



SCHOOL BOARD ACTION REPORT

DATE: January 2, 2020
FROM: Denise Juneau, Superintendent
LEAD STAFF: Fred Podesta, Chief Operations Officer
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For Introduction: February 26, 2020
For Action: March 11, 2020

1. TITLE

BEX V: Award Contract P1672, for Construction Project Management Services, to Shiels Obletz Johnsen, Inc. (“SOJ”) for the Van Asselt Classroom Addition and Mercer Middle School Replacement project

2. PURPOSE

The purpose of this action is to provide authorization for the Superintendent to enter into a construction project management contract in the amount of \$5,369,905, including reimbursable expenses, for the Van Asselt Classroom Addition and Mercer Middle School Replacement project.

3. RECOMMENDED MOTION

I move that the School Board authorize the Superintendent to execute contract P1672 for Construction Project Management Services, with Shiels Obletz Johnsen, Inc. in the amount of \$5,369,905, including reimbursable expenses, with any minor additions, deletions, and modifications deemed necessary by the Superintendent, and to take any necessary actions to implement the contract.

4. BACKGROUND INFORMATION

a) Background

On February 12, 2019, voters approved the \$1.4 billion, Building Excellence V (BEX V) Capital Levy, which will support Seattle Public School District’s long-range plans to upgrade and renovate aging school facilities and address enrollment growth. The Capital Planning section of the Capital Projects department has identified this project to involve the following.

Van Asselt Classroom Addition:

- New spaces to house a total of 1,000 students at this campus as an interim school;
- Limited renovation of the existing 1950 elementary school building;
- Building of a new multi-story classroom and gymnasium addition;
- Relocation and modernization of the existing 1908 historic landmarked schoolhouse.

- The Van Asselt Classroom Addition project is located at 7201 Beacon Avenue S., Seattle WA 98108, a 9.5-acre site housing existing occupied and non-occupied buildings, outdoor playfield and track.

Mercer Middle School Replacement:

- Demolition of the existing 1957 school building;
- All-new permanent replacement school to house a total of 1,000 students at Mercer Middle School;
- Reoriented school campus with site improvements.
- The Mercer Middle School Replacement project is located at 1600 S. Columbian Way, Seattle WA 98108, an 8.39-acre site housing an existing school, outdoor playfield and track. The campus sits immediately adjacent and to the south of Jefferson Park.

This BEX V Construction Project Management Contract P1672 with SOJ covers the Van Asselt Classroom Addition and Mercer Middle School Replacement project. Under contract, SOJ will provide project management services from conceptual design through construction and closeout of the project.

The following are some key reasons and benefits for using a Construction Project Management (CPM) firm for this BEX V project:

- One of the primary drivers for engaging contract CPM services is to accommodate the fast track schedule of the largest BEX V projects that are needed to accommodate district student enrollment growth.
- A significant benefit of retaining contract seasoned CPM 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.
- 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 CPM 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 June 2019. Six firms submitted proposals. The district review panel interviewed three firms and selected SOJ as the most qualified firm for the BEX V Van Asselt Classroom Addition and Mercer Middle School Replacement project.

For the Van Asselt Classroom Addition and Mercer Middle School Replacement project, the district selected SOJ based on specific criteria to best meet its needs, including factors like

demonstrated performance on similar projects, K-12 school construction project management experience, deep understanding of education issues, education specifications, pedagogies and teaching practices, communication skills, General Constructor/Construction Management (GC/CM) experience, Alternative Public Works construction delivery method experience, successful construction project management and delivery record, relevant 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 criterion in selecting its Construction Management firms, and aggressively negotiated the contract terms and price, to receive the best value for the services.

b) Alternatives

Deny Motion. If motion is denied, the district will not be able to execute the construction management contract to start the design of the Van Asselt Classroom Addition and Mercer Middle School Replacement project. This is not recommended because it would negatively impact the district's commitment to provide equitable access in our schools.

c) Research

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

- SPS BEX V Master Plan, February 2019
- SPS Technical Building Standards, December 2012
- SPS Middle School Educational Specifications, January 2012
- SPS School Design Advisory Team Process Guide documents
- McKinstry Building Condition Assessment Update, 2019
- Seattle Building Code
- RCW Chapter 39.10, Alternative Public Works Contracting Procedures

5. FISCAL IMPACT/REVENUE SOURCE

The fiscal impact to this motion will be \$5,369,905. The revenue source for this motion is from the BEX V Capital Levy. The total project budget, of which the construction project management contract is one part, is \$196,790,034.

