



# Peninsula Metropolitan Park District

PO Box 425 – Gig Harbor, WA 98335  
253-858-3400 – [info@penmetparks.org](mailto:info@penmetparks.org)  
[www.penmetparks.org](http://www.penmetparks.org)

## **STUDY SESSION AGENDA: Tuesday, November 19, 2019, 6:00 pm**

Gig Harbor Civic Center Council Chambers (3510 Grandview St., Gig Harbor, WA 98335)

**Call to Order** \_\_\_\_: \_\_\_\_

### **Commissioner Roll Call:**

	Present	Excused	Comment
Maryellen (Missy) Hill			
Amanda Babich			
Todd Iverson			
Kurt Grimmer			
Steve Nixon			

**ITEM 1 Approval of Agenda**

**ITEM 2 Board Discussion**  
**2.a Retreat Results Action Plan**

**ITEM 3 Adjournment** \_\_\_\_: \_\_\_\_

### **AGENDA POLICY**

- No comments or discussion will be allowed on consent items.
- Public comment will be allowed on each Regular Agenda Action Item. Each speaker will be limited to a three (3) minute time limit and may only speak once with a total of 15 minutes per side. Comments will be included as part of the official record of the meeting.
- Citizen Comments: Citizens are afforded an opportunity at each regular and special meeting of the Board of Park Commissioners to offer their comments to the Board. Citizens are limited to a three (3) minute time limit and may only speak once during the Citizen Comment period at each meeting. Comments will be included as part of the official record of the meeting.
- Individuals requesting an item to be placed on the agenda must submit a request by 12 noon on the Tuesday preceding the Monday meeting date.
- Individuals wishing to submit materials or written testimony to the Board at the meeting must provide ten (10) copies at least 15 minutes prior to the start of the meeting.



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## DISTRICT COMMISSION MEMO

**To:** Peninsula Metropolitan Park District Board of Commissioners  
**From:** Glenn Akramoff, Interim Executive Director  
**Date:** November 19, 2019  
**Subject:** Strategic Planning Session Board Retreat – Action Items

### **Background**

The Peninsula Metropolitan Park District Board of Commissioners held a strategic planning session Board retreat on October 12, 2019, to discuss and provide direction on several issues faced by the park district.

The retreat covered topics including Board values, the recreation program, events, capital projects, communication and marketing, Board leadership, Board committees, regional representation, and policy review.

Key strategic themes discussed included:

- Mission and Values
- Event Process
- Committees
- Youth Sports
- Communication Program Vision
- Continuity

Attached to this memo is the agenda and comprehensive summary provided by Joy Johnston of Mojo Strategies. This report clearly defines the 14 action items constructed by the Board to discuss at future Board meetings.

### **Policy Implications/Support**

1. The Board should review policies related to various action items
2. New processes will need to be developed after pending Board approval of action items
3. Staff will begin the process of implantation of action items upon Board approval

### **Staff Contact**

Should you have any questions or comments please contact me at the earliest opportunity should additional research be required to provide answers at the meeting: 253-858-3400 or via e-mail at [gakramoff@PenMetParks.org](mailto:gakramoff@PenMetParks.org).

# PenMet Parks

## Strategic Planning Session Summary

Prepared by Mojo Strategies 11/4/19

### Overview

The Board of the Peninsula Metropolitan Park District (PenMet Parks) held a strategic planning session on October 12, 2019 to discuss and provide direction on a number of issues faced by the park district. Topics on the agenda included board values, the recreation program, events, capital projects communication and marketing, board leadership, board committees, regional representation, and policy review. This summary includes general notes about topic discussions, strategic direction provided by the Board during discussions, and action items.

### Key Strategic Outcomes

**MISSION:** PenMet Parks is committed to inclusion, community, and better lives for all through parks and recreation opportunities, and that is reaffirmed succinctly in the updated mission.

**VALUES:** The PenMet Board supports PenMet Parks staff in their adoption of values and will similarly adopt values for the Board.

**PRESENTING EVENTS:** PenMet Parks is committed to presenting public events that are creative, fun, inclusive, well-run, responsibly planned within available resources, and beneficial to the community.

**HOSTING EVENTS:** PenMet Parks is supportive of community groups who want to present events in PenMet park facilities.

**TEEN ADVISORY COMMITTEE:** The PenMet Board is supportive of the Teen Advisory Committee and will seek further ways to support their work and connect.

**VALUE OF YOUTH SPORTS:** PenMet youth sports provide unique value to the community and fulfill specific needs in the community that are not already being met.

**YOUTH SPORTS QUALITY & COMMUNITY AWARENESS:** PenMet Parks is committed to building on the quality of its youth sports program and increasing awareness in the community about the special experiences PenMet Parks offers.

**COMMUNICATION VISION:** PenMet Parks marketing and communications should continue to promote recreation and events as well as increase general awareness and understanding of PenMet Parks major issues and accomplishments.

**COMMUNICATION PROGRAM:** It is important that the communication program is functioning in alignment with the needs of the district and the expectations of the community and the PenMet Board supports analysis of the program, formalized procedures, and strategic use of communication tools.

**CONTINUITY:** The PenMet Board is committed to continuity in leadership and strategic direction at all times, including through periods of transition.

## Action Items

*Items for action and/or to be scheduled for follow up at future board meetings:*

1. Staff will provide a proclamation of support for PenMet Parks staff values to the Board at a future meeting for consideration and adoption.
2. The Board will develop values specific to the Board at a study session in February.
3. The eight goals described in the Parks, Recreation & Open Space (PROS) Plan will be listed as a bulleted list along with the updated mission on the City's website and other communications as appropriate.
4. Staff will provide the Board an events calendar each year, six months in advance of the start of the next year.
5. Staff will create a template or dashboard for each PenMet-hosted event that measures 1) the financial impact 2) the impact on staff resources and 3) the community need and/or benefit to the community. Staff will create a similar but separate template or dashboard for events proposed/presented by community groups to be held in PenMet facilities.
6. For planning and evaluation purposes, staff will delineate events presented by PenMet Parks as a whole from events that are organized specifically by PenMet Parks programs (such as the Teen Advisory Committee).
7. Staff will present to the Board a list of ideas for ways for the Board can connect with the Teen Advisory Committee.
8. Staff will develop strategies and messaging to promote the unique value of PenMet youth sports in order to differentiate PenMet youth sports from other community programs and set expectations that align with the PenMet vision.
9. Staff will develop recommendations for building on the quality of PenMet youth sports, such as support and training for coaches, partnerships, or improvements to the registration experience.
10. An unbiased third party will be hired to conduct a rate analysis for PenMet recreation fees.
11. Staff will formalize communications procedures such as protocols for media outreach/response and Board notification and social media policies.
12. An unbiased third party will be hired to conduct an analysis of the communications program.
13. The Board will formally define leadership roles and how those roles work together and with staff.
14. The Board will bring back the Board Logistics topics for further discussion at a future meeting.

Following are discussion notes, strategic outcomes, and action items by topic:

## Topic #1: PenMet Parks Mission, Vision & Values

### DISCUSSION

The Board reviewed the current PenMet Parks mission and examples from other park districts and departments. The Board discussed the meaning and relevance of its current mission and some felt that while the words of the mission were accurate, the mission itself was somewhat long and hard to remember. After discussion about the core responsibilities and vision of the district, the Board agreed to the following updated mission:

*“Enhancing the quality of life  
by providing parks and recreation opportunities  
for our community.”*

The Board then reviewed the values recently adopted by PenMet Parks staff and examples of values adopted by other park districts and departments. The Board discussed that it would be helpful to have their own set of agreed upon values to promote accountability, ensure Board sustainability, and provide guidance for interacting with each other, staff, and the community. They discussed that values would be useful for onboarding new Board members more effectively. The Board agreed that they support the PenMet staff in their adoption of their values.

### KEY STRATEGIC OUTCOMES

- **PenMet Parks is committed to inclusion, community, and better lives for all through parks and recreation opportunities, and that is reaffirmed succinctly in the updated mission.**
- **The PenMet Board supports PenMet Parks staff in their adoption of values and will similarly adopt values for the Board.**

### ACTION ITEMS

1. Staff will provide a proclamation of support for PenMet Parks staff values to the Board at a future meeting for consideration and adoption.
2. The Board will develop values specific to the Board at a study session in February.
3. The eight goals described in the Parks, Recreation & Open Space (PROS) Plan will be listed as a bulleted list along with the updated mission on the City’s website and other communications as appropriate.

## Topic #2: Major Events

### DISCUSSION

The Board reviewed the District's current schedule of public events, attendance, costs, and revenue. They discussed which events have been recently added and why, and discussed distinctions between 1) events that PenMet Parks presents that are targeted to specific audiences, 2) events that are open to all and have no attendance limitations, 3) events presented by specific PenMet programs such as the Teen Advisory Committee, and 4) events that happen in PenMet Parks that are presented by other groups from the community. The Board expressed support for presenting events as well as embraces events presented by other groups from the community in PenMet facilities. The Board encourages staff creativity and supports flexibility in event scheduling. The Board also expressed the importance of producing events within budget and within the capacity of staff resources. The Board agreed that it would be helpful to have tools for evaluating events to ensure that resources are used wisely, events fit within the PenMet Parks mission, and that events maximize community benefit, visibility and inclusion. Board members expressed a desire for budget flexibility to support new event ideas, such as discretionary funds or "mini grants." Through the discussion, the Teen Advisory Committee became a topic of focus, and the Board expressed a desire to support their work and connect more meaningfully with the committee.

### KEY STRATEGIC OUTCOMES

- **PenMet Parks is committed to presenting public events that are creative, fun, inclusive, well-run, responsibly planned within available resources, and beneficial to the community.**
- **PenMet Parks is supportive of community groups who want to present events in PenMet park facilities.**
- **The PenMet Board is supportive of the Teen Advisory Committee and will seek further ways to support their work and connect.**

### ACTION ITEMS

4. Staff will provide the Board an events calendar each year, six months in advance of the start of the next year.
5. Staff will create a template or dashboard for each PenMet-hosted event that measures 1) the financial impact 2) the impact on staff resources and 3) the community need and/or benefit to the community. Staff will create a similar but separate template or dashboard for events proposed/presented by community groups to be held in PenMet facilities.
6. For planning and evaluation purposes, staff will delineate events presented by PenMet Parks as a whole from events that are organized specifically by PenMet Parks programs (such as the Teen Advisory Committee).
7. Staff will present to the Board a list of ideas for ways for the Board can connect with the Teen Advisory Committee.

## Topic #3 Recreation Program

### DISCUSSION

The Board reviewed the history of the recreation program since the department formation in 2010, the list of programs offered, number of participants, revenue, and staff and contractor costs. The Board discussed PenMet youth sports and how those programs are similar or different from other youth sports programs in the community. Board members noted that they would like PenMet youth sports to address needs not already addressed elsewhere in the community and that programs shouldn't be redundant. Through the discussion, the following distinguishing characteristics of PenMet youth sports emerged:

- PenMet youth sports offer opportunities for all to participate regardless of income or athletic ability: "everybody plays"
- PenMet youth sports focus on building character, building community and creating memorable experiences: "the joy of being active"
- PenMet youth sports are more successful when everyone is engaged: kids, coaches, staff, and parents: "building community through sports"

The Board discussed that the expectations of parents sometimes differs from what PenMet youth sports offer. Board members discussed ways to provide information to the community to differentiate PenMet youth sports from other community youth sports programs, including setting clear expectations at the time of registration and communicating the value of the programs in marketing materials. Additionally, board members suggested ways to build on the quality of programs, such as more training for coaches before each season, regular clinics for coaches, partnerships with other youth sports programs, and volunteer coaching/training provided by local high school students. It was noted that expectations are partly set by the program fees. The Board discussed looking into the current fee structure, how fees compare to other programs in the community, and what the market needs and will support. Board members briefly discussed the scholarship program and whether or not people are aware scholarships are available.

### KEY STRATEGIC OUTCOMES

- **PenMet youth sports provide unique value to the community and fulfill specific needs in the community that are not already being met.**
- **PenMet Parks is committed to building on the quality of its youth sports program and increasing awareness in the community about the special experiences PenMet Parks offers.**

### ACTION ITEMS

8. Staff will develop strategies and messaging to promote the unique value of PenMet youth sports in order to differentiate PenMet youth sports from other community programs and set expectations that align with the PenMet vision.
9. Staff will develop recommendations for building on the quality of PenMet youth sports, such as support and training for coaches, partnerships, or improvements to the registration experience.
10. An unbiased third party will be hired to conduct a rate analysis for PenMet recreation fees.

## Topic #4 Communication Vision

### DISCUSSION

The Board reviewed the history of the PenMet marketing and communication program over the last 10 years. The Board also reviewed communication tactics and how they support PenMet program areas such as recreation, events, capital projects, executive functions and facilities. Board members expressed a need for more information about important PenMet parks issues and projects, such as key developments in capital projects. The Board discussed the importance of transparency, accuracy, and consistency, as well as clear messaging that translates technical terminology into plain language. They noted that it would be useful for the Board to be provided information (and/or to have information posted to the website) that they can share when talking with the community about key projects so that messages are consistent and accurate.

Board members recommended that the communications program use the PenMet website to its fullest potential and take more advantage of tools provided by Facebook, later recommending strategic use of all available communication tools. The Board discussed recent news stories and expressed a desire to be notified when the district has been contacted by media. The Board recommends proactive communications that engage the community and help educate the community about what the district is accomplishing. In order to ensure that the communications program has the capacity and resources needed to support PenMet Parks program areas and overall district outreach, it was suggested that an unbiased third party conduct an analysis of the communications program.

### KEY STRATEGIC OUTCOMES

- **PenMet Parks marketing and communications should continue to promote recreation and events as well as increase general awareness and understanding of PenMet Parks major issues and accomplishments.**
- **It is important that the communication program is functioning in alignment with the needs of the district and the expectations of the community and the PenMet Board supports analysis of the program, formalized procedures, and strategic use of communication tools.**

### ACTION ITEMS

11. Staff will formalize communications procedures such as protocols for media outreach/response and Board notification and social media policies.
12. An unbiased third party will be hired to conduct an analysis of the communications program.



## Topic #5 Board Logistics

### DISCUSSION

- **Board Leadership** – The Board discussed ways to maintain consistency during significant district transitions. Board members suggested improving the orientation process for new commissioners and clarifying Board roles and relationships between the roles and staff. Board members recommended developing succession plans as Board members leave or roles change.
- **Board Committee Structure** – The Board was provided an example of a template for a committee charter. The Board discussed a committee structure consisting of Finance, Communications, Operations and Legislative Committees. The Board agreed that they would like to discuss the committee structure further at a future study session.
- **Regional Representation** – Due to time limitations, the Board opted to table this discussion for a future meeting.
- **Policies** – The Board discussed the importance of ensuring that policies are aligned with the PROS plan and PenMet mission. Board members suggested doing at least an annual review of policies and educating new commissioners about district policies early in the orientation process.

