

## Doyle, Peter (FAA)

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**To:** Doyle, Peter (FAA)  
**Cc:** Friday, April 03, 2015 4:46 PM  
**Subject:** Ball, Kendall (FAA); Shepherd.S@portseattle.org; Read, Carolyn (FAA)  
**Attachments:** Carriger, Jesse (FAA); Fields, Carlos (FAA); Sanmartin, Frank (FAA)  
RE: Airport Improvement Program Compliance Requirements  
Cert.pdf

The Seattle ADO, when issuing the grant 3-53-0062-131, used the following methodology within the "Memoranda of Agreement for Sound Insulation in the Highline School District", to fund the North Hill/Marvista project:

- The MOA states that the Olympic school is an eligible school under Item 1)
- Item 7) allows the district to close an eligible school and replace the capacity elsewhere only in the dollar amount identified in Exhibit C Column 3. This language was included in the MOA for facilities deemed to be "not worth the insulation effort" and funding would be more appropriately applied to constructing a new building.
- For Olympic, this amount was \$3,879,406, which at the time of the MOA was the dollar amount estimated to insulate the Olympic building.
- Item 6 b) states that the District will determine which eligible schools will be replaced and closed, and Olympic was determined to be in this category
- Item 7)c, iii, states that the closed school may no longer be used for instructional purposes and the District did provide an exiting Plan for the Olympic site.
- The school district provided documentation that described that the Marvista school received displaced students from the closure of the Olympic school.

Basically we followed the MOA in a manner where the list of eligible schools for insulation were identified by the Noise Exposure Maps and the 65DNL for the Seattle-Tacoma International Airport. The amount to insulate these schools was determined and a dollar amount was identified. The District had determined the Olympic school was not a facility worth investing the noise insulation dollars. Marvista was determined to be a new site that accommodated student displaced from the Olympic school, and under Item 7 of the MOA, the FAA issued a Noise Fund grant to use the MOA dollar amount to insulate Olympic to offset costs for the new facility.

With respect to closing the project, the FAA read the attached Sponsor Certification for Construction Final Acceptance and specifically Item 3, as an assurance that the funds that reimbursed construction cost were in compliance with the Federal labor and civil rights requirements. The FAA also determined that despite the fact that the contract provision may not have been included (hence the N/A answers to Item 8 and 10 of the Sponsor Certification for Construction Contracts), the requirement was fulfilled and certified as compliant for the offering the grant, reimbursing the construction costs, and the eventual closure of the project.

Additional note: With respect to the Sponsor Certification for Construction Contracts Item 10; because the established Disadvantage Business Enterprise goal was "Race Neutral", as I understand, inclusion of this goal is not allowed within construction contracts. DBE participation is also a goal and not a requirement within our area of the country. Also, The City of Seattle did have an established DBE goal for a three year period of AIP projects (to include School insulation), when this grant was issued.

**Peter Doyle**

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Seattle Airports District Office  
11 Lind Avenue SW - Suite 250  
Renton, WA 98057-3356  
425.227.2652  
[Peter.Doyle@faa.gov](mailto:Peter.Doyle@faa.gov)

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**From:** Ball, Kendall (FAA)  
**Sent:** Friday, April 03, 2015 11:24 AM  
**To:** Felicia DenAdel  
**Cc:** Doyle, Peter (FAA); Carriger, Jesse (FAA); Fields, Carlos (FAA); Sanmartin, Frank (FAA)  
**Subject:** RE: Airport Improvement Program Compliance Requirements

Hi Felicia:

I thought I would give you an update. Peter Doyle of our Seattle Airports District Office is going to research the Highline School District (Marvista School) project grant and get back to me next week. As soon as I have some additional information I will contact you.

Have a great Easter weekend.

*Ken*

Kendall L. Ball, P.E.  
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M: 202-577-8772  
F: 202-267-5302  
E: [Kendall.Ball@faa.gov](mailto:Kendall.Ball@faa.gov)

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**From:** Felicia DenAdel [<mailto:denadelf@sao.wa.gov>]  
**Sent:** Tuesday, March 31, 2015 2:04 PM  
**To:** Ball, Kendall (FAA)  
**Cc:** Fields, Carlos (FAA)  
**Subject:** RE: Airport Improvement Program Compliance Requirements

Thank you Ken, I appreciate it.

