



SCHOOL BOARD ACTION REPORT

DATE: February 25, 2021
FROM: Denise Juneau, Superintendent
LEAD STAFF: Fred Podesta, Chief Operations Officer
206-252-0102, fhpodesta@seattleschools.org

For Introduction: February 24, 2021
For Action: March 10, 2021

1. TITLE

Building Excellence (BEX) V: Memorandum of Agreement (MOA) between the City of Seattle and Seattle Public Schools regarding the Student and Community Workforce Agreement

2. PURPOSE

The purpose of this action is to authorize the Superintendent to enter into a MOA with the City of Seattle to assist with implementation of the Student and Community Workforce Agreement (SCWA) approved by the board on September 23, 2020.

3. RECOMMENDED MOTION

I move that the School Board authorize the Superintendent to approve the MOA between Seattle Public Schools (SPS) and the City of Seattle regarding the implementation of the SCWA in an amount of \$452,648 on an annual basis not to exceed a period of five years.

4. BACKGROUND INFORMATION

a. Background

The SCWA was negotiated between SPS and the Seattle Building & Construction Trades Council and establishes general contractors as signatories for projects with construction costs of \$5 million or more. The School Board approved the SCWA on September 23, 2020, effective for five years, applicable to all appropriate projects, and contains a provision for mutual review after two years. The terms of the agreement support the district's values of ensuring that its public capital investments support high quality construction while supporting student preparation and pursuit of high-wage careers, especially for African American males; supporting the stability of SPS families and SPS neighborhoods through high-wage work; advancing racial and social equity; increasing representation of women, African Americans and people of color, plus LGBTQIA+ in our workforce; and creating family-wage opportunities within and related to construction careers.

As noted above, the SCWA applies to SPS construction projects estimated to have a construction cost equal to or more than \$5 million, a threshold that matches agreements in place for the City of Seattle, King County, the Port of Seattle, and Sound Transit. The SCWA is similar to the agreement executed by the City of Seattle, which, as directed by the board, was the model for SPS to negotiate its agreement with the Seattle Building &

Construction Trades Council. The city successfully implemented similar programs, including Priority Hire, women-and-minority-owned businesses (WMBE) utilization, Acceptable Worksites, as well as the corresponding Community Workforce Agreement, which are each administered by the City Department of Finance and Administrative Services. For implementation, SPS has planned for the City to perform initial support services for the SCWA, since both parties can achieve cost savings and benefits in the public's interest by having the City complete those services.

This MOA provides staffing resources from the city to SPS, for administration and monitoring of the SPS SCWA and associated social equity provisions which includes WMBE, Acceptable Worksites, prevailing wages, and apprenticeship utilization for SPS-funded and managed construction projects. This MOA places:

1. Two full-time experienced mid-range Strategic Advisor 1 staff, whom the City has trained and prepared to perform such duties, to be embedded and reporting from the SPS office, City offices, or virtual environment to allow for collaboration, decision-making or discussions that complement the required services; and
2. Provides 0.10 FTE in management and supervision from the City for the named staff.

Costs for these services have been identified in the MOA as an amount of \$452,648 on an annual basis not to exceed a period of five years.

b. Alternatives

Do not approve the MOA at this time. This is not recommended as the City of Seattle offers expertise to SPS surrounding the implementation of Community Workforce Agreements that SPS does not possess.

c. Research

- Student and Community Workforce Agreement
- School Board Action Report authorizing the Student and Community Workforce Agreement (September 23, 2020)
- Student and Community Workforce Agreement Task Force Final Report (June 19, 2020)
- School Board Action Report authorizing creation of Student and Community Workforce Agreement Task Force (July 10, 2019)
- School Board Action Report directing the Superintendent to negotiate the terms of a Student and Community Workforce Agreement (July 8, 2020)

5. FISCAL IMPACT/REVENUE SOURCE

Costs for these services have been identified in the MOA as \$452,648 on an annual basis not to exceed a period of five years. BEX/BTA projects greater than \$5M will be funding the effort of the City of Seattle personnel on an annual prorated basis.

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

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

6. **COMMUNITY ENGAGEMENT**

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

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

7. **EQUITY ANALYSIS**

Racial and social equity is one of the foremost benefits of this MOA regarding the implementation of the approved SCWA. The social justice lens has been prominent throughout the rollout of this process, and the Racial Equity Analysis Toolkit guided the conversation, beginning with the initial task force recommendation to support students with this opportunity for engagement within the construction industry.

Task force members were trained by the SPS Department of Racial Equity Advancement and each meeting began with a reminder of the equity lens and mission of SPS.

SPS will seek continued insights from those that may be interested, such as the Racial Equity Teams at appropriate high schools, the African American Males Student Advisory Board, the Rainier Beach Action Coalition, and others.

8. **STUDENT BENEFIT**

The SCWA supports those students who wish to consider employment within the construction industry by creating priorities for SPS students into pre-apprenticeship programs and subsequent apprenticeship employment on SPS construction projects. The SCWA creates a stronger career pathway for SPS students and families, including those from economically distressed communities within the district, into no-debt paid apprenticeship training and long-term family-wage construction employment.

