



Hornell City School District Capital Improvement Project Expenditures

Report of Examination

Period Covered:

November 10, 2006 — November 9, 2011

2012M-73



Thomas P. DiNapoli

Table of Contents

	Page
AUTHORITY LETTER	2
INTRODUCTION	3
Background	3
Objective	4
Scope and Methodology	4
Comments of District Officials and Corrective Action	4
CAPITAL IMPROVEMENT PROJECT EXPENDITURES	5
Procurement of Services	5
Professional Service Fees	6
Recommendations	9
APPENDIX A CIP Budget and Amendments	10
APPENDIX B Response From District Officials	11
APPENDIX C OSC Comments on the District’s Response	20
APPENDIX D Audit Methodology and Standards	21
APPENDIX E How to Obtain Additional Copies of the Report	23
APPENDIX F Local Regional Office Listing	24

State of New York Office of the State Comptroller

Division of Local Government and School Accountability

November 2012

Dear School District Officials:

A top priority of the Office of the State Comptroller is to help school district officials manage their districts efficiently and effectively and, by so doing, provide accountability for tax dollars spent to support district operations. The Comptroller oversees the fiscal affairs of districts statewide, as well as districts' compliance with relevant statutes and observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving district operations and Board of Education governance. Audits also can identify strategies to reduce district costs and to strengthen controls intended to safeguard district assets.

Following is a report of our audit of the City of Hornell School District, entitled Capital Improvement Project Expenditures. This audit was conducted pursuant to Article V, Section 1 of the State Constitution and the State Comptroller's authority as set forth in Article 3 of the General Municipal Law.

This audit's results and recommendations are resources for district officials to use in effectively managing operations and in meeting the expectations of their constituents. If you have questions about this report, please feel free to contact the local regional office for your county, as listed at the end of this report.

Respectfully submitted,

*Office of the State Comptroller
Division of Local Government
and School Accountability*

Introduction

Background

The Hornell City School District (District) is located in the City of Hornell and the Towns of Fremont, Hornellsville, and Howard in Steuben County. The District is governed by the Board of Education (Board) which comprises five elected members. The Board is responsible for the general management and control of the District's financial and educational affairs. The Superintendent of Schools (Superintendent) is the chief executive officer of the District and is responsible, along with other administrative staff, for the day-to-day management of the District under the direction of the Board. There are five schools in operation within the District, with approximately 2,000 students and 500 employees. The District's budgeted appropriations to date for the 2011-12 fiscal year are \$13.7 million, which are funded primarily with State aid, sales tax, real property taxes, and grants.

In the fall of 2005, the District retained an Architect-Engineering firm (Architect) to complete the District's required Building Condition Survey (BCS) of its facilities. The BCS identified approximately \$40 million in improvements that were needed, and the Architect developed a five-year plan to address them. In December 2006, the District contracted with the Architect and a construction management company (CMC) to develop and oversee a future Capital Improvement Project (CIP) in conjunction with the Board-appointed Facilities Committee.

In December 2007, District voters rejected the proposed \$75.2 million CIP, which included the purchase of land for a new bus maintenance and storage facility, demolition of the old maintenance building and bus maintenance/storage facility, and various site improvements. At a special vote in March 2008, District voters authorized a CIP for additions, reconstruction, and renovations of the school buildings at a maximum cost of \$52.7 million.¹

Upon voter approval, the Architect and CMC began to plan, design and engineer the six individual projects. As the CIP designs were refined, budget amendments occurred to reallocate funds. As projects were closed for the first phase of the CIP, and bids were received and approved for the second phase of the CIP, it became evident that the entire CIP would be \$6 million under budget. On May 18, 2010, the Board adopted budget amendments to reflect the

¹ The six individual projects included in the CIP were the Bryant Elementary School for \$4,397,434, the Jr/Sr High School for \$25,300,083, the District Wide Technology (DWT) for \$6,703,500, the Columbian School for \$1,178,466, the Intermediate School (IS) for \$11,313,180, and the North Hornell School for \$2,744,323.

\$6 million in unallocated funds and revised the Intermediate School's project budget. Because the voters approved a \$52.7 million CIP, the Architect and CMC proposed expanding on the CIP's original scope to address some of the \$18.3 million in renovations identified in the 2010 BCS that had been removed. On June 6, 2011, the Board approved expanding the scope of the CIP. (See Appendix A for a detailed breakdown of the CIP budget and amendments.)

Objective

The objective of our audit was to examine the controls over the capital improvement project. Our audit addressed the following related question:

- Are capital project expenditures properly supported and within the amount authorized and approved?

Scope and Methodology

We examined the CIP project for the period November 10, 2006, through November 9, 2011.

