



# School Board Briefing/Proposed Action Report

Informational (no action required by Board)     Action Report (Board will be required to take action)

**DATE:** February 25, 2016  
**FROM:** Dr. Larry Nyland, Superintendent  
**LEAD STAFF:** Dr. Lester Herndon, Associate Superintendent of Facilities & Operations, (206) 252-0644, [ltherndon@seattleschools.org](mailto:ltherndon@seattleschools.org)

## I. TITLE

BEX IV & BTA IV: Award Contract P1438 for Construction Management Services for ~~BEX IV and BTA IV~~ project at Lincoln High School and Wing Luke Elementary School to Heery International, Inc.    **For Introduction:** March 2, 2016  
**For Action:** March 16, 2016

## II. WHY BOARD ACTION IS NECESSARY

Per Board Policy No. 6220, Procurement, all contracts exceeding \$250,000 must be approved by the Board. The contract to Heery International, Inc. for the full scope of Construction Management Services for Modernization of Lincoln High School and New K-5 Elementary School at Wing Luke will exceed \$250,000.

## III. FISCAL IMPACT/REVENUE SOURCE

Fiscal impact to this action will be Three Million, Nine Hundred Eighty Three Thousand, Two Hundred Ninety Dollars.

The revenue source for this motion is BEX IV and BTA IV Capital Funds.

Project	BEX IV funding	BTA IV funding	Total Project Budget
Wing Luke Elementary School	\$43,222,947	\$0	\$43,222,947
Lincoln High School	\$19,238,051	\$70,471,090	\$89,709,141

Expenditure:     One-time     Annual     Other Source

## IV. POLICY IMPLICATION

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

## V. RECOMMENDED MOTION

I move that the School Board authorize the Superintendent to execute construction contract P1438, with Heery International, Inc., in the amount of \$3,983,290, plus Washington State sales tax (WSST), for Construction Management Services for the BEX IV & BTA IV project at

Lincoln High School and Wing Luke Elementary School, in the form of the draft agreement attached to the Board Action Report, with any minor additions, deletions, and modifications deemed necessary by the Superintendent and to take any necessary actions to implement the agreement.

## **VI. BOARD COMMITTEE RECOMMENDATION**

The motion was discussed at the February 25, 2016, Operations Committee meeting. The Committee moved this item forward to the full Board for consideration.

## **VII. BACKGROUND INFORMATION**

The projects are intended to address the projected high school enrollment growth in north and central regions and the replacement of an existing elementary school in southeast Seattle. In February of 2013 the six-year capital levy (BEX IV) was approved by voters. BEX IV provides funds to repurpose the existing Lincoln building into a High School and meet the educational needs of a High School. BEX IV also provides funding for a new Wing Luke Elementary School. The proposed BTA IV funding will address additional basic infrastructure improvements including health and safety issues that maintain the physical integrity of the District's schools and buildings. It was necessary to begin project specific planning and design work to allow bidding and construction to be completed by the scheduled opening date. An additional interim contract P1410 was enabled at the beginning of project specific work in mid-November 2015 for preliminary Lincoln High School management of the site conditions assessment, site specific planning, School Design Advisory Team (SDAT) process and conceptual design work with compensation for additional services and reimbursable expenses not to exceed \$226,481. In addition, a modification to the aforementioned agreement was approved in the amount of \$21,446 for oversight of the master planning of the site, General Contractor/Construction Manager (GCCM) procurement assistance and value analysis of the concept design estimate. The Wing Luke Elementary School project management will begin fall of 2016.

This BEX IV and BTA IV Construction Management Contract with Heery International, Inc. covers the Lincoln High School Modernization and the Wing Luke Elementary School Replacement. Under the contract, Heery International, Inc., will provide project management services through design, construction, and closeout of the project.

The following are some key reasons and benefits for using a Construction Management (CM) firm for these BEX IV and BTA IV projects:

- One of the primary drivers for engaging contract CM services is to accommodate the fast track schedule of the largest BEX IV and BTA IV projects that are needed to accommodate district student enrollment growth.
- A significant benefit of retaining contract seasoned CM firms is that they bring a series of specialized skills, such as cost estimating, schedule management, claims management, familiarity with local building codes and processes, community presentation capability, and design facilitation that employee project management staff normally do not possess.
- If the temporary need for staff augmentation was addressed by hiring additional internal staff, it is likely that it would take several months to hire them and they would need to be

laid off in 2-3 years as workloads decline. Hiring and firing in such short succession can be disruptive to the capital department, and is not likely to result in the best candidates.

- The District has demonstrated a history of success, from the Capital Improvement Program (CIP) in the 1980s and 90s through four BEX programs using qualified Construction Management firms to supplement in-house Project Management Staff.
- Best practice is for school districts to use outside CM services for large programs and complex projects. This is done by Spokane, Tacoma, Lake Washington and Bellevue School Districts.
- Financial program management and the smaller and/or less complex BEX and BTA projects will be managed by in-house staff.

The District publicly advertised for services in July 2015. Four firms (4) submitted proposals. The review panel consisted of District employees. The review panel interviewed four (4) firms and selected Heery International, Inc. as the most qualified firm for the BEX IV and BTA IV, Lincoln High School and Wing Luke Elementary School Projects.

For Lincoln High School and Wing Luke Elementary, the District selected Heery International, Inc., based on specific criteria to best meet its needs, including factors like demonstrated performance on similar projects, K-12 school construction experience, communication skills, General Constructor/Construction Management(GC/CM), Alternative Public Works construction delivery method, Construction Manager Certifications and Education, knowledge of local and city issues, familiarity with Washington State Environmental Policy Act (SEPA), and the willingness to accept the District's standard terms and conditions. The District included cost as an important criteria in selecting its Construction Management firms, and aggressively negotiated the contract terms and price, to receive the best value for the services.

#### **VIII. STATEMENT OF ISSUE**

Whether to execute the contract with Heery International, Inc., for Construction Management Services for BEX IV and BTA IV project at Lincoln High School and Wing Luke Elementary School as follows:

- Lincoln High School: \$2,373,966, plus WSST
- Wing Luke Elementary: \$1,609,324, plus WSST

#### **IX. ALTERNATIVES**

Do not approve this contract. This is not recommended because the Construction Management firm has an important role in the design phase and if preliminary work is not started immediately, the school opening may be delayed and the District's significant capacity shortfall in north, central and southeast will not be addressed at the earliest possible date.

#### **X. RESEARCH AND DATA SOURCES / BENCHMARKS**

The Construction Management firm will employ the following resources when planning this project:

- The 2013 Generic Elementary Educational Specifications and High School are currently being produced.
- Seattle Public Schools Facilities Technical Standards.
- BEX IV and BTA IV Capital Levy Schedule.
- School Design Advisory Team Manual.
- Facilities Condition Assessment 2014.
- BEX IV and BTA IV Robison Cost Estimate for CM Services
- Meng Analysis - Facilities Condition Assessment Report, dated 2014

**XI. TIMELINE FOR IMPLEMENTATION / COMMUNITY ENGAGEMENT**

Upon Board approval, planning and design will begin, including engagement with a Site Specific School Design Advisory Team which will include representation from Neighborhood Councils.

**XII. ATTACHMENTS**

- Contract P1438
- Interim Contract for CM Services, P1410; Phase I – Lincoln High School
- Modification #1, Interim Contract P1410

**CONSTRUCTION MANAGEMENT AGREEMENT  
BEX IV LEVY PROJECTS**

**CONTRACT NO. P1438**

**Between**

**Seattle School District**

**And**

**Heery International, Inc.**

CONSTRUCTION MANAGEMENT AGREEMENT  
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Exhibit A - Schedule of Payments (Attachment 1)

Exhibit B – Estimate of Reimbursable Expenses

Exhibit C – List of Personnel

Exhibit D – Hourly rates for personnel

Exhibit E – Staffing Levels by CM/Project

Exhibit F – List of Projects

## CONSTRUCTION MANAGEMENT AGREEMENT

This Construction Management Agreement ("Agreement") is effective as of the 1 day of April, 2016, by and between Seattle School District No. 1 ("Owner") and Heery International, Inc., a Georgia State corporation ("Construction Manager" or "CM"), for project construction management services on Lincoln High School Renovation and Wing Luke Elementary School Replacement Project in the Building Excellence Program - Phase IV ("Program or BEX IV").

### ARTICLE I. DEFINITIONS

1. Architect or A/E shall mean the architects, or such other firm as selected by the Owner for the design of the Project.
2. Architect's Estimate or A/E Estimate. The Architect's estimate of the allowed construction cost ("ACC"), as that term is defined in the Owner-Architect agreement, prepared by a cost estimator and adjusted from time to time as required, itemized by major categories and projected to the expected time of bid.
3. Budgets.
  - (1) Project Budget. The budget for a specific Project. It includes the design budget, the construction budget, the furniture/equipment budget, and any costs of planning for and administering the design and construction contracts that are not included in the design or construction budgets.
  - (2) Design Budget. The budget for the design of a specific project. It includes the cost of the design contract, related consultant contracts, and the cost of awarding and administering such contracts.
  - (3) Construction Budget. The budget for the construction of a specific project. It includes the construction contract, related consultant contracts, and the cost of awarding and administering such contracts.
  - (4) Furniture/Equipment Budget. The budget for the furniture, equipment, education materials and move-in of a specific project. It includes the procurement contracts, and the cost of awarding and administering such contracts.
4. Construction Contract shall mean the general construction or general construction/construction manager contracts for the Project, when executed.
5. Construction Manager's Detailed Estimate Review. A thorough review of the Architect's estimate of the ACC, prepared, and adjusted as required below.
6. Contract or Contracts shall mean individually and collectively the design contracts, construction contracts, and early procurement contracts, if any.