9. **WHY BOARD ACTION IS NECESSARY**

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

☐ Board Policy No. _____, [TITLE], provides the Board shall approve this item

☒ City of Seattle offers expertise to Seattle Public Schools surrounding the implementation of Community Workforce Agreements that Seattle Public Schools does not possess.

10. POLICY IMPLICATION

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

11. BOARD COMMITTEE RECOMMENDATION

This motion was discussed at the Operations Committee meeting on February 4, 2020. The committee reviewed the motion and moved the item forward with a recommendation for approval by the full Board.

12. TIMELINE FOR IMPLEMENTATION

The MOA becomes effective when approved and executed by the board. Services and costs associated with services are anticipated to begin April 1, 2021. This MOA shall remain in effect five years from inception date.

13. ATTACHMENTS

- Memorandum of Agreement between the City of Seattle and Seattle Public Schools (for approval)

MEMORANDUM OF AGREEMENT BETWEEN THE CITY OF SEATTLE

AND

SEATTLE PUBLIC SCHOOLS

THIRD PARTY ADMINISTRATION

STUDENT AND COMMUNITY WORKFORCE AGREEMENT

THIS IS A MEMORANDUM OF AGREEMENT (MOA) between The City of Seattle (“the City”), a municipal corporation and first-class home rule city with a council-mayor form of government, acting by and through its Department of Finance and Administrative Services (“FAS”), and Seattle School District No. 1 (“Seattle Public Schools, or “SPS”), a Washington Municipal Corporation. The City and SPS are sometimes referred to individually as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, SPS owns, controls and operates the SPS K-12 public schools and facilities and such facilities require projects to construct and/or improve such facilities; and

WHEREAS, SPS has over \$1 billion in current funding under the Building Excellence V capital levy program for such construction improvements, and other levy measures are anticipated for future years, with a significant share of such funds being dedicated to facility construction and/or improvements that are built within RCW 39.12 and 39.04;

WHEREAS, the SPS Board of Directors, commonly known as the Seattle School Board, has the fiscal and legal responsibility to manage the construction and improvements of SPS facilities and a corresponding public interest to train and prepare students to graduate from SPS schools and prepare for a career or education pathway of their choice;

WHEREAS, the Seattle School Board adopted a mission and strategic plan that highlights the need to prepare and train students about career pathways, and, to the extent permitted by law, particularly provide such opportunities to pursue those choices in a successful way for African-American males and all students who are people of color, students who identify as LGBTQIA+, and other students facing unique challenges, economic instability in their homes and/or barriers in pursuit of a career;

WHEREAS, SPS has adopted a Priority Hire program that includes a Student and Community Workforce Agreement (“SCWA,” Appendix A) between SPS and the Seattle Building Trades, under which contractors will prioritize the hiring of former SPS students, those with an SPS affiliation such as households or families, residents of economically distressed ZIP codes within Seattle, women and people of color, and the SCWA is similar to the City’s Community Workforce Agreement and City Priority Hire program; and

WHEREAS, SPS has adopted a commitment to establish a women and minority-owned business (commonly referred to as “WMBE”) program for construction projects as well as measures to ensure an appropriate workplace environment, generally termed “Acceptable Worksites”, which were also adopted as a component of the Priority Hire programs and align appropriately with the SCWA;

WHEREAS, on Sept. 23, 2020, the Seattle School Board authorized the Superintendent to execute the proposed SCWA and proceed with implementation of the various recommendations, and the Superintendent thereafter executed the SCWA on Oct. 1, 2020;

WHEREAS, the SCWA and associated programmatic needs impose requirements on Contractors including prioritizing the apprenticeship training and union dispatch hire of former SPS students, residents of economically distressed ZIP codes, indigenous peoples, women, people of color and apprentices on SPS covered projects, and those responsibilities require proper monitoring and enforcement to ensure contractor compliance;

WHEREAS, the Seattle School Board authorization includes imposing policies, practices, provisions and requirements for WMBE utilization and Acceptable Worksites;

WHEREAS, the City successfully implemented similar programs, including Priority Hire, WMBE, Acceptable Worksites, as well as the corresponding Community Workforce Agreement, which are each administered by the City Department of Finance and Administrative Services; and

WHEREAS, SPS wishes the City to perform support services for these programs, including SCWA, WMBE, Acceptable Worksite, Priority Hire, prevailing wage and apprenticeship utilization monitoring; and

WHEREAS, the Parties can achieve cost savings and benefits in the public's interest by having the City complete those services for SPS at SPS' expense; and

WHEREAS, this MOA establishes SPS' roles and responsibilities as the recipient of such services and the City's roles and responsibilities as the provider of such services; and

WHEREAS, an MOA as to the services, costs and responsibilities between the parties assures common understandings,

WHEREAS, the Seattle Public Schools Board of Directors voted on March 10, 2021 to authorize SPS to enter into a Memorandum of Agreement with the City of Seattle for these services;

NOW, THEREFORE, the Parties agree as follows:

TERMS AND CONDITIONS:

1. Purpose, Scope and Term of MOA

1.1. Purpose and Scope.

- A. This MOA provides staffing resources from the City to SPS, for administration and monitoring of the SPS SCWA and associated social equity provisions which includes WMBE, Acceptable Worksites, prevailing wages, and apprenticeship utilization for SPS-funded and managed construction projects. This MOA places:
 - a. Two full-time experienced mid-range Strategic Advisor 1 staff whom the City has trained and prepared to perform such duties, to be embedded and reporting from the SPS office, City offices, or virtual environment to allow for collaboration, decision-making or discussions that complement the required services; and
 - b. Provides 0.10 FTE in management and supervision from the City for the named staff.