We conducted our audit in accordance with generally accepted government auditing standards (GAGAS). More information on such standards and the methodology used in performing this audit is included in Appendix D of this report.

Comments of District Officials and Corrective Action

The results of our audit and recommendations have been discussed with District officials and their comments, which appear in Appendix B, have been considered in preparing this report. According to the District's response letter, District officials disagreed with the findings and recommendations in our report. Appendix C includes our comments on the issues raised in the District's response letter.

The Board has the responsibility to initiate corrective action. Pursuant to Section 35 of the General Municipal Law, Section 2116-a (3)(c) of the Education Law and Section 170.12 of the Regulations of the Commissioner of Education, a written corrective action plan (CAP) that addresses the findings and recommendations in this report must be prepared and provided to our office within 90 days, with a copy forwarded to the Commissioner of Education. To the extent practicable, implementation of the CAP must begin by the end of the next fiscal year. For more information on preparing and filing your CAP, please refer to our brochure, *Responding to an OSC Audit Report*, which you received with the draft audit report. The Board should make the CAP available for public review in the District Clerk's office.

Capital Improvement Project Expenditures

A capital project is a plan for the acquisition and/or construction of capital facilities, capital improvements, and major equipment purchases. All the financial activities related to capital projects are recorded and reported in the capital projects fund. The Board is responsible for establishing procedures to properly authorize, finance, and monitor the status of individual capital projects to ensure that moneys are properly accounted for and used only for their intended purposes. Such procedures also include maintaining complete and accurate accounting records and retaining documentation to support payments made.

In March 2008, District voters authorized a CIP for additions, reconstruction, and renovations of the school buildings at a maximum cost of \$52.7 million. As of June 30, 2011, the District's total CIP expenditures were approximately \$34 million, which was under budget by \$18.7 million. We found that the District awarded 37 construction contracts totaling approximately \$29.3 million after seeking competition and that the 249 proposed change orders² totaling approximately \$1.3 million were properly approved and all were proper CIP expenditures.

However, we found that the District did not seek competition for the approximately \$5.4 million in CIP-related professional services. In addition, we found that these professional service expenditures were not properly supported and fees for construction management services totaling approximately \$255,500 were paid in advance of an audit.

Procurement of Services

An effective procurement process includes confirming that vendors/consultants are eligible to provide necessary services, obtaining requests for proposals (RFPs)³ from providers of professional services, and requiring written contracts detailing contract terms and deliverables, such as the contract period, services to be provided, and the basis for compensation for these services before services are provided to the District. Written contracts also help to protect the District in the event that contractors default on their obligations or make excessive claims.

² A change order is used to officially make changes to a signed contract for capital construction.

³ An RFP is a highly structured document that specifies minimally acceptable functional, technical, and contractual requirements and the evaluation criteria that will govern the contract award.

District policy indicates that goods and services which are not required by law to be procured through competitive bidding will be procured in a manner to ensure the prudent and economical use of public moneys in the best interests of the taxpayers, to ensure that goods and services are procured in the most prudent and economical manner, that goods and services of desired quality are being acquired at the lowest possible price, and to protect against favoritism, improvidence, extravagance, fraud, and corruption. Board policy indicates that alternative proposals or quotations will be secured by using an RFP process or by obtaining written or verbal quotations. Alternative proposals secured by using an RFP process benefit the District by providing a comparison of the qualifications and fee structure for various professional services.

Although the Board adopted a comprehensive purchasing policy requiring the use of an RFP process to procure professional services, the District neglected to do so when it retained the Architect and the CMC for the CIP. The previous Superintendent stated that the Board agreed to use the Architect for the CIP because the firm was already providing services (2005 BCS) to the District when he started, and the firm knew the buildings. The previous Superintendent also stated that the CMC was retained based on recommendations from other superintendents in the area and was approved by the Board. Because District officials failed to seek competition for these professional services, we reviewed the two professional service contracts to determine if the contracts were properly authorized and represented the prudent and economical use of District moneys.

Professional Service Fees

Construction Management Services and Fees – On December 18, 2006, the Board approved a contract with a company for construction management services for the next capital project that was approved by the voters of the District. According to the contract, the scope of the CMC’s basic services was broken out between the pre-construction phase and construction phase. As part of the pre-construction phase, the CMC was responsible for preparing and updating the CIP completion schedule and cost estimates after reviewing and analyzing bids. During the construction phase, the CMC was responsible for overall management of the CIP by coordinating scheduled CIP activities, preparing and maintaining accounting records and reports, and monitoring the cost and completion of the CIP through the review and approval of individual contractors’ requests for payments. The CMC’s compensation for these basic services was based on the direct salaries of CMC personnel engaged on the CIP as described in an attached schedule. Although the CMC contract did not specifically include a clause stipulating the payment of a construction management fee, the attached schedule included a construction management fee

based on a percentage of the construction cost.⁴ The CMC contract also allowed for the payment of reimbursable expenses, such as out-of-town travel, long distance communication, and postage. As the scope of the CIP changed, the CMC contract was amended by change orders that were approved by the Board.

