

Board Special Meeting

Operations Committee

November 5, 2020, 4:30 p.m.

Meeting to be held remotely

By [Microsoft Teams](#)

By Teleconference: +1 206-800-4125 (Conference ID: 991 698 459#)



Agenda

Call to Order

4:30 p.m.

1. Roll Call
2. Approval of agenda
3. Approval of meeting minutes from October 8, 2020

Standing Agenda Items

4:40 p.m.

1. 2020 Committee Work Plan and Facility Capital Projects BAR Management Schedule (Mack)
2. Capital Financial Budget Report (Coan)
3. Capital and Operations Community Engagement (Podesta)
4. Design Modification/Construction Change Order Review (Best)

Board Action Reports (Discussion and/or Action)

5:00 p.m.

1. Approval of Management and Operations Agreement for Memorial Stadium Parking Lot (Carlson, Intro. 11/18)
2. BEX V, Distressed School Grant: Award Contracts K1372, P1797, P1798 and P1796 to Building Envelope Technology & Research, Inc. (BET&R) for technical consultation services during design and on-site construction observation of the building envelope (exterior cladding systems) and roofing systems for the Coe Elementary Classroom Addition, Leschi Elementary Classroom Addition, James Madison Middle School Classroom Addition and Van Asselt Classroom and Gymnasium Addition projects (Best, Intro. 11/18)
3. Distressed School Grant Award Architectural & Engineering Contract P1717 to Thomas Cook Fitzgerald Architecture (TCF) for the Leschi Elementary School Four Classroom Addition project (Best, Intro. 11/18)
4. BEX V: Resolution 2020/21-12 Racial Imbalance Analysis for Rainier Beach High School Replacement project (Best, Intro. 11/18)
5. BEX V: Award Architectural & Engineering Contract P1776 to Mahlum Architects for the Lincoln High School Phase 2 project (Best, Intro. 11/18)
6. BEX V: Resolution 2020/21-15: Approval of General Contractor/Construction Manager (GC/CM) Delivery Method and Award General Contractor/Construction Manager (GC/CM) Contract P5153 to Lydig Construction, Inc., for the Lincoln High School Phase 2 project (Best, Intro. 11/18)
7. Final Acceptances:
 - a. BTA IV: Final Acceptance of Contract K5102 with King County Directors' Association (KCDA) and Musco Sports Lighting, LLC, for the Athletic Field Lighting at Robert Eagle Staff Middle School project (Best, Intro. 11/18)
 - b. BEX IV & BTA IV: Final Acceptance of Contract K5108 with Western Ventures Construction for the JSCEE Freezer Upgrade project (Best, Intro. 11/18)

Special Attention Items

5:20 p.m.

1. Green Resolution Update (Best)
2. Clean Energy Resolution (DeWolf/Rivera-Smith)
3. Update on Health and Emergency Management with Remote Learning and Covid-19 (Podesta/Coulter)
4. Threat Assessment Policies: Revisions Status (Romanuk/Boy)
5. Proposed Property Exchanges (Best/Asencio)
6. BEX/BTA Oversight Committee Membership (Podesta)
7. Policy 1010 Capital Projects Semi-Annual Report (written update only)

Adjourn

6:30 p.m.

Upcoming Meetings

- December 3, 2020
- January 14, 2021
- February 4, 2021
- March 11, 2021
- April 1, 2021
- May 6, 2021
- June 3, 2021

IMPORTANT NOTE: This meeting will be held remotely without an in-person location per the Governor's proclamation prohibiting public agencies from conducting meetings subject to the Open Public Meetings Act in-person to curtail the spread of COVID-19. The public is being provided remote access through Microsoft Teams and teleconference as noted above. There is a maximum capacity of 350 meeting participants and other attendees for this remote meeting, and a "waiting room" may be utilized to address capacity. Additional attendees will be admitted from the waiting room as capacity permits.

As School Board Committees are working committees, the documents presented to the Board can change up to the time of the meeting. The Board Executive Committee has approved a pilot program to post to the website committee agendas and approved minutes only. Full meeting materials for Regular Board Meetings will still be posted. If you would like access to any of the materials for this meeting, you may call 206-252-0040 or email boardoffice@seattleschools.org and the Board Office staff will send committee materials to you promptly. Special meetings of the Board may contain discussion and/or action related to the items listed on the agenda. Executive sessions are closed to the public per RCW 42.30.

School Board/district public meetings for Operations/Capital Projects

Board Work Sessions are 4:30 – 6:00 p.m., via MS Teams

- Thursday, November 12, 2020, Operations Data Dashboard/Scorecard

Design Development Presentations:

- West Seattle Elementary School, Thursday, November 12, 6:00 – 8:00 p.m.

BEX/BTA Oversight Committee meetings are 8:30 – 10:30 a.m., via Zoom

- November 13, 2020
- December 11, 2020
- January 8, 2021
- February 12, 2021
- March 12, 2021
- April 9, 2021
- May 14, 2021
- June 11, 2021
- July 9, 2021

Capacity, Enrollment, and Facilities Master Planning (CEAFMP) Advisory Committee meetings are 1:00 – 3:00, via Zoom

- November 20, 2020
- December 18, 2020
- January 22, 2021
- February 26, 2021
- March 26, 2021
- April 23, 2021
- May 28, 2021
- June 25, 2021
- July 23, 2021

Information Technology Advisory Committee are 4:30 – 6:00, via MS Teams

- November 16, 2020
- December 21, 2020
- January 18, 2021
- February 15, 2021
- March 15, 2021
- April 19, 2021
- May 17, 2021
- June 21, 2021
- July 19, 2021

Board Special Meeting
Operations Committee
October 8, 2020, 4:30 PM
Meeting held remotely



Minutes

Call to Order

1. This meeting was called to order at 4:32 PM. Directors Mack, Rankin, Rivera-Smith participated with Microsoft Teams or by phone. This meeting was staffed by Chief Operations Officer Fred Podesta, Senior Project Manager Eric Becker, Transportation Manager Hunter Maltais, Executive Director of the Department of Technology Services Carlos del Valle, Chief Financial Officer JoLynn Berge, Senior Project Manager Mike Skutack, and Director of Board Relations and Policy Ellie Wilson-Jones.

Director Mack noted that the meeting was being held remotely consistent with the Governor's proclamations prohibiting the meeting from being held in person due to COVID-19. Director Mack noted that the public had been provided remote access through Microsoft Teams and teleconference.

2. Approval of agenda

Director Mack proposed two amendments to the agenda. She requested that the Special Attention Item BEX/BTA Oversight Committee Semi-Annual Report include a discussion and requested an update from Mr. Podesta about the Joint Use Agreement timeline.

Director Rankin moved to approve the agenda as amended. Director Rivera-Smith seconded. This motion passed unanimously.

3. Approval of meeting minutes

Director Rivera-Smith moved to approve the 9/10 meeting minutes. Director Rankin seconded. This motion passed unanimously.

Standing Agenda Items

1. 2020 Committee Work Plan and Facility Capital Projects BAR Management Schedule

Director Mack reported that changes were in progress regarding which policies go to which committees. She referred staff to Ms. Wilson-Jones for new language in Operations Committee charter.

2. Technology Budget Update

Mr. Del Valle provided background on the Technology budget actuals for fiscal year 19-20 and highlighted that invoices were still being received as the year was in close-out.

Ms. Berge clarified the difference between software licenses and curriculum. Director Mack requested clarity between where the different items were booked, such as a learning platform versus a curriculum.

Ms. Berge confirmed that the Technology Budget Update could be presented to the Operations Committee on a quarterly basis.

3. Capital and Operations Community Engagement

Mr. Podesta referred to the schedule of committee meetings and public events at the end of the meeting agenda. Directors and staff discussed additional places to disseminate the information about community meetings, such as posting the links in more than one calendar on the district website. Mr. Podesta committed to augmenting the advertisement and conveying the updates in a Friday Memo to the Board.

4. Design Modification/Construction Change Order Review

Mr. Becker referred to the Change Order log from the September meeting with Director Rivera-Smith. Director Rivera-Smith provided background on the Covid-19 mitigation costs.

Board Action Reports (Discussion and/or Action)

1. Approval of the renewed agreement with King County to purchase ORCA Business Passport Products (Metro Transportation)

Mr. Podesta introduced the new Transportation Manager Hunter Maltais. He highlighted that the BAR was for both Introduction and Action on the same date due to delays caused by changes in leadership and restructuring the contract with the City of Seattle. He confirmed that the contract was for an annual renewal. Mr. Maltais provided background on the eligibility and distribution of ORCA cards, and the new payment structure.

Directors and staff discussed expanding the eligibility of middle school students who may need access to transportation to district programs during this year of remote learning. Mr. Podesta committed to researching the potential number of additional students and the costs for providing them with ORCA cards.

Director Rankin made a motion to move this item forward to the full Board with a recommendation for consideration with amendments about increasing access to ORCA cards for middle schoolers not currently eligible under the Transportation Services Standards. Director Rivera-Smith seconded. This motion passed unanimously.

2. BTA IV: Approval of Budget Transfer and Construction Change Order #17 for the Webster School Modernization and Addition project

Mr. Becker provided background on this fund transfer from the program contingency. He reported that the building will be occupied in November 2020.

Director Rivera-Smith made a motion to move this item forward to the full Board with a recommendation for approval. Director Rankin seconded. This motion passed unanimously.

3. BEX V: Resolution 2020/21-11 Racial Imbalance Analysis for Viewlands Elementary School project

Mr. Becker provided background on the requirement to conduct a Racial Imbalance Analysis for OSPI. He summarized the analysis to clarify that enlarging the building does not change the racial make-up of the school.

Director Rankin made a motion to move this item forward to the full Board with a recommendation for approval. Director Rivera-Smith seconded. This motion passed unanimously.

4. BEX V: Approval of the Site-Specific Educational Specifications for the Viewlands Elementary School Replacement project

Mr. Becker provided background on the purpose and benefit of Site-Specific Educational Specifications. He confirmed that the building will include a gender-neutral restroom.

Director Rivera-Smith made a motion to move this item forward to the full Board with a recommendation for approval. Director Rankin seconded. This motion passed unanimously.

5. BEX V: Approval of the Value Engineering Report for the Viewlands Elementary School Replacement project

Mr. Becker provided background and the results of the Value Engineering process.

Director Rankin made a motion to move this item forward to the full Board with a recommendation for approval. Director Rivera-Smith seconded. This motion passed unanimously.

6. BEX V: Resolution 2020/21-10 Racial Imbalance Analysis for Northgate Elementary School project

Mr. Becker reported that the analysis verified that the project will not create or aggravate racial imbalance within the school.

Director Rankin made a motion to move this item forward to the full Board with a recommendation for approval. Director Rivera-Smith seconded. This motion passed unanimously.

7. BEX V: Resolution 2020/21- 8 New-in-Lieu Replacement Option for the Van Asselt School Addition project

Director Mack requested that the background of the BAR include the building's address.

Director Rankin made a motion to move this item forward to the full Board with a recommendation for approval, with the addition of the address. Director Rivera-Smith seconded. This motion passed unanimously.

8. BEX V: Award Architectural & Engineering Contract P1788 to Bassetti Architects for the Rainier Beach High School Replacement project

Mr. Skutack provided background on the selection process and the reasons for pursuing a GC/CM procurement process. He confirmed that the new school library will retain Director Patu's name. He also described the participation of Moody Architects in this project.

Director Rankin made a motion to move this item forward to the full Board with a recommendation for approval. Director Rivera-Smith seconded. This motion passed unanimously.

Special Attention Items

1. Student Assignment Transition Plan

Ms. Davies reminded the committee of two matters raised at the September meeting: defining the set aside for Native Heritage seats at International schools to prioritize English Language Learner students and changes to the Montessori program at Bagley Elementary to rebalance programs and classrooms to be more racially equitable.

2. Growth Boundaries

Ms. Davies provided background on the overcapacity at Mercer Middle School. She referred to the timeline of next steps in the committee packet. She confirmed that the Capacity, Enrollment, and Facilities Master Plan advisory committee will have a role in reviewing this case and making recommendations to the School Board.

Directors and staff discussed the timeline and how to simplify navigation to the relevant webpages on the district's site.

Director Mack requested that Board Directors be updated about school boundary meetings with their districts via the Friday Memo to the Board. Ms. Davies noted that the information was historically conveyed via an email to the pertinent directors and agreed to review the method.

Director Mack requested adding "2x2" meetings into the timeline. Ms. Davies confirmed that those are being scheduled, now.

3. Enrollment Update October 1 Count

Ms. Davies reported that counts are conducted weekly and the numbers are provided in the Friday Memo to the Board. She highlighted that the high schools' counts are not reliable, at this time, due to issues with the Running Start data, which is still being corrected. She confirmed that the final official count will be shared via a Friday Memo to the Board.

4. BEX/BTA OC Semi-Annual Report ~~(written update only)~~

Director Mack reported that Director Harris resigned from the BEX/BTA Oversight Committee and recommended Director Rivera-Smith for her seat. Director Rivera-Smith's confirmation was pending Director DeWolf's approval.

Director Mack referred to the committee roster and highlighted that many terms were expiring. She requested a meeting to address next steps.

5. Joint Use Agreement Timeline update

Mr. Podesta that a revised timeline does not exist, now. He provided background on the discussions between the Parks Department and the district and highlighted that Parks requested clear, specific "asks" from the district before they could commit to supporting outdoor education and including it in the Joint Use Agreement.

Director Mack requested that the Board be informed about how school leaders were solicited for outdoor education pilot proposals and that staff verify that the information was shared with principals.

Adjourn

This meeting adjourned at 7:26 PM

Minutes submitted by:

The Office of Chief Operations Officer Fred Podesta

DRAFT

	January 9, 2020	February 6, 2020	February 13, 2020	March 2, 2020	March 12, 2020	March 24, 2020	April 8, 2020	April 27, 2020	May 14, 2020	June 4, 2020	July - no meeting	August 13, 2020	September 10, 2020	October 8, 2020	November 5, 2020	December 3, 2020
Reports per board policies		Asset Preservation Program Report; Policy 6800 & 4260 Annual Report					BEX/BTA OC Semi-Annual Report		Asset Preservation Program Report (Policy-6800); BEX/BTA OC Semi-Annual Report	Asset Preservation Program Report (Policy-6800)		3208 Sexual Harassment Report; Asset Preservation Program Report (Policy 6800)	Asset Preservation Program Report (Policy 6800)	BEX/BTA OC Semi-Annual Report	1010 Report (Cap Prj)	H13.00 Report (in BAR below)
Board Policy Review	6900 and 6901 status				New Policy 3423, Parent/Guardian Administration of Marijuana for Medical Purposes (related policies: 3416 & 5201)				4314, Notification of Threats of Violence or Harm & New Policy 3225, School-Based Threat Assessment; New Policy 3424, Opioid Related Overdose Reversal	New 6902, Technology Planning		New 6902, Technology Planning			Health and Emergency Management Policy Review (w/ debrief of COVID-19 response)	Discuss 2021 Policy Calendar
Board Action Reports	Transportation Services Standards	Transportation Services Standards; 1:1 Laptops; Policies 6900 and 6901			Policies 6900 and 6901; Elevator Maint./Repair; Northgate ES Landmarking		New Policy 3423, Parent/Guardian Administration of Marijuana for Medical Purposes (related policies: 3416 & 5201)		District Operations contracts; BEX/BTA summer projects	4314, Notification of Threats of Violence or Harm & New Policy 3225, School-Based Threat Assessment; New Policy 3424, Opioid Related Overdose Reversal			4314, Notification of Threats of Violence or Harm & New Policy 3225, School-Based Threat Assessment			Capacity Mgmt BAR
Special Attention Items		Capital Budget Preview	Northgate ES Schematic Design; Capital Budget Review	Viewlands ES Schematic Design; West Woodland ES Schamtic Design	RBHS Landmarking Strategy	Kimball ES Schematic Design; West Seattle ES Schematic Design	Enrollment & Capacity Process Planning; HC Policy and Student Assgmt Plan, Traffic Safety Annual Report ; Capital Budget Presentation	Magnolia ES Schematic Design; Coe ES Schematic Design		Traffic Safety Annual Report		BTA V Guiding Principles	Process and timeline for community engagement and board action for 2021-22 boundary changes & SATP	Student Assignment Transition Plan; Growth Boundaries; Enrollment Update October 1 Counts	Green Resolution Update; Clean Energy Resolution; Threat Assessment policy revisions; Proposed Property Exchanges	(3208 Sexual Harassment Report?)
Board Work sessions (BWS)		February 12, Enrollment Planning			March 18, SCWA TF Recommendations				May 5: Capital Program Semi-Annual Report; Capacity and Enrollment Evaluation	June 17: SATP & Boundaries 2020-21; SCWA		8/19 Policy Review re. Safety and Security		10/14 BTA V Planning Overview Work Session	11/12 Ops Data Dashboard & Scorecard	
Standing Agenda Items:	Capital Financial (Budget) Report, Change Order Report, 2020 Work plan, Capital-Ops public meetings, Facilities Capital Projects BAR Mgmt Schedule															
Annual Items:	February - Policy 6800 & Policy 4260 Reports; August - Policy 3208 Report; December - Policy H13.00 Capacity Mngmt BAR; Bi-Annual Reports: Policy 1010; BEX/BTA OC; Capital Grants Update															
Pending Items:	Facility Joint Use Agreements 2020-21 contract; Playground Redev Fund Report; Spring 2020 Adv Learning TF; CEAFFMP Adv Cmte Annual Report; Joint Use Agreement w SPR; Policy Reviews: H13.00, Capacity Management; D00.00 School Attendance/D09.00 School Assignment/3130 Student Assignment; D137.00 Regulations for Stadiums Owned of Leased by Seattle Public Schools; Nutrition Services Update; Policy 3246 Restraint and Isolation;Gun Safety/Safe Storage/WSSDA Update (4210, Weapons Prohibition For Adults & Visitors; 3248, Firearms and Dangerous Weapons Prohibition for Students; Res. 2017/18-17), Policy 6902 Technology Planning; 4314, Notification of Threats of Violence or Harm & New Policy 3225, School-Based Threat Assessment															

* Estimated Dates																
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										Committee Chair: Eden Mack		Members: Brandon Hersey and Liza Rankin				Draft October 14, 2020
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The committee charter is to: Ensure the leveraged use of Board Policy No. 0030, Ensuring Educational and Racial Equity; In coordination with the Superintendent and lead committee staff, develop an annual Operations Committee work plan; Develop, review and recommend applicable Series 3000, 4000, and 6000 policies for consideration by the Board;Make recommendations with respect to Operations; Nutrition Services; Transportation; Capital Projects and Planning; Facilities; Sustainability; Enrollment Planning; Admissions; Boundaries; Athletics; Safety and Security relating primarily to property; and general technology infrastructure; Review capital programs’ budgets on a monthly basis; Review and make recommendations to the Board regarding the annual capital budget; Oversee levy planning and prioritization process and recommend levy guiding principles for consideration by the full Board; Provide overarching guidance on space utilization; Review monthly reports on facility joint use agreements and maintenance backlog; In consultation with the Executive Committee, review and recommend action on facility joint use agreements

Senior Level Staff	Project Manager	Project	Board Operation Committee Meeting Dates										
			August 13 2020	September 10 2020	October 8 2020	November 5 2020	December 3 2020	January 14 2021	February 4 2021	March 11 2021	April 1 2021	May 6 2021	June 3 2021
Richard Best	Richard Best	Miscellaneous											
Becky Asencio	Paul Cathcart	Building Condition Assessment											
	Michelle Hanshaw	Capacity Mitigation 2020-21					BAR						
	Michelle Hanshaw	Bitter Lake/Cleveland Field Land Exchange	Written Update										
	Michelle Hanshaw	West Seattle Land Exchange					Property Xchg BAR						
	Paul Cathcart	Seismic Assessment Contract		BAR									
	Paul Cathcart	Asset Preservation Report		Written Update (2019-20)						Written Update (2020-21)			
	Paul Cathcart	BTA V Master Planning Consultant					BAR						
Eric Becker	Brian Fabella	Webster School Addition & Modernization			Budget Transfer Covid								
	Brian Fabella	Viewlands ES Replacement			Racial Imbalance & Ed Spec & Value Engineering								
	Brian Fabella	Leschi ES Addition				AE BAR							
	Vince Gonzales	Queen Anne ES Addition & Modernization					Final Acceptance						
	Vince Gonzales	Northgate ES Replacement		Ed Spec & VE Report	Racial Imbalance								
	Vince Gonzales	Madison MS Eight Classroom Addition		A/E Contract								General Construction Contract	
	Justine Kim (SOJ)	Daniel Bagley ES Addition & Modernization						Budget Transfer COVID-19					
	Justine Kim (SOJ)	Robert Eagle Staff MS Field Lighting				Final Acceptance							
	Justine Kim (SOJ)	Van Asselt/Mercer		GC/CM Contract	New-in-Lieu								
Mike Skutack	Mike Skutack	Six Schools 100 kW Solar Projects						Final Acceptance					
	Mike Skutack	Magnolia School Addition & Modernization Phase 1					Final Acceptance						
	Mike Skutack	Magnolia School Classroom Addition Phase 2											
	Mike Skutack	Coe ES Classroom Addition	Construction Contract										
	Mike Skutack	Kimball ES Replacement	VE Report	Racial Imbalance & Site Specific Ed. Spec.									Construction Contract
	Paul Wight	West Seattle ES Classroom Addition										Construction Contract	
	Paul Wight	West Woodland ES Classroom & Gym Addition											
	Paul Wight	Cleveland HS New Synthetic Turf and Track						Final Acceptance					
	Paul Wight	Cleveland HS Field Lights		Final Acceptance									
	Paul Popovich (Parametrix)	Rainier Beach			A/E Contract	Racial Imbalance							
	Van Nguyen (CBRE/Heery)	Wing Luke ES Replacement									Commissioning Final Report		Final Acceptance
	Jennifer Everett (CBRE/Heery)	Lincoln HS Addition & Modernization					Final Acceptance						
	Jennifer Everett (CBRE/Heery)	Lincoln Seismic				AE Contract. GC/CM							

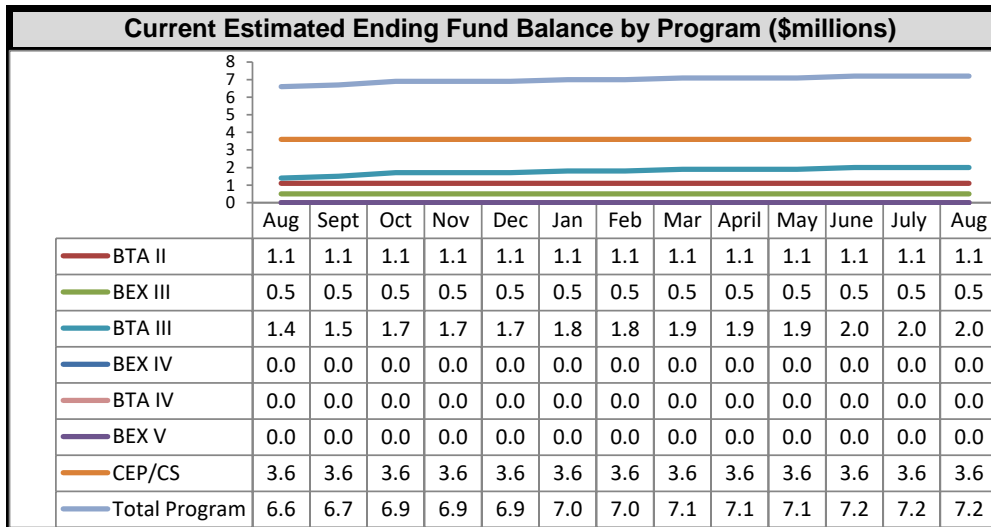
Senior Level Staff	Project Manager	Project	Board Operation Committee Meeting Dates										
			August 13 2020	September 10 2020	October 8 2020	November 5 2020	December 3 2020	January 14 2021	February 4 2021	March 11 2021	April 1 2021	May 6 2021	June 3 2021
Jeanette Imanishi	Mike Barrett	Portables											
	Mike Barrett	Fairmount Park Window Leak Repair											
	Mike Jenkins	JSCEE Freezer				Final Acceptance							
	Mark Emelko	Franklin HS Window and Door Replacement											
	Mark Emelko	African American Academy Roof Replacement											
	Mark Emelko	North Queen Anne System Upgrades											
	Mark Emelko	West Seattle HS Roof Replacement											
	Mark Emelko	Garfield HS Upgrades		Construction Contract									
	Mark Emelko	Wedgwood ES Upgrades						Final Acceptance					
	Milton Huertas	Broadview-Thomson K-8 Seismic					Final Acceptance						
	Milton Huertas	Beacon Hill ES, Maple ES & Orca K-8 Seismic Improvements					Final Acceptance						
	Milton Huertas	Cedar Park ES Restroom Addition						Final Acceptance					
	Milton Huertas	Laurelhurst ES & Sand Point ES Seismic											
	Milton Huertas	Washington MS Seismic											
	Milton Huertas	Whitman MS Seismic Improvements						Final Acceptance					
	Milton Huertas	McClure MS Seismic and Science Room Improvements											
	Tom Gut	Lafayette ES Seismic, Sprinkler & HVAC Improvements						Contract Award					
	Tom Gut	Catharine Blaine K-8 Seismic						Final Acceptance?					
	Tom Gut	John Muir ES Geothermal Wells		Final Acceptance									
	Tom Gut	Dearborn Park ES Roof and Seismic						Final Acceptance?					
	Tom Gut	Adams ES Fire Sprinkler Installation							Final Acceptance				
	Tom Gut	North Beach, Jane Addams & Sacajawea ES Site Improvements						Final Acceptance					
	Tom Gut	Gatewood Door & HVAC	A/E Contract							Contract Award			
	Tom Gut	Boren HVAC	A/E Contract							Contract Award			
	Conrad Plyler	Garfield HS Field & Lighting Improvements						Final Acceptance					
	Conrad Plyler	Franklin HS Field Lighting Improvements											
	Jeanette/Conrad	Jane Addams MS & Nathan Hale Field Replacement							Final Acceptance				
	Conrad Plyler	Multiple Sites Playground Improvements							Final Acceptance				
	Conrad Plyler	WSHS Batting Cages & Field							Construction Contract			Final Acceptance	
	Conrad Plyler	Madison MS Lights										Construction Contract	
	Conrad Plyler	Jane Addams MS Lighting							Construction Contract				
	Mike Jenkins	NOVA Health Center											
	Conrad Plyler	Whitman MS Field Lighting											
	Jeanette/Conrad	Ballard Athletic Field							Final Acceptance				

August FY 2019-20 Year End
Capital Programs
Monthly Summary Report

Life to Date Capital Program Fund Balance (\$millions)					
	Revenue	Expenditures	Intra Fund Transfers	Inter Fund Transfers	Current Fund Balance
BEX II	434.7	436.6	1.9	0.0	(0.0)
BTA II	182.2	168.5	(2.4)	(9.9)	1.4
BEX III	478.6	476.4	(2.2)	1.2	1.2
BTA III	273.4	218.7	0.0	(53.2)	19.0
Grants	36.4	35.9	0.0	0.0	0.5
BEX IV	728.9	624.9	0.0	(41.0)	63.0
BTA IV	292.6	324.9	(9.5)	(44.7)	(86.4)
BEX V	124.0	28.7	0.0	(7.1)	88.1
CEP/CS	47.9	14.8	4.2	(17.1)	20.2
Capital Fund Balance as of 8/31/20					106.9
* Transfer details on attached program sheets					

Capital Program Fiscal Year-To-Date (\$millions)					
Current Fiscal Year Program	FY 2019-20 Adopted Budget	FY 2019-20 Current Budget	FY 2019-20 Committed *	% Budget Committed	Balance
BTA II includes grants	0.0	0.0	0.0	0%	0.0
BEX III includes grants	0.6	0.6	0.2	34%	0.4
BTA III includes grants	14.0	15.5	10.2	66%	5.3
BEX IV includes grants	90.0	90.0	64.2	71%	25.8
BTA IV includes grants	128.6	125.3	76.4	61%	48.8
BEX V includes grants	73.7	75.5	45.7	61%	29.8
CEP/CS includes grants	0.6	0.7	0.5	76%	0.2
Capital Capacity Reserve	40.8	40.8	0.0	0%	40.8
Total Capital Program	348.3	348.3	197.3	57%	151.1
* Committed includes actual expenditures and encumbrances as of 8/31/20					

FY 2019-20 adopted budget, commitments and balance.



Attached individual program sheets indicate information on any change to each program's estimated ending fund balance.

Note: Numbers presented may not add up precisely to the totals due to rounding

August FY 2019-20 Year End
Capital Programs
Monthly Summary Report

BUILDING EXCELLENCE II CAPITAL PROGRAM

(Amounts in \$ Millions)

	Original Program Budget	Current Program Budget	Life To Date (8/31/20)	Remaining Program Budget	Change <u>LTD</u> from 7/31/20
Revenue					
Construction					
Levy Collections	373.5	369.1	369.1	0.0	0.0
Investment Earnings	10.3	11.6	11.6	0.0	(0.0)
State Match	24.0	29.2	29.2	0.0	0.0
Other	0.0	0.5	0.5	0.0	0.0
Technology					
Levy collections	24.5	25.8	25.8	0.0	0.0
Investment Earnings	0.7	(1.5)	(1.5)	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0
Total Revenue Plan	433.0	434.7	434.7	0.0	0.0
Transfers					
Construction					
From CEP (Garfield)	0.0	1.9	1.9	0.0	0.0
Expenditures					
Construction	396.2	410.9	410.9	(0.0)	(0.1)
Technology	26.0	25.7	25.7	0.0	0.0
Total Expenditure Plan	422.2	436.6	436.6	(0.0)	(0.1)
Current Fund Balance			(0.0)		
Estimated Ending Fund Balance (Sept. 1, 2019)					0.0

Prior Month Change to Ending Fund Balance:
- No Change

March 2017 ending fund balance decreased by \$647,816 and allocated to construction for Solar Technology Energy Projects.

August FY 2019-20 Year End
Capital Programs
Monthly Summary Report

BUILDING EXCELLENCE III CAPITAL PROGRAM

(Amounts in \$ Millions)

	Original Program Budget	Current Program Budget	Life To Date (8/31/20)	Remaining Program Budget	Change <u>LTD</u> from 7/31/20
Revenue					
Combined Program					
Bond Sale		420.0	420.0	0.0	0.0
Investment Earnings		30.5	30.5	0.0	0.0
State Match	481.0	26.3	26.3	0.0	0.0
Grant		2.8	2.8	0.0	0.0
Other		1.8	1.8	0.0	0.0
Total Revenue Plan	481.0	481.5	481.5	0.0	0.0

Transfers

	Construction				
From Debt Service (Sealth)	0.0	1.5	1.5	0.0	0.0
To CEP (Garfield)	0.0	(2.2)	(2.2)	0.0	0.0
To GF (Tech Salaries)	0.0	(0.3)	(0.3)	0.0	0.0
Total Transfers Plan	0.0	(1.0)	(1.0)	0.0	0.0

Expenditures

	Construction	393.0	418.0	417.9	0.1	0.0
	Infrastructure	26.0	16.9	16.8	0.1	0.0
	Technology	42.0	41.7	41.7	0.0	0.0
	Grant	0.0	2.8	2.3	0.5	0.0
	Program Reserve	20.0	0.5	0.0	0.5	0.0
Total Expenditure Plan		481.0	480.0	478.8	1.2	0.0

Current Fund Balance

	1.7
Current fund balance excluding Grant	1.2
Current fund balance of Grant	0.5

Estimated Ending Fund Balance (Sept. 1, 2021)

0.5

Numbers presented may not add up precisely to the totals due to rounding

Prior Month Change to Ending Fund Balance:

- No Change

Notes:

1. 09/30/11 - estimated program ending fund balance change due to project savings reported.
2. As a result of additional project savings that were identified, FY13 Recommended Capital Budget is included in current program budget for BEX IV Design Reserve and Intermediate Term Capacity Management Plan.
3. All committed and approved projects are either completed or on schedule.

August FY 2019-20 Year End
Capital Programs
Monthly Summary Report

BUILDINGS, TECHNOLOGY, and ACADEMICS II CAPITAL PROGRAM

(Amounts in \$ Millions)

		Original Program Budget	Current Program Budget	Life To Date (8/31/20)	Remaining Program Budget	Change <u>LTD</u> from 7/31/20
Revenue						
Combined Program						
	Levy	177.3	176.4	176.4	0.0	0.0
	Grant	0.0	5.3	5.3	0.0	0.0
	Investment Earnings	1.0	2.2	2.2	0.0	0.0
	QZAB Loan	0.0	3.1	3.1	0.0	0.0
	Other	0.0	0.5	0.5	0.0	0.0
Total Revenue Plan		178.4	187.4	187.4	0.0	0.0
Transfers						
	To Debt Service (QZAB)	0.0	(1.1)	(1.1)	0.0	0.0
	To BEX I (Close Out)	0.0	(6.0)	(6.0)	0.0	0.0
	To GF (Software Licenses)	0.0	(8.9)	(8.9)	0.0	0.0
	From CEP (Seattle WS Loan)	0.0	3.6	3.6	0.0	0.0
Total Transfers Plan		0.0	(12.3)	(12.3)	0.0	0.0
Expenditures						
	Buildings	95.5	102.0	101.8	0.2	0.0
	Academics	39.8	31.4	31.4	0.0	0.0
	Grant	0.0	5.3	5.3	0.0	0.0
	Technology	42.8	35.3	35.3	0.0	0.0
Total Expenditure Plan		178.0	174.0	173.7	0.2	0.0
Current Fund Balance				1.4		
Current fund balance excluding Grant				1.4		
Current fund balance of Grant				0.0		

Estimated Ending Fund Balance (Sept. 1, 2021) 1.1

Numbers presented may not add up precisely to the totals due to rounding

Prior Month Change to Ending Fund Balance:
- No Change

Notes:

1. The Current Program Budget includes \$9.1M for the Seattle World School which includes the Board Approved CEP loan for \$3.64M.
2. All committed and approved projects are either completed or on schedule.

August FY 2019-20 Year End
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BUILDINGS, TECHNOLOGY, and ACADEMICS III CAPITAL PROGRAM

(Amounts in \$ Millions)

	Original Program Budget	Current Program Budget	Life To Date (8/31/20)	Remaining Program Budget	Change <u>LTD</u> from 7/31/20
Revenue					
Combined Program					
Levy	266.6	268.3	268.3	0.0	(0.0)
Grant	0.0	18.1	18.1	0.0	0.0
Investment Earnings	1.4	4.5	4.5	0.0	0.0
QSCB Loan *	0.0	17.5	17.5	0.0	0.0
QSCB Loan *	0.0	(17.5)	(17.5)	0.0	0.0
Other	0.0	1.2	0.6	0.6	0.0
Total Revenue Plan	268.1	292.0	291.4	0.6	0.0

Transfers

From CEP (BTA III)	0.0	7.1	7.1	0.0	0.0
To Debt Service	0.0	(4.1)	(4.1)	0.0	0.0
To GF (Maintenance)	0.0	(17.4)	(17.4)	0.0	0.0
To GF (Tech/Computer Map)	0.0	(11.5)	(11.5)	0.0	0.0
To GF (Software)	0.0	(2.6)	(2.6)	0.0	0.0
To CEP (BTA III)	0.0	(7.1)	(7.1)	0.0	0.0
To Debt Service (QSCB Interest)	0.0	(0.1)	(0.1)	0.0	0.0
Total Transfers Plan	0.0	(35.7)	(35.7)	0.0	0.0

Expenditures

Buildings	126.6	103.9	92.6	11.3	4.8
Academics	94.6	105.9	99.6	6.3	(0.1)
Grant	0.0	18.1	18.1	0.0	0.0
Technology	34.9	26.5	26.5	0.0	0.0
Total Expenditure Plan	256.1	254.3	236.8	17.6	4.7

Current Fund Balance **19.0**

Current fund balance excluding Grant **19.0**

Current fund balance of Grant **0.0**

Estimated Ending Fund Balance (Sept. 1, 2022) **2.0**

* QSCB Loan \$17.5M paid back in full by end of FY17; First of three payments began FY15. This is listed as a transfer within Dashboard Summary.
Numbers presented may not add up precisely to the totals due to rounding

Prior Month Change to Ending Fund Balance:

- No Change

Notes:

- 09/30/11 - estimated program ending fund balance change due to project savings reported.
- Construction escalation reduced from 4% to 2%.
- All committed and approved projects are either completed or on schedule.
- FY13 Recommended Capital Budget plus Intermediate Term Capacity Management plan included in Current Program Budget.
- \$7M of JSCEE Series A Bond Principal payments between FY15 - FY17 moved from CEP to BTA III program

August FY 2019-20 Year End
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BUILDING EXCELLENCE IV CAPITAL PROGRAM

(Amounts in \$ Millions)

	Original Program Budget	Current Program Budget	Life To Date (8/31/20)	Remaining Program Budget	Change <u>LTD</u> from 7/31/20
Revenue					
Combined Program					
Levy Collections*	689.9	689.9	689.8	0.0	(0.1)
Investment Earnings & Other	6.4	6.4	6.4	0.0	0.1
State Assistance	35.1	36.1	32.7	3.4	(1.8)
Grant	0.0	9.9	9.6	0.3	0.0
Total Revenue Plan	731.3	742.2	738.5	3.8	(1.8)
Transfers					
To GF (Maintenance)	(18.0)	(18.0)	(18.0)	0.0	0.0
To GF (Tech Reimbursable)		(23.0)	(23.0)	0.0	0.0
Total Transfers Plan	(18.0)	(41.0)	(41.0)	0.0	0.0
Expenditures					
Construction	530.8	564.3	538.5	25.8	3.9
Infrastructure	92.4	95.4	58.7	36.7	2.8
Technology	53.8	30.8	27.7	3.1	0.1
Program Reserve	28.7	1.1	0.0	1.1	0.0
Grant	0.0	9.6	9.6	0.0	0.0
Total Expenditure Plan	705.6	701.3	634.5	66.8	6.8
Current Fund Balance			63.0		
Current fund balance excluding Grant			63.0		
Current fund balance of Grant			0.0		

Estimated Ending Fund Balance (Sept. 1, 2023)

0.0

Numbers presented may not add up precisely to the totals due to rounding

Prior Month Change to Ending Fund Balance:
- No Change

Notes:

* Reduced by 1% Estimated Uncollectable Levy Collections

August FY 2019-20 Year End
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BUILDINGS, TECHNOLOGY, and ACADEMICS IV CAPITAL PROGRAM

(Amounts in \$ Millions)

	Original Program Budget	Current Program Budget	Life To Date (8/31/20)	Remaining Program Budget	Change <u>LTD</u> from 7/31/20
Revenue					
Combined Program					
Levy Collections*	460.6	456.0	277.7	178.3	0.5
Investment Earnings & Other	0.0	0.4	(0.1)	0.5	1.1
State Assistance	4.7	4.7	4.7	0.0	3.4
Distressed Funds	10.0	23.3	10.2	13.1	0.2
Total Revenue Plan	475.3	484.4	292.6	191.8	5.1
Transfers					
To GF (Maintenance)	(18.0)	(18.0)	(11.0)	(7.0)	(4.1)
To GF (Tech Reimbursable)	0.0	(33.5)	(33.5)	0.0	(10.0)
To CEP (Loan Payback)	0.0	(2.5)	(2.5)	0.0	0.0
From CEP (Loan to begin Program)	0.0	2.5	2.5	0.0	0.0
To CEP (World School Payback)	(3.6)	(3.6)	(3.6)	0.0	0.0
To GF (Map Testing)	0.0	(3.5)	(0.2)	(3.3)	(0.2)
To Debt Service (JSCEE Payment)	(8.1)	(8.1)	(5.8)	(2.3)	0.0
Total Transfers Plan	(29.7)	(66.7)	(54.2)	(120.9)	(14.1)
Expenditures					
Buildings	275.4	315.4	259.5	55.9	6.5
Technology	104.7	71.2	50.0	21.2	(4.9)
Academics	35.2	30.7	15.4	15.3	1.2
Program Reserve	15.6	0.3	0.0	0.3	0.0
Total Expenditure Plan	430.8	417.7	324.9	92.8	2.8
Current Fund Balance			(86.4)		
Current fund balance excluding Grant			(86.4)		
Current fund balance of Grant			0.0		
Estimated Ending Fund Balance (Sept. 1, 2025)					0.0

Numbers presented may not add up precisely to the totals due to rounding

Prior Month Change to Ending Fund Balance:

- No Change

Notes:

* Reduced by 1% Estimated Uncollectable Levy Collections

August FY 2019-20 Year End
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BUILDING EXCELLENCE V CAPITAL PROGRAM

(Amounts in \$ Millions)

	Original Program Budget	Current Program Budget	Life To Date (8/31/20)	Remaining Program Budget	Change LTD from 7/31/20
Revenue					
Combined Program					
Levy Collections*	1400.0	1389.5	122.2	1267.3	1.3
Investment Earnings & Other	0.0	10.9	0.4	10.4	0.1
State Assistance	0.0	23.9	1.3	22.6	0.0
Distressed Funds	0.0	33.4	0.0	33.4	0.0
Total Revenue Plan	1400.0	1457.7	124.0	1333.7	1.4
Transfers					
To GF (Maintenance)	(30.0)	(30.0)	(2.4)	(27.6)	(2.4)
To CEP (Playgrounds DW)	(1.0)	(1.0)	0.0	(1.0)	0.0
To Debt Service (JSCEE Series A Bond	(10.1)	(10.1)	0.0	(10.1)	0.0
To GF (Tech Reimbursable)	0.0	(4.7)	(4.7)	0.0	(4.7)
Total Transfers Plan	(41.1)	(45.8)	(7.1)	(38.7)	(7.1)
Expenditures					
Construction	980.1	1043.1	11.4	1031.8	5.6
Infrastructure	195.2	195.5	9.8	185.7	5.9
Technology	151.7	147.0	7.5	139.4	2.0
Program Reserve	32.0	26.2	0.0	26.2	0.0
Total Expenditure Plan	1358.9	1411.9	28.7	1383.1	13.4
Current Fund Balance			88.1		
Current fund balance excluding Grant			88.1		
Current fund balance of Grant			0.0		

Estimated Ending Fund Balance (Sept. 1, 2027) **0.0**

Numbers presented may not add up precisely to the totals due to rounding

Prior Month Change to Ending Fund Balance:

- No Change

Notes:

*Reduced by .75% Estimated Uncollectable Levy Collections

August FY 2019-20 Year End
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CAPITAL ELIGIBLE PROGRAM ("Other Capital")

(Amounts in \$ Millions)

	Multi Year Budget *	FY09 - FY20 YTD Date thru (8/31/20)	Remaining Program Budget	Change YTD From 7/31/20
Beginning Balance	1.8			
Revenue				
Community Schools Sales	22.2	22.2	0.0	0.0
Property Sales	3.4	3.4	0.0	0.0
Surplus Prop. Rentals	14.9	15.1	(0.2)	0.2
Investment Earnings	2.9	3.0	(0.2)	0.0
Other	4.3	4.1	0.0	0.0
Total Revenue Plan	49.4	47.9	1.5	0.2
Transfers				
From BTA III	7.1	7.1	0.0	0.0
To Capital Fund (BTA III)	(7.1)	(7.1)	0.0	0.0
From BEX III (Garfield)	2.2	2.2	0.0	0.0
To General Fund (Technology)	(0.3)	(0.3)	0.0	0.0
To Debt Service (JSCEE Series A)	(30.2)	(16.7)	(13.4)	0.0
To Debt Service (QSCB Interest)	(0.1)	(0.1)	0.0	0.0
From BTA I (Close out)	2.0	2.0	0.0	0.0
To Seattle World School Loan (BTA II)	(3.6)	(3.6)	0.0	0.0
From BTA IV (World School)	3.6	3.6	0.0	0.0
To BTA IV (Technology Loan)	(2.5)	(2.5)	0.0	0.0
From BTA IV (Technology Loan)	2.5	2.5	0.0	0.0
Total Transfers Plan	(26.4)	(12.9)	(13.4)	0.0
Expenditures				
CEP Expenditures		9.3		0.0
Eligible Community Schools Expenditures		5.5		0.0
CEP Expenditure Plan	19.4	14.8	4.7	0.0

Current Fund Balance

20.2

Estimated Ending Fund Balance Community Schools (Sept. 1, 2027)

16.7

Estimated Ending Fund Balance CEP (Sept. 1, 2027)

(13.1)

Estimated Ending Fund Balance (Sept. 1, 2027)

3.6

CEP is the continuation of previous "Other Capital" programs

Numbers presented may not add up precisely to the totals due to rounding


* Assumes: Series A Bond payments on John Stanford Center is funded by CEP/Capital Levies through 2027; All property sales revenue and rental/lease income fund CEP and Community Schools.

Prior Month Change to Ending Fund Balance:

- No Change

Notes:

1. The Budget Includes \$1M for Playground Redevelopment.
2. The Budget includes \$2M for World School commitment.
3. The 18 Year Budget includes Debt Service payments for the JSCEE Series A Bond: FY12 - FY27.
4. \$7M of JSCEE Series A Bond Principal payments between FY15 - FY17 moved to BTA III program underspend.
5. BTA I closeout and BEX III Payback for Garfield have been moved from Revenue to Transfer Category in April, 2015.

Change Order Log Review - October 15, 2020		
1	Wing Luke	Jody Miller Construction; CO #11 \$16,191
2	Webster	BNBuilders; CO #18 \$68,288.98
3	Daniel Bagley	Lydig Construction, CO #13 \$160,452.02
4	Rising Star	S.M. Stemper Architects, MOD #17 \$42,130
Reviewed by Lisa Rivera-Smith		
Signature:		
Date:		Oct. 15, 2020



SCHOOL BOARD ACTION REPORT

DATE: October 22, 2020
FROM: Ms. Denise Juneau, Superintendent
LEAD STAFF: Fred Podesta, Chief Operations Officer
fhpodesta@seattleschools.org, 206-252-0102
Frank Griffin, Facility Operations Director
fgriffin@seattleschools.org, 206-252-0609

For Introduction: November 18, 2020
For Action: December 2, 2020

1. TITLE

Approval of Management and Operations Agreement for Memorial Stadium Parking Lot

2. PURPOSE

The purpose of this action is to execute a service contract with Republic Parking for the management and operation of the Memorial Stadium parking lot. Board approval of the contract will compensate Republic Parking with 5% of generated revenue (projected to be \$400,000 over the term of the contract) as payment for these services.

3. RECOMMENDED MOTION

I move that the School Board authorize the Superintendent to execute a contract with Republic Parking for management and operation of the Memorial Stadium parking lot, for a projected amount of \$400,000 over a five-year term, in the form of the draft agreement attached to the School Board Action Report, with any minor additions, deletions, modifications or actions deemed necessary by the Superintendent to implement the contract.

4. BACKGROUND INFORMATION

a. Background

The district owns a paid parking lot at Memorial Stadium. Its revenue, in excess of expenses, is used to support academic activities of the district. The current management contract with Republic Parking expires December 31, 2020. For that contract, the district utilized a competitive request for proposal (RFP) process, and a committee evaluated each proposal based on established criteria to select the most financially beneficial proposal from the firm most qualified to manage the lot. Over the last 15 years the RFP's proposals have proposed payment for services ranging from 5.5% to 30% of revenue generated.

The district utilized a similar RFP process to select Republic Parking for the upcoming contract. Contracting Services received three qualified proposals on October 13, 2020. The selection committee reviewed and recommended the award of the contract to Republic Parking.

In the near term, the annual gross revenue generated from the operation of the parking lot is estimated to be considerably less than historical revenues, due to the current pandemic. The first year of the management fee is predicted to be about \$12,000. As Seattle re-opens to pre-pandemic levels of public activity, the management fee is estimated to be over the entire contractual period as much as \$400,000.

The initial contract is for a three-year period from January 1, 2021 through December 31, 2024, with option to renew, upon mutual agreement, for up to two additional one-year terms. The total amount estimated to be paid to the selected agency over the entire five-year period is \$400,000. This is based on a management fee of 5% of an estimated revenue received by the district of \$8,000,000.

b. Alternatives

Do not approve the agreement. Failing to engage a parking operator would require the district to manage the parking lot itself, which is not a core competency.

c. Research

Not applicable.

5. FISCAL IMPACT/REVENUE SOURCE

Based on projected gross revenue of \$8,000,000 over the entire contract, the management fee will be \$400,000, resulting in a projected profit of \$7,600,000 (before taxes and credit card fees are deducted) to the district.

The revenue source for this motion is the operation of the parking lot.

Expenditure: ☐ One-time ☐ Annual ☐ Multi-Year ☒ N/A

Revenue: ☐ One-time ☒ Annual ☐ Multi-Year ☐ N/A

6. COMMUNITY ENGAGEMENT

With guidance from the District's Community Engagement tool, this action was determined to merit the following tier of community engagement:

☒ Not applicable

☐ Tier 1: Inform

☐ Tier 2: Consult/Involve

☐ Tier 3: Collaborate

7. EQUITY ANALYSIS

An equity analysis was not performed for this action.

8. STUDENT BENEFIT

By approving this agreement, the district will be able to receive revenue on an asset that can then be used for academic activities, which benefits students.

9. WHY BOARD ACTION IS NECESSARY

- ☒ Amount of contract initial value or contract amendment exceeds \$250,000 (Policy No. 6220)
- ☐ Amount of grant exceeds \$250,000 in a single fiscal year (Policy No. 6114)
- ☐ Adopting, amending, or repealing a Board policy
- ☐ Formally accepting the completion of a public works project and closing out the contract
- ☐ Legal requirement for the School Board to take action on this matter
- ☐ Board Policy No. _____, [TITLE], provides the Board shall approve this item
- ☐ Other: _____

10. POLICY IMPLICATION

Per Board Policy No. 6220, Procurement, any contract over \$250,000 must be brought before the School Board for approval.

11. BOARD COMMITTEE RECOMMENDATION

This motion was discussed at the Operations Committee meeting on November 5, 2020. The committee reviewed the motion and _____.

12. TIMELINE FOR IMPLEMENTATION

Upon approval of this motion, the Memorial Stadium Parking Lot Management and Operation Agreement will be executed.

13. ATTACHMENTS

Memorial Stadium Parking Lot-Management and Operation Agreement (Sample Contract for reference)

**SAMPLE AGREEMENT
MEMORIAL STADIUM PARKING LOT MANAGEMENT AND OPERATION**

This Agreement is made by and between Seattle School District No. 1, a municipal corporation (hereinafter “District”) and _____ (hereinafter “Contractor”).

I. SCOPE OF WORK

Contractor shall provide at its own cost all labor, materials, supplies, equipment and management support services necessary to manage and operate a public parking lot on the front concourse area of the High School Memorial Stadium located at 401 Fifth Avenue North, Seattle, Washington, 98109 (“Parking Lot”), which site plan is included in this Agreement as Attachment A.

II. AGREEMENT PERIOD

The Agreement shall be in effect from January 1, 2021 through December 31, 2023. This Agreement may, with the mutual approval of both parties, be extended under the same terms and conditions for two (2) additional one-year terms. In the event either party decides not to renew this Agreement or its extension thereof, such decision should be given in writing to the other party no later than one hundred and twenty (120) days prior to the expiration of the agreement.

III. GENERAL TERMS

The Parking Lot are to be used only for the purposes of a parking facility for motorized vehicles and for no other business or purpose without the written consent of District, which it may give or withhold at its sole discretion. Contractor may propose other income generating activities for District’s consideration.

Contractor shall become familiar with all events scheduled in the Memorial Stadium, Seattle Center and facilities in the vicinity and shall provide a sufficient number of properly trained and supervised attendants to service the anticipated parking activities.

Parking rates charged shall be geared to the level of activity associated with the Parking Lot. It is understood that parking rates will vary depending on the demand and anticipated usage.

Contractor shall ensure that all employees are trained to serve the public in a courteous and efficient manner and shall maintain exemplary conduct throughout the course of this Agreement. Acts or language by any employee not in keeping with District standards shall be cause for immediate removal of said offending person and/or persons from the Parking Lot by Contactor, upon District request.

Contactor acknowledges that District may have unforeseen parking needs that are not

specified in this Agreement. Contractor and District agree to work cooperatively to resolve conflicts that may arise due to these unforeseen needs.

The Request for Proposal (RFP082095) and Contractor's response to RFP082095 dated _____ including all promises, warranties, commitments and representations are herein incorporated as part of this Agreement as Attachment B (hereinafter "Proposal").

IV. RESERVED PARKING/RESTRICTIONS

District may restrict, limit or prohibit parking on the Parking Lot. Parking may be reserved for District sponsored events such as School District-wide meetings and events which require the concourse to be free of vehicles. Contractor will **NOT** be compensated for these restrictions provided that such restrictions do not occur more than three (3) times per year. In addition, Contractor shall provide to District personnel or authorized agents without fee or compensation to Contractor, the following:

- A. Four (4) permanently reserved parking spaces immediately adjacent to the North end of the Athletic Building.
- B. Stickers or other means to provide six additional parking spaces within the lot, Monday through Friday, from 7 a.m. to 6 p.m.
- C. Twenty Eight (28) parking permits for School District staff parking on a first-come, first-served basis, Monday through Friday, from 7 a.m. to 5 p.m. according to the District's school-year calendar, which generally begins about September 3 ending about June 20, excluding school breaks and legal holidays.
- D. Upon authorization of District Central Administration, stickers or other means to be used in lieu of parking fees when the above-mentioned parking stickers or permits is not adequate to serve the District's needs.

V. MANAGEMENT FEES

District agrees to pay Contractor a management fee, upon Contractor's fulfillment of its obligations under this Agreement, equal to- _____ of gross revenue generated from the Parking Lot. However, NSF checks, invalid credit/debit cards and other similar deductions from the revenue should reduce the amount of gross revenue base on which Contractor's management fees are based. Contractor shall furnish to District documents of gross revenue collected, related accounting statements and information and reconciliation of the gross revenue along with the monthly invoice.

Contractor shall invoice District for its management fees on or before the 15th day following the end of each month. District shall pay Contractor all sums due within 25 days of District's receipt of Contractor's invoice, provided revenue is satisfactorily verified by District. In the event that District disputes the invoiced amount, District shall promptly notify contractor.

Contractor shall mail invoices to the District at:

Property Management Office, MS 23-365
Seattle Public Schools
P. O. Box 34165
Seattle, Washington 98124

Or deliver to:

Property Management Office
Seattle Public Schools
2445 Third Avenue South
Seattle, WA 98134

Or to such other place as District may from time to time designate by notice to Contractor.

VI. CONTRACTOR AND DISTRICT RESPONSIBILITIES

A. Evaluation and Recommendation

Contractor shall evaluate the Parking Lot conditions and the general vicinities to recommend and implement the types of service, layouts, number of attendants, types of revenue collection mechanism, equipment, signs, marketing strategies etc. necessary to provide the most financially advantageous method of operating and managing the parking service. If any site changes are proposed, Contractor shall prepare a specific plan showing the parking lane configurations and indicating any devices, signs, gates, etc. to be installed. Contractor must obtain approval from the District prior to any changes.

B. Events Requiring Service

Contractor shall provide year-round 24 hour per day continuous parking management services at the Memorial Stadium Parking Lot and services during the hours indicated on the Proposal. Contractor shall provide sufficient personnel to maximize revenues, serve the public, provide industry standard parking lot services, and collect parking payments on-site or from the deposit boxes as often as necessary.

Contractor has provided a schedule in its Proposal with time and duration and the number of attendants that Contractor anticipates will provide services for various events and activities and to collect payments. It is recognized that service needs will vary and are therefore subject to modification as deemed necessary by Contractor. Contractor shall request in writing District's approval in advance if such modification is significant. Such request shall be subject to District's approval.

C. Revenue

Contractor shall deposit in a District approved financial institution in District's name once daily all gross revenue from parking receipts and other income as may be derived through operation of the Parking Lot. Contractor agrees to provide, on a weekly basis, detailed and summary of transaction reports to the District pertaining to the gross revenue generated. Samples of such reports are attached hereto. In the event District has needs to change its requirements for the type of reports to be provided by Contractor, Contractor agrees to work with the District to provide reports needed by the District. Upon reconciliation of revenue records by District, if the District determined that Contractor did not deposit all the above-mentioned funds, Contractor shall reimburse District promptly upon notification and supply of supporting documentation. District reserves the right to change the revenue deposit policy and procedures.

Contractor shall not be responsible for "shortages" caused by NSF checks, invalid credit/debit cards; provided that Contractor performs its due diligence in screening out and denying repeated use of such checks, or credit/debit cards and that if the same customer commit such misuse more than twice, Contractor shall reimburse the District for the lost revenue due to such misuse. NSF checks, invalid credit/debit cards and other similar deductions from the revenue should reduce the amount of gross revenue base on which Contractor's management fees are based.

Regardless of whether the financial institution designated for the deposits of revenues is in the School District or the Contractor's name, Contractor shall be responsible and pay for all banking fees charged by the financial institution, including, but not limited to, the cost of banking supplies, service fees and credit/debit card processing fees.

D. Expenses

The District shall be responsible and pay for only those expenses stated in the RFP082095. Contractor shall be responsible and pay for those expenses listed in the RFP and its Proposal.

E. Uniforms

Contractor shall provide and maintain at its own expense, distinctive uniforms for all parking lot attendants performing services at the Parking Lot. There shall be an identification badge for each employee and the uniform shall bear the _____ company logo.

F. Operating Procedures

Contractor agrees to use operating procedures described in its Proposal.

G. Signage

Contractor shall take all reasonable steps necessary to promote use of the High School

Memorial Stadium Parking Lot by placing professional signage on or about the Lot and using other strategies as Contractor deems appropriate. All signs and equipment currently owned by District shall remain the sole property of District, regardless of the contract term, extension or cancellation. Signs and equipment provided by Contractor shall remain the sole property of Contractor, regardless of the contract term, extension or cancellation. Contractor shall notify District of all signs to be used or any intent to change existing signs at any time throughout the term of this Agreement, any of which being subject to the prior approval of District.

H. Supplies and Materials

Contractor agrees to provide adequate supplies, equipment and materials as may be required to assure proper operation of the Parking Lot and maximization of revenue from the Parking Lot. Contractor must provide at least one (1) ADA accessible ticket meter. Contractor shall permit no supplies, materials or other merchandise to be purchased in the name of or on the credit of District.

I. Maintenance

1. Contractor shall, at its own expense, make the site and configuration changes and to provide on-going maintenance to the Parking Lot as stated on its Proposal.
2. Equipment owned by Contractor shall be maintained by the same in an operable and safe condition.
3. Contractor shall maintain miscellaneous facilities or equipment used by Contractor, but owned by District.
4. Contractor shall be responsible for restriping or spot painting of parking lanes as often as needed.
5. Contractor has inspected the Parking Lot and accepts the premises "AS IS" in its present condition. Contractor shall be responsible for routine minor asphalt repairs and maintenance. District shall be responsible for major asphalt repaving, if District determines that such repaving is needed, and flood lighting maintenance according to District's standard and schedule.
6. Contractor will promptly report to the District's Property Management Office any needed repair or maintenance work that are the responsibility of the District.

J. Sanitation

Contractor shall maintain the Parking Lot in a safe, clean, orderly, and sanitary condition. Contractor shall be responsible for removing all hazardous materials immediately, including all paper, glass, oil and gas spillage, food and other wastes daily by placing in the dumpster provided by the District. Contractor shall provide for any on-site storage it may require. District, at its own expense, shall provide a dumpster and disposal of trash from

the Parking Lot.

District expressly acknowledges that Contractor's obligations in connection with the management, operation and promotion of the Parking Lot, and employment of persons in connection therewith, do not include the rendition of service, supervision, or furnishing of personnel in connection with the personal safety and security of District employees, tenants, customers, or other persons within and about the Parking Lot. Contractor does not have knowledge or expertise as a guard or security service, and does not employ personnel for that purpose, nor do Contractor's employees undertake the obligation to guard or protect customers against the intentional acts of third parties. District shall determine, at District's discretion, whether and to what extent any precautionary warnings, security devices, or security services may be required to protect patrons in and about the Parking Lot. However, Contractor shall immediately report any safety or security issues to the appropriate authorities.

K. Snow Removal

Contractor shall be responsible for snow removal as needed. If Contractor cannot perform this service in a timely manner, District may perform this service for which Contractor will reimburse District's expense.

L. Taxes

District shall be responsible for payment of any and all taxes associated with the Parking Lot only, including property tax, special and general assessments, sales tax, and any taxes on parking. Contractor shall be responsible for payment of any and all taxes including B & O taxes, assessments, and license fees assessed or imposed upon Contractor's business, fixtures, furniture and personal property installed or located in the Parking Lot.

M. Utilities

District shall be responsible for providing electricity, garbage disposal, and if applicable, water and sewer, associated with the Parking Lot; provided that District shall not be liable for and Contractor shall not be entitled to terminate this Agreement by reason of District's failure to provide or furnish any of the foregoing utilities or services unless such failure was due to the gross negligence or intentional misconduct of District. District shall not be liable for loss or injury to persons or property, however arising, occurring in connection with or attributable to any failure to furnish such utilities or services, unless and only to the extent due to the gross negligence or intentional misconduct of District, and in no event shall District be liable for Contractor's consequential damages. Each party shall be responsible for its own telephone charges.

VII. PERMITS AND COMPLIANCE WITH LAWS

Contractor shall obtain all licenses and authorizations required by law to perform the services as specified. Contractor shall obtain and pay for the garage keeper's license. Contractor shall comply fully at its sole expense with all federal and state statutes and city

ordinances now or hereafter in force in respect to the Parking Lot and Contractor's activities therein. Contractor shall be responsible for notifying the District of any new federal and state statutes and city ordinances hereafter in respect to the Parking Lot.

Contractor warrants and represents to District that Contractor shall use the Parking Lot only for lawful purposes. Structural, mechanical, or other installations and any alterations required by law or regulations pertaining to air quality, environmental protection, provisions required by the Americans with Disabilities Act, or other similar governmental rules or regulations shall remain the responsibility of District; however, if District determines that the cost to make any such installations or alterations creates an undue burden to the District, or rendering it no longer cost effective to continue the operation on the Parking Lot, District shall have the right to terminate this Agreement and both parties shall be relieved of all rights and obligations hereunder and such termination shall not be cause for Contractor to claim for any consequential damages.

VIII. FIXTURES AND EQUIPMENT

A. School District Facilities and Equipment

1. No alterations to buildings on the Parking Lot or grounds shall be made by Contractor except with written permission from District.
2. District, at its own expense, will supply electrical power to existing District owned equipment and fixtures, and if applicable, to the meters or electronic pay stations installed by Contractor. Additional fixtures must be approved by District prior to installation.
3. All equipment owned by District shall remain the property of District.

B. Contractor's Supplies and Equipment

1. All equipment furnished and installed by Contractor shall conform to any applicable Federal, State, County and City Codes or Regulations.
2. Contractor's equipment shall remain the property of Contractor.

IX. INSURANCE AND BOND

Contractor shall, at its own expense, provide, secure and maintain the following for the duration of this Agreement:

- A. Fidelity bond (blanket employee dishonesty) insurance in the amount of \$200,000. Money and securities inside and outside coverage to be included in the amount of \$2,500. The Seattle School District shall be listed as the recipient of any insurance proceeds covering claims of any loss.
- B. Deposit with the Seattle School District \$5,000 as security for performance.

C. Insurance against claims for injuries to persons or damage to property, which may arise from, or in connection with, the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors.

D. Contractor shall obtain insurance of the types and limits described below:

1. Comprehensive General Liability Insurance written on an occurrence basis including coverage for products and completed operations and blanket contractual.

The amount of insurance shall be no less than:

\$1,000,000 each occurrence

\$2,000,000 general aggregate

\$5,000,000 each occurrence – umbrella/excess

General liability certificates shall name Seattle School District No.1 as an additional insured.

2. Automobile Liability Insurance covering all owned, non-owned, hired and leased vehicles. The amount of insurance shall be no less than:

\$1,000,000 each occurrence/accident

3. Workers' Compensation coverage as required by the Industrial Insurance Laws of the State of Washington.

4. Employers' Liability/Stop Gap Insurance in the amount of:

\$1,000,000 bodily injury/accident

\$1,000,000 bodily injury/disease – employee

5. Builder's Risk Insurance in the amount of the value of the project, if Contractor makes improvements to the Parking Lot.

E. Insurance companies providing coverage shall be licensed to do business in the State of Washington and carry a Best's rating of "A" or better.

F. The coverage afforded by the insurance carrier shall be primary and non-contributing with any insurance or self-insurance pool coverage carried by the District.

G. Policies shall provide that coverage shall not be canceled or materially altered without forty-five (45) days prior written notice to the District and shall also provide for ten (10) days written notice in the event of cancellation for non-payment of premium.

H. Contractor shall furnish the District with original certificates and a copy of any amendatory endorsements, including but not necessarily limited to the additional insured endorsement or equivalent. The Contractor shall supply such certificates prior to commencement of the work and at renewal of any policy.

X. ACCIDENTS AND INDEMNIFICATION

- A. Contractor shall indemnify District and save it harmless from and against any and all suits, actions, damages, claims, liability, and expense in connection with loss of life, bodily or personal injury, or property damage arising from or out of any occurrence in, upon, at or from the Parking Lot, or the occupancy or use by Contractor of the Parking Lot or any part thereof, or occasioned wholly or in part by any act or omission of Contractor, its agents, subcontractors, employees, servants, invitees, licensees, or concessionaires; provided that Contractor shall not be liable to District to the extent such damages, liability, claims or expenses are caused by or result from the negligence or intentional misconduct of District.
- B. Contractor hereby expressly waives claims against District, and District shall not be responsible or liable at any time, for any loss or damage to Contractor's personal property or to Contractor's business, including any loss or damage to either the person or property of Contractor that may be occasioned by or through the acts or omissions of persons occupying adjacent, connecting, or adjoining space, unless and only to the extent due to District's gross negligence or intentional misconduct, and in no event shall District be liable for Contractor's consequential damages. Contractor shall store its property in and shall use and enjoy the premises and improvements at its own risk, and hereby releases District, to the full extent permitted by law and except as expressly provided above, from all claims of every kind resulting in loss of life, personal or bodily injury, or property damage.
- C. In the event Contractor hires any agents or subcontractors ("Subcontractors") to perform work on the Parking Lot, Contractor shall include a provision in all contracts between Contractor and any Subcontractor that, to the fullest extent permitted by law, Subcontractor will defend, indemnify, and save District harmless from and against any and all claims, actions, lawsuits, damages, liability, and expense (including, without limitation, attorneys' fees) arising from loss, damage, or injury to persons or property or loss of use of the property occurring in, on, or about the Parking Lot, arising out of the work performed at the Parking Lot, or occasioned wholly or in part by any act or omission of Subcontractor, Subcontractor's agents, contractors, lower-tier subcontractors, customers or employees. Notwithstanding anything to the contrary herein, Subcontractor shall not be required to indemnify District for District's sole negligence or intentional misconduct.
- D. Solely for the purpose of effectuating the indemnification obligations under this Agreement, and not for the benefit of any third parties (including but not limited to employees of Contractor), Contractor specifically and expressly waives any immunity that may be granted it under the Washington State Industrial Insurance Act, Title 51RCW. Furthermore, the indemnification obligations under this Agreement shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable to or for any third party under Worker Compensation Acts, Disability Benefit Acts or other employee benefit acts. Contractor shall cause Subcontractors and their contractors and material suppliers to execute similar waivers of industrial insurance immunity. The parties acknowledge that the foregoing provisions of this Section have been specifically

and mutually negotiated between the parties.

SEATTLE SCHOOL DISTRICT NO. 1

CONTRACTOR

XI. WAIVER OF SUBROGATION

- A. District and Contractor do each herewith and hereby release and relieve the other from responsibility for, and waive their entire claim of recovery for, any loss or damage to the real or personal property of either located anywhere in the Parking Lot or the Building, arising out of or incident to the occurrence of any of the perils which are covered by any insurance policy obtained by Contractor or District. Each party shall obtain any special endorsements, if required by its insurer, to evidence this waiver of the insurer's right to subrogation against the other party.
- B. The mutual waivers and waivers of subrogation rights in Section XI.A above shall not apply to the extent Contractor self-insures for property damage, if allowed to do so by District. Additionally, the mutual waivers and waivers of subrogation in Section XI A above shall not apply for losses or claims for any one (1) property damage occurrence, in which the amount of damages is equal to or less than District's property damage deductible or self-insurance retention (collectively, the "Deductible"), which is, as of the date of execution hereof, \$100,000 ("Deductible"). For all such property damage losses equal to or less than the Deductible, District shall be the sole loss payee under the Contractor's property insurance, and any proceeds received therefrom shall be made payable by the insurance company directly to District. Contractor shall indemnify, defend and hold District harmless from and against any and all claims, demands, damages, injuries, losses, liens, costs or expenses (including attorneys' fees) incurred, claimed or arising out of any such property damage event or occurrence.

XII. CANCELLATION OF EVENTS

District assumes no liability for damages sustained by Contractor due to the cancellation of events at the Seattle Center and/or the Memorial Stadium, or anywhere, or the relocation of the same to other sites. Contractor shall not be liable to District by reason of being prevented from carrying on the business due to strike or other causes beyond its control.

XIII. ACCOUNTING AND RECORD KEEPING

Contractor shall provide the following at Contractor's own expense:

- A. Maintain daily detailed revenue records and forward such reports to District on a weekly basis.
- B. Keep all parking sales tickets and revenue records in good and safe storage.
- C. All the sales tickets and revenue records made available at any time at District's request

for review and audit purposes.

- D. District reserves the right to specify (and/or to change) the forms and procedures for the accounting of parking lot revenues. District agrees to pay for the cost of printing new forms if District requests such changes.
- E. District shall have the privilege of conducting a separate and independent audit at its own expense and Contractor agrees to make all receipts, books, accounts, invoices, and other papers related to this Agreement available for such audit.

XIV. ACCESS

District shall have the right to inspect the Parking Lot at all reasonable times and enter the same for purposes of repairing, altering, improving the Parking Lot or the Building, but nothing contained in this Agreement shall be construed so as to impose any obligation on District to make any repairs, alterations or improvements.

XV. DEFAULT

Time is of the essence to this Agreement. In the event Contractor fails to make timely deposits and/or transfer of revenue collected when same are due, Contractor shall have two (2) business days to cure such alleged default upon notice by District to Contractor of such default. If the default by Contractor pertains to any of the other covenants or agreements herein, Contractor shall have 15 days to cure such alleged default upon notice by District to Contractor. If Contractor fails to cure the alleged defaults as stated in this section, it shall be lawful for District to assume operation of the Parking Lot with or without process of law, and District shall not be liable for damages solely by reason of such re-entry. District may also avail itself of any other remedy provided by law.

XVI. CONTRACTOR NOT AN EMPLOYEE

Contractor and its employees are not employees of the District. Contractor agrees to pay promptly when due, all wages occurring to its employees, and payment to its vendors, and shall not permit the same to become a charge against District.

XVII. NOTICES

All notices, statements, demands, requests, consents, approvals, authorization, offers, agreements, appointments, or designations under this Lease by either party to the other shall be in writing and shall be sufficiently given and served upon the other party if personally delivered or sent by certified mail, return receipt requested, postage prepaid, and addressed as follows:

If to Contractor, addressed to:

or to the last known post office address of Contractor or to the Parking Lot;

If to District, addressed to District at the address set forth in Section V of this Agreement, or to such other place as District may from time to time designate by notice to Contractor.

XVIII. TERMINATION

District may, at its option, terminate all or a portion of the services not then performed under this Agreement upon 60 days written notice. If the Agreement is terminated by District as provided herein, Contractor's compensation for the Services shall be (i) that portion of the compensation for services performed prior to termination, and (ii) proper compensation for reimbursable expenses, if any. District shall not be liable for any consequential or incidental damages, including, but not limited to, loss of profits on other projects or of reputation incurred by Contractor as a result of such termination.

At the expiration of the terms of the Agreement or at the earlier termination thereof, Contractor agrees to quit and surrender such premises and to redeliver such premises and property of District to District in as good state and condition as it was at date of Agreement beginning, ordinary wear and tear, and Acts of God excepted.

Contractor shall, at its own expense, purchase and install at the Parking Lot new parking equipment and signs (the "Parking Equipment"). Contractor shall, at its own expense, maintain the Parking Equipment as is necessary, to provide efficient and continual parking operations at the Parking Lot. In the event Contractor needs to purchase and install new parking equipment and signs for initial set up to operate the Parking Lot, District acknowledges that Contractor's initial investment in such Parking Equipment is significant and that it requires at least 3 years to amortize the investment; therefore, in the event District cancels this Agreement within 24 months of the initial Agreement due to no fault of Contractor, District agrees to reimburse Contractor for an amount up to \$5,000. Without limiting the generality of the foregoing, for the purposes of the Seattle Public Schools Personal Services Contract form completed by the Contractor in connection with the services to be provided hereunder, this payment shall be deemed to be a "reimbursable expense" in the event of a termination for convenience by the District.

XIX. ENTIRE AGREEMENT

This Agreement and the Services Contract ("Contract"), Exhibits, Riders, and/or Addenda, if any, attached hereto, represent the entire and integrated agreement between District and Contractor and supersede all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both District and Contractor. In the event of any conflict between this Agreement and the terms of the Contract, the terms of this Agreement shall control.

This Agreement includes the following attachments:

ATTACHMENT

A

B

C

TOPIC

Memorial Stadium Parking Lot Site Plan

Proposal Response from _____ for RFP082095
dated _____.

Addendum No.

This Agreement shall be interpreted, construed, and enforced in all respects in accordance with the laws of the State of Washington. Venue in any litigation shall be in King County, Washington.

VENDOR

SEATTLE SCHOOL DISTRICT NO. 1

Signature

Signature

(Contractor Representative)

JoLynn Berge

Title

CFO/Superintendent Designee
Title

Date Signed

Date Signed

Company Name

Employer I.D. No. or Social Security No.



SCHOOL BOARD ACTION REPORT

DATE: October 27, 2020
FROM: Ms. Denise Juneau, Superintendent
LEAD STAFF: Fred Podesta, Chief Operations Officer
206-252-0102, fhpodesta@seattleschools.org

For Introduction: November 18, 2020
For Action: December 2, 2020

1. TITLE

BEX V, Distressed School Grant: Award Contracts K1372, P1797, P1798, and P1796 to Building Envelope Technology & Research, Inc. (BET&R) for technical consultation services during design and on-site construction observation of the building envelope (exterior cladding systems) and roofing systems for the Coe Elementary Classroom Addition, Leschi Elementary Classroom Addition, James Madison Middle School Classroom Addition and Van Asselt Classroom and Gymnasium Addition projects

2. PURPOSE

The purpose of this action is to provide authorization for the Superintendent to enter into contracts K1372, P1797, P1798, and P1796 with BET&R for technical consultation services during design and on-site construction observation of the building envelope and roofing systems in the amount of \$25,635 for Coe Elementary School; \$167,851 for Leschi Elementary School; \$245,187 for James Madison Middle School; and \$417,803 for Van Asselt School projects, for a total amount of \$856,476.

3. RECOMMENDED MOTION

I move that the School Board authorize the Superintendent to execute contracts:

K1372 in the amount of \$25,635 for Coe Elementary School;
P1797 in the amount of \$167,851 for Leschi Elementary School;
P1798 in the amount of \$245,187 for James Madison Middle School; and
P1796 in the amount of \$417,803 for Van Asselt School

with BET&R, for technical consultation services during design and on-site construction observation of the building envelope and roofing systems projects with any minor additions, deletions, modifications and actions deemed necessary by the Superintendent to implement the contract.

4. BACKGROUND INFORMATION

a. Background

This motion allows the district to execute contracts K1372, P1797, P1798, and P1796 with BET&R for technical consultation services during design and on-site construction

observation of the building envelope and roofing systems. Coe Elementary, James Madison Middle and Leschi Elementary School are all building classroom addition projects. The Van Asselt School project includes the modernization of the existing landmarked schoolhouse building (built 1909) and a new classroom and gymnasium addition. Building envelope and roofing systems in the scope of services include subsurface damp proofing and waterproofing, glazing (punched windows, storefront and curtainwall systems), masonry veneer, metal cladding, exterior doors, roofing, and traffic coating (flooring within the mechanical penthouse). In addition, the scope of work includes complete building (or new addition) air barrier testing for the Van Asselt project and window water testing to American Society of Testing and Materials (ASTM) standards for all four projects.

Coe Elementary School is located at 2424 7th Ave. W, Seattle, WA 98119
James Madison Middle School is located at 3429 45th Ave. SW, Seattle, WA 98116
Leschi Elementary School is located at 135 32nd Ave., Seattle, WA 98122
Van Asselt School is located at 7201 Beacon Ave. S, Seattle, WA 98108

Design phase services include: review of architect's drawings, details and specifications; preparation of approximately five isometric drawings (quantities vary per project) for better clarity surrounding material sequencing; and assistance with the bid and award phase including providing written responses to questions and attendance at the pre-bid meeting. Construction observation services include review of approximately 20 shop drawing submittals (quantities vary per project); attendance at envelope and roof pre-installation meetings; review of in-situ mock-up for compliance with contract documents and manufacturer requirements; approximately 100 on-site visits observing installation of the various envelope and roofing systems and preparation of associated field reports (quantities vary per project); preparation of the envelope and roofing system project punch lists and review of the envelope; and roofing system as-built drawings and operations and maintenance manuals.

Seven firms submitted their qualifications concerning RFP012035 to Seattle Public Schools regarding these Building Envelope and Inspection Services. Participating on the interview team were: Director of Facilities Frank Griffin; General Foreperson (Roofing) Brian Zadorozny; General Foreperson (Envelope & Glazing) Ed Dayton and Director of Capital Projects & Planning Richard Best. BET&R was unanimously selected as the most qualified firm to provide these services. What differentiated BET&R from the other applicants was their comprehensive project approach providing significant value to ensure that the district does not experience problems with the proposed projects' building envelope or roofing systems.

b. Alternatives

Deny Motion. If motion is denied, the district will not be able to execute the contracts with BET&R. This is not recommended because it would negatively impact the district's commitment to ensure building envelopes and roofing systems are well designed and executed maximizing the public's investment in their schools.

c. Research

- Seattle Public Schools Technical Building Standards dated December 2012
- 2015 Seattle Building Code
- Coordination meetings with district facilities and other stakeholders throughout the design process

5. **FISCAL IMPACT/REVENUE SOURCE**

The fiscal impact to this motion will be \$25,635 for Coe Elementary School; \$167,851 for Leschi Elementary School; \$245,187 for James Madison Middle School; and \$417,803 for Van Asselt School projects, for a total amount of \$856,476.

The revenue source for this motion is from the Building Excellence (BEX) V Capital Levy and from Distressed School Grants. The classroom additions at Coe Elementary School, Leschi Elementary School and James Madison Middle School are funded from Distressed School Grants. The Van Asselt Classroom and Gymnasium Addition project was funded from the BEX V Capital Levy.

Expenditure: ☒ One-time ☐ Annual ☐ Multi-Year ☐ N/A

Revenue: ☐ One-time ☐ Annual ☐ Multi-Year ☒ N/A

6. **COMMUNITY ENGAGEMENT**

With guidance from the District's Community Engagement tool, this action was determined to merit the following tier of community engagement:

☐ Not applicable

☐ Tier 1: Inform

☒ Tier 2: Consult/Involve

☐ Tier 3: Collaborate

The selection of projects in the BEX V Capital Levy program went through an extensive community vetting process and ultimately received 73% approval from voters in February 2019.

7. **EQUITY ANALYSIS**

The district's Racial Equity Analysis toolkit was utilized to guide the planning process for the BEX V Capital Levy, influencing community engagement methods, preparation of the 2018 update to the Facilities Master Plan, and ultimately the final proposed levy package. The board's guiding principles stated that racial and educational equity should be an overarching principle for the BEX V Capital Levy planning efforts in accordance with Board Policy 0030, Ensuring Educational and Racial Equity. Projects identified for inclusion in the BEX V Capital Levy will ultimately improve conditions for all students in the affected schools. Improved building

conditions create a better environment for learning and can provide facilities to better position students for academic success.

The Coe and Leschi Elementary School Classroom Additions projects were submitted to the State of Washington for Distressed School Grant consideration as recent enrollment growth had displaced their preschool programs. Preschool is an important consideration for helping students achieve reading at grade level by third grade. Leschi Elementary School is one of the thirteen identified priority elementary schools. The James Madison Middle School Classroom Addition project will eliminate eight on-site portables.

8. STUDENT BENEFIT

It is the goal of the district to continue the process of implementing the Buildings, Technology, and Academics/Athletics (BTA) and BEX Capital Levy programs and providing students with safe and secure school buildings.

9. WHY BOARD ACTION IS NECESSARY

- ☒ Amount of contract initial value or contract amendment exceeds \$250,000 (Policy No. 6220)
- ☐ Amount of grant exceeds \$250,000 in a single fiscal year (Policy No. 6114)
- ☐ Adopting, amending, or repealing a Board policy
- ☐ Formally accepting the completion of a public works project and closing out the contract
- ☐ Legal requirement for the School Board to take action on this matter
- ☐ Board Policy No. _____, [TITLE], provides the Board shall approve this item
- ☐ Other: _____

10. POLICY IMPLICATION

Per Board Policy No. 6220, Procurement, any contract over \$250,000 must be brought before the Board for approval.

11. BOARD COMMITTEE RECOMMENDATION

This motion was discussed at the Operations Committee meeting on November 5, 2020. The committee reviewed the motion and _____.