### KEY STRATEGIC OUTCOMES

- **The PenMet Board is committed to continuity in leadership and strategic direction at all times, including through periods of transition.**

### ACTION ITEMS

13. The Board will formally define leadership roles and how those roles work together and with staff.
14. The Board will bring back the Board Logistics topics for further discussion at a future meeting.

*Due to time constraints and because capital projects were scheduled to be discussed at the next board meeting, the topic of capital projects was not discussed at the strategic planning session.*

## PenMet Parks Strategic Planning Session

Saturday, October 12, 2019 | 9 am to 4 pm

Agenda for Planning Purposes – FINAL

9:00 am	<b>Welcome, Introductions and Overview</b> <ul style="list-style-type: none"> <li>Welcome (Joy)</li> <li>Introductions (Board and Staff)</li> <li>Opening Remarks (Missy)</li> <li>Why Are We Here? PenMet Parks Successes and Challenges (Glenn)</li> <li>Overview of Strategic Planning Key Themes and Objectives (Joy)</li> </ul>	<i>OUTCOME GOAL: Set the tone, introduce all participants to each other, and lay out the day and strategic planning session objectives.</i>
9:30 am	<b>PenMet Parks Mission, Vision and Values</b> (Glenn to present/Joy to facilitate) <ul style="list-style-type: none"> <li>Review current organization mission and vision along with examples from other park districts</li> <li><i>Discussion:</i> Does the Board wish to make any changes?</li> <li>Review recently adopted staff values</li> <li><i>Discussion:</i> Does the Board want to adopt similar values? Are there any values that should be added or changed?</li> <li>Review PROS Plan goals and objectives</li> </ul>	<i>OUTCOME GOAL: Consensus on PenMet Parks mission, vision, and values that will help guide discussions for the day.</i>
10:30 am	<i>Coffee Break</i>	
10:45 am	<b>Recreation Program and Major Events</b> (Glenn to present/Joy to facilitate) <ul style="list-style-type: none"> <li>Review activities offered by the recreation program, registration rates, user experiences and budget</li> <li><i>Discussion:</i> Is the recreation program functioning in alignment with the PenMet Parks PROS Plan, mission and vision? What is working well? What areas need improvement in order to best achieve the PenMet Parks PROS Plan Goals &amp; Objectives, organization mission and vision?</li> <li>Review of events and what it takes to successfully produce a major public event</li> <li><i>Discussion:</i> How do events fit with the PROS Plan, organization mission and vision? Is PenMet Parks doing the right amount of events? What is working well? What could PenMet do to improve this service to the community?</li> </ul>	<i>OUTCOME GOAL: Consensus on the Board's vision for recreation programs/events. Possible action items may include changes to current programs or new policies.</i>
11:45 am	<b>Capital Projects</b> (Glenn to present/Joy to facilitate) <ul style="list-style-type: none"> <li>Review current capital project list and schedule and overall PenMet assets</li> <li>Overview of operations and maintenance costs associated with developed facilities</li> <li><i>Discussion:</i> How do capital projects fit with the PenMet Parks PROS Plan, organization mission and vision? What projects are a high priority? Going forward, what would be useful for the board when making decisions about purchasing property or creating new facilities?</li> </ul>	<i>OUTCOME GOAL: Consensus on the Board's vision for capital projects. Possible action items may include capital project prioritization/scheduling and/or new policies.</i>
12:45-1:30 pm	<i>Lunch</i>	
1:30 pm	<b>Communication Vision</b> (Glenn to present/Joy to facilitate) <ul style="list-style-type: none"> <li>Review current communication program</li> <li><i>Discussion:</i> Is the program currently in alignment with the PROS Plan, organization PenMet Parks mission and vision? What program areas are the highest priority for PenMet Parks to promote/communicate about? Who is the target audience for communications and marketing efforts? What is working well?</li> </ul>	<i>OUTCOME GOAL: Consensus on the Board's vision and priorities for the communication program. Possible action items may include changes to the current program and/or new policies.</i>

	What areas need improvement?	
2:30 pm	<p><b>Board Logistics</b> (Glenn to present/Joy to facilitate)</p> <ul style="list-style-type: none"> <li>• <b>Board Leadership</b> – How can the Board maintain consistency during significant district transitions?</li> <li>• <b>Board Committee Structure</b> – What is working well? What could be improved? Does the Board need a more formal structure for committees, responsibilities and reporting?</li> <li>• <b>Regional Representation</b> – What are the regional committees and how does having a presence and voice within those committees fit with the PROS Plan, organization PenMet Parks mission and vision? Who should represent PenMet Parks in the committees?</li> <li>• <b>Policies</b> – How can the Board ensure that the policies are consistent with the PROS Plan, organization mission and vision?</li> </ul>	<p><b>OUTCOME GOALS:</b></p> <ul style="list-style-type: none"> <li>• <i>Consensus on the Board's vision for leadership through significant transitions.</i></li> <li>• <i>Consensus on the Board's vision for its committee structure and possible action items.</i></li> <li>• <i>Consensus on the Board's vision and priorities for regional representation and assign representatives.</i></li> <li>• <i>Consensus on the Board's vision for review of policies.</i></li> </ul>
3:30 pm	<p><b>Recap and Conclusion</b></p> <ul style="list-style-type: none"> <li>• Review action items and significant strategic outcomes (Joy)</li> <li>• Final remarks and next steps (Glenn/Missy)</li> </ul>	<p><b>OUTCOME GOAL:</b>  <i>Clarification on strategic direction and action items, set expectations for how action items will be achieved.</i></p>



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**REGULAR MEETING AGENDA: Tuesday, November 19, 2019, 7:00 pm**  
Gig Harbor Civic Center Council Chambers (3510 Grandview St., Gig Harbor, WA 98335)

**Call to Order** \_\_\_\_: \_\_\_\_

**Commissioner Roll Call:**

	Present	Excused	Comment
Maryellen (Missy) Hill			
Amanda Babich			
Todd Iverson			
Kurt Grimmer			
Steve Nixon			

**ITEM 1 Approval of Agenda**

**ITEM 2 Citizen Comments** (three-minute time limit)

**ITEM 3 Presentations**

**3.a Greater Gig Harbor Foundation**

**3.b Financial Report**

**3.c President's Report**

**ITEM 4 Consent Agenda**

**4.a Approval of Meeting Minutes**

11-5-19 Study and Regular

**4.b Approval of Vouchers**

TBD upon Elaine Sorenson

**ITEM 5 New Business**

**5.a 2nd Public Hearing and Levy Rate Approval**

**5.b Transfer Funds Hales Pass Roof**

**5.c KCDA/MUSCO Contract Approval**

**ITEM 6 Comments by Board**

**ITEM 7 Next Board Meetings:** Tues. December 3, 2019 (Study and Regular) at City Hall location

**ITEM 8 Executive Session:** Consider Real Estate [RCW 42.30.110 (b) and (c)]

**ITEM 9 Adjournment** \_\_\_\_: \_\_\_\_



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## DEPARTMENT STAFF REPORT: November 6-November 19, 2019

### ADMINISTRATION

- Henderson Bay Student job shadow program
- Finished Preliminary Budget
- Working on Salary Survey
- Finished new staff orientation for Jesse Savage and Stacie Snuffin

### MARKETING

- Winter Parks and Recreation Guide complete and Mailed.
- First showing of Adaptive Recreation in Parks and Recreation Guide
- Promotion for Cookies w/ Mrs. Clause and Breakfast with Santa under way (posters/banners/digital)
- BWS will be featured in the December issue of Gig Harbor Living local
- Email marketing/Social for upcoming events and recreation programs scheduled
- Website pages to include Adaptive Rec, Teens, Capital Projects and Media Releases are in production
- Website updated for Winter Programing
- Lighting Project communicated to user groups, staff and posted to Dist. Calendar.
- High Level with Cooperate Sponsor interest in support the District, meetings in progress

### PEG GRANTS:

- Eagle Scout projects for Bat Houses at Hales Pass (completed 11/16)
- Rotary Bark Park trail map and signs (completed 11/16)
- Tubby's small dog area shelter (finalizing application)
- Narrows fencing (preparing application)
- McCormick trail map and signs (preparing application)
- Off Leash Area Obstacle Course (after review, rejected by users/professionals consulted)
- Voyager PTA Playground (being prepared for presentation at future meeting)
- Three other scouts currently discussing projects

### VOLUNTEER PROJECTS:

- Working with community service people at Narrows continues.
- PHS runners trimmed trails at McCormick Forest; GHHS to trim trails at Rotary Bark Park.

### **CAPITOL PROGRAM:**

- Opening Bids for SHP Turf & Parking Lighting Project on Thursday, 10/10.
- Permits submitted.
- Processing contract for Hales Pass roof replacement.
- Evaluating submissions from RFQ for Hales Pass renovation design.
- Discussion of Memorials and Donations Policy to continue.
- PEG Grant Policy revisions being prepared for Dec 3 Board meeting.
- City of Gig Harbor conducted planning meeting on Cushman Trail Phase V to refine route from Borgen Blvd to PC Line.
- Most computers have been upgraded to Windows 10 (Windows 7 won't be supported after 2019). Other computer upgrades in progress.
- Finalizing post-move IT and phone adjustments.

### **EVENTS**

- Participated in the 13<sup>th</sup> Annual Chum Festival

### **MAINTENANCE & FACILITIES:**

- Justin Palmer from Henderson Bay is job shadowing for us.
- Accepted bid to refinish Pavilion Floors
- Setting up Awnings for the Chum Fest
- Turf Field Lighting Started at SHP
- Irrigation hook up for winterizing Heritage Garden, Master Gardner Support.
- Replacing light bulbs in the parking lot, Concession Stand, Pavilion
- Winterizing Hose bibs, water pipes Etc.

### **RECREATION**

- Basketball has over 500 kids registered and another 70 on the waiting list in leagues that are full.
- Cookies with Mrs. Claus is full (December 14<sup>th</sup> Event); Looking at possibly doing another one in the afternoon same day.
- Teen trivia night at Ocean 5 on November 15<sup>th</sup> (Superhero Theme).
- Kelly met with Ocean 5's new Marketing Manager to go over more program, event and marketing possibilities.
- Mike, Spencer and Aiden attended a 3-hour Active Net Regional User Group meeting in Redmond on November 14<sup>th</sup>. Learned a lot of what's coming up and what we could implement for the future as the district and programs continue to grow.



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## STUDY SESSION MINUTES

Tuesday, November 5, 2019, 6:00 pm

Gig Harbor Civic Center Council Chambers (3510 Grandview St. Gig Harbor, WA 98332)

**Call to Order:** The meeting was called to order by Commissioner Hill at 6:00 pm

### **Commissioners Present:**

Maryellen (Missy) Hill  
Kurt Grimmer  
Steve Nixon (On-Call)  
Amanda Babich  
Todd Iverson

### **Citizens:**

### **Staff:**

Glenn Akramoff  
Elaine Sorensen  
Eric Guenther  
Ed Lewis  
Aiden Krug  
Stacie Snuffin

## STUDY SESSION AGENDA:

### **ITEM 1 Approval of Agenda**

Commissioner Grimmer made a motion to approve the agenda, seconded by Commissioner Babich. The agenda was approved with a 5-0 vote.

### **ITEM 2 Board Discussion: PEG Grant Program**

Discussed changes to the PEG grant process. Commissioners decide there should be two categories for grants. Anything lower than \$2,000 would be considered a smaller grant and anything above that threshold would be a bigger project. Having a quarterly report of these grants would be beneficial for the board to review and get the community engaged. Creating a marketing plan for the PEG Grants in the policy is supported by the Board and crafting a staff committee for these projects would be useful to vet the substantially of the project. A review of the projects list will be given to the Board. Two updated project lists (smaller and larger) will be provided quarterly. The Board concurred that all grants outside the district will be considered by a case by case basis and brought to the Board for evaluation. The documents will be updated and brought back to the Board for review.

### **ITEM 3 Adjournment: \_\_\_\_: \_\_\_\_**

**APPROVED BY THE BOARD ON:** \_\_\_\_\_

\_\_\_\_\_  
**President**

\_\_\_\_\_  
**Clerk**

Submitted by: *Gamani Hayden*



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## REGULAR MEETING MINUTES

Tuesday, November 5, 2019, 7:00 pm

Gig Harbor Civic Center Council Chambers (3510 Grandview St., Gig Harbor, WA 98335)

**Call to Order** \_\_\_\_: \_\_\_\_

**Commissioners Present:**

Maryellen (Missy) Hill  
Amanda Babich  
Todd Iverson  
Kurt Grimmer  
Steve Nixon (On-Call)

**Staff:**

Glenn Akramoff  
Eric Guenther  
Ed Lewis  
Aiden Krug  
Elaine Sorensen  
Stacie Snuffin

**Citizens:**

Bill Sehmel  
Kendalyn Harris

## REGULAR MEETING AGENDA:

**ITEM 1**

**Approval of Agenda**

Commissioner Babich made the motion to approve the agenda, seconded by Commissioner Grimmer. The agenda was approved with a 5-0 vote.

**ITEM 2**

**Citizen Comments** (three-minute time limit)

Kendalyn Harris presented a PEG Grant project for a new playground structure at Voyager Elementary school. In the process of creating an application for a PenMet grant for \$15,000.

**ITEM 3**

**Presentations**

**3.a Legislative Funds**

Legislative funds historically are used to fund various programs and projects throughout the district. Commissioners have \$5,000 each, Commissioner Babich moved to allocate her remaining \$2,500 funds to the recreation program. Commissioners acknowledged that Iverson used \$1214.65 of his funds to help make carnival booths for the Scarecrow Festival.

Commissioner Hill will verify with legal that her offer to Kendalyn Harris for the play structure at Voyager Elementary is an appropriate way to spend her funds. Other Commissioners will revisit their funds at a later time.



### **3.b Proclamation on Employee Values**

Commissioner Iverson made a motion to accept the proclamation on staff values, seconded by Commissioner Grimmer. The proclamation was approved 5-0.

### **3.c Executive Director Report**

Executive Director Akramoff listed some items that he still wants to accomplish before a new E.D. relieves him of his duties. This included information gathering, providing a formal report given to the Board about what he has accomplished while being PenMet's Interim Executive Director, the policy update process, a schedule for the commissioner to refer to in the 2020 calendar, finishing up real estate projects that were started, and continuing employee development. Commissioner Babich made the motion to reopen item 3.C on the Agenda, seconded by Commissioner Grimmer, the motion passed with a 5-0 vote. Commissioner Iverson made a motion that allows the Executive Director to move forward with PEG Grants under \$2,000, seconded by Commissioner Grimmer, the motion passed with a 5-0 vote.

### **3.d Financial Report**

No financial report

### **3.e President's Report**

Commissioner Hill wanted to recognize Kelly Darling for her extraordinary commitment to providing creative and diverse camps, classes, and events to our customers.