We reviewed all 71 of the CMC's claims to determine if they were proper District expenditures. As of June 30, 2011, the CMC was paid almost \$1,985,000. We found that the hourly rates charged by the CMC for its direct personnel costs were in agreement with those provided for in the contract and its amendments. However, we were unable to verify if the approximately \$1,243,000 in direct personnel costs were for actual hours worked. Time sheets were not provided to the District to support the amount charged. Also 12 claims totaling \$255,500 were paid before an audit by the claims auditor, including one \$9,500 claim that we could not find any indication that it was ever audited and approved for payment.

Architectural Services and Fees – On December 19, 2006, the Board approved a contract for architectural, engineering, and surveying pre-construction and construction services for the next CIP. According to the contract, the scope of the Architect's basic services included five phases for each of the buildings, and each phase was assigned a percentage of the basic compensation fee.⁵ According to the contract, the basic compensation fee is calculated based on a percentage of the construction cost for each building, which is defined as the total cost or estimated cost of all elements of the CIP designed or specified by the Architect. For example, if a building's construction cost is \$2.5 million, the Architect's total basic compensation would be \$232,500 (9.3 percent) for this building's renovations.

The contract also states that if the building's work will be completed in phases, the basic compensation fee will be calculated for each phase. For example, if the building's construction was broken into two phases of \$1,700,000 and \$800,000, the Architect's basic compensation would be \$242,400,⁶ or \$9,900 more. Therefore, it is advantageous for the Architect to separate each building's renovations into individual phases. As the Architect completed tasks in each of the five phases, it would bill and receive progress payments. In the first example, the basic compensation would be

⁴ According to the CMC contract, when compensation is based on a percentage of construction cost, compensation is based on the lowest bid, or if no such bids are received, the latest approved estimate of the project.

⁵ The percentage assigned to each phase was as follows: schematic design (15 percent), design development (25 percent), construction documents (35 percent), bidding (3 percent), and construction (22 percent).

⁶ The basic compensation fee is calculated by multiplying the \$1.7 million phase by 9.6 percent and the \$800,000 phase by 9.9 percent.

divided among the five phases as follows: schematic design (\$34,875), design development (\$58,125), construction documents (\$81,375), bidding (\$6,975), and construction (\$51,150).

During our audit period, the Architect submitted 23 claims totaling \$3,421,942, which included \$3,046,295 for basic compensation fees, \$185,744 for additional services, \$115,797 for reimbursable expenses, and \$74,106 for pre-referendum services. Because the Architect's invoices were not detailed or contained insufficient supporting documentation, we were unable to verify whether the amounts charged were appropriate District expenditures. Furthermore, because the contract allows for the basic compensation fee to be calculated based on cost or estimates by building or individual building phases, and the Architect's invoices do not specify which method is used, we determined that the Architect's basic compensation fee could be between \$2.36 million and \$4.07 million. It appears that the basic compensation fee charged by the Architect was in the middle of this range (See Table 1). However, without clear contract language and detailed invoices, we were unable to determine if the fees paid were in compliance with contract terms.

Table 1: Architect Basic Compensation Fees^a

Per Architect Invoice	Per Building Cost	Per Building Cost by Phase	Per Bid by Building	Per Bid by Building Phase	Per Original Budget by Building	Per Adjusted Budget by Building Phase
\$3,468,406	\$3,319,175	\$3,485,263	\$2,360,455	\$2,462,794	\$4,018,060	\$4,072,390

^a Compensation fees, other than per architect invoice fees, were recalculated by OSC.

In addition, we were unable to verify the amounts paid to the Architect for reimbursable expenses. For example, the Architect charged \$27,738 for mileage reimbursement but did not provide documented support for these expenses such as the dates of travel and the actual miles traveled. We requested additional information from the Architect related to the reimbursable expenses for five claims totaling \$115,797. Upon receipt of the additional information, we were still unable to verify that the reimbursements were appropriate. We question the veracity of these reimbursable expenditures because it appears that some may already be included in the basic compensation fee. For example, the Architect charged the District \$3,094 for submissions to the New York State Education Department (SED). However, the contract includes a clause under the basic compensation services section stating that the Architect will assist with the preparation, filing for licenses, approvals, permits and authorizations required by SED. Because the District's claims auditor relied on the CMC to review and approve the Architect's invoices, these inconsistencies/ discrepancies were not detected. Had the auditor performed an

appropriate audit of these vouchers, these inconsistencies could have come to light during construction.