*Felicia A. Den Adel*

State Audit Specialist  
State Auditor's Office  
(360) 224-7710

[felicia.denadel@sao.wa.gov](mailto:felicia.denadel@sao.wa.gov)

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**From:** [kendall.ball@faa.gov](mailto:kendall.ball@faa.gov) [mailto:kendall.ball@faa.gov]  
**Sent:** Tuesday, March 31, 2015 6:52 AM  
**To:** Felicia DenAdel  
**Cc:** [Carlos.Fields@faa.gov](mailto:Carlos.Fields@faa.gov)  
**Subject:** RE: Airport Improvement Program Compliance Requirements

Good Morning Felicia:

Thank you for your email. This is a very interesting situation; however, this is going to take some time to sort out. I will get back to you as soon as I have an answer for you. Don't hesitate to call if you have any questions.

Have a great day.

*Ken*

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**From:** Felicia DenAdel [mailto:denadelf@sao.wa.gov]  
**Sent:** Monday, March 30, 2015 5:34 PM  
**To:** Ball, Kendall (FAA)  
**Subject:** Airport Improvement Program Compliance Requirements

Good afternoon,

We are currently auditing the Airport Improvement Program CFDA #20.106 at the Highline School District (Washington). The District reported \$3.879 million in federal expenditures on its Schedule of Expenditures of Federal Awards in 2014 for the Marvista Elementary School replacement project that was completed in 2010. These federal program funds were awarded after the project was completed, therefore the district is not in compliance with the Davis-Bacon Act or Suspension and Debarment requirements.

We have reached out to the FAA in Seattle with no response, so we are hoping you can assist us or provide us with a contact person (I got your contact information from the OMB Circular A-133 Compliance Supplement). Our question is, given the nature of how the District was awarded these funds after the project was completed, would it be acceptable in DOT if we deem those federal compliance requirements not applicable?

*The following is a summary of the details as we understand them:*

[felicia.denadel@sao.wa.gov](mailto:felicia.denadel@sao.wa.gov)

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Good Morning Felicia:

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Have a great day.

*Ken*

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We have reached out to the FAA in Seattle with no response, so we are hoping you can assist us or provide us with a contact person (I got your contact information from the OMB Circular A-133 Compliance Supplement). Our question is, given the nature of how the District was awarded these funds after the project was completed, would it be acceptable in DOT if we deem those federal compliance requirements not applicable?

*The following is a summary of the details as we understand them:*

*The District reported \$3.879 million in federal expenditures on its Schedule of Expenditures of Federal Awards (SEFA) in 2014 for the Marvista Elementary School replacement project that was completed in 2010. Marvista Elementary was not in the list of eligible schools however per page 3 of the attached MOA, the District could close an eligible school and obtain funding for a replacement school. Olympic Elementary was closed in 2005 and was used as interim site until 2013. It has not been used as school site since then. Olympic exit letter attachment provides the same explanation for the expenditures claimed for Marvista Elementary.*

*The Marvista Elementary project was different from all other schools that were built using Airport Improvement Program funds. The Federal portion of the project was assigned to the project **AFTER** the school has already been built per Port of Seattle and FAA designation. The Capital project was administered under state guidelines not federal guidelines. As a result when we review FAA approved sponsor certifications (sponsor certification attachment) we note that Davis Bacon Act as well as Civil Rights clauses are not applicable as noted on Pg.8 of the PDF document.*

*FAA accepted closeout documentation and determined that it was satisfactory per SEA-3-53-0062-131 attachment – letter from FAA.*

*The District did not check for Federal Suspension & Debarment at the time of the contract as contract was administered.*

Thank you for your assistance and please don't hesitate to call if I can clarify anything further.

*Felicia A. Den Adel*

Single Audit Specialist

Washington State Auditor's Office

) 224-7710

[felicia.denadel@sao.wa.gov](mailto:felicia.denadel@sao.wa.gov)

**MEMORANDUM OF AGREEMENT FOR SOUND INSULATION IN THE  
HIGHLINE SCHOOL DISTRICT**

THIS AGREEMENT is entered into on this 4th day of June, 2002, by and between the Port of Seattle ("Port"), the Highline School District ("District"), and the Federal Aviation Administration ("FAA"), (all, collectively, the "Parties").