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

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

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

6. COMMUNITY ENGAGEMENT

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

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

Upon Board approval, planning and design will begin, including engagement with a site-specific School Design Advisory Team (SDAT) which will include representation from neighborhood councils.

7. EQUITY ANALYSIS

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

8. STUDENT BENEFIT

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

9. WHY BOARD ACTION IS NECESSARY

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

10. POLICY IMPLICATION

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

11. BOARD COMMITTEE RECOMMENDATION

This motion was discussed at the Operations Committee meeting on February 6, 2020. The Committee reviewed the motion and moved the item forward with a recommendation for approval by the full Board.

12. TIMELINE FOR IMPLEMENTATION

Anticipated Notice to Proceed Date:	February 10, 2020
Anticipated Construction Date:	July 2021 for Van Asselt Addition July 2023 for Mercer Middle School Replacement
Substantial Completion Date:	June 2023 for Van Asselt Addition June 2025 for Mercer Middle School Replacement

13. ATTACHMENTS

- RFP 04977 for Construction Project Management Services (available upon request in the Capital Projects & Planning department) (for reference only)
- Contract P1672, for Construction Management Services, to Shiels Oblatz Johnsen, Inc. (“SOJ”) for the Van Asselt Classroom Addition and Mercer Middle School Replacement project (for approval)



Construction Project Management

Construction Management Services, to Shiels Obletz Johnsen, Inc. for the Van Asselt Classroom Addition and Mercer Middle School Replacement project

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For questions and more information about this document, please contact the following:

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Contract P1672, for Construction Management Services, to Shiels Obletz Johnsen, Inc. for the Van Asselt Classroom Addition and Mercer Middle School Replacement project

**CONSTRUCTION PROJECT MANAGEMENT SERVICES
AGREEMENT
BEX V CAPITAL LEVY PROJECTS**

CONTRACT NO. P1672

Between

Seattle School District

And

Shiels Oblatz Johnsen Inc.

CONSTRUCTION PROJECT 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 – Identified Personnel & Hourly Rates

Exhibit E – Staffing Levels by CPM/Project

Exhibit F – List of Projects

CONSTRUCTION PROJECT MANAGEMENT AGREEMENT

This Construction Management Agreement ("Agreement") is effective as of the _____ day of _____ 2020, by and between Seattle School District No. 1 ("Owner") and Shiels Oblatz Johnsen Inc., ("Construction Project Manager" or "CPM"), for project construction management services on Van Asselt Classroom and Gymnasium Addition ("Van Asselt Addition" or "Van Asselt" or "VA") and Asa Mercer International Middle School Replacement (or "Mercer Middle School Replacement" or "Mercer Middle School" or "Mercer MS") Projects in the Building Excellence Program - Phase V ("Program" or "BEX V").

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 Project 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 or state statutes, regulations, orders, or directives of the federal government or the State of Washington, any political subdivision of that state, any municipal corporation with jurisdiction 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 (activation and occupancy) as well as a correction period of one year following the final 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 V.
15. Project. A portion of the 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. Punchlist 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 PROJECT MANAGER'S
SERVICES AND RESPONSIBILITIES**

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

<u>Project:</u>	<u>Planned Start</u>	<u>Planned Occupancy</u>
Van Asselt Addition	October 1, 2019	June 2023
Mercer Middle School Replacement	October 1, 2019	June 2025

CPM 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, CPM shall (a) exercise that degree of professional skill, judgment, and diligence commensurate with that which is normally exercised by recognized professional construction project 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 CPM shall serve as the Owner's representative (but not its agent), subject to the supervision, direction, and control of the Owner and shall manage and coordinate the selected Project(s) and perform all services appropriate to that function unless reserved to the Owner by this Agreement or excluded from CPM's duties, responsibilities, and authority by directive of the Owner. At the time of performance, the CPM shall be properly licensed, equipped, organized and financed to perform the services.