When the terms of a contract are not clearly stated, District officials cannot be certain that they are paying for the agreed-upon services and that the services are delivered in accordance with District requirements.

Recommendations

1. The Board should ensure that District officials comply with the District's purchasing policy and award professional services contracts only after soliciting for RFPs, or document a justifiable reason for not soliciting competition.
2. The Board should ensure that all professional service agreements clearly state the terms of the contracts such as the services to be provided and the basis for the compensation.
3. The claims auditor should ensure that all invoices for professional services are properly detailed, supported, and verified with contracts prior to payment.

APPENDIX A

CIP BUDGET AND AMENDMENTS

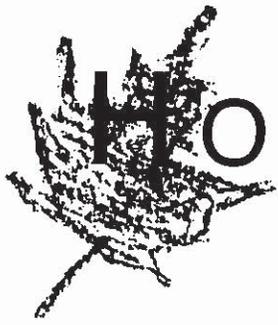
Table 2: CIP Budget and Amendments

Project Name	Board Approved Referendum Budget	1st Revision	2nd Revision 1/26/09	3rd Revision 11/16/09	4th Revision 5/18/10	5th Revision 6/6/11
Bryant Elem	\$4,397,434	\$4,397,434	\$4,397,434	\$3,647,434	\$3,375,807	\$3,325,659
Bryant 2						\$1,075,000
Jr/Sr High School	\$25,300,083	\$25,300,083	\$25,300,083	\$25,300,083	\$21,883,677	\$25,433,759
1-Roof		\$259,178	\$259,178	\$241,583	\$242,715	\$242,715
2-Reno/Addds		\$25,040,905	\$25,040,905	\$22,026,421	\$18,608,883	\$18,607,883
3-Interactive classroom				\$3,032,079	\$3,032,079	\$3,951,263
4-Stadium						\$1,106,898
5-BCS						\$1,525,000
DWT (District Wide Technology)	\$6,703,500	\$6,703,500	\$6,703,500	\$7,453,500	\$6,185,530	\$6,328,071
DWT-I		\$2,132,459	\$2,567,502	\$2,053,502	\$2,215,333	\$2,293,999
DWT-II		\$2,933,441	\$990,626	\$2,254,626	\$824,825	\$923,700
DWT-III		\$1,637,600	\$3,145,372	\$3,145,372	\$3,145,372	\$3,110,372
Intermediate	\$11,313,180	\$11,313,180	\$11,313,180	\$11,313,180	\$11,314,655	\$12,291,725
Pool					\$72,000	\$55,049
Reno/Recons					\$11,242,655	\$10,379,650
Maint. Bldg Demo						\$100,000
BCS						\$1,757,026
Columbian Elem	\$1,178,466	\$1,178,466	\$1,178,466	\$1,178,466	\$1,178,466	\$1,490,945
North Hornell	\$2,744,323	\$2,744,323	\$2,744,323	\$2,744,323	\$2,744,323	\$2,744,323
Capitalize Interest	\$1,063,014	\$1,063,014	\$1,063,014	\$1,063,014		
Unallocated Project Contingency					\$6,017,542	\$10,518
TOTAL	\$52,700,000	\$52,700,000	\$52,700,000	\$52,700,000	\$52,700,000	\$52,700,000

APPENDIX B

RESPONSE FROM DISTRICT OFFICIALS

The District officials' response to this audit can be found on the following pages.



HORNELL

CITY SCHOOL DISTRICT

25 Pearl Street • Hornell • New York • 14843

Douglas H. Wyant, Jr., Superintendent
 Phone 607-324-1302
 FAX 607-324-4060
 Business Office
 607-324-7634

Schools

Senior High	324-1303
Intermediate	324-1304
Bryant	324-2171
N. Hornell	324-0014

July 25, 2012

Edward V. Grant, Jr., Chief Examiner
 Office of the State Comptroller
 The Powers Building
 16 West Main Street, Suite 522
 Rochester, NY 14614-1608

Re: Audit Report Title: Capital Improvement Project Expenditures
 Audit Report Number: 2012M-73

Dear Mr. Grant:

This letter will serve as the Hornell City School District's formal response to the draft audit report by the Office of the State Comptroller (OSC) in its audit of the District's capital improvement project expenditures, to be included as an appendix to the OSC's final audit report.

The District has reviewed the draft report and is in overall disagreement with the findings contained therein. The District takes these audit findings seriously.