12. TIMELINE FOR IMPLEMENTATION

Anticipated Notice to Proceed Date: April 2020
Substantial Completion Date: July 2024

13. ATTACHMENTS

- BET&R Contract K1372 for Coe Elementary School (for reference as part of motion) (available upon request from the Capital Projects & Planning department, 206-252-0990)
- BET&R Contract P1797 for Leschi Elementary School (for reference as part of motion) (available upon request from the Capital Projects & Planning department, 206-252-0990)
- BET&R Contract P1798 for James Madison Middle School (for reference as part of motion) (available upon request from the Capital Projects & Planning department, 206-252-0990)
- BET&R Contract P1796 for Van Asselt School (for reference as part of motion) (available upon request from the Capital Projects & Planning department, 206-252-0990)

**CONTRACT
FOR
CONSULTING SERVICES**

Owner: **Seattle School District No. 1,**

and

Consultant: Building Envelope
Technology & Research

Tax I.D. #: 91-1943254

**Building Envelop Consulting Services
Coe Elementary**

Contract No. **K1372**

CONSULTING SERVICES CONTRACT

This Agreement, Contract No. K-1372 made by and between Seattle School District No. 1, a Washington municipal corporation ("District" or "Owner"), and **Building Envelope Technology & Research (BET&R)** ("Consultant"). District and Consultant agree as follows:

1. SCOPE OF WORK AND SCHEDULE

- a. Consultant shall provide professional and related services as described in Exhibit A hereto, on the schedule set forth therein ("Services"). Consultant is authorized to proceed (check one):

☒

Upon receipt of this signed Agreement;

☐

On _____ 20__.

- b. Unless modified by a change order, this contract shall be completed by *(Date)* and the contract shall terminate upon such completion.

**2. CONTRACT PRICE
[CHECK ONE ONLY]**

- a. ☒ District agrees to pay Consultant, on a time and expenses basis, a sum not to exceed: **Twenty-Five Thousand Six Hundred Thirty-five Dollars (\$25,635.00)** the "Maximum Authorized Compensation" payable according to Consultant's schedule of fees and reimbursable expenses specified in Exhibit B hereto. Compensation will be paid only to the extent that Consultant presents documented evidence of fees earned and expenses incurred during the period for which payment is requested, and in no case shall the total compensation exceed the Maximum Authorized Compensation.

or

- b. ☐ District agrees to pay Consultant a lump sum of _____ (\$_____) as full and complete compensation for all services hereto, exclusive of reimburseable expenses described in Exhibit B, if any. Compensation for reimbursables will be paid only to the extent that Consultant presents documented evidence of expenses incurred during the period for which payment is requested.

Consultant shall submit its invoices in the form and according to the schedule prescribed in the General Conditions, Exhibit C, to the address listed in paragraph 3. The amount paid shall constitute complete compensation for all costs and fees incurred, including any expenses for meals, travel, lodging and Washington State sales tax, if applicable. Additional services must be authorized in writing by District prior to performance. A W-9 form must be attached if Consultant is an individual.

3. COMMUNICATIONS

The District's representative for this contract is Michael Skutack. All correspondence, requests, notices and other communications to District, in relation to this Agreement, shall be in writing and shall be delivered to:

To the District: Mailing Address:
Michael Skutack
Senior Project Manager
Seattle School District No. 1
Mail Stop MS 22-332
PO Box 34165
Seattle, WA 98124-1165

Physical Location:
2445 Third Avenue South
Seattle, WA 98134

To the Consultant:
Jim Carlson.
Principal Consultant
Building Envelope Technology & Research
4000 Delridge Way SW, 1st Flor
Seattle, WA 98106

Either party may from time to time change such address by giving the other party notice of such change in accordance with the provisions of this Paragraph 3.

4. CONSULTANT'S REPORTS

Consultant shall provide reports as requested by District in a format proposed by Consultant and approved by District.

5. PERSONNEL

Consultant shall assign the personnel listed below to the performance of the Work and shall not (for so long as they remain in Consultant's employ) reassign or remove any of them without the prior written consent of District.

<u>Name</u>	<u>Title</u>	<u>Role</u>
Jim Carlson	Principal Consultant	Project Manager

6. THIS AGREEMENT INCLUDES THE FOLLOWING ATTACHMENTS:

Exhibit	Topic
A	Scope of Services and Schedule
B	Fees and Reimbursable Costs
C	General Conditions of Personal Services Contract (Short Form) revision date of April 18, 2016

Modifications and revisions, if any, to the General Conditions are made by the parties in an attached Exhibit D, if included.

CONSULTANT: DocuSigned by:

Susanna Chaudhry

7360B0EEFBDA46E...

Signature

Jim Carlson

Typed Name (Above)

Principal Consultant

Title

Date Signed

Building Envelope Technology & Research
Company Name

91-1943254

Employer I.D. No. or Social Security No.

DISTRICT: DocuSigned by:

Amy Fleming

7784A818D57B43F...

Signature

Amy Fleming

Typed Name (Above)

Director of Accounting Services

Title

10/30/2019

Date Signed

SCOPE OF SERVICES AND SCHEDULE

The scope of services shall include limited design consulting and roof monitoring for the Coe Elementary School project.

Task 1 - Cross Check of Architect's Building Envelope Related Documents

BET&R anticipates performing an initial review and cross check of the Architect's building envelope-related detail drawings and technical specifications. The review can be accomplished via digital Bluebeam red-line edits or hard copy as may be preferred by the Client and/or the Project Architect. We may also include general recommendations for additional building envelope related items that need to be addressed. BET&R anticipates meeting with the Architect and the Client to review BET&R's Cross Check comments and recommendations. The anticipated cost for BET&R's Task 1 Basic Services work is outlined in Attachment A, included with this Proposal package.

Pre-Construction Services

At the start of the roof installation BET&R anticipates participating in one (1) Roofing Pre-Construction Meeting with the Project Team, to review the upcoming roof installation. The focus of the meeting will be to review and discuss roofing and building envelope-related requirements, specifications, and detail drawings, submittal status, and manufacturer's specific installation requirements.

Monitoring Site Visits

BET&R will then perform part-time technical monitoring of the roofing installations on the new addition, to assist the Client by observing that the work is performed per the requirements of the Project Documents, Manufacturers' published details and industry standard installation requirements, and that the Contractor's work is in keeping with accepted industry standards. Based on the limited allowed budget and our current understanding of the general timeline for the roof installation, we anticipate performing twelve (12) Roofing Monitoring Site Visits. As part of BET&R's technical monitoring process, written Field Reports will be prepared and distributed to the Project Team. These reports typically document the work progress, items and components the Monitor observes, as well as documenting issues or items that need to be address, and the technical solutions recommended by BET&R or the Project Team.

Pre-Construction and Completion Surveys

As the Project nears completion, BET&R will conduct a Pre-Completion and Completion Surveys of the newly installed roof and generate a Punch List of roof-related items requiring further attention and/or correction prior to the Project being deemed complete. Once the Contractor notifies the Project Team that their Punch List work and corrections are complete, BET&R will perform a Completion Survey to verify that Punch List items have or have not been addressed, and to assist in facilitating close-out of this aspect of the project. The anticipated cost for BET&R's Task 2 Basic Services work is outlined in Attachment A, included with this Proposal package.

Schedule

Design Completed:	December 20, 2019
Bid Opening:	March 3, 2020
General Contractor NTP:	April 30, 2020
General Contractor Site Access	July 1, 2020
Substantial Completion	July 1, 2021
Final Completion	August 16, 2021

FEES AND REIMBURSABLE COSTS

Fee is estimated as follows: Total Not to Exceed (NTE) fee of \$25,635.00 including estimated reimbursables. Fee shall not be exceeded without the prior written approval of the Owner Representative. Contractor shall monitor fee and make immediate notification to Owner if any increase in fee will be required.

**Contract Rates/ Adjustment Factors
Hourly Rates**

(See fee proposal attached)

SERVICES CONTRACT

GENERAL CONDITIONS (SHORT FORM)

ARTICLE 1 - CONSULTANT'S SERVICES AND RESPONSIBILITIES

1.1 Services. Consultant shall furnish all personnel, equipment and materials for the performance of all services under this Agreement. Such services, together with all drawings, specifications, materials, information, property, and other items provided or to be provided to District under this Agreement, are sometimes collectively referred to herein as the "Services."

1.2 Manner of Performance. Consultant's Services shall be performed with the degree of care and diligence ordinarily exercised under similar circumstances in the applicable disciplines and as expeditiously as is consistent with such standards of professional skill and care and the orderly progress of the Services. At the time of performance, Consultant shall be properly licensed, equipped, organized and financed to perform the Services.

1.3 District's Representatives. District may designate one or more individuals or firms as its representative for administration of this contract. If a representative is assigned by District, it shall not have authority to assign additional Services or to reduce the Services to be performed by the Consultant under this contract.

1.4 Correction of Noncompliances. Consultant shall, at no cost to District, promptly and satisfactorily correct any Services found to be defective or not in compliance with the requirements of this Agreement or the requirements of any governmental authority, law, regulations or ordinances. If the Consultant fails to initiate corrections within fifteen (15) days of receipt of written notice from the District, the District may do so, by contract or otherwise, and recover (e.g., by offset against the compensation otherwise payable under this contract) from the Consultant the cost it incurred. The obligations of the Consultant to correct nonconforming Services shall not in any way limit any other obligations of the Consultant. The District's right to make corrections and charge the Consultant for them is in addition to any other rights and remedies available to the District under this Agreement or otherwise by law and shall in no event be construed or interpreted as obligating the District to make any correction of defective or nonconforming Services.

1.5 Consultant's Personnel. All personnel employed by Consultant engaged in the Services and Services shall be fully qualified and shall be authorized under applicable federal, state, and local law to perform such Services and Services. Consultant shall, if so requested by District, remove from the performance of the Services any person District reasonably deems incompetent. Failure of District to so object shall not relieve Consultant of responsibility for such person. If any personnel are reassigned or replaced by Consultant upon District's request, Consultant shall replace them with personnel approved by District.

1.6 Consultant Employee Background. Pursuant to RCW 28A.400.330, Consultant shall prohibit from providing Services at a public school where there may be contact with children, any employee of Consultant who has pled guilty to or been convicted of any felony crime involving the physical neglect of a child under Chapter 9A.42 RCW, the physical injury or death of a child under Chapter 9A.32 or 9A.36 RCW (except motor vehicle violations under Chapter 46.61 RCW), sexual exploitation of a child under Chapter 9.68A RCW, sexual offenses under Chapter 9A.44 RCW where a minor is the victim, promoting prostitution of a minor under Chapter 9A.88 RCW, the sale or purchase of a minor child under RCW 9A.64.030, or violation of similar laws of another jurisdiction. Failure to comply with this section shall be grounds for District to immediately terminate the contract for cause.

1.7 Compliance With Laws

1.7.1 General. Consultant shall comply, and be certain that its Services comply, with all applicable laws, ordinances, regulations, resolutions, licenses of record, permits of record, and other requirements applicable to the Services, in effect at the time of performance of the Services and as interpreted by cognizant authorities, including but not limited to those related to the Americans with Disabilities Act and worker and site safety laws and regulations. Consultant shall furnish such documents as may be required to effect or evidence such compliance. All

laws, ordinances, regulations, and resolutions required to be incorporated in agreements of this character are incorporated in this Agreement by this reference.

1.7.2 Nondiscrimination.

A. Applicable state laws concerning prevailing wages, hours, workers' compensation and other conditions of employment are called to the attention of bidders for their compliance. Bidder shall include in the bid any filing fees required to comply with applicable labor laws.

B. During the term of this Agreement, Consultant shall comply with applicable local, state and federal laws prohibiting discrimination with regard to race, creed, color, national origin, sex, sexual orientation, marital status, age or the presence of any sensory, mental or physical handicap.

C. Any consultant or contractor who is in violation of these requirements, or an applicable nondiscrimination program shall be barred forthwith from receiving awards of any purchase order from Seattle School District No. 1 or shall be subject to other legal action or contract cancellation unless satisfactory showing is made that discriminatory practices have terminated, and that reoccurrence of such acts is unlikely. This includes compliance with Section 503 and 504 of the Vocational Rehabilitation Act of 1973 and Sections 2012 and 2014 of the Vietnam Era Veterans Readjustment Act of 1974.

1.7.3 Debarment

A. Consultant, by accepting the contract, warrants that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions (defined as not being eligible to receive federal funds) by any local, state or federal department or agency. Consultant also acknowledges they are not debarred under School Board Policy No. 6973 in contracting with the District currently or on future contracts.

ARTICLE 2 - PAYMENTS TO CONSULTANT

2.1 The compensation shall be made no more frequently than monthly and if paid on a lump sum basis shall be in proportion to the Services performed. Each of Consultant's invoices shall set forth in a detailed and clear manner a complete description of the Services covered thereby, on a form substantially similar to that customarily used by District and shall be supported by such receipts, documents, and other information as District may reasonably request. The invoice shall include separate listings of Services for particular schools or programs, if requested by the District. District shall pay each of Consultant's invoices within thirty (30) days after District's receipt, provided that all required documentation is included and accurate.

ARTICLE 3 - REIMBURSABLE EXPENSES

3.1 Reimbursable Expenses are in addition to the hourly rates for Services and include actual reasonable expenditures made by Consultant and Consultant's employees and subconsultants in the interest of the Project for the expenses listed in the following subparagraphs. Consultant represents that Schedule B sets forth Consultant's best estimate of the Reimbursable Expenses under this Agreement. Notwithstanding any other provision of this Agreement to the contrary, District shall not be obligated to pay Consultant, and Consultant shall not invoice District for, any Reimbursable Expenses which exceed Schedule B, unless authorized by a budget approved in writing by District. District hereby approves the attached schedule as an initial budget for the Reimbursable Expenses. Consultant shall immediately notify District if, in Consultant's best judgment, the then current estimate of the Reimbursable Expenses exceeds the approved budget therefor. Travel expenses are not Reimbursable Expenses, provided, however, that travel more than 75 miles from the site of the Services and approved in writing by the District is a Reimbursable Expense at the Internal Revenue Service allowed rate.

ARTICLE 4 - CONSULTANT'S ACCOUNTING RECORDS

4.1 The Consultant's records of performance of Services shall at all times be subject to review by and the approval of District, but the making of (or failure or delay in making) such review or approval shall not

relieve Consultant of responsibility for performance of the Services in accordance with this Agreement. Records of Reimbursable Expenses shall be kept in accordance with generally accepted accounting principles.

4.2 Consultant shall promptly furnish District with such information related to the Services as may be requested by District. Until the expiration of three (3) years after final payment of the compensation payable under this Agreement, Consultant shall provide District access to (and District shall have the right to examine, audit and copy) all of Consultant's books, documents, papers and records which are related to the Services or this Agreement. Consultant agrees to provide reasonable cooperation with any inquiry by either the District or State Auditor relating to the performance of the contract. Failure to cooperate may be cause for debarment from award of future contracts and shall act as a waiver of any claim for any further compensation under this contract.

ARTICLE 5 - DISTRICT OWNERSHIP AND USE OF DOCUMENTS

5.1 **District Ownership.** All drawings, specifications, materials, information, property and other items obtained or developed in connection with the Services or through the Reimbursable Expenses (including, but not limited to, documents, designs, drawings, plans, specifications, calculations, maps, sketches, notes, reports, data, estimates, reproductions, renderings, models, mock-ups, completed Services and Services in progress), together with all rights associated with ownership of such items (such as copyright, patent, trade secret and other proprietary rights), shall become the property of District when so obtained or developed or when such expense is incurred, as the case may be, whether or not delivered to District. Consultant shall deliver such items, together with all materials, information, property and other items furnished by District or the cost of which is included in the Reimbursable Expenses, to District upon request and in any event upon the completion, termination or cancellation of this Agreement. However, Consultant may at its own expense retain copies of any such items for its own records or for use in the furtherance of its professional knowledge.

5.2 **License.** District shall have a permanent, assignable, nonexclusive, royalty-free license and right to use all concepts, methods, processes, products, writings and other items (whether or not copyrightable or patentable) developed or first reduced to practice in the performance of the Services or otherwise whether by Consultant, any of its subconsultants, or any employee(s) of Consultant in connection with this Agreement. District shall hold Consultant or its subconsultants harmless for District's reuse of documents on a project other than this Project unless the Consultant is retained by the District for such other Project.

5.3 **Nondisclosure.** Consultant shall not, without the prior written consent of District, disclose to third parties any information obtained in connection with the Services unless: (a) the information is known to Consultant prior to obtaining the same directly or indirectly from District or in connection with the Services; (b) the information is in the public domain at the time of disclosure by Consultant; or (c) the information is obtained by Consultant from a third party who did not obtain the same directly or indirectly from District or in connection with the Services. If so requested by District, Consultant shall obtain from its employees, subconsultants and their respective employees nondisclosure agreements in the form and content satisfactory to District. Submission or distribution to meet official regulatory requirements or for other purposes in connection with the activity for which the Services were rendered is not to be construed as publication in derogation of District's or Consultant's rights.

ARTICLE 6 - RELEASE, INDEMNIFICATION AND HOLD HARMLESS

6.1 **Release and Indemnification.** Consultant releases and shall indemnify and hold harmless District, its successors and assigns, and the directors, officers, employees and agents of District and their successors and assigns (collectively, the "Indemnitees") from all claims, losses, harm, costs, liabilities, damages and expenses (including, but not limited to, reasonable attorneys' fees incurred on such claims and in proving the right to indemnification) relating to the services arising (whether before or after completion of the Services) out of any act, error or omission of any of the following: Consultant; Consultant's subconsultants of any tier; the directors, officers, employees or agents of Consultant or any of its subconsultants of any tier; or anyone acting on Consultant's behalf in connection with the Services or this Agreement ("Indemnitors"). However, to the extent that such claims, losses, harm, costs, liabilities, damages and expenses are caused by or are resulting from the concurrent negligence of (i) the Indemnitees or the indemnitees' agents or employees, and (ii) the Indemnitor or the indemnitors' agents or employees, this indemnity obligation is enforceable only to the extent of the Indemnitors' negligence. Consultant also shall not be required to so indemnify any of the Indemnitees against liability or damages caused by or resulting

from the sole negligence of the Indemnitees. The indemnification obligation under this paragraph shall not be affected by any limitation on the amount or type of damages, compensation or benefits payable by or for Consultant or any subconsultant under any worker's compensation act, including Title 51, RCW, any disability benefit acts, or any other employee benefit acts. Consultant and any subconsultant hereby waive, for themselves and their successors, any right to claim such limitation as a defense, set off, or other reduction of rights to indemnification under this paragraph. **Consultant further agrees that this waiver has been mutually negotiated by the parties.**

6.2 Workers' Compensation. As to the Indemnitees identified above only, Consultant expressly waives any immunity or limitations (e.g., on the type or amount of damages, compensation, benefits or liability payable by Consultant) that might otherwise be afforded under any industrial insurance, Workers' compensation, disability benefit or similar law, rule, regulation or order of any governmental authority having jurisdiction (including, but not limited to, the Washington Industrial Act, Title 51 of the Revised Code of Washington). By executing this Agreement, Consultant acknowledges that the foregoing waiver has been mutually negotiated by the parties.

6.3 Patent; Copyright. Consultant releases and shall defend, indemnify and hold harmless the Indemnitees from all claims, losses, harm, costs, liabilities, damages, expenses (including, but not limited to, reasonable attorneys' fees) and royalties arising (whether before or after completion of the Services) out of or in connection with any claim, action, suit or proceeding based upon infringement of any patent, copyright, trade secret or other proprietary right or upon the wrongful use of any confidential or proprietary concept, method, process, product, writing, information or other item and arising out of or in connection with performance of the Services or the use or intended use of any of the Services. Further, if any of the Services or any use or intended use of the Services constitutes an infringement of any patent, copyright, trade secret or other proprietary right or the wrongful use of any confidential or proprietary concept, method, process, product, writing, information or other item, Consultant shall at its expense either procure for the Indemnitees the right to use the infringing item, replace the infringing item with a substantially equal but noninfringing item or modify the infringing item so that it becomes noninfringing; provided, however, that this paragraph 6.3 does not apply to any claim, action, suit or proceeding based upon infringement which is related to any materials or equipment designated solely by District for use by the District and not designed by the Consultant.

ARTICLE 7 - INSURANCE

7.1 Workers' Compensation; Employer's Liability Insurance. Consultant shall, at its sole expense, require that, with respect to all persons performing the Services, Consultant and its subconsultants maintain in effect at all times during performance of the Services coverage or insurance in accordance with the applicable laws relating to Workers' compensation and employer's liability insurance (including, but not limited to, the Washington Industrial Insurance Act and the laws of the state in which any such person was hired).

7.2 Liability Insurance. In addition, Consultant shall, at its sole expense, maintain in effect at all times during performance of the Services and for a period of at least three (3) years after completion thereof such insurance as will protect Consultant and the District from all claims, losses, harm, costs, liabilities, damages and expenses arising out of property damage or personal injury (including death) that may occur in connection with performance of the Services. Consultant shall promptly furnish to District upon request certificates of insurance and other evidence (such as copies of insurance policies and Certificates of Compliance issued by the Washington State Department of Labor and Industries) of the insurance required under this Article 7. Without limitation of the foregoing, such insurance shall include personal injury (including death) and property damage combined insurance with limits of \$1,000,000 CSL each occurrence and annual aggregate for the following coverages:

- (a) Commercial general liability/general (including premises operations, completed operations, blanket/contractual, broad form property damage and contractor's protective).
- (b) Commercial auto liability (including owned, hired and nonowned).
- (c) Professional liability (E & O)

7.3 Additional Insured; Subrogation. Any policy of insurance required under this Article shall name the District, its employees, directors, officers and agents ("Indemnitees") additional insureds and contain a

waiver of the insurer's right of subrogation against the Indemnitees. To the full extent permitted by its policies, Consultant hereby waives such rights of subrogation. Such policies shall not be terminated or canceled without giving forty-five (45) days' advance written notice thereof to District.

ARTICLE 8 - CHANGES

8.1 Notice. District may at any time, by written notice thereof to Consultant, make changes in the Services to be performed under this Agreement (including, but not limited to, additions to or deletions from any Services, suspension of performance, and changes in the schedule and location of performance). Consultant shall, within ten (10) days after receipt of notice of any change which Consultant believes to be outside the scope of Services, give District written notice of such belief, otherwise the change shall be deemed to be within the scope of Services.

8.2 Adjustment. If any change under paragraph 8.1 causes an increase or decrease in the cost of or the time required for performance of the Services, an equitable adjustment in the compensation and/or schedule under this Agreement shall be made to reflect such increase or decrease and this Agreement shall be modified in writing accordingly, and only so long as Consultant provides timely notice as required by Section 8.1. Such equitable adjustment shall constitute full compensation to Consultant for such change.

ARTICLE 9 - TERMINATION OF THIS AGREEMENT

9.1 Termination of Agreement by District for Cause.

9.1.1 If Consultant shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if Consultant shall violate any of the provisions of this Agreement, or if Consultant becomes insolvent or the subject of any proceeding under bankruptcy, insolvency or receivership law or makes an assignment for the benefit of creditors, District shall thereupon have the right to terminate this Agreement by giving written notice of such termination and specifying the effective date thereof as a certain date at least seven (7) days after the notice, during which period Consultant shall have the right to cure the default.

9.1.2 Whether or not this Agreement is so terminated, Consultant shall be liable to District for any damage or loss resulting from such failure or violation by Consultant described in subparagraph 9.1.1, including, but not limited to, costs in addition to those agreed to herein for prosecuting Services to completion and delay damages paid or incurred by District. The rights and remedies of District provided by this paragraph are cumulative with and in addition to any other rights and remedies provided by law or this Agreement.

9.1.3 District shall be liable to Consultant for Consultant's just and equitable compensation for any satisfactory services completed, but in no event shall this compensation exceed the percentage of total services satisfactorily completed at the time of termination times the total compensation payable under this Agreement less any damage or loss described in Section 9.1.2. District may withhold payments to Consultant equal to any claim made in writing by District for the purpose of set-off until such time as the exact amount of damages due District from Consultant is determined. In no event shall District be liable for any consequential or incidental damages, including, but not limited to, loss of profit on this or other projects or of reputation incurred by Consultant as a result of such termination. If District purports to terminate all or a part of this Agreement for cause, and it is determined that insufficient cause existed, such termination shall be deemed to have been a termination for convenience of District pursuant to paragraph 9.2, and the rights of the parties shall be determined accordingly.

9.2 Termination for Convenience by District. District may, at its option, terminate all or a portion of the services not then performed under this Agreement at any time by so notifying Consultant in writing. In that event, all finished or unfinished documents and other materials as described above shall, at the option of District, become its property upon compensation therefor in accordance with this Agreement, and District shall indemnify and hold harmless Consultant and its agents and employees from any claims arising from District's subsequent use of such documents and other materials, except to the extent Consultant is solely or concurrently negligent. If the Agreement is terminated by District as provided herein, Consultant's compensation for the Services shall be (i) that portion of the compensation for services properly performed prior to termination, and (ii) proper compensation for Reimbursable Expenses. District shall not be liable for any consequential or incidental damages, including, but not

limited to, loss of profits on this or other projects or of reputation incurred by Consultant as a result of such termination.

ARTICLE 10 - MISCELLANEOUS

10.1 **Time.** Time is of the essence with regard to performance of this Agreement.

10.2 **Subcontracting.** Except for any services to be performed by subconsultants specified in Exhibit A, Consultant shall not (by contract, operation of law or otherwise) delegate or subcontract performance of any Services to any other person or entity without the prior written consent of District.

10.3 **Independent Contractor.** Consultant shall at all times be an independent contractor and not an agent or representative of District with regard to performance of the Services as authorized by this Agreement. Consultant shall not represent that it is, or hold itself out as, an agent or representative of District. The Consultant shall perform the Services in accordance with its own methods and in an orderly and professional manner. The Consultant is not authorized on behalf of the District to enter into any agreements, to waive or modify any provisions of the District's contracts with third parties, to authorize payment on behalf of the District, or to receive or accept contractual notices, to accept or approve any change in the price or time of contract on behalf of the District, or to otherwise bind the District by its actions. The District shall not be responsible for fringe benefits, withholding, paying of any taxes on behalf of the Consultant or its employees or agents, or remuneration above the amount stipulated in this Agreement.

10.4 **Nonwaiver.** The failure of either party to insist upon or enforce strict performance by the other party of any of the provisions of this Agreement or to exercise any rights under this Agreement shall not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon any such provisions or rights in that or any other instance.

10.5 **Assignment.** Neither District nor Consultant shall assign, sublet or transfer any interest in this Agreement without the written consent of the other.

10.6 **Entire Agreement.** This Agreement represents the entire and integrated agreement between District and Consultant and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both District and Consultant.

10.7 **Applicable Law; Venue.** This Agreement shall be interpreted, construed, and enforced in all respects in accordance with the laws of the State of Washington without regard to its choice of law provisions. Venue in any litigation shall be in King County, Washington.

10.8 **Conflicts.** The Consultant has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner with the performance of the Services. The Consultant will not employ any person in the performance of this Agreement having any such interest.

10.9 **Mediation.** Any dispute arising out of or relating to this Agreement, or the breach thereof, shall first be subject to mediation under the Construction Mediation Rules of the American Arbitration Association ("AAA"). To initiate the mediation process, a party shall submit a written mediation request to the other party. If the parties are unable to agree to a mediator within thirty (30) days after the receipt of the written request for mediation, either party may submit a request for mediation to the AAA. The Consultant may not bring litigation unless it has been properly addressed in the above dispute resolution procedure.

**CONTRACT
FOR
CONSULTING SERVICES**

Owner: **Seattle School District No. 1,**

and

Consultant:
Building Envelope Technology &
Research (BET&R)

Tax I.D. #: 91-1943254

**Building Envelope Technical
Consultation Services for Leschi
Elementary School Classroom Addition**

Contract No. **P1797**

CONSULTING SERVICES CONTRACT

This Agreement, Contract No. **P1797** made by and between Seattle School District No. 1, a Washington municipal corporation ("District" or "Owner"), and **Building Envelope Technology & Research** ("Consultant"). District and Consultant agree as follows:

1. SCOPE OF WORK AND SCHEDULE

- a. Consultant shall provide professional and related services as described in Exhibit A hereto, on the schedule set forth therein ("Services"). Consultant is authorized to proceed (check one):

☒
☐

Upon receipt of this signed Agreement;
On _____ 20__.

- b. Unless modified by a change order, this contract shall be completed by *(Date)* and the contract shall terminate upon such completion.

2. CONTRACT PRICE [CHECK ONE ONLY]

- a. ☒ District agrees to pay Consultant, on a time and expenses basis, a sum not to exceed: **One Hundred Sixty-Seven Thousand eight Hundred Fifty One Dollars and no Cents (\$167,851.00)** (the "Maximum Authorized Compensation") payable according to Consultant's schedule of fees and reimbursable expenses specified in Exhibit B hereto. Compensation will be paid only to the extent that Consultant presents documented evidence of fees earned and expenses incurred during the period for which payment is requested, and in no case shall the total compensation exceed the Maximum Authorized Compensation.

Or

- b. ☐ District agrees to pay Consultant a lump sum of _____ (\$ _____) as full and complete compensation for all services hereto, exclusive of reimbursable expenses described in Exhibit B, if any. Compensation for reimbursables will be paid only to the extent that Consultant presents documented evidence of expenses incurred during the period for which payment is requested.

Consultant shall submit its invoices in the form and according to the schedule prescribed in the General Conditions, Exhibit C, to the address listed in paragraph 3. The amount paid shall constitute complete compensation for all costs and fees incurred, including any expenses for meals, travel, lodging and Washington State sales tax, if applicable. Additional services must be authorized in writing by District prior to performance. A W-9 form must be attached if Consultant is an individual.

3. COMMUNICATIONS

The District's representative for this contract is Richard Best. All correspondence, requests, notices and other communications to District, in relation to this Agreement, shall be in writing and shall be delivered to:

To the District: **Richard Best**
Director Capital Projects
Seattle School District No. 1
Mail Stop: **22-331**
PO Box 34165
Seattle, WA 98124-1165

To the Consultant: Jim Carlson
Technical Director
Building Envelope Technology
& Research (BET&R)
4000 Delridge Way SW, 1st Floor
Seattle, WA, 98106

Physical Location:
2445 Third Avenue South
Seattle, WA 98134

Either party may from time to time change such address by giving the other party notice of such change in accordance with the provisions of this Paragraph 3.

4. CONSULTANT'S REPORTS

Consultant shall provide reports as requested by District in a format proposed by Consultant and approved by District.

5. PERSONNEL

Consultant shall assign the personnel listed below to the performance of the Work and shall not (for so long as they remain in Consultant's employ) reassign or remove any of them without the prior written consent of District.

Name	Title	Role
<u>Jim Carlson</u>	<u>Technical Director</u>	<u>Principal Consultant</u>
<u>Juan Aguirre</u>	<u>Technologist/Administrator</u>	<u>Design Review/PM</u>
<u>Martha Carlson</u>	<u>Intake Manager</u>	<u>Project Coordinator</u>

6. THIS AGREEMENT INCLUDES THE FOLLOWING ATTACHMENTS:

Exhibit	Topic
A	Scope of Services and Fee
B	Fee and Reimbursable Costs
C	General Conditions of Personal Services Contract (Short Form) revision date of April 18, 2016

Modifications and revisions, if any, to the General Conditions are made by the parties in Exhibit D, if included.

CONSULTANT:

DISTRICT:

Signature

Signature

Jim Carlson

Typed Name

JoLynn Berge

Typed Name

Principal Consultant

Title

CFO/Superintendent's designee

Title

Date Signed

Date Signed

Building Envelope Technology & Research

Company Name

91-1943254

Employer I.D. No. or Social Security No.

SCOPE OF SERVICES AND FEE

See Attached Building Envelope Technology & Research Document titled New Addition – Leschi Elementary School Building Envelope Consulting Fee Matrix, Revised 10/16/2020.

FEES AND REIMBURSABLE COSTS

See Exhibit A for identified fee and reimbursable costs associated with each task.

SERVICES CONTRACT**GENERAL CONDITIONS (SHORT FORM)****ARTICLE 1 - CONSULTANT'S SERVICES AND RESPONSIBILITIES**

1.1 Services. Consultant shall furnish all personnel, equipment and materials for the performance of all services under this Agreement. Such services, together with all drawings, specifications, materials, information, property, and other items provided or to be provided to District under this Agreement, are sometimes collectively referred to herein as the "Services."

1.2 Manner of Performance. Consultant's Services shall be performed with the degree of care and diligence ordinarily exercised under similar circumstances in the applicable disciplines and as expeditiously as is consistent with such standards of professional skill and care and the orderly progress of the Services. At the time of performance, Consultant shall be properly licensed, equipped, organized and financed to perform the Services.

1.3 District's Representatives. District may designate one or more individuals or firms as its representative for administration of this contract. If a representative is assigned by District, it shall not have authority to assign additional Services or to reduce the Services to be performed by the Consultant under this contract.

1.4 Correction of Noncompliances. Consultant shall, at no cost to District, promptly and satisfactorily correct any Services found to be defective or not in compliance with the requirements of this Agreement or the requirements of any governmental authority, law, regulations or ordinances. If the Consultant fails to initiate corrections within fifteen (15) days of receipt of written notice from the District, the District may do so, by contract or otherwise, and recover (e.g., by offset against the compensation otherwise payable under this contract) from the Consultant the cost it incurred. The obligations of the Consultant to correct nonconforming Services shall not in any way limit any other obligations of the Consultant. The District's right to make corrections and charge the Consultant for them is in addition to any other rights and remedies available to the District under this Agreement or otherwise by law and shall in no event be construed or interpreted as obligating the District to make any correction of defective or nonconforming Services.

1.5 Consultant's Personnel. All personnel employed by Consultant engaged in the Services and Services shall be fully qualified and shall be authorized under applicable federal, state, and local law to perform such Services and Services. Consultant shall, if so requested by District, remove from the performance of the Services any person District reasonably deems incompetent. Failure of District to so object shall not relieve Consultant of responsibility for such person. If any personnel are reassigned or replaced by Consultant upon District's request, Consultant shall replace them with personnel approved by District.

1.6 Consultant Employee Background. Pursuant to RCW 28A.400.330, Consultant shall prohibit from providing Services at a public school where there may be contact with children, any employee of Consultant who has pled guilty to or been convicted of any felony crime involving the physical neglect of a child under Chapter 9A.42 RCW, the physical injury or death of a child under Chapter 9A.32 or 9A.36 RCW (except motor vehicle violations under Chapter 46.61 RCW), sexual exploitation of a child under Chapter 9.68A RCW, sexual offenses under Chapter 9A.44 RCW where a minor is the victim, promoting prostitution of a minor under Chapter 9A.88 RCW, the sale or purchase of a minor child under RCW 9A.64.030, or violation of similar laws of another jurisdiction. Failure to comply with this section shall be grounds for District to immediately terminate the contract for cause.

1.7 Compliance With Laws

1.7.1 General. Consultant shall comply, and be certain that its Services comply, with all applicable laws, ordinances, regulations, resolutions, licenses of record, permits of record, and other requirements applicable to the Services, in effect at the time of performance of the Services and as interpreted by cognizant authorities, including but not limited to those related to the Americans with Disabilities Act and worker and site safety laws and regulations. Consultant shall furnish such documents as may be required to effect or evidence such compliance. All

laws, ordinances, regulations, and resolutions required to be incorporated in agreements of this character are incorporated in this Agreement by this reference.

1.7.2 Nondiscrimination.

A. Applicable state laws concerning prevailing wages, hours, workers' compensation and other conditions of employment are called to the attention of bidders for their compliance. Bidder shall include in the bid any filing fees required to comply with applicable labor laws.

B. During the term of this Agreement, Consultant shall comply with applicable local, state and federal laws prohibiting discrimination with regard to race, creed, color, national origin, sex, sexual orientation, marital status, age or the presence of any sensory, mental or physical handicap.

C. Any consultant or contractor who is in violation of these requirements, or an applicable nondiscrimination program shall be barred forthwith from receiving awards of any purchase order from Seattle School District No. 1 or shall be subject to other legal action or contract cancellation unless satisfactory showing is made that discriminatory practices have terminated, and that reoccurrence of such acts is unlikely. This includes compliance with Section 503 and 504 of the Vocational Rehabilitation Act of 1973 and Sections 2012 and 2014 of the Vietnam Era Veterans Readjustment Act of 1974.

1.7.3 Debarment

A. Consultant, by accepting the contract, warrants that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions (defined as not being eligible to receive federal funds) by any local, state or federal department or agency. Consultant also acknowledges they are not debarred under School Board Policy No. 6973 in contracting with the District currently or on future contracts.

ARTICLE 2 - PAYMENTS TO CONSULTANT

2.1 The compensation shall be made no more frequently than monthly and if paid on a lump sum basis shall be in proportion to the Services performed. Each of Consultant's invoices shall set forth in a detailed and clear manner a complete description of the Services covered thereby, on a form substantially similar to that customarily used by District and shall be supported by such receipts, documents, and other information as District may reasonably request. The invoice shall include separate listings of Services for particular schools or programs, if requested by the District. District shall pay each of Consultant's invoices within thirty (30) days after District's receipt, provided that all required documentation is included and accurate.

ARTICLE 3 - REIMBURSABLE EXPENSES

3.1 Reimbursable Expenses are in addition to the hourly rates for Services and include actual reasonable expenditures made by Consultant and Consultant's employees and subconsultants in the interest of the Project for the expenses listed in the following subparagraphs. Consultant represents that Schedule B sets forth Consultant's best estimate of the Reimbursable Expenses under this Agreement. Notwithstanding any other provision of this Agreement to the contrary, District shall not be obligated to pay Consultant, and Consultant shall not invoice District for, any Reimbursable Expenses which exceed Schedule B, unless authorized by a budget approved in writing by District. District hereby approves the attached schedule as an initial budget for the Reimbursable Expenses. Consultant shall immediately notify District if, in Consultant's best judgment, the then current estimate of the Reimbursable Expenses exceeds the approved budget therefor. Travel expenses are not Reimbursable Expenses, provided, however, that travel more than 75 miles from the site of the Services and approved in writing by the District is a Reimbursable Expense at the Internal Revenue Service allowed rate.

ARTICLE 4 - CONSULTANT'S ACCOUNTING RECORDS

4.1 The Consultant's records of performance of Services shall at all times be subject to review by and the approval of District, but the making of (or failure or delay in making) such review or approval shall not

relieve Consultant of responsibility for performance of the Services in accordance with this Agreement. Records of Reimbursable Expenses shall be kept in accordance with generally accepted accounting principles.

4.2 Consultant shall promptly furnish District with such information related to the Services as may be requested by District. Until the expiration of three (3) years after final payment of the compensation payable under this Agreement, Consultant shall provide District access to (and District shall have the right to examine, audit and copy) all of Consultant's books, documents, papers and records which are related to the Services or this Agreement. Consultant agrees to provide reasonable cooperation with any inquiry by either the District or State Auditor relating to the performance of the contract. Failure to cooperate may be cause for debarment from award of future contracts and shall act as a waiver of any claim for any further compensation under this contract.

ARTICLE 5 - DISTRICT OWNERSHIP AND USE OF DOCUMENTS

5.1 **District Ownership.** All drawings, specifications, materials, information, property and other items obtained or developed in connection with the Services or through the Reimbursable Expenses (including, but not limited to, documents, designs, drawings, plans, specifications, calculations, maps, sketches, notes, reports, data, estimates, reproductions, renderings, models, mock-ups, completed Services and Services in progress), together with all rights associated with ownership of such items (such as copyright, patent, trade secret and other proprietary rights), shall become the property of District when so obtained or developed or when such expense is incurred, as the case may be, whether or not delivered to District. Consultant shall deliver such items, together with all materials, information, property and other items furnished by District or the cost of which is included in the Reimbursable Expenses, to District upon request and in any event upon the completion, termination or cancellation of this Agreement. However, Consultant may at its own expense retain copies of any such items for its own records or for use in the furtherance of its professional knowledge.

5.2 **License.** District shall have a permanent, assignable, nonexclusive, royalty-free license and right to use all concepts, methods, processes, products, writings and other items (whether or not copyrightable or patentable) developed or first reduced to practice in the performance of the Services or otherwise whether by Consultant, any of its subconsultants, or any employee(s) of Consultant in connection with this Agreement. District shall hold Consultant or its subconsultants harmless for District's reuse of documents on a project other than this Project unless the Consultant is retained by the District for such other Project.

5.3 **Nondisclosure.** Consultant shall not, without the prior written consent of District, disclose to third parties any information obtained in connection with the Services unless: (a) the information is known to Consultant prior to obtaining the same directly or indirectly from District or in connection with the Services; (b) the information is in the public domain at the time of disclosure by Consultant; or (c) the information is obtained by Consultant from a third party who did not obtain the same directly or indirectly from District or in connection with the Services. If so requested by District, Consultant shall obtain from its employees, subconsultants and their respective employees nondisclosure agreements in the form and content satisfactory to District. Submission or distribution to meet official regulatory requirements or for other purposes in connection with the activity for which the Services were rendered is not to be construed as publication in derogation of District's or Consultant's rights.

ARTICLE 6 - RELEASE, INDEMNIFICATION AND HOLD HARMLESS

6.1 **Release and Indemnification.** Consultant releases and shall indemnify and hold harmless District, its successors and assigns, and the directors, officers, employees and agents of District and their successors and assigns (collectively, the "Indemnitees") from all claims, losses, harm, costs, liabilities, damages and expenses (including, but not limited to, reasonable attorneys' fees incurred on such claims and in proving the right to indemnification) relating to the services arising (whether before or after completion of the Services) out of any act, error or omission of any of the following: Consultant; Consultant's subconsultants of any tier; the directors, officers, employees or agents of Consultant or any of its subconsultants of any tier; or anyone acting on Consultant's behalf in connection with the Services or this Agreement ("Indemnitors"). However, to the extent that such claims, losses, harm, costs, liabilities, damages and expenses are caused by or are resulting from the concurrent negligence of (i) the Indemnitees or the indemnitees' agents or employees, and (ii) the Indemnitor or the indemnitors' agents or employees, this indemnity obligation is enforceable only to the extent of the Indemnitors' negligence. Consultant also shall not be required to so indemnify any of the Indemnitees against liability or damages caused by or resulting

from the sole negligence of the Indemnitees. The indemnification obligation under this paragraph shall not be affected by any limitation on the amount or type of damages, compensation or benefits payable by or for Consultant or any subconsultant under any worker's compensation act, including Title 51, RCW, any disability benefit acts, or any other employee benefit acts. Consultant and any subconsultant hereby waive, for themselves and their successors, any right to claim such limitation as a defense, set off, or other reduction of rights to indemnification under this paragraph. **Consultant further agrees that this waiver has been mutually negotiated by the parties.**

6.2 Workers' Compensation. As to the Indemnitees identified above only, Consultant expressly waives any immunity or limitations (e.g., on the type or amount of damages, compensation, benefits or liability payable by Consultant) that might otherwise be afforded under any industrial insurance, Workers' compensation, disability benefit or similar law, rule, regulation or order of any governmental authority having jurisdiction (including, but not limited to, the Washington Industrial Act, Title 51 of the Revised Code of Washington). By executing this Agreement, Consultant acknowledges that the foregoing waiver has been mutually negotiated by the parties.

6.3 Patent; Copyright. Consultant releases and shall defend, indemnify and hold harmless the Indemnitees from all claims, losses, harm, costs, liabilities, damages, expenses (including, but not limited to, reasonable attorneys' fees) and royalties arising (whether before or after completion of the Services) out of or in connection with any claim, action, suit or proceeding based upon infringement of any patent, copyright, trade secret or other proprietary right or upon the wrongful use of any confidential or proprietary concept, method, process, product, writing, information or other item and arising out of or in connection with performance of the Services or the use or intended use of any of the Services. Further, if any of the Services or any use or intended use of the Services constitutes an infringement of any patent, copyright, trade secret or other proprietary right or the wrongful use of any confidential or proprietary concept, method, process, product, writing, information or other item, Consultant shall at its expense either procure for the Indemnitees the right to use the infringing item, replace the infringing item with a substantially equal but noninfringing item or modify the infringing item so that it becomes noninfringing; provided, however, that this paragraph 6.3 does not apply to any claim, action, suit or proceeding based upon infringement which is related to any materials or equipment designated solely by District for use by the District and not designed by the Consultant.

ARTICLE 7 - INSURANCE

7.1 Workers' Compensation; Employer's Liability Insurance. Consultant shall, at its sole expense, require that, with respect to all persons performing the Services, Consultant and its subconsultants maintain in effect at all times during performance of the Services coverage or insurance in accordance with the applicable laws relating to Workers' compensation and employer's liability insurance (including, but not limited to, the Washington Industrial Insurance Act and the laws of the state in which any such person was hired).

7.2 Liability Insurance. In addition, Consultant shall, at its sole expense, maintain in effect at all times during performance of the Services and for a period of at least three (3) years after completion thereof such insurance as will protect Consultant and the District from all claims, losses, harm, costs, liabilities, damages and expenses arising out of property damage or personal injury (including death) that may occur in connection with performance of the Services. Consultant shall promptly furnish to District upon request certificates of insurance and other evidence (such as copies of insurance policies and Certificates of Compliance issued by the Washington State Department of Labor and Industries) of the insurance required under this Article 7. Without limitation of the foregoing, such insurance shall include personal injury (including death) and property damage combined insurance with limits of \$1,000,000 CSL each occurrence and annual aggregate for the following coverages:

- (a) Commercial general liability/general (including premises operations, completed operations, blanket/contractual, broad form property damage and contractor's protective).
- (b) Commercial auto liability (including owned, hired and nonowned).
- (c) Professional liability (E & O)

7.3 Additional Insured; Subrogation. Any policy of insurance required under this Article shall name the District, its employees, directors, officers and agents ("Indemnitees") additional insureds and contain a

waiver of the insurer's right of subrogation against the Indemnitees. To the full extent permitted by its policies, Consultant hereby waives such rights of subrogation. Such policies shall not be terminated or canceled without giving forty-five (45) days' advance written notice thereof to District.

ARTICLE 8 - CHANGES

8.1 Notice. District may at any time, by written notice thereof to Consultant, make changes in the Services to be performed under this Agreement (including, but not limited to, additions to or deletions from any Services, suspension of performance, and changes in the schedule and location of performance). Consultant shall, within ten (10) days after receipt of notice of any change which Consultant believes to be outside the scope of Services, give District written notice of such belief, otherwise the change shall be deemed to be within the scope of Services.

8.2 Adjustment. If any change under paragraph 8.1 causes an increase or decrease in the cost of or the time required for performance of the Services, an equitable adjustment in the compensation and/or schedule under this Agreement shall be made to reflect such increase or decrease and this Agreement shall be modified in writing accordingly, and only so long as Consultant provides timely notice as required by Section 8.1. Such equitable adjustment shall constitute full compensation to Consultant for such change.

ARTICLE 9 - TERMINATION OF THIS AGREEMENT

9.1 Termination of Agreement by District for Cause.

9.1.1 If Consultant shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if Consultant shall violate any of the provisions of this Agreement, or if Consultant becomes insolvent or the subject of any proceeding under bankruptcy, insolvency or receivership law or makes an assignment for the benefit of creditors, District shall thereupon have the right to terminate this Agreement by giving written notice of such termination and specifying the effective date thereof as a certain date at least seven (7) days after the notice, during which period Consultant shall have the right to cure the default.

9.1.2 Whether or not this Agreement is so terminated, Consultant shall be liable to District for any damage or loss resulting from such failure or violation by Consultant described in subparagraph 9.1.1, including, but not limited to, costs in addition to those agreed to herein for prosecuting Services to completion and delay damages paid or incurred by District. The rights and remedies of District provided by this paragraph are cumulative with and in addition to any other rights and remedies provided by law or this Agreement.

9.1.3 District shall be liable to Consultant for Consultant's just and equitable compensation for any satisfactory services completed, but in no event shall this compensation exceed the percentage of total services satisfactorily completed at the time of termination times the total compensation payable under this Agreement less any damage or loss described in Section 9.1.2. District may withhold payments to Consultant equal to any claim made in writing by District for the purpose of set-off until such time as the exact amount of damages due District from Consultant is determined. In no event shall District be liable for any consequential or incidental damages, including, but not limited to, loss of profit on this or other projects or of reputation incurred by Consultant as a result of such termination. If District purports to terminate all or a part of this Agreement for cause, and it is determined that insufficient cause existed, such termination shall be deemed to have been a termination for convenience of District pursuant to paragraph 9.2, and the rights of the parties shall be determined accordingly.

9.2 Termination for Convenience by District. District may, at its option, terminate all or a portion of the services not then performed under this Agreement at any time by so notifying Consultant in writing. In that event, all finished or unfinished documents and other materials as described above shall, at the option of District, become its property upon compensation therefor in accordance with this Agreement, and District shall indemnify and hold harmless Consultant and its agents and employees from any claims arising from District's subsequent use of such documents and other materials, except to the extent Consultant is solely or concurrently negligent. If the Agreement is terminated by District as provided herein, Consultant's compensation for the Services shall be (i) that portion of the compensation for services properly performed prior to termination, and (ii) proper compensation for Reimbursable Expenses. District shall not be liable for any consequential or incidental damages, including, but not

limited to, loss of profits on this or other projects or of reputation incurred by Consultant as a result of such termination.

ARTICLE 10 - MISCELLANEOUS

10.1 **Time.** Time is of the essence with regard to performance of this Agreement.

10.2 **Subcontracting.** Except for any services to be performed by subconsultants specified in Exhibit A, Consultant shall not (by contract, operation of law or otherwise) delegate or subcontract performance of any Services to any other person or entity without the prior written consent of District.

10.3 **Independent Contractor.** Consultant shall at all times be an independent contractor and not an agent or representative of District with regard to performance of the Services as authorized by this Agreement. Consultant shall not represent that it is, or hold itself out as, an agent or representative of District. The Consultant shall perform the Services in accordance with its own methods and in an orderly and professional manner. The Consultant is not authorized on behalf of the District to enter into any agreements, to waive or modify any provisions of the District's contracts with third parties, to authorize payment on behalf of the District, or to receive or accept contractual notices, to accept or approve any change in the price or time of contract on behalf of the District, or to otherwise bind the District by its actions. The District shall not be responsible for fringe benefits, withholding, paying of any taxes on behalf of the Consultant or its employees or agents, or remuneration above the amount stipulated in this Agreement.

10.4 **Nonwaiver.** The failure of either party to insist upon or enforce strict performance by the other party of any of the provisions of this Agreement or to exercise any rights under this Agreement shall not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon any such provisions or rights in that or any other instance.

10.5 **Assignment.** Neither District nor Consultant shall assign, sublet or transfer any interest in this Agreement without the written consent of the other.

10.6 **Entire Agreement.** This Agreement represents the entire and integrated agreement between District and Consultant and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both District and Consultant.

10.7 **Applicable Law; Venue.** This Agreement shall be interpreted, construed, and enforced in all respects in accordance with the laws of the State of Washington without regard to its choice of law provisions. Venue in any litigation shall be in King County, Washington.

10.8 **Conflicts.** The Consultant has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner with the performance of the Services. The Consultant will not employ any person in the performance of this Agreement having any such interest.

10.9 **Mediation.** Any dispute arising out of or relating to this Agreement, or the breach thereof, shall first be subject to mediation under the Construction Mediation Rules of the American Arbitration Association ("AAA"). To initiate the mediation process, a party shall submit a written mediation request to the other party. If the parties are unable to agree to a mediator within thirty (30) days after the receipt of the written request for mediation, either party may submit a request for mediation to the AAA. The Consultant may not bring litigation unless it has been properly addressed in the above dispute resolution procedure.

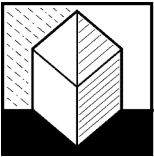
NEW ADDITION - LESCHI ELEMENTARY SCHOOL

Building Envelope Consulting Fee Matrix

Revised: 10/16/2020

Fee Matrix Summary

Phase 1 Building Envelope Design Phase	\$ 42,724.00
Phase 2 Building Envelope Bid Phase	\$ 3,505.00
Phase 3 Building Envelope Construction Phase	\$ 121,622.00
Total Fee Amount	\$ 167,851.00



BUILDING ENVELOPE
TECHNOLOGY & RESEARCH

PROFESSIONAL ROOFING, WATERPROOFING,
CLADDING, AND FENESTRATION CONSULTANTS

PHASE 1		BUILDING ENVELOPE DESIGN PHASE					
		Technical Director	Senior Building Envelope Consultant	Building Envelope Technologist	Part-time Monitor / CAD Illustrator	Technical Production Administration	TOTALS
Deliverable Task	Task Description	\$ 195.00	\$ 185.00	\$ 155.00	\$ 98.00	\$ 75.00	
1	Review Schematic Drawings and Material and System Recommendations standards for SPS Schools, and then meet with the Project Architect and SPS Team to review the systems to be specified (and ultimately installed), and to discuss building envelope system continuity and transitioning between the building envelope components regarding the new classroom addition portion of the building.	15	16		8	2	\$ 6,819.00
2	BET&R will perform a technical review of the Architect's building envelope-related addition and existing building roof replacement drawings, detail drawings, and technical specifications when the Project Documents are 65% complete. These reviews can be accomplished via digital Bluebeam red-line edits and utilizing a design comments matrix or matrices for ease of reference for the Project Team. We will also include recommendations for additional building envelope detailing, as may be necessary.	28	40			6	\$ 13,310.00
3	BET&R will perform a second technical review of the Architect's new classroom wing addition's building envelope-related and existing building roof replacement detail drawings and technical specifications when the Project Documents are 95% complete with the purpose of confirming the 65% comments were entered, checking for proper detailing on additional drawings, and checking the building envelope-related technical specifications and drawings for consistency and accuracy. This 95% technical review can be accomplished via digital Bluebeam red-line edits and utilizing a design comments matrix or matrices for ease of reference for the Project Team.	26	45			5	\$ 13,770.00
4	Following each of these technical reviews, BET&R anticipates participating in a meeting with the Architect and Owner Team to discuss BET&R's technical recommendations and the technical red-line edits to Drawings & Specifications.	8	8			1	\$ 3,115.00
5	Prepare five (5) Isometric Details for Complex Building Envelope configurations.	4	13		25	1	\$ 5,710.00
		81	122	0	33	15	
Phase 1 Subtotal		\$ 15,795.00	\$ 22,570.00	\$ -	\$ 3,234.00	\$ 1,125.00	\$ 42,724.00
Phase 1 Total							\$ 42,724.00

OFFICE ADDRESS | 4000 Delridge Way SW 1st Floor, Seattle, WA 98106

PHONE | 206.405.3455 FAX | 206.405.3458 WEBSITE | bet-r.com

NEW ADDITION - LESCHI ELEMENTARY SCHOOL		Building Envelope Consulting Fee Matrix				Revised: 10/16/2020	
PHASE 2		BUILDING ENVELOPE BID PHASE					
		Technical Director	Senior Building Envelope Consultant	Building Envelope Technologist	Part-time Monitor / CAD Illustrator	Technical Production Administration	TOTALS
Deliverable Task	Task Description	\$195.00	\$185.00	\$155.00	\$98.00	\$75.00	
1	Attend Pre-Bid Meeting and field building envelope questions during meeting.	3	3			1	\$1,215.00
2	BET&R will assist the Architect and Owner to address bidding Contractors' questions related to the new classroom addition's building envelope. BET&R will review and provide recommendations on building-envelope related substitution requests, as requested by the Architect. BET&R also anticipates reviewing one (1) building-envelope related addendum, prepared by the Architect, in effort that the Architect can incorporate the addendum into to the Project Manual, and to help integrate technical answers to Contractors’ potential questions into the Project Manual, as may be appropriate.	2	3				\$945.00
3	Review bids and address Owner and Architect's questions regarding bid alternate(s) selection and award of contract.	2	2			2	\$1,345.00
		7	8	0	0	3	
Phase 2 Subtotal		\$1,365.00	\$1,480.00	\$-	\$-	\$225.00	\$3,505.00
Phase 2 Total							\$3,505.00

NEW ADDITION - LESCHI ELEMENTARY SCHOOL		Building Envelope Consulting Fee Matrix				Revised: 10/16/2020	
PHASE 3	BUILDING ENVELOPE CONSTRUCTION PHASE						
		Technical Director	Senior Building Envelope Consultant	Building Envelope Technologist	Part-time Monitor / CAD Illustrator	Technical Production Administration	TOTALS
Deliverable Task	Task Description	\$ 195.00	\$ 185.00	\$ 155.00	\$ 98.00	\$ 75.00	
1	BET&R will perform technical review of up to three (3) building envelope-related product Submittal packages. Architect to assemble packets to facilitate efficient review by BET&R.	6	12			5	\$ 3,765.00
2	Attend and assist Architect and Owner Team with conducting pre-installation meetings with the General Contractor and envelope-related Sub-contractors. The focus of these pre-cons/meetings will be to review and discuss building envelope requirements, specifications, and detail drawings, submittal status, and manufacturer's installation requirements, weather-related items: - One (1) Waterproofing; - One (1) Cladding; - One (1) Fenestration; - One (1) Roofing.	5	16		16	4	\$ 5,803.00
3	BET&R has included time for RFI review and response to ten (10) RFIs regarding the building-envelope installation. This will allow for envelope-related questions to be addressed by the Building Envelope Consultant, in a timely manner and consistent with the Project Documents and good industry practice.	10	25		8	8	\$ 7,959.00
4	In-situ mock-ups are important to verify the Contractor's understanding of the design details, proper installation and sequencing of materials, and integration of envelope systems, to see that they are suitable as mocked-up in-situ and will perform as expected, prior to Contractor installing the remainder of the components. BET&R anticipates reviewing the following mock-ups: - One (1) Below Slab Waterproofing Mock-up; - One (1) Rough-opening Flexible Flashing and Window Mock-up; - One (1) Brick Veneer Cladding and Flashing Mock-up; - One (1) Roofing and Sheet Metal Flashing Mock-up.	6	20		40	7	\$ 9,315.00
5 and 6 Description	BET&R will conduct technical monitoring site visits to see that the building envelope work is being performed per the Project Documents, and that the quality of the Contractor's work is in keeping with Project requirements, industry standards, as well as, to assist with technical issues that may arise during the Project. It must be understood that the Contractor will be responsible for their own quality control and quality assurance of their Sub-contractors' work during construction. A formalized Field Report that includes photographs, narrative descriptions, recommendations, and action items that require follow-up corrective action by the Contractor and tracking will be prepared by the building envelope monitor for the site visits. BET&R recommends that a standard protocol be mutually agreed upon by the Project Team for addressing outstanding Action Items, and their corrective actions, that are documented in BET&R's Field Reports. Based on the Architectural Renderings and or Schematic Drawings, BET&R anticipates conducting the following part-time monitoring site visits:						\$ -
5	On-Site Monitoring and Field Report Preparation for: - Below-grade Waterproofing and Underslab Vapor Retarder (four [4] site visits); - Roofing (twelve [12] site visits); Anticipate (16) site visits.	15	48		176	22	\$ 30,703.00
6	Part-time, Spot Check, On-Site Monitoring and Field Report Preparation for: - Cladding; and (5) - Fenestration and Related Flashings; (7) Anticipate twelve (12) site visits.	12	36		144	18	\$ 24,462.00
7	Conduct Pre-Completion Survey and Prepare Punchlist: As the roofing, cladding, fenestration, and waterproofing Project work nears completion, BET&R will conduct a building envelope Pre-Completion Survey and generate a Punchlist of items needing attention, completion, and/or correction prior to the Project being deemed complete.	5	15		40	8	\$ 8,270.00

NEW ADDITION - LESCHI ELEMENTARY SCHOOL		Building Envelope Consulting Fee Matrix				Revised: 10/16/2020	
PHASE 3		BUILDING ENVELOPE CONSTRUCTION PHASE					
		Technical Director	Senior Building Envelope Consultant	Building Envelope Technologist	Part-time Monitor / CAD Illustrator	Technical Production Administration	TOTALS
Deliverable Task	Task Description	\$ 195.00	\$ 185.00	\$ 155.00	\$ 98.00	\$ 75.00	
8	Conduct Completion Survey: Once the Contractor notifies the Project Team that their Punchlist work and corrections are complete, BET&R will perform a Completion Survey of the building envelope to verify whether or not the Punchlist items have been addressed.	4	18		22	4	\$ 6,566.00
9	Attend Project Progress Meetings with Owners' Project Manager and Project Team, and participate in Project on-site walks.	8	75		35		\$ 18,865.00
10	Coordination and consulting services regarding the Window Water Testing.		8		8	2	\$ 2,414.00
		71	273	0	489	78	
Phase 3 Subtotal		\$ 13,845.00	\$ 50,505.00	\$ -	\$ 47,922.00	\$ 5,850.00	\$ 118,122.00
Testing		Window Water Testing ASTM E1105 with Chamber					\$ 3,500.00
Phase 3 Total							\$ 121,622.00

**CONTRACT
FOR
CONSULTING SERVICES**

Owner: **Seattle School District No. 1,**

and

Consultant:
Building Envelope Technology &
Research (BET&R)

Tax I.D. #: 91-1943254

**Building Envelope Technical
Consultation Services for Madison
Middle School**

Contract No. **P1798**

CONSULTING SERVICES CONTRACT

This Agreement, Contract No. **P1798** made by and between Seattle School District No. 1, a Washington municipal corporation ("District" or "Owner"), and **Building Envelope Technology & Research** ("Consultant"). District and Consultant agree as follows:

1. SCOPE OF WORK AND SCHEDULE

- a. Consultant shall provide professional and related services as described in Exhibit A hereto, on the schedule set forth therein ("Services"). Consultant is authorized to proceed (check one):

☒
☐

Upon receipt of this signed Agreement;
On _____ 20__.

- b. Unless modified by a change order, this contract shall be completed by *(Date)* and the contract shall terminate upon such completion.

2. CONTRACT PRICE [CHECK ONE ONLY]

- a. ☒ District agrees to pay Consultant, on a time and expenses basis, a sum not to exceed: **Two Hundred Forty-Five Thousand One Hundred Eighty Seven Dollars and no Cents (\$245,187.00)** (the "Maximum Authorized Compensation") payable according to Consultant's schedule of fees and reimbursable expenses specified in Exhibit B hereto. Compensation will be paid only to the extent that Consultant presents documented evidence of fees earned and expenses incurred during the period for which payment is requested, and in no case shall the total compensation exceed the Maximum Authorized Compensation.

Or

- b. ☐ District agrees to pay Consultant a lump sum of _____ (\$ _____) as full and complete compensation for all services hereto, exclusive of reimbursable expenses described in Exhibit B, if any. Compensation for reimbursables will be paid only to the extent that Consultant presents documented evidence of expenses incurred during the period for which payment is requested.

Consultant shall submit its invoices in the form and according to the schedule prescribed in the General Conditions, Exhibit C, to the address listed in paragraph 3. The amount paid shall constitute complete compensation for all costs and fees incurred, including any expenses for meals, travel, lodging and Washington State sales tax, if applicable. Additional services must be authorized in writing by District prior to performance. A W-9 form must be attached if Consultant is an individual.

3. COMMUNICATIONS

The District's representative for this contract is Richard Best. All correspondence, requests, notices and other communications to District, in relation to this Agreement, shall be in writing and shall be delivered to:

To the District: **Richard Best**
Director Capital Projects
Seattle School District No. 1
Mail Stop: **22-331**
PO Box 34165
Seattle, WA 98124-1165

To the Consultant: Jim Carlson
Technical Director
Building Envelope Technology
& Research (BET&R)
4000 Delridge Way SW, 1st Floor
Seattle, WA, 98106

Physical Location:
2445 Third Avenue South
Seattle, WA 98134

Either party may from time to time change such address by giving the other party notice of such change in accordance with the provisions of this Paragraph 3.

4. CONSULTANT'S REPORTS

Consultant shall provide reports as requested by District in a format proposed by Consultant and approved by District.

5. PERSONNEL

Consultant shall assign the personnel listed below to the performance of the Work and shall not (for so long as they remain in Consultant's employ) reassign or remove any of them without the prior written consent of District.

Name	Title	Role
<u>Jim Carlson</u>	<u>Technical Director</u>	<u>Principal Consultant</u>
<u>Juan Aguirre</u>	<u>Technologist/Administrator</u>	<u>Design Review/PM</u>
<u>Martha Carlson</u>	<u>Intake Manager</u>	<u>Project Coordinator</u>

6. THIS AGREEMENT INCLUDES THE FOLLOWING ATTACHMENTS:

Exhibit	Topic
A	Scope of Services and Fee
B	Fee and Reimbursable Costs
C	General Conditions of Personal Services Contract (Short Form) revision date of April 18, 2016

Modifications and revisions, if any, to the General Conditions are made by the parties in Exhibit D, if included.

CONSULTANT:

DISTRICT:

Signature

Signature

Jim Carlson

Typed Name

JoLynn Berge

Typed Name

Principal Consultant

Title

CFO/Superintendent's designee

Title

Date Signed

Date Signed

Building Envelope Technology & Research

Company Name

91-1943254

Employer I.D. No. or Social Security No.

SCOPE OF SERVICES AND FEE

See Attached Building Envelope Technology & Research Document titled New Addition – Madison Middle School Building Envelope Consulting Fee Matrix, Revised 10/16/2020.

FEES AND REIMBURSABLE COSTS

See Exhibit A for identified fee and reimbursable costs associated with each task.

SERVICES CONTRACT**GENERAL CONDITIONS (SHORT FORM)****ARTICLE 1 - CONSULTANT'S SERVICES AND RESPONSIBILITIES**

1.1 Services. Consultant shall furnish all personnel, equipment and materials for the performance of all services under this Agreement. Such services, together with all drawings, specifications, materials, information, property, and other items provided or to be provided to District under this Agreement, are sometimes collectively referred to herein as the "Services."

1.2 Manner of Performance. Consultant's Services shall be performed with the degree of care and diligence ordinarily exercised under similar circumstances in the applicable disciplines and as expeditiously as is consistent with such standards of professional skill and care and the orderly progress of the Services. At the time of performance, Consultant shall be properly licensed, equipped, organized and financed to perform the Services.

1.3 District's Representatives. District may designate one or more individuals or firms as its representative for administration of this contract. If a representative is assigned by District, it shall not have authority to assign additional Services or to reduce the Services to be performed by the Consultant under this contract.

1.4 Correction of Noncompliances. Consultant shall, at no cost to District, promptly and satisfactorily correct any Services found to be defective or not in compliance with the requirements of this Agreement or the requirements of any governmental authority, law, regulations or ordinances. If the Consultant fails to initiate corrections within fifteen (15) days of receipt of written notice from the District, the District may do so, by contract or otherwise, and recover (e.g., by offset against the compensation otherwise payable under this contract) from the Consultant the cost it incurred. The obligations of the Consultant to correct nonconforming Services shall not in any way limit any other obligations of the Consultant. The District's right to make corrections and charge the Consultant for them is in addition to any other rights and remedies available to the District under this Agreement or otherwise by law and shall in no event be construed or interpreted as obligating the District to make any correction of defective or nonconforming Services.

1.5 Consultant's Personnel. All personnel employed by Consultant engaged in the Services and Services shall be fully qualified and shall be authorized under applicable federal, state, and local law to perform such Services and Services. Consultant shall, if so requested by District, remove from the performance of the Services any person District reasonably deems incompetent. Failure of District to so object shall not relieve Consultant of responsibility for such person. If any personnel are reassigned or replaced by Consultant upon District's request, Consultant shall replace them with personnel approved by District.

1.6 Consultant Employee Background. Pursuant to RCW 28A.400.330, Consultant shall prohibit from providing Services at a public school where there may be contact with children, any employee of Consultant who has pled guilty to or been convicted of any felony crime involving the physical neglect of a child under Chapter 9A.42 RCW, the physical injury or death of a child under Chapter 9A.32 or 9A.36 RCW (except motor vehicle violations under Chapter 46.61 RCW), sexual exploitation of a child under Chapter 9.68A RCW, sexual offenses under Chapter 9A.44 RCW where a minor is the victim, promoting prostitution of a minor under Chapter 9A.88 RCW, the sale or purchase of a minor child under RCW 9A.64.030, or violation of similar laws of another jurisdiction. Failure to comply with this section shall be grounds for District to immediately terminate the contract for cause.

1.7 Compliance With Laws

1.7.1 General. Consultant shall comply, and be certain that its Services comply, with all applicable laws, ordinances, regulations, resolutions, licenses of record, permits of record, and other requirements applicable to the Services, in effect at the time of performance of the Services and as interpreted by cognizant authorities, including but not limited to those related to the Americans with Disabilities Act and worker and site safety laws and regulations. Consultant shall furnish such documents as may be required to effect or evidence such compliance. All

laws, ordinances, regulations, and resolutions required to be incorporated in agreements of this character are incorporated in this Agreement by this reference.

1.7.2 Nondiscrimination.

A. Applicable state laws concerning prevailing wages, hours, workers' compensation and other conditions of employment are called to the attention of bidders for their compliance. Bidder shall include in the bid any filing fees required to comply with applicable labor laws.

B. During the term of this Agreement, Consultant shall comply with applicable local, state and federal laws prohibiting discrimination with regard to race, creed, color, national origin, sex, sexual orientation, marital status, age or the presence of any sensory, mental or physical handicap.

C. Any consultant or contractor who is in violation of these requirements, or an applicable nondiscrimination program shall be barred forthwith from receiving awards of any purchase order from Seattle School District No. 1 or shall be subject to other legal action or contract cancellation unless satisfactory showing is made that discriminatory practices have terminated, and that reoccurrence of such acts is unlikely. This includes compliance with Section 503 and 504 of the Vocational Rehabilitation Act of 1973 and Sections 2012 and 2014 of the Vietnam Era Veterans Readjustment Act of 1974.

1.7.3 Debarment

A. Consultant, by accepting the contract, warrants that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions (defined as not being eligible to receive federal funds) by any local, state or federal department or agency. Consultant also acknowledges they are not debarred under School Board Policy No. 6973 in contracting with the District currently or on future contracts.

ARTICLE 2 - PAYMENTS TO CONSULTANT

2.1 The compensation shall be made no more frequently than monthly and if paid on a lump sum basis shall be in proportion to the Services performed. Each of Consultant's invoices shall set forth in a detailed and clear manner a complete description of the Services covered thereby, on a form substantially similar to that customarily used by District and shall be supported by such receipts, documents, and other information as District may reasonably request. The invoice shall include separate listings of Services for particular schools or programs, if requested by the District. District shall pay each of Consultant's invoices within thirty (30) days after District's receipt, provided that all required documentation is included and accurate.

ARTICLE 3 - REIMBURSABLE EXPENSES

3.1 Reimbursable Expenses are in addition to the hourly rates for Services and include actual reasonable expenditures made by Consultant and Consultant's employees and subconsultants in the interest of the Project for the expenses listed in the following subparagraphs. Consultant represents that Schedule B sets forth Consultant's best estimate of the Reimbursable Expenses under this Agreement. Notwithstanding any other provision of this Agreement to the contrary, District shall not be obligated to pay Consultant, and Consultant shall not invoice District for, any Reimbursable Expenses which exceed Schedule B, unless authorized by a budget approved in writing by District. District hereby approves the attached schedule as an initial budget for the Reimbursable Expenses. Consultant shall immediately notify District if, in Consultant's best judgment, the then current estimate of the Reimbursable Expenses exceeds the approved budget therefor. Travel expenses are not Reimbursable Expenses, provided, however, that travel more than 75 miles from the site of the Services and approved in writing by the District is a Reimbursable Expense at the Internal Revenue Service allowed rate.

ARTICLE 4 - CONSULTANT'S ACCOUNTING RECORDS

4.1 The Consultant's records of performance of Services shall at all times be subject to review by and the approval of District, but the making of (or failure or delay in making) such review or approval shall not

relieve Consultant of responsibility for performance of the Services in accordance with this Agreement. Records of Reimbursable Expenses shall be kept in accordance with generally accepted accounting principles.

4.2 Consultant shall promptly furnish District with such information related to the Services as may be requested by District. Until the expiration of three (3) years after final payment of the compensation payable under this Agreement, Consultant shall provide District access to (and District shall have the right to examine, audit and copy) all of Consultant's books, documents, papers and records which are related to the Services or this Agreement. Consultant agrees to provide reasonable cooperation with any inquiry by either the District or State Auditor relating to the performance of the contract. Failure to cooperate may be cause for debarment from award of future contracts and shall act as a waiver of any claim for any further compensation under this contract.

ARTICLE 5 - DISTRICT OWNERSHIP AND USE OF DOCUMENTS

5.1 **District Ownership.** All drawings, specifications, materials, information, property and other items obtained or developed in connection with the Services or through the Reimbursable Expenses (including, but not limited to, documents, designs, drawings, plans, specifications, calculations, maps, sketches, notes, reports, data, estimates, reproductions, renderings, models, mock-ups, completed Services and Services in progress), together with all rights associated with ownership of such items (such as copyright, patent, trade secret and other proprietary rights), shall become the property of District when so obtained or developed or when such expense is incurred, as the case may be, whether or not delivered to District. Consultant shall deliver such items, together with all materials, information, property and other items furnished by District or the cost of which is included in the Reimbursable Expenses, to District upon request and in any event upon the completion, termination or cancellation of this Agreement. However, Consultant may at its own expense retain copies of any such items for its own records or for use in the furtherance of its professional knowledge.

5.2 **License.** District shall have a permanent, assignable, nonexclusive, royalty-free license and right to use all concepts, methods, processes, products, writings and other items (whether or not copyrightable or patentable) developed or first reduced to practice in the performance of the Services or otherwise whether by Consultant, any of its subconsultants, or any employee(s) of Consultant in connection with this Agreement. District shall hold Consultant or its subconsultants harmless for District's reuse of documents on a project other than this Project unless the Consultant is retained by the District for such other Project.

5.3 **Nondisclosure.** Consultant shall not, without the prior written consent of District, disclose to third parties any information obtained in connection with the Services unless: (a) the information is known to Consultant prior to obtaining the same directly or indirectly from District or in connection with the Services; (b) the information is in the public domain at the time of disclosure by Consultant; or (c) the information is obtained by Consultant from a third party who did not obtain the same directly or indirectly from District or in connection with the Services. If so requested by District, Consultant shall obtain from its employees, subconsultants and their respective employees nondisclosure agreements in the form and content satisfactory to District. Submission or distribution to meet official regulatory requirements or for other purposes in connection with the activity for which the Services were rendered is not to be construed as publication in derogation of District's or Consultant's rights.

ARTICLE 6 - RELEASE, INDEMNIFICATION AND HOLD HARMLESS

6.1 **Release and Indemnification.** Consultant releases and shall indemnify and hold harmless District, its successors and assigns, and the directors, officers, employees and agents of District and their successors and assigns (collectively, the "Indemnitees") from all claims, losses, harm, costs, liabilities, damages and expenses (including, but not limited to, reasonable attorneys' fees incurred on such claims and in proving the right to indemnification) relating to the services arising (whether before or after completion of the Services) out of any act, error or omission of any of the following: Consultant; Consultant's subconsultants of any tier; the directors, officers, employees or agents of Consultant or any of its subconsultants of any tier; or anyone acting on Consultant's behalf in connection with the Services or this Agreement ("Indemnitors"). However, to the extent that such claims, losses, harm, costs, liabilities, damages and expenses are caused by or are resulting from the concurrent negligence of (i) the Indemnitees or the indemnitees' agents or employees, and (ii) the Indemnitor or the indemnitors' agents or employees, this indemnity obligation is enforceable only to the extent of the Indemnitors' negligence. Consultant also shall not be required to so indemnify any of the Indemnitees against liability or damages caused by or resulting

from the sole negligence of the Indemnitees. The indemnification obligation under this paragraph shall not be affected by any limitation on the amount or type of damages, compensation or benefits payable by or for Consultant or any subconsultant under any worker's compensation act, including Title 51, RCW, any disability benefit acts, or any other employee benefit acts. Consultant and any subconsultant hereby waive, for themselves and their successors, any right to claim such limitation as a defense, set off, or other reduction of rights to indemnification under this paragraph. **Consultant further agrees that this waiver has been mutually negotiated by the parties.**

6.2 Workers' Compensation. As to the Indemnitees identified above only, Consultant expressly waives any immunity or limitations (e.g., on the type or amount of damages, compensation, benefits or liability payable by Consultant) that might otherwise be afforded under any industrial insurance, Workers' compensation, disability benefit or similar law, rule, regulation or order of any governmental authority having jurisdiction (including, but not limited to, the Washington Industrial Act, Title 51 of the Revised Code of Washington). By executing this Agreement, Consultant acknowledges that the foregoing waiver has been mutually negotiated by the parties.

6.3 Patent; Copyright. Consultant releases and shall defend, indemnify and hold harmless the Indemnitees from all claims, losses, harm, costs, liabilities, damages, expenses (including, but not limited to, reasonable attorneys' fees) and royalties arising (whether before or after completion of the Services) out of or in connection with any claim, action, suit or proceeding based upon infringement of any patent, copyright, trade secret or other proprietary right or upon the wrongful use of any confidential or proprietary concept, method, process, product, writing, information or other item and arising out of or in connection with performance of the Services or the use or intended use of any of the Services. Further, if any of the Services or any use or intended use of the Services constitutes an infringement of any patent, copyright, trade secret or other proprietary right or the wrongful use of any confidential or proprietary concept, method, process, product, writing, information or other item, Consultant shall at its expense either procure for the Indemnitees the right to use the infringing item, replace the infringing item with a substantially equal but noninfringing item or modify the infringing item so that it becomes noninfringing; provided, however, that this paragraph 6.3 does not apply to any claim, action, suit or proceeding based upon infringement which is related to any materials or equipment designated solely by District for use by the District and not designed by the Consultant.

ARTICLE 7 - INSURANCE

7.1 Workers' Compensation; Employer's Liability Insurance. Consultant shall, at its sole expense, require that, with respect to all persons performing the Services, Consultant and its subconsultants maintain in effect at all times during performance of the Services coverage or insurance in accordance with the applicable laws relating to Workers' compensation and employer's liability insurance (including, but not limited to, the Washington Industrial Insurance Act and the laws of the state in which any such person was hired).

7.2 Liability Insurance. In addition, Consultant shall, at its sole expense, maintain in effect at all times during performance of the Services and for a period of at least three (3) years after completion thereof such insurance as will protect Consultant and the District from all claims, losses, harm, costs, liabilities, damages and expenses arising out of property damage or personal injury (including death) that may occur in connection with performance of the Services. Consultant shall promptly furnish to District upon request certificates of insurance and other evidence (such as copies of insurance policies and Certificates of Compliance issued by the Washington State Department of Labor and Industries) of the insurance required under this Article 7. Without limitation of the foregoing, such insurance shall include personal injury (including death) and property damage combined insurance with limits of \$1,000,000 CSL each occurrence and annual aggregate for the following coverages:

- (a) Commercial general liability/general (including premises operations, completed operations, blanket/contractual, broad form property damage and contractor's protective).
- (b) Commercial auto liability (including owned, hired and nonowned).
- (c) Professional liability (E & O)

7.3 Additional Insured; Subrogation. Any policy of insurance required under this Article shall name the District, its employees, directors, officers and agents ("Indemnitees") additional insureds and contain a

waiver of the insurer's right of subrogation against the Indemnitees. To the full extent permitted by its policies, Consultant hereby waives such rights of subrogation. Such policies shall not be terminated or canceled without giving forty-five (45) days' advance written notice thereof to District.

ARTICLE 8 - CHANGES

8.1 Notice. District may at any time, by written notice thereof to Consultant, make changes in the Services to be performed under this Agreement (including, but not limited to, additions to or deletions from any Services, suspension of performance, and changes in the schedule and location of performance). Consultant shall, within ten (10) days after receipt of notice of any change which Consultant believes to be outside the scope of Services, give District written notice of such belief, otherwise the change shall be deemed to be within the scope of Services.

8.2 Adjustment. If any change under paragraph 8.1 causes an increase or decrease in the cost of or the time required for performance of the Services, an equitable adjustment in the compensation and/or schedule under this Agreement shall be made to reflect such increase or decrease and this Agreement shall be modified in writing accordingly, and only so long as Consultant provides timely notice as required by Section 8.1. Such equitable adjustment shall constitute full compensation to Consultant for such change.

ARTICLE 9 - TERMINATION OF THIS AGREEMENT

9.1 Termination of Agreement by District for Cause.

9.1.1 If Consultant shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if Consultant shall violate any of the provisions of this Agreement, or if Consultant becomes insolvent or the subject of any proceeding under bankruptcy, insolvency or receivership law or makes an assignment for the benefit of creditors, District shall thereupon have the right to terminate this Agreement by giving written notice of such termination and specifying the effective date thereof as a certain date at least seven (7) days after the notice, during which period Consultant shall have the right to cure the default.

9.1.2 Whether or not this Agreement is so terminated, Consultant shall be liable to District for any damage or loss resulting from such failure or violation by Consultant described in subparagraph 9.1.1, including, but not limited to, costs in addition to those agreed to herein for prosecuting Services to completion and delay damages paid or incurred by District. The rights and remedies of District provided by this paragraph are cumulative with and in addition to any other rights and remedies provided by law or this Agreement.

9.1.3 District shall be liable to Consultant for Consultant's just and equitable compensation for any satisfactory services completed, but in no event shall this compensation exceed the percentage of total services satisfactorily completed at the time of termination times the total compensation payable under this Agreement less any damage or loss described in Section 9.1.2. District may withhold payments to Consultant equal to any claim made in writing by District for the purpose of set-off until such time as the exact amount of damages due District from Consultant is determined. In no event shall District be liable for any consequential or incidental damages, including, but not limited to, loss of profit on this or other projects or of reputation incurred by Consultant as a result of such termination. If District purports to terminate all or a part of this Agreement for cause, and it is determined that insufficient cause existed, such termination shall be deemed to have been a termination for convenience of District pursuant to paragraph 9.2, and the rights of the parties shall be determined accordingly.