7. Days. Calendar days unless stated otherwise.
8. Demolition Contract shall mean the separate contract, if any, for demolition and hazardous materials removal for a Project.
9. Furniture/Equipment Contract shall mean the separate contract or contracts, if any, for purchase of furniture, workstations, furnishings, or special equipment for a Project.
10. Governmental Requirements shall mean any and all applicable building, zoning, subdivision, traffic, parking, land use, environmental, occupancy, health, or other applicable laws, ordinances, regulations, decrees, rules, conditions, or requirements of any federal, state, county, municipal or other governmental or quasi-governmental authority or agency pertaining to the Program. This term is intended to include any requirements imposed as a condition to the granting of any such governmental approvals, consents, variances, permits, state funding or other similar actions.
11. Hazardous Substances shall include (a) asbestos, (b) petroleum and petroleum-based chemicals and substances, (c) urea formaldehyde, and (d) any chemical, material, element, compound, solution, mixture, substance, or matter of any kind whatsoever which is defined, classified, listed, designated, or regulated as hazardous, toxic, or radioactive by federal statutes, regulations, orders, or directives of the State of Washington, any political subdivision of that state, any municipal corporation of that state or any board, agency, authority, or body associated with the foregoing of any quasi-governmental body or agency with jurisdiction over such matters.
12. Phases of a Project.
  - (1) Design. Includes the selection of the Architect and award of a design contract. The preparation of the plans and specifications required for the construction of a Project. The selection of the construction contractor(s) and award of the construction contract(s) are part of this Phase. (Demolition, hazardous material removal, and some renovation of existing facilities also may take place in this phase.)
  - (2) Construction. The actual construction of the facilities required for completion of a Project. This work may be accomplished by the award of more than one construction contract. This phase includes commissioning of the facilities and the move-in and set-up of furniture and equipment as well as a warranty period of one year following the substantial completion of construction.
13. Plans and Specifications shall mean the plans and specifications included in the construction contracts.
14. Program shall mean the planning, design, and construction of new and renovation projects for the Building Excellence Program - Phase IV.

15. Project. A portion of Owner's Program, limited to planning, design, construction, commissioning and related work at one location. The Projects are listed in Exhibit F.
16. Project Schedule shall have the meaning given it in Paragraph II.F.8.
17. Punch List Work shall mean minor items of repair, correction, adjustment, or completion as such phrase is commonly understood in the construction industry.
18. Services shall have the meaning set forth in Section II.A.
19. Shop Drawings shall have the meaning set forth in the contracts.
20. Subcontractor shall have the meaning given it in the contracts.
21. Work shall have the meaning given it in the contracts.

ARTICLE II. CONSTRUCTION MANAGER'S  
SERVICES AND RESPONSIBILITIES

- A. General Description. The Construction Manager shall perform management and coordination services on behalf of the Owner and in collaboration with the Architects, for the completion of the following selected Projects:

<u>Project:</u>	<u>Planned Start</u>	<u>Planned Occupancy</u>
Lincoln High School Modernization	04/01/2016	09/2019

Wing Luke Elementary School Replacement	10/03/2016	9/2020
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CM shall assist Owner as requested in completing the Project work by providing planning, budgeting, scheduling, project specific community engagement, processing of governmental actions, design review, estimate and cost review, value engineering, constructability review, contractor selection, contract administration, and related support services, all as set forth in this Agreement. Such services shall include those described in further detail in Article. II.B. through H. below ("services").

- B. Professional Services. In the performance of the services, CM shall (a) exercise that degree of professional skill, judgment, and diligence commensurate with that which is normally exercised by recognized professional construction management firms with respect to services of a similar nature performed in the Greater Seattle Area, including review for compliance with applicable governmental requirements; (b) furnish efficient business administration and supervision to perform in an expeditious, timely, and economical manner consistent with the interests of the Owner; (c) perform the services at all times in a relationship of trust and confidence to the Owner; (d) act solely to further the interests of the Owner in connection with the complete construction of the Project; (e) efficiently coordinate its services with and otherwise cooperate with the Architect in furthering the interests of the Owner; (f) provide at all appropriate times to the services

the key personnel identified on Exhibits C and E to this Agreement; and (g) provide sufficient personnel, property, and facilities to carry out its responsibilities under this Agreement. Hereinafter, the performance standards described in the preceding sentence are sometimes referred to as using "professional efforts." This Agreement contemplates that the CM shall serve as the Owner's representative, subject to the supervision, direction, and control of the Owner and shall manage and coordinate the selected Project and perform all services appropriate to that function unless reserved to the Owner by this Agreement or excluded from CM's duties, responsibilities, and authority by directive of the Owner.

- C. Construction Manager Liability. Nothing in this contract is intended to impose responsibility on the CM for (a) construction means, methods, techniques, sequences, and procedures employed by a contractor for the performance of the work covered by its construction contract or (b) for a default in performance by a contractor of its construction contract unless such default was caused by an act or omission of CM in violation of its duties and responsibilities under this Agreement.
- D. General Duties. The CM shall perform all of the following:
1. CM Staffing. CM shall, at a minimum, commit the staffing provided in Exhibit C and sufficient support personnel, property, and facilities to carry out its responsibilities under this agreement.
  2. Project Budget. Each Project will have an overall budget identified by the Owner. CM shall update the project budget(s) on a monthly basis or more often as the directed by the Owner.
  3. Reports. Reports shall be presented in a format approved by Owner. Reports shall be prepared and submitted by CM. CM shall not be entitled to delegate to other contractors the preparation or submission of reports. Required reports are as follows:
    - a. Weekly Reports. Each Friday, CM shall present in writing a summary report of the work performed on the Project that week, work scheduled for the next week, problems resolved, problem areas that require attention, and assignments (or recommended assignments), and completion dates for necessary actions, and at Owner's request, meet to discuss the same.
    - b. Unusual Events. CM shall keep Owner's staff aware of any new problems or developments of an unusual nature. As may be appropriate, these reports may be written, submitted by email, or delivered by hand, but no more than twenty-four hours after CM becomes aware of the event.
    - c. Monthly Reports. On the first Monday of each month, CM shall submit a detailed written report on:

- (1) The Project budget, each including cost to date (provided by Owner) and time-phased projected costs to completion; any cost overruns and actions being taken to eliminate or minimize them;
- (2) The Project schedules, including current status, projected completion date(s), and actions being taken to overcome any slippage;
- (3) For each Project, for those contracts under the CM's responsibility (including the CM contract), a summary of the current status, problems not covered in the budget or schedule reports, and actions being taken to correct any problems; and
- (4) As requested, this monthly report will also be submitted orally.

E. Scope of Work-Project Design Phase. Without limiting the generality of Sections II.A. and D., this Section describes in greater particularity the duties and responsibilities of the CM during the Design Phase for the Projects listed in Exhibit F.

1. Design Budget. CM shall prepare for Owner approval a design budget that includes Architect and design-related consultant costs, starting with the design phase. This budget shall be updated and submitted to Owner on a monthly basis.
2. Consultant and Contractor Selection. Pursuant to procedures acceptable to Owner, CM shall assist Owner in screening, interviewing, and recommending A/E, consultant, construction contractor and/or GC/CM (if applicable) firms and the negotiation of the fees for A/E, consultant, construction contractor and/or GC/CM (if applicable) contracts and any required modifications as are determined to be necessary.
3. Schedule Monitoring. CM shall monitor each project design as it is developed, maintaining a running check on cost, schedule and scope (both design and construction). Special attention shall be given to "long lead" materials and equipment. CM shall consult with the Architect, (GC/CM (if applicable) and Owner to coordinate actions necessary to preclude schedule problems caused by long lead items.
4. Project Progress Monitoring. Based on the program budget, CM shall develop for Owner approval a detailed design and construction budget for each project. The design and construction budgets shall be updated and submitted to Owner, as the design develops, but not less often than outlined in Article II. D. 2 & 3. CM shall establish, maintain, and update an automated master Project schedule as the design develops and as outlined in Article II.D. 3. The project schedule shall incorporate information from Critical Path ("CPM") schedules prepared by construction contractors during the construction phase, as may be appropriate.

The CM's Project schedule shall be in sufficient detail to assure that actions to obtain necessary approvals are timely initiated, long lead items procured, and similar events identified and planned. The schedule shall be capable of showing the scheduled and actual progress on multiple projects.

5. Estimate Review. CM shall provide detailed reviews of Architect's estimate at the completion of:
  - a. Schematic design;
  - b. Design development;
  - c. Ninety-five percent (95%) completion of the construction documents.
  - d. If GCCM, Alternative Construction Delivery: Architect's estimator will reconcile and review GC/CM's estimates.