See Note 1 Page 20

The audit report states that "Although the Board adopted a comprehensive purchasing policy requiring the use of an RFP to procure professional services, the District neglected to do so when it retained the architectural firm and the construction management company (CMC) for the CIP." The District's Purchasing Policy provides that the Purchasing Agent will not be required to secure alternative proposals or quotations for professional services. While the District agrees that in most instances issuance of a request for proposals would be in the best interest of the District, in this instance the District chose to enter into agreements for architectural and construction management services with firms that had performed services for the District in the past and were known to be qualified and reliable.

See Note 2 Page 20

In response to the finding that the District overpaid the construction management company, the District responds as follows:

- ***“...we were unable to verify if the approximately \$1,930,000 in direct personnel costs were for actual hours worked.”***

As of November 2011, the District had been invoiced by CMC in the amount of \$1,574,298.48 for direct personnel costs (see Exhibit A attached). In a follow up with the CMC, the District was advised that supporting documentation (time sheets) is available for inspection at the CMC’s offices. To District’s knowledge, these records were not requested for examination.

See
Note 3
Page 20

- ***“Also, 12 claims totaling \$255,500 were paid before audit by the claims auditor...”***

A sampling of these claims was provided to the District for review. Research indicates that although the checks may have been dated prior to the claims auditor’s approval date, actual check runs were not performed and/or payments were not distributed, until approval had been received.

See
Note 4
Page 20

- ***“...we found that the District overpaid the CMC \$336,440 for the construction management fee because the CMC did not adjust its calculation according to the contract.”***

Auditor’s findings that compensation should have been based upon a percentage of the bids awarded and that District overpaid CMC in the amount of \$336,440 are incorrect. The CMC management fee is a fixed fee, as evidenced by Change Order #2, section 13.2.1(D) (copy attached as Exhibit B) which provided for the CMC to receive payment of \$790,362, payable in equal monthly installments through December 2011. Moreover both the District and CMC agree that CMC’s compensation was partly fee based and partly based on actual hourly services (see copy of letter attached as Exhibit C). Although Exhibit A of the contract indicates that a percentage was used to calculate construction manager’s fee, it was not intended to be the basis of compensation. Clause 12.3.4 applies “When compensation is based on a percentage of Construction Cost, ***and*** (emphasis added) any portions of the Project are deleted or otherwise not constructed...” Clause 12.3.4 (copy attached as Exhibit D for your reference) is not applicable because: 1) as stated above, the basis for compensation is not Construction Cost and 2) no portion of the project as presented to and approved by voters was deleted. In fact, due to a favorable bid environment, significantly more work was undertaken within the voter approved scope than what was foreseen when the voters approved the project. Six separate projects were planned; eleven projects have actually been undertaken.

See
Note 5
Page 20

In addition, the audit findings indicate that architectural services and fees submitted for reimbursement are not verifiable as documentation provided was not detailed or was insufficient. Historically, this level of documentation has not been the norm within the architectural industry. In the future, the District will ensure that agreements for professional services will more clearly define the basis upon which payment for services

are to be paid when not based on a fixed fee, and the more comprehensive level of documentation this audit sought are provided to the District.

If there are questions or a need for further clarification, please contact my office.

Thank you.

Sincerely,

Douglas H. Wyant, Jr.
Superintendent

DHW/fmc
cc.: Jeffrey Ahearn, Business Official



Invoice No: 11-11-7301
 Date: December 5, 2011
 Project Mgr: Robert T. Vargo
 Job Name: Hornell City School District
 Description: Capital Improvement Project
 Construction Management
 Job Number: 6746
 Period: November 2011

To: Hornell City School District
 Attn: Douglas H. Wyant, Jr., Superintendent
 25 Pearl Street
 Hornell, NY 14843