- C. Construction Project Manager Liability. Nothing in this contract is intended to impose responsibility on the CPM 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 CPM in violation of its duties and responsibilities under this Agreement.
- D. General Duties. The CPM shall perform all of the following:
1. CPM Staffing. CPM 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. CPM 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 the CPM. CPM 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, CPM 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. In addition, during construction of the project CPM, shall attach to the Weekly Report the CPM's daily field reports regarding their site

observations, adherence with the contract documents (products and installation) and current project schedule.

- b. Unusual Events. CPM 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 CPM becomes aware of the event.
- c. Monthly Reports. On the first Monday of each month, CPM shall submit a detailed written report on:
 - (1) The Project budget, 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 CPM's responsibility (including the CPM 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 CPM during the Design Phase for the Projects listed in Exhibit F.

- 1. Design Budget. CPM 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, CPM 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. CPM 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. CPM 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, CPM 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. CPM 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 schedules prepared by construction contractors during the construction phase, as may be appropriate. The CPM'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. CPM shall provide detailed reviews of Architect's estimate at the completion of:
 - a. Schematic design;
 - b. Design development; and
 - c. Ninety-five percent (95%) completion of the construction documents.
 - d. If GC/CM, 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 CPM 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 CPM shall report to the Owner on any known problems concerning permit approvals. The CPM 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 CPM'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. The CPM 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. The CPM 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 the CPM shall, at no additional cost, make recommendations concerning any GC/CM'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, CPM 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. The CPM 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, the CPM 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. The CPM 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. The CPM 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. The CPM 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, the CPM 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.

The CPM 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, the CPM 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, the CPM 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 CPM during the Construction Phase for the Projects listed in Exhibit F.
1. CPM Representative. The CPM 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 on behalf of the CPM to take any and all actions that may be necessary for the CPM 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 CPM. The CPM is a representative of the Owner. It is not an agent of the Owner, except as explicitly provided in Article II.F.12 below, and as may otherwise be specifically authorized in writing by Owner. The CPM 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. The CPM 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 the CPM'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 CPM shall be designated an Owner's Representative to all contractors until final payment is due. The CPM 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. The CPM shall, on a daily basis, observe the progress of the construction and document findings in a written Field Report. The CPM shall promptly report any probable defects to the Owner and Architect.

