project as described in Exhibit A, Section A.1 and A.2.

B. C.2 CONSTRUCTION MANAGER'S FIXED GENERAL CONDITIONS

DELETE the first paragraph of C.2 and **REPLACE** with the following:

Construction Manager's fixed lump sum compensation for all General Conditions costs required for the Project is \$873,205.00. Payment shall be commensurate with the percentage of Project Work complete.

Construction Manager's fixed lump sum compensation for all General Conditions costs required for the Renovation Project is \$127,968.00. Payment shall be commensurate with the percentage of Project Work complete. The Construction Manager's fixed lump sum for General Conditions costs required for the Renovation Project will be modified when the Renovation Project GMP Amendment is awarded.

C. C.1 COMPENSATION FOR CONSTRUCTION MANAGEMENT SERVICES

DELETE C.1.1 in its entirety and **REPLACE** with the following:

C.1.1 CONSTRUCTION MANAGEMENT FEE. The Construction Manager shall be paid a fixed lump sum fee of \$415,000.00 as the Construction Management Fee for the Project. The Construction Management Fee, in the absence of either a change in scope of the Project by the Commission or the issuance of Commission originated additive change orders, or both, constitutes the Construction Manager's full fee for the Construction Services described in Exhibit A of the Agreement. The Construction Management Fee will be payable in 13 monthly installments beginning with July 2015 and ending July 2016. The first 12 payments will be for \$32,000.00. The July 2016 payment will be for \$31,000.00.

"The Construction Manager shall be paid a fixed lump sum fee of \$10,000.00 as the Construction Management Fee for the Renovation Project to be payable in September 2015 or upon completion of the summer 2015 structural repairs. The Construction Manager's lump sum Construction Management Fee for Renovation Project will be modified when the Renovation Project GMP Amendment is awarded.

D. C.3 CONSTRUCTION MANAGER'S NOT-TO-EXCEED GENERAL CONDITIONS REIMBURSEMENT

DELETE C.3 in its entirety and **REPLACE** with the following:

C.3. REIMBURSEMENT FOR CONSTRUCTION MANAGER'S GENERAL REQUIREMENTS

C.3.1. Construction Manager shall be reimbursed for General Requirements costs and expenses actually incurred and required for the Project subject to a not-to-exceed total sum of \$335,331.00. Construction Manager shall be reimbursed for General Requirements costs and expenses actually incurred and required for the Renovation Project subject to a not-to-exceed sum \$6,946.00. The Construction Manager's not-to-exceed General Requirements budget for Renovation Project will be modified when the Renovation Project GMP Amendment is awarded.

General Requirements will be paid pursuant to the reimbursement procedures set forth in **EXHIBIT C – COMPENSATION/COST OF THE WORK** and the payment procedures provided in Article 5.

C.3.2. In the event that costs in excess of the not-to-exceed sum, then the Construction Manager's Contingency may be used to pay for such overage, however, if the Construction Manager's Contingency has been exhausted, the Construction Manager shall not be entitled to any increase in the Project GMP or Construction Management Fee due to such overage.

C.3.3. Only costs for the following may be reimbursed from General Requirements budget unless additional categories are approved in writing by the Commission:

1. Building Layout and Elevation Benchmarks
2. Street Cleaning/Snow Removal
3. Pest Control
4. Access Road Maintenance
5. Construction Barricade Graphics
6. Temporary Utilities
7. Temporary Gas Lines
8. Temporary Energy Costs (Stated as an Allowance)
9. Temporary Utility Enclosures
10. Temporary Heat
11. Temporary Water for Drinking
12. Safety
13. Carpenters for Safety Maintenance
14. Temporary Stair Maintenance
15. Handrails and Toe Board Maintenance
16. Safety Equipment
17. Overhead Protection/Canopies
18. First Aid Supplies
19. Watchman Services
20. Fences and Gates
21. General Cleaning and Disposal
22. General Construction Cleaning
23. Dumpster Container service, removal and disposal
24. Floor Trash Buggies
25. Labor for General Cleanup
26. Monthly Construction Progress Photos
27. Postage/Overnight mail/Messenger Service
28. Out of Town Travel Expenses
29. Temporary Toilets
30. Copier Charges
31. Bidding Document CD's and Revisions
32. Long Distance Communications
33. Pre-Conditions Site Survey
34. Settlement Survey
35. Vibration Monitoring
36. Indoor Air Quality Monitoring