## **ITEM 4 Consent Agenda**

### **4.a Approval of Meeting Minutes**

10-1-19 Study Session and Regular

10-15-19 Study Session and Regular

### **4.b Approval of Vouchers**

- \$25,474.34 Reference number: V2019 535-V2019 552
- \$78,627.16 Reference number: V2019 553-V2019 577
- \$11,709.96 Reference Number: V2019 578-V2019 583

## **ITEM 5 Old Business**

### **5.a 1<sup>st</sup> Public Hearing and Levy Rate approval**

Commissioner Hill opened the 1<sup>st</sup> public hearing of the 2020 annual budget at 7:26. Commissioner Babich made a motion to approve R2019-016 Peninsula Metropolitan Parks District annual budget adoption, Commissioner Hill seconded. Commissioner Grimmer made a motion to keep the recreational fees consistent with what they currently are. The Commissioners voted in favor of not reducing the current recreation fees with a 3-2 vote.

**5.b KCDA Membership**

Eric Guenther discussed the benefits of joining the Kitsap County Directors Association. Commissioner Iverson made the motion to pass R2019-018, seconded by Commissioner Babich, the motion passed with a 5-0 vote.

**5.c Hales Pass Roof Contract (KCDA)**

Commissioner Iverson made a motion to pass R2019-019, seconded by Commissioner Babich, the motion passed with a 5-0 vote.

**5.d SHP Field Lighting Bid Approval**

Commissioner Iverson made a motion to pass R2019-021 for construction services from MD Electric. Seconded by Commissioner Grimmer, the motion passed with a 5-0 vote.

**ITEM 6 Comments by Board**

No comments

**ITEM 7 Next Board Meetings:** Tues. November 19th, 2019 (Study and Regular) at City Hall location

**ITEM 8 Executive Session:** Consider the Qualifications of an Employee and Real Estate [RCW 42.30.110] (In 7:43, Out 7:57) Commissioner Babich made the motion that the Board approves the Executive Director employment agreement for Douglas W. Nelson and substantially the form attached that authorizes the Board President to negotiate any remaining terms and execute the agreement. Seconded by Commissioner Grimmer, the motion passed with a 5-0 vote. Moved to reopened Item 3. C.

**ITEM 9 Adjournment**

Commissioner Hill adjourned the meeting at 8:00 pm

**APPROVED BY THE BOARD ON:** \_\_\_\_\_

\_\_\_\_\_  
**President**

\_\_\_\_\_  
**Clerk**

Submitted by: *Gamani Hayden*



# Peninsula Metropolitan Park District

## INCOME STATEMENT 2019

January - October, 2019

	TOTAL			
	ACTUAL	BUDGET	OVER BUDGET	% OF BUDGET
<b>Income</b>				
<b>3100000 TAX REVENUE</b>				
3111000 Real and Personal Property Tax	5,947,707.33	6,072,946.63	-125,139.30	97.94 %
3131700 Sales Tax	348,324.38	307,999.00	40,325.38	113.08 %
3172000 Leasehold Excise Tax	2,464.12	7,400.00	-4,935.88	33.30 %
3174000 Private Harvest Tax	2,115.06		2,115.06	
<b>Total 3100000 TAX REVENUE</b>	<b>6,300,610.89</b>	<b>6,388,345.63</b>	<b>-87,734.74</b>	<b>98.63 %</b>
<b>3400000 CHARGES FOR SERVICES</b>				
3473000 Facility Rental Fee	66,333.59	66,333.55	-0.56	99.91 %
<b>Total 3400000 CHARGES FOR SERVICES</b>	<b>66,333.59</b>	<b>66,333.55</b>	<b>-0.56</b>	<b>99.91 %</b>
<b>3610000 INTEREST AND OTHER EARNINGS</b>				
3611100 Investment Interest	208,600.52	28,000.00	180,600.52	643.69 %
<b>Total 3610000 INTEREST AND OTHER EARNINGS</b>	<b>208,600.52</b>	<b>28,000.00</b>	<b>180,600.52</b>	<b>643.69 %</b>
<b>3620000 RENTS, LEASES AND CONCESSIONS</b>				
3625001 Long Term Golf Course Lease	66,662.19	48,000.00	11,662.19	126.40 %
3626001 Housing Rentals/Leases	47,316.60	44,120.00	3,196.60	107.32 %
3627001 Concessions Lease Facilities	960.00	200.00	760.00	480.00 %
<b>Total 3620000 RENTS, LEASES AND CONCESSIONS</b>	<b>105,178.79</b>	<b>89,320.00</b>	<b>15,848.79</b>	<b>117.74 %</b>
<b>3670000 PRIVATE SOURCE CONTRIBUTIONS</b>				
3671900 Private Donations - Other	7,341.95		7,341.95	
<b>Total 3670000 PRIVATE SOURCE CONTRIBUTIONS</b>	<b>7,341.95</b>		<b>7,341.95</b>	
<b>3680000 OTHER GP NON REVENUE</b>				
	4,641.37		4,641.37	
<b>Total Income</b>	<b>\$6,699,607.11</b>	<b>\$6,561,668.18</b>	<b>\$137,938.93</b>	<b>101.65 %</b>
<b>GROSS PROFIT</b>	<b>\$6,699,607.11</b>	<b>\$6,561,668.18</b>	<b>\$137,938.93</b>	<b>101.65 %</b>
<b>Expenses</b>				
<b>5110000 LEGISLATIVE</b>				
5111010 Board / Employee Compensation	28,846.00	51,200.00	-22,354.00	70.00 %
5111020 Board Payroll Taxes	2,888.10	4,726.00	-1,837.90	60.92 %
5111031 Office & Operating Supplies-Reg	69.18	1,200.00	-1,130.82	4.81 %
5112041 Professional Services	2,188.00	12,200.00	-10,012.00	18.19 %
5114043 Travel	79.77	4,016.00	-3,936.23	1.99 %
5114049 Memberships & Training	4,629.94		4,629.94	
5115045 Rentals	2,526.00		2,526.00	
5571055 Interfund Transfer	6,900.00	6,900.00	0.00	100.00 %
<b>Total 5110000 LEGISLATIVE</b>	<b>55,166.96</b>	<b>81,052.00</b>	<b>-25,743.04</b>	<b>67.33 %</b>
<b>5120000 EXECUTIVE</b>				

	TOTAL			
	ACTUAL	BUDGET	OVER BUDGET	% OF BUDGET
5087600 Contingency Expense		75,000.00	-75,000.00	
5131011 Wages - Regular	159,086.93	184,828.30	-25,741.37	86.07 %
5131020 Benefits	68,344.30	84,688.30	-16,344.00	80.70 %
5131042 Cell Phone	2,102.35	694.00	1,408.35	302.93 %
5131044 Marketing	55,601.91	90,000.00	-34,398.09	61.78 %
5131045 Office Lease	37,029.16		37,029.16	
5132041 Executive-Professional Services	146,834.51	50,000.00	96,834.51	293.67 %
5134043 Executive - Travel	993.13	4,443.00	-3,449.87	22.35 %
5134049 Memberships & Training	4,379.85	6,085.00	-1,685.15	72.22 %
5135041 Admin Office - Cleaning Service	1,580.00		1,580.00	
5152041 Legal - Professional Services	41,104.30	25,000.00	16,104.30	164.42 %
5162041 Personnel-Professional Services	1,505.00	4,270.00	-2,765.00	35.25 %
5761031 Office and Operating Supplies	4,111.91	5,420.00	-1,308.09	75.87 %
5761035 Minor Equipment	19,158.24		19,158.24	
5761041 Prof. Serv -Computer & Security	29,748.88	15,830.00	13,918.88	187.93 %
5761043 Administration - Travel		500.00	-500.00	
5761044 Printing/Advertising	3,901.89	5,625.00	-1,723.11	69.37 %
5761045 Operating Rentals and Leases	3,482.25	1,710.00	1,772.25	203.64 %
5761046 Insurance - General Liability	75,100.00	61,460.00	13,640.00	122.19 %
5761049 Miscellaneous / Events	1,701.25	2,300.00	-598.75	73.97 %
5768953 Other Oper. Exps-External Taxes	6,433.36	12,500.00	-6,066.64	51.47 %
5928900 Bond Service Costs	300.00	500.00	-200.00	60.00 %
5977665 Transfer - Capital Fund	4,026,114.68	4,026,114.68	0.00	100.00 %
5977671 Transfer - Debt Service Fund	73,325.00	73,325.00	0.00	100.00 %
5982252 Intergovt Prnt - Fire Protect		4,770.08	-4,770.08	
6103601 Computer Hardware	15,245.88	3,675.00	11,570.88	414.85 %
6103602 Computer Software	6,496.80	8,150.00	-1,653.20	79.72 %
6104201 Postage	646.61	1,100.00	-453.39	58.78 %
6104204 Internet	10,025.08	6,170.00	3,855.08	162.48 %
<b>Total 5130000 EXECUTIVE</b>	<b>4,794,353.27</b>	<b>4,754,138.36</b>	<b>40,214.91</b>	<b>100.85 %</b>
<b>5140000 FINANCIAL AND RECORDS SERVICES</b>				
5141011 Wages - Regular	93,407.14	94,015.00	-607.86	99.35 %
5141020 Personnel Benefits	39,018.74	39,350.00	-331.26	99.16 %
5142000 Financial Services	500.00	500.00	0.00	100.00 %
5142341 Professional Services	9,232.22	9,180.00	52.22	100.57 %
5142342 Cell Phone	300.00	300.00	0.00	100.00 %
5142349 Bank Charges	330.09	490.00	-159.91	67.37 %
5144043 Travel	30.00	200.00	-170.00	15.00 %
<b>Total 5140000 FINANCIAL AND RECORDS SERVICES</b>	<b>142,818.19</b>	<b>144,035.00</b>	<b>-1,216.81</b>	<b>99.16 %</b>
<b>5710000 PARTICIPANT RECREATION</b>				
5711011 Wages - Administration	42,284.53	68,740.80	-26,456.27	61.51 %
5711020 Benefits - Administration	20,161.11	27,123.30	-6,962.19	74.33 %
5711043 Conferences	4,216.49	4,019.00	197.49	104.91 %
5712042 Communication - Phones	1,545.39	1,680.00	-134.61	91.99 %
5972055 Transfer- Rec. Revolving Fund	135,108.25	135,108.25	0.00	100.00 %
<b>Total 5710000 PARTICIPANT</b>	<b>203,315.77</b>	<b>236,671.35</b>	<b>-33,355.58</b>	<b>85.91 %</b>

	TOTAL			
	ACTUAL	BUDGET	OVER BUDGET	% OF BUDGET
<b>RECREATION</b>				
<b>5760000 PARK FACILITIES</b>				
5769010 Wages - Regular	88,334.84	110,265.80	-21,930.96	80.11 %
5769020 Personnel Benefits	30,098.22	43,159.20	-13,060.98	69.74 %
5769031 Supplies	2,138.63	2,500.00	-361.37	85.55 %
5769035 Small Equipment		500.00	-500.00	
5769042 Communication	634.18	1,000.00	-365.82	63.42 %
5769043 Travel	840.73	1,482.00	-641.27	56.73 %
5769044 Printing		1,800.00	-1,800.00	
5769045 Facility Rentals		200.00	-200.00	
5769049 Miscellaneous		25,000.00	-25,000.00	
<b>Total 5760000 PARK FACILITIES</b>	<b>122,046.60</b>	<b>185,907.00</b>	<b>-63,860.40</b>	<b>65.65 %</b>
<b>5768500 PARKS &amp; GROUNDS MAINTENANCE</b>				
5768511 Wages - Regular	281,888.70	316,181.10	-34,292.40	89.15 %
5768520 Benefits	126,629.71	135,034.10	-8,404.39	93.78 %
5768531 Operating Supplies	52,370.72	66,666.70	-14,295.98	78.56 %
5768532 Fuel	7,983.72	12,500.00	-4,516.28	63.87 %
5768534 Concessions Expense	55.00		55.00	
5768535 Small Tools & Minor Equipment	16,952.54	18,333.30	-1,380.76	92.47 %
5768540 Extraordinary Park Repairs	6,480.39		6,480.39	
5768541 Professional Services	29,364.49	30,000.00	-635.51	97.88 %
5768542 Communication - Phones	12,239.06	16,666.70	-4,427.64	73.43 %
5768543 Travel	240.00	900.00	-660.00	26.67 %
5768544 Printing & Advertising		1,000.00	-1,000.00	
5768545 Operating Rentals & Leases	3,723.13	6,750.00	-3,026.87	55.16 %
5768546 Surface Water/Noxious Weed Tax	3,224.26	3,426.11	-201.85	94.11 %
5768547 Utility Services	51,143.61	66,666.70	-15,523.09	76.72 %
5768548 Repairs & Maintenance	7,197.99	9,000.00	-1,802.01	79.98 %
5768549 Memberships & Training		2,500.00	-2,500.00	
<b>Total 5768500 PARKS &amp; GROUNDS MAINTENANCE</b>	<b>599,493.32</b>	<b>685,624.71</b>	<b>-86,131.39</b>	<b>87.44 %</b>
<b>Total Expenses</b>	<b>\$5,917,136.11</b>	<b>\$6,088,228.42</b>	<b>\$ -171,092.31</b>	<b>97.19 %</b>
<b>NET OPERATING INCOME</b>	<b>\$773,471.00</b>	<b>\$493,739.76</b>	<b>\$279,731.24</b>	<b>156.66 %</b>
<b>NET INCOME</b>	<b>\$773,471.00</b>	<b>\$493,739.76</b>	<b>\$279,731.24</b>	<b>156.66 %</b>



# Peninsula Metropolitan Park District

PO Box 425 – Gig Harbor, WA 98335  
253-858-3400 – info@penmetparks.org  
[www.penmetparks.org](http://www.penmetparks.org)

## Explanation Financial Statement Line Items 2019 October

- #5112041 Legislative – Professional Services – Commissioner Iverson \$1,500 Ecoquest Camp, Commissioner Babich \$2,500 Women’s Wellness Event, Commissioner Grimmer \$2,500 Women’s Wellness Event & \$400 Adult Egg Hunt, Commissioner Grimmer \$2,025 Harbor Wildwatch
- #5114049 Legislative – Professional Services – Cedar River Group \$4,629.94
- #5115045 Legislative – Rental of Board Meeting Facilities \$2,520.00
- #5131042 Executive Cell Phone - Verizon \$1,408.35
- #5131045 Executive – Office Lease – Brown Dog - \$18,723.68
- #5132041 Executive – Professional Services – Demarche Consulting Group, Revenue Study, HR Investigation, Salary Survey Robert Half Temporary Services \$96,834.51
- #5135041 Executive – Office Cleaning - \$1,580.00
- #5152041 Executive – Legal – Mark Roberts \$16,104.30
- #5761035 Executive – Minor Equipment - \$19,158.24 New Office Furniture
- #5761041 Executive – Professional Computer Services – Nicholas Huff Follow Up Invoices and Pacific Office Automation, New Computer Setup \$13,918.88
- #5761045 Executive – Rentals – Copier Buy Out Payment \$1,772.25(Refund was received Wells Fargo)
- #5761046 Executive – Insurance – Enduris Auto Damage and Additional Property \$13,640.00
- #6103601 Executive – Computer Hardware – New Server and Installation \$11,570.88
- #6104204 Executive – Internet – Voice Edge - \$3,855.08
- #5142341 Financial – Professional Services – ADP HR Pro Software and Shredding Services 52.22
- #5711043 Recreation – Conferences – Revenue School & NRPA \$197.49
- #5768534 Maintenance – Health Department Permit \$55.00
- #5768540 Maintenance - Snow Removal & Broken Benches \$6,480.39



# Peninsula Metropolitan Park District

10123 78<sup>th</sup> Ave NW, Gig Harbor, WA 98332  
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"Today We Touch Tomorrow"

## DISTRICT COMMISSION MEMO

**To:** District Commission  
**From:** Glenn Akramoff, Interim Executive Director  
**Date:** November 19, 2019  
**Subject:** **Resolution R2019-022 Authorizing Transfer of Capital Funds – Hales Pass**

### Background

This resolution would allow funds to be accessed from the Park Improvement Fund at the discretion of the Executive Director to cover costs related to the current re-roofing project, and the renovation under planning for 2020 at Hales Pass.