These detailed estimate reviews shall be delivered to Owner in timely fashion so as not to delay progress on the Project.

6. Permit Assistance. For permits that may be required of Owner, the CM shall assist in securing and transmitting appropriate documents to the various approval agencies at the appropriate times and will expedite these agencies' approvals to the extent possible. The CM shall report to the Owner on any known problems concerning permit approvals. CM to assist Owner in obtaining the Master Use Permit (MUP) in order for the construction to commence in accordance with the project schedule identified in Exhibit F.
7. Reasonableness of Bids. The CM's detailed estimate reviews provided at the time of 95% completion of the construction documents shall be used as one of the factors in determining the reasonableness of the bids (or proposals) received.
8. Bid Alternates. CM shall make recommendations for, and assist in, the development of alternate bid items if the Architect's estimates indicate a possible shortage of funds for award of a project.
9. Value Engineering and Constructability Studies. CM shall coordinate work by others on value engineering studies at the completion of schematic design, and a constructability study at the completion of ninety-five (95%) construction documents or as may be otherwise appropriate for GC/CM delivery, if utilized. These studies shall comply with requirements of the Office of the Superintendent of Public Instruction (OSPI).
10. Construction Site Provisions. If requested by Owner CM shall, at no additional cost, make recommendations concerning any GCCM's plans for construction jobsite safety requirements, temporary facilities, permitting, parking, traffic control, deliveries, lay-down areas, available utilities and construction contractor payment for utilities, and similar jobsite considerations that will affect the construction work. However, CM will not be responsible for the adequacy or

enforcement of any construction contractor's safety program and procedures, which will be solely the construction contractor's responsibility.

11. Schedule for Owner Furnished Items. CM shall take appropriate action to plan for the timely scheduling, procurement by Owner, and delivery of any Owner furnished equipment, fixtures, systems, and/or materials.
12. Recommendations on Project Manual. Based on the District's Technical Standards, CM shall advise and recommend to the Architect and Owner provisions that should be included in the construction specifications, Division I and the construction contract General Conditions and Special Conditions, and coordinate preparation of these documents with the A/E.
13. Design Document Review. CM shall review as appropriate A/E prepared drawings and specifications for any lack of clarity, ambiguity, conflicts, and any other aspects that may adversely affect construction price and/or performance.
14. Advice on Additional Consultants. CM shall make recommendations for actions required to select any additional consultants and assist in the negotiation and drafting of contracts for such services.
15. Bid Evaluation. CM shall conduct a responsibility check of the apparent low responsive bidder or proposer and its subcontractors and suppliers. If there is any question as to the low, responsive, responsible bidder, it shall initiate responsibility checks of such additional bidders as may be necessary and appropriate to preclude delay in awarding the contract. It shall conduct a pre-award meeting with the apparently successful bidder to determine that the bidder understands the contract requirements and is prepared and capable of complying with them.

If only one bid or proposal is received, or if the low bid or proposal is more than 10% greater than the A/E estimate, CM shall perform an analysis of the bidder's estimate to determine the reasonableness of the price and provide Owner with a report setting forth its findings and recommendations.

CM shall recommend to Owner, in writing with supporting reasons, the bidder it believes should be awarded the construction contract.

16. Construction Contract Award. Prior to award, CM shall review and cross-check owner-contractor agreement and construction contract documents for possible errors and make recommendations for corrections, if any, to Owner. Owner shall receive payment and performance bonds and certificates of insurance. When the construction contractor has complied with all preliminary requirements, CM shall prepare a notice to proceed for issuance by Owner.



- F. Construction Phase Duties. Without limiting the generality of Sections II.A. and D., this Section describes in greater particularity the duties and responsibilities of the CM during the Construction Phase for the Projects listed in Exhibit F.
1. CM Representative. CM shall appoint an on-site full-time project manager and other staff as set forth in Exhibit C for each Project, acceptable to Owner, who has full, authority to take any and all actions that may be necessary for CM to fully and timely comply with its contract obligations. This project manager, or an equally authorized and qualified alternate, shall be locally available at all times project work is in progress.
  2. Authority of CM. CM is a representative of the Owner. It is not a general agent of Owner. Except as provided in Article II. F. 11 & 12 below, and as may otherwise be specifically authorized in writing by Owner. CM has no authority to order extra work of the Architect(s), construction contractor(s), or consultants, or in any way to modify Owner's contracts with those parties.
  3. Contracts. CM shall administer the contracts to be executed between Owner and a contractor or contractors to be selected by Owner such that, to the best of CM's ability and consistent with the standard set forth in Article II.B., the work covered by such contractors is completed for the price specified in such construction contracts and within the time specified in such construction contracts.
  4. Owner's Representative. Unless otherwise directed by Owner, the CM shall be designated an Owner's Representative to all contractors until final payment is due. The CM shall have authority to act on behalf of the owner only (a) to the extent provided in the construction contracts and (b) to the extent the exercise of such authority is not inconsistent with limitations placed on such authority by this Agreement or by directives of the Owner or the Owner's Representatives.
  5. Observation of the Construction Work. CM shall, on a daily basis, observe the progress of the construction. CM shall promptly report any probable defects to the Owner and architect.
  6. Inspections. CM shall perform regular on-site observations of construction contractor's work as frequently as necessary and take other actions in coordination with the Architect and any special inspectors to (a) determine that the work of each contractor is being performed generally in accordance with the requirements of the construction contract for such Work; (b) guard the Owner against defects and deficiencies in the work on the program; and (c) subject to review by the Architect and Owner, reject work which, in CM's opinion, does not conform to the requirements of the applicable construction contract. The CM shall make recommendations to the Architect and Owner regarding special inspection or testing of any portion of the work, whether or not such work is then fabricated, installed, or completed. CM shall be responsible for confirming that all tests required by the Construction Documents are conducted. If such tests are not conducted, the CM shall be liable for any losses to the extent they are

attributable to CM's failure to inform Owner that such required tests have not been conducted and to the extent such losses from this failure are not recovered from the construction contractor or third party consultants.

7. Coordination. CM shall provide administrative, management, and related services as required to direct and coordinate work of the contractors with each other and with the activities and responsibilities of the CM, the Owner, the Owner's Representatives, and the Architect, such that the Projects are completed in accordance with the plans and specifications and the Owner's objectives for cost, time, and quality.
8. Meetings. CM shall schedule and conduct regular preconstruction, construction, and progress meetings to discuss such matters as procedures, progress, problems, and scheduling and shall prepare and promptly distribute minutes of such meetings to the participants and Owner.
9. Schedule. CM shall review each construction contractor's schedule for compliance with the contract requirements to confirm that it is generally realistic and that the construction contractor appears to have reasonable plans to obtain suitable forces and equipment that will enable it to meet the schedule. CM shall prepare and regularly update and reissue a project schedule incorporating the activities of the contractor on the project. Each reissued project schedule shall show current conditions and revisions required by actual experience. CM shall monitor the progress of the work and advise Owner as to actions necessary to avoid or overcome schedule slippages. CM shall monitor the construction contractor's progress in meeting the project schedule. CM shall be especially alert for delays in the work that may be caused by differing site conditions, or Owner's, Architect's or CM's failure or inability to take timely action on shop drawings, requests for information, and similar items. CM shall initiate appropriate action to mitigate or prevent the cause of any delay and shall maintain accurate records of the effect of any delay on the progress of the work and prepare estimates of the construction contractor's delay related costs or review and recommend resolution of requests for additional time or money as a result of delays, if any.
10. Budget. CM shall, in conjunction with District accounting staff (a) provide regular monitoring of the Owner's construction budget for the Project, showing actual costs for activities in progress and estimates for incomplete activities correlated to the categories or line items in the budget and the contractor's schedule of values; (b) identify variances between actual and estimated construction costs as actually incurred or projected that exceed or will exceed the amount set forth in the budget; and (c) advise the Owner, and the Architect whenever any category or line item of construction costs as actually incurred or projected exceeds or will exceed the amount set forth in the budget; and (d) advise and counsel the Owner concerning any action that should be taken by reason of any overage described in clause (c).

