

ORIGINAL

MILWAUKEE BOARD OF SCHOOL DIRECTORS

CITY OF MILWAUKEE

WISCONSIN

Contract for **ENERGY CONSERVATION BUILDING SYSTEM UPGRADES**

Location: **MILWAUKEE PARKSIDE SCHOOL OF THE ARTS**

THIS CONTRACT, Made this 26th day of March, 2021 by **Berglund Construction Company** hereinafter called the Contractor; and _____

a duly licensed surety corporation with an agency in Milwaukee, Wisconsin, hereinafter called the Surety; and the City of Milwaukee, a municipal corporation, represented by its Milwaukee Board of School Directors, hereinafter called the Board or the Owner.

WHEREAS, The Contractor has made a proposal in writing to the Board, to do the work hereinafter mentioned for the Owner, and according to the requirements of the Official Advertisement for bids, the Instructions to Bidders, the General Conditions of the Contract, the Specifications, the Drawings, and the Contractor's Proposal, all of which are hereby made part of this Contract, by reference thereto and are on file in the office of the Board; and whereas the Board has awarded the Contract to the Contractor according to law;

NOW THEREFORE, The Contractor, for and in consideration of the payments hereinafter provided, agrees with the Owner, to well and truly execute and perform the Contract, under the superintendence of the Board, for the price and within the time herein stated and according to this Contract.

ARTICLE 1. SCOPE OF THE WORK. Furnish all labor and materials required and do all the work necessary in connection with the **Energy Conservation Building Systems Upgrade Project** at the **Milwaukee Parkside School of the Arts** building in accordance with plans and specifications on file in the office of the Board and **base bid of \$4,725,000.00** received pursuant to advertisement.

ARTICLE 2. TIME OF COMPLETION. **This project's start date is scheduled for March 26, 2021 and completion date is August 13, 2022.** The Contractor agrees to proceed with the work expeditiously without any delay or cessation, except such as may reasonably be beyond his control, and to employ a force of workmen sufficient so to perform the work covered by this Contract in such manner as to expedite the work of such other Contractors as may be engaged upon the work, as further provided in the Instructions to Bidders, to the end that the work to be performed by the Contractor shall be fully completed on or before the **13th day of August, 2022**, subject to such adjustment of said date as may be made in accordance with this Contract. It is specifically agreed that the Contractor shall be bounden for damages, as hereinafter provided, for each and every day's delay which may be due or traceable to the Contract. In case the Contractor shall fail to perform fully the Contract within the agreed time limit, he shall pay to the Board, as liquidated damages for such default, the sum of **\$2,000.00** per day for each and every day's delay in completing the performance thereof after such time limit.

ARTICLE 3. PAYMENT. Milwaukee Board of School Directors, shall pay the Contractor for the full and complete performance of the work, the sum of **Four Million Seven Hundred Twenty Five Thousand Dollars and 00/100 (\$4,725,000.00)** as provided in the General Conditions of the Contract.

ARTICLE 4. OBLIGATIONS OF THE CONTRACTOR AND SURETY. The Contractor and the Surety, in consideration of the award of this Contract to the Contractor, jointly and severally for themselves, their heirs, executors, administrators, and successors or assigns, hereby guarantee, covenant and agree to and with the Owner that:

(a) The Contractor shall well and truly execute and perform this Contract under the superintendence of and to the satisfaction of the Board.

(b) The Contractor shall well and truly make payment to each and every person or party entitled thereto of all claims for work or labor performed and materials furnished for, or in, or about, or under this Contract pursuant to the provisions of Wis. Stat. § 289.16, and acts and laws amendatory thereof and supplemental thereto.

(c) The Contractor shall carry the compensation insurance in a duly licensed insurance company for the benefit of the employees of the Contractor and of any sub-contractor and shall keep said insurance in force during the life of the Contract as required by the provisions of Chapter 102 of the Wisconsin Statutes and acts and laws amendatory thereof and supplemental thereto.

(d) The Contractor will well and truly save and indemnify and keep harmless the Board from and against all liability for claims, damages, judgements, costs and expenses, which may in anywise come against said Board in consequence of the award of this Contract, or which may in anywise result from the carelessness or neglect of the said Contractor or his agents, employees, or workmen in any respect whatever.