- B. SPS owns and has all authority over the SPS SCWA and the associated Priority Hire, WMBE and Acceptable Worksite programs, policies, practices, rules and administrative decisions. The construction projects covered by the SCWA are those declared so by SPS. These principally will be SPS construction projects estimated by SPS to have a construction cost equal to or more than \$5 million.

1.2. Term. This MOA becomes effective when executed. Services and costs associated with services are anticipated to begin on April 1, 2021, subject to the date when the two Strategic Advisor I positions are hired and trained sufficiently to begin work. This MOA shall remain in effect 5 years from April 1, 2021 unless terminated otherwise under Section 35; after 5 years, it may be renewed by agreement.

2. Responsibilities and Services

The City shall not act as an agent or legal representative to SPS except as may be explicitly authorized in the performance of the services described herein. The City shall be the lead for the completion of work items requested by SPS. The City shall provide services in the type, nature and magnitude requested by SPS and agreed to by the City. SPS shall direct requests for service changes to City management.

Regular responsibilities are named in Appendix B.

3. Changes to Services

In the event either Party desires a material change to this MOA, that Party shall notify the other, and the Parties agree to negotiate in good faith. During negotiations, the Parties will continue performing the MOA as currently in effect. If the Parties mutually agree to a proposed change, they will include the change in the MOA through a written addendum signed by both Parties. If the Parties do not agree to a proposed change, the MOA will continue as currently in effect without the proposed change.

It is known that SPS- intends to review this MOA and the efficacy of this service model for meeting SPS needs, during the comprehensive review of the SCWA that is currently directed by the Seattle School Board to encompass the SCWA program from October 2020 through October 2022. As a result, SPS may wish to reduce the level of services prior to the conclusion of the five-year anticipated agreement duration (and extension periods if any), which may include reducing or terminating some or all of the services. SPS has unilateral authority to reduce services, however SPS must notify the City of any reductions with written notice at least 6 months in advance of the reduction in service and may be negotiated so as to minimize impacts to the smooth and successful administration of the services conducted. Minor changes or clarifications may be administered by a supplemental letter of understanding signed by both Parties.

4. Mutual Coordination

The parties agree to meet monthly at a mutually agreed upon day/time, and to do so routinely through the term of the MOA. The parties agree to an annual review of the services which shall occur within the first two months of each calendar year at a mutually agreed upon day/time. At the annual review meeting, the City shall provide a summary of its activity for the MOA in the previous

calendar year, its metrics of work performed, a list of any concerns or issues, and related information or materials.

5. Personnel and Equipment

5.1 This MOA includes the staffing stated in 1.1.A (above).

5.2 The City will include an SPS staff person on the hiring committee to allow SPS input on the staff person being hired. This is intended to occur no later than February 1, 2021, although the timeframe may be adjusted based on the needs of the City for the hiring process.

5.3 If SPS needs the City staff to work on SPS premises and/or with SPS equipment, SPS may provide the necessary premises and equipment. Such premises and equipment are exclusively for the work and not to be used for any other purpose. The Parties agree that both positions require dedicated office space at the City for the named staff and the 0.10 share of management staff, the costs of such space and supplies is within the funding identified below and will be included on the quarterly invoice on a pro-rated daily basis.

5.4 Unless otherwise specified herein, the City shall furnish and supply all agreed upon labor, supervision, equipment, materials and supplies requested in the performance of the agreed upon services. City staff shall have access to a workspace at both the Seattle Municipal Tower and John Stanford Center for Educational Excellence. SPS shall furnish the workspace furniture, materials and supplies for work at John Stanford Center.

5.5 The City shall make a reasonable effort to meet pertinent SPS deadlines for completion of services and shall notify SPS as soon as it becomes aware of any hardship or other inability to perform the services requested. In the event of an emergency, the City and SPS shall agree upon a contingency plan with alternate methods for the completion of services.

5.6 SPS shall retain responsibility and ownership over each program and project. Nothing in this MOA will supersede this authority. SPS is not responsible for the supervision of City employees and will not supervise City employees.

6. Compensation

6.1 Annual Costs

Service Description	Estimated Annual FTEs (2021 - 2022)	Estimated Annual Labor Costs^{1,2}	Estimated Annual Equipment/Supplies/Materials/Admin Overhead³	Estimated Annual Charges (2021 - 2022)
Community Workforce Agreement (CWA) Administration and Limited Monitoring	0.75	\$ 117,798	\$ 42,364	\$ 160,162

Prevailing Wage/Apprentice Utilization/WMBE	1.25	\$ 196,330	\$ 70,607	\$ 266,936
Direct Management Support/Oversight	0.10	\$ 19,382	\$ 6,169	\$ 25,550
Total	2.1	\$ 333,509	\$ 119,139	\$ 452,648

Reference note: Administration Overhead based on 2021 Proposed budget data. Equipment & office space costs are pro-rated based on a 60/40 time split between City of Seattle and SPS facilities. Hourly rate at 2020 value and at mid-range for SA1 and Manager 3.