The current Hales Pass fund balance is \$31,986.25. Anticipated expenses for the roof replacement are \$67,801.17.

PenMet has issued a Request for Qualifications for an architect to perform an assessment on the Arletta School House at Hales Pass Park, and then design improvements as appropriate. That process will be regularly shared with the Board. The designer contract and later, the actual renovation work, will require Board approval.

Design and renovation work for the school house is projected to be around \$600,000 depending on Board decisions. This resolution will enable transfer of up to \$700,000.00 to meet these anticipated expenses.

The initial 2019 budget for the Park Improvement Fund was \$6,836,758.20. Transfers in and out of the fund during 2019 netted to \$3,576,114.68 leaving a balance of \$11,104,252.60 at this time.

### Recommendation

Staff recommends that the Board of Park Commissioners approve Resolution R2019-022 to transfer funding from the Park Improvement Fund to the Hales Pass Park Fund as established by the resolution.

### Policy Implications/Support

1. On November 5, 2019 at their regular meeting, the Board of Park Commissioners approved Resolution R2019-019 to approve a contract for roof replacement at Hales Pass Park.
2. On November 19, 2018 at their regular meeting, the Board of Park Commissioners approved Resolution R2018-015 to adopt the 2019 budget with Capital Funds including the Park Improvement Fund and Hales Pass Park Fund.

### Motion

I move that the Board of Park Commissioners approve Resolution R2019-022 to transfer funding from the Park Improvement Fund to the Hales Pass Park Fund as established by the resolution.

Should you have any questions or comments, please contact me at your earliest opportunity so that we may perform any additional research necessary to provide answers at the meeting. I can be contacted at 253-858-3408 or via e-mail at [GAkramoff@PenMetParks.org](mailto:GAkramoff@PenMetParks.org).



2019 Capital Projects

Project	Year Started	CIP Fund 1/1/2019	2019 Budgeted Transfers	Land Sale Donations and Fund Transfers	Capital Fund Expenses	CIP 10/31/2019	Notes
Park Improvement Program	2006	\$6,836,758.20	\$3,576,114.68	\$691,379.72	\$0.00	\$11,104,252.60	Transfer to Community Recreation Center + Sale of Boys and Girls Club Land
Peninsula Enhancement Grant Program (PEG)	2007	\$25,000.00	\$0.00	\$0.00	\$1,514.35	\$23,485.65	Walrath Peg Grant Supplies Heritage Garden Irrigation
Community Recreation Center	2017	\$750,868.70	\$0.00	\$500,000.00	\$783,796.80	\$467,071.90	Ed Lewis; Snodgrass Freeman & Associates; Roberts Johns & Hemphill
Lighting Project - Sehmel Homestead Park	2019	\$0.00	\$400,000.00	\$205,000.00	\$2,542.80	\$602,457.20	Note: \$350,000 of future grant money has been awarded to this project. \$251,901.60 will be transferred back into the PIP
Service Options	2014	\$0.00	\$50,000.00	\$0.00	\$4,503.28	\$45,496.72	Electric Meter Installation Sunrise Beach, Hales Pass Roof Repair, Narrows Mobile Home, Partnership Horseshoe Lake
Hales Pass - Renovation	2018	\$16,986.25	\$0.00	\$15,000.00	\$0.00	\$31,986.25	Note: A \$1,000,000 transfer will be requested from the PIP to fund this renovation. Includes Pierce County Planning Grant
Sunrise Beach	2019	\$0.00	\$0.00	\$8,500.00	\$4,200.00	\$4,300.00	Easement Reimbursement Fund GPA Valuation / Note: The balance of this fund will be transferred into the PIP at year end.
Building Fund	2015	\$100,905.00	\$0.00	\$0.00	\$0.00	\$100,905.00	
<b>Total Capital Funds</b>		<b>\$7,730,518.15</b>	<b>\$4,026,114.68</b>	<b>\$1,419,879.72</b>	<b>\$796,557.23</b>	<b>\$12,379,955.32</b>	

The actual cash for these 2019 capital fund transfers will come in during the months of April and October.





# Peninsula Metropolitan Park District

## RESOLUTION NO. R2019-022

---

### **A RESOLUTION OF PENMET PARKS TO TRANSFER FROM 2019 PARK IMPROVEMENT FUND CAPITAL BUDGET**

WHEREAS, the Peninsula Metropolitan Park District (PenMet Parks) Board of Park Commissioners may by resolution amend its current year budget; and

WHEREAS, the PenMet Parks Board of Park Commissioners has identified costs related to Hales Pass for the roof repair, and building renovation; and

WHEREAS, monies in the Park Improvement Fund have been identified as currently available to fund these costs in an amount not to exceed \$700,000; and

WHEREAS, the PenMet Parks Comprehensive Financial Management Policy requires a resolution of the Board to transfer funds between projects; NOW, THEREFORE BE IT

RESOLVED by the Board of Park Commissioners of the Peninsula Metropolitan Park District that up to \$700,000 from the Park Improvement Fund be transferred to the Hales Pass Park Fund and amend the 2019 Capital Project budget.

The foregoing resolution was adopted at a regular meeting of the Board of Park Commissioners of the Peninsula Metropolitan Park District held on November 19, 2019.

---

Maryellen Hill, President

---

Amanda Babich, Clerk  
Peninsula Metropolitan Park District Commission

---

Attest



# Peninsula Metropolitan Park District

10123 78<sup>th</sup> Ave NW, Gig Harbor, WA 98332  
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## DISTRICT COMMISSION MEMO

**To:** Peninsula Metropolitan Park District Board of Commissioners  
**From:** Glenn Akramoff, Interim Executive Director  
**Date:** November 19, 2019  
**Subject:** **Resolution R2019-021 Execution of a Three-Party Contract Agreement with KCDA and MUSCO Sports Lighting for Lighting System at Sehmel Homestead Park**

### **Background**

During the planning and granting phases of the Sehmel Homestead Park Lighting Project, staff consulted with other jurisdictions and industry professionals to identify efficient processes to complete the project. The use of KCDA to purchase the lighting system was highly recommended.

Subsequently, staff has worked with KCDA staff to understand the process and prepare the foundation for using KCDA on the SHP Lighting project. KCDA arranged for contractors to evaluate the project to provide KCDA-contracted pricing. Resultant numbers from MUSCO Sports Lighting were very competitive with prices quoted during a 2019 lighting systems evaluation process.

### **Recommendation**

Staff recommends that the Board approve Resolution R2019-021 authorizing the Executive Director to execute a Third-Party Contract Agreement with KCDA and MUSCO Sports Lighting in substantially the form attached.

### **Policy Implications/Support**

1. Chapter RCW 39.34, the Interlocal Cooperative Act, permits PenMet Parks to make the most efficient use of its powers by enabling it to cooperate and contract with other governmental agencies on the basis of mutual advantage and to better serve the community.
2. The King County Directors' Association (KCDA) is a non-profit purchasing cooperative organized and owned by Washington's public-school districts. KCDA's mission is to provide centralized procurement services to member school districts and public agencies that will save them time and money as well as comply with all legal procurement requirements.

### **Motion**

I move to approve Resolution R2019-021 authorizing the Executive Director to execute a Third-Party Contract Agreement with KCDA and MUSCO Sports Lighting in substantially the form attached.

Should you have any questions or comments, please contact me at your earliest opportunity so that we may perform any additional research necessary to provide answers at the meeting. I can be contacted at 253-858-3408 or via e-mail at [GAkramoff@PenMetParks.org](mailto:GAkramoff@PenMetParks.org).

**Attachments:** KCDA-MUSCO Quote (Contract Agreement will be furnished before meeting)



# Peninsula Metropolitan Park District

## RESOLUTION NO. R2019-021

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### **AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE A THREE-PARTY CONTRACT AGREEMENT WITH KCDA AND MUSCO SPORTS LIGHTING FOR INSTALLATION OF FIELD LIGHTS AT SEHMEL HOMESTEAD PARK**

WHEREAS, chapter RCW 39.34, the Interlocal Cooperative Act, permits PenMet Parks to make the most efficient use of its powers by enabling it to cooperate and contract with other governmental agencies based on mutual advantage and to better serve the community; and;

WHEREAS, PenMet Parks is a member of the King County Directors' Association (KCDA), a non-profit purchasing cooperative that provides centralized procurement services to its members that will save them time and money as well as comply with all legal procurement and public works contracting requirements; and

WHEREAS, PenMet Parks requested and KCDA provided pricing for a field lighting system at Sehmel Homestead Park; and

WHEREAS, KCDA complied with its statutory requirements for public works contracting and identified MUSCO Sports Lighting as the lowest and best bidder in the amount of \$251,161 plus WSST;

WHEREAS, it is in the best interests of PenMet Parks to issue a purchase order and enter into a three-party contract that is between PenMet Parks, KCDA and MUSCO Lighting for the field lighting system work at Sehmel Homestead Park.

NOW THEREFORE BE IT

RESOLVED that the Executive Director is authorized to execute a purchase order and a three-party contract between PenMet Parks, KCDA and MUSCO Sports Lighting for the field lighting system work at Sehmel Homestead Park in the amount of \$251,161.00 plus WSST, substantially in the form attached as Exhibit A and B and such other documents as reasonably necessary carry out the work.

The foregoing resolution was adopted at a regular meeting of the Board of Park Commissioners of the Peninsula Metropolitan Park District held on November 19, 2019.

---

Maryellen Hill, President

---

Amanda Babich, Clerk

---

Attest



**Behmel Homestead Park**  
**Date: August 18<sup>th</sup>, 2018**  
**King County Directors Association**  
**Master Project: 1186260**  
**Contract Number: 18-408**  
**Quote #188114**  
**Expiration: 02/28/2021**

**Musco Equipment and Installation**

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TLC for LED Light-Structure System delivered to your site in Five Easy Pieces™

- 4 - pre-cast concrete foundations
- 4 - Galvanized steel poles
- UL Listed remote electrical component enclosure
- Pole length wire harness
- Factory-aimed and assembled TLC/LED 1600 - field lighting luminaires
- Factory-aimed and assembled TLC/LED 575 BT - luminaires
- Lighting control cabinet and Control Link (wireless control system)
- Scoreboard contactor and control zone

**Also Includes:**

- 50% less spill and glare light than Musco's prior industry leading technology
- Musco Constant 25 warranty and maintenance program that eliminates your maintenance costs for 25 years, including labor and materials
- Guaranteed constant footcandles for 25 years, per IESNA RP-06-16
- Lighting Contactors sized for voltage and phase at the site and our Control & Monitoring System for flexible control and solid management of your lighting system

**Installation Breakdown**

- Deliver and unload Musco equipment
- Auger and set Musco pre-cast concrete foundation(s)
- Assemble and stand Musco equipment
- Site cleanup
- Testing and train staff

**Scope of work:**

The Musco Light Structure System shall be "installed" by a licensed Electrical Contractor, registered in the State of Washington. The installation includes, delivering and unloading of the Musco equipment upon arrival to the job site, excavation of 4 augured holes, installation of the pre-cast concrete foundations and concrete backfill. Assembly and installation of 4 new galvanized steel poles, assembly and mounting of the luminaire assemblies, electrical enclosures and wiring harnesses on each of the 4 poles. Wiring for the Lighting System is from the luminaire assemblies down to the remote electrical enclosures at the base of each pole where they will be terminated on the Musco supplied disconnect breaker. The control cabinet will be left on site with the on site electrical contractor for installation by others.

Pricing includes all fabric, plywood and matting required to protect the synthetic turf from heavy equipment.

Site will be cleaned up of all debris, packing and construction materials. We will take all precautions necessary to minimize impacts to the site, final grading and seeding will be by others

The electrical permit is included, any additional required permits will be by others.

**Total Breakout of Equipment and Installation:**

KCDA Contract Price – Soccer (30ft).....	\$220,798.00
Adder - 81 575 Ball Trackers (8 @) \$3,510.00).....	\$28,080.00
Performance and Payment Bond.....	\$2,283.00
<b>Total Price (Equipment and Installation):</b>	<b><u>\$251,161.00</u></b>

**Notes:**

Performance and payment bond is included in the quote at 9.18/1000%.

Pricing does NOT include taxes.

Purchase orders are to be sent directly to the KCDA along with a copy of this quote.

Delivery to the job site from the time of order, submittal approval, and confirmation of order details including voltage and phase, pole locations is 30 days. Current estimated delivery month is November 2019.

Due to the built-in custom light control per luminaire, pole locations need to be confirmed prior to production.

Light Levels and uniformities are guaranteed by MUSCO, any additional aiming required to meet the specified requirements shall be done by MUSCO.

**Fax or Mail a copy of the Purchase Order to KCDA and Musco Sports Lighting:**

KCDA  
Attn: Valeria Buckbee  
P.O. Box 5650  
Kent, WA 98064  
Fax: 425-282-0675  
E-mail: [customerservice@kcda.org](mailto:customerservice@kcda.org)  
Phone: 800-422-6019

Musco Sports Lighting, LLC  
Attn: Amanda Hudnut  
P.O. Box 260  
Muscatine, IA 52761  
Fax: 800-374-6402  
E-mail: [Amanda.hudnut@musco.com](mailto:Amanda.hudnut@musco.com)  
Phone: 800-825-6020

Thank you for considering Musco for your sports-lighting needs. Please contact me with any questions.