6. **Inspections.** The CPM 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 the CPM's opinion, does not conform to the requirements of the applicable construction contract. The CPM 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. The CPM shall be responsible for confirming that all tests required by the Construction Documents are conducted. If such tests are not conducted, the CPM shall be liable for any losses to the extent they are attributable to CPM'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.** The CPM 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 CPM, 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.** The CPM 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.** The CPM 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. The CPM 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. The CPM shall monitor the progress of the work and advise Owner as to actions necessary to avoid or overcome schedule slippages. The CPM shall monitor the construction contractor's progress in meeting the project schedule. The CPM shall be especially alert for delays in the work that may be caused by differing site conditions, or Owner's, Architect's or CPM's failure or inability to take timely action on shop drawings, requests for information, and similar items. The CPM 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. The CPM 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. The CPM 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 CPM, the Architect, and for final authorization by the Owner. To reduce the possibility of delay for the Program, the CPM 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 the CPM determines is justified in accordance with the terms of the construction contract for the project, the CPM 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, the CPM 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 CPM 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. The CPM shall promptly notify Owner of any changes directed pursuant to this paragraph. Except as to changes described in the first sentence of this paragraph, the CPM 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. The CPM 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. The CPM 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 CPM 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, the CPM 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. The CPM 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. The CPM 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 CPM shall not be responsible for field verification of the as-built.
16. Contractor Submittals. The CPM shall maintain a log of the shop drawings submitted by the construction contractor to the Architect for review and approval. The CPM 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. The CPM 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. The CPM shall maintain at the project site or at the CPM'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. The CPM 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. The CPM 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 CPM 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. The CPM 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. The CPM 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. The CPM shall assist in preparation of documents required for submissions to establish compliance with governmental requirements.
21. Owner-Furnished Equipment. The CPM 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 CPM shall assist Owner staff in overall coordination of FF&E delivery and installation among the contractors and FF&E vendors.
22. Safety. The CPM 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, CPM 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. The CPM may reject work and may stop nonconforming work if continuation of that work would, in the opinion of CPM, be more costly than a possible delay claim. If CPM 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. The CPM shall assist in identifying the problem and the specification section or drawing applicable to the problem and in recommending a solution. The CPM shall then take such action as Owner may direct.
24. Punch List Work. When the CPM considers each contractor's work or a designated portion of that work complete as notified by the Contractor, except for punch list work, the CPM shall coordinate with the Architect and Owner consultants to develop a punch list(s), and the CPM shall coordinate with the Contractor a schedule for completion of such punch list work. The CPM shall be responsible for determining that all "punch list" work is complete prior to recommending approval of final payment for the construction contract(s).
25. Substantial Completion. The CPM 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. The CPM shall oversee the commissioning process and shall work with the Owner to confirm 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. The CPM 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. The CPM 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, the CPM 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. The CPM 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 CPM. The CPM will endeavor to achieve the required closeout deliverables in a timely manner throughout construction and closeout, but closeout services beyond the duration of the CPM contract shall entitle the CPM to additional services, if requested by the Owner. At project completion, the CPM 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. The CPM shall receive, review, obtain revisions as may be appropriate, and determine that the construction contractor's schedule of values is reasonable. The CPM 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 construction schedule. This will serve as data for input to the monthly status report, which the CPM 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.

The CPM 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 CPM 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 CPM shall not be responsible for field verification of the as-built documents.

29. Permits. The CPM shall assist Owner in obtaining building occupancy permits.
30. Lien Releases. Before recommending final payment, the CPM shall obtain the releases of claims and liens required by the construction contract provisions. If a right to pursue claimed items is reserved, the CPM 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 Final Acceptance of the facilities, the CPM 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. The CPM 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 CPM, 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 CPM has actual knowledge; (c) any repudiation or breach by any contractor or its obligations under the construction contract of which the CPM 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 CPM has actual knowledge; (f) any deposit, spill, release, or discovery of hazardous substances on, in, under, or about the project of which the CPM 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 CPM 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. Communications. The Owner may elect to utilize a web-based project management communications tool, such as e-Builder, during the course of this project. The CPM and its subconsultants will be required to transmit all documents utilizing any such web-based tool, as directed by the Owner. The Owner will provide e-Builder training to the CPM and its subconsultants that are assigned to the project at no cost. No additional payment shall be paid to the CPM for the training, apart from the fee amount agreed to in this Agreement.
- I. Compliance. All of CPM's agents, employees, and representatives shall, while on the Owner's property or conducting Owner-related business, comply with all applicable local, state, and federal laws, including without limitation, FAA, OSHA, WISHA, Workers' Compensation, and all laws prohibiting harassment of any kind in the workplace. CPM assumes all responsibility for providing to its agents, employees, and

representatives any training that may be required to ensure compliance with any such laws.