6.2 Costs. SPS will pay the estimated cost for the services as provided in the Table 1 above. The costs associated with these services has been estimated by the City of Seattle. Given the difficulty of making a precise accounting of each item for such costs, the parties agree that the total estimated charges displayed in Table 1 are agreed upon to represent the costs. Costs shall begin to accrue once both staff are hired to begin service delivery. Should only one of the two anticipated staff be ready to report, the invoice amount shall be prorated accordingly, at 50% of the total billable amount for the prorated period of business days within the quarter where there is only one of the two anticipated staff.

6.3 The City shall invoice SPS each quarter for 25% of the total annual cost. SPS shall pay the City within 45 days after the invoice is agreed upon as valid and correct.

7. **Confidential Information.** The District will not provide ~~confidential~~identifiable information about an individual worker or student to the City in the performance of~~under~~ this agreement, except as may be required to accomplish the tasks and reporting for the work of this Contract~~identifiable information may be available within LCP tracker or B2GNow systems.~~ The City and the District shall use, store, transmit, delete, or disclose such information as narrowly and as closely-held as possible, while performing the obligations under this Contract or as otherwise required by law. Such private information specifically includes an individual's Social Security Number but may include other information as deemed to be confidential by either party and/or by law.~~identifiable information strictly as necessary to carry out its obligations under this Contract, or as otherwise required by law.~~
8. **Indemnification.** The City agrees that to the fullest extent permitted by law, and up to a maximum of \$6.5 million, the City will hold harmless, defend, and indemnify SPS, its agents, employees and board members from any liability, cost or expense, including without limitation penalties, losses, damages, attorneys' fees, taxes, expenses of litigation, judgments, liens, and encumbrances, to the extent arising out of or resulting from any act or omission by the City under this MOA. The terms of this section shall survive termination of this MOA.

The District agrees that to the fullest extent permitted by law, and up to a maximum of \$6.5 million, the District will hold harmless, defend, and indemnify the City, its agents, employees, and board members from any liability, cost or expense, including without limitation penalties, losses, damages, attorneys' fees, taxes, expenses of litigation, judgments, suits, liens, and encumbrances, to the extent arising out of or resulting from any act or omission by District under this MOA. The terms of this section shall survive termination of this MOA.

9. **Insurance.** Each party to the MOA will provide the other with a Certificate of Insurance, or evidence of Self-Insurance, that documents insurance coverage for claims of negligence resulting in to personal injury or property damages that may arise from or in connection with the performance of the MOA, with limits of not less than \$1,000,000 per occurrence. Coverage exposures include but are not limited to:
- a) **Commercial General Liability (CGL) insurance.** CGL insurance must include coverage for:
 - 1. Premises/Operations
 - 2. Products/Completed Operations
 - 3. Personal/Advertising Injury
 - 4. Contractual
 - 5. Stop Gap (unless insured as Employers Liability under Part B. of a Workers Compensation Insurance Policy)
 - b) **Automobile Liability Insurance.** Automobile Liability for owned, non-owned, hired, and leased vehicles, as applicable, with a minimum limit of liability of \$1,000,000 CSL.
 - c) **State of Washington Statutory Workers' Compensation Insurance.** Workers' Compensation coverage as required by Title 51 RCW (Industrial Insurance).

9.1 General Conditions (Not Applicable to Washington State Workers Compensation)

- A. **Deductibles or Self-Insured Retentions.** Deductibles or Self-Insured Retentions shall be disclosed in the evidence of insurance and are subject to approval of the Party or its contractors as appropriate shall be responsible for payment of any claims or expenses incurred within a deductible or self-insured retention.
- B. **Security of Insurers.** Insurers shall be licensed to do business in the State of Washington and shall maintain not less than an A- VII A.M. Best's ratings unless coverage is procured as surplus lines under RCW Chapter 48.15 ("Unauthorized insurers").
- C. **Cancellation.** Coverage shall not be cancellable without at least thirty (30) days advance written notice of cancellation, except ten (10) days with respect to cancellation for non-payment of premium.
- D. **Waiver of Subrogation.** CGL, Auto, and Employer's Liability insurance required to be maintained by each Party hereunder shall contain a waiver of subrogation in favor of the other Party.
- E. **CGL Insurance Additional Insured.** CGL insurance maintained by each Party shall include the other Party, its officers, elected officials, employees, agents, and volunteers" as additional insureds for primary and non-contributory limits of liability per the ISO CG 20 26 11 85 designated additional insured endorsement or its equivalent with products additional insured status for not less than six years following physical completion.
- F. **Self-Insurance.** The Parties acknowledge that the other Party may employ self-insured and/or alternative risk financing and/or capital market risk financing programs for some or all of its coverages. The term "insurance" wherever used herein shall include any such self-insured and/or alternative risk financing and/or capital market risk financing programs. The Parties shall each be liable for any of their own self-insured retention or deductible portion of any claim for which insurance is required.