(e) Neither the extension by the Owner of time to the Contractor or to other contractors or sub-contractors for the completion of their work, nor the assignment, subletting, alteration or modification of this Contract or other contracts in the premises, nor change in the work covered thereby, shall in any way release the Contractor or Surety from full liability under this contract. Notice of any such default, delay, extensions of time, assignment, subletting, alteration or modification is hereby expressly waived by the Contractor and the Surety.

ARTICLE 5. MINIMUM WAGE. The Contractor and the Surety, in consideration of the award of this Contract to the Contractor, jointly and severally for themselves, their heirs, executors, administrators, and successors or assigns hereby agree to pay all employees in and about the construction or performance of the work under this Contract in accordance with the schedule of wages contained in the Instructions to Bidders for work in any trade or occupation listed therein. The Contractor shall make wage reports as required by the Instructions to Bidders. Strict compliance with the minimum wage requirements is demanded by the Owner and shall be considered as of the essence of this Contract. It is hereby agreed that the Board shall have the right at all times to examine all persons employed upon the project by the Contractor and carryon and make such investigations as it may deem necessary to see that the terms of this agreement, relating to such wage payments, are being fully observed.

ARTICLE 6. ASSIGNING OR SUB-LETTING OF CONTRACT. This Contract shall not be assigned nor sublet by the Contractor or Surety without prior written consent thereto of the Board.

ARTICLE 7. FINAL DETERMINATION BY BOARD. The Board shall have the right and power to adjust and determine finally all questions as to the proper and timely performance of the work and the amounts earned under this Contract, all as provided in General Conditions.

ARTICLE 8. MILWAUKEE BOARD OF SCHOOL DIRECTORS AUTHORITY. It is hereby agreed and declared that this Contract is made expressly subject to the powers granted to the Milwaukee Board of School Directors, by the applicable provisions of Chapter 119 and Sec. 62.15 of the Wisconsin Statutes, and acts and laws amendatory thereof and supplemental thereto.

ARTICLE 9. NON APPROPRIATION OF FUNDS AND LEGAL AUTHORITY. This Contract is contingent upon the appropriation of sufficient funds by the Board. If funds are not appropriated, Contractor agrees to take back any commodities furnished under the Contract, terminate any services supplied to the Board under the Contract, and relieve the Board of any further obligations under the Contract. This Contract is also contingent upon the Board possessing the legal authority to exceed the revenue limit to pay for the Work, including payment of debt service on any debt incurred to pay for the Work. If at any time after the signing of this contract the Board loses the legal authority to exceed the revenue limit to pay for the Work, including payment of debt service on any debt incurred to pay for the Work, Contractor agrees to take back any commodities furnished under the Contract, terminate any services supplied to the Board under the Contract, and relieve the Board of any further obligations under the Contract.

ARTICLE 10. INDEMNITY. Contractor assumes full liability for all of its acts or omissions in the performance of this Contract, as well as the acts or omissions of its Subcontractors. Contractor shall indemnify and hold harmless the Board, its agents, officers and employees against all liabilities, losses, judgments, decrees, costs, and expenses that may be claimed against MPS by third parties as a result of the willful misconduct or the negligent actions or omissions of said Contractor, its agents, or employees. If judgment is recovered against the Board in suits of law or equity as a consequence of the willful misconduct or negligent actions or omissions of the Contractor, the Contractor assumes full liability for such judgment, not only as to any monetary award, but also as to the costs, attorneys' fees or other expenses resulting therefrom.

ARTICLE 11. IRREPARABLE HARM. It is mutually agreed the breach of this Contract on Contractor's part shall result in irreparable and continuing damage to the Board for which money damages may not provide adequate relief. Therefore, the breach of this Contract on Contractor's part shall entitle the Board to both preliminary and permanent injunctive relief and money damages insofar as they can be determined under the circumstances.

ARTICLE 12. NOTICES. Notices to either party provided for in this Contract shall be sufficient if sent by email or by Certified or Registered mail, postage prepaid, addressed to the signatories on this contract, or to their designee.