9.2 Termination for Convenience by District. District may, at its option, terminate all or a portion of the services not then performed under this Agreement at any time by so notifying Consultant in writing. In that event, all finished or unfinished documents and other materials as described above shall, at the option of District, become its property upon compensation therefor in accordance with this Agreement, and District shall indemnify and hold harmless Consultant and its agents and employees from any claims arising from District's subsequent use of such documents and other materials, except to the extent Consultant is solely or concurrently negligent. If the Agreement is terminated by District as provided herein, Consultant's compensation for the Services shall be (i) that portion of the compensation for services properly performed prior to termination, and (ii) proper compensation for Reimbursable Expenses. District shall not be liable for any consequential or incidental damages, including, but not

limited to, loss of profits on this or other projects or of reputation incurred by Consultant as a result of such termination.

ARTICLE 10 - MISCELLANEOUS

10.1 **Time.** Time is of the essence with regard to performance of this Agreement.

10.2 **Subcontracting.** Except for any services to be performed by subconsultants specified in Exhibit A, Consultant shall not (by contract, operation of law or otherwise) delegate or subcontract performance of any Services to any other person or entity without the prior written consent of District.

10.3 **Independent Contractor.** Consultant shall at all times be an independent contractor and not an agent or representative of District with regard to performance of the Services as authorized by this Agreement. Consultant shall not represent that it is, or hold itself out as, an agent or representative of District. The Consultant shall perform the Services in accordance with its own methods and in an orderly and professional manner. The Consultant is not authorized on behalf of the District to enter into any agreements, to waive or modify any provisions of the District's contracts with third parties, to authorize payment on behalf of the District, or to receive or accept contractual notices, to accept or approve any change in the price or time of contract on behalf of the District, or to otherwise bind the District by its actions. The District shall not be responsible for fringe benefits, withholding, paying of any taxes on behalf of the Consultant or its employees or agents, or remuneration above the amount stipulated in this Agreement.

10.4 **Nonwaiver.** The failure of either party to insist upon or enforce strict performance by the other party of any of the provisions of this Agreement or to exercise any rights under this Agreement shall not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon any such provisions or rights in that or any other instance.

10.5 **Assignment.** Neither District nor Consultant shall assign, sublet or transfer any interest in this Agreement without the written consent of the other.

10.6 **Entire Agreement.** This Agreement represents the entire and integrated agreement between District and Consultant and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both District and Consultant.

10.7 **Applicable Law; Venue.** This Agreement shall be interpreted, construed, and enforced in all respects in accordance with the laws of the State of Washington without regard to its choice of law provisions. Venue in any litigation shall be in King County, Washington.

10.8 **Conflicts.** The Consultant has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner with the performance of the Services. The Consultant will not employ any person in the performance of this Agreement having any such interest.

10.9 **Mediation.** Any dispute arising out of or relating to this Agreement, or the breach thereof, shall first be subject to mediation under the Construction Mediation Rules of the American Arbitration Association ("AAA"). To initiate the mediation process, a party shall submit a written mediation request to the other party. If the parties are unable to agree to a mediator within thirty (30) days after the receipt of the written request for mediation, either party may submit a request for mediation to the AAA. The Consultant may not bring litigation unless it has been properly addressed in the above dispute resolution procedure.

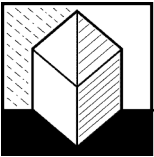
NEW ADDITION - MADISON MIDDLE SCHOOL

Building Envelope Consulting Fee Matrix

Revised: 10/16/2020

Fee Matrix Summary

Phase 1 Building Envelope Design Phase	\$ 45,310.00
Phase 2 Building Envelope Bid Phase	\$ 9,140.00
Phase 3 Building Envelope Construction Phase	\$ 190,737.00
Total Fee Amount	\$ 245,187.00



BUILDING ENVELOPE
TECHNOLOGY & RESEARCH

PROFESSIONAL ROOFING, WATERPROOFING,
CLADDING, AND FENESTRATION CONSULTANTS

PHASE 1		BUILDING ENVELOPE DESIGN PHASE					
		Technical Director	Senior Building Envelope Consultant	Building Envelope Technologist	Part-time Monitor / CAD Illustrator	Technical Production Administration	TOTALS
Deliverable Task	Task Description	\$ 195.00	\$ 185.00	\$ 155.00	\$ 98.00	\$ 75.00	
1	Review Schematic Drawings for the new addition and then provide technical guidance to the Project Architect and SPS Team regarding recommended systems to be specified. BET&R will participate in virtual meetings to review the building envelope systems to be specified and discuss building envelope system continuity and transitioning between the building envelope components regarding the new classroom addition portion of the building.	6	12	14		2	\$ 5,710.00
2	BET&R will perform a technical review of the Architect's building envelope-related addition and existing building roof replacement drawings, detail drawings, and technical specifications when the Project Documents are 65% complete. These reviews can be accomplished via digital Bluebeam red-line edits and utilizing a design comments matrix or matrices for ease of reference for the Project Team. We will also include recommendations for additional building envelope detailing, as may be necessary.	5	42	40		6	\$ 15,395.00
3	BET&R will perform a second technical review of the Architect's new classroom wing addition's building envelope-related and existing building roof replacement detail drawings and technical specifications when the Project Documents are 95% complete with the purpose of confirming the 65% comments were entered, check for proper detailing on additional drawings, and for checking the building envelope-related technical specifications and drawings for consistency and accuracy. This 95% technical review can be accomplished via digital Bluebeam red-line edits and utilizing a design comments matrix or matrices for ease of reference for the Project Team.	8	36	45		6	\$ 15,645.00
4	Following each of these technical reviews, BET&R anticipates participating in a meeting with the Architect and Owner Team to discuss BET&R's technical recommendations and the technical red-line edits to Drawings & Specifications.		12	8		2	\$ 3,610.00
5	Prepare five (5) Isometric Details for Complex Building Envelope configurations.	2	11		25	1	\$ 4,950.00
Phase 1 Subtotal		21	113	107	25	17	
Phase 1 Total		\$ 4,095.00	\$ 20,905.00	\$ 16,585.00	\$ 2,450.00	\$ 1,275.00	\$ 45,310.00
							\$ 45,310.00

OFFICE ADDRESS | 4000 Delridge Way SW 1st Floor, Seattle, WA 98106

PHONE | 206.405.3455 FAX | 206.405.3458 WEBSITE | bet-r.com

NEW ADDITION - MADISON MIDDLE SCHOOL		Building Envelope Consulting Fee Matrix				Revised: 10/16/2020	
PHASE 2	BUILDING ENVELOPE BID PHASE						
		Technical Director	Senior Building Envelope Consultant	Building Envelope Technologist	Part-time Monitor / CAD Illustrator	Technical Production Administration	TOTALS
Deliverable Task	Task Description	\$ 195.00	\$ 185.00	\$ 155.00	\$ 98.00	\$ 75.00	
1	Prepare for and attend Pre-Bid Meeting and field building envelope questions during meeting.		5	8		1	\$ 2,240.00
2	BET&R will assist the Architect and Owner to address bidding Contractors' questions related to the new classroom addition's building envelope. BET&R will review and provide recommendations on building-envelope related substitution requests, as requested by the Architect. BET&R also anticipates reviewing one (1) building-envelope related addendum, prepared by the Architect, to help integrate technical answers to contractors' potential questions into the Project Manual, as may be appropriate.	4	8	12		1	\$ 4,195.00
3	Assist Architect and SPS with reviewing bids and address Owner and Architect's questions regarding bid alternate(s) selection and award of contract.	2	6	4		2	\$ 2,705.00
		6	19	24	0	4	
Phase 2 Subtotal		\$ 1,170.00	\$ 3,515.00	\$ 3,720.00	\$ -	\$ 300.00	\$ 9,140.00
Phase 2 Total							\$ 9,140.00

NEW ADDITION - MADISON MIDDLE SCHOOL		Building Envelope Consulting Fee Matrix				Revised: 10/16/2020	
PHASE 3		BUILDING ENVELOPE CONSTRUCTION PHASE					
		Technical Director	Senior Building Envelope Consultant	Building Envelope Technologist	Part-time Monitor / CAD Illustrator	Technical Production Administration	TOTALS
Deliverable Task	Task Description	\$ 195.00	\$ 185.00	\$ 155.00	\$ 98.00	\$ 75.00	
1	BET&R will perform technical review of up to eight (8) building envelope-related product Submittal packages. Architect to assemble packets to facilitate efficient review by BET&R.	4	12	25	5	16	\$ 8,565.00
2	Attend and assist Architect and Owner Team with conducting pre-installation meetings with the General Contractor and envelope-related Sub-contractors. The focus of these pre-cons/meetings will be to review and discuss building envelope requirements, specifications, and detail drawings, submittal status, and manufacturer's installation requirements, weather-related items: - One (1) Waterproofing; - One (1) Cladding; - One (1) Fenestration; - One (1) Roofing.	4	4	20	28	4	\$ 7,664.00
3	BET&R has included time for RFI review and response to twenty (20) RFIs regarding the building-envelope installation. This will allow for envelope-related questions to be addressed by the Building Envelope Consultant, in a timely manner and consistent with the Project Documents and good industry practice.	5	30	36	20	10	\$ 14,815.00
4	In-situ mock-ups are important to verify the Contractor's understanding of the design details, proper installation and sequencing of materials, and integration of envelope systems, to see that they are suitable as mocked-up in-situ and will perform as expected, prior to Contractor installing the remainder of the components. BET&R anticipates reviewing the following mock-ups: Mock ups may be done in conjunction with other site visits as possible. - One (1) Below-grade Waterproofing Mock-up; - One (1) Underslab Vapor Retarder Mock-up; - One (1) Rough-Opening Flexible Flashing and Window Mock-up; - One (1) Storefront Mock-up; - One (1) Brick Veneer Cladding and Flashing Mock-up; - One (1) Sheet Metal Cladding and Flashing Mock-up; and - One (1) Low-Slope Roofing and Sheet Metal Flashing Mock-up.	8	6	21	35	10	\$ 10,105.00
5 and 6 Description	BET&R will conduct technical monitoring site visits to see that the building envelope work is being performed per the Project Documents, and that the quality of the Contractor's work is in keeping with Project requirements, industry standards, as well as, to assist with technical issues that may arise during the Project. It must be understood that the Contractor will be responsible for their own quality control and quality assurance of their Sub-contractors' work during construction. A formalized Field Report that includes photographs, narrative descriptions, recommendations, and action items that require follow-up corrective action by the Contractor and tracking will be prepared by the building envelope monitor for the site visits. BET&R recommends that a standard protocol be mutually agreed upon by the Project Team for addressing outstanding Action Items, and their corrective actions, that are documented in BET&R's Field Reports. Based on the Architectural Renderings and or Schematic Drawings, BET&R anticipates conducting the following part-time monitoring site visits:						\$ -
5	On-Site Monitoring and Field Report Preparation for: - Below-grade Waterproofing and Underslab Vapor Retarder (eight [8] site visits); - Roofing (twenty [20] site visits) Anticipate (28) site visits.	20	14	42	308	28	\$ 45,284.00
6	Part-time, Spot Check, On-Site Monitoring and Field Report Preparation for: - Sheet Metal and Masonry Cladding; and - Fenestration and Related Flashings; Anticipate thirty (30) site visits.	8	30	45	330	45	\$ 49,800.00
7	Conduct Pre-Completion Survey and Prepare Punchlist: As the roofing, cladding, fenestration, and waterproofing Project work nears completion, BET&R will conduct a building envelope Pre-Completion Survey and generate a Punch List of items needing attention, completion, and/or correction prior to the Project being deemed complete.	4	15	40	40	10	\$ 14,425.00

NEW ADDITION - MADISON MIDDLE SCHOOL		Building Envelope Consulting Fee Matrix				Revised: 10/16/2020	
PHASE 3		BUILDING ENVELOPE CONSTRUCTION PHASE - CONTINUED					
		Technical Director	Senior Building Envelope Consultant	Building Envelope Technologist	Part-time Monitor / CAD Illustrator	Technical Production Administration	TOTALS
Deliverable Task	Task Description	\$ 195.00	\$ 185.00	\$ 155.00	\$ 98.00	\$ 75.00	
8	Conduct Completion Survey: Once the Contractor notifies the Project Team that their Punchlist work and corrections are complete, BET&R will perform a Completion Survey of the building envelope to verify whether or not the Punchlist items have been addressed.	2	10	28	35	10	\$ 10,760.00
9	Attend Project Progress Meetings with Owners' Project Manager and Project Team, and participate in Project on-site walks. Provide technical building envelope consulting during the construction phase.	8	40	40	20		\$ 17,120.00
10	Review Building Envelope Portions of O&M Manual and request Contractor to make corrections and/or provide missing sections, warranties, and/or other items on behalf of SPS.	8	12	14		4	\$ 6,250.00
11	Coordination and consulting services regarding Window Water Testing.		4	5	8	2	\$ 2,449.00
		71	177	316	829	139	
Phase 3 Subtotal		\$ 13,845.00	\$ 32,745.00	\$ 48,980.00	\$ 81,242.00	\$ 10,425.00	\$ 187,237.00
Testing		Window Water Testing ASTM E1105 with Chamber					\$ 3,500.00
Phase 3 Total							\$ 190,737.00

**CONTRACT
FOR
CONSULTING SERVICES**

Owner: **Seattle School District No. 1,**

and

Consultant:
Building Envelope Technology &
Research (BET&R)

Tax I.D. #: 91-1943254

**Building Envelope Consultant – Van
Asselt Interim Site New Addition Project**

Contract No. **P1796**

CONSULTING SERVICES CONTRACT

This Agreement, Contract No **P1796** made by and between Seattle School District No. 1, a Washington municipal corporation ("District" or "Owner"), and ***Building Envelope Technology & Research***. ("Consultant"). District and Consultant agree as follows:

1. SCOPE OF WORK AND SCHEDULE

- a. Consultant shall provide professional and related services as described in Exhibit A hereto, on the schedule set forth therein ("Services"). Consultant is authorized to proceed (check one):

☒
☐

Upon receipt of this signed Agreement;
On _____ 20__.

- b. Unless modified by a change order, this contract shall be completed by *(Date)* and the contract shall terminate upon such completion.

2. CONTRACT PRICE

- a. ☒ District agrees to pay Consultant, on a time and expenses basis, a sum not to exceed: ***Four Hundred and Seventeen Thousand Eight Hundred and Three Dollars (\$417,803)*** (the "Maximum Authorized Compensation") payable according to Consultant's schedule of fees and reimbursable expenses specified in Exhibit B hereto. Compensation will be paid only to the extent that Consultant presents documented evidence of fees earned and expenses incurred during the period for which payment is requested, and in no case shall the total compensation exceed the Maximum Authorized Compensation.

or

- b. ☐ District agrees to pay Consultant a lump sum of _____ (\$ _____) as full and complete compensation for all services hereto, exclusive of reimburseable expenses described in Exhibit B, if any. Compensation for reimbursables will be paid only to the extent that Consultant presents documented evidence of expenses incurred during the period for which payment is requested.

Consultant shall submit its invoices in the form and according to the schedule prescribed in the General Conditions, Exhibit C, to the address listed in paragraph 3. The amount paid shall constitute complete compensation for all costs and fees incurred, including any expenses for meals, travel, lodging and Washington State sales tax, if applicable. Additional services must be authorized in writing by District prior to performance. A W-9 form must be attached if Consultant is an individual.

3. COMMUNICATIONS

The District's representative for this contract is Richard Best. All correspondence, requests, notices and other communications to District, in relation to this Agreement, shall be in writing and shall be delivered to:

To the District: **Richard Best**
Director Capital Projects
Seattle School District No. 1
Mail Stop: **22-331**
PO Box 34165
Seattle, WA 98124-1165

Physical Location:
2445 Third Avenue South
Seattle, WA 98134

To the Consultant:
Jim Carlson
Technical Director
Building Envelope Technology
& Research (BET&R)
4000 Delridge Way SW, 1st Floor
Seattle, WA 98106

Either party may from time to time change such address by giving the other party notice of such change in accordance with the provisions of this Paragraph 3.

4. CONSULTANT'S REPORTS

Consultant shall provide reports as requested by District in a format proposed by Consultant and approved by District.

5. PERSONNEL

Consultant shall assign the personnel listed below to the performance of the Work and shall not (for so long as they remain in Consultant's employ) reassign or remove any of them without the prior written consent of District.

Name	Title	Role
Jim Carlson	Technical Director	Principal Consultant
Juan Aguirre	Technologist/Administrator	Design Review/PM
Martha Carlson	Intake Manager	Project Coordinator

6. THIS AGREEMENT INCLUDES THE FOLLOWING ATTACHMENTS:

Exhibit	Topic
A	Scope of Services and Schedule
B	Fees and Reimbursable Costs
C	General Conditions of Personal Services Contract (Short Form) revision date of September 17, 2019

Modifications and revisions, if any, to the General Conditions are made by the parties in an attached Exhibit D, if included.

CONSULTANT:

DISTRICT:

Signature

Signature

Jim Carlson

Typed Name (Above)

Jolynn Berge

Typed Name (Above)

Principal Consultant

Title

CFO/Superintendent's Designee

(Signing Authority)
Title

Date Signed

Date Signed

Building Envelope Technology & Research

Company Name

91-1943254

Employer I.D. No. or Social Security No.

SCOPE OF SERVICES AND SCHEDULE

See Attached Building Envelope Technology & Research Document titled Van Asselt Addition Building Envelope Consulting Fee Matrix, Revised 10/16/2020.

FEES AND REIMBURSABLE COSTS

See Exhibit A for identified fee and reimbursable costs associated with each task.

SERVICES CONTRACT

GENERAL CONDITIONS (SHORT FORM)

ARTICLE 1 - CONSULTANT'S SERVICES AND RESPONSIBILITIES

1.1 Services. Consultant shall furnish all personnel, equipment and materials for the performance of all services under this Agreement. Such services, together with all drawings, specifications, materials, information, property, and other items provided or to be provided to District under this Agreement, are sometimes collectively referred to herein as the “Services.”

1.2 Manner of Performance. Consultant's Services shall be performed with the degree of care and diligence ordinarily exercised under similar circumstances in the applicable disciplines and as expeditiously as is consistent with such standards of professional skill and care and the orderly progress of the Services. At the time of performance, Consultant shall be properly licensed, equipped, organized and financed to perform the Services.

1.3 District's Representatives. District may designate one or more individuals or firms as its representative for administration of this contract. If a representative is assigned by District, it shall not have authority to assign additional Services or to reduce the Services to be performed by the Consultant under this contract.

1.4 Correction of Noncompliances. Consultant shall, at no cost to District, promptly and satisfactorily correct any Services found to be defective or not in compliance with the requirements of this Agreement or the requirements of any governmental authority, law, regulations or ordinances. If the Consultant fails to initiate corrections within fifteen (15) days of receipt of written notice from the District, the District may do so, by contract or otherwise, and recover (e.g., by offset against the compensation otherwise payable under this contract) from the Consultant the cost it incurred. The obligations of the Consultant to correct nonconforming Services shall not in any way limit any other obligations of the Consultant. The District's right to make corrections and charge the Consultant for them is in addition to any other rights and remedies available to the District under this Agreement or otherwise by law and shall in no event be construed or interpreted as obligating the District to make any correction of defective or nonconforming Services.

1.5 Consultant's Personnel. All personnel employed by Consultant engaged in the Services and Services shall be fully qualified and shall be authorized under applicable federal, state, and local law to perform such Services and Services. Consultant shall, if so requested by District, remove from the performance of the Services any person District reasonably deems incompetent. Failure of District to so object shall not relieve Consultant of responsibility for such person. If any personnel are reassigned or replaced by Consultant upon District's request, Consultant shall replace them with personnel approved by District.

1.6 Consultant Employee Background. Pursuant to RCW 28A.400.330, Consultant shall prohibit from providing Services at a public school where there may be contact with children, any employee of Consultant who has pled guilty to or been convicted of any felony crime involving the physical neglect of a child under Chapter 9A.42 RCW, the physical injury or death of a child under Chapter 9A.32 or 9A.36 RCW (except motor vehicle violations under Chapter 46.61 RCW), sexual exploitation of a child under Chapter 9.68A RCW, sexual offenses under Chapter 9A.44 RCW where a minor is the victim, promoting prostitution of a minor under Chapter 9A.88 RCW, the sale or purchase of a minor child under RCW 9A.64.030, or violation of similar laws of another jurisdiction. Failure to comply with this section shall be grounds for District to immediately terminate the contract for cause.

1.7 Compliance With Laws

1.7.1 General. Consultant shall comply, and be certain that its Services comply, with all applicable laws, ordinances, regulations, resolutions, licenses of record, permits of record, and other requirements applicable to the Services, in effect at the time of performance of the Services and as interpreted by cognizant authorities,

including but not limited to those related to the Americans with Disabilities Act and worker and site safety laws and regulations. Consultant shall furnish such documents as may be required to effect or evidence such compliance. All laws, ordinances, regulations, and resolutions required to be incorporated in agreements of this character are incorporated in this Agreement by this reference.

1.7.2 Nondiscrimination.

A. Applicable state laws concerning prevailing wages, hours, workers' compensation and other conditions of employment are called to the attention of bidders for their compliance. Bidder shall include in the bid any filing fees required to comply with applicable labor laws.

B. During the term of this Agreement, Consultant shall comply with applicable local, state and federal laws prohibiting discrimination with regard to race, creed, color, national origin, sex, sexual orientation, marital status, age or the presence of any sensory, mental or physical handicap.

C. Any consultant or contractor who is in violation of these requirements, or an applicable nondiscrimination program shall be barred forthwith from receiving awards of any purchase order from Seattle School District No. 1 or shall be subject to other legal action or contract cancellation unless satisfactory showing is made that discriminatory practices have terminated, and that reoccurrence of such acts is unlikely. This includes compliance with Section 503 and 504 of the Vocational Rehabilitation Act of 1973 and Sections 2012 and 2014 of the Vietnam Era Veterans Readjustment Act of 1974.

1.7.3 Debarment

A. Consultant, by accepting the contract, warrants that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions (defined as not being eligible to receive federal funds) by any local, state or federal department or agency. Consultant also acknowledges they are not debarred under School Board Policy No. 6973 in contracting with the District currently or on future contracts.

ARTICLE 2 - PAYMENTS TO CONSULTANT

2.1 The compensation shall be made no more frequently than monthly and if paid on a lump sum basis shall be in proportion to the Services performed. Each of Consultant's invoices shall set forth in a detailed and clear manner a complete description of the Services covered thereby, on a form substantially similar to that customarily used by District and shall be supported by such receipts, documents, and other information as District may reasonably request. The invoice shall include separate listings of Services for particular schools or programs, if requested by the District. District shall pay each of Consultant's invoices within thirty (30) days after District's receipt, provided that all required documentation is included and accurate.

ARTICLE 3 - REIMBURSABLE EXPENSES

3.1 Reimbursable Expenses are in addition to the hourly rates for Services and include actual reasonable expenditures made by Consultant and Consultant's employees and subconsultants in the interest of the Project for the expenses listed in the following subparagraphs. Consultant represents that Schedule B sets forth Consultant's best estimate of the Reimbursable Expenses under this Agreement. Notwithstanding any other provision of this Agreement to the contrary, District shall not be obligated to pay Consultant, and Consultant shall not invoice District for, any Reimbursable Expenses which exceed Schedule B, unless authorized by a budget approved in writing by District. District hereby approves the attached schedule as an initial budget for the Reimbursable Expenses. Consultant shall immediately notify District if, in Consultant's best judgment, the then current estimate of the Reimbursable Expenses exceeds the approved budget therefor. Travel expenses are not Reimbursable Expenses, provided, however, that travel more than 75 miles from the site of the Services and approved in writing by the District is a Reimbursable Expense at the Internal Revenue Service allowed rate.

ARTICLE 4 - CONSULTANT'S ACCOUNTING RECORDS

4.1 The Consultant's records of performance of Services shall at all times be subject to review by and the approval of District, but the making of (or failure or delay in making) such review or approval shall not relieve Consultant of responsibility for performance of the Services in accordance with this Agreement. Records of Reimbursable Expenses shall be kept in accordance with generally accepted accounting principles.

4.2 Consultant shall promptly furnish District with such information related to the Services as may be requested by District. Until the expiration of three (3) years after final payment of the compensation payable under this Agreement, Consultant shall provide District access to (and District shall have the right to examine, audit and copy) all of Consultant's books, documents, papers and records which are related to the Services or this Agreement. Consultant agrees to provide reasonable cooperation with any inquiry by either the District or State Auditor relating to the performance of the contract. Failure to cooperate may be cause for debarment from award of future contracts and shall act as a waiver of any claim for any further compensation under this contract.

ARTICLE 5 - DISTRICT OWNERSHIP AND USE OF DOCUMENTS

5.1 District Ownership. All drawings, specifications, materials, information, property and other items obtained or developed in connection with the Services or through the Reimbursable Expenses (including, but not limited to, documents, designs, drawings, plans, specifications, calculations, maps, sketches, notes, reports, data, estimates, reproductions, renderings, models, mock-ups, completed Services and Services in progress), together with all rights associated with ownership of such items (such as copyright, patent, trade secret and other proprietary rights), shall become the property of District when so obtained or developed or when such expense is incurred, as the case may be, whether or not delivered to District. Consultant shall deliver such items, together with all materials, information, property and other items furnished by District or the cost of which is included in the Reimbursable Expenses, to District upon request and in any event upon the completion, termination or cancellation of this Agreement. However, Consultant may at its own expense retain copies of any such items for its own records or for use in the furtherance of its professional knowledge.

5.2 License. District shall have a permanent, assignable, nonexclusive, royalty-free license and right to use all concepts, methods, processes, products, writings and other items (whether or not copyrightable or patentable) developed or first reduced to practice in the performance of the Services or otherwise whether by Consultant, any of its subconsultants, or any employee(s) of Consultant in connection with this Agreement. District shall hold Consultant or its subconsultants harmless for District's reuse of documents on a project other than this Project unless the Consultant is retained by the District for such other Project.

5.3 Nondisclosure. Consultant shall not, without the prior written consent of District, disclose to third parties any information obtained in connection with the Services unless: (a) the information is known to Consultant prior to obtaining the same directly or indirectly from District or in connection with the Services; (b) the information is in the public domain at the time of disclosure by Consultant; or (c) the information is obtained by Consultant from a third party who did not obtain the same directly or indirectly from District or in connection with the Services. If so requested by District, Consultant shall obtain from its employees, subconsultants and their respective employees nondisclosure agreements in the form and content satisfactory to District. Submission or distribution to meet official regulatory requirements or for other purposes in connection with the activity for which the Services were rendered is not to be construed as publication in derogation of District's or Consultant's rights.

ARTICLE 6 - RELEASE, INDEMNIFICATION AND HOLD HARMLESS

6.1 Release and Indemnification. Consultant releases and shall indemnify and hold harmless District, its successors and assigns, and the directors, officers, employees and agents of District and their successors and assigns (collectively, the "Indemnitees") from all claims, losses, harm, costs, liabilities, damages and expenses (including, but not limited to, reasonable attorneys' fees incurred on such claims and in proving the right to indemnification) relating to the services arising (whether before or after completion of the Services) out of any act, error or omission of any of the following: Consultant; Consultant's subconsultants of any tier; the directors, officers, employees or agents of Consultant or any of its subconsultants of any tier; or anyone acting on Consultant's behalf in connection with the Services or this Agreement ("Indemnitors"). However, to the extent that such claims, losses, harm, costs, liabilities, damages and expenses are caused by or are resulting from the concurrent negligence of (i) the Indemnitees or the indemnitees' agents or employees, and (ii) the Indemnitor or the indemnitors' agents or

employees, this indemnity obligation is enforceable only to the extent of the Indemnitors' negligence. Consultant also shall not be required to so indemnify any of the Indemnitees against liability or damages caused by or resulting from the sole negligence of the Indemnitees. The indemnification obligation under this paragraph shall not be affected by any limitation on the amount or type of damages, compensation or benefits payable by or for Consultant or any subconsultant under any worker's compensation act, including Title 51, RCW, any disability benefit acts, or any other employee benefit acts. Consultant and any subconsultant hereby waive, for themselves and their successors, any right to claim such limitation as a defense, set off, or other reduction of rights to indemnification under this paragraph. **Consultant further agrees that this waiver has been mutually negotiated by the parties.**

6.2 Workers' Compensation. As to the Indemnitees identified above only, Consultant expressly waives any immunity or limitations (e.g., on the type or amount of damages, compensation, benefits or liability payable by Consultant) that might otherwise be afforded under any industrial insurance, Workers' compensation, disability benefit or similar law, rule, regulation or order of any governmental authority having jurisdiction (including, but not limited to, the Washington Industrial Act, Title 51 of the Revised Code of Washington). By executing this Agreement, Consultant acknowledges that the foregoing waiver has been mutually negotiated by the parties.

6.3 Patent; Copyright. Consultant releases and shall defend, indemnify and hold harmless the Indemnitees from all claims, losses, harm, costs, liabilities, damages, expenses (including, but not limited to, reasonable attorneys' fees) and royalties arising (whether before or after completion of the Services) out of or in connection with any claim, action, suit or proceeding based upon infringement of any patent, copyright, trade secret or other proprietary right or upon the wrongful use of any confidential or proprietary concept, method, process, product, writing, information or other item and arising out of or in connection with performance of the Services or the use or intended use of any of the Services. Further, if any of the Services or any use or intended use of the Services constitutes an infringement of any patent, copyright, trade secret or other proprietary right or the wrongful use of any confidential or proprietary concept, method, process, product, writing, information or other item, Consultant shall at its expense either procure for the Indemnitees the right to use the infringing item, replace the infringing item with a substantially equal but noninfringing item or modify the infringing item so that it becomes noninfringing; provided, however, that this paragraph 6.3 does not apply to any claim, action, suit or proceeding based upon infringement which is related to any materials or equipment designated solely by District for use by the District and not designed by the Consultant.

ARTICLE 7 - INSURANCE

7.1 Workers' Compensation; Employer's Liability Insurance. Consultant shall, at its sole expense, require that, with respect to all persons performing the Services, Consultant and its subconsultants maintain in effect at all times during performance of the Services coverage or insurance in accordance with the applicable laws relating to Workers' compensation and employer's liability insurance (including, but not limited to, the Washington Industrial Insurance Act and the laws of the state in which any such person was hired).

7.2 Liability Insurance. In addition, Consultant shall, at its sole expense, maintain in effect at all times during performance of the Services and for a period of at least three (3) years after completion thereof such insurance as will protect Consultant and the District from all claims, losses, harm, costs, liabilities, damages and expenses arising out of property damage or personal injury (including death) that may occur in connection with performance of the Services. Consultant shall promptly furnish to District upon request certificates of insurance and other evidence (such as copies of insurance policies and Certificates of Compliance issued by the Washington State Department of Labor and Industries) of the insurance required under this Article 7. Without limitation of the foregoing, such insurance shall include personal injury (including death) and property damage combined insurance with limits of \$1,000,000 CSL each occurrence and annual aggregate for the following coverages:

- (a) Commercial general liability/general (including premises operations, completed operations, blanket/contractual, broad form property damage and contractor's protective).
- (b) Commercial auto liability (including owned, hired and nonowned).
- (c) Professional liability (E & O)

7.3 Additional Insured; Subrogation. Any policy of insurance required under this Article shall name the District, its employees, directors, officers and agents ("Indemnitees") additional insureds and contain a waiver of the insurer's right of subrogation against the Indemnitees. To the full extent permitted by its policies, Consultant hereby waives such rights of subrogation. Such policies shall not be terminated or canceled without giving forty-five (45) days' advance written notice thereof to District.

ARTICLE 8 - CHANGES

8.1 Notice. District may at any time, by written notice thereof to Consultant, make changes in the Services to be performed under this Agreement (including, but not limited to, additions to or deletions from any Services, suspension of performance, and changes in the schedule and location of performance). Consultant shall, within ten (10) days after receipt of notice of any change which Consultant believes to be outside the scope of Services, give District written notice of such belief, otherwise the change shall be deemed to be within the scope of Services.

8.2 Adjustment. If any change under paragraph 8.1 causes an increase or decrease in the cost of or the time required for performance of the Services, an equitable adjustment in the compensation and/or schedule under this Agreement shall be made to reflect such increase or decrease and this Agreement shall be modified in writing accordingly, and only so long as Consultant provides timely notice as required by Section 8.1. Such equitable adjustment shall constitute full compensation to Consultant for such change.

ARTICLE 9 - TERMINATION OF THIS AGREEMENT

9.1 Termination of Agreement by District for Cause.

9.1.1 If Consultant shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if Consultant shall violate any of the provisions of this Agreement, or if Consultant becomes insolvent or the subject of any proceeding under bankruptcy, insolvency or receivership law or makes an assignment for the benefit of creditors, District shall thereupon have the right to terminate this Agreement by giving written notice of such termination and specifying the effective date thereof as a certain date at least seven (7) days after the notice, during which period Consultant shall have the right to cure the default.

9.1.2 Whether or not this Agreement is so terminated, Consultant shall be liable to District for any damage or loss resulting from such failure or violation by Consultant described in subparagraph 9.1.1, including, but not limited to, costs in addition to those agreed to herein for prosecuting Services to completion and delay damages paid or incurred by District. The rights and remedies of District provided by this paragraph are cumulative with and in addition to any other rights and remedies provided by law or this Agreement.

9.1.3 District shall be liable to Consultant for Consultant's just and equitable compensation for any satisfactory services completed, but in no event shall this compensation exceed the percentage of total services satisfactorily completed at the time of termination times the total compensation payable under this Agreement less any damage or loss described in Section 9.1.2. District may withhold payments to Consultant equal to any claim made in writing by District for the purpose of set-off until such time as the exact amount of damages due District from Consultant is determined. In no event shall District be liable for any consequential or incidental damages, including, but not limited to, loss of profit on this or other projects or of reputation incurred by Consultant as a result of such termination. If District purports to terminate all or a part of this Agreement for cause, and it is determined that insufficient cause existed, such termination shall be deemed to have been a termination for convenience of District pursuant to paragraph 9.2, and the rights of the parties shall be determined accordingly.

9.2 Termination for Convenience by District. District may, at its option, terminate all or a portion of the services not then performed under this Agreement at any time by so notifying Consultant in writing. In that event, all finished or unfinished documents and other materials as described above shall, at the option of District, become its property upon compensation therefor in accordance with this Agreement, and District shall indemnify and hold harmless Consultant and its agents and employees from any claims arising from District's subsequent use of such documents and other materials, except to the extent Consultant is solely or concurrently negligent. If the Agreement is terminated by District as provided herein, Consultant's compensation for the Services shall be (i) that portion of the compensation for services properly performed prior to termination, and (ii) proper compensation for

Reimbursable Expenses. District shall not be liable for any consequential or incidental damages, including, but not limited to, loss of profits on this or other projects or of reputation incurred by Consultant as a result of such termination.

ARTICLE 10 - MISCELLANEOUS

10.1 Time. Time is of the essence with regard to performance of this Agreement.

10.2 Subcontracting. Except for any services to be performed by subconsultants specified in Exhibit A, Consultant shall not (by contract, operation of law or otherwise) delegate or subcontract performance of any Services to any other person or entity without the prior written consent of District.

10.3 Independent Contractor. Consultant shall at all times be an independent contractor and not an agent or representative of District with regard to performance of the Services as authorized by this Agreement. Consultant shall not represent that it is, or hold itself out as, an agent or representative of District. The Consultant shall perform the Services in accordance with its own methods and in an orderly and professional manner. The Consultant is not authorized on behalf of the District to enter into any agreements, to waive or modify any provisions of the District's contracts with third parties, to authorize payment on behalf of the District, or to receive or accept contractual notices, to accept or approve any change in the price or time of contract on behalf of the District, or to otherwise bind the District by its actions. The District shall not be responsible for fringe benefits, withholding, paying of any taxes on behalf of the Consultant or its employees or agents, or remuneration above the amount stipulated in this Agreement.

10.4 Nonwaiver. The failure of either party to insist upon or enforce strict performance by the other party of any of the provisions of this Agreement or to exercise any rights under this Agreement shall not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon any such provisions or rights in that or any other instance.

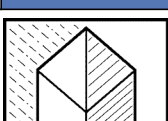
10.5 Assignment. Neither District nor Consultant shall assign, sublet or transfer any interest in this Agreement without the written consent of the other.

10.6 Entire Agreement. This Agreement represents the entire and integrated agreement between District and Consultant and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both District and Consultant.

10.7 Applicable Law; Venue. This Agreement shall be interpreted, construed, and enforced in all respects in accordance with the laws of the State of Washington without regard to its choice of law provisions. Venue in any litigation shall be in King County, Washington.

10.8 Conflicts. The Consultant has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner with the performance of the Services. The Consultant will not employ any person in the performance of this Agreement having any such interest.

10.9 Mediation. Any dispute arising out of or relating to this Agreement, or the breach thereof, shall first be subject to mediation under the Construction Mediation Rules of the American Arbitration Association ("AAA"). To initiate the mediation process, a party shall submit a written mediation request to the other party. If the parties are unable to agree to a mediator within thirty (30) days after the receipt of the written request for mediation, either party may submit a request for mediation to the AAA. The Consultant may not bring litigation unless it has been properly addressed in the above dispute resolution procedure.

VAN ASSELT SCHOOL ADDITION		Building Envelope Consulting Fee Matrix		Revised: 10/16/2020	
Fee Matrix Summary:	Phase 1 Building Envelope Design Phase	\$	55,600.00	<div></div> <div>BUILDING ENVELOPE TECHNOLOGY & RESEARCH</div> <div>PROFESSIONAL ROOFING, WATERPROOFING, CLADDING, AND FENESTRATION CONSULTANTS</div>	
	Phase 2 Building Envelope Bid Phase	\$	15,380.00		
	Phase 3 Building Envelope Construction Phase	\$	346,823.00		
	Total Fee Amount	\$	417,803.00		

PHASE 1		BUILDING ENVELOPE DESIGN PHASE					
		Technical Director	Senior Building Envelope Consultant	Building Envelope Technologist	Part-Time Monitor / CAD Illustrator	Technical Production Administration	TOTALS
Deliverable Task	Task Description	\$ 195.00	\$ 185.00	\$ 165.00	\$ 98.00	\$ 75.00	
1	Review Schematic Drawings for the new addition and then provide technical guidance to the Project Architect and SPS Team regarding recommended systems to be specified. BET&R anticipates providing example system layout diagrams for building envelope systems and provide recommendations regarding building envelope system continuity and transitioning between the building envelope components regarding the new classroom addition portion of the building.	15		20		2	\$ 6,375.00
2	Technical Review and Edit of Architect's Building Envelope Drawings & Specifications at 65% Completion: BET&R will perform a technical review of the Architect's building envelope-related detail drawings and technical specifications when the Project Documents are 65% complete. These reviews can be accomplished via digital Bluebeam red-line edits and utilizing design comment matrices for ease of reference for the Project Team. We will also include recommendations for additional building envelope detailing, as may be necessary.	40		68		6	\$ 19,470.00
3	Technical Review and Edit of Architect's Building Envelope Drawings & Specifications at 95% Completion: BET&R will perform a second technical review of the Architect's building envelope-related detail drawings and technical specifications when the Project Documents are 95% complete with the purpose of confirming comments were entered, checking for proper detailing on additional drawings, and cross-checking the building envelope-related specifications and drawings for consistency and accuracy. This review can be accomplished via digital Bluebeam red-line edits and utilizing design comment matrices for ease of reference for the Project Team.	32		56		5	\$ 15,855.00
4	Prepare for and participate in two (2) meetings with the Architect and Owner Team to discuss BET&R's technical recommendations and red-line edits to Drawings & Specifications.	12		14		4	\$ 4,950.00
5	Prepare ten (10) Isometric Details for Building Envelope configurations.	20			50	2	\$ 8,950.00
		119	0	158	50	19	
Phase 1 Subtotal		\$ 23,205.00	\$ -	\$ 26,070.00	\$ 4,900.00	\$ 1,425.00	\$ 55,600.00
Phase 1 Total							\$ 55,600.00

OFFICE ADDRESS | 4000 Delridge Way SW 1st Floor, Seattle, WA 98106

PHONE | 206.405.3455 FAX | 206.405.3458 WEBSITE | bet-r.com

VAN ASSELT SCHOOL ADDITION		Building Envelope Consulting Fee Matrix				Revised: 10/16/2020		
PHASE 2	BUILDING ENVELOPE BID PHASE							
		Technical Director	Senior Building Envelope Consultant	Building Envelope Technologist	Part-Time Monitor / CAD Illustrator	Technical Production Administration	TOTALS	
Deliverable Task	Task Description	\$ 195.00	\$ 185.00	\$ 165.00	\$ 98.00	\$ 75.00		
1	Prepare for and attend Pre-Bid Meeting to review and discuss the new School's building envelope-related materials, the building envelope systems, review and discuss specific details, and assist in facilitating procurement of competitive bids from building envelope-related sub-contractors.	8		14		2	\$ 4,020.00	
2	Assist the Architect and Owner to address bidding Contractors' questions related to the new classroom addition's building envelope. BET&R will review and provide recommendations on building-envelope related substitution requests, as requested by the Architect. BET&R also anticipates reviewing one (1) building-envelope related addendum, prepared by the Architect, in effort to help integrate technical information, stemming from Contractors' questions, into the Project Manual, as may be appropriate.	14		24	10	3	\$ 7,895.00	
3	Telecons for up to two meeting(s) to assist Architect and SPS with reviewing bids and address Owner and Architect's questions regarding potential bid alternate(s) selection, and potential award of contract.	8		8		2	\$ 3,465.00	
		30	0	46	10	7		
Phase 2 Subtotal		\$ 5,850.00	\$ -	\$ 7,590.00	\$ 980.00	\$ 525.00	\$ 15,380.00	
Phase 2 Total								\$ 15,380.00

VAN ASSELT SCHOOL ADDITION		Building Envelope Consulting Fee Matrix				Revised: 10/16/2020	
PHASE 3	BUILDING ENVELOPE CONSTRUCTION PHASE						
		Technical Director	Senior Building Envelope Consultant	Building Envelope Technologist	Part-Time Monitor / CAD Illustrator	Technical Production Administration	TOTALS
Deliverable Task	Task Description	\$ 195.00	\$ 185.00	\$ 165.00	\$ 98.00	\$ 75.00	
1	Perform technical review of up to twelve (12) building envelope-related product Submittal Packages. Architect to assemble packages to facilitate efficient review by BET&R.	15		42		25	\$ 11,730.00
2	Attend and assist Architect with conducting pre-installation meetings (i.e., up to 6) with the General Contractor and Sub-contractors. The focus of these meetings will be to review and discuss building envelope requirements, Specifications, and Detail Drawings, Submittal status, and manufacturer’s specific installation requirements: - One (1) Below-grade Waterproofing and Underslab Vapor Retarder; - One (1) Fiber Cement Cladding; - One (1) Metal Wall Cladding; - One (1) Windows, Storefront and Curtain Wall; - One (1) Wood Window Restoration; - One (1) Roofing and Sheet Metal Flashings.	21		24	45	5	\$ 12,840.00
3	Assist Architect in providing responses for up to thirty-five (35) RFIs regarding the building-envelope system and components and/or their installation, with the goal of allowing for envelope-related questions to be addressed by the Building Envelope Consultant in a manner consistent with good industry practice.	35		70	20	15	\$ 21,460.00
4	Part-Time On-Site Mock-Up Observation and Field Report Preparation: In-situ mock-ups are important to verify the Contractor’s understanding of the design details, proper installation, and sequencing of materials and systems to see that they are suitable for the building and may perform as expected, prior to installing the remainder of the components. BET&R anticipates reviewing the following mock-ups: - Three (3) Below-grade Waterproofing (positive side, negative side, and crystalline) Mock-ups; - One (1) Underslab Vapor Retarder Mock-up; - One (1) Fiber Cement Cladding Mock-up; - One (1) Metal Cladding Mock-up; - One (1) Low Slope Roofing and Sheet Metal Flashing Mock-up; - One (1) Rough Opening Flexible Flashing and Window Mock-up; - One (1) Wood Window Restoration Mock-up.	18		45	81	10	\$ 19,623.00

VAN ASSELT SCHOOL ADDITION		Building Envelope Consulting Fee Matrix				Revised: 10/16/2020		
PHASE 3	BUILDING ENVELOPE CONSTRUCTION PHASE							
		Technical Director	Senior Building Envelope Consultant	Building Envelope Technologist	Part-Time Monitor / CAD Illustrator	Technical Production Administration	TOTALS	
Deliverable Task	Task Description	\$ 195.00	\$ 185.00	\$ 165.00	\$ 98.00	\$ 75.00		
5 and 6 Task Description	Part-time, Spot-Check, On-Site Monitoring, and Field Reports Preparation: BET&R will conduct technical monitoring site visits to verify that the building envelope work is or is not being performed per the Project Documents, and that the quality of the Contractor’s work is in keeping with industry standards, as well as, to assist with any hidden conditions and/or technical issues that may arise during the Project. It must be understood that the Contractor will be responsible for their own quality control and quality assurance of their Sub-contractors during construction. A formalized Field Report that includes photographs, narrative descriptions, recommendations, and action items that require follow-up corrective action or tracking will be prepared for the site visits. BET&R recommends that a standard protocol be mutually agreed upon by the Project Team for addressing outstanding Action Items and corrective actions that are documented in the Field Reports. Based on the Architectural Renderings and Schematic Drawings, BET&R anticipates conducting the following part-time monitoring site visits:							
5	Part-time, Spot-check, On-Site Monitoring and Field Report Preparation for: - Below-grade Waterproofing and Underslab Vapor Retarder (seventeen [17] site visits); - Roofing (twenty-eight [28] site visits); Anticipate (45) site visits.	25		70	540	68	\$ 74,445.00	
6	Part-time, Spot-Check, On-Site Monitoring and Field Report Preparation for: - Cladding; and - Fenestration, including curtain wall, storefront systems, exterior doors, and wood window restoration, and Related Flashings. Anticipate fifty (50) site visits.	30		80	600	75	\$ 83,475.00	
7	Conduct Pre-Completion Survey and Prepare Punchlist: As the roofing, exterior cladding, fenestration, and waterproofing Project work nears completion, BET&R will conduct a building envelope Pre-Completion Survey and generate a Punchlist of items needing attention, completion, and/or correction prior to the Project being deemed complete.	12		48	48	8	\$ 15,564.00	
8	Conduct Completion Survey: Once the Contractor notifies the Project Team that their Punchlist work and corrections are complete, BET&R will perform a Completion Survey of the building envelope to verify whether or not the Punchlist items have been addressed.	10		42	42	6	\$ 13,446.00	
9	Project Progress Meeting Attendance by Project Administrator: Twenty (20) Progress Meetings and Technical consulting during the building envelope construction phase of the Project.	80		240	80	9	\$ 63,715.00	
10	Review Building Envelope Portions of O&M Manual and request Contractor provide missing sections, warranties, and/or other items on behalf of SPS.	12		21	10	6	\$ 7,235.00	
11	Coordination and consulting services regarding the Air Barrier and Window Water Testing.	6		24	45	2	\$ 9,690.00	
Phase 3 Subtotal Testing Testing Phase 3 Total		264	0	706	1511	229		
		\$ 51,480.00	\$ -	\$ 116,490.00	\$ 148,078.00	\$ 17,175.00	\$ 333,223.00	
		Air Barrier Testing Sub-Consultant						\$ 7,000.00
		Window Water Testing ASTM E1105 with Chamber						\$ 6,600.00
								\$ 346,823.00



SCHOOL BOARD ACTION REPORT

DATE: October 27, 2020
FROM: Denise Juneau, Superintendent
LEAD STAFF: Fred Podesta, Chief Operations Officer
206-252-0102, fhpodesta@seattleschools.org

For Introduction: November 18, 2020
For Action: December 2, 2020

1. TITLE

Distressed School Grant: Award Architectural & Engineering Contract P1717 to Thomas Cook Fitzgerald Architecture (TCF) for the Leschi Elementary School Four Classroom Addition project

2. PURPOSE

The purpose of this action is to provide authorization for the Superintendent to enter into an Architectural & Engineering (A/E) contract in the amount of \$427,981.

3. RECOMMENDED MOTION

I move that the School Board authorize the Superintendent to execute A/E contract P1717 with TCF in the amount of \$427,981 for the Leschi Elementary School Four Classroom Addition project, with any minor additions, deletions, modifications and actions deemed necessary by the Superintendent to implement the contract.

4. BACKGROUND INFORMATION

a. Background

The Leschi Elementary School Four Classroom Addition project, located at 135 32nd Ave., Seattle, WA 98122, is funded through the Office of Superintendent of Public Instruction (OSPI) Distressed School Grant.

The project scope includes a four-classroom, two-story addition on the north end of the existing building and improvements to the main entrance/administration area to create a secure-entry vestibule that directs visitors into the office area prior to allowing access to the school. The new school addition will meet the requirements outlined in the district's elementary school educational specifications.

The firm of TCF was selected through the A/E selection procedures established in Superintendent Procedure [6220SP.C](#). Six firms submitted their qualifications, and four firms were shortlisted and interviewed. Those firms are Studio Meng Strazzara, Rolluda Architects, BLRB Architects, and TCF. TCF was judged to be the most qualified to provide these design services.

Prior improvements that have been made at Leschi Elementary School since 2000 include the 2004 HVAC upgrades, 2016 reroof, 2016 geothermal wells, and 2018 seismic improvements.

b. Alternatives

Deny Motion. If the motion is denied, the district will not be able to execute the contract to start the design of the Leschi Elementary School Four Classroom Addition project.

c. Research

- Leschi Elementary School Four Classroom Addition Building Excellence (BEX) V Master Planning, February 2019
- Seattle Public Schools Technical Building Standards dated December 2012
- 2015 Seattle Building Code
- Coordination meetings with district facilities and other stakeholders throughout the design process

5. FISCAL IMPACT/REVENUE SOURCE

The fiscal impact to this motion will be \$427,981. The revenue source for this motion is funded by the \$4,400,000 Distressed School grant from the OSPI. The advertised maximum allowable construction cost budget is \$3,000,000; the total project budget is \$4,400,000 of which the A/E contract is one part.

Expenditure: ☒ One-time ☐ Annual ☐ Multi-Year ☐ N/A

Revenue: ☐ One-time ☐ Annual ☐ Multi-Year ☒ N/A

6. COMMUNITY ENGAGEMENT

With guidance from the District's Community Engagement tool, this action was determined to merit the following tier of community engagement:

☐ Not applicable

☐ Tier 1: Inform

☒ Tier 2: Consult/Involve

☐ Tier 3: Collaborate

The selection of projects in the BEX V Levy program went through an extensive community vetting process and ultimately received 73% approval from voters in February 2019. This project was not selected to be part of the BEX V Levy, but it was part of the community vetting process for selecting BEX V projects.

7. EQUITY ANALYSIS

The project was submitted to the State of Washington for Distressed School Grant consideration as Leschi Elementary School is one of the thirteen priority elementary schools associated with the implementation of the district's strategic plan. Recent enrollment growth had displaced the preschool programs. Preschool is an important consideration for helping students achieve reading at grade level by third grade.

8. STUDENT BENEFIT

It is the goal of the district to continue the process of implementing the Buildings, Technology, and Academics/Athletics (BTA) and BEX Capital Levy programs to provide students with safe and secure school buildings.

9. WHY BOARD ACTION IS NECESSARY

- ☒ Amount of contract initial value or contract amendment exceeds \$250,000 (Policy No. 6220)
- ☐ Amount of grant exceeds \$250,000 in a single fiscal year (Policy No. 6114)
- ☐ Adopting, amending, or repealing a Board policy
- ☐ Formally accepting the completion of a public works project and closing out the contract
- ☐ Legal requirement for the School Board to take action on this matter
- ☐ Board Policy No. _____, [TITLE], provides the Board shall approve this item
- ☐ Other: _____

10. POLICY IMPLICATION

Per Board Policy No. 6220, Procurement, any contract over \$250,000 must be brought before the Board for approval.

11. BOARD COMMITTEE RECOMMENDATION

This motion was discussed at the Operations Committee meeting on November 5, 2020. The committee reviewed the motion and _____.

12. TIMELINE FOR IMPLEMENTATION

Design will begin upon execution of this contract. Construction will take place June 2021.

13. ATTACHMENTS

- Contract P1717 (for reference as part of motion) (available upon request from the Capital Projects & Planning department, 206-252-0702)

- Architect Fee Schedule (for reference) (available upon request from the Capital Projects & Planning department, 206-252-0702)
- AE Scoring Sheet (for reference) (available upon request from the Capital Projects & Planning department, 206-252-0702)

CONTRACT
FOR
ARCHITECTURAL OR ENGINEERING
SERVICES

Owner: Seattle School District No. 1,

and

Architect: TCF Architecture
Tax I.D. #91-0727155

Contract No. P1717

Leschi Elementary School Four
Classroom Addition

AE FORM 1 - CONTRACT FOR ARCHITECTURAL OR ENGINEERING SERVICES

This Agreement, Contract No. P1717, is made by and between Seattle School District No. 1, a Washington municipal corporation ("Owner"), and TCF Architecture ("Architect"). The "Architect" may in fact be an architect, engineer, consultant, or similar company, and is not necessarily a licensed architect. Owner and Architect agree as follows:

1. SCOPE OF WORK AND SCHEDULE

Architect shall provide professional architectural services pertaining to the planning, design, and construction of the Leschi Elementary School Four Classroom Addition project pursuant to the terms and provisions of this Agreement and the attached AE Form 2.

2. CONTRACT PRICE AND SCHEDULE

As full compensation for performance of all Services except Additional Services, Owner shall pay Architect Four Hundred Twenty Three Thousand, Five Hundred Eighty One Dollars (\$423,581), plus Reimbursable Expenses not to exceed Four Thousand Four Hundred Dollars (\$4,400), subject to adjustments as provided elsewhere in this Agreement. This Fee covers all Basic Services of the Architect and its consultants, regardless of whether or not such Basic Services are eligible for State matching dollars. The Architect shall provide a spreadsheet which divides its Fee between Basic Services that are eligible for State matching dollars and Basic Services that are not eligible for State matching dollars. Architect shall commence work and complete the various phases of work at the prices and according to the schedule set forth in this Agreement. Owner has an urgent need for the use of facilities and time is of the essence.

3. COMMUNICATIONS

(a) All correspondence, requests, notices, and other communications to Owner, in relation to this Agreement, shall be in writing and shall be delivered to:

Mailing Address: Brian Fabella
Project Manager
Mail Stop 22-232
P. O. Box 34165
Seattle, WA 98124-1165

Location: 2445 Third Avenue South
Seattle, WA 98134
Phone: 206-252-0702
Fax: 206-252-0573

In the event Owner has designated a Construction Manager in paragraph 4 of this Agreement, below, all of the aforementioned communications to Owner should be directed to Construction Manager, unless the Owner otherwise indicates in writing.

- (b) All correspondence, requests, notices, and other communications to Architect, in relation to this Agreement, shall be in writing and shall be delivered to:

[Architect]	Steve Wachtler
[Company]	TCF Architecture
[Address]	902 N 2 nd Street
	Tacoma, WA 98403

Either party may from time to time change such address by giving the other party notice of such change in accordance with the provisions of this paragraph.

4. CONSTRUCTION MANAGER

Owner designates the below listed firm as its representative to act on Owner's behalf in connection with the administration of this Agreement and the subject Project. Said firm is referred to in this Agreement and related Agreements as "Construction Manager" and/or "Owner's Representative," and where a Construction Manager is used the term "Owner" shall mean and refer to the Construction Manager unless otherwise indicated. "Construction Manager" as used in this Agreement is not the GC/CM for projects in which the Owner utilizes RCW 39.10. The Construction Manager shall act as Owner's Representative in the administration of this Agreement and Project. Unless and until directed by Owner to the contrary, and except for any directions which authorize Additional Services or which otherwise entitle the Architect to additional Fee, Architect shall be entitled to rely upon the authority of the Construction Manager as Owner's Representative. The Construction Manager for this Agreement, if any, is:

N/A

Owner reserves the right to change the Construction Manager and will provide Architect with notice of any such change.

5. THIS AGREEMENT INCLUDES THE FOLLOWING DOCUMENTS:

- (a) Contract for Architectural Services--AE Form 1, six pages, revision date April, 2019,

(b) “AE Form 2,” which shall be one of the following three documents (check one as appropriate):

- ☒ AIA Document B103-2017 (General Conditions of Contract between Owner and Architect for a Design-Bid Build Project), as revised by the Owner, revision date of April 2019;
- ☐ AIA Document B103-2017 (General Conditions of Contract between Owner and Architect for a GC/CM Project), as revised by the Owner, revision date of April 2019; or
- ☐ General Conditions of Contract between Seattle School District No. 1 and Architect/Engineer for Smaller Projects, revision date of February, 2016

(c) Schedules listed below:

Schedule	Topic
A	Scope of Project
B	Project Milestones and Consultant Listing
C	Fees & Reimbursable Expenses
D	Nondiscrimination Statement

6. SUPPLEMENTAL CONDITIONS

The parties make the following modifications and revisions to the AE Form 2 (in addition to the revisions made by the Owner within the AE Form 2):

N/A

7. KEY PERSONNEL

Architect shall assign the following personnel to the performance of the Services and shall not (for so long as they remain in the Architect’s employ) reassign or remove any of them without the prior written consent of the Owner. In the event any such individual leaves the Architect’s employ or the Owner requests reassignment, the Architect shall replace such individual with another person of equivalent skills and experience satisfactory to the Owner.

Name**Project Role**

Brian Ho

Managing Principal

Steve Wachtler

Principal / Project Architect

8. MAXIMUM ALLOWABLE CONSTRUCTION COST AND OWNER CONTROLLED ALTERNATES

The Maximum Allowable Construction Cost ("MACC") for this Project, including demolition and abatement shall not exceed Three Million Dollars (\$3,000,000.00). Owner Controlled Alternates ("OCA"), if known, are identified in Schedule A, and/or otherwise will be addressed according to the AE Form 2.

9. SITE OBSERVATION

During the course of the Construction Phase, the Architect and its consultants shall perform visits to the project site as provided in the AE Form 2.

10. INVOICES

Architect shall submit its invoices in the form and according to the schedule prescribed in the AE Form 2 to the following address:

Mailing Address: Brian Fabella
Project Manager
Mail Stop 22-331
P.O. Box 34165
Seattle, WA 98124-1165

Location: 2445 Third Ave.
Seattle, WA 98134

11. INSURANCE

Architect shall maintain insurance with insurers and under such forms of policies as may be acceptable to Owner (and with an A.M. Best rating of A- or better) as follows:

Commercial General Liability Including premises operations, products and completed operations, contractual liability, , personal and advertising injury including, but not limited to libel and slander, etc, medical expense coverage, damage to rented premises, and an endorsement naming Owner as additional insured.

Limits of Liability . During the required coverage period, Architect shall notify the Owner of any claim(s) which may impair the level of coverage. In such event, Owner shall have the right to require Architect to obtain additional coverage, at no additional

cost to the Owner, to assure the Per Occurrence amount of available insurance for each liability coverage.

Each Occurrence Limit	\$1,000,000
Damage to Rented Premises Limit	\$ 100,000
Medical Expense Limit	\$5,000
Personal & Advertising Injury Limit	\$1,000,000
General Aggregate Limit	\$2,000,000
Products – Completed Operations Aggregate Limit	\$2,000,000

Workers Compensation

Limits of Liability	Statutory
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Employers Liability (Washington Stop-Gap)

Each Accident	\$1,000,000
Disease – Each Employee	\$1,000,000
Disease – Policy Limit	\$1,000,000

Commercial Automobile Liability including owned, hired, and non-owned auto. Coverage to include Combined Single Limit.

Limits of Liability	\$1,000,000
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Professional Liability including coverage for contractual liability. If contract is claims-made, a three (3) year discovery period shall be included.

Limits of Liability	\$1,000,000 per wrongful act and \$2,000,000 annual aggregate
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During the required coverage period, the Architect shall notify the Owner of any claim(s) which may impair the Architect's level of coverage. In such event, the Owner shall have the right to require the Architect to obtain additional coverage, at no additional cost to the Owner, to assure the Per Occurrence amount of insurance is available for each liability coverage.

12. AGREEMENT

This Agreement supersedes any and all prior agreements and is the entire agreement between Architect and Owner.

13. EFFECTIVE DATE

This Agreement is effective as of the date executed by both parties.

14. SIGNATURES

Architect:

Signature

Brian Ho

Typed Name

Principal

Title

TCF Architecture

Company Name

Date Signed

Owner:

Signature

JoLynn Berge

Typed Name

Chief Financial Officer

Title

Seattle School District

Company Name

Date Signed

SCOPE OF PROJECT

Leschi Elementary School Four Classroom Addition

BASIC SERVICES SCOPE DESCRIPTION OF MACC

The scope of this project includes a two-story four-classroom addition on the north end of the existing building. The addition will use similar systems and be a similar construction type to that of the existing building. The new addition will allow two existing classrooms to return to their use as preschool classrooms. The scope also includes security improvements at the main entrance. The MACC is \$3,000,000. Very little site work is anticipated other than minor landscape restoration, site stair and retaining wall replacement and what is required to accommodate the building addition. The project will remain occupied during construction and the most disruptive activities will need to occur during the summer of 2021 and after school hours. Contractor staging and access will be from the north east corner of the site. Basic services shall include Architectural Design in general conformance with the educational Specifications, Basic Structural, Mechanical, and Electrical Engineering of the building per the Architectural Design.

OTHER BASIC SERVICES (ADDITIONAL SERVICES)

Predesign
Educational Specifications
SPS prototype Ed Specs.
SEPA Process
Coordination of Owner's Consultants
Supplementary Construction Administration
Civil Engineer Other Basic Services
Landscape Architect
Cost Control Consultant
Hardware Consultant
Acoustical Consultant
Mechanical Other Basic Services
Electrical and Low-Voltage Systems Other Basic Services

PROJECT MILESTONES AND CONSULTANT LISTING

Leschi Elementary Four Classroom Addition

TASK	DATE
1. Approve A/E Contract	May 2020
2. Conferences with District Staff	May 2020
3. Schematic Design & Cost Estimate Submittal	May 2020
4. SSD Schematic Design Review	May 2020
5. Meet with District Staff	August 2020
6. Design Development & Cost Estimate Submittal	August 2020
7. SSD Design Development Review	October 2020
8. 65% Construction Documents & Cost Estimate Submittal	November 2020
9. 65% SSD Review Documents	November 2020
10. 100% Construction Documents & Cost Estimate Submittal	November 2020
11. 100% SSD Review Documents	December 2020
12. Permit Submittal (12-week turnaround)	December 2020
13. 100% Submittal of Construction Documents for printing to bid	February 2021
14. Sent to Printers	February 2021
15. First Advertisement for Call for Bids	March 2021
16. Second Advertisement for Call for Bids	April 2021
17. Pre-Bid Meeting	April 2021
18. Bid Opening Date	May 2021
19. Board Packet to Director	May 2021
20. To Executive Committee	May 2021
21. To School Board	June 2021
22. Notice to Proceed	June 2021
23. Pre-Construction Meeting	June 2021
24. Contractor Site Access	June 2021
25. Substantial Completion	June 2022
26. Final Completion	September 2022

Consultants:

Services Provided

Firm Name

Civil Engineering	AHBL
Landscape Architect	AHBL
Cost Control Consultant	RC Cost Group
Hardware Consultant	Adams Consulting
Acoustical Consultant	BRC Acoustical & Audio Visual Design
Mechanical Engineer	Matrix Engineers
Electrical and Low Voltage Systems	Hargis Engineers

Contract for Architectural Services
Revised April 2019

Schedule C

SCHEDULE C
Fees & Reimbursable Expenses

BASIC SERVICES FEE

Two Hundred Seventy Two Thousand, Two Hundred Eighty Nine Dollars (\$272,289)

OTHER BASIC SERVICES (ADDITIONAL SERVICES FEE)

One Hundred Fifty One Thousand, Two Hundred Ninety Three Dollars (\$151,293)

REIMBURSABLE EXPENSES

Reimbursable expenses for this Project as identified in the General Conditions shall be limited to the not-to-exceed amount of: Four Thousand Four Hundred Dollars (\$4,400.00).

CONTRACT PRICE ADJUSTMENT FACTORS

The following Price Adjustment Factors apply to, and will be used for, any and all adjustments of the contract price (other than reimbursable expenses listed in Schedule C) that may be required under the provisions for Additional Services, the contract's Changes provisions, or any other provision. These factors apply to both additions to and reductions in the Basic Services. They apply to Architect and all consultants (except consultants with rates as specifically provided herein) and others that Architect may retain in connection with the performance of Services under this Contract, unless the applicable Architect's consultant normally charges a lower hourly rate than listed below in which case the lower rate will be utilized.

POSITION	RATE/HOUR
Principal	\$220/HR
Project Manager	\$220/HR
Architect	\$175/HR
Drafter	\$105/HR
Clerical	\$90/HR
Construction Admin./Spec Writer	\$155/HR

POSITION (AHBL)	RATE/HOUR
Principal	\$225/HR
Project Manager	\$165/HR
Engineer	\$130/HR
Drafter	N/A
Clerical	\$85/HR
Construction Admin./Spec Writer	N/A

SCHEDULE C
Fees & Reimbursable Expenses

POSITION (PCS Structural Solutions) RATE/HOUR

Principal	\$200/HR
Project Manager	\$135/HR
Engineer	\$120/HR
Drafter	\$100-140/HR
Clerical	\$90/HR
Construction Admin./Spec Writer	N/A

POSITION (Metrix Engineering) RATE/HOUR

Principal	\$195/HR
Associate Principal	\$175/HR
Project Manager	\$160/HR
Engineer	\$140/HR
Drafter	N/A
Clerical	\$78/HR
Construction Admin./Spec Writer	\$78/HR

POSITION (HARGIS) RATE/HOUR

Principal	\$190/HR
Sr. Project Engineer	\$175/HR
Engineer	\$155/HR
Sr. Designer	\$145/HR
Designer	\$125/HR
Drafter	\$105/HR
Administrative	\$80/HR

POSITION (BRC Acoustics) RATE/HOUR

Principal	\$185/HR
Sr. Accoustical Consultant I	\$170/HR
Sr. Accoustical Consultant II	\$160/HR
Accoustical Consultant I	\$140/HR
Accoustical Consultant II	\$95/HR
Clerical	\$65/HR

POSITION (RC Coast Group) RATE/HOUR

Principal/ Cost Estimator	\$175/HR
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POSITION (Adams Consulting & Estimating) RATE/HOUR

Principal/Hardware Consultant	\$90/HR
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SCHEDULE C
Fees & Reimbursable Expenses

1. COMPOSITE RATES - The above rates are composite rates that include salaries, hourly pay, all personnel benefits, overhead, taxes, G&A expenses, office supplies, travel, all other expenses (other than reimbursable expenses listed in Schedule C), profit, supervision, and all other costs or charges that Architect, its associates and consultants may incur in the performance of their services under this contract.
2. ARCHITECT ALLOWANCE - For work performed by principals or employees of the Architect, the Architect will be compensated at 100% of the rate per hour indicated above for the personnel involved.
3. CONSULTANT ALLOWANCE - For work performed by subcontractors or consultants to the Architect, the Architect will be compensated at 110% of the consultant's rate per hour for subcontractor or consultant personnel involved.
4. ADJUSTMENT OF COMPOSITE RATES - The Composite Rates are valid for the entire contract term. They will be adjusted only in those circumstances where the Architect or the Owner establishes that unusual or exceptional conditions exist, which could not have been anticipated at the time of contract negotiation, and that those conditions make existing rates unreasonable. If the project exceeds 36 months in duration, and the cost of living increases greater than 8% during this period based on the CPI-U for the Seattle area, the Architect shall be allowed an adjustment of rates for services performed beyond the 36 month duration upon negotiation. The CPI-U will be as referenced on the chart on the www.seattle.gov website.
5. Should the parties not be able to agree on the price and/or duration for additional work prior to the start of the work, the OWNER shall, at the start of the work, unilaterally modify the contract to provide what it believes is a reasonable payment and schedule for that work. The Architect may request resolution of the disagreement pursuant to the contract Disputes procedures. Any failure to agree on price or duration shall not relieve the Architect from performing the specified services in a fully competent, professional and timely manner.

SEATTLE SCHOOL DISTRICT NO. 1
NONDISCRIMINATION STATEMENT

Architects who desire to provide the Seattle School District No. 1 with equipment, supplies and/or professional services must comply with the following contract requirements. During the performance of this contract, the Architect agrees as follows:

1. Architect agrees to comply with all local, state and federal laws prohibiting discrimination with regard to race, creed, color, national origin, sex, marital status, age or the presence of any sensory, mental or physical handicap.
2. Architect will not discriminate against any otherwise qualified employee or applicant for employment because of race, creed, color, national origin, age, sex, marital status, sensory, mental or physical handicap unless, in some rare cases, the contractor may establish a bona fide occupational qualification as defined by law. Architect will ensure that applicants are employed, and that employees are treated during employment, without regard to race, creed, color, national origin, sex, marital status, age or the presence of any sensory, mental or physical handicap. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Architect agrees to post in conspicuous places, available to employees and applicants for employment, any notices to be provided by the Owner setting forth the provisions of this nondiscrimination clause.
3. Architect will, in all solicitations or advertisements for employees placed by or on behalf of Architect, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, national origin, age, sex, marital status, sensory, mental or physical handicap.
4. Architect will send to each labor union or representative or workers with which he/she has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the Architect's nondiscrimination commitments, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
5. Any Architect who is in violation of these requirements shall be barred forthwith from receiving awards of any purchase order or contract from Seattle School District No. 1 or shall be subject to other legal action or contract cancellation unless a satisfactory showing is made that discriminatory practices have terminated, and that reoccurrence of such acts is unlikely. This includes compliance with Section 503 and 504 of the Vocational Rehabilitation Act of 1973 and Sections 101 and 104 of the Vietnam Era Veterans' Readjustment Assistance Act of 1974.

Seattle Public Schools

TCF CONSULTING SERVICES FEE PROPOSAL

Contract Exhibit 'A'

Leschi Addition and Renovation

September 9, 2020

2020-001

ASSUMPTIONS:

Leschi Assumed MACC		Total	Leschi Building Areas	
New Building Addition		\$2,550,000	Existing Building Area	57208 SF
Existing Building Renovation		\$200,000	Building Addition	5000 SF
On-Site Improvements		\$250,000	Area of Renovation	1000 SF
Total		\$3,000,000		

MACC: Maximum Allowable Construction Cost as defined by OFM guidelines

LESCHI FEE CALCULATIONS:

CORE BASIC SERVICES: OFM A/E Fee Schedule, Exhibit A

Note: This proposal assumes the MACC in the above amount. Fee adjustment may be needed if the MACC is changed

Addition Area Calculation:	5,000 SF	=	\$510.00 /SF (building only)
Renovation Area Calculation:	1,000 SF	=	\$200.00 /SF (building only)

OFM Fee %	Table MACC	Table %
Table MACC (Sch B)	2,700,000 SF =	9.41%

FEES	Square Feet	Basic Fee %	Remodel Modifier	Adjusted Fee %	Construction Cost	Fee
New Building Addition	5,000	9.41%	1.21	11.410%	\$2,550,000	\$290,945
Existing Building Renovation	1,000	9.41%	1.21	11.410%	\$200,000	\$22,819
On-Site Work		9.41%	1.21	11.410%	\$250,000	\$28,524
LESCHI CORE BASIC SERVICES FEE				11.41%	\$3,000,000	\$342,289

Note: Core Basic Services includes Basic Architectural, Structural, Mechanical and Electrical services, as defined by the State of Washington OFM Guidelines.

OTHER BASIC SERVICES (OBS) (to be included in the Contract)

TCF Other Basic Services:		Avg. Rate	
OBS-1: PreDesign	40 hours	x	\$175 = \$7,000 (fixed fee)
OBS-2: SEPA	30 hours	x	\$150 = \$4,500 (fixed fee)
OBS-3: Coord. W/ Owner's Consultants	40 hours	x	\$125 = \$5,000 (fixed fee)
OBS-4: Not Used	NA	x	NA = NA
OBS-5: Not Used	NA	x	NA = NA
OBS-6: Supplementary Construction Administration	(See calculation below for detail)		= \$38,902 (hourly, estimate)
Total TCF Other Basic Services			\$55,402

Other Basic Services (OBS) - Consultants: See attached consultant proposals for detail.

OBS-7: Civil Engineer: AHBL	\$64,930
OBS-8: Landscape Architect: AHBL	\$12,510
OBS-9: Cost Control Consultant: RC Cost Group	\$13,200
OBS-10: Hardware Consultant: Adams Consulting	\$900
OBS-11: Acoustical Consultant: BRC Acoustical & Audiovisual Design	\$6,945

OBS-12: Not Used	
OBS-13: Mechanical: Metrix Engineers	\$16,400
OBS-14: Electrical / Low-Voltage Systems OBS: Hargis Engineers	\$35,925

Excluded Other Basic Services: Envelope Consultant (Owner to Contract directly)

TCF Mark-Up on Consultants Additional Services at 10%	\$15,081
Total Consultant Additional Services	\$165,891
TOTAL SERVICES FEES (Core Basic plus Other Basic) FOR INITIAL CONTRACT	\$563,581

REIMBURSABLE EXPENSES

Reimbursable Expenses Budget (see attached rate schedule)		
Plan Review Fees & Bid Documents Printing (SPS to set up an account with a printer)	by Owner	
Other Reimbursable Expenses (Initial budget amount)		\$2,000
Estimated Consultant Reimbursables (excluding all plan review fee costs)		\$2,000
Subtotal		\$4,000
10% Mark-up		\$400
Estimated Total Reimbursable Expenses (budget amount only)	(NTE w/o approval)	\$4,400
TOTAL FEES & ESTIMATED EXPENSES FOR CONTRACT AMOUNT		\$567,981
Consulting services agreement, Contract No. P1691		\$60,000
Modification Request to Consulting services agreement, Contract No. P1691		\$80,000
TOTAL FEE OF THIS PROPOSAL		\$427,981

OPTIONAL ADDITIONAL SERVICES (NOT IN INITIAL CONTRACT - ADD IF NEEDED)

OAS-1: Architectural - Staff Moving Planning and Logistics	\$10,800 (if needed)
OAS-2: Architectural - WSSP	\$19,450 (if needed)
OAS-3: Architectural - Value Engineering	\$7,000 (if needed)
OAS-4: Architectural - Constructability Review	\$4,500 (if needed)
OAS-5: Mechanical - Abbreviated ELCCA	\$6,000 (if needed)
OAS-6: Mechanical - Total System Performance Ratio Report	\$17,000 (if needed)
OAS-7: Mechanical - WSSP	\$6,500 (if needed)
OAS-8: Mechanical - Value Engineering	\$3,500 (if needed)
OAS-9: Mechanical - Conformed Set	\$1,200 (if needed)
OAS-10: Mechanical - Record Drawings	\$1,500 (if needed)
OAS-11: Mechanical - Constructability Review	\$3,500 (if needed)
OAS-12: Electrical - WSSP	\$3,500 (if needed)
OAS-13: Electrical - Value Engineering	\$1,800 (if needed)
OAS-14: Electrical - Constructability Review	\$1,800 (if needed)
OAS-15: Electrical - Daylight Modeling	\$3,600 (if needed)
OAS-16: Electrical - Conformed Set	\$1,200 (if needed)
OAS-17: Electrical - Record Drawings	\$1,200 (if needed)
OAS-18: Acoustical - Construction Phase services	\$1,480 (if needed)
OAS-19: Acoustical - WSSP HVAC Measurements	\$2,040 (if needed)
OAS-20: Architectural - Enhanced CA	\$105,000 (if needed)
OAS-21: Structural - Conformed Set	\$1,000 (if needed)
OAS-22: Structural - Record Drawings	\$1,500 (if needed)
OAS-23: Structural - Value Analysis Participation	\$2,400 (if needed)
OAS-24: Structural - Constructability Review Participation	\$2,400 (if needed)
OAS-25: Structural - WSSP Coordination	\$1,500 (if needed)
OAS-26: Civil - Conformed Set	\$1,100 (if needed)

OAS-27: Civil - Record Drawings	\$2,600 (if needed)
OAS-28: Landscaping - Conformed Set	\$900 (if needed)
OAS-29: Landscaping - Record Drawings	\$900 (if needed)
OAS-30: Architectural - Conformed Set	\$4,200 (if needed)
OAS-31: Architectural - Record Drawings	\$5,250 (if needed)

DETAILED BREAKDOWN OF OBS 6

Estimated Construction Administration Time Detail:

Task: Assume 35 weeks (8 months) to Substantial Completion.		
Owner / Contract Agreement Assistance	2	
Pre-Construction Meeting (including prep time & follow-up)	6	
Site Meetings, Meeting Minutes & Field Reports (assume 1 per week)	227.5	One site visits per week & one meeting. Initial meetings to be virtual meetings via Zoom or Teams
Submittals Review and Processing	60	
Contractor Payment Request Review and Processing	24	
Weekly Project Administration: Correspondence, RFI's, etc.	210	Assume 6 hours per week
Process Change Orders & CCD's, & Proposal Review	25	
Substantial Completion Review (assume 1), and Preparation	25	
Final Completion Review (assume 2), and Preparation	22	Assume 2 back checks of the punchlist
Closeout Documentation Review, Processing and Follow-up	60	
Warranty Phase Review	6.5	
CA Phase Project Management	32	Assume 4 hours per month
Total CA Anticipated	700	
CA Average Hourly Rate	\$150	
Total CA Phase Architectural Services Fee Estimate	\$105,000	
CA & Closeout Phase from Basic Services Fees	\$66,098	
Difference - Proposed Additional Service Fee	\$38,902	

Leschi
RFQ10915
AE Interviews 12.17.19

	Jeanette Imanishi	Tom Gut	Mike Kennedy	Sara Mirabueno	Brian Fabella	Vince Gonzales	Totals
BLRB	68	68	67	60	61.5	66.5	391
Studio Meng	74	71	69	64	65	68	411
TCF	74	66	66	67	68	68	409
Rolluda	59	59	58	56	59.5	59.5	351

Evaluation Team / Selection Committee selected TCF for Leschi Elementary School Project



SCHOOL BOARD ACTION REPORT

DATE: October 13, 2020
FROM: Ms. Denise Juneau, Superintendent
LEAD STAFF: Fred Podesta, Chief Operations Officer
206-252-0102, fhpodesta@seattleschools.org

For Introduction: November 18, 2020
For Action: December 2, 2020

1. TITLE

BEX V: Resolution 2020/21-12 Racial Imbalance Analysis for Rainier Beach High School Replacement project

2. PURPOSE

The purpose of this action is to secure \$8,501,081 in state funding assistance for the Rainier Beach High School Replacement project. The Office of Superintendent of Public Instruction (OSPI) Form D-5 Application requires board acceptance of the resolution certifying that the proposed project will not create or aggravate racial imbalance.

3. RECOMMENDED MOTION

I move that the School Board approve Resolution 2020/21-12 certifying that the proposed Rainier Beach High School Replacement project will not create or aggravate racial imbalance as defined by [WAC 392-342-025](#).

4. BACKGROUND INFORMATION

a. Background

The Capital Projects and Planning Department, working collaboratively with Enrollment Planning, has recommended that Rainier Beach High School be demolished and replaced due to poor building conditions outlined in the 2014 Facility Assessment Report by Meng Analysis and the 2019 Building Condition Assessment Update by McKinstry. The Building Excellence (BEX) V Capital Levy proposed the replacement of Rainier Beach High School with a 1,600-student, multi-story school facility of approximately 233,700 square feet, with options to retain or replace the existing 19,300 square feet theater. Approximately 800 students will remain on-site during construction. Construction is anticipated to begin summer 2022, be multi-phased and substantially complete by spring 2025.

OSPI is responsible for administering the School Construction Assistance Program (SCAP), which is OSPI's largest capital program and provides funding assistance for facility planning, new construction, and modernizations. Based on OSPI's work, the legislature makes biennial appropriations to release state funds for school construction assistance through the D-Form approval process, which includes the primary documents

that form the basis of any agreements between OSPI and the school districts receiving state funding assistance.

The OSPI Form D-5 requires a School Board Resolution to certify under WAC 392-342-025 that a SCAP funded project will not create or aggravate racial imbalance. If this resolution is not approved in a timely manner, state funding assistance for this project will not be forthcoming. SCAP funding for Rainier Beach High School project is estimated to be \$8,501,081.

An evaluation was performed using enrollment data from the 2012 through the 2019 school years to certify under WAC 392-342-025 that the Rainier Beach High School project will not create or aggravate racial imbalance.

WAC 392-342-025's definition of racial imbalance in a greater than 50 percent minority, non-multiracial school district, such as Seattle Public Schools, shall be defined (by current federal categories) as existing when:

Part (a): When the combined minority enrollment of a school varies from the districtwide combined minority percentage by more than plus or minus 25 percentage points:

Part (b): When a school's enrollment of a single minority group with a districtwide enrollment of less than 30 percent exceeds 50 percent:

Part (c): When a school's enrollment of a single minority group with a districtwide enrollment of 30 percent or more exceeds the minority group's districtwide percentage by 20 percentage points or more:

Rainier Beach High School Part (a) analysis: Rainier Beach High School was shown to be racially imbalanced as defined by WAC 392-342-025 (a) in eight of the eight years studied with no discernable trend to either a racially balanced or imbalanced student body.

Rainier Beach High School Part (b) analysis: Rainier Beach High School was shown to be racially imbalanced as defined by WAC 392-342-025 (b) in four of the eight years studied with the data showing a slight trend toward a more racially balanced student body.

Rainier Beach High School Part (c) analysis Rainier Beach High School was shown to be racially imbalanced as defined by WAC 392-342-025 (c) in none of the eight years studied.