11. Changes. CM shall (a) recommend to the Owner , in collaboration with the Architect, any necessary or desirable changes to the plans and specifications or to the work; (b) review and analyze requests for changes and additional compensation from a contractor and submit recommendations to the Owner concerning any such request; (c) assist in negotiations with the contractor concerning any request for a change order or additional compensation; and (d) assist in negotiating contractor's proposals, submit recommendations to the Owner concerning requested changes, and if they are accepted, prepare change orders for signatures of CM, the Architect, and for final authorization by the Owner. To reduce the possibility of delay for the Program, CM shall promptly forward to Owner, Architect, and Owner's advisor all plans and specifications, change orders, and other items requiring Owner's approval together with all information reasonably required to evaluate the proposed items. In the event, the contractor submits a change order request for an increase in the contract sum based on unanticipated events or conditions, which CM determines is justified in accordance with the terms of the construction contract for the project, CM shall assist Owner, at its request, in identifying possible further revisions in the plans and specifications to reduce (or eliminate) any increase to the contract sum otherwise required. Owner shall have the final decision on acceptance or rejection of all change orders submitted by the contractor, other than as specifically permitted by the next paragraph.
12. Change Order Authority. Unless otherwise directed by Owner, CM shall have authority and discretion to direct and approve (a) immaterial changes to the plans and specifications up to \$10,000 per change that are required by field conditions; and (b) changes up to \$25,000 per change if the CM determines that the change is necessary to avoid personal injury or property damage or to avoid substantial delay to the completion date of the project. A change shall not be deemed immaterial if it (1) violates governmental requirements, (2) reduces the overall quantity or character of the work, (3) increases operating costs by more than an inconsequential amount, or (4) affects the scheduled completion date. A change shall not be distorted or separated into parts so as to avoid this requirement. CM shall promptly notify Owner of any changes directed pursuant to this paragraph. Except as to changes described in the first sentence of this paragraph, CM shall not approve any changes to the plans and specifications or the construction contract for a project without Owner's prior written approval, which shall not be unreasonably delayed.
13. Contractor and A/E Claims. CM shall assist in reviewing, analyzing, and processing contractor and A/E change orders and requests for equitable adjustment (REA) and claims ; negotiations, administrative proceedings, or dispute resolution concerning the contractor's performance; and make recommendations to the Owner concerning courses of action available to the Owner where a contractor is not performing in accordance with the provisions of the applicable construction contract. CM support of the Owner in analyzing, reviewing, and defending against a Contractor's Formal Claim (Part 8) may merit

additional compensable services. If services are performed more than four months after substantial completion of the construction contract, unless the CM is responsible for the delay, , the Owner shall pay for such services as an added cost.

14. Consultants and Testing. If required or requested by Owner, CM shall assist the Owner in selecting and retaining the professional services of surveyors, soils engineers, special consultants, and testing laboratories and shall coordinate their services. To the extent such tests, inspections, and reports are not the obligation of a Contractor, they shall be furnished subject to Owner's authorization and at Owner's expense.
15. Plans and Specifications. CM shall consult with the Architect and the Owner if any contractor requests interpretations of the meaning and intent of the plans and specifications of the applicable contract and shall assist on behalf and in the interests of the Owner in the resolution of questions that may arise. CM shall determine that the construction contractor is maintaining an accurate "red line" set of construction contract drawings, updated regularly (and in no event less than once per week) showing modifications made to the construction work. The CM shall not be responsible for field verification of the as-built.
16. Contractor Submittals. CM shall maintain a log of the shop drawings submitted by the construction contractor to the Architect for review and approval. CM shall to the extent required or appropriate to the work (a) receive a concurrent copy of all submittals from the Contractors and review them for completeness and; (b) coordinate with the Architect to reject those deemed incomplete; and (c) in collaboration with the Architect, establish and implement procedures for expediting the processing and approval of shop drawings, product data, samples, and other submittals. The parties acknowledge the ultimate responsibility for accuracy and completeness of the submittals rests with the construction contractor(s).
17. Reports. CM shall (a) record the progress of work on the Project; (b) submit written progress reports to the Owner as outlined in Article II. D. 3.; (c) evaluate the percentage complete of each construction activity as indicated in the construction contractor's construction schedule; and (d) require a daily log of reasonably relevant information to be kept by each contractor.
18. Project Records. CM shall maintain at the project site or at the CM's business office, as may be appropriate to the proper performance of the work, on a current basis (a) a record copy of all construction contracts, drawings, specifications, addenda, change orders, and other modifications, in good order (b) shop drawings; (c) product and test data; (d) samples; (e) submittals; (f) records of purchases of materials, supplies, and equipment; (g) applicable manuals and handbooks; (h) maintenance and operating manuals and instructions; (i)

contractor and supplier warranties; and (j) all other documents that arise out of the construction contracts or work.

19. Hazardous Substances. CM shall not knowingly permit to be deposited, disposed, placed, generated, buried, discharged, manufactured, refined, transported, treated, handled, or located on or about the site any hazardous substance. CM shall not have violated this paragraph if (a) it authorizes a contractor to temporarily use or store hazardous substances where such hazardous substances are reasonably required for and are in quantities appropriate to the performance of the contractor's work; and (b) the CM exercises professional efforts to confirm that any activity with respect to the Contractor's use and storage of such hazardous substances is in compliance with governmental requirements applicable to such use and storage.
20. Governmental Requirements. CM shall use its best efforts to monitor and report on compliance by all contractors with all laws, regulations, ordinances, Owner policy, and other governmental criteria that are applicable to them and the services they are performing for Owner. CM shall punctually perform and comply with all of the obligations, terms, and conditions to be performed by or complied with by the Owner of the project under any governmental requirements applicable to the construction of the project. CM shall assist in preparation of documents required for submissions to establish compliance with governmental requirements.
21. Owner-Furnished Equipment. CM shall ensure proper coordination between furnishings, fixtures and equipment (FF&E) that are part of the Project and building systems to support FF&E conditions and requirements. Where appropriate, the CM shall assist in overall coordination of FF&E delivery and installation among the contractors and FF&E vendors.
22. Safety. CM shall review the construction contractor's safety program, recommend any necessary changes, and comment as appropriate on compliance with the safety program during the performance of the work. However, CM will not be responsible for the adequacy or enforcement of any construction contractor's safety program and procedures, which will be solely the construction contractor's responsibility.
23. Nonconforming Work. CM may reject work and may stop nonconforming work if continuation of that work would, in the opinion of CM, be more costly than a possible delay claim. If CM finds work not in conformance with the construction contract(s), the defect shall immediately be brought to the attention of Architect (if appropriate) and Owner. CM shall assist in identifying the problem and the specification section or drawing applicable to the problem and in recommending a solution. CM shall then take such action as Owner may direct.

24. Punch List Work. When the CM considers each contractor's work or a designated portion of that work complete as notified by the Contractor, except for punch list work, the CM shall coordinate with the Architect and Owner consultants to develop a punch list(s), and the CM shall coordinate with the Contractor a schedule for completion of such punch list work. CM shall be responsible for determining that all "punch list" work is completed prior to recommending approval of final payment for the construction contract(s).
25. Substantial Completion. CM shall use professional efforts to cause the construction contractors to achieve substantial completion of the project by the date agreed upon by contractor and Owner in the construction contract. For purposes of this Agreement, "substantial completion" shall mean the completion of the project in accordance with the plans and specifications except for punch list work that does not affect the function or usefulness of the project.
26. Commissioning. CM shall be responsible for managing the commissioning process and shall confirm to Owner the successful completion of the startup and testing of electrical, HVAC, communications, mechanical and other systems and equipment, including such repetitive testing as is reasonably necessary to demonstrate satisfactory performance under normal operating conditions. CM shall coordinate the commissioning activities of the Owner, the Owner's Commissioning Agent, and the contractor. It shall assist the Architect and the construction contractor in resolving any problems. It shall, in cooperation with Owner's personnel, schedule operation and maintenance training sessions for systems and equipment. It shall confirm that full payment is not made for such systems or equipment until tests and training meeting the construction contract requirements have been performed and related manuals delivered.
27. Closeout. CM shall obtain keys and a copy of all warranties, guarantees, manuals, and related documents and deliver them to Owner's staff prior to recommending final payment for the construction. After project completion, CM shall transfer to Owner, all records, reports, drawings, correspondence, and other documents prepared and/or maintained by it under this contract in an organized and catalogued fashion. CM may retain copies of such records, at its expense, if it so desires.

The parties recognize that the timing and quality of closeout activities and deliverables by other parties may be outside the control of the CM. The CM will endeavor to achieve the required closeout deliverables in a timely manner throughout construction and closeout, but closeout services beyond the duration of the CM contract shall entitle the CM to additional services, if requested by the Owner. At project completion, the CM shall maintain and transfer to the Owner a tabulated "Closeout Binder", and instruct the Owner staff the status of any missing closeout documents required for Final Acceptance and/or Release of Retainage.

28. Schedule of Values and Contractor Applications for Payment. CM shall receive, review, obtain revisions as may be appropriate, and determine that the construction contractor's schedule of values is reasonable. CM will review the progress of construction with the construction contractor, observe work in place and properly stored materials on a monthly basis, and evaluate the percentage complete of each construction activity as indicated in the construction contractor's CPM construction schedule. This will serve as data for input to the monthly status report, which CM will prepare and distribute to the Owner, A/E, and other appropriate parties. This report will reflect the contractual progress and will be the basis for the monthly progress payment to the construction contractor.

CM shall determine that the construction contractor is maintaining an accurate "red line" set of construction contract drawings, updated regularly (and in no event less than once per week) showing modifications made to the construction work. CM shall recommend to Owner, for inclusion in the construction contract documents, a provision requiring the construction contractor to submit current and accurate "red line" drawings with each monthly pay request, as a condition to approval of said pay request. The CM shall not be responsible for field verification of the as-built documents.

29. Permits. CM shall assist Owner in obtaining building occupancy permits.
30. Lien Releases. Before recommending final payment, CM shall obtain the releases of claims and liens required by the construction contract provisions. If a right to pursue claimed items is reserved, CM shall determine if any such items are accurately and reasonably described, both as to substance and cost.
31. Warranty Inspections. Owner will administer all warranty and maintenance related requests. Approximately eleven months after substantial completion of the facilities, CM shall coordinate an inspection with Owner, A/E, and contractor to assist Architect in identifying and reporting any defects in the work that should be corrected.