WHEREAS, the Port, the District, the FAA, and Adam Smith, Member of the United States Congress, Ninth Congressional District entered into that certain Memorandum of Understanding dated May 25, 2001, regarding funding sources to mitigate noise impacts associated with jet aircraft operations within Highline schools ("MOU"); and

WHEREAS, said MOU provided that the Parties would produce a more detailed agreement;

NOW, THEREFORE, the Parties agree as follows:

- 1) **ELIGIBLE SCHOOLS:** The Parties agree that only the following District schools are eligible for Port, FAA and State of Washington ("State") funding toward sound insulation treatments: Beverly Park at Glendale Elementary, Cedarhurst Elementary, Des Moines Elementary, Highline High, Hilltop Elementary, Madrona Elementary, Midway Elementary, Mt. Rainier High, North Hill Elementary, Olympic Elementary, Pacific Middle School, Parkside Elementary, SeaTac Occupational Skills Center, Southern Heights Elementary, and Sunnysdale Elementary ("Eligible Schools").
- 2) **SOUND INSULATION STUDY:** In conjunction with the District and the FAA, the Port has completed the Port of Seattle Sound Insulation Study for Highline School District Schools ("Study"), to evaluate District schools that were impacted by aircraft noise, develop sound insulation recommendations that meet FAA design standards, and provide cost estimates. The funding obligations under this Agreement shall be subject to and consistent with the design goals, sound insulation, cost estimates and cost categories in the Study. The District shall be responsible for design and construction of sound insulation of Eligible Schools under this Agreement that, at a minimum, meet the design and sound insulation goals set forth in the Study. The District shall also ensure that any future facilities at Eligible School sites, including portable classrooms, meet the design and sound insulation goals set forth in the Study.
- 3) **DISTRICT PLAN/ PRIORITY LIST:** The Parties accept the Prioritized Construction Schedule in the Highline School District Capital Facilities Improvement Plan 2002 ("District Plan") for Eligible Schools to receive sound insulation, as the priority list under this Agreement ("Priority List"). The District Plan is attached as Exhibit A to this Agreement and incorporated herein by this reference. Construction timelines in the Priority List are estimated, and substantial changes are subject to written notice and annual review by the Parties.

**MEMORANDUM OF AGREEMENT FOR SOUND INSULATION IN THE  
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- 3) **DISTRICT PLAN/ PRIORITY LIST:** The Parties accept the Prioritized Construction Schedule in the Highline School District Capital Facilities Improvement Plan 2002 ("District Plan") for Eligible Schools to receive sound insulation, as the priority list under this Agreement ("Priority List"). The District Plan is attached as Exhibit A to this Agreement and incorporated herein by this reference. Construction timelines in the Priority List are estimated, and substantial changes are subject to written notice and annual review by the Parties.

#### 4) FUNDING:

- a) The Parties agree that funding under this agreement will come from the following sources:
  - i) The Port will contribute \$50,000,000 from ad valorem tax and/or allowable airport revenues.
  - ii) The FAA will work with the Port to obtain available federal Airport Improvement Program ("AIP") grant funds up to, \$50,000,000 toward eligible noise mitigation costs. Federal funding is subject to federal authorizing legislation for the Airport Improvement Program and annual appropriations. The FAA's portion of AIP funds, up to \$50,000,000 requires up to \$12,500,000 in matching AIP funds from the Port, which will be credited against the Port's total contribution, set forth above.
  - iii) The District will contribute \$50,000,000. The District, at its sole expense, may fund beyond the contribution levels set forth in this Agreement to achieve the District Plan construction goals for the Eligible Schools.
- b) AIP funds will be used to fund costs identified in the Study under any of the following cost categories: Direct Acoustical, Construction Impact and Responsible Construction Costs.
- c) To fulfill its funding obligation as set forth in subparagraph 4 a. (i),
  - i) The Port may use Seattle-Tacoma International Airport ("Airport") non-AIP revenues to fund costs identified in the Study under any of the following cost categories: Direct Acoustical, Construction Impact, Responsible Construction, and Portables and Similar Construction.
  - ii) Port ad valorem tax dollars may be used to fund costs under any of the cost categories set forth in subparagraph 4. c) i), or under the cost category identified in the Study as Jurisdiction Required Improvements.
  - iii) A schedule showing estimated Port funds by type is attached as Exhibit B and incorporated herein by this reference. The Port will work to maximize the use of non-AIP Airport revenues consistent with the cost categories identified in subparagraph 4. c) i). The Port will fund costs ineligible for Airport revenues, including AIP funds, with ad valorem tax dollars.
- d) The Port must apply for and receive FAA AIP grants for each of the Eligible Schools before the District commences construction of work that will be reimbursed by AIP funds. The Port shall confirm in writing to the District that it has received the funding for a specific project prior to the District commencing work.
- e) The schedule of Port and FAA estimated yearly funding contributions for 2002 through 2011 is attached as Exhibit C and incorporated herein by this reference. The District shall inform the Port and the FAA of any changes in its construction schedule that may impact the yearly funding contributions set forth in Exhibit C. Exhibit C

may be amended by the Parties at any time to reflect agreed to changes in the yearly funding amounts and sources.

- f) It is the goal of the Parties to this agreement that the State will contribute \$50,000,000, if legislation authorizing such expenditure is adopted, toward the work for Eligible Schools. In the 2002 legislative session, the State authorized funding in the amount of \$5,000,000 toward that work. As legislation is adopted, the District and Port will coordinate with the State to develop a payment schedule and further define responsibilities related to State funding.
- 5) **AVIGATION EASEMENT:** Upon completion of construction of sound insulation at each of the Eligible Schools, the District shall convey to the Port an avigation easement over each of the Eligible Schools in the form of Exhibit D, attached to this Agreement and incorporated herein by this reference. The Port will be responsible for ordering any title reports necessary for the easement.
- 6) **REPLACEMENT SCHOOLS:**
- a) The Parties understand and agree that due to the age of some of the Eligible Schools and amount of work necessary to bring them up to current codes and standards, replacement may be more economical and appropriate than remodeling to accomplish the desired level of sound insulation in some of the Eligible Schools ("Replacement Schools").
  - b) Replacement Schools shall, at a minimum, meet the design goals of the Study. The District will determine which Eligible Schools or buildings will be replaced.
  - c) Replacement Schools are eligible for FAA and Port funds in the amount identified in Exhibit C, Column 3 ("Eligible Costs"). However, FAA and Port funds will not exceed the funding levels described in 4 a.
- 7) **CLOSED SCHOOLS:**
- a) The District may elect to close Eligible Schools ("Closed Eligible School") and replace the capacity of the closed schools elsewhere in the District. Closed Eligible Schools are eligible for FAA and Port funds in the amount identified in Exhibit C, Column 3 ("Eligible Costs"), notwithstanding, FAA and Port funding obligations shall not exceed the amounts set forth in subparagraph 4 a. The District shall provide evidence to the FAA that the total area allocated for use by students at the elementary or secondary level District-wide after closure of Eligible Schools shall be equal to or greater than the total area of the Eligible Schools as of the date of this agreement.
  - b) Upon closure of an Eligible School, the District shall be entitled to receive payment in full of the sound insulation costs allocated in the Study for that Eligible School. A Closed Eligible School will not be eligible for funds from the Port or FAA in addition to those allocated in the Study and paid upon closure.

- c) Continued use of a Closed Eligible School as an interim school during construction at other schools shall be allowed as provided in the District Plan, and in accordance with the following:
  - i) Any costs associated with interim use of a Closed Eligible School, including construction costs, shall not be eligible for reimbursement under this Agreement.
  - ii) Prior to project close-out, the District shall provide the FAA with a certification that it will not use Closed Eligible Schools beyond an interim use, except as provided in subparagraph 7 c. (iii).
  - iii) Once an interim use is no longer required as provided in the District's Plan, the Closed Eligible School may no longer be used for instructional purposes unless the Closed Eligible School is subsequently sound insulated to meet the design goals of the Study.
  
- 8) **NEW CONSTRUCTION/CHANGES IN USE:** Except for Eligible Schools identified in this Agreement, the Parties understand and agree that the Port and the FAA will not contribute funds towards the sound insulation of: (a) educational facilities constructed by the District after 1985, and (b) any District facility in existence as of the date of this Agreement, where the District changes the use of the facility to an educational use subsequent to the execution of this Agreement.
  
- 9) **AIP GRANT FUNDING REQUIREMENTS:** The Parties agree to the following AIP grant assurances:
  - a) General.
    - i) These assurances shall be complied with in the performance of grant agreements for noise compatibility projects undertaken by the District.
    - ii) These assurances are required to be submitted as part of the project application by sponsors requesting funds under the provisions of the Airport and Airway Improvement Act of 1982, as amended, and the Aviation Safety and Noise Abatement Act of 1979, as amended. Sponsors are units of local government in the areas around the airport that are the subject of the noise compatibility program.
  
  - b) Sponsor Certification.
    - i) General Federal Requirements. The District will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines and requirements as they relate to the application, acceptance, and use of Federal funds for this project.
    - ii) District Fund Availability. The District has sufficient funds available to ensure operation and maintenance of items funded under the grant agreement which it will own or control.
    - iii) Minimum Wage Rates. The District shall include, in all contracts in excess of \$2,000 for work on any projects funded under the grant agreement which involve

- labor, provisions establishing minimum rates of wages, to be predetermined by the Secretary of Labor, in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a – 5), which contractors shall pay to skilled and unskilled labor, and such minimum rates shall be stated in the invitation for bids and shall be included in proposals or bids for the work. To the extent that such wages are higher than wages required by RCW 39.12, the federal wages shall apply.
- iv) Veteran's Preference. The District shall include, in all contracts for work on any projects funded under the grant agreement which involve labor, such provisions as are necessary to insure that, in the employment of labor (except in executive, administrative, and supervisory positions), preference shall be given to veterans of the Vietnam era and disabled veterans as defined in Section 515 (c)(1) and (2) of the Airport and Airway improvement Act of 1982. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.
  - v) Conformity to Plans and Specifications. The District will execute the project subject to plans, specifications, and schedules approved by the Project Manager, Seattle Airport District Office, Federal Aviation Administration ("Project Manager"). Such plans, specifications, and schedules shall be submitted to the Project Manager prior to commencement of site preparation, construction, or other performance under this grant agreement, and, upon approval by the Project Manager, shall be incorporated into this grant agreement. Any modifications to the approved plans, specifications, and schedules, that are to receive FAA funding, shall also be subject to approval by the Project Manager and incorporated into the grant agreement. Timelines and procedures will be established per paragraph 13 to assure plans, specifications, and schedule reviews are completed in a timely manner.
  - vi) Construction Inspection and Approval. The District will provide and maintain competent technical observation at the construction site throughout the project reasonably to assure that the work conforms with the plans, specifications, and schedules approved by the Project Manager for the project. The District shall subject the construction work on any project contained in an approved project application to prompt and reasonable inspection and approval by the Project Manager and such work shall be in accordance with reasonable regulations and procedures prescribed by the Project Manager and included in the bidding documents issued by the District. Such regulations and procedures shall require such cost and progress reporting by the sponsor or sponsors of such project as the Project Manager shall deem necessary.
- c) Duration. The terms, conditions, and assurances of the grant agreement shall remain in full force and effect throughout the useful life of the facilities developed or equipment acquired or throughout the useful life of the items installed under this project, but in any event not to exceed twenty (20) years from the date of acceptance of a grant offer of federal funds for the project. However, there shall be no time limit on the duration of the terms, conditions, and assurances with respect to real property acquired with federal funds. The duration of the Civil Rights assurance shall be as specified in said assurance.

d) Accounting System, Audit, and Requirements.

i) The District shall keep all project accounts and records which fully disclose the amount and disposition by the District of the proceeds of the grant, the total cost of the project in connection with which the grant is given or used, and the amount and nature of that portion of the cost of the project supplied by other sources, and such other financial records pertinent to the project. The accounts and records shall be kept in accordance with an accounting system that will facilitate an effective audit in accordance with the Single Audit Act of 1984.

ii) The District shall make available to the Project Manager and the Comptroller General of the United States, or any of their duly authorized representatives, for the purpose of audit and examination, any books, documents, papers, and records of the District that are pertinent to the grant. The Project Manager may require that an appropriate audit be conducted by the District. In any case in which an independent audit is made of the accounts of the District relating to the disposition of the proceeds of a grant or relating to the project in connection with which the grant was given or used, it shall file a certified copy of such audit with the Comptroller General of the United States not later than 6 months following the close of the fiscal year for which the audit was made.

c) Operation and Maintenance. The District will suitably operate and maintain noise program implementation items that it owns or controls upon which federal funds have been expended.

f) Reports and Inspections. The District will submit to the Project Manager such annual or special financial and operations reports as the Project Manager may reasonably request. It will also make records and documents relating to the project, and continued compliance with the terms, conditions, and assurances of the grant agreement including deeds, leases, agreements, regulations, and other instruments, available for inspection by any duly authorized agent of the Project Manager upon reasonable request.

g) Civil Rights. The District will comply with all applicable Washington State laws to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap, be excluded from participating in any activity conducted with or benefiting from funds received from this grant. This assurance obligates the sponsor for the period during which federal financial assistance is extended to the program, except where federal financial assistance is to provide, or is in the form of, personal property or real property or interest therein or structures or improvements thereon, in which case the assurance obligates the sponsor or any transferee for the longer of the following periods: (a) the period during which the property is used for a purpose for which federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits or (b) the period during which the sponsor retains ownership or possession of property.

- h) Design. The District shall follow the A&E selection process in Advisory Circular 150-5100 14C, or any current revisions to the extent of FAA funding and submit plans and specifications along with the design report or certification that the school buildings will meet the interior noise level and ventilation requirements established in the Study.
- i) Construction. The District and the Project Manager shall mutually agree to language proposed for the construction contract, which will be consistent with applicable standard FAA contract clauses as well as with Washington State statutory and regulatory requirements and established District practices. Any DBE goals shall be applicable to the extent of FAA funding and Washington State law. The District shall comply with Washington State statutory and regulatory bidding requirements and submit bid documents with recommendation for award for the information of the Project Manager. The District shall submit weekly reports during construction.
- j) Close Out. The following documents may be required by the FAA, depending on elements of projects funded:
  - i) Sponsor Certification for Project Plans and Specifications
  - ii) Sponsor Certification for Equipment/Construction Contracts
  - iii) Sponsor Certification for Construction Project Final Acceptance
  - iv) Sponsor Certification for Selection of Consultants
  - v) Final Construction Report summarizing work completed and costs  
Sample copies of these documents will be provided upon request.

10) **CONTRACTING REQUIREMENTS:** The District shall enter into contracts under the requirements of Washington State Law, including without limitation RCW 28A.335.190, portions of RCW 39.04 and RCW 39.80 applicable to school districts and meet federal law.

11) **REIMBURSEMENT:**

- a) The District shall present the Port with written requests for payment. All such requests for payment shall be directed to the Port at the following address: Manager, Community Development, Seattle-Tacoma Int'l Airport, P.O. Box 68727, Seattle, WA 98168-0727. Payment requests shall contain a description of the work completed and shall be supported by appropriately detailed invoices described in 11 b. below. In no event shall requests be made more than once per month. The Port shall pay the amounts requested by the District in compliance with this subparagraph within thirty (30) days of receipt of the request.
- b) The Parties agree to review the contractor's schedule of values for each project to determine FAA grant fundable line items. A sample invoice with a schedule of values showing generally acceptable FAA grant fundable line items and accounting summary information, to be submitted by the District with its request for payment, will be developed. It is understood that the content and format of the specific items

may vary depending on the Eligible School. The Parties shall develop procedures to assure that acceptance of schedule of values will not delay payments to the contractor provided that the contractor has complied with their contract requirements.

- c) In the event that an independent audit is required under 9 d. above, that is beyond the District's routine annual audit process, and at an added cost to the District, the Port will reimburse the District for those audit expenses. The costs to reimburse audit expenses will be in addition to the Port's \$50,000,000 contribution identified in subparagraph 4) a) i).

**12) INSPECTION:**

- a) Post-construction sound insulation audits will be conducted by the District to ensure the design and construction meets the goals of the Study. The District shall provide copies of post-construction sound insulation audits for each of the Eligible Schools to the Port and FAA.
- b) The District shall allow the Port and the FAA access at reasonable times and with reasonable notice to inspect the Eligible Schools during and after construction of sound insulation treatments.
- c) It shall be the sole responsibility of the District to implement the construction contract.

**13) TIMELINES AND PROCEDURES:** The Parties agree to establish timelines and procedures to ensure timely implementation of the District Plan. Timelines to be established include; grant funding application dates, response times for reviews and approvals, and a list of documentation due dates. The Parties will review the established timelines and procedures annually, or as needed, to assess and update the information.

**14) DISPUTE RESOLUTION:**

- a) Except as otherwise set forth in this Paragraph, any claim, dispute or other matter in question arising out of or related to this Agreement ("Disputes") shall be exclusively subject to the following alternative dispute resolution procedure as a condition precedent to the institution of legal or equitable proceedings by either party. This requirement cannot be waived except by an explicit written waiver signed by the Parties; Notwithstanding the foregoing, the Parties acknowledge and agree that claims or disputes arising out of or related in any way to AIP funds, including but not limited to, grant assurances, funding eligibility, etc. ("AIP Claims") shall not constitute Disputes under the Agreement (as that term is defined in this Paragraph) and shall not be subject to the provisions of this Paragraph. The Parties retain all rights and remedies that may be available to them at law for the resolution of such AIP Claims.
- b) The Parties shall negotiate in good faith and use their best efforts to resolve any Disputes that may develop under this Agreement. The Port's Managing Director, Aviation (or his/her designee), the Superintendent of the District (or his/her designee) and/or the Airport District Office Manager of the FAA (or his/her designee) along

- with any staff or technical persons any of the Parties desires, shall meet within seven (7) days after request from any party, which may be extended for an additional seven (7) days to include other persons or obtain additional information.
- c) If a Dispute is not resolved under the procedure set forth in subparagraph 13 (a), or within such additional time as the Parties mutually agree, then the Parties shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the Parties mutually agree otherwise, shall be in accordance with the American Arbitration Association Mediation Rules currently in effect. Request for mediation shall be filed in writing with the other Parties to this Agreement and with the American Arbitration Association. Mediation shall proceed in advance of legal or equitable proceedings. Any contractual or statutory deadlines, including without limitation statutes of limitation, shall be tolled pending mediation for a period of 60 days from the date of filing, unless tolled for a longer period by agreement of the Parties or court order. The Port's Managing Director, Aviation (or his/her designee), the Superintendent of the District (or his/her designee) and/or the Airport District Office Manager of the FAA (or his/her designee) having full authority to settle the Dispute, must attend the mediation session; *provided that*, in the case of the Port, while the Managing Director, Aviation (or his/her designee) will attend, final authority for settlement may be subject to the approval of the Port Commission or that of its designee.
- d) The Parties may bring no litigation on a Dispute unless the Dispute has been properly raised and considered in the above mediation procedure. The parties to the mediation, except the FAA, shall share the mediator's fee and any filing fees equally. The mediation shall be held in King County, Washington. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

**15) HOLD HARMLESS/INDEMNIFICATION:** Each party shall indemnify and hold harmless from and against any and all claims, actions, damages, liability, and expense, including, without limitation, reasonable attorney's fees incurred thereby or in proving the right to indemnification, incurred as a result of such party's actions or omissions under this Agreement; provided that, if such claims, actions, damages, liability, or expense arise from concurrent negligence of two or more of the parties, including without limitation instances where this Agreement is subject to the provisions of RCW 4.24.115, then the obligation to indemnify under this Agreement shall be effective only to the extent of each party's own negligence. No party shall be required under this Paragraph to indemnify another for its sole negligence. The FAA is preempted by federal law and this provision does not apply to the FAA.

16) **NOTICES:** All notices under this Agreement may be delivered or mailed. If mailed, they shall be sent to the following respective addresses:

To: Highline School District  
Superintendent  
15675 Ambaum Blvd. SW  
Burien, WA 98166.

To: Port of Seattle  
Aviation Director  
P.O. Box 68727  
Seattle, WA 98168-0727

To: Federal Aviation Administration  
Division Manager, ANM 600  
1601 Lind Ave.  
Renton, WA 98055

17) **APPLICABLE LAW:** This Agreement shall be governed by the laws of the State of Washington for the Port of Seattle and Highline School District. No federal law shall be preempted.

18) **SEVERABILITY:** If any provision of this Agreement shall be held invalid, the remainder of the Agreement shall not be affected thereby if such remainder would then continue to serve the purposes and objectives of the Parties.

19) **NON-WAIVER:** Waiver of any breach of any provision of this Agreement shall not be deemed to be a waiver of any prior or subsequent breach, and shall not be construed to be a modification of this Agreement.

20) **AMENDMENTS/MODIFICATIONS:** This Agreement may be amended or modified by written agreement of the Parties.

21) **ENTIRE AGREEMENT:** This Agreement supercedes the MOU and contains the entire agreement of the Parties hereto and no representations, inducements, promises or agreements, oral or otherwise, between the Parties not embodied herein shall be of any force or effect.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed on the date first written above.

HIGHLINE SCHOOL DISTRICT

By: Joseph P. McFadden  
Title: Superintendent

PORT OF SEATTLE

By: W.R. Summers  
Title: C.E.O.

FEDERAL AVIATION ADMINISTRATION

By: Steven H. Olson  
Title: Aspects Division Manager