		Requisition No.	Forty-five		
Phase	Position	Staffing Budget	Billed to Date	Less Previous Billings	Current Payment Due
Prereferendum	Facility Planning	\$15,125.00	\$15,125.00	\$15,125.00	\$0.00
	Project Management	16,066.00	16,066.00	16,066.00	0.00
	Estimator	<u>6,851.00</u>	<u>6,851.00</u>	<u>6,851.00</u>	<u>0.00</u>
		\$38,042.00	\$38,042.00	\$38,042.00	\$0.00
Preconstruction	Estimator	\$342,221.69	\$168,251.91	\$167,505.36	\$746.55
	Project Manager/Supt.	258,387.76	149,731.28	149,731.28	0.00
	Facility Planning	171,175.70	117,888.33	115,948.47	1,939.86
	Secretary	<u>42,329.87</u>	<u>34,133.37</u>	<u>33,981.97</u>	<u>151.40</u>
		\$814,115.02	\$470,004.89	\$467,167.08	\$2,837.81
Construction	Project Manager	\$1,211,898.36	\$273,362.19	\$260,911.63	\$12,450.56
	Asst. Project Manager	401,657.18	272,196.83	259,904.03	12,292.80
	Facility Planning	27,433.28	19,540.11	19,324.57	215.54
	Superintendent	784,135.80	419,048.77	387,987.41	31,061.36
	Secretary	<u>225,473.83</u>	<u>82,103.69</u>	<u>80,362.59</u>	<u>1,741.10</u>
		\$2,650,598.45	\$1,066,251.59	\$1,008,490.23	\$57,761.36
Total Staffing		\$3,502,755.47	\$1,574,298.48	\$1,513,699.31	\$60,599.17
Construction Management Fee		\$790,362.00	\$773,091.00	\$755,795.00	\$17,296.00
Total Staffing and Fee		4,293,117.47	2,347,389.48	2,269,494.31	77,895.17
Reimbursable Expenses:			\$11,977.91	\$11,589.35	\$
Current Payment Due Payable to Welliver McGuire Inc.					\$78,000.00

We appreciate your business.
 If you have any questions,
 please feel free to call.

Welliver McGuire Inc.
 250 North Genesee Street, Montour Falls, NY 14865
 P 607.535.5400 F 607.535.9206

buildwelliver.com

Confidence built on performance.

Hornell City School District
 Capital Improvement Project
 Job Number 6746

	Original Budget		This Period				Previously Billed		Cumulative To Date	
	Manhours	Dollars	Manhours	Rate	Extension	Manhours	Dollars	Manhours	Dollars	
Prereferendum Phase										
Facility Planning	275	\$15,125.00	0	\$55.00	\$0.00	275	\$15,125.00	275	\$15,125.00	
Project Management	200	\$16,066.00	0	\$80.33	\$0.00	200	\$16,066.00	200	\$16,066.00	
Estimator	100	\$6,851.00	0	\$68.51	\$0.00	100	\$6,851.00	100	\$6,851.00	
Total Preconstruction	575	\$38,042.00	0		\$0.00	575	\$38,042.00	575	\$38,042.00	
Preconstruction Phase										
Estimator	4648	\$342,221.69	9	\$82.95	\$746.55	2235.5	\$167,505.36	2244.5	\$168,251.91	
Project Manager/Superintendent	2993	\$256,387.76	0	\$97.27	\$0.00	1721	\$149,731.28	1721	\$149,731.28	
Facility Planning	1800	\$171,175.70	18	\$107.77	\$1,939.86	1184	\$115,948.47	1202	\$117,888.33	
Secretary	1260	\$42,329.87	4	\$37.85	\$151.40	993	\$33,981.97	997	\$34,133.37	
Total Preconstruction	10701	\$614,115.02	31		\$2,837.81	6,133.50	\$467,167.08	6,164.50	\$470,004.89	
Construction Phase										
Project Manager	13710	\$1,211,898.36	128	\$97.27	\$12,450.56	2853	\$260,911.63	2981	\$273,362.19	
Assistant Project Manager	5484	\$401,657.18	160	\$76.83	\$12,292.80	3580	\$259,904.03	3740	\$272,196.83	
Facility Planning	275	\$27,433.28	2	\$107.77	\$215.54	191.25	\$19,324.57	193.25	\$19,540.11	
Superintendent	10968	\$784,135.80	376	\$82.61	\$31,061.36	4949.5	\$387,987.41	5325.5	\$419,048.77	
Secretary	6398	\$225,473.83	46	\$37.85	\$1,741.10	2220	\$80,362.59	2266	\$82,103.69	
Total Construction	36835	\$2,650,598.45	712		\$57,761.36	13,793.75	\$1,008,480.23	14,505.75	\$1,066,251.59	
Grand Total	48111	\$3,502,755.47	743		\$60,598.17	20,502.25	\$1,513,699.31	21,245.25	\$1,574,288.48	

If approved, the proposed change order serves as an instrument to modify Contract B801 CMA-1992, dated December 22, 2007.

Change Order #2

Modify the following provisions to agreement as follows:

Replace existing Exhibit A-1 with Exhibit A-2

Article 3 Additional Services

Revise article 3.1 to include additional services as defined by Exhibit A-3 Articles 3.1.2 -3.1.9

13.2.1

A.) Pre-referendum phase services shall be billed commencing August 1, 2007 up to a maximum of \$38,042.