Conclusion: Since the school boundaries will not be impacted by the construction of the new facility, it is anticipated that the makeup of the student body will remain the same. Therefore, the project meets the requirements outlined by WAC 392-342-025 parts (a-c) in a greater than 50 percent minority, non-multiracial school district by not aggravating an existing racial imbalance.

b. Alternatives

Do not approve Resolution 2020/21-12. This is not recommended. If Resolution 2020/21-12 is not approved, the D-5 form cannot be submitted to OSPI, and the district will not receive state funding assistance.

c. Research

- WAC 392-342-025 Racial Imbalance Prohibition - Definition and acceptance criteria
- Enrollment Data specific to the evaluation of WAC 392-342-025 Racial Imbalance Prohibition
- 2014 Building Condition and Educational Adequacy Assessment Report – Meng Analysis
- 2019 Seattle Public Schools Building Condition Assessment Update – McKinstry

5. FISCAL IMPACT/REVENUE SOURCE

The Rainier Beach High School project funding source is from the BEX V Capital Levy and anticipated state assistance funding.

If this resolution is not approved in a timely manner, the state funding assistance for Rainier Beach High School project will not be forthcoming. This resolution is a requirement of the state D-5 application for assistance. Approximately \$8 million in state assistance funding is anticipated for new-in-lieu construction.

Expenditure: ☐ One-time ☐ Annual ☐ Multi-Year ☒ N/A

Revenue: ☒ One-time ☐ Annual ☐ Multi-Year ☐ N/A

6. COMMUNITY ENGAGEMENT

With guidance from the district's Community Engagement tool, this action was determined to merit the following tier of community engagement:

☐ Not applicable

☐ Tier 1: Inform

☒ Tier 2: Consult/Involve

☐ Tier 3: Collaborate

The selection of projects in the BEX V program went through an extensive community vetting process and ultimately received 73% approval from voters in February 2019.

7. EQUITY ANALYSIS

The district's Racial Equity Analysis toolkit was utilized to guide the planning process for the BEX V Capital Levy, influencing community engagement methods, preparation of the 2018 update to the Facilities Master Plan, and ultimately the final proposed levy package. The board's guiding principles stated that racial and educational equity should be an overarching principle for the BEX V Capital Levy planning efforts in accordance with Board Policy 0030, Ensuring Educational and Racial Equity. Projects identified for inclusion in the BEX V Capital Levy will ultimately improve conditions for all students in the affected schools. Improved building conditions create a better environment for learning and can provide facilities to better position students for academic success.

8. STUDENT BENEFIT

It is the goal of the district to continue the process of implementing the BTA and BEX Capital Levy programs and providing students with safe and secure school buildings.

9. WHY BOARD ACTION IS NECESSARY

- ☐ Amount of contract initial value or contract amendment exceeds \$250,000 (Policy No. 6220)
- ☐ Amount of grant exceeds \$250,000 in a single fiscal year (Policy No. 6114)
- ☐ Adopting, amending, or repealing a Board policy
- ☐ Formally accepting the completion of a public works project and closing out the contract
- ☐ Legal requirement for the School Board to take action on this matter
- ☐ Board Policy No. _____, [TITLE], provides the Board shall approve this item
- ☒ Other: A Board Resolution is required by OSPI as a part of the state funding assistance process to certify under WAC 392-342-025 that the project will not create or aggravate racial imbalance.

10. POLICY IMPLICATION

This action aligns with Board Policy No. 6100, Revenues from Local, State, and Federal Sources, which states: "It is the policy of the Seattle School Board to pursue systematically those funding opportunities that are consistent with district priorities from federal, state, and other governmental units, as well as from private and foundation sources." In addition, it states: "The Board agrees to comply with all federal and state requirements that may be a condition for the receipt of federal or state funds."

11. BOARD COMMITTEE RECOMMENDATION

This motion was discussed at the Operations Committee meeting on November 5, 2020. The committee reviewed the motion and _____.

12. TIMELINE FOR IMPLEMENTATION

Upon approval, this resolution will be transmitted to the state to continue through the funding approval process. The new school is anticipated to open in the 2025 school year.

13. ATTACHMENTS

- Resolution 2020/21-12 (for approval)
- Racial Imbalance Analysis (for reference)

School Year	District Students	African American/ Black	Asian	Hispanic/ Latino	American Indian/ Alaska Native	Multi-Racial	Native Hawaiian/ Pacific Islander	White	Percent POC	Percent White			
2012	49,864	8,822	8,782	6,266	505	3,293	262	21,934	>50% POC, nonmultiracial				
2012		17.69%	17.61%	12.57%	1.01%	6.60%	0.53%	43.99%	56.01%	43.99%			
2013	51,010	8,737	8,529	6,512	420	3,790	268	22,753	>50% POC, nonmultiracial				
2013		17.13%	16.72%	12.77%	0.82%	7.43%	0.53%	44.60%	55.39%	44.60%			
2014	51,988	8,530	8,254	6,494	377	4,366	248	23,690	>50% POC, nonmultiracial				
2014		16.41%	15.88%	12.49%	0.73%	8.40%	0.48%	45.57%	54.38%	45.57%			
2015	52,324	8,216	7,915	6,419	337	4,822	247	24,368	>50% POC, nonmultiracial				
2015		15.70%	15.13%	12.27%	0.64%	9.22%	0.47%	46.57%	53.43%	46.57%			
2016	53,102	8,184	7,734	6,493	331	5,341	205	24,814	>50% POC, nonmultiracial				
2016		15.41%	14.56%	12.23%	0.62%	10.06%	0.39%	46.73%	53.27%	46.73%			
2017	53,380	8,002	7,458	6,435	293	5,729	244	25,219	>50% POC, nonmultiracial				
2017		14.99%	13.97%	12.06%	0.55%	10.73%	0.46%	47.24%	52.76%	47.24%			
2018	52,931	7,519	7,193	6,490	269	6,183	223	25,054	>50% POC, nonmultiracial				
2018		14.21%	13.59%	12.26%	0.51%	11.68%	0.42%	47.33%	52.67%	47.33%			
2019	53,627	7,501	6,864	6,884	243	6,857	217	25,061	>50% POC, nonmultiracial				
2019		13.99%	12.80%	12.84%	0.45%	12.79%	0.40%	46.73%	53.3%	46.7%			
											>50% POC, nonmultiracial WAC definitions		
School Year	School Students	African American/ Black	Asian	Hispanic/ Latino	American Indian/ Alaska Native	Multi-Racial	Native Hawaiian/ Pacific Islander	White	Percent POC	Percent White	a) Combined School POC Exceeds Combined District POC by 25%	b) Single District POC Group of <30%, Exceeds 50% at School	c) Single District POC Group of >30%, Exceeds District % of that POC Group by 20% at School
2012	407	211	82	56	4	17	18	19	Racial Imbalance		Yes	Yes	No
2012		51.84%	20.15%	13.76%	0.98%	4.18%	4.42%	4.67%	95.33%	4.67%	39.32%	1	0
2013	484	254	123	61	3	14	18	11	Racial Imbalance		Yes	Yes	No
2013		52.48%	25.41%	12.60%	0.62%	2.89%	3.72%	2.27%	97.73%	2.27%	42.33%	1	0
2014	600	307	151	80	5	22	16	18	Racial Imbalance		Yes	Yes	No
2014		51.17%	25.17%	13.33%	0.83%	3.67%	2.67%	3.00%	96.83%	3.00%	42.46%	1	0
2015	655	321	171	91	4	29	15	24	Racial Imbalance		Yes	No	No
2015		49.01%	26.11%	13.89%	0.61%	4.43%	2.29%	3.66%	96.34%	3.66%	42.91%	0	0
2016	680	344	182	94	2	27	9	22	Racial Imbalance		Yes	Yes	No
2016		50.59%	26.76%	13.82%	0.29%	3.97%	1.32%	3.24%	96.76%	3.24%	43.49%	1	0
2017	721	355	180	102	3	40	17	24	Racial Imbalance		Yes	No	No
2017		49.24%	24.97%	14.15%	0.42%	5.55%	2.36%	3.33%	96.67%	3.33%	43.92%	0	0
2018	740	337	196	107	3	64	15	18	Racial Imbalance		Yes	No	No
2018		45.54%	26.49%	14.46%	0.41%	8.65%	2.03%	2.43%	97.57%	2.43%	44.90%	0	0
2019	717	314	191	121	6	49	16	20	Racial Imbalance		Yes	No	No
2019		43.79%	26.64%	16.88%	0.84%	6.83%	2.23%	2.79%	97.21%	2.79%	43.94%	0	0

**Seattle School District #1
Board Resolution**

Resolution No. 2020/21-12



A RESOLUTION of the Board of Directors of Seattle School District No. 1, King County, Seattle, Washington certifying that the Rainier Beach High School Replacement project named in the project application (Form D-5) submitted to the Office of Superintendent of Public Instruction will not create or aggravate racial imbalance within the District boundaries.

WHEREAS, it has been determined that racial imbalance, as defined by WAC 392-342-025, does not currently exist in the catchment area of the Rainier Beach enrollment area; and

WHEREAS, the proposed project at Rainier Beach High School will not create or aggravate a racial imbalance in student enrollment in the Rainier Beach enrollment area as defined by WAC 392-342-025;

NOW THEREFORE, BE IT

RESOLVED, Seattle School Board of Directors certifies that the Rainier Beach High School Replacement project will not create or aggravate racial imbalance within the District boundaries as defined for greater than fifty percent minority, non-multiracial school districts in WAC 392-342-025.

RESOLVED, that duly certified copies of this resolution shall be presented to the Office of Superintendent of Public Instruction.

ADOPTED this 2nd day of December, 2020

Zachary DeWolf, President

Chandra N. Hampson, Vice President

Leslie Harris, Member-at-Large

Brandon K. Hersey

Eden Mack

Liza Rankin

Lisa Rivera-Smith

ATTEST: _____
Denise Juneau, Superintendent
Secretary, Board of Directors
Seattle School District No. 1
King County, WA



SCHOOL BOARD ACTION REPORT

DATE: October 12, 2020
FROM: Denise Juneau, Superintendent
LEAD STAFF: Fred Podesta, Chief Operations Officer
206-252-0102, fhpodesta@seattleschools.org

For Introduction: November 18, 2020
For Action: December 2, 2020

1. TITLE

BEX V: Award Architectural & Engineering Contract P1776 to Mahlum Architects for the Lincoln High School Phase 2 project

2. PURPOSE

The purpose of this action is to provide authorization for the Superintendent to enter in to an Architectural & Engineering (A/E) contract in the amount of \$2,990,805.

3. RECOMMENDED MOTION

I move that the School Board authorize the Superintendent to execute A/E contract P1776 with Mahlum Architects in the amount of \$2,990,805 for the Lincoln High School Phase 2 project, with any minor additions, deletions, modifications and actions deemed necessary by the Superintendent to implement the contract.

4. BACKGROUND INFORMATION

a. Background

The Lincoln High School Phase 2 project, located at 4400 Interlake Avenue North, is funded through the BEX V levy passed by the voters in February 2019. The levy timeline includes that this project is anticipated to be completed for the 2022 school year.

The project scope includes earthquake (seismic) safety improvements, theater improvements, as well as career and technical education improvements.

The firm of Mahlum Architects was selected through the Architecture and Engineering (A/E) selection procedures established in Superintendent Procedure [6220SP.C](#). Six firms submitted their qualifications and three firms were shortlisted and interviewed, Integrus Architecture, Mahlum Architects, and SKL Architects. Mahlum Architects was judged to be the most qualified to provide these design services.

Prior improvements that have been made at Lincoln High School since the year 2000 include the 2017 Lincoln High School Modernization project. The 2017 Lincoln High School Modernization Project primarily focused on the west buildings on the campus, the Phase 2 project will focus on the east buildings.

b. Alternatives

Deny Motion. If motion is denied, the district will not be able to execute the contract to start the design of the Lincoln High School Phase 2 project.

c. Research

- Seattle Public Schools BEX V Master Plan, February 2019
- Seattle Public Schools Technical Building Standards, December 2012
- Seattle Public Schools Educational Specifications for High Schools, May 2016
- Seattle Public Schools CTE Annual Plan, June 2020
- Facilities Condition Assessment, 2014
- Seattle Building Code
- Coordination meetings with district facilities and other stakeholders throughout the design process.

5. FISCAL IMPACT/REVENUE SOURCE

The fiscal impact to this motion will be \$2,990,805. The revenue source for this motion is from the BEX V Capital Levy. The advertised Maximum Allowable Construction Cost budget is \$19,000,000, the total project budget is \$28,968,384, of which the A/E contract is one part.

Expenditure: ☒ One-time ☐ Annual ☐ Multi-Year ☐ N/A

Revenue: ☐ One-time ☐ Annual ☐ Multi-Year ☒ N/A

6. COMMUNITY ENGAGEMENT

With guidance from the District's Community Engagement tool, this action was determined to merit the following tier of community engagement:

☐ Not applicable

☐ Tier 1: Inform

☒ Tier 2: Consult/Involve

☐ Tier 3: Collaborate

The selection of projects in the 2019 (BEX V) program went through an extensive community vetting process and ultimately received 73% approval from voters in February 2019.

7. EQUITY ANALYSIS

The district's Racial Equity Analysis toolkit was utilized to guide the planning process for the BEX V Capital Levy, influencing community engagement methods, preparation of the 2018 update to the Facilities Master Plan, and ultimately the final proposed levy package. The board's guiding principles stated that racial and educational equity should be an overarching principle for the BEX V Capital Levy planning efforts in accordance with Board Policy 0030, Ensuring

Educational and Racial Equity. Projects identified for inclusion in the BEX V Capital Levy will ultimately improve conditions for all students in the affected schools. Improved building conditions create a better environment for learning and can provide facilities to better position students for academic success.

8. STUDENT BENEFIT

It is the goal of the district to continue the process of implementing the BTA and BEX Capital Levy programs and providing students with safe and secure school buildings.

9. WHY BOARD ACTION IS NECESSARY

- ☒ Amount of contract initial value or contract amendment exceeds \$250,000 (Policy No. 6220)
- ☐ Amount of grant exceeds \$250,000 in a single fiscal year (Policy No. 6114)
- ☐ Adopting, amending, or repealing a Board policy
- ☐ Formally accepting the completion of a public works project and closing out the contract
- ☐ Legal requirement for the School Board to take action on this matter
- ☐ Board Policy No. _____, [TITLE], provides the Board shall approve this item
- ☐ Other: _____

10. POLICY IMPLICATION

Per Board Policy No. 6220, Procurement, any contract over \$250,000 must be brought before the Board for approval.

11. BOARD COMMITTEE RECOMMENDATION

This motion was discussed at the Operations Committee meeting on November 5, 2020. The Committee reviewed the motion and _____.

12. TIMELINE FOR IMPLEMENTATION

Design will begin upon execution of this contract. Construction will take place Summer of 2021 through the Summer of 2022.

13. ATTACHMENTS

- Contract P1776 (for reference as part of motion) (available upon request from the Capital Projects & Planning department, 206-252-0669)
- Architect Fee Schedule (for reference) (available upon request from the Capital Projects & Planning department)
- AE Scoring Sheet (for reference) (available upon request from the Capital Projects & Planning department, 206-252-0669)

Lincoln High School Phase 2 - Mahlum Primary Contract Fee Schedule			
ITEM	DESCRIPTION	FEE	BILLING
BASIC DESIGN FEE			
A	Includes: Architectural, structural, mechanical, electrical, low voltage, civil engineering (SD only), hardware consulting	\$ 1,942,275	% Complete
Subtotal - Basic Design Fee		\$ 1,942,275	
OTHER BASIC SERVICES			
B	Civil Engineering	\$ 47,300	% Complete
C	Landscape Architecture	\$ 48,950	% Complete
D	Acoustical Design	\$ 11,700	% Complete
E	Theater Design	\$ 69,520	% Complete
F	Cost Estimating Consultant	\$ 185,790	% Complete
G	GC / CM Process and Phasing	\$ 154,720	% Complete
H	Landmarks Review Process	\$ 5,910	Hourly, Not-to-Exceed
I	WSSP Documentation	\$ 24,790	% Complete
J	SEPA Support	\$ 6,450	% Complete
K	Commissioning Support	\$ 18,770	Hourly, Not-to-Exceed
L	Storm Drainage Plan & Report	\$ 8,250	% Complete
M	SWPPP & NPDES	\$ 2,750	% Complete
N	FF&E Support and Coordination	\$ 22,900	Hourly, Not-to-Exceed
O	Enhanced Construction Administration	\$ -	Hourly, Not-to-Exceed
P	Conformed Construction Documents	\$ 29,110	Hourly, Not-to-Exceed
Q	Record Drawings	\$ 42,180	Hourly, Not-to-Exceed
R	Phase 3 - 50% Schematic Design	\$ 317,690	% Complete
S	2018 Seattle Energy Code Analysis	\$ 11,750	% Complete
Subtotal - Other Basic Services		\$ 1,008,530	
Total - Basic & Other Basic Services		\$ 2,950,805	
Reimbursements		\$ 40,000	
GRAND TOTAL - Basic Services, Other Basic Services, Reimbursements		\$ 2,990,805	

NOTE: For items identified above that are designated **Hourly, Not-to-Exceed**, the Architect shall present to the Owner on a bi-weekly basis an accounting of the time and fee spent along with names of the staff (including Consultants) performing the work. Documentation shall be collected and submitted via an MS Excel Worksheet. Failure to submit the required documentation in a timely manner may result in delayed payment or non-payment.



16 August 2020 (revised 09/29/2020)

Jennifer Everett, Sr. Construction Project Manager
CBRE|Heery
1420 Fifth Avenue, Suite 1700
Seattle, Washington 98101

RE: Seattle Public Schools – Lincoln High School Phase 2 (2020910.00)

Subject: Fee Proposal

Dear Jennifer,

We are excited to continue to work with you and Seattle Public Schools (SPS) by providing design services for the Phase 2 work at Lincoln High School. This letter provides an overview of our current understanding of the scope of work for Phase 2 following our Pre-design phase that defined the extent of the renovations including seismic upgrades and targeted program and system improvements.

Project Understanding

The first phase of the Lincoln High School modernization was completed in 2019, allowing the school to open as a new attendance area high school in Fall 2019. Phase 1 focused primarily on the historic buildings on the west side of campus. Phase 2 is focused on the existing buildings built in 1959 on the east side of the campus with a total gross area of approximately 70,000 sf.

As defined by the 2019 BEX V Capital Levy, the project includes voluntary seismic and programmatic improvements to the 1959 buildings. The program upgrades will prioritize the theater and locker rooms and, if feasible within the project budget, minor improvements to the Music and Career & Technical Education (CTE) classrooms may be included. In addition, opportunities for interior and exterior systems improvements, finishes upgrades, and space reconfigurations will be considered when impacted by the primary work. All improvements will be based on the school district's educational specification for high schools, though deviations will be reviewed and approved based on existing conditions and budget. At this time, building additions, including a new auxiliary gymnasium, major mechanical, electrical, plumbing and low-voltage system replacement are not included in the scope of work.

The sitework included minimal modifications to address ADA requirements and areas immediately adjacent to the east building entries. In addition, it is assumed that new plus replaced impervious surface onsite will be less than 10,000 SF and require implementation of On-site Stormwater Management but no detention or water quality treatment will be required. It is also understood that all right of way requirements were already addressed with the City of Seattle during Phase 1.

Students and staff will continue to occupy the Lincoln High School campus during construction beginning in the Summer of 2021 and concluding in the Fall of 2022. The design team will work with the school district and the GCCM partner to ensure that school operations can continue with minimal interruption during construction.

The Maximum Allowable Construction Cost (MACC) is \$19,000,000.

The District has elected to utilize a General Contractor-Construction Manager (GCCM) approach to project delivery and is currently interviewing contractors. We anticipate the GCCM partner to be under contract during the Schematic Design phase.

The project will follow Washington Sustainable Schools Protocol (WSSP), however we do not anticipate the project to receive state match (SCAP) funding. The D-form process, including Value Engineering and Constructability Review, are not planned for the project. However, in partnership with the GCCM and SPS, value engineering and constructability review will be conducted on an ongoing basis as part of the normal design process to maintain the project budget and document quality control.

The existing site is landmarked per the City of Seattle Landmarks Preservation Board. We will follow the Landmarks review and approval process for all Phase 2 work.

The design team will provide meeting minutes to document discussions, decisions, and actions following all owner meetings including leadership team, user group, SDCI, Landmarks, and community meetings.

Schedule, Permitting, and Phasing

We have attached a draft project schedule that shows Schematic Design beginning in September 2020 and anticipates Construction Documents concluding in the Spring of 2021. Construction will begin over the Summer of 2021 and be complete in the Fall of 2022.

We anticipate a phased agency review process by the City of Seattle and will involve them throughout all phases of design. Permitting will be under 2018 Seattle Building Code (anticipated adoption date is February 1, 2021) and 2018 Seattle Energy Code.

To meet the project timeline and allow for construction to begin during the Summer of 2021, the scope of services includes phased documentation for permitting and bidding. Currently we do not expect the project to require a Master User Permit or Departures process.

Project Team

Rebecca Hutchinson will be your primary contact and will lead our team as Project Manager. David Sarti and Claudia Saunders will lead our design effort and Rod Meira will be our lead Project Architect. I will support the District and our team as Principal-in-charge.

Our proposed consultant team is as follows:

Structural Engineer	PCS Structural Solutions 1011 Western Avenue, Suite 810 Seattle, WA 98104
Mechanical Engineer	Metrix Engineers, LLC. 725 Powell Ave SW #100 Renton, WA 98057
Electrical Engineer	Hargis Engineers, Inc. 1201 Third Avenue, Suite 600 Seattle, WA 98101

Civil Engineer	LPD Engineering, PLLC 1932 1st Ave #201 Seattle, WA 98101
Landscape Architect	Osborn Consulting, Inc. 1800 112th Ave NE # 220E Bellevue, WA 98004
Acoustical Consultant	Yantis Acoustics, LLC 6550 125th Avenue SE Bellevue, WA 98006
Theatre Consultant	The Shalleck Collaborative 220 NW 8th Avenue Portland, OR 97209
Cost Consultant	RC Cost 917 Pacific Avenue, Suite 505 Tacoma, WA 98402

The District will contract directly for services including Site Survey, Geotechnical Engineering, Hazardous Materials Survey and Documentation, Traffic Engineering, Environmental Consulting, Building Envelope Design Review and Inspection, and Special Testing and Inspection.

Insurance

The following itemizes the minimum insurance coverage for Mahlum and the following sub-consultants (Civil, Structural, Mechanical and Electrical):

Commercial General Liability	\$2,000,000 per occurrence / General Aggregate
Automobile Liability	\$1,000,000 combined single limit
Workers' Compensation	Washington Statutory limit
Employer's Liability (Stop Gap)	\$1,000,000 each employee / \$1,000,000 each accident
Professional Liability (E & O)	\$2,000,000 per occurrence / \$2,000,000 General Aggregate

Other sub-consultants may or may not carry professional liability insurance.

Scope of Services

Our base fee proposal will be based upon the WAC 392-343-070 Fee Guidelines. The Total Construction Cost is \$19,000,000 with an estimated work area of 70,000 sf. The fee percentage for the basic services scope of work is 10.88% which includes the percentage increase to account for the renovation of an existing facility. Basic Services shall include structural, mechanical, electrical, low-voltage (telecom, AV, security, etc), civil engineering (SD only), and hardware consulting. Specialty Consultants shall include civil engineering (DD-CO), landscape architecture, acoustical design, theater design, and cost estimating. *A portion of the Schematic Design phase will be completed under our Pre-design interim contract, consequently, our fee for Basic Services, Landscape Architecture, Theater Design, and Acoustical Design has been reduced by one-third of the total Schematic Design fee for each.*

Other basic service tasks per the WAC/OFM Guidelines are listed further in this letter and on the Fee Summary.

The percentage fee breakdown for each phase of the work will follow OFM Guidelines, as follows:

Phase	Percentage
Schematic Design (1/3 of phase billed under a separate contract)	18%
Design Development	20%
Construction Documents	31%
Bidding	2%
Construction Administration	27%
Close-out/Punch-list	1.5%
Completion of Corrections/Warranty	0.5%
TOTAL	100%

Other Basic Services

In addition to the Basic Services provided, we have identified Other Basic Services including Specialty Consultants and Tasks per the WAC/OFM Guidelines required to complete the project. The following is a description of the services included in attached Fee Summary proposed for your project. All reimbursable and consultant services will be billed at a rate of 1.10 times our direct cost.

A/E Specialty Consultants:

Civil Engineering (Lump sum, % Complete): Services include civil engineering for DD-CO phases per OFM Guidelines A/E Extra Services Specialty Consultants.

Landscape Architecture (Lump sum, % Complete): Services include site design and landscape development per OFM Guidelines A/E Extra Services Specialty Consultants. Primary landscape components include pedestrian hardscape, planting, irrigation, and site furnishings.

Acoustical Design (Lump sum, % Complete): Services include acoustical design for architectural acoustics within the music rooms and black box and review of the mechanical system for noise and vibration per OFM Guidelines A/E Extra Services Specialty Consultants.

Theater Design (Lump sum, % Complete): Services include production systems design for the theater and black box including rigging and overhead support at the stage and blackbox, lighting controls, production lighting fixtures, stage draperies, refurbishment or replacement of fixed theater seating, and audio visual systems. Design services are per OFM Guidelines A/E Extra Services Specialty Consultants.

Cost Estimating Consultant (Lump sum, % Complete): Services include independent cost estimating at completion of SD, DD and 65% CD printings per OFM Guidelines A/E Extra Services Specialty Consultants. Mechanical/Plumbing, Electrical, Civil, and Theater scopes of work will be estimated by the design consultant performing the work.

Other Basic Service Tasks shall be per the WAC/OFM Guidelines, and will include the following:

GC/CM Process and Phasing (Lump-sum, % Complete): Services for pre-construction coordination with GC/CM including bi-weekly OAC meetings, cost estimating review, reconciliation, additional coordination required for phased bidding and permitting, in addition to integration of GC/CM through all design phases and bidding. Services include participation by all design disciplines. Participation in the GCCM selection process is also included.

Landmarks Review Process (Hourly, not to exceed): Service includes preparation of Landmarks Review meetings associated with the agency review process - assumes 3 Landmarks meetings. This work is anticipated to be performed concurrent to the main project design phases.

WSSP Documentation (Lump-sum, % Complete): Service includes documentation of the WSSP workplan and score sheet required to meet OSPI requirements and the Owner's sustainability goals. The Integrated Design Charrette is included in the Pre-design scope. This work is anticipated to be performed concurrent to the main project design phases.

SEPA Support (Lump-sum, % Complete): Services include assistance to the owner's environmental consultant in completing the addendum to the SEPA Checklist along with responding to any comments from local agencies. This work is anticipated to be performed concurrent to the main project design phases.

ELCCA/PFEC Form and Cover Letter (Lump-sum, % Complete): Not required if the project costs do not exceed 50% of the full building replacement cost and is not receiving state match funding.

Commissioning Support (Hourly, not to exceed): Service includes support and coordination to the Owner, Commissioning Agent, and the General Contractor during design and construction.

Mechanical and electrical engineers will attend SOO review meeting, pre-commissioning and commissioning meetings (up to 5 mechanical and 1 electrical). (revised 09/29/2020)

Storm Drainage Plan and Report (Lump-sum, % Complete): Services include preparation of a detailed basin and downstream drainage study, calculation of storm drainage requirements and preparation of plans and report for permitting and construction of storm drainage facilities.

SWPPP and NPDES (Lump-sum, % Complete): Service includes preparing a Stormwater Pollution Prevention Plan (SWPPP) Report to comply with the National Pollution Discharge Elimination System (NPDES) and assisting the owner and contractor with submittal of the NPDES permit & CSWPPP to Department of Ecology.

Low-Voltage Systems Design (Lump-sum, % Complete):

Telecommunications / Classroom AV Systems / Intercom Clock Design: Included in Basic Services.

Security System Design: Included in Basic Services.

Emergency Communications System Design: Included in Basic Services.

Performance AV Systems: Included in Theater Design Services.

FF&E Support and Coordination (Lump-sum, % Complete): This additional service includes furniture selection and documentation based on the *Furniture Workbook and Catalog, dated December 2018*. We understand that the district will work with your in-house district staff for coordination of the final

purchase order and installation of the FF&E items. This work is anticipated to be performed concurrent to the main project design phases.

Enhanced Construction Administration (Hourly, not to exceed): ~~Not included. This service will, if needed, enhance fees provided by the WAC fee guidelines to accommodate the Owner's needs during construction. Fees include an additional 600 hours for the architectural team and increases the overall FTE from 0.8 to 1.0 during the 16-month construction schedule. Additional Construction Administration services is also included for structural, mechanical, electrical, civil, and landscape team members.~~ (revised 09/29/2020)

Conformed Construction Documents (Hourly, not to exceed): Service includes compilation of all addenda into the Bid set to create a conformed set for the contractor use during construction.

Record Drawings (Hourly, not to exceed): Service includes transferring the contractor's as-built notes and dimensions from constructed ASI's, RFI's and COP's into the CAD design drawings (Revit model) and providing the Owner with disc of PDF files and CAD backgrounds for each sheet. This work is anticipated to be performed post construction.

Phase 3 Schematic Design (Lump-sum, % Complete): Service includes partial schematic design phase (approximately 50%) of a future phase 3. The planning includes an auxiliary gym and east entry addition; full mechanical, electrical, and low-voltage system upgrades; and renovation of the theater and support spaces to support the educational program and address ADA requirements. This work is anticipated to be performed concurrent to the main project schematic design phase and will include an estimate of probable cost for future district planning. (revised 09/29/2020)

2018 Seattle Energy Code System Analysis (Lump-sum, % Complete): Service includes meetings with district capital projects and operations staff to review the new 2018 Seattle Energy Code requirements, define new acceptable systems standards, provide system cost studies, and verify feasibility and applicability to phase 3 project planning. (revised 09/29/2020)

Optional Additional Services

We have not included the following additional services but they could be added to the project at a later date as required.

Utility Rebate Options and Submission

Photovoltaic System Design

2018 SEC Reporting and Analysis

Post Occupancy Evaluation

We understand that this proposal including scope of work and associated fees will be incorporated into a design services agreement between Owner and Architect. We look forward to reviewing this proposal with you and addressing any questions you have at your earliest convenience.

Sincerely,

A handwritten signature in black ink, appearing to be 'DM' followed by a stylized flourish.

David Mount AIA
Partner

cc Mike Skutack, Seattle Public Schools
 Rebecca Hutchinson AIA, Mahlum
 Nancy Harmon, Mahlum

encl Fee Summary (*revised 09/29/2020*)
 Preliminary Project Schedule

SPS - Lincoln High School Phase 2

PROJECT BUDGET & SCOPE

Project Budget

\$19,000,000	Allowable Construction Cost
\$19,000,000	Budget Responsibility of A/E (MACC)
\$19,000,000	Total Construction Budget (without sales tax)

August 16, 2020
(revised 09/29/2020)

Project Scope

70,000 gsf Total Project Area

BASIC SERVICES COMPENSATION Architectural, mechanical, electrical, low-voltage, civil & structural 10.88% **\$1,942,275***

ADDITIONAL SERVICES PROPOSED

Additional Service Tasks	Arch Fee	Consult Fee		Total Fee
GCCM Process and Phasing	\$39,600	\$104,650	x 1.1	\$154,720 <i>lump sum</i>
Landmarks Review Process	\$5,910	\$0	x 1.1	\$5,910 <i>hourly</i>
WSPS Documentation	\$6,500	\$16,625	x 1.1	\$24,790 <i>lump sum</i>
SEPA Support	\$3,700	\$2,500	x 1.1	\$6,450 <i>lump sum</i>
ELCCA/PFEC Form (not required)	\$0	\$0	x 1.1	\$0
Commissioning Support	\$5,400	\$12,150	x 1.1	\$18,770 <i>hourly</i>
Storm Drainage Plan and Report	\$0	\$7,500	x 1.1	\$8,250 <i>lump sum</i>
SWPPP and NPDES	\$0	\$2,500	x 1.1	\$2,750 <i>lump sum</i>
Low-Voltage Systems (in Basic Services)	\$0	\$0	x 1.1	\$0
FF&E Support and Coordination	\$22,900	\$0	x 1.1	\$22,900 <i>hourly</i>
Enhanced Construction Administration	\$0	\$0	x 1.1	\$0
Conformed Construction Documents	\$7,600	\$19,550	x 1.1	\$29,110 <i>hourly</i>
Record Drawings	\$7,840	\$31,220	x 1.1	\$42,180 <i>hourly</i>
Phase 3 Schematic Design	\$165,800	\$138,086	x 1.1	\$317,690 <i>lump sum</i>
2018 Seattle Energy Code Analysis	\$1,300	\$9,500	x 1.1	\$11,750 <i>lump sum</i>
	266,550	Total Additional Service Tasks		\$645,270

Additional Consultant Services

Civil Engineering	\$43,000	x 1.1	\$47,300 <i>lump sum</i>
Landscape Architecture	\$44,500	x 1.1	\$48,950 <i>lump sum *</i>
Acoustic Design	\$10,633	x 1.1	\$11,700 <i>lump sum *</i>
Cost Estimating	\$63,200	x 1.1	\$69,520 <i>lump sum</i>
Theater Design	\$168,896	x 1.1	\$185,790 <i>lump sum *</i>
	Total Additional Consultant Service Tasks		\$363,260

Additional Service Total **\$1,008,530**

TOTAL PROPOSED COMPENSATION

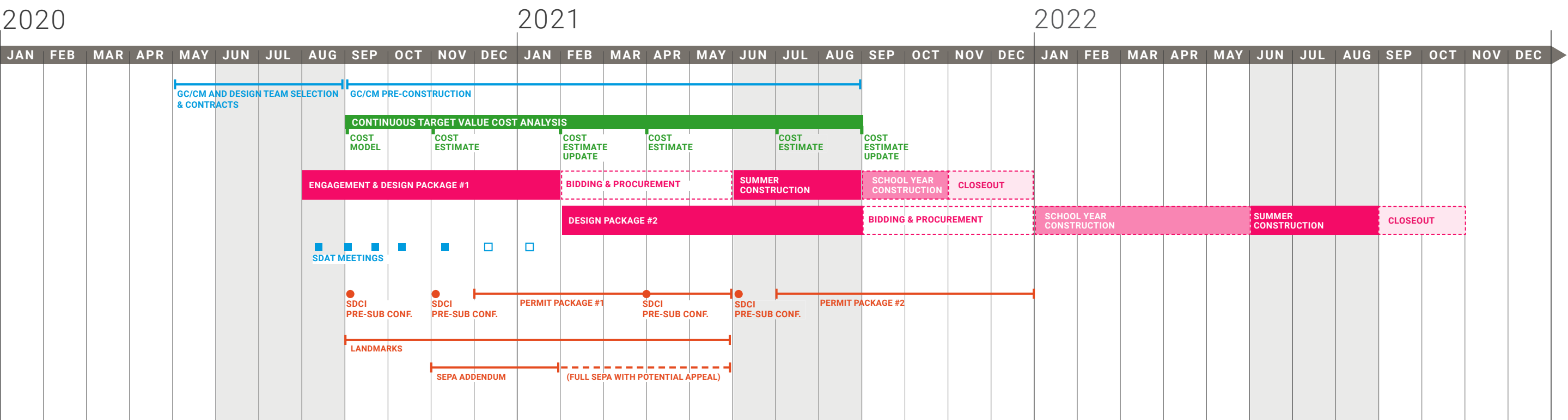
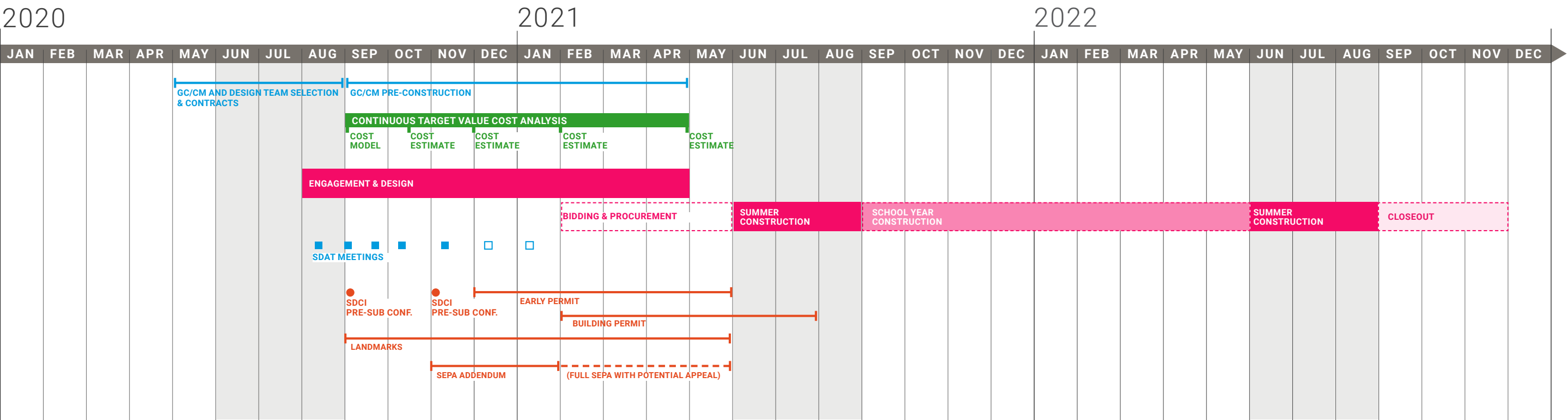
(Basic Services Compensation + Additional Services Total) **\$2,950,805**

Basic Services Reimbursable Expenses

Estimated Direct Costs (printing, copies, postage, travel)	\$40,000
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* one-third (1/3) of Schematic Design phase included under a separate contract

REVISIONS





SCHOOL BOARD ACTION REPORT

DATE: October 14, 2020
FROM: Ms. Denise Juneau, Superintendent
LEAD STAFF: Fred Podesta, Chief Operations Officer
206-252-0102, fhpodesta@seattleschools.org

For Introduction: November 18, 2020
For Action: December 2, 2020

1. TITLE

BEX V: Resolution 2020/21-15: Approval of General Contractor/Construction Manager (GC/CM) Delivery Method and Award General Contractor/Construction Manager (GC/CM) Contract P5153 to Lydig Construction, Inc., for the Lincoln High School Phase 2 project

2. PURPOSE

The purpose of this action is to approve Lydig Construction, Inc., as the General Contractor/Construction Manager (GC/CM) for the Lincoln High School Phase 2 project, and to approve Resolution 2020/21-15 certifying that the district intends to comply with RCW 39.10. School Board approval of the negotiated total contract cost is required as part of the Superintendent of Public Instruction (OSPI) D-Form process to receive state funding assistance.

3. RECOMMENDED MOTION

I move that the School Board authorize the Superintendent to utilize the GC/CM alternative construction delivery method on the Lincoln High School Phase 2 project and award of contract P5153 to be authorized to Lydig Construction, Inc. This action authorizes the GC/CM Contractor to immediately provide pre-construction services for an amount not to exceed \$243,340, plus Washington State sales tax, and approve Resolution 2020/21-15 certifying that the district intends to comply with RCW 39.10. This action also authorizes the Superintendent to negotiate and execute a contract amendment, with any minor additions, deletions, modifications and actions deemed necessary for the Guaranteed Maximum Price (GMP) as defined by the RCW 39.10.370 for not to exceed amount of \$21,200,000 which includes the pre-construction services allowance, Specified General Conditions, Negotiated Support Services Allowance, the Maximum Allowable Construction Cost (MACC) including subcontractor bonds, the MACC Contingency, and the GC/CM fee, no earlier than completion of 90% construction documents unless otherwise agreed to by both parties. The GMP excludes Washington State sales tax.

4. BACKGROUND INFORMATION

a. Background

The Lincoln High School Phase 2 project, located at 4400 Interlake Avenue North, is funded through the BEX V capital levy passed by the voters in February 2019. The levy timeline includes that this project will be completed for the 2022 school year.

The scope of work for this project includes earthquake (seismic) safety improvements, theater improvements, as well as career and technical education improvements.

This motion allows the district to execute a GC/CM construction contract with Lydig Construction, Inc., who was the selected as the most qualified, responsive and responsible bidder.

The Lincoln High School Phase 2 project buildings (east buildings on the campus) were constructed in 1959. Prior improvements that have been made at Lincoln High School since the year 2000 include the 2017 Lincoln High School Modernization project which primarily focused on the west campus buildings, the Phase 2 project will focus on the east buildings.

Background on GC/CM Procurement

The State of Washington allows public agencies to utilize alternative public works contracting methods including the GC/CM delivery model. Using GC/CM allows the district to select a contractor on factors other than low price such as relevant experience and project specific qualifications. This allows the GC/CM to join the project team during early design to provide expertise in construction phase planning, means and methods, constructability, sequencing, scheduling, site logistics, and cost estimating. These contributions are welcomed by the project team to collectively manage this complex capacity addition project.

Seattle Public Schools has used GC/CM delivery on several complex projects in recent years, including Northgate Elementary School Replacement, Daniel Bagley Elementary School, Webster School, Loyal Heights Elementary School, Robert Eagle Staff Middle School, Licton Springs K-8, Cascadia Elementary School and Olympic Hills Elementary Schools, Denny Middle School/Chief Sealth high School, Nathan Hale, Garfield, Cleveland, Roosevelt High Schools, and Lincoln High School - Phase 1. This type of procurement has been found to reduce risk to the district by early involvement of the contractor during the design phase where decisions on design are informed by construction methods, materials, coordination, and sequencing.

The likely benefits from using GC/CM on the Lincoln High School Phase 2 project are considerable. Selection of the GC/CM firm was largely based on qualifications and experience relevant to the specific nature and challenges of the project. The criteria includes: past performance on completing projects of similar size, scope and complexity; the ability of the GC/CM team to control the project schedule and complete the project within budget and on a tight timeline; and past experience of the GC/CM firm with projects involving complex construction phasing, with construction at a fully-occupied site, with potential historic preservation controls, and in residential neighborhoods. Other benefits:

- The GC/CM acts as an advocate of the Owner, unlike a low-bid delivery method.
- Top tier contractors competed for this project because this will not be a low bid, thus carrying a higher likelihood of quality assurance and timely completion.
- The GC/CM selection was also based on a competitively bid fee and specified general conditions (general contractor's staffing).
- Through pre-construction involvement, the GC/CM will understand the work long before bidding.
- The GC/CM will participate in setting the schedule, packaging the scope to fit the

marketplace, and realistically set expectations before work is procured in order to successfully deliver on value.

- The GC/CM participates actively in ongoing constructability reviews throughout the design process, resulting in cost-effective and value-based solutions which the project team welcomes.
- Open book cost accounting of the work brings transparency to actual value of work to be constructed.
- Phasing of bid buy-out and flexibility to adjust bid packages as the work is bought out allows for cost management by the Owner and GC/CM team.

On March 26, 2020, the Lincoln High School Phase 2 project was presented to the State Capital Projects Advisory Review Board Project Review Committee (CPARB-PRC) which authorizes the use of alternative delivery methods for public agencies. A unanimous vote of the CPARB-PRC approved the use of GC/CM for this project based largely on meeting the following criteria and qualifications:

- Project complexity, including complex phasing, tight fixed schedule, complex coordination, potential historic landmark controls, and occupied site.
- Complex technical work environment, including site constraints, complex and involved regulatory processes, retrofit and connection to potentially designated landmark structures and surrounding residential neighborhood.
- The Owner has strong history of building capital projects.
- The specific project team has strong GC/CM experience and successful project records.

The GC/CM procurement process requires three steps: Step 1: Submission of Qualifications and Experience; Step 2: resumes, references and interviews of project team; and Step 3: bid on GC/CM fee percentage of estimated construction costs and bid on Specified General Conditions outlined in the contract documents. The project was publicly advertised on May 12, 2020 and May 21, 2020. A total of six GC/CM firms submitted written qualifications on June 12, 2020. A selection committee of five professionals with members from the Capital Projects and Planning department, the Facilities Operation department and construction manager each evaluated the GC/CM qualifications submittals and ranked the firms. Three firms were selected by the panel to be shortlisted for interviews. Interviews were conducted on July 30, 2020 by an expanded nine-member selection panel and after evaluation by the selection committee, finalists were selected to submit priced proposals. Sealed proposals were received August 14, 2020. The scores were totaled from each of the three steps and Lydig Construction, Inc., was the highest scoring firm.

Lydig Construction, Inc., is aware Seattle Public Schools is entering into a Student and Community Workforce Agreement (SCWA) and that Seattle Public Schools formed a Student and Community Workforce Agreement Task Force, charged with examining and making recommendations to the board regarding a Student and Community Workforce Agreement. On September 23, 2020 the board adopted the policy to implement the SCWA on projects with project budgets anticipated in excess of \$5,000,000. Therefore, Lydig Construction, Inc. will incorporate the SCWA into the self-performed and sub-contractor bid packages during the bidding process for the GC/CM project. This will be implemented prior to final GMP with Lydig Construction, Inc.

b. Alternatives

Deny Motion. If motion is denied, the district as a public agency will be required to procure a general contractor for construction via lowest price bidding. The benefits described in section a. above would not be available on this project.

c. Research

[Capital Projects Advisory Board \(CPARB\).](#)

[RCW Chapter 39.10.340:](#) Alternative Public Works Contracting Procedures.

RCW Chapter 39.10: Under certain circumstances, alternative public works contracting procedures may best serve the public interest if such procedures are implemented in an open and fair process based on objective and equitable criteria.

RCW Chapter 39.10.280: A public body not certified under RCW 39.10.270 must apply for approval from the committee to use the design-build or general contractor/construction manager procedure on a project. A public body seeking approval must submit to the committee an application in a format and manner as prescribed by the committee. The application must include a description of the public body's qualifications, a description of the project, and its intended use of alternative contracting procedures.

RCW 39.10.340: Subject to the process in RCW 39.10.270 or 39.10.280, public bodies may utilize the general contractor/construction manager procedure for public works projects where:

- (1) Implementation of the project involves complex scheduling, phasing, or coordination;
- (2) The involvement of the general contractor/construction manager during the design stage is critical to the success of the project;
- (3) The project encompasses a complex or technical work environment; or the project requires specialized work on a building that has historic significance

5. FISCAL IMPACT/REVENUE SOURCE

Fiscal impact to this action will not exceed \$21,200,000, including \$243,240 for Preconstruction Services, plus Washington State sales tax. Board approval of the GMP is required as part of the process to receive state funding assistance of up to \$1,108,759. The total project budget, of which the construction contract is one part, is \$28,968,384.

The revenue source for this motion is from the BEX V Capital Levy.

Expenditure: ☒ One-time ☐ Annual ☐ Multi-Year ☐ N/A

Revenue: ☐ One-time ☐ Annual ☐ Multi-Year ☒ N/A

6. COMMUNITY ENGAGEMENT

With guidance from the District's Community Engagement tool, this action was determined to merit the following tier of community engagement:

- ☐ Not applicable
- ☐ Tier 1: Inform
- ☒ Tier 2: Consult/Involve
- ☐ Tier 3: Collaborate

The selection of projects in the BEX V program went through an extensive community vetting process and ultimately received 73% approval from voters in February 2019.

Moving forward there are several additional steps at which public input will be received including a State Environmental Policy Act (SEPA) checklist process, potentially the City's Master Use Permit (MUP) process, and potentially the City's historic landmarks review designation and controls process. Each of these processes include public meetings and/or comment periods.

7. EQUITY ANALYSIS

The district's Racial Equity Analysis toolkit was utilized to guide the planning process for the BEX V Capital Levy, influencing community engagement methods, preparation of the 2018 update to the Facilities Master Plan, and ultimately the final proposed levy package. The board's guiding principles stated that racial and educational equity should be an overarching principle for the BEX V Capital Levy planning efforts in accordance with Board Policy 0030, Ensuring Educational and Racial Equity. Projects identified for inclusion in the BEX V Capital Levy will ultimately improve conditions for all students in the affected schools. Improved building conditions create a better environment for learning and can position students for academic success.

8. STUDENT BENEFIT

The Lincoln High School Phase 2 project will incorporate guidelines and requirements set forth in the Seattle Public Schools Educational Specifications and the School Design Advisory Team (SDAT) process and will provide students with safe and secure school buildings.

9. WHY BOARD ACTION IS NECESSARY

- ☒ Amount of contract initial value or contract amendment exceeds \$250,000 (Policy No. 6220)
- ☐ Amount of grant exceeds \$250,000 in a single fiscal year (Policy No. 6114)
- ☐ Adopting, amending, or repealing a Board policy

☐ Formally accepting the completion of a public works project and closing out the contract

☐ Legal requirement for the School Board to take action on this matter

☐ Board Policy No. _____,

☒ Other: The Office of Superintendent of Public Instruction (OSPI) Form D-5 Application for Preliminary Funding Status requires the applicant School District's board approval to use alternative Public Works contracting for construction of the subject project.

10. POLICY IMPLICATION

Per Board Policy No. 6220, Procurement, any contract over \$250,000 must be brought before the Board for approval.

11. BOARD COMMITTEE RECOMMENDATION

This motion was discussed at the Operations Committee meeting on November 5, 2020. The Committee reviewed the motion and _____.

12. TIMELINE FOR IMPLEMENTATION

Upon approval of this motion, a Notice to Proceed will be issued to the selected GC/CM.

Timeline Summary:

- Start of preconstruction services – Fall 2020
- Completion of preconstruction services – Summer 2020
- Bidding/Total Contract Cost negotiation period – Spring 2021
- Start of construction – Summer 2021
- Substantial Completion – August 2022
- School opening – September 2022

13. ATTACHMENTS

- Resolution 2020/21-15 (for approval)
- Contract P5153 (for reference) (available upon request in the Capital Projects & Planning department), 206-252-0635)
- GC/CM Selection Results Memo (for reference) (available upon request from the Capital Projects & Planning department, 206-252-0635)
- CPARB Approval Letter (for reference) (available upon request from the Capital Projects & Planning department, 206-252-0635)

**Seattle School District #1
Board Resolution**

Resolution No. 2020/2021-15



A RESOLUTION of the Board of Directors of Seattle School District No. 1, King County, Seattle, Washington, certifying that the District intends to comply with the RCW 39.10 for the use of the Alternative Public Works Contracting Procedures or General Contractor Construction Manager (GC/CM) Delivery method on the Lincoln High School Phase 2 project as required by Office of Superintendent of Public Instruction (OSPI) D-5 Application.

WHEREAS, it has been determined that the Lincoln High School Phase 2 project meets at least one of the RCW 39.10.270 requirements; and

WHEREAS, the Capital Projects Advisory Review Board (CPARB) Project Review Committee has reviewed and approved the use of alternative delivery method; and

WHEREAS, this resolution ensures the responsiveness of the District to OSPI, as required on the D-5 application;

NOW THEREFORE, BE IT RESOLVED, that the Seattle School Board of Directors approves use of a GC/CM delivery method for the Lincoln High School Phase 2 project in accordance with the OSPI provisions in the D-5 application and certifies that it will comply with the RCW 39.10 requirements.

RESOLVED, that duly certified copies of this resolution shall be presented to OSPI .

ADOPTED this 2nd day of December, 2020

Zachary DeWolf, President

Chandra N. Hampson, Vice President

Leslie Harris, Member-at-Large

Brandon K. Hersey

Eden Mack

Liza Rankin

Lisa Rivera-Smith

ATTEST:
Denise Juneau, Superintendent
Secretary, Board of Directors
Seattle School District No. 1
King County, WA



STATE OF WASHINGTON
Capital Projects Advisory Review Board
Project Review Committee

March 26, 2020

Mr. Richard Best, Director
Capital & Planning
Seattle Public Schools District 1
2443 – 3rd Avenue South; MS: 22-332
Post Office Box 34165
Seattle, Washington 98124

Re: Public Body Project Approval – GC/CM

Dear Mr. Best:

The Capital Projects Advisory Review Board's Project Review Committee has determined that your application has met the criteria established in RCW 39.10.280 for public body project approval.

Seattle Public Schools District No. 1 is hereby authorized to utilize the GC/CM alternative contracting procedure for the *Lincoln High School Seismic Improvement & Theater Renovation Project*.

Congratulations on obtaining project approval and we look forward to successful completion of your project.

Under the terms of RCW 39.10.350, you will be required to submit project data to CPARB at the conclusion of the project. Please email CPARB staff person, Nancy Deakins, with your point of contact responsible for providing project information, at Nancy.Deakins@des.wa.gov. She can be reached at (360) 407-9333 if you have any questions regarding this process.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. Dugan".

Jim Dugan, Chair
Project Review Committee

cc: Ed Peters, Vice Chair
Nancy Deakins, DES
PRC Master File



AIA® Document A133™ – 2009

Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

AGREEMENT made as of the ____ day of _____ in the year 2020
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status and address)

Seattle School District No. 1
2445 3rd Avenue South
Seattle, Washington 98124

and the Construction Manager:
(Name, legal status and address)

Lydig Construction, Inc.
3180 139th Avenue SE, Suite 100
Bellevue, Washington 98005

for the following Project:
(Name and address or location)

Lincoln High School Phase 2
4400 Interlake Avenue N.
Seattle, Washington 98103

The Architect:
(Name, legal status and address)

Mahlum Architects
71 Columbia Street, Floor 4
Seattle, Washington 98104

The Owner's Designated Representative:
(Name, address and other information)

Michael Skutack, Senior Project Manager
Seattle School District No. 1
2445 3rd Avenue South
Seattle, Washington 98124
Telephone: (206) 252-0669
Mobile: (206) 730-3427
mskutack@seattleschools.org

The Construction Manager's Designated Representative:
(Name, address and other information)

Larry Swartz, CEO

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™–2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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User Notes:

(1446143855)

Lydig Construction, Inc.
3180 139th Ave SE, Suite 110
Bellevue, Washington 98005

The Architect's Designated Representative:
(Name, address and other information)

David Mount, Partner
Mahlum Architects
71 Columbia Street, Floor 4
Seattle, Washington 98104

The Owner's Project Manager:
CBRE | Heery
1420 Fifth Avenue, Suite 1700
Seattle, WA 98101
Attn: Jennifer Everett
jmeverett@seattleschools.org

The Owner and Construction Manager agree as follows.

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TABLE OF ARTICLES

1	GENERAL PROVISIONS
2	CONSTRUCTION MANAGER'S RESPONSIBILITIES
3	OWNER'S RESPONSIBILITIES
4	COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
5	COMPENSATION FOR CONSTRUCTION PHASE SERVICES
6	COST OF THE WORK FOR CONSTRUCTION PHASE
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8	INSURANCE AND BONDS
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12	SCOPE OF THE AGREEMENT

EXHIBIT A ~~GUARANTEED MAXIMUM PRICE AMENDMENT~~

ARTICLE 1 GENERAL PROVISIONS

§ 1.0 DEFINITIONS

§ 1.0.0 These Definitions are often shorthand references to more formal definitions elsewhere in the Contract Documents. When a defined term is described elsewhere in the Contract Documents, the more descriptive definition shall control over any general description in this Section 1.0.

§ 1.0.1 The **Agreement** is this revised A133-2009 Agreement between Owner and Construction Manager. All references to the A133 in the Contract Documents are to this revised document.

§ 1.0.2 An **Allowance** is a stated amount included in the Guaranteed Maximum Price ("GMP") for a stated part of the Work that is not fully defined and/or quantified at the time the GMP is established. When that part of the Work is adequately defined and/or quantified, the GMP will be adjusted to account for the difference between the Allowance and the actual or estimated Cost of the Work for that item in an amount that is mutually agreeable to the Owner and Construction Manager. Following the adjustment, that part of the Work will no longer be an Allowance item.

§ 1.0.3 An **Application for Payment** is described in Section 9.3 of the revised General Conditions and Section 7.1 of this Agreement. An Application for Payment is generally a document the Construction Manager submits to the Owner and the Architect itemizing amounts due for and operations completed at the Project site in accordance with the Contract for Construction.

§ 1.0.4 The **Architect**, listed above, is the entity with which the Owner has contracted in a separate Owner-Architect agreement; the Architect is described in Section 3.3 of this Agreement and defined in Section 4.1 of the revised General Conditions.

§ 1.0.5 A **Change Order** is defined in Section 7.2.1 of the revised General Conditions and is generally a written instrument signed by the Owner, the Construction Manager and the Architect that modifies the Contract for Construction and states their agreement upon a Change in the Work, the amount of the adjustment, if any, in the GMP; and the extent of the adjustment, if any, in the Contract Time.

§ 1.0.6 A **Claim** is defined in Section 15.1.1 of the revised General Conditions and generally consists of a demand or assertion by one of the parties seeking, as a matter of right, adjustments or interpretations of Contract terms, payment

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of money, extension of time or other relief. The term "Claim" includes disputes and matters in question between the Owner and the Construction Manager arising out of or relating to the Contract Documents.

§ 1.0.7 A **Construction Change Directive** is defined in Section 7.3 of the revised General Conditions as a written order prepared by the Architect and signed by the Owner and Architect, with or without the agreement of the Construction Manager, directing the Construction Manager to perform a change in the Work, or perform Work the Construction Manager contends to be a change in the Work, prior to agreement of the basis for adjustment, if any, to the Contract for Construction.

§ 1.0.8 The **Construction Manager** is the entity identified above as the party to this Agreement responsible for performing the Preconstruction Services and, upon successful negotiation and execution of the GMP Amendment, responsible for construction of the Work through its own services as well as through Subcontractors. The Construction Manager is identified as the "Contractor" in the General Conditions and shall provide the services of a General Contractor/Construction Manager as defined in RCW 39.10.

§ 1.0.9 The **Construction Manager's Contingency** is described in Section 2.2.4.1.

§ 1.0.10 The **Construction Phase** is defined in Section 2.3 of this Agreement and any Special Conditions, and generally consists of the period of the Contract during which the Construction Manager performs construction of the Work after the earlier of execution of the GMP Amendment or the Owner's issuance of a Notice to Proceed.

§ 1.0.11 The **Construction Schedule** is the schedule defined in Section 3.10 of the revised General Conditions and prepared, revised and utilized by the Construction Manager for its performance under the Contract for Construction.

§ 1.0.12 The **Contract Documents** are defined in Section 1.1.1 of the revised General Conditions and Section 1.1 of this Agreement.

§ 1.0.13 The **Contract for Construction** (sometimes referred to as the **Contract**) is the agreement between the Owner and the Construction Manager and is formed by the Contract Documents.

§ 1.0.14 The **Contract Sum** is defined in Section 5.1 of this Agreement and Section 9.1 of the revised General Conditions that the Owner agrees to pay the Construction Manager for its performance of the Work under the Contract for Construction. The Contract Sum consists of the sum of the Cost of the Work (including Negotiated Support Services and Specified General Conditions) as well as the Construction Manager's Fee, and it shall not exceed the GMP. Neither the Preconstruction Services Cost nor the sales tax is included in the Contract Sum.

§ 1.0.15 The **Contract Time** is the time defined in Section 8.1.1 of the revised General Conditions and specified in the GMP Amendment to achieve Substantial Completion of the Work.

§ 1.0.16 The term **Contractor** means the Construction Manager.

§ 1.0.17 The **Cost of the Work** is defined in Article 6 of this Agreement.

§ 1.0.18 **Drawings** are defined in Section 1.1.5 of the revised General Conditions and generally are the graphic and pictorial portions of the Contract Documents showing the design and location of the Work, and generally include plans, elevations, sections, details, dimensions, schedules and diagrams.

§ 1.0.19 The Construction Manager's **Fee** is the amount specified in the GMP Amendment based on the percentage contained in Section 5.1.1 of this Agreement that the Construction Manager is to receive under this Contract in addition to the Cost of the Work for its performance of the Work. The Fee compensates the Construction Manager for all aspects of its performance other than the Cost of the Work, the Negotiated Support Services and the Specified General Conditions. The Fee includes the Construction Manager's profit and all overhead expenses not otherwise reimbursable under this Agreement, including but not limited to all insurance required by Sections 11.1 of the revised A201, all bonds required by Section 11.4 of the revised A201, home office overhead, and all taxes except sales tax on the Contract Sum, and as otherwise described in this Agreement. The Fee is applied to all reimbursable Costs of the Work as defined in Sections 6.1 through 6.7.4, but is NOT applied to the Negotiated Support Services and is NOT applied to the Specified General Conditions. The Fee is not applied to any other costs except as described above.

§ 1.0.20 **Final Completion** is defined in Section 9.10.1 of the revised General Conditions and generally occurs when the Owner finds that the Work has been concluded, the required occupancy permit has been issued, the commissioning process and any validation process have been successfully concluded, incidental corrective or punch list Work and final cleaning have been completed, the Construction Manager has submitted or delivered all specified items, the

Construction Manager has submitted a final Application for Payment, and the Owner has approved a final Application for Payment.

§ 1.0.21 The **General Conditions** of the Contract are defined in Section 1.3 of this Agreement and are the revised 2007 Edition of AIA Document A201, General Conditions of the Contract for Construction, which is incorporated herein by reference. All references to the A201 General Conditions in the Contract Documents are to the revised document.

§ 1.0.22 The **Guaranteed Maximum Price ("GMP")** is defined in Section 2.2, described in Section 5.2 of this Agreement, and established in the GMP Amendment. The GMP consists of the sum that the Owner and the Construction Manager establish in the GMP Amendment as the fixed limit for all Costs of the Work reimbursable under Article 6 of this Agreement, which includes the MACC, the Negotiated Support Services, the Specified General Conditions, the Construction Manager's Contingency, and the Construction Manager's Fee. The GMP does not include the Preconstruction Services Cost or sales tax on progress payments. State and local sales tax on the Contract Sum will be reimbursed by the Owner and paid with progress payments. The Owner is not obligated to pay the Construction Manager more than the GMP for the performance of the Work. The GMP is the equivalent to the "Total Contract Cost" as that latter term is used in RCW 39.10.

§ 1.0.23 The **GMP Amendment** is described in Section 2.2.6 of this Agreement and generally is an amendment to this Agreement setting forth the GMP, the information and assumptions upon which it is based, the Contract Time, and other information upon which the parties agree.

§ 1.0.24 The **Maximum Allowable Construction Cost ("MACC")** consists of the sum to which the Owner and the Construction Manager agree in writing, as a part of the GMP negotiations, as an estimate of the Cost of the Work reimbursable under Article 6 of this Agreement. The MACC does not include the Negotiated Support Services, the Specified General Conditions, the Construction Manager's Contingency, the Construction Manager's Fee, Preconstruction Services, or sales tax. A final MACC will be established as part of the GMP negotiation in accordance with this Agreement.

§ 1.0.25 **Negotiated Support Services** are defined in Section 6.7.5 of this Agreement and are generally items the Construction Manager normally would manage or perform on the Work for a school, including but not limited to, surveying, laser scanning, hoisting, cleanup and trash removal, street cleaning, dust control, maintenance of traffic on public street and roads, temporary heat, temporary hookups, temporary toilets, temporary fences, enclosures, barriers and barricades, and temporary meter installation for water, utilities, natural gas, sewer and storm sewer. Approved Negotiated Support Services are reimbursable, consistent with the Contract Documents, to the extent they are Costs of the Work within the GMP. The Construction Manager's management of Negotiated Support Service is included within the Specified General Conditions amount. If the Owner requires the Construction Manager to provide the Builder's Risk insurance (see Section 11.3 of the A201), such premiums will be paid as a Negotiated Support Service.

§ 1.0.26 The **Notice to Proceed** is described in Section 2.3.1 of this Agreement and is generally a written notice the Owner submits to the Construction Manager that generally permits construction or a designated portion thereof to commence upon the Construction Manager's compliance with conditions expressed in the notice.

§ 1.0.27 The **Owner** is the entity listed on the first page of this Agreement.

§ 1.0.28 The **Owner-Architect Agreement** is the separate agreement between the Owner and the Architect relating to the design of the Project.

§ 1.0.29 The **Owner's Designated Representative**, identified above, is a representative of the Owner. His or her duties and responsibilities are specified in the Contract Documents. The Owner's Representative himself or herself is not empowered to waive any terms or conditions of the Contract Documents or to commit the Owner to additional costs or time except as explicitly provided in this Agreement.

§ 1.0.30 The **Preconstruction Phase** is defined in Section 2.1 and generally consists of the initial portion of the Construction Manager's services and performance under the Contract prior to execution of the GMP Amendment or issuance of the Notice to Proceed.

§ 1.0.31 The **Preconstruction Services** generally consist of those services provided by the Construction Manager under Sections 2.1 and 2.2 of this Agreement.

§ 1.0.32 The **Preconstruction Services Cost** is defined in Section 4.1.2 of this Agreement and is the compensation payable by the Owner to the Construction Manager for Preconstruction Services.

§ 1.0.33 The **Project** is defined on the cover page above and in Section 1.1.4 of the revised General Conditions.

§ 1.0.34 The Owner's **Project Manager**, listed above, reports to the Owner's Designated Representative. The Owner's Project Manager will provide project management and will act as the primary point of contact for Owner-Construction Manager communications and for all matters relating to the services and requirements of this Agreement. The Owner's Project Manager is not empowered to waive any terms or conditions of the Contract Documents or to commit the Owner to additional costs or time except as explicitly provided in this Agreement.

§ 1.0.35 The **Project Team** consists of the Construction Manager, the Owner, the Architect, the Project Manager, and all consultants and Subcontractors of any tier employed or retained by each of them.

§ 1.0.36 **Specifications** are defined in Section 1.1.6 of the revised General Conditions and generally consist of the portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.0.37 **Specified General Conditions** are further defined in Article 6 and generally mean certain selected general conditions Work and services specified in the Contract Documents to be provided by the Construction Manager for the fixed Specified General Conditions price as a part of the Cost of the Work. The Specified General Conditions are to be performed by the Construction Manager with its own forces in most instances. The Specified General Conditions include and pay for any Preconstruction Services that occur after execution of the GMP Amendment. The Specified General Conditions include but are not limited to the Construction Manager's construction administration, management services and supervision of the Project, all costs associated with the subcontractor bidding process (except costs of subcontractor bid advertising and subcontractor bid document reproduction), such as developing solicitations, site tours, responding to questions from bidders, providing a bid opening facility (unless the Owner elects to provide such facilities), advertisement and negotiation of subcontract bid packages, bidding in accordance with the requirements of the Contract Documents, subcontract award, Washington Sustainable Schools Protocol ("WSSP") documentation, and all aspects of safety implementation and administration. Any cost that is not specifically identified as covered by the Fee or as a reimbursable Cost of the Work shall be covered by the amount bid for Specified General Conditions.

§ 1.0.38 The **Subcontracting Plan** is defined in Section 2.1.6 and is prepared by the Construction Manager for the Owner's approval prior to conclusion of the Design Development phase. It identifies all proposed subcontract bid packages, any contemplated alternative subcontractor selection process permitted by RCW 39.10, any bid packages for which the Construction Manager expects to compete, all subcontractor scopes of work, the timing of solicitation of subcontractor bids for the packages to meet the Construction Schedule, major coordination issues with other packages, and means to enhance the opportunity for local businesses to participate in performing the Work.

§ 1.0.39 A **Subcontractor** is defined in Section 5.1 of the revised General Conditions and is generally a person or entity that has a direct contract with the Construction Manager. A **Subcontractor of any tier** is a Subcontractor or a lower tier subcontractor that performs a portion of the Work of the Project at the site or supplies materials or equipment. A **Design-Build Subcontractor** is a Subcontractor that will not only construct discrete portions of the Work but also will participate in the design of such portion, to the extent permitted under RCW 39.10.

§ 1.0.40 **Substantial Completion** is defined in Section 9.8.1 of the revised General Conditions. The required date of Substantial Completion is established in the GMP Amendment.

§ 1.0.41 The **Work** is defined in Section 1.1.3 of the revised General Conditions and generally means the construction and services performed in the Construction Phase as required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Construction Manager to fulfill its obligations.

§ 1.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other ~~Conditions~~), Conditions and General Requirements), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or

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repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Owner with the assistance of the Architect and furnished by the Owner as described in Section 2.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

§ 1.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner; to furnish ~~efficient construction administration, management services and supervision;~~ efficient, professional and competent construction administration, management services and supervision with sufficient quantities of fully qualified, competent and experienced personnel; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an ~~expeditious~~ expeditious, workmanlike and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents. The parties shall endeavor to promote harmony, mutual respect, and cooperation among the Owner, Architect, Construction Manager, the Project Manager, authorities having jurisdiction, and other persons or entities employed by them for the Project to the fullest extent possible in order to further the interests of the Owner in the Project and to effect prompt and successful completion of the Project within the requirements of the Contract Documents, the Contract Time and the GMP.

§ 1.3 General Conditions

For the Preconstruction Phase, AIA Document A201™-2007, General Conditions of the Contract for Construction, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in A201-2007, which document is incorporated herein by reference. The term "Contractor" as used in A201-2007 shall mean the Construction Manager.

§ 1.4 The Construction Manager shall perform the Preconstruction Services, shall be responsible for coordinating the activities of construction during the Construction Phase if the GMP Amendment is signed, shall be fully responsible for discharging all of the Construction Manager's obligations under the Contract Documents, and, during the Preconstruction and Construction Phases, shall advise and work with the Project Team to make recommendations for alternate or substitute products and technologies, construction techniques, methods and practices based on maintainability and durability as well as cost savings, time saving and/or other related efficiencies.

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 2.1 Preconstruction Phase

§ 2.1.1 The Construction Manager shall participate as a part of the Project team to provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, and coordinate estimating reconciliation, each in terms of the other. The Construction Manager shall also perform all services and meet all requirements described in the Preconstruction Services Scope of Work.

§ 2.1.2 Consultation

~~The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.~~
§ 2.1.2.1 The Construction Manager

shall jointly schedule and conduct meetings with the Architect and Owner on average on a every other week basis during the Schematic Design Phase, Design Development phase, and the Construction Document Phase to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall actively and cooperatively advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also actively and collaboratively provide recommendations consistent with the Project requirements to the Owner and Architect on constructability; availability of materials and labor; time requirements for procurement, installation and construction; phasing and site work planning; sequencing and scheduling for procurement, installation and construction; traffic planning; factors related to construction quality, local market trends, bidding strategies, maintainability and durability; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and value engineering.

§ 2.1.2.2 Design Review. The Construction Manager shall review the Schematic Design Documents, Design Development Documents and Construction Documents, Specifications, and other Contract Documents as they are developed and completed. These documents will include those prepared by any Design-Build Subcontractors and may be developed at different rates for different components of the Project. The Construction Manager shall also review all other documents provided by the Owner, including but not limited to the associated environmental documents, all record drawings of existing facilities and all documents provided or made available as a part of the GC/CM selection process. The Construction Manager shall promptly report in writing to the Owner and the Architect any errors, inconsistencies, incomplete information or other questions or deficiencies that the Construction Manager has discovered and that need to be resolved for the successful completion of the Work, paying particular attention to coordination issues. Design review activities are to be a cooperative and collaborative effort with the Architect, the Owner, and their consultants. The Construction Manager shall recommend changes and alternatives to the Architect, without, however, assuming any of the Architect's design responsibilities, except to the extent the Construction Manager or a Subcontractor performs design-build Work.

§ 2.1.2.3 Constructability. The Construction Manager shall work with the Owner and Architect to prepare a constructability plan for the Project to reduce cost, save time, improve quality, reduce risk and improve the overall process of Project delivery. Key objectives of the constructability program will include creation and maintenance of a well-planned, safe, effective, cooperative and mutually beneficial work environment for all participants. The constructability plan shall meet the requirements of the Office of the Superintendent of Public Instruction ("OSPI"). A primary objective of these efforts will be to assist the Owner to ensure that the GMP does not exceed the Owner's budget and the Project is completed on time. The Construction Manager shall perform actions designed to minimize adverse effects of labor or material shortages or delays; time requirements for procurement, installation and construction completion; and factors related to construction cost. As part of this effort, the Construction Manager shall participate in and provide written comments as a part of formal constructability reviews following completion of the Design Development Documents and when the Construction Documents are 90% complete and shall confirm prior to solicitation of the first subcontract bid package that a constructability analysis has been performed.

§ 2.1.2.4 Value Engineering. The Construction Manager will participate in value engineering the design documents at end of Schematic Design, at the end of the Design Development phase, and on a continuing basis with the Architect in subsequent phases up to 90% Construction Documents. At the completion of each of its reviews, the Construction Manager will provide the Owner and Architect with a formal record of its findings and recommendations. The Architect and the Construction Manager will brief the Owner and any value engineers and answer their questions to determine the advisability of changes in the design documents. Value engineering will include selecting building systems, with final selection of systems to occur prior to the start of the Construction Documents Phase.

§ 2.1.2.5 Site Investigation. The Construction Manager shall suggest to the Owner and shall perform as agreed with the Owner and as a non-labor cost under Section 4.1.2, site investigation to assist in development of the design and construction planning.

§ 2.1.3 When Project requirements in Section 3.1.1 have been sufficiently identified, and by no later than 75% of the Design Development phase, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's and the Owner's review and the Owner's acceptance. Regardless of any review, acceptance, or approval of the Construction Manager's schedule, the Owner shall not be responsible for any aspects of the Construction Manager's schedule. The Construction Manager shall obtain the Architect's and Owner's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and

integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission date of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner. The Construction Manager will be responsible for the Construction Schedule, including a plan for phased construction defined in the Contract Documents.

§ 2.1.4 Phased Construction

The Construction Manager shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, or phased construction. The Construction Manager shall take into consideration occupancy needs, site logistics, utilities, safety, cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues.

§ 2.1.5 Preliminary Cost Estimates

§ 2.1.5.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the Architect's and Owner's review and Owner's approval. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 2.1.5.2 The Construction Manager will collaborate with the Architect and Owner on cost estimates throughout the Preconstruction Phase, and will prepare detailed cost estimates following completion of the Schematic Design Phase, completion of the Design Development Phase and when Construction Documents are 90% complete (the "GMP estimate"). The Construction Manager shall also reconcile its estimate with the Architect's cost estimator at each phase for the Construction Manager's, Architect's, and Owner's acceptance. Cost escalation to the time of Subcontractor bidding shall not exceed three percent (3%) in these estimates without approval of the Owner. Timely and complete estimates are critical to the success of the Project; therefore, failure of the Construction Manager to submit timely cost estimates shall be grounds for the termination of the Construction Manager for cause. As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Architect's and Owner's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective ~~action~~action, including participation in preparing a list of proposed cost savings equal to or greater than the overage.

§ 2.1.5.3 If any estimate submitted to the Owner exceeds previously approved estimates or the Owner's budget, the Construction Manager shall make appropriate recommendations to the Owner and Architect, including participation in preparing a list of proposed cost savings equal to or greater than the overage, and the Architect will, if requested by the Owner, modify the design to meet the Owner's budget.

§ 2.1.6 Subcontractors and Suppliers

~~The Construction Manager shall develop bidders' interest in the Project.~~ **§ 2.1.6.1** The Construction Manager shall develop bidders' interest in the Project. The Construction Manager shall prepare and submit a construction management and subcontracting plan ("Subcontracting Plan") to the Owner and the Architect for review and approval prior to conclusion of the Design Development Phase. Prior to negotiation of the GMP, the Owner and the Construction Manager shall negotiate the following items and shall include the Subcontracting Plan as an exhibit to the GMP Amendment. The Subcontracting Plan shall describe the process for allocating scope of Work among the bid packages and shall, for and within each Component, identify:

- .1 All subcontract bid packages, specifying those upon which the Construction Manager or its affiliates intend to bid;
- .2 The scopes of Work, timing of solicitation of bids for the packages to meet the Construction Schedule;
- .3 Major coordination issues with other packages;

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- .4 Means to enhance the opportunity for local businesses to participate in performing the work (e.g., through development of multiple work packages);
- .5 The scope of work and cost estimates for each subcontract bid package.

§ 2.1.6.2 The Construction Manager shall use its best efforts to develop the interest of subcontractor bidders in the Project. The Construction Manager shall develop and use bidder responsibility criteria for all subcontract bid packages for which there is no prebid determination of subcontractor eligibility. The Construction Manager shall consider prebid determinations of Subcontractor eligibility to the extent permitted by statute and shall furnish to the Owner and Architect for their information as a part of the submittal of its Subcontracting Plan a list of possible eligible Subcontractors, including suppliers who are to furnish materials or equipment fabricated to a special design, from whom bids will be requested for each principal portion of the Work. The Owner will promptly reply in writing to the Construction Manager if the Architect or Owner knows of any objection to such Subcontractor or supplier, to the extent that any such objection is based upon the lack of a prequalification, failure to meet bidder responsibility criteria, or is otherwise supported by statute or other law. The receipt of such list shall not require the Owner or Architect to investigate the qualifications of proposed Subcontractors or suppliers, nor shall it or the lack of any objection waive the right of the Owner or Architect later to object to or reject any proposed Subcontractor or supplier.

§ 2.1.7 The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them. **Long-Lead Time Procurement**

§ 2.1.7.1 The Construction Manager shall prepare, for the Architect's and Owner's review and the Owner's acceptance, and update at least monthly, a procurement schedule for items and/or associated services that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the bidding and delivery of materials that must be ordered well in advance of construction following the requirements of RCW 39.10. If the Owner agrees, and consistent with RCW 39.10.390, to procure any items prior to the establishment of the GMP, the Owner shall procure the items on terms and conditions reasonably acceptable to the Construction Manager. Upon the establishment of the GMP, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter assume full responsibility for them.

§ 2.1.7.2 The Construction Manager shall identify and estimate the value of any items that require off-site storage, together with proposed locations for storage during the course of the Work acceptable to Owner. These locations shall be selected to provide a maximum of protection and minimum of cost and delay associated with delivery to the site.

§ 2.1.8 Extent of Responsibility

The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

§ 2.1.8.1 The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications prepared by the Architect are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

§ 2.1.8.2 The Construction Manager shall carefully review upon receipt all Drawings and Specifications submitted to it at each level of design. The Construction Manager shall promptly report to the Owner and the Architect any error, inconsistency or omission that the Construction Manager may discover in them and shall recommend changes and alternatives. The Construction Manager's review shall be made in the Construction Manager's capacity as a contractor

and not as a licensed design professional, except to the extent the Construction Manager or a Subcontractor has design-build responsibilities.

§ 2.1.9 Notices and Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi governmental authorities for inclusion in the Contract Documents.

§ 2.2 Guaranteed Maximum Price Proposal and Contract Time

~~§ 2.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, Manager, and when the Construction Drawings and Specifications are at least 90% complete, the Owner will submit a "GMP set" of Construction Documents to the Construction Manager. Within twenty-one (21) days of receipt, and in consultation with the Architect and Owner, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4, and the Construction Manager's Fee. Construction Manager shall promptly notify the Owner if it does not consider the Drawings and Specifications to be at least 90% complete and shall not propose a GMP until the Drawings and Specifications are at least 90% complete.~~

~~§ 2.2.2 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom, therefrom by allowing for such further development in its cost proposal. The Construction Manager will also make allowance for market conditions at the time of bidding and possible estimating inaccuracies within the GMP. Such further development does not include such things as material changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order. A Change in the Work will not be warranted if the Work in question was reasonably inferable from or contemplated by, or a prudent contractor should have realized that the Work was necessary and appropriate under, the Contract Documents referenced in the GMP Amendment.~~

~~§ 2.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:~~

- ~~.1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;~~
- ~~.2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, divided into the proposed subcontract bid packages and including assumptions under Section 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;~~
- ~~.3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, and the Construction Manager's Fee; the MACC, Specified General Conditions, Negotiated Support Services, and other Article 6 Costs of the Work; the Construction Manager's Contingency; and the Construction Manager's Fee (any Allowances must be limited and pre-approved by the Owner);~~
- ~~.4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and~~
- ~~.5 A date by which the Owner must conclude negotiations and accept the Guaranteed Maximum Price.~~

~~§ 2.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order.~~

~~§ 2.2.4.1 In preparing the Construction Manager's GMP proposal, the Construction Manager and the Owner shall agree upon an amount of Construction Manager's Contingency to be included within the GMP. The Construction Manager's Contingency shall be no less than two point five percent (2.5%) and no more than five percent (5%) of the MACC, depending upon how much (if any) Subcontractor bidding has occurred at the time that the GMP is agreed upon and depending upon any other risk factors agreed upon between the Construction Manager and the Owner. The Construction Manager's Contingency is for the Construction Manager's exclusive use to cover costs arising under~~

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Section 2.2.2 and other costs that are properly reimbursable as a Cost of the Work but not qualified for inclusion in a Change Order. The Construction Manager may use the Construction Manager's Contingency to pay for Project issues that are within its control, such as design issues that a reasonable construction manager should have resolved during the Preconstruction Services Phase, items in Drawings but not in the Specifications, items on one Drawing but not another, items specified but not drawn, non-specified items within Specifications, buy-out errors or shortfalls, scope gaps, ambiguities in the Construction Documents, damaged Work not covered by insurance (except for deductibles which are not reimbursable), interdisciplinary design coordination, Subcontractor performance, and unanticipated expediting costs for critical materials. The Construction Manager's Contingency may also be used for issues beyond the Construction Manager's control such as lost time, increases in bid contracts, and Subcontractor performance or failure. The Construction Manager must give the Owner notice and supporting cost backup when applying to use the Construction Manager's Contingency. This Contingency is not available for Owner-directed design or scope changes, unforeseen or differing site conditions, and design errors or omissions beyond the reasonable inferences described in Section 2.2.2, as those costs entitle the Construction Manager to a Change Order. The Construction Manager shall use the Construction Manager's Contingency only for the items in this Section 2.2.4.1 and only with the Owner's prior written consent, which shall not unreasonably be withheld. Each use of Construction Manager's Contingency shall be shown as a separate line item in the schedule of values submitted with Applications for Payment. Any balance remaining in the Contingency shall be returned to the Owner in a deductive Change Order before Final Payment.

