

**Intergovernmental Agreement among the  
City of Chicago, the Board of Education of the City of Chicago, the Chicago Park District  
and the Public Building Commission of Chicago  
(Marshall Metro High School Campus Park Improvement Project)**

This Intergovernmental Agreement (“**Agreement**”), dated December 29, 2010 but effective as of January 30, 2007 (the “**Effective Date**”), is made among the City of Chicago, an Illinois municipal corporation and home rule unit of local government (the “**City**”), the Board of Education of the City of Chicago, a body politic and corporate (the “**Board**”), the Chicago Park District, a body politic and corporate (the “**Park District**”), and the Public Building Commission of Chicago, a municipal corporation (the “**Commission**”). The City, the Board, the Park District and the Commission are sometimes referred to herein as a “**Party**” and collectively as the “**Parties**.”

**RECITALS**

A. The City is a home rule unit of local government under the 1970 Constitution of the State of Illinois and has the authority to promote the health, safety and welfare of its inhabitants, to furnish essential governmental services through its various departments and agencies and to enter into contractual agreements with units of local government for the purpose of achieving the aforesaid objectives.

B. The Board is a body politic and corporate created pursuant to 105 ILCS 5/31-2.

C. The Park District is a body politic and corporate created pursuant to the Chicago Park District Act, 70 ILCS 1505/0.01 *et seq.*, which has the authority to exercise control over and supervise the operation of all parks within the corporate limits of the City of Chicago, to acquire real estate for park purposes and to enter into intergovernmental agreements, upon the approval of its Board of Commissioners, for the purpose of achieving the aforesaid objectives. On October 13, 2010, the Board of Commissioners of the Chicago Park District authorized the Park District to enter into this Agreement.

D. On March 18, 1956, the City Council of the City (the “**City Council**”) created the Commission pursuant to the Public Building Commission Act of the State of Illinois, 50 ILCS 20/1 *et. seq.*, as amended (the “**Act**”) for the purpose of facilitating the acquisition, development and construction of public improvements and facilities at various locations in the City.

E. At the request of the City, the Board and the Park District, the Commission has undertaken a program involving the planning, design, land acquisition, development and construction of campus parks anchored by local public schools that feature baseball fields, basketball courts, tennis courts, running tracks and related and ancillary facilities in order to increase vital recreation space and improvements in the City’s neighborhoods (the “**Campus Park Program**”).

F. The Campus Park Program includes the development and construction of the Marshall Metro High School Campus Park Project (the “**Project**”) which will provide extensive

site improvements, demolition and reconfiguration of parking areas, landscaping, athletic fields, arboretum, ornamental lighting and fencing and other related and ancillary facilities as more fully described on **Exhibit A** hereto.

G. The Project is situated on an approximately ten (10) acre site located in the East Garfield Community bounded by Monroe on the north, Kedzie Avenue on the east, Jackson Boulevard on the south and a line approximately 100 feet west of Spaulding on the west as depicted on **Exhibit A-1** hereto.

H. The City, the Park District and the Board have agreed that funding to pay the costs of the Project will be paid by the City, the Park District and the Board in the amounts set forth on **Exhibit B-1** hereof.

I. (1) Pursuant to an ordinance adopted by the City Council of the City on April 11, 2007 (the "2007 Bond Ordinance"), the City issued certain \$547,590,000 General Obligation Bonds Project and Refunding Series 2007A (the "2007ABonds") as a means of financing, among other things, grants to assist other municipal corporations, units of local government and school districts. The 2007 Bond Ordinance authorizes the Chief Financial Officer to execute agreements to make such grants funded from the proceeds of the 2007A Bonds. (2) Pursuant to an ordinance adopted by the City Council of the City on November 5, 2008 (the "2008 Bond Ordinance"), the City issued certain \$388,001,650 General Obligation Bonds Project and Refunding Series 2008C (the "2008C Bonds") as a means of financing, among other things, grants to assist other municipal corporations, units of local government and school districts. The 2008 Bond Ordinance authorizes the Chief Financial Officer to execute agreements to make such grants funded from the proceeds of the 2008C Bonds. (3) Pursuant to an ordinance adopted by the City Council of the City on November 18, 2009 (the "2009 GO Bond Ordinance"), the City issued certain \$401,920,000 General Obligation Bonds, Refunding Series 2009A, \$159,855,000 General Obligation Bonds, Taxable Project and Refunding Series 2009B, \$98,320,000 General Obligation Bonds, Taxable Project Series 2009C (Build America Bonds—Direct Payment) and \$133,180,000 General Obligation Bonds, Taxable Project Series 2009D (Recovery Zone Economic Development Bonds—Direct Payment) (collectively, the "2009 GO Bonds") as a means of financing, among other things, grants to assist other municipal corporations, units of local government and school districts. The 2009 GO Bond Ordinance authorizes the Chief Financial Officer to execute agreements to make such grants funded from the proceeds of the 2009 GO Bonds. (4) Pursuant to an ordinance adopted by the City Council of the City on September 9, 2009 (the "2009 Sales Tax Bond Ordinance"), the City issued certain \$90,892,392.35 City of Chicago \$68,730,000 Sales tax Revenue Refunding Bonds, Series 2009A, \$2,150,000 Sales Tax Revenue Refunding Bonds, Taxable Series 2009B, and \$20,012,392.35 Sales Tax Revenue Refunding Bonds, Taxable Series 2009C (Capital Appreciation Bonds) (collectively, the "2009 Sales Tax Bonds") as a means of financing, among other things, grants to assist other municipal corporations, units of local government and school districts. The 2009 Sales Tax Bond Ordinance authorizes the Chief Financial Officer to execute agreements to make such grants funded from the proceeds of the 2009 Sales Tax Bonds.

J. The Park District and the Board desire to set forth procedures for the District's use of the Project as a community recreational and athletic facility while preserving the Board's priority use of the Project.

K. The Parties have determined that it is in their best interests to enter into this Agreement pursuant to Article VII, Section 10 of the 1970 Illinois Constitution, which encourages intergovernmental cooperation, in order to set forth their objectives and respective duties and responsibilities and to describe the procedures and guidelines to be followed with respect to the implementation of the Project.

Now, therefore, in consideration of the mutual covenants and agreements contained herein, the Parties hereby agree as follows:

### **Section I. Incorporation of Recitals.**

The recitals set forth above constitute an integral part of this Agreement and are hereby incorporated herein by this reference with the same force and effect as if set forth herein as agreements of the Parties.