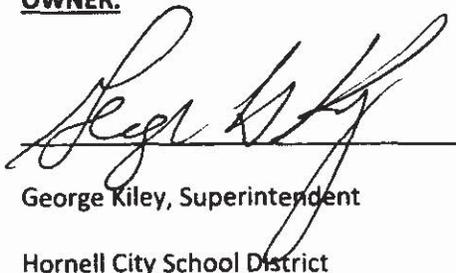
B.) Preconstruction Phase Services shall be billed to a maximum of \$814,115.00 commencing in the first month following passage of the enabling referendum.

C.) Construction Phase Services shall be billed to a maximum of \$2,650,598 commencing on the first month following passage of the enabling referendum.

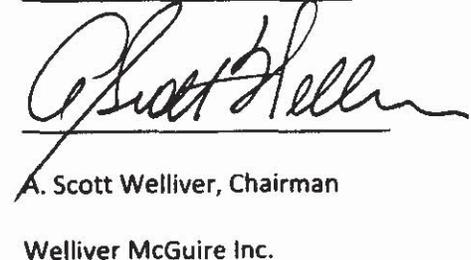
D.) The Construction Manager's fee shall be \$790,362 payable in equal monthly installments commencing in the first month following passage of the enabling referendum and continuing through December 2011.

Signed:

OWNER:


George Kiley, Superintendent
Hornell City School District

CONSTRUCTION MANAGER:


A. Scott Welliver, Chairman
Welliver McGuire Inc.



250 North Genesee Street
 Montour Falls, NY 14865
 Phone 607-535-5400
 800-376-3051
 Fax 607-535-9254
 www.welliver-mcguire.com

BY: _____
 AUG 1 8 2008

August 1, 2008

Dr. George A. Kiley, Superintendent
 Hornell City School District
 25 Pearl Street
 Hornell, NY 14843

Re: Change Order to Agreement Dated December 22, 2007

Dear George,

As you know Rusty and I are scheduled to meet with you on August 19th. Our purpose is to touch base with you now that the project is getting up to speed, and update you regarding our plans to provide construction management services, review the change order necessitated by the revised reduced scope of the approved project, and to assure that we understand your expectations going forward.

Regarding the Change Order:

The original contract was based on the work that would be encompassed in the proposal voted on in December. The total base fee for all services included in the agreement is \$4,539,598. The agreement in part is fee based and in part is based on the actual hourly services provided with a maximum increase of 4.9% increase per year for wage rates during the term of the agreement. The proposed change order, utilizing updated wage rates, is for \$4,293,117, which is \$246,482 less than the original contract. The Change Order also provides for adding an Exhibit A-3 which describes the additional services Hornell has requested in accordance with Article 3.1. A copy of the proposed change order is enclosed for your review.

Please do not hesitate to give me a call if you'd like to discuss this before our meeting. I can be reached at (607) 535-5400. Thank you and I look forward to seeing you on the 19th.

Sincerely,

A. Scott Welliver
 Chairman/CEO

cc: Jeffrey Ahearn
 Robert Gosden

- .3 claims for damages because of bodily injury, sickness or disease, or death of any person other than the Construction Manager's employees;
- .4 claims for damages insured by usual personal injury liability coverage which are sustained (1) by a person as a result of an offense directly or indirectly related to employment of such person by the Construction Manager, or (2) by another person;
- .5 claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in Article 14 or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of operations under this Agreement until date of final payment and termination of any coverage required to be maintained after final payment.

ARTICLE 12 PAYMENTS TO THE CONSTRUCTION MANAGER

§ 12.1 DIRECT PERSONNEL EXPENSE

§ 12.1.1 Direct Personnel Expense is defined as the direct salaries of the Construction Manager's personnel engaged on the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions and similar contributions and benefits. which expenses are included in the rates shown in Attachment "A".

§ 12.2 REIMBURSABLE EXPENSES

§ 12.2.1 Reimbursable Expense are in addition to compensation for Basic and Additional Services and include expenses incurred by the Construction Manager and Construction Manager's employees and consultants in the interest of the Project, as identified in the following Clauses.

§ 12.2.1.1 Expense of transportation in connection with the Project, expenses in connection with authorized out-of-town travel; long-distance communications; and fees paid for securing approval of authorities having jurisdiction over the Project. The only authorized reimbursable travel expenses are those for required travel outside Chemung and Schuyler Counties.

§ 12.2.1.2 Expense of reproductions, postage, express deliveries, electronic facsimile transmissions and handling of Drawings, Specifications and other documents.

§ 12.2.1.3 If authorized in advance by the Owner, expense of overtime work requiring higher than regular rates.

§ 12.2.1.4 Expense of additional insurance coverage or limits requested by the Owner in excess of that normally carried by the Construction Manager.

§ 12.3 PAYMENTS ON ACCOUNT OF BASIC SERVICES

§ 12.3.1 An initial payment as set forth in Section 13.1 is the minimum payment under this Agreement.

§ 12.3.2 Subsequent payments for Basic Services shall be made monthly and, where applicable, shall be in proportion to services performed within each phase of service, on the basis set forth in Section 13.2.1.

§ 12.3.3 If and to the extent that the time initially established in Section 13.5.1 of this Agreement is exceeded or extended through no fault of the Construction Manager, compensation for any services rendered during the additional period of time shall be computed in the manner set forth in Section 13.3.1.

§ 12.3.4 When compensation is based on a percentage of Construction Cost and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with Section 13.2.1, based on (1) the lowest bona fide bids or negotiated proposals, or (2) if no such bids or proposals are received, the latest approved estimate of such portions of the Project.

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APPENDIX C

OSC'S COMMENTS ON THE DISTRICT'S RESPONSE

Note 1

District officials never expressed any disagreement with the audit findings during the multiple meetings we had with them to discuss our audit results. During these meetings, we sought clarification and understanding, and we are confident that the facts in our report are accurate.

Note 2

The District's procurement policy states that "the Purchasing Agent will not be required to secure alternative proposals or quotations for professional services, which, because of the confidential nature of the services, do not lend themselves to procurement through solicitation." Architectural and construction management services are not confidential services like those provided by an attorney. Accordingly, District officials should have followed the Board's procurement policy or sought its approval for an exception.

Note 3

Officials have a responsibility to ensure that the amounts listed on the CMC invoices are true and actual District expenses prior to payment. Because the CMC's fees are based on direct personnel costs, obtaining sufficient supporting documentation, such as time sheets, would have been necessary during the proper audit of the claims. Having this information available for inspection at the CMC's offices after payment is unacceptable. Furthermore, we requested time sheets directly from the CMC project manager on multiple occasions, because District officials expressed concerns about his unavailability during various months of construction.

Note 4

Because this point was not raised prior to the completion of our fieldwork, we are not in a position to comment on its accuracy. However, issuing checks prior to the claims auditor's approval increases the risk that payments could be made in error.

Note 5

We have revised our report to reflect this new interpretation of the contract terms.

APPENDIX D

AUDIT METHODOLOGY AND STANDARDS

Our overall goal was to assess the adequacy of the internal controls put in place by officials to safeguard District assets. To accomplish this, we performed an initial assessment of the internal controls so that we could design our audit to focus on those areas most at risk. Our initial assessment included evaluations of the following areas: financial oversight, cash receipts and disbursements, purchasing, payroll and personal services, and information technology.

During the initial assessment, we interviewed appropriate District officials, performed limited tests of transactions and reviewed pertinent documents, such as District policies and procedures manuals, Board minutes, and financial records and reports. In addition, we obtained information directly from the computerized financial databases and then analyzed it electronically using computer-assisted techniques. This approach provided us with additional information about the District's financial transactions as recorded in its databases. Further, we reviewed the District's internal controls and procedures over the computerized financial databases to help ensure that the information produced by such systems was reliable.

After reviewing the information gathered during our initial assessment, we determined where weaknesses existed, and evaluated those weaknesses for the risk of potential fraud, theft and/or professional misconduct. We then decided on the reported objective and scope by selecting for audit the area most at risk. We selected the CIP for further audit testing.

To accomplish the objective of this audit:

- We interviewed appropriate current and former District officials and employees, including a former Superintendent. These discussions allowed us to gain an understanding of the District's internal control environment.
- We reviewed pertinent documents available, including applications and certificates of payment, applications for examination and approval of final plans and specifications, change orders, claims, contracts, and Board construction reports. We examined change orders to determine whether they were approved, signed, and dated by the appropriate District officials and paid accordingly.
- We selected a random sample of a completed project for any items that appeared to be split to avoid Board approval.
- We selected a random sample of 23 claims of a completed project totaling approximately \$355,500 to determine if CIP claims were properly authorized and audited prior to payment.
- We selected a random sample of 31 claims of all projects totaling approximately \$753,900 to determine if they were properly authorized and audited prior to payment.

- We selected all payments made to the CMC, totaling \$686,611, to compare construction management fees to project costs to determine if they were appropriate.
- We selected all payments made to the Architect totaling \$3,421,942 to verify if the payments were properly supported, reviewed, approved, and allowed by the contract.

We conducted this performance audit in accordance with generally accepted government auditing standards (GAGAS). Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

APPENDIX E

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Steven J. Hancox, Deputy Comptroller
Nathaalie N. Carey, Assistant Comptroller

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