

DEC 07 2017

Deputy Superintendent's Office



**AGREEMENT BETWEEN THE CITY OF SHORELINE
AND SHORELINE SCHOOL DISTRICT NO. 412
FOR ACCELERATED PROCESSING OF CONSTRUCTION PERMITS
FOR SCHOOL DISTRICT CONSTRUCTION PROJECTS**

THIS AGREEMENT is made and entered into by Shoreline School District No. 412 (hereinafter referred to as the "School District") and the City of Shoreline (hereinafter referred to as "City"). The School District and City are collectively referred to hereafter as "the Parties" or individually as a "Party".

RECITALS

WHEREAS, the City is a non-charter optional municipal code city organized pursuant to Title 35A of the Revised Code of Washington.

WHEREAS, the School District is a quasi-municipal corporation organized pursuant to Title 28A of the Revised Code of Washington.

WHEREAS, in 2017, voters approved a \$250 million school construction bond to fund the rebuilding of Einstein Middle School, Kellogg Middle School, and Parkwood Elementary School and, to build an Early Learning Center at the Shoreline Children's Center.

WHEREAS, phased improvements are underway at the Aldercrest campus to modernize this facility with the goal of reopening the campus as an elementary school to safely serve Shoreline School District students and families now and into the future.

WHEREAS, the School District has requested an eight week processing time for certain permits required by the City for construction projects at the following schools: Aldercrest Elementary School; Parkwood Elementary School; Einstein Middle School; and Kellogg Middle School.

WHEREAS, the Parties desire to enter into an agreement so as to provide for the terms and conditions of the City's accelerated processing of such permits and the School District's payment for such accelerated processing.

AGREEMENT

FOR AND IN CONSIDERATION OF and subject to the terms and conditions set forth below, the Parties agree as follows:

**SECTION 1
PURPOSE OF AGREEMENT**

The purpose of this Agreement is to set forth the roles and responsibilities of the Parties with respect to the City's accelerated processing of permits that are issued by the City for construction at Aldercrest Elementary School, Parkwood Elementary School, Einstein Middle School, and Kellogg Middle School and, the fees owed to the City by the School District for the accelerated processing of these permits. This Agreement does not include permits and reviews by non-city utility providers including, but not limited to, sewer, water, electric, and gas.

**SECTION 2
DEFINITIONS**

- A. "Construction Permit" or "Construction Permits" means Building Permits, Mechanical Permits, Electrical Permits, Site Development Permits, Right of Way Permits, Plumbing Permits, Demolition Permits, and Fire Systems Permits. Construction Permits do not include Conditional Use permits as defined in SMC 20.30.300 or any other Type B, Type C, or Type L permit as defined in SMC 20.30.050, 20.30.060, and 20.30.070 respectively.
- B. "Date revisions were received" means the date the document is stamped as received by the City.
- C. "Days" means calendar days.
- D. "Accelerated Processing" means an eight (8) week processing time, calculated from the date the City determines an application is complete to the date of permit issuance, accounting for tolling when additional information has been requested by the City.
- E. "Project" or "Projects" means the School District's remaining renovations for Aldercrest Elementary; rebuilding of Einstein Middle School, Kellogg Middle School, and Parkwood Elementary.
- F. "Week" means one calendar week or seven (7) consecutive calendar days.

**SECTION 3
ENVIRONMENTAL REVIEW**

- A. The School District is the "lead agency" for the purposes of a Project's compliance with the State Environmental Policy Act, RCW 43.21C (SEPA).
- B. Verification from the School District to the City that a Project has complied procedurally and substantively with SEPA must be submitted to the City for each Project as part of the construction permit application. Verification should include, at a minimum, Determination of Non-Significance or a Determination of Significance and, if the latter, an Environmental Impact Statement.

SECTION 4 ROLES AND RESPONSIBILITIES

The Parties understand and agree that the process described in this Agreement depends upon timely and open communication, prompt submittal of documentation and information, and mutual cooperation between the Parties. In this regard, communication of issues, changes, or problems that arise with any aspect of the roles and responsibilities described herein should occur as early as possible in the process, and not wait for explicit due dates or deadlines. Each Party agrees to work cooperatively and in good faith toward resolution of any such issues so as to meet the deadlines articulated in this Agreement.

A. **City Responsibilities:** The City agrees to review the Construction Permit applications and provide the School District with review comments as described in this Section to facilitate the issuance of Construction Permits for the Projects within the Accelerated Processing time period.