Tim Butz  
Musco Sports Lighting, LLC  
Phone: 800/720-6625  
E-mail: [tim.butz@musco.com](mailto:tim.butz@musco.com)

Yuli Diaz  
Musco Sports Lighting, LLC  
Phone: 800-754-6025  
E-mail: [yuli.diaz@musco.com](mailto:yuli.diaz@musco.com)

**AGREEMENT  
BETWEEN  
PENINSULA METROPOLITAN PARK DISTRICT (“CLIENT”),  
KING COUNTY DIRECTOR’S ASSOCIATION (“KCDA”),  
AND  
CONTRACTOR**

This **AGREEMENT** is made as of the 8th day of November, 2019, between the public entity Peninsula Metropolitan Park District dba PenMet Parks (“Client”) P.O. Box 425, Gig Harbor, WA 98335 (address); King County Directors Association (KCDA), Street Address: 18639 - 80th Ave S, Kent, WA 98032; and the Contractor: Musco Sports Lighting, LLC., 2107 Stewart Road, Muscatine, Iowa 52761.

This Agreement supplements the King County Directors’ Association (“KCDA”) Purchase Order Number [REDACTED] (“Purchase Order”) for the Client.

A general description of the Project is:

Install field lighting system at Sehmel Homestead Park turf field. Additional details in Project Submittal.

The Architect/Engineer (“A/E”), if any, is:  
Musco

*The Client, KCDA, and Contractor agree as set forth below.*

**ARTICLE 1**  
**THE WORK**

**1.1** This Agreement provides supplemental terms and conditions to the Purchase Order and is incorporated by reference into the Purchase Order as if set forth in full therein. This Agreement shall be completed and executed for all KCDA projects that include any on-site construction activities. The Contractor shall fully execute and complete the entire Work described in the Contract Documents.

**ARTICLE 2**  
**DATES OF COMMENCEMENT AND SUBSTANTIAL AND FINAL COMPLETION**

**2.1** The date of commencement of the Work (the date from which the Contract Time is measured) shall be the date established in a notice to proceed issued by the Client, unless a different date is stated below:

**2.2** The Contractor shall achieve Substantial Completion of the entire Work no later than [REDACTED] and Final Completion no later than [REDACTED], subject to adjustments of the Contract Time as provided in the Contract Documents.

**2.3** Liquidated damages, if any, shall be \$ [REDACTED] per day for each calendar day after the Contract Time that Substantial Completion is not attained, and shall be paid to the Client.

### ARTICLE 3 **CONTRACT SUM**

**3.1** KCDA shall pay the Contractor for the Contractor's performance of the Contract the Contract Sum of Two Hundred Fifty-One Thousand, One Hundred Sixty-One Dollars (\$251,161.00), subject to additions and deductions as provided in the Contract Documents. Sales tax is not included in the Contract Sum and shall be added to the invoice between the Contractor and KCDA and to the invoice between KCDA and the Client.

The contract sum has been derived from the contractor's bid to KCDA directly, or to KCDA through the Association of Educational Purchasing Agencies (AEPA) dated 3/1/2019, and is made up of the following components:

**3.2** The Contract Sum is based upon and includes the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Client:

**3.3** Unit prices beyond those listed in the Contractor's Bid to KCDA or AEPA, if any, are as follows: [Click or tap here to enter text](#)

**3.4** Allowances, if any, are as follows: [Click or tap here to enter text](#)

**3.5** If this Agreement is for a Project for the Contract Sum of one million dollars or more, complete below the names of the following subcontractors with whom the Contractor will subcontract for performance of the work:

- NA HVAC (heating, ventilation, and air conditioning)
- NA Plumbing as described in chapter 18.106 RCW
- NA Electrical as described in chapter 19.28 RCW.

### ARTICLE 4 **PAYMENT**

**4.1** Whenever this Agreement states that KCDA will make payments, the parties agree that payment from the Client to KCDA is a condition precedent to payment from KCDA to the Contractor and that KCDA will use such payments from the Client to pay Contractor. KCDA will make payments to the Contractor as provided below and elsewhere in the Contract Documents based upon Application(s) for Payment submitted by the Contractor and per Article 15. KCDA will schedule final payment, constituting the entire unpaid balance of the Contract Sum except statutory retainage, to the Contractor when the Work has achieved Final Completion, the Agreement has been fully performed, the Client's Board of Directors has accepted the Work, and the Client has agreed to receive billing from KCDA. The retainage shall be paid pursuant to RCW 60.28 and the Contract Documents.

**4.2** Payments due and unpaid under the Agreement shall bear interest as specified by RCW 39.76, not to exceed the Bank of America prime rate plus 2%.

**ARTICLE 5  
PERMITS AND FEES**

5.1 The Client will secure and pay for the cost of any required building permit. The Client shall secure and pay for necessary approvals, easements, assessments and charges required for the use or occupancy of permanent structures or permanent changes in existing facilities.

5.2 The Contractor shall secure and pay, as a part of the Contract Sum, for all other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the construction of the Work.

**ARTICLE 6  
PROPERTY INSURANCE**

6.1 The Client shall include this project in its existing property insurance coverage for loss or damage to the property in the course of construction. Upon the occurrence of an insured loss, the Client shall have the power to adjust and settle any loss with the insurers.

6.2 The Contractor shall be responsible for securing property insurance for its own equipment. This property insurance shall be on an "all-risk" or equivalent policy form and shall include, but not be limited to, coverage for fire and extended coverage, theft, vandalism, malicious mischief, collapse and windstorm. Any deductible shall be the sole responsibility of the Contractor. The Contractor's other insurance requirements are described in Article 17.

**ARTICLE 7  
ENUMERATION OF CONTRACT DOCUMENTS**

The Contract Documents are enumerated as follows, except for modifications issued after execution of this Agreement:

7.1 KCDA Invitation to Bid Number [REDACTED] or AEPA Invitation to Bid Number AEPA [REDACTED] and all of the terms and conditions incorporated therein, including but not limited to all terms and conditions in the Invitations for Bids, Request for Proposal, and Public Works Procedures for Members and Contractors.

7.2 For AEPA bids, Washington, King County Directors' Association (KCDA) Additional Agency Terms and Conditions as listed in the AEPA Invitation to Bid.

7.3 KCDA Purchase Order Number [REDACTED].

7.4 This executed Agreement between the Client and Contractor, including the attached General Conditions.

7.5 Any Supplementary and other Conditions of the Agreement.

7.6 The Specifications as follows:

<u>Section</u>	<u>Title</u>	<u>Pages</u>
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7.7 The Drawings as follows:

<u>Number</u>	<u>Title</u>	<u>Date</u>
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7.8 The Addenda (if any) as follows:

<u>Number</u>	<u>Date</u>	<u>Pages</u>
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7.9 Department of Labor and Industries Prevailing Wage Rates.  
 County:   
 Effective Date:

7.10 Any other documents forming part of the Contract Documents and listed below:

*This Agreement entered into as of the day and year first written above.*

KING COUNTY DIRECTORS' ASSOCIATION

CONTRACTOR

By

By

*(Signature)*

*(Signature)*

*(Printed name and title)*

*(Printed name and title)*

CLIENT

By

*(Signature)*

*(Printed name and title)*

## GENERAL CONDITIONS

### ARTICLE 8 THE CONTRACT DOCUMENTS

8.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one is as binding as if required by all. Performance by the Contractor is required to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results.

8.2 The Contract Documents shall not be construed to create a contractual relationship of any kind between either the Client or KCDA and a Subcontractor of any tier, or between any persons or entities other than the Client, KCDA, and Contractor.

8.3 The term "Work" means the demolition, abatement, disposal, construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

8.4 The term "A/E" means the entity listed as such on the first page of this Agreement, if any. The A/E may be an architect, engineering or similar company, or consultant, and is not necessarily a licensed architect or engineer. If "None" or "N/A" is listed for the A/E, then the Client or its designated representative will perform all of the functions of the A/E described herein. The A/E is not an agent of the Client or KCDA, and is not authorized to speak on behalf of or bind the Client or KCDA.

8.5 The Contractor's execution of the Agreement is a representation and acknowledgement that the Contractor has visited the site and become familiar with the local conditions under which the Work is to be performed, that the Contract Sum is reasonable compensation for all the Work, and that the Contract Time is adequate for the performance of the Work. The Contractor's execution of the Agreement is a further representation and acknowledgement that the Contractor has carefully checked and verified all pertinent figures and examined the Contract Documents and the Project site, including any existing structures, and that it has satisfied itself as to the nature, location, character, quality and quantity of the Work, the labor, materials, equipment, goods, supplies, work, services and other items to be furnished, and all other requirements of the Contract Documents, as well as the surface conditions and other matters that may be encountered at the Project site or affect performance of the Work or the cost or difficulty thereof.

8.6 KCDA is an intended third-party beneficiary of this Agreement and may enforce all of its terms directly against the Contractor. Contractor hereby assigns to the Client all manufacturers' warranties.

### ARTICLE 9 ADMINISTRATION OF THE AGREEMENT

9.1 The Client, with assistance from the A/E, will provide administration of the Agreement. The Client must approve in writing all changes in the Contract Sum or Time and all Change Orders, Construction Change Directives, and payments to the Contractor.

9.2 No representative of KCDA, the Client, or the A/E is authorized to revoke, alter, enlarge, relax or release any requirements of the Contract Documents, nor to approve or accept any portion of the Work whether or not executed in accordance with, nor to issue instructions contrary to the Contract Documents. All warranties, guarantees, and certificates shall inure to the benefit of the Client.

9.3 The Client or the A/E may disapprove, condemn or reject work when, in its opinion, the Work does not conform to the Contract Documents. The Client or the A/E may require special inspection or testing of any Work in accordance with the provisions of the Contract Documents whether or not such Work is then fabricated, installed or completed.

9.4 The Client or the A/E may call, schedule and conduct job meetings, which the Contractor and representatives of its Subcontractors shall attend, to discuss such matters as procedures, progress, problems and scheduling.

9.5 The Client, KCDA, and the A/E may visit the site at intervals each considers appropriate to the stage of the Work to become generally familiar with the progress and quality of the completed Work. However, none of them will be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work.

9.6 The Client may occupy the site during the course of the Work.

### ARTICLE 10 THE CONTRACTOR

10.1 The Contractor shall perform, supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, personnel and procedures, for safety, and for coordinating all portions of the Work under the Agreement, unless the Contract Documents specifically provide other instructions concerning these matters. The Contractor shall be and operate as an independent contractor in the performance of the Work and shall have complete control over and responsibility for all personnel performing the Work. The Contractor is not authorized to enter into any agreements or undertakings for or on behalf of KCDA or the Client or to act as or be an agent or employee of KCDA or the Client.

**10.2** The Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, disposal, and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

**10.3 Workers.** The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. The Contractor shall be responsible to KCDA and the Client for the acts and omissions of the Contractor's employees, Subcontractors of any tier and their agents and employees, and other persons performing portions of the Work under a contract with the Contractor. At no change to the Contract Sum or Contract Time, the Client may provide written notice requiring the Contractor to remove from the Work any employee or other person carrying out the Work that the Client considers objectionable. If the Work is being performed at a site in active school use or where there is a likelihood of contact with children, a person shall be unfit and removed from the site if he or she is a registered sex offender or has pled guilty to or has been convicted of any felony crime involving the physical injury or death of a child (RCW 9A.32 or RCW 9A.36 but not RCW 46.61--motor vehicle violation), the physical neglect of a child (RCW 9A.42), sexual offenses against a minor (RCW 9A.44), sexual exploitation of a child (RCW 9.68A), the sale or purchase of a minor child (RCW 9A.64.030), promoting prostitution of a child (RCW 9A.88), or violation of similar laws of another jurisdiction. Failure to comply with this section shall be grounds for the immediate termination of this Agreement for cause.

**10.4 Warranty.** The Contractor warrants that materials and equipment furnished under the Agreement will be of good quality and new, that the Work will be performed in a skillful and workmanlike manner, free from defects not inherent in the quality required or explicitly permitted, and that the Work will conform to the requirements of the Contract Documents. The Client may conclude that Work not conforming to these requirements, including substitutions or deviations from the drawings or specifications not properly approved and authorized, is defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage.

**10.5 Taxes and Fees.** In accordance with Article 3, KCDA shall invoice the Client and pay all sales tax. The Contractor shall pay all other consumer, use, B & O, and other similar taxes that are legally enacted when bids are received, whether or not yet effective or merely scheduled to go into effect.

**10.6 Legal Compliance.** The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on performance of the Work. The Contractor shall promptly notify KCDA, the Client, and A/E in writing if the Contractor observes the Drawings or Specifications to be at variance with them.

**10.7 Submittals.** The Contractor shall review, approve and submit to the Client or A/E with reasonable promptness Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents. The Work shall be in accordance with approved submittals.

**10.8 Progress Schedule.** Within *seven days* of execution of this Agreement, the Contractor shall submit a preliminary schedule of the Work to the Client. Failure to do so shall constitute a material breach of the Contract and a material breach of the conditions of the bid bond. Within *thirty days* after execution of the Agreement, and before any progress payment need be made, the Contractor, after consultations with its Subcontractors, shall submit a Progress Schedule to the Client. Neither the Client nor the A/E will, however, be required to review or approve the substance or sequence of the Progress Schedule, which are the Contractor's sole responsibility. The Contractor will be responsible for planning, scheduling, managing, and reporting the progress of the Work in accordance with all of the specific methods and submittals described in the Contract Documents. The Contractor shall use the Contract Schedule to plan, coordinate, and prosecute the Work in an orderly and expeditious manner.

**10.9 Clean-Up.** The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Agreement. Prior to completion of the Work or at the Client's request, the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials. If the Contractor fails to do so, the Client may do so and charge to the Contractor all costs incurred.

**10.10 Access.** The Contractor shall provide KCDA, the Client, the A/E and their respective consultants access to the Work wherever located.

**10.11 Royalties and Patents.** The Contractor shall pay all royalties and license fees, shall defend suits or claims for infringement of patent rights and shall hold KCDA, the Client, and the A/E harmless from loss on account thereof, unless the Contract Documents require the particular infringing design, process or product of a particular manufacturer or manufacturers.

**10.12 Indemnification.** Subject to the following conditions and to the fullest extent permitted by law, the Contractor shall defend, indemnify, and hold harmless KCDA, the Client, and the A/E and their respective agents, employees, directors, officers, consultants, successors and assigns ("Indemnified Parties") from and against all claims, damages,

losses and expenses, direct and indirect, or consequential, including but not limited to costs and attorneys' fees incurred on such claims and in proving the right to indemnification, arising out of or resulting from performance of the Work, any act or omission of the Contractor, its agents, any of its Subcontractors of any tier, and anyone directly or indirectly employed by the Contractor or Subcontractors of any tier ("Indemnitor"). The Contractor will fully defend, indemnify, and hold harmless the Indemnified Parties for the sole negligence of the Indemnitor. The Contractor will defend, indemnify, and hold harmless the Indemnified Parties for the concurrent negligence of the Indemnitor to the extent of the Indemnitor's negligence. The Contractor agrees to being added by KCDA or the Client as a party to any mediation, arbitration, or litigation with third parties in which KCDA or the Client alleges indemnification or contribution from an Indemnitor. The Contractor agrees that all of its Subcontractors of any tier will, in the subcontracts, similarly stipulate; in the event any does not, the Contractor shall be liable in place of such Subcontractor(s). To the extent a court or arbitrator strikes any portion of this indemnification provision for any reason, all remaining provisions shall retain their vitality and effect. In claims against any person or entity indemnified under this Section 10.12 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section 10.12 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts. After mutual negotiation of the parties, the Contractor waives immunity as to the Client, KCDA, the A/E and their consultants only under Title 51 RCW, "Industrial Insurance." IF THE CONTRACTOR DOES NOT AGREE WITH THIS WAIVER, IT MUST PROVIDE A WRITTEN NOTICE TO THE SCHOOL DISTRICT PRIOR TO THE DATE FOR THE RECEIPT OF BIDS, OR THE CONTRACTOR WILL BE DEEMED TO HAVE NEGOTIATED AND WAIVED THIS IMMUNITY. The provisions of this Section shall survive the expiration or termination of this Agreement.