### **Section II. Definitions.**

For all purposes of this Agreement, each of the following terms shall have the respective meaning assigned to it as follows:

**Architect of Record:** The firm or entity employed by the Commission or its designee for the purpose of designing and observing the Work for compliance with the requirements of the Contract.

**Authorized Board Representative:** The person or entity designated by the Board, including the duly designated representative(s) thereof, as the person to whom notices shall be given pursuant to this Agreement and otherwise act as the Board's representative in implementing this Agreement.

**Authorized Commission Representative:** The person or entity employed or retained by the Commission to provide planning, development, construction management, administration and / or coordination services for the Project.

**Authorized Park District Representative:** The General Superintendent of the Park District, including the duly designated representative(s) thereof, who is designated by the Park District as the person to whom notices shall be given pursuant to this Agreement and otherwise act as the Park District's representative in implementing this Agreement.

**Budget:** The preliminary budget for the construction of the Project as agreed to by the Parties from time to time. For purposes of this Agreement, the term "Budget" includes, as the case may be, the preliminary budget as set forth on **Exhibit B-2** hereof and final Budget(s) as determined by the Parties.

**Budget Director.** The Budget Director of the City including the duly designated representative thereof.

**Certificate of Final Acceptance:** The certificate, substantially in the form attached hereto as **Exhibit C-2**, which shall be delivered by the Commission to the Budget Director and the Authorized Board Representative to certify that a Certificate of Final Completion has been issued by the Architect of Record for the Project, that the Commission has verified that all punch list work has been completed, and that all deliverables, including but not limited to the items as provided in **Section 10.6**, have been transmitted to DGS along with a Final Certificate of Occupancy issued by the authority having jurisdiction.

**Commissioner:** The Commissioner of DZLUP including the duly designated representative thereof.

**Contract:** The contract which shall be entered into between the Commission and a Contractor, including all of the contract documents described therein, providing all labor, materials and other services for development and construction of the Project.

**Contractor:** An individual or firm that contracts with the Commission to perform services and/or provide Work in connection with the Project. For purposes of this Agreement, the term "**Contractor**" may include a general or specialty contractor, subcontractor, design entity, construction manager, environmental consultant or other consultants engaged by the Commission to implement the Project.

**DZLUP:** The City's Department of Zoning and Land Use Planning, or any successor department or agency.

**Final Completion:** The last date on which all of the following events have occurred: the Authorized Commission Representative has determined that all Punch List Work and any other remaining Work have been completed in accordance with the Contract; final inspections have been completed; operations systems and equipment testing have been completed; the Certificate of Final Completion has been issued by the Architect of Record; a Final Certificate of Occupancy has been issued by the authority having jurisdiction; all deliverables as provided in **Section 10.6** hereof including, but not limited to: all warranties, operations/maintenance manuals, and as-built drawings, have been provided to the Commission and forwarded to DGS; any LEED Commissioning responsibilities required by the Contract have been completed; and all contractual requirements for final payment to the Contractor have been completed.

**Funds:** Those monies provided by the Board, the City and the Park District in the amounts as set forth on **Exhibit B-1** hereof to be utilized to pay the costs of the Project and which will be deposited in the Project Account.

**Notice of Substantial Completion:** The certificate, substantially in the form attached hereto as **Exhibit C-1**, which shall be delivered by PBC to DGS along with a Certificate of Substantial Completion issued by the Architect of Record, a copy of the Punch List and a Certificate of Occupancy issued by the authority having jurisdiction.

**Project:** The planning, design and construction of open space and recreational facilities in the East Garfield Park Community of the City as more fully described on **Exhibit A-1** hereof.

**Project Account:** A separate, interest bearing account to be established by the Commission for the deposit of funds paid by the City, the Board and the Park District to pay the costs of the Project. Any interest accrued shall be applied to the Project.

**Project Scope:** The requirements of the Parties with respect to the nature, scope and extent of the Project including, but not limited to, the size, type, function, spatial relationships, and materials to be used in the design and construction of the Project.

**Property:** The real estate parcels or areas upon which the Project will be constructed as depicted on **Exhibit A-2** hereof.

**Punch List or Punch List Work:** Minor adjustments or repairs in the Work as determined by the Architect of Record which must be completed prior to Final Completion and Acceptance of the Work and the issuance of the Certificate of Final Completion. The Authorized Commission Representative and Authorized Board Representative shall have the right to consult with the Architect of Record concerning the preparation and completion of the Punch List.

**Schedule:** The projected date or dates on which the Project or portions thereof shall be completed as agreed to by the Parties.

**Substantial Completion:** The date on which the Architect of Record has issued a Certificate of Substantial Completion to certify that the Project has been essentially completed in accordance with the Contract except for Punch List Work that will not preclude the beneficial use and occupancy of the Project for the purpose intended, and when the Contractor has obtained and delivered to the Authorized Commission Representative a "Certificate of Occupancy" issued by the authority that has jurisdiction.

**Work:** All labor, materials, equipment or other incidentals necessary or convenient to the successful completion of the Project or portions thereof and which are required by, incidental to or collateral to the Contract Documents.

### **Section III. Responsibilities of the Parties.**

#### **3.1 The Commission.**

The Commission will coordinate, manage, administer and otherwise implement the Project in accordance with the terms and conditions of this Agreement, the Act, the Contract and any applicable laws and regulations. Specific responsibilities of the Commission include, but are not limited to, the following:

3.1.a Prepare or cause to be prepared the terms and conditions of the Contract, which shall be forwarded to the Commissioner, the Authorized Board Representative and the Authorized Park District Representative for review upon request.

3.1.b Solicit bids and/or proposals for the Contract and other Work as may be required for the development and construction of the Project or portions thereof.

3.1.c Engage the services of architectural, engineering, landscaping and such other design and/or construction consultants as may be necessary for the completion of the Project.

3.1.d Examine all documents submitted by the City, the Board, the Park District or the Contractor relating to the Project and render decisions pertaining thereto with reasonable promptness in order to avoid delay in the progress of the Project.

3.1.e Obtain such surveys, title information, environmental tests and other reports and documents as may be necessary in order to determine the condition of the Property and factors that may affect the completion of the Project.

3.1.f Determine the types and amounts of insurance and bonds to be provided by the Contractor and other consultants during the construction of the project and the sufficiency of evidence that such coverages are in force as more fully described in **Section 8.2** hereof.

3.1.g Require and procure from the Contractor waivers of all liens or rights of lien for labor and material furnished by or through it in the construction of the Project as more fully described in **Section 7.4** hereof.

3.1.h Require, by appropriate provision in the Contract, subject to the provisions of 740 ILCS 35/1, et seq., that the Contractor indemnify, save and hold harmless the City, the Board and the Park District as more fully described in **Section 8.1** hereof.