- G. **Certificates of Insurance.** The Parties shall each deliver to the other Party ACORD or equivalent Certificates of Liability Insurance issued in conformance with prevailing established market practice evidencing compliance with the minimum levels of coverages and limits of liability and meeting general conditions stated herein, including but not limited to provision for notice of cancellation as specified herein.
10. **Audits.** The Parties shall each maintain books and records regarding SCWA expenses to allow accurate audits. Each Party may audit the other Party's SCWA-related books and records at the offices where such books and records are kept. Such audit shall be during ordinary business hours and shall occur not later than thirty (30) days after a Party receives notice of intent to audit from the other Party. Audits shall be conducted by a firm not paid on a contingency basis. The auditing Party shall pay the costs of the audit firm, unless the audit reveals that the audited Party overcharged or underpaid by five percent (5%) or more, in which case the audited Party shall pay the costs of the audit firm.
11. **Cooperation with District Auditor, City Auditor, and State Auditor.** The Parties agree to provide reasonable cooperation with any inquiry by either the district, City, or State Auditor relating to the performance of this contract. The District has the right to audit records of the City relating to payment or performance under this contract, for one year after completion of this contract. Failure to cooperate may be cause for debarment from award of future contracts.
12. **Compliance with Laws.**
- 12.1 In General.** Each Party shall comply, and shall take reasonable steps to ensure that its employees, agents, consultants, contractors and representatives comply, with all federal, state, and local law, regulations, and ordinances applicable to the work or services for which that Party is responsible under this MOA, including, but not limited to, applicable public works and procurements laws and regulations, bonding, prevailing wage, nondiscrimination, retainage, insurance, and workers' compensation requirements.
- 12.2 Licensing and Certification of Employees.** Each Party shall comply, and shall take reasonable steps to ensure that its employees, agents, consultants, contractors and representatives comply, with all federal, state and local licensing, registration, filing and/or certification standards applicable to the work or services for which that Party is responsible under this MOA, including but not limited to applicable accrediting standards and any other standards or criteria established by any state or federal agency.
13. **Independent Contractor.** The parties agree this MOA does not make any person an employee of the other party. The City shall at all times be an independent contractor and not an agent or representative of the District with regard to the services provided under this MOA. No individual assigned to work at a District location or for a District student shall become a District employee because of this MOA. The City is responsible for all wages and benefits owed to the City staff, agents, or volunteers.

14. **Notice.** All required written notices that are prescribed herein for the management of this MOA as a document shall be in writing and delivered by hand or U.S. Mail as follows:

To the District lead:

Richard Best, Director of Capital Projects and Planning
Seattle Public Schools
PO Box 34165, MS 23-376
Seattle, WA 98124-1165

To the City of Seattle lead:

Anna Pavlik, Labor Equity Program Manager
Finance and Administrative Services
PO Box 34996
Seattle, WA 98124-4996

15. **Governing Law.** The terms of this MOA shall be interpreted according to and enforced under the laws of the State of Washington.
16. **Waiver.** Any express waiver or failure to exercise promptly any right under this MOA will not create a continuing waiver or any expectation of non-enforcement.
17. **Assignment.** Neither Party shall assign its rights or responsibilities under this MOA, unless it receives written permission from the other Party.
18. **Severability.** If any provision of this MOA is held invalid or unenforceable, the remainder of the MOA will not be affected, but continue in full force.
19. **Entire Agreement.** This MOA constitutes the entire agreement between the Parties, and supersedes all prior oral or written agreements, commitments, or understandings concerning the matters provided herein.
20. **Amendments and Modifications.** Modifications to this MOA must be in writing and be signed by an authorized representative of each Party.
21. **Judicial Proceedings.** The Parties agree that any judicial proceedings arising out of this MOA will take place in Seattle, Washington.
22. **Counterparts.** The Parties agree that this MOA may be executed in one or more counterparts, each of which shall constitute an enforceable original of the MOA, and that facsimile signatures shall be as effective and binding as original signatures.
23. **Force Majeure.**
- 23.1** Neither Party shall be considered in breach of this MOA or liable for any delay or failure to comply with this MOA, if and to the extent that such delay or failure is attributable to the occurrence of an event beyond the reasonable control of a Party ("Force Majeure Event").

23.2 A Party claiming relief based on a Force Majeure Event shall:

- A.** Promptly notify the other Party in writing of the existence and nature of the Force Majeure Event;
- B.** Exercise all reasonable efforts to minimize delay caused by such Force Majeure Event;
- C.** Notify the other Party in writing of the cessation of such Force Majeure Event; and
- D.** Resume performance of its obligations under this MOA as soon as practicable thereafter.

24. Administration

24.1 The City will be solely responsible for managing its SCWA-related personnel. In managing its SCWA-related personnel, the City will apply its policies and procedures regarding recruitment, discipline, appearance, drug use and drug testing.

24.2 SPS will be solely responsible for managing its SCWA-related personnel. In managing its SCWA-related personnel, SPS will apply its policies and procedures regarding recruitment, discipline, appearance, drug use and drug testing.

25. Record Retention. The Parties shall retain SCWA-related records consistent with their respective record retention schedules and the Washington State Public Records Act, chapter 42.56 RCW as now codified or hereafter amended.

26. Rights and Remedies. The rights and remedies of the Parties to this MOA are in addition to any other rights and remedies provided by law or equity, except if this MOA specifies that the rights and remedies provided herein shall supersede or replace the Parties' rights or remedies at law or equity. In the event of a dispute or litigation, each Party will be responsible for its own attorney's fees, costs, and other expenses.