### 10.13 Prevailing Wages.

10.13.1 Pursuant to RCW 39.12, no worker, laborer, or mechanic employed in the performance of any part of this Agreement shall be paid less than the "prevailing rate of wage" (in effect as of the date that bids are due) as determined by the Industrial Statistician of the Department of Labor and Industries, ESAC Division, PO Box 44540, Olympia WA 98504-4540, Telephone (360) 902-5335. The schedule of the prevailing wage rates for the locality or localities where this Work will be performed is attached and made a part of this Agreement by reference as though fully set forth herein; if not attached, then the applicable prevailing wages are determined as of the Bid Date for the county in which the Project is located and are available at <http://www.lni.wa.gov/TradesLicensing/PrevWage/WageRates/default.asp>. A copy is available for viewing at the Client's office, and a hard copy will be mailed upon request. To the extent that there is any

discrepancy between the attached or provided schedule of prevailing wage rates and the published rates as are applicable under WAC 296-127-011, or if no schedule is attached, then the applicable published rates shall apply at no increase to the Contract Sum. The Contractor shall provide the respective Subcontractors with a schedule of the applicable prevailing wage rates. The Industrial Statistician will answer questions relating to prevailing wage data upon request.

10.13.2 Pursuant to RCW 39.12.060, in case any dispute arises as to what are the prevailing rates of wages for work of a similar nature, and such dispute cannot be adjusted by the parties in interest, including labor and management representatives, the matter shall be referred for arbitration to the director of the Department of Labor and Industries, whose decision therein shall be final and conclusive and binding on all parties involved in the dispute.

10.13.3 The Contractor shall defend, indemnify and hold the Client harmless, including attorneys' fees, from any violation or alleged violation of RCW 39.12 ("Prevailing Wages on Public Works") and RCW 51 ("Industrial Insurance"), including without limitation RCW 51.12.050, by the Contractor, any Subcontractor of any tier, or any person performing Work on behalf of the Contractor or any Subcontractor of any tier.

10.14 The Contractor shall comply with all applicable provisions of RCW 49.28.

10.15 Pursuant to RCW 49.70 and WAC 296-307-560 et seq., the Contractor shall provide KCDA and the Client copies of and have available at the Project Site a workplace survey or material safety data sheets for all "hazardous" chemicals under the control or use of Contractor or any Subcontractor at the Project Site.

10.16 The Contractor shall maintain and preserve for at least three years from the date of final payment books, ledgers, records, documents, estimates, bidding documents, correspondence, logs, schedules, electronic data and other evidence relating or pertaining to the costs incurred by the Contractor in connection with or related to the Agreement and/or performance of the Contract ("records") to such extent and in such detail as will properly reflect and fully support compliance with the Contract Documents and with all costs, charges and other amounts of whatever nature for which reimbursement or payment is or may be claimed under the Contract. The Contractor agrees to make available at all reasonable times at the office of the Contractor all such records for inspection, audit and reproduction (including electronic reproduction) by KCDA and the Client and their representatives. These requirements shall be applicable to each Subcontractor of any tier and included in each Subcontract and purchase order issued with respect to the Work. The Contractor agrees, on behalf of itself, its representatives, and Subcontractors of any tier and their representatives, that any rights under RCW 42.56 will commence at Final Acceptance, and that the invocation of such rights at any time by the Contractor or a Subcontractor of any tier or any of their

representatives shall initiate an equivalent right to disclosures from the Contractor and Subcontractors of any tier for the benefit of KCDA and the Client. Because of the importance of the access of such records to the Client in the case of a Claim, if the Contractor or any Subcontractor fails to fully comply with the requirements of this section with regard to any Claim, such Claim shall be deemed to be waived.

## **ARTICLE 11 SUBCONTRACTORS**

**11.1** A "Subcontractor" is a person or entity that has a direct contract with the Contractor to perform a portion of the Work at the site or to supply materials or equipment. A "Subcontractor of any tier" includes Subcontractors as well as all direct and lower level sub-subcontractors and suppliers.

**11.2** As soon as practicable after award of the Agreement, the Contractor shall confirm in writing to KCDA and the Client the names of the Subcontractors for each portion of the Work. The Contractor shall not contract with any Subcontractor to whom the Client has made reasonable and timely objection or which is different from the one listed in conjunction with the bid. Contracts between the Contractor and Subcontractors shall (1) require each Subcontractor to be bound to the Contractor by the terms of the Contract Documents to the extent of the Work to be performed by the Subcontractor and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by the Contract Documents, assumes toward KCDA and the Client, and (2) allow to the Subcontractor the benefit of all rights, remedies and redress afforded to the Contractor by these Contract Documents.

**11.3** The Contractor shall promptly pay (and secure the discharge of any liens asserted by) all persons properly furnishing labor, equipment, materials or other items in connection with the performance of the Work (including, but not limited to, any Subcontractors). The Contractor shall furnish to KCDA and the Client such releases of liens and claims and other documents as KCDA or the Client may request from time to time to evidence such payment (and discharge). KCDA may, at its option, withhold payment, in whole or in part, to the Contractor until such documents are so furnished. The Contractor shall defend, indemnify, and hold harmless KCDA and the Client from any liens, including all expenses and attorneys' fees. Nothing in the Contract Documents shall create any obligation on the part of KCDA, the Client, or A/E to pay or to see to the payment of any moneys due any Subcontractor of any tier or other person or entity, except as may otherwise be required by laws and regulations.

## **ARTICLE 12 CONSTRUCTION BY CLIENT OR BY SEPARATE CONTRACTORS**

**12.1** The Client reserves the right to perform construction or operations related to the Project with the Client's own forces and to award separate contracts in connection with other portions of the Project or other

construction or operations on the site under conditions of the contract identical or substantially similar to those of the Contract Documents. The Contractor has the responsibility to coordinate its Work with such separate contractors and the Client's own forces.

**12.2** The Contractor shall afford the Client and separate contractors reasonable opportunity for the introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations as required by the Contract Documents.

## **ARTICLE 13 CHANGES IN THE WORK**

**13.1** The Client, without invalidating the Agreement, may order changes in the Work consisting of additions, deletions or modifications ("Changes"), and the Contract Sum and Contract Time will be adjusted accordingly. Changes in the Work, the Contract Sum and/or the Contract Time shall be authorized only by written Change Order signed by KCDA, the Client, the A/E and the Contractor or by written Construction Change Directive signed by the Client and the A/E.

**13.1.1** Change Orders. A Change Order is a written instrument signed by KCDA, the Client, and the Contractor stating their agreement upon a change in the Work; the amount of the adjustment in the Contract Sum, if any; and the extent of the adjustment in the Contract Time, if any.

**13.1.2** Construction Change Directives. A Construction Change Directive is a written order prepared and signed by the Client and the A/E that directs a change in the Work and states a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both. It shall be used in the absence of total agreement on the terms of a Change Order. The Contractor shall promptly proceed with the change in the Work described in the Construction Change Directive. As soon as possible, and within *seven days* of receipt, the Contractor shall advise KCDA and the Client in writing of the Contractor's agreement or disagreement with the cost or the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

**13.2** Changes in the Work shall be priced using the Contractor's unit prices and/or R.S. Means pricing as submitted in its Bid to KCDA or AEPA. If no such unit prices are listed for the Changes in the Work, and if the parties cannot agree on the cost or credit to KCDA and the Client from a Change in the Work, the Contractor shall keep and present, in such form as KCDA or the Client may prescribe, an itemized accounting together with supporting data. The total cost of any Change or Claim shall be limited to the reasonable value of the following:

**13.2.1** Direct labor costs: The effective W.D.O.L.&I. prevailing hourly wage for the laborers, journeymen, and foremen performing and/or directly supervising the Changed Work on the site. The premium

portion of overtime wages may not be included unless pre-approved in writing by the Client. The hourly cost shall be based upon basic wages and mandatory fringe benefits and workers' insurances.

13.2.2 Direct material costs: An itemization of the quantity of materials necessary to perform the Change in the Work and the net cost therefor.

13.2.3 Construction equipment usage costs: An itemization of the actual length of time construction equipment appropriate for the Work will be used solely on the Change in the Work at the Site times the lower of the actual rental receipt or applicable current state, NECA, EquipmentWatch, or MCA rental cost. Actual, reasonable mobilization costs are permitted if the equipment is brought to the Site solely for the Change in the Work. The rate for equipment necessarily standing by for future use on the Work shall be 50% of the rate established above.

13.2.4 Cost of any change in insurance or bond premium. Upon request, the Contractor shall provide KCDA and the Client with supporting documentation.

13.2.5 Subcontractor costs: Payments the Contractor makes to Subcontractors for Changed Work performed by Subcontractors of any tier. The cost of Work for Subcontractors of any tier shall be determined in the same manner as prescribed in this Section 13.2.

13.2.6 Fee: The allowance for all combined overhead, profit, and other costs, including all office, home office, extended and site overhead (including project manager, project engineer, superintendent and general foreman time), and all delay and including impact costs of any kind, added to the total cost to the Client of any Change Order or any Claim for additional work or extra payment of any kind on this Project shall be calculated consistent with the provisions of the KCDA contract. The change order must be signed by both the Client and Contractor.

**13.3 Dispute Resolution.** All claims, disputes and other matters in question of the Contractor, direct or indirect, arising out of, or relating to, the Contract Documents or the breach thereof ("Claims"), except Claims which have been waived under the terms of the Contract Documents, shall be decided exclusively by the following dispute resolution procedure; claims that have been waived under the terms of the Contract Documents are not permitted to be brought in any forum. The Contractor shall diligently carry on the Work and maintain the progress schedule during the dispute resolution procedure, including any litigation proceedings, unless the parties mutually agree in writing otherwise.

13.3.1 Notice of Claim. The Contractor shall submit notice of all Claims to both KCDA and the Client in writing within *seven days* of the event giving rise to them and shall include a clear description of the event and its probable effect. Failure to comply with these requirements shall constitute waiver of the Claim.

13.3.2 Claim Submission. Within *21 days* of the Notice of Claim, the Contractor shall provide both KCDA and the Client in writing with a Claim, which shall include a clear description of the Claim, any and all changes in cost and in time to which the Contractor and its Subcontractors of any tier may be entitled under this Agreement for the Claim, and data supporting the Claim. The claim of a Subcontractor may be brought only through the Contractor and only after the Contractor notifies KCDA and the Client in writing that the Contractor has reviewed and agrees with the Claim. No act, omission, or knowledge, actual or constructive, of the Client shall in any way be deemed to be a waiver of the requirement for a timely written Claim unless the Client provides the Contractor with an explicit, unequivocal written waiver. Failure to comply with these requirements shall constitute waiver of the Claim.

13.3.3 Informal Resolution. KCDA and the Client will make a determination of the Claim. If no determination is made within two weeks of submission of the Claim, the Claim shall be deemed rejected. If the Contractor disagrees with KCDA and the Client's determination and wishes to pursue the Claim further, the Contractor must, within *fourteen days* of receipt of the determination, provide KCDA and the Client with a written request that a representative of the Contractor, KCDA, and the Client meet, confer, and attempt to resolve the Claim. This meeting will then take place at a mutually convenient time within *thirty days* of the request, unless the Client elects to proceed directly to mediation.

13.3.4 Mediation. The Contractor may bring no litigation against the Client or KCDA unless the Claim is first subject to non-binding mediation under the Construction Mediation Rules of the American Arbitration Association ("AAA"). The Contractor is responsible for initiating the mediation process. This requirement cannot be waived except by an explicit written waiver signed by KCDA, the Client, and the Contractor. To initiate the mediation process, the Contractor shall submit a written mediation request to KCDA and the Client within *thirty days* of the meeting undertaken in Section 13.3.3. If the parties are unable to agree to a mediator within *thirty days* after KCDA and the Client's receipt of the written request for mediation, any party may submit a request for mediation to the AAA. An officer of the Contractor and of KCDA and the Superintendent or designee of the Client, all having full authority to settle the Claim (subject only to ratification by the Client's Board of Directors), must attend the mediation session. To the extent there are other parties in interest, such as Subcontractors, their representatives, with full authority to settle the Claim, shall also attend the mediation session. Unless KCDA, the Client, and Contractor mutually agree in writing otherwise, all unresolved Claims in the Project shall be considered at a single mediation session which shall occur prior to Final Acceptance by the Client.

13.3.5 Litigation. The Contractor may bring no litigation on Claims unless such Claims have been properly raised and considered in the dispute resolution procedures of Sections 13.3.1 through 13.3.4 above. All unresolved Claims

of the Contractor shall be waived and released unless the Contractor has strictly complied with the time limits of the Contract Documents, and litigation is served and filed within the earlier of (a) 120 days after the Date of Substantial Completion as designated in writing by the Client or (b) 60 days after Final Acceptance. This requirement cannot be waived except by an explicit written waiver signed by KCDA, the Client, and the Contractor. The pendency of a mediation (calculated as the period from the written request for mediation through the day following the mediation proceeding) shall toll these filing requirements.

**13.4 Notices and Claims.** All notices and Claims shall be made in writing as required by the Agreement.

13.4.1 Any notice of a Claim of the Contractor against KCDA or the Client and any Claim of the Contractor, whether under the Agreement or otherwise, must be made pursuant to and in strict accordance with the applicable provisions of the Contract Documents. Failure to comply with these requirements shall constitute waiver of the Claim. No act, omission, or knowledge, actual or constructive, of KCDA, the Client, or the A/E shall in any way be deemed to be a waiver of the requirement for timely written notice and a timely written Claim unless KCDA, the Client, and the Contractor sign an explicit, unequivocal written waiver approved by KCDA and the Client's Board of Directors.

13.4.2 The fact that KCDA, the Client, and the Contractor may continue to discuss or negotiate a Claim that has or may have been defective or untimely under the Contract shall not constitute waiver of the provisions of the Contract Documents unless KCDA, the Client, and Contractor sign an explicit, unequivocal written waiver approved by the Client's board of directors.