3.1.i Approve any and all changes to the Contract including changes to the Schedule or increases or decreases in the scope of the Work of the Contractor and adjustments in the contract price occasioned thereby which do not result in an increase in the overall Budget for the Project.

3.1.j Apply the funds deposited in the Project Account or otherwise paid by the City, the Board and the Park District solely to obtain the full and faithful completion of the Project in accordance with the Budget and the Schedule unless otherwise authorized by the Budget Director, the Authorized Board Representative and the Authorized Park District Representative.

3.1.k Provide such additional services as may be requested by the Commissioner, the Board or the Park District with respect to the Project provided that sufficient funds are available to pay the costs of such services.

### **3.2 The City.**

The City, in consultation with the Board, the Park District and the Commission, shall determine the nature and scope of the Project. Specific responsibilities of the City include, but are not limited to, the following:

3.2. a Deposit funds in the amounts set forth on **Exhibit B-1** into the Project Account for a total contribution of Four Million Six Thousand Eight Hundred Twenty-Seven Dollars (\$4,006,827) (\$1,306,827 of which has been previously deposited).

3.2.b Provide information to the Commission regarding the requirements for work performed in the public ways including construction standards, insurance requirements, design

requirements, objectives, constraints and criteria, space requirements and relationships, and site requirements with reasonable promptness to avoid delays in the progress of the Project.

3.2.c Provide a preliminary Budget for the Project or portions thereof and, in consultation with the Board, the Park District and the Commission, determine the final Budget for the Project.

3.2.d In consultation with the Board, the Park District and the Commission, the Budget Director shall have the right to review and approve change orders which may result in a material increase or decrease of sums allocated to any specific line item in the Budget or which may cause the cost of the Project to exceed the Budget or scope of the Project.

3.2.e Cooperate with the Commission and its designated representatives in obtaining any and all approvals pertaining to the use of the public ways, including street closings or vacations.

3.2.f Provide such additional assistance as shall be agreed by the Parties.

### **3.3 The Park District.**

The Park District, in consultation with the Board, the Commissioner and the Commission, shall determine the nature and scope of the Project. Specific responsibilities of the Park District include, but are not limited to, the following:

3.3.a Deposit the amounts set forth on **Exhibit B-1** hereof into the Project Account for a total contribution of Two Million Dollars (\$2,000,000).

3.3.b In consultation with the Board, the City and the Commission, review preliminary budgets for the Project and determine the final Budget for the Project.

3.3.c In consultation with the Board, the Budget Director and the Commission, the Authorized Park District Representative shall have the right to review and approve change orders which may result in a material increase in the Budget or which may cause the cost of the Project to exceed the Budget.

3.3.d Provide such additional assistance as shall be agreed by the Parties.

3.3.e Negotiate and enter into an intergovernmental agreement with the Board to set forth the procedures for the District's use of the Project as a community recreational and athletic facility while preserving the Board's priority use of the Project (the "Use Agreement").

### **3.4 The Board.**

The Board, in consultation with the Park District, the Commissioner and the Commission, shall determine the nature and scope of the Project. Specific responsibilities of the Board include, but are not limited to, the following:

3.4.a Deposit the amounts set forth on **Exhibit B-1** hereof into the Project Account for a total contribution of Four Million Six Thousand Eight Hundred Twenty-Six Dollars (\$4,006,826.00).

3.4.b Provide a preliminary budget for the Project and, in consultation with the Park District and the City, determine the final Budget for the Project.

3.4.c In consultation with the Park District, the Budget Director and the Commission, the Authorized Board Representative shall have the right to review and approve change orders which may result in a material increase in the Budget or which may cause the cost of the Project to exceed the Budget.

3.4.d Provide such additional assistance as shall be agreed by the Parties.

3.4.e Negotiate and enter into an intergovernmental agreement with the Park District to set forth the procedures for the District's use of the Project as a community recreational and athletic facility while preserving the Board's priority use of the Project (the "Use Agreement").

#### **Section IV. Site Availability and Access.**

##### **4.1 Right of Entry.**

It is expressly acknowledged and agreed that the Commission, its employees and consultants shall have the right to enter upon the Property for purposes associated with developing, improving and constructing the Project upon written notification to the City and/or the Board. The City and the Board shall cooperate with the Commission and its designated representatives in obtaining any and all approvals pertaining to the use of the Property, and execute any applications for permits or the like, as may be required in order to develop and construct the Project.

##### **4.2 Unpermitted Encumbrances.**

Neither the Commission nor the Contractor nor any of their respective commissioners, officials, representatives, agents, successors or assigns shall engage in any financing or other transaction the effect of which creates an encumbrance or lien upon the Property.

#### **Section V. Environmental Conditions.**

##### **5.1 Reports and Studies.**

The Board shall provide to the Commission a copy of any studies and reports with regard to the environmental condition of the soil of the Property and the geology thereof which may have been obtained by the Board. The Commission shall cause to be conducted any additional environmental reports and studies which are necessary for the completion of the Project.

##### **5.2 Environmental Remediation.**



In the event that adverse environmental conditions are discovered during the development or construction of the Project, the Commission will undertake the remediation of such adverse environmental condition so that the Property can be used for the construction of the Project, with the right to utilize such contingency funds as may be allocated in the Budget for such purpose. If, however, the cost of the environmental remediation action exceeds such contingency funds, the Commission shall promptly notify the Budget Director, the Authorized Board Representative and the Authorized Park District Representative in writing, and the Parties shall mutually agree in writing upon appropriate action to be taken to fund and complete such remediation, if feasible, or modify the Project.

## **Section VI. Construction of the Project.**

### **6.1 Preparation of Bid Documents.**

The Board shall provide the Commission with any preliminary documents for the Project as may be required under this Agreement. The Commission shall appoint an Architect of Record or other design entity to prepare design documents that are sufficiently complete to solicit bids or proposals for the construction of the Project. The Commission shall provide a copy of such design submittals as may be requested by the City, the Board or the Park District for review and timely approval to determine compliance with the Project Scope.

### **6.2 Selection of General Contractor.**

Upon completion of the bid documents by the Commission, the Commission shall solicit bids or proposals for the construction of the Project. The Commission shall review and evaluate the bids or proposals submitted and conduct such investigations as may be necessary and appropriate. During the bid review period, the Commissioner, the Authorized Board Representative and the Authorized Park District Representative shall have the right to attend meetings and participate in the evaluation process. Following the bid review process, the Commission shall select the Contractor submitting the lowest responsible bid or proposal prices and authorize the award of the Contract.