- J. Drug- and Weapons-Free Workplace. The CPM shall enforce strict discipline and good order among the CPM's employees, sub-consultants, and other persons carrying out the Agreement, including observance of drug testing and all smoking, tobacco, alcohol, parking, safety, weapons, background checks, sexual harassment, and other rules governing the conduct of personnel on the Owner's property. The CPM shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. The CPM shall ensure that all persons performing the Services under this Agreement comply with the Owner's tobacco-free use policy and will not and do not engage in inappropriate conduct or inappropriate contact with students or staff. The CPM and its subcontractors of any tier shall fully comply with all applicable federal, state, and local laws and regulations regarding drug-free workplace, including the Drug-Free Workplace Act of 1988. Any person not fit for duty for any reason, including the use of alcohol, controlled substances, or drugs, shall immediately be removed from the Work. The CPM and its employees, agents, and consultants shall not bring onto the Project site or onto any Owner property any firearm or any other type of weapon described in either RCW 9.41.280(1) or RCW 9.41.250. Any person violating this Section shall immediately be removed from the Work, and such a violation shall be grounds for a termination of this Agreement for cause at the Owner's discretion. Any employees of the CPM and its consultants of any tier performing Services on the project site or Owner property shall be free from drug and alcohol impairments. If the Owner or Building Site Administrator reasonably believes that a person may be under the influence of any such drugs or alcohol, the Owner may require that testing take place immediately and failure to do so shall be grounds for the immediate termination of the offending CPM for cause. Pursuant to RCW 28A.210.310, smoking or use of any kind of lighted pipe, cigar, cigarette or any other lighted smoking equipment, material or smokeless tobacco products is prohibited on all school district property.
- K. Employees. The CPM shall enforce strict discipline and good order among the CPM's employees and other persons carrying out this Agreement, including observance of drug testing and all smoking, tobacco, parking, safety, weapons and other rules governing the conduct of personnel at a Project site. The CPM shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. The CPM shall ensure that all persons performing the Work comply with the Owner's tobacco use policy and will not and do not engage in inappropriate conduct or inappropriate contact with students or staff. The CPM shall not utilize any employee at a Project site who is a registered sex offender or who has pled guilty to or been convicted of any felony crime involving the physical neglect of a child under Chapter 9A.42 RCW, the physical injury or death of a child under Chapter 9A.32 RCW or Chapter 9A.36 RCW (except motor vehicle violations under Chapter 46.61 RCW), sexual exploitation of a child under Chapter 9A.68A RCW, sexual offenses under Chapter 9A.44 RCW where a minor is a victim, promoting prostitution of a minor under Chapter 9A.88 RCW, the sale or purchase of a minor child under Chapter 9A.64.030 RCW, or violation of similar laws of another jurisdiction. At no change to its Fee, the CPM shall remove from the Work and a Project

site any employee or other person who has engaged in such actions or who the Owner reasonably considers objectionable. Failure to comply with these requirements is grounds for immediate termination of the Agreement for cause.

- L. Performance Review. When requested by Owner, but not more often than every six months, The CPM shall assign an appropriately qualified senior member of its staff to participate in a review of the CPM's contract performance and Owner's administration of this contract. This representative shall not be directly involved in the provision of the CPM'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 the CPM 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 the CPM's official point of contact. The Owner shall review construction contracts and recommendations by the CPM within a reasonable time to avoid unreasonable delay in the progress of the CPM'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. The Owner shall not, however, furnish legal and such other services on behalf of the CPM.
- 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. CPM as Additional Insured. The Owner shall endeavor to cause the CPM to be named as an additional insured in each construction Contract's general liability insurance policy applicable to the site.
- E. Limitation of CPM Authority. No contract or contract modification shall be binding on the Owner unless and until executed by the Owner. The CPM shall inform all prospective contractors and all bidders at the commencement of discussions or negotiations carried out by the CPM that the CPM 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 CPM Authority for Changes. The CPM 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.12. All contractors shall be informed of such limits on the CPM's authority.
- G. Owner Provided Data. Owner shall provide the CPM with all necessary and appropriate documentation and data in Owner's possession that may be required by CPM in the performance of its duties. Owner shall assure that similar documentation and data are provided by the Architect(s). However, CPM shall not be responsible for the accuracy of documentation prepared by others.
- H. Owner Reimbursed Items. Owner will reimburse the CPM 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 the CPM's duties under this contract.