§ 2.2.4.2 The MACC shall consist of all Subcontractor scope of Work by bid package consistent with the Subcontracting Plan, including Work the Construction Manager will self-perform through the Subcontractor bidding process, and other Article 6 Costs of the Work except the Negotiated Support Services and the Specified General Conditions. The MACC used in negotiating the GMP shall be the summation of the actual amounts of any low bids received for Subcontract bid packages already bid by the Construction Manager and estimated amounts for Subcontract bid packages not yet bid and any potential negotiated amounts agreed upon between the Owner and Construction Manager. Within two weeks of receipt of bids for each individual subcontract bid package, the Construction Manager shall determine and notify the Owner as to whether any scope changes for such bid package beyond those specified in Section 2.2.2 have occurred in those subcontract bidding documents as a result of completion of the Construction Documents to the 100% level. In the event that the Owner agrees that such additional scope changes occurred, and that these scope changes are required for the Project and approved by both the Construction Manager and the Owner, the parties shall execute a Change Order reflecting such additional Work. Any amounts remaining in the MACC when all the subcontract bid packages have been awarded shall be added to the Construction Manager's Contingency. It is the intent of the parties that when the GMP is set, the Construction Manager will have participated in and be fully aware of the existing conditions and proposed design for the Project. It is further intended that the GMP will include all elements necessary to complete the Project in accordance with the Contract Documents, and that Change Orders adjusting the GMP will therefore not be necessary except in limited circumstances as set forth below. Accordingly, the GMP shall be adjusted principally for the following events:

- .1 Scope Changes.** Owner revisions on scope items previously approved by the Owner and incorporated in the pricing of the GMP. Examples: The Owner approved use of MC cable in lieu of conduit for branch wiring runs and later decides to change back to conduit; or bid alternates not included in the GMP.
- .2 Concealed or Unknown Conditions** as described in Section 3.7.4 of the A201-2007 General Conditions. For example, during the Construction Phase, substantially differing site conditions are encountered that could not have been reasonably anticipated or discovered by the Construction Manager during the Preconstruction Phase. This category includes unknown and unforeseeable hazmat conditions and soil conditions.
- .3 Regulatory Agency Changes.** Costs incurred as a result of changes in regulatory requirements but only where such requirements change after execution of the GMP Amendment. (This shall not include costs incurred as a result of inspections or other enforcement that are based upon pre-existing requirements of the building permit.)
- .4 Significant Design Errors or Omissions.** Significant errors or omissions in the Drawings or Specifications that could not reasonably have been anticipated or discovered by the Construction Manager before the GMP was established. However, design errors and omissions do not include, for example: (1) failure to coordinate between trades; (2) requirements of the Specifications that are not specifically shown in Drawings; (3) requirements of the Drawings that are not specifically described in the Specifications; or (4) design changes made at the request of the Construction Manager in order to facilitate the constructability of the Project. The failure of the Architect to specify every detail in the

Construction Documents does not eliminate the requirement for the Construction Manager to provide at least a standard commercially available detail to serve the basic functions of the design.

.5 Changes required by governmental inspectors to meet requirements beyond those contained in regulations. Changes required by an inspector of a governmental authority having jurisdiction beyond those contained in regulations or previously communicated.

.6 Allowance adjustments.

§ 2.2.4.3 Examples of events for which the GMP shall not be adjusted include but are not limited to:

.1 Subcontractor gaps. Gaps in scope coverage between Subcontractors, including self-performed Work.

.2 Scope gaps. An item indicated in the Drawings or Specifications that was not picked up in the GMP.

.3 Ambiguities. Ambiguities in the Construction Documents that the Construction Manager knew of or that a reasonable contractor would have identified and raised with the Owner prior to establishing the GMP.

.4 Interdisciplinary Coordination. Coordination inconsistencies and errors between design disciplines that the Construction Manager knew of, caused or contributed to, or reasonably should have known of.

.5 Subcontractor Failure. A Subcontractor fails to perform or goes bankrupt.

.6 Escalation of materials, equipment or labor prices.

.7 The Construction Manager's Estimating errors.

.8 Expediting costs for critical materials.

.9 Coordination Claims. Costs related to Subcontractor Claims or charges that result from mistakes or omissions in Subcontractor buyout, or coordination issues between Subcontractors, or interference between Subcontractor and the Construction Manager or among Subcontractors.

§ 2.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner and Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 2.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 2.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase, unless the Owner provides prior written authorization for such costs.

§ 2.2.8 The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the ~~agreed upon~~ agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. ~~The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised.~~ Revisions to the Drawings and Specifications will be included in the 100% Submittal and promptly furnished to the Construction Manager. The Construction Manager shall notify the Owner and Architect promptly and in writing of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications, and the revised Drawings and Specifications, and shall comply with the contractual procedure in providing notice and asserting and pursuing any Claim that may arise therefrom. If the Construction Manager does not provide this notification within thirty (30) days of its receipt of the revised Drawings and Specifications, the revisions shall be considered accepted with no change in the GMP or Contract Time.

§ 2.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes (but not sales taxes on the Contract Sum) for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed. The only taxes excluded from the GMP and separately reimbursable by the Owner are state and local sales taxes on the Contract Sum.

§ 2.2.10 If the MACC varies more than 15% from the estimated MACC specified in the Price Proposal due to changes in the scope requested and approved by the Owner, the percentage applied to the MACC to determine the Fee shall be renegotiated when the GMP is negotiated.

§ 2.3 Construction Phase

§ 2.3.1 General

§ 2.3.1.1 For purposes of Section 8.1.2 of A201–2007, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 2.3.1.2 The Construction Phase shall commence upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal by executing the GMP Amendment or the Owner's issuance of a Notice to Proceed, whichever occurs earlier.

§ 2.3.1.3 Although it will not cause the Construction Phase to commence, the Owner may at any time approve the Construction Manager's (a) award of a subcontract, (b) undertaking construction Work with its own forces, or (c) issuance of a purchase order for materials or equipment and/or associated services required for the Work. Any Work so approved and undertaken shall comply with and be subject to this Agreement and the A201 General Conditions.

§ 2.3.2 Administration

§ 2.3.2.1 ~~Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall~~ The Construction Manager shall comply with the applicable requirements of RCW 39.10, the provisions of which shall take precedence over any inconsistent provisions of the Contract Documents. Except as specified below, the Construction Manager shall assemble the bidding materials, manage the bidding process, and obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect- Architect and the Owner. The Construction Manager shall analyze the subcontractor bids and deliver them to the Owner with a recommendation of award. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection. Unless bids are rejected, subcontract bid packages shall be awarded to the "responsible" bidder submitting the low responsive bid. The responsibility criteria in the bid packages shall comply with Washington law. The determination of "responsibility" shall comply with the responsibility criteria in the bid packages, the requirements of RCW 39.10, and Washington law.

- .1 Other than Work under the Specified General Conditions and Negotiated Support Services, all Work on the Project shall be competitively bid as required by RCW 39.10. The Construction Manager may, subject to RCW 39.10 and the approved Subcontracting Plan, organize and solicit bids for the subcontract work, and the Construction Manager may not use alternates without approval of the Owner.
- .2 The Construction Manager shall bid out the subcontract bid packages in accordance with its approved Subcontracting Plan. The Construction Manager shall document and report monthly to the Owner on its procurement process. The Owner's written approval is required for changes to the Subcontracting Plan.
- .3 Before initially soliciting bids for the first subcontract bid package, the Construction Manager shall submit, and the Owner shall reasonably approve, final bid package estimates for all subcontract bid packages in the approved Subcontracting Plan. The sum of all the final bid package estimates in the Subcontracting Plan plus any other described Article 6 Costs of the Work other than Negotiated Support Services and Specified General Conditions shall not exceed the MACC.
- .4 When in the best interests of the Project and when critical to the successful completion of a subcontract bid package and the Owner consents, the Construction Manager may make a prebid determination of Subcontractor eligibility in accordance with RCW 39.10. In addition, if the anticipated subcontract value will exceed \$3 million and the Owner consents, the Construction Manager may select a mechanical

Subcontractor, an electrical Subcontractor, or both, in accordance with the alternative procedure specified in RCW 39.10.385.

- .5 As part of its Subcontracting Plan, the Construction Manager shall promptly notify the Owner of Work (other than Negotiated Support Services and Specified General Conditions) that it will seek to self-perform. The Construction Manager, including its subsidiaries and affiliates, may bid on a subcontract bid package if the Work within the subcontract bid package is customarily performed by the Construction Manager, if the Construction Manager has, in the Owner's reasonable opinion, aggressively sought competition, if the bid opening is managed by the Owner, if notification of the Construction Manager's intention to bid is included in the public solicitation of bids for the bid package, and if the Construction Manager otherwise complies with RCW 39.10. In no event may the total value of subcontract work performed by the Construction Manager exceed thirty percent (30%) of the MACC negotiated as part of the GMP Amendment. The Construction Manager shall coordinate subcontract bid package Work it performs with the Work of Subcontractors.
- .6 The Construction Manager shall require a bid bond from Subcontractors bidding Work expected to cost more than \$300,000, and all Subcontractors awarded a subcontract in excess of \$300,000 shall provide a performance and payment bond for the subcontract amount.
- .7 The Construction Manager's solicitations of subcontract bid packages shall be made in accordance with the following procedures:
 - .1 A representative from the Owner will be present at each bid opening to observe the procedure.
 - .2 Solicitations for bids will be advertised at least fourteen (14) days in advance in the Daily Journal of Commerce and at least one other local newspaper.
 - .3 Bidders may obtain the bid results by telephone from the Construction Manager.
 - .4 Responsiveness requirements and bidding procedures will be described in each solicitation and shall be reviewed with the Owner prior to advertising a bid package solicitation.
- .8 The services performed by the Construction Manager in soliciting subcontract bid packages are covered under Specified General Conditions.
- .9 The Construction Manager shall ensure compliance with RCW 39.10 and with all the above requirements for Subcontractor solicitation, and subcontracts shall conform to the requirements of RCW 39.10.
- .10 The Construction Manager shall promptly contract with the selected bidder and shall promptly deliver a copy of each subcontract to the Owner.

§ 2.3.2.2 If the Guaranteed Maximum Price has been established and when a specific bidder (1) is recommended to the Owner by the Construction Manager, (2) is qualified to perform that portion of the Work, and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 2.3.2.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost plus fee basis, fee, except for any contracts awarded under RCW 39.10.385 which shall include a maximum allowable subcontract cost. If the Subcontract is awarded under RCW 39.10.385, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below, and these Subcontractors shall be audited prior to final payment in accordance with Section 7.2.2.

§ 2.3.2.4 If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 6.10.2.

§ 2.3.2.5 The Construction Manager shall schedule and conduct weekly progress meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The ~~Construction Manager-Architect~~ shall prepare and promptly distribute minutes to the Owner and ~~Architect~~Construction Manager.

§ 2.3.2.6 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work (the "Construction Schedule") and submittal schedule in accordance with Section 3.10 of ~~A201-2007~~, A201-2007 and other Contract Documents. The Construction Manager shall provide regular monitoring and shall update monthly (or sooner in the event of a substantial change) the Construction Schedule as Work progresses.

§ 2.3.2.7 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner.

The reports shall:

- .1 Include information concerning both the entire Project and each subcontract bid package.
- .2 Identify any variances between scheduled and probable completion dates, and propose action required to meet scheduled completion dates.
- .3 Review the Construction Schedule for portions of the Project not started or incomplete and propose to the Owner alternate procedures or adjustments to meet the scheduled completion dates.
- .4 Provide summary reports for each Construction Schedule update.
- .5 Document all significant changes in the Construction Schedule, whether the Owner approves of the change, and the reasons for them.
- .6 Record in writing and by photographs the progress of the Project.
- .7 Identify significant problems in scheduling together with recommended corrective action.
- .8 Maintain and report a QC log.
- .9 Document any outstanding RFIs and risks associated with delayed responses.
- .10 List outstanding submittals and risks associated with delayed responses.
- .11 Document any outstanding Change Orders and any risks associated with delayed responses.
- .12 The status of permits that the Construction Manager is required to obtain or assist in obtaining.

The Construction Manager shall also keep, and make available to the Owner and ~~Architect~~, Architect with its monthly Application for Payment or more often as requested by the Owner, a daily log containing a record for each day of weather, Subcontractors working at the site, deliveries, Work accomplished, portions of the Work in progress, number and employer of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner. The information on the log does not constitute notice of a potential or actual Claim to the Owner.

§ 2.3.2.8 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 2.3.2.7 above. The Construction Manager shall include a Project status report in a format acceptable to the Owner, listing (i) all pending and/or approved Change Orders and Construction Change Directives (including amounts), (ii) an analysis of the Specified General Conditions and Negotiated Support Services budget with an explanation of substantial variances from previous budgets, (iii) projected cash flow of construction costs, (iv) an allocation by subcontract bid package and schedule-of-values line item, (v) expenditures to date, (vi) estimates to complete, (vii) forecast at completion, (viii) variances with budget and commitment, and (ix) the items for which the Owner has authorized the Construction Manager to use Contingency, the cost of those approved items, and the balance of funds remaining in the Contingency Account.

§ 2.3.2.9 The Construction Manager shall review and inspect the Work of the Subcontractors on a regular basis (at least as often as described in the Construction Manager's approved quality control / quality assurance plan) for defects and deficiencies in their Work and for conformance with the Drawings, Specifications and other Contract Documents, and shall stop the Work of Subcontractors if necessary. The Construction Manager shall provide notification at regularly scheduled progress meetings of any material defects or deficiencies and recommend remedial action. The Construction Manager shall take the lead role in negotiating and resolving any disputes with Subcontractors and

obtain the Owner's concurrence or approval of all settlements that may affect the GMP or the Construction Manager's Contingency before executing change orders with Subcontractors.

§ 2.3.2.10 The Construction Manager shall maintain, in good order and on a current basis, a record copy of all subcontracts, purchase orders, Drawings marked to record all changes made during construction, Specifications, addenda, Change Orders, and other Modifications; shop drawings; product data; samples; submittals; inspection reports; purchases; materials; equipment; applicable handbooks; maintenance and operating manuals and instructions; other related documents and revisions which arise out of subcontracts or Work. These records shall be available to the Owner, and, at completion of the Project, delivered to the Owner.

§ 2.3.2.11 As part of the Specified General Conditions, the Construction Manager shall provide an adequate and experienced staff consistent with or in excess of that specified in its response to the RFQ. The staff shall include necessary and appropriate project managers, superintendents, field engineers, engineers, quality control specialists, scheduling engineers, cost engineers, safety engineer, clerical, accounting, data processing personnel, and others. These individuals shall be employees of the Construction Manager and shall not be consultants.

§ 2.4 Professional Services

Section 3.12.10 of A201–2007 shall apply to both the Preconstruction and Construction Phases. **§ 2.4.1** Section 3.12.10 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 2.4.2 Design-Build Responsibilities.

§ 2.4.2.1 The Construction Manager will utilize Design-Build Subcontractors to perform the design and construction of a portion of the Work as part of the GMP and as agreed upon with the Owner and to the extent allowable under RCW 39.10. Design services shall not be performed directly by the Construction Manager but will be performed by qualified and licensed engineers and other design professionals engaged or employed by Design-Build Subcontractors.

§ 2.4.2.2 The Construction Manager shall be responsible to the Owner for acts and omissions related to design by the Design-Build Subcontractors, their lower-tier Subcontractors, and their respective employees, agents, and other persons performing design services through the Construction Manager on the Project. If the Construction Manager believes that implementation of any instruction received from the Owner would cause a violation of any applicable law, the Construction Manager shall notify the Owner in writing and shall not be obligated to perform any act which it believes would violate any applicable law.

§ 2.4.2.3 The Construction Manager shall require that Design-Build Subcontractors shall:

- .1** provide a preliminary evaluation of the Owner's preliminary program;
- .2** visit the site, review record drawings, become familiar with the existing facilities and local conditions, and correlate observable conditions with the requirements of the Owner's preliminary program and schedule; and
- .3** be responsible for their design and their respective Contract Documents being in compliance with the requirements of all applicable laws, ordinances, restrictions, building codes and regulations. Any conflicts or potential violations which a Design-Build Subcontractor or the Construction Manager may discover shall be brought to the immediate attention of the Owner. However, nothing contained herein shall make the Construction Manager or a Design-Build Subcontractor responsible for unknown defects in existing construction or for changes to existing construction required by governmental authorities having jurisdiction, except to the extent that the Construction Manager or a Design-Build Subcontractor implements the changes to existing construction required by governmental authorities having jurisdiction.

§ 2.4.2.4 The Construction Manager, through its Design-Build Subcontractors, shall provide services described below, and the GMP will be increased, if authorized in writing by the Owner:

- .1** making revisions in the Construction Documents, budget or other documents, when such revisions are inconsistent with prior approvals or instructions of the Owner, are required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents, or are required by the governmental authorities having jurisdiction and requesting upgrades not reasonably anticipatable to an existing facility;

- .2 providing services at the Owner's specific request to perform detailed investigations of existing conditions or facilities or to make measured drawings thereof, or to verify the accuracy of drawings or other information furnished by the Owner;
- .3 coordinating services in connection with the performance of separate contractors or individuals retained by the Owner subsequent to the Owner's issuance of the notice to proceed with construction;
- .4 providing analyses of owning and operating costs subsequent to the Owner's issuance of the notice to proceed with construction; or
- .5 making investigations, inventories of materials or equipment, or valuations and detailed appraisals, all of existing facilities.

§ 2.5 Hazardous Materials

Section 10.3 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

ARTICLE 3 OWNER'S RESPONSIBILITIES

§ 3.1 Information and Services Required of the Owner

§ 3.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, ~~systems~~, systems sustainability and site requirements.

§ 3.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Construction Manager may only request such evidence if (1) the Owner fails to make payments of undisputed amounts to the Construction Manager as the Contract Documents require, (2) a change in the Work materially changes the Contract Sum, or (3) the Construction Manager identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Construction Manager and Architect.

§ 3.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 3.1.4 **Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, the Owner shall furnish the ~~following~~ information or services described below with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 3.1.4.1 The Owner shall furnish tests, inspections and reports required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 3.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 3.1.4.3 The Owner, when such services are ~~requested~~, requested and upon its approval, shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing

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values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 3.1.4.4 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

§ 3.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201–2007, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative. The Owner's designated representative will have authority within specified limits to act on behalf of the Owner in writing with respect to changes in the scope of the Work, in the GMP, and/or the Contract Time. Any decisions and approvals beyond those specified limits involving a change in the scope of the Work, in the GMP, and/or the Contract Time, or involving modification or waiver of the terms of the Contract Documents must be approved in writing by the Owner's Board of Directors or the Owner's Superintendent or designee.

§ 3.2.1 Legal Requirements. The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests. The Owner is not required to furnish legal, insurance and accounting services for the benefit of the Construction Manager.

§ 3.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B133™–2014, B103™–2007, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, as revised, including any additional services requested by the Construction Manager and authorized by the Owner that are reasonable and necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 4.1 Compensation

§ 4.1.1 For the Construction Manager's Preconstruction Phase services, the Owner shall compensate the Construction Manager as follows:

§ 4.1.2 For the Construction Manager's Preconstruction Phase services described in Sections 2.1 and 2.2: *(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)*

Compensation for the Preconstruction Services (the "Preconstruction Services Cost") shall not exceed \$243,240.00 and shall be paid on an hourly basis at the rates and for the individuals specified in Exhibit 1 to this Agreement. In addition, the Construction Manager shall receive compensation during the Preconstruction Phase for any pre-approved non-labor costs incurred to perform the Preconstruction Services, including equipment at the hourly rates specified in the attachment. Other additional costs that will be reimbursed when pre-approved by the Owner in writing may include but are not limited to costs of testing, intrusive investigation, selective demolition and restoration, copying, blueprints and courier costs. The Preconstruction Services rates shall be fully loaded and shall include personnel and consultant costs and all benefits, materials, equipment, taxes, profit and overhead. Costs that would cause the not-to-exceed amount to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

The Construction Manager's Fee in Section 5.1.1 does not apply to Preconstruction Services, and any savings from any not-to-exceed amount for Preconstruction Services will revert to the Owner.

~~§ 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within () months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.~~

§ 4.1.4 Compensation based on ~~Direct Personnel Expense~~ hourly rates shall be fully loaded and includes the direct salaries of the Construction Manager's personnel providing Preconstruction Phase services on the Project and the Construction Manager's costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

§ 4.2 Payments

§ 4.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. The invoice will contain detail of and support for the services performed.

§ 4.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid Thirty (30) days after the ~~invoice date~~ date when payment is due shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.

(Insert rate of monthly or annual interest agreed upon.)

%—Pursuant to RCW 39.76, not to exceed the Bank of America prime rate plus 2.00 % per annum, except when a higher interest rate is required by law.

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 5.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds. The Contract Sum is the Cost of the Work as defined in ~~Section 6.1.1~~ Article 6 plus the Construction Manager's Fee.

§ 5.1.1 The Construction Manager's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)

The Construction Manager's Fee for the Work during the Construction Phase shall be the fixed, lump sum amount that will be calculated as (a) the percentage specified in the Fee Proposal Form (Four point Three-Three Percent (4.33%)) times (b) the MACC negotiated as part of the GMP, but not upon the Negotiated Support Services and the Specified General Conditions. The Fee shall not be applied to any Contingency used by the Construction Manager.

§ 5.1.2 The method of adjustment of the Construction Manager's Fee for changes in the Work:

In the event a Change Order is issued for an additive Change in the Work, the increase in the Construction Manager's Fee will be calculated using the percentage specified above in Section 5.1.1.

§ 5.1.3 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

The fee for changed Work for which the Owner is responsible and which is directly performed by a Subcontractor of any tier, including overhead and profit, is specified in Section 7.5 of the A201-2007 General Conditions. If a lower-tier Subcontractor performs changed Work, the fee of upper-tier Subcontractors is also specified in Section 7.5 of the A201-2007 General Conditions.

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed ~~percent (—%)~~ of the standard rate paid at the place of the ~~Project~~ Project and as further described in Section 6.5.2.

§ 5.1.5 Unit prices, if any:

(Identify and state the unit price; state the quantity limitations, if any, to which the unit price will be applicable.)

Item

Units and Limitations

Price per Unit (\$0.00)

§ 5.1.6 The Specified General Conditions are in the fixed amount of Six Hundred Seventeen Thousand Sixteen Dollars (\$617,016.00).

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§ 5.1.7 The amount for Negotiated Support Services and any allowances therein will be negotiated at the time of establishing the MACC.

§ 5.2 Guaranteed Maximum Price

§ 5.2.1 The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time. To the extent the Cost of the Work-Work, Negotiated Support Services, Specified General Conditions, plus the Construction Manager's Fee exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner.

(Insert specific provisions if the Construction Manager is to participate in any savings.)

There are no shared savings provisions; all savings shall revert to the Owner.

§ 5.2.2 The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

§ 5.3 Changes in the Work

§ 5.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect or Owner may make minor changes in the Work as provided in Section 7.4 of AIA Document A201-2007, General Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time consistent with the requirements of the Contract Documents as a result of changes in the Work.

§ 5.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201-2007, General Conditions of the Contract for Construction.

§ 5.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201-2007 and the term "costs" as used in Section 7.3.7 of AIA Document A201-2007 shall have the meanings assigned to them in Section 7.5 of AIA Document A201-2007 and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts, subcontracts and the Contract Documents.

§ 5.3.4 In calculating adjustments to the Guaranteed Maximum Price, Price for changed Work performed by the Construction Manager, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201-2007 shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 5.1 of this Agreement.

~~§ 5.3.5 If no specific provision is made in Section 5.1.2 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.2 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.~~

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 6.1 Costs to Be Reimbursed

§ 6.1.1 The term Cost of the Work shall mean the actual, net costs reasonably and necessarily incurred by the Construction Manager in the proper performance of the Work-Work, without any Construction Manager overhead, profit, fee or markup. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7.

§ 6.1.2 Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

§ 6.2 Labor Costs

§ 6.2.1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site ~~workshops~~ workshops or transporting materials, equipment or personnel to and from the Project site.

§ 6.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel ~~when stationed at the site with the Owner's prior approval~~ are included in the Specified General Conditions and not separately reimbursable.

(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal or other offices shall be included in the Cost of the Work, identify in Section 11.5, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

§ 6.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the ~~Work~~ Work are included in the Specified General Conditions and not separately reimbursable.

§ 6.2.4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under ~~Sections 6.2.1 through 6.2.3.~~ Section 6.2.1. This does not include insurance required by Section 11.1 of the A201, which costs are included within the Construction Manager's Fee. Costs paid or incurred by the Construction Manager for vacations, bonuses, travel, stock options, deferred compensation, or discretionary payments to employees are not directly reimbursable. As part of the GMP Amendment, the parties may agree to a wage burden rate for all workers under Section 6.2.1, which will be fully burdened, including all the wage-based costs, and fixed for the duration of the Contract Time. Burden rates, including any agreed burden rates, are subject to the Owner's audit to confirm that the burden has been correctly calculated and applied the burden in accordance with the Contract Documents.

~~§ 6.2.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, with the Owner's prior approval.~~

§ 6.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts. The Construction Manager shall maintain a procedure for the review, processing and payment of applications by the Subcontractors for progress and final payments, all in accordance with the terms and conditions of the Contract Documents. The Construction Manager shall verify the completeness of all applications for payment and assemble and check all supporting documentation required by the Contract Documents or by the subcontracts with respect to each Application for Payment, including all lien waivers and releases.

§ 6.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 6.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed ~~construction~~ construction, except on-site storage and handling of materials, which are included under Specified General Conditions.

§ 6.4.2 Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold or returned by the Construction Manager. Any amounts realized from such sales or returns shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.4.3 Notwithstanding the above, costs of material and equipment directly procured by the Construction Manager (and not bid through a subcontract package) and incorporated in the completed construction will generally be included in Negotiated Support Services.

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§ 6.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ 6.5.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

§ 6.5.2 Rental charges (not to exceed the local fair market rental costs) actually paid to non-related third parties for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item may not exceed seventy-five percent (75%) of the purchase price of any comparable item. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

Rentals from the Construction Manager or any entity in which the Construction Manager or one or more of its owners has a direct or indirect ownership interest ("CM Equipment") shall be separately accounted for and the rental costs shall not exceed the Rental Rate Blue Book by Data Quest, San Jose, California, or fair market rental costs, whichever are lower. If more than one rate is applicable, the best available rate will be utilized. The rates in effect at the time of the performance of the Work are the maximum rates allowable for equipment of modern design and in good working condition and include full compensation for furnishing all fuel, oil, lubrication, repairs, maintenance, and insurance to the same extent as the comparable Blue Book or fair market rate. Equipment not of modern design and/or not in good working condition will have lower rates. Hourly, weekly, and/or monthly rates, as appropriate, will be applied to yield the lowest total cost. When rental rates payable do not include fuel, lubrication, maintenance and servicing, as defined as operating costs in the Blue Book, such operating costs shall be reimbursed based on actual costs. The rate for CM Equipment necessarily standing by for future use on the Work shall be 50% of the maximum rate established above. If CM Equipment is required for which a rental rate is not established by the Blue Book, an agreed rental rate shall be established for that equipment, which rate and use must be approved by the Owner prior to performing the Work.

§ 6.5.3 Costs of street cleaning (as a Negotiated Support Service); removal of rubbish and debris from the site of the Work and its proper and legal disposal, except when performed by a Subcontractor. A separate subcontract that specifically requires progress cleaning, removal of rubbish and debris not normally included in a trade subcontract is not a Cost of the Work. Any progress cleaning, rubbish and debris removal shall be performed under Negotiated Support Services unless included as part of a trade subcontract scope identified above.

§ 6.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site ~~office~~ office are included in Specified General Conditions and are not separately reimbursable, except for the costs of document reproduction for subcontractor bidding which are a reimbursable Cost of the Work.

§ 6.5.5 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the ~~Work~~ Work may be allowed with the Owner's prior written approval, but not including commuting or travel costs from the Construction Manager's office, which are included in Specified General Conditions and are not separately reimbursable.

§ 6.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

§ 6.5.7 Notwithstanding the above, costs of other material and equipment, temporary facilities and related items procured by the Construction Manager will generally be included in Negotiated Support Services, except to the extent designated for inclusion in the Specified General Conditions. Reference the Cost Responsibility Matrix Exhibit for clarification of such items. All office trailers, furniture, technology, communication (including cell phones), personal transportation (including pickup trucks) and clerical equipment therein, project identification and temporary signage, and delivery by the Construction Manager, on-site storage, sheds and handling are Specified General Conditions.

§ 6.6 Miscellaneous Costs

§ 6.6.1 ~~Premiums~~ The actual, net costs of premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval. Contract are included in the Fee and are not separately reimbursable.

§ 6.6.2 ~~Sales, use or similar~~ Use or similar taxes, B&O and income taxes imposed by a governmental authority that are related to the Work and for which the Construction Manager is liable. are included in the Fee and so are not reimbursable. Sales tax on the Contract Sum is paid with and based upon each Application for Payment.

§ 6.6.3 ~~Fees and assessments for the building permit and for other~~ Project-specific permits, licenses and inspections of governmental authorities having jurisdiction for which the Construction Manager (but not Subcontractors) is required by the Contract Documents to pay. pay are reimbursed as a Negotiated Support Service; see Section 11.5.2.

§ 6.6.4 Fees of laboratories for tests required of the Construction Manager by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201–2007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

§ 6.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201–2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

§ 6.6.6 ~~Costs for electronic equipment and software, directly related to the Work with the Owner's prior approval.~~ including computers, are included in Specified General Conditions and are not separately reimbursable.

§ 6.6.7 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 6.6.8 ~~Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.~~

§ 6.6.9 ~~Subject to the Owner's prior approval, expenses~~ Expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work. Work are included in Specified General Conditions and are not separately reimbursable.

§ 6.6.10 The cost of warehousing of stored materials or equipment subsequently incorporated into the Work, which warehousing was unanticipated at the time of the GMP Amendment and which the Owner approves in writing.

§ 6.7 Other Costs and Emergencies

§ 6.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ 6.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201–2007.

§ 6.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors of any tier or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Construction Manager and only to the extent that the cost

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of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 6.7.4 The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2007 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section ~~6.8.6.8~~ or are listed as covered by the Fee or the Specified General Conditions.

§ 6.7.5 Negotiated Support Services

Negotiated Support Services by the Construction Manager may be accomplished and will be reimbursed as Costs of the Work within the GMP, consistent with the Cost Responsibility Matrix Exhibit, only as follows:

- .1 Negotiated Support Services described and included in the GMP.
- .2 Units of Negotiated Support Services may be accomplished by the Construction Manager during the Construction Phase, subject to prior written Owner approval, if the Cost of the unit of the Work is less than \$35,000.
- .3 Subcontractor bidding requirements are not applicable to Negotiated Support Services.

§ 6.7.6 Specified General Conditions

The fixed, lump sum contained in the Construction Manager’s response to the Pricing Proposal for certain identified general conditions Work and services, consistent with the Cost Responsibility Matrix Exhibit, to be provided by the Construction Manager as Specified General Conditions. The Specified General Conditions Work is to be performed by the Construction Manager with its own forces in most instances and also includes any Preconstruction Services and activities that occur after the GMP is established through execution of the GMP Amendment.

§ 6.8 Costs Not To Be Reimbursed

§ 6.8.1 The Cost of the Work shall not include the items listed below: below, as all such items are covered by the Construction Manager’s Fee or the Specified General Conditions or are at the Construction Manager’s risk:

- .1 Salaries and other compensation of the Construction Manager’s personnel stationed at the Construction Manager’s principal office or offices other than the site office, except as specifically provided in Section 6.2, or as may be provided in Article 11;
- .2 Expenses of the Construction Manager’s principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;
- .4 The Construction Manager’s capital expenses, including interest on the Construction Manager’s capital employed for the Work;
- .5 Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Construction Manager, Subcontractors of any tier and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Sections 6.1 to 6.7;
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .8 Costs for services incurred during the Preconstruction Phase: Phase except as specifically allowed herein;
- .9 Direct payments by the Owner (if any) for the building permit and related permits, reserve capacity fees, and plan-check fees, including SEPA, design review, and land use fees are not a part of the Cost of the Work or the GMP;
- .10 Overtime wages, unless pre-approved by the Owner;
- .11 Main or home office accounting, data processing, software, hardware or computer-related costs and data processing, software, hardware or computer-related costs;
- .12 Penalties and fines imposed by a governmental entity;
- .13 Safety costs not included in the Negotiated Support Services or Specified General Conditions.
- .14 Liquidated damages;
- .15 Except as specifically allowed under Section 6.1 through 6.7, reproduction costs, costs of telegrams, facsimile transmissions and long-distance telephone calls, postage and express delivery charges, telephone at the site and reasonable petty cash expenses of the site office;
- .16 Legal, consultant, or claims-related expenses except as specifically provided in Section 6.6.8;
- .17 Warehousing in the Construction Manager’s facility; and
- .18 Business licenses.

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§ 6.9 Discounts, Rebates and Refunds

§ 6.9.1 ~~Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager.~~ Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained. If the Construction Manager is offered discounts and/or rebates based upon prompt payment, the Construction Manager shall offer the Owner the opportunity to take advantage of such discount and/or rebate, and if the Owner makes such a prompt payment then the Owner shall only be charged the price as reduced by the discount and/or rebate. If the Owner declines the opportunity the Construction Manager may keep any such discounts and/or rebates it achieves through its own prompt payment. If the Construction Manager does not provide the Owner the opportunity to participate then the Construction Manager may only charge the net costs after consideration of discounts and rebates. The Construction Manager shall notify the Owner in a timely manner of the availability of such cash discounts, rebates, or refunds.

§ 6.9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 6.9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.10 Related Party Transactions

§ 6.10.1 For purposes of Section 6.10, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term "related party" includes any member of the immediate family of any person identified above.

§ 6.10.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

§ 6.11 Accounting Records

The Construction Manager and any cost-reimbursable Subcontractors shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. This requirement also applies to any Subcontractor of any tier that submits a Claim. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and ~~copy~~, copy (including electronically), the Construction Manager's and Subcontractors' original records and accounts, including complete documentation supporting accounting entries, books, ledgers, computerized records, daily reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, invoices of Subcontractors and suppliers of any tier, memoranda and other data relating to this ~~Contract.~~ The Construction Manager Project or any Claim. The Construction Manager and its Subcontractors shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 7.1 Progress Payments

§ 7.1.1 Based upon Applications for Payment submitted ~~to the Architect in compliance with the Contract Documents and submitted to the Owner~~ by the Construction Manager and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Construction Manager as provided below and elsewhere in the Contract Documents. The Construction Manager's submission of this Application constitutes a

certification that the Work is current on the Construction Schedule, unless otherwise noted on the Application. The Application shall be in a form acceptable to the Owner.

§ 7.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 7.1.3 ~~Provided that an Application for Payment is received by the Architect not later than the day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the day of the month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than () days after the Architect receives the Application for Payment.~~

~~(Federal, state or local laws may require payment within a certain period of time.)~~ **Applications for Payment**

§ 7.1.3.1 Draft Application. On or before the 25th calendar day of each month, the Construction Manager shall submit to the Owner and Architect a report on the current progress of the Work as compared to the Construction Manager's Construction Schedule, an updated Construction Schedule, and a draft, itemized application for payment for Work performed during that calendar month on a State of Washington Application for Payment on Contract form approved by the Owner. This shall not constitute a payment request. The Construction Manager, the Architect and the Owner shall meet before the end of that month and confer regarding the current progress of the Work and the amount of payment to which the Construction Manager is entitled. The Architect or the Owner may request the Construction Manager to provide data substantiating the Construction Manager's right to payment as the Owner or the Architect may require, such as copies of requisitions from Subcontractors of any tier, lien releases, and certified payroll records, and reflecting retainage as provided elsewhere in the Contract Documents. The Construction Manager shall not be entitled to make a payment request, nor is any payment due the Construction Manager, until such data is furnished.

§ 7.1.3.2 Payment Request. After the Construction Manager, the Owner and the Architect have met and conferred regarding the updated draft application, and the Construction Manager has furnished all progress information required and all data requested by the Owner or Architect under Section 9.3.1.1 above, the Construction Manager has submitted current meeting minutes, daily reports, as-built drawings and commissioning logs (if requested) and an updated (bar chart) construction schedule, the Construction Manager may then submit a payment request in the agreed-upon amount, in the form of a notarized, itemized Application for Payment, in triplicate, for Work properly performed during the referenced calendar month on a form supplied or approved by the Owner, along with a lien release on a form approved by the Owner from each Subcontractor for whose Work the Owner paid the Construction Manager for the prior month. The Application shall also state that prevailing wages have been paid in accordance with the prefiled statements of intent to pay prevailing wages on file with the Owner and that all payments due Subcontractors of any tier from the Owner's payment the prior month have been made. Any payment request shall not be valid unless it complies with the requirements of the Contract Documents.

§ 7.1.3.3 Payment. See Section 9.6.1 of the A201.

(Federal, state or local laws may require payment within a certain period of time.)

§ 7.1.3.4 Disputed Amounts. If the Construction Manager believes it is entitled to payment for Work performed during that same calendar month in addition to the agreed-upon amount, the Construction Manager may also submit along with the approved Application for Payment a separate written payment request specifying the exact additional amount due, the category in the schedule of values in which the payment is due, the specific Work for which the additional amount is due, and why the additional payment is due. Furthermore, for the submittal to be considered, pursuant to WAC 296-127-320, the Construction Manager and all Subcontractors shall file with the Owner by the same date certified copies of all payroll records relating to the additional amount sought.

§ 7.1.3.5 Stored Materials. If authorized by the Owner, an Application for Payment may include a request for payment for material delivered to the Project site and suitably stored and for completed preparatory Work. An Application for Payment may include a request for payment for material stored off the Project site if authorized by the Owner and provided that the Construction Manager complies with or furnishes satisfactory evidence of the following:

- .1 The material will be placed in a bonded warehouse that is structurally sound, dry, lighted, secure and suitable for the materials to be stored.

- .2 The warehouse is approved in writing by the Owner. The Owner generally will not approve locations beyond a 10-mile radius of the Project absent special circumstances.
- .3 Only materials for the Project are stored within the warehouse (or a secure portion of a warehouse set aside for the Project).
- .4 The Construction Manager furnishes the Owner a certificate of insurance extending the Construction Manager's insurance coverage for damage, fire and theft to cover the full value of all materials stored, or in transit.
- .5 The warehouse (or secure portion thereof) is continuously under lock and key, and only the Construction Manager's authorized personnel shall have access.
- .6 The Owner shall at all times have the right of access to stored materials in the possession of the Construction Manager.
- .7 The Construction Manager assumes total responsibility for the stored materials.
- .8 The Construction Manager furnishes to the Owner proofs of title, satisfactory evidence that the Construction Manager has paid for the materials in question, certified lists of materials stored, bills of lading, invoices and other information as may be required, and shall also furnish notice to the Owner when materials are moved from storage to the Project site.

§ 7.1.4 With each Application for Payment, the Construction Manager shall submit the reports required in Section 2.3 and its current detailed computerized substantiation (such as a detailed job cost report) and lien releases; the Construction Manager shall also submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to if required by the Owner or Architect. The Construction Manager may be required to account on a monthly basis as part of its Application for Payment for the Cost of the Work for certain portions of the Project that the Owner defines prior to setting the GMP, such Costs of the Work will include allocation of Specified General Conditions as well as building system and other shared costs. Upon request, the Construction Manager shall demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed ~~progress (1) progress~~ payments already received by the Construction Manager, less ~~that (2) that~~ portion of those payments attributable to the Construction Manager's Fee, plus ~~payrolls (3) payrolls~~ for the period covered by the present Application for Payment.

§ 7.1.4.1 As a part of its Application for Payment, the Construction Manager shall promptly, following the date of execution of the GMP Amendment, prepare a comprehensive list of equipment that it anticipates to use on the Project, whether owned or rented. The Construction Manager shall maintain and submit to the Owner monthly a detailed equipment inventory of all equipment it has purchased and charged as a Cost of the Work or job-owned through aggregate rentals and shall prepare an equipment rental report that identifies the equipment rented for the month and identifies the source of the rented equipment. The inventory shall include (1) the original acquisition cost and date, (2) the Owner-approved fair market value of the equipment when first used on the Project, and (3) the final disposition.

§ 7.1.5 At least fourteen (14) days before the first Application for Payment, the Construction Manager shall submit to the Owner and Architect a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Owner or Architect may require. These schedules, unless objected to by the Architect or the Owner, shall be used as a basis for reviewing the Construction Manager's Applications for Payment. Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. Fee, Negotiated Support Services, Specified General Conditions, and Contingency shall each be shown as separate line items. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the ~~Architect-Owner~~ Architect-Owner may require. This schedule, unless objected to by the ~~Architect-Owner~~ Architect-Owner, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 7.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 7.1.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201–2007;
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Construction Manager's Fee, less retainage of ~~percent (— %).~~ Fee. The Construction Manager's Fee shall be ~~computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;~~
- .4 ~~Subtract retainage of — percent (— %) from that portion of the Work that the Construction Manager self-performs; N/A~~
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; ~~and~~
- .7 Subtract amounts, if any, for which the Architect or Owner has withheld or nullified a Certificate for Payment ~~or the Owner has withheld payment as provided in Section 9.5 of AIA Document A201–2007. A201–2007; and~~
- .8 Subtract the statutory retainage of five percent (5%) of total of items .1-.7 above and pursuant to RCW 60.28.

§ 7.1.8 ~~The Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements. N/A~~

§ 7.1.9 Except with the Owner's prior approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 7.1.10 In taking action on the Construction Manager's Applications for Payment, the ~~Architect~~ Architect, Project Manager, and Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the ~~Architect~~ Architect, Project Manager, or Owner has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that the ~~Architect~~ Architect, Project Manager, or Owner has made exhaustive or continuous on-site inspections; or that the ~~Architect~~ Architect, Project Manager, or Owner has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner. Payment by the Owner shall not constitute final approval of the Work done or the amount due.

§ 7.1.11 The Construction Manager shall obtain Affidavits of Wages Paid from each Subcontractor of any tier within fourteen (14) days of each Subcontractor's completion of its Work on the Project.

§ 7.2 Final Payment

§ 7.2.1 Final payment, constituting the entire unpaid balance of the Contract ~~Sum, Sum except for statutory retainage,~~ shall be made by the Owner to the Construction Manager within 30 days of the Owner's Final Acceptance of all the Work under the Contract, which shall occur when

- .1 the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201–2007, and to satisfy other requirements, if any, which extend beyond final payment;

- .2 the Construction Manager has submitted a final accounting for the Cost of the Work (including final accountings from any cost reimbursable Subcontractors) and a final Application for Payment; ~~and~~
- .3 Final Completion has been achieved;
- .4 a final Certificate for Payment has been issued by the Architect- Architect; and
- .5 the requirements for Final Acceptance in the A201-2007 General Conditions are met.

The Owner's final payment to the Construction Manager shall be made ~~no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:~~

in accordance with the Contract Documents.

§ 7.2.2 The Owner or the Owner's auditors will review and report in writing on the Construction Manager's final accounting (including the final accounting of any mechanical and/or electrical subcontracts under RCW 39.10.385) within 30 days after delivery of the final accounting to the ~~Architect-Owner~~ by the Construction Manager. Based upon such Cost of the Work as the Owner or the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner or the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201-2007. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201-2007. ~~The Architect is not~~ Neither the Architect nor the Owner is responsible for verifying the accuracy of the Construction Manager's final accounting. The Owner's final accounting shall not preclude or in any way limit the Owner from exercising its rights of audit under other provisions of this Contract.

§ 7.2.3 If the Owner or the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to ~~request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201-2007. A request for mediation invoke the dispute resolution procedure of Article 15 of the revised General Conditions.~~ Commencement of the dispute resolution procedure for the disputed amount shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to ~~request mediation commence the dispute resolution procedure~~ within this 30-day period shall result in the substantiated amount reported by the Owner or the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the ~~amount certified in the Architect's final Certificate~~ undisputed amount in the final Application for Payment.

§ 7.2.4 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. ~~If the Construction Manager has participated in savings as provided in Section 5.2.1, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.~~

ARTICLE 8 INSURANCE AND BONDS

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in the Contract Documents, including Article 11 of AIA Document A201-2007. All of the costs for the insurance required by Section 11.1 of the A201 and the bonds required by Section 11.4 of the A201 are included within the Construction Manager's Fee and are not separately reimbursable. If the Owner requires that the Construction Manager procure the builder's risk insurance it will be as a Negotiated Support Service.

(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201-2007.)

Type of Insurance or Bond
See the A201

Limit of Liability or Bond Amount (\$0.00)Amount(\$0.00)
See the A201

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ARTICLE 9 DISPUTE RESOLUTION

§ 9.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201–2007. ~~However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 9.3 of this Agreement shall not apply.~~

§ 9.2 For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution shall be as follows:

(Check the appropriate box. If the Owner and Construction Manager do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

☐ ~~Arbitration pursuant to Section 15.4 of AIA Document A201–2007~~

☐ ~~Litigation in a court of competent jurisdiction~~

☐ ~~Other: (Specify)~~ **X** Litigation in King County Superior Court

§ 9.3 Initial Decision Maker

~~The Architect will serve as the~~ There shall be no Initial Decision Maker pursuant to Section 15.2 of AIA Document A201–2007 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker. A201–2007.

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

ARTICLE 10 TERMINATION OR SUSPENSION

§ 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price

§ 10.1.1 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201–2007. Notwithstanding anything herein to the contrary, the Owner shall maintain the right to terminate for cause or convenience as described in Article 14 of AIA Document A201–2007.

§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services reasonably and necessarily performed prior to receipt of a notice of ~~termination~~ termination, not to exceed the Preconstruction Services Cost. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 4.1.

§ 10.1.3 If the Owner terminates the Contract pursuant to Section 10.1.1 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 10.1.2:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;~~and~~

- ~~.3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.~~
- ~~services; and~~
- .4 Adjust for statutory retainage in accordance with RCW 60.28.

The Owner shall also pay the Construction Manager fair compensation, to the extent permitted in Section 6.1 and not excluded by Section 6.2 of this Agreement, either by purchase or rental at the election of the Owner, for any equipment purchased for the Project and now owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

§ 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price

Following execution of the Guaranteed Maximum Price Amendment and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in Article 14 of AIA Document A201–2007.

§ 10.2.1 If the Owner terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

§ 10.2.2 If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 ~~above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, utilizing as necessary a reasonable estimate of the Cost of the Work for Work not actually completed above.~~

§ 10.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201–2007, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in ~~Sections 5.1 and 5.3.5~~ Section 5.1 of this Agreement.

ARTICLE 11 MISCELLANEOUS PROVISIONS

§ 11.1 Terms in this Agreement shall have the same meaning as those in A201–2007.

§ 11.2 Ownership and Use of Documents

Section 1.5 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 11.3 Governing Law

Section 13.1 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 11.4 Assignment

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing

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financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201–2007, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 11.5 Other provisions:

§ 11.5.1 PROJECT INFORMATION

The Construction Manager and all Subcontractors shall submit Project information required by the state Capital Projects Advisory Review Board.

§ 11.5.2 PERMITS, FEES AND NOTICES

§ 11.5.2.1 The Owner will obtain and pay only for the initial building permit and fees. Except for Subcontractor permits and fees, the Construction Manager shall obtain all additional permits necessary for the execution of the Work and shall pay all permit, utility, miscellaneous, and ancillary fees required. The costs of such permits shall be as an allowance in the Negotiated Support Services, except for Subcontractor permits, fees, and licenses, which costs shall be included within the subcontract bid packages. Subcontractor bid packages shall include all permits and fees necessary for such Subcontractors to perform their work, including without limitation all fees, licenses, permits, plan check fees for deferred submittals, application fees and review fees for any and all shop drawings or bidder designed systems, any inspection fees not covered by the initial building permit fee, including reinspection fees, government fees, Department of Labor and Industries fees, renewals and penalties, and inspections by government agencies necessary for proper execution and completion of the Subcontractor's Work. The Owner will not pay, and the Construction Manager will not be reimbursed for, license fees or any renewals or penalties. Any such costs not paid for by the Owner shall be incorporated into the Specified General Conditions.

§ 11.5.2.2 The Construction Manager shall coordinate and schedule all Work with permitting agencies, utility companies, and other such agencies determined to have jurisdictional authority necessary for completion of the Work. The Construction Manager shall be responsible for providing all information, documents, and fees to the permitting agencies, utility companies, and other such agencies determined to have jurisdictional authority as necessary to timely obtain and coordinate permits, utility and other such connections. The Construction Manager shall obtain all permit renewals during the course of the Work.

§ 11.5.2.3 The Construction Manager will be responsible for providing information to the Department of Labor and Industries and/or local jurisdiction.

§ 11.5.2.4 The Construction Manager will be responsible for any renewals of and penalties arising from the building permit and other permits and governmental fees.

ARTICLE 12 SCOPE OF THE AGREEMENT

§ 12.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 12.2 The following documents comprise the Agreement:

- .1 This AIA Document A133–2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as modified
- .2 AIA Document A201–2007, General Conditions of the Contract for Construction
- .3 AIA Document E201™ 2007, Digital Data Protocol Exhibit, if completed, or the following:
- .4 AIA Document E202™ 2008, Building Information Modeling Protocol Exhibit, if completed, or the following:
- .5 Other documents:

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(List other documents, if any, forming part of the Agreement.)

Exhibit 1: Rates for Preconstruction Services

Addenda 1 through 6.

Cost Responsibility Matrix

Upon execution, Exhibit A, Guaranteed Maximum Price Amendment.

This Agreement is entered into as of the day and year first written above.

OWNER *(Signature)*

CONSTRUCTION MANAGER *(Signature)*

(Printed name and title)

(Printed name and title)

Init.

/

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Graehm Wallace, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with this certification at 13:39:38 PT on 10/13/2020 under Order No. 2573503930 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A133™ – 2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as published by the AIA in its software, other than changes shown in the attached final document by underscoring added text and striking over deleted text.

(Signed)

(Title)

(Dated)



AIA® Document A201® – 2007

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Lincoln High School Phase 2

4400 Interlake Avenue N.

Seattle, Washington 98103

THE OWNER:

(Name, legal status and address)

Seattle School District No. 1

2445 3rd Avenue South

Seattle, Washington 98124

THE ARCHITECT:

(Name, legal status and address)

Mahlum Architects

71 Columbia Street, Floor 4

Seattle, Washington 98104

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Owner or Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include other documents such as the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements. In the event of a conflict or discrepancy among or in the Contract Documents that cannot be resolved by interpreting the Contract Documents as a single, integrated document and giving effect to each provision therein, interpretation shall be governed in the following priority, with an Addendum or a revision to a Contract Document having precedence over the original document and later Addenda having precedence over earlier:

- .1 Agreement (revised A133-2009, including exhibits) (written amendments having precedence)
- .2 Any Supplementary Conditions
- .3 These revised General Conditions (A201-2007)
- .4 Any Special Conditions
- .5 Division 1 General Requirements
- .6 Specifications
- .7 Drawings (large-scale drawings having precedence over small-scale drawings, and written or computed dimensions having precedence over scaled dimensions)
- .8 RFQ and Request for Price Proposal documents
- .9 Material and systems schedules

In the event that Work is shown on Drawings but not contained in Specifications, the Work as shown shall be provided at no change in the GMP or Contract Time, according to specifications to be issued by the Architect that are consistent with and reasonably inferable from the Work shown on the Drawings.

§ 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a ~~Sub-subcontractor~~, Sub-subcontractor (although the Owner does not waive any third-party beneficiary rights it may otherwise have as to Subcontractors of any tier), (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 THE WORK

The term "Work" means the ~~construction and services~~ construction, services, and administrative procedures required by the Contract Documents, whether completed or partially ~~completed~~, completed and whether new construction or modification of existing structures, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project. Where the Work requires construction that modifies or interfaces with existing structures, the Contractor shall ensure that the Work is compatible and interfaces with the as-built conditions of the existing structures.

§ 1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by separate contractors.

§ 1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

§ 1.1.6 THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 INSTRUMENTS OF SERVICE

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, the Project Manual, studies, surveys, models, sketches, drawings, specifications, and other similar materials through which the Work to be executed by the Contractor is described.

§ 1.1.8 INITIAL DECISION MAKER

~~The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2. [not used.]~~

§ 1.1.9 PROJECT MANUAL

The Project Manual is a volume or volumes assembled for the Work which may include the bidding requirements, sample forms, Conditions of the Contract, Specifications, and other related materials such as construction details and schedules.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any ~~trade, trade, nor shall it remove the Contractor's obligation to complete all of the Work when~~ coordination between the Specifications and the Drawings or coordination between subcontracts is required.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words not defined in the Contract Documents that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.2.4 If the Contractor discovers that the Specifications, Drawings, or Project Manual fail to particularly describe the material or kind of goods to be used in any place or discovers an inconsistency or ambiguity between the Specifications, Drawings, or Project Manual or an inconsistency or ambiguity arises internally within the Specifications, Drawings, or Project Manual, then the Contractor shall make inquiry of the Architect as to what is best suited. The material that a competent contractor, having participated in a preconstruction phase and following accepted construction industry standards, would use in its place to produce first quality finished Work shall be considered a part of the Contract without adjustment to the GMP or Contract Time. If the Contractor discovers such an inconsistency or ambiguity and fails to notify the Architect, there shall be no adjustment to the GMP or Contract Time.

§ 1.3 CAPITALIZATION

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles ~~or and identified references to Sections in this document~~ (3) the titles of other documents published by the American Institute of Architects-Architects, or (4) published codes and standards.

§ 1.4 INTERPRETATION

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement. Reference in the singular to an article, device, item or piece of equipment shall include the larger of the number of such articles indicated in the Contract Documents or the number required to complete the installation.

§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 1.5.1 The Architect and the Architect's consultants ~~shall~~ shall, subject to any right of the Owner, be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and ~~will~~ will, subject to any right of the Owner, retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the ~~Work~~ Work under the Contract Documents and with respect to the Project. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. All copies of the Instruments of Service, except the Contractor's record set, shall be returned or suitably accounted for to the Owner upon completion of the Work. The Contractor may retain one record set. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

~~If the parties intend to transmit Instruments of Service Contractor acknowledges that drawings, specifications, Instruments of Service, or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents that Contractor receives in digital form, including but not limited to the BIM model and other documents received through e-Builder, may contain transmission or translation errors and are issued for convenience only, and thus Contractor may only rely upon hard copy documents.~~

ARTICLE 2 OWNER

§ 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the ~~Owner or the Owner's authorized representative,~~ School District Board of Directors or the Owner's authorized representative. The "Owner" does not include teachers, district administrators, the school principal, staff, custodians, maintenance or safety workers, or others at the school. WAIVERS OF PROVISIONS OF THIS CONTRACT CAN ONLY BE MADE IN WRITING AND BY THE OWNER'S BOARD OF DIRECTORS. No other person is authorized to grant such waivers on behalf of the Owner. No officer, agent, representative, or employee of the Owner shall be personally responsible for any liability arising under this Agreement.

~~§ 2.1.2 The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.~~

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable The Contractor may only request evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) Contract if the Owner fails to make payments of undisputed amounts to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) require or if the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change, due and the Owner agrees. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary environmental approvals, easements, assessments and related charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities. The Contractor is responsible to secure and pay for licenses and all other permits, subject to Section 3.7.1.

§ 2.2.3 The Owner ~~shall~~ may furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work. The Contractor should assume that the locations of any underground or hidden utilities, active or abandoned underground tanks, plumbing or electrical runs indicated in the surveys or Contract Documents are shown in approximate locations, but the Contractor is responsible for making all utility location checks and verifications. The Contractor is responsible for performing all utilities investigation and location work to determine the precise locations thereof. The Contractor shall not damage or interrupt utilities or utilities services of any kind. The Contractor shall bear the risk of loss arising out of its Work which directly or indirectly damages or interrupts any utilities or utilities services, or causes or contributes to damages of any nature, except in the case where the loss resulted because the utility location information provided by Owner or Utility Provider was inaccurate.

§ 2.2.4 ~~The Owner~~ Owner, upon written request, shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such reasonable information or services.

§ 2.2.5 ~~Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2. The Contractor will be responsible as a Cost of the Work for the printing costs for Subcontractor bid packages (including those on which it bids) and will furnish, free of charge, such copies of Drawings and Project Manuals to the Owner and Architect as are reasonably necessary.~~

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly or materially fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order signed personally or by an agent specifically so empowered by the Owner to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of itself or the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ~~ten-day~~ seven (7) day period after receipt of written notice from the Owner to commence and continue to make reasonable progress toward the correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In the event such deficiencies threaten the health or safety of the Owner's employees, students or occupants, or exist within fourteen calendar days of the date on which the Owner is scheduled to begin to operate school at the Project, the Owner may immediately proceed to correct such deficiencies without notice. In either such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services and expenses made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. The right of the Owner to correct the Work pursuant to this Section 2.4 shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of itself or others. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. The Owner's exercise of its rights under this Section shall not adversely affect any warranties applicable to the Project.

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required bonded, and insured in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents and submittals approved or accepted pursuant to Section 3.12. The Contractor shall comply with any requirements of the Office of the Superintendent of Public Instruction.

§ 3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.1.4 The Contractor shall be and operate as an independent contractor in the performance of the Work and shall have complete control over and responsibility for all personnel performing the Work. The Contractor is not authorized to enter into any agreements or undertakings for or on behalf of the Owner or to act as or be an agent or employee of the Owner.

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Execution of the Contract and the GMP Amendment by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents. By executing this Contract and the GMP Amendment, the Contractor represents and acknowledges that the GMP is reasonable compensation for all the Work, that the Contract Time is adequate for the performance of the Work, and that it has carefully examined the Contract Documents and the Project site, including any existing structures and access thereto, and any drawings of the existing conditions available from the Owner, and that it has satisfied itself as to the nature, location, character, quality and quantity of the Work, the labor, materials, equipment, goods, products, supplies, work, services and other items to be furnished and all other requirements of the Contract Documents, as well as the surface conditions and other foreseeable matters that may be encountered at the Project site or affect performance of the Work or the cost or difficulty thereof, including but not limited to those conditions and matters affecting: transportation, access, local regulations, disposal, handling and storage of materials, equipment and other items; availability and quality of labor, water, electric power, utilities, drainage; availability and condition of roads; normal climatic conditions and seasons; physical conditions at the Project site and the surrounding locality; topography and ground surface conditions; and equipment and facilities needed preliminary to and at all times during the performance of the Work. The failure of the Contractor to fully acquaint itself with any such condition or matter shall not in any way relieve the Contractor from the responsibility for performing the Work in accordance with the Contract Documents and within the Contract Time and the GMP and shall not be the basis of a Claim.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Drawings, Specifications, and other Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of ~~any existing conditions~~ and verify any existing conditions, including all general reference points and any interfering existing conditions, related to that portion of the Work, and shall observe any conditions at the site affecting it, ~~it and shall carefully compare and verify such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing such activities.~~ These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect and the Owner any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Owner or Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations, or lawful orders of public authorities, but the Contractor

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shall promptly report to the Owner and Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Owner or Architect may require. The Contractor shall comply with all applicable Federal, State, County and City laws, ordinances, rules and regulations, including, but not limited to, the latest applicable versions of:

- .1 International Building Code (with Washington State amendments);
- .2 International Plumbing Code;
- .3 International Mechanical Code;
- .4 International Fire Code;
- .5 National Electrical Code;
- .6 Washington State Energy Code;
- .7 Washington State Rules and Regulations for Barrier-Free Design;
- .8 Americans with Disabilities Act (ADA);
- .9 Federal and State Safety Codes as adapted and/or modified by State and Local Ordinances;
- .10 Washington Sustainable Schools Protocol (WSSP) to the extent that this Project receives any State of Washington funds; and
- .11 Seattle Building Code, Seattle Energy Code, and any other applicable municipal code.

§ 3.2.4 If Subject to the restrictions in Section 2.2.4.2.4 of the A133 Agreement as to what constitutes a compensable design error or omission, if the Contractor believes that additional cost or time is involved because of ~~clarifications or instructions the Architect issues~~ any design errors or omissions or inconsistencies noted by the Contractor, or clarifications or instructions issued by the Owner or the Architect in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make any Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public ~~authorities~~ authorities unless the Contractor recognized or reasonably should have recognized such error, inconsistency, omission or difference and failed to report it to the Owner and the Architect. If the Contractor performs any construction activity it knows or reasonably should have known involves an error, inconsistency or omission in the Contract Documents or reports referenced therein without such notice to the Owner and the Architect, the Contractor shall be responsible for such performance and shall bear the attributable costs for correction.

§ 3.2.5 Any investigations of hidden or subsurface conditions have been made for design purposes, and the Contractor has participated in recommending necessary investigations. The results of these investigations may be bound into the Project Manual or otherwise available for the convenience of the Contractor and the Sub-bidders but are not a part of the Contract Documents unless specifically so indicated. While the Contractor may reasonably rely upon such investigation results, there is no guarantee, express or implied, that the conditions indicated are representative of those existing throughout the site or that unforeseen developments may not occur. The Contractor is solely responsible for reasonably interpreting the information and extrapolating beyond the testing location, including each individual boring, test pit or other location.

§ 3.2.6 The Contractor shall do no work, except Work related to means and methods and temporary controls, without applicable Drawings, Specifications, or written modifications or, where required, Shop Drawings, Product Data, or Samples, unless instructed to do so in writing by the Architect and the Owner.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, ~~sequences~~ sequences, assembly details and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. ~~If the Contract Documents give The Contractor shall review any such specific instructions concerning construction means, methods, techniques, sequences, assembly details, or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be~~

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safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner required and shall advise the Owner and Architect (a) if the specified instruction or procedure deviates from what the Contractor considers to be good construction practice or jeopardizes jobsite safety, (b) if following the instruction or procedure will negatively affect any warranties, or (c) if the Contractor objects to the instruction or procedure. The Contractor shall propose alternative instructions or procedures acceptable to the Contractor, for which no increase in the GMP or Contract Time will be made. The Contractor shall not proceed with such alternative instruction or procedure without the written acceptance of the Owner and the Architect, and the Contractor shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's principals, agents, employees, Subcontractors of any tier and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors. Subcontractors of any tier.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work. Under no condition shall a section of Work proceed prior to preparatory work having been completed, cured, dried and otherwise made satisfactory to receive the related work. Responsibility for timely installation of all materials and equipment rests solely with the Contractor, who shall maintain coordination control at all times. The Contractor shall require its Subcontractors of any tier to be familiar with all aspects of the Contract Documents related to their Work. The Contractor shall ensure that the responsible Subcontractor has carefully examined all preparatory work that has been executed to receive its work and has notified the Contractor (who shall notify the Owner and Architect in writing) of any defects or imperfections in preparatory work that will, in any way, affect satisfactory completion of the Work. The lack of such notification, or the failure of the Contractor to inspect such portions of the Work, shall constitute an acceptance of preparatory work and a waiver of any later claim of defect therein.

§ 3.3.4 The Contractor shall perform such detailed examination, inspection and quality control and surveillance of the Work as will ensure that the Work is progressing and is being completed in strict accordance with the Contract Documents, including the then current issue of the Drawings, Specifications, and accepted shop drawings. The Contractor shall be responsible for examination, inspection and quality control and surveillance of all Work performed by any Subcontractor of any tier. The Contractor shall determine when it is necessary to perform, and shall perform, tests (as a Cost of the Work and in addition to those requested by the Owner or required by the Specifications or any other provision of the Contract Documents) to verify its inspections or to ensure that the Work is being completed in strict accordance with the Contract Documents. The Contractor shall report known errors, omissions, or inconsistencies to the Architect and the Owner before commencing Work. Inspections by or on behalf of the Owner shall not constitute approval of the Work.

§ 3.3.5 The Contractor shall plan and lay out all Work in advance of installation so as to coordinate all Work without delay or revision. The Contractor is responsible for coordination of all the Drawings related to specific locations. The Contractor shall establish and maintain existing lot lines, restrictions, existing survey markers of any kind, and bench marks. The Contractor shall establish and maintain all other lines, levels and bench marks necessary for the execution of the Work and take necessary steps to prevent their dislocation or destruction. The Contractor shall employ a professional land surveyor registered in the State of Washington to initially lay out and be responsible for the accuracy of the Work and to create and submit to the Owner an as-built survey and accurate utility as-builts for use by the Owner. The Contractor shall provide an as-built surveyed site plan noting all site improvements, including but not limited to building corners, storm, sewer, drains, grade and invert elevations, edge of pavement, signs, markings, back of curb, and sidewalks.

§ 3.3.6 The Contractor's superintendent shall provide a Daily Report to the Owner for each work day during the Contract Time, whether or not any Work is performed, and for each non-work day in which Work is performed on the site. The Daily Report shall be completed on a form approved by the Owner and Architect, and submitted through e-Builder to the Owner and the Architect on the work day following the day covered in the Report. Some of the required report forms are included in the Specifications. Failure to provide timely Daily Reports to the Owner will entitle the Owner to withhold a portion of or the entire progress payment otherwise due to the Contractor.

§ 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. To the extent that the Owner allows the Contractor to utilize the Owner's utilities, the Contractor shall install temporary meters to quantify the Contractor's required reimbursement to the Owner for those utilities.

§ 3.4.2 ~~Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the~~ After the Amendment setting the GMP has been executed, the Owner and the Architect may consider a written request for the substitution of material or products in place of those specified in the Contract Documents only as described in the Specifications and following the procedures of the Contract Documents. The written request must include the specifications for the material or product and any proposed change in the GMP or Contract Time. The Contractor may make substitutions only with the explicit written consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive. By requesting a substitution, the Contractor represents that it has personally investigated the proposed material or product and determined that it is equal or better in all respects to that specified (or if not equal or better in all respects, the Contractor shall identify such deficiencies), that the same or better warranty will be provided for the substitution, that complete cost data, including all direct and indirect costs of any kind, has been presented, that it waives any other known or unknown Claim for an increase in the GMP or Contract Time, that it has coordinated with affected Subcontractors, and the substitution will not impact other parts of the Work, and that it will coordinate the installation of the substitute if accepted and make all associated changes in the Work.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the ~~Work~~ Work, including observance of drug testing and all smoking, tobacco, drug, alcohol, parking, safety, weapons, background checks, sexual harassment, and other rules governing the conduct of personnel at the Owner's property and at the Project site. Upon the Owner's request and for any employee working on the Project, the Contractor shall provide the Owner with background checks on each of its employees and of the employees of all Subcontractors of any tier. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. The Contractor shall ensure that all persons performing the Work comply with the Owner's tobacco-free policy, and will not and do not engage in inappropriate conduct or inappropriate contact with students or staff. Neither the Contractor nor any of its Subcontractors of any tier shall utilize any employee at the site or permit any contact between children at a public school and any employee who is a registered sex offender or who has pled guilty to or been convicted of any felony crime involving the physical neglect of a child under Chapter 9A.42 RCW, the physical injury or death of a child under Chapter 9A.32 RCW or Chapter 9A.36 RCW (except motor vehicle violations under Chapter 46.61 RCW), sexual exploitation of a child under Chapter 9A.68A RCW, sexual offenses under Chapter 9A.44 RCW where a minor is a victim, promoting prostitution of a minor under Chapter 9A.88 RCW, the sale or purchase of a minor child under Chapter 9A.64.030 RCW, or violation of similar laws of another jurisdiction. The Contractor shall remove from the Work and Work site any employee or other person who has engaged in such actions or who the Owner reasonably considers objectionable without change in the GMP or Contract Time. Without limiting the generality of the foregoing, the Contractor shall ensure by appropriate provisions in each subcontract agreement that the Contractor may remove from the Work and Work site any Subcontractor or Subcontractor's employee who has engaged in such action. At no change to the GMP or Contract Time, the Contractor shall remove from the Work and Work site any employee or other person pursuant to this Section 3.4.3. Failure to comply with these requirements is grounds for immediate termination of the Agreement for cause.

§ 3.4.3.1 No employees of either the Contractor or any of its Subcontractors of any tier shall harass, intimidate, have physical contact with, or engage in other verbal or physical conduct or communication of a sexual, intimidating or harassing nature with students or the Owner's staff, nor create an intimidating, hostile or offensive environment. The Contractor shall remove from the Work and Work site any employee or other person who has engaged in such actions or who the Owner reasonably considers objectionable. Without limiting the generality of the foregoing, the Contractor shall ensure by appropriate provisions in each subcontract agreement that the Contractor may remove from the Work and Work site any Subcontractor or Subcontractor's employee who has engaged in such action. At no change to the GMP or Contract Time, the Contractor shall remove from the Work and Work site any employee or other person pursuant to this Section. Failure to comply with these requirements is grounds for immediate termination of the Agreement for cause.

§ 3.4.4 Prevailing Wages.

§ 3.4.4.1 Pursuant to RCW 39.12, "Prevailing Wages on Public Works," no worker, laborer, or mechanic employed in the performance of any part of the Work shall be paid less than the "prevailing rate of wage" (in effect as of the date that bids are due) as determined by the Industrial Statistician of the Department of Labor and Industries. The schedule of the prevailing wage rates for the locality or localities where this contract will be performed is attached to the executed contract and made a part of the Contract Documents by reference as though fully set forth herein; if not attached, then the applicable prevailing wages are determined as of the Bid Date for the county in which the Project is located and are available at <http://www.lni.wa.gov/TradesLicensing/PrevWage/WageRates/default.asp>. A copy is available for viewing at the Owner's office, and a hard copy will be mailed upon request. To the extent that there is any discrepancy between the attached or provided schedule of prevailing wage rates and the published rates applicable under WAC 296-127-011, or if no schedule is attached, the applicable published rates shall apply with no increase in the GMP. It is the Contractor's responsibility to ensure that the correct prevailing wage rates are paid. The Contractor shall provide the respective Subcontractors with a schedule of the applicable prevailing wage rates. Questions relating to prevailing wage data should be addressed to the Industrial Statistician upon request.

Mailing	Department of Labor and Industries
Address:	Prevailing Wage Office
	PO Box 44540
	Olympia, WA 98504
Telephone:	(360) 902-5335
Facsimile:	(360) 902-5300

§ 3.4.4.2 Pursuant to RCW 39.12.060, in case any dispute arises as to what are the prevailing rates of wages for work of a similar nature, and such dispute cannot be adjusted by the parties in interest, including labor and management representatives, the matter shall be referred for arbitration to the director of the Department of Labor and Industries of the state, and his or her decision therein shall be final and conclusive and binding on all parties involved in the dispute.

§ 3.4.4.3 The Contractor shall defend, indemnify and hold the Owner harmless, including attorneys' fees, from any violation or alleged violation by the Contractor or any Subcontractor of any tier of RCW 39.12 ("Prevailing Wages on Public Works") and Chapter 51 RCW ("Industrial Insurance"), including without limitation RCW 51.12.050.

§ 3.4.5 The Contractor shall comply with all applicable provisions of RCW 49.28 ("Hours of Labor").

§ 3.4.6 Pursuant to RCW 49.70, "Worker and Community Right to Know Act," and WAC 296-307-560 et seq., the Contractor shall provide the Owner copies of and have available at the Project Site a workplace survey or material safety data sheets for all "hazardous" chemicals under the control or use of Contractor or any Subcontractor of any tier at the Project Site. Contractor shall not be entitled to any additional Contract Time or any increase in the GMP arising from its failure or alleged failure to comply with this statute or regulation.

§ 3.4.7 The Contractor shall be responsible for labor peace on the Project and shall at all times use its best efforts and exercise its best judgment as an experienced contractor to adopt and implement policies and practices designed to avoid work stoppages, slowdowns, disputes or strikes where reasonably possible and practical under the circumstances, and shall at all times maintain Project-wide labor harmony. The Contractor shall provide the Owner advance notice, to the extent possible, of any anticipated strikes.

§ 3.4.8 Materials shall conform to the manufacturer's standards in effect at the date of execution of the Contract Documents and shall be installed in strict accordance with the manufacturer's instructions, specifications and directions. The Contractor shall, if required in writing by the Owner or Architect, furnish satisfactory evidence regarding the kind and quality of any materials identifying thereon the source, and warranting their quality and compliance with the Contract Documents.

§ 3.4.9 Certified Asbestos-Free and Lead-Free Products: All products and materials incorporated into the Project as part of the Work shall be certified as "asbestos-free" and "lead-free" by United States standards. At the completion of the Project the Contractor shall submit Certifications of Asbestos-Free and of Lead-Free Materials certifying that all materials and products incorporated into the Work meet the requirements of this section.

§ 3.4.10 Apprenticeship.

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§ 3.4.10.1 Pursuant to RCW 39.04.320, for projects estimated to cost one million dollars or more, no less than fifteen percent (15%) of the Labor Hours shall be performed by apprentices, unless a different amount is permitted or otherwise required by law.

§ 3.4.10.2 Apprenticeship hours shall be performed by participants in training programs approved by the Washington State Apprenticeship Council.

§ 3.4.10.3 "Labor Hours" means the total hours of workers receiving an hourly wage who are directly employed on the site of the public works project. "Labor hours" includes hours performed by workers employed by the Contractor and all Subcontractors working on the Project. "Labor hours" does not include hours worked by foremen, superintendents, owners, and workers who are not subject to prevailing wage requirements of RCW 39.12.

§ 3.4.10.4 During the term of this Contract, the Owner may adjust the apprenticeship labor hour requirement upon its finding or determination that includes:

- (1) A demonstration of lack of availability of apprentices in the geographic area of the Project;
- (2) A disproportionately high ratio of material costs to labor hours that does not make feasible the required minimum levels of apprenticeship participation;
- (3) Demonstration by participating contractors of a good faith effort to comply with the requirements of RCW 39.04.300, 39.04.310 and 39.04.320;
- (4) Small contractors or subcontractors (e.g., small or emerging businesses) would be forced to displace regularly employed members of their workforce;
- (5) The reasonable and necessary requirements of the Contract render apprentice utilization infeasible at the required level (e.g., the number of skilled workers required and/or limitations on the time available to perform the Work preclude utilization of apprentices); or
- (6) Other criteria the Owner deems appropriate, which are subject to review by the office of the Governor.

§ 3.4.10.5 The Contractor shall report apprentice participation to the Owner at least quarterly, on forms provided or approved by the Owner. In addition, copies of quarterly certified payroll records may be requested to document the goal, including copies with any birthdates and social security numbers (and any other sensitive personal information) redacted so as such copies may be used to respond to any public records requests. The reports will include:

- (1) The name of the Project;
- (2) The dollar value of the Project;
- (3) The date of the Contractor's notice to proceed;
- (4) The name of each apprentice and apprentice registration number;
- (5) The number of apprentices and labor hours worked by them, categorized by trade or craft;
- (6) The number of journey level workers and labor hours worked by them, categorized by trade or craft; and
- (7) The number, type, and rationale for the exceptions granted.

§ 3.4.10.6 To comply with the changes to RCW 39.04.320 that are effective as of January 1, 2020, the following provisions also apply:

- (1) This Section 3.4.10 specifies that the 39.04.320 apprenticeship goals should be met;
- (2) The Owner shall provide a monetary incentive of One Thousand Dollars for meeting these goals;
- (3) The Contractor shall pay a monetary penalty of One Thousand Dollars for not meeting these goals;
- (4) The Owner is not in a position within existing resources to identify an expected cost value to be included in the bid associated with meeting these goals; and
- (5) Contractor and its Subcontractors are not required to exceed these apprenticeship utilization requirements.

§ 3.5 WARRANTY

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or explicitly permit otherwise. The Contractor further warrants that the Work will be performed in a skillful and workmanlike manner, will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents ~~require or permit~~ require. Work, materials, or equipment not conforming to these ~~requirements may be~~

requirements, including substitutions not properly approved and authorized, is considered defective. The Contractor's warranty excludes remedy for damage or defect caused by ~~abuse, by abuse by the Owner,~~ alterations to the Work not executed or supervised by or through the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner or Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The Contractor is not relieved of its general warranty obligations by the specification of a particular product or procedure in the Contract Documents. Warranties in the Contract Documents shall survive completion, acceptance, final payment, and the correction period identified in Section 12.2. The Contractor shall collect, assign, and deliver to the Owner any specific written warranties given by others. Warranty language shall comply with the Contract Documents and shall be submitted to the Owner and Architect at least thirty (30) days prior to ordering the warranted material or equipment.

§ 3.6 TAXES

The Contractor shall pay sales, consumer, ~~use-use, B & O, income,~~ and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect. The only taxes excluded from the GMP and separately reimbursable are state and local sales taxes on progress payments.

§ 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

§ 3.7.1 ~~Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. See Section 11.5.2 of the A133 Agreement.~~

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work. The Contractor shall coordinate and schedule all Work with entities with jurisdiction over the site, permitting agencies, utility companies, and other such agencies determined to have jurisdictional authority necessary for completion of the Work. The Contractor shall keep the Owner informed of communications from these authorities and utilities. The Owner may assist the Contractor with such coordination and scheduling, but the Owner is not responsible for any delays caused by such permitting agencies, utility companies, and other such agencies determined to have jurisdictional authority. The Contractor shall be responsible for providing all information, documents, and fees to the permitting agencies, utility companies, and other such agencies determined to have jurisdictional authority within 30 days after issuance of the Notice to Proceed as necessary to obtain and coordinate permits, utility and other such connections. The Contractor shall obtain all permit renewals during the course of the Work. The Contractor is responsible for providing information and fees to the Department of Labor and Industries.

§ 3.7.3 If the Contractor observes that portions of the Contract Documents are at variance with applicable laws, statutes, ordinances, building codes, rules and regulations, or lawful orders of public authorities, the Contractor shall promptly notify the Architect and Owner in writing, and necessary changes shall be accomplished by appropriate modification. If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume ~~appropriate~~ responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 **Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in any soils reports made available to the Contractor by the Owner or in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide written notice to the Owner and the Architect before conditions are disturbed and in no event later than ~~24~~ three (3) days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the ~~Contract Sum or Contract Time, or both. GMP or Contract Time, or both,~~ consistent with the requirements of the Contract Documents. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. ~~If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.~~ writing. Any Claim of the Contractor arising from

the Architect's determination or recommendation shall be made in accordance with the dispute resolution procedure in Article 15. No increase to the GMP or the Contract Time shall be allowed if the Contractor knew or reasonably should have known of the concealed conditions prior to its executing Amendment No. 1.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall ~~notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly~~ immediately notify the Owner and Architect by telephone call and email. Upon receipt of such written notice, the Owner and Contractor shall promptly cooperate with each other and take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations that may affect the human remains, burial markers, archaeological sites or wetlands until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the ~~Contract Sum-GMP and Contract Time-Time, if any,~~ arising from the existence of such remains or features ~~may shall~~ be made as provided in Article 15. Any provision in an inadvertent discovery plan referenced within the Contract Documents shall override any inconsistent provisions in this Section 3.7.5.

§ 3.8 ALLOWANCES

§ 3.8.1 The Contractor shall include in the ~~Contract Sum-GMP~~ all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has made reasonable and timely written objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required ~~taxes, taxes except state and local sales tax on progress payments,~~ less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the ~~Contract Sum-GMP~~ but not in the allowances; and
- .3 Whenever costs are more than or less than allowances, the ~~Contract Sum-GMP~~ shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between ~~actual~~ actual, reasonable costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section ~~3.8.2.2-3.8.2.2,~~ except where the allowance is based upon a unit price specified in the Agreement.

Allowances are defined in the Contract Documents due to the uncertainty in the scope, price and quantity of the Allowance items at the time the Contract was executed. Whenever actual costs are more or less than the allowance, the GMP will be adjusted accordingly by Change Order. The Contractor must provide the Owner with written notice of its intent to exceed an allowance amount, with estimates and justification (providing the Owner with the opportunity to approve or reject the excess costs).

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner ~~with reasonable promptness in~~ sufficient time to avoid delay in the Work.

§ 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a ~~competent superintendent and necessary assistants-competent, computer literate, experienced project manager, project engineer, superintendent and necessary assistants~~ as identified in the Contractor's proposal who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case. The project manager, project engineer, and superintendent shall be experienced, shall be employees of the Contractor, and shall remain on the Project site whenever Subcontractors of any tier are present and not less than eight hours per day, five days per week, unless the job is closed down due to a legal holiday, a general strike, conditions beyond the control of the Contractor, termination of the Contract in accordance with the Contract Documents or unless Final Completion is attained. The Contractor shall also have available for work on site experienced, skilled workers, such as carpenters, laborers, erection specialists, etc., to perform work as needed.

§ 3.9.2 ~~The Contractor, as soon as practicable after award of the Contract, Upon execution of the Agreement, the Contractor shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing superintendent, project manager, and project engineer. The Owner or Architect may reply within a reasonable time to the Contractor stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent superintendent, project manager, or project engineer or (2) that the Architect or Owner requires additional time to review. The names shall be consistent with the individuals proposed by the Contractor in its Statement of Qualifications. Failure of the Owner or Architect to reply within the 14 day period a reasonable time shall constitute notice of no reasonable objection. Within ten (10) days after issuance of the conditional Notice to Proceed, the Contractor shall also furnish to the Architect and Owner:~~

- .1 A chain-of-command organizational chart which includes all supervisory personnel, including the project manager, the project engineer and the superintendent, assistant superintendent and lead foreman, that the Contractor intends to use on the Work. The chart shall specify any limits of authority for each person, including any limitation on his or her ability to speak for and bind the Contractor, as well as any limits on decision-making authority with respect to specific dollar values, contract time, and issues affecting quality of the Work.
- .2 To the extent not previously provided, complete resumes, including all past and current projects, for the project manager and the superintendent. The Owner intends to review the resumes and verify references, and it reserves the right to reject personnel reasonably believed to be unsuitable or incompatible for the Project. The Contractor shall replace any rejected personnel with an agreeable replacement at no increase in the GMP or Contract Time.
- .3 A list of telephone numbers for all key personnel of the Contractor and its principal subcontractors for purposes of contacting personnel after hours in the event of an emergency. The list shall be periodically updated as necessary to ensure the Owner has the most current information.