### **6.3 Limited Applicability of Approval.**

Any approvals of the design of the Project or the Work made by the City, the Board or the Park District are for purposes of this Agreement only and do not affect or constitute approvals required for building permits or approvals required pursuant to any ordinance of the City. Any such approvals by the City, the Board or the Park District pursuant to this Agreement also do not constitute approval of the quality, structure soundness or the safety of improvements constituting the Project.

### **6.4 Ownership of Documents.**

All documents, data, certificates, warranties and environmental remediation documents with regard to the implementation of the Project shall be the property of the Commission. The Commission shall assign and transfer ownership of all such documents and materials that it may

have obtained from the Contractor or others to the Board or the City, as directed, upon completion of the Project.

#### **6.5 Project Labor Agreement.**

The Board has entered into a Project Labor Agreement with various trades regarding construction project on property owned by the Board. The Commission acknowledges familiarity with the requirements of the Board's Project Labor Agreement, its applicability to construction of the Project, and shall comply in all respects.

### **Section VII. Administration of the Project.**

#### **7.1 Enforcement of the Contract.**

The Commission shall comply, and cause the Contractor to comply, with the terms and conditions of the Contract and all applicable federal, state and local laws, codes, ordinances and orders. Such requirements include, but are not limited to, Illinois Prevailing Wage Act, the Chicago Human Rights Ordinance, City residency requirements, and the Commission's special conditions regarding MBE (24%) and WBE (4%) participation.

#### **7.2 Coordination with the City, the Board and the Park District.**

The Commission shall apprise the Commissioner and the Authorized Board Representative and Authorized Park District Representative of the status of progress regarding the Project on a quarterly basis and, upon request, provide the City, the Board and the Park District with copies of reports and other documents prepared for the Commission. As soon as reasonably practicable, the Commission shall provide the Commissioner, the Budget Director and the Authorized Board Representative and Park District Representative with any information which may result in a request for change order, require the expenditure of additional funds or result in Project delays. The Commissioner and the Authorized Board Representative and Authorized Park District Representative shall have the right to inspect the Project or portions thereof at all reasonable times and to attend meetings with representatives of the Commission, the Contractor and others regarding the Project. The City, the Board and the Park District will provide to the Commission prompt, accurate and complete information regarding the Project Scope so that the progress of the Project will not be impeded. All data provided by the City, the Board or the Park District shall be evaluated by the Commission, which shall have the right to recommend alternative approaches and value engineering in order to reduce costs while maintaining the overall quality and scope of the Project.

#### **7.3 Payment and Performance Bond.**

The Commission shall require that the Contractor provide a payment and performance bond in accordance with state law to ensure that the terms and conditions of the Contract will be faithfully performed. The payment and performance bond shall be in the amount specified in the Contract and issued by a surety company licensed to do business in the State of Illinois and approved by the Commission. If the surety fails or is deemed by the Commission to be

insufficient security for the payment of the bond, the Commission will require the Contractor to furnish an additional bond in such amount as determined by the Commission. Any proceeds derived by the Commission as a result of the payment of the performance bond shall be credited to the Project Account and applied to the Project as agreed to in writing by the Budget Director and the Authorized Board Representative and Authorized Park District Representative.

#### **7.4 Waiver and Release of Liens.**

The Commission shall require and procure from the Contractor waivers of lien or rights of lien for all labor and materials furnished in the construction of the Project. This provision shall be construed as being solely for the benefit of the Commission, the City, the Board and the Park District and shall not confer any rights hereunder for the benefit of the Contractor or its subcontractors. To ensure payment of lien claims, the Commission shall retain the amounts of the liens claimed by subcontractors or suppliers from payments to the Contractor in accordance with applicable Illinois statutory requirements.

#### **7.5 Default by Contractor.**

In the event that the Contractor defaults in its obligations to perform, the Commission shall pursue all rights and remedies afforded to it at law, or in equity on behalf of the Parties pursuant to the terms of the Contract.

### **Section VIII. Indemnity and Insurance.**

#### **8.1 Indemnity.**

The Contract to be awarded by the Commission for the Project shall require that the Contractor indemnify, save and hold harmless the Commission, the City, the Board and the Park District and their respective commissioners, board members, officers, agents and employees and representatives, individually and collectively, from all claims, demands, actions and the like, made or instituted by third parties arising or alleged to arise out of the Work of the Project as a result of any negligent or willful act or omission of the Contractor or its subcontractors or any of their employees or agents.

#### **8.2 Insurance.**

The Contractor shall be required to purchase and maintain during the construction of the Project the types and amounts of insurance to be determined by the Commission. Prior to the commencement of the Work on the Project, the Commission shall obtain from the Contractor certificates of insurance evidencing the required insurance and certifying the name and address of the Contractor, the description of work or services covered by such policies, the inception and expiration dates of the policies and the specific coverages to be provided. A copy of any and all such insurance certificates shall be provided by the Commission to the City, the Board and the Park District upon request. All such insurance shall be placed in financially responsible companies, satisfactory to the Commission and authorized under the insurance laws of the State of Illinois to do business in the State of Illinois and shall have the Commission, the City, the Board and the Park District as additional insureds.

**Section IX.**  
**Payment of Project Costs.**

**9.1 Cost of the Project.**

It is the intent of the Parties that the actual cost of completing the Project shall not exceed the sum set forth in the Budget, as such Budget may be adjusted from time to time by agreement of the Parties. The fee for the Commission's services for the management and administration of the Project will be included within the Budget and shall not exceed three percent (3%) of the costs of the Project and will be paid on a pro rata basis commensurate with the Schedule.

**9.2 Project Account.**

The Funds shall be deposited by the Parties into the Project Account in the amounts set forth on **Exhibit B-1** and managed by the Commission on behalf of the Parties. All disbursements from the Project Account shall be made on the basis of invoices approved by the Commission in accordance with the usual policies and procedures of the Commission.

**9.3 Insufficient or Excess Funds.**

If in undertaking the completion of the Project to the satisfaction of the Parties, the Commission determines that the preliminary estimates of the costs of completing the Project are insufficient, the Commission shall notify the Budget Director and the Authorized Board Representative and Authorized Park District Representative in writing and the Parties shall agree on any future action as is appropriate. Any balance remaining in the Project Account upon completion of the Project shall be paid by the Commission as directed by the Budget Director and the Authorized Board Representative and Authorized Park District Representative.

