

**BOOK 1**

**DESIGN-BUILD AGREEMENT  
BETWEEN**

**PUBLIC BUILDING COMMISSION OF CHICAGO**

**AND**

**WIGHT & COMPANY**

**2013 SCHOOL INVESTMENT PROGRAM  
PROJECT NUMBER 13  
CONTRACT NUMBER PS1975**



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**DESIGN-BUILD AGREEMENT BETWEEN COMMISSION AND DESIGN-BUILDER**

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## **ARTICLE 1 AGREEMENT**

This Agreement is made by and between the Public Building Commission of Chicago, a municipal corporation and body politic organized and operating under the Constitution of the State of Illinois ("Commission" or "PBC") and **WIGHT & COMPANY** ("Design-Builder") the for services in connection with the Facility Scopes of Work as set forth in Exhibit 2 – Scope and Performance Criteria, with an Effective Date listed on the Execution Page of this Design-Build Agreement for the following facilities:

18730 GRESHAM, 18470 RYDER

## **ARTICLE 2 GENERAL PROVISIONS**

2.1 RELATIONSHIP The Commission and the Design-Builder agree to proceed with the Project(s) on the basis of trust, good faith and fair dealing and shall take all actions reasonably necessary to perform this Agreement in an economical and timely manner, including consideration of design modifications and alternative materials or equipment that will permit the Scopes of Work to be constructed within the Guaranteed Maximum Price (GMP) and by the Dates of Substantial Completion and Final Completion for each Scope. The Design-Builder agrees to procure or furnish, as permitted by the laws of Illinois, the design phase services and construction phase services as set forth below.

2.1.1 The Design-Builder represents that it is an independent contractor and that it is familiar with the type of work it is undertaking.

2.2.2 Neither the Design-Builder nor any of its agents or employees shall act on behalf of or in the name of the Commission unless authorized in writing by the Commission's Representative.

2.1.3 The Commission and the Design-Builder shall perform their obligations with integrity, ensuring at a minimum that:

2.1.3.1 Conflicts of interest shall be avoided or disclosed promptly to the other Party; and

2.1.3.2 The Design-Builder and the Commission warrant that they have not and shall not pay nor receive any contingent fees or gratuities to or from the other Party, including their agents, officers and employees, Subcontractors or others for whom they may be liable, to secure preferential treatment.

2.2 ARCHITECT/ENGINEER Architectural and engineering services shall be procured from licensed, independent design professionals retained by the Design-Builder or furnished by licensed employees of the Design-Builder, as permitted by the law of the State of Illinois. The person or entity providing architectural and engineering services shall be referred to as the Architect/Engineer. If the Architect/Engineer is an independent design professional, the architectural and engineering services shall be procured pursuant to a separate agreement

between the Design-Builder and the Architect/Engineer. The Architect/Engineer for the Project is/are: **WIGHT & COMPANY**.

2.3 EXTENT OF AGREEMENT This Agreement is solely for the benefit of the Parties, represents the entire and integrated agreement between the Parties, and supersedes all prior negotiations, representations or agreements, either written or oral. The Commission and the Design-Builder agree to look solely to each other with respect to the performance of the Agreement. The Agreement and each and every provision are for the exclusive benefit of the Commission and the Design-Builder and not for the benefit of any third party nor any third party beneficiary except to the extent expressly provided in the Agreement.

## 2.4 DEFINITIONS

2.4.1 The Contract Documents consist of:

- a. Change Orders and written amendments to this Agreement including exhibits and appendices, signed by both the Commission and the Design-Builder;
- b. this Agreement except for the existing Contract Documents set forth in item e. below;
- c. the most current documents approved by the Commission pursuant to Subparagraph 3.1.2
- d. the information provided by the Commission pursuant to Clause 4.1.2.1;
- e. the Contract documents in existence at the time of execution of this Agreement which are set forth in Article 15; and
- f. the Commission's Program provided pursuant to Subparagraph 4.1.1.

In case of any inconsistency, conflict or ambiguity among the Contract Documents, the documents shall govern in the order in which they are listed above; further, Book 1 will govern over Book 2 and Book 2A, and Book 2 Shall govern over Book 2A.

2.4.2 The term Day shall mean calendar day, unless otherwise specifically defined.

2.4.3 Design-Builder's Fee means the compensation paid to the Design-Builder for its profit.

2.4.4 Defective Work is any portion of the Work not in conformance with the Contract Documents as more fully described in Article 3.

2.4.5 The term fast-track means accelerated scheduling which involves commencing construction prior to the completion of drawings and specifications and then using means such as bid packages and efficient coordination to compress the overall schedule.

2.4.6 Final Completion occurs on the date when the Design-Builder's obligations under this Agreement are complete and accepted by the Commission and the final payment becomes due and payable.

2.4.7 A Material Supplier is a party or entity retained by the Design-Builder to provide material and equipment for the Work.

2.4.8 Others means other contractors and all persons at the Worksite who are not employed by Design-Builder, its Subcontractors or Material Suppliers.

2.4.9 The term Overhead shall have the meaning set forth in Section 8.2.9 below.

2.4.9.1 The Commission is the person or entity identified as such in this Agreement and includes the Commission's Representative.

