

**Interdistrict Cooperative Agreement
For Joint Financing, Planning, Construction, and Equipping
of Delta High School**

**Between
Kennewick School District No. 17
Pasco School District No. 1
Richland School District No. 400**

THIS AGREEMENT (the "Facility Agreement") is entered into by and between the Kennewick School District No. 17 ("Kennewick"), a Washington municipal corporation, the Pasco School District No. 1 ("Pasco"), a Washington municipal corporation, and the Richland School District No. 400 ("Richland"), a Washington municipal corporation, together the "Parties."

WHEREAS RCW 28A.225.250 allows the Parties to establish interdistrict cooperative programs and Ch. 392-135 WAC allows the Parties to enter into interdistrict cooperative contracts; and

WHEREAS the Parties entered into the STEM Educational Cooperative Agreement on April 13, 2009 ("Program Agreement") to create a public high school program referred to as Delta High School ("Program") that provides students a Science, Technology, Engineering, and Mathematics ("STEM") focused curriculum; and

NOW, THEREFORE, in consideration of the promises and agreements herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

SECTION I: PURPOSE OF THE AGREEMENT

- A. The Parties agree that the purpose of this Agreement is to detail the following related to the Delta High School facility:**
- 1. Joint financing and ownership of the purchase, acquisition, or lease of real property,**
 - 2. Joint financing and decision-making regarding the design and construction of the STEM High School Program's facility ("Facility"),**
 - 3. Joint purchase of capital equipment,**
 - 4. Joint financing of repairs, improvements, additions and maintenance, and**
 - 5. Distribution of assets, ownership and equity interests of the Parties to such property, "Facility", and capital equipment upon withdrawal from or dissolution of the cooperative.**

SECTION II: ADMINISTRATIVE OVERSIGHT OF PROPERTY PURCHASE, DESIGN, CONSTRUCTION AND MAINTENANCE OF NEW FACILITY

- A. Superintendents Council.** The Program Agreement establishes a Superintendents Council comprised of the superintendents, or their designees, of Kennewick, Pasco, and Richland School Districts. The duties of the Superintendents Council are to receive recommendations and make decisions regarding budgets, rules and regulations of operations, and program and curriculum offerings of the STEM High School Program. By this Agreement, additional duties of the Superintendents Council will include, but are not limited to, receiving recommendations and making decisions regarding financing, construction, planning, equipping, maintenance and operations of a new facility for the Program. The Superintendents Council will make decisions by consensus. If the superintendents are unable to reach consensus, decisions will be made by majority vote.
- B. Host District and Legal Applicant.** By resolution approved by each district's board of directors, one school district that is a Party to this agreement will be designated as the host district and legal applicant for purposes of obtaining state construction funding assistance under Ch. 392-345 WAC, subject to the terms and conditions of this Agreement. The host district will be the district in which the property jointly purchased, acquired, or leased for Delta High School is located. The host district shall maintain and be the fiscal agent of the capital account for monies received pursuant to Ch. 392-345 WAC. ESD 123 will serve as the fiscal agent for all other purposes unless otherwise agreed to by the Parties.
- C. Capital Projects Committee.** A Capital Projects Director Committee shall be established and comprised of one designee from each district. The three designees shall share equally in making decisions regarding the planning and construction of the facility. While it is the intent of the Parties that decisions will be made by consensus of this Committee, a majority can make time-sensitive decisions. The designee from the host district shall schedule meetings and provide notice to others. This Committee may recommend appointment of a Project Manager by the Superintendents Council. All decisions which require approval of a school district board of directors during the normal course of school construction projects must be approved by the host district board of directors upon the recommendation of the Superintendents Council.
- D. Operations.** The host district will plan and coordinate custodial, routine maintenance, security, utilities, and other day-to-day matters associated with operating a school

facility. Unless otherwise specified in this agreement, the policies and procedures of the host district will apply in regard to facilities maintenance and upgrades. The budget for maintenance and operations shall be approved by the Superintendents Council.