**9.4. Records; Audit.**

The Commission shall maintain records and accounts of all financial transactions relating to the implementation of the Project. The Budget Director and the Authorized Representatives of the Board and the Park District shall have the right to inspect the books and records of the Commission pertaining to the Project at all reasonable times.

**Section X.**  
**Completion of the Project.**

**10.1 Standards of Construction.**

The Commission shall require that the Contractor provide for the Project materials that are new and work of good quality, free from faults and defects, and in conformity with the requirements of the Contract. The Commission shall also require that Contractor correct any deficient or defective work or materials in accordance with the procedures described in the General Contract. For a period of one (1) year commencing no earlier than the date of Substantial Completion, or such longer period as may be provided by any applicable special warranty in any of the various subcontracts to the Contract ("**Contractor's Warranty**"), the Commission shall assist the Board in causing the Contractor to correct, repair or replace any

work or materials found to be deficient or defective or nonconforming and any damage caused by such work and materials. Any equipment or material which is repaired or replaced will have the warranty period extended for a minimum period of one (1) year from the date of the last repair or replacement if standard in the industry and consistent with the applicable warranty.

#### **10.2 Completion Requirements.**

The Commission shall require the Contractor to comply with the requirements of the Contract with respect to the completion and close-out of the Project including, but not limited to, the completion of punch list work, the furnishing of material and equipment guarantees, warranties, operating and maintenance data, manuals and record or "as-built" drawings, shop drawings, waivers of lien, certified payrolls, and such other documents as may be required to comply with the terms of the Contract. The Commission will cause a copy of all such relevant documents to be delivered to the Authorized Board Representative. Any liquidated damages which may be assessed by the Commission against the Contractor for non-performance or delay will be credited to the Project Account or otherwise disbursed as agreed by the Budget Director and the Authorized Board Representative and Park District.

#### **10.4 Inspections.**

All Work and materials constituting the Project shall be subject to inspection by the Commissioner, the Authorized Board Representative and Authorized Park District Representative and their respective designees or personnel. The Commission shall notify the Authorized Board, City and Park District Representatives when the Project has been scheduled for inspections. The Commission will monitor completion of the Punch List Work and update the Commissioner and the Authorized Representatives of the Board and the Park District.

#### **10.4 Notice of Substantial Completion.**

Upon issuance of the Certificate of Substantial Completion by the Architect of Record, the Commission shall deliver to the Commissioner and the Authorized Board Representative a copy of such certificate and the Certificate of Occupancy issued by the authority having jurisdiction. Upon delivery to the Commissioner and the Authorized Board Representative of such certificates along with the Notice substantially in the form attached hereto as **Exhibit C-1**, the Project will be deemed substantially complete according to the Contract except for Punch List Work.

#### **10.5 Transfer of Responsibility.**

Within five (5) business days following receipt by Board of the documents as provided in **Section 10.4** above, the Board shall assume responsibility for the Project from that date forward including, without limitation, costs of operation and maintenance, electricity, water, and other utilities, security, personnel and insurance to a level as determined to be appropriate by the Board.

#### **10.6 Certificate of Final Acceptance**

Upon issuance of the Certificate of Final Completion, the Commission shall deliver to the Authorized Board Representative a Certificate of Final Acceptance, substantially in the form attached hereto as **Exhibit C-2** along with a copy of the Certificate of Final Completion issued by the Architect of Record and the Final Certificate of Occupancy by the authority having jurisdiction. The Certificate of Final Acceptance shall certify that each of the following have been completed and appropriate documentation delivered to the Authorized Board Representative: environmental reports; permits and licenses; shop drawings; "as-built" contract drawings; operation and maintenance manuals; and subcontractor/manufacturers warranties. Upon delivery of such certificates by the Commission to the Commissioner and the Authorized Board Representative, the Project will be deemed completed in accordance with the terms of this Agreement

## **Section XI. Notices.**

### **11.1 Notices to Parties.**

Any notice, certificate or other communication provided pursuant to this Agreement shall be in writing and shall be mailed, postage prepaid, by registered or certified mail with return receipt requested, or hand delivered and receipted, as follows:

If to the City:

Office of Budget and Management  
City Hall - Room 604  
121 North LaSalle Street  
Chicago, Illinois 60602  
Attention: Budget Director

With a Copy to:

Corporation Counsel  
City of Chicago  
121 North LaSalle Street - Room 600  
Chicago, Illinois 60602  
Attention: Finance and Economic Development  
Division

And a Copy to:

City of Chicago  
Department of Zoning and Land Use Planning  
Room 905, City Hall  
121 North LaSalle Street  
Chicago, Illinois 60602  
Attention: Commissioner

If to the Board:

Board of Education of the City of Chicago  
125 South Clark Street  
Chicago, Illinois 60603  
Attention: Chief Operating Officer

With a Copy to:

Law Department

Board of Education of the City of Chicago  
125 South Clark Street  
Chicago, Illinois 60603  
Attention: General Counsel

If to the Park District:

Chicago Park District  
541 North Fairbanks  
Chicago, Illinois 60611  
Attention: General Superintendent

With a Copy to:

Chicago Park District  
541 North Fairbanks  
Chicago, Illinois 60611  
Attention: General Counsel

If to the Commission:

Public Building Commission of Chicago  
Richard J. Daley Center  
50 West Washington Street, Room 200  
Chicago, Illinois 60602  
Attn: Executive Director

With a Copy to:

Neal & Leroy, LLC  
203 N. LaSalle Street, Suite 2300  
Chicago, Illinois 60601  
Attn: Anne L. Fredd

Notices are deemed to have been received by the Parties three (3) days after mailing.

## **11.2 Changes.**

The Parties, by notice given hereunder, may designate any further or different address or addresses to which subsequent notices, certificates or other communications shall be sent.

## **Section XIV. Miscellaneous Provisions.**

### **12.1 Entire Agreement; Amendment.**

Except as otherwise provided herein, this Agreement contains the entire agreement of the Parties with respect to the subject matter herein and supersedes all prior agreements, negotiations and discussions with respect thereto, and shall not be modified, amended or changed in any manner whatsoever except by mutual consent of the Parties as reflected by written instrument executed by the Parties hereto.

### **12.2 Conflict of Interest.**

No member of any board, commission or agency of the Commission, the Board, the City, or the Park District nor any official or employee of the Board, the City or the Park District shall have any financial or ownership interest, direct or indirect, in this Agreement or the Property; nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his or her personal interest or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested. No representative of the Commission, the Board, the City or the Park District shall be personally liable for the performance of the Parties pursuant to the terms and conditions of this Agreement.