2.4.10 The Commission's Program is an initial description of the Commission's objectives, that may include budget and time criteria, space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.

2.4.11 The Project as identified in Article 1, is the building(s), facility(ies) or other improvements for which the Design-Builder is to perform the Work under this Agreement. It may also include improvements to be undertaken by the Commission or Others.

2.4.12 A Subcontractor is a party or entity retained by the Design-Builder as an independent contractor to provide the onsite labor, materials, equipment or services necessary to complete a specific portion of the work. The term Subcontractor does not include the Architect/Engineer or any separate contractor employed by the Commission or any separate contractor's subcontractor.

2.4.13 Substantial Completion of the Work, or of a designated portion of the Work, occurs on the date when the Design-Builder's obligations are sufficiently complete in accordance with the Contract Documents so that the Commission may occupy or utilize the Project, or a designated portion, for the use for which it is intended, in accordance with Section 3.06 of Book 2. The issuance of a Certificate of Occupancy is not a prerequisite for Substantial Completion if the Certificate of Occupancy cannot be obtained due to factors beyond the Design-Builder's control. This date shall be confirmed by a Certificate of Substantial Completion signed by the Commission and the Design-Builder. The Certificate shall state the respective responsibilities of the Commission and the Design-Builder for security, maintenance, heat, utilities, or damage to the Work, and insurance. The Certificate shall also list the items to be completed or corrected, and establish the time for their completion and correction, within the time frame, if any, established for the Date of Final Completion.

2.4.14 A Sub-subcontractor is a party or entity who has an agreement with a Subcontractor to perform any portion of the Subcontractor's work.

2.4.15 Terrorism means a violent act, or an act that is dangerous to human life, property or infrastructure, that is committed by an individual or individuals and that appears to be part of an effort to coerce a civilian population or to influence the policy or affect the

conduct of any government by coercion. Terrorism includes but is not limited to, any act certified by the United States Secretary of Treasury as an act of terrorism pursuant to the Terrorism Risk Insurance Act, as amended.

2.4.16 The Work is the Design Phase services procured or furnished in accordance with Paragraph 3.1, the GMP Proposal provided in accordance with Paragraph 3.2, the Construction Phase services provided in Paragraph 3.3, additional services that may be provided in accordance with Paragraph 3.10, and other services which are necessary to complete the Project in accordance with and reasonably inferable from the Contract Documents.

2.4.17 Deliverables are any and all documents, including but not limited to plans, specifications, drawings, and reports prepared by the Design-Builder in the performance of the Work.

2.4.18 Worksite means the geographic area at the location(s) mentioned in Article 1 where the Work is to be performed.

2.4.19 User Agency means the unit of local government on the behalf of which the Commission is undertaking the design and construction of the Project.

### **ARTICLE 3**

#### **DESIGN-BUILDER'S RESPONSIBILITIES**

The Design-Builder shall be responsible for procuring or furnishing the design and for the construction of the Work consistent with the Commission's Program, as such Program may be modified by the Commission during the course of the Work. The Design-Builder shall exercise reasonable skill and judgment in the performance of its services consistent with the team relationship described in Paragraph 2.1, but does not warrant nor guarantee schedules and estimates other than those that are part of the GMP proposal. The Design-Builder shall at all times comply in letter and spirit with, and demonstrate good faith efforts to achieve, the affirmative action goals of the Commission and its User Agency, as those goals may be set forth in the MBE/WBE Special Conditions for Design Build Contracts, Book 2, Article 23, attached hereto and incorporated by reference herein, and in any other terms and provisions of this Agreement.

3.1 DESIGN PHASE SERVICES. In addition to the Design Phase Services set forth below, the Design-Builder shall provide those design services specified in Exhibit 1 - Design Builder Design Services, attached hereto and incorporated by reference herein.

3.1.2 CONSTRUCTION DOCUMENTS The Design-Builder shall submit for the Commission's written approval Construction Documents based on the approved Scope and Performance Criteria Documents. The Construction Documents shall set forth in detail the requirements for construction of the Work, and shall consist of drawings and specifications based upon codes, laws and regulations enacted at the time of their preparation. When the Design-Builder submits the Construction Documents, the Design-Builder shall identify in writing all material changes and deviations that have taken place from the Scope and Performance Criteria Documents. Construction shall be in accordance with these approved Construction Documents. One set of these documents shall be furnished to the Commission prior to commencement of construction; provided, however, that in the event that the Commission decides, in its sole option and opinion, to fast-track the Work, or any portion thereof, the Design-Builder

shall proceed to perform such fast-track Work regardless of the status of the Construction Documents. The Commission will identify fast-track Work in its Notice-to-Proceed to the Design-Builder. The Design-Builder shall provide a final GMP for each Scope of Work and a final update of the schedule with the Construction Documents for each Scope of Work.