IV. TERM

This Agreement between Owner and the CPM 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 from date of Final Acceptance. 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 CPM the lump sum of Five Million Two Hundred Fifty Thousand Eight Hundred Fifty Five and no cents (\$5,250,855). This lump sum fee shall include any Labor and Other Direct Costs (ODCs) by the CPM.
- B. Monthly Payments. Owner shall pay CPM on the schedule listed in Exhibit A. Invoices shall be submitted monthly and shall be in a form acceptable to Owner. Submission to the Owner shall be transmitted through e-Builder (if utilized on the Project) or by mail. 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 CPM's administration costs including overhead, G&A, and profit, but not any Other Direct Costs (ODCs). If hourly rates are applied, CPM 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, CPM shall be entitled to reimbursement for actual, reasonable out-of-pocket costs of the items as identified in Exhibit B. The CPM 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, the CPM will provide staffing and expertise at least equal to that specified in Exhibit E.
- E. Audit. All CPM requests for payment are subject to audit by Owner. The CPM 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 the CPM 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.
- F. Changes. The Owner may direct changes within the general scope of the Services, including the manner or timing of performance. The CPM shall comply with such direction. If such changes increase or decrease the cost of performance, either the owner or CPM 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 CPM 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 CPM
- G. Correction of Services. The CPM shall, at no additional cost to Owner, promptly and satisfactorily correct any failure to use professional efforts. If CPM 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 CPM, and deduct the reasonable cost (including administrative cost, if any) from any payment due CPM. 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.
- H. Withheld Payments. Any amount otherwise payable under this Agreement may be withheld, in whole or in part, but only to the extent of the following:
- .1 The Owner makes a claim arising out of or connected with this Agreement against the CPM;
 - .2 Any claim for which the Owner is to be reimbursed, or any Indemnitee is to be indemnified by the CPM under this Agreement, is filed against the Owner or any of

its subsidiaries or any other Indemnitee, or if reasonable evidence indicates the probability of a filing of any such claim;

.3 Any claim related to the performance of the Services, or provision by the CPM of any professional associate or consultant of labor, equipment or materials used in connection with the Services, is filed against the Owner, the Project, or any other property of the Owner, or if reasonable evidence indicates the probability of a filing of any such claim; or

.4 The CPM is in material default under any provision of this Agreement.

The Owner will pay any payments withheld pursuant to Section if the CPM, as appropriate:

.1 Pays, satisfies or discharges any claim of the Owner, any Indemnitee or any third party which was the basis of the withholding of payment; and/or

.2 Cures all defaults in its performance under this Agreement.

VI. TERMINATION OF AGREEMENT

A. Termination for Cause (Default).

1. Notice. Should CPM 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, CPM shall be liable to Owner for any damages, direct and indirect, that Owner may suffer as a result of CPM's default.
2. Conversion to Termination for Convenience. If the contract is terminated for cause and it is later determined that CPM 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, CPM 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, The CPM 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 CPM.

VII. INSURANCE AND INDEMNITY

- A. Commercial General Liability. The CPM 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 CPM or its agents or employees in the performance of this Agreement. Owner agrees to endeavor to include provisions in any construction contracts requiring the contractor to indemnify CPM and to name CPM, its employees, officers, and agents as additional insured on commercial general liability policies required by such contractor.
- B. Commercial Automobile Liability. The CPM shall maintain commercial auto liability insurance in amounts of not less than one million dollars (\$1,000,000) per occurrence. 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 CPM or its agents or employees in the performance of this Agreement. Owner agrees to endeavor to include provisions in any construction contracts requiring the contractor to indemnify CPM and to name CPM, its employees, officers, and agents as additional insureds on commercial automobile liability policies required by such contractor.
- C. Professional Liability. The CPM shall maintain, at Owner's expense, professional liability insurance on a claims-made basis, covering the negligent errors and omissions of CPM 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. The CPM 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 CPM under this contract.
- E. Construction Manager's Indemnity. The CPM shall indemnify and hold harmless Owner, its employees, officers and its agents from all liability, cost, or expense, including attorney's fees and costs, 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 CPM, its agents, or employees; or the concurrent negligence of CPM, its agents, or employees, but only to the extent of the negligence of CPM, its agents, or employees.