SECTION III: CAPITAL INVESTMENT FOR DELTA FACILITIES, JOINT OWNERSHIP, AND JOINT FINANCING OF DESIGN AND CONSTRUCTION COSTS

- A. Any party to this Agreement may share in the expenses related to the cost of land purchases, planning, construction, design of facilities, major or capital improvements, and all other expenses related to the construction of the Facility. Kennewick School District and Pasco School District each agree to contribute no more than fifty percent (50%) of the local costs not otherwise funded by state financing assistance or other third-party contributions. Richland School District may also contribute to such local costs.**
- B. The parties recognize that mutually approved expenditures have been made prior to the execution of this agreement. For expenditures made prior to the execution of this agreement, the Superintendents Council will verify the amount to be credited to each party in addition to each party's share of total local costs.**
- C. This Agreement confers upon each party a one-third (1/3) ownership interest in the property and Facility constructed for Delta High School, less reimbursements for contributions made pursuant to Section III(A), III(B), and IV(B).**
- D. It is understood that the Parties will pursue State Financing Assistance for construction, per WAC 392-345-025, to the fullest extent possible on behalf of their respective districts. The Parties will request the full 90% match from the state under WAC 392-345-045(2). In the event that the match is less than 90%, the Parties who have agreed to pay at least one-third of the costs pursuant to Section III (A) and III (B) above will meet to determine if the construction of a new facility is feasible, and must have unanimous agreement in order to move forward with construction if state financing assistance is less than 90%.**
- E. The Parties will seek financial contribution from the Washington State STEM Education Foundation for excess costs of financing, property purchase, construction, planning, equipping, maintenance and operations of a new facility, which is the difference between the actual cost and any monies received from State Financing Assistance for this purpose.**
- F. For the purposes of Ch. 392-345 WAC, the "host district" is identified as the school district in which the property jointly purchased, acquired, or leased for Delta High**

School is located. The host district will apply for, receive, and expend the monies solely in accordance with this agreement. Regardless of this designation, each of the Parties shall enjoy an equal ownership interest- in the property and Facility, subject to the limitations provided by this Agreement. Additionally, the designation of "host district" does not convey any additional authority over the operation, construction or ownership of the property and Facility. However, the Parties, agree that the host district will lead the coordination of "day-to-day" operations and invoice the ESD for any direct expenses approved by the Superintendents Council.

- G. State law requires school facilities constructed after January 1994 to implement an asset preservation system (APS). The APS provides for the preservation of school facilities by employing a system of processes, to include but not limited to predictive and preventative, repairs, maintenance, and re-conditioning. The APS also includes a yearly and six year building condition evaluation and reporting process to comply with the requirements that facilities sustain their expected life cycle. Any additional costs to maintain the facilities for this requirement not provided through the state Capital Budget shall be prorated among the Parties.
- H. The Districts shall share evenly and equally in the cost to equip the Facility, as approved by the Superintendents Council. If any District donates equipment to the Facility, that equipment will be affixed with an asset inventory tag from said district. It is the responsibility of each district to track its property that is located at the Facility.
- I. If a third party makes a cash or in-kind donation to the Facility or Program, the donation will be assigned to the Program fiscal agent (ESD 123), and will be subject to the fiscal agent's policies and procedures.

If the Washington State STEM Education Foundation or another third party makes a donation towards the cost of capital construction, the host district will manage and account for the donation. The Parties understand that under the intent of the Joint Partners Agreement, the Washington State STEM Education Foundation will make every attempt to financially support the construction and operation of this facility.

SECTION IV: CAPITAL MAINTENANCE ACCOUNT

- A. Per WAC 392-345-025(6), the parties will establish a separate account into which the Parties will make deposits in order to pay for minor repairs and renovation

costs to the Facility. The Superintendents Council will determine the amount to be deposited on annual basis through ESD 123.

- B. Once the Facility is completed, any contemplated major capital facility improvements require unanimous agreement of the Parties.

SECTION V: JOINT FINANCING MAINTENANCE AND OPERATIONS COSTS

- A. The Parties shall share equally in the cost of maintaining the Facility, including the costs of routine and planned maintenance, insurance, and physical operations.
- B. The fiscal agents will provide the Superintendents Council with an accounting of the costs and expenditures for maintenance and operations on a quarterly basis, or as otherwise requested by the Superintendents Council.

SECTION VI: DISPUTE RESOLUTION

- A. It is hereby agreed that whenever a dispute arises between the Parties concerning this Agreement , it shall be resolved in accord with the following procedure:
 - 1. If any dispute, controversy or claim arises in connection with the performance or breach of this agreement, any Party may, upon written notice to the other Parties, request facilitated negotiations. Such negotiations shall be assisted by a neutral facilitator acceptable to all Parties and shall require the best efforts of the Parties to discuss with each other in good faith their respective positions and, respecting their different interests, to finally resolve such dispute.
 - 2. Each Party may disclose any facts to the other Parties or to the facilitator which it, in good faith, considers necessary to resolve the dispute. However, all such disclosures will be deemed in furtherance of settlement efforts and will not be admissible in any subsequent litigation against the disclosing Party. Except as agreed by all Parties, the facilitator shall keep confidential all information disclosed during negotiations. The facilitator shall not act as a witness for any Party in any subsequent arbitration between the Parties.
 - 3. Such facilitated negotiations shall conclude within fourteen (14) calendar days from receipt of the written notice unless extended by mutual consent. The Parties may also agree at any time to terminate or waive facilitated negotiations. The costs incurred by each Party in such negotiations will be borne by it; the fees and expenses of the facilitator, if any, shall be borne equally by the Parties.
 - 4. If any dispute, controversy or claim arises in connection with the performance or breach of this agreement and cannot be resolved by facilitated negotiations (or the