E. C.4.2 Commission Contingencies, Commission Allowance Items and Construction Manager Allowances

DELETE C.4.2 in its entirety and **REPLACE** with the following:

C.4.2 Commission Contingencies, Commission Allowance Items and Construction Manager Allowances

.1 Commission Contingencies. The Commission has established a budget of \$100,000 for Commission Contingencies in the **Exhibit C(1) - Project GMP**. The Commission Contingencies are for the exclusive use of the Commission at the Commission's sole and absolute discretion. In the event that any Commission Contingencies remain unused at the completion of the Project, the Commission shall issue a deductive Change Order to reduce the Project GMP so any unused portion of the Commission Contingencies remain with the Commission. A budget for Commission Contingencies will be included in the Renovation Project GMP Amendment.

.2 Commission Allowance. The Commission and the Construction Manager acknowledge that certain portions of the Project were not be fully specified prior to establishing the Cost of the Work and the Project GMP. The Commission has established a budget of \$100,000 for such Project Work as may be required ("Commission Allowance"). When appropriate or otherwise as directed by the Commission, the Construction Manager shall manage a competitive bidding process per Section 4.02(e)(3) for the Commission Allowance Work. Construction Manager shall be entitled to an adjustment to the Commission Allowance amount if the amount of the bid(s) accepted (including additional costs for bonds and insurance) exceeds the Commission Allowance amount. Any Commission Allowance Overage shall be funded by the Commission from the Commission Contingency or by Change Order from other Commission provided funds. The Commission Allowance shall also be decreased by the difference between the Commission Allowance and the Trade Contract amounts where the Trade Contract amount is less than the Commission Allowance and any such difference shall be allocated to the Commission Contingency. At such time as the Construction Manager executes contracts or change orders for any Commission Allowance Work, such Commission Allowance work will become Reimbursable Trade Contractor Costs at the Accepted Bid Contract Amount and shall be treated accordingly. In the event that any Commission Allowance amounts remain unused at the completion of the Project, the Commission shall issue a deductive Change Order to reduce the Project GMP so any unused portion of the Commission Allowance remains with the Commission.

.3 Construction Manager Allowances. The Commission and the Construction Manager acknowledge that the Construction Manager may carry allowances at a value of not more than \$165,860.00 related to certain Reimbursable Trade Contractor Costs or General Requirements Costs for portions of the Work that are anticipated by both parties but have not been completely defined on the Construction Documents ("Construction Manager Allowances"). Usage of Construction Manager Allowances shall be conditioned upon the Construction Manager providing the Commission with contemporaneous written notice, which notice shall include a description and cost of the Work to be covered by the use of the Construction Manager Allowance, the entities being paid, and the reasons for the use of the Construction Manager Allowance. In the event the Commission determines that the application of a Construction Manager Allowance was inconsistent with the terms of the Agreement or this Amendment, the Construction Manager shall be responsible for returning such sums to the Construction Manager Allowance. In the event that any Commission Manager Allowance amounts remain unused at the completion of the Project, the Commission shall issue a deductive Change Order to reduce the Project GMP so any unused portion of the Commission Manager's Allowance remains with the Commission.

F. CONSTRUCTION MANAGER'S CONTINGENCY

DELETE C.5 in its entirety and REPLACE with the following:

C.5 CONSTRUCTION MANAGER'S CONTINGENCY

C.5.1 The Construction Manager's Contingency ("CM Contingency") included in the Project GMP is \$400,000.00. The CM Contingency may be used to pay Reimbursable Trade Contractor Cost overages and additional costs associated with schedule recovery not the subject of a Change Order. Permissible uses of the CM Contingency also include, without limitation, funding shortfalls between line items in the Project GMP and the Trade Contracts that are not the result of the Construction Manager's acts, errors or omissions (where such acts, errors or omissions are inconsistent with the standard of care set forth in the Agreement), Trade Contractor defaults, and the Builder's Risk insurance deductible. The CM Contingency may be utilized to fund costs that would otherwise fall within the Fixed General Conditions or General Requirements to the extent such costs are associated with an event for which the Construction Manager is entitled to access the CM Contingency. Use of the CM Contingency requires contemporaneous notice to the Commission with a description and cost of the Work to be covered by the use of the CM Contingency, entities being paid, and the reasons for the use of the CM Contingency.