13.4.3 The Contractor expressly acknowledges and agrees that the Contractor's failure to timely submit required notices or timely submit Claims has a substantial impact upon and prejudices KCDA and the Client, including but not limited to the inability to fully investigate or verify the Claim, mitigate damages, choose alternative options, adjust the budget, delete or modify the impacted Work, and/or monitor time, cost and quantities. For these and other reasons, the parties stipulate that KCDA and the Client are prejudiced by the Contractor's failure to timely submit notices or Claims as required by the Contract Documents.

**13.5 Claims for Concealed or Unknown Conditions.** If conditions unknown to the Contractor are encountered at the site which are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found and generally recognized as inherent in activities of the character provided for in the Contract Documents, then the Contractor shall give written notice to KCDA and the Client promptly before conditions are disturbed and in no event later than seven days after the first observance on the conditions. The Contractor shall make any Claim arising

from such condition in accordance with the dispute resolution procedure in Section 13.3.

**13.6 Claims for Consequential Damages.** The Contractor, the Client, and KCDA waive Claims against each other for consequential damages arising out of or relating to this Agreement. This mutual waiver includes without limitation:

.1 damages incurred by KCDA or the Client for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

.2 damages incurred by the Contractor for principal and home office overhead and expenses including without limitation the compensation of personnel stationed there, for losses of financing, business and reputation, for losses on other projects, for loss of profit, and for interest or financing costs.

This mutual waiver is applicable to all consequential damages of any cause, including without limitation due to either party's termination in accordance with Article 20. Nothing contained in this Section 13.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

**13.7** The Contractor (including Subcontractors of any tier) shall not in any event be entitled to damages arising out of actual or alleged loss of efficiency; morale, fatigue, attitude, or labor rhythm; constructive acceleration; home office overhead; expectant underrun; trade stacking; reassignment of workers; concurrent operations; dilution of supervision; learning curve; beneficial or joint occupancy; logistics; ripple; season change; extended overhead; profit upon damages for delay; impact damages; or similar damages.

## **ARTICLE 14**

### **TIME**

**14.1** Within seven days of executing the Agreement, the Contractor shall deliver any required bond to the Client with a copy to KCDA; no Progress Payments shall be due until the bond is delivered.

**14.2** If, through no fault of the Contractor or a Subcontractor of any tier, the Work is delayed at any time in progress of the Work by changes ordered in the Work, by unanticipated general labor disputes, fire, unusual delay in deliveries, abnormal adverse weather conditions not reasonably anticipatable, unavoidable casualties, delays caused by the Client or its separate contractors, or any causes beyond the Contractor's control and for which it and its subcontractors of any tier are not responsible, or by other causes which may justify delay, then the Contract Time shall be extended by Change Order to the extent the critical path is affected. The Contractor (including Subcontractors) shall be entitled to damages for delay, the total limited to the liquidated rate of Section 2.3, only where KCDA or the Client's own actions or

inactions were the actual, substantial cause of the delay and where the Contractor could not have reasonably avoided the delay by the exercise of due diligence. If a delay was caused by the Contractor, a Subcontractor of any tier, or anyone acting on behalf of any of them, the Contractor is not entitled to an increase in the Contract Time or in the Contract Sum.

**14.3 THE TIMELY COMPLETION OF THIS PROJECT IS ESSENTIAL TO KCDA AND THE CLIENT.** KCDA and the Client will incur serious and substantial damages if Substantial Completion of the Work does not occur within the Contract Time; however, it may be difficult if not impossible to determine the amount of such damages. Consequently, this Agreement may include provisions for liquidated damages. KCDA and the Client's right to liquidated damages is not affected by partial completion, occupancy, or beneficial occupancy. If this Agreement does not contain an agreed amount for liquidated damages, KCDA and the Client may prove their actual damages.

## **ARTICLE 15 PAYMENTS AND COMPLETION**

**15.1 Progress Payments.** Payments shall be made as provided in Articles 3 and 4 of this Agreement. If Progress payments are specified, they will be made monthly for Work duly approved and performed during the calendar month preceding the application according to the following procedure.

**15.1.1 Draft Application.** Within the first five days of each month, the Contractor shall submit to KCDA and the Client, for the Client's approval, a report on the current status of the Work as compared to the Progress Schedule and a draft itemized AIA Application for Payment for Work performed during the prior calendar month. This shall not constitute a payment request. KCDA or the Client may request the Contractor to provide data substantiating the Contractor's right to payment, such as copies of requisitions or invoices from Subcontractors.

**15.1.2 Payment Request.** The Client shall review and approve the draft Application for Payment, or state its reasons for disapproval. Upon the Client's approval, and after the Contractor has furnished all data requested, the Contractor may submit to KCDA a payment request in the agreed-upon amount, in the form of a notarized, itemized AIA Application for Payment for Work performed during the prior calendar month. KCDA shall re-verify the amounts with the Client and, once verified and approved by the Client, will invoice the Client, and KCDA shall make payment to Contractor from funds received from the Client. Payment from the Client to KCDA is a condition precedent to payment from KCDA to the Contractor. Among other things, the Application shall state that prevailing wages have been paid in accordance with the prefilled statement(s) of intent to pay prevailing wages on file with KCDA and the Client and that all payments due Subcontractors from KCDA's prior payments have been made. The submission of this Application constitutes a certification that the Work is current on the progress schedule, unless otherwise noted on the Application. If the Contractor believes it is entitled

to payment for Work performed during the prior calendar month in addition to the agreed-upon amount, the Contractor may submit to KCDA a separate written payment request specifying the exact additional amount due, the category in the Schedule of Values in which the payment is due, the specific Work for which the additional amount is due, and why the additional payment is due.

**15.1.3 Payments to Subcontractors.** No payment request shall include amounts the Contractor does not intend to pay to a Subcontractor. If, after making a request for payment but before paying a Subcontractor for its performance covered by the payment request, the Contractor discovers that part or all of the payment otherwise due to the Subcontractor is subject to withholding from the Subcontractor for unsatisfactory performance or other reasons, the Contractor may withhold the amount as allowed under the subcontract, but it shall give the Subcontractor and KCDA and the Client written notice of the remedial actions that must be taken as soon as practicable after determining the cause for the withholding but before the due date for the Subcontractor payment, and pay the Subcontractor within *eight working days* after the Subcontractor satisfactorily completes the remedial action identified in the notice.

**15.2 Prevailing Wages.** Pursuant to RCW 39.12, the Contractor will not receive any payment until the Contractor and all Subcontractors have submitted a "Statement of Intent to Pay Prevailing Wage" to KCDA and the Client. The statement must have the approval of the Industrial Statistician of the Department of Labor and Industries before it is submitted to KCDA and the Client. The Contractor and the respective Subcontractors shall pay all fees required by the Department of Labor and Industries, including fees for the approval of the "Statement of Intent to Pay Prevailing Wages." Approved copies of the "Statement of Intent to Pay Prevailing Wages" must be posted where workers can easily read them.

**15.3 Progress payments.** Unless the Client informs the Contractor that a payment will be withheld as provided in Section 15.4, KCDA shall make progress payments within 30 days of approval of the payment request by the Client.

**15.4 Withheld Payments.** Payments may be withheld on account of (1) defective Work not remedied, (2) claims filed by third parties, (3) failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment or provide releases under Section 11.3.1, (4) reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum, (5) damage to KCDA, the Client, or another contractor, (6) reasonable evidence that the Work will not be completed within the Contract Time and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay, or (7) failure to carry out the Work in accordance with the Contract Documents. When KCDA intends to withhold all or part of a payment for any of the foregoing reasons, KCDA will provide the Contractor, within *eight working days* after KCDA's receipt of the Application for Payment, written notification of the reasons that all or part of



the payment is being withheld and what remedial actions the Contractor must take to receive the withheld amount.

### 15.5 Substantial Completion.

15.5.1 When the Contractor believes that the entire Work is Substantially Complete, it shall notify KCDA and the Client in writing. When the Client agrees, the Client will issue a Certificate of Substantial Completion. Substantial Completion is the stage in the progress of the Work when the construction is sufficiently complete, in accordance with the Contract Documents, so the Client can fully utilize the Work (or the designated portion thereof) for the use for which it is intended. All Work other than incidental corrective or punchlist work and final cleaning shall have been completed. The Work is not Substantially Complete if all systems and parts affected by the Work are not usable, if an occupancy permit (temporary or final) has not been issued, or if utilities affected by the Work are not connected and operating normally. The fact that the Client may use or occupy the Work or designated portion thereof does not indicate that the Work is Substantially Complete, nor does such occupation toll or change any liquidated damages due KCDA.

15.5.2 Immediately before partial or complete occupancy, the Client will schedule an inspection tour of the area to be occupied. A representative of KCDA and/or the Client, A/E and Contractor will jointly tour the area and record items still remaining to be finished and/or corrected. The Contractor shall supply and install any items missed by the inspection but required or necessary for Final Completion as a part of the Contract Sum, notwithstanding their not being recorded during the inspection tour.

15.6 Final Payment. Pursuant to RCW 60.28, completion of the Contract Work shall occur after the Contractor has notified KCDA and the Client in writing that the Work has been concluded and submits the items listed below to KCDA and the Client, any required occupancy permit has been issued, and the Client's Board formally accepts the Project ("Final Acceptance"). Final Payment shall not become due until after Final Acceptance. Before Final Acceptance, the Contractor must have submitted the following to the Client:

- .1 An affidavit that all payrolls, Subcontractors, bills for materials and equipment, and other indebtedness connected with the Work for which the Client or its property might in any way be responsible or encumbered, have been paid or otherwise satisfied,
- .2 consent of surety to final payment,
- .3 a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to KCDA and the Client,
- .4 a written statement that the Contractor knows of no substantial reason why the insurance will not be

renewable to cover the period required by the Contract Documents,

.5 other data establishing payment or satisfaction of or protection (satisfactory to KCDA and the Client) against all obligations, such as receipts, releases and waivers of liens arising out of the Agreement, satisfactorily demonstrating to KCDA and the Client that the claims of Subcontractors and laborers who have filed claims have been paid,

.6 pursuant to RCW 39.12.040, an "Affidavit of Wages Paid" from the Contractor and from each Subcontractor certified by the Industrial Statistician of the Department of Labor and Industries, with fees paid by the Contractor or Subcontractor,

.7 a certified statement that the Contractor has closed all necessary permits or otherwise met the requirements of all governing jurisdictions related to this Project (including, without limitation, city/county building departments, health districts and utility districts; attach a copy of each of these closed or signed-off permits),

.8 all warranties, guarantees, certificates, spare parts, specified excess material, and other documents or items required by the Contract Documents, and

.9 a hard copy of the "record" drawings and specifications, delivered in a clear, clean and legible condition.

If any Subcontractor of any tier refuses to furnish a release or waiver required by KCDA of the Client, KCDA may retain in the fund, account, or escrow funds such amount as to defray the cost of foreclosing the liens of such claims and to pay attorneys' fees, the total of which shall be no less than 150% of the claimed amount. If any such lien remains unsatisfied after all payments are made, the Contractor shall refund to KCDA all moneys that the latter or the Client may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

Final payment shall be made pursuant to RCW 60.28 after the Contractor has properly submitted certificates from the Department of Revenue, the Department of Labor and Industries and, pursuant to RCW 50.24, a certificate from the Department of Employment Security.

### 15.7 Waivers.

15.7.1 Final Payment by KCDA. The making of final payment shall constitute a waiver of claims by KCDA and the Client except those arising from (1) liens, claims, security interests, or encumbrances arising out of the Agreement and unsettled; (2) failure of the Work to comply with the requirements of the Contract Documents; or (3) terms of warranties required by the Contract Documents or law.

15.7.2 **Final Payment to Contractor.** Acceptance of final payment by the Contractor shall constitute a waiver of Claims except those previously made in writing and identified in writing as unsettled on the final Application for Payment.

15.7.3 **Change Orders.** The execution of a Change Order shall constitute a waiver of Claims by the Contractor arising out of the Work to be performed or deleted pursuant to the Change Order, except as specifically described in the Change Order. If the Contractor adds to a Change Order or any other document a reservation of rights that has not been initialed by KCDA and the Client, all the amounts previously agreed shall be considered disputed and not yet payable unless the costs are re-negotiated or the reservation is withdrawn or changed in a manner satisfactory to and initialed by KCDA and the Client. If KCDA makes payment for a Change Order or an Application for Payment that contains a reservation of rights not initialed by KCDA and the Client to indicate agreement with the reservation, and if the Contractor accepts such payment, then the reservation of rights shall be deemed waived, withdrawn, and of no effect.

## 15.8 **Retainage.**

### 15.8.1 **Progress Payments:**

.1 Pursuant to RCW 60.28, KCDA will reserve 5% from the moneys the Contractor earns on estimates during the progress of the Work, to be retained as a trust fund for the protection and payment of the claims of any person arising under the Agreement and the state with respect to taxes imposed pursuant to Title 82 RCW which may be due from the Contractor.

.2 The moneys reserved may, at the option of the Contractor, be (1) retained in a fund by KCDA until 45 *days* following Final Acceptance; or (2) deposited by KCDA in an interest-bearing account in a bank, mutual savings bank, or savings and loan association, not subject to withdrawal until 45 *days* following Final Acceptance, with interest to the Contractor; or (3) placed in escrow with a bank or trust company until 45 *days* following the Final Acceptance, by KCDA's joint check to the bank or trust company and the Contractor, to be converted into bonds and securities chosen by the Contractor, approved by KCDA, and held in escrow, with interest on the bonds and securities paid to the Contractor as it accrues.

.3 If moneys are retained from the Contractor, it may retain payment of not more than 5% from the moneys earned by any Subcontractor, provided that the Contractor pays interest to the Subcontractor at the same interest rate it receives from its reserved funds.

15.9 **Warranty of Title.** The Contractor warrants and guarantees that title to Work, materials and equipment covered by an Application for Payment, whether incorporated in the Project or not, will pass to the Client no later than the time of payment, free and clear of liens. The Contractor shall

promptly pay (and secure the discharge of any liens asserted by) all persons properly furnishing labor, equipment, materials or other items in connection with the performance of the Work (including, but not limited to, any Subcontractors). The Contractor shall furnish to the Client such releases of claims and other documents as may be requested by the Client from time to time to evidence such payment (and discharge). The Client may, at its option, withhold payment, in whole or in part, to the Contractor until such documents are so furnished. The Contractor shall indemnify and hold harmless the Client from any liens, including all expenses and attorneys' fees.

## **ARTICLE 16**

### **PROTECTION OF PERSONS AND PROPERTY**

16.1 The Contractor shall have the right to control and shall be solely responsible for, and neither KCDA, the Client, nor the A/E shall have responsibility for, all aspects of safety, including initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Agreement. The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to (1) employees on the Work and other persons who may be affected thereby; (2) the Work and materials and equipment to be incorporated therein; and (3) other property at the site or adjacent thereto. The Contractor shall maintain the Work site and perform the Work in a manner that meets statutory and common-law requirements for the provision of a safe place to work. This requirement shall apply continuously and not be limited to working hours.