Parties agree to waive that process) then such dispute, controversy or claim shall be settled by arbitration in accordance with the laws of Washington State and the then current Arbitration Rules of the American Arbitration Association (the "AAA"), except that no prehearing discovery shall be permitted unless specifically authorized by the arbitration panel, and shall take place in the Tri-Cities, Washington.

5. Such arbitration shall be conducted before a single arbitrator to be chosen by the Parties. If there is a dispute in selecting the arbitrator, any Party may petition the Superior Court in Benton County to select the arbitrator. The arbitrator shall have no authority to award non-monetary or equitable relief, and any monetary award shall not include punitive damages. The confidentiality provisions applicable to facilitated negotiation shall also apply to arbitration.
6. The award issued by the arbitrator may be confirmed in a judgment by any state court of competent jurisdiction. All reasonable costs of the Parties, as determined by the arbitrator, including but not limited to: (1) the costs, including reasonable attorney's fees, of the arbitration; (2) the fees and expenses of the facilitator and the arbitrator; and (3) the costs, including reasonable attorney's fees, necessary to confirm the award in court shall be borne entirely by the non-prevailing Party or Parties (to be designated by the arbitration panel in the award) and may not be allocated between the Parties by the arbitrator. For disputes related to Sections VII and/or VIII of this agreement, a decision by the arbitrator is non-binding, and may be appealed by any party de novo to the Superior Court of Benton and Franklin Counties.

SECTION VII: WITHDRAWAL

- A. Withdrawal occurs when an individual Party, other than the host district, leaves the Program ending their financial commitments to the Program and the Program continues to operate by the host district and one remaining district.
- B. It is hereby agreed that neither Kennewick, Pasco, nor Richland may withdraw from the Program within ten (10) years of approval by the Superintendent of Public Instruction of the financial plan for the construction of the Delta High School Facility.
- C. In the event that a Party desires to withdraw from the Program after the expiration of the ten (10) year period, such Party shall give notice in writing to the other district(s) no later than eighteen (18) months prior to July 1 of the year in which the district intends to withdraw. The withdrawal shall become effective on July 1.

- D. If a Party withdraws from the Program, an accounting shall be done of all monetary contributions made under Section III (A), III (B) and IV (B) of this Agreement. The withdrawing party will give up its equity interest in the facility and property, and will only be entitled to be reimbursed for its actual contributions made under Section III (A), III (B), and IV (B), or their pro-rata share if the amount of the contributions exceeds the fair market value of the property. The withdrawing party will not be entitled to reimbursement for its maintenance and operations costs or share of ownership.
- E. The Superintendents Council will determine how these monies will be reimbursed to the withdrawing Party. The reimbursement must be paid to the withdrawing Party no later than ten (10) years after the effective date of withdrawal and may be paid out in yearly installments over that ten-year period as determined by the Superintendents Council.
- F. The withdrawing Party will continue to be bound by the terms and conditions of this Agreement until the date the withdrawal becomes effective.
- G. Withdrawal by the Host District constitutes dissolution and shall be subject to Section VIII, Dissolution Provision.

SECTION VIII: DISSOLUTION PROVISION

- A. Dissolution occurs when either the host district or the other two Parties withdraw from the Program. Upon the date of dissolution the operation of the Delta High School Program will cease. No party may use the name "Delta" in naming a subsequent STEM high school program after dissolution.
- B. State law, chapter 392-345-040 WAC, provides that procedures for the dissolution of the operation of school facilities pursuant to this Agreement shall not be instituted prior to the expiration of ten (10) years after the date of the superintendent of public instruction approval of the financial plan for the construction of such school facilities when such facilities were constructed with state funding assistance: Provided, that a request for dissolution prior to such ten-year period may be approved when, in the judgment of the superintendent of public instruction, there is substantiation of sufficient cause therefore. Any plan for dissolution by the Parties prior to expiration of the ten (10) years must be submitted to the superintendent of public instruction for review and approval prior to proceeding with dissolution action.
- C. If the program is dissolved, the following will apply:
 - a. The property, building(s) and all fixtures will be appraised according to RCW 28A.335.120 and put up for sale.