1. The City will issue a Notice of Complete Application upon determination by the City that a Construction Permit application is complete.
2. The City will complete the first review of the Construction Permit application within three (3) weeks of the date of the Notice of Complete Application. Upon completion of the first review, the City will send written comments to the School District detailing required revisions.
3. The City will complete the second review of a Construction Permit application within one (1) week of the date revisions were received from the School District that, in the City's sole opinion, completely address the first review comments. Upon completion of the second review, the City will send written comments to the School District detailing required revisions.
4. The City will complete all subsequent reviews, if required, of a Construction Permit application within one (1) week of the date revisions were received from the School District that, in the City's sole opinion, completely address the review comments. Upon completion of any subsequent review, the City will send written comments to the School District detailing required revisions.
5. Following the completion of the City's first or second review of a Construction Permit application, if, in the City's sole opinion, there are no remaining issues associated with the building placement and design of the foundation, the City may, upon written request of the School District, issue a separate permit for the "Foundation Only" and/or "Site Development." The issuance of these types of permits will allow construction on those portions of a Project to begin in advance of issuance of the actual building permit.
6. The City's Project Manager may release partial review comments to the School District in advance of the City completing a round of reviews to reduce the turn-around time between reviews.
7. The City's Project Manager will coordinate the City's and the Shoreline Fire Department's review of all Construction Permit applications required for each Project.
8. The City's permit application review staff will be available to meet, at a minimum, weekly with the School District to answer questions related to compliance with all applicable code provisions.

9. The City will provide the School District with weekly progress reports on the status of Construction Permit reviews. Reports will be provided via e-mail by close of business on Friday of the following week to the School District's Project Manager.

B. School District Responsibilities: The School District agrees to provide Construction Permit applications and revisions as described in this Section to facilitate the issuance of Construction Permits for the Projects within the Accelerated Processing time period.

1. The School District will provide the City with four (4) weeks of notice prior to the estimated date of Construction Permit application submittals to ensure required staff are assigned to complete the review of the Construction Permit applications. The School District has established the following estimated schedule for submittal of Construction Permit applications:

School	Estimated Date of Building Permit Submittal
Parkwood Elementary	February 1, 2018
Einstein Middle	August 1, 2018
Kellogg Middle	August 1, 2018
Aldercrest Elementary	October 2017 or 1 st Quarter 2018

2. The School District shall request a Pre-Application meeting as defined in SMC 20.30.080 for each of the Projects prior to application submittal.
3. The School District will completely respond to the City's first review letter and submit necessary revisions to the City within ten (10) days of the date of the City's first review letter.
4. The School District will completely respond to the City's second review letter and submit necessary revisions to the City within one (1) week of the date of the City's second review letter.
5. The School District will completely respond to the City's third review letter and submit necessary revisions to the City within four (4) days of the date of the City's third review letter. The School District acknowledges that reviews of Construction Permit applications beyond the third review will likely extend the permit issuance date beyond the Accelerated Processing time period.
6. The School District acknowledges that the City may release partial review comments to the School District in advance of the City completing a round of reviews to reduce the turn-around time between reviews. The release of partial review comments does not obligate the School District to respond to such comments within the time periods set forth in this Section.
7. The School District Project Manager will coordinate review of all non-city permits as needed to facilitate issuance of Construction Permits by the City within the Accelerated Processing time period.
8. The School District's Project Manager will be available to meet, at a minimum, weekly with the City to answer questions related to compliance with all applicable code provisions.

C. Joint Responsibilities:

1. Project Managers.

- a. To promote effective intergovernmental cooperation and efficiencies, each Party will designate an individual as a Project Manager who shall be responsible for coordination of communications between the Parties and shall act as the point of contact for that Party.
- b. At the discretion of the Party, Project Manager(s) may be designated for an individual School District Project or for all School District Projects.
- c. Designated Project Manager(s) shall be identified by each Party promptly upon Construction Permit application submittal.

2. Failure to Meet Timelines

- a. The Parties recognize and acknowledge that the ability to meet the Accelerated Processing time period requires timely performance based on available staffing and effective communication. If either Party fails to perform their responsibilities for a Construction Permit application as set forth in this Section so as to facilitate permit issuance within the Accelerated Processing time period, then the timelines shall be adjusted to afford the other Party the same number of days the non-performing party has delayed.
- b. In the event of a failure to perform, the Parties shall work collaboratively to promptly develop corrective actions. Appropriate corrective actions will be mutually established by the City's Project Manager and the School District's Project Manager. If the need for corrective action is solely attributable to the City's actions and is not resolved within one (1) week, then the School District may request a reduction in the fees due the City on the Construction Permit application at issue. At no time should such a reduction be greater than two (2) times the applicable permit review fees.