C.5.2 Payment of funds out of the CM Contingency is conditioned upon the Construction Manager diligently attempting to obtain performance from Trade Contractors and sub tier contractors prior to resorting to the CM Contingency. If the Construction Manager accesses the CM Contingency in connection with an event for which insurance proceeds may be available, the Construction Manager shall take all reasonable measures to recover under the insurance coverage and shall reimburse the CM Contingency to the full amount of such recovery up to the full amount of the CM Contingency allocation at issue. To the extent that the CM Contingency payment resulted from a Trade Contractor default or other performance deficiency, the Construction Manger shall seek recovery from the responsible Trade Contractor and shall reimburse the CM Contingency to the full amount of such recovery up to the amount of the CM Contingency allocation at issue. In the event that any Commission Manager's Contingency remains unused at the completion of the Project, the Commission shall issue a deductive Change Order to reduce the Project GMP so any unused portion of the Commission Manager's Contingency remains with the Commission.

(Signature Page Follows)

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IN WITNESS WHEREOF, the parties hereto have agreed and executed this GMP Amendment

ATTEST:

PUBLIC BUILDING COMMISSION
OF CHICAGO

BY: Ral Emanuel Date: _____
Chairman

BY: [Signature] Date: 10/22/15
Secretary

CONSTRUCTION MANAGER

BERGLUND CONSTRUCTION COMPANY, INC.

By: [Signature] Date: 9-8-15
President

Subscribed and sworn to me this

8th day of Sept 2015.

[Signature]
Notary Public



My Commission expires: 6/18/16

(Seal of Notary)

Approved as to form and legality

Anne L. Fred Date: 9-11-15
Neal & Leroy, LLC

EXHIBIT C(1) - PROJECT GMP

DESCRIPTION	REFERENCE	AMOUNT
(1) Project Pre-Construction Fee <i>Construction Manager's fixed, lump sum fee for Preconstruction Services</i>	4.03(c) Exhibit C.0	\$159,308.00
(2) Cost of the Work =	4.03(d) Exhibit C.4	\$15,946,013.00
(a) Reimbursable Trade Contractor Costs +		\$14,684,518.00
(b) Commission Contingencies +		\$100,000.00
(c) Commission Allowance Item(s) +		\$100,000.00
(d) Construction Manager Allowances +		\$165,860.00
(e) Construction Manager's Contingency +		\$400,000.00
(f) Bond and Insurance.		\$495,635.00
(3) Construction Management Services =	4.03(e) Exhibit C.1, C.2, C.3	\$1,623,536.00
(a) a fixed lump sum Construction Management Fee +		\$415,000.00
(b) Construction Management Fixed General Conditions Reimbursement		\$873,205.00
(c) Not-To Exceed General Requirements Reimbursement.		\$335,331.00
PROJECT GMP = (1) + (2)(a-f) + (3)(a-c):		\$17,728,857.00

EXHIBIT C(2) – RENOVATION PROJECT INITIAL GMP

DESCRIPTION	REFERENCE	AMOUNT
(1) Renovation Project Pre-Construction Fee <i>Construction Manager's fixed, lump sum fee for Preconstruction Services</i>	4.03(c) Exhibit C.0	\$51,920.00
(2) Cost of the Work =	4.03(d) Exhibit C.4	\$458,557.00
(a) Reimbursable Trade Contractor Costs +		\$433,484.00
(b) Commission Contingencies +		\$0.00
(c) Commission Allowance Item(s) +		\$0.00
(d) Construction Manager Allowances +		\$0.00
(e) Construction Manager's Contingency +		\$0.00
(f) Bond and Insurance.		\$25,073.00
(3) Construction Management Services =	4.03(e) Exhibit C.1, C.2, C.3	\$144,914.00
(a) a fixed lump sum Construction Management Fee +		\$10,000.00
(b) Construction Management Fixed General Conditions Reimbursement		\$127,968.00
(c) Not-To Exceed General Requirements Reimbursement.		\$6,946.00
RENOVATION PROJECT INITIAL GMP = (1) + (2)(a-f) + (3)(a-c):		\$655,391.00