§ 3.9.3 ~~The Contractor shall not employ a proposed superintendent superintendent, project manager, or project engineer to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent the superintendent, project manager, or project engineer, nor any individual identified in the Contractor's RFP response, without the Owner's consent, which shall not unreasonably be withheld or delayed. The Contractor shall have available for work on site experienced, skilled workers, such as carpenters, laborers, and erection specialists, to perform work as needed. The Owner reserves the right, after consultation with the Contractor, to require the Contractor to replace a superintendent, project engineer, project manager or other assistants if the Owner determines that such replacement is in the best interests of the Project. The Owner shall exercise such right in a reasonable manner. The Owner shall be entitled to exercise the same rights concerning any replacement.~~

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 ~~The Contractor, promptly after being awarded the Contract, Contract and again following execution of the GMP Amendment, shall prepare and submit for the Owner's and Owner's Project Manager and Architect's information a Contractor's construction schedule for the Work. Work consistent with the requirements of the Contract Documents. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals least monthly and as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. Unless agreed to in writing by the Owner, the Contractor's scheduler shall be an employee of the Contractor, and not a consultant. The Contractor shall allocate in the schedule of values a separate line item in the amount of at least one-half of one percent (.5%) of the GMP for scheduling, which shall cover both the initial schedule and all monthly updates. The Contractor shall request payment for this line item with each Payment Application, based upon the percentage completion of the Project. For any month that the Contractor fails to submit an updated schedule, the Contractor shall not be entitled to any payment for scheduling for that month, and the percentage of the scheduling line item represented by that month's percentage of completion of the Work shall be permanently deducted from the GMP by Change Order.~~

§ 3.10.1.1 ~~Contractor shall promptly notify the Owner and the Architect in writing of any proposed changes in the Project Schedule or the Contract Time or of any event which could delay performance of any item of the Work, stating the cause of the delay, expected duration of the delay, the anticipated effect of the delay on the Project Schedule and the action being taken to correct the delay. Notification of potential delay does not constitute a change in the Contract Time; only a Change Order signed by the Owner can amend the Contract Time. The Contractor shall comply with~~

Article 15 with regard to any delays that it believes are the responsibility of the Owner or are otherwise the subject of a Claim for additional Contract Time.

§ 3.10.1.2 If any Project Schedule submitted sets forth a date for Substantial Completion for the Work or any phase of the Work beyond the Dates of Substantial Completion established in the Contract Documents (as the same may be extended as provided in the Contract Documents), the Contractor shall submit to the Architect and the Owner for their review and approval a narrative description of the means and methods which the Contractor proposes to use to expedite the progress of the Work to ensure timely completion of the various phases of the Work and the Work as a whole. Regardless of the cause of any delay, the Contractor shall exercise reasonable efforts to bring the Project back into compliance with the Project Schedule.

§ 3.10.1.3 To the extent that the Contractor or any Subcontractor or material supplier of any tier is responsible for the delay, the Contractor shall take all necessary action to bring the Project back into compliance with the Project Schedule, including without limitation increasing and/or changing the number of personnel on the Project and implementing overtime and double shifts, all without any increase to the GMP.

§ 3.10.2 The Contractor shall prepare and keep current a submittal schedule, promptly after being awarded the Contract and thereafter as necessary update it thereafter at least monthly to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Owner and Architect's review. The Owner and Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect and Owner reasonable time to review submittals in accordance with the Specifications and submittal procedures. The Contractor shall contemporaneously provide the Owner with a copy of all submittals. The Contractor should expect a response time of at least fourteen (14) days for the Architect's review and at least twenty-one (21) days for review by the Architect's consultants. Complex, inter-related or multiple submittals will often take longer. Neither the Owner nor the Architect can guarantee response times from governmental authorities, such as permitting agencies or review of any required deferred submittals. If the Contractor fails to submit a acceptable submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum-GMP or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect. submitted to the Owner and Architect and shall promptly notify the Owner of any substantial deviations from those schedules. The Contractor's Construction Schedule shall be based upon a critical path method ("CPM") analysis of construction activities and sequence of operations needed for the orderly performance and completion of all separable parts of the Work, in the form of a precedence diagram and activity listing and time-scaled, all in accordance with the Contract and within the Contract Time. The Contractor shall utilize scheduling software for its CPM scheduling. The Schedule shall be resource loaded and provided to the Owner in electronic, readable format. It shall include the Date of Commencement, any milestone dates identified in the Specifications, mock-up dates, key commissioning dates, the Date(s) of Substantial Completion, and the Date(s) of Final Completion in accordance with the Contract Documents. The Schedule shall be updated monthly and submitted with the Contractor's Application for Payment. The Critical Path shall be clearly indicated on the Contractor's Construction Schedule.

§ 3.10.4 The Contractor shall not be entitled to any adjustment in the Contract Time, the Contractor's Construction Schedule, or the Contract Sum, or to any additional payment of any sort by reason of the loss or use of any float time, including time between the Contractor's anticipated completion date and end of the Contract Time, whether or not the float time is described as such on the Contractor's Construction Schedule. To ensure that the Owner is substantively aware and effectively able to mitigate any Project delays, the Contractor shall not be entitled to any extension of time, compensable or otherwise, for any delay that occurred during any time the Contractor has not timely submitted an updated Construction Schedule as required by the Contract Documents.

§ 3.10.5 The Contractor shall attend and participate in and ensure applicable Subcontractors of any tier attend and participate in:

- .1 A preconstruction meeting;
- .2 Regular weekly on-site Project status meetings scheduled by the Owner or by the Architect to review progress of the Work, to discuss the Contractor's progress reports, to obtain necessary Owner's or Architect's approvals, and generally to keep the Owner and Architect informed and involved in the progress of the Project; and
- .3 Other meetings scheduled from time to time by the Owner or by the Architect to review

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progress of the Work and other pertinent matters.

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner and update at least weekly one record copy of the Drawings, Specifications, Addenda, ~~Change Orders~~ Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one record copy of ~~approved~~ accepted Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and the Owner and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed. The location of all existing or new hidden piping, valves, conduit, cabling and utilities, as located during the course of construction, shall be appropriately marked until the actual field location dimensions and coordinates are incorporated on the as-built drawings, and mechanical and electrical deviations and changes shall be included. The documents shall include all Architectural, Mechanical, Electrical, Structural, Landscape, and Civil as-built drawings, whether changes occur or not, using Owner-approved CAD software. These documents, as well as the approved permit set of plans, shall be available to the Architect and Owner at the site and reviewed with them on a weekly basis. Upon Final Completion of the Work, the Contractor shall transfer all as-built information in a clear and legible manner as described in the Contract Documents and in compliance with all requirements of local governmental entities, shall certify in writing that these documents reflect complete and accurate "as-built" conditions and shall deliver the following in a clear, clean and legible manner and in compliance with all requirements of local governmental authorities: (i) complete, integrated copies of the documents in both paper form in good condition and in electronic form in the same format as originally created by the Architect, (ii) the approved permit set of plans, and (iii) the full-size record documents, Shop Drawings, Specifications, Addenda, maintenance manuals and warranties to the Architect for submittal to the Owner in accordance with the provisions of the Contract Documents. Satisfactory maintenance of up-to-date as-built drawings on a monthly basis will be a requirement for approval of progress payments.

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples and/or assemblies or mock-ups that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is for the Contractor to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review and acceptance or approval of such submittals by the Owner or the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the 4.2.7 and shall not constitute an approval or acceptance of the Contractor's means and methods or a waiver or modification of any requirement of the Contract Documents. Informational submittals upon which the Owner or the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the (but are not required to be) returned by the Owner or Architect without action.

§ 3.12.5 The Contractor shall be responsible for tracking the status of submittals. The Contractor shall review for compliance with the Contract Documents, note any deviations from the Contract Documents, approve in writing, and submit to the Architect-Architect: Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule ~~approved~~ accepted by the Owner and Architect or, in the absence of an ~~approved~~ accepted submittal schedule, with reasonable promptness and frequency and in such sequence and uniform flow rate consistent with the submittal schedule as to cause no delay in the Work or in the activities of the Owner or of separate contractors. The Contractor shall notify the Owner and Architect of any expedited review required. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Architect without action, which will not constitute an Owner-caused delay to the Contractor. At the time of submission, the Contractor shall inform the Architect in writing if expedited review is requested or if there is any deviation in the Shop Drawings (which deviations must be

subsequently accepted by the Owner before the Work may proceed), Product Data, or Samples from the requirements of the Contract Documents. So far as practicable, each Shop Drawing or Product Data submittal shall bear a cross reference note referring to Drawing or detail numbers on the Drawings showing the same Work in order to facilitate checking of Shop Drawing or Product Data and their prompt return to the Contractor. Shop Drawings for interrelated Work shall be submitted at approximately the same time. Unless otherwise directed in writing, the Contractor shall submit its submittals through e-Builder. The Architect will retain the reproducible copy. The Contractor shall keep accurate records of the receipt, review and delivery of all Submittals and shall submit to the Owner reports every week on the status of their review, identifying the location and the causes of any failure to promptly receive such submissions and suggesting responsibility.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

- .1 Each submittal shall bear a stamp or specific written indication that the Contractor has satisfied its responsibilities under the Contract Documents with respect to the review of the submission. The Contractor's superintendent must initial each submittal. Submittals that are simply passed through by the Contractor's clerical staff are not sufficient to meet these requirements.
- .2 Each submittal shall be accompanied by a completed Submittal Cover Sheet, as included in the Project Manual or provided by the Architect, which shall clearly identify applicable Specification Section and paragraph number(s), material, supplier, pertinent data such as catalog numbers, and the use for which it is intended.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review and acceptance of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been ~~approved~~ reviewed and no exceptions taken by the Architect.

§ 3.12.8 The Work shall be in accordance with ~~approved~~ accepted submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's ~~approval~~ approval, review or acceptance of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written ~~approval to acceptance~~ of the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's ~~approval thereof~~ approval, review or acceptance thereof. Any corrections or modifications to Shop Drawings made by the Architect shall be deemed accepted by the Contractor, without change in GMP or Contract Time, unless the Contractor provides the Architect with written notice at least three (3) working days before commencing any Work from such Shop Drawings and complies with the change procedures in the Contract Documents. The Contractor shall make all corrections requested by the Architect and, when requested by the Architect, provide a corrected Submittal.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval or acceptance of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when

submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, ~~approve~~ accept or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.12.11 Any mechanical systems shown in the Drawings are diagrammatic. (Other Drawings may also be diagrammatic.) The Contractor shall provide dimensioned Shop Drawings and details for all plumbing piping, ductwork, heating system piping, underground hot water piping, hot water boilers, and accessories to indicate complete systems. Shop Drawings shall be to 1/4" = 1'-0" minimum scale in all mechanical rooms, boiler rooms, as well as where accuracy or location is necessary for coordination or installation purposes. Ductwork Shop Drawings shall include a separate drawing to not less than 1/4" = 1'-0" scale showing all duct penetrations through structure (floors, roof, and walls) dimensioned, and all equipment locations, weights and pad details for all HVAC equipment. Critical dimensions of all equipment pad, and pipe or duct penetrations through structure shall be included.

§ 3.13 USE OF SITE

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, permits, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. Materials and equipment on site shall be used directly in the Work and not stored on site after their use is complete. There shall be no use of existing on-site facilities (parking, toilets, etc.) without the Owner's prior approval. Portions of the site may be occupied and in use during construction. The Contractor is responsible to coordinate its Work with any such occupation or use at no increase to the GMP or Contract Time and at no disruption to the occupancy or use.

§ 3.14 CUTTING AND PATCHING

§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to access or complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

§ 3.14.3 Existing structures and facilities, including but not limited to buildings, landscaping, utilities, topography, streets, curbs, and walks, that are damaged or removed due to excavations or other construction work of the Contractor, shall be patched, repaired or replaced by the Contractor to the satisfaction of the Architect, the owner of such structures and facilities, and governmental authorities having jurisdiction. In the event the governmental authorities require that the repairing and patching be done with its own labor and/or materials, the Contractor shall abide by such regulations and it shall pay for such work at no change in the GMP or Contract Time.

§ 3.15 CLEANING UP

§ 3.15.1 The Contractor shall keep the premises and surrounding ~~area~~ area, including roads, free from accumulation of waste materials or rubbish caused by operations under the Contract. The Contractor shall furnish portable containers on site for use by all trades. At the Owner's request and, in any event, at the completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor for any clean-up costs. The Contractor shall only use waste receptacles provided by the Contractor and shall appropriately dispose of any waste material off site.

§ 3.16 ACCESS TO WORK

The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

§ 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law and subject to the following conditions of this Section 3.18, the Contractor shall defend, indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them—its board members, officials, employees, consultants, Project Manager, students, and volunteers, the Architect, Architect's consultants, and agents and employees, successors and assigns of any of them ("Indemnified Parties") from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, direct and indirect, or consequential, including but not limited to costs, design professional and consultant fees, and attorneys' fees incurred on such claims and in proving the right to indemnification, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent or connected to the acts or omissions of the Contractor, a Subcontractor, Subcontractor of any tier, their agents and anyone directly or indirectly employed by any of them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder, liable ("Indemnitor"). Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.1.1 The Contractor shall fully defend, indemnify, and hold harmless the Indemnified Parties for the sole negligence of the Indemnitor.

§ 3.18.1.2 To the extent of the Indemnitor's negligence, the Contractor shall defend, indemnify, and hold harmless the Indemnified Parties for the concurrent negligence of the Indemnitor. The Contractor agrees to being added by the Owner or the Architect as a party to any arbitration or litigation with third parties in which the Owner or Architect alleges indemnification or contribution from the Contractor, any of its Subcontractors of any tier, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable. The Contractor agrees that all of its Subcontractors of any tier shall, in their subcontracts, similarly stipulate; in the event any does not, the Contractor shall be liable in place of such Subcontractor(s) of any tier. To the extent any portion of this Section 3.18 is stricken by a court or arbitrator for any reason, all remaining provisions shall retain their vitality and effect.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, Subcontractor of any tier, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor of any tier under workers' compensation acts, disability benefit acts or other employee benefit acts. After mutual negotiation of the parties, the Contractor waives immunity as to the Owner, the Architect and their respective consultants only under Title 51 RCW, "Industrial Insurance." IF THE CONTRACTOR DOES NOT AGREE WITH THIS WAIVER, IT MUST PROVIDE A WRITTEN NOTICE TO THE OWNER AS PART OF ITS RESPONSE TO THE REQUEST FOR PRICING PROPOSAL, OR THE CONTRACTOR WILL BE DEEMED TO HAVE NEGOTIATED AND WAIVED THIS IMMUNITY.

ARTICLE 4 ARCHITECT

§ 4.1 GENERAL

§ 4.1.1 The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture or engineering in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term

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"Architect" means the Architect or the Architect's authorized representative and does not include any employees of the Owner.

§ 4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the ~~Owner, Contractor~~ Owner and Architect. Consent shall not be unreasonably withheld.

§ 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a successor architect ~~as to whom the Contractor has no reasonable objection and~~ whose status under the Contract Documents shall be that of the Architect.

§ 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect will ~~provide~~ assist in providing administration of the Contract as described in the Contract Documents and will be an Owner's representative ~~but not the Owner's agent~~ during construction until the date the Architect issues the final Certificate ~~for Payment~~ for Payment and from time to time during the one (1) year period for correction of Work. The Architect will have authority to act on behalf of the Owner only to the extent provided in the ~~Contract Documents.~~ Documents, unless otherwise modified in writing in accordance with other provisions of the Contract. Neither the Architect nor the Owner's Project Manager is an agent of the Owner and neither is authorized to agree on behalf of the Owner to changes in the GMP or Contract Time, nor to waive provisions of the Contract Documents, nor to direct the Contractor to take actions that change the GMP or Contract Time except that the Owner's representative may issue Construction Change Directives in accordance with Section 7.3.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with and to keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. ~~The Architect will not.~~ Neither the Architect nor the Owner will have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1. The presence of the Architect or the Owner at the site shall not in any manner be construed as assurance that the Work is being completed in compliance with the Contract Documents, nor as evidence that any requirement of the Contract Documents of any kind, including notice, has been met or waived. The Contractor shall reimburse the Owner for any amounts paid to the Architect for site visits made necessary by the fault of the Contractor or by defects and deficiencies in the Work.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. ~~The Architect will not.~~ Neither the Architect nor the Owner will be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. ~~The Architect will not.~~ Neither the Architect nor the Owner will have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work. Neither the Architect nor the Owner will be responsible for defining the extent of any subcontract or dealing with disputes between the Contractor and third parties.

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect and Owner's Project Manager about matters arising out of or relating to the Contract. The Contractor shall simultaneously provide the Owner with a direct copy of all written communications to the Architect, including all notices, requests, transmittals, substitutions, RFIs, Claims, and potential changes in the GMP or Contract Time but not including Shop Drawings, Product Data or Samples. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through ~~the Contractor.~~ the Contractor except as provided in the Contract Documents. Communications by and with separate contractors shall be through the Owner.

§ 4.2.5 Based on the Architect's observations and evaluations of the Work and the Contractor's Applications for Payment, the Architect will ~~review and certify~~ make recommendations to and assist the Owner to determine the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 ~~The Architect has~~ Both the Architect and the Owner have authority to reject Work that does not conform to the Contract Documents. Whenever the Architect or the Owner considers it necessary or advisable, the Architect or the Owner will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect or the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or the Owner or their representatives to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, accept, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product ~~Data and Samples~~, Data, Samples, and other submittals required by the Contract Documents, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken with reasonable promptness in accordance with the submittal schedule ~~approved~~ accepted by the Architect or, in the absence of an ~~approved~~ accepted submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, weights or gauges, fabrication processes, coordination with the work of other trades, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval or acceptance of a specific item shall not indicate approval of an assembly of which the item is a component. The Contractor shall clearly note, and the Architect shall not be required to search out any deviations from the Contract Documents not clearly identified by the Contractor, nor shall the Architect be required to review partial submissions of those for which submission for correlated items have not been received. Regardless of how a submittal is marked, the Contractor should not presume that the Architect has reviewed a submittal in every aspect.

§ 4.2.8 The Architect or Owner will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will ~~conduct inspections~~ make observations, make recommendations and otherwise assist the Owner to determine the date or dates of Substantial Completion and the date of ~~final completion~~; Final Completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents and pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. ~~The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.~~

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the ~~Contract Documents~~ Drawings and Specifications and any modifications thereto on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Section 4.2.11, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until fifteen (15) days after written request is made for them.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations

and initial decisions, the Architect will endeavor to secure faithful performance of the Contract by both Owner and Contractor, will not show partiality to either and will not be liable to the Contractor for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract ~~Documents.~~Documents and agreeable to the Owner.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within a reasonable time and any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the ~~site.~~site or to supply materials or equipment for the Project. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the ~~site.~~site or to supply materials or equipment for the Project. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.1.3 A Subcontractor of any tier is a Subcontractor or a Sub-subcontractor.

§ 5.1.4 The designation of terms in this article is not meant to change or alter the definitions contained in RCW 60.28, "Lien for Labor, Materials, Taxes on Public Works," RCW 39.12, "Prevailing Wages on Public Works," or other statutory definitions of a subcontractor for the purposes of such statutes.

§ 5.1.5 Responsible Subcontractor: This designation reflects a person or entity who is qualified and can document training, experience, license, and special certification to perform work, supply materials, or provide equipment required and specified by the Contract Documents.

§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, ~~each Subcontractor bid package,~~ shall furnish in writing to the Owner ~~through and~~ the Architect the names of all persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. ~~The Architect may reply within 14 days~~ the Work (i.e., at least 1% of the GMP), as well as the proprietary names and the suppliers of the principal items or systems of materials and equipment proposed for the Work. The Contractor shall organize this list of Subcontractors in the same sequence as the Index of Specification Sheets, and state the Work category followed by the name of the Subcontractor and/or fabricator (or "Contractor" where the portion of the Work is by the Contractor's own forces), **including the address, telephone number, individual name of the project contact, and his or her email address.** The list shall be accompanied by evidence of any qualifications required within the technical sections of the Project Manual and satisfactory to the Architect and Owner. The list shall be updated promptly as part of the payment process if additional Subcontractors of any tier are engaged. No action or inaction of the Owner or Architect in response to receipt of the names of the proposed Subcontractors of any tier shall constitute approval of any Subcontractor of any tier or of its performance. The Architect may reply promptly to the Contractor in writing stating (1) whether or not the Owner or the Architect, ~~Architect,~~ after due investigation, has reasonable objection to any such proposed person or entity or (2) that the Owner or Architect requires additional time for review. "Reasonable objection" shall include without limitation lack of "responsibility" of the proposed Subcontractor, as defined in RCW 39.26.160(2) or lack of qualification as required within the technical sections of the Project Manual, or as otherwise described in Section 5.2.3. Failure of the Owner or Architect to reply ~~within the 14 day period~~ promptly shall constitute notice of no reasonable objection. If the Owner makes a reasonable objection, the Contractor shall replace the Subcontractor with no increase to the GMP or Contract Time. Such a replacement shall not relieve the

Contractor of its responsibility for the performance of the Work and compliance with all of the requirements of the Contract within the GMP and Contract Time.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made ~~reasonable objection~~ a timely and reasonable objection as not "responsible."

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the ~~Contractor, the Contractor~~ Contractor or a Subcontractor as not "responsible," the Contractor or Subcontractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was qualified, "responsible" and reasonably capable of performing the Work, the Contract Sum-GMP and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work- issued. However, no increase in the ~~Contract Sum-GMP~~ or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting ~~names as required~~ qualified names as required, and no increase in the GMP or Contract Time shall be allowed for such change (1) if the Owner reasonably concludes that a proposed Subcontractor of any tier has materially failed to perform satisfactorily (such as causing a material delay) on one or more projects for the Owner within three years of the bidding date or is otherwise not "responsible" as defined in the Contract Documents, the bidding documents, and RCW 39.26.160(2), 39.04, and 39.10, (2) if the proposed Subcontractor is not qualified as required within the technical sections of the Project Manual, or (3) if the proposed lower-tier Subcontractor is different from the entity listed with the first-tier Subcontractor's Bid. Such a replacement shall not relieve the Contractor of its responsibility for the performance of the Work or compliance with all of the requirements of the Contract within the GMP and Contract Time.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.2.5 The Contractor shall verify responsibility criteria for each first-tier Subcontractor. A Subcontractor of any tier that engages other Subcontractors must verify responsibility criteria for each of its lower-tier Subcontractors. Verification shall include that each Subcontractor of any tier, at the time of subcontract execution, meets the responsibility criteria listed in the bidding documents for the bid package.

§ 5.2.6 If the Owner reasonably concludes that any portion of the Work subcontracted by the Contractor is not being performed in accordance with the Contract Documents, the Contractor shall, upon request of the Owner, remove the Subcontractor performing such work. This removal shall not relieve the Contractor of its responsibility for the performance of the Work or complying with all of the requirements of the Contract within the GMP and Contract Time, nor shall the Owner be obligated to so request.

§ 5.2.7 The Contractor shall schedule, supervise and coordinate the operations of all Subcontractors of any tier, including any suppliers of early procurement items and any Assigned Subcontractors. No subcontracting of any of the Work shall relieve the Contractor from its responsibility for the performance of the Work in accordance with the Contract Documents or from its responsibility for the performance of any other of its obligations under the Contract Documents. The Contractor is responsible for the timely, accurate and appropriate Subcontractor coordination of the Work of lower tier Subcontractors in accordance with the overall Work, including communications, meetings, drawings, illustrations, and other necessary associated activities required for the successful coordination of all trades, schedules, materials and workmanship. The Owner shall provide to the Contractor copies of any written Owner-Supplier agreements to any early procurement contracts, to the extent that such agreements are identified in the Specifications.

§ 5.2.8 The Contractor agrees to diligently, and using its best efforts, cause each Subcontractor of any tier to correct, at that Subcontractor's own expense, all Work performed by the Subcontractor of any tier that is defective in material or workmanship or fails to conform to the Contract Documents, including all necessary removal, replacement and/or repair of any other portion of the Project which may be damaged in removing, replacing or repairing any portion of the Project. If any Subcontractor of any tier defaults in its obligation to promptly correct any such deficiency, the Contractor shall be responsible for correcting the deficiency.

§ 5.2.9 The Contractor shall provide, and shall cause its Subcontractors of any tier to provide, all required notices and comply with all applicable health and safety laws, rules, regulations, codes and lawful orders of public authorities and of quasi-governmental authorities relating to the Work, including without limitation all OSHA and WISHA requirements, and the Contractor shall, and shall cause applicable Subcontractors of any tier to, indemnify, defend and hold harmless the Owner from and against any and all claims, liabilities, fines and attorneys' fees arising from any failure of the Contractor or a Subcontractor of any tier to have complied with any such requirements in any respect.

§ 5.3 SUBCONTRACTUAL RELATIONS

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents.

Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors. The Contractor shall provide to the Owner copies of the written agreements between the Contractor and any Subcontractor, and a Subcontractor and any sub-tier Subcontractor, upon request.

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner ~~for cause~~ pursuant to Section 14.2 or 14.4 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the ~~subcontract~~ subcontract, but only for events and payment obligations that arise after the date of the assignment.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. ~~If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.~~

§ 5.5 LIENS

§ 5.5.1 The Contractor shall promptly pay (and secure the discharge of any liens asserted by) all persons properly furnishing labor, equipment, materials or other items in connection with the performance of the Work (including, but not limited to, any Subcontractors of any tier) to the extent that the Owner has paid the Contractor for such. The Contractor shall furnish to the Owner such releases of liens and Claims and other documents monthly with its payment application to evidence such payment (and discharge). The Owner may, at its option, withhold payment, in whole or in part, to the Contractor until such documents are furnished. The Contractor may provide other security acceptable to the Owner, such as a bond, in lieu of paying disputed liens or Claims.

§ 5.5.2 The Contractor shall defend, indemnify, and hold harmless the Owner from any liens, including all expenses and the Architect's and attorneys' fees, except to the extent a lien has been filed because of the failure of the Owner to make a contractually required payment.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article ~~15-15~~, except that the Contractor shall have no Claim for such construction or operations to the extent disclosed in the Bidding Documents or Contract Documents or known to the Contractor prior to execution of the GMP Amendment. The Contractor is also responsible to coordinate its Work with any other entities performing work on or adjacent to the site, such as work in the right of way and work by utility companies, and the Contractor shall incorporate such work into its project schedule.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction ~~schedules~~, schedules when directed to do so. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual ~~agreement~~, agreement with the Owner. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

§ 6.2 MUTUAL RESPONSIBILITY

§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents. If the Contractor receives items from a separate contractor or from the Owner for storage, erection or installation, the Contractor shall acknowledge receipt for items delivered, and thereafter will be held responsible for the care, storage and any necessary replacement of items received.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect and the Owner apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse and indemnify the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective ~~construction~~, construction of the separate contractor. If such a separate contractor sues or initiates any proceeding against the Owner on account of any damages or delays alleged to have been caused by the Contractor, the Owner shall notify the Contractor. The Contractor shall defend all such proceedings at its own expense, and shall defend, indemnify, and hold the Owner harmless from any damages awarded on such claims, including all attorneys' fees and other costs incurred by the Owner.

§ 6.2.4 The Contractor shall promptly remedy damage caused by the Contractor ~~wrongfully causes~~ to completed or partially completed construction or to property of the ~~Owner~~, Owner, or separate contractors as provided in Section 10.2.5.

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§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.2.6 Should the Contractor or any of its Subcontractors of any tier cause damage of any kind, including but not limited to delay, to any other contractor or Subcontractor on the Project, the Contractor shall, upon due notice, promptly attempt to settle with such other contractor or Subcontractor by agreement or otherwise to resolve the dispute.

§ 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and ~~the Architect will allocate the cost among those responsible~~ responsible plus a ten percent (10%) markup on such costs.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, solely by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect ~~alone~~ but only with the Owner's concurrence.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

§ 7.1.4 Before effectuating a change in the Work or in the Contract Documents, the Owner may request the Contractor to propose the amount of change in the GMP, if any, and the extent of change in the Contract Time, if any, arising from the proposed change in the Work. The Contractor shall submit its responsive proposal as soon as possible and within ten (10) days, and shall in good faith specify the components and amounts by which the GMP and/or Contract Time would change. Labor, materials and equipment shall be limited to and itemized in the manner described in Article 6 of the A133 Agreement for the Contractor and Section 7.5 of these General Conditions for Subcontractors of any tier. If the Contractor fails to respond within this time, the Owner may withhold some or all of a progress payment otherwise due until the proposal is received. If the Owner explicitly accepts the proposal in writing, the Owner and the Contractor will be immediately bound to the terms of the proposal, the change will be included promptly in a future Change Order, and the change in the Work described in the proposal shall commence expeditiously. The Owner may reject the proposal, in which case the Owner may either not effectuate the change in the Work or may order the change through a Construction Change Directive or supplemental instruction or an order for a minor change in the Work. The Architect and the Owner may confer directly with Subcontractors of any tier concerning any item proposed to the Owner under this Article.

§ 7.1.5 If the Contractor adds a reservation of rights that has not been initialed by the Owner to any Change Order, Construction Change Directive, Change Order proposal, Application for Payment or any other document, all amounts and all Work therein shall be considered disputed and not due or payable unless and until costs are re-negotiated or the reservation is withdrawn or changed in a manner satisfactory to and, in all cases, initialed by the Owner. If the Owner makes payment for a Change Order or an Application for Payment that contains a reservation of rights not initialed by the Owner to indicate agreement with the reservation, and if the Contractor negotiates the check for or otherwise accepts such payment, then the reservation of rights shall be deemed waived, withdrawn and of no effect.

§ 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect stating their agreement upon all of the following:

- .1 The change in the Contract Documents, including any change in the requirements of the Work;
- .2 The amount of the adjustment, if any, in the ~~Contract Sum;~~ GMP; and

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- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the ~~Contract Sum-GMP~~ or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, ~~the Contract Sum with the GMP and Contract Time being adjusted accordingly.~~ The Owner's use of a Construction Change Directive does not constitute agreement that the directive constitutes a change in the Work, the GMP, or the Contract Time. For any change in the Work, whether initiated by a Construction Change Directive or a Change Order Proposal, the Contractor must submit its proposed price and any proposed extension of the Contract Time to the Owner within fourteen (14) days of the date of the Construction Change Directive or Change Order Proposal. If the Contractor fails to submit a proposed price and time within this time period, the Owner may establish what it believes to be the fair price of the changed work, and any additional Contract Time, and this price and time submitted by the Owner shall be final and binding upon the parties, as if they had signed a Change Order in this amount, without recourse to submitting any claims or litigation. Payment for any Changes to the Work shall not exceed the labor and equipment indicated on the daily work logs.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the ~~Contract Sum-GMP~~, the adjustment shall be based on one of the following ~~methods:~~ methods or as mutually agreed by the Owner and Contractor:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be proposed by the Owner and determined in a manner agreed upon by the parties (accompanied by the Contractor's itemized estimate of probable cost) and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed (e.g., more than fifty percent) in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices but not the Contract Time or any other portion of the GMP shall be equitably adjusted.

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work ~~involved and advise the Architect involved.~~ As soon as possible, and within seven (7) days of receipt, the Contractor shall advise the Architect in writing of the Contractor's agreement or disagreement with the proposed adjustment or the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the ~~Contract Sum or Contract Time-GMP~~ or Contract Time. The Contractor's response shall reasonably specify the reasons for its disagreement and the adjustment or other terms that it proposes. Without such timely written response, the Contractor shall conclusively be deemed to have accepted the Owner's adjustment. The Contractor's disagreement shall not relieve the Contractor of its obligation to comply promptly with any written notice issued by the Owner or the Architect. The adjustment shall then be determined by the Architect in accordance with the provisions of the Contract Documents. The ultimate adjustment shall not exceed the larger amount submitted.

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including any adjustment in ~~Contract Sum-GMP~~ and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be ~~recorded as incorporated into~~ a Change Order.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the ~~Contract Sum~~, the Architect shall ~~determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount.~~ In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, GMP, or if cost is to be

determined under Section 7.3.3.3, the Contractor shall provide a not-to-exceed price for the Construction Change Directive Work within fourteen (14) days of receipt of the Construction Change Directive, and the Contractor shall keep and present, itemized in the categories of Section 7.5 for Subcontractors of any tier and of Article 6 of the Agreement for the Contractor, and in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

- .1 — Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 — Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 — Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 — Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 — Additional costs of supervision and field office personnel directly attributable to the change. In order to facilitate checking of such quotations, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by complete itemization of costs, including labor, equipment, material and subcontract costs. Labor, equipment and materials shall be itemized in the manner described in Section 7.5. When major cost items arise from Subcontractors of any tier, these items shall also be similarly itemized. Approval may not be given without such itemization. Failure to provide data within twenty-one (21) days of the Owner's or Architect's request shall constitute waiver of any Claim for changes in the Contract Time or GMP. The total cost of any change, including a Claim under Article 15, shall be limited to the reasonable value, as determined by the Owner (subject to appeal through the dispute resolution procedure of Article 15), of the items in Section 7.5 for Subcontractors of any tier and of Article 6 and Section 5.1.1 of the Agreement for the Contractor. Unless otherwise agreed in writing by the Owner, the cost shall not exceed the lower of the prevailing cost for the work in the locality of the Project or the cost of the work in the current edition of R.S. Means Company, Inc., Building Construction Cost Data as adjusted to local costs and conditions. The Architect and the Owner may communicate directly with Subcontractors of any tier concerning costs of any Work included in a Construction Change Directive. If the Contractor disagrees with the method or the adjustment in the Contract Time, the adjustment or method shall be referred to the Architect for determination, and any adjustment shall be limited to the change in the actual critical path of the Contractor's Construction Schedule directly caused thereby.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the ~~Contract Sum~~ shall be GMP shall be the largest of (i) the reasonable and prevailing value of the deletion or change, (ii) the line item value in the Schedule of Values, or (iii) the actual net cost as confirmed by the Architect-Owner. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, ~~the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15, and provided that any reservations of rights regarding the Construction Change Directive have been initialed by the Owner, amounts not in dispute for such changes in the Work may be included in Applications for Payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs.~~

§ 7.3.10 When the Owner and Contractor agree with a ~~determination recommendation~~ made by the Architect concerning the adjustments in the ~~Contract Sum~~ GMP and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and ~~the Architect will prepare a will be recorded by preparation and execution of an appropriate Change Order.~~ Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 MINOR CHANGES IN THE WORK

The Architect ~~has and~~ the Owner have authority to order minor changes in the Work not involving adjustment in the ~~Contract Sum-GMP~~ or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly. If the Contractor believes that such order, or the response to a Request for Information, causes an increase in the GMP or Time, the Contractor must properly submit a notice and Claim pursuant to Article 15.

§ 7.5 PRICING COMPONENTS

§ 7.5 For the Contractor, the value of any changed Work or of any Claim for an increase or decrease in the GMP shall be limited to the Cost of the Work and Fee defined in the revised A133 Agreement. For Subcontractors of any tier, the total cost of any Change in the Work or of any other increase or decrease in the GMP, including a Claim, shall be limited to the following components:

§ 7.5.1 Direct labor costs: These are the labor costs determined by the number of additional craft hours and the hourly costs necessary to perform the change in the Work. The hourly cost shall be based upon the following:

- .1 Basic wages and fringe benefits: The hourly wage (without markup or labor burden) and fringe benefits paid by the Subcontractor as established by the Washington Department of Labor and Industries or contributed to labor trust funds as itemized fringe benefits, whichever is applicable, not to exceed that specified in the applicable "Intent to Pay Prevailing Wage" for the laborers, apprentices, journeymen, and foremen performing and/or directly supervising the Change in the Work on the site. The premium portion of overtime wages is not included unless pre-approved in writing by the Owner. Costs paid or incurred by the Subcontractor for vacations, per diem, subsistence, housing, travel, bonuses, stock options, or discretionary payments to employees are not separately reimbursable. The Contractor shall provide copies of certified payrolls for itself and Subcontractors of any tier upon the Owner's request.
- .2 Workers' insurances: Direct contributions to the State of Washington as industrial insurance; medical aid; and supplemental pension by class and rates established by the Washington Department of Labor and Industries.
- .3 Federal insurances: Direct contributions required by the Federal Insurance Compensation Act (FICA); Federal Unemployment Tax Act (FUTA); and State Unemployment Compensation Act (SUCA).

Upon the Owner's request, the Contractor shall substantiate all claimed wage rates and shall provide a breakdown of the various components of the labor costs in a form provided or approved by the Owner.

§ 7.5.2 Direct material costs: This is an itemization, including material invoice, of the quantity and cost of additional materials reasonable and necessary to perform the change in the Work. The unit cost shall be based upon the net cost after all discounts or rebates, freight costs, express charges, or special delivery costs, when applicable. No lump sum costs will be allowed except when approved in advance by the Owner. If the Contractor is offered discounts and/or rebates based upon prompt payment, the Contractor shall offer the Owner the opportunity to take advantage of such discount and/or rebate, and if the Owner makes such a prompt payment then the Owner shall only be charged the price as reduced by the discount and/or rebate. If the Owner declines the opportunity the Contractor may keep any such discounts and/or rebates it achieves through its own prompt payment. If the Contractor does not provide the Owner the opportunity to participate then the Contractor may only charge the net costs after consideration of discounts and rebates.

§ 7.5.3 Construction equipment usage costs: This is an itemization of the actual length of time that construction equipment appropriate for the Work will be used solely on the change in the Work at the site times the applicable rental cost as established by the lower of the local prevailing rate published in The Rental Rate Blue Book by Data Quest, San Jose, California (copies of which shall be provided to the Owner), as modified by the AGC/WSDOT agreement or the actual, reasonable rate paid to unrelated third parties as evidenced by rental receipts. Rates and quantities of equipment rented that exceed the local fair market rental costs shall be subject to the Owner's prior approval. Total rental charges for equipment or tools shall not exceed 75% of the fair market purchase value of the equipment or the tool. Actual, reasonable mobilization costs are permitted if the equipment is brought to the Site solely for the change in the Work. If more than one rate is applicable, the best available rate shall be utilized. The rates in effect at the time of the performance of the changed Work are the maximum rates allowable for equipment of modern design and in good working condition and include full compensation for furnishing all fuel, oil, lubrication, repairs,

maintenance, and insurance to the same extent as the comparable Blue Book or fair market rate. Equipment not of modern design and/or not in good working condition shall have lower rates. Hourly, weekly, and/or monthly rates, as appropriate, shall be applied to yield the lowest total cost. When rental rates payable do not include fuel, lubrication, maintenance, and servicing, as defined as operating costs in the Blue Book, such operating costs shall be reimbursed based on actual costs. The rate for equipment necessarily standing by for future use on the changed Work shall be no more than 50% of the rate established above. If equipment is required for which a rental rate is not established by Blue Book, an agreed rental rate shall be established for that equipment, which rate and use must be approved by the Owner prior to performing the Work.

§ 7.5.4 Cost of change in insurance or bond premium. This is defined as:

- .1 Subcontractors' liability insurance: The actual cost (expressed as a percentage submitted with the certificate of insurance provided under Section 11.1.3, and subject to audit) of any changes in the Subcontractor's liability insurance arising directly from the changed Work; and
- .2 Public works bond: The actual cost (expressed as a percentage submitted with evidence of bondability under Section 11.4.1, and subject to audit) of the change in the Subcontractor's premium for the Subcontractor's statutorily required performance and payment bond arising directly from the changed Work.

Upon request, the Subcontractor shall provide the Owner with supporting documentation from its insurer or surety of any associated cost incurred. The Contractor is not entitled to any increased premium for insurance or bonds as those costs are included within the Contractor's Fee. The Contractor is not entitled to any increased premium on any retainage bond as such bonds are optional.

§ 7.5.5 Lower-tier Subcontractor costs: These are payments the Subcontractor makes to lower-tier Subcontractors for changed Work performed by such Subcontractors. The lower-tier Subcontractors' cost of changed Work shall be determined in the same manner as prescribed in this Section 7.5.

§ 7.5.6 Subcontractor's Fee: This is the allowance for all combined overhead, profit and other costs, including all office, home office and site overhead (including facilities, purchasing, clerical, project manager, project engineer, other engineers, project foreman, estimator, superintendent and their vehicles and clerical assistants), taxes (except for sales tax), employee per diem, subsistence and travel costs, warranty, safety costs, printing and copying, quality control/assurance, purchasing, small or hand tool (a tool that costs \$500 or less and is normally furnished by the performing contractor) or expendable charges, preparation of as-built drawings, impact on unchanged Work, Change Order and Claim preparation, and delay and impact costs of any kind (cumulative, ripple, or otherwise). No such costs may be added to the total cost to the Owner of any Change Order, Construction Change Directive, Claim or any other claim of any kind on this Project. No Fee shall be due, however, for direct settlements after Substantial Completion by the Owner of Subcontractor Claims. The Fee shall be limited in all cases to the following schedule:

- .1 A Subcontractor of any tier shall receive 15% of the cost of any materials supplied or work properly performed by that Subcontractor's own forces.
- .2 A Subcontractor of any tier shall receive 6% of the amount owed (less fee) directly to a lower-tier Subcontractor or supplier for materials supplied or for work properly performed by that Subcontractor or supplier.
- .3 A Subcontractor of any tier shall receive no more than 5% of any amounts owed to any remote, sub-tier subcontractors which are within the lines of contractual responsibility but not in privity of contract with such Subcontractor, for work performed by that remote, sub-tier subcontractor.
- .4 The cost to which this Fee is to be applied shall be determined in accordance with Section 7.5.1 through 7.5.4.
- .5 The total summed Fee of the first-tier Subcontractor and all lower-tier Subcontractors shall not exceed 26%. If the Fee would otherwise exceed 26%, the Contractor shall proportionately reduce the Fee percentage for the Contractor and all Subcontractors except for the Subcontractor supplying material or performing work with its own forces. None of the fee percentages authorized in this Section 7.5.6 may be compounded with any other fee percentage or percentages authorized in this Section.

If a change in the Work involves both additive and deductive items, the appropriate Fee allowed will be added to the net difference of the items. If the net difference is negative, no Fee will be added to the negative figure as a further deduction. The parties acknowledge that the Fees listed in this Section 7.5.6 are substantially greater than the fees and overhead normally included in determining the GMP bid and Subcontractor bid prices; that these higher percentages are a sufficient amount to compensate the Subcontractors for all effects and impacts of Changes in the Work; and that

the resultant overcompensation of the Subcontractors for some Changes compensates the Subcontractors for any Changes for which the Contractor or Subcontractors believe the percentage is otherwise insufficient.

§ 7.5.7 The cost of any changed Work or of any other increase or decrease in the GMP, including a Claim, shall not include, among other things, consultant costs, attorneys' fees, or Claim preparation expenses.

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement by the Owner in its conditional notice to proceed issued for each phase of the Work. Work on the site may begin for a phase when the Contractor complies with the requirements of the notice to proceed. The date of commencement of all the Work is the date established by the Owner in its first conditional notice to proceed issued for a phase of the Work.

§ 8.1.3 The date of Substantial Completion (or a designated portion thereof) is the date certified by the Architect and set by the Owner in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 PROGRESS AND COMPLETION

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time and shall achieve Final Completion within thirty (30) days thereafter (or such other period of time for specific phases as is specified in the Contract Documents).

§ 8.2.4 THE TIMELY COMPLETION OF THIS PROJECT IS ESSENTIAL TO THE OWNER. The Owner will incur serious and substantial damages if Substantial Completion of the Work does not occur within the Contract Time; however, it would be difficult if not impossible to determine the amount of such damages, which could include, for example, personnel and overtime costs, transportation costs, governmental fees, storage costs, portable rental costs, loss of use, and lost opportunities. Consequently, provisions for liquidated damages as a reasonable estimate of loss may be included in the Contract Documents. The Owner's right to liquidated damages is not affected by partial completion, occupancy, or beneficial occupancy. The Contractor shall furnish sufficient forces, construction plant and equipment, and shall work such hours, including night shifts, overtime operations and weekend and holiday work as may be necessary to insure the completion of the Work in accordance with the date of Substantial Completion and the accepted Contractor's Construction Schedule. If the Contractor fails to perform in a timely manner in accordance with the Contract Documents and, through the fault of the Contractor or Subcontractor(s) of any tier fails to meet the Contractor's Construction Schedule, the Contractor shall take such steps as may be necessary to immediately improve its progress by increasing the number of workers, shifts, overtime operations or days of work or other means and methods, all without additional cost to the Owner.

§ 8.2.5 If the Work is to be performed in phases, with separate dates set forth for Substantial Completion elsewhere in the Contract Documents, then the specified liquidated damages shall apply separately to each such phase unless otherwise specified.

§ 8.2.6 Any provisions in the Contract for liquidated damages are intended to be in lieu of the liability of the Contractor for delay, special, incidental and consequential damages (such as cost of capital and loss of profits, use and

revenue) sustained by the Owner but shall not relieve or release the Contractor from liability for any and all damage or damages suffered by the Owner due to other breaches of the Contract or suffered by separate contractors.

§ 8.2.7 It is the Contractor's option, but not its right, to attempt to complete the Project earlier than the dates specified in the Contract Documents. Thus any Claim based upon delay shall be evaluated based upon the dates specified in the Contract Documents, not an earlier projected completion that the Contractor may propose.

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work (1) by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or ~~by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries,~~ (2) by changes ordered in the Work only to the extent reflected in approved Change Orders providing for specific extensions of the Contract Time; or (3) by unanticipated, abnormal weather (see Section 15.1.5.2); or (4) by unexpected industry-wide labor disputes, fire, seismic event, unusual delay in deliveries, governmental delays (including unanticipated permit delays not caused by the Contractor; delays caused by a local jurisdictions' scheduled days off shall not be considered an excusable delay) unavoidable casualties or other causes beyond the Contractor's control; or (5) by delay authorized by the Owner pending mediation and arbitration; or litigation; or (6) by other causes that the Architect-Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable ~~time as the Architect may determine.~~ time, limited to the change in the actual critical path of the Contractor's Construction Schedule directly caused thereby, as the Owner may determine consistent with the provisions of the Contract Documents. In no event, however, shall the Contractor be entitled to any extension of time absent proof of (1) delay to an activity on the critical path of the Contract Schedule, so as to actually delay the Project completion beyond the date of Substantial Completion, or (2) delay transforming an activity into the critical path of the Contract Schedule, so as to actually delay the Project completion beyond the date of Substantial Completion.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15-15 and shall include any proposed changes in the Contractor's Construction Schedule or the Contract Time, a description of any event that could delay performance or supplying of any item of the Work, the expected duration of the delay, the anticipated effect of the delay on the Contractor's Construction Schedule, and the action being taken to correct the delay situation. That the Owner or the Architect may be aware of the occurrence or existence of a delay through means other than the Contractor's written notification shall not constitute a waiver of a timely or written notice or Claim. The Contractor has an obligation to minimize and mitigate schedule impacts.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

- .1** If the delay was not caused by the Owner, the Contractor, a Subcontractor of any tier, or the Architect, or anyone acting on behalf of any of them, the Contractor is entitled only to an increase in the Contract Time in accordance with the Contract Documents but not an increase in the GMP. If the delay was caused by the Contractor, a Subcontractor of any tier, or anyone acting on behalf of any of them, the Contractor is not entitled to an increase in the Contract Time or in the GMP. The Contractor shall be entitled to a change in the GMP only if the delay was caused by the Owner or the Architect, or anyone acting on behalf of them. The Contractor shall not recover damages, an equitable adjustment or an increase in the GMP or Contract Time from the Owner where the Contractor could have reasonably avoided the delay by the exercise of due diligence. The Contractor shall be able to recover an increase in the GMP, provided it is consistent with the terms of the Contract Documents, only if the delay was in the critical path, could not have reasonably been avoided, was unreasonable and was caused by the Owner or anyone acting on its behalf as permitted under the Contract Documents. The Owner is not obligated directly or indirectly for damages, an equitable adjustment, or an increase in the GMP for any delay suffered by a Subcontractor of any tier that does not increase the Contract Time.
- .2** In the event the Contractor (including any Subcontractors of any tier) is held to be entitled to damages from the Owner for delay beyond the payment permitted in Section 7.5.6, it is agreed that the total combined damages awardable against the Owner for each day of delay shall be limited to the original Specified General Conditions divided by the total number of days of Contract Time. By submitting its proposal and by signing the GMP Amendment, the Contractor represents that it would be difficult if not impossible to determine the amount of any delay damages due it, that it has taken this provision for liquidated damages into consideration in its bid, and that these liquidated damages are a reasonable

estimate of its loss. No damages shall be allowed for any time prior to seven (7) days before receipt of written notice of the Claim of the delay pursuant to Article 15.

- .3 The Contractor shall not in any event be entitled to damages arising out of actual or alleged loss of efficiency; morale, fatigue, attitude, or labor rhythm; constructive acceleration; home office overhead; expectant underrun; trade stacking; reassignment of workers; rescheduling of work, schedule compression; concurrent operations; dilution of supervision; learning curve; beneficial or joint occupancy; logistics; ripple; season change; extended or expanded overhead or general conditions; profit upon damages for delay; impact damages; cumulative impacts; or similar damages. Any effect that such alleged costs may have upon the Contractor or its Subcontractors of any tier is fully compensated through the percentage Fee on Change Orders paid through Section 7.5.6 and any liquidated damages paid hereunder.
- .4 The Contractor shall not be entitled to any adjustment in the Contract Time or the GMP, or to any additional payment of any sort, by reason of the loss or the use of any float time, including time not on the critical path or time between the Contractor's anticipated completion date and the end of the Contract Time, whether or not the float time is described as such on the Contractor's Construction Schedule.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM/GMP

The Contract Sum/GMP is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.2 SCHEDULE OF VALUES

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, At least fourteen (14) days before the first Application for Payment, the Contractor shall submit to the Architect, before the first Application for Payment, Owner and Architect a schedule of values allocating the entire Contract Sum/GMP to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect or Owner may require. At a minimum, the Work shall be itemized by Specification section or system, separate values for labor, materials and equipment shall be provided, and line items on the schedule of values shall be tied to the Contractor's schedule. Quantities shall be provided for each section or system of the Work. The Contractor shall itemize and prepare the schedule of values for approval by the Owner with respect to form, content, and level of detail. This schedule, unless objected to by the Architect, Architect or the Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment.

- .1 Mobilization shall be a maximum of one-half of one percent (0.5%) of the GMP, and shall be paid only if supported by an itemized breakdown of costs acceptable to the Owner.
- .2 Payment applicable to the expenses of Contractor's bond and/or builder's risk insurance will be made only upon receipt of paid invoices from surety and/or insurance carrier.
- .3 No payment will be made for shop drawings or submittals until on-site receipt of materials, except for structural steel, fire sprinkler, automatic temperature control, and fire alarm shop drawings that have been reviewed and accepted by the Architect.
- .4 The schedule of values shall allocate at least one percent (1%) of the GMP to Commissioning, as defined in the Contract Documents.
- .5 The schedule of values shall allocate at least two percent (2%) of the GMP for completion of punchlist items.
- .6 The schedule of values shall allocate at least one half percent (.5%) of the GMP for completion of approved operations and maintenance data and the delivery of warranties.
- .7 The schedule of values shall allocate at least one half percent (.5%) of the GMP for completion of record drawings, delivery of extra stock, and all other documentation or items of the Work required for Final Completion of the entire Project.
- .8 None of the percentages in this Section 9.2 are the statutory retainage described in Section 9.3.4 or any other retainage from amounts earned, but rather this allocation requires the Contractor to recognize that the Contractor and its Subcontractors will expend significant costs in advancing the line item of the Work from Substantial Completion to Final Completion. These amounts are not earned until Final Completion is accomplished, respectively, for a line item or the Work as a whole. At its sole discretion, the Owner may release portions of this amount progressively as items are completed.
- .9 Itemize separately line item costs for permits, bonds, insurance, layout and supervision, scheduling, and temporary facilities.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents. Progress payments will be made monthly for work duly certified, approved, and performed during the calendar month preceding the application. These amounts are paid in trust to the Contractor for distribution to Subcontractors to the extent and in accordance with the approved Application for Payment.

§ 9.3.1.1 ~~As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.~~

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay. A payment request shall not be valid unless it complies with the requirements of the Contract Documents.

§ 9.3.1.3 Payments to Subcontractors. No payment request shall include amounts the Contractor does not intend to pay to a Subcontractor because of a dispute or other reason. If, after making a request for payment but before paying a Subcontractor for its performance covered by the payment request, the Contractor discovers that part or all of the payment otherwise due to the Subcontractor is subject to withholding from the Subcontractor under the subcontract (such as for unsatisfactory performance or non-payment of sub-subcontractors), the Contractor may withhold the amount as allowed under the subcontract, but it shall give the Subcontractor, the Owner and the Architect written notice of the remedial actions that must be taken as soon as practicable after determining the cause for the withholding but before the due date for the Subcontractor payment, and pay the Subcontractor within eight (8) working days after the Subcontractor satisfactorily completes the remedial action identified in the notice.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of project specific materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in writing and in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.3.4 Retainage.

§ 9.3.4.1 In accordance with RCW 60.28, a sum equal to five percent (5%) of each approved Application for Payment shall be retained. After award of a Contract for public improvements, or work for which retained percentages are required to be reserved under the provision of RCW 60.28, the Owner shall require the Contractor to exercise, in writing, one of the options listed below:

- 1 Retained percentages will be retained in a fund by the Owner not subject to release until sixty (60) days following the Final Acceptance of the Work as completed and as provided in Section 9.10.6; or
- 2 Deposited by the Owner in an interest-bearing account in a bank, mutual savings bank or savings and loan association and not subject to release until sixty (60) days following Final Acceptance of the Work as completed and as provided in Section 9.10.6; or

- .3 Placed in escrow with a bank or trust company and not subject to release until sixty (60) days following the Final Acceptance of the Work as completed and as provided in Section 9.10.6.
- .4 If the Contractor provides a bond in place of retainage, it shall be in an amount equal to 5% of the GMP plus change orders. The minimum requirements for the bond are that it must be on a form acceptable to the Owner, with an A.M. Best rating of A- or better and a financial rating of no less than VII, and signed by a surety registered by the Washington State Insurance Commissioner and on the currently authorized insurance list published by the Washington State Insurance Commissioner; additional requirements as established by the Owner may be applied.

§ 9.3.4.2 The Contractor or a Subcontractor may withhold payment of not more than five percent (5%) as retainage from the monies earned by any Subcontractor or Sub-subcontractor, per RCW 60.28, provided that the Contractor pays interest to the Subcontractor at the same interest rate it receives from its reserved funds. If requested by the Owner, the Contractor shall specify the amount of retainage and interest due a Subcontractor.

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Architect will, within seven (7) days after receipt of the Contractor's approved Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial and Final Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the ~~Contract Sum.~~ GMP.

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Owner may, with or without the Architect's concurrence, withhold payment, and the Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, evidence or subsequent observations, it may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the ~~Contract Sum;~~ GMP;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or

- .7 repeated unsatisfactory prosecution of the Work by the Contractor, including but not limited to failure to carry out the Work in accordance with the Contract Documents.
- .8 delay by the Contractor and/or its Subcontractor(s) of any tier, or failure to comply with the Contractor's Construction Schedule requirements;
- .9 failure to submit affidavits pertaining to wages paid as required by statute;
- .10 failure to submit a properly updated Construction Schedule;
- .11 failure to comply with a requirement of the Contract Documents in which the Owner has reserved the right to withhold payment;
- .12 liquidated damages;
- .13 failure to properly maintain as-builts;
- .14 failure to properly submit daily construction records;
- .15 failure to properly submit certified payrolls; or
- .16 failure to properly submit any other documents required of the Contractor under the Contract Documents.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 ~~If the Architect withholds certification for payment under Section 9.5.1.3, the~~ The Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

§ 9.5.4 Pursuant to RCW 39.12, "Prevailing Wages on Public Works," the Contractor will not receive any payment until the Contractor and all Subcontractors of any tier for whom payment is sought have submitted state-approved "Statements of Intent to Pay Prevailing Wage" to the Owner. The statement must have the approval of the Industrial Statistician of the Department of Labor and Industries before it is submitted to the Owner. The statement must include the Contractor's registration number, the number of workers in each trade classification, and the applicable wage rate for each trade listed. The Contractor agrees to provide each Subcontractor of any tier with a schedule of applicable prevailing wage rates. The Contractor and the respective Subcontractors of any tier shall pay all fees required by the Department of Labor and Industries, including fees for the approval of the "Statement of Intent to Pay Prevailing Wages." Approved copies of the "Statement of Intent to Pay Prevailing Wages" must be posted where workers can easily read them.

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has issued a Certificate for Payment, ~~and it has been approved by the Owner, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.~~ Documents. The Owner will make a progress payment within thirty (30) days of its receipt and approval of the Architect's Certificate for Payment; any payments made by or through the Office of the Superintendent of Public Instruction shall be made in accordance with policies, procedures, and forms required by that office. The Owner shall be entitled to withhold payment to the extent provided by the Contract Documents, notwithstanding the issuance of a Certificate for Payment.

§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven (7) days after receipt of payment from ~~the Owner~~ the Owner, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. If the Contractor does not receive payment for any cause which is not the fault of a particular Subcontractor but does receive payment for materials supplied or work performed by that Subcontractor, the Contractor shall pay that Subcontractor in accordance with its subcontract for its satisfactorily completed work, less the retained percentage.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the ~~Contractor~~ Contractor, satisfactory to the Owner, that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. ~~If the Contractor fails to furnish such evidence within seven days, Work and~~ the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of ~~Work not in accordance with the Contract Documents.~~ Work.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the ~~Contract Sum,~~ GMP, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.7 FAILURE OF PAYMENT

If the Architect ~~does not improperly~~ fails to issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's ~~Application for Payment,~~ timely and complete Application for Payment pursuant to the A133 Agreement (subject to the approved payment schedule), or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount ~~certified by the Architect or awarded by binding dispute resolution, due and owing to the Contractor,~~ then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the ~~Contract Sum-GMP~~ shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and ~~start-up, plus interest start-up~~ as provided for in the ~~Contract Documents-A133~~ and Section 7.5 of these General Conditions.

§ 9.8 SUBSTANTIAL COMPLETION AND OCCUPANCY

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof ~~designated and approved by the Owner is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.~~ fully occupy or utilize the Work, or the designated portion thereof, for its intended use, including FF&E and student, teacher, and staff occupancy. The fact that the Owner may occupy the Work or a designated portion thereof does not indicate that the Work is acceptable in whole or in part. All Work other than incidental corrective or punch list work and final cleaning shall be completed, including but not limited to the following:

- (1) Obtain applicable occupancy permits, including fire/life safety systems and health department approval, pressure vessel permits, elevator permits, and similar approvals or certificates by governing authorities and franchised services, assuring the Owner's full access and use of completed Work.
- (2) Submit the Contractor's punch list of items to be completed or corrected and written request for inspection.
- (3) Complete final start-up, testing, commissioning, and commence instruction and training sessions on all major building systems including HVAC and controls, intercom, data communications, fire alarm, telephone, fire sprinkler, security and clocks.
- (4) Make final changeover of locks and transmit new keys to the Owner, and advise the Owner of the changeover in security provisions.
- (5) Discontinue or change over and remove unnecessary temporary facilities and services from the project site.
- (6) Advise the Owner on coordination of shifting insurance coverages, including proof of extended coverages as required.
- (7) Complete final cleaning.

The Work is not Substantially Complete unless the Architect reasonably judges that the Work can achieve Final Completion within thirty (30) days (or such other period of time as is specified in the Contract Documents), appropriate cleaning has occurred, all designated systems and parts are commissioned and usable, including balancing of the HVAC system, utilities are connected and operating normally and training sessions have occurred, all required temporary occupancy permits, pressure vessel permits, elevator permits, and similar approvals or certificates by governing authorities and franchised services, assuring the Owner's full access to the Work have been issued, O & M manuals have been submitted for review, and the Work is accessible by normal vehicular and pedestrian traffic routes. The fact that the Owner may occupy the Work or a designated portion thereof does not indicate that the Work is Substantially Complete or is acceptable in whole or in part, nor does such occupation toll or change any liquidated damages due the Owner.

§ 9.8.1.1 Date of Commissioning of Critical Systems. The following systems of the Work and any other systems so designated in the Contract Documents are considered "Critical Systems:" the HVAC system, the data communications system(s), the intercom system, the life safety system(s), the clock system, the telephone system, and the security system. Commissioning shall commence no later than thirty (30) days prior to the scheduled date of Substantial Completion and shall be completed no later than the date of Substantial Completion. The Date of Commissioning is the date that the commissioning is completed. When the Contractor considers that the Critical Systems are complete and fully functional, up and running and ready for normal operation and functional performance testing (as may be specified overall or for any phases), and after all pre-commissioning checklists have been completed, the Contractor shall so notify the Architect in writing a minimum of thirty (30) days prior to the Date of Substantial Completion for that portion or phase as fixed in the Contract Documents. The Architect will then schedule a pre-commissioning inspection and observe the functional performance tests of these systems identified in the Contract Documents to determine whether the Critical Systems are complete and ready for normal operation. If the Architect's inspection discloses that the Critical Systems are not Substantially Complete or that any item is not in accordance with the requirements of the Contract Documents, the Contractor shall expeditiously, and before the Date of Commissioning, complete or correct such item upon notification by the Architect. The Contractor shall then submit a request for another inspection by the Architect to determine completion of the Critical Systems and pay the costs associated with the reinspection, including fees of any commissioning agent and the Architect and its consultants. As each of the Critical Systems is determined to be complete, the Architect will notify the Owner in writing, which shall establish the Date of Commissioning. Training of Owner personnel shall be conducted prior to departure of the installing entity from the site by appropriate Subcontractor personnel on site who are knowledgeable with the construction and operation of each system. Warranties on the Critical Systems required by the Contract Documents shall commence on the Date of Final Acceptance by the School Board, and the Contractor shall retain the responsibility to maintain the systems until Final Acceptance.

§ 9.8.1.2 Indemnification. The Contractor shall defend, indemnify, and hold harmless the Owner and the Architect and their agents, employees, and consultants, successors and assigns from and against all claims, damages, losses and expenses of third parties, direct and indirect, or consequential, including costs, design professional fees, and attorneys' fees incurred by the Owner related to such claims and in proving the right to indemnification, arising out of or resulting from the failure of the Contractor to attain the Date of Commissioning no later than the Date of Substantial Completion fixed by the Contract Documents, only to the extent caused in whole or in part by the Contractor. In particular, the Contractor acknowledges that all HVAC, mechanical, electrical, control and environmental management systems shall be fully operational under procedures and loads intended to provide unoccupied space with positive performance for pre-occupancy environmental documentation, and the systems are scheduled to operate under a procedure intended to dissipate off-gassing that may occur from interior and other materials.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. The Contractor shall proceed promptly to complete and correct items on the list and shall immediately clean-up any dust or debris created through punchlist work activities. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, and upon verification by the Architect that all permits, approvals, testing, training and other submittals and administrative actions required under the Contract Documents for obtaining Substantial Completion have been satisfied, the Architect and, at its option, the Owner, will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection

discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion. If the Owner or Architect determines that the Work or designated portion is not substantially complete, the Contractor shall expeditiously complete the Work or designated portion, and again request an inspection. The Contractor shall pay the costs associated with this third and any further re-inspections.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion ~~that which, upon approval of the Owner, shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial-Final Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.~~ Completion, except that warranties for HVAC equipment shall commence with acceptance of the Commissioning Report by the Owner's Board of Directors. The Contractor shall attach and submit with the executed Certificate of Substantial Completion the Certificate of Occupancy as well as a written list of each outstanding and unresolved Claim; any Claim not so submitted and identified, other than retainage and the undisputed balance of the GMP, shall be deemed waived and abandoned. If the Owner or Architect determines that the Work or designated portion is not Substantially Complete, the Contractor shall expeditiously complete the Work or designated portion, again request an inspection, and pay the costs associated with the re-inspection, including Architect and consultant fees.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. ~~Upon such acceptance Any items not included by the Architect but required or necessary for Final Completion of the Contract shall be supplied and installed by the Contractor as a part of the GMP, notwithstanding their not being recorded by the Architect. Upon written acceptance of the Certificate of Substantial Completion by the Owner and the Contractor, and upon the Contractor's Application for Payment and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof, as provided in the Contract Documents. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents. No further payment will be due or owing until the payment following Final Completion.~~

§ 9.8.6 The Contractor shall prepare, continue to monitor with the Architect, and cause to be completed, all punchlists with respect to the activity of each Subcontractor and report weekly to the Owner on all outstanding punchlist items. Beginning thirty (30) days before the scheduled date of Substantial Completion, the Contractor shall prepare reports weekly, identifying items to be completed in order to obtain required certificates of occupancy and make recommendations to the Owner with respect to effectuating the earliest possible completion. The Contractor shall include this report as a schedule item on its CPM schedule.

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner ~~may may, upon written notice to the Contractor, take possession of, operate, occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project.~~ stage. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. ~~complete. Unless otherwise agreed in writing, such possession, use or operation shall not be deemed an acceptance of any portion of the Work, nor accelerate the time for any payment to the Contractor under the Contract, nor prejudice any rights of the Owner under the Contract or under any insurance, bond, guaranty or other requirement of the Contract, nor relieve the Contractor of the risk of loss or any of its obligations under the Contract, nor establish a Date of Substantial or Final Completion, nor establish a date for termination or partial termination of the running of liquidated damages, nor constitute a waiver of any Owner claims. If the Contractor fails to achieve Substantial Completion of the Work within the Contract Time, or fails to achieve Final Completion of the Work within thirty (30) days of Substantial~~

Completion (or such other period of time as is specified in the Contract Documents), the Owner may take possession of, use or operate all or any part of the Work without an increase in the GMP or the Contract Time on account of such possession or use. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and ~~acceptance and upon receipt of a final Application for Payment, acceptance,~~ the Architect will promptly make such ~~inspection and, when the Architect finds inspection accompanied by the Contractor (if requested by the Architect or Owner). If the Architect or Owner determines that some or all of the punch list items are not accomplished, the Contractor shall be responsible to the Owner for all costs, including re-inspection fees, for any subsequent Architect's inspection to determine compliance with the punch list. When the Architect finds all punch list items complete and the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that notify the Owner and the Contractor in writing that, to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable.~~ Documents. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.1.1 The Contractor shall cause punch list items to be completed within thirty (30) days of Substantial Completion of each phase (or such other period of time as is specified in the Contract Documents) or within such reasonable period as may be required to correct the item (in the event that the punch list items are, because of their nature, incapable of correction during that period) provided that the Contractor commences to correct the item within that period and thereafter diligently and in good faith pursues the corrective action to completion. If, at fifteen (15) days after the Date of Substantial Completion, the Owner considers that the punch list items are unlikely to be completed within thirty (30) days of the date of Substantial Completion of each phase (or such other period of time as is specified in the Contract Documents), the Owner may, upon seven (7) days' written notice to the Contractor, take over and perform some or all of the punch list items. If the Contractor fails to correct the deficiencies within this seven (7) day period, the Owner may back-charge the actual cost of performing this punch list work, including any design costs, plus 10% to account for the Owner's transaction costs.

§ 9.10.1.2 The Contractor is liable for, and the Owner may deduct from any amounts due the Contractor, all Architect, engineer or other design consultant fees and all Commissioning Agent and consultant Project Manager fees incurred by the Owner for services performed more than thirty (30) days after Substantial Completion of all the Work (or such other period of time as is specified in the Contract Documents), whether or not those services would have been performed prior to that date had Final Completion been achieved in a timely manner.

§ 9.10.1.3 When the Architect finds that the Work has been concluded, a final occupancy permit has been issued, any commissioning process and validation process have been successfully concluded and the Commissioning Report has been accepted by the Owner's Board of Directors, and the Contractor has submitted all the items identified in Section 9.10.1.4 to the Architect, the Contractor may submit a final Application for Payment. The Architect will then promptly issue a final Certificate for Payment stating that the entire balance found to be due the Contractor and noted in said final Certificate is due and payable. The Architect's final Certificate for Payment shall establish the date of Final Completion upon its execution by the Owner.

§ 9.10.1.4 "Final Completion" will be attained when the Contractor has accomplished the following:

- (1) Complete all requirements listed in Section 9.8 for Substantial Completion.

- (2) Complete all remaining punch list items and remaining Work, and obtain approval by Architect and Owner that all Work is complete.
- (3) Obtain permanent occupancy permits (if only a temporary occupancy permit was issued at Substantial Completion).
- (4) Submit final change order and final Application for Payment.
- (5) Submit record documents, any final property survey, and paper and electronic operation and maintenance manuals required by the Contract Documents.
- (6) Deliver tools, spare parts, extra stock of material and similar physical items to the Owner as required by the Contract Documents.
- (7) Complete final cleaning after punchlist work (in addition to the final cleaning that was required to obtain Substantial Completion).
- (8) Complete instruction and training sessions on all major building systems including HVAC, intercom, data communications, fire alarm, telephone, fire sprinkler, emergency power, security and clocks.
- (9) Submit executed warranties.
- (10) Discontinue or change over and remove temporary facilities and services from the project site.
- (11) Advise the Owner on coordination of shifting insurance coverages, including proof of extended coverages as required.
- (12) Acceptance of the final Commissioning Report by the Owner's Board of Directors.
- (13) All copies of Instruments of Service, except the Contractor's record set, have been returned to the Owner or are suitably accounted for to the Owner.

§ 9.10.2 Neither final payment nor any ~~remaining~~ retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that after the Owner's Board of Directors has formally accepted the Project ("Final Acceptance"). To achieve Final Acceptance, the Architect must have issued a final Certificate for Payment under Section 9.10.1.3, an occupancy permit must have been issued, Final Completion must have occurred, and the Contractor has submitted the following to the Architect and the Owner:

- (1) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, except for any claims that are specifically identified on the affidavit (Affidavit of Payment of Debts and Claims, AIA form G706 or equivalent),
- (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least ~~30~~ thirty (30) days' prior written notice has been given to the Owner,
- (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents,
- (4) consent of surety, if any, to final payment and ~~(5), if required by the Owner, (AIA form G707 or equivalent),~~
- (5) other data establishing payment or satisfaction of or protection against obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the ~~Owner~~ Owner (Contractor's Affidavit of Release of Liens, AIA form G706A or equivalent). If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees-fees,
- (6) pursuant to RCW 39.12.040, an "Affidavit of Wages Paid" from the Contractor and from each Subcontractor of any tier certified by the Industrial Statistician of the Washington State Department of Labor and Industries, with the fees paid by the Contractor or Subcontractor,
- (7) a letter from the Architect indicating that the Work is complete and recommending Final Acceptance of the Project by the Owner,
- (8) certification that the materials in the Work are "lead-free" and "asbestos-free,"
- (9) a certified statement that the Contractor has closed all necessary permits or otherwise met the requirements of all governing jurisdictions related to this project, including but not limited to all

city or county departments, health districts and utility districts, provided to Owner with a copy of all closed or signed off permits,

(10) record documents;

(11) all warranties, guarantees, training, manuals, operation instructions, certificates, spare parts, maintenance manuals and stock, specified excess material, as-built drawings and other documents, training or items required by the Contract Documents or local governmental entities; and

(12) all submittals and information sufficient for the Owner to submit apprenticeship utilization data as required by RCW 39.04.320(5)(a).

Pursuant to RCW 60.28, "Lien for Labor, Materials, Taxes on Public Works," completion of the Contract Work shall occur upon Final Acceptance.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, statutory retainage, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled ~~at the time of final Application for Payment~~ and attached to the Contractor's final Application for Payment.

§ 9.10.5.1 The execution of a Change Order shall constitute a waiver of Claims by the Contractor arising out of the Work to be performed or deleted pursuant to the Change Order, except as specifically described in the Change Order. Reservations of rights will be deemed waived and are void unless the reserved rights are specifically described in detail to the satisfaction of the Owner and are initialed by the Owner.

§ 9.10.5.2 If a Subcontractor of any tier refuses to furnish a release or waiver required by the Owner, the Owner may (a) retain in the fund, account, or escrow funds in such amount as to defray the cost of foreclosing the liens of such claims and to pay attorneys' fees, the total of which shall be no less than 150% of the claimed amount, or (b) accept a bond from the Contractor, satisfactory to the Owner, to indemnify the Owner against such lien. If any such lien remains unsatisfied after all payments from the retainage are made, the Contractor shall refund to the Owner all moneys that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§ 9.10.6 Release of Retainage: The retainage will be held and applied by the Owner as a trust fund in a manner required by RCW 60.28. Release of the retainage will be processed in ordinary course of business upon the expiration of sixty (60) days following Final Acceptance of the Work by the Owner provided that no notice of lien shall have been given as provided in RCW 60.28, that no Claims have been brought to the attention of the Owner and that the Owner has no claims under this Contract; and provided further that, for state-funded projects, release of retention has been duly authorized by the State. The following items must also be obtained prior to release of retainage: pursuant to RCW 60.28, a certificate from the Department of Revenue; pursuant to RCW 50.24, a certificate from the Department of Employment Security; and appropriate information from the Department of Labor and Industries.

§ 9.10.7.1 The Contractor and all Subcontractors of any tier shall maintain books, ledgers, records, documents, estimates, bids, correspondence, logs, schedules, emails, facsimiles, and other tangible and electronic data and other evidence relating or pertaining to the costs and/or performance of the Contract ("records") to such extent and in such detail as will properly reflect and fully support compliance with the requirements of the Contract Documents and with all costs, charges and other amounts of whatever nature. The Contractor shall preserve such records for a period of three (3) years following the date of Final Acceptance under the Contract and for such longer period as may be required by any other provision of the Contract. Within seven (7) days of the Owner's request, the Contractor agrees to make available at the office of the Contractor during normal business hours all records for inspection, audit and reproduction (including electronic reproduction) by the Owner or its representatives. These requirements shall also be applicable to each Subcontractor of any tier and included in each Subcontract and purchase order issued with respect to the Work, except fixed-price Subcontracts where the price is \$25,000 or less. The Contractor agrees, on behalf of itself and Subcontractors of any tier, that any rights under RCW 42.56 will commence at Final Acceptance, and that the invocation of such rights at any time by the Contractor or a Subcontractor of any tier, or their respective representatives, shall initiate an equivalent right to disclosures from the Contractor and Subcontractors of any tier for the benefit of the Owner. Failure to fully comply with any requirements of this Section shall constitute a material breach of contract and shall constitute a waiver of all Changed Work and Claims by the Contractor and any Subcontractor that does not fully comply.

§ 9.10.7.2 In support of any Owner audit pursuant to Section 9.10.7.1 above or otherwise allowed under the Contract Documents, Contractor and its Subcontractors of any tier shall, upon request, promptly make available to Owner all relevant cost, schedule, engineering and accounting documents, including but not limited to the following:

- (1) Daily time sheets and supervisor's daily reports;
- (2) collective bargaining agreements;
- (3) insurance and all other documents used by Contractor benefits records;
- (4) payroll registers and certified payrolls*;
- (5) earnings records*;
- (6) payroll tax forms;
- (7) material invoices, requisitions, and delivery confirmations;
- (8) material cost distribution worksheet*;
- (9) equipment records (list of company equipment, rates, etc.)*;
- (10) vendors', rental agencies', subcontractors', and agents' invoices;
- (11) contracts between Contractor and each of its subcontractors, and all lower-tier subcontractor contracts and supplier contracts;
- (12) subcontractors' and agents' payment certificates;
- (13) canceled checks (payroll and vendors);
- (14) job cost report, including monthly totals*;
- (15) job payroll ledger*;
- (16) planned resource loading schedules and summaries*;
- (17) general ledger;
- (18) cash disbursements journal;
- (19) financial statements for all years reflecting the operations on the Work. In addition, the Owner may require, if it deems it appropriate, additional financial statements for three (3) years preceding execution of the Work;
- (20) depreciation records on all company equipment whether these records are maintained by the company involved, its accountant, or others;
- (21) if a source other than depreciation records is used to develop costs for Contractor's internal purposes in establishing the actual cost of owning and operating equipment, all such other source documents;
- (22) all non-privileged documents which relate to each and every Claim, together with all documents which support the amount of any adjustment in Contract Sum or Contract Time sought by each Claim;
- (23) work sheets or software used to prepare the Claim establishing the cost components for items of the Claim, including, but not limited to, labor, benefits and insurance, materials, equipment, subcontractors, all documents which establish the time periods, individuals involved, the hours for the individuals, and the rates for the individuals; and
- (24) work sheets, software, and all other documents used by Contractor to prepare its bid.

For those items above marked with an asterisk*, Contractor shall provide native electronic files of this information in a form compatible with Microsoft Excel.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall have the right to control and shall be solely and completely responsible for conditions of the work site, including safety of all persons and property, during performance of the Work. The Contractor shall maintain the Work site and perform the Work in a manner that meets statutory and common-law requirements for the provision of a safe place to work. This requirement shall apply continuously and not be limited to working hours. Any review by the Owner or the Architect of the Contractor's performance shall not be construed to include a review of the adequacy of the Contractor's safety measures in, on or near the site of the Work. No action or inaction of the Owner or the Architect relating to safety or property protection or a violation thereof shall in any way: (1) relieve the Contractor of sole and complete responsibility for the violation and the correction thereof, or of sole liability for the consequences of said violation; (2) impose any obligation upon the Owner or Architect to inspect or review the Contractor's safety program or precautions or to enforce the Contractor's compliance with the requirements of this Article 10; (3) impose any continuing obligation upon the Owner or Architect to ensure the Contractor performs the Work safely or to provide such notice to the Contractor or any other person or entity; (4) affect the Contractor's sole and complete responsibility for performing the Work safely or the Contractor's responsibility for the safety and welfare of its employees and the employees of Subcontractors of any tier; or (5) affect the Contractor's responsibility for the protection of property, students, staff and the general public.

§ 10.2 SAFETY OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

- .1 employees on or involved in the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss. The Contractor shall comply with all notices and comply with all requests from the Owner regarding the safety and protection of the Owner's students and staff. The Contractor shall comply with the safety regulations set forth in "Safety Standards for Construction" and "General Safety Standards" and any other requirements published by the Washington State Department of Labor and Industries. The Contractor shall comply with the Federal Occupational Safety and Health Act of 1970 (OSHA), including all revisions, amendments and regulations issued thereunder, and the provisions of the Washington Industrial Safety and Health Act of 1973 (WISHA), including all revisions, amendments and regulations issued thereunder by the Washington State Department of Labor and Industries. The WISHA regulations shall apply to all excavation, trenching and ditching operations. In case of conflict between any such requirements, the more stringent applicable regulation or requirement shall apply.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities. The Contractor shall maintain at the work site office or other well known place at the work site all materials (e.g., a first aid kit) necessary for giving first aid to the injured, and shall establish, publish and make known to all employees procedures for ensuring immediate removal to a hospital or a doctor's care, persons, including employees, who may have been injured on the site. Employees shall not be permitted to work on the site before the Contractor has established and made known procedures for removal of injured persons to a hospital or a doctor's care. The Contractor's and/or any Subcontractors shall ensure that at least one of such employees has a valid, effective first aid card.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the ~~Work~~, Work and explicitly permitted by the Contract Documents, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not load or permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

~~If either party the Contractor suffers injury or damage to person or property because of an alleged act or omission of the other party, Owner, or of others for whose acts such party is the Owner may be legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party-Owner within a reasonable time not exceeding 21 twenty-one (21) days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter. This Section does not apply to Claims, damages for additional costs or time, acceleration, or delay.~~

§ 10.2.8.1 At all times until the Owner's occupancy of the Work or a designated portion of the Work, the Contractor shall protect from damage, weather, deterioration, theft, vandalism and malicious mischief, and shall bear the risk of any uninsured loss or destruction of, or injury or damage to, all materials, equipment, tools, and other items incorporated or to be incorporated in the Work or designated portion, or consumed or used in the performance of the Work or designated portion, and all Work in process and completed Work or designated portion. The Contractor is responsible for any deductible amounts related to any insurance coverage without reimbursement.

§ 10.2.8.2 Any notice given to the Contractor by the Owner or the Architect of a safety or property protection violation will not: (1) relieve the Contractor of sole and complete responsibility for the violation and the correction thereof, or for sole liability for the consequences of said violation; (2) impose any obligation upon the Owner or Architect to inspect or review the Contractor's safety program or precautions or to enforce the Contractor's compliance with the requirements of this Article 10; or (3) impose any continuing obligation upon the Owner or Architect to provide such notice to the Contractor or any other persons or entity.

§ 10.3 HAZARDOUS MATERIALS

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a hazardous material or substance, as defined by CERCLA, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing. The Contractor shall proceed with the Work in areas not affected.

§ 10.3.2 Upon receipt of the Contractor's written notice, and with the Owner's agreement, the Owner shall obtain the services of a licensed laboratory to reasonably verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be verified that it has been rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of

such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable ~~objection~~-objection, but the Owner shall not be responsible for any delay resulting from the Contractor's objection to such person or entity. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time ~~shall~~ may be extended appropriately and the ~~Contract Sum~~ shall GMP may be increased in the amount of the Contractor's demonstrated and reasonable additional costs of shut-down, delay and ~~start-up~~-start-up, which adjustments shall be accomplished as provided in Articles 7, 8 and 15.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking ~~indemnity~~-indemnity or if the removal of such material or substance was a part of the Contractor's Work.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's ~~fault~~-fault, misuse, or negligence in the use and handling of such materials or substances. The Contractor shall store all hazardous materials safely, whether or not required by Contract Documents. The Contractor shall not install hazardous materials, including without limitation asbestos, lead, mercury, or polychlorinated biphenyl (PCB), in the Work.

§ 10.3.5 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without fault or negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

§ 10.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

§ 10.5 PUBLIC SAFETY AND CONVENIENCE

§ 10.5.1 The Contractor shall conduct its Work so as to ensure the least possible obstruction to vehicular traffic and inconvenience to the general public and others in the vicinity of the Work and to ensure the protection of persons, property and natural resources. No road or street shall be closed to the public except with the permission of the Owner and the proper governmental authority. Fire hydrants on or adjacent to the Work shall be accessible to fire fighting equipment at all times. Temporary provisions shall be made by the Contractor to ensure the use of sidewalks, fire lanes, private and public driveways and proper functioning of gutters, sewer inlets, drainage ditches and culverts, irrigation ditches and natural water courses, if any, on the Work site.