In any action against Owner or any other entity indemnified under this paragraph, by any employee of CPM 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 CPM or any agent under Title 51 RCW, the Industrial Insurance Act, or any other employee benefits act. In addition, CPM 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 CPM by Owner, and does not include, or extend to, any claims by the CPM's employees directly against the CPM. The CPM 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 and hold harmless the CPM, 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, caused by or resulting from the sole negligence of the Owner, its agents, or employees; or the concurrent negligence of Owner, its agents, or employees, but only to the extent of the negligence of Owner, its agents, or employees.
- 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, the CPM shall provide Owner with certificates of insurance or other documents establishing compliance with these provisions.

VIII. KEY PERSONNEL

The selection of the CPM for this contract was based, in part, on the CPM assuring that certain key personnel would perform various functions for the CPM. These individuals are identified in Exhibit C. Except for conditions beyond the control of the CPM, 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 the CPM, CPM 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

The CPM 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. The CPM may retain a record copy of all documentation. Owner shall not reuse any documents, reports, materials, or other subject matter provided by CPM hereunder for other than the Project defined by this Agreement without prior written consent of CPM, which shall not be unreasonably withheld. Owner shall, in any event, indemnify, defend, and hold CPM 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 the CPM 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 the CPM hereunder. Without the Owner's consent (which shall not be unreasonably withheld), the CPM 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 the CPM, 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. The CPM acknowledges that its duties and responsibilities are unique and personal to CPM.
- 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 CPM, 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 the CPM 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. The CPM 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 CPM as an agent for or joint venturer with Owner. CPM 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. The CPM's personnel performing Services under this Agreement shall at all times be under the CPM's exclusive direction and control and shall be employees of the CPM and not employees of the Owner. The CPM shall pay all wages, salaries, and other amounts due its employees in connection with this Agreement, and shall be responsible for all reports and obligations relating to social security, income tax withholding, unemployment compensation, Workers' Compensation, and similar matters. CPM agrees to be responsible for all of CPM's federal, state, and local taxes, withholding, social security, insurance, and other benefits.
- 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 the CPM'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, without regard to its choice of law provisions. Exclusive venue shall be in King County, Washington.
- M. No Third Party Rights. The provisions of this Agreement are intended solely for the benefit of, and may only be enforced by, the parties hereto and their respective successors and assigns. None of the rights or obligations of the parties set forth or implied herein are intended to confer any claim, cause of action, remedy, defense, legal justification, indemnity, contribution claim, set-off, or other right whatsoever upon or otherwise inure to the benefit of any contractor, subcontractor, worker, supplier, mechanic, architect, insurer, surety, guest, member of the public, lender, or other third parties having dealings with either of the parties hereto or involved, in any manner, in the Project.
- N. Conditions, Clarifications and Other Provisions.
1. The CPM 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 CPM entitle CPM to an extension of time of performance and additional service fee.
 2. The maximum compensation established herein is based on CPM'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. The CPM 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: _____
 Bradley D. Tong, Principal

 By: _____
 JoLynn Berge,
 CFO / Superintendent's Designee

Date: _____

Date: _____

List of Exhibits

Exhibit A – Schedule of Payments

Exhibit B - Estimate of Reimbursable Expenses

Exhibit C – List of Personnel

Exhibit D – Hourly Rates for Personnel

Exhibit E – Staffing Levels by CPM per Project

Exhibit F – List of Projects

Exhibit A – Schedule of Payments

Van Asselt Addition Project - Lump Sum Professional Fee: \$2,000,000

Notwithstanding contract section V. B., SOJ shall submit invoices monthly to the Owner for professional services performed plus actual costs (ODC's and Reimbursable Expenses) incurred during the previous month. Professional services invoiced shall be calculated as a percentage of the total lump sum fee for Van Asselt Addition commensurate with the actual progress of each phase of the project. The breakdown of professional fee by phase is:

Pre-Design: 2%

Design Phase: 34%

Construction Phase (including pre-construction / bidding): 56%

Closeout Phase: 8%

Reimbursable Expenses and ODC's will be added to each monthly invoice at Cost + 5%.