- G. Notices to Owner. CM shall notify Owner promptly upon its receipt of any knowledge with respect to any one or more of the following: (a) receipt of any notice from any person, partnership, entity, or other party, other than Owner, that the CM, the Owner, the Architect, or any contractor is in breach of any of its obligations under this Agreement, any contract, or any other agreement or contract relating to the Project or any part or item or interest therein; (b) work that is not in conformity with the applicable contract, the plans and specifications, or governmental requirements of which the CM has actual knowledge; (c) any repudiation or breach by any contractor or its obligations under the construction contract of which the CM has actual knowledge; (d) receipt of any notice to the effect that any portion of the Project is not being operated, used, constructed, managed, or maintained in accordance with governmental requirements; (e) any material casualty occurring to any party or item of the Project of which CM has actual knowledge; (f) any deposit, spill, release, or discovery of hazardous substances on, in, under, or about

the project of which the CM has actual knowledge other than reasonable quantities of hazardous substances that are temporarily being used or stored on a portion of site and are appropriate to the work being done on such site and are stored and used in compliance with all governmental requirements and authorizations by Owner; (g) receipt of any order, request, authority concerning a potential or actual violation by a Project of any governmental requirement relating to hazardous substances; (h) receipt of any notice that there is a pending or threatened litigation or proceeding affecting a Project; (i) receipt of any notice of a fact or condition specific to a Project that would materially increase the cost of completing or operating the Project or would be materially inconsistent with the terms of this Agreement; and (j) any condition or circumstance existing in, on, under, or about a Project of which the CM has actual knowledge that (1) creates a material risk of damage or injury to a Project; (2) is hazardous to persons or property lawfully in or on a Project; or (3) would expose the Owner to any substantial risk of liability. Any notification delivered under this section shall include a copy of the notice or writing, where applicable.

- H. Performance Review. When requested by Owner, but not more often than every six months, CM shall assign an appropriately qualified senior member of its staff to participate in a review of CM's contract performance and Owner's administration of this contract. This representative shall not be directly involved in the provision of CM's support services of the management of this contract. Owner shall assign at least one representative, not involved in the administration of this contract, to participate in the review. On completion of the review, the participant shall prepare a report for both CM and Owner that evaluates the performance of the parties and, if appropriate, includes recommendations for improved performance.

### III. OWNER'S RESPONSIBILITY AND LIMITATION ON CONSTRUCTION MANAGER'S AUTHORITY

- A. Owner Representative. Owner shall designate a staff representative who shall be CM's official point of contact. The Owner shall review construction contracts and recommendations by the CM within a reasonable time to avoid unreasonable delay in the progress of the CM's services.
- B. Owner Furnished Services. The Owner shall furnish such legal, accounting, and insurance counseling services as may be necessary for the construction of the Program, including such auditing services as the Owner may require to verify applications for payment or to ascertain how or for what purposes the contractors have used the monies paid by or on behalf of the Owner.
- C. Owner Provided Consulting Services. The Owner shall cause to be furnished at the Owner's expense such surveys, soils and environmental studies, structural and other engineering services, and services of the Architect as may be reasonably necessary to the Project.



- D. CM as Additional Insured. The Owner shall cause the CM to be named as an additional insured in each construction Contract's general liability insurance policy applicable to the site.
- E. Limitation of CM Authority. No contract or contract modification shall be binding on the Owner unless and until executed by the Owner. CM shall inform all prospective contractors and all bidders at the commencement of discussions or negotiations carried out by the CM that the CM cannot bind the Owner and that its sole function will be to make recommendations to the Owner, except as provided in Paragraph II.F.11. above.
- F. Limitation of CM Authority for Changes. CM acknowledges that in the management of the Project and the administration of construction contracts for all or part of the work, it will not have authority, absent the approval of the Owner, to direct any change in the plans and specifications or in the work, to issue change orders or to agree to pay additional compensation to any contractor except as set forth in Paragraph II.F.11. All contractors shall be informed of such limits on the CM's authority.
- G. Owner Provided Data. Owner shall provide CM with all necessary and appropriate documentation and data in Owner's possession that may be required by CM in the performance of its duties. Owner shall assure that similar documentation and data are provided by the Architect(s). However, CM shall not be responsible for the accuracy of documentation prepared by others.
- H. Owner Reimbursed Items. Owner will reimburse CM for the costs of providing suitable working space at construction sites, appropriately furnished, including local telephone service if requested by Owner and not otherwise provided by Owner or Contractor(s). These facilities shall be used solely for the performance of CM's duties under this contract.

#### IV. TERM

This Agreement between Owner and CM shall commence on the date specified on the first page of this Agreement and shall terminate four months after Project Occupancy, subject to the provisions of the Article entitled "Termination of Agreement," not including the required 1-year Warranty Walk. The parties may negotiate subsequent additional services such as assistance with closeout or remaining claims on terms acceptable to both parties.

#### V. COMPENSATION

- A. Lump Sum. As full compensation for performance of all Services, Owner shall pay the CM the lump sum of three million nine hundred eighty three thousand two hundred and ninety dollars and no cents (\$3,983,290). This lump sum fee shall include any labor and Other Direct Costs (ODCs) by the CM.
- B. Monthly Payments. Owner shall pay CM on the schedule listed in Exhibit A. Invoices shall be submitted monthly and shall be in a form acceptable to Owner. Payment shall be

within thirty (30) days following receipt of such monthly invoice. Any hourly rates shown in Exhibit D shall include payment for all of CM's administration costs including overhead, G&A, and profit, but not any Other Direct Costs (ODCs). If hourly rates are applied, CM shall submit timesheets clearly outlining individuals performing work, hours worked, ODC and reimbursable expenses, and any other information/expenses in support of the monthly invoice.

- C. Reimbursable Expenses. In addition to the lump sum payment for Services, CM shall be entitled to reimbursement for actual, reasonable out-of-pocket costs of the items as identified in Exhibit B. CM shall not be entitled to reimbursement for any additional costs or expenses, beyond those specifically identified in Exhibit B, without the prior written approval of Owner. Reimbursable expenses, when allowed, shall be reimbursed at 105% of actual costs.
- D. Staffing. During the Project, CM will provide staffing and expertise at least equal to that specified in Exhibit E.
- E. Audit. All CM requests for payment are subject to audit by Owner. CM shall cooperate with personnel performing such audits, including providing requested records, suitable working space, access to copying equipment, and telephones. Owner may decline to pay any payment request that CM fails to reasonably establish is within the fixed price for the Project and is for services or materials required by this contract. Initial payment shall not preclude Owner from later withholding for amounts subsequently found not to be reasonably supported.

The CM shall be entitled to additional compensable support services if the Owner incurs an Audit by an outside (3<sup>rd</sup> Party) agency such as the State of Washington and requires assistance or support from the Consultant in reviewing and responding to an Audit.

- F. Changes. The Owner may direct changes within the general scope of the Services, including the manner or timing of performance. CM shall comply with such direction. If such changes increase or decrease the cost of performance, either the owner or CM may request an equitable adjustment in the contract amount. The parties agree that the following would constitute a change in the Services: (1) significant change to the project schedule; (2) request by the Owner for CM to attend more than 20 meetings per month during the design phase and 15 meetings per month during the construction phase for a project, including monthly community meetings; (3) owner request for support or relocation of students and staff, other than move-in activities for the completed project; (4) support to the owner resulting from audit by the State Auditor or another third party of the project; (5) significant changes in scope or complexity to the Project (such as, but not limited to, significant changes resulting from historic landmarks designation or other actions outside the control of the CM
- G. Correction of Services. CM shall, at no additional cost to Owner, promptly and satisfactorily correct any failure to use professional efforts. If CM fails to do so within ten (10) days of written notice from Owner of the inadequacy, Owner may correct the

inadequacy through other sources, charge the reasonable cost of the corrective action to CM, and deduct the reasonable cost (including administrative cost, if any) from any payment due CM. The foregoing, applicable until one (1) year after completion of all services, is in lieu of all other express or implied warranties and warranty remedies.

## VI. TERMINATION OF AGREEMENT

### A. Termination for Cause (Default).

1. Notice. Should CM fail to provide services required by any material provision of this contract in a timely, competent, and professional manner, Owner may terminate this contract, in whole or in part, for cause, upon fourteen (14) days written notice and opportunity to cure the default. If the contract is so terminated, CM shall be liable to Owner for any damages, direct and indirect, that Owner may suffer as a result of CM's default.
2. Conversion to Termination for Convenience. If the contract is terminated for cause and it is later determined that CM was not in default, the termination shall be converted to a termination for convenience of Owner.
3. Payment Upon Termination. If the contract is terminated for cause, CM shall be entitled to payment for the work satisfactorily performed prior to termination. However, payment of any previously unpaid amount shall be subject to set-off by Owner for any damages Owner has incurred (or incurs) as a result of the default.