### **12.3 Mutual Assistance.**

The Parties agree to perform their respective obligations, including the execution and delivery of any documents, instruments and certificates as may be necessary or appropriate, consistent with the terms and provisions of this Agreement.

### **12.4 Disclaimer.**

No provision of this Agreement, nor any act of the Commission, the Board, the City or the Park District shall be deemed or construed by any of the Parties, or by third persons, to create any relationship of third-party beneficiary, or of principal or agent, or of limited or general partnership, or of joint venture, or of any association of relationship involving the Commission, the Board, the City or the Park District.

### **12.5 Waiver.**

No waiver of any right hereunder shall be effective unless such waiver is contained in writing or executed by the party waiving such right. No waiver of any right hereunder in any particular circumstance or with respect to any particular subject shall constitute a waiver of any such right in any subsequent circumstances or with respect to any other subject.

### **12.6 Headings.**

The headings of the various sections and subsections of this Agreement have been inserted for convenient reference only and shall not in any manner be construed as modifying, amending or affecting in any way the express terms and provisions hereof.

### **12.7 Governing Law.**

This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

### **12.8 Successors and Assigns.**

The terms of this Agreement shall be binding upon the Commission, the Board, the City and the Park District. None of the rights, duties or obligations under this Agreement may be assigned without the express written consent of the Parties.

### **12.9 Severability.**



If any provision of this Agreement, or any paragraph, sentence, clause, phrase, or word or the application thereof, in any circumstance, is held invalid, the remainder of this Agreement shall be construed as if such invalid part were not included herein and the remainder of the terms of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

#### **12.10 Counterparts.**

This Agreement shall be executed in several counterparts, each of which shall constitute an original instrument.

#### **12.11 Term.**

The term of this Agreement begins on the Effective Date and shall end on the date of issuance of the Certificate on Final Acceptance as provided in **Section 10.6** and **Exhibit C-2** (the “**Expiration Date**”), provided, however that the terms of this Agreement shall govern and control any activities of the Parties undertaken in connection with the Project prior to the Effective Date. The term of the Use Agreement may not be coterminous with the term of this Agreement.

#### **12.12 Compliance.**

This Agreement shall not be legally binding on the Chicago Park District if entered into in violation of the provisions of the Public Officer Prohibited Activities Act, 50 ILCS 105/0.01 *et seq.* The Chicago Park District’s Ethics Code, Chapter III of the Code of the Chicago Park District, shall be incorporated into and made part of this Agreement.

#### **12.13 Contingent Liability.**

Any agreement lawfully entered into for a period of more than one year shall be executory only for the amounts for which the Park District may become liable in succeeding fiscal years pursuant to Section 17(i) of the Chicago Park District Act, 70 ILCS 1505/17(i).

**[Signatures Appear on Next Page]**



IN WITNESS WHEREOF, the Parties hereto have executed or caused this Agreement to be executed, as of the date first written above on the dates hereinafter subscribed by each of the Parties.

**APPROVED:**

**Office of Management and Budget**

By: \_\_\_\_\_  
Budget Director

Dated: \_\_\_\_\_

**ATTEST:**

By: \_\_\_\_\_  
Secretary

**Chicago Park District,**  
a body politic and corporate

By: \_\_\_\_\_  
General Superintendent

Dated: \_\_\_\_\_

**City of Chicago, an Illinois municipal corporation**

By: \_\_\_\_\_  
Chief Financial Officer

Dated: \_\_\_\_\_

**Board of Education of the City of Chicago**

By: \_\_\_\_\_  
Mary B. Richardson-Lowry, President

Attest: \_\_\_\_\_  
Estela G. Beltran 11/11/11

Approved as to Legal form:  
\_\_\_\_\_  
Patrick J. Rocks, General Counsel

Board Report: 10-1215-OP2

**Public Building Commission of Chicago,**  
a municipal corporation

By: \_\_\_\_\_  
Erin Lavin Cabonargi,  
Executive Director

**Approved as to Form and Legality for The  
Public Building Commission of Chicago**

**Neal & Leroy, LLC**

By: \_\_\_\_\_  
Anne L. Fredd



IN WITNESS WHEREOF, the Parties hereto have executed or caused this Agreement to be executed, as of the date first written above on the dates hereinafter subscribed by each of the Parties.

**APPROVED:**

**Office of Management and Budget**

By: \_\_\_\_\_  
Budget Director

Dated: \_\_\_\_\_

**City of Chicago, an Illinois municipal corporation**

By: \_\_\_\_\_  
Chief Financial Officer

Dated: \_\_\_\_\_

**ATTEST:**

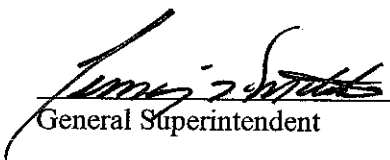
By: \_\_\_\_\_  
Secretary

**Board of Education of the City of Chicago**

By: \_\_\_\_\_  
President

Board Report No.: \_\_\_\_\_

**Chicago Park District,**  
a body politic and corporate

By:   
General Superintendent

Dated: November 9, 2010

**Public Building Commission of Chicago,**  
a municipal corporation

By: \_\_\_\_\_  
Erin Lavin Cabonargi,  
Executive Director

**Approved as to Form and Legality for The  
Public Building Commission of Chicago**

**Neal & Leroy, LLC**

By: \_\_\_\_\_  
Anne L. Fredd

Handwritten signature or mark.

IN WITNESS WHEREOF, the Parties hereto have executed or caused this Agreement to be executed, as of the date first written above on the dates hereinafter subscribed by each of the Parties.

**APPROVED:**

**Office of Management and Budget**

By: \_\_\_\_\_  
Budget Director

Dated: \_\_\_\_\_

**City of Chicago**, an Illinois municipal corporation

By: \_\_\_\_\_  
Chief Financial Officer

Dated: \_\_\_\_\_

**ATTEST:**

By: \_\_\_\_\_  
Secretary

**Board of Education of the City of Chicago**

By: \_\_\_\_\_  
President

Board Report No.: \_\_\_\_\_

**Chicago Park District**,  
a body politic and corporate

By: \_\_\_\_\_  
General Superintendent

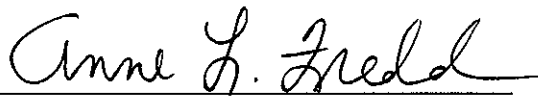
Dated: \_\_\_\_\_

**Public Building Commission of Chicago**,  
a municipal corporation

By:   
Erin Lavin Cabonargi,  
Executive Director

**Approved as to Form and Legality for The  
Public Building Commission of Chicago**

**Neal & Leroy, LLC**

By:   
Anne L. Fredd





IN WITNESS WHEREOF, the Parties hereto have executed or caused this Agreement to be executed, as of the date first written above on the dates hereinafter subscribed by each of the Parties.