27. No Joint Venture or Partnership. No joint venture or partnership is formed because of this MOA.

28. No Third-Party Rights. This MOA is solely for the benefit of the Parties hereto. It creates no right, privilege, duty, obligation, cause of action or other remedy in any person or entity not a party to it.

29. Binding on Successors and Assigns. This MOA, together with all appendices, exhibits and attachments now or hereafter made a part, shall be binding on the Parties hereto and their respective successors and assigns.

30. Warranty of Right to Enter into MOA. The Parties each warrant they have the authority to enter into this MOA and that the persons signing this MOA for each Party have the authority to bind that Party.

31. Appendices Exhibits and Attachments. All appendices, exhibits and attachments referenced in and attached to this MOA are incorporated by this reference.

32. Survival of Certain Provisions. The Parties' rights and duties under the following sections shall survive any termination or expiration of this MOA:

Section 8.0 Indemnification
Section 9.0 Insurance
Section 10.0 Audits
Section 25.0 Record Retention
Section 32.0 Dispute Resolution

33. Dispute Resolution. The City and SPS agree to resolve any disputes arising under this MOA so that the purposes of this MOA are not frustrated. Except as otherwise provided in this MOA, the Parties shall use the following dispute resolution process.

33.1. Step One. If an issue arises that is not being resolved by staff and a time or cost imposition requires a structured dispute process, either party will refer the dispute to the program Directors of the respective program and allow ten (10) business days for discussion and agreement. After 10 business days if no resolution has been found, the parties may mutually agree to additional time for resolution or may proceed to other remedies.

33.2. Mediation. The parties may, by agreement, submit the matter to non-binding mediation. In that event, the Parties shall share equally in the cost of the mediation. If additional parties participate in the mediation then each participant shall pay a share of the cost of the mediation, such share to be calculated by dividing the total cost of the mediation by the number of parties participating. Mediation shall not be a prerequisite to litigation.

33.3. Continued Performance. During the conflict or dispute resolution efforts, the Parties shall continue to diligently perform their respective responsibilities under this MOA.

34. Tolling.

34.1. The Parties agree that any statute of limitations or statute of repose shall be tolled during any dispute resolution process between them. The time that the statutes are so tolled shall be added to the time for bringing an action for each Party's claims under any federal or state law (whether arising under statute or case law), including any state or federal code(s) of civil procedure or statute of limitations that are or may apply.

34.2. If either Party sues including, without limitation, to toll the statute of limitations as to a third party, the tolling agreement in Paragraph A of this Section 34.1 shall remain in effect for the duration of any conflict or dispute resolution process between the Parties.

34.3. The Parties agree that, notwithstanding the tolling agreement in Paragraph a of this Section 34.1, the Parties do not waive or release any statute of limitations or statute of repose defense that could be asserted.

35. Termination. Either party may terminate this MOA, with 120 calendar days written notice at any time for any reason. In addition, SPS may terminate this MOA with written notice effective immediately if it determines such action is necessary for the health, safety or education of students or staff. SPS shall be responsible for all costs incurred by the City for services performed under this MOA up to the effective date of termination of the MOA.

IN WITNESS WHEREOF, the parties have executed this MOA effective as of the date last written below.

JoLynn Berge
Chief Financial Officer
Seattle Public Schools

Date

Kiersten Grove
Deputy Department Director, Finance and Administrative Services
City of Seattle

Date

Appendix A. Student and Community Workforce Agreement

https://www.seattleschools.org/district/district_quick_facts/initiatives/student_and_community_workforce_agreement

Appendix B. Responsibilities and Services

1. City Obligations

A. The City shall be responsible for the basic services detailed below and tasks related to those services. It is understood that the services will be provided within the capacity of the agreed-upon staff (2 full-time dedicated Strategic Advisors). The intensity of each service or task will vary from project to project, based upon the priorities and needs that emerge, allowing staff to make decisions around what are the most important priorities or tasks at any given time. Examples of situations that can influence the intensity or response time include: when a significant number of projects occur at one time, when key personnel are changed or substituted, if a change to the SCWA requires increased monitoring, and when an issue emerges that requires an intensive and/or immediate response such as an Acceptable Work Site violation. Services are listed in order of priority, with “1” being the highest prioritized service, in the event any changes or unforeseen circumstances prohibit the City from continuously providing all basic services. Each prioritized service includes subservices. Each subservice is listed in order of priority, with “a” being the highest priority.

1. Administration of SCWA, Prevailing Wages, Apprentice Utilization, WMBE and Acceptable Work Sites

- a. **Pre-Bid Meetings and Pre-Construction Meetings.** The City staff shall attend all pre-bid meetings and all pre-construction or Social Equity Conferences prior to the notice to proceed is issued. The City staff will provide an overview of the SCWA and other social equity initiatives

included in this MOA during these meetings and will provide in-depth training for all prime contractors after a contract has been awarded.