### B. Termination for Convenience of Owner.

1. Notice. Owner may terminate the contract in whole or in part at any time for any reason. If it elects to do so, CM shall be entitled to payment for all services provided prior to termination, plus reasonable wind-up costs incurred in the twenty (20) working days after the effective date of termination.
2. Payment Upon Termination. Payment of termination costs may be conditioned by Owner on the delivery to Owner of contract documents in the possession of CM.

## VII. INSURANCE AND INDEMNITY

- ### A. Commercial General Liability. CM shall maintain commercial general liability insurance in amounts of not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) annual aggregate. This insurance shall cover Owner, as an additional insured, its employees and agents for any damage or injury that may arise out of or result from the operations or actions of CM or its agents or employees in the performance of this Agreement. Owner agrees to include provisions in any construction contracts requiring the contractor to indemnify CM and to name CM, its employees,

officers, and agents as additional insured on comprehensive general liability policies required by such contractor.

- B. Commercial Automobile Liability. CM shall maintain commercial auto liability insurance in amounts of not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) annual aggregate. This insurance shall cover Owner, as an additional insured, its employees and agents for any damage or injury that may arise out of or result from the operations or actions of CM or its agents or employees in the performance of this Agreement. Owner agrees to include provisions in any construction contracts requiring the contractor to indemnify CM and to name CM, its employees, officers, and agents as additional insureds on comprehensive general liability policies required by such contractor.
- C. Professional Liability. As requested by Owner, CM shall maintain, at Owner's expense, professional liability insurance on a claims-made basis, covering the negligent errors and omissions of CM in the performance of professional services, in amounts of not less than one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) per annual aggregate.
- D. Compliance with Laws. CM shall maintain full insurance coverage, including workers compensation and unemployment coverage as may be required by local, state, and federal laws or regulations applicable to the site of any work being performed by CM under this contract.
- E. Construction Manager's Indemnity. CM shall indemnify and hold harmless Owner, its employees, and its agents from all liability, cost, or expense, including but not limited to, claims or suits for damages arising out of bodily injury or death to persons and damage to property, caused by or resulting from the sole negligence of CM, its agents, or employees; or the concurrent negligence of CM, its agents, or employees, but only to the extent of the negligence of CM, its agents, or employees.

In any action against Owner or any other entity indemnified under this paragraph, by any employee of CM or its agents, or anyone directly or indirectly employed by any of them, the indemnification obligation of this paragraph shall not be limited by a limit on the amount or type of damages, compensation, or benefits payable by or for CM or any agent under Title 51 RCW, the Industrial Insurance Act, or any other employee benefits act. In addition, CM specifically and expressly waives immunity as to Owner in accordance with Title 51 RCW, provided that contractor's waiver of immunity extends only to claims against CM by Owner, and does not include, or extend to, any claims by CM's employees directly against CM. CM acknowledges that this waiver is a mutually negotiated agreement by the parties.

- F. Owner's Indemnity. To the fullest permitted by the law, Owner shall indemnify, defend, and hold harmless CM, its officers, agents, and employees from and against any and all liabilities, claims, causes of action, damages, losses, costs, and expenses, including attorney's fees and costs, resulting from bodily injury, personal injury, or death sustained

by any person, damage to property of any kind, or the actual, alleged, or threatened presence, discharge, dispersal, seepage, migration, release, or escape of hazardous substances, arising out of, incidental to, or resulting, in whole or in part, from the acts, errors, or omissions of any person or entity other than CM in connection with the Program.

- G. Certificates. The insurance required under A, B, and C above shall be issued by carriers or companies acceptable to Owner and remain in effect throughout the entire duration of this contract. Carrier shall have an A.M. Best rating of A- VII or better. On request, CM shall provide Owner with certificates of insurance or other documents establishing compliance with these provisions.

#### VIII. KEY PERSONNEL

The selection of CM for this contract was based, in part, on CM assuring that certain key personnel would perform various functions for CM. These individuals are identified in Exhibit C. Except for conditions beyond the control of CM, key personnel will not be replaced or assigned other duties without the advance concurrence of Owner. However, if in the opinion of Owner, the performance of any individual is not acceptable, or if because of conditions beyond the control of CM, CM must make a replacement, such replacement shall have equal or superior qualifications to the individual being replaced and shall be subject to prior approval by Owner.

#### IX. OWNERSHIP OF DOCUMENTS

CM agrees that all documents, reports, materials, or other subject matter prepared, procured, or produced in the rendition of the services under this Agreement shall become the property of Owner upon payment for the services rendered hereunder and all such documents, reports, materials, or other subject matter shall be delivered to Owner as specified in this Agreement or upon termination thereof. CM may retain a record copy of all documentation. Owner shall not reuse any documents, reports, materials, or other subject matter provided by CM hereunder for other than the Project defined by this Agreement without prior written consent of CM, which shall not be unreasonably withheld. Owner shall, in any event, indemnify, defend, and hold CM harmless from and against any and all claims, suits, actions, judgments, demands, losses, costs, expenses, damages, and liability caused by, resulting from, or arising out of such reuse.

#### X. MISCELLANEOUS

- A. Changes and Modifications. Except as specifically provided for in other provisions of this contract, this contract may be changed, modified, or otherwise altered only by a written modification signed by authorized officials of both CM and Owner.
- B. Assignment. Owner may assign its rights and delegate its duties to another person, entity, trust, or instrumentality, provided, however, that such assignment shall not affect the rights and obligations of CM hereunder. Without the Owner's consent (which shall not be unreasonably withheld), the CM may not assign the whole or any part of its

interest in this Agreement or delegate all or any part of its duties under this Agreement, except to a parent, affiliate, or subsidiary of CM, which meets all the requirements of this Agreement.

- C. Binding Effect. This Agreement shall extend to and be obligatory upon the heirs, legal representatives, successors, and assigns of the respective parties to the extent such succession or assignment is permitted under Paragraph X.B. CM acknowledges that its duties and responsibilities are unique and personal to CM.
- D. Notices. Any notice, request, submission, or written communication required or permitted to be delivered under this Agreement shall be (a) in writing; (b) transmitted by personal delivery, express or courier service, United States Postal Service in the manner described below or electronic means of transmitting written material; and (c) deemed to be delivered on the earlier of (i) the date received or (ii) five (5) days after having been deposited in the United States Postal Service, postage prepaid. Such writings shall be addressed to Owner or CM, as the case may be, at the respective designated addresses set forth next to their signatures or at such other address(es) as they may later specify by written notice delivered in accordance with this paragraph.
- E. Waiver, Amendment, and Extension. No waiver, amendment, extension, or variation in the terms of this Agreement shall be valid against a party unless in writing and signed by such party and then only to the extent specifically set forth in the writing. No failure or delay on the part of a party in exercising any right, power, or privilege under this Agreement, nor any course of dealing between the parties, will waive, amend, or vary the terms of this Agreement.
- F. Entire Understanding. This Agreement, and the documents incorporated in it, embody the entire agreement between the parties with respect to the subject matter covered by this Agreement. Exhibits referred to in this Agreement and other documents and instruments described by specific reference in this Agreement or the exhibits shall be deemed incorporated. All previous documents, letters, instruments, discussions, and negotiations between CM and Owner are superseded by the express terms and conditions of this Agreement and there have been no promises, agreements, representations, warranties, or commitments between such parties with regard to the construction of the Program other than set forth in this Agreement.
- G. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall constitute one and the same document.
- H. Interpretation. This Agreement has been scrutinized by the parties and their respective counsel and shall be given a fair and reasonable interpretation in accordance with the words contained in it without any weight being given to whether a provision was drafted by a party or its counsel. This Agreement, its exhibits, and other documents described or referred to in this Agreement and its exhibits shall be construed and interpreted as a whole and to harmonize and give effect to all of the provisions of such documents.

Whenever this Agreement (including the exhibits) utilizes the term "including" or word of similar effect, the listing given shall be interpreted as illustrative and not all inclusive. Titles of articles, sections, or paragraphs, the table of contents, and other headings appearing in this Agreement are for convenience only and shall not be part of this Agreement or considered in its interpretation.

- I. Relationship. CM at all times is acting as an independent contractor performing the services. Nothing in this Agreement is intended or shall be construed as creating any other relationship or designating CM as an agent for or joint venturer with Owner. CM shall at all times be responsible for the actions and omissions of its employees, agents, contractors, or representatives and no such persons shall occupy the same or similar relationship to Owner.
- J. Severability. If any clause or provision of this Agreement is illegal, invalid, or unenforceable under present or future laws, then it is the intention of the parties that the remainder of this Agreement shall not be affected and that in lieu of each clause or provision as similar in terms to such illegal, invalid, or unenforceable, there be added as part of this Agreement a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legally valid and enforceable, provided, however, that if CM's cost of performance is affected thereby, the parties agree to negotiate an equitable adjustment to the contract price.
- K. Dispute Resolution. If a dispute arises out of or relates to this Agreement, and if that dispute has not been settled through direct discussions within a reasonable period, the parties agree to first endeavor to settle the dispute through mediation before having recourse to a judicial forum.
- L. Governing Law. The laws of the State of Washington shall govern this Agreement and the rights of the parties. Venue shall be in King County, Washington.