3. Dispute Resolution

The City Project Manager and the School District Project Manager will attempt to mutually resolve any disputes or questions of interpretation of this Agreement or the performance of either Party under this Agreement. If the disputes or questions are not resolved by the Project Managers, then the Parties agree to use their best efforts to resolve disputes arising out of or related to this Agreement using good faith negotiations by engaging in the following dispute resolution process:

- a. Either Party may refer a dispute to the dispute resolution process by providing written notice of such referral to the other Party's Designated Representative.
- b. Initial Dispute Resolution: The School District's Designated Representative and the City's Designated Representative shall meet to discuss and attempt to resolve the dispute in a timely manner. If the Designated Representatives cannot resolve the

- dispute within three (3) days after referral of that dispute for Initial Dispute Resolution, either Party may refer the dispute for Secondary Dispute Resolution.
- c. Secondary Dispute Resolution: The School District Deputy Superintendent, the City's Director of Planning and Community Development, the City's Director of Public Works (if applicable) and the Shoreline Fire Marshal (if applicable) shall meet to discuss and attempt to resolve the dispute. If they cannot resolve the dispute within two (2) days after referral of that dispute for Secondary Dispute Resolution, either Party may refer the dispute for Tertiary Dispute Resolution.
 - d. Tertiary Dispute Resolution: The School District Superintendent, the City Manager, and the Shoreline Fire Chief (if applicable) shall meet to discuss and attempt to resolve the dispute in a timely manner. Except as otherwise specified in this Agreement, in the event the dispute is not resolved within two (2) days after referral of that dispute for Tertiary Dispute Resolution, the Parties are free to file suit, seek any available legal remedy, or agree to alternative dispute resolution methods such as mediation.
 - e. At all times prior to resolution of the dispute, the Parties shall continue to perform any undisputed obligations and make any undisputed required payments under this Agreement in the same manner and under the same terms as existed prior to the dispute. Notwithstanding anything in this Agreement to the contrary, neither Party has an obligation to agree to refer the dispute to mediation or other form of dispute resolution following completion of Tertiary Dispute Resolution.

SECTION 5 FINANCIAL REIMBURSEMENT

- A. In order to achieve Accelerated Processing for Construction Permits for the Projects, the School District agrees to pay the City three (3) times the applicable permit review fees set forth in Shoreline Municipal Code (SMC), Chapter 3.01.
- B. If requested in writing by the School District, a "Foundation Only" and/or "Site Development" permit will be charged a minimum fee of fifteen (15) hours. Hours in excess of the minimum hours shall be billed at the hourly minimum rate set forth in SMC 3.01.010.
- C. The City will invoice the School District for each Project twice: first at permit intake for all applicable intake fees and second prior to permit issuance for payment in full of all remaining fees. All invoices shall be due in full thirty (30) calendar days from the date of invoice.

**SECTION 6
TERMINATION**

- A. This Agreement may be terminated by the mutual consent of both Parties.
- B. Either the City or the School District may terminate this Agreement for cause in the event that the other Party fails to fulfill its material obligations under this Agreement in a timely manner or breaches any material provision of this Agreement and the dispute resolution process identified in Section 5 has failed to reach resolution within the timelines described therein.
- C. The Party wishing to terminate this Agreement for cause shall provide the other Party with written notice of its intent to terminate and shall give the other Party an opportunity to correct the failure to perform or breach within three (3) days of the notice or within such longer period as may be necessary in the event that correction cannot reasonably be accomplished within three (3) days. If the failure or breach is not corrected or cured, this Agreement may be terminated by the aggrieved party by giving three (3) days written notice to the other Party.
- D. If the School District, at its sole discretion, elects not to require accelerated permit processing for any Project and the School District has provided written notice to the City prior to the submittal of the first Construction Permit Application for that Project, then the City shall not be required to perform accelerated permit processing for that Project and the School District shall not be required to pay for such accelerated processing. In such case, the School District shall only have to pay the standard permit review fees for that Project.
- E. A termination shall not extinguish or release any Party from liability for costs or obligations existing as of the date of termination. Any costs incurred prior to proper notification of termination will be borne by the Parties in accord with the terms of this Agreement.

**SECTION 7
INDEMNITY**

- A. Both Parties agree to defend, indemnify, and hold the other Party, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees to the extent resulting from the negligent, gross negligent and/or intentional acts, errors or omissions of the indemnifying Party, its agents or employees arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the indemnified Party.
- B. Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the School District and the City, its officers, officials, employees, and volunteers, the School District's and the City's respective liability hereunder shall be only to the extent of the School District's and the City's negligence. It is further specifically and expressly understood that

the indemnification provided herein constitutes the School District's and the City's waiver of immunity under Industrial Insurance, Title 51 RCW, as to each other only and solely for the purpose of this indemnification. This waiver is not granted to any worker protected under Title 51 RCW and is solely to indicate that the protections offered under Title 51 RCW do not limit the scope of the indemnity obligations herein. This waiver has been mutually negotiated by the Parties.