- b. **Pre-Job Conferences.** The Pre-job Conferences refers to the one-time meeting each Contractor on the project will have with the Seattle Building Trades as appropriate to the conditions of the SCWA. The City staff shall provide SPS with necessary information for contractors on pre-job paperwork deadlines and protocols. The City shall also submit the contractor's pre-job paperwork or pre-job waiver request to the unions and attend any appropriate pre-job conferences and shall document related submittals including pre-job conference forms, final trade assignments, pre-job conference waiver requests and dispatch requests. The City will receive notification of pre-job waiver approval or denial and shall notify SPS and the contractor of such approval or denial.
- c. **Generate Reports.** The City shall generate reports from LCPtracker as needed to monitor contractor progress in meeting the requirements.
- d. **Technical Assistance in Group Setting.** The City shall provide technical assistance for contractors working on SPS covered projects and other interested parties on matters related to the SCWA, prevailing wages, acceptable worksites, WMBE, etc. The City shall offer this technical assistance in the form of group training sessions prior to a contractor's work on the SPS covered project. Training sessions will be offered quarterly for any interested contractor staff to attend, unless SPS and the City find it of benefit to provide it with greater or lesser frequency. Training session advertisements, dates and locations will be coordinated by SPS.
- e. **LCPtracker and B2Gnow support.** The City will support all contractors in the administration and technical support of LCPtracker and B2Gnow. Some examples include, approving companies and apprentices in the system, adjusting system settings to allow 4/10 schedule and system use training.
- f. **Communication Materials.** When new materials are needed in the opinion of either the City or of SPS, the City will utilize existing materials as a starting point, and shall create appropriate materials such as training announcements and presentation materials. The City shall prepare easy to read educational materials and distribute to contractors at all appropriate events. The City shall adjust communication materials to accommodate SPS unique program details such as incorporating the priorities for SPS students, families, and the SPS CTE Pre-Apprentice program. All communication materials will include the appropriate contact information in case a contractor needs technical assistance. The City may draft other communication materials such as updates for City and SPS leadership, presentations, or general program brochures, etc. as time allows. The City shall submit all communication materials to SPS for review and approval prior to implementation.
- g. **Acceptable Work Sites (AWS).** The City will administer the SPS Acceptable Work Site provision for SPS projects. SPS and contractor will

refer any known AWS issues to the City who will recommend a course of action to SPS. The City reserves the right to transfer further investigation to SPS if necessary due to the time constraints of available City dedicated staff time or other appropriate reasons. As part of the administration of AWS, the City will ask AWS questions when conducting prevailing wage interviews to identify potential AWS issues. The City will inform SPS any time an AWS concern has been discovered, and/or an investigation has initiated, as well as providing progress, recommendations and close out.

2. Monitoring of SCWA, Prevailing Wages, Apprentice Utilization, WMBE and Acceptable Work Sites

- a. **Review and Monitor the progress of each element within the Social Equity Plan including the pages for the Inclusion Plan, Apprenticeship Plan and Workforce Projections.** The City shall receive the Social Equity Plan that is submitted by the Prime in advance of the appropriate meeting (either the Pre-Construction meeting or a separately scheduled Social Equity Conference) and will review with the Prime. The City will regularly monitor and compare contractor's performance to the Social Equity Plan throughout the life of the project. If the City identifies a concern that a prime contractor may not be on track to meet the elements of the Plan and any requirements, the City may recommend that SPS require the contractor to their intended approaches and strategies to show there is still a path to meeting said requirements.
- b. **Review and Monitor Payroll Data.** The City shall regularly review and monitor certified payroll data entered by contractors into LCPtracker and to ensure that all contractors entering payroll data have attended a pre-job conference or have an approved pre-job waiver. SPS will be responsible for the procurement of LCPtracker.
- c. **Review and Monitor Wages.** The City shall identify any wage violations and notify the SPS Capital Director of such activity and follow up on the resolution of the issue by either collecting proof of payment of restitution pay or other outcome.
- d. **Conduct Jobsite Interviews.** The City shall conduct jobsite visits for interviewing workers to ensure contractors are following prevailing wages, SCWA and AWS. Interviews include, but are not limited to, verification of wages, classifications, contractors on site and worker information such as name, SPS status, ZIP code, length of time on project, and other applicable information. City staff shall attend any required training in advance of obtaining site access per SPS directive and shall wear all required personal protective equipment at all times during jobsite interviews. Interviews may be conducted by phone or other virtual methods if the City or SPS deems it is impractical for City staff to conduct interviews in person.
- e. **Wage Clarifications and Determinations.** The City shall advise and assist with wage clarifications and determinations upon request following L&I determinations.

3. Direct Management Support and Oversight

- a. **Staff Management.** Oversee the work of the staff hired under this MOA and coordinate with SPS key personnel to ensure service expectations are met, staff have information and support they need to do their work, staff performance is evaluated, and there is close collaboration with SPS.