M. Conditions, Clarifications and Other Provisions.

1. CM relies upon project schedules established in this Agreement as set forth in Exhibit F. Extensions of project schedule or duration at the Owner's direction for convenience or beyond the control of the CM entitle CM to an extension of time of performance and additional service fee.
2. The maximum compensation established herein is based on CM's attendance at a maximum of 20 on-going meetings per month during the design phase and 15 meetings per month during the construction phase for each project, including monthly community meetings,
3. CM assumes that prior to construction, any interim monthly or permanent relocation of any students, faculty, staff, tenants or to her persons currently occupying any of the Project premises will be the responsibility of the Owner.

CONSTRUCTION MANAGER

OWNER

\_\_\_\_\_

\_\_\_\_\_

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

By: \_\_\_\_\_  
Dr. Larry Nyland, Interim Superintendent

Date: \_\_\_\_\_

Date: \_\_\_\_\_



Exhibit A - Schedule of Payments (Attachment 1)

Exhibit B – Estimate of Reimbursable Expenses

Exhibit C – List of Personnel

Exhibit D – Hourly rates for personnel

Exhibit E – Staffing Levels by CM/Project

Exhibit F – List of Projects

**Exhibit A – Schedule of Payments**

See Attachment 1

**Exhibit B - Estimate of Reimbursable Expenses**

Reimbursable Expenses Not Applicable

Other Direct Costs (ODCs) include:

- Parking for meetings
- Postage, copying, printing (Heery Office)
- Long Distance Phone rates (Heery Office)
- Laptop and software for Heery staff not located at SPS (excluding e-Builder)

ODCs exclude District provided computer and/or laptop, software licenses, cell phone, office supplies, copying and printing, and typical office-related consumables for CM staff located at the District offices.

**Exhibit C – List of personnel**

<b>STAFF</b>	<b>ROLE</b>
Mike Finnegan	Senior Project Mgr
Scott Lund	Senior Project Mgr
CM (TBD)	Asst. Project Mgr
Nenad Curgus	Senior Scheduler
Andie Rutledge	Administrator
Roxann Robinson	Senior Administrator
Dan Gendreau	Project Director
Senior Estimator (RLB)	Senior Estimator

**Exhibit D – Hourly Rates for Personnel**

<b>STAFF</b>	<b>ROLE</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>
Mike Finnegan	Senior Project Mgr	\$186.30	\$192.82	\$199.57	\$206.55	
Scott Lund	Senior Project Mgt.	\$151.32	\$156.61	\$162.09	\$167.77	\$173.64
CM (TBD)	Asst. Project Mgr.	\$103.50	\$107.12	\$110.87	\$114.75	\$118.77
Nenad Curgus	Senior Scheduler	\$155.25	\$160.68	\$166.31	\$172.13	\$178.15
Andie Rutledge	Administrator	\$93.15	\$96.41	\$99.78	\$103.28	\$106.89
Roxann Robinson	Senior Administrator	\$92.61	\$95.85	\$99.21	\$102.68	\$106.27
Dan Gendreau	Project Director	\$203.53	\$210.65	\$218.03	\$225.66	\$233.56
Senior Estimator (RLB)	Senior Estimator	\$150.00	\$150.00	\$150.00	\$150.00	\$150.00

**Exhibit E – Staffing Levels by CM/Project**

<b>STAFF</b>	<b>DESIGN</b>	<b>CONSTRUCTION</b>	<b>CLOSEOUT<sup>1</sup></b>
Mike Finnegan	100%	100%	100 % to 50%
Scott Lund	100%	100%	100 % to 50%
CM (TBD)	0%	100%	100 % to 50%
Andie Rutledge <sup>2</sup>	25%	25%	25%

<sup>1</sup> Note: Closeout CM staffing planned for 100% FTE through month of Occupancy (typically September) and 50% October through December, unless targeted for earlier Substantial Completion.

<sup>2</sup> Note: Project coverage under main BEX IV

**Exhibit F – List of Projects**

<b>Project</b>	<b>Planned Start*</b>	<b>Planned Occupancy</b>
Lincoln High School	April 1, 2016	September 3, 2019
Wing Luke Elementary School	October 1, 2016	September 8, 2020

\* See Article II, Paragraph A for more specific description of CM Contract Start Date.

**CONTRACT  
FOR  
CONSULTING SERVICES**

Owner: Seattle School District No. 1,

And

Consultant: Heery International, Inc.

Tax I.D. # 58-0827945

Lincoln High School Modernization

Contract No. P1410

**CONSULTING SERVICES CONTRACT**

This Agreement, Contract No. P1410 made by and between Seattle School District No. 1, a Washington municipal corporation ("District"), and Heery International, Inc. ("Contractor"). District and Contractor agree as follows:

**1. SCOPE OF WORK AND SCHEDULE**

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

- Upon receipt of this signed Agreement
- On \_\_\_\_\_

b. Unless modified by a change order, this contract terminates on close of business March 11, 2016.

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

a.  District agrees to pay Contractor, on a time and expenses basis, a sum not to exceed: \_\_\_\_\_ (the "Maximum Authorized Compensation") payable according to Contractor's schedule of fees and reimbursable expenses specified in Exhibit B hereto. This amount 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.

or

b.  District agrees to pay Contractor a lump sum of ***One Hundred and Thirty-One Thousand Four Hundred & Twelve*** Dollars (\$131,412.00) as full and complete compensation for all services hereto, exclusive of reimburseable expenses described in Exhibit B, if any.

Compensation will be paid only to the extent that Contractor 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. Contractor 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. A W-9 form must be attached if Contractor is an individual.

**3. COMMUNICATIONS**

The District's representative for this contract is *Lucy Morello*. 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:  
*Lucy Morello*  
*Senior Project Manager*  
Seattle School District No. 1  
Mail Stop (MS #22-334 )  
PO Box 34165  
Seattle, WA 98124-1165

To the Contractor: *Mike Finnegan*  
*Project Director*  
Heery International, Inc.  
999 Third Avenue  
Suite 3200  
Seattle, WA 98104

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. CONTRACTOR'S REPORTS**

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

**5. PERSONNEL**

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


<b>Name</b>	<b>Title</b>	<b>Role</b>
<i>Mike Finnegan</i>	<i>Project Director</i>	<i>Senior Construction Manager</i>

**6. THIS AGREEMENT INCLUDES THE FOLLOWING ATTACHMENTS:**

<b>Exhibit</b>	<b>Topic</b>
A	Scope of Services and Schedule
B	Fees and Reimbursable Costs
C	General Conditions of Personal Services Contract (Short Form) dated March 1, 2001 (revised 1/18/13)

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

CONTRACTOR:

  
DF8F3515D52E48D...  
 \_\_\_\_\_  
 Signature

Dennis Lawler  
Typed Name (Above)

Vice-President  
Title  
10/14/2015

\_\_\_\_\_  
Date Signed

Heery International, Inc.  
Company Name

58-0827945  
Employer I.D. No. or Social Security No.

DocuSigned by:

DISTRICT:  
  
A1EBD1E155674E0  
 \_\_\_\_\_  
 Signature

Kathie Technow  
Typed Name (Above)

Accounting Manager  
Title  
10/27/2015

\_\_\_\_\_  
Date Signed

## **SCOPE OF SERVICES AND SCHEDULE**

Scope of work covers, but not limited to, the following tasks:

- Review Owner Program of Requirements
- Educational Specification Review
- Preview Existing Cost Information & Prepare Detailed Breakdown of Costs
- Review Architect Schedule
- Infrastructure Review and Systems Conditions Assessment and Recommendations in conjunction with Project Team
- Risk Assessment Analysis and Mitigation Strategies/ Recommendations in conjunction with the Project Team
- Agency / Permit Analysis
- Construction Procurement Analysis/ Strategy & Recommendations in conjunction with Project Team
- SDAT meetings
- Prepare project Master Implementation Schedule (MS Project) & updates
- Scoping Meetings with Project Team
- Site Walk Through with Project Team - Priority 1 Scope
- Develop Management Plan in conjunction with project Team
- Adjustments & Final Update (Preliminary Cost Model & Comprehensive Budget)
- Cash Flows
- Assist with Design Team fee negotiations
- Landmarks process
- Locate and review existing data (ie, geotech reports, hazmat reports, previous improvements) or acquires services of specialty consultants
- Attend Community Meetings

The time period of the services is upon receipt of this signed Agreement through March 11, 2016. A primary Construction Management contract will take effect on or about March 11, 2016 after Board approval on March 2, 2016.



**FEES AND REIMBURSABLE COSTS**

Lump sum (level of service) of \$131,412 is based on half time during the balance of 2015 and full-time after January 1, 2016 using the staff hourly rates included in the Heery proposal.

Staff	Position	2015	2016
Mike Finnegan	Senior Construction Manager	\$185.00	\$191.48

Allowance for Reimbursable Expenses: \$400.00

Interim

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

Services. Contractor 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. Contractor'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, Contractor 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 Contractor under this contract.

1.4 Correction of Noncompliances. Contractor 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.

1.5 Contractor's Personnel. All personnel employed by Contractor 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. Contractor 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 Contractor of responsibility for such person. If any personnel are reassigned or replaced by Contractor upon District's request, Contractor shall replace them with personnel approved by District.