- C. The provisions of this section shall survive the expiration or termination of this Agreement.

SECTION 8 DURATION OF AGREEMENT

This Agreement shall take effect upon the last date of signature by the Parties as set forth below. This Agreement shall remain in effect until the City has issued all requested Construction Permits for School District Projects, unless sooner terminated as provided in Section 6 above.

SECTION 9 ASSIGNMENT AND BENEFICIARIES

No Party may assign all or any portion of this Agreement without the express written consent of the other Party. There are no third party beneficiaries to this Agreement.

SECTION 10 REPRESENTATIVES AND NOTICES

- A. The Designated Representatives will jointly administer this Agreement and each Party shall bear its own costs of administering this Agreement.
- B. The Designated Representatives shall communicate regularly to discuss the status of the tasks to be performed, to discuss any substantial changes to the Projects and proactively resolve any issues or disputes related to the Projects, consistent with this Agreement. Each Designated Representative is also responsible for coordinating the input and work of its agency, consultants, and staff as it relates to the objectives of this Agreement. The Parties reserve the right to change Designated Representatives by providing notice to the other party during the term of this Agreement.
- C. Unless otherwise provided herein, all notices and communications concerning this Agreement shall be in writing and addressed to the Designated Representatives. All notices shall be either: (i) delivered in person, (ii) deposited postage prepaid in the certified mails of the United States, return receipt requested, (iii) delivered by a nationally recognized overnight or same-day courier service that obtains receipts, or (iv) delivered electronically by electronic mail (e-mail) or facsimile. However, notice under Section 8, Termination, must be delivered in person or by certified mail, return receipt requested.

D. The Designated Representatives are:

City of Shoreline
Paul Cohen, Planning Manager
17500 Midvale Avenue N
Shoreline, WA 98133
pcohen@shorelinewa.gov
(206) 801-2551

Shoreline School District
Dan Stevens, Manager - Capital Projects
18560 1st Ave NE
Shoreline, WA 98155
dan.stevens@shorelineschools.org
(206) 393-4246

**SECTION 11
CITY'S PERMITTING AND REGULATORY AUTHORITY**

Nothing in this Agreement shall be deemed a waiver of the City's regulatory or permitting authority as to any of the permits required for the School District Projects, nor a predetermination of the compliance of a Project with applicable codes and regulations. The City retains the right to approve or reasonably condition permits required for the School District Projects within the bounds of the City's legal authority.

**SECTION 12
GENERAL PROVISIONS**

- A. **Governing Law and Venue.** This Agreement shall be construed and enforced in accordance with the laws of the State of Washington. Venue of any suit between the Parties arising out of this Agreement shall be King County Superior Court.
- B. **Severability.** Any provision or part of the Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon the City and the School District, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- C. **Entire Agreement.** This agreement contains the entire Agreement between the parties hereto and no other agreements, oral or otherwise, regarding the subject matter of this agreement, shall be deemed to exist or bind any of the parties hereto. Either party may request changes in the agreement. Proposed changes which are mutually agreed upon shall be incorporated by written amendment to this agreement. Such amendment shall be binding upon the Parties without the need for formal approval by the Shoreline School District Board and/or the Shoreline City Council, as long as the amendments are generally consistent with this Agreement.
- D. **Force Majeure.** The Parties shall not be deemed in default with provisions of this Agreement where performance was rendered impossible by war or riots, civil disturbances, floods or other natural catastrophes beyond its control; the unforeseeable unavailability of labor or materials; or labor stoppages or slow-downs, or power outages exceeding back-up power

supplies. This Agreement shall not be revoked or a party penalized for such noncompliance, provided that such party takes immediate and diligent steps to bring itself back into compliance and to comply as soon as practicable under the circumstances without unduly endangering the health, safety, and integrity of both parties' employees or property, or the health, safety, and integrity of the public, public right-of-way, public property, or private property.

- E. Headings and Construction. Section headings are intended as information only, and shall not be construed with the substance of the section they caption. In construction of this Agreement, words used in the singular shall include the plural and the plural the singular, and "or" is used in the inclusive sense, in all cases where such meanings would be appropriate.
- F. Execution in Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all counterparts together shall constitute but one and the same instrument.


IN WITNESS WHEREOF, each person whose signature appears below represents, warrants, and guarantees that he/she has been duly authorized and has full authority to execute this Agreement on behalf of the party for which he/she is signing this Agreement.

City of Shoreline


Shoreline School District No. 412

By: 
Debbie Tarry, City Manager

By: 

Date: 

Date: 11/7/2017

Approved as to Form:


Attorney, City of Shoreline