§ 10.6 WEATHER PROTECTION

§ 10.6.1 Temporary weather protection of the Work is the responsibility of the Contractor as necessary to proceed in accordance with the Contractor's approved schedule and environmental conditions as defined in the Contract Documents. Weather protection shall include but not be limited to protection of soils, subgrade preparation, exterior concrete, masonry, sealant, gypsum sheathing, roofing, and interior finishes. Delays and costs resulting from the Contractor's failure to protect the Work from damage due to weather are the sole responsibility of the Contractor.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized and admitted to do business in the jurisdiction in which the Project is located ~~such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable; possessing an A.M. Best's policyholder's rating of A or better and a financial rating of no less than IX and reasonably acceptable to the Owner, an occurrence-based Commercial General Liability Insurance Policy, which shall provide personal injury, bodily injury and property damage liability to cover the Contractor's operations, including Subcontractors and suppliers of any tier; owned, non-owned and hired vehicles; on work the Contractor may subcontract or sublet to others; and on the indemnity provisions of this Contract, including but not limited to premises, products/completed operations, personal injury, blanket contractual liability, explosion, collapse or underground (XCU), employment related practices coverage, and stopgap employer's liability. Except for the employment related practices coverage, this insurance shall name the Owner, the Architect, their consultants and employees, any required governmental agencies and others designated in the Contract Documents as additional insureds for all coverages required by Section 11.1 and shall include a severability of interest (cross liability clause) for Work performed under this Contract. The Contractor's policy shall be designated primary coverage for both defense and indemnity, and any Owner's policies excess. Such limits of liability insurance shall have per project general aggregate provisions and shall not be less than the following:~~

- ~~.1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;~~ \$1,000,000 per occurrence for bodily injury liability including sickness, disease or death and \$1,000,000 bodily injury liability for all occurrences (other than automobiles);
- ~~.2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;~~ \$1,000,000 for property damage liability (other than automobiles) because of damage to or destruction of property of others including loss of the use thereof caused by one occurrence and \$1,000,000 property damage liability for all occurrences;
- ~~.3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;~~ As an alternate to subsections .1 and .2 above, the Contractor may insure for \$1,000,000 limit protection for both bodily injury and property damage liability per occurrence and \$2,000,000 general aggregate;
- ~~.4 Claims for damages insured by usual personal injury liability coverage;~~
- ~~.5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;~~ \$1,000,000 per accident for bodily injury liability including sickness, disease or death and property damage liability because of damage to or destruction of property of others including loss of use thereof arising out of the operation of automobiles;
- ~~.6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;~~ \$1,000,000 for claims for damages insured by personal injury liability coverage which are sustained (1) by a person as a result of an offense directly or indirectly related to employment of such person by the Contractor or (2) by another person;
- ~~.7 Claims for bodily injury or property damage arising out of completed operations; and~~
- ~~.8 Claims involving contractual liability insurance;~~ \$1,000,000 for claims involving blanket contractual liability insurance (included and defined in the Commercial General Liability Insurance Policy) applicable to the Contractor's obligations under Section 3-18.3.18;
- ~~.7 \$2,000,000 for Contractor's Pollution Liability coverage, including non-owned disposal sites, for creation of new or exacerbated conditions;~~
- ~~.8 \$2,000,000 for Professional Liability covering any Contractor design, including but not limited to for the removal of hazardous materials; and~~
- ~~.9 In addition, the Contractor shall maintain an umbrella policy that provides excess limits following form over the primary layer, on all coverages except Contractor's Pollution liability, Employment Practice Liability, and Professional Liability, in an amount not less than \$10,000,000.~~

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, ~~whether shall be~~ written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the

Work until the date of final payment. Final Acceptance and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents. Completed operations coverage shall remain in force for three (3) years after Final Acceptance. The insurance described above shall include coverage for underground, collapse and explosion exposures. In addition, the Contractor shall purchase and maintain insurance for claims under workers' compensation (industrial insurance), disability benefit and other similar employee benefit acts in the State statutory amount and Stop Gap Liability Insurance (Employer's Liability Insurance) with coverage of at least \$1,000,000 each occurrence/each accident. All policies and certificates must be signed copies and policies shall contain a provision that written notice must be provided to the Owner 30 days before the policies are cancelled; Contractor must provide the Owner and Architect 45 days written notice before the Owner is removed as additional insured. The Contractor shall furnish to the Owner and Architect copies of any subsequently issued endorsements amending, modifying, altering or restricting coverage or limits. Furthermore, such policies or certificates shall contain a clause verifying that the policy contains coverage for blanket contractual liability including both oral and written contracts and that liability coverages include protection for underground, collapse and explosion and that the indemnification provisions of Section 3.18 are acknowledged. Losses up to the deductible amount or otherwise not covered by insurance shall be the responsibility of the Contractor without reimbursement.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. Before any presence on site, commencing Work or exposure to loss can occur, or, in any event, within ten (10) days after the execution of the Contract, the Contractor shall furnish the Owner with four copies of Certificates of Insurance on AIA Document G705 or ACORD Certificate of Liability Insurance as evidence of all insurance required by the Contract Documents, including an endorsement to the insurance policies naming the Owner, the Architect, their consultants and employees, any required governmental agencies and others designated in the Contract Documents as additional insureds using forms CG 20 10 and either CG 20 37 or CG 20 40 or their equivalents (additional insured including completed operations). If the Agreement is executed, no Progress Payment will be due until all such Certificates are furnished. The Contractor shall furnish to the Owner and Architect copies of any subsequently issued endorsements amending, modifying, altering or restricting coverage limits. Furthermore, such policies or certificates shall contain a clause verifying that the policy contains coverage for blanket contractual liability including both oral and written contracts and that liability coverages include protection for underground, collapse and explosion and that the indemnification provisions of Section 3.18 are acknowledged. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and annually thereafter and as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness. Upon written request, the Contractor shall provide a copy of its policies to the Owner.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's consultants as additional insureds for claims arising out of or caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims arising out of or caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations. operations giving at least thirty (30) days' notice of cancellation.

§ 11.1.5 The Contractor shall ensure and require that Subcontractors of any tier have insurance coverage to cover bodily injury and property damage on all operations and all vehicles owned or operated by Subcontractors of all tiers in the amount of \$1,000,000 per occurrence with a \$2,000,000 aggregate limit. Also, the Subcontractors shall name both the Contractor and the Owner as an additional insured giving at least thirty (30) days' notice of cancellation.

§ 11.1.6 If the Owner is damaged by the failure of the Contractor to maintain any of the insurance in this Article 11 or to so notify the Owner, then the Contractor shall bear all costs attributable thereto. The Owner may withhold payment pending receipt of all certificates of insurance. Failure to withhold payment shall not constitute a waiver.

§ 11.1.7 The Owner's specification or approval of the insurance in this Contract or of its coverage or amount shall not relieve or decrease the liability of the Contractor under the Contract Documents or otherwise. Coverages are the minimum to be provided and are not limitations of liability under the Contract, indemnification, or applicable law provisions. The Contractor may, at its expense, purchase larger coverage amounts. Notwithstanding anything herein to the contrary, the Contractor shall provide all bonding, insurance, and permit documentation as required by governmental entities for all portions of the Project.

§ 11.2 OWNER'S LIABILITY INSURANCE

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ 11.3 PROPERTY INSURANCE

§ 11.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized and admitted to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form to cover the course of construction upon the entire Work at the site and all materials or equipment furnished or installed on the Project, in the amount of the initial Contract Sum, GMP, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project. The Contractor shall be responsible for deductible amounts of up to \$10,000 for each occurrence, except for losses caused by the Owner or caused by flood or earthquake.

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

§ 11.3.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

~~§ 11.3.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.~~

§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit. All tools and equipment of the Contractor and Subcontractors of any tier not intended as part of the construction or installation of the Work will be the sole responsibility of the Contractor.

~~§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.~~

§ 11.3.2 BOILER AND MACHINERY INSURANCE

The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner;

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this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

§ 11.3.3 LOSS OF USE INSURANCE

The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

§ 11.3.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.3.6 ~~Before an exposure to loss may occur,~~ Upon the Contractor's request, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

§ 11.3.7 WAIVERS OF SUBROGATION

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section ~~11.3 or other property insurance applicable to the Work, 11.3,~~ except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner does not waive the subrogation rights to the extent of its property insurance on structures or portions of structures that do not comprise the Work. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.3.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner. Any inconsistent policy provisions will supersede the provisions of this Section.

§ 11.3.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with

the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.3.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Owner shall have the right to require the Contractor to furnish bonds covering **Contractor's Bonds**. The Contractor shall secure and pay for, from a surety company acceptable to the Owner and admitted and licensed in the State of Washington and possessing an A.M. Best's policyholder's rating of A- or better and a financial rating of no less than VIII, bonds covering the faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract under the Contract Documents, each in the full amount of the GMP plus sales tax, pursuant to RCW 39.08, "Contractor's Bond." Within ten (10) days of executing Amendment No. 1, the Contractor shall deliver the originals of the bonds to the Owner and one copy to the Architect. **THE OWNER MAY WITHHOLD PAYMENT TO THE CONTRACTOR UNTIL SUCH SURETY BONDS ARE RECEIVED AND MAY TERMINATE THE CONTRACT FOR CAUSE.** The Contractor shall be responsible for any delay in the Contract Time because of failure to submit acceptable bonds.

§ 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.4.3 Subcontractors' Performance and Payment Bonds. Each Subcontractor so required by a bidding package or RCW 39.10.380 shall secure and pay for, from a surety company acceptable to the Owner and the Contractor and admitted and licensed in the State of Washington, bonds covering the faithful performance of the subcontract and payment of obligations arising under the Contract Documents related to the subcontract, each in the full amount of the subcontract sum, pursuant to RCW 39.10 and RCW 39.08. Within ten (10) days of entering into the subcontract, and before any payment is due, the Subcontractor shall deliver copies of the bonds to the Owner and to the Architect.

§ 11.5 If the Owner is damaged by the failure of the Contractor to maintain any of the bonds or insurance in this Article 11 or to so notify the Owner, then the Contractor shall bear all costs attributable thereto. The Owner may withhold payment pending receipt of all certificates of insurance and bonds. Failure to withhold payment shall not constitute a waiver.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's or the Owner's request or to requirements of a governmental authority or as otherwise specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, Owner or governmental authority, be uncovered for the Architect's requesting party's examination and be replaced at the Contractor's expense without change in the Contract Time, Time or GMP.

§ 12.1.2 If a portion of the Work has been covered that the Architect, Architect, Owner or governmental authority has not specifically requested to examine prior to its being covered, the Architect covered and for which neither the Contract Documents nor governmental laws or regulations required inspection, the Architect, Owner or governmental authority may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner employed by the Owner, and in that event the Owner or the separate contractor shall be responsible for payment of such costs.

§ 12.2 CORRECTION OF WORK

§ 12.2.1 ~~BEFORE OR AFTER SUBSTANTIAL COMPLETION~~ BEFORE OR AFTER FINAL COMPLETION

The Contractor shall promptly correct Work rejected by the Architect or Owner or failing to conform to the requirements of the Contract Documents, whether discovered before or after ~~Substantial~~ Final Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 ~~AFTER SUBSTANTIAL COMPLETION~~ AFTER FINAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one (1) year after the later of the date of ~~Substantial~~ Final Completion of the Work or designated portion thereof or after the date for commencement of warranties established under ~~Section 9.9.1, the Contract Documents~~, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it according to the requirements of this Section 12.2.2 with no change in the Cost of the Work promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. ~~The Owner shall give such notice promptly after discovery of the condition. During the one year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4. If the Contractor does not promptly in accordance with the provisions of this Section 12.2.2 initiate work to correct the Work designated in the notice, the Owner may proceed to correct the Work, the Owner may without further notice dispose of materials and equipment as it sees fit, and the Contractor will be liable for all costs. This obligation shall survive acceptance of the Work under the Contract and termination of the Contract, is in addition to other warranties provided by contract or law, and does not establish a time limit for damages.~~

- .1 If, in the Owner's opinion, the nonconforming Work either prevents the use of a portion of the facility and/or immediate response is required to prevent further damage or to restore security to prevent external entrance, and/or is a safety hazard (e.g., break in the waterline, sprinkler system failure, failure of the heating system, inability to close or lock exterior door, etc.), the Contractor shall initiate corrective work on site the same day if the Contractor is notified prior to noon, or by noon the following day if notified after noon, and shall complete corrective action within 48 hours.
- .2 If, in the Owner's opinion, the nonconforming Work has the potential of becoming a safety hazard, of affecting internal security, or of limiting the use of the facility (e.g., potential loss of heat in a single classroom, failure of one or more plumbing fixtures, loose carpet seam in corridor, interior door lock not working, etc.), the Contractor shall initiate corrective work on site within two (2) working days and shall complete corrective action within five (5) working days.
- .3 If, in the Owner's opinion, the nonconforming Work does not have an impact on the use of the building, but must be fixed, (e.g., interior door closer broken, window cracked, wall covering seam coming loose, etc.), the Contractor shall initiate corrective work on site within fourteen (14) days and shall complete corrective action within twenty-eight (28) days.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after ~~Substantial~~ Final Completion by the period of time between ~~Substantial~~ Final Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall ~~not~~ be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the ~~Contract Sum will be reduced as appropriate and equitable. GMP will be reduced by the greater of the (1) cost of correction or (2) diminution of value of the Work that is not in accordance with the requirements of the Contract Documents.~~ Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

The Contract shall be governed by the internal law of the place where the Project is located ~~except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.~~ located, without regard to its choice of law provisions. The venue for any litigation shall be in the county in which the project is located.

§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 13.2.3 If a majority of the ownership or the control of Contractor is acquired by a third party, and such acquisition reasonably imperils performance or creates a conflict of interest that the Owner, in its sole discretion, cannot reasonably reconcile, then the Owner may terminate this Contract at any time pursuant to Section 14.2, except that the Owner shall give the Contractor thirty (30) days written notice of termination and the opportunity for the Contractor to cure prior to termination.

§ 13.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual, to ~~a member of the firm or entity, or the designated representative as identified in the A133 Agreement, or to an officer of the corporation~~ for which it was intended; or if delivered at, or sent by facsimile, email, registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice. The date of written notice shall be the earlier of the date of personal delivery, actual receipt by email or facsimile, or three (3) calendar days after the date of postmark.

§ 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law. The Contractor's sole remedy for Claims, disputes and other matters in question of the Contractor, direct or indirect, arising out of, or relating to, the Contract Documents or breach thereof, except Claims which have been waived under the terms of the Contract Documents, however, is the dispute resolution procedure of Article 15.

§ 13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

§ 13.4.3 If any portion of this Contract is held to be void or unenforceable, the remainder of the Contract shall be enforceable without such portion.

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made at an appropriate time and as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. ~~authorities having jurisdiction shall be made at an appropriate time.~~ Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to or provided by the Owner, or with the appropriate public authority, and the Owner shall bear all related costs of tests, inspections and approvals. ~~necessary tests, inspections and approvals, except that the Contractor will be responsible for any costs of retesting and any extra costs caused by the Contractor.~~ The Contractor shall give the Architect and Owner timely notice of when and where tests and inspections are to be made so that the Architect and Owner may be present for such procedures. The independent testing agency shall prepare the test reports, logs and certificates applicable to the specific inspections and tests and promptly and simultaneously deliver the specified number of copies of them to the designated parties. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Owner and Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Owner and the Architect.

§ 13.5.5 If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work. The Contractor shall provide the Owner and Architect at least forty-eight (48) hours' notice prior to all tests and inspections.

§ 13.5.7 If the Owner is responsible under the Contract Documents, law or regulation to pay only for an inspection of any inspector, consultant or Architect, the Owner shall be required to pay only for the first actual inspection. If the Contractor arranges for an inspection and an extra cost is incurred because the inspector is required to wait, to leave without inspecting, to perform a partial inspection, to return to complete or reinspect, or otherwise to expend time other than for the primary inspection, the Contractor shall be responsible for all such costs to the extent caused by the Contractor. If the Contractor does not pay the charges for which it is responsible within thirty (30) days of billing, the Owner has the option to pay the charges directly and backcharge the Contractor on the next progress payment for the amount paid plus a 10% handling fee.

§ 13.5.8 No acceptance by the Owner of any Work shall be construed to result from any inspections, tests or failures to inspect or test by the Owner, the Owner's representatives, the Architect or any other person. No inspection, test, failure to inspect or test, or failure to discover any defect or nonconformity by the Owner, the Owner's representatives, the Architect or any other person shall relieve the Contractor of its responsibility for meeting the requirements of the Contract Documents or impair the Owner's right to reject defective or nonconforming items or right to avail itself of any other remedy to which the Owner may be entitled, notwithstanding the Owner's knowledge of the defect or

nonconformity, its substantiality or the ease of its discovery. Entities performing inspections and/or testing do not have the authority to direct the Contractor's means and methods and are not agents or representatives of the Owner or Architect. Inspections which meet the requirements of code shall not override the requirements of the Contract Documents, which may be more stringent.

§ 13.6 INTEREST

Payments due and unpaid under the Contract Documents shall bear interest ~~from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located as specified by RCW 39.76, not to exceed the Bank of America prime rate plus 2%.~~

§ 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the ~~Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. Agreement, and within the shorter of the time period specified by applicable law and the time limits identified in this Agreement.~~ The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

§ 13.8 STATUTES AND OTHER REQUIREMENTS

The Contractor shall abide by the provisions of all applicable Washington statutes and regulations. Although a number of statutes are referenced in the Contract Documents, these references are not meant to be a complete list and should not be relied upon as such.

§ 13.8.1 Contractor Registration and Related Requirements. Pursuant to RCW 39.06, "Registration, Licensing of Contractors," the Contractor shall be registered and licensed as required by the laws of the State of Washington, including but not limited to RCW 18.27, "Registration of Contractors." The Contractor shall: have a current state unified business identifier number; have industrial insurance coverage for the Contractor's employees working in Washington as required in Title 51 RCW; have an employment security department number as required in Title 50 RCW; have a state excise tax registration number as required in Title 82 RCW, and; not be disqualified from bidding on any public works contract under RCW 39.06.010 (unregistered or unlicensed contractors) or RCW 39.12.065(3) (prevailing wage violations).

§ 13.8.2 Law Against Discrimination. The Contractor shall comply with pertinent statutory provisions relating to public works of RCW 49.60, "Discrimination."

§ 13.8.3 Provisions for Aged and Handicapped Persons. The Contractor shall comply with pertinent statutory provisions relating to public works of RCW 70.92, "Provisions in Buildings for Aged and Handicapped Persons," and the Americans with Disabilities Act.

§ 13.8.4 Safety Standards. The Contractor shall comply with pertinent provisions of RCW 49.17, "Washington Industrial Safety and Health Act," and Chapter 296-155 WAC, "Safety Standards for Construction Work."

§ 13.8.5 Unemployment Compensation. Pursuant to RCW 50.24, "Contributions by Employers," in general and RCW 50.24.130 in particular, the Contractor shall pay contributions for wages for personal services performed under this Contract or arrange for a bond acceptable to the commissioner.

§ 13.8.6 Drug-Free Workplace. The Contractor and all Subcontractors of any tier shall fully comply with all applicable federal, state, and local laws and regulations regarding drug-free workplace, including the Drug-Free Workplace Act of 1988. Any person not fit for duty for any reason, including the use of alcohol, controlled substances, or drugs, shall immediately be removed from the Work.

§ 13.8.7 Tobacco-Free Environment. Pursuant to RCW 28A.210.310, smoking or use of any kind of lighted pipe, cigar, cigarette or any other lighted smoking equipment, material or smokeless tobacco products, including vaping, is prohibited on all school district property.

§ 13.8.8 Weapons-Free Environment. The Contractor and its employees, agents, and Subcontractors of any tier shall not bring onto the Project site or onto any Owner property any firearm or any other type of weapon described in either

RCW 9.41.280(1) or RCW 9.41.250. Any person violating this Section shall immediately be removed from the Work, and such a violation shall be grounds for a termination of this Agreement for cause at the Owner's discretion.

§ 13.8.9 Asbestos Removal. To the extent this Project involves asbestos removal, the Contractor shall comply with Chapter 49.26 RCW, "Health and Safety – Asbestos," and any provisions of the Washington Administrative Code promulgated thereunder, and the applicable section of the Specifications should be viewed for possible insurance required for the applicable Subcontractor.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 ~~The Except as provided by RCW 60.28.080, the Contractor may terminate the Contract if the Work is stopped for a period of 30-sixty (60) consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:~~

- .1** Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2** An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3** Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has improperly not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4** The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven (7) days' written notice to the Owner and ~~Architect, Architect~~ (during which period the Owner has the opportunity to cure), terminate the Contract and recover from the Owner payment for Work ~~executed, including reasonable overhead and profit, properly executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead and profit on Work executed, direct costs incurred by reason of such termination, and damages, direct damages.~~ The total recovery of the Contractor shall not exceed the unpaid balance of the GMP less the remaining contingencies.

§ 14.1.4 If the Work is stopped for a period of ~~60-sixty (60) consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven (7) additional days' written notice to the Owner and the Architect, (during which period the Owner has the opportunity to cure), terminate the Contract and recover from the Owner as provided in Section 14.1.3. The total recovery of the Contractor shall not exceed the unpaid balance of the Contract Sum less the remaining contingency.~~

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 ~~The Owner may terminate the Contract if the Contractor may, upon seven (7) days' written notice to the Contractor, terminate (without prejudice to any right or remedy of the Owner) the whole or any portion of the Work or the Contract for cause if the Contractor:~~

- .1** ~~repeatedly~~ refuses or fails to supply enough properly skilled workers or proper materials;
- .2** fails to make prompt payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3** ~~repeatedly disregards~~ fails to comply with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public ~~authority; authority having jurisdiction; or~~
- .4** fails to prosecute the Work or any portion thereof with sufficient diligence to ensure the Substantial Completion of the Work within the Contract Time; or

- .5 is adjudged bankrupt, makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of its insolvency; or
- .6 fails to comply with the provisions of RCW 28A.400.330 by permitting a worker on the Project having contact with children who has been convicted of or pled guilty to a felony crime involving children as described in Section 3.4.3;
- .7 staffs the Project with personnel different from the personnel listed in its proposal; or
- .8 otherwise is guilty of a material or substantial breach of or default under a provision of the Contract Documents.

§ 14.2.2 When any of the above reasons exist, the Owner, ~~upon certification by the Initial Decision Maker that sufficient cause exists to justify such action,~~ Owner may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven (7) days' written notice, terminate employment of the Contractor on all or a portion of the Work and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work; the Work; and
- .4 Take or direct any or all of the actions in Section 14.5.1.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the ~~Contract Sum~~ GMP, less the remaining contingencies, exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. The remaining contingency shall accrue to the Owner. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, ~~shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.~~

§ 14.2.5 If the Owner terminates a portion of the Work, the Contractor shall continue the performance of the remainder of the Work in accordance with the Contract Documents to the extent not terminated.

§ 14.2.6 If, after the Contractor has been terminated pursuant to this Section 14.2 or otherwise for cause, it is determined that none of the circumstances set forth in Section 14.2.1 exists, then such termination shall be considered a termination for convenience pursuant to Section 14.4.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The ~~Contract Sum~~ GMP and Contract Time shall be adjusted for ~~increases~~ changes in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the ~~Contract Sum~~ GMP shall be consistent with the terms of the Contract Documents. No adjustment shall be made to the extent ~~profit.~~

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate (without prejudice to any right or remedy of the Owner) the whole or any portion of the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;

- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed, consistent with the Contract Documents for Work properly executed, and costs necessarily incurred by reason of such termination (such as the cost of settling and paying claims arising out of the termination of Work under subcontracts or orders), along with reasonable profit on the Work not executed, not to exceed the Contractor's Fee in the Agreement of the Cost of the Work not performed. The total sum to be paid to the Contractor under this Section 14.4 shall not exceed the GMP, less the remaining contingencies, as reduced by the amount of payments otherwise made, by the larger of (1) the actual value or (2) the scheduled value of Work not terminated, and as otherwise permitted by this Contract. The amounts payable to the Contractor shall exclude the fair value of property which is destroyed, lost, stolen or damaged so as to become undeliverable to the Owner or to a buyer pursuant to Sections 14.5.1.6 or 14.5.1.7.

§ 14.5 EFFECTS OF TERMINATION BY OWNER

§ 14.5.1 Unless the Owner directs otherwise, after receipt of a Notice of Termination from the Owner pursuant to Section 14.2 or 14.4, the Contractor shall promptly:

- .1 stop Work under the Contract on the date and as specified in the Notice of Termination;
- .2 place no further orders or subcontracts for materials, equipment, services or facilities, except as may be necessary for completion of any portion of the Work that is not terminated;
- .3 procure cancellation of all orders and subcontracts, upon terms acceptable to the Owner, to the extent that they relate to the performance of Work terminated;
- .4 assign to the Owner all of the right, title and interest of the Contractor under all orders and subcontracts, as directed by the Owner, in which case the Owner shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- .5 with the Owner's approval, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts not assigned to the Owner;
- .6 transfer title and deliver to the entity or entities designated by the Owner the fabricated or unfabricated parts, Work in process, partially completed supplies and equipment, materials, parts, tools, dies, jigs and other fixtures, completed Work, supplies and other material produced as part of, or acquired in connection with the performance of, the Work terminated, and the completed or partially completed plans, drawings, information and other property related to the Work;
- .7 use commercially reasonable efforts to sell any property of the types referred to in Section 14.5.1.6. The Contractor shall not be required to extend credit to any buyer, and may acquire any such property under the conditions prescribed by and at a price or prices approved by the Owner, and the proceeds of any such transfer or disposition may be applied in reduction of any payments to be made by the Owner to the Contractor;
- .8 take such action as may be necessary or as directed by the Owner to preserve and protect the Work and property related to this Project in the possession of the Contractor in which the Owner has an interest; and
- .9 continue performance only to the extent not terminated.

§ 14.5.2 In arriving at any amount due the Contractor after termination, the following deductions shall be made:

- .1 all unliquidated advance or other prior payments on account made to the Contractor applicable to the terminated portion of the Contract;
- .2 any claim the Owner may have against the Contractor;
- .3 an amount necessary to protect the Owner against outstanding or potential liens or Claims;
- .4 the agreed price for or the proceeds of sale of any materials, supplies or other things acquired by the Contractor or sold, pursuant to the provisions of Section 14.5.1.7, and not otherwise recovered by or credited to the Owner; and
- .5 the remaining contingency.

§ 14.5.3 If (and only if) the termination pursuant to Section 14.4 is partial, the Contractor may file a Claim for an equitable adjustment of the price or prices specified in the Contract relating to the continued portion of the Contract. Any Claim by the Contractor for an equitable adjustment under this Section must be asserted within sixty (60) days from the effective date of the partial Termination.

§ 14.5.4 The Contractor shall refund to the Owner any amounts paid by the Owner to the Contractor in excess of costs reimbursable under the Contract Documents.

§ 14.5.5 The Contractor shall, from the effective Date of Termination until the expiration of three (3) years after final settlement under this Contract, preserve and make available to the Owner, at all reasonable times at the office of the Contractor, and without charge to the Owner, all books, records, documents, photographs and other evidence bearing on the costs and expenses of the Contractor under this Contract and relating to the terminated Work. The Owner may have costs reimbursable under this Article 14 audited and certified by independent certified public accountants selected by the Owner, who shall have full access to all the books and records of the Contractor.

§ 14.5.6 The damages and relief from termination by the Owner specifically provided in Article 14 shall be the Contractor's sole entitlement in the event of termination.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 CLAIMS

§ 15.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of the Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. ~~Contract Documents.~~ The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the ~~Contract.~~ Contract Documents. The responsibility to substantiate Claims shall rest with the party making the Claim. Claims must be initiated in writing and include the information and substantiation required by the Contract Documents. Neither a Request for Information, nor a Construction Change Directive, nor a Change Order, nor a reservation of rights, nor minutes of a meeting, nor a Daily Report, nor any log entry or ROM log entry, nor an Owner's request for or the Contractor's response to a Change Order proposal or a proposal request, nor a notice of a potential or future Claim shall constitute a Claim.

§ 15.1.2 NOTICE OF CLAIMS

~~Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.~~

§ 15.1.2.1 In an effort to reduce the incidence and costs to all parties of extended disputes, all Claims, direct or indirect, arising out of, or relating to, the Contract Documents or the breach thereof, except Claims which have been waived under the terms of the Contract Documents, shall be decided exclusively by the following alternative dispute resolution procedure unless the parties mutually agree in writing otherwise. To the extent that the Owner and Contractor agree to any partnering process to help resolve disputes, or if the Owner and Contractor agree to engage a Disputes Review Board (or individual), such processes shall be in addition to, and not in place of, the mandatory dispute resolution procedures in the Contract Documents.

§ 15.1.2.2 Except for Claims requiring notice before proceeding with the affected Work as otherwise described in the Contract Documents, the Contractor shall submit a written notice of any Claim to the Owner and the Architect within seven (7) days of the occurrence of the event giving rise to such Claim and shall include a clear description of the event leading to or causing the Claim. For all Claims, the Contractor shall submit a written Claim as provided herein within thirty (30) days of submitting the notice. Claims shall include a clear description of the Claim and any proposed change in the GMP (showing all components and calculations) and/or Contract Time (showing cause and analysis of the resultant delay in the critical path and other information referenced in Section 8.3.2) and shall provide data fully supporting the Claim, including without limitation a complete explanation as to why the relief sought is not within the scope of the Contract Documents. The Contractor may delay submitting data by an additional fourteen (14) days if it notifies the Owner in its Claim that substantial data must be assembled. Failure to properly submit the notice or Claim shall constitute a waiver of the Claim. The Claim shall be deemed to include all changes, direct and indirect, in cost and in time to which the Contractor (and Subcontractors of any tier) is entitled and may not contain reservations of rights without the Owner's written approval; any such unapproved reservations of rights shall be without effect. Any

Claim of a Subcontractor of any tier may be brought only through, and after review by, the Contractor. For the purposes of calculating such time periods, an "event giving rise to a Claim" is not a Request for Information but rather is a response that the Contractor believes would change the GMP and/or Contract Time. The fact that the Owner and the Contractor may consider, discuss or negotiate an untimely or waived Claim shall in no way be deemed to constitute a waiver of any notice or other provisions of the Contract Documents.

§ 15.1.2.3 Notice and Claims. All notices and Claims shall be made in writing as required by the Contract, and shall be addressed to the Owner's Designated Representative identified in the A133. Any notice of a Claim of the Contractor against the Owner and any Claim of the Contractor, whether under the Contract or otherwise, must be made pursuant to and in strict accordance with the applicable provisions of the Contract. No act, omission, or knowledge, actual or constructive, of the Owner or the Architect shall in any way be deemed to be a waiver of the requirement for timely written notice and a timely written Claim unless the Owner and the Contractor sign an explicit, unequivocal written waiver approved by the Owner's Board of Directors. The fact that the Owner and the Contractor may consider, discuss, or negotiate a Claim that has or may have been defective or untimely under the Contract shall not constitute a waiver of the provisions of the Contract Documents unless the Owner and Contractor sign an explicit, unequivocal waiver approved by the Owner's Board of Directors. The Contractor expressly acknowledges and agrees that the Contractor's failure to timely submit required notices and/or timely submit Claims has a substantial impact upon and prejudices the Owner, including but not limited to the inability to fully investigate or verify the Claim, mitigate damages, choose alternative options, adjust the budget, delete or modify the impacted Work, and/or monitor time, cost and quantities. For these and other reasons, the parties stipulate that the Owner is prejudiced by the Contractor's failure to timely submit notices and/or Claims as required by the Contract Documents, and that the Owner shall not be required to establish any actual prejudice in order to enforce the notice and Claim provisions of the Contract Documents.

§ 15.1.2.4 Upon receipt of a Claim against the Contractor or at any time thereafter, the Architect or the Owner may, but are not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Architect or the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.1.2.5 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the Claim by the Architect, by mediation or by litigation.

§ 15.1.2.6 At any time following the Owner's receipt of the written Claim, the Owner may require that an officer of the Contractor, a principal of the Architect, and the Owner's Superintendent or designee (all with authority to settle) meet, confer, and attempt to resolve the Claim. If the Claim is not resolved, the Contractor may bring no litigation against the Owner unless the Claim is first subject to nonbinding mediation as described in this Article 15. This mediation requirement cannot be waived except by an explicit written waiver by both parties.

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, including the dispute resolution process and except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and maintain the Contractor's Construction Schedule and the Owner shall continue to make payments in accordance with the Contract Documents. ~~The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.~~

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the ~~Contract Sum~~ GMP, written notice as provided herein shall be given before proceeding to execute ~~the Work~~ the Work, and a written notice and a written Claim must be made in accordance with this Article 15, or it will be waived. If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Architect, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Architect, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension or (7) other reasonable grounds, a Claim shall be filed in accordance with this Article 15. The Contractor shall not be entitled to an increase in the GMP or Contract Time arising out of an error or conflict in or among the Contract Documents where the Contractor failed adequately to review the Contract Documents or failed to report the error or conflict to the Architect and the Owner in a timely manner consistent with the requirements of the Contract

Documents. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be ~~given~~, and a written Claim must be made in accordance with Article 15, or it will be waived. The Contractor's Claim shall include an estimate of any cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary. Any adjustment in the Contract Time arising from a Change or a Claim shall be limited to the change in the actual critical path of the Project directly caused thereby. If the delay was not caused by the Owner, the Contractor, a Subcontractor of any tier, or the Architect, or anyone acting on behalf of any of them, the Contractor is entitled only to an increase in the Contract Time in accordance with the Contract Documents but not a change in the GMP. If the delay was caused by the Contractor, a Subcontractor of any tier, or anyone acting on behalf of any of them, the Contractor is not entitled to an increase in the Contract Time or in the GMP.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled ~~construction~~, and that the Work was on schedule (or not behind schedule through the fault of the Contractor) at the time the adverse weather conditions occurred. Neither the Contract Time nor the GMP will be adjusted for normal inclement weather. The Contractor shall be entitled to a change in the Contract Time only (but not a change in the GMP) if the Contractor can substantiate to the reasonable satisfaction of the Owner and Architect that there was materially greater than normal inclement weather considering the full term of the Contract Time and using a ten-year average of accumulated record mean values from climatological data compiled by the U.S. Department of Commerce National Oceanic and Atmospheric Administration for the locale closest to the Project, and that the alleged abnormal inclement weather actually extended the critical path of the Work. The change in Contract Time shall be provisional until Substantial Completion has been achieved, at which time the change in the Contract Time shall be the extent to which the total net accumulated number of calendar days lost due to inclement weather from commencement of the Work until Substantial Completion exceeds the total net accumulated number to be expected for the same period from the aforesaid data.

§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes without limitation:

- .1 damages incurred by the Owner for rental expenses, ~~for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and~~
- .2 damages incurred by the Contractor for principal and home office overhead and expenses including without limitation the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work for losses on other projects, for loss of profit, and for interest or financing costs.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract ~~Documents.~~ Documents, or to preclude an obligation of the Contractor to indemnify the Owner for direct, indirect or consequential damages alleged by a third party.

§ 15.2 INITIAL DECISION

[not used.]

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 MEDIATION

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to the initiation of binding dispute resolution. This requirement cannot be waived except by an explicit written waiver signed by the Owner and the Contractor.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, ~~unless the parties mutually agree otherwise, mediation.~~ A request for mediation shall be filed in writing with the other party to the Contract, and the parties shall promptly attempt to mutually agree upon a mediator. If the parties have not reached agreement on a mediator within thirty (30) days of the request, either party may file the request with the American Arbitration Association or such other alternative dispute resolution service to which the parties mutually agree, with a copy to the other party, and the mediation shall be administered by the American Arbitration Association (or other agreed service) in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. currently in effect. A request for mediation shall be made in writing, writing and delivered to the other party to the Contract, and filed with the person or entity administering the mediation. ~~The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation Contract.~~ Mediation shall proceed in advance of

binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, mediation, unless stayed for a longer period by agreement of the parties or court order. ~~If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.~~

§ 15.3.3 The parties to the mediation shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.3.4 An officer of the Contractor and the Owner's Superintendent or designee must attend the mediation session with authority to settle the Claim. To the extent there are other parties in interest, such as the Architect or Subcontractors, their representatives, also with authority to settle the Claim, shall also attend the mediation session. Unless the Owner and the Contractor mutually agree in writing otherwise, all unresolved Claims shall be considered at a single mediation session that shall occur after Substantial Completion but prior to Final Acceptance by the Owner.

§ 15.4 ARBITRATION LITIGATION

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded. **Litigation.** The Contractor may bring no litigation on Claims unless such Claims have been properly raised and considered in the procedures of this Article 15. The Contractor shall have the burden to demonstrate in any litigation that it has complied with all requirements of this Article 15. All unresolved Claims of the Contractor shall be waived and released unless the Contractor has complied with the time limits of the Contract Documents, and litigation is served and filed within the earlier of (a) 120 days after the Date of Substantial Completion approved in writing by the Owner or (b) ninety (90) days after Final Acceptance. This requirement cannot be waived except by an explicit written waiver signed by the Owner and the Contractor. The pendency of a mediation (the time period between the written mediation request and the date of mediation) shall toll these deadlines until the earlier of the mediator providing written notice to the parties of impasse or thirty (30) days after the date of the mediation session. Neither the Contractor nor a Subcontractor of any tier, whether claiming under a bond or lien statute or otherwise, shall be entitled to attorneys' fees directly or indirectly from the Owner (but may recover attorneys' fees from the bond or statutory retainage fund itself to the extent allowable under law). The Owner may join the Contractor as a party to any litigation or arbitration involving the alleged fault, responsibility, or breach of contract of the Contractor or Subcontractor of any tier.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 15.4.4 CONSOLIDATION OR JOINDER

§ 15.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Graehm Wallace, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with this certification at 13:38:57 PT on 10/13/2020 under Order No. 2573503930 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2007, General Conditions of the Contract for Construction, as published by the AIA in its software, other than changes shown in the attached final document by underscoring added text and striking over deleted text.

(Signed)

(Title)

(Dated)



SCHOOL BOARD ACTION REPORT

DATE: October 5, 2020
FROM: Denise Juneau, Superintendent
LEAD STAFF: Fred Podesta, Chief Operations Officer
206-252-0636, fhpodesta@seattleschools.org

For Introduction: November 18, 2020
For Action: December 2, 2020

1. TITLE

BTA IV: Final Acceptance of Contract K5102 with King County Directors' Association (KCDA) and Musco Sports Lighting, LLC, for the Athletic Field Lighting at Robert Eagle Staff Middle School project

2. PURPOSE

The purpose of this action is to approve final acceptance of Contract K5102 with King County Directors' Association (KCDA) and Musco Sports Lighting, LLC, for the Athletic Field Lighting at Robert Eagle Staff Middle School project. Board approval allows the district to submit required documents to the State of Washington Department of Labor & Industries, Department of Revenue and Employment Security Department and closeout the project, including authorizing the release of project retainage.

3. RECOMMENDED MOTION

I move that the School Board accept the work performed under Contract K5102 with King County Directors' Association (KCDA) and Musco Sports Lighting, LLC, for the Athletic Field Lighting at Robert Eagle Staff Middle School project as final.

4. BACKGROUND INFORMATION

a. Background

The Athletic Field Lighting at Robert Eagle Staff Middle School project is located at 1330 N 90th St, Seattle, WA 98103. The project was funded under the Building, Technology and Academics/Athletics IV (BTA IV) Program. The project included installing ten (10) light poles with LED lights and lighting controls at the existing synthetic turf playfield.

The lighting was installed as mitigation for the impacts of SPS's change in school start times. In the fall of 2016, SPS changed start times so high school students would start at 8:50 a.m. and be dismissed at 3:20 p.m., approximately 1 hour later than the previous schedule. Starting fall 2017, high schools started at 8:45 or 8:55 a.m. and were dismissed at 3:35 or 3:45 p.m. The later dismissal time for high schools means that school athletic fields are used for practice later in the day, reducing the time that unlighted fields are available for school practices and events and for community use under the Joint Use

Agreement with Seattle Parks and Recreation. This was identified as a significant adverse impact in the Change in School Start Times Programmatic Environmental Impact Statement (EIS) (SPS, 2015). The lights were also installed to meet the purposes of the Joint Use Agreement to increase youth and community access to SPS facilities and grounds and to increase student access to parks facilities and grounds.

Seattle Public Schools (SPS) added lighting to the athletic field at Robert Eagle Staff Middle School to allow for both SPS and community use. Use of the field includes multiple year-round sports events such as: baseball, softball, soccer, and ultimate Frisbee. In addition, the fields can be used as a practice (not competition) football field for Lincoln High School. The fields are also used for organized non-scholastic athletic activities such as little-league baseball, softball, soccer, ultimate Frisbee, and lacrosse.

The proposal to add lighting to the athletic field at Robert Eagle Staff Middle School was reviewed and evaluated through the district's State Environmental Policy Act (SEPA) process and through the City of Seattle's school design departure process, master use permit process, and building permit process.

The district contracted with the King County Director's Association (KCDA), which is a purchasing cooperative owned by Washington State Public School Districts. KCDA bids and awards supply and service contracts through open competition as prescribed by the laws of the State of Washington. This approach to project delivery allowed for several advantages, including reducing the time needed for procurement, as the process began immediately with obtaining quotes from a known qualified vendor, Musco Sports Lighting, LLC, and execution of a contract.

The contractor achieved substantial completion of the work in August 2019 and final completion in August 2020. There were two change orders, totaling in the amount of \$45,988 for additional lighting controls and unforeseen conditions encountered underground during the project. The final contract expenditure was \$775,964. No apprentices were reported for this project as it did not meet the minimum contract value required by law.

b. Alternatives

Not accepting the project in a timely manner could put the district in a position subject to litigation. Therefore, this alternative is not recommended.

c. Research

- Discussions with SPS Athletic Department staff
- Seattle Public Schools Technical Building Standards dated December 2012

5. FISCAL IMPACT/REVENUE SOURCE

All payments have been made to the contract from the BTA IV Capital levy funds. No outstanding invoices remain.

During the course of the project, two Change Orders were issued, comprised of three Change Order Proposals. Change Orders totaled \$45,988 plus Washington State sales tax (WSST). Change order expenditures totaled 6.9% of the construction contract amount with expenditures as follows:

Contractor:	KCDA/ Musco Sports Lighting, LLC
Contract Amount:	\$ 658,793
Change Orders:	\$ 45,988
WSST	<u>\$ 71,183</u>
Total Contract including WSST:	\$ 775,964
Project Retention:	\$ 35,239

Expenditure: ☐ One-time ☐ Annual ☐ Multi-Year ☒ N/A

Revenue: ☐ One-time ☐ Annual ☐ Multi-Year ☒ N/A

6. **COMMUNITY ENGAGEMENT**

With guidance from the District's Community Engagement tool, this action was determined to merit the following tier of community engagement:

☒ Not applicable

☐ Tier 1: Inform

☐ Tier 2: Consult/Involve

☐ Tier 3: Collaborate

7. **EQUITY ANALYSIS**

The selection of projects for BTA IV Capital Levy was completed in 2015. Projects selected for the BTA IV Capital Levy were intended to address student capacity needs and inadequate building systems in school facilities across the city. Providing athletic field lights at our middle and high schools responds to comments received concerning the district's environmental impact statement changing high school bell times allowing greater access for youth to athletic fields. As such, this motion was not put through an equity analysis as it would have been done for the district's current capital planning efforts.

8. **STUDENT BENEFIT**

The project ensures a safe, secure learning environment for every student. It allows additional time on the athletic fields where students can engage in sports activities, special events and celebrations.

9. WHY BOARD ACTION IS NECESSARY

- ☐ Amount of contract initial value or contract amendment exceeds \$250,000 (Policy No. 6220)
- ☐ Amount of grant exceeds \$250,000 in a single fiscal year (Policy No. 6114)
- ☐ Adopting, amending, or repealing a Board policy
- ☒ Formally accepting the completion of a public works project and closing out the contract
- ☐ Legal requirement for the School Board to take action on this matter
- ☐ Board Policy No. _____, [TITLE], provides the Board shall approve this item
- ☐ Other: _____

In accordance [WAC 392-344-160](#) Board approval of final acceptance is required prior to the Release of Project Retainage.

10. POLICY IMPLICATION

For purposes of avoiding disputes over the timing of the filing of liens, the School Board should accept the work on a construction project as finally complete prior to the release of retention.

11. BOARD COMMITTEE RECOMMENDATION

This motion was discussed at the Operations Committee meeting on November 5, 2020. The Committee reviewed the motion and _____.

12. TIMELINE FOR IMPLEMENTATION

Acceptance of completed project by School Board	December 2, 2020
Release of retainage bond	Approx. March 1, 2021
Contractor's one-year warranty period ends	August 10, 2020

13. ATTACHMENTS

- Architect's Letter of Recommendation (for reference)



8/12/2020

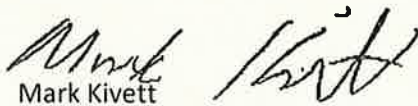
Ethan Bernau and Seattle Public School District

Robert Eagle Staff Athletic Fields – Seattle Washington

This letter is to notify you that Musco Sports Lighting has completed the project at Robert Eagle Staff Athletic Fields., Seattle School District – owner. All Punch List items on the project are also completed.

Let me know if you need anything else.

Sincerely,


Mark Kivett

Credit Manager



SCHOOL BOARD ACTION REPORT

DATE: October 27, 2020
FROM: Denise Juneau, Superintendent
LEAD STAFF: Fred Podesta, Chief Operations Officer
206-252-0102, fhpodesta@seattleschools.org

For Introduction: November 18, 2020
For Action: December 2, 2020

1. TITLE

BEX IV & BTA IV: Final Acceptance of Contract K5108 with Western Ventures Construction for the JSCEE Freezer Upgrade project

2. PURPOSE

The purpose of this action is to approve final acceptance of Contract K5108 with Western Ventures Construction for the John Stanford Center for Educational Excellence (JSCEE) Freezer Upgrade Project. Board approval allows the district to submit required documents to the State of Washington Department of Labor & Industries, Department of Revenue and Employment Security Department and closeout the project, including authorizing the release of project retainage.

3. RECOMMENDED MOTION

I move that the School Board accept the work performed under Contract K5108 with Western Ventures Construction for the JSCEE Freezer Upgrade Project as final.

4. BACKGROUND INFORMATION

a. Background

The JSCEE Freezer Upgrade Project is located at 2445 3rd Ave. S, Seattle, WA 98134. The project was funded from the Building Excellence (BEX) IV and Buildings, Technology and Academics/ Athletics (BTA) IV Capital levies' Food Service Equipment Fund. The project allowed for refrigeration equipment upgrades to the central kitchen facilities, which provide meals for students throughout the district. The JSCEE freezer upgrade included replacement of freezer mechanical equipment, lighting replacement and envelope repairs. The project was successfully completed during the summer of 2019 as the existing refrigeration mechanical equipment was in poor condition.

SH Architecture (whose firm name was changed to Knit Designing Communities on Oct. 28, 2019) was selected for the design of the project. The district sought bids in February of 2019 and awarded the contract to Western Ventures Construction on March 20, 2019.

Western Ventures Construction began shutdown of the JSCEE freezer and with subcontractors installed new electrical raceways, constructed a secured area and mechanical pad for refrigeration equipment and repairs on the envelope at close of the school year. Work was completed during the summer, allowing food to be restocked in the freezer by start of the 2019-2020 school year.

The contractor satisfactorily completed the contract work and the consultant, Knit, agrees and recommends the board's final acceptance of the project. The apprenticeship utilization rate for this project was 0%. The final construction contract value including Washington State sales tax (WSST) was \$614,648, which is \$6,738 above the total project budget.

b. Alternatives

Not accepting the project in a timely manner could put the district in a position subject to litigation. Therefore, this alternative is not recommended.

c. Research

- Seattle Public Schools Technical Building Standards dated December 2012
- 2015 Seattle Building Code, including amendments

5. FISCAL IMPACT/REVENUE SOURCE

All payments have been made to the contract from the BEX IV and BTA IV Food Service Equipment Fund. No outstanding invoices remain.

During the project, three Change Orders were issued, comprised of three Change Order Proposals or Construction Change Directives. Change Orders totaled \$41,918 plus Washington State sales tax. Change Order expenditures totaled 8.12% of the construction contract amount with the most significant expenditures associated with unforeseen freezer envelope issues. Change orders were reasonable for a project of this magnitude.

Contractor:	Western Ventures Construction
Contract Amount	\$516,345
Change Orders	\$ 41,918
WSST	<u>\$ 56,384</u>
Total Contract including WSST	\$614,648
Project Retention	\$ N/A Bond

Amy Fleming: Approved Without Edits on 10/22/20 (reference routing emails)
Director of Accounting

Expenditure: ☐ One-time ☐ Annual ☐ Multi-Year ☒ N/A

Revenue: ☐ One-time ☐ Annual ☐ Multi-Year ☒ N/A

6. COMMUNITY ENGAGEMENT

With guidance from the District's Community Engagement tool, this action was determined to merit the following tier of community engagement:

- ☒ Not applicable
- ☐ Tier 1: Inform
- ☐ Tier 2: Consult/Involve
- ☐ Tier 3: Collaborate

7. EQUITY ANALYSIS

The selection of projects for the BEX IV Capital Levy was completed in 2012 and in 2015 for the BTA IV Capital Levy. Projects selected for the BEX IV and BTA IV Capital levies were intended to address student capacity needs and inadequate building systems in school facilities across the city. As such, this motion was not put through the equity analysis as it would have been done for the district's current capital planning efforts.

8. STUDENT BENEFIT

This project ensures a safe food storage environment and allows the district to provide nutritional meals for students.

9. WHY BOARD ACTION IS NECESSARY

- ☐ Amount of contract initial value or contract amendment exceeds \$250,000 (Policy No. 6220)
- ☐ Amount of grant exceeds \$250,000 in a single fiscal year (Policy No. 6114)
- ☐ Adopting, amending, or repealing a Board policy
- ☒ Formally accepting the completion of a public works project and closing out the contract
- ☐ Legal requirement for the School Board to take action on this matter
- ☐ Board Policy No. ____, [TITLE], provides the Board shall approve this item
- ☐ Other: _____

10. POLICY IMPLICATION

For purposes of avoiding disputes over the timing of the filing of liens, the School Board should accept the work on a construction project as finally complete prior to the release of retention.

11. BOARD COMMITTEE RECOMMENDATION

This motion was discussed at the Operations Committee meeting on November 5, 2020. The committee reviewed the motion and _____.

12. TIMELINE FOR IMPLEMENTATION

Acceptance of completed project by the School Board	December 2, 2020
Release of retainage bond	Not Applicable
Contractor's one-year warranty period ends	August 12, 2020

13. ATTACHMENTS

- Architect's Letter of Recommendation, in accordance with [WAC 392-344-155](#) (for reference)



KNIT

September 21, 2021

Seattle Public Schools
MS-22-332
PO Box 341652445 3th Ave S
Seattle, WA 98124

ATTN: Mike Jenkins, Project Manager

RE: Statement of Completion of Work
JSCEE Freezer Upgrade Project
Contractor: Western Ventures Construction, Inc
Contract Number: K5108

Dear Mike:

All contract work for the JSCEE Freezer Upgrade Project was completed on August 10, 2019. The work performed under this contract has been reviewed and to the best of our knowledge found to be complete.

Feel free to email or call if you have any questions.

Sincerely,

KNIT

Freeman Fong, AIA, NCARB
Associate Principal

COVID-19 Scenarios: Emergency Responses During Majority Remote Learning

Last updated 10/21/2020

Key SPS Departments	Weather/Snow Response	Confirmed COVID Case Response	Power Outage Response	Technology Failure Response
Schools	Limited effect on remote learners. In person services dependent on transportation and staff availability.	If building or learning area is closed, in person service time will need to be made up.	Teaching staff required to have asynchronous work prepared.	Teaching staff required to have asynchronous work prepared.
Child Care	Operations dependent on buildings being open.	Temporary closure depending on results of contact tracing.	Operations may continue or close depending on specific situation.	Shift to asynchronous work may be needed.
Communications	Preplanned messaging shared (after response decision is made) with media outlets, families, staff, and child care.	Preplanned messaging based on scenario details shared with affected families, staff, and stakeholders in consultation with Health Services.	Messaging would depend on scale of incident.	Messaging would depend on scale of incident.
Nutrition Services	<u>3 Levels of possible response: All Closed, All Open, or High Traffic Sites Only.</u> Decision would be made by 9:30 AM.	<u>At a School:</u> Serve outside with bus if building closed. <u>At JSCEE:</u> If kitchen closes, Central Kitchen operates out of Lincoln and West Seattle High Schools.	Minimal need for adjustment anticipated.	Minimal need for adjustment anticipated.

Department**Weather/Snow****COVID Case****Power Outage****Tech Failure**

Transportation	All routes run or no routes. General 'snow routes' will not be an option.	Temporary loss of individual route is maximum anticipated impact.	Minimal impact anticipated. Adjustments made case by case.	Move to manual operations. Limited slowing of response anticipated.
Warehouse	Later deliveries anticipated.	Deliveries will be delayed. Supporting Nutrition Services will be prioritized.	Minimal need for adjustment anticipated. Supporting Nutrition Services will be prioritized.	Move to manual operations. Minimal delays anticipated. Nutrition Services support prioritized.
Technology	'Hand on' work (repairs/deliveries) delayed. Resource Centers possibly closed.	'Hands on' work delayed. Resource Centers possibly closed.	JSCEE limited impact. Resource Centers may close, depending on timing/location of event. Students/Staff doing remote work have options to change devices or move to asynchronous learning. Camera systems may be affected.	<u>3 Levels of event and response:</u> Limited Scope/Device Issue: Techline will respond and assist. Application/System Issue: Tech will search for workarounds. Paper backups, manual work, asynchronous learning options recommended. Massive Outage: Paper backups, manual work, asynchronous learning will be required.
Facilities	Limited clearing/heating at buildings. Staff may be dispatched to different sites.	Building or area (based on Health Services contact tracing) shut down for 24 hours, then disinfected.	Email alerts sent to affected staff when aware of outage. Alarm systems may go down.	Minimal impact anticipated. Alarm systems may be affected.

COVID-19 Scenarios: Hazard Summaries During Majority Remote Learning

Last updated 10/21/2020

This document is a companion piece to **COVID-19 Scenarios: Emergency Responses During Majority Remote Learning**. While the **Emergency Responses** document serves as a quick reference to show what the capacity and intent of the district is in the situations identified, this **Hazard Summaries** document will provide contextual information on each hazard and how it affects SPS departments, including highlighting which will be most affected with the goal of providing a deeper understanding of how departments will need to work together during this time and the variables involved.

Weather/Snow Response

The Seattle area can be affected by all types of weather hazards, but the focus of this section is primarily snow and the other aspects of a cold weather event. As we head into the winter season, these events are the most likely to affect school operations. Another event that can affect our schools, especially during rainy months, is flooding, which can occur not just in connection with overflowing creeks and streams, but also from broken pipes and similar failures of constructed materials at schools or on neighboring properties.

Remote learning would likely be affected in a limited way during major snow or other weather events. The most likely impact would be interfering with the efforts of staff trying to teach from buildings or students who are going to some location (such as a neighbor or child care program) other than their actual home to participate in remote learning.

If a winter weather event occurs in the early stages of in-person special education services, which are expected to begin within less than two weeks of this writing, the Transportation Department will evaluate the specifics of the situation and transport all students with minor adjustments or transport none of the students. Unlike previous years, during non-pandemic times, there will not be an option to move all buses to pre-planned "snow routes." It also should be acknowledged that Transportation may be able to move students, but the inability of educational staff to make it to the school could still interrupt student programs.

Since the majority of students are learning from home and limited in-person service is just beginning at the time of this writing, the school operations that will likely be most broadly affected are the meal provided by Nutrition Services with the support of the Warehouse, Transportation, and Facilities departments.

Nutrition Services is planning to for a three-level response to snow or a similar major winter weather event:

-All Open. This would be when there is sufficient mobility, on roads in the city limits and surrounding areas, allowing staff to make it to work and open all sites.

-All Closed. This would be when there is a lack of mobility in the city and surrounding areas to the degree that it is deemed impossible to open any or a majority of sites because of safety or staffing concerns.

-Limited Sites Only: This would be when there is a lack of staffing to support all the sites, even though mobility in the city appears to not be a major barrier. This would most likely occur in a case where roads are passable in the Seattle city limits, but not in surrounding areas where many staff live, preventing them from making it into the city to work. Nutrition Services staff available to work would be reassigned to support the limited sites.

Whichever of the three aforementioned plans is put into effect, notification will need to be made to Warehouse (who deliver), Facilities (who open buildings), Transportation (who operate bus delivery of meals), Communications (who will broadcast through appropriate channels to families), and Safety and Security (who often serve as an operations communications hub).

Flooding events in the Seattle city limits that would affect school properties would likely be limited in scope and hard to predict. Each individual event would require a different response, but likely only affect one site at a time, and Facilities would reassign staff as an emergency response measure. Facilities would need to share information with Safety and Security and Communications to be sure that any affected staff is informed of the situation.

In any weather scenario, the intent of Facilities will be to allow Child Care Operators to open their programs if they are able to staff them, which will be included in messaging from Communications. It will be important to immediately inform Communications and the Safety and Security department of any exceptions that may occur.

Whether or not Health Centers or Technology Resource Centers can operate will depend on the scale of the event. The outcome of that decision will need to be shared with Communications and Safety and Security immediately after it is made.

The impacts of other likely significant weather events, such as windstorms or thunderstorms, will be addressed under the hazards of “Power Outage” and “Technology Failure”.

Confirmed COVID Case

It should be noted that there are many scenarios with suspected COVID-19 cases that can cause minor disruption in the work environment. Any time staff quarantines because of possible exposure, concerning symptoms, or to await a test result, work can be interrupted and supervisors and Health Services take a keen interest in the situation. However, it is the confirmed case of a person with COVID-19 that leads to a definite response that may have a dramatic effect on operations within a building or site. The departments taking the lead in responding to this hazard will be Health Services and Facilities.

Once a case has been identified, Health Services will attempt to determine the amount of possible exposure through contact tracing efforts. Based on the results of the contact tracing, a building or part of a building may be shut down by Facilities for up to 24 hours before being disinfected. After the disinfecting, staff may return to using that space or building. Any staff that appears to have likely been exposed will be contacted individually by Health Services and, depending on the specific incident, a broader message to possibly exposed persons may be sent out. Recommendations to quarantine and get tested may be made.

The preceding paragraph shows a wide variance in the scale of response, depending on what is revealed about potential exposure through contact tracing. Regardless of the scale, Communications will need to be given timely and accurate information and a decision will need to be made about how broadly the incident should be shared. The appropriate COVID-19 Site Supervisor(s) and Safety and Security also will need to be advised, along with, possibly, Transportation, Warehouse, and Nutrition Services, depending on the specifics of the case.

It should be noted that we may still be in the early stages of this pandemic, which appears unlikely to end prior to the widespread distribution of a vaccine. This means that increased case counts and previously unobserved symptomatic manifestations, including increased mortality, could still occur. With this in mind, it is wise for SPS to consider increased cross training of staff and sharing of information, in the event that we face increased loss of staff to illness or mortality during this historical event. This would especially be true within the district office, where many departments have key persons who possess knowledge or skills that few, if any, others possess.

Child Care programs operating during this unique time would be informed by the COVID-19 Site Supervisor or Health Services if a confirmed case of COVID-19 led to a building closure or possible exposure to anyone involved with their program. It should be noted that the Child Care program will have their own protocol, dictated by Public Health and their organization to follow as well. A Child Care program that experiences a confirmed case of COVID-19 within their program will follow those protocols and would be expected to inform the COVID-19 Site Supervisor if needed.

Health Care Centers work closely with Health Services and, like Child Care programs, have their own protocols in communication with COVID-19 Site Supervisors. They also will need to be informed of a confirmed COVID-19 case that affects their program and will inform the Site Supervisor if they have a confirmed case within their program.

Power Outage

Power outages in the City of Seattle are typically momentary events that do not dramatically interrupt the District's ability to serve students, but there are certainly exceptions. Each outage will need to be evaluated uniquely, with Facilities, specifically the Work Control division, taking the lead in advising. In addition to this guidance, Seattle City Light has an 'Outage Map' on their 'Outage Resources' webpage (<http://www.seattle.gov/light/sysstat/> or Seattle.Gov>Departments>City Light>Outage Resources) that provides information on the area affected by the outage along with an estimated time frame for recovery that may inform SPS decisions on how to proceed.

Due to their unpredictable nature, it can be difficult to prepare how to specifically respond to a power outage in general, but it should be noted that this type of event will have increased disruption on the educational process during Majority Remote Learning because of the dependence on electrical power and variety of different sources; with students spread throughout neighborhoods in the city and teachers even in communities outside the city limits.

While it is possible that remote learning could continue with battery powered devices, and it may be wise to remind students and staff to keep their devices property charged, it seems

likely that asynchronous work will be needed during a power outage event. It has been recommended that perhaps teachers be instructed to have two days of asynchronous work ready, at all times, for such an event.

Nutrition Services expects they can still provide meals with little difficulty during a power outage and will simply not have hot food options available, although it may be difficult for them to operate in the dark during a prolonged outage. Other departments will expect the same; to be able to operate with a few limitations temporarily, with the possibility of facing greater challenges in sustaining specific programs if an outage continues for many hours or into multiple days.

In all power outage incidents, Communications and Safety and Security will want to be advised for messaging, especially if the event results in a program closure at a building or major disruption of learning.

Child Care programs are not supposed to operate during a power outage but realistically would not be able to have children picked up in time to close during most, brief outages, and would likely close only when it appears that the outage will be lengthy.

Technology Failure

Majority Remote Learning operations are heavily dependent on Technology and SPS Department of Technology Services (DoTS) is the biggest stakeholder in working helping work through any kind of technology failure, while staff facilitating the educational process in Schools and Continuous Improvement, Support Services, and Child Care are dependent on working through these scenarios. As reflected in the **Emergency Responses** partner document, other departments may experience some effects from this type of event but have historically been able to work around them through manual operations. With these points in mind, technology failures may be considered in three categories or levels of event:

-Limited Scope/Device Issue. These incidents occur throughout the district on an almost daily basis. They are addressed by calling TechLine at 206-252-0333, emailing TechTicket, or otherwise getting assistance from DoTS staff. While these issues could be considered as having greater significance during remote learning, these long-established practices, with some pandemic related modifications, have continued to address issues, with overall success. These practices have recently been amplified for families with the institution of Technology Resource Centers in response to the need created by the current pandemic situation.

-Application/System Issue. When there is an issue with an entire system, such as PowerSchool or ESS, DoTS looks for workarounds and sends out emails to SPS staff, as appropriate. Most departments elect to temporarily do work that does not involve the affected system or use other methods to perform the needed tasks. This would hold true for those engaging in remote learning unless the specific system was one hosting a class, which would dictate a need to move to asynchronous learning.

-Massive Outage: In the case of a massive outage, affecting systems or applications on a broad scale, even nationwide, (such as occurred with Microsoft 365 on September 28, 2020) there will realistically be little that DoTS can do to keep work

continuing. In such a case it will be necessary for classes to move to asynchronous learning options and other departments to make similar adjustments.

To: Operations Committee

From: Ronald Boy, Senior General Counsel

Date: November 3, 2020

Re: Policy No. 3225, School-Based Threat Assessment, Summarized Key Points

This memorandum is intended to give a brief overview of the intent of proposed Policy No. 3225, the opportunity to revise the proposed policy's language, and the connection of this policy to Board Resolution No. 2019/20-38's commitment to reexamine the policy and amend as necessary and the identified priorities and concerns from the August 19, 2020 Board Work Session.

Policy No. 3225, School-Based Threat Assessment

Policy No. 3225 details how district staff should respond when they learn of a potential of alleged threat from a student to ensure student and school safety. For example:

- A student posts an image on social media aiming what appears to be an assault weapon with a message "kill them all";
- A teacher reports that one of her students wrote in their daily journal a list of students and staff that they want to die;
- Several students report that another student sent them a message on Instagram to not go to the school dance because there would be a bomb.

The policy details creating and training a school-based threat assessment team. According to the law, the school-based threat assessment team must be multidisciplinary and multiagency. Team members might include a school counselor, a school psychologist and/or school social worker, other individuals from the community, a school administrator, and a special education teacher. Not every team member needs to participate in every threat assessment. However, if faced with a potential threat made by, or directed toward, a student eligible for special education services, the threat assessment team must include a special education teacher.

Board Resolution 2019/20-38

Board Resolution 2019/20-38 affirmed Seattle Public Schools' commitment to Black students. The resolution directed that among others, Board Policy 2019/20-38 be reexamined and amended as necessary. The resolution provided a number of principles to guide the reexamination of the policies. The principles that could apply to this policy are: (1) the role of law enforcement in district schools must be clearly defined; (2) the district will minimize, with the goal to eliminate, the number of school-based arrests and citations while maintaining safe school environments; and (3) monitoring and detailed reporting of school-based law enforcement interactions will promote effectiveness and accountability.

Board Policy No. 3225 responds to serious credible threats of harm made by a student or students. As a result, law enforcement is likely to be involved. The revisions to this policy could clearly define when law enforcement is contacted, who is involved in the decision to contact law enforcement, when a member of law enforcement is invited to participate on the threat-assessment team, and how law enforcement contact is recorded for reporting purposes.

August 19, 2020 Board Work Session

The Board Work Session on August 19, 2020 was intended to give Board Directors an opportunity to identify their concerns, priorities, and direction in furtherance of Black students' safety, the focus of resolution 2019/20-38. The key points that were identified in this work session that relate to Board Policy 3225 are:

- The need for clear implementation/procedural processes.
- Clear processes for reporting.
- Expectations and standards for police presence. Define the role of law enforcement.
- Focus on protecting students.
- Policy should be restorative and preventative. Is there opportunity for restorative justice practices?

Attachments:

1. Resolution No. 2019/20-38, Affirming Seattle Public Schools' commitment to Black students – Adopted June 24, 2020
2. Previously Proposed New Board Policy No. 3225, School-Based Threat Assessment – As Introduced to the Board June 24, 2020
3. Previously Proposed Revisions to Board Policy No. 4314, Notification of Threats of Violence or Harm – tracked changes – As Introduced to the Board June 24, 2020
4. DRAFT – Superintendent Procedure No. 3225, School-Based Threat Assessment – tracked changes in comparison to WSSDA Model Policy No. 3225 – As attached to the BAR for June 24, 2020 Introduction
5. DRAFT – Draft Superintendent Procedure No. 4314, Notification of Threats of Violence of Harm – tracked changes – As attached to the BAR for June 24, 2020 Introduction
6. WSSDA Model Policy 3225, School-Based Threat Assessment
7. Former WSSDA Model Policy 4314, Notification of Threats of Violence or Harm – Policy since retired by WSSDA
8. Erin Jones Notes from Work Session (8/19) and Recommendations for Next Steps
9. Policy Summary from 8/19/20 Work Session annotated Committee, Priority and Next Steps
10. Board Policy No. 3210, Nondiscrimination, Acts of Hostility & Defamation
11. WSSDA Legal and Policy News Excerpt, August 2020
12. WSSDA Model Policy 3143, Notification and Dissemination of Information about Student Offenses and Notification of Threats of Violence or Harm
13. WSSDA Model Procedure 3143P, Notification and Dissemination of Information about Student Offenses and Notification of Threats of Violence or Harm

Seattle School District No. 1
Board Resolution

Resolution No. 2019/20-38



A RESOLUTION of the Board of Directors of Seattle School District No. 1, King County, Seattle, Washington to affirm Seattle Public Schools' commitment to Black students.

WHEREAS, Seattle Public Schools serves more than 8,000¹ Black students who make up over fourteen percent of the district's student population; and

WHEREAS, Seattle Public Schools has committed itself to addressing systemic racism via Board Policy No. 0030², Ensuring Educational and Racial Equity; and

WHEREAS, the Seattle Public Schools strategic initiatives³ are focused on ensuring racial equity in our educational system by unapologetically addressing the needs of students of color who are furthest from educational justice and working to undo legacies of racism through closing gaps in service to African American males and other students of color furthest from educational justice; and

WHEREAS, the Seattle School Board unanimously adopted Resolution No. 2019/20-23⁴ to declare that the lives of Black students matter and affirmed the Seattle School Board's commitment to racial justice and recognition that the lives and lived experiences of our Black youth matter, not just during Black History Month, but every single day.

WHEREAS, in the United States, Black students are three-times more likely to be suspended than their peers and Black students with disabilities are further disciplined or suspended for behavior related to their disability at a rate more than twice that of their white counterparts, and in our state, according to the Washington Office of Superintendent of Public Instruction, Black males and other students of color are disproportionately disciplined at a rate of 6.5% as compared to 1% for white students. And in Seattle, Black students and students of color are disproportionately disciplined and removed from the educational environment⁵, widening gaps in access to instructional time and support services; and

¹ <https://washingtonstatereportcard.ospi.k12.wa.us/ReportCard/ViewSchoolOrDistrict/100229>

² https://www.seattleschools.org/district/district_quick_facts/initiatives/policy_0030

³ https://www.seattleschools.org/district/district_quick_facts/strategic_plan

⁴ <https://www.seattleschools.org/cms/One.aspx?portalId=627&pageId=88502243>

⁵ https://www.seattleschools.org/cms/One.aspx?portalId=627&pageId=25571096#Graph_14

WHEREAS, according to research conducted by ACLU, a criminal arrest as a juvenile has dire consequences as a first-time arrest doubles the odds that a student will drop out of high school and a first-time court appearance quadruples the odds that a student will drop out of school⁶; and

WHEREAS, per Board Resolution 2017/17-18, Seattle Public Schools stands against gun violence and the arming of educators, and per Board Policy No. 4210, Weapons Prohibition for Adults and Visitors, Seattle Public Schools properties are designated gun-free zones; and

WHEREAS, a relationship with the criminal justice system for the express purposes of eliminating the school to prison pipeline AND protecting our students from violence, trafficking, violence and abuse is paramount, the routine presence of active duty law enforcement presence in our schools and events is not a consistently proven means to do so and in fact, by definition, creates greater opportunity for criminalization rather than an express focus on communication, collaboration, information and relationship building; and

WHEREAS, police shootings are gun violence and over 1,000 people each year are killed by the police in America and 25% of those killed are Black despite being only 16% of the population⁷; and

WHEREAS, when compared to white people, Black people and African Americans are twice as likely to be killed by police in Seattle and three times as likely to be killed by police in Washington state⁸; and

WHEREAS, the District's collective bargaining agreement⁹ with the Principal Association of Seattle Schools (PASS) does not explicitly address the relationship of district schools with law enforcement and SEA agreement language remains out of compliance and deficit-based; and

WHEREAS, implicit bias, racism, and lack of cultural-competence amongst school staff causes harm¹⁰ to children of color¹¹; and

WHEREAS, Holistic Social Emotional Learning and healing happens where the mind and the body and the spirit meet, and every culture and community has passed this learning down since time immemorial as wisdom¹². Thus, social and emotional management systems reside and thrive within and emanate from our Black students along with their brilliance.

NOW THEREFORE, BE IT

⁶ <https://www.edweek.org/ew/articles/2017/01/25/Black-students-more-likely-to-be-arrested.html>

⁷ <https://mappingpoliceviolence.org/>

⁸ <https://mappingpoliceviolence.org/>

⁹ <https://www.seattleschools.org/cms/One.aspx?portalId=627&pageId=15568#PASS>

¹⁰ https://www.naacpldf.org/files/about-us/Bias_Reportv2017_30_11_FINAL.pdf

¹¹ <https://www.edweek.org/ew/articles/2019/03/20/dear-white-teachers-you-cant-love-your.html>

¹² https://greatergood.berkeley.edu/article/item/why_dont_students_take_social_emotional_learning_home

RESOLVED, that Black Lives don't just matter, they are worthy, beloved, and needed. So, when we utilize holistic social emotional learning to support students, abandoning notions of policing and pathology, we meet with students and community to learn the wisdom that already exists and design social management systems that authentically recognize and value Black lives and knowledge.

BE IT FURTHER RESOLVED, that the Seattle School Board supports defunding police, i.e. reducing police funding so as to increase social service funding, positively impact safety and well-being of our students while reducing police violence.

BE IT FURTHER RESOLVED, that the Board commits to, by accountably engaging in substantive and substantial family and community engagement, reexamine and amend as appropriate School Board Policy Nos. ¹³ 3200, Written Rules of Student Conduct; 3240, Student Behavior and Disciplinary Responses; 4310, Relations with Law Enforcement, Child Protective Services, and the County Health Department; 4314, Notification of Threats of Violence or Harm; and 3225, School-Based Threat Assessment, which is planned for adoption; to ensure consistency with the following principles that:

- Utilize de-escalation techniques and restorative justice programs, which should reduce exclusionary practices and narrow racial disparities in discipline, including interventions that address the excessive and disparate loss of instruction for Black students with disabilities;
- School administrators and teachers have the skill, and the resources to improve their skill, to maintain order and conduct of their students, schools, and classrooms;
- Law enforcement should not be involved in enforcing the rules of student conduct;
- The role of law enforcement in district schools must be clearly defined; and
- The district will minimize, with the goal to eliminate, the number of school-based arrests and citations while maintaining safe school environments; and
- Monitoring and detailed reporting of school-based law enforcement interactions will promote effectiveness and accountability.

BE IT FURTHER RESOLVED, that in the event that Seattle Public Schools must engage with the Seattle Police Department in relation to external threats, the district shall formalize how information on such threats is communicated to and from the district and school site-based administration in accordance with Board Policies.

¹³ <https://www.seattleschools.org/cms/One.aspx?portalId=627&pageId=15630#gsc.tab=0>

BE IT FURTHER RESOLVED, that the Seattle School Board commits to introducing Board Policy No. 0040, Anti-Racism.

BE IT FURTHER RESOLVED, that District staff will prioritize work with PASS and labor partners to include express racial equity analysis as it pertains to law enforcement in schools. The District and SEA are strongly encouraged to complete the most recent bargain to “Establish joint work group to revise and update Certificated, Article III – General Rights and Responsibilities, Section F, G, and H related to safety, security and employee responsibilities. (outdated terms lacking restorative justice and racial equity lens, and terms are no longer compliant with RCW and WACS) This work is to be completed in 2019-2020 for submission to SEA and SPS Board for approval for contract implementation in 2020-2021,¹⁴” and utilize the agreement to commit to limiting police presence in our schools.

BE IT FURTHER RESOLVED, that the Board directs Superintendent Juneau to (1) develop a Black studies curriculum for use in grades K-5 that will intertwine anti-racist Black language, pedagogy and practices through all subjects and (2) create a stand-alone Black studies course for middle and high school students that will be required for graduation from Seattle Public Schools. We expect this work to go through an extensive community engagement process including, but not limited to, the Office of African American Male Achievement Student Advisory Council, NAACP Youth Council, and other groups or individuals of Black educators, students, community-based organizations, and organizers.

BE IT FURTHER RESOLVED, that the District will commit to a moratorium on the utilization of the Seattle Police Department’s School Emphasis Officers and School Resources Officers programs and providing replacements supported by community. The duration of the moratorium is indefinite. During this the moratorium:

- The District and Board will work in consultation with school communities, particularly Black and Indigenous families and students most directly impacted by policing in schools, to identify alternative, community-based, restorative mentorship for schools impacted by the programs’ cessation.
- The District and Board shall work with the City of Seattle, King County Prosecuting Attorney’s Office and other leadership to demand social supports and resources to enhance student growth, learning and safety in schools and communication that keeps students safe.

BE IT FURTHER RESOLVED, that the Superintendent shall report back to the Board on the status of, and plan for, implementation of each point in the above resolution within 120 days.

¹⁴ <https://www.seattleschools.org/cms/One.aspx?portalId=627&pageId=15568#SEA>

ADOPTED this 24th day of June, 2020

Zachary DeWolf, President

Chandra N. Hampson, Vice President

Leslie Harris, Member-at-Large

Brandon K. Hersey


Eden Mack

Liza Rankin

Lisa Rivera-Smith

ATTEST:
Denise Juneau, Superintendent
Secretary, Board of Directors
Seattle School District No. 1
King County, WA

APPROVED DURING THE JUNE 24, 2020 REGULAR BOARD MEETING -
SIGNED COPY TO BE POSTED ONCE SIGNATURES ARE FINALIZED

	<p style="text-align: center;">SCHOOL-BASED THREAT ASSESSMENT</p>	<p style="text-align: center;">Policy No. 3225 MONTH XX, 2020 Page 1 of 4</p>
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The Seattle School Board is committed to creating healthy, supportive, and culturally responsive environments from the classroom to the central office. This policy establishes a school-based threat assessment program to provide for timely and methodical school-based threat assessment and management. School-based threat assessment programs will be supported by District level threat assessment staff in both the school-based threat assessment process and the management of plans created by school-based teams to manage or reduce the threatening, or potentially threatening, behavior of a student.

A safe and healthy school climate is important in promoting a sense of belonging and supporting excellence for each and every student. Threat assessment best occurs in school climates that rely on trusting relationships between family, student, and staff, which are built with cultural humility, safety, respect, honesty, accountability, and with an eye towards equity. Student behavior, rather than a student's demographic or personal characteristics, will serve as the basis for a school-based threat assessment. In addition, an equity lens will be applied to each school-based threat assessment. The lens also identifies concerns for bias toward underserved populations and minority groups that may lead to overreaction or unnecessary discipline.

The threat assessment process is distinct from student discipline procedures. The mere fact that the district is conducting a threat assessment does not by itself necessitate suspension or expulsion and the district will not impose suspension or expulsion, including emergency expulsion, *solely* for investigating student behavior or conducting a threat assessment. Further, suspension, or other removal from the school environment may create the risk of triggering either an immediate or a delayed violent behavioral response, unless such actions are coupled with containment and support. However, nothing in this policy precludes district staff from acting immediately to address an imminent threat, including imposing an emergency expulsion, if the district has sufficient cause to believe that the student's presence poses an immediate and continuing danger to other students or school staff or an immediate and continuing threat of material and substantial disruption of the educational process. If a disciplinary response is imposed, the district will follow all conditions and limitations set forth in the Washington Administrative Code and outlined in the Seattle Public Schools' Student Rights and Responsibilities document which includes but is not limited to parent/guardian notification and disciplinary grievance and appeal rights.

Structure of Threat Assessment Teams

The superintendent shall establish and ensure the training of a multidisciplinary, multiagency threat assessment team or more than one such team to serve district schools. As the threat assessment team must be multidisciplinary and multiagency, and must have received training to address implicit bias and challenge systemic racism, it may include persons with expertise in:

- Counseling, such as a school counselor, a school psychologist and/or school social worker,

- School leadership, such as a principal or other school leader,
- Other district or school staff,
- Community resources,
- Special education teachers, and a
- Practicing educational staff member.

Not every multidisciplinary team member need participate in every threat assessment. When faced with a potential threat by, or directed towards, a student receiving special education services, the threat assessment team must include a team member who is a special education teacher.

Although parents, guardians, or family members are often interviewed as part of the threat assessment process, neither the student nor the student's family members are part of the threat assessment team. This does not diminish the district's commitment that school staff will make every reasonable attempt to notify the parents/guardians of the alleged threat and to involve parents/guardians and the student in the resolution of the student's behavioral violations, consistent with Policy Board Policy No. 3240, Student Behavior and Disciplinary Responses, and the Seattle Public Schools' Student Rights and Responsibilities document.

Function of Threat Assessment Team

Each threat assessment team member, whether a teacher, counselor, school leader, other school staff, contractor, consultant, volunteer, or other individual, functions as a "school official with a legitimate educational interest" in educational records controlled and maintained by the district. The district provides the threat assessment team access to educational records as specified by the Family Educational Rights and Privacy Act (FERPA). No member of a threat assessment team shall use any student record beyond the prescribed purpose of the threat assessment team or re-disclose records obtained by being a member of the threat assessment team, except as permitted by FERPA.

The threat assessment team:

- Identifies and assesses the behavior of a student that is threatening, or potentially threatening, to self, other students, staff, school visitors, or school property. Threats of self-harm or suicide unaccompanied by threats of harm to others should be promptly evaluated according to Board Policy No. 2145, Suicide Prevention.
- Gathers and analyzes information about the student's behavior to determine a level of concern for the threat. The threat assessment team may conduct interviews of the person(s) who reported the threat, the recipient(s) or target(s) of the threat, other witnesses who have knowledge of the threat, and where reasonable, the individual(s) who allegedly engaged in the threatening behavior or communication. The purpose of the interviews is to evaluate the individual's threat in context to determine the meaning of the threat and intent of the individual. The threat assessment team may request and obtain records in the district's possession, including student education, health records, and criminal history record information. The purpose of obtaining information is to evaluate situational variables, rather than the student's demographic or personal characteristics.
- Determines the nature, duration, and level of severity of the risk and whether reasonable modifications of policies, practices, or procedures will mitigate the risk. The threat assessment team will not base a determination of threat on generalizations or

stereotypes. Rather, the threat assessment team makes an individualized assessment, based on reasonable judgment, best available objective evidence, or current medical evidence as applicable;

- Communicates lawfully and ethically with each other, school leaders, and other school staff who have a need to know particular information to support the safety and well-being of the school, its students, and its staff; and
- Reports its determination to the superintendent or designee in a timely manner.

Depending on the level of concern determined, the threat assessment team develops and implements supports and intervention strategies to shape and change the student's behavior in ways that promote a safe, positive, consistent, and predictable teaching and learning environment, without excluding the student from the school.