### 3.1.3 OWNERSHIP OF DOCUMENTS

3.1.3.1 OWNERSHIP OF DRAWINGS AND DOCUMENTS All Deliverables, data, findings or information in any form prepared, assembled or encountered by or provided to Design-Builder under this Agreement are property of the Commission, including all copyrights inherent in them or their preparation. During performance of the Work, Design-Builder is responsible for any loss or damage to the Deliverables, data, findings or information while in Design-Builder's or any Subcontractor's possession. Any such lost or damaged Deliverables, data, findings or information must be restored at the expense of the Design-Builder. If not restorable, Design-Builder must bear the cost of replacement and of any loss suffered by the Commission.

3.1.3.2 COPYRIGHT Design-Builder and the Commission agree that, to the extent permitted by law, the Deliverables to be produced by Design-Builder at the Commission's instance and expense under this Agreement are conclusively considered "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 will be the sole copyright owner of the Deliverables and of all aspects, elements and components of them in which copyright can subsist, and of all rights to apply for copyright registration or prosecute any claim of infringement.

To the extent that any Deliverable does not qualify as a "work made for hire," Design-Builder hereby irrevocably grants, conveys, bargains, sells, assigns, transfers and delivers to the Commission, its successors and assigns, all right, title and interest in and to the copyrights and all U.S. and foreign copyright registrations, copyright applications and copyright renewals for them, and other intangible, intellectual property embodied in or pertaining to the Deliverables prepared for the Commission under this Agreement, and all goodwill relating to them, free and clear of any liens, claims, or other encumbrances, to the fullest extent permitted by law. Design-Builder will, and will cause all of its subconsultants and Subcontractors, employees, agents and other persons within its control to execute all documents and perform all acts that the Commission may reasonably request in order to assist the Commission in perfecting its rights in and to the copyrights relating to the Deliverables, at the sole expense of the Commission. Design-Builder warrants to the Commission, its successors and assigns, that on the date of transfer Design-Builder is the lawful owner of good and marketable title in and to the copyrights for the Deliverables and has the legal rights to fully assign them. Design-Builder further warrants that it has not assigned and will not assign any copyrights and that it has not granted and will not grant any licenses, exclusive or non-exclusive, to any other party, and that it is not a party to any other agreements or subject to any other restrictions with respect to the Deliverables. Design-Builder warrants and represents that the Deliverables are complete, entire and comprehensive, and that the Deliverables constitute a work of original authorship.

3.1.3.3 USE OF DOCUMENTS IN EVENT OF TERMINATION In the event of a termination of this Agreement pursuant to Article 12, the Commission shall have the right to use, to reproduce, and to made derivative works of the Documents to complete the Project, regardless of whether there has been a transfer of copyright under Subparagraph 3.1.3.2, provided payment has been made pursuant to the Contract Documents. The Commission's use of the Documents without the Design-Builder's involvement is at the Commission's sole risk, except for the Design-Builder's indemnification obligations pursuant to Article 11.

3.1.3.4 COMMISSION'S USE OF DOCUMENTS AFTER COMPLETION OF PROJECT After completion of the Project, the Commission may reuse, reproduce or make derivative works from the Documents solely for the purposes of maintaining, renovating, remodeling or expanding the Project at the Worksite. The Commission's use of the Documents without the Design-Builder's involvement or on other projects is at the Commission' sole risk, except for the Design-Builder's indemnification obligations pursuant to Article 11.

3.1.3.5 DESIGN-BUILDER'S USE OF DOCUMENTS Where the Design-Builder has transferred its copyright interest in the Documents under Subparagraph 3.1.3.2, the Design-Builder may reuse Documents prepared by it pursuant to this Agreement in its practice, but only in their separate constituent parts and not as a whole.

3.1.3.6 The Design-Builder shall obtain from its Architect/Engineer, Subcontractors and consultants rights and rights of use that correspond to the rights given by the Design-Builder to the Commission in this Agreement, and the Design-Builder shall provide evidence that such rights have been secured.

## 3.2 GUARANTEED MAXIMUM PRICE ("GMP")

3.2.1 GMP PROPOSAL The GMP shall be the sum of the ~~estimated~~ Cost of the Work for each Scope of Work as defined in Article 8 and the Design-Builder's Fee as defined in Article 7. The GMP is subject to modification as provided in Article 9. The Design-Builder does not guarantee any specific line item provided as part of the GMP, but agrees that it will be responsible for paying all costs of completing the Work which exceed the GMP as adjusted in accordance with this Agreement.

The Commission and the Design-Builder may agree that: (i) elements of the Work may be performed by sub-contractors pursuant to lump sum sub-contracts, and (ii) the Cost of the Work may itself become a lump sum. Sub-contracts may only be lump sum with the agreement of the Commission. For each approved lump sum sub-contracts, the Design-Builder agrees that the Work included in each sub-contract shall be completed by the Design-Builder for the lump sum price of that sub-contract, which lump sum may only be increased by approval of the Commission and an amendment to this Agreement. The Cost of the Work may become a lump sum through a revised Exhibit 7 – Compensation/Cost of the Work that shall be initialed by the Executive Director of the Commission and the Design-Builder.

3.2.2 BASIS OF GUARANTEED MAXIMUM PRICE The Design-Builder shall include with the GMP Proposal a written statement of its basis, which shall include: