

Capital Project Agreement

SCHOOL NAME: QUEEN MARY ELEMENTARY SCHOOL

SCHOOL DISTRICT NAME: School District No. 44 (NORTH VANCOUVER)

PROJECT NUMBER: 114464

PROJECT DESCRIPTION: SEISMIC UPGRADE AND RESTORATION OF HERITAGE SCHOOL - 120K + 350 NOMINAL CAPACITY

THIS CAPITAL PROJECT AGREEMENT made in duplicate and dated for reference the 17th day of Dec., 2008

BETWEEN: Her Majesty the Queen in Right of the Province of British Columbia, represented by the Minister of Education
(herein the "Province")

OF THE FIRST PART

AND: The Board of Education of School District No. 44 (North Vancouver)
(herein the "Board")

OF THE SECOND PART

SCHEDULE A – RATIONALE, SCOPE AND DESIGN PARAMETERS

School Name: QUEEN MARY ELEMENTARY
Project No: 114464
Project Description: SEISMIC UPGRADE AND RESTORATION OF HERITAGE SCHOOL - 120K + 350 NOMINAL CAPACITY

1.1 Rationale

Queen Mary is a three-storey masonry building dating to 1914. It is considered by the community to be one of North Vancouver's most significant heritage buildings. It was designed by noted architect William Gillam in the Edwardian Baroque style.

The 2004 Ministry review of seismic risk of schools indicated that Queen Mary Elementary was among the higher risk buildings in the North Vancouver School District. In April 2005, in response to the 2004/05 Capital Plan request submitted by NVSD44, the Ministry of Education announced funding for a feasibility study to seismically mitigate Queen Mary Elementary.

A Phase 1 Feasibility Study by Downs/Archambault Architects was completed in September 2006, and a Due Diligence Review by KMBR Architects was completed in December 2007. The Due Diligence Review confirmed that the cost of seismic upgrades would be approximately \$10.8 million, or 88% the cost of a replacement building. Subsequent cost analysis conducted by Jim Bush and Associates in November 2008 indicated that the cost of upgrading mechanical, and electrical, systems, plus restoration of its historic features would exceed the building's replacement cost.

Queen Mary Elementary is one of two NVSD schools covered by the City of North Vancouver's "Heritage Protection Bylaw". A significant transferrable density bank was created by the City of North Vancouver for the express purpose of restoring Queen Mary and Ridgeway Schools. Premium costs for heritage restoration will be paid for from the sale of transferrable density credits created at the Queen Mary School site and the Lonsdale redevelopment project.

Matrix Planning Associates completed a review of long term enrolment at Queen Mary School, and took into consideration capacity of neighbouring elementary schools. The review also took into consideration community services that are currently offered out of Queen Mary School, and assumed that fulltime kindergarten will be introduced to all BC schools within the next several years. Matrix indicated that there exists a long term need for a school at this location with a capacity for 350 grades 1 to 7 students and 3 kindergarten modules. It recommended that the equivalent of 3 classroom spaces for community services be maintained.

1.2 Options Considered

A replacement school option was considered for cost comparative purposes. This option was not pursued because of the high significance of this landmark heritage building to the community. The shell of the existing building and its placement on the site was considered suitable for its long-term continuation as a school, and hub for community services.

Due to the complexity of this heritage restoration project, a procurement process known as "Construction Management at Risk" is proposed. The Construction Manager will be responsible, in conjunction with the Cost Consultants and the design team, to ensure that cost-effective methods of construction are considered early in the detailed design stage. The Construction Manager will have proven experience in complex renovations and in school construction.

1.3 Scope

Design and construction of a restored 120K+350 nominal capacity elementary plus 296 sqm for Neighbourhoods of Learning to be constructed on the NVSD44-owned site located at the corner of West

Keith Road and Mahon Avenue.

1.4 Design Parameters

Subject to the Ministry of Education's policies, procedures and guidelines the school shall be designed and constructed within the following cost allowances and factors.

Nominal Capacity:	120K/350 elementary, plus 296 sqm for Neighbourhoods of Learning
Maximum Building Area:	3958 m ² (includes 296 m ² NoL Program)
Quantity Survey Date	November 2008
Location Factor Date (Year/Month)	April 2008
<u>Cost Factors:</u>	<u>Base</u>
Unit Rate:	\$1,035 / m ²
Air Conditioning Adjustment	\$ 0 / m ²
Size Factor:	0.9903
Location Factor:	2.627 1 st QTR 2008
Project Unit Rate (new space):	\$2,848.37 / m ²
Project Unit Rate (renovations):	\$3,471.55 / m ²
Equipment Allowance (new space):	13.0% x 25% for Replacement
Equipment Allowance (renovations):	N/A
Equip. Freight Rate Allowance:	0.00%
Consultant Fees (new space):	11.00% Adjusted for size (724 m ² addition)
Consultant Fees (renovations):	16%

Notes: Equipment allowance calculated as a percentage of base building cost (maximum building area x base unit rate)
Consultant fees calculated as a percentage of site development and construction costs

BACKGROUND:

- A. The Board in accordance with its capital plan has requested provincial funding for the following Capital Project:
- Seismic Upgrade, described in Schedule "A".
- B. The Ministry supported Seismic Upgrade to Queen Mary Elementary School in the 2005/06 Capital Plan
- C. By letter dated April 7th, 2005 the Ministry indicated support for the Capital Project.
- D. The parties agree that the Province will make financial contributions to the Board by way of Prepaid Capital Advances for the purposes of the Capital Project, subject to the terms and conditions of this Agreement.

THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS

1.01 In this Agreement:

"Capital Project" means the Capital Project described in Schedule A;

"Certificate of Approval" means the Certificate of Approval described in paragraph 3.03;

"Eligible Expenditure(s)" means those expenditure areas more particularly described and listed in the Capital Project Financial Summary attached as Schedule "B";

"Event of Force Majeure" means invasion, rebellion, hostilities, sabotage, Acts of God, strikes, lockouts or labour disputes that are a major disabling event or circumstance in relation to the normal operations of the party concerned as a whole which is beyond the reasonable control of the party directly affected and results in a material delay, interruption or failure by such party in carrying out its duties, covenants or obligations under this Agreement;

"Guidelines" means the Ministry publication entitled Capital Asset Management - Project Procurement Procedures and Guidelines containing procedures and guidelines for Capital Projects and includes any revisions or updates of that publication;

"Minister" means the Minister of Education and includes the Deputy Minister of Education and any person designated by either of them to act with respect to any provision of this Agreement;

"Ministry" means the Ministry of Education of the Province of British Columbia;

"Prepaid Capital Advance(s)" means a prepaid capital advance authorized by the Minister of Education in accordance with section 56.1 of the *Financial Administration Act*, RSBC 1996, c. 138;

"Project Director" means the individual appointed by the Board to be accountable for delivering the Project in accordance with the terms of this Capital Project Agreement;

"Province" means the Province of British Columbia as represented by the Ministry of Education;

"Restricted Capital Reserve" refers to the Board's financial account containing any surplus in respect of a capital project or disposal of assets and that may only be utilized by the Board for capital projects and with the Minister's approval;

"Schools Protection Program" means the risk management program developed and administered by the Risk Management Branch of the Ministry of Finance and includes the Schools Protection Program Reference Manual and all amendments and updates to the program and manual;

"Seismic Projects Master Agreement" means the agreement between the Province and the Board detailing project delivery and funding parameters for two or more Capital Projects and this project is included in the Seismic Project Master Agreement;

"Identified Risks" means those risks identified on Schedule F, Identified Risks Summary;

"Temporary Accommodations" means such temporary facilities as portable buildings and associated services (water, sewer, power) as well as the costs of moving into and out of such facilities;

"Treasury Board" means the Treasury Board established under the *Financial Administration Act*; RSBC 1996, c. 138;

"Value Analysis" means the process for identifying major savings in a facility without compromising the value-for-money, reliability or performance.

2. SCHEDULES

2.01 The following Schedules are required and form an integral part of this Agreement:

- A. Capital Project Rationale, Scope and Design Parameters
- B. Capital Project Financial Summary
- C. Capital Project Schedule and Projected Cash Flow
- D. Not Applicable

2.02 The following Schedules, if identified and included, form an integral part of this Agreement and the parties agree to comply with all the terms and conditions contained therein.

- E. Design Aid Sheet(s)
- F. Identified Risks Summary

- G. Not Applicable
- H. Borrowing Bylaw and Minister's Authorization
- I. Not Applicable
- J. Not Applicable

2.03 The Feasibility Study - Stage 1 Queen Mary Elementary School, prepared by Downs/Archambault Architects (DA), dated September, 2006, in conjunction with the Due Diligence Review by KMBR Architects, Bush Bohlman Engineers, and Value Management Inc., dated December 12, 2007, and supplementary sketches (Restoration Option Floor Plans) from DA, dated December 5, 2008 are deemed to contain representations of the Board which are relied upon by the Ministry and these Reports form part of this Agreement. Should there be any inconsistencies between the Capital Project Agreement and the above reports, then the wording in this Agreement shall take precedence.

3. PROVINCIAL FUNDING CONTRIBUTIONS AND OBLIGATIONS

3.01 Subject to paragraph 3.02 to 3.08 the Province will:

- (a) provide to the Board capital funding as set out in Schedule "B" (Capital Project Financial Summary), to be used for the purposes of the Capital Project. This includes the amounts for the base levels of specified risks as identified under the heading "Above the Line - Fixed Allocation" in the table set out in Schedule F (Identified Risks Summary);
- (b) with additional justification satisfactory to the Province, provide to the Board additional funding as detailed in Schedule "F" (Identified Risks Summary), in the event that the costs of the Identified Risks exceed the base levels allocated to them in 3.01 (a). This additional funding may be accessed in the following manner;
 - (i) the Board must apply in writing to the Ministry for this additional funding and setting out the justification for a transfer of funds,
 - (ii) if there is a disagreement between the parties as to the increase in funding, it will be resolved with the assistance of an independent cost consultant appointed by mutual agreement of the parties and paid for from the Unspecified Reserves in Schedule "F",
 - (iii) on no account will the total cost adjustment exceed the maximum amount allocated under this subparagraph (b).

3.02 The Province will provide the capital funding in paragraph 3.01 in the form of a Prepaid Capital Advance.

3.03 Payment of a Prepaid Capital Advance is subject to the Ministry issuing a "Certificate of Approval" in accordance with Treasury Board policies and directives and to the following conditions:

- (a) on no account must the Board make a draw against funds available under a Certificate of Approval, unless:
 - (i) the draw is reimbursement for Eligible Expenditures properly incurred by the

Board in connection with the Capital Project; and

- (ii) the draw will not result in aggregate expenditures exceeding the aggregate limit set out in the Seismic Projects Master Agreement between the Ministry and the board dated _____ if such an agreement is in place.
 - (b) the Province may modify or withhold a Prepaid Capital Advance and applicable "Certificate of Approval", or any portion thereof, in the event the Board fails to observe, perform and comply with any provision of this Agreement or if, in the opinion of the Province, there has been a material change in the Capital Project including, without limitation, the matters referred to in paragraphs 4.04 (b) and 5.02 (a);
 - (c) the Board will comply with all applicable policies or directives of the Treasury Board respecting Prepaid Capital Advances; and
 - (d) Any unexpended funds from 3.01 (a) will be held in the Board's Restricted Capital Reserve.
- 3.04 The provision of funding under paragraph 3.01 is subject to the Board allocating **Three Million, Two Hundred Fifty-One Thousand, Six Hundred Seventy-Six [\$ 3,251,676]** to the Capital Project from the Boards Local Capital Reserve, and the Minister, by this Agreement, approves such allocation.
- 3.05 Not Applicable [OR]
- 3.06 If the project schedule is unduly affected due to activities of the province, then as established between the School District and Ministry staffs, the Ministry will make an appropriate adjustment to the funding in 3.01 (a) to permit the project to proceed on a revised schedule. No such adjustments will be made for any delays caused by the Board.

4. BOARD CONTRIBUTIONS AND OBLIGATIONS

- 4.01 The Board undertakes to:
- (a) fully comply with the conditions in paragraph 3.03 when making draws against funds available under the Certificate of Approval;
 - (b) carry out the Capital Project in a manner that ensures:
 - (i) cost effective design and construction;
 - (ii) competent project management and cost control through all project phases; and
 - (iii) Board fiscal and management accountability with respect to the Capital Project, in accordance with the Guidelines.
- 4.02 **Procurement and Contributions:**
- The Board will:
- (a) procure the Capital Project in accordance with the Guidelines;
 - (b) include in any contracts the standard insurance indemnification clauses required by the Schools Protection Program; and
 - (c) provide any and all financial contributions which, together with the Provincial funding in paragraph 3.01, may be necessary to complete the Capital Project as contemplated in this Agreement.

4.03 If paragraph 3.05 applies to this Agreement then the Board warrants and represents that it will comply with all the terms and conditions of the Province's written authorization.

4.04 Project Management:

- (a) The Board will engage or appoint a Project Director who will complete the project in a manner consistent with this Capital Project Agreement and who will:
 - (i) establish and maintain effective working relationships with the Ministry for the purpose of ensuring timely and collaborative efforts in support of achieving project objectives;
 - (ii) ensure that an independent Value Analysis is completed on this Capital Project in a manner consistent with the procurement method;
 - (iii) engage qualified advisory services, such as quality assurance professionals, independent qualified cost consultants, and other expertise as required to meet the terms of this agreement;
 - (iv) establish project tracking and reporting capability, consistent with Ministry requirements, for the purpose of assisting the Project Director to maintain project, cost, and risk management controls; and
 - (v) manage the project schedule to achieve the dates set out in Schedule "C".
- (b) The Board will implement its key obligations under this Capital Project Agreement in a timely manner to facilitate the project schedule set out in Schedule "C".
- (c) The Board will ensure that all communication related to this Capital Project conforms to the Communications Protocol Agreement on Capital Projects between the Ministry of Education and School Districts.
- (d) Upon the completion of the Capital Project, the Board will advise the Ministry of the availability and disposition of Temporary Accommodations.

4.05 Capital Project Management:

The Board will:

- (a) inform the Province without delay of any material issues which may affect the successful completion of the Capital Project;
- (b) comply with the requirements of the Schools Protection Program respecting capital construction projects; and
- (c) accept all costs for delays and associated escalation under its control.

4.06 Reporting

- (a) Prior to proceeding with procurement using a design-bid-build, construction management, or construction management at risk approach, the Board must submit to the Ministry the Value Analysis report required under section 4.04 (ii).
- (b) At the key milestones set out in Schedule "C", the Board must submit to the Ministry

Project Implementation Reports that will update the current Capital Project status, cash flow and schedule forecasts. These reports will be submitted using the Ministry's WebCaps Intranet site in accordance with Appendix 3 of the Guidelines.

- (c) The Board will, at the request of the Ministry, prepare specific reports relating to this project.
- (d) In addition to the requirements in paragraphs 4.05 (a), 4.06 (b), 4.06 (c) and 5.02 (a), the Board will immediately provide a report to the Ministry should any condition arise that materially affects the scope, costs or schedule of the project.
- (e) The Board, no later than six months after the date of substantial completion will submit to the Province a "Scope and Cost Review" substantially in the form set out in Appendix 4 of the Guidelines.
- (f) The Board will submit a "Notice of Project Account Closure" substantially in the form set out in Appendix 5 of the Guidelines when all funds have been disbursed.

5. ADDITIONAL CONDITIONS

5.01 Force Majeure

An Event of Force Majeure will relieve the Board and the Province of their obligations to meet the scope, costs and schedule set out in Schedule "C", Capital Project Schedule and Projected Cash Flow.

5.02 Unforeseen Circumstances

- (a) If unforeseen circumstances arise that compromise the Capital Project meeting the scope, costs or schedule set out in Schedule C, the Board must immediately advise the Ministry.
- (b) The Board must provide from its own fiscal resources all financial contributions which, together with the Provincial funding in paragraph 3.01, are necessary to properly complete the Capital Project and, sources of Board financial contribution may include the following:
 - i. allocating funds in its local capital reserve;
 - ii. with the prior approval of the Minister, using a surplus in its Restricted Capital Reserve as provided in section 156(10) of the *School Act*, RSBC 1996 c. 412, and
 - iii. with the prior approval of the Minister, borrow money in accordance with Section 144(1) of the *School Act*.
- (c) If the unforeseen circumstances in (a) above such as: severe weather, flooding, earthquake, external labour disruption, etc. are beyond the control of the Board, the Board may make a written request to the Ministry for additional funding.