4. Further Administration of SCWA, Prevailing Wages, Apprentice Utilization, WMBE and Acceptable Work Sites

- a. **One-on-one Technical Assistance.** Upon request from a contractor or SPS, the City may provide one-on-one training or technical assistance to contractors as staff time permits on any of the Appendix B services. The City is responsible for the training and technical assistance content.
- b. **Project Administrative Committee (PAC) Meetings.** The City shall invite all parties and attend all PAC meetings.
- c. **Dual Benefit Reimbursement.** The City shall review dual benefit reimbursement requests from open-shop contractors and forward completed requests to SPS for payment.
- d. **Acceptable Work Sites.** The City shall conduct all investigations related to this MOA scope of service items, including interviews and communication with contractors, and follow direction from SPS to complete investigations. The City reserves the right to transfer further investigation to SPS if necessary due to the time constraints of available City dedicated staff time or other appropriate reasons.
- e. **Pre-Bid Meetings for Lower Tier Subcontractors.** The City may attend pre-bid meetings for lower tier subcontractors as time allows. Lower tier subcontractors are those that do not have a direct contract with SPS, but do have a direct contract with the prime contractor or a hiring contractor on the covered project. If in attendance at such pre-bid meetings, the City will provide the same level of overview of the SCWA and other social equity initiatives as provided to the prime contractor.

5. Further Direct Management Support and Oversight

- a. **Issue Identification and Analysis, SCWA Interpretation and SCWA Enforcement.** The City shall support SPS by providing recommendations for past precedent for SCWA interpretation, enforcement mechanisms and corrective action plans.
- b. **Contract Development.** The City may help SPS on contract provision development.

6. Program Reporting

- a. The City will interpret data from the reports and will assist in the preparation of executive presentations upon request and as time permits.

7. Website Presence

- a. The City will monitor the SPS-maintained website and will provide notification to SPS when website content needs to be updated.

8. Public Facing Community Relationships

- a. **Attend Public Meetings.** The City shall attend public meetings upon request and as time permits.

2. SPS Obligations

A. SPS hereby gives authority, including jobsite access, to the City to perform services within this MOA.

B. SPS is responsible for providing to the City detailed project information and access to SPS capital development staff to ensure close collaboration and adequate awareness for City staff of project plans including, but not limited to 1) advance notice of advertisement, pre-bid meetings, intent to award, and notice to proceed; 2) project look ahead documents; and 3) related modifications to the contract or project plans. Additional SPS responsibilities are detailed below:

1. SCWA, Prevailing Wage, Apprentice Utilization and WMBE Administration and Monitoring

- a. **Technical Assistance.** SPS shall provide any relevant technical assistance to the City and contractors and shall refer contractors or other stakeholders to the City when appropriate. SPS will coordinate training schedules and logistics with the City.
- b. **Communication Materials.** SPS shall review and approve City prepared communication materials in a timely way.
- c. **Pre-Bid Meetings and Pre-Construction Meetings.** SPS shall notify the City at least 1 week in advance of all pre-bid and pre-construction meetings and shall accommodate a City preference for scheduling a Social Equity Conference in lieu of or in addition to the City attending a Pre-Construction conference. SPS will take meeting minutes as appropriate.
- d. **Dual Benefit Reimbursement.** SPS is responsible for the payment of dual benefit reimbursement requests as reviewed and approved by the City. SPS will track all incoming requests, forward promptly to the City and update the City and contractors regarding dual benefit reimbursement payments.
- e. **Project Administrative Committee (PAC) Meetings.** SPS shall host and facilitate all PAC meetings.
- f. **Jobsite Interviews.** SPS shall allow City staff unfettered access to the jobsite for conducting interviews and observing work unless otherwise deemed impractical for safety or is disruptive of critical work (e.g. concrete pouring). In such cases, SPS or the prime contractor will provide a timeline to resume interviews.
- g. **Acceptable Work Sites (AWS).** SPS will refer all AWS issues to the City for initial review and recommendations. SPS will require contractors to post AWS poster in a prominent place at all job sites. SPS will be responsible for enforcement of AWS determinations.
- h. **Wage Violations.** SPS shall respond to any alerts regarding wage violations and is responsible for determining next steps.
- i. **Review and Monitor Social Equity Plan.** SPS shall track the receipt of the Plan from the Prime and the City approval of such documents. SPS shall provide direction to the Contractor based on City feedback, if needed.

- j. **Notifications.** SPS will notify the City as soon as practicable of any known, but no less than 3 days after SPS becomes aware unless otherwise specified below:
 - 1. Prevailing wage issues (including overtime issues) and Acceptable Work Site concerns;
 - 2. Construction shift and schedule changes at least 3 business days prior to the change. In the event a change in shift or schedule (normal working hours) is due to an emergency, SPS notifies the City immediately upon the change.
 - 3. Change in project conditions that may impact safety;
 - 4. Plans to negotiate changes to the SCWA in advance of the next PAC meeting;
 - 5. Awards issued to prime contractors and removal of prime contractor and substantial completion.

2. **Direct Management Support and Oversight**

- a. **Contract Development.** SPS shall manage the SCWA and any and all amendment negotiations to the SCWA with the Unions. SPS is also independently responsible and the authority over all SPS contract documents.
- b. **Enforcement.** SPS is responsible for enforcement actions including all those that are done under the authority of either the SCWA and contract.

3. **Program Reporting**

- a. **LCPtracker and B2Gnow.** SPS is responsible for the procurement and cost of LCPtracker and B2Gnow.

4. **Public Facing Materials**

- a. **Website Presence.** SPS is responsible for ensuring a website presence.
- b. **Materials.** SPS is responsible for the design and posting of public facing materials and shall provide direction to the City in drafting public facing materials.