Mercer Middle School Replacement Project – Lump Sum Professional Fee: \$3,250,855

Notwithstanding contract section V. B., SOJ shall submit invoices monthly to the Owner for professional services performed plus actual costs (ODC's and Reimbursable Expenses) incurred during the previous month. Professional services invoiced shall be calculated as a percentage of the total lump sum fee for Mercer Middle School Replacement commensurate with the actual progress of each phase of the project. The breakdown of professional fee by phase is:

Pre-Design: 2%

Design Phase: 34%

Construction Phase (including pre-construction / bidding): 56%

Closeout Phase: 8%

Reimbursable Expenses and ODC's will be added to each monthly invoice at Cost + 5%.

Exhibit B - Estimate of Reimbursable Expenses

Reimbursable expenses are incidental costs such as parking fees, tolls, graphics, copy artwork, public presentation materials, copies/reproduction, delivery services, out of town travel and allocable professional liability insurance costs.

Reimbursable Expenses will vary from month to month but are estimated as follows:

Van Asselt Addition: $\$500 / \text{month} \times 44 \text{ months} = \$22,000$

Mercer Middle School Replacement: $\$600 / \text{month} \times 60 \text{ months} = \$36,000$

Reimbursable Expenses shall be invoiced to Owner on a monthly basis at actual cost + 5%.

Exhibit C – List of Personnel

Brad Tong	Principal-In-Charge / Advisor
Justine Kim	Project Manager
Ethan Bernau	Project Manager
Cheri Hendricks	Program & Design Manager *
Adam Strutynski	Deputy Project Manager / Project Controls Manager *
Paul Schlachter	Construction Manager
Paige McGehee	Program Coordinator
Jerome Hunter	Cultural Perspectives *

* These personnel are pre-approved as subconsultants to SOJ, and whose labor costs are included in the lump sum fee in Section V. COMPENSATION, Sub-Section A. Lump Sum.

Exhibit D – Hourly Rates for Personnel *

<u>Name</u>	<u>SOJ Employee Bill Rate</u>	<u>Alternate Sub-Consultant Bill Rate</u>
Brad Tong	\$235	
Justine Kim	\$220	
Ethan Bernau	\$200	
Cheri Hendricks		\$198 **
Adam Strutynski	\$190	\$154 **
Paul Schlachter	\$190	
Paige McGehee	\$75	
Jerome Hunter	\$115	\$93 **

* These Hourly Personnel Rates are 2019 fully burdened rates. Hourly rate increases will be held to a maximum of 2.5% per year through 2020; and annual year over year increases beyond 2020 will be tied to annual CPI adjustments as published by the US Dept of Labor Statistics for Seattle, WA.

** Approved Sub-Consultant total hourly professional rate billed by SOJ to Owner, as marked-up by a maximum of 1.10.

Exhibit E – Staffing Levels by CPM per Project

Van Asselt Addition

Brad Tong	Principal-In-Charge / Advisor
Ethan Bernau	Project Manager
Cheri Hendricks	Program & Design Manager *
Adam Strutynski	Project Controls Manager *
Paul Schlachter	Construction Manager
Paige McGehee	Program Coordinator
Jerome Hunter	Cultural Perspectives Advisor *

Mercer Middle School Replacement

Brad Tong	Principal-In-Charge / Advisor
Justine Kim	Project Manager
Cheri Hendricks	Program & Design Manager *
Adam Strutynski	Deputy Project Manager / Project Controls Manager *
Paul Schlachter	Construction Manager
Paige McGehee	Program Coordinator
Jerome Hunter	Cultural Perspectives Advisor *

* Pre-Approved Sub-Consultant

Exhibit F – List of Projects

Project	Planned Start	Planned Occupancy *
Van Asselt Addition	October 1, 2019	June 2023
Mercer Middle School Replacement	October 1, 2019	June 2025

* Planned Occupancy represents date of Substantial Completion and ability for the Owner to occupy the premises as authorized by local building official or agency having jurisdiction. Planned Occupancy does not represent the first day of school.