ARTICLE 13. WAIVER. The waiver or failure of either Party to exercise in any respect any rights provided for in this Contract shall not be deemed a waiver of any further right under this Contract.

ARTICLE 14. CHOICE OF LAW AND FORUM. The state courts of Wisconsin shall be the sole forum for all disputes arising of this Contract. The validity, construction, enforcement and effect of this Contract shall be governed solely by the laws of the State of Wisconsin.

ARTICLE 15. GUARANTEED SAVINGS. This contract is governed under Wisconsin State Statute 66.0133 which requires the Contractor to guarantee the energy savings that the project will produce. In this contract the FEMP IPMVP protocol used will be Option A - Retrofit Isolation. The values calculated using IPMVP Option A will be calculated by the district and shared with the contractor. The resulting values will be used to create the stipulated values for each Facility Improvement Measure. These Stipulated values will be agreed to with the district and the contractor and will then be deemed to guarantee.

Measured Project Benefits are determined by partial field measurement of the energy use of the system(s) to which an Improvement Measure was applied separate from the energy use of the rest of the facility. Utility Cost Avoidance will be measured using FEMP IPMVP Option A and stipulated for the remainder of the contract.

Partial measurement means that some but not all parameters will be measured. Careful review of the design and installation of Improvement Measures is intended to demonstrate that the stipulated values fairly represent the probable actual values.

Agreed-upon values will be shown in the measurement and verification plan. Engineering calculations using measurements and stipulations are used to calculate Measured Project Benefits for the duration of the Contract Term.

Measured Project Benefits from the following Improvement Measures will be calculated using Option A:

Source of Measured Benefit	Electric M&V Option	Gas M&V Option	First Year Utility Avoidance
Corridor Upgrade/Replacement	A		
Auditorium Upgrade/Replacement	A		
Gym Upgrade/Replacement	A		
Gym Destratification	A	A	
Cafeteria Upgrade/Replacement	A		
Total Measured Project Benefits - Option A			

Contractor guarantees the annual savings as noted in the Savings Summary Chart and the stipulated savings for the entire payback period as stated in the Annual Cost Avoidance Chart set forth in Appendix B; and based on the Energy Conservation Report provided in Appendix A attached hereto and based on installation of all equipment as specified and designed.

Whereas the Energy Conservation Report is based on stipulated savings and will not require additional measurement nor verification after Contractor has completed performance of the work and contract is paid in full, MPS will not receive any additional payments from Contractor and Contractor will not receive any additional payments from MPS based on future performance of installed Facility Improvement Measures.

IN WITNESS WHEREOF, the parties have executed this Contract the day and the year first above written and the Contractor and Surety have affixed their corporate seals thereto.

Sealed and delivered in presence of

Berglund Construction Company

CONTRACTOR

Contractor's Corporate Seal

PRESIDENT

SECRETARY

BONDING COMPANY

Bonding Company Seal

(ATTORNEY-IN-FACT) OR (AGENT)

WITNESS AS TO CONTRACTOR

WITNESS AS TO THE SURETY

CITY OF MILWAUKEE, represented by its
Milwaukee Board of School Directors

PRESIDENT

SUPERINTENDENT OF SCHOOLS

Countersigned this _____ day of _____, year of _____

COMPTROLLER

Approved as to form and execution this _____ day of _____, year of _____

ASSISTANT CITY ATTORNEY

STATE OF WISCONSIN
MILWAUKEE COUNTY

_____, being duly sworn on oath deposes and says
that he/she is (attorney-in-fact) or (agent) of said _____
(BONDING COMPANY)

Affiant further deposes and says that no officer, official, or employee of the City of Milwaukee has any interest, directly or indirectly, or is receiving any premium, commission, or fee or other thing of value on account of the sale or furnishing of this bond, undertaking or contract of indemnity, guaranty or suretyship in connection with the above mentioned contract.

Subscribed and sworn to before me this

_____ day of _____ A.D. Year of _____

Position _____

Notary Public, Milwaukee Co., Wis.

My commission expires _____

Form 115a -8/03