16.2 The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons and property and their protection from damage, injury, or loss. The Contractor shall promptly remedy damage and loss to property at the site caused in whole or in part by the Contractor, a Subcontractor of any tier, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible, except for damage or loss attributable to acts or omissions of KCDA, the Client, or A/E or by anyone for whose acts any of them may be liable, and not attributable to the fault or negligence of the Contractor or a Subcontractor of any tier. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 10.12.

16.3 The Contractor shall not be required to perform without consent any Work relating to asbestos or polychlorinated biphenyl ("PCB") unless specifically required by the Contract Documents.

16.4 The Contractor shall bear the risk of any loss, damage or destruction of its own property, including without limitation its tools, trailers and equipment, whether rented or owned, to the extent that they will not be incorporated in the Work. Any insurance provided by the Client will not cover any such loss, damage or destruction.

16.5 If the scope of the Work requires the Contractor to perform Work relating to hazardous materials, the Contractor shall be responsible to take all reasonable precautions to prevent foreseeable bodily injury or death resulting from such materials or substances, and to dispose of such materials as required by the Contract Documents and all applicable state and federal laws and regulations. The Contractor shall defend, indemnify, and hold harmless the Client, its consultants, the A/E, and their respective agents, employees, consultants, successors and assigns from and against any and all claims to the extent of the Contractor's failure to abide by such Contract Documents and all applicable state and federal laws and regulations.

## **ARTICLE 17 INSURANCE AND BONDS**

### **17.1 Contractor's Liability Insurance.**

17.1.1 The Contractor shall purchase from and maintain during the life of this Agreement, at its own cost in a company or companies admitted to do business in the State of Washington, possessing a Best's policy holder's rating of A- or better and a financial rating of no less than VII, and reasonably acceptable to KCDA and the Client, an occurrence-based Commercial General Liability Insurance Policy which shall provide bodily injury and property damage liability on the Contractor's operations, including its Subcontractors of any tier; owned, non-owned and hired vehicles; and on work the Contractor may subcontract or sublet to others; and on the indemnity provisions of this Agreement. This insurance will name KCDA and the Client and their employees as additional insureds per Additional Insured Owner's (Form B) for Work performed under this Agreement. The Contractor's policy shall be designated primary coverage for both defense and indemnity, and any KCDA or Client policies excess. Such limits of liability insurance shall have per project general aggregate provisions and shall not be less than the following:

- .1 \$1,000,000 Combined Single Limit protection for both bodily injury and property damage liability per occurrence and \$2,000,000 general aggregate;
- .2 \$1,000,000 per accident for bodily injury liability including sickness, disease or death and property damage liability because of damage to or destruction of property of others, including loss of use thereof arising out of the operation of automobiles.
- .3 \$1,000,000 for personal injury liability coverage included and defined in the Commercial General Liability insurance policy for damages which are sustained by (1) a person as a result of an offense directly or indirectly related to employment of such person by the Contractor, or (2) by another person.
- .4 \$1,000,000 for claims involving blanket contractual liability insurance (included and defined in the Commercial General Liability Insurance Policy)

applicable to the Contractor's obligations under Section 10.12.

.5 In addition, the Contractor shall maintain a true umbrella policy that provides excess limits over the primary layer, in an amount not less than \$2,000,000.

17.1.2 The insurance described above shall include coverage for underground, collapse and explosion exposures.

17.1.3 In addition, the Contractor shall purchase and maintain insurance for claims under workers' compensation (industrial insurance), disability benefit and other similar employee benefit acts in the State statutory amount and Employer's Liability with coverage of at least \$250,000/\$500,000.

17.1.4 Before commencing the Work or exposure to loss can occur, and, in any event, within *ten days* after KCDA has issued its notice of intent to award contract, the Contractor shall furnish KCDA and the Client with Certificates of Insurance, in duplicate, as evidence of all insurance required by the Contract Documents. All policies and certificates must be signed copies and shall contain provision that coverages afforded under the policies cannot be materially altered, allowed to expire or canceled without first giving *45 days* written notice by certified mail to KCDA and the Client. The Contractor shall furnish to KCDA and the Client copies of any subsequently issued endorsements amending, modifying, altering, or restricting coverage of limits.

17.1.5 Coverage shall be maintained without interruption from the date of commencement of the Work until the date of Final Acceptance, except for any coverage required to be maintained after Final Acceptance. Completed operations coverage shall remain in force for three years after Final Acceptance.

17.1.6 If KCDA or the Client is damaged by the failure of the Contractor to maintain any of the above insurance or to so notify KCDA and the Client, then the Contractor shall bear all costs properly attributable thereto. KCDA MAY WITHHOLD PAYMENT PENDING RECEIPT OF ALL CERTIFICATES OF INSURANCE. Failure to withhold payment shall not constitute a waiver.

17.1.7 KCDA's specification or approval of the insurance in this Agreement or of its amount shall not relieve or decrease the liability of the Contractor under the Contract Documents or otherwise. Coverages are the minimum to be provided and are not limitations of liability under the Contract, indemnification, or applicable law provisions. The Contractor may, at its expense, purchase larger coverage amounts or additional insurance.

### **17.2 Property Insurance.**

17.2.1 The requirements for property insurance are addressed in Article 6 above.

### 17.3 Waivers of Subrogation.

17.3.1 KCDA, the Client, and the Contractor waive all rights against each other and any of their subcontractors of any tier, the A/E, their consultants, separate contractors described in Article 12 (if any), and any of their respective agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to Articles 6 and 17.2 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Client as fiduciary. KCDA and the Client do not waive their subrogation rights to the extent of the Client's property insurance on structures or portions of structures that do not comprise the Work. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

### 17.4 Payment and Performance Bond.

17.4.1 Pursuant to RCW 39.08, the Contractor is required to submit payment and performance bonds secured from a surety company licensed to do business in the State of Washington. The Contractor shall pay for the bonds in the full amount of the Contract Sum plus sales tax. Within seven days of entering into the Agreement, the Contractor shall deliver two copies of the bond (including the original bond) to KCDA and one copy each to the Client and the A/E. The price of the bond will be added to the total contract amount to be paid by the Client. KCDA MAY DECLINE TO ENTER INTO THE CONTRACT IF EVIDENCE OF BONDABILITY IS NOT RECEIVED, AND THE CLIENT MAY WITHHOLD ITS NOTICE TO PROCEED AND/OR WITHHOLD PAYMENT TO THE CONTRACTOR UNTIL SUCH SURETY BOND IS RECEIVED.

## ARTICLE 18 CORRECTION OF WORK

18.1 The Contractor shall promptly and within at least fourteen (14) days of notice from the Client or KCDA correct Work rejected or failing to conform to the requirements of the Contract Documents at any time through a period of one year from the date of Substantial Completion of the Agreement or by terms of a longer manufacturer's warranty or an applicable special warranty required by the Contract Documents. The provisions of this Article apply to Work done by Subcontractors of any tier as well as to Work done by direct employees of the Contractor.

18.2 If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents or fails to carry out the Work in accordance with the Contract Documents, KCDA and/or the Client, by a written order, may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated.

18.3 Nothing contained in this Article shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the time period of one year as described above relates only to the specific obligation of the Contractor to correct the Work and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

## ARTICLE 19 MISCELLANEOUS PROVISIONS

19.1 **Applicable Law and Venue.** The Agreement shall be governed by the laws of the State of Washington, without regard to its choice of law provisions. The exclusive venue for any litigation regarding this Agreement shall be in the county in which the Project is located.

19.2 **Statutes.** The Contractor shall abide by the provisions of all applicable Washington statutes. The statutes referenced in the Contract Documents are not meant to be a complete list and should not be relied upon as such.

19.3 **Contractor Registration and Related Requirements.** Pursuant to RCW 39.06, the Contractor shall be registered or licensed as required by the laws of the State of Washington, including but not limited to RCW 18.27. The Contractor shall: have a current state unified business identifier number; have industrial insurance coverage for the Contractor's employees working in Washington as required in Title 51 RCW; have an employment security department number as required in Title 50 RCW; have a state excise tax registration number as required in Title 82 RCW, and; not be disqualified from bidding on any public works contract under RCW 39.06.010 (unregistered or unlicensed contractors) or RCW 39.12.065(3) (prevailing wage violations).

19.4 **Law Against Discrimination.** Contractor shall comply with pertinent statutory provisions relating to public works of RCW 49.60.

19.5 **Provisions for Aged and Handicapped Persons.** Contractor shall comply with pertinent statutory provisions relating to public works of RCW 70.92.

19.6 **Safety Standards.** Contractor shall comply with pertinent provisions of Chapter 296-155 WAC, "Safety Standards for Construction Work."

19.7 **Unemployment Compensation.** Pursuant to RCW 50.24 in general and RCW 50.24.130 in particular, the Contractor shall pay contributions for wages for personal services performed under this Agreement or arrange for a bond acceptable to the commissioner.

19.8 **Drug-Free Workplace.** The Contractor and all Subcontractors 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.

**19.9 Tobacco-Free Environment.** Smoking or use of any kind of lighted pipe, cigar, cigarette or any other lighted smoking equipment, material or smokeless tobacco products, including vaping, is prohibited on all Client property.

**19.10 Asbestos Removal.** To the extent this Project involves asbestos removal, the Contractor shall comply with RCW 49.26 and any provisions of the Washington Administrative Code promulgated thereunder.

**19.11 Assignment.** The Contractor shall not let, delegate duties under, assign or transfer this Agreement, or any interest in it or part of it, without the prior written consent of KCDA and the Client.

**19.12 Weapons.** The Contractor and its employees, agents, and Subcontractors of any tier shall not bring onto the Project site or onto any Client 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 Client's discretion.

**19.13 Contaminated Properties.** To the extent this Project involves the remediation of contaminated property, the Contractor shall comply with RCW 64.44 and 70.105D and any provisions of the Washington Administrative Code promulgated thereunder, including the use of authorized contractors as provided in RCW 64.44.060.

**19.14 Disposal of Materials.** To the extent this Project involves the remediation of contaminated property, the Contractor shall comply with all applicable requirements of RCW 70.95 and any provisions of the Washington Administrative Code promulgated thereunder.

## **ARTICLE 20 TERMINATION OF THE CONTRACT**

**20.1 Termination for Cause by Contractor.** If KCDA fails to make payment for a period of *60 days* through no fault of the Contractor and has been given approval by the Client, the Contractor may, upon *seven additional days'* written notice to KCDA, terminate the Agreement and recover from KCDA payment for all Work properly executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including Fees applicable thereto.

**20.2 Termination for Cause by Client.** The Client may, upon *seven days'* written notice to the Contractor, terminate (without prejudice to any right or remedy of KCDA

or the Client) the whole or any portion of the Work for cause, including but not limited to the following circumstances:

- .1 the Contractor fails to prosecute the Work or any portion thereof with sufficient diligence to ensure the Completion of the Work within the Contract Time;
- .2 the Contractor is in material default of or materially breaches any provisions of this Agreement;
- .3 the Contractor is adjudged bankrupt, makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of its insolvency;
- .4 the Contractor fails to supply a sufficient number of properly skilled workers or proper materials;
- .5 the Contractor fails to make prompt payment to Subcontractors or for materials or labor;
- .6 the Contractor materially disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction; or
- .7 the Contractor fails to comply with the provisions of RCW 28A.400.330 by permitting a worker on the Project having contact with children who has been convicted of or pled guilty to a felony crime involving children as described in Section 10.3.

**20.3 Termination for Convenience by Client.** The Client may, at any time upon *seven days'* written notice to the Contractor, terminate (without prejudice to any right or remedy of the Client or KCDA) the whole or any portion of the Work for the convenience of KCDA and the Client. The Client shall be liable to Contractor only for those costs reimbursable to Contractor in accordance with the following:

- .1 The amount due under Articles 4 and 15 of this Agreement for the performance of the Work terminated;
- .2 Other pre-approved costs, consistent with Section 13.2, necessary and reasonably incurred in connection with the termination of Work.

The total sum to be paid to the Contractor under this Section 20.3 shall not exceed the Contract Sum as reduced by the amount of payments otherwise made.

### **20.4 Effects of Termination.**

20.4.1 Unless the Client directs otherwise, after receipt of a Notice of Termination from the Client pursuant to Section 20.2 or 20.3, the Contractor shall promptly:

- .1 stop Work under the Agreement on the date and as specified in the Notice of Termination;

.2 place no further orders or subcontracts for materials, equipment, services or facilities, except as may be necessary for completion of any portion of the Work that is not terminated;

.3 procure cancellation of all orders and subcontracts, upon terms acceptable to the Client, to the extent that they relate to the performance of Work terminated;

.4 assign to the Client all of the right, title and interest of the Contractor under all orders and subcontracts, in which case the Client shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

.5 with the Client's approval, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts not assigned to the Client;

.6 transfer title and deliver to the entity or entities designated by the Client the fabricated or unfabricated parts, Work in process, partially completed supplies and equipment, materials, parts, tools, dies, jigs and other fixtures, completed Work, supplies and other material produced as part of, or acquired in connection with the performance of, the Work terminated, and the completed or partially completed plans, drawings, information and other property related to the Work;

.7 use its best efforts to sell any property of the types referred to in Section 20.4.1.6. The Contractor may acquire any such property under the conditions prescribed by and at a price or prices approved by the Client, and the proceeds of any such transfer or disposition may be applied in reduction of any payments to be made by the Client to the Contractor;

.8 take such action as may be necessary or as directed by the Client to preserve and protect the Work and property related to this Project in the possession of the Contractor in which the Client has an interest; and

.9 continue performance only to the extent not terminated.

20.4.2 In arriving at any amount due the Contractor after termination, the following deductions shall be made:

.1 all unliquidated advance or other prior payments on account made to the Contractor applicable to the terminated portion of the Agreement;

.2 any claim which KCDA or the Client may have against the Contractor;

.3 an amount necessary to protect KCDA and the Client against outstanding or potential liens or claims; and

.4 the agreed price for or the proceeds of sale of any materials, supplies or other things acquired by the Contractor or sold, pursuant to the provisions of Section 20.4.1.7, and not otherwise recovered by or credited to KCDA.

20.4.3 If (and only if) the termination pursuant to Section 20.3 is partial, the Contractor may file a Claim for an equitable adjustment of the price or prices specified in the Agreement relating to the continued portion of the Agreement. The Contractor must assert any Claim for an equitable adjustment under this subparagraph within *ninety-one days* from the effective date of the Termination.

20.4.4 The Contractor shall refund to KCDA any amounts KCDA paid to the Contractor in excess of costs reimbursable under Section 20.3.

20.4.5 The damages and relief from termination by the Client specifically provided in Article 20 shall be the Contractor's sole entitlement in the event of termination.

20.4.6 When this Agreement refers to a termination, it is understood that the termination is of this Agreement, the Purchase Order, and all related contract documents, but not of any contract between KCDA and the Contractor that is not specific to this Project and this Client.

End of Section