**APPROVED:**

**Office of Management and Budget**

By:   
Budget Director

Dated: 12/29/10

**City of Chicago**, an Illinois municipal corporation

By:   
Chief Financial Officer

Dated: 12/29/10

**ATTEST:**

By: \_\_\_\_\_  
Secretary

**Board of Education of the City of Chicago**

By: \_\_\_\_\_  
President

Board Report No.: \_\_\_\_\_

**Chicago Park District**,  
a body politic and corporate

By: \_\_\_\_\_  
General Superintendent

Dated: \_\_\_\_\_

**Public Building Commission of Chicago**,  
a municipal corporation

By: \_\_\_\_\_  
Erin Lavin Cabonargi,  
Executive Director

**Approved as to Form and Legality for The  
Public Building Commission of Chicago**

**Neal & Leroy, LLC**

By: \_\_\_\_\_  
Anne L. Fredd



**EXHIBIT A-1**  
**Marshall Metro High School Campus Park Project**

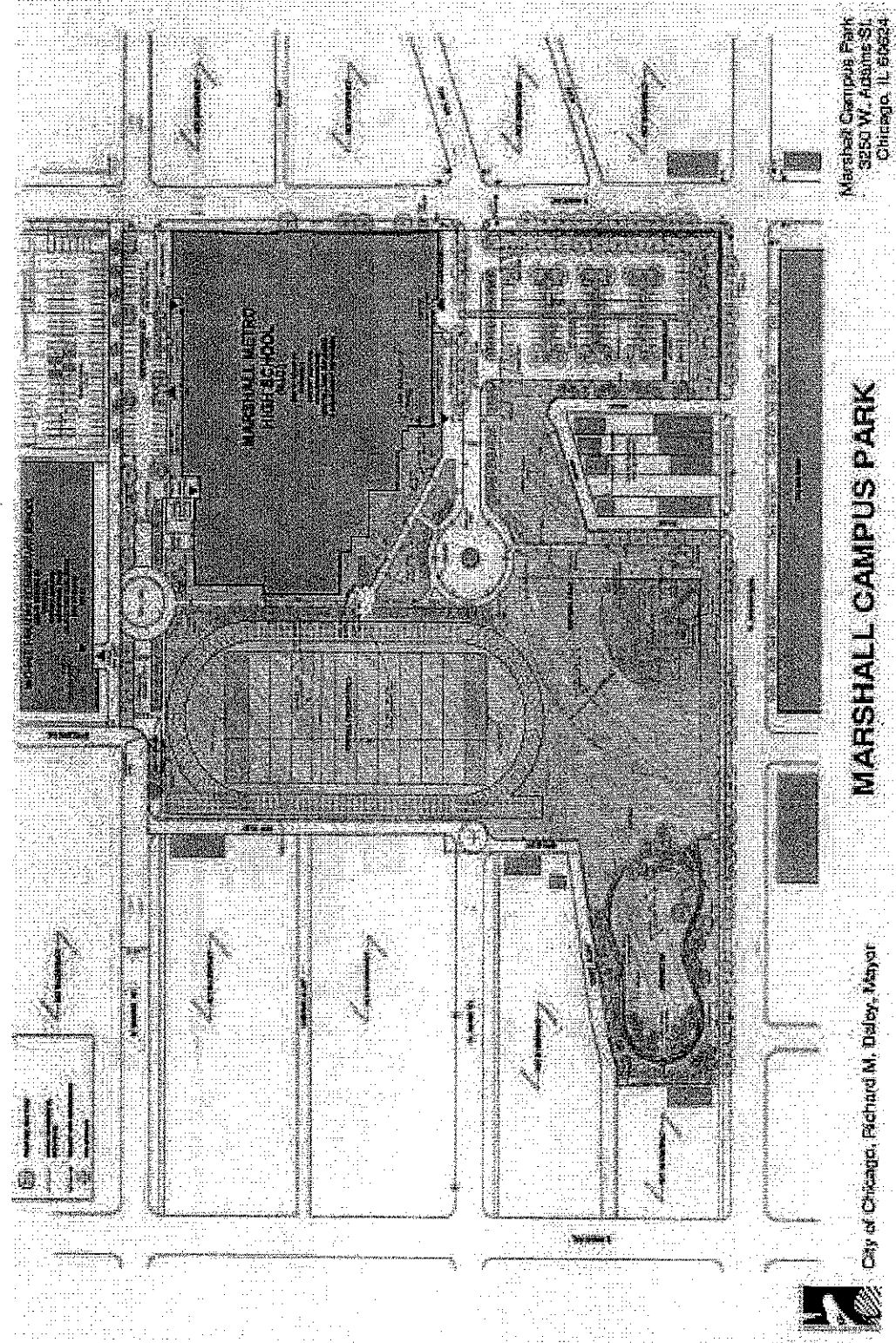
**Description of the Project**

The site is approximately 13 acres located in the East Garfield Park Community adjacent to the existing Marshall Metro High School. The Site is bounded by Monroe on the north, Kedzie Avenue on the east, Jackson Boulevard on the south and a line approximately 100 feet west of Spaulding on the west. It is a combination of vacant lots that were assembled by the City and the Board of Education over a period of years.

The campus park will consist of landscaping, a multi purpose practice field for football or soccer, a softball field, an arboretum and other related and ancillary improvements. The project will include a student garden area. Ornamental fencing and lighting will also be included. In addition, the existing parking lot at the north end of the school will be demolished and configured and there will be additional parking at the south end of the school. The project includes the vacation of parts of Spaulding, 5<sup>th</sup> Avenue, Adams Street and two alleys to consolidate the campus park.