1.6 Contractor Employee Background. Pursuant to RCW 28A.400.330, Contractor shall prohibit from providing Services at a public school where there may be contact with children, any employee of Contractor 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.

1.7 Compliance With Laws

1.7.1 General. Contractor 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. Contractor 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, Contractor 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 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.

## **ARTICLE 2 - PAYMENTS TO CONTRACTOR**

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 Contractor'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 Contractor's invoices within thirty (30) days after District's receipt, provided that all required documentation is included and accurate.

## **ARTICLE 3 - REIMBURSABLE EXPENSES**

Reimbursable Expenses are in addition to the hourly rates for Services and include actual reasonable expenditures made by Contractor and Contractor's employees and subcontractors in the interest of the Project for the expenses listed in the following subparagraphs. Contractor represents that Schedule B sets forth Contractor'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 Contractor, and Contractor 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. Contractor shall immediately notify District if, in Contractor'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 is a Reimbursable Expense at the Internal Revenue Service allowed rate.

## **ARTICLE 4 - CONTRACTOR'S ACCOUNTING RECORDS**

The Contractor'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 Contractor 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.

Contractor 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, Contractor shall provide District access to (and District shall have the right to examine, audit and copy) all of Contractor's books, documents, papers and records which are related to the Services or this Agreement.

## **ARTICLE 5 - DISTRICT OWNERSHIP AND USE OF DOCUMENTS**

**District Ownership.** All drawings, specifications, materials, information, property and other items obtained or developed in connection with the Services or the cost of which is included in 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 Districtship 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. Contractor 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, Contractor 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.

**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 Contractor, any of its subcontractors, or any employee(s) of Contractor in connection with this Agreement. District shall hold Contractor or its subcontractors harmless for District's reuse of documents on a project other than this Project.

5.3 **Nondisclosure.** Contractor 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 Contractor 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 Contractor; or (c) the information is obtained by Contractor 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, Contractor shall obtain from its employees, subcontractors 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 Contractor's rights.

## **ARTICLE 6 - RELEASE, INDEMNIFICATION AND HOLD HARMLESS**

6.1 **Release and Indemnification.** Contractor 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) relating to the services to the extent arising (whether before or after completion of the Services) out of any negligent or intentionally wrongful act, error or omission of any of the following: Contractor; Contractor's subcontractors or subcontractors; the directors, officers, employees or agents of Contractor or any of its subcontractors or subcontractors; or anyone acting on Contractor's behalf in connection with the Services or this Agreement. However, Contractor shall not be required to so indemnify any of the Indemnitees against liability or damages to the extent caused by or resulting from the negligence of such 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 Contractor or any subcontractor under any worker's compensation act, including Title 51, RCW, any disability benefit acts, or any other employee benefit acts. Contractor and any subcontractor 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. **Contractor further agrees that this waiver has been mutually negotiated by the parties.**

6.2 **Workers' Compensation.** Contractor expressly waives any immunity or limitations (e.g., on the type or amount of damages, compensation, benefits or liability payable by Contractor) 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, Contractor acknowledges that the foregoing waiver has been mutually negotiated by the parties.

6.3 Patent; Copyright. Contractor 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, Contractor 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.

### ARTICLE 7 - INSURANCE

7.1 Workers' Compensation; Employer's Liability Insurance. Contractor shall, at its sole expense, require that, with respect to all persons performing the Services, Contractor and its subcontractors 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, Contractor shall, at its sole expense, maintain in effect at all times during performance of the Services and for a period of at least two (2) years after completion thereof such insurance as will protect Contractor 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. Contractor 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, 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, Contractor 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 Contractor, 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). Contractor shall, within ten (10) days after receipt of notice of any change which Contractor 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. Such equitable adjustment shall constitute full compensation to Contractor for such change.

### **ARTICLE 9 - TERMINATION OF THIS AGREEMENT**

#### 9.1 Termination of Agreement by District for Cause.

9.1.1 If Contractor shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if Contractor shall violate any of the provisions of this Agreement, or if Contractor 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 Contractor shall have the right to cure the default.

9.1.2 Whether or not this Agreement is so terminated, Contractor shall be liable to District for any damage or loss resulting from such failure or violation by Contractor 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 Contractor for Contractor'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. District may withhold payments to Contractor 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 Contractor is determined. In no event shall District be liable for any consequential or incidental damages, including, but not limited to, loss of profit on other projects or of reputation incurred by Contractor 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 10.2, 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 Contractor 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 Contractor and its agents and employees from any claims arising from District's subsequent use of such documents and other materials, except to the extent Contractor is solely or concurrently negligent. 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. 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.

### **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 subcontractors specified in Exhibit A, Contractor 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. Contractor 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. Contractor shall not represent that it is, or hold itself out as, an agent or representative of District.

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 Contractor 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 Contractor 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 Contractor.

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. Venue in any litigation shall be in King County, Washington.

Interim

September 30, 2015

Seattle Public Schools  
Capital Projects & Planning  
2445 Third Avenue South  
Seattle, WA

Architecture  
Engineering  
Interior Design  
Program Management  
Construction Management  
Commissioning

Attn: Lucy Morello  
Senior Project Manager

Re: Lincoln High School Modernization  
Fee Proposal - Interim Scope of Work/Project Launch Services

Dear Lucy;

Our fee proposal scope of work covers, but not limited to, the following tasks:

- Review Owner Program of Requirements
- Educational Specification Review
- Preview Existing Cost Information & Prepare Detailed Breakdown of Costs
- Review Architect Schedule
- Infrastructure Review (BTA IV scoping) and Systems Conditions Assessment and Recommendations in conjunction with Project Team
- Risk Assessment Analysis and Mitigation Strategies/ Recommendations in conjunction with the Project Team
- Agency / Permit Analysis
- Construction Procurement Analysis/ Strategy & Recommendations in conjunction with Project Team
- SDAT meetings
- Prepare project Master Implementation Schedule (MS Project) & updates
- Scoping Meetings with Project Team
- Site Walk Through with Project Team - Priority 1 Scope
- Develop Management Plan in conjunction with project Team
- Adjustments & Final Update (Preliminary Cost Model & Comprehensive Budget)
- Cash Flows
- Assist with Design Team fee negotiations
- Landmarks process

Heery International, Inc.

A group of professional service practices

999 Third Avenue, Suite 3200, Seattle, Washington 98104  
Telephone 206 587-0473 Fax 206 587-0469

Offices Nationwide



- Locate and review existing data (ie, geotech reports, hazmat reports, previous improvements) or acquires services of specialty consultants
- Attend Community Meetings

The time period of the services is from September 16, 2015 through March 11, 2016. Assuming that BTA IV passes in February 9, 2016, our primary contract will take effect on or about March 11 after Board approval on March 2<sup>nd</sup>.

Our lump sum fee proposal (level of service) of \$131,412 is based on half time during the balance of 2015 and full-time after January 1, 2016 using the staff hourly rates included in our proposal.

Please let me know if you have any questions or require further information.

Sincerely,

A handwritten signature in green ink that reads "Mike Finnegan".

Mike Finnegan  
Project Director

[mfinnega@heery.com](mailto:mfinnega@heery.com)

(206) 854-6172 cell

Interim



# PROFESSIONAL SERVICES CONTRACT MODIFICATION

## SEATTLE SCHOOL DISTRICT CAPITAL PROJECTS

Project Name	<u>Lincoln</u>	MOD #	<u>1</u>
Project #	<u>A33</u>	Contract #	<u>P1410</u>
		Date	<u>1/25/16</u>

TO CONSULTANT: HEERY INTERNATIONAL, INC.  
999 THIRD AVENUE, SUITE 3200  
SEATTLE, WA 98104

The following changes in your contract with the Seattle School District dated (contract date) are hereby approved as indicated below:

Federal ID Tax Number  
58-0827945

**DESCRIPTION OF SERVICES CHANGE:**

\*Except as specifically modified below, the Original Contract remains in force.

	AMOUNT
<b>Extension of pre-design services from March 11, 2016 through March 31, 2016.</b>	<b>\$21,446.00</b>
<b>Primary CM agreement will not be executed until late March.</b>	

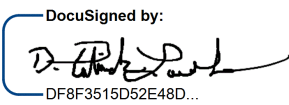
DATE EXTENSION CHANGE: (Indicate reason for extension of time in Description of Services Change area)  
 ORIGINAL CONTRACT DATE: **10.27.2015** MODIFIED DATE(S):

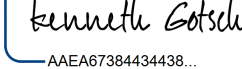
Original Contract Sum:	<b>\$131,412.00</b>
Net Change of Previously Authorized Modifications:	<b>\$ 0.00</b>
Contract Sum Prior to this Modification:	<b>\$131,412.00</b>
Contract Sum will be increased (decreased) by Mod:	<b>\$21,446.00</b>
Net Contract Sum including this Modification:	<b>\$152,858.00</b>

This modification becomes a part of the original contract when signed by the consultant and the Seattle School district:  
 I hereby approve and authorize change to this contract.

CONSULTANT/ARCHITECT

APPROVED BY DISTRICT

DocuSigned by:  


  
 AAE67384434438...

DATE: 2/12/2016

DATE: 2/16/2016