In cases where the student whose behavior is threatening or potentially threatening also has a disability, the threat assessment team aligns supports and intervention strategies with the student's individualized education program (IEP) or the student's plan developed under Section 504 of the rehabilitation act of 1973 (Section 504 plan) by coordinating with the student's IEP team or Section 504 plan team. Although some of the functions of a school-based threat assessment may run parallel to the functions of a student's IEP team or Section 504 plan team, school-based threat assessments remain distinct from those teams and processes.

Data Collection, Review and Reporting

The Superintendent shall establish procedures for collecting and submitting data related to the school-based threat assessment program that comply with OSPI's monitoring requirements, processes, and guidelines. The Superintendent will annually report to the Board on the use of the school-based threat assessment program.

Other tasks of Threat Assessment Team

The threat assessment team may also participate in other tasks that manage or reduce threatening or potentially threatening behavior and increase physical and psychological safety. This may include:

- Providing guidance to students and staff regarding recognition of behavior that may represent a threat to students, staff, school, the community, or the individual;
- Providing informational resources for community services boards or health care providers for medical evaluation or treatment, as appropriate;
- Assessing individuals other than students whose behavior poses a threat to the safety of students or staff and notify the superintendent or designee of such an individual.

The Superintendent or their designee is granted the authority to develop procedures to implement this policy.

Adopted: MONTH 2020

Revised:

Cross Reference: Policy Nos. 0030, 2145, 2161, 2162, 3143, 3231, 3240, 3248, 3432, 4200, 4210, 4310, 4314


Related Superintendent Procedure:

Previous Policies:

Legal References: Chapter 28A.300 RCW; Chapter 28A.320 RCW; CFR 34, Part 99, Family Educational Rights and Privacy Act Regulations

Management Resources: *Policy & Legal News*, December 2019

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 SEATTLE PUBLIC SCHOOLS	NOTIFICATION OF THREATS OF VIOLENCE OR HARM	Policy No. 4314 September 7, 2011 MONTH XX, 2020 Page 1 of 32
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Students and school employees who are subjects of ~~credible~~ threats of violence or harm ~~shall~~will be notified of the threats in a timely manner. Parents ~~shall~~will be included in notifications to students who are subjects of threats of violence or harm. If there is a specific and significant threat to the health or safety of a student or other individuals, the district may disclose information from education records to appropriate parties whose knowledge of the information is necessary. Timing and details of the notice will be as extensive as permitted by the federal Family Educational Rights and Privacy Act, ~~(FERPA)~~, other legal limitations, and the circumstances.

"Threats of violence or harm" means direct or indirect communications by any means of the intent to inflict physical injury upon a specific individual or individuals or that place a person in fear of the imminent likelihood of serious damage, danger, or harm.

The ~~district~~ school-based threat assessment team, in partnership with a central office threat assessment team member will assess and address potential threats of violence or harm in a manner consistent with the district's Board Policy No. 3225, School-Based Threat Assessment, other safety policies, disciplinary rules, and incident management and comprehensive safe school plans.

~~Persons found to have made threats of violence or harm against~~ If the school-based threat assessment team, in partnership with a central office threat assessment team member ~~district property, determines a person poses a threat of violence or harm to~~ students, employees, or others ~~will be subject to, the district may administer~~ relevant district discipline policies and ~~will be referred procedures and may refer~~ to appropriate community agencies including law enforcement and mental health services. If it is determined that a student poses a threat of violence or harm, then school staff will make reasonable attempts to notify the parents/guardians and involve parents/guardians and the student in the resolution of the student's behavioral violations. District staff ~~shall~~will work with in-district and community-based professionals and services in all relevant ~~disciplines~~areas of expertise to address threats of violence or harm, those threatened, and those making the threats. Necessary information about the person making the threat ~~shall~~will be communicated by the ~~principals~~school leader to teachers and staff, including security personnel.

State law provides the district, school district directors, and district staff with immunity from liability for providing notice of threats in good faith. Persons who make a knowingly false notification of a threat are subject to appropriate district discipline policies and may be referred for prosecution.

The Superintendent is authorized to develop procedures for this policy, as necessary.

Definitions

- ~~1. Individual-directed threats of violence or harm are those that create fear of physical harm to a specific individual or individuals, communicated directly or indirectly by any means.~~
- ~~2. Building-directed threats of violence or harm are direct or indirect communications by any means of the intent to cause damage to a school building or school property (e.g., bomb threats), or to harm students, employees, volunteers, patrons or visitors.~~
- ~~3. A “credible” threat of violence or harm means a communication that, after an initial review and investigation, appears reasonably plausible of being carried out.~~

~~Credibility will be determined by the Principal or designee, in collaboration with the Seattle Public Schools Threat Assessment Team, for threats made by students; the Superintendent or designee, in collaboration with the Seattle Public Schools Threat Assessment Team, will determine credibility of threats made by staff members.~~

Reporting Requirement

~~Students, staff, volunteers, and others in the school community have the responsibility to report in a timely manner all threats of violence or harm to the Principal, building security specialist, and/or the Seattle Public Schools Safety & Security Department. The Safety & Security Department (through its Threat Assessment Team) will collaborate with building administrators in the internal investigation of the threat and the development of a safety plan. Based on the significance and credibility of the threat, the Principal or the Safety & Security Department may report the threat to law enforcement.~~

Notification to Others

~~To promote the safety of all concerned, the principal shall determine if classroom teachers, school staff, school security, and others working with the student(s) involved in the threat circumstance, should be notified. Subject to the confidentiality provisions cited above, principals shall consider all available~~

information when determining the extent of information to be shared, including prior disciplinary records, official juvenile court records, and documented history of violence of the person who made the threat.

Adopted: September 2011

Revised: -MONTH 2020

Cross Reference: -Policy Nos. 2161, 2162, 3143, 3207, 3225, 3240, 3241, 5281, 6513

Related Superintendent Procedure: 4314SP

Previous Policies: F43.00; F43.01

Legal References: RCW 28A.320.128 Notice and disclosure policies — Threats of violence — student conduct — Immunity for good faith notice — Penalty; WAC 392-400 Pupils; 20 U.S.C. § 1232g Family Educational Rights and Privacy Act; 34 C.F.R. Part 99 FERPA Regulations

Management Resources: *Policy & Legal News, December 2019; Policy News*, February 2010; February 2003

Superintendent Procedure —3225SP **School-Based Threat Assessment**

Approved by:

Date:

Denise Juneau, Superintendent



Definitions

For purposes of district or school-based threat assessments of students, the following definitions will apply:

- A **school-based threat assessment** means the formal process, ~~established by a school district, of in which a school, in partnership with a central office threat assessment team member, works together in~~ evaluating the threatening, or potentially threatening, behavior of a student, and the circumstances surrounding the threat, to uncover any facts or evidence that the student or other actor is likely to carry out the threat.
- **School-based threat management** means the development and implementation of a school-based plan to manage or reduce the threatening, or potentially threatening, behavior of a student in a way that increases the physical and psychological safety of students, staff, and visitors, while providing for the education of all students.
- A **threat** is an expression of an intent to cause physical harm to self/others. The threat may be expressed/communicated behaviorally, orally, visually, in writing, electronically, or through any other means; and is considered a threat regardless of whether it is observed by or communicated directly to the target of the threat or observed by or communicated to a third party; and regardless of whether the target of the threat is aware of the threat. Threats may be direct, such as “I am going to beat you up.” or indirect, such as, “I’m going to get him.”
- **A low risk threat** is one in which it is determined that the individual/situation does not appear to pose a threat of serious harm to self/others, and any exhibited issues/concerns ~~can~~may be resolved easily.
- **A moderate risk threat** is one in which the person/situation does not appear to pose a threat of violence, or serious harm to self/others, at this time; but exhibits behaviors that indicate a continuing intent and potential for future violence or

serious harm to self/others; and/or exhibits other concerning behavior that requires intervention.

- **A high risk threat** is one in which the person/situation appears to pose a threat of violence, exhibiting behaviors that indicate both a continuing intent to harm self/others and efforts to acquire the capacity to carry out the plan; and may also exhibit other concerning behavior that requires intervention.
- **An imminent threat** exists when the person/situation appears to pose a clear and immediate threat of serious violence toward self/others that requires containment and action to protect identified or identifiable target(s); and may also exhibit other concerning behaviors that require intervention.

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Principles

Six principles form the foundation of the threat assessment process. These principles are:

- Targeted violence is the end result of an understandable, and oftentimes discernible, process of thinking and behavior.
- Targeted violence stems from an interaction among the individual, the situation, the setting, and the target.
- An investigative, skeptical, inquisitive mindset is critical to successful threat assessment. All information sources should be approached with cultural sensitivity and all leads must be explored.
- Effective threat assessment is based upon facts rather than on characteristics or “traits.” There must be recognition that implicit bias toward students of color furthest from educational justice may lead to overreaction or unnecessary discipline.
- An “integrated systems approach” should guide threat assessment inquiries and investigations.
- The central question in a threat assessment inquiry or investigation is whether a student poses a threat, not whether the student has made a threat.

Identifying and Reporting Threats

Timely reporting of expression to harm is crucial to an effective school-based threat assessment program.

Anyone, including students, families, and community members may report communication or behavior that appears to be threatening or potentially threatening to ~~designate the school leader or the district’s Safety~~ and ~~or district administrators~~. Security office.

All school district employees, volunteers, and contractors should report immediately to ~~designate the school administrator(s)~~ leader or the district’s Safety and Security office any expression of intent to harm another person, concerning communications, or concerning behaviors that suggest an individual may intend to commit an act of violence.

Anyone who believes that a person or situation poses an *imminent* threat of serious violence that requires containment should notify ~~school security~~ the district’s Safety and Security Office and/or law enforcement.

Assessing Threats

A School-based threat assessment is distinct from law enforcement investigation (if any). The goal of the threat assessment process is to take appropriate preventive or corrective measures to maintain a safe, positive, consistent, and ~~secure~~ school-predictable learning environment, to protect and support potential victims, and to provide assistance support, as needed, to the individual being assessed. School-based threat assessment is also distinct from student discipline procedures. However, the

functions of school-based threat assessment may run parallel to student discipline procedures.

Triage

The ~~superintendent will designate a~~ Superintendent designates the school leader as the team leader for each threat assessment team(s), ~~such as a school principal or a district administrator.~~ The school leader will have access to a central office threat assessment team member for consultation and to determine next steps. If it is not feasible for all team members to be involved with the screening of initial reports referred to the team, the threat assessment team leader may designate a subset of team members to triage cases and determine their appropriateness for review and/or action by the full team. If a team implements a triage process, at least two members of the team will review initial reports and determine if the full team should further assess and manage the situation. All triaged cases must be shared with all members of the assessment team to ensure the cases were adequately addressed ~~through a racial equity lens.~~ All threat assessment team members shall be trained and supported by the central office threat assessment team to triage cases ~~effectively and to address implicit bias and challenge systemic racism.~~

Imminent

Upon notification of threatening behavior or communications, the school ~~administrator~~ leader, threat assessment team, or triage team ~~shall~~ will first determine if an imminent threat is believed to exist. If the individual appears to pose an imminent threat of serious violence to themselves or to others in the school, the ~~administrators~~ school leader or assessment team ~~shall~~ will notify law enforcement.

Moderate or high-risk threat

If the threat assessment team cannot determine with a reasonable degree of confidence that the alleged threat is a not a threat, or is a low risk threat, then the threat assessment team will undertake a more in-depth assessment to determine the nature and degree of any safety concerns and to develop strategies to prevent violence and reduce risk, as necessary.

The threat assessment team's review may include but is not limited to, reviews of records; interviews and consultations with staff, students, family members, community members, and others who know the individual; and interviews of the individual and the target/recipient of the threat(s). The threat assessment team will also screen for risk of self-harm and suicidal ideation, regardless of whether the alleged threat also included possible self-harm.

Upon a determination that a student poses a threat of violence or physical harm to self or others, a threat assessment team shall immediately report its determination to the ~~superintendent~~ Superintendent or designee. The ~~superintendent~~ Superintendent or designee shall immediately attempt to notify the student's parent or legal guardian. The district will ensure that the notice is in a language the parent and/or guardian understands, which may require language assistance for parents or guardians with limited-English proficiency under Title VI of the Civil Rights Act of 1964.

In instances where the threat is deemed moderate risk or high risk, or requires further intervention to prevent violence or serious harm, the school ~~administrator~~leader shall notify the parent and/or guardian of any student who is the target/recipient of a threat as well as the parent and/or guardian of any student who made the threat. See Board Policy No. 4314 and Superintendent Procedure 4314—4314SP, Notification of Threats of Violence or Harm. The district will ensure that the notice is in a language the parent and/or guardian understands, which may require language assistance for parents or guardians with limited-English proficiency under Title VI of the Civil Rights Act of 1964.

If the threat assessment team determines that an individual poses a threat of violence, based on the information collected, the threat assessment team develops, implements, and monitors supports and intervention strategies to address, reduce, and mitigate the threat and assistance to those involved, as needed. If these strategies include disciplinary ~~consequences~~responses, the district will provide notice to the student and their parents or legal guardian consistent with ~~Student Discipline Policy and Procedure 3241~~Board Policy No. 3240, Student Behavior and Disciplinary Responses, and the Seattle Public Schools' Student Rights and Responsibilities document.

The threat assessment team may assist individual(s) within the school to access appropriate school and community-based resources for support and/or further intervention. This includes assisting those who engaged in threatening behavior or communication, and any impacted staff or students.

In cases where the student whose behavior is threatening or potentially threatening also has a disability, the threat assessment team must align intervention strategies with the student's individualized education program (IEP) or the student's plan developed under ~~section~~Section 504 of the rehabilitation act of 1973 (~~section~~Section 504 plan) by coordinating with the student's IEP team or ~~section~~Section 504 plan team.

No identifiable threat or low risk threat

If the threat assessment team concludes that no further assessment is necessary to determine the reported possible threat is not identifiable or constitutes a low threat of violence or harm to self or others, the threat assessment team need not intervene or take further steps.

Data Collection, Review and Reporting

The ~~superintendent~~Superintendent shall establish procedures for collecting and submitting data related to the school-based threat assessment program that comply with OSPI's monitoring requirements, processes, and guidelines. The Superintendent will annually report to the Board on the use of the school-based threat assessment program.

~~Management Resources:~~ ~~2019-December Issue~~

Adoption Date:
Classification: **Essential**
Revised Dates:

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Approved: MONTH 2020
Revised:
Cross Reference: School Board Policy No. 3225

DRAFT

Superintendent Procedure 4314SP Notification of Threats of Violence or Harm



Approved by: s/S. Enfield

_____: _____ Date: 9/14/11

— Dr. Susan Enfield, Interim Denise Juneau,
Superintendent

Staff, students, volunteers, and others involved in school activities have the responsibility to report any threats of violence or harm to designated school officials. Based on the significance and credibility of the threat, it ~~shall~~may be reported to law enforcement. Staff ~~shall~~will involve ~~in-district multi-disciplinary professional~~the school-based threat assessment team as well as a member of the central office threat assessment team in evaluating the threat and the needs of the person making the threat. If it is determined that a student poses a threat of violence or harm, then school staff will make reasonable attempts to notify the parents/guardians and involve parents/guardians and the student in the resolution of the student's behavioral violations. Consultation with or referrals to community-based professionals and services are encouraged where appropriate.

Under the Family Educational Rights and Privacy Act, ~~(FERPA)~~, the district may ~~only~~ release student records only with permission from the parent/guardian or the adult student ~~permission or in~~(a student who is over the age of 18), unless it is a health or safety emergency. For that reason, the district will identify students who have made threats of violence or harm when notifying the subjects of the threats; under the following conditions:

- A. The parent or adult student has given permission to disclose the student's identity or other information to the subject of the student's threat; ~~;~~
- B. The identity of the student and the details of the threat are being disclosed to relevant district staff who have been determined to have legitimate educational interest in the information; ~~;~~
- C. The identity of the student or the details of the threat are being released because the release of the information is necessary to protect the health or safety of the student or other individuals. In making this determination, school officials ~~shall~~will use their best judgment; and may take into account the "totality of the circumstances" pertaining to the safety or health of a student or other individuals; ~~;~~ or
- D. The district is responding to a court order or subpoena. The district must make a reasonable effort to notify the parents of the student or adult student of the subpoena in advance of complying; so that the family ~~can~~may seek protective action, unless the court order or subpoena expressly forbids such notification.

Relevant information about the threat ~~that does not improperly identify a student~~ shallwill be provided to the subject of the threat, and the subject shallwill be advised

that if law enforcement has been involved in the matter, the law enforcement agency may have more information that ~~can~~may be shared with the subject.

To promote the safety of all concerned, the school leader will consider all available information when determining the extent of information to be shared. Subject to the confidentiality provisions cited above, school leaders will determine if classroom teachers, school staff, school security, and others working with the student(s) involved in the threat circumstance should be notified. School leaders must provide information received about a student's conviction, adjudication, or diversion agreement to every teacher of the student for the offenses listed in Board Policy No. 3143, District Notification of Juvenile Offenders.

Suspension or other removal from the school environment may create the risk of triggering either an immediate or a delayed violent behavioral response unless such actions are coupled with containment and support. When considering the appropriate discipline for a student who has made a response to a student's threat of violence or harm, the student's ~~prior disciplinary records shall~~individual circumstances will be taken into account. Emergency expulsion ~~shall~~may be considered, ~~based on the credibility and significance of the threat. if the district has sufficient cause to believe that the student's presence poses an immediate and continuing danger to other students or school personnel or an immediate and continuing threat of material and substantial disruption of the educational process.~~

Disciplinary responses to students making threats of violence of harm will be consistent with district policy and procedure regarding student discipline (see Board Policy No. 3240, Student Behavior and Disciplinary Responses, and the Seattle Public Schools' Student Rights and Responsibilities document) and state laws and regulations.

Discipline ~~shall only be imposed on~~of students eligible for special education services or with disabilities ~~consistent with policy and the~~ will be consistent with district policy and procedures (see Board Policy No. 2161, Special Education, and Board Policy No. 2162, Education of Students with Disabilities Under Section 504 of the Rehabilitation Act of 1973) and the associated legal requirements ~~for special education.~~

If the threat by a student was significant and credible enough to warrant expulsion, the student may only be readmitted to the district through the readmission application process provided for in district policy. The readmission application process shall include meeting district readmission criteria established at the time of expulsion and should include completion of an assessment by an appropriate professional, with a report to the district, when the district determines such an assessment is necessary.

Discipline ~~against~~of district staff for making threats of violence or harm ~~shall~~will be consistent with district policy and procedure regarding staff discipline, (see Board Policy No. 5281, Staff Disciplinary Action and Discharge) and any relevant collective bargaining requirements.

Approved: September 2011

Revised: MONTH 2020

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School-Based Threat Assessment

The Board is committed to providing a safe and secure learning environment for students and staff. This policy establishes a school-based threat assessment program to provide for timely and methodical school-based threat assessment and management.

Threat assessment best occurs in school climates of safety, respect, and emotional support. Student behavior, rather than a student's demographic or personal characteristics will serve as the basis for a school-based threat assessment.

The threat assessment process is distinct from student discipline procedures. The mere fact that the district is conducting a threat assessment does not by itself necessitate suspension or expulsion and the district will not impose suspension or expulsion, including emergency expulsion, *solely* for investigating student conduct or conducting a threat assessment. Further, suspension, or other removal from the school environment can create the risk of triggering either an immediate or a delayed violent response, unless such actions are coupled with containment and support. However, nothing in this policy precludes district personnel from acting immediately to address an imminent threat, including imposing an emergency expulsion, if the district has sufficient cause to believe that the student's presence poses an immediate and continuing danger to other students or school personnel or an immediate and continuing threat of material and substantial disruption of the educational process.

Structure of Threat Assessment Teams

The superintendent shall establish and ensure the training of a multidisciplinary, multiagency threat assessment team or more than one such team to serve district schools. As the threat assessment team must be multidisciplinary and multiagency, it might include persons with expertise in:

- Counseling, such as a school counselor, a school psychologist and/or school social worker,
- Law enforcement, such as a school resource officer,
- School administration, such as a principal or other senior administrator,
- Other district or school staff,
- Community resources,
- Special education teachers, and a
- Practicing educational staff member.

Not every multidisciplinary team member need participate in every threat assessment. When faced with a potential threat by, or directed towards, a student receiving special education services, the threat assessment team must include a team member who is a special education teacher.

Although parents, guardians, or family members are often interviewed as part of the threat assessment process, neither the student nor the student's family members are part of the threat assessment team. This does not diminish the district's commitment that school personnel will make every reasonable attempt to involve parents and the student in the resolution of the student's behavioral violations, consistent with Policy and Procedure 3241 – Student Discipline [**modify as accurate for your district**].

Function of Threat Assessment Team

Each threat assessment team member, whether a teacher, counselor, school administrator, other school staff, contractor, consultant, volunteer, or other individual, functions as a "school official with a legitimate educational interest" in educational records controlled and maintained by the district. The district provides the threat assessment team access to educational records as specified by the Family Educational Rights and Privacy Act (FERPA). No member of a threat assessment team, including district / school-based members and community resource / law enforcement members, shall use any

student record beyond the prescribed purpose of the threat assessment team or re-disclose records obtained by being a member of the threat assessment team, except as permitted by FERPA.

The threat assessment team:

- Identifies and assesses the behavior of a student that is threatening, or potentially threatening, to self, other students, staff, school visitors, or school property. Threats of self-harm or suicide unaccompanied by threats of harm to others should be promptly evaluated according to [modify as necessary for your district] Policy 2145 – Suicide Prevention.
- Gathers and analyzes information about the student's behavior to determine a level of concern for the threat. The threat assessment team may conduct interviews of the person(s) who reported the threat, the recipient(s) or target(s) of the threat, other witnesses who have knowledge of the threat, and where reasonable, the individual(s) who allegedly engaged in the threatening behavior or communication. The purpose of the interviews is to evaluate the individual's threat in context to determine the meaning of the threat and intent of the individual. The threat assessment team may request and obtain records in the district's possession, including student education, health records, and criminal history record information. The purpose of obtaining information is to evaluate situational variables, rather than the student's demographic or personal characteristics.
- Determines the nature, duration, and level of severity of the risk and whether reasonable modifications of policies, practices, or procedures will mitigate the risk. The threat assessment team will not base a determination of threat on generalizations or stereotypes. Rather, the threat assessment team makes an individualized assessment, based on reasonable judgment, best available objective evidence, or current medical evidence as applicable;
- Communicates lawfully and ethically with each other, school administrators, and other school staff who have a need to know particular information to support the safety and well-being of the school, its students, and its staff; and
- Timely reports its determination to the superintendent or designee.

Depending on the level of concern determined, the threat assessment team develops and implements intervention strategies to manage the student's behavior in ways that promote a safe, supportive teaching, and learning environment, without excluding the student from the school.

In cases where the student whose behavior is threatening or potentially threatening also has a disability, the threat assessment team aligns intervention strategies with the student's individualized education program (IEP) or the student's plan developed under section 504 of the rehabilitation act of 1973 (section 504 plan) by coordinating with the student's IEP team or section 504 plan team. Although some of the functions of a school-based threat assessment may run parallel to the functions of a student's IEP team or 504 plan team, school-based threat assessments remain distinct from those teams and processes.

Data Collection, Review and Reporting

The superintendent shall establish procedures for collecting and submitting data related to the school-based threat assessment program that comply with OSPI's monitoring requirements, processes, and guidelines.

Other tasks of threat assessment team

The threat assessment team may also participate in other tasks that manage or reduce threatening or potentially threatening behavior and increase physical and psychological safety. This may include:

- Providing guidance to students and staff regarding recognition of behavior that may represent a threat to students, staff, school, the community, or the individual;
- Providing informational resources for community services boards or health care providers for medical evaluation or treatment, as appropriate;
- Assessing individuals other than students whose behavior poses a threat to the safety of students or staff and notify the superintendent or designee of such an individual.

Cross References:

- 2121 – Substance Abuse Program
- 2145 – Suicide Prevention
- 2161 – Special Education and Related Services for Eligible Students
- 2162 – Education of Students With Disabilities Under Section 504 of the Rehabilitation Act of 1973
- 3143 – District Notification of Juvenile Offenders
- 3231 – Student Records
- 3432 – Emergencies
- 3241 – Student Discipline
- 4210 – Regulation of Dangerous Weapons on School Premises
- 4310 – District Relationships with Law Enforcement and other Government Agencies
- 4314 – Notification of Threats of Violence of Harm

Legal References:

- Chapter 28A.300 RCW
- Chapter 28A.320 RCW
- CFR 34, Part 99, Family Educational Rights and Privacy Act Regulations

Management Resources:

- 2019 – December Issue

Adoption Date:
Classification: **Essential**
Revised Dates:

Notification of Threats of Violence or Harm

Students and school employees who are subjects of threats of violence or harm will be notified of the threats in a timely manner. Parents will be included in notifications to students who are subjects of threats of violence or harm. If there is a specific and significant threat to the health or safety of a student or other individuals, the district may disclose information from education records to appropriate parties whose knowledge of the information is necessary. Timing and details of the notice will be as extensive as permitted by the federal Family Educational Rights and Privacy Act (FERPA), other legal limitations, and the circumstances.

“Threats of violence or harm” means direct or indirect communications by any means of the intent to inflict physical harm upon a specific individual or individuals or that place a person in fear of the imminent likelihood of serious harm.

The district will assess and address potential threats of violence or harm in a manner consistent with the district’s threat assessment policy, other safety policies, and comprehensive safe school plans.

If the district determines a person poses a threat of violence or harm to students, employees, or others, the district may administer relevant district discipline policies and procedures and may refer to appropriate community agencies including law enforcement and mental health services. District staff will work with in-district and community-based professionals and services in all relevant areas of expertise to address threats of violence or harm, those threatened, and those making the threats. Necessary information about the person making the threat will be communicated by the principal to teachers and staff, including security personnel.

State law provides the district, school district directors, and district staff with immunity from liability for providing notice of threats in good faith. Persons who make a knowingly false notification of a threat are subject to appropriate district discipline policies and may be referred for prosecution.

The superintendent is directed to develop and implement procedures consistent with this policy.

Cross References: 6513 – Workplace Violence Prevention
5281 – Disciplinary Action and Discharge
3241 – Student Discipline
3207 – Prohibition of Harassment, Intimidation, and Bullying
2162 – Education of Students With Disabilities Under Section 504 of the Rehabilitation Act of 1973
2161 – Special Education and Related Services for Eligible Students
3143 – District Notification of Juvenile Offenders
3225 – Threat Assessment

Legal References: RCW 28A.320.128 Notice and disclosure policies — Threats of violence — Student conduct — Immunity for good faith notice — Penalty
WAC 392-400 Pupils
20 U.S.C. 1232g Family Educational Rights and Privacy Act
34 C.F.R. Part 99 FERPA Regulations

Management 2019 – December Policy Issue
Resources: 2018 – December 2018 - December Policy Issue
 2010 – February Issue
 Policy News, February 2003 Threats Policy Due in September

Adoption Date:

Classification: **Essential**

Revised Dates: **02.03; 12.06; 02.10; 12.11; 12.18; 12.19**

Erin Jones Notes from Work Session (8/19) and Recommendations for Next Steps:

Based on a reading of the resolution and the notes taken during the work session, I have outlined the priorities as I understood the Directors to communicate them, as well as my recommendations for next steps.

Priorities of School Directors:

Policy # or topic	Concerns	Next steps for work w/district	Next steps work w/community (Students should be invited)
<p>From “be it resolved” 2, 3, 4, 8.</p> <p>Almost every director is concerned about policing and security (Policy 0030 is aspirational?)</p> <p>Policies affected: 3200 3207 3210 3240 3244 3246 4310 4314</p>	<ul style="list-style-type: none">-not clear implementation/procedural processes-need to provide clear TO DOs, not a focus on what NOT to do-need clear processes for reporting-what are standards/expectations around police presence-need a focus on protecting students, not protecting staff-determine where policies are reactive and punitive, instead of restorative and preventative-eliminate restraint and isolation	<ul style="list-style-type: none">-define role of law enforcement in district-ensure all educators (classified, certificated, administrative, security officers) have the appropriate training in effective student engagement, de-escalation and restorative justice practices-ensure there are clear processes for staff regarding legal requirements for reporting (CPS), as well as harm that has been done to a student by a staff person-clearer and more thorough plan for reporting about interactions w/law enforcement and communicating that out w/community-legal analysis of individual rights of staff (state language protects staff from students, which means SPS needs different language to address this concern)-make shift from “compliance” to supporting the “spirits” of children (shifting away from the authoritarian mindset)-defer resources from punishment to serving the needs of students-need a complete list of current CBO partnerships and explore expanding opportunities	<ul style="list-style-type: none">-re-examine all policies related to policing and get feedback from those “on the ground”-clarify role of security/safety in district vs. policing-co-create (w/district staff) a safety plan ensuring there are common understandings about language and needs-what are desires of community for accountability/answer ability for data and changes?-What does the community want/need with regard to holding staff and district accountable when educators mistreat students?

<p>From “be it resolved” 6.</p> <p>PASS/SEA (Connected to other comments above, but this is work that must be done w/between district and labor unions)</p>	<ul style="list-style-type: none"> -process was supposed to be completed last year -need to get clear on terminology (restorative justice, racial equity) 	<ul style="list-style-type: none"> -establish joint work group to revise and update Certificated, Article III - General Rights and Responsibilities, Section F, G and H, related to safety, security and employee responsibility 	<ul style="list-style-type: none"> -at least some community representation to determine appropriate definitions and expectations for restorative justice and racial equity
<p>From “be it resolved” 7.</p> <p>Fixing/completing work of ethnic studies implementation and then Black studies</p>	<ul style="list-style-type: none"> -there were obvious complications with the process of developing and implementing ethnic studies - need to face and address those and get them fixed before beginning the work of Black studies -better to take the time to do the work well than to try to push new curriculum out quickly -need to address not just curriculum but provide the instructional support to ensure educators have the necessary background information and instructional skill to deliver content in a culturally-responsive way 	<ul style="list-style-type: none"> -honestly unpack the ways the district fell short in the process of developing and implementing ethnic studies -determine a course of action that will allow the process of developing and implementing Black studies to be much more effective and inclusive and transparent. -develop a clear adoption process (including timelines) for both ethnic studies and Black studies that is published widely for both educators and community 	<ul style="list-style-type: none"> -communicate clearly with the community about the shortfalls of the ethnic studies process (people have to see you take accountability, in order to trust that you will complete the next process more effectively and efficiently). -work with community partners and educators to develop a process for both creating curriculum and preparing educators to teach Black studies -need to develop common understandings for what “progress” and “success” look like for everyone.

Recommendations for Next Steps:

Based on all I have read and all notes taken from the work session, here are my recommendations for the BOARD, the DISTRICT and work with COMMUNITY.

BOARD:

- Develop clear work plans and deadlines, based on your priorities, to ensure you will stay focused as you move your policy work forward.
- Develop the protocols and communication plans necessary to promote collaboration and commonality among board directors and with district staff.
- Create mini-videos - "how-to"s for policy development and how the community can be engaged (each board member create one 10 - 15 minute video about a different element of the policy-making policy).
- Do listening tour via Zoom of your region to engage them on your priorities. Possible questions to address: what would a "safe school environment" look/feel/sound like for you?; what data would you (as community) like to gather about safety/discipline?; when misconduct happens staff to student, what kind of communication do you want (as families/students), and what would it take for you to feel that the situation has been properly addressed?

DISTRICT:

- Complete the PASS/SEA conversation (it was due to be completed at the end of last school year)
- Ensure there are sufficient resources for implementation of policy (including funding for the social supports necessary to replace mentoring work that used to be done by SROs and implementation of ethnic/Black studies work)
- Do a legal analysis to understand the rights of staff who feel threatened by students.
- Develop language for how discipline will be addressed in SPS, since state language protects staff from students.
- Gather and share data broadly in ways that are readable and comprehensible to staff, the board, the public (besides data around policing and discipline, determine what should be reportable, to whom and in what format)
- Ensure there are clear definitions for terms - Social Emotional Learning (SEL), restorative justice, culturally-responsive practice
- Have a plan for implementation of above terms (SEL, RSJ, CRP), particularly in a virtual setting

Community partnerships:

- Do a listening tour of district regions on issues related to policing and safety, starting as soon as possible (also use this time to ask how community would define/describe "progress" and "success").
- Create survey tool to determine from families the ways they wish to be informed about issues related to safety, particularly when/if their children are involved.
- Work with community to ensure definitions for social emotional learning, restorative justice, culturally-responsive practice and racial equity align with needs of community.

Additional recommendations:

- I know you are working on a draft anti-racism policy. I actually believe you have all the makings of anti-racist policy in what you already have on the books - addressing policing/discipline, curriculum, instruction, partnerships with CBOs. I worry that creating a new policy could actually muddy the waters. Work to make sure you are enforcing what you already have and that you have devoted the resources and time needed to put towards curriculum, professional development and authentic/effective implementation.
- You must determine definitions and a framework for Social Emotional Learning, particularly right now after the events (both the pandemic and public racial conflict). Here are resources I have gathered to address your needs to implement SEL with a racial equity lens - <https://www.k12.wa.us/sites/default/files/public/studentssupport/sel/pubdocs/Appendix%20M%20SEL%20Equity%20Paper.pdf>; <https://loreamartinez.com/2020/07/07/crossing-3-bridges-to-center-sel-in-equity/>. Here is

what Highline School District is doing - <https://staff.highlineschools.org/departments/communications/insider-news/news-details/~board/district-news/post/strategies-to-ensure-positive-anti-racist-and-fearless-self-implementation>.

**Work Session: Examination of Policies in Furtherance of Black Student Safety
and Resolution 2019/20-38**

Policy #	Policy Title	Committee, Priority, Next Steps (Per 9/3/20 Mtg w/ Dirs. DeWolf, Rankin, Mack)	Last Revised	Topics Covered in Policy	Has Supt Procedure?	Is there a WSSDA model? When was it last updated?
3124	Removal/Release of Student During School Hours	Use as reference for other policy reviews (e.g. Exec review of 4310)	2011	<ul style="list-style-type: none"> • Requires release of students only to authorized individuals • Speaks to sending students home for illness, discipline or corrective action • Provides for release of students to law enforcement 	No	3124, Removal-Release of Student During School Hours; December 2011
3200	Written Rules of Student Conduct <i>(Included in Board Resolution No. 2019/20-28)</i>	C&I Review in conjunction w/ SR&R	2012	<ul style="list-style-type: none"> • Requires annual approval and distribution of Student Rights and Responsibilities • Notes relationship between rules and legal requirements (due process, IDEA, etc.) • Requires principal/staff confer annually to develop/review standards and uniform enforcement 	No	3200, Rights and Responsibilities; April 2019
3207	Prohibition of Harassment, Intimidation, or Bullying - Students	C&I Recently updated, review this policy later in the review calendar for these policies	2020	<ul style="list-style-type: none"> • Provides HIB policy related to students • Cites to state HIB definitions and describes prohibited behaviors/expressions • Requires staff and volunteer training and prevention strategies, speaks to interventions, provides IEP and Section 504 meeting requirements, prohibits retaliation and false allegations, and requires district compliance officer 	Yes	3207, Prohibition of Harassment, Intimidation, and Bullying; August 2019
3208	Sexual Harassment	A&F Not on top 8 list, but policy revisions needed to address compliance requirements	2011	<ul style="list-style-type: none"> • Defines and prohibits sexual harassment • Provides requirement for district action including related requirements for reporting to law enforcement/CPS • Provides for discipline/sanctions and prohibits retaliation and false allegations • Requires training, details required procedure contents, and requires annual report 	Yes	3205, Sexual Harassment of Students Prohibited; July 2015

*Committee listed for purposes of draft Res. 2019/20-38 work plan and Policy 1240 transition / May not reflect 1240 assignments

**Work Session: Examination of Policies in Furtherance of Black Student Safety
and Resolution 2019/20-38**

3210	Nondiscrimination, Acts of Hostility, Defamation	Ops Reivew in conjunction with 3225 and 4314	2018	<ul style="list-style-type: none"> • Prohibits discrimination on the basis of listed categories and provides for disciplinary action • Prohibits retaliation • Authorizes designation of nondiscrimination compliance officer 	Multiple	3210, Nondiscrimination; March 2016
3225 (DRAFT)	School Based Threat Assessment <i>(Included in Board Resolution No. 2019/20-28)</i>	Ops Reivew in conjunction with 3210 and 4314	NOT YET ADOPTED	Per Draft Introduced 6/24/20: <ul style="list-style-type: none"> • Establishes school-based threat assessment program • Distinguishes from and explains relationship to disciplinary responses • Provides structure, function and tasks for threat assessment teams • Provides for OSPI and Board reporting 		3225, School-Based Threat Assessment; December 2019
3240	Student Behavior and Disciplinary Responses <i>(Included in Board Resolution No. 2019/20-28)</i>	C&I	2017	<ul style="list-style-type: none"> • Speaks to educational environment, student rights, and persistent racial disproportionality in disciplinary responses • Provides for a Positive Behavior Interventions and Supports (PBIS) framework and continuum of responses • Prohibits out-of-school suspensions for K-5 students for disruptive conduct / rule breaking / disobedience and provides for focus on reducing loss of instructional time and out-of-school responses • States applicability of school rules on school property, school events, school-provided transportation 	No	3241, Student Discipline; April 2019
3244	Prohibition of Corporal Punishment	C&I	2018	<ul style="list-style-type: none"> • Defines and prohibits corporal punishment 	No	3244, Prohibition of Corporal Punishment; February 2018

*Committee listed for purposes of draft Res. 2019/20-38 work plan and Policy 1240 transition / May not reflect 1240 assignments

**Work Session: Examination of Policies in Furtherance of Black Student Safety
and Resolution 2019/20-38**


3246	Restraint, Isolation, and Other Uses of Physical Intervention	C&I	2019	<ul style="list-style-type: none"> • Prohibits unreasonable restraint, restraint devices, isolation and other uses of physical interventions, and use for discipline/punishment • Provides for limited use of restraint, isolation, and other uses of physical intervention for specified purposes • Requires annual report 	Yes	3246, Restraint, Isolation and Other Uses of Reasonable Force; March 2016
3248	Firearms and Dangerous Weapons Prohibition for Students	To be reviewed with incoming chairs for potential placement on committee workplan in 2021	2013	<ul style="list-style-type: none"> • Prohibits students from carrying firearms / dangerous weapons on / at school property, transportation and events • Provides minimum disciplinary response, cites to statutorily required expulsion, and cites appeal rights • Requires OSPI reporting 	Yes	Consolidates student prohibition into 4210 / 4210 (A)
3421	Child Abuse, Neglect, and Exploitation Prevention	Use as reference for other policy reviews (e.g. Exec review of 4310)	2012	<ul style="list-style-type: none"> • Requires immediate reporting of suspected child abuse, neglect, or exploitation to law enforcement or CPS and school administrator • Provides training requirements 	Yes	3241, Child Abuse, Neglect, and Exploitation Prevention; June 2015
4200	School Visitations and Maintaining Safe and Orderly Environments	Use as reference for other policy reviews (e.g. Exec review of 4310)	2017	<ul style="list-style-type: none"> • Provides authorization of / limitations on school visitations • Speaks to unauthorized persons / trespass, solicitation, recruitment, disturbances and interference 	Multiple	4200, Safe and Orderly Learning Environment; Revised February 2018
4210	Weapons Prohibition for Adults and Visitors	To be reviewed with incoming chairs for potential placement on committee workplan in 2021	2013	<ul style="list-style-type: none"> • Prohibits weapons on school property • Provides exemptions to prohibition and relevant legal citations 	No	4210 / 4210 (A), Regulation of Dangerous Weapons on School Premises; Revised July 2016 / October 2019

*Committee listed for purposes of draft Res. 2019/20-38 work plan and Policy 1240 transition / May not reflect 1240 assignments

**Work Session: Examination of Policies in Furtherance of Black Student Safety
and Resolution 2019/20-38**

4310	Relations with Law Enforcement, Child Protective Services, and the County Health Department <i>(Included in Board Resolution No. 2019/20-28)</i>	Exec	2014	<ul style="list-style-type: none"> • States district responsibility for order / conduct in schools and holding students accountable for rule infractions • Allows for referral of law violations to legal authorities • Speaks to developing & maintaining relationships with law enforcement / other gov agencies and establishing procedures 	Yes	4310, District Relationships with Law Enforcement and other Government Agencies; December 2018
4314	Notification of Threats of Violence or Harm <i>(Included in Board Resolution No. 2019/20-28)</i>	Ops Reivew in conjunction with 3210 and 3225	2011	<ul style="list-style-type: none"> • Requires notifications to subjects of threats, their parents, and staff • Cross-references to relevant discipline policies • Provides for referrals to community agencies (law enforcement, mental health) • Cites staff reporting requirements and immunity 	Yes	4314, Notification of Threats of Violence or Harm; December 2019
4315	Release of Information Concerning Sexual and Kidnapping Offenders	Use as reference for other policy reviews	2011	<ul style="list-style-type: none"> • Provides for dissemination of information as requested by law enforcement agencies 	No	4315, Release Of Information Concerning Sexual And Kidnapping Offenders; October 2010

*Committee listed for purposes of draft Res. 2019/20-38 work plan and Policy 1240 transition / May not reflect 1240 assignments

	<p style="text-align: center;">NONDISCRIMINATION, ACTS OF HOSTILITY & DEFAMATION</p>	<p style="text-align: center;">Policy No. 3210 March 7, 2018 Page 1 of 2</p>
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Seattle Public Schools (“the District”) shall provide equal educational opportunity and treatment for all students, and is committed to nondiscrimination in all aspects of the District’s academic, athletic, and activities programs. The District prohibits discrimination on the basis of any of the following categories: sex (gender); race; creed; color; religion; ancestry; national origin; age; economic status; sexual orientation including gender expression or identity; pregnancy; marital status; physical appearance; the presence of any sensory, mental or physical disability; honorably discharged veteran or military status; or the use of a trained dog guide or service animal by a person with a disability.

Acts of discrimination, hostility, defamation, whether verbal or physical, will not be tolerated and constitute grounds for immediate disciplinary action. Further, District programs shall be free from sexual harassment, as provided in Board Policy No. 3208 and Superintendent Procedure 3208SP.

Retaliation against any person who makes or is a witness in a discrimination complaint is prohibited and will result in appropriate discipline. The district will take appropriate actions to protect involved persons from retaliation.

The District shall comply with all state or federal laws as may pertain to this subject.

The Superintendent is authorized to designate a staff member to serve as the nondiscrimination compliance officer for this policy. The Superintendent is authorized to develop procedures governing the nondiscrimination complaint process and any other procedures as required by law and this policy.

Adopted: April 2012

Revised: March 2018

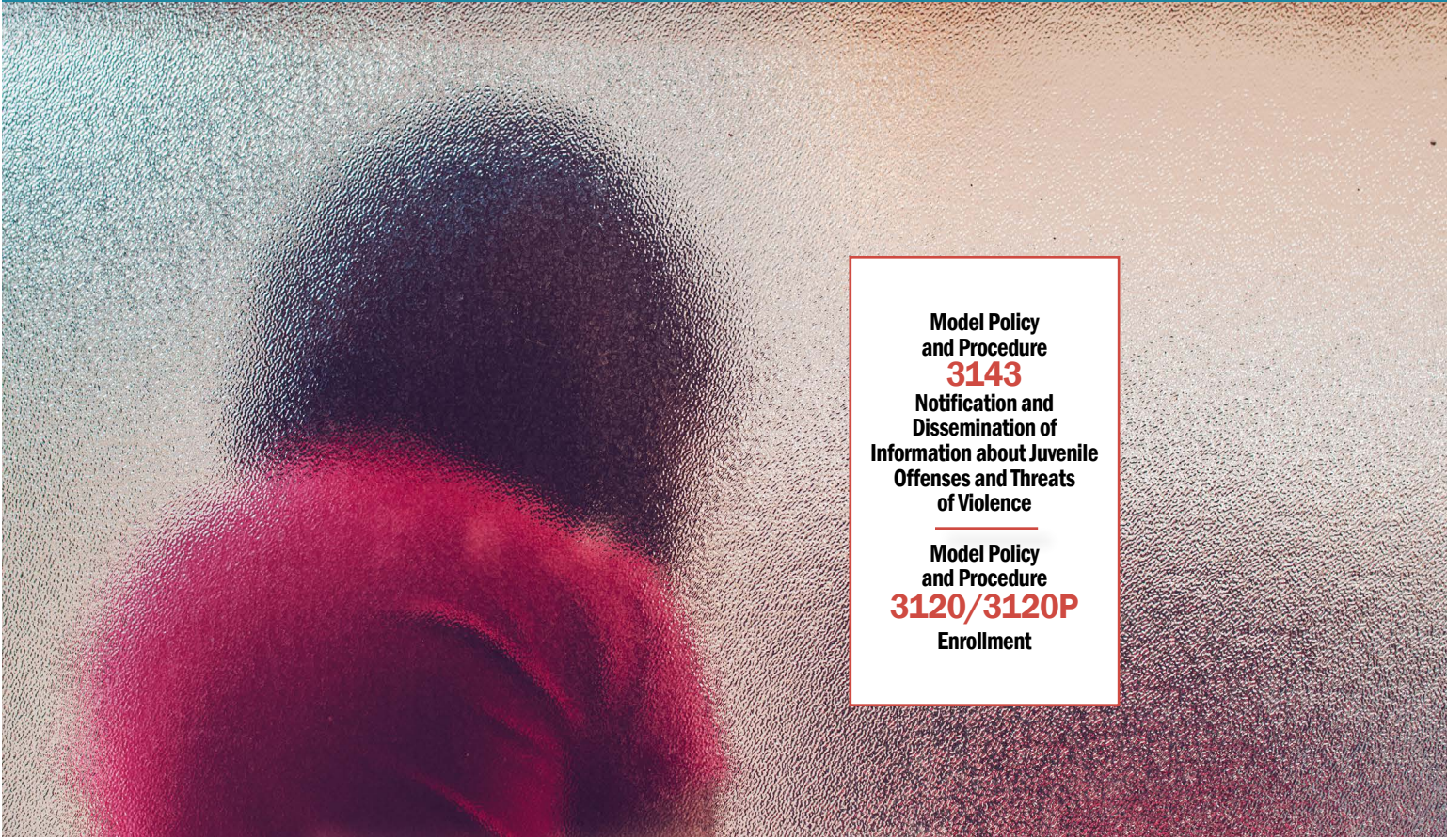
Cross Reference: Policy Nos. 2015; 2020; 2030; 2140; 2150; Student Rights & Responsibility Handbook

Related Superintendent Procedure: 3210SP.A & 3210SP.B

Previous Policies: D47.00; D49.00; D50.00

Legal References: RCW 28A.640 Sexual Equality; RCW 49.60 Discrimination — Human rights commission; RCW 28A.642 Discrimination prohibition; 42 U.S.C. §§ 12101-12213 Americans

with Disabilities Act; WAC 392-400-215 Student rights; WAC 392-190 Equal Educational Opportunity - Unlawful Discrimination Prohibited
Management Resources: *Policy News*, August 2007



Model Policy
and Procedure
3143
Notification and
Dissemination of
Information about Juvenile
Offenses and Threats
of Violence

Model Policy
and Procedure
3120/3120P
Enrollment

When students have committed a juvenile offense

In 2018, the August and December issues of *Policy & Legal News* featured articles about model policy revisions based on a State Auditor's Office (SAO) performance audit that examined what happened when principals and districts received notifications of student criminal offenses. **During the 2020 legislative session, lawmakers responded to lingering issues identified by the SAO audit. This was welcome news because comprehensive improvement required more holistic statutory changes, including revising several statutory requirements that previously had the potential to confuse staff, stigmatize students, and increase the likelihood that important information would go unnoticed.**

Background

During the past two decades, our Legislature has passed several bills that required courts, state agencies, and county sheriffs to notify schools and districts of student criminal offenses.

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- In 1995, the Department of Social and Health Services (DSHS) - Juvenile Rehabilitation Program was required to notify school districts before releasing juveniles from custody or transferring them to community facilities.
- In 1997, the courts were required to notify school principals when minors who were enrolled in public schools were found guilty or entered into diversion agreements for any of a long list of crimes. Diversion agreements are voluntary contracts between students and courts, with specific requirements, such as community service and counseling, that students must meet to have the charges dismissed. The list of crimes included violent offenses, sex offenses, inhaling toxic fumes, liquor violations, possession of firearms and dangerous weapons, kidnapping, trafficking, harassment, and arson.
- In 2006, anyone required to register as a sex offender was also required to notify the county sheriff before enrolling in a public or private school. The county sheriff was then required to notify both the school district and the principal of the student's chosen school.
- In 2011, the Department of Corrections (DOC) was required to notify school districts before the DOC released or transitioned to partial confinement anyone younger than 22 who had committed violent, sexual, or stalking offenses.

Similarly, over the past few decades, our Legislature passed various bills requiring districts and school principals to take actions based on receiving information about a student's juvenile offense. An important component of these actions was appropriately disseminating that sensitive but potentially crucial information.

SAO performance audits

In May 2018, the SAO issued a performance audit examining whether state agencies, courts, and sheriffs notified schools of registered juvenile sex or kidnapping offenders. That audit found gaps and breakdowns in the notification processes to schools. Courts and agencies acted immediately to remedy a number of identified issues. However, the report noted that the remaining barriers transcended the effort of the agencies and that statutory changes might be helpful. For example, the 2018 state law listed more than 330 different criminal offenses that courts were required to communicate to schools. If the courts, state agencies, and law enforcement fully complied with the requirements, this would result in about 11,000 notifications a year to schools, including notifications for students who were not going to

return to school at all, as well as notifications to schools that the students were no longer going to attend.

The SAO then began a second audit, this time examining what happens to the notifications after principals and district officials received them. In August 2018, the SAO gave WSSDA some initial feedback, based on their interviews and site visits for the second audit. The SAO noticed that many of the principals interviewed reported concern and confusion about the scope of their duty to share information about students' criminal offenses. The concern was that principals did not want to violate students' confidentiality, and the confusion was the extent of their duty to share that information. For example, some principals were confused about whether they needed to share the information with all of the student's teachers. Some principals reported they might tell teachers that a specific student had a safety plan, without providing information on the student's criminal history.

2018 revisions to model policies

While the SAO audit was still ongoing, WSSDA's Policy & Legal staff took immediate steps toward supporting districts by revising two model policies. In November 2018, the SAO issued its [final report](#) on the school responses to notifications of student criminal offenses, noting that WSSDA had acted immediately to improve its model policies. With the information in the SAO final report, WSSDA staff made additional revisions to the model policies to support districts with compliance. This time, the revisions were to the policies governing student records. However, other issues identified in the SAO audit required statutory changes.

House Bill (HB) 1191—Concerning School Notifications

During the 2020 legislative session, our Legislature passed HB 1191 – Concerning School Notifications to act on recommendations from the SAO audit and stakeholder workgroups. HB 1191 includes several helpful provisions. As mentioned, state law previously required notifications even when students were not going to return to school, as well as notifications to schools the students are not going to attend. HB 1191 modified the notification obligations both on the part of the agencies providing districts and schools with notice and on the part of districts and schools receiving the notice. As modified, notification requirements no longer include former students who are now over 21 or who have already received a high school diploma or students between 18 and 21 who have not indicated they will enroll in an educational program.

**Model Policy
and Procedure****3143****Model Policy
and Procedure****3120
3120P**

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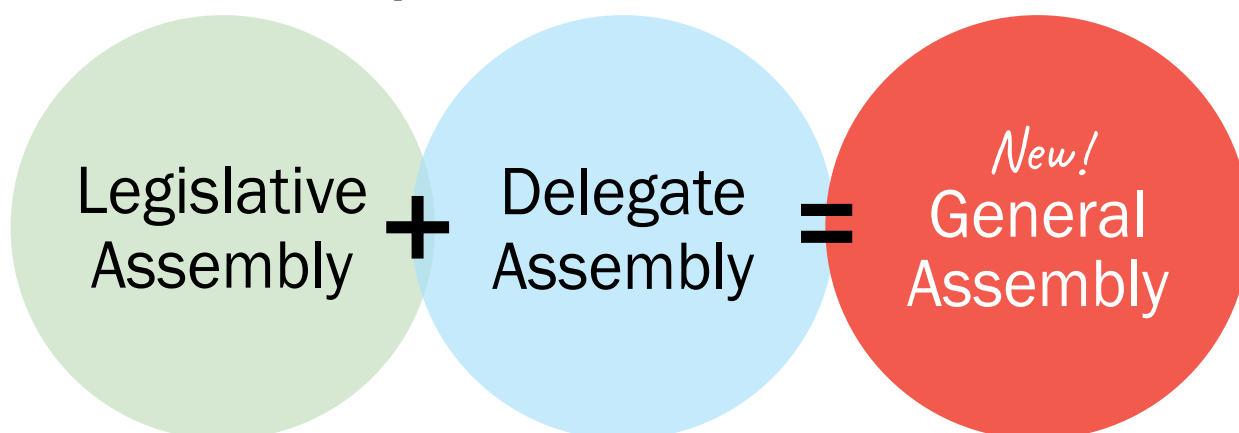
Other provisions of HB 1191 address the sensitivity of information regarding student juvenile offenses. For example, the information included in the notification process is no longer subject to disclosure under the Public Records Act. Another example is that HB 1191 provides students and/or their parents the opportunity to appeal a principal's decision to share with teachers and other school staff information of a student's controlled substance violation. This right to appeal applies only to violations of controlled substances. The district superintendent hears the appeal and makes the final determination. This provision is intended to assuage concerns about the deleterious effect that notification can have on a student's relationships with teachers and the potential to impair a student's scholastic career.

HB 1191 called for WSSDA, in consultation with several stakeholders, to revise its model policies. We invited representatives from organizations on behalf of educators, classified staff, principals, district administrators, law enforcement, violence prevention and intervention, free legal services for youth, student discipline, and the state auditors who performed the audits that sparked the legislation to work with us. Many thanks to all of those who participated on the workgroup.

Based on the workgroup's observations and the need for a comprehensive, cohesive approach, WSSDA created one, new model policy and procedure by merging the content of former Model Policy 3143–District Notification of Juvenile Offenders; former Model Policy, Procedure, and Form 3144/ 3144P/ 3144F–Release of Information Concerning Student Sexual and Kidnapping; and former Model Policy and Procedure 4314/4314P–Notification of Threats of Violence or Harm. The new document is titled **Model Policy and Procedure 3143–Notification and Dissemination of Information about Juvenile Offenses and Threats of Violence**. This new version of 3143 is retitled and reclassified as an Essential policy. WSSDA is retiring Model Policy, Procedure, and Form 3144/ 3144P/ 3144F and Model Policy and Procedure 4314/4314P. WSSDA has also revised **Model Policy 3120–Enrollment**, which is an Essential policy to reflect HB 1191.

**Model Policy
and Procedure
3143**
**Model Policy
and Procedure
3120
3120P**

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Voting on the adoption of WSSDA's permanent and legislative positions just got easier with a new, revised, all-in-one General Assembly.

Join the assembly 8 a.m. Sept. 25 at wssda.org/GA

Notification and Dissemination of Information about Student Offenses and Notification of Threats of Violence or Harm

The _____ School District/Public School is committed to providing a safe and secure environment for all its students and staff. All students, including those who have committed or been adjudicated for offenses, have constitutional rights to public education.

A. Notification of Student Offenses from County Sheriff's Office, Courts, Department of Social and Health Services, Department of Corrections, and Other School Districts.

The district receives notices and information about student offenders from several statutorily authorized sources, including the county sheriff's office, the courts, the department of social and health services, the department of corrections, and other school districts where the student previously enrolled. The district will take appropriate precautionary measures when it receives notices and information of student offenses from any of these sources. Student discipline, if any, will be consistent with 3241 – Student Discipline [modify as accurate for your district].

The superintendent, or his or her designee, and school principals play an important role in determining and implementing appropriate precautionary measures relating to notices and information about student offenses. If the superintendent, a designee of the superintendent, or a principal of a school receives student offense information under RCW 28A.225.330 (notifications from other school districts), 9A.44.138 (sheriff notifications to school districts), 13.04.155 (court notifications to school districts), 13.40.215 (department of children, youth, and families notifications to school districts), or 72.09.730 (department of corrections notifications to school districts), the following notification provisions will be followed.

1. Sex Offenses and Registered Sex or Kidnapping Offenders.

a. Superintendent or Designee. Upon receipt of information about sex offenses as defined in RCW 9.94A.030 or upon receipt of information about registered sex or kidnapping offenders pursuant to RCW 9A.44.138, the superintendent or his or her designee will provide the information to the principal of the school where the student is enrolled or will enroll—or, if not known, where the student was most recently enrolled.

b. Principals. When the principal receives the information described above, he or she must then disclose the information as follows.

If the student is classified as a risk level II or III, the principal shall provide the information received to every teacher of the student and to any other personnel who, in the judgment of the principal, supervises the student or for security purposes should be aware of the student's record.

If the student is classified as a risk level I, the principal shall provide the information received only to personnel who, in the judgment of the principal, for security purposes should be aware of the student's record.

c. Convicted Juvenile Sex Offenders Attendance at Victims School. Convicted juvenile sex offenders are prohibited from attending the elementary, middle, or high school attended by their victims or their victims' siblings. The parents or legal guardians of the convicted juvenile sex offender shall be responsible for providing transportation or covering other costs associated with or required by the sex offender's change in school.

The Department of Social and Health Services (DSHS) Sex Offender School Attendance Program assists with ensuring that juvenile sex offenders, committed to Juvenile Rehabilitation Administration (JRA), do not enroll

in the same school as their victim or their victims' siblings. If there is a conflict in schools, DSHS program staff will work with JRA to have the offender moved to another school.

d. Collaboration. The principal or designee will consult and collaborate with department of corrections, juvenile justice staff, treatment providers, victim support groups, and families, as applicable, when working with students required to register as a sex or kidnapping offender.

e. Inquiries by the Public. Law enforcement agencies receive relevant information about the release of sex and kidnapping offenders into communities and decide when such information needs to be released to the public. Therefore, district and school staff will refer all inquiries by the public at large (including parents and students) regarding students required to register as a sex or kidnapping offender directly to law enforcement.

2. Violent Offenses, Firearms and Dangerous Weapons Crimes, Unlawful Possession or Delivery of Controlled Substances, or School Disciplinary Actions.

a. Superintendent or Designee. Upon receipt of information about a violent offense as defined in RCW 9.94A.030, any crime under chapter 9.41 RCW, unlawful possession or delivery, or both, of a controlled substance in violation of chapter 69.50 RCW, or a school disciplinary action, the superintendent or designee will provide the information to the principal of the school where the student is enrolled or will enrolled—or, if not known, where the student was most recently enrolled.

b. Principals. When the principal, receives the information described above, he or she, *has discretion* to share the information with a district staff member if, in the principal's judgment, the information is necessary for:

- The staff member to supervise the student;
- The staff member to provide or refer the student to therapeutic or behavioral health services; or
- Security purposes.

School principals and staff should use care not to allow a student's demographic or personal characteristics to bias the decision of whether to share information received.

Upon receipt of information about an adjudication in juvenile court for an unlawful possession of a controlled substance in violation of chapter 69.50 RCW, the principal *must* notify the student and the parent or legal guardian at least five days before sharing the information with a district staff member.

If either the student or the student's parent or legal guardian objects to the proposed sharing of the information, the student, the student's parent or legal guardian, or both, may, within five business days of receiving notice from the principal, appeal the decision to share the information with staff to the superintendent of the district in accordance with procedures developed by the district.

The superintendent shall have five business days after receiving an appeal under the above to make a written determination on the matter. Determinations by the superintendent under this subsection are final and not subject to further appeal.

A principal may not share adjudication information under this subsection with a district staff member while an appeal is pending.

3. Public Records Act.

Any information received by district staff under this section is exempt from disclosure under the public records act (chapter 42.56 RCW) and may not be further disseminated except as provided in RCW 28A.225.330, other statutes or case law, and the family and educational and privacy rights act of 1994 (20 U.S.C. Sec. 1232g et seq.).

4. Assignment of Student Offenders to Certain Classrooms.

A student committing an offense under chapter 9A.36 (assault), 9A.40 (kidnapping, unlawful imprisonment, custodial interference, luring, trafficking, and coercion of involuntary servitude), 9A.46 (harassment), or

9A.48 RCW (arson, reckless burning, and malicious mischief) when the activity is directed toward the teacher, shall not be assigned to that teacher's classroom for the duration of the student's attendance at that school or any other school where the teacher is assigned.

A student who commits an offense under chapter 9A.36 (assault), 9A.40 (kidnapping, unlawful imprisonment, custodial interference, luring, trafficking, and coercion of involuntary servitude), 9A.46 (harassment), or 9A.48 RCW (arson, reckless burning, and malicious mischief), when directed toward another student, may be removed from the classroom of the victim for the duration of the student's attendance at that school or any other school where the victim is enrolled.

B. Notification of Threats of Violence or Harm.

Students and school employees who are subjects of threats of violence or harm will be notified of the threats in a timely manner. "Threats of violence or harm" means direct or indirect communications by any means of the intent to inflict physical harm upon a specific individual or individuals or that place a person in fear of the imminent likelihood of serious harm.

The district will assess and address potential threats of violence or harm in a manner consistent with Policy and Procedure 3225 – School-Based Threat Assessment [modify as accurate for your district], other safety policies, and comprehensive safe school plans. In instances where the threat is deemed moderate risk or high risk, or requires further intervention to prevent violence or serious harm, the school administrator shall notify the parent and/or guardian of any student who is the target/recipient of a threat as well as the parent and/or guardian of any student who made the threat. The district will ensure that the notice is in a language the parent and/or guardian understands, which may require language assistance for parents or guardians with limited-English proficiency under Title VI of the Civil Rights Act of 1964.

If there is a specific and significant threat to the health or safety of a student or other individuals, the district may disclose information from education records to appropriate parties whose knowledge of the information is necessary. Timing and details of the notice will be as extensive as permitted by the federal Family Educational Rights and Privacy Act, other legal limitations, and the circumstances.

The district may use information about a threat of harm or violence in connection with student discipline consistent with Policy and Procedure 3241 – Student Discipline [modify as accurate for your district].

The district, board, school officials, and school employees providing notice in good faith as required and consistent with the board's policies are immune from any liability arising out of such notification. A person who intentionally and in bad faith or maliciously, knowingly makes a false notification of a threat under this section is guilty of a misdemeanor punishable under RCW 9A.20.021.

C. Immunity.

Any school district or district employee who releases the information in compliance with federal and state law is immune from civil liability for damages unless it is shown that the school district or district employee acted with gross negligence or in bad faith.

Cross References: 2161 - Special Education and Related Services for Eligible Students
 2162 - Education of Students With Disabilities Under Section 504 of the
 Rehabilitation Act of 1973
 3120 – Enrollment
 3140 - Release of Resident Students
 3207 - Prohibition of Harassment, Intimidation, and Bullying
 3225 - School-Based Threat Assessment
 3231 - Student Records
 3241 – Student Discipline
 4020 - Confidential Communications
 5281 - Disciplinary Action and Discharge
 6513 - Workplace Violence Prevention

Legal References:

RCW 4.24.550 Sex offenders and kidnapping offenders — Release of information to public — Web site
 RCW 9A.44.130 Registration of sex offenders and kidnapping offenders — Procedures — Definition — Penalties
 RCW 13.04.155 Notification to school principal of conviction, adjudication, or diversion agreement — Provision of information to teachers and other personnel — Confidentiality
 RCW 13.40.215 Juveniles found to have committed violent or sex offense or stalking — Notification of discharge, parole, leave, release, transfer, or escape — To whom given — School attendance — Definitions
 RCW 28A.225.330 Enrolling students from other districts — Requests for information and permanent records — Withheld transcripts — Immunity from liability — Notification to teachers and security personnel — Rules
 RCW 28A.320.128 Notice and disclosure policies — Threats of violence — Student conduct — Immunity for good faith notice — Penalty
 RCW 28A.600.460 Classroom discipline — Policies - Classroom placement of student offenders — Data on disciplinary actions
 RCW 28A.320; 2020 c 167 § 1 - Notification provisions
 RCW 72.09.345 Sex offenders — Release of information to protect public — End-of-sentence review committee — Assessment — Records access — Review, classification, referral of offenders — Issuance of narrative notices
 WAC 392-400 Student Discipline
 20 U.S.C. 1232g; 34 C.F.R. Part 99 Family Educational Rights and Privacy Act
 Article IX, Section 1, Washington State Constitution

Management
 Resources:

2020 - August Issue
 2019 - December Issue
 2018 - December Issue
 2018 - August Issue
 2010 - October Issue
 2010 - February Issue
 2006 - December Issue
 1999 - June Issue
 1997 - August Issue

Adoption Date:
 Classification: **Essential**
 Revised Dates:

Procedure - Notification and Dissemination of Information about Student Offenses and Notification of Threats of Violence or Harm

A. Registered Student Sex or Kidnapping Offenders.

1. Principals.

Principals have statutory disclosure obligations upon receipt of information about registered student sex or kidnapping offenders described in Policy 3143. In addition to their responsibilities described in Policy 3143, principals have a responsibility to develop a protocol for safety planning for registered student sex or kidnapping offenders, which will include student meetings, designing and monitoring student safety plans, and implementing safeguards when students change schools or change sex offender levels or status with parole or probation.

2. Safety Planning.

The principal will complete safety planning for registered student sex or kidnapping offenders with school staff, law enforcement, probation or parole, treatment providers, parents or guardians, care providers, and child advocates, as appropriate, in order to provide a safe school environment for all students and staff. For safety planning to be effective, the district will finalize formal enrollments for students required to register as a sex or kidnapping offender promptly after their enrollment request.

3. Student Meetings.

The principal or designee, working together with probation and parole professionals, will meet promptly with the registered student sex or kidnapping offenders to create and implement a student safety plan. The principal or designee will determine other appropriate school personnel to be included in the meeting to assist in defining school expectations. The student's parent or guardian or care provider may also be invited. The purpose for the meeting is to help the student be successful in his or her transition back to school and to provide a safe school environment for all students and staff.

4. Student Safety Plan.

The principal or designee (and other school staff as applicable) in consultation with probation and parole professionals (if under court supervision) will create a student safety plan for each registered student sex or kidnapping offender. The plan will outline the responsibilities of the student and other stakeholders to promote those activities deemed essential in safely managing the student's behavior.

- a.** The Student Safety Plan will outline conditions and limitations on each student required to register as a sex or kidnapping offender concerning their interactions on the school campus;
- b.** For students not under court supervision, the Student Safety Plan should be developed in conjunction with school staff in consultation with the student's family or guardian or care provider;
- c.** The Student Safety Plan will be based on the student's needs and include guidelines for expected intervention actions for high-risk behaviors and reinforce positive behaviors;
- d.** Each Student Safety Plan will be reviewed as necessary by staff designated by the principal.

5. Monitoring the Safety Plan.

The Student Safety Plan for registered student sex or kidnapping offenders will be monitored and changes made on an "as-needed" basis by school staff.

- a. School authorities should be prepared to take appropriate actions (especially if they notice an increase or escalation of a student's high-risk behaviors) for the short and long-term safety of the student required to register as a sex or kidnapping offender and all other students;
- b. School staff will report to the principal or designee and to law enforcement or other involved agencies (treatment providers, parole/probation) if they determine the student has not followed the Student Safety Plan.
- c. Follow-through on the Student Safety Plan will be consistent with existing disciplinary policies and procedures, student conduct policies, and mandatory reporting policies.

Schools may develop school threat assessment teams and make referrals to those teams when students engage in inappropriate behaviors as defined in the Student Safety Plan.

6. When Students Move or Change Status.

When a registered student sex or kidnapping offender changes schools, whether within or outside of the district, the current principal will notify the new principal and share the student records and safety plans with the new school. If the student's sex or kidnapping offender status or probation or parole status changes, the principal will notify the school staff as part of the school's safety planning.

B. Adjudication in Juvenile Court for an Unlawful Possession of a Controlled Substance.

At least five days before a principal uses his or her discretion to share with a school or district staff member information about a student's adjudication in juvenile court for an unlawful possession of a controlled substance in violation of chapter 69.50 RCW, the principal *must* first notify the student and the parent or legal guardian of the right to appeal the principal's determination to the superintendent.

The principal's notification may occur orally or in writing but must be in a language the parent and/or guardian understands, which may require language assistance for parents or guardians with limited-English proficiency under Title VI of the Civil Rights Act of 1964.

The principal will either verbally explain any process for how to appeal the principal's determination or provide the student and parent/legal guardian with a copy of any written procedures developed by the district. [Insert written procedures or additional steps, if any here.]

Within five business days of receiving notice from the principal, if either the student or the student's parent or legal guardian objects to the proposed sharing of the information, including objecting verbally or objecting in a writing, the principal will not share the student's adjudication information with a school or district staff member until the superintendent determines the appeal.

The superintendent shall have five business days after receiving the appeal to make a written determination on the matter. Determinations by the superintendent under this subsection are final and not subject to further appeal.

C. Notification of Threats of Violence or Harm.

The district has a school-based threat assessment program and investigates reports of possible threats of violence or harm consistent with Policy and Procedure 3225 – School-Based Threat Assessment [modify as accurate for your district].

Under the Family Educational Rights and Privacy Act (FERPA), the district may release student records only with permission from the parent or the adult student (a student who is 18 years of age or older) or in a health or safety emergency, as defined by FERPA. For that reason, the district may disclose the identity of students who have made threats of violence or harm only as allowed by law.

The district will provide relevant information about the threat to the subject of the threat, and advise the subject of the threat that if law enforcement has been involved in the matter.

Suspension or other removal from the school environment can create the risk of triggering either an immediate or a delayed violent response unless such actions are coupled with containment and support. When considering the appropriate response to a student's threat of violence or harm, the student's individual circumstances will be taken into account.

Any student discipline for making threats of violence or harm must be consistent with Policy and Procedure 3241 – Student Discipline [modify as accurate for your district]. Discipline of students eligible for special education services or with disabilities will be consistent with Policy and Procedure 2161 – Special Education and Related Services for Eligible Student and Policy and Procedure 2162 - Education of Students with Disabilities Under Section 504 of the Rehabilitation Act of 1973 [modify as accurate for your district].

Adoption Date:
Classification:
Revised Dates:

Transfer of Ownership of District Property

Seattle Public Schools and the City of Seattle Parks Department have been working on a property exchange of portions of the West Seattle Elementary and Walt Hundley Playfield Properties.

West Seattle Elementary parcel exchange for Walt Hundley parcel

The Seattle Public School District and the City of Seattle Parks Department previously agreed to an exchange of property in 1987 when West Seattle Elementary, previously known as High Point Elementary, 6760 34th Ave SW Seattle, WA 98126, was constructed, whereby Parks would deed a portion of their parcel property to the district in return for a portion of the SPS parcel at the adjacent Walt Hundley Playfield, 6920 34th Ave SW Seattle, WA 98126. On June 15, 1987, the Superintendent of the Parks Department signed and executed a Lot Boundary Adjustment that at the time was thought to be deemed a legal property exchange.

In the predesign phase of design of the West Seattle Elementary School construction project for the addition, it was discovered that the Lot Boundary Adjustment had not been properly filed with the City Department of Planning and Development. The school was ultimately built on this portion of the parcel that is still owned by the City of Seattle Parks Department. This property exchange is required to allow for construction of a 12-classroom addition at West Seattle Elementary.

The next steps in this process are to have the Seattle Public Schools and the City of Seattle Parks Department parcels surveyed with an equal square footage; complete an updated Lot Boundary Adjustment with a new legal description and submit it to the City Department of Planning and Development for recording prior to receiving the construction permit. The construction of this project is to begin the summer of 2021 and will need the construction permit prior to starting. This process will also require holding a public hearing along with two Board Action Reports; one to surplus the property and another to exchange the property with the City of Seattle Parks Department. The City of Seattle Parks Department have their own processes that will be brought to the City Council for approval.

Both parties agree that the exchange is beneficial to both the Seattle Public Schools and the Seattle Parks Department.

Date: November 5, 2020
To: Operations Committee
From: Fred Podesta, Chief Operations Officer
Subject: BEXT/BTA Oversight Committee Membership

Background

The Building Excellence (BEX) and Buildings, Technology and Academics (BTA) Capital Programs Oversight Committee is a citizen oversight committee required by the Seattle School Board. The committee oversees the planning, prioritization, and implementation of current and future BEX and BTA programs; makes recommendations concerning the progress of capital programs; and advises about the identity, scope, and priority of projects to be included in future BEX and BTA capital levies.

The committee was first established to provide oversight for BEX I levy. In 2018, it was recognized that BTA levies should also be considered by the committee and the charge was amended accordingly. At that time, guidelines were developed that clarified the length of committee members' terms. These guidelines were implemented with initial staggered terms, to avoid the full turnover of membership. Under this plan, five of the current members' terms expired on October 31.

The committee charge states that members are eligible to serve multiple terms and past practice has been for members' terms to roll over if the member was willing to continue to serve. In consultation with the current committee chair and the chair of the Operations Committee, staff recommend that the district solicit for members whenever terms conclude. This is not a reflection on the work of the current committee, which is highly valued, but rather reflects the desire of the board to allow community members to participate at regular intervals. Existing members are also welcome to re-apply for membership at the conclusion of their terms.

Work Plan

As the terms have already expired, the committee chair will determine if members are willing to serve an interim extension through June 30, 2021.

During this interval, district staff will work with the directors and the committee to solicit for members to fill the five positions. The specific tasks include:

1. Review committee qualifications with:
 - Operations Committee members
 - Current and past BEX/BTA committee board representatives
 - Students and community members
 - Existing BEX/BTA Oversight Committee
 - District staff
2. Form membership committee
3. Establish solicitation and application process
4. Solicit and review applications
5. Select members
6. Transition new members onto the committee

BEX/BTA Capital Levy Semi-Annual Report

November 3, 2020

Introduction: Much of the funding to construct, maintain and renovate district educational facilities comes directly from Seattle residents through voter-approved capital levies. By maintaining and regularly improving schools and related facilities, we reduce the cost of ownership, which in turn reduces the costs to local taxpayers over the long-term. Our buildings, however, require consistent, thoughtfully applied fiscal resources to systematically maximize their lifecycle while minimizing the financial burden on the community. Seattle residents have been generous in responding to District requests for fiscal support of our capital needs, approving Building Excellence (BEX) and Building, Technology and Academics (BTA) capital levies since 1995. Successful passage of our capital levies is critical in providing a learning environment that allows staff to focus on positioning students for academic success.

In Fiscal Year 2019-2020, Capital Projects and Planning staff focused their efforts on designing, bidding and building projects identified in the capital levies for BTA III, BEX IV, BTA IV, and BEX V as well as for distressed school grant projects.

At Seattle Public Schools, we remain committed to providing an excellent education for every student, in every classroom, every day. School construction responds to the rigorous educational program and minimizes long-term operational costs through careful selection of materials and stringent criteria for energy usage.

BTA III (2010-2016)

Program Status: Efforts focused on completing remaining projects, including:

1. Construction closeout of: Adams ES fire suppression system upgrade; Muir ES geothermal well installation.
2. Physical construction of: Adams ES fire suppression system upgrade.
3. Design of: Lafayette HVAC and fire suppression system upgrades.

Budget Status: As of August 31, 2020, the levy remains within available funds.

Informational: Funds were allocated for implementing fire sprinkler improvements to Mercer MS and HVAC improvements to Montlake ES that have not been spent. Both schools are proposed for either replacement or a major modernization and addition as part of the BEX V capital levy. These dollars were fenced and used to reduce revenue requirements of the BEX V capital levy.

BEX IV (2013-2019)

Program Status: Efforts focused on completing identified capacity/condition projects, including:

1. Construction closeout of: Dearborn Park ES roof replacement and seismic improvements; Decatur ES modernization; Decatur ES annex demolition; McGilvra ES lunchroom addition, Queen Anne ES classroom and gymnasium additions; View Ridge ES seismic improvements; Wing Luke ES Phase 1 building demolition and site improvements; Eckstein MS Phase 1 and Phase 2 seismic improvements; Cleveland HS new field and field lighting; Lincoln HS modernization and addition; and, student enrollment, class size reduction, special education & program placement repurposing projects.
2. Physical construction of: Beacon Hill ES, Maple ES and Orca Whitworth K-8 seismic improvements; Daniel Bagley ES classroom and gymnasium addition and modernization; Wedgwood ES exterior door repairs or replacement, roof coating, seismic improvements; Wing Luke Elementary School – Phase 2 replacement building; Broadview Thomson K-8 Phase 2 seismic improvements; Whitman

MS seismic improvements; and student enrollment, class size reduction, special education & program placement repurposing projects;

3. Design of: Fairmount Park ES window repairs; Wedgwood ES exterior door repairs or replacement, roof coating, seismic improvements; Broadview Thomson K-8 seismic improvements Phase 2; Whitman MS seismic improvements; Washington MS seismic improvements, science classroom improvements; McClure seismic improvements, science classroom improvements; North Queen Anne School program placement, exterior door and window replacement seismic improvements, HVAC upgrades, fire suppression upgrades, electrical system upgrades; and student enrollment, class size reduction, special education & program placement repurposing projects.

Budget Status: As of August 31, 2020, the levy remains within available funds. Levy project expenditures total \$825,306,314 dollars of the Board approved budget of \$891,295,085 dollars.

Informational: Funds were allocated for science improvements to Mercer MS and seismic improvements to Alki ES, Montlake ES, Northgate ES, Rogers ES, Sacajawea ES, Mercer MS, and, Rainier Beach HS that have not been spent. These schools are proposed for either replacement or a major modernization and addition as part of the BEX V capital levy. These dollars were fenced and used to reduce revenue requirements of the BEX V capital levy.

BTA IV (2017-2022)

Program Status: Efforts focused on completing projects, including:

1. Construction closeout of: Dearborn Park ES roof replacement and seismic improvements; Magnolia ES Phase 1 modernization and addition; Robert Eagle Staff MS field lighting; Cleveland HS new field and field lighting; Lincoln HS modernization and addition; Ballard HS athletic field lights; Roosevelt HS athletic field lights; North Queen Anne School roof replacement and seismic improvements; John Stanford Center for Educational Excellence freezer mechanical system replacement; and, student enrollment, class size reduction, special education & program placement repurposing projects.
2. Physical construction of: Webster School modernization and addition; Jane Addams MS synthetic athletic field replacement; Franklin HS Phase 2 window replacement and landmarked door repairs; Nathan Hale HS synthetic athletic field replacement and track repairs; and, student enrollment, class size reduction, special education & program placement repurposing projects
3. Design of: Jane Addams MS synthetic athletic field replacement and athletic field lights; Madison MS new synthetic athletic field and athletic field lights; Garfield HS landmarked exterior door repair or replacement, and waterproofing; Nathan Hale HS synthetic athletic field replacement, track repairs; West Seattle HS new synthetic athletic field, batting cages; and student enrollment, class size reduction, special education & program placement repurposing projects

Budget Status: As of August 31, 2020, the levy remains within available funds. Levy project expenditures total \$297,045,182 dollars of the Board approved budget of \$411,398,613 dollars.

BEX V (2020-2025)

Status: Planning staff worked diligently on the supporting the start-up of the BEX V capital levy. Planning group efforts focused on preparation of Landmark nomination reports, research on potential property issues, and general support for the initial planning phases of the BEX V construction projects.

Efforts focused on completing projects, including:

1. Construction closeout of: North Queen Anne School roof replacement and seismic improvements.
2. Physical construction of: Beacon Hill ES playground improvements; Dearborn Park ES playground improvements; Dunlap ES playground improvements; Green Lake ES playground improvements; Hawthorne ES playground improvements; Lowell ES playground improvements; Maple ES playground improvements; McGilvra ES playground improvements; Montlake ES playground improvements; Olympic View playground improvements; North Beach ES site improvements (asphalt overlay, stormwater collection system repairs); Rising Star ES @ African American Academy Phase 2 roof replacement; Sacajawea ES site improvements (asphalt overlay, stormwater collection system repairs); Wedgwood ES exterior door repairs or replacement, roof coating, seismic improvements; West Woodland ES classroom and gymnasium addition; Jane Addams MS site improvements (asphalt overlay, stormwater collection system repairs); Ballard HS synthetic athletic field replacement; and West Seattle HS roof replacement.
3. Design of: Beacon Hill ES playground improvements; Dearborn Park ES playground improvements; Dunlap ES playground improvements; Green Lake ES playground improvements; Hawthorne ES playground improvements; Kimball ES replacement; Lowell ES playground improvements; Maple ES playground improvements; McGilvra ES playground improvements; Montlake ES playground improvements; North Beach ES site improvements (asphalt overlay, stormwater collection system repairs); Northgate ES replacement; Olympic View playground improvements; Sacajawea ES site improvements (asphalt overlay, stormwater collection system repairs); Viewlands ES replacement; Wedgwood ES exterior door repairs or replacement, roof coating, seismic improvements; West Seattle ES classroom addition and modernization; West Woodland ES classroom and gymnasium addition; Jane Addams MS site improvements (asphalt overlay, stormwater collection system repairs); Madison MS new synthetic athletic field, athletic field lights; Ballard HS synthetic athletic field replacement; Lincoln HS seismic improvements; Rainier Beach HS replacement; West Seattle HS roof replacement and Van Asselt Classroom and Gymnasium Addition

Budget Status: First collection of the levy occurred Spring 2020. As of August 31, 2020, levy project expenditures total \$34,749,174 dollars of the Board approved budget of \$1, 479,191,944 dollars.

Distressed School Grant and K3 CSR Grant

Efforts focused on completing projects, including:

1. Construction closeout of: Nathan Eckstein MS solar sunshades.
2. Physical construction of: Coe ES classroom addition; Cedar Park ES restroom addition; Magnolia ES classroom addition; and, West Woodland ES classroom and gymnasium addition.
3. Design of: Coe ES classroom addition; Cedar Park ES restroom addition; Leschi Elementary School classroom addition; Magnolia ES classroom addition; West Woodland ES classroom and gymnasium addition; and James Madison Middle School classroom addition.