# EXHIBIT A-2 Marshall Metro High School Campus Park Project

## Site Plan



**EXHIBIT B-1**  
**Marshall Metro High School Campus Park Project**

**Source of Funds**

City of Chicago

2007A Bonds \$ 306,827 (previously deposited)

2008C Bonds \$1,000,000 (previously deposited)

2009 Bonds \$ 900,000

2010 Bonds \$1,800,000

City Subtotal \$ 4,006,827

Board of Education: \$ 4,006,826

Chicago Park District \$ 2,000,000

Total \$10,013,653

# **EXHIBIT B-2** **Marshall Metro High School Campus Park Project** **Project Budget**

**PUBLIC BUILDING COMMISSION OF CHICAGO**

Division:  
 Project: Marshall Campus Park  
 Address: 3250 W. Adams St.  
 Ward/Ad: 28/E9 Smith

PMO Project No:  
 PBC Project No: CPS-21  
 Date: 10/10/08  
 Rev. Date: 7/29/09  
 PM: Jennifer Valentin

**TOTAL PBC PROJECT BUDGET**

Cost Codes	GL Code	Group Headings	Budget	Comments
		<b>Square Footage</b>	<b>448,669</b>	
I		<b>Planning</b>		
01.01	522415	Preliminary Property Appraisals	\$0	
01.02	522210	Demolition Assessment/Planning	\$0	
01.03	513119	Environmental Assessment/Planning	\$0	
01.04	513173	Facility/Site Test Fits/Layouts	\$0	
01.05	513183	Conceptual Estimating	\$10,000	
01.06	513185	Other Planning Costs	\$5,000	
01.07	513163	Site Survey	\$5,000	
		<b>Sub-Total</b>	<b>\$16,000</b>	
II		<b>Land Acquisition &amp; Site Control</b>		
02.01	513200	Legal Fees - Acquisition	\$0	
02.02	513203	Legal Fee Reimbursables	\$0	
02.06	522100	Land Acquisition	\$0	
02.07	522300	Relocation Costs	\$0	
02.09	524800	Abatement, Demo, Fencing, & Signage	\$2,000	
02.11	523700	Utility Relocation Fees	\$1,245,000	
02.12	523723	Public Right of Way Amendment	\$25,000	Street Closures
02.13	522160	Other Land Acquisition Costs	\$0	
		<b>Sub-Total</b>	<b>\$1,272,000</b>	
III		<b>Environmental and Site Preparation</b>		
03.01	513140	Environmental Testing and Consulting	\$80,000	
03.03	513168	Geotechnical Testing	\$10,000	
03.06	523900	Environmental Remediation & Site Preparation	\$140,000	
03.07	523950	Other Environmental & Site Prep. Costs	\$25,000	
		<b>Sub-Total</b>	<b>\$235,000</b>	
IV		<b>Design</b>		
04.01	521105	Design Architect Fees	\$0	
04.02	521100	AOR Basic Fees	\$199,000	
04.03	521500	AOR Reimbursables	\$32,000	
04.04	521500	AOR Additional Services	\$34,000	
04.10	513800	Commissioning Agent	\$0	
04.11	513700	Developer Services & Rezoning Fees	\$0	
04.12	513250	Legal Fee - Zoning Board Approval, Plan Development	\$12,000	
04.13	513800	Other Design Related Costs	\$31,000	
		<b>Sub-Total</b>	<b>\$276,000</b>	
V		<b>Project Implementation</b>		
05.01	513142	Project Management Fees	\$419,259	
05.02	520100	Project Management Reimbursables	\$41,927	
05.04	518700	Pre-Bid Advertising	\$3,000	
05.05	515200	Document Reproduction	\$5,000	
05.06	518500	Community Outreach	\$0	
05.07	513104	Alternative Action Consulting	\$23,190	
05.09	511300	PBC Administration	\$197,440	3% construction (2.00+3.00+5.00+0.00+5.00)
05.10	513500	Other Project Implementation Costs	\$25,000	
		<b>Sub-Total</b>	<b>\$744,826</b>	
VI		<b>Construction</b>		
06.01	513136	Testing and Inspection	\$50,000	(Compaction Testing)
06.02	514200	Insurance	\$0	
06.04	524360	General Construction	\$8,370,000	(includes Demo)
06.05	524350	General Construction Allowances	\$59,327	
06.06	581100	General Construction Contract Contingency	\$0	
06.07	513106	IT Systems	\$0	
06.08	526000	FF&E - Furnishings	\$0	
06.09	519100	Public Artwork Program	\$0	
06.10	581000	Construction Contingency	\$955,500	
		<b>Sub-Total</b>	<b>\$7,444,827</b>	
		<b>TOTAL PBC BUDGET</b>	<b>\$10,015,623</b>	

**BUDGET Approvals:**

*[Signature]*  
 PBC - Project Manager  
*[Signature]*  
 PBC - Director of Planning & Design  
*[Signature]*  
 PBC - Director of Development  
*[Signature]*  
 PBC - Executive Director  
*[Signature]*  
 PBC - Director of Finance

**FUNDING Approvals:**

*[Signature]*  
 Department of Planning and Development  
*[Signature]*  
 Chicago Public Schools / Board of Education  
*[Signature]*  
 Chicago Park District  
*[Signature]* 9.9.09  
 Office of Budget & Management

**EXHIBIT C-1**  
**Marshall Metro High School Campus Park Project**

**Notice of Substantial Completion**

Date:

Chief Operating Officer  
Board of Education  
125 South Clark Street  
Chicago, IL 60603

Dear Commissioner \_\_\_\_\_:

Enclosed please find a Certificate of Substantial Completion as issued by the Architect of Record, a copy of the Punch List, along with a Certificate of Occupancy for the above-referenced Project, and a letter from the independent commissioning agent certifying that all systems are operating as designed.

The Public Building Commission is in the process of completing the remaining punch list work. Copies of all warranties, operations/maintenance manuals and as-built drawings are currently being assembled and will be transmitted to you upon Final Completion of the Project. Training of Board of Education staff has been completed, all keys have been turned over, and draft copies of warranties and operation/maintenance manuals have been provided to the DGS building engineer.

Please contact the writer at (312) \_\_\_\_\_ should you have any questions.

Very truly yours,

**Public Building Commission of Chicago**

PBC Project Manager

Enclosure

cc: General Counsel - BOE  
Commissioner, DZLUP  
Executive Director – PBC

**EXHIBIT C-2**  
**Marshall Metro High School Campus Park Project**  
**Certificate of Final Acceptance**

Date:

Chicago Board of Education  
125 South Clark Street  
Chicago, IL 60603  
Attention: Chief Operating Officer

Project Name and Number: \_\_\_\_\_

Dear \_\_\_\_\_:

Enclosed please find a Certificate of Final Completion as issued by the Architect of Record, along with a Final Certificate of Occupancy for the above-referenced Project.

The Public Building Commission has verified that all punch list work has been completed. Copies of all warranties, operations/maintenance manuals and as-built drawings are transmitted to you concurrently with this certificate.

Please contact the writer at (312) \_\_\_\_\_ should you have any questions.

Very truly yours,

**Public Building Commission of Chicago**

PBC Project Manager

Enclosure

cc: General Counsel - BOE  
Commissioner, DZLUP  
Executive Director - PBC