- b. The host district shall have the right of first refusal to buy the property upon dissolution.
- c. Upon sale of the property, any parties having made contributions pursuant to Section III (A), III (B) and Section IV(B) will be reimbursed for those total contributions, or their pro-rata share if the amount of the contributions exceeds the fair market value of the property.
- d. If dissolution occurs due to mutual agreement of the three parties, or due to withdrawal of two parties other than the host district, each district who is a party to this Agreement on both the date of approval of this agreement and the date of dissolution is entitled to a one-third share of the net proceeds of said sale. The Superintendents Council will determine the process for dissolution and how each Party will be reimbursed.
- e. If dissolution occurs due to the withdrawal of the host district, the net proceeds of said sale shall be distributed to the remaining districts who are a party to this Agreement on both the date of approval of this agreement and dissolution. The host district will give up its financial interest in the facility and real property.
- f. The sale of any property or Facility subject to this Agreement to a party other than the host district requires the approval of the board of directors of any district who is a party to this Agreement on both the date of approval of this agreement and of dissolution.

SECTION IX: MISCELLANEOUS

- A. **Indemnification and Hold Harmless.** Each Party shall defend, indemnify, and hold the others harmless from and against any and all claims, suits, damages, causes of action, economic loss, or judgments that arise or are a direct result of the negligent or intentional acts or omissions of the Party, its agents, employees, or officers related to this Agreement.
- B. **Claims Procedure.** A Party who intends to claim indemnification under this Agreement shall notify the Party from whom it seeks indemnification in writing of any claim, lawsuit, or other action in respect to which such indemnification is claimed within ten (10) days or receipt.
- C. **Assignment.** No assignment of this Agreement shall be made in whole or in part by any Party without the express written consent of the other Parties, which may be withheld at their sole discretion.

D. **Notice.** Notices under this Agreement shall be sent to the following:

Richland School District
Attn: Superintendent
615 Snow Ave.
Richland, WA 99352

Pasco School District
Attn: Superintendent
1215 W. Lewis St.
Pasco, WA 99301

Kennewick School District
Attn: Superintendent
1000 W. 4th Ave.
Kennewick, WA 99336

E. **Governing Law.** This Agreement is made and entered into in the State of Washington and shall be governed by and construed and enforced in accordance with the substantive laws of the State of Washington. Should any dispute arise concerning the enforcement, breach or interpretation of this Agreement, venue shall be in Benton/Franklin Counties, Washington. The Parties shall first submit their dispute to dispute resolution according to Section VI.

F. **Severability.** In the event a term, condition, or provision of the Agreement is determined as void, unenforceable, or unlawful by a court of competent jurisdiction, the Parties agree that such term, condition, or provision is severable, and that the remainder of the Agreement shall remain in full force and effect.

G. **Entire Agreement.** This Agreement is the entire agreement of the Parties and may be changed, modified, or amended only upon written agreement bearing the signatures of the authorized representatives from the Richland, Pasco, and Kennewick School Districts and with the approval of the respective school boards.

H. **Amendments.** Any Party to this Agreement can propose amendments. No amendment, supplement, or modification of this Agreement shall be binding unless executed in writing by all Parties hereto and with the approval of the respective school boards.

I. **Term.** This Agreement shall remain in effect for ten (10) years from the date of signature of the last approving Party. The Agreement will be automatically renewed for two (2) additional ten (10) year terms, unless written notice of termination is served upon each of the Parties no less than eighteen (18) months prior to expiration of the current ten-year term. Written notice of termination shall be deemed to have been given three (3) calendar days after depositing the notice, postage prepaid, in the United States mail, or upon receipt, if by personal delivery.

J. **Extension of Program Agreement.** Through this Agreement, the Parties agree to extend the term of the 2009 Program Agreement for ten (10) years from the date of signature of this Agreement by the last approving Party. The Parties agree to meet and

recommend changes to the Program Agreement (if any) by June 30, 2013. The Program Agreement is herein incorporated by reference, and will be automatically renewed for two (2) additional ten (10) year terms, unless written notice of termination is served upon each of the Parties no less than eighteen (18) months prior to expiration of the current program term. Written notice of termination shall be deemed to have been given three (3) calendar days after depositing the notice, postage prepaid, in the United States mail, or upon receipt, if by personal delivery.

IN WITNESS WHEREOF, the Parties have executed this Agreement by having their authorized representatives affix their signatures in the spaces below.

Wayne Adams 12-12-12

Board President Date
Kennewick School District No. 17

Richard Gunn 12-12-12

Board President Date
Richland School District No. 400

Sherry Duncan 12-11-12

Board President Date
